ORDINANCE NO. 18418


WHEREAS, the City of Topeka is situated in Shawnee County, Kansas, which county has in place the Shawnee County Emergency Operations Plan, prepared and maintained by the Shawnee County Department of Emergency Management; and

WHEREAS, said emergency operations plan is authorized and mandated by K.S.A. 48-929.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. City of Topeka Code Chapter 38 is hereby amended by the addition of the following language:

In the event of a disaster as defined by K.S.A. 48-904(d) as amended, the City shall participate in and follow the procedures as established by the Shawnee County Emergency Operations Plan as developed and maintained by the Shawnee County Department of Emergency Management as authorized by K.S.A. 48-929.

Section 2. City of Topeka Code Chapter 38 is hereby amended by the addition of the following language:

The Shawnee County Emergency Operations Plan is hereby adopted as if fully set out herein.
Section 3.  City of Topeka Code § 38-26, Creation, is hereby repealed.

Creation.

There is hereby created a disaster agency for emergency preparedness.

Section 4.  City of Topeka Code § 38-27, Composition, is hereby repealed.

Composition.

The disaster agency for emergency preparedness shall consist of the following:

(1) The mayor, who shall serve as chairperson.

(2) An assistant to the mayor, designated as the "coordinator," who shall be charged with the preparation of the disaster emergency plan for the city, together with such other duties as the mayor may prescribe. The coordinator shall be appointed by and hold the position at the pleasure of the mayor. The coordinator shall serve as vice-chairperson of the agency.

(3) Such other officers, members and citizens of the community as the mayor shall deem advisable. All members shall be appointed by the mayor and shall serve at the mayor's pleasure.

Section 5.  City of Topeka Code § 38-28, Powers and duties, is hereby repealed.

Powers and duties.

The disaster agency for emergency preparedness shall have the following powers and duties to:

(1) Adopt, amend and repeal rules, regulations and bylaws governing its procedure and activities.
(2) Cooperate with and assist the state division of emergency preparedness and other local agencies throughout the state, federal agencies engaged in emergency preparedness activities or related fields, and to enter into mutual aid arrangements.

(3) Supervise and direct investigations and to report to the mayor with recommendations for such appropriate action as it may deem necessary, with respect to any type of activity or matter of public concern or welfare insofar as such activity or matter is or may be related to emergency preparedness.

(4) Create committees, either within or without its membership, to aid in the discharge of its powers and duties.

(5) Prepare and keep current a disaster emergency plan for the city, which has been approved after examination and periodic review by the state division of emergency preparedness.

(6) Prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all officials and of the disaster chain of command.

(7) Do all acts and things not inconsistent with law for the furtherance of emergency preparedness activities.

Section 6. City of Topeka Code § 38-29, Authority to accept public or private services, loans, gifts and grants, is hereby repealed.

Authority to accept public or private services, loans, gifts and grants.

The mayor is hereby authorized to accept on behalf of the city and the disaster agency for emergency preparedness any and all gifts, grants or loans of money, and services, equipment, supplies or materials offered to the city by any private individual, firm,
partnership or corporation or by the federal or state government or their agencies or
officers. The mayor is empowered to designate such officers as the mayor may deem
necessary to receive such services, equipment, supplies, materials or funds on behalf of
the city subject to the terms of the officer.

Section 7. City of Topeka Code § 38-51, Definitions, is hereby repealed.

Definitions.

The following words, terms and phrases, when used in this article, shall have the
meaning ascribed to them in this section, except where the context clearly indicates a
different meaning:

Attack means any attack or series of attacks by an enemy of the United States
causing, or which may cause, substantial damage or injury to civilian property or persons in
the United States in any manner, by sabotage or by the use of bombs, missiles, shellfire or
atomic, radiological, chemical, bacteriological or biological means or by other weapons or
processes.

Duly authorized deputy means a person who is authorized by law to perform all of
the functions, exercise all of the powers and discharge all of the duties of an office if the
office is vacant or at such times as it lacks administration due to the death, absence or
disability of the incumbent officer.

Emergency interim successor means a person designated pursuant to this article, if
the officer is unavailable, to exercise the powers and discharge the duties of an office until
a successor is appointed or elected and qualified as provided by law, or until the lawful
incumbent is able to resume the exercise of the powers and discharge the duties of the
office.
Unavailable means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and any duly authorized deputy are absent or unable, for physical, mental or legal reasons, to exercise the powers and discharge the duties of the office.

Section 8. City of Topeka Code § 38-52, Designation of successors, is hereby repealed.

Designation of successors.

(a)—Elective officers. Within 30 days after first entering upon the duties of the office, the mayor and each member of the city council shall, in addition to any duly authorized deputy, designate such number of emergency interim successors to the office and specify their rank in order of succession after any duly authorized deputy, so that there will be not less than three duly authorized deputies or emergency interim successors or combination thereof for the office.

(b)—Appointive officers. The council shall, within the time specified in subsection (a), in addition to any duly authorized deputy, designate for appointive officers including but not restricted to the chief of police, city fire chief, city health officer, city attorney, civil defense director, code enforcement director, city engineer, city treasurer, city clerk, police court judge and the airport manager, such number of emergency interim successors to these officers and specify their rank in order of succession after any duly authorized deputy, if any, so that there will be not less than three duly authorized deputies or emergency interim successors or combination thereof for each officer.
Section 9. City of Topeka Code § 38-53, Review of designations, is hereby repealed.

Review of designations.

The incumbent in the case of those elective officers in section 38-52(a), and the council in the case of those appointive officers specified in section 38-52(b), shall review and, as necessary, promptly revise the designations of emergency interim successors to ensure that at all times there are at least three such qualified emergency interim successors or duly authorized deputies or any combinations thereof for each officer specified.

Section 10. City of Topeka Code § 38-54, Qualifications of emergency interim successors, is hereby repealed.

Qualifications of emergency interim successors.

No person shall be designated or serve as an emergency interim successor unless such person may, under the constitution and statutes of this state and the ordinances of this city, hold the office of the person to whose powers and duties such person is designated to succeed, but no provision of any ordinance prohibiting an officer or employee of this city from holding another office shall be applicable to an emergency interim successor.

Section 11. City of Topeka Code § 38-55, Status of emergency successor, is hereby repealed.

Status of emergency successor.

A person designated as an emergency interim successor holds that designation at the pleasure of the designator, provided, that such person must be replaced if removed.
from such designation. Such person retains this designation as emergency interim successor until replaced by another appointed by the authorized designator.

**Section 12.** City of Topeka Code § 38-56, Assumption of powers and duties of officer by emergency interim successor, is hereby repealed.

**Assumption of powers and duties of officer by emergency interim successor.**

If in the event of an attack any officer named in section 38-52 and any duly authorized deputy is unavailable, the emergency interim successor highest in rank in order of succession who is not unavailable shall, except for the power and duty to appoint emergency interim successors, exercise the powers and discharge the duties of such officer. An emergency interim successor shall exercise such powers and discharge such duties only until such time as the lawful incumbent officer or any duly authorized deputy or an emergency interim successor higher in rank in order of succession exercises, or resumes the exercise of, the powers and discharge of the duties of the office, or until, where an actual vacancy exists, a successor is appointed to fill such vacancy or is elected and qualified as provided by law.

**Section 13.** City of Topeka Code § 38-57, Recording of authorized deputies and emergency successors, is hereby repealed.

**Recording of authorized deputies and emergency successors.**

The name, address and rank in order of succession of each duly authorized deputy shall be filed with the city clerk and each designation, replacement or change in order of succession of an emergency interim successor shall become effective when the designator files with the city clerk the successor's name, address and rank in order of succession. The
city clerk shall keep on file all such data regarding duly authorized deputies and emergency interim successors and it shall be open to public inspection.

Section 14. City of Topeka Code § 38-58, Formalities of taking office, is hereby repealed.

Formalities of taking office.

At the time of their designation, emergency interim successors shall take such oath and do such other things, if any, as may be required to qualify them to exercise the powers and discharge the duties of the office to which they may succeed.

Section 15. City of Topeka Code § 38-59, Quorum and vote requirements, is hereby repealed.

Quorum and vote requirements.

In the event of an attack, quorum requirements for the council shall be suspended, and where the affirmative vote of a specified proportion of members for approval of an ordinance, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

Section 16. City of Topeka Code § 38-81, Declaration, is hereby repealed.

Declaration.

(a) Whenever, in the judgment of the mayor, upon personal investigation or other information, determination is made that a disaster has occurred or the threat thereof is imminent, the mayor may declare a state of disaster emergency within the city. Such declaration shall recite the findings of the mayor, shall declare that a state of disaster emergency exists and shall be signed by the mayor.
(b) In the event of the absence or incapacity of the mayor, the council, by majority action of the remaining members thereof, may declare a state of local disaster emergency in the manner provided in subsection (a).

Section 17. City of Topeka Code § 38-82, Formulation of regulations, is hereby repealed.

Formulation of regulations.

(a) Following a proclamation under section 38-81, the mayor, or the person legally acting for the mayor in the mayor's absence, shall promulgate such reasonable orders, rules and regulations as deemed necessary to protect life and property or to bring the emergency situation under control.

(b) Without limiting the scope of the regulations authorized under subsection (a), orders, rules and regulations under this section may provide for:

(1) The control of traffic, including public and private transportation within the city or any area thereof.

(2) Designation of specific zones within the city in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated.

(3) Control of places of amusement and assembly, and of persons on public streets and thoroughfares.

(4) Establishment of a curfew.

(5) Control of the sale, transportation and use of alcoholic beverages and liquors and cereal malt beverages.
(6) Control of the possession, sale, carrying and use of firearms and other dangerous weapons and ammunition.

(7) Control of the storage, use and transportation of explosives or inflammable materials deemed to be dangerous to public safety.

(c) Orders, rules and regulations established under this section shall be effective from the time of issuance by the mayor, or the person legally acting for the mayor in the mayor's absence, and in such manner as shall be prescribed therein. Such orders, rules and regulations may be amended, modified or rescinded from time to time by the mayor, or the person legally acting for the mayor, during the pendency of the emergency.

Section 18. City of Topeka Code § 38-83, Notice to the public; filing with the city clerk, is hereby repealed.

Notice to the public; filing with the city clerk.

(a) The proclamation, orders, rules and regulations issued by the mayor under this article, or the person legally acting for the mayor, shall be disseminated immediately to the citizens of the city by the various radio stations, television stations and newspapers within and serving the city. The above-mentioned media will continue to broadcast and publish the orders, rules and regulations periodically at least three times each hour throughout the period of the emergency and shall also broadcast or publish immediately any modification, amendment or rescission of the proclamation, orders, rules and regulations in order to provide all citizens with knowledge of the emergency situation at all times.

(b) All proclamations, orders, rules and regulations formulated under this article shall be filed promptly with the city clerk.
Section 19. City of Topeka Code § 38-84, Activation of local response, is hereby repealed.

Activation of local response.

The declaration of a local disaster emergency shall activate the response and recovery aspects of any and all local and interjurisdictional disaster emergency plans which are applicable to the city, and shall initiate the rendering of aid and assistance thereunder.

Section 20. City of Topeka Code § 38-85, Request for national guard, is hereby repealed.

Request for national guard.

In addition to any orders, rules or regulations formulated under this article, the mayor may request the governor, or in the governor’s absence, the adjutant general, to call upon the national guard to aid the city. The commanding officer of such militia shall report to the mayor and shall cooperate with the mayor and the civil authorities and shall render all assistance in attempting to maintain and restore the public peace or safety, and in the protection of life or property, for the duration of the lawfully proclaimed state of disaster emergency.

Section 21. City of Topeka Code § 38-86, Duty of individuals during disaster emergencies; compensation for loss of property, exceptions; claims procedure, is hereby repealed.

Duty of individuals during disaster emergencies; compensation for loss of property, exceptions; claims procedure.

(a) Each person within this city shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract
from the ability of the city and the public successfully to meet disasters. This obligation includes appropriate personal service and use or restriction on the use of property during a declared state of local disaster emergency. This article neither increases nor decreases these obligations, but recognizes their existence under the constitution and statutes and the common law of this state. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this subsection are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute enacted or ordinance duly adopted therefor.

(c) Compensation for property shall be granted only if the property was commandeered or otherwise used in coping with a disaster and its use or destruction was ordered by an official of the city or some other authorized member of the emergency preparedness forces.

(d) Any person claiming compensation for the use, damage, loss or destruction of property under this section shall file a claim therefor in the district court in the same manner as any other civil action. The court shall determine the validity of such claim in the same manner and under the same conditions prescribed for condemnation actions pursuant to the eminent domain procedure act (K.S.A. 26-501 et seq.) and amendments thereto. Unless the amount of compensation on account of property damaged, lost or destroyed is agreed upon by the claimant and the adjutant general, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation law of this state.
Nothing in this section applies to or authorizes compensation for the
destruction or damaging of standing timber or other property in order to provide a fire break
or for the release of waters or the breach of impoundments in order to reduce pressure or
other danger from actual or threatened flood.

Section 22. City of Topeka Code § 38-87, Duties and immunities of law
enforcement, military and other authorized personnel, is hereby repealed.

Duties and immunities of law enforcement, military and other authorized
personnel.

Law enforcement officers, military personnel or other persons authorized to assist
them, while engaged in maintaining or restoring the public peace or safety or in the
protection of life or property during a state of disaster emergency, shall have all powers,
duties and immunities of peace officers of the state in addition to all powers, duties and
immunities now otherwise provided by law and shall be immune from civil and criminal
liability for acts reasonably done by them in the performance of their duties so long as they
act without malice and without the use of excessive or unreasonable force. All such
personnel shall have the authority to enforce any and all ordinances of the city within an
area affected by disaster as indicated in the proclamation of a local disaster emergency,
and for such purpose, all such personnel shall be considered to be authorized officers of
the city.

Section 23. City of Topeka Code § 38-88, Immunity from liability for persons in
control of certain premises, is hereby repealed.

Immunity from liability for persons in control of certain premises.
Any person owning or controlling real estate or other premises who voluntarily and
without compensation grants a license or privilege, or otherwise permits the designation or
use of the whole or any part of such real estate or premises, for the purpose of sheltering
persons during an actual or impending nuclear attack or disaster, together with his
successors in interest, if any, shall not be civilly liable for negligently causing the death of,
or injury to, any person on or about such real estate or premises, or the loss of or damage
to the property of such person, at any time such real estate or premises are actually used
for such purpose.

Section 24. City of Topeka Code § 38-89, Duration, is hereby repealed.

Duration.

(a) No state of local disaster emergency shall be continued for a period in excess
of seven days, or renewed, except with the consent of the council.

(b) All emergency powers conferred on the mayor and all orders, rules and
regulations made in the exercise of such power under this article shall cease to be in effect
upon declaration by the mayor that the emergency no longer exists, unless such
emergency powers or orders, rules and regulations shall have been superseded by a
proclamation of the governor of the state.

Section 25. City of Topeka Code § 38-90, Violations, is hereby repealed.

Violations.

It shall be unlawful for any person to willfully violate any order, rule or regulation
made pursuant to a proclaimed state of disaster emergency subsequent to a determination
that an emergency exists under this article.
Section 26. City of Topeka Code § 38-111, Requests for assistance, is hereby amended to read as follows:

Requests for assistance.

In the event of a disaster when there is a request for assistance, if the city can provide assistance without unduly jeopardizing the protection of its own community, that this division hereby authorizes the city's chief administrative officer, city manager or his or her designee with consent of the council, to provide such assistance as may be required under authority granted in K.S.A. 12-16, 117, (1994 Supp.) with all the privileges and immunities provided therein.


Section 28. This ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council APR 19 2005

ATTEST:

William W. Bunten, Mayor

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY DATE 4/20/05 BY ICC
TO BE CODIFIED X
NOT TO BE CODIFIED