

ORDINANCE NO. 37-94

AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT NOT TO EXCEED \$365,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF MAKING IMPROVEMENTS TO VARIOUS STREETS IN THE CITY OF BEXLEY, OHIO, INCLUDING THE ACQUISITION OF ALL NECESSARY EQUIPMENT AND RELATED APPURTENANCES THEREFOR.

WHEREAS, pursuant to Ordinance No. 34-93 duly adopted on May 25, 1993, notes in the principal amount of \$365,000 (the "Outstanding Notes") dated July 1, 1993 were issued for the purpose hereinafter stated, to mature on July 1, 1994, and it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds; and

WHEREAS, the City Auditor has certified to this council (the "Council") that the estimated life of the improvement stated in the title of this Ordinance (the "Project") which is to be financed from the proceeds of bonds and notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being twenty (20) years and notes being nineteen (19) years;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, COUNTY OF FRANKLIN, STATE OF OHIO THAT:

Section 1. It is hereby declared necessary to issue bonds (the "Bonds") of the City of Bexley, Franklin County, Ohio (the "City") in the principal sum not to exceed \$365,000 for the purpose of paying the cost of financing the Project.

Section 2. The Bonds shall be dated approximately June 1, 1994, shall bear interest at the maximum average annual interest rate presently estimated to be six and one-half per centum (6.50%) per annum, payable semiannually until the principal sum is paid and shall mature in twenty (20) annual installments.

Section 3. It is necessary to issue and this Council hereby determines that notes shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes.

Section 4. Such anticipatory notes (the "Notes") shall be in the amount of \$365,000, or such lesser amount as shall be determined by the City Auditor and set forth in the Certificate of Award

authorized below, which sum does not exceed the amount of the Bonds. The Notes shall be dated June 29, 1994 and shall mature on June 28, 1995. The Notes shall be issued in bearer form, shall be executed and delivered in such number and in such denominations as shall be requested by the original purchaser thereof. Coupons shall not be attached to the Notes.

Section 5. The Notes shall be the full general obligation of the City and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Bonds and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity, together with interest thereon, and is hereby pledged for such purpose.

Section 6. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the ten mill limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes at maturity. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution; provided, however, that in each year to the extent that funds are available from other sources and are lawfully appropriated for the payment of the Notes or Bonds, the amount of the Debt Service Levy shall be reduced by the amount of such funds so available and appropriated.

Section 7. The Debt Service Levy shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of the interest and principal of the Notes and Bonds when and as the same falls due.

Section 8. It is hereby determined that, for purposes of issuance and sale, it is in the best interests of the City to combine the Notes with other limited tax notes of the City, authorized by other Ordinances of this Council adopted on the date hereof. The Notes and such other notes will be jointly referred to herein as the "Combined Notes". The Combined Notes shall be designated "City of Bexley, Franklin County, Ohio Various Purpose Capital Improvement Notes".

Section 9. The Combined Notes shall bear interest at the rate per annum determined by the City Auditor and certified to this Council not to exceed six per centum (6.00%) per annum, based on a 360 day year, payable at maturity. After publication of a Notice of Note Sale on the calendar maintained by the Ohio Municipal Advisory Council for such purpose, the Combined Notes shall be, and hereby are, awarded to such purchaser as shall offer, in the opinion of the City Auditor, the best rate of interest on the Combined Notes, at the par value thereof and the Clerk is hereby authorized and directed to deliver the Combined Notes, when executed, to said purchaser upon payment of such purchase price and accrued interest to the date of delivery. The City Auditor is hereby authorized and directed to execute on behalf of the City a Certificate of Award identifying the purchaser of the Notes and setting forth the final terms of sale. The proceeds of such sale, except any premium or accrued interest thereon, shall be deposited in the Treasury of this City and used for the Project and for no other purpose. Any premium or accrued interest shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal and interest on the Combined Notes in the manner provided by law. The form of the Notice of Note Sale

as presented to this Council is hereby approved with such changes as the City Auditor shall deem appropriate.

Section 10. The Combined Notes shall be executed by the City Auditor and the Mayor, provided that one but not both of such signatures may be a facsimile signature, shall be payable as to both principal and interest at such bank as shall be acceptable to the City Auditor and the original purchaser of the Combined Notes and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

Section 11. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Combined Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Combined Notes so that the Combined Notes will not constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further covenants that it will restrict the use of the proceeds of the Combined Notes in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder or under the Internal Revenue Code of 1954, as amended (the "Regulations").

The City Auditor, or any other officer, including the Clerk of the City, is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Combined Notes as permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Combined Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the City Auditor, which action shall be in writing and signed by the City Auditor, or any other officer of the City, including the Clerk on behalf of the City; (b) to take any and all actions, make or obtain calculations, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Combined Notes; and (c) to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with sections 141 through 150 of the Code and the Regulations.

The City Auditor of the City shall keep and maintain adequate records pertaining to investment of all proceeds of the Combined Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Combined Notes which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The City Auditor of the City is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Combined Notes requires any such reports or rebates.

The Combined Notes are hereby designated by the City to be "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City Auditor or any other officer, including the Clerk of the City, having responsibility with respect to the issuance of the Combined Notes is authorized and

directed to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the representations, warranties and covenants of the City designed to assure that the Combined Notes will remain "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

Section 12. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 13. It is hereby found and determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Combined Notes in order to make them legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Combined Notes.

Section 14. The Clerk is hereby directed to forward a certified copy of this Ordinance to the Auditor of Franklin County, Ohio.

Section 15. This Ordinance shall take effect and be in force at the earliest date permitted by law.

Signed:

D. Madasi
Mayor

John M Brennan
Council President

Adopted June 14, 1994

Attest:

Effective June 14, 1994

John J. Gohy
Clerk of Council

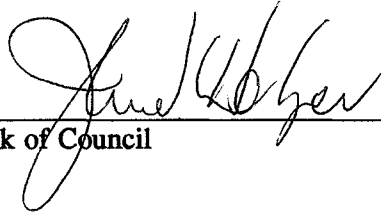
Approved as to form:

James H. Gross
Legal Officer

*June 14, 1994 - 1st reading
Susp. & Adopted*

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 3794 duly adopted by the Council of the City of Bexley, Franklin County, Ohio on the ____ day of June 14, 1994 and that a true copy thereof was certified to the County Auditor of Franklin County, Ohio on the ____ day of June, 1994.



Clerk of Council