

ORDINANCE NO. 26-97

AUTHORIZING THE ISSUANCE OF \$2,000,000 OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF (A) PURCHASING EQUIPMENT FOR VARIOUS CITY DEPARTMENTS IN THE CITY OF BEXLEY, OHIO, INCLUDING THE ACQUISITION OF ALL RELATED APPURTENANCES THEREFOR, AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE; (B) MAKING IMPROVEMENTS TO VARIOUS STREETS IN THE CITY OF BEXLEY, OHIO, INCLUDING THE ACQUISITION OF ALL NECESSARY EQUIPMENT AND RELATED APPURTENANCES THEREFOR, AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE; (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, AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE; AND (D) REPAIRING AND CONSTRUCTING STREETS IN THE CITY OF BEXLEY, OHIO, INCLUDING ALL NECESSARY EQUIPMENT AND APPURTENANCES THEREFOR, AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE AND DECLARING AN EMERGENCY.

WHEREAS, the City Council (the "Council") of the City of Bexley (the "City") has issued notes dated June 27, 1996, in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) (the "Outstanding Notes") in anticipation of the issuance of a portion of the bonds herein described, which Outstanding Notes will mature June 26, 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 Council (the "Council") of the City of Bexley (the "City") has issued notes dated October 22, 1996, in the amount of One Million One Hundred Fifty Thousand Dollars (\$1,150,000) (the "Outstanding Notes") in anticipation of the issuance of a portion of the bonds herein described, which Outstanding Notes will mature June 26, 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 (the "City Auditor") of the City has certified to this Council that the estimated life of the improvement stated in the title of this ordinance (the "Project") which is to be financed with 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 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 Two Million Dollars (\$2,000,000), for the purpose of paying the cost of the Project.

Section 2. The Bonds shall be dated prior to the maturity date of the Notes (as defined herein below), shall bear interest at the maximum average annual interest rate presently estimated to be six per centum (6.0%) 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 there shall be issued, notes 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 Two Million Dollars (\$2,000,000), which sum does not exceed the amount of the Bonds. The Notes shall be dated June 25, 1997 and shall mature on June 25, 1998. The Notes shall be issued in bearer form (or, if requested by the Original Purchaser, 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 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 and are 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.

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 payments of the premium, if any, and interest on and principal of the Notes and Bonds when and as the same falls 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, based on a 360-day year of twelve 30-day months, payable at maturity, at such rate per annum as shall be determined by the City Auditor and certified to this Council. 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 (the "Original Purchaser"), at the par value thereof. The City Auditor is hereby authorized and directed to deliver the Notes, when executed, to the Original 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 Various Purpose Capital Improvement Notes, Series 1997-A", shall be payable as to both principal and interest at such bank as shall be acceptable to the City Auditor and the Original Purchaser. The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

Section 10. For purposes of this ordinance, the following terms shall have the following meanings:

"Book entry form" or "book entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book entry and (ii) physical Notes in fully registered form are issued only to the Depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book entry is the record that identifies the owners of beneficial interests in those Notes.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book entry system to record beneficial ownership of Notes, and to effect transfers of Notes, in book entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

All or any portion of the Notes may be initially issued to a Depository for use in a book entry system, and the provisions of this section shall apply, notwithstanding any other provision of this ordinance: (i) there shall be a single Note of each maturity; (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book entry form shall be shown by book entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book entry; and (v) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Council. Debt service charges on Notes in book entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Notes as provided in this ordinance.

The paying agent for the Notes may, with the approval of this Council, enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the paying agent for the Notes and this Council. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The paying agent for the Notes shall furnish a copy of each of those agreements, certified to be correct by the paying agent for the Notes, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this ordinance.

The Mayor, City Auditor, Clerk, or any other officer of this Council, including the Council President, is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, the letter agreement among the City, the paying agent for the Notes and The Depository Trust Company, as depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system in substantially the form submitted to this Council.

Section 11. If any Depository determines not to continue to act as a depository for the Notes for use in a book entry system, the City and the paying agent for the Notes may attempt to establish a securities depository/book entry relationship with another qualified Depository under this ordinance. If the City and the paying agent for the Notes do not or are unable to do so, the City and the paying agent for the Notes, after the paying agent for the Notes has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver note certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Notes), if the event is not the result of action or inaction by the City or the paying agent for the Notes, of those persons requesting such issuance.

Section 12. 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 (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.

Section 13. 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 14. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the Clerk and a no-litigation certificate of the Mayor and the City Auditor, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein.

Section 15. 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 16. 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 17. The Clerk is hereby directed to forward a certified copy of this ordinance to the Auditor of Franklin County, Ohio.

Section 18. 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 this ordinance must be immediately effective for the 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:



Mayor

Attest:

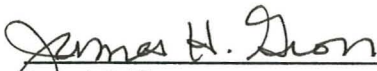


Clerk

Adopted: June 10, 1997

Effective: June 25, 1997

Approved as to form:



Legal Officer

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of Ordinance No. 216-97 duly adopted by the City Council of the City of Bexley, Franklin County, Ohio on June 10, 1997 and that a true copy thereof was certified to the County Auditor of Franklin County, Ohio, on the ___ day of _____, 1997.



Clerk, City of Bexley, Franklin County, Ohio

May 13, 1997, first reading
June 10, 1997, third reading,
Passed

May 27, 1997, second reading