

ORDINANCE NO. 01 - 14

AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF BEXLEY, OHIO TO BE A PUBLIC PURPOSE; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION OF A COMPENSATION AND COOPERATION AGREEMENT; ESTABLISHING AN URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND; DESIGNATING THE PURPOSES FOR WHICH MONEYS DEPOSITED IN THE URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND MAY BE USED; AND RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.41, 5709.42, 5709.43, 5709.82 and 5709.85.

WHEREAS, Ohio Revised Code ("R.C.") Section 5709.41 provides that this Council may, under certain circumstances, declare Improvement (as defined below) to parcels of real property located in the City of Bexley (the "City") to be a public purpose, thereby exempting that Improvement from real property taxation, provided the City has held fee title to such real property prior to the adoption of the ordinance providing for the exemption; and

WHEREAS, pursuant to R.C. Section 5709.41, said exemption may exceed 75% of such Improvement for up to thirty (30) years with the approval of the affected local school district; and

WHEREAS, the real property described in Exhibit A hereto and incorporated herein by reference (the "Property") is located in the State of Ohio (the "State"), County of Franklin, and the City; and

WHEREAS, a private developer is desirous of redeveloping the Property by constructing an urban grocery store thereon (the "Project"); and

WHEREAS, the Property as currently improved consists of outdated, functionally obsolete structures and is located in the City's Main Street corridor; and

WHEREAS, the proposed Project would be consistent with the City's redevelopment efforts as described in the 2011 Land Use Strategy (the "Redevelopment Plan"), and in particular, the recommendations for East Main Street contained in Section C, page 6 of the Redevelopment Plan; and

WHEREAS, the Project will increase density, enhance the Main Street corridor and is a critical component of the City's redevelopment efforts; and

WHEREAS, pursuant to Second Amended Ordinance No. 20-13, passed September 17, 2013, the City transferred fee title to the Property to Bexley Community Improvement Corporation (the "CIC"); and

WHEREAS, pursuant to Ordinance No. 47-13, passed October 8, 2013, the City acquired fee title to the Property back from the CIC and re-conveyed the Property to the CIC; and

WHEREAS, the CIC is leasing the Property to the private developer to enable the developer to construct the Project; and

WHEREAS, because the City currently occupies the Property and must move its facilities located thereon, it is necessary for the City to acquire one or more other properties, to make improvements thereto and to incur related costs; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for service payments in lieu of real property taxes ("Service Payments," as further defined below) with respect to the Improvement to the Property pursuant to R.C. Section 5709.42; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Bexley City School District (the "School District") in accordance with R.C. Sections 5709.41 and 5709.83, or such notice has been waived; and

WHEREAS, in connection with the hereinafter-described compensation to be provided to the School District, the Board of Education of the School District, pursuant to a Resolution passed on October 7, 2013, has approved this Ordinance and the exemptions provided herein;

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

Section 1. One hundred percent (100%) of the increase in the assessed value of the Property subsequent to the acquisition of the Property by the City from the CIC (which increase in assessed value is an "Improvement" as defined in R.C. Section 5709.41 and which Improvement is described on Exhibit B attached hereto and incorporated by reference herein) shall be a public purpose and shall be exempt from real property taxation for a period commencing on the effective date of this Ordinance and ending thirty (30) years after such date.

Section 2. The costs described in Exhibit C attached hereto and incorporated by reference herein (the "Designated Costs") are hereby designated as a public purpose and as costs that will facilitate the urban redevelopment of the City in a manner consistent with the City's Redevelopment Plan. This Council hereby finds that the City is engaged in urban redevelopment through its paying all or a portion of the Designated Costs.

Section 3. As provided in R.C. Section 5709.42, the owner of any portion of the Property is required hereby to make annual payments in lieu of taxes to the Franklin County Treasurer (the "County Treasurer") on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been

charged and payable against the Improvement of the Property if it were not exempt from taxation pursuant to R.C. Section 5709.41 (with the payments in lieu of tax, including any penalties and interest, the "Service Payments"). The County Treasurer shall remit all Service Payments, in respect of the Improvement, to the City for deposit in the Bexley City Hall Urban Redevelopment Tax Increment Equivalent Fund established in Section 4 hereof. This Council hereby authorizes the Mayor or the City Auditor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those Service Payments and to make such arrangements as are necessary and proper for payment of the Service Payments. Any late payments shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. The Service Payments shall be allocated and deposited in accordance with Sections 4 and 5 of this Ordinance.

Section 4. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. Section 5709.43, the Bexley City Hall Urban Redevelopment Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvement to the Property by or on behalf of the County Treasurer, as provided in R.C. Section 5709.42, and hereby provides that all of the moneys deposited in the Fund shall be used as provided below. The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which said Fund shall be dissolved in accordance with R.C. Section 5709.43(D). Upon dissolution, any incidental surplus money remaining in the Fund shall be disposed of as provided in R.C. Section 5709.43(D).

The Service Payments deposited into the Fund shall be used for the following purposes and in the following order:

(1) First, the City hereby requests that the Franklin County Auditor (the "County Auditor") and the County Treasurer make compensation payments (the "School District Compensation") to the School District pursuant to the Compensation and Cooperation Agreement (as described in Section 5 hereof); and

(2) Second, to reimburse the City for Designated Costs.

If the County Auditor and County Treasurer do not pay the School District Compensation directly to the School District as described in (1) above, the City shall pay the School District Compensation to the School District within thirty (30) days after each deposit by the County Auditor and County Treasurer of Service Payments in the Fund. Should any owners of the Property make a Service Payment that is less than the full amount due, the City and the School District shall negotiate in good faith to determine what portion of the partial Service Payment will be paid to the School District as the School District Compensation.

Section 5. The Mayor and City Auditor are hereby authorized and directed to sign the Compensation and Cooperation Agreement between the City and the School District (the "Compensation and Cooperation Agreement") on behalf of the City pursuant to R.C. Section

5709.82 providing for the payment of the School District Compensation. The Compensation and Cooperation Agreement shall be in substantially the form attached hereto as Exhibit D and incorporated herein by reference together with such revisions as are approved by the Mayor and City Auditor as consistent with the objectives and requirements of this Ordinance, which approval shall be conclusively evidenced by the signing of the Compensation and Cooperation Agreement.

Section 6. This Council hereby authorizes the Mayor, the City Auditor or other appropriate officers of the City, to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance, including the filing of one or more applications for exemption as provided in R.C. Section 5709.911.

Section 7. The Mayor, the City Auditor, and/or any other official, as appropriate, are each authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the actions described herein, or contemplated by this Ordinance.

Section 8. This Council hereby designates the tax incentive review council (the "TIRC") established in Ordinance 67-02, passed September 24, 2002, as the TIRC that shall annually review the exemptions provided pursuant to this Ordinance as required by R.C. Section 5709.85.

Section 9. The City requires exemption recipients to follow non-discriminatory hiring. Thus, no owner of any portion of the Property may deny employment to an individual solely on the basis of race, color, religion, sex, national origin, age or disability. The TIRC shall evaluate the exemption recipients' compliance with such non-discriminatory hiring policies during its annual review.

Section 10. Pursuant to R.C. Section 5709.41, the Mayor is hereby directed to deliver a copy of this Ordinance to the Director Ohio Development Services Agency ("DSA") within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 1 hereof remains in effect, the Mayor, the City Auditor or other authorized officer of this City shall prepare and submit to the Director of DSA the status report required under R.C. Section 5709.41(E).

Section 11. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

Section 12. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 2/11, 2014

Richard Sharp
President of Council

Attest: W. Chaffey
Clerk of Council

Approved: 2/11, 2014

Ben Kessler
Ben Kessler, Mayor

First Reading 1-14-14
Second Reading 2-8-14
Third Reading 2-11-14
Passed 2/11/14

EXHIBIT A to TIF Ordinance

DESCRIPTION OF PARCELS AFFECTED BY THE IMPROVEMENTS

The Property is comprised of the following tax year 2013 parcel numbers:

020-004381-00

020-004197-00

020-000570-00

EXHIBIT B to TIF Ordinance

DESCRIPTION OF IMPROVEMENT

The Improvement may include, but is not limited to, the following:

The construction of an urban grocery store and related improvements at an estimated cost of between \$5,000,000 and \$5,500,000 on the Property.

EXHIBIT C to TIF Ordinance

DESCRIPTION OF THE DESIGNATED COSTS

The Designated Costs may include, but are not limited to, costs related to the following:

The relocation of the current City Hall and City Service Department facilities from the Property to certain other property; the acquisition of the property commonly known as "Bexley Square Shopping Center;" the acquisition of other property that may be used for City services or functions; the improvement of public roads, water and sewer systems, rights-of-way, sidewalks, public parking lots, landscaping and other public infrastructure; environmental remediation; demolition; together with all necessary and appropriate appurtenances and hard and soft costs associated therewith.

EXHIBIT D to TIF Ordinance

**FORM OF COMPENSATION AND COOPERATION AGREEMENT
(attached hereto)**

TAX INCREMENT FINANCING COMPENSATION AND COOPERATION AGREEMENT

This Tax Increment Financing Compensation and Cooperation Agreement (this "Agreement"), is made and entered into this 7 day of October, 2013, by and between, the CITY OF BEXLEY, OHIO (the "City"), a municipal corporation organized and existing under the laws of the State of Ohio, and the BOARD OF EDUCATION OF THE BEXLEY CITY SCHOOL DISTRICT (the "School District"), a public school district organized and existing under the laws of the State of Ohio.

RECITALS:

A. In connection with its support of ongoing urban redevelopment efforts consistent with its 2011 Land Use Strategy, approved by City Council on February 22, 2011 pursuant to Amended Resolution No. 02-11, the City is desirous of (i) facilitating the redevelopment of the site of the current City Hall and current City service facilities (collectively, the "Current Site") by a private developer, (ii) relocating City Hall to a new site and making related improvements to or adjacent to that site, (iii) acquiring and/or constructing a new City service facility, and (iv) making related improvements and incurring related costs (collectively, the "Project," as further described in Section 1 of this Agreement).

B. In connection with undertaking the Project, the City desires to enact, or has already enacted, an ordinance (the "TIF Ordinance," substantially in the form attached hereto as Exhibit A and incorporated herein by this reference) to establish tax increment financing ("TIF") on the Current Site pursuant to Ohio Revised Code ("R.C.") Section 5709.41. The resulting TIF revenues would be used by the City for debt service on bonds issued by the City to finance the Project. The TIF Ordinance would provide for a 30 year, 100% TIF exemption for the Current Site, which is currently composed of parcel numbers 020-004381-00, 020-004197-00 and 020-000570-00.

C. Pursuant to R.C. Section 5709.41(C)(2), School District approval is necessary for the City to establish a 30 year, 100% TIF exemption. In addition, pursuant to R.C. Section 5709.82(C) and (D), if the payroll associated with "New Employees" (as defined in R.C. Section 5709.82(A), including construction employee payroll) equals or exceeds \$1 million during any year in which an exemption is provided pursuant to the TIF Ordinance, the City is required to negotiate with the School District with respect to the sharing of City income tax revenues associated with such New Employees.

D. The City and the School District desire to cooperate with each other with respect to the financing and construction of the Project and with respect to the establishment of a TIF for the Current Site. That cooperation is described in this Agreement, and includes, but is not limited to, the School District's approval of a 30 year, 100% TIF exemption pursuant to R.C. Section 5709.41 and adequate compensation to the School District.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties hereto agree as follows:

Section 1. The Project. In connection with the Project, the City would convey the Current Site, including the improvements located thereon, to the Bexley Community Improvement Corporation (the "CIC"), and the CIC would lease the Current Site to a private developer. The improvements on the Current Site will be wholly or partially razed either before or shortly after the Current Site is leased to the developer. The developer would pay annual ground rent payments to the CIC pursuant to the terms of a long-term ground lease. The developer also would construct a private development, including a grocery store with related improvements, on the Current Site.

Section 2. Service Payments. The City anticipates issuing one or more series of bonds (collectively, the "Bonds") to finance the Project costs. The annual debt service on the Bonds is expected to be paid, in part, from Service Payments (as defined in the TIF Ordinance) received by the City pursuant to the TIF Ordinance.

Section 3. School District Compensation.

(1) **TIF Revenue Sharing:** In consideration of the terms set forth herein, the parties agree to the following:

- a. For each year of the TIF exemption period, the School District shall receive Service Payments equal to 30% of the taxes that the School District would have received on the value of the Improvements (as defined in the TIF Ordinance and R.C. Section 5709.41), had those Improvements not been exempted from taxation under the TIF Ordinance (the "School District Compensation").
- b. In the TIF Ordinance, the City shall request that the Franklin County Auditor and Treasurer pay the School District Compensation directly to the School District in two semi-annual payments made at the same time as each settlement.
- c. If the Franklin County Auditor and Treasurer do not pay the School District Compensation directly to the School District, the City shall pay the School District Compensation to the School District within thirty (30) days after each deposit by the Franklin County Auditor and Treasurer of Service Payments in the City's urban redevelopment tax increment equivalent fund established in the TIF Ordinance. Should any property owners make a Service Payment that is less than the full amount due, the City and the School District shall negotiate in good faith to determine what portion of the partial Service Payment will be paid to the School District as the School District Compensation.

(2) **Income Tax Sharing:** In consideration of the terms set forth herein, the School District hereby waives its right under R.C. 5709.82 to receive income tax revenue sharing from the City based upon the payroll of "New Employees" working at the Current Site before and during the exemption period.

Section 4. School District Consents and Waivers. The School District hereby acknowledges that it has received a copy of the TIF Ordinance. In consideration of the execution of this Agreement, the School District hereby:

(i) approves the 30 year, 100% TIF exemption for the Current Site specified in the TIF Ordinance;

(ii) waives any notice requirements set forth in R.C. Sections 5709.41, 5709.83 and 5715.27 with respect to the TIF exemption;

(iii) waives any defects or irregularities relating to the TIF exemption; and

(iv) if necessary, agrees to support the City's TIF exemption application to the Ohio Tax Commissioner.

Section 5. Property Valuation. The parties hereby acknowledge and agree that the true value of the land at the Current Site, exclusive of improvements, is \$750,000 for tax year 2013, and that the City intends to provide information to the Franklin County Auditor so that the land at the Current Site is valued by the Franklin County Auditor at approximately \$750,000 for tax year 2013. Neither party shall attempt to establish a tax year 2013 true value for the land at the Current Site that is greater or less than \$750,000. The School District is entitled to file a counter-complaint so that it may participate in any case originated for the Current Site, provided that the School District does not present any evidence or argument to prevent the establishment of the land value of \$750,000 for tax year 2013. Since the pre-existing improvements at the Current Site will be imminently demolished, the parties anticipate and intend that the Franklin County Auditor will establish a base TIF value of \$750,000 for the land and \$0 for the improvements. If the Auditor establishes a base TIF value that is higher or lower than a fair market value of \$750,000, the City and the School District shall renegotiate in good faith to place the parties in the same respective positions that were intended under the terms of this Agreement.

Section 6. Application of Ohio Revised Code Section 5709.82. The School District acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District in connection with real property tax exemptions granted pursuant to the TIF Ordinance and the compensation provided for in this Agreement is in lieu of any other compensation that may be provided for in R.C. Section 5709.82.

Section 7. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement.

Section 8. Entire Agreement. This Agreement is executed pursuant to R.C. Sections 5709.41, 5709.82, 5709.83 and 5715.27, and sets forth the entire agreement and understanding between the parties, including without limitation all forms of compensation to be paid to the School District pursuant to those sections, and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement.

Section 9. Notices. All payments, certificates, and notices, which are required to or may be given pursuant to the provisions of this Agreement shall be provided via hand delivery or sent by United States ordinary or certified mail, postage prepaid, and shall be deemed to have been given or delivered when actually delivered or when so mailed to the following addresses:

If to the City:

City of Bexley
2242 E. Main Street
Bexley, Ohio 43209
Attention: Mayor

With a copy to:

Scott J. Ziance, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

If to the School District:

Bexley City School District
348 South Cassingham Road
Bexley, Ohio 43209
Attention: Superintendent

With a copy to:

Jeffrey A. Rich, Esq.
Rich & Gillis Law Group, LLC
6400 Riverside Dr., Suite D
Dublin, Ohio 43017

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

Section 10. Severability of Provisions. The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

Section 12. Extent of Covenants; Binding Effect; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Agreement. Each duty of the School District and its bodies, officers and employees, and the City and its bodies, officers and employees undertaken pursuant to the Agreement, is established as a duty with the School District and the City and of each such officer, employee or body having authority to perform that duty, specifically and enjoined by law resulting from an office, trust or station within the meaning of R.C. Section 2731.01 providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.

[Remainder of the Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

CITY OF BEXLEY, OHIO

By: _____

Mayor

Approved as to Form and Correctness _____

By: _____

Law Director

BEXLEY CITY SCHOOL DISTRICT

By: _____

Superintendent

By: _____

Treasurer

By: _____

President of the Board of Education