RESOLUTION NO. 7420

A RESOLUTION introduced by Deputy Mayor Duane F. Pomeroy and Councilmember Harold Lane, amending City of Topeka Resolution No. 7104 to grant to the Topeka Housing Authority eminent domain authority, and rescinding the original of City of Topeka Resolution No. 7104.

1. FINDINGS AND DECLARATION OF NECESSITY

The following is hereby declared.

1.1 There exists in the City of Topeka unsanitary, unsafe, and overcrowded dwelling accommodations;

1.2 There is in the City of Topeka a shortage of safe or sanitary dwelling accommodations available at rents or prices which persons of low income can afford and that such shortage forces such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;

1.3 The aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety and welfare of the residents of the City of Topeka;

1.4 These conditions prompt expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

1.5 These blighted areas cannot be cleared, and the shortage of safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprise alone, and the construction of housing complexes for persons of low income (as herein defined) would therefore not be competitive with private enterprise;

1.6 The construction of such complexes would make housing available for persons of low income;
1.7  The clearance, re-planning, and preparation for rebuilding of these blighted areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of city-wide concern;

1.8  Residential construction activity is closely correlated with general economic activity and the undertakings authorized by this Resolution to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction which will assist materially in maintaining full employment and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of City Council determination.

2. DEFINITIONS

The following terms, wherever used or referred to in this Resolution, shall have the following respective meanings, unless a different meaning clearly appears from the context.

2.1  "Housing Authority" or "Authority" shall mean the Topeka Housing Authority created pursuant to this Resolution.

2.2  "Governing Body" shall mean the Topeka City Council.

2.3  "Mayor" shall mean the mayor of the City of Topeka.

2.4  "Clerk" shall mean the clerk of the City of Topeka.

2.5  "Federal government" shall include the United States of America, the public housing administration, or any other agency or instrumentality, corporate or otherwise of the United States of America.
2.6 "Blighted area" means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors are detrimental to safety, health and morals.

2.7 "Housing complex" or "complex" shall mean any work or undertaking to provide decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare, or other purposes. The term "housing complex" or "complex" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration or repair of the improvements and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing complex.

2.8 "Persons of low income" shall mean persons or families who lack the amount of income necessary (as determined by the City) to enable them without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

2.9 "Elderly person" shall mean a single person or a family, the head of which (or his spouse) has attained retirement age as defined in section 216 (a) of the federal Social Security Act or who is under a disability as defined in section 223 of said Act.
2.10 "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

2.11 "Municipality" shall mean any city.

3. **POWERS**

3.1 The City of Topeka hereby creates by this Resolution an Authority to be known as the "Topeka Housing Authority" and delegates to this Authority only those powers conferred on the City of Topeka by the Kansas municipal housing law, K.S.A. 17-2337, et seq., that are set out and enumerated below. Further, the City of Topeka hereby authorizes the Topeka Housing Authority to employ an executive director, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and to delegate to one or more of its agents or employees such powers or duties as the Topeka Housing Authority may deem proper. Such Housing Authority shall have the power to sue and be sued.

3.2 In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the Topeka Housing Authority, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of this Resolution. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

3.3 The Topeka Housing Authority also shall have the following powers:

To prepare, carry out, and manage housing complexes and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing
complex or any part thereof but in the carrying out activities under the terms of the Kansas
municipal housing law, public utilities, either publicly or privately owned, shall not be
required to locate, relocate, remove or readjust utility facilities and services without fair
and reasonable compensation;

To undertake and carry out studies and analyses of the housing needs and of the
meeting of such needs (including data with respect to population and family groups and
the distribution thereof according to income groups, the amount and quality of available
housing and its distribution according to rentals and sales prices, employment, wages and
other factors affecting the local housing needs and the meeting thereof) and to make the
results of such studies and analyses available to the public and the building, housing and
supply industries; and to engage in research and disseminate information on housing and
blight clearance;

To arrange or contract for the furnishing by any person or agency, public or private,
of services, privileges, works, or facilities for, or in connection with, a housing complex or
the occupants thereof, and (notwithstanding anything to the contrary contained in the
Kansas municipal housing law or in any other provision of law) to agree to any conditions
attached to federal financial assistance, and to comply with any conditions which the
federal government may have attached to its financial aid of the complex;

To lease or rent any dwellings, accommodations, lands, buildings, structures or
facilities embraced in any complex and (subject to the limitations contained in the Kansas
municipal housing law with respect to the rental of dwellings in housing complexes) to
establish and revise the rents or charges therefore; to own, hold, and improve real or
personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest,
devise, or otherwise any real or personal property or any interest therein; to acquire by the
exercise of the power of eminent domain any real property; (eminent domain authority
shall expire on December 2, 2008) to sell, lease, exchange, transfer, assign, pledge or
dispose of any real or personal property or any interest therein as any part of the property
of the Housing Authority established under this Resolution; to insure or provide for the
insurance, in any stock or mutual company, of any real or personal property or operations
of the Authority against any risks or hazards;

To invest any reserve or sinking funds held in connection with a housing complex
which are not required for immediate disbursements, in investments authorized by K.S.A.
12-1675, and amendments thereto, in the manner prescribed therein or in direct
obligations of the United States government or any agency thereof; to redeem its bonds at
the redemption price established therein or to purchase its bonds at less than such
redemption price, all bonds so redeemed or purchased to be canceled.

To determine where blighted areas exist or where there is unsafe, unsanitary or
overcrowded housing; to make studies and recommendations relating to the problem of
clearing, re-planning and reconstructing of blighted areas and the problem of eliminating
unsafe, unsanitary or overcrowded housing and providing dwelling accommodations for
persons of low income; and to cooperate with any state public body in action taken in
connection with these problems;

To insure or provide for the insurance of any housing complex of the Authority
against such risks as the Authority may deem advisable;

To prepare plans and provide assistance of all kinds for the relocation of families
displaced from a blighted area by the Kansas municipal housing law, and to provide
adequate recreational facilities, in the over-all plan of the municipal housing area;

To exercise all or any part or combination of powers herein granted.

4. BOARD OF COMMISSIONERS

4.1 In accordance with the provisions of the Kansas municipal housing law the mayor of the City of Topeka hereby assumes responsibility for appointing, with the consent of the city council, five (5) persons as commissioners of the Topeka Housing Authority created by this Resolution.

4.2 The commissioners first appointed pursuant to this resolution shall be designated to serve terms as follows; one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years and two (2) for four (4) years each, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of four (4) years except that all vacancies shall be filled for the unexpired term, all such appointments to be made by the mayor.

4.3 A commissioner shall receive no compensation for his or her services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties. Each commissioner shall hold office until his or her successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the Authority and this certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

4.4 The powers delegated to the Topeka Housing Authority shall be vested in the commissioners thereof in office from time to time. Three (3) commissioners shall constitute a quorum of such Authority for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any
vacancies. Action may be taken by the Authority upon a vote of a majority of the
commissioners present, unless in any case the bylaws of the Authority shall require a
larger number. Meetings of the commissioners may be held anywhere within the
perimeter boundaries of the area of operation of the Authority or within any additional area
where the Authority is authorized to undertake a project or complex. Appointments may
be made of any persons as commissioners of the Authority who reside within its
boundaries or area, and who are otherwise eligible for such appointments under this
Resolution; provided however that no less than one commissioner is directly assisted by
the Topeka Housing Agency. The commissioners of the Authority shall elect a chair and
vice-chair from among the commissioners.

4.5 A commissioner may be removed by the mayor for inefficiency or neglect of
duty or misconduct in office, but a commissioner shall be removed only after a hearing
and after he or she shall have been given a copy of the charges at least ten (10) days
prior to the hearing and had an opportunity to be heard in person or by counsel. In the
event of the removal of any commissioner, a record of the proceedings, together with the
charges and findings thereon, shall be filed in the office of the clerk.

5. PAYMENT FOR DWELLING ACCOMMODATIONS

5.1 It is hereby declared to be the policy of the City that the Topeka Housing
Authority shall manage and operate its housing complexes in an efficient manner so as to
enable it to fix the rentals or payments for dwelling accommodations at low rates
consistent with its providing decent, safe and sanitary dwelling accommodations for
persons of low income.

5.2 The Authority shall not construct or operate any housing complex for profit,
or as a source of revenue to the Authority. To this end the Topeka Housing Authority shall
fix the rentals or payments for dwellings in its complexes at no higher rates than it shall
find to be necessary in order to produce revenues which (together with all other available
moneys, revenues, income and receipts in connection with or for such complexes from
whatever sources derived, including federal financial assistance) will be sufficient:

(a) To pay, as the same become due, the principal and interest on borrowed
funds;

(b) To create and maintain such reserves as may be prudent and necessary;

(c) To meet the cost of, and to provide for, maintaining and operating the
projects (including necessary reserves therefore and the cost of any insurance and of
administrative expenses); and

(d) To make such payments in lieu of taxes and, after payment in full of all
obligations for which federal annual contributions are pledged, to make such repayments
of federal and local contributions as it determines are consistent with the maintenance of
the low-rent character of projects.

5.3 Rentals or payments for dwellings shall be established and the projects
administered insofar as possible, so as to assure that any federal financial assistance
required shall be strictly limited to amounts and periods necessary to maintain the low-rent
character of the projects. Nothing herein shall be construed to limit the amount the
Authority may charge for non-dwelling facilities. All such income, together with other
income and revenue, shall be used in the operation of the projects to aid in accomplishing
the public purposes set out in this Resolution.

6. **HOUSING RENTALS AND TENANT ADMISSIONS**

6.1 The Topeka Housing Authority shall do the following:
Rent or lease the dwelling accommodations in a housing complex only to persons of low income and at rentals within the financial reach of such persons.

Rent or lease to a tenant such dwelling accommodations consisting of the number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

Fix income limits for occupancy and rents after taking into consideration the family size, composition, age, physical handicaps, and other factors that might affect the rent paying ability of the family, including the economic factors which affect the financial stability and solvency of the project.

6.2 In computing the rental for this purpose of admitting tenants, there shall be included in the rental the average annual cost (as determined by the Authority) to occupants of heat, water, electricity, gas, cooking fuel and other necessary services or facilities, whether or not the charge for such services and facilities is included in the rental.

6.3 The Topeka Housing Authority will agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance. Further, notwithstanding the provisions hereof, nothing herein shall be construed to limit the amount of rental that the Authority may charge or the tenants that the Authority may admit for non-dwelling facilities. All such rental, together with other income and revenue, shall be used in the operation of the complexes to aid in accomplishing the public purposes of this Resolution.

6.4 Nothing contained in this or any preceding section shall be construed as limiting the power of the Topeka Housing Authority, with respect to a housing complex, to vest in an obligee the right, in the event of a default by the Authority, to take possession or
cause the appointment of a receiver thereof, free from all the restrictions imposed by this
or the preceding section.

7. **EXEMPTION FROM SPECIAL ASSESSMENTS**

7.1 The property acquired or held pursuant to this Resolution is declared to be
public property used exclusively for essential city, municipal public and governmental
purposes and such property shall be exempt from all special assessments of the state or
of any state public body. In lieu of taxes on such property the Authority agrees to make
payments to the City as is consistent with the maintenance of the low-rent character of
housing complexes and the achievements of the purposes of this Resolution.

8. **PLANNING, ZONING, AND BUILDING REQUIREMENTS**

8.1 All housing initiatives of the Authority shall be subject to the planning,
zoning, sanitary and building laws, ordinances and regulations applicable in the City of
Topeka.

9. **REMEDIES OF AN OBLIGEE**

9.1 An obligee of the Authority shall have the right in addition to all other rights
which may be conferred on such obligee, subject only to any contractual restrictions
binding upon any such obligee:

(a) By mandamus, suit, action or proceeding at law or in equity to compel said
Authority, and the commissioners, officers, agents employees thereof to perform each
and every term, provision and covenant contained in any contract of said Authority
with or for the benefit of such obligee, and to require the carrying out of any or all such
covenants and agreements of said Authority and the fulfillment of all duties by this
Resolution.
(b) By suit, action or proceeding in equity, to enjoin any acts or things which
may be unlawful or the violation of any of the rights of such obligee of said Authority.

10. EXEMPTION OF PROPERTY FROM EXECUTION SALE

10.1 All property (including funds) owned or held by the Authority under the terms
of this Resolution shall be exempt from levy and sale by virtue of an execution, and no
execution or other judicial process shall issue against the same nor shall any judgment
against the Authority be a charge or lien upon such property; provided, however, that the
provisions of this section shall not apply to or limit the right of obligees to foreclose or
otherwise enforce any mortgage or other security executed or issued pursuant to this
Resolution or the right of obligees to pursue any remedies for the enforcement of any
pledge or lien on rents, fees or revenues or the right of the federal government to pursue
any remedies conferred upon it pursuant to the provisions of the Kansas municipal
housing law and this Resolution.

11. AID FROM THE FEDERAL GOVERNMENT

11.1 In addition to the powers conferred upon the Authority by other provisions of
this Resolution, the Authority is empowered to borrow money or accept contributions,
grants or other financial assistance from the federal government for or in aid of any
housing complex within its area of operation, to take over, lease or manage any complex
or undertaking constructed or owned by the federal government, and to these ends, to
comply with such conditions and enter into such contracts, covenants, mortgages, trust
indentures, leases or agreements as may be necessary, convenient or desirable.

11.2 It is the purpose and intent of this Resolution to authorize the Authority to do
any and all things necessary or desirable to secure the financial aid or cooperation of the
federal government in the undertaking construction maintenance or operation of any
housing complex by such Authority. To accomplish this purpose the Authority,
notwithstanding the provisions of any other law, may include in any contract for financial
assistance with the federal government any provisions, which the federal government may
require as conditions to its financial aid of a housing complex, not inconsistent with the
purposes of this Resolution.

12. TRANSFER OF POSSESSION OR TITLE TO THE FEDERAL
GOVERNMENT

12.1 In any contract with the federal government for annual contributions to the
Authority, the Authority may obligate itself (which obligation shall be specifically
enforceable and shall not constitute a mortgage, notwithstanding any other law) to convey
to the federal government possession of or title to the housing complex to which such
contract relates, upon the occurrence of a substantial default (as defined in such contract)
with respect to covenants or conditions to which the Authority is subject; and such
contract may further provide that in case of such conveyance, the federal government
may complete, operate, manage, lease, convey, or otherwise deal with the housing
complex and funds in accordance with the terms of such contract: Provided, that the
contract requires that, as soon as practicable after the federal government is satisfied that
all defaults with respect to the housing complex have been cured and that the housing
complex will thereafter be operated in accordance with the terms of the contract, the
federal government shall reconvey to the Authority the housing complex as then
constituted.
13. REPORTS AND RECOMMENDATIONS

13.1 At least once a year, the Authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional resolutions and/or ordinances or other action on the part of the City as it deems necessary in order to carry out the purposes of this Resolution.

14. INVALIDITY OF PART

14.1 If any provision of this Resolution, or the application thereof to any person or circumstance, is held invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remainder of the resolution and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby and shall continue in full force and effect.

15. That City of Topeka Resolution No. 7104 is hereby rescinded.


CITY OF TOPEKA, KANSAS

Duane F. Pomeroy, Deputy Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 12/11/03 BY BL

LRES/THA 12/11/03 14