

By Mr. Hunt

Authorizing settlement of the case of Harris-McBurney Company, plaintiff, vs City of Bexley, Ohio, being case No. 189,575, Common Pleas Court, Franklin County, Ohio, and declaring an emergency.

WHEREAS, there is now pending in the Court of Common Pleas of Franklin County, Ohio, cause No. 189,575, filed on the 26th day of March, 1954, by Harris-McBurney Company against this City, wherein said Company claims that there is a balance due and owing from the City in the sum of \$17,557.00 with interest thereon at the rate of 6% per annum from the first day of December 1953 upon its contract with the City for the installation of street lights on various streets, as set forth in said petition; that said sum was arrived at by deducting from the contract price of \$176,622.90 the sum of \$153,576.21 theretofore paid upon said contract, leaving a balance of \$23,046.69; that 3% of the contract price was retained by the City for a period of one year for maintenance purposes as provided in the contract, in the sum of \$5,298.68, and leaving a balance owing as of December 1, 1953 in the sum of \$17,557.00 which said Company claims to be due and owing as of that date; and

WHEREAS, the City, by its amended answer therein claims certain credits by reason of necessary expenditures made by the City to correct certain defects in said improvement as the work progressed thereon, at a total expense to the City in the sum of \$5200.30 and further obligations for engineering services; and

WHEREAS, said Harris-McBurney Company has proposed to compromise and settle said cause now pending in the Common Pleas Court, and to receive in full satisfaction of all claims of principal and interest arising out of its said contract for installing lights in various streets in the City, and in full payment of the 3% maintenance fund so retained by the City, the sum of \$19,143.89, and to dismiss said case of record with prejudice at its costs, and

WHEREAS, Council is of the opinion that said cause and claims should be compromised and adjusted, and all differences between the parties arising out of said contract and said retainer be composed and said case disposed of upon the above proposed terms; Now, Therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, STATE OF OHIO:

Section 1. That the proposal of Harris-McBurney Company to compromise and settle in full said case of Harris-McBurney Company vs City of Bexley, No. 189,575, Common Pleas Court, and all matters and claims against the City of Bexley, Ohio, growing out of its contract for the installation of street lights on various streets in the City of Bexley, together with and in full payment and satisfaction of the 3% of the contract price retained by the City for maintenance purposes, and to dismiss with prejudice at its costs said cause No. 189,575, now pending in the Common Pleas Court of this County, for the sum of \$19,143.89 to be paid by the City, be and the same is hereby accepted and the Auditor is hereby authorized and directed, upon receipt by the City, and the approval thereof by the Mayor, of the engineer's final written report and recommendation of acceptance of said work, to issue to said Harris-McBurney Company the voucher of the City in compromise and settlement of the above matters, upon receipt of its full acquittance thereof.

Section 2. That this ordinance is an emergency measure, necessary for the immediate preservation of the public peace, health and safety in the operation of said lighting system, and the same shall go into full force and effect upon its passage.

Dated Dec 28, 1954

Approved Dec 28, 1954

C. J. [Signature]
President of Council

H. W. [Signature]
Mayor

Attest: [Signature] Clerk