

ORDINANCE NO. 5-97

AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$270,000 OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF MAKING IMPROVEMENTS TO THE WATER DISTRIBUTION SYSTEM IN THE CITY OF BEXLEY, INCLUDING WATER LINE REPLACEMENTS, WITH ALL NECESSARY EQUIPMENT AND RELATED APPURTENANCES, RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE, AND DECLARING AN EMERGENCY.

WHEREAS, notes in the principal amount of \$270,000, (the "Outstanding Notes") dated February 29, 1996 were issued in anticipation of the issuance of bonds for the purpose hereinafter stated, mature February 28, 1997, 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 forty (40) years and notes being sixteen (16) 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 in the principal sum of not to exceed \$270,000 for the purpose of paying the cost of financing the Project.

Section 2. The Bonds 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 and per centum (6.0%) per annum, payable semiannually until the principal sum is paid and shall mature in 40 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 such amount, not to exceed \$270,000, as shall be determined by the City Auditor, which sum does not exceed the amount of the Bonds. The Notes shall be dated February 27, 1997 and shall mature on February 27, 1998. The Notes shall be issued in bearer form and shall be executed and delivered in such number and such denominations as shall be requested by the 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 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 such rate per annum as shall be determined by the City Auditor and certified to this Council, provided that such rate shall not exceed six per centum (6.0%) per annum, based on a 360-day year of twelve 30-day months, payable at maturity. After publication of a Notice of Sale in the calendar published by the Ohio Municipal Advisory Council in such form as is approved by the City Auditor, the Notes shall be, and hereby are, awarded and sold at private sale by the City Auditor to such purchaser as shall offer, in the opinion of the City Auditor, the best rate of interest on the Notes, at not less than the par value thereof, and the City Auditor of this Council is hereby authorized and directed to deliver the Notes, when executed, to said purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery. The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest or premium 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.

Section 9. The Notes shall be executed by the City Auditor and the Mayor, provided that either but not both of such signatures may be a facsimile, shall be designated "City of Bexley, Franklin County, Ohio Water Distribution System Improvement Notes", 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

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 of the City, including the Mayor, 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 Mayor, 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 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 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 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 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 of the City, including the Mayor, 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 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.

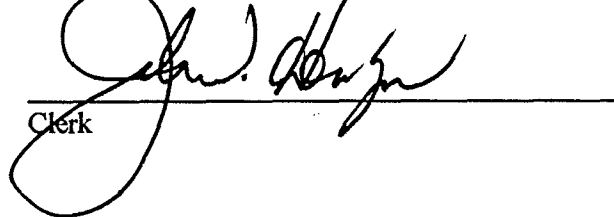
Section 13. The Clerk is hereby directed to forward a certified copy of this ordinance to the Auditor of Franklin County, Ohio.

Section 14. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that notes heretofore issued are about to mature and it is necessary to make immediate provision 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 adoption.

Signed:

  
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Council President

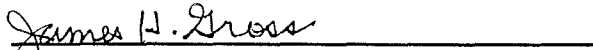
Attest:

  
\_\_\_\_\_  
Clerk

Adopted: February \_\_\_\_, 1997

Effective: February \_\_\_\_, 1997

Approved as to form:

  
\_\_\_\_\_  
Legal Officer

January 28, 1997 1<sup>st</sup> reading

February 11, 1997 passed