

## **Council Minutes – April 1, 2008**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 1, 2008. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, Councilmember Woelfel gave the invocation.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

Councilmember Alcala moved to suspend the Council Rules to add a Presentation by Don Stevens, Municipal Services Group (MSG) regarding the lease purchase of an Enterprise Resource Planning software system and a police helicopter to the agenda. The motion seconded by Councilmember Woelfel carried. Councilmembers Alcala and Ortiz voted “no.” (7-2-0)

Don Stevens, Municipal Services Group stated that the master lease purchase agreement is being amended to revise the language relating to the Kansas Cash Basis Law. He explained that MSG conducts an in-depth financial analysis to determine financial qualifications. He stated that they are moving forward with the funding of both lease purchase agreements with the understanding that there are issues that must be resolved relating to the documents that were used to initially approve the transactions. He noted that MSG issues conservative fundamental loans outlined by Federal regulations, and they are confident that the City’s best business practices and Cash Flow Policy are dependable. He encouraged the Council to approve the resolutions.

Mayor Bunten stated that it is still being determined if the Communication that was used to approve the lease purchase agreement of the police helicopter could be in fact, a resolution.

Mr. Stevens stated that it was their understanding that the Communication that was approved by the Council was sufficient documentation to move forward with the transactions.

Councilmember Haynes asked how the base interest rate on the lease purchase agreements was determined.

Mr. Stevens stated that MSG only makes reference to national ratings for the purpose of submitting a Request for Proposal. He explained that they conduct their own investigation to determine base interest rates, which are locked in if the business transaction is settled within a reasonable amount of time. He noted that in the event that there is a legitimate non-appropriation by the City, the equipment would be repossessed.

Councilmember Alcalá clarified that the credibility of MSG has never been in question. He stated that if the resolutions are not approved would MSG still conduct business with the City; and would interest rates increase for future business transactions.

Mr. Stevens stated that they would continue to conduct business with the City. He explained there are always risks involved when underwriting a business transaction, and all financial factors are considered.

Councilmember Alcalá stated that it is important for the City to follow the purchasing process that has been put into place to protect the interest of taxpayers.

Councilmember Haynes asked what MSG's relationship with the private vendors is at this time.

Mr. Stevens stated that MSG has made the required payments to the vendors. He noted that if the lease purchase agreements are not approved, the City may face financial repercussions with the vendors, not MSG.

Mayor Bunten asked if MSG was told that the Communication that approved the purchase of a police helicopter was not subject to a veto.

Councilmember Alcalá raised a point of order. He expressed concern with exposing the City to liability relating to the pending lawsuit involving the lease purchase agreements.

Norton N. Bonaparte, Jr., City Manager stated that he did not have conversations with MSG regarding the purchase of a police helicopter until after the Council approved the purchase of a police helicopter on December 4, 2007.

Mr. Stevens stated that to the best of his knowledge, City Manager Bonaparte did not engage in any conversations with MSG prior to the Council approving the purchase of a second police helicopter.

Councilmember Haynes asked if MSG understands and accepts that the master lease agreement would be used for the financial basis of multiple lease purchase agreements.

Mr. Stevens stated that it is common practice for MSG to use a master lease agreement as a financial umbrella for multiple lease purchase agreements.

Councilmember Ortiz moved to suspend the Council Rules to add a Joint City of Topeka/Shawnee County Resolution relating to the extension of Amtrak services to the agenda. The motion seconded by Councilmember Alcalá carried. Councilmember Woelfel voted “no.” (8-1-0)

Councilmember Woelfel stated that a representative with the Northern Flyer Alliance has been scheduled to make a presentation to the Council on April 15, 2008. He requested that the resolution be considered at that time.

Mayor Bunten announced that the resolution would be added to the agenda under New Business as item 6H.

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT for Frito-Lay Subdivision No. 1 located at 4326 SW Kirklawn Avenue in the City of Topeka, Shawnee County, Kansas was presented. (P08/5)

RESOLUTION NO. 8045 introduced by Councilmember Richard Harmon granting American Cancer Society an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8046 introduced by Councilmember Jack Woelfel granting Full Gospel Light House Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8047 introduced by Councilmember Lana Kennedy granting Cumulus Broadcasting an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

Minutes of the regular meeting of March 25, 2008 were presented.

2008 Open After Midnight License renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Bob's Carwash	3162 E 6 <sup>th</sup> Street
Bob's Carwash	2733 California
Buffalo Wild Wings Grill & Bar	1227 SW Wanamaker Road
Donnie's	124 SW 8 <sup>th</sup> Avenue
The Dugout	1545 SW Fairlawn
Hot Pockets	1909 NE Seward
Oscar's	1424 SW Lane
Rendezvous Grille	705 S Kansas
Sixth Avenue Ballroom	117 SW 6 <sup>th</sup> Avenue
Sk8away Inc.	815 SW Fairlawn Road
Spanky's Bar and Grille	3100 SW Gage Boulevard
Stingers	2335 NW Clay
Topeka Performing Arts Center	214 SE 8 <sup>th</sup> Avenue

Councilmember Ortiz moved to approve the consent agenda. The motion seconded by Councilmember Preisner carried. Councilmember Kennedy was out of the room. (8-0-0)

ORDINANCE NO. 19063 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 130-11 concerning the procedure for changing street names and specifically repealing said original section placed on first reading March 25, 2008 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Alcalá asked what it costs the City to process a street name change request. He stated that he believes it is a non-essential service and the costs could be absorbed by the citizens through a benefit district.

Mike Teply, Public Works Director stated that they are very restrictive regarding the request for a street name change. He stated that he would research the financial costs and report back to the Council.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Councilmember Kennedy was out of the room. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Kennedy -1.

A PROJECT BUDGET in the amount of \$2,600,000 and ORDINANCE NO. 19064 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-841002.00 (HTE 843520) which provides for the rehabilitation of various street sections throughout the City of Topeka, primarily on major arterials, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 25, 2008 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to approve the project budget and adopt the ordinance.

The motion seconded by Councilmember Swank carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$422,600 and RESOLUTION NO. 8048 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-141001.00 (HTE141290) which provides for the installment of cameras to monitor traffic city-wide, as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Swank carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$1,000,000 and RESOLUTION NO. 8049 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-501000.00 (HTE502240) which provides for work to re-direct stormwater runoff as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Alcala moved to approve the project budget and resolution. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

NOMINATION AND ELECTION of a Deputy Mayor to serve a one-year term pursuant to City of Topeka Charter Ordinance No. A2-26 was presented.

Councilmember Alcala nominated Councilmember Haynes.

Councilmember Blackburn nominated Councilmember Preisner

Councilmember Haynes nominated Councilmember Ortiz.

Councilmember Blackburn moved that nominations cease. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

After tallying the written ballots, the City Clerk announced that Councilmember Ortiz received one vote, Councilmember Haynes received three votes and Councilmember Preisner received five votes.

Mayor Bunten announced that Councilmember Preisner would serve as Deputy Mayor.

SELECTION AND APPOINTMENT OF COUNCIL REPRESENTATIVES to serve a one-year term on the Joint Economic Development Organization Board was presented.

Councilmember Preisner nominated Councilmember Harmon and Councilmember Swank.

Councilmember Blackburn nominated Councilmember Kennedy.

Councilmember Kennedy declined the nomination.

Councilmember Blackburn withdrew the nomination.

Councilmember Alcala nominated Councilmember Haynes.

Councilmember Kennedy nominated Councilmember Woelfel.

Councilmember Woelfel declined the nomination.

Upon hearing no more nominations, Mayor Bunten ruled that nominations cease.

After tallying the written ballots, the City Clerk announced that Councilmember Haynes received five votes, Councilmember Swank received five votes and Councilmember Harmon received eight votes.

Councilmember Haynes withdrew his nomination.

Mayor Bunten announced that Councilmembers Swank and Harmon would serve on the Joint Economic Development Organization Board.

RESOLUTION NO. 8050 introduced by City Manager Norton N. Bonaparte, Jr., relating to the lease purchase of an Enterprise Resource Planning (ERP) software system for the City of Topeka was presented.

Norton N. Bonaparte, Jr., City Manager stated that the resolution would authorize the purchase of an ERP software system. He noted that Jim Langford, Budget and Finance Director and Mark Biswell, Information Technology Director were present to answer questions.

Councilmember Alcalá questioned why the lease purchase agreements for the ERP software system and police helicopter were not cancelled when it was discovered that there could be possible legal issues with the agreements.

Norton N. Bonaparte, Jr., City Manager stated that when he was advised that revisions may need to be made to the language of the lease purchase agreement documents, the Council was notified. He explained that following notification, a number of executive sessions were scheduled for the purpose of providing the Council with the necessary information to make a decision on how to proceed with the matter.

Braxton Copley, Interim City Attorney reported that additional language was added to the master lease agreement and the resolutions specifically relating to K.S.A. 1011-16(b) - Kansas Cash Basis Law. He also reported that Payment Schedule Nos. 1 and 2 were changed to reflect the correct amount financed, the base interest rate for each individual payment schedule; and the amount included in the rental payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost. He stated that as a precautionary measure, the lease purchase agreements are being reauthorized in the form of a resolution and not a



Communication to avoid further legal action by the Shawnee County District Attorney. He explained that a resolution is subject to Mayoral veto eliminating one of the issues outlined in the legal action taken by the District Attorney. He clarified that approval of the resolutions would correct the language in the master lease agreement, each separate lease purchase agreement and Payment Schedule Nos. 1 and 2; and reauthorize the lease purchase agreement for the ERP software system, as well as, the police helicopter.

Councilmember Haynes stated that he believes the master lease agreement needs additional language included in Section 6.06 specifically relating to K.S.A. 1011-16(b) - Kansas Cash-Basis Law. He also stated that he would prefer that both parties understand that no funds will be appropriated beyond each budget year or from any lawfully operated revenue producing source. He also expressed concern with the language that addresses termination of the agreements and the consequences and risks involved.

Braxton Copley gave a detailed overview of the language amendments made to the master lease agreement (*See Exhibit B*). He stated that in his opinion, the language clearly covers K.S.A. 1011-16(b) as interpreted by the Court of Appeals and what is required by law. He also stated that the terms of termination are covered in the agreement, and the choice not to appropriate funds would be a policy decision made by the Council.

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Harmon.

Councilmember Blackburn distributed an amendment to the resolution. He explained that the amendment would incorporate the authorization of the lease purchase agreement for the police helicopter, as well as, the amendments previously listed by the Interim City Attorney, Braxton Copley.

Councilmember Blackburn moved to amend the resolution as distributed. The motion was seconded by Councilmember Preisner.

Mayor Bunten questioned if the initial lease purchase agreement of the police helicopter was authorized by the Council.

Braxton Copley clarified that the lease purchase agreement of the police helicopter was authorized by the Council. He stated that any other legal issues relating to the pending lawsuit regarding the lease purchase agreement should be discussed in an executive session.

Councilmember Haynes asked why the effective dates of the lease purchase agreements are not retroactive if the agreements are being reauthorized.

Braxton Copley stated that verbiage of the resolutions could be changed to reflect the effective date as being retroactive.

Councilmember Alcalá stated that he would oppose the amendment. He questioned the reason for the amendment, and stated that he believes the lease purchase agreements should be considered separately.

Councilmember Alcalá called the question.

Councilmember Blackburn challenged the call to the question.

Councilmember Blackburn stated he believes the amendment is a fair compromise to the document, and is based on the votes that were cast previously by the Council.

Councilmember Alcalá withdrew the call to the question.

Councilmember Alcalá made a friendly amendment to lines 15 and 42 of the resolution by correcting the amount to reflect \$3,857,329.02.

The motion to amend the resolution as distributed by Councilmember Blackburn failed. Councilmembers Kennedy, Alcalá, Ortiz and Harmon voted “no.” Councilmember Haynes abstained. (4-4-1)

Councilmember Preisner withdrew the motion to approve the resolution. The second concurred.

Councilmember Preisner moved to amend lines 15 and 42 of the resolution by correcting the amount to reflect \$3,857,329.02. The motion seconded by Councilmember Blackburn carried. Councilmembers Kennedy and Ortiz voted “no.” Councilmember Haynes abstained. (7-2-1)

Councilmember Preisner moved to approve the resolution as amended. The motion was seconded by Councilmember Harmon.

Councilmembers Blackburn and Kennedy stated that they would oppose the resolution as presented.

Councilmember Woelfel asked if the resolutions are denied, would it threaten the credibility of the City.

Braxton Copley stated that in his opinion, denial may have an effect on the City’s credibility.

Don Stevens encouraged the Council to reach an agreement. He noted that the City may face financial and legal ramifications with the equipment vendors.

Councilmember Alcalá raised a point of order. He noted that Mr. Stevens has a vested interest in MSG and the success of the financial transactions.

Mr. Stevens stated that any action perceived as inconsistent could have a long-term effect on the financial future of the City.

Councilmember Swank stated that she believes the Council wants to support the purchase of an ERP software system, it is the language contained within the lease purchase agreement that they do not agree with.

Councilmember Harmon asked if MSG would agree to continue negotiations to address the Council's concerns, or is the matter time-sensitive.

Braxton Copley stated that MSG has been cooperative throughout the process. He stated that the matter is not time-sensitive; however, he would prefer that the Council take action on the resolutions at this time. He also stated that he is open to any language amendment suggestions.

Councilmember Preisner moved to withdraw the motion to approve the resolution as amended. The second concurred.

Councilmember Haynes moved to amend the master lease agreement by striking the first sentence of section 6.06 in its entirety, and inserting "In accordance with K.S.A. 10-1116(b) it is understood and agreed that nothing within this agreement shall be construed to require the City of Topeka to make periodic payments or annual installments beyond those budgeted and appropriated for that purpose during the current budget year, or from any funds made available from any lawfully operated revenue producing source." The motion seconded by Councilmember Harmon carried. Councilmembers Alcalá and Ortiz voted "no." Councilmember Kennedy abstained. (6-2-1)

Braxton Copley stated that he would send the proposed amended language to MSG's legal counsel for review via electronic mail and await a reply.

Mayor Bunten announced that while they were waiting for a response from MSG, they would continue with items listed on the agenda under New Business and First Readings.

ORDINANCE NO. 19065 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of March 10, 2008, through March 16, 2008, and enumerating said expenditures therein was presented for first and final reading.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Preisner carried. Councilmember Alcalá voted “no.” (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Noes: Alcalá -1.

A CITY OF TOPEKA/ BOARD OF COUNTY COMMISSIONERS OF SHAWNEE COUNTY JOINT RESOLUTION of support for the expansion of Amtrak Services in Topeka and Shawnee County was presented.

Councilmember Ortiz explained that the joint resolution would express City and County support of Northern Alliance Flyer’s efforts in extending Amtrak’s service area and bringing back the “Red Cap” service for customers. She also stated that upon approval, the joint resolution would be forwarded to the State Legislature and Federal Delegation as soon as possible.

Councilmember Ortiz moved to approve the joint resolution. The motion was seconded by Councilmember Alcalá.

Councilmember Preisner stated that he supports the joint resolution but does not believe it is time-sensitive. He noted that a representative from Northern Alliance Flyer would make a presentation to the Council at the April 15, 2008 Council meeting and suggested that the joint resolution be approved then.

Councilmember Woelfel stated that he has questions that need answered and would prefer to wait until April 15, 2008 to approve the joint resolution. He noted that this would be the first Joint City-County resolution of support for extension of services.

Councilmember Preisner moved to table the joint resolution until April 15, 2008. The motion seconded by Councilmember Woelfel carried. Councilmembers Alcalá, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

Norton N. Bonaparte, Jr., requested that item 7A, an ordinance concerning the rates of the water, water pollution control, and stormwater utility be pulled from the agenda per staff's request.

Upon hearing no objections, Mayor Bunten announced that the ordinance would be removed from the agenda.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., granting to Kaw Valley Electric Cooperative, Inc., its successors and assigns, an electric energy franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on a property located at 328 SW Taylor Street, 720 SW 4<sup>th</sup> Street and 724 SW 4<sup>th</sup> Street from “C-1” Commercial District TO “R-2” Single Family Dwelling District was presented for first reading. (Z08/7)

Braxton Copley announced that MSG's legal counsel accepted the amended language to the master lease agreement, and believes that the equipment vendors would also agree with the language amendments.

Councilmember Preisner moved to approve the resolution authorizing the lease purchase agreement for the ERP software system as amended, with the stipulation that the amended language is approved by all parties involved with the lease purchase agreement. The motion seconded by Councilmember Swank carried. Councilmembers Alcalá, Ortiz and Blackburn voted “no.” (6-3-0)

Councilmember Kennedy moved to reconsider the motion to approve the resolution authorizing the lease purchase agreement for the ERP software system as amended, with the stipulation that the amended language is approved by all parties involved with the lease purchase agreement. The motion seconded by Councilmember Haynes carried. Councilmember Harmon voted “no.” (8-1-0)

The motion to approve the resolution authorizing the lease purchase agreement for the ERP software system as amended, with the stipulation that the amended language is approved by all parties involved with the lease purchase agreement carried. Councilmembers Kennedy, Alcalá, Ortiz and Blackburn voted “no.” (5-4-0)

RESOLUTION NO. 8051 introduced by City Manager Norton N. Bonaparte, Jr., relating to the lease purchase of a helicopter for the Police Department was presented.

Norton N. Bonaparte, Jr., City Manager stated that the resolution would authorize the lease purchase agreement of a second police helicopter in the amount of \$820,371.90. He noted that Police Chief Ron Miller and Deputy Chief Gary Herman were present to answer questions.

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Blackburn.

Councilmember Haynes asked if the amended language of the resolution authorizing the ERP software system, previously approved by the Council, carried over to the resolution authorizing the lease purchase agreement of the police helicopter.

Braxton Copley stated that the amended language did not carry over. He explained that the Council has the option to reconsider the motion amending the resolution authorizing the lease purchase agreement of an ERP software system, which would allow the Council the opportunity to amend the language of both resolutions.

Councilmember Preisner withdrew the motion to approve the resolution. The second concurred.

Councilmember Haynes moved to reconsider the motion to amend the resolution authorizing the lease purchase agreement for an ERP software system. The motion seconded by Councilmember Harmon carried. Councilmembers Kennedy, Alcalá and Ortiz voted “no.” (6-3-0)

Councilmember Haynes moved to amend the resolution authorizing the lease purchase agreement for an ERP software system by deleting the word “reauthorization” and inserting the words “authorization and” on line 12; delete the words “and to the extent lawful ratification” after the word “approval” beginning on line 12; deleting the word “reauthorization” and inserting the words “authorization and” on line 44; and delete the words “and to the extent lawful ratified” beginning after the word “approved” on line 44. The motion seconded by Councilmember Harmon carried. Councilmembers Kennedy, Alcalá and Ortiz voted “no.” Councilmember Blackburn abstained. (5-3-1)

Councilmember Preisner moved to approve the resolution authorizing the lease purchase agreement of an ERP software system as amended, with the stipulation that the amended



language is approved by all parties involved with the lease purchase agreement. The motion seconded by Councilmember Swank carried. Councilmembers Kennedy, Alcala, Ortiz and Blackburn voted “no.” (5-4-0)

Councilmember Haynes moved to amend the resolution authorizing the lease purchase agreement for the police helicopter by deleting the word “reauthorization” and inserting the words “authorization and” on line 10; delete the words “and to the extent lawful ratification” after the word “approval” beginning on line 10; deleting the word “reauthorization” and inserting the word “authorization” on line 43; and deleting the words “and to the extent lawful ratified” after the word “approved” beginning on line 43. The motion seconded by Councilmember Woelfel carried. Councilmembers Alcala and Ortiz voted “no.” (7-2-0)

Councilmember Harmon moved to extend the meeting through the end of the agenda. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

Fred Martinez spoke in support of purchasing a second police helicopter. He stated that he believes the Police Department needs every available resource to control community crime. He also stated that public safety should be the Council’s priority.

Mimi Leonard spoke in support of purchasing a second Police helicopter. She stated that she believes it is vital to the economic development and growth of the city because it is crucial for citizens to feel and remain safe.

Councilmember Blackburn gave a detailed history of the events that have transpired over the past year regarding the purchase of a second police helicopter. He stated that in his opinion, initially it was simply a request for equipment that was needed by staff, which has now turned into a political issue. He also stated the purchase of a second police helicopter addresses the safety priorities outlined in City of Topeka Resolution No. 8022.

Councilmember Harmon stressed the importance of all City contracts being correct and consistent and stated that he views the resolutions as an opportunity to correct language flaws in the lease purchase agreements. He expressed concern with inconsistencies having an affect on the long-term financial stability of the City. He noted that previously he voted “no” on the request because of the way it was presented to the Council; however, this time it was presented through proper procedure.

Councilmember Haynes stated that he fully supports the Police Department and their efforts in keeping the citizens safe. He also stated that he believes the City has other financial priorities that need funding before purchasing a second police helicopter. He stated that he would oppose the resolution.

Councilmember Swank stated that the purchase of a new police helicopter displays responsible long-range financial planning by the City. She noted that there is a high probability that the Switzer helicopter would have to be replaced within the next five years.

Councilmember Kennedy stated that she would not support the resolution because she is still not comfortable with the language of the documents relating to the lease purchase agreements. She requested that new documents be created that include the correct language.

Mayor Bunten stated that he believes the Switzer helicopter is capable of being used as a backup for the City of Topeka. He also stated that he believes purchasing a new police helicopter displays irresponsible spending because there are better ways to utilize the funds.

Councilmember Blackburn asked who initiated the request to purchase a second police helicopter; what are the financial implications of purchasing a new helicopter compared to maintaining the Switzer helicopter; what are the obstacles faced when cross training officers on

two different helicopter systems; and would the State of Kansas Highway Patrol fly routine patrol over the city.

Ron Miller, Topeka Police Chief stated that the Police Department made the request to purchase a new Robinson R-44 helicopter. He also stated that it would cost more to maintain the Switzer helicopter than it would to purchase a new helicopter; and the Kansas Highway Patrol would only respond to emergency situations and would not fly routine patrol over the city.

Sergeant Mike Boucher, Police Department Helicopter Unit stated there are many training obstacles that have to be dealt with when transitioning pilots between two helicopter systems. He also noted that the Switzer helicopter has reached its technology limit.

Councilmember Preisner moved to approve the resolution authorizing the lease purchase agreement for a police helicopter as amended, with the stipulation that the amended language is approved by all parties involved with the lease purchase agreement. The motion seconded by Councilmember Swank carried. Councilmembers Kennedy, Alcala, Ortiz and Haynes voted "no." (5-4-0)

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL, were presented.

Norton N. Bonaparte, Jr., City Manager stated that the trailer parked near the area of SE 12th and Adams Streets is in violation of City Code and the Code Compliance Division is in the process of investigating the matter. He announced that on April 5, 2008 the first phase of the 2008 Take Over/Make Over Project would begin. He also announced upcoming community events.

Councilmember Ortiz encouraged Councilmembers to participate in the 2008 Take Over/Make Over Project on April 5, 2008.

Councilmember Preisner asked what the financial ramifications would be if the resolutions authorizing the lease purchase agreement of the police helicopter and the ERP software system are vetoed. He requested that the information be distributed to the Council at next week's Council meeting.

Councilmember Harmon asked citizens to contact the Public Works Department at 785-368-3801 for information on City of Topeka garage sale sign regulations.

Blake Redd and Ellen Ross appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:56 p.m.



*Brenda Younger*  
\_\_\_\_\_  
Brenda Younger  
City Clerk

## EXHIBIT B

Section 6.01. Rental Payments Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder and under each Individual Payment Schedule shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. Rental Payments shall be in consideration of Lessee's use of the Equipment during the year in which such payments are due. ~~For the purpose of the Kansas Cash Basis Law, the amount financed in Individual Payment Schedule No. 1 is \$3,340,428.00. Further, the Base Interest Rate for Individual Payment Schedule No. 1 is 3.83% per annum. In accordance with K. S. A. 10-1116c(d)(3), the amount included in the Rental Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost, relative to Individual Payment Schedule No. 1, is \$0.00.~~

Section 6.06. Non-appropriation. ~~The municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from funds budgeted and appropriated for that purpose during such municipality's current budget year or funds made available from any lawfully operated revenue producing source. In the event sufficient funds are not available to be budgeted or appropriated for the Rental Payments required to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement in whole only by terminating any or all of the Individual Payment Schedules at the end of the then current Original Term or Renewal Term of the respective Individual Payment Schedules, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement or the Individual Payment Schedules beyond the then current Original or Renewal Term, which will be tied to the City's fiscal year. Lessee agrees to deliver notice to Lessor of such termination at least ninety (90) days prior to the end of the then current Original or Renewal Term. If this Agreement is terminated under the provisions of this Section 6.06, Lessee agrees to peaceably deliver/surrender to the Lessor the Unit or Units of Equipment subject to the Individual Payment Schedule or Schedules so terminated, to Lessor at the location or locations specified by Lessor. TO THE EXTENT LAWFUL, Lessee agrees that if funds are appropriated to make Rental Payments for a succeeding fiscal year, it will not terminate this Agreement or any Individual Payment Schedule during such fiscal year, and that if this Agreement or any Individual Payment Schedule is terminated pursuant to this provision by non-appropriation prior to making of all Rental Payments due hereunder, Lessee will not replace the Equipment with the same or similar property or retain others to provide the same or similar services until after the date on which the next occurring Renewal Term of the applicable Individual Payment Schedule or Schedules would have ended. In the event of non-appropriation, Lessor shall have the right to recover the interest which shall have accrued on the principal balance outstanding as of the preceding Rental Payment due date, as set forth in the Exhibit E attached to the applicable Individual Payment Schedule.~~

Section 13.01. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01(a) or 13.01(c), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action deemed appropriate by Lessor in its sole discretion, is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; and
- (c) Failure by Lessee to maintain insurance on the Equipment in accordance with Section 8.03 hereof; and
- (d) A determination by a court of competent jurisdiction that Lessee knowingly made a misrepresentation of a material fact which Lessor reasonably and actually relied upon in entering into this Agreement.

Notwithstanding the foregoing, termination of this agreement under the provisions of Section 6.06 shall not constitute an event of default under this agreement.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.06; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article 6 and Section 8.03 hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

### PAYMENT SCHEDULE NO. 1

For the purpose of the Kansas Cash Basis Law, the amount financed in Individual Payment Schedule No. 1 is \$3,340,428.00. Further, the Base Interest Rate for Individual Payment Schedule No. 1 is 3.83% per annum. In accordance with K. S. A. 10-1116c(d)(3), the amount included in the Rental Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost, relative to Individual Payment Schedule No. 1, is \$0.00.

### PAYMENT SCHEDULE NO. 2

For the purpose of the Kansas Cash Basis Law, the amount financed in Individual Payment Schedule No. 2 is \$740,000.00. Further, the Base Interest Rate for Individual Payment Schedule No. 2 is 3.84% per annum. In accordance with K.S.A. 10-1116c(d)(3), the amount included in the Rental Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost, relative to Individual Payment Schedule No. 2, is \$0.00.