

City of Oberlin, Ohio

ORDINANCE No. 12-31 AC CMS

AN ORDINANCE APPROVING AN AGREEMENT WITH THE EAST COLLEGE STREET CONDO ASSOCIATION TO MANAGE A COMMUNITY GARDEN AT THE EAST COLLEGE STREET PROJECT PUBLIC PLAZA AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the proposed agreement between the City of Oberlin, Ohio, and the East College Street Condo Association to allow the East College Street Condo Association to manage a community garden at the East College Street Project Public Plaza in accordance with the terms and conditions specified in the Agreement attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.


SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or related 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 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 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit:

“to enable planting of gardens at the East College Street Project Public Plaza in a timely manner to take advantage of the 2012 growing season”, and shall take effect immediately upon passage.

PASSED: 1st Reading- April 16, 2012 (S, E)
2nd Reading-
3rd Reading-

ATTEST:


BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL


RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 04/17/2012

EFFECTIVE DATE: 04/16/2012

AGREEMENT

This agreement is made and entered into at Oberlin, Ohio, on this 15th day of May, 2012, by and between THE CITY OF OBERLIN, OHIO, a chartered Ohio municipality, hereinafter referred to as "City", and East College Street Condo Association (ECSCA), an Ohio corporation, not for profit, whose mailing address is 65 East College Street Suite 3, Oberlin, Ohio 44074, hereinafter referred to as "ECSCA".

WITNESSETH:

WHEREAS, the City-owned plaza located within the East College Street Project located at intersection of South Pleasant Street and East College Street in the City, hereinafter referred to as the East College Street Plaza, was originally designed with an area designated for community gardening to take place in conjunction with other community and municipal uses of the plaza property that do not interfere with each other; and

WHEREAS, ECSCA has proposed that City allow ECSCA to occupy a portion of said property for a period of time with the specific purpose of creating a community garden which will be open to all citizens of City; and

WHEREAS, the Council of City has determined that the establishment of community gardens are of great interest to the citizens of City and that the creation of same upon municipal property represents a proper municipal public purpose; and

WHEREAS, City has deemed it to be in the best interests of the residents of the City to encourage the creation of community gardens so that citizens of City can grow and harvest crops for their personal consumption; and

WHEREAS, City desires to enter into an agreement with ECSCA providing for the utilization of community garden in a section of the East College Street Plaza for said purpose with ECSCA to establish such a community garden for the benefit of the citizens of City.

NOW, THEREFORE, in consideration of the foregoing representations and other good and valuable consideration, the receipt of which is hereby specifically acknowledged, City and ECSCA do hereby agree as follows:

1. City authorizes ECSCA to occupy the area of "East College Street Plaza" outlined in the drawing attached hereto as "Exhibit A" for the sole purpose of establishing and maintaining for the benefit of the Oberlin community a community garden, which shall be known as "East College Street Plaza Community Garden".

2. ECSCA shall have the right to occupy said portion of "East College Street Plaza" from the date of execution of this Agreement until March 31, 2013. This agreement will automatically renew annually for up to ten years, each year on April 1 unless either party provides written notice to terminate the agreement at least 60 days prior to March 31 of the given year.

3. During the period of authorized occupation by ECSCA of the portion of "East College Street Plaza" outlined on Exhibit A, ECSCA shall proceed in a timely manner with the establishment of gardening beds. No permanent structures shall be erected on the site during the term of this agreement. In conjunction with seasonal brush and leaf collection, the City will transport to and deposit at the site leaves and wood chips, as are available. On those days when the City will have leaf mulch and wood chips available for free pick-up to the general public from its Class IV compost facility, ECSCA may transport unlimited quantities to the community garden site; the City will transport leaf mulch and/or wood chips for ECSCA in a 1-ton dump truck for a fee of \$20/truckload.

4. No fee shall be charged by ECSCA for the use of the community garden area. ECSCA will create a use agreement with each gardener that outlines these various terms and conditions.

5. The hours of occupancy each day for the community garden shall be sunrise to sunset. Signs shall be posted on site informing the public of those hours. Any individual present in the community garden other than during that period of time, unless previously granted consent in writing by the City, shall be considered trespassing and subject to criminal penalties relating to same.

6. As this is a community garden which contemplates only the personal cultivation of crops for personal consumption and use, any commercial resale of crops grown on the community garden property is strictly prohibited.

7. ECSCA shall not create any nuisance condition on the property and shall not deposit any hazardous or toxic substance on the property except legally authorized pesticides and fertilizers. ECSCA shall maintain a log book recording the date, type and quantity of all pesticides applied. Said log book shall be available to the City for review. Pesticide and fertilizer use shall be restricted to the least amount necessary to allow for successful cultivation and growth. If objections are raised by users of the community garden as to the use of pesticides and fertilizers, the City retains the right to prohibit pesticide and fertilizer use except those that are 100% organic.

8. As the community garden is located adjacent to a residential zone, loud noises and assemblies are strictly prohibited. ECSCA may obtain prior consent from the City for assemblies planned for specific days and times at the site which directly relate to community garden activities.

9. The community garden shall be open to all residents, without discrimination of any kind, including that based on race, color, religion, sex, sexual orientation, disability, familial status or national origin. ECSCA shall be responsible for communicating to Oberlin residents the availability of the garden plots at the beginning and end of the growing season and the process by which residents may apply for a plot. The plan for such communication is subject to review and approval by the City Manager and shall include, at a minimum an article or advertisement in the Oberlin News Tribune. The process for assigning plots shall include a procedure for handling more requests than can be accommodated. ECSCA shall establish a waiting list for garden plots. If no names are on the waiting list following announcement of availability at the end of the growing season, ECSCA may renew current plot assignments for the upcoming year.

10. ECSCA shall provide the City with a comprehensive report concerning the activities (including an accounting for all costs associated with the community garden and all fees collected) occurring at the community garden during the term of this agreement. The report shall be provided to the City within sixty (60) days of the expiration of this agreement, being May 31, 2012. The City shall have the right to request, and ECSCA shall provide, such further records, reports and documentation that City shall request in order for City to be assured that the community garden was managed, to the satisfaction of the City, in a reasonable, efficient, and appropriate manner.

11. ECSCA shall be responsible for providing any water necessary for gardening from the cistern system or other source, as may be necessary.

12. Unless this agreement is renewed or replaced with a subsequent agreement, immediately upon the expiration of this agreement, ECSCA shall remove all of their personal property and equipment from the property and, if requested by City, shall restore the land to its condition as it was immediately prior to the beginning of this agreement.

13. Nothing contained within this agreement shall create or constitute either an employee-agent relationship or partnership between the City and ECSCA, it being the intent of this agreement that ECSCA be acting as an independent contractor during the course of their occupancy of the property.

14. ECSCA agrees to hold harmless and indemnify the City from any claim, cause of action, damage, loss, or other liability to any person or property arising out of or relating in any way to the occupation of ECSCA of the property or relating to any activities occurring there during the term of this agreement. Further, ECSCA agrees to obtain, and keep in effect throughout the term of this contract, public liability and property damage insurance naming City as an additional insured in such amounts and such form as are approved by City. Said insurance shall not be cancelled or terminated without at least thirty (30) days advance written notice to City.

15. Any notice that is to be given to ECSCA or to City pursuant this agreement shall be mailed by U.S. Mail, postage pre-paid, or personally delivered to the attention of the following individuals at the following addresses:

To the City of Oberlin:

To ECSCA:

Office of the City Manager
Oberlin Municipal Building
85 South Main Street
Oberlin, Ohio 44074

President, ECSCA
Josh Rosen
65 East College Street Suite 3
Oberlin, Ohio 44074

16. This agreement was approved by the City Council of City by Ordinance No. 12-31 AC CMS, effective April 16, 2012, a copy being attached hereto and incorporated herein by reference, and by ECSCA by action of its Board of Directors at a duly convened directors' meeting held on May 9th, 2012.

IN WITNESS WHEREOF, we have hereunto signed this agreement at Oberlin, Ohio, on the day and year set forth hereinbefore.

WITNESSES:

Shelli Dunala
Sandra Phillips

CITY OF OBERLIN, OHIO

by: Eric Norenberg
Eric Norenberg, City Manager

East College Street Condo Association (ECSCA)

by: Josh Rosen
its: President

APPROVED AS TO FORM:

Eric R. Severs
Eric R. Severs, Oberlin Law Director