

ORDINANCE NO. 14 -97

By: Jeffrey L. McClelland

An Ordinance to authorize the Mayor and Auditor to execute an employment contract by and between the City and John R. Carruthers and to declare an emergency.

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

Section 1. That the Mayor and Auditor are hereby authorized and directed to execute an employment contract on behalf of the City with John R. Carruthers with respect to Dr. Carruthers' employment as Chief of Police, said contract to be substantially in the form attached to this Ordinance as Exhibit A and incorporated herein by this reference.

Section 2. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to authorize said contract prior to the commencement of Dr. Carruthers' service as Chief of Police on February 26, 1997 and shall be in force immediately upon its passage and approval by the Mayor.

Passed: 2/25, 1997

[Signature]
President of Council

Attest: [Signature]
Clerk of Council

Approved: 2/27, 1997

[Signature]
David H. Madison, Mayor

February 25, 1997, first reading, passed

No contract as of 3/12/97. Contract on hold as per Russ Weber, Jeff McClelland, David B.

[Signature]
3/12/97

Employment Contract

This agreement is entered into between John R. Carruthers, Ph.D. ("Carruthers") and the City of Bexley, Ohio ("Bexley") in duplicate, each copy of which is an original.

1. Purpose. Bexley has offered and Carruthers has accepted employment as Bexley's Chief of Police. Employment of a police chief is governed by Section 47 of Bexley's Charter. Section 47 provides no details regarding the precise, legal relationship between the chief of police and Bexley. This writing contains Bexley's and Carruthers' agreement regarding both the terms and conditions of Carruthers' employment as chief of police and the application of Section 47 of Bexley's Charter to that employment.

2. Civil service status. The position of chief of police is unclassified with limited tenure rights.

3. Duties. Subject to direction from the Mayor and Safety Director, Carruthers shall have and exercise executive control over Bexley's police department. Carruthers shall assume and perform all duties normally incident to the position of chief of police and all other duties which may, from time to time, be assigned by the Mayor or the Safety Director.

4. Probationary period. Carruthers shall serve a one year probationary period to begin February 26, 1997. Carruthers may be removed at any time during his probationary period for unsatisfactory service as determined by the mayor. Probationary termination is not subject to review by City Council pursuant to Section 47 of Bexley's charter.

5. Duration of employment. Upon completion of his probationary period, Carruthers shall be employed for a term of 5 years beginning February 26, 1998. During that term, Carruthers may not be removed from office save for the reasons enumerated in Section 47 of Bexley's charter. Carruthers' employment contract shall automatically renew for additional periods of 5 years unless the Mayor gives written notice at least 120 calendar days before the expiration of any contract term that it will not be renewed. In that case, Carruthers shall be deemed to have voluntarily resigned as chief of police effective the close of business of the last day of his contract term.

6. Termination for cause. The following procedure shall apply to any disciplinary action taken pursuant to Section 47 of Bexley's charter:

a) City Council may hear any suspension, itself. Alternatively, City Council may appoint a referee to conduct the hearing as follows:

i) The referee shall submit a written report and recommendation to City Council within 10 working days after conclusion of the hearing. A copy of the report and recommendation shall be mailed to Carruthers at the same time.

ii) The report and recommendation shall include findings of fact and conclusions of law and recommend an ultimate disposition.

iii) City Council shall consider the report and recommendation and may

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adopt it, reject it, or order any other disposition it concludes is appropriate.

b) Hearings shall be conducted as directed by City Council or the referee. In particular, and not by way of limitation, hearings need not comply with procedures mandated by: O.R.C. Ch. 119; O.R.C. §124.34; O.A.C. Ch. 124; the rules of the Bexley Civil Service Commission; or the rules of any court including the Ohio Rules of Evidence.

c) The time frame incorporated in Section 47 is directory, not mandatory.

d) As used in Section 47 of Bexley's Charter, "other just and reasonable cause" includes 2 or more consecutive, unsatisfactory, annual performance evaluations.

e) City Council's decision is final and not subject to judicial review.

7. Salary. Carruthers shall receive an annual salary of \$64,000 payable in accordance with Bexley's usual practice. Carruthers' salary may be increased from time to time but may not be decreased except in accordance with Section 47 of Bexley's Charter.

8. Overtime. The position of chief of police is salaried and overtime exempt.

9. Leave. Carruthers shall receive vacation leave, sick leave and personal leave in accordance with Bexley's policies and procedures as they now exist or as they may, from time to time, be amended.

10. Carryover leave. Prior to his appointment as Bexley's chief of police, Carruthers earned leave with his previous employment. Bexley shall credit Carruthers with leave from that employment as follows: Sick leave: ____ hours; Vacation leave: ____ hours; Personal leave: ____ hours.

11. Credit for prior service. For purposes of all Bexley benefits which are conditioned upon employee service credit, Carruthers shall be credited with ____ years of prior service.

12. Car. Bexley shall assign an individual car to Carruthers. Because Carruthers is "on-call" at all times, he may use the car during his nominal, "non-working" hours.

13. Comparable benefits. Carruthers' salary -- including percentage pay increases -- and insurance benefits shall be adjusted over the term of this agreement to be comparable to or greater than those enjoyed by commissioned members of Bexley's police department. Bexley may provide different benefits than those incorporated in any collective bargaining agreement governing its police department. This section does not entitle Carruthers to anything whose provision would conflict with any part of this agreement including, without limitation, overtime exemption and restrictions on tenure.

14. Venue and choice of law. This agreement is governed by Ohio law. Venue for proceedings arising out of this agreement shall only be proper in Franklin County, Ohio.

15. Arbitration. Arbitration is the exclusive mechanism for resolving disputes regarding the application of this agreement. An arbitrator shall be selected from a panel of at least 7

arbitrators supplied by the American Arbitration Association ("AAA") by alternate striking of names. Carruthers shall strike first. Either party may request arbitration and each party may reject one panel without striking. Each party shall be liable for half of the fees charged by AAA or the arbitrator. The arbitration shall be conducted in accordance with AAA's Rules of Commercial Arbitration and each party shall be individually liable for all expenses incurred in presenting his/its position. The arbitrator's jurisdiction is further limited as follows:

a) The arbitrator shall construe this agreement as written and may not alter any of its provisions.

b) The arbitrator has no jurisdiction over the Mayor's decision to prefer charges or City Council's resolution thereof pursuant to Section 47 of Bexley's charter.

16. Review by counsel. Carruthers received a copy of this agreement prior to its execution. Carruthers had adequate time to review it with his attorney. Carruthers states he is satisfied with the agreement and executed it without reservation.

17. Severability. Should any provision of this agreement be judicially abrogated, that provision, alone, shall be severed and the remainder of the agreement shall remain in full force and effect. Within 10 working days following the termination of any appellate proceedings, Carruthers and the Mayor shall meet, personally or through their designated representatives, to negotiate a successor provision.

18. Whole agreement. This writing, consisting of 3 printed pages, contains the entire agreement between Carruthers and Bexley regarding Carruthers' employment as Bexley's Chief of Police. All other agreements are void. This agreement may not be amended except by writing executed by Carruthers and Bexley's Mayor and approved by City Council.

Witness our hands this _____ day of February, 1997.

City of Bexley, Ohio

by: _____
David H. Madison, Mayor

John R. Carruthers, Ph.D.

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Printed: 2/21/97