

AMENDED ORDINANCE NO. 23-98

BY: William J. Schottenstein

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 2143 East Main Street (Lot Numbers 20 & 21; Bexley Drive Addition) regarding improvements to be made upon and within the City owned right-of-way of East Main Street.

WHEREAS, Amended Ordinance No. 60-96 granted approval for construction of a 36 inch high stone retaining wall and a 42 inch high wrought iron railing which would encroach 60 inches upon and within the City owned right-of-way at this location; and,

WHEREAS, said retaining wall and iron railing were never constructed; and,

WHEREAS, the current tenant has requested approval for construction of a 36 inch high concrete patio and railing which would encroach 96 inches upon and within the City owned right-of-way at this location.

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

Section 1. That the property owner at 2143 East Main Street (Lot Numbers 20 & 21; Bexley Drive Addition) has requested approval to construct a 36 inch high concrete patio and a railing, the design and height to be determined by the Planning Commission in accordance with all applicable codes, in the City right-of-way of said property which would encroach a distance of 96 inches upon and within the East Main Street right-of-way owned by the City of Bexley.

Section 2. That the property owner will request and receive Environmental Review Approval from the Bexley Planning Commission for the landscape plan, the railing, and patio furniture associated with the encroachment.

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 retaining wall 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 That the previous approval granted by Amended Ordinance No. 60-96 should be, and hereby is, repealed.

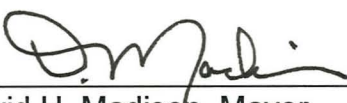
Section 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 14, 1998


President of Council

Attest: 
Clerk of Council

Approved: 4/14, 1998


David H. Madison, Mayor
2143Main

1st reading – March 10, 1998
2nd reading – March 31, 1998

4-14-98 third reading
passed

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property tenant has sought and obtained permission from the City of Bexley to construct a 36 inch high stone retaining wall and a 42 inch high wrought iron railing as indicated below on the property described below and in the easement/right-of-way as described. Approval of the retaining wall and railing and use of an easement/right-of-way area that is public property is conditioned upon this Agreement.

_____, for himself and his successors and assigns (collectively the "Tenant"), shall construct the retaining wall and railing in accordance with plans approved by the City and shall at all times maintain the retaining wall and railing in good condition, free of all defects. The Tenant shall also 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 retaining wall and railing for any reason and shall defend, at his 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 retaining wall and railing from the public property occupied by it and shall yield to said City all rights to occupy the public property used for such retaining wall and railing whenever said City shall determine the same to be necessary or desirable; that the Tenant releases the City, its employees and agents, from any liability for damage to the retaining wall and railing arising out of or in connection with any cause whatsoever; that said patio shall be so constructed 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 retaining wall and railing to be necessary or desirable, the Tenant shall promptly make any such changes, relocations, or rearrangements solely at his expense.

Capital University, for itself and its successors and assigns (collectively the "Owner"), agrees to the covenants of the Tenant set forth in the preceding paragraph and guarantees compliance with such covenants, it being the understanding of the parties that the Tenant shall be primarily responsible for assuring compliance with such covenants while he is in possession of the subject property and that the City shall take action to enforce such covenants directly against the Owner only if, in the City's sole discretion, the Tenant shall have failed, after notice from the City, to comply fully with them.

The Tenant and/or the Owner shall carry liability insurance in an amount satisfactory to the City and shall provide a certificate of insurance naming the City as an additional insured. With respect to any other insurance coverage that shall be available to the City, such insurance shall be primary and not contributory or excess.

The Tenant and the Owner further agree that the retaining wall and railing shall be removed promptly upon receipt of a written request from the City in the event that use of the retaining wall and railing is discontinued for a period of six months during any outdoor eating season.

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 retaining wall and railing in the easement/right-of-way area.

2143 East Main Street
Address of Property

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

Lot Nos. 20 & 21; Bexley Drive Addition
Lot Numbers or Other Description

Stone Retaining Wall and Wrought
Iron Railing
Building or Structure

40 Feet Measured from the
Center of E. Main Street
Easement/Right-Of-Way Width
Property Location

8.00 feet
Maximum Encroachment Into
Easement/Right-Of-Way

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

Ordinance No. 23-98
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 31st day of March, 2000 by David H. Madison, Mayor of the City of Bexley, Ohio, and Richard A. Levin, Auditor of the City of Bexley, Ohio.

Sara Chinnoch
Witness
Pat O'Donnell
Witness

[Signature]
Mayor
Richard A. Levin
Auditor
Anita S. Hughes
Notary Public

ANITA S. HUGHES
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JULY 25, 2003

STATE OF OHIO, COUNTY OF FRANKLIN:
SS:

The foregoing instrument was acknowledged before me this 3rd day of MARCH, 2000 by ~~the~~ VERNON P. TRUESDALE

Silda E. Waddell
Witness

Vernon P. Truesdale
Capital University
Parvula Sue Glein
Notary Public
My Commission expires Aug. 27th 2001

STATE OF OHIO, COUNTY OF FRANKLIN:
SS:

The foregoing instrument was acknowledged before me this 20th day of March, 2000, by the undersigned Khaled Ballouz.

Pat O'Donnell
Witness

Khaled Ballouz
Tenant
Kathleen Marie Rose
Notary Public

KATHLEEN MARIE ROSE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES July 10, 2000