

ORDINANCE NO. 35-96

AUTHORIZING THE ISSUANCE OF CONSOLIDATED NOTES IN THE AMOUNT OF NOT TO EXCEED \$880,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF RETIRING NOTES PREVIOUSLY ISSUED, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 25-95 duly adopted on June 13, 1995, consolidated notes in the aggregate principal amount of \$880,000 dated June 28, 1994 were issued for the following purposes: (a) purchasing equipment for various City departments in the City of Bexley, Ohio, including the acquisition of all related appurtenances therefor; (b) making improvements to various streets in the City of Bexley, Ohio, including the acquisition of all necessary equipment and related appurtenances therefor; and (c) purchasing vehicles for use by various City departments in the City of Bexley, Ohio, including the acquisition of all necessary equipment and related appurtenances therefor; to mature on June 27, 1996;

WHEREAS, 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 weighted average life of the improvements stated in this Ordinance (the "Project") which are to be financed from the proceeds of bonds and Notes hereinafter referred to exceeds five (5) years, the maximum maturity of bonds being six (6) years and Notes being four (4) 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 of \$880,000 for the purpose of paying the cost of acquiring and constructing the Project and retiring the Outstanding Notes at maturity.

Section 2. The Bonds shall be of the denomination of \$5,000 each or any integral multiple thereof, shall be dated prior to the maturity date of the Notes, shall bear interest at the maximum average annual interest rate presently estimated to be six per centum (6.00%) per annum, payable semiannually until the principal sum is paid and shall mature in six (6) 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 maximum principal amount of \$880,000, or such lesser amount as shall be determined by the City Auditor and certified to this Board, which sum does not exceed the amount of the Bonds. The Notes shall be dated the date established by the City Auditor and certified to this Council, and shall mature no later than one year after their issuance. The Notes shall be issued in bearer form (or, if requested by the Original Purchaser [as defined hereinbelow], in registered form; provided that the Original Purchaser shall agree to pay all costs related to such registration), and shall be executed and delivered in such number and 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 which is sufficient to provide funds to pay interest upon the Notes as and when the same fall due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. 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.

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 premium, if any, and interest on and principal of the Notes and Bonds when and as the same fall due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources for the payment of the Notes and Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

Section 8. The 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 Sale on the calendar maintained by the Ohio Municipal Advisory Council for such purpose, the 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 Notes, at the par value thereof and the Clerk is hereby authorized and directed to deliver the Notes, when executed, to said purchaser upon payment of such purchase price and accrued interest to the date of delivery. 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 Notes in the manner provided by law. The City Auditor is authorized and directed to execute on behalf of the City a Certificate of Award setting forth the final terms of the Notes, which terms shall not be substantially inconsistent with the terms of this Ordinance.

Section 9. The 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 Notes and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

Section 10. 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 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 Notes so that the 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 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 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 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 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 Auditor of the City shall keep and maintain adequate records pertaining to investment of all proceeds of the 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 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 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 Notes requires any such reports or rebates.

The 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 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 Notes will remain "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

Section 11. 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 12. It is hereby found and determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the 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 Notes.

Section 13. The Clerk is hereby directed to forward a certified copy of this Ordinance to the Auditor of Franklin County, Ohio.

Section 14. This Ordinance is hereby declared to be an emergency measure, the immediate passage of which is necessary for the preservation of the public peace, health, safety and welfare of the City and its inhabitants and for the further reason that the Notes are about to mature and it is necessary to provide for their repayment in order to preserve the credit of the City; wherefore this Ordinance shall take effect and be in force from and immediately after its passage.

Signed:

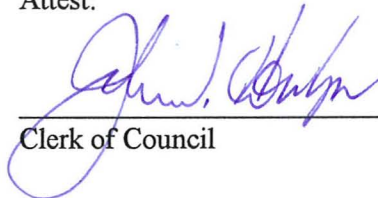


Council President

Adopted: June 25, 1996

Effective: June 25, 1996

Attest:



Clerk of Council

May 28, 1996 - 1st reading
June 11, 1996 2nd reading
June 25, 1996, 3rd Reading - Passed.

Approved as to form:

James H. Gross
Legal Officer

Approved:

J. Madison
Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 35-96 duly adopted by the Council of the City of Bexley, Ohio on the 25 day of JUNE, 1996 and that a true copy thereof was certified to the Auditor of Franklin County, Ohio on the 25 day of JUNE, 1996.

J. W. ...
Clerk of Council