

1 RESOLUTION NO. 7420

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

8  
9 **1. FINDINGS AND DECLARATION OF NECESSITY**

10  
11 The following is hereby declared.

12 1.1 There exists in the City of Topeka unsanitary, unsafe, and overcrowded  
13 dwelling accommodations;

14 1.2 There is in the City of Topeka a shortage of safe or sanitary dwelling  
15 accommodations available at rents or prices which persons of low income can afford and  
16 that such shortage forces such persons to occupy unsanitary, unsafe and overcrowded  
17 dwelling accommodations;

18 1.3 The aforesaid conditions cause an increase in and spread of disease and  
19 crime and constitute a menace to the health, safety and welfare of the residents of the  
20 City of Topeka;

21 1.4 These conditions prompt expenditures of public funds for crime prevention  
22 and punishment, public health and safety, fire and accident protection, and other public  
23 services and facilities;

24 1.5 These blighted areas cannot be cleared, and the shortage of safe and  
25 sanitary dwellings for persons of low income cannot be relieved through the operation of  
26 private enterprise alone, and the construction of housing complexes for persons of low  
27 income (as herein defined) would therefore not be competitive with private enterprise;

28 1.6 The construction of such complexes would make housing available for  
29 persons of low income;

30           1.7    The clearance, re-planning, and preparation for rebuilding of these blighted  
31 areas and the providing of safe and sanitary dwelling accommodations for persons of low  
32 income are public uses and purposes for which public money may be spent and private  
33 property acquired and are governmental functions of city-wide concern;

34           1.8    Residential construction activity is closely correlated with general economic  
35 activity and the undertakings authorized by this Resolution to aid the production of better  
36 housing and more desirable neighborhood and community development at lower costs will  
37 make possible a more stable and larger volume of residential construction which will  
38 assist materially in maintaining full employment and the necessity in the public interest for  
39 the provisions hereinafter enacted is hereby declared as a matter of City Council  
40 determination.

41           2.    **DEFINITIONS**

42  
43           The following terms, wherever used or referred to in this Resolution, shall have the  
44 following respective meanings, unless a different meaning clearly appears from the  
45 context.

46           2.1    “Housing Authority” or “Authority” shall mean the Topeka Housing Authority  
47 created pursuant to this Resolution.

48           2.2    “Governing Body” shall mean the Topeka City Council.

49           2.3    “Mayor” shall mean the mayor of the City of Topeka.

50           2.4    “Clerk” shall mean the clerk of the City of Topeka.

51           2.5    “Federal government” shall include the United States of America, the public  
52 housing administration, or any other agency or instrumentality, corporate or otherwise of  
53 the United States of America.

54           2.6    “Blighted area” means any area where dwellings predominate which by  
55    reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light  
56    or sanitary facilities, or any combination of these factors are detrimental to safety, health  
57    and morals.

58           2.7    “Housing complex” or “complex” shall mean any work or undertaking to  
59    provide decent, safe and sanitary dwellings, apartments, or other living accommodations  
60    for persons of low income. Such work or undertaking may include buildings, land,  
61    equipment, facilities, and other real or personal property for necessary, convenient or  
62    desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation,  
63    landscaping, administrative, community, health, recreational, welfare, or other purposes.  
64    The term “housing complex” or “complex” also may be applied to the planning of the  
65    buildings and improvements, the acquisition of property, the demolition of existing  
66    structures, the construction, reconstruction, alteration or repair of the improvements and  
67    all other work in connection therewith, and the term shall include all other real and  
68    personal property and all tangible or intangible assets held or used in connection with the  
69    housing complex.

70           2.8    “Persons of low income” shall mean persons or families who lack the  
71    amount of income necessary (as determined by the City) to enable them without financial  
72    assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

73           2.9    “Elderly person” shall mean a single person or a family, the head of which  
74    (or his spouse) has attained retirement age as defined in section 216 (a) of the federal  
75    Social Security Act or who is under a disability as defined in section 223 of said Act.

76           2.10 "Real property" shall include all lands, including improvements and fixtures  
77 thereon, and property of any nature appurtenant thereto, or used in connection therewith,  
78 and every estate, interest and right, legal or equitable, therein, including terms for years.

79           2.11 "Municipality" shall mean any city.

80           3.       **POWERS**

81           3.1     The City of Topeka hereby creates by this Resolution an Authority to be  
82 known as the "Topeka Housing Authority" and delegates to this Authority only those  
83 powers conferred on the City of Topeka by the Kansas municipal housing law, K.S.A. 17-  
84 2337, *et seq.*, that are set out and enumerated below. Further, the City of Topeka hereby  
85 authorizes the Topeka Housing Authority to employ an executive director, technical  
86 experts and such other officers, agents and employees, permanent and temporary, as it  
87 may require, and to delegate to one or more of its agents or employees such powers or  
88 duties as the Topeka Housing Authority may deem proper. Such Housing Authority shall  
89 have the power to sue and be sued.

90           3.2     In any suit, action or proceeding involving the validity or enforcement of or  
91 relating to any contract of the Topeka Housing Authority, the Authority shall be  
92 conclusively deemed to have become established and authorized to transact business  
93 and exercise its powers hereunder upon proof of the adoption of this Resolution. A copy  
94 of such resolution duly certified by the clerk shall be admissible in evidence in any suit,  
95 action or proceeding.

96           3.3     The Topeka Housing Authority also shall have the following powers:

97           To prepare, carry out, and manage housing complexes and to provide for the  
98 construction, reconstruction, improvement, extension, alteration or repair of any housing

99 complex or any part thereof but in the carrying out activities under the terms of the Kansas  
100 municipal housing law, public utilities, either publicly or privately owned, shall not be  
101 required to locate, relocate, remove or readjust utility facilities and services without fair  
102 and reasonable compensation;

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

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

117 To lease or rent any dwellings, accommodations, lands, buildings, structures or  
118 facilities embraced in any complex and (subject to the limitations contained in the Kansas  
119 municipal housing law with respect to the rental of dwellings in housing complexes) to  
120 establish and revise the rents or charges therefore; to own, hold, and improve real or  
121 personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest,

122 devise, or otherwise any real or personal property or any interest therein; to acquire by the  
123 exercise of the power of eminent domain any real property; (eminent domain authority  
124 shall expire on December 2, 2008) to sell, lease, exchange, transfer, assign, pledge or  
125 dispose of any real or personal property or any interest therein as any part of the property  
126 of the Housing Authority established under this Resolution; to insure or provide for the  
127 insurance, in any stock or mutual company, of any real or personal property or operations  
128 of the Authority against any risks or hazards;

129 To invest any reserve or sinking funds held in connection with a housing complex  
130 which are not required for immediate disbursements, in investments authorized by K.S.A.  
131 12-1675, and amendments thereto, in the manner prescribed therein or in direct  
132 obligations of the United States government or any agency thereof; to redeem its bonds at  
133 the redemption price established therein or to purchase its bonds at less than such  
134 redemption price, all bonds so redeemed or purchased to be canceled.

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

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

143 To prepare plans and provide assistance of all kinds for the relocation of families  
144 displaced from a blighted area by the Kansas municipal housing law, and to provide

145 adequate recreational facilities, in the over-all plan of the municipal housing area;

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

147 **4. BOARD OF COMMISSIONERS**

148 4.1 In accordance with the provisions of the Kansas municipal housing law the  
149 mayor of the City of Topeka hereby assumes responsibility for appointing, with the  
150 consent of the city council, five (5) persons as commissioners of the Topeka Housing  
151 Authority created by this Resolution.

152 4.2 The commissioners first appointed pursuant to this resolution shall be  
153 designated to serve terms as follows; one (1) for one (1) year, one (1) for two (2) years,  
154 one (1) for three (3) years and two (2) for four (4) years each, from the date of their  
155 appointment, but thereafter commissioners shall be appointed as aforesaid for a term of  
156 office of four (4) years except that all vacancies shall be filled for the unexpired term, all  
157 such appointments to be made by the mayor.

158 4.3 A commissioner shall receive no compensation for his or her services, but  
159 shall be entitled to the necessary expenses, including traveling expenses, incurred in the  
160 discharge of his or her duties. Each commissioner shall hold office until his or her  
161 successor has been appointed and has qualified. A certificate of the appointment or  
162 reappointment of any commissioner shall be filed with the Authority and this certificate  
163 shall be conclusive evidence of the due and proper appointment of the commissioner.

164 4.4 The powers delegated to the Topeka Housing Authority shall be vested in  
165 the commissioners thereof in office from time to time. Three (3) commissioners shall  
166 constitute a quorum of such Authority for the purpose of conducting its business and  
167 exercising its powers and for all other purposes, notwithstanding the existence of any

168 vacancies. Action may be taken by the Authority upon a vote of a majority of the  
169 commissioners present, unless in any case the bylaws of the Authority shall require a  
170 larger number. Meetings of the commissioners may be held anywhere within the  
171 perimeter boundaries of the area of operation of the Authority or within any additional area  
172 where the Authority is authorized to undertake a project or complex. Appointments may  
173 be made of any persons as commissioners of the Authority who reside within its  
174 boundaries or area, and who are otherwise eligible for such appointments under this  
175 Resolution; provided however that no less than one commissioner is directly assisted by  
176 the Topeka Housing Agency. The commissioners of the Authority shall elect a chair and  
177 vice-chair from among the commissioners.

178         4.5     A commissioner may be removed by the mayor for inefficiency or neglect of  
179 duty or misconduct in office, but a commissioner shall be removed only after a hearing  
180 and after he or she shall have been given a copy of the charges at least ten (10) days  
181 prior to the hearing and had an opportunity to be heard in person or by counsel. In the  
182 event of the removal of any commissioner, a record of the proceedings, together with the  
183 charges and findings thereon, shall be filed in the office of the clerk.

184         5.       **PAYMENT FOR DWELLING ACCOMMODATIONS**

185         5.1     It is hereby declared to be the policy of the City that the Topeka Housing  
186 Authority shall manage and operate its housing complexes in an efficient manner so as to  
187 enable it to fix the rentals or payments for dwelling accommodations at low rates  
188 consistent with its providing decent, safe and sanitary dwelling accommodations for  
189 persons of low income.

190         5.2     The Authority shall not construct or operate any housing complex for profit,

191 or as a source of revenue to the Authority. To this end the Topeka Housing Authority shall  
192 fix the rentals or payments for dwellings in its complexes at no higher rates than it shall  
193 find to be necessary in order to produce revenues which (together with all other available  
194 moneys, revenues, income and receipts in connection with or for such complexes from  
195 whatever sources derived, including federal financial assistance) will be sufficient:

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

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

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

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

206 5.3 Rentals or payments for dwellings shall be established and the projects  
207 administered insofar as possible, so as to assure that any federal financial assistance  
208 required shall be strictly limited to amounts and periods necessary to maintain the low-rent  
209 character of the projects. Nothing herein shall be construed to limit the amount the  
210 Authority may charge for non-dwelling facilities. All such income, together with other  
211 income and revenue, shall be used in the operation of the projects to aid in accomplishing  
212 the public purposes set out in this Resolution.

213 **6. HOUSING RENTALS AND TENANT ADMISSIONS**

214 6.1 The Topeka Housing Authority shall do the following:

215  
216 Rent or lease the dwelling accommodations in a housing complex only to persons  
217 of low income and at rentals within the financial reach of such persons.

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

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

225 6.2 In computing the rental for this purpose of admitting tenants, there shall be  
226 included in the rental the average annual cost (as determined by the Authority) to  
227 occupants of heat, water, electricity, gas, cooking fuel and other necessary services or  
228 facilities, whether or not the charge for such services and facilities is included in the rental.

229 6.3 The Topeka Housing Authority will agree to conditions as to tenant eligibility  
230 or preference required by the federal government pursuant to federal law in any contract  
231 for financial assistance. Further, notwithstanding the provisions hereof, nothing herein  
232 shall be construed to limit the amount of rental that the Authority may charge or the  
233 tenants that the Authority may admit for non-dwelling facilities. All such rental, together  
234 with other income and revenue, shall be used in the operation of the complexes to aid in  
235 accomplishing the public purposes of this Resolution.

236 6.4 Nothing contained in this or any preceding section shall be construed as  
237 limiting the power of the Topeka Housing Authority, with respect to a housing complex, to  
238 vest in an obligee the right, in the event of a default by the Authority, to take possession or

239 cause the appointment of a receiver thereof, free from all the restrictions imposed by this  
240 or the preceding section.

241 **7. EXEMPTION FROM SPECIAL ASSESSMENTS**

242 7.1 The property acquired or held pursuant to this Resolution is declared to be  
243 public property used exclusively for essential city, municipal public and governmental  
244 purposes and such property shall be exempt from all special assessments of the state or  
245 of any state public body. In lieu of taxes on such property the Authority agrees to make  
246 payments to the City as is consistent with the maintenance of the low-rent character of  
247 housing complexes and the achievements of the purposes of this Resolution.

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

249 8.1 All housing initiatives of the Authority shall be subject to the planning,  
250 zoning, sanitary and building laws, ordinances and regulations applicable in the City of  
251 Topeka.

252 **9. REMEDIES OF AN OBLIGEE**

253 9.1 An obligee of the Authority shall have the right in addition to all other rights  
254 which may be conferred on such obligee, subject only to any contractual restrictions  
255 binding upon any such obligee:

256 (a) By mandamus, suit, action or proceeding at law or in equity to compel said  
257 Authority, and the commissioners, officers, agents employees thereof to perform each  
258 and every term, provision and covenant contained in any contract of said Authority  
259 with or for the benefit of such obligee, and to require the carrying out of any or all such  
260 covenants and agreements of said Authority and the fulfillment of all duties by this  
261 Resolution.

262 (b) By suit, action or proceeding in equity, to enjoin any acts or things which  
263 may be unlawful or the violation of any of the rights of such obligee of said Authority.

264 10. **EXEMPTION OF PROPERTY FROM EXECUTION SALE**

265 10.1 All property (including funds) owned or held by the Authority under the terms  
266 of this Resolution shall be exempt from levy and sale by virtue of an execution, and no  
267 execution or other judicial process shall issue against the same nor shall any judgment  
268 against the Authority be a charge or lien upon such property; provided, however, that the  
269 provisions of this section shall not apply to or limit the right of obligees to foreclose or  
270 otherwise enforce any mortgage or other security executed or issued pursuant to this  
271 Resolution or the right of obligees to pursue any remedies for the enforcement of any  
272 pledge or lien on rents, fees or revenues or the right of the federal government to pursue  
273 any remedies conferred upon it pursuant to the provisions of the Kansas municipal  
274 housing law and this Resolution.

275 11. **AID FROM THE FEDERAL GOVERNMENT**

276 11.1 In addition to the powers conferred upon the Authority by other provisions of  
277 this Resolution, the Authority is empowered to borrow money or accept contributions,  
278 grants or other financial assistance from the federal government for or in aid of any  
279 housing complex within its area of operation, to take over, lease or manage any complex  
280 or undertaking constructed or owned by the federal government, and to these ends, to  
281 comply with such conditions and enter into such contracts, covenants, mortgages, trust  
282 indentures, leases or agreements as may be necessary, convenient or desirable.

284 11.2 It is the purpose and intent of this Resolution to authorize the Authority to do  
285 any and all things necessary or desirable to secure the financial aid or cooperation of the

286 federal government in the undertaking construction maintenance or operation of any  
287 housing complex by such Authority. To accomplish this purpose the Authority,  
288 notwithstanding the provisions of any other law, may include in any contract for financial  
289 assistance with the federal government any provisions, which the federal government may  
290 require as conditions to its financial aid of a housing complex, not inconsistent with the  
291 purposes of this Resolution.

292 **12. TRANSFER OF POSSESSION OR TITLE TO THE FEDERAL**  
293 **GOVERNMENT**

294 12.1 In any contract with the federal government for annual contributions to the  
295 Authority, the Authority may obligate itself (which obligation shall be specifically  
296 enforceable and shall not constitute a mortgage, notwithstanding any other law) to convey  
297 to the federal government possession of or title to the housing complex to which such  
298 contract relates, upon the occurrence of a substantial default (as defined in such contract)  
299 with respect to covenants or conditions to which the Authority is subject; and such  
300 contract may further provide that in case of such conveyance, the federal government  
301 may complete, operate, manage, lease, convey, or otherwise deal with the housing  
302 complex and funds in accordance with the terms of such contract: Provided, that the  
303 contract requires that, as soon as practicable after the federal government is satisfied that  
304 all defaults with respect to the housing complex have been cured and that the housing  
305 complex will thereafter be operated in accordance with the terms of the contract, the  
306 federal government shall reconvey to the Authority the housing complex as then  
307 constituted.

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308           13.    **REPORTS AND RECOMMENDATIONS**

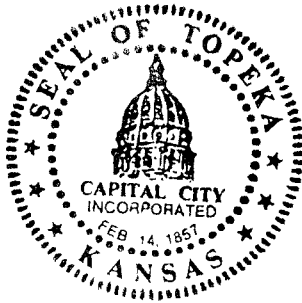
309           13.1    At least once a year, the Authority shall file with the clerk a report of its  
310 activities for the preceding year, and shall make recommendations with reference to such  
311 additional resolutions and/or ordinances or other action on the part of the City as it deems  
312 necessary in order to carry out the purposes of this Resolution.

313           14.    **INVALIDITY OF PART**

314           14.1    If any provision of this Resolution, or the application thereof to any person or  
315 circumstance, is held invalid, illegal, or otherwise unenforceable by a court of competent  
316 jurisdiction, the remainder of the resolution and the application of such provision to  
317 persons or circumstances other than those as to which it is held invalid, shall not be  
318 affected thereby and shall continue in full force and effect.

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

320           ADOPTED and APPROVED by City Council December 2, 2003.



CITY OF TOPEKA, KANSAS

Duane F. Pomeroy  
Duane F. Pomeroy, Deputy Mayor

329    ATTEST:

330           Iris E. Walker  
331           Iris E. Walker, City Clerk  
332

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