

ORDINANCE NO. 83 -96

BY: Melisa D. Shroyer

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 465 South Parkview Avenue (Lot Number 55; Holtzman #2 Addition) regarding improvements to be made upon and within the City owned right-of-way of South Parkview Avenue; specifically, to allow for the construction of a dumpster enclosure and placement of trash dumpsters on City owned right-of-way at the intersection of the western terminus of Bryden Road and the southern terminus of Westland Avenue.

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

Section 1. That the property owner at 465 South Parkview Avenue (Lot Number 55; Holtzman #2 Addition) has requested approval to construct a dumpster enclosure and place trash dumpsters in the City right-of-way located at the intersection of the western terminus of Bryden Road and the southern terminus of Westland Avenue which would encroach upon and within the right-of-way owned by the City of Bexley.

Section 2. That the construction of the dumpster enclosure and placement of the trash dumpsters will be in accordance with drawing A1 which is attached to and made a part of this Ordinance.

Section 3. That the Mayor and Auditor be, and they hereby are, authorized to enter into a Consent and Hold Harmless Agreement with the property owner, 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 dumpster enclosure and trash dumpsters 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.

Section 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 1996

President of Council

Attest: _____
Clerk of Council

Approved: _____, 1996

David H. Madison, Mayor

465pview

*November 10, 1996 1st Reading
November 26, 1996 2nd Reading
December 10, 1996 - 3rd reading; tabled
February 24, 1998 - removed from
table; defeated*

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owner has sought and obtained permission from the City of Bexley to construct a dumpster enclosure and place trash dumpsters as indicated below on the property described below and in the easement/right-of-way as described. Approval of the enclosure and dumpsters and use of an easement/right-of-way area which is public property is conditioned upon this Agreement.

Sunbury Gardens, its successors and assigns (collectively the "Owner"), shall save the City harmless from any and all damages which may arise from, or grow out of, the construction, installation, maintenance, repair, relocation, removal or replacement of the enclosure and dumpsters for any reason and shall defend, at its own cost, every suit in which the City of Bexley, Ohio, 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 the Owner, upon notice from the City of Bexley, Ohio, duly authorized by the Council of Bexley, Ohio, shall forthwith remove said enclosure and dumpsters from the public property occupied by them and shall yield to said City all rights to occupy the public property used for such enclosure and dumpsters whenever said City shall determine the same to be necessary or desirable; that the Owners release the City, its employees and agents, from any liability for damage to the enclosure and dumpsters arising out of or in connection with any cause whatsoever; that said enclosure shall be so constructed and dumpsters shall be so placed as to not interfere with or damage any utility facilities or to impede nor interfere with in any way the use of the easement/right-of-way area, streets, alleys, sidewalks, and curbs by the City and the public; and in the event that the City determines changes to the enclosure and dumpsters to be necessary or desirable, the Owner shall promptly make any such changes, relocations, or rearrangements solely at its expense.

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

Intersection of Bryden Road and
Westland Avenue
Address of Properties

Street Right-Of-Way
Type of Easement/Right-Of-Way

Lot Number 55; Holtzman #2 Addition
Lot Numbers or Other Description

Dumpster Enclosure & Trash Dumpsters
Building or Structure

In Accordance With Drawing A1
Easement/Right-Of-Way Width
Property Location

In Accordance With Drawing A1
Maximum Encroachment Into
Easement/Right-Of-Way

Street, Sidewalk & Public Utilities
Services Existing in Easement/
Right-Of-Way

Ordinance No. -96
Approving Authority

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

STATE OF OHIO, COUNTY OF FRANKLIN:

SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 199____ by David H. Madison, Mayor of the City of Bexley, Ohio, and John W. Hornberger, Auditor of the City of Bexley, Ohio.

Witness

Mayor

Witness

Auditor

Notary Public

STATE OF OHIO, COUNTY OF FRANKLIN:

SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 199____ by _____

Witness

Property Owner

Witness

Property Owner

Notary Public