## AMENDED ORDINANCE NO. <u>1</u>-93

## BY: John H. Offenberg

An Ordinance authorizing the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Bexley with the property owner at 841 Montrose Avenue (Lot Number 199; Bexley Plaza Addition) regarding improvements to be made upon and within the City owned right-of-way of Astor Avenue.

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

<u>Section 1</u>. That the property owner at 841 Montrose Avenue (Lot Number 199; Bexley Plaza Addition) has requested approval to construct a 24 inch high stone retaining wall in the side yard setback of said property which would encroach a distance of approximately 36 inches upon and within the Astor Avenue right-of-way owned by the City of Bexley;

Section 2. That the Mayor and the Auditor be, and they hereby are, authorized to enter into a Consent and Hold Harmless Agreement with the property owners, in form and substance satisfactory to the City Attorney, authorizing the encroachment as proposed in accordance with the submitted request on the condition that the property owner assume all responsibility for damage, loss and injury arising out of the location of said retaining wall including any additional cost to the City of Bexley incurred in connection with its use of the right-of-way occasioned by the location of the structure.

<u>Section 3.</u> That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

, 1993 Passed:

President of Council

Attest: of Council Clerk

Approved: della 9, 1993

David H. Madison, Mayor

070/Yoder

1st reading - January 12, 1993 2nd reading - January 26, 1993 31 Madun - Mulay 9, 1993 Mrs. Dorothy Prichard City of Bexley 2242 East Main Street Bexley, Ohio 43209

Dear Mrs. Prichard:

Recently, we had an existing wall replaced on our property. It is a wall that runs along our property on the Astor side as well as the front portion of the property facing Montrose. The original wall was built in 1930, when the house was built, and was badly deteriorated.

In replacing the wall we replicated exactly the dimensions of the original wall as to height depth, and width. It has, I believe, enhanced the property immensely.

Sincerely Roger A. yoder

841 Montrose Ave. Bexley, Ohio 43209

## <u>CONSENT AND</u>

## HOLD HARMLESS AGREEMENT

The undersigned property owner and the City of Bexley, Ohio (the "City") agree as follows:

The owner has sought and obtained permission from the City to erect a 24 inch high stone retaining wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the proposed retaining wall and use of the easement/right-of-way area is conditioned upon this Agreement.

Roger A. Yoder, his successors and assigns, shall save the City harmless from any and all damages which may arise from, or grow out of, the construction and installation of the retaining wall, and said grantee, his successors and assigns, shall defend, at their own cost, every suit in which the City shall be made a party, brought and prosecuted for the recovery of any such damages; that the occupancy of public property is hereby permitted merely as an accommodation to the said grantee and that no right, title or interest of the public is waived or abridged in any way thereby; that said grantee, his successors or assigns, shall at all times maintain the retaining wall in a manner satisfactory to the City; that said grantee, his successors or assigns, upon notice from the City of Bexley, Ohio duly authorized by the Council of the City, shall forthwith remove said retaining wall, and shall yield to said City all rights to occupy the space used for such structure, whenever said City shall determine the same to be necessary or desirable; that said structure shall be so constructed as to not interfere with or damage any utility facilities and in the event that changes become necessary to construct and accommodate said retaining wall, the grantee, his successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof.

This Agreement shall not be construed as in any way limiting the rights presently held by the City in the easement/right-ofway area, or the use thereof for public purposes, except to promote the construction and maintenance of the below mentioned structures in the easement/right-of-way.

841 Montrose Avenue Street Right-Of-Way Address of Property Type of Easement/Right-Of-Way Lot #199; Bexley Plaza Addition Stone Retaining Wall Lot No. or Other Description Building or Structure 25 Feet Measured from Center of Astor Avenue 3 feet Easement/Right-Of-Way Width -Maximum Encroachment Into Property Location Easement/Right-Of-Way Street, Sidewalk and amended. <u>AOrdinance No. |</u> Public Utilities -93 Approving Authority Services Existing in Easement/ Right-Of-Way Date of Agreement Date of Agreement

This Agreement shall be binding on and for the benefit of the party hereto and his respective successors and assigns.

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

	The				acknowledged			this	
		a6th	day	of _	February	×			
1992, by DAVID H. MADISON,									
			•		OhN W. Horn	berge			
			of Bexley,			v			

Nutrah E. Foulk Vitness - Rom R. Patterson

Witness

Mayor Audit

Notary Public ANHTA S. HUGHES NOTARY PUBLIC, STATE OF CHIO MY COMMISSION EXPIRES JULY 21, 1993

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The	foregoing 2nd		acknowledged March	before	me this
1992, by	Roger				· · · · · · · · · · · · · · · · · · ·
<u>Vie</u> Witness	Zunt	-	Property Owner	- 4- y A-	Joclen
			$\gamma$		

Mani Norton Witness

Property Owner

May L. Norton Notary Public

MARY L. NORTON NOTARY PUBLIC, STATE OF OHIO COUNTY OF FRANKLIN MY COMMISSION EXPIRES OCTOBER 20, 1996