

CITY OF OBERLIN, OHIO

ORDINANCE No. 19-36 AC CMS

AN ORDINANCE APPROVING AN AGREEMENT WITH OUR F.A.M.I.L.Y. TO MANAGE A COMMUNITY GARDEN AT LEGION FIELD 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 Our F.A.M.I.L.Y. an Ohio corporation, not for profit, to allow Our F.A.M.I.L.Y. to manage a community garden at Legion Field Park 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.

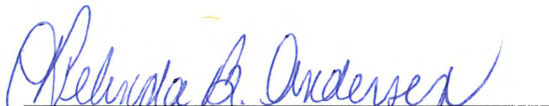
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit: to enable planting of gardens at Legion Field Park in a timely manner to take advantage of the 2019 growing season, and shall take effect immediately upon passage.

PASSED: 1st Reading: June 17, 2019 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:


BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL


BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 06/18/2019

EFFECTIVE DATE: 06/17/2019

AGREEMENT

This agreement is made and entered into at Oberlin, Ohio, on this 29th day of June, 2019, by and between THE CITY OF OBERLIN, OHIO, a chartered Ohio municipality, hereinafter referred to as "City", and Our F.A.M.I.L.Y., an Ohio corporation, not for profit, whose mailing address is 234 Hemlock Drive, Elyria, Ohio 44035, hereinafter referred to as "Our F.A.M.I.L.Y.".

WITNESSETH:

WHEREAS, the City property located at the intersection of South Professor Street and West Hamilton Street in the City and commonly referred to as "Legion Field" is used on a limited basis that has enabled community gardening to take place in conjunction with other community and municipal uses of the property that do not interfere with the uses contemplated under this Agreement; and

WHEREAS, Our F.A.M.I.L.Y. has proposed that City allow Our F.A.M.I.L.Y. to occupy said property for a period of time for the specific purpose of managing on behalf of the City, a community garden which will be open to all citizens of City and others as provided for herein; and

WHEREAS, the Council of City has determined that the establishment of a community garden is of great interest and benefit 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 interest of and a benefit to the residents of the City to encourage the creation of a community garden so that citizens of the City, and others as is provided for herein, may grow and harvest crops for their personal consumption; and

WHEREAS, City desires to enter into an agreement with Our F.A.M.I.L.Y. to manage, on behalf of the City, a community garden at Legion Field for the use and benefit of the citizens of City and others as is provided herein.

NOW, THEREFORE, in consideration of the foregoing representations and other good and valuable consideration, the receipt of which is hereby specifically acknowledged, City and Our F.A.M.I.L.Y. do hereby agree as follows:

1. **Use of Premises.** City authorizes Our F.A.M.I.L.Y. to occupy the area of "Legion Field" outlined in the drawing attached hereto as "Exhibit A" for the sole purpose of managing and maintaining a community garden, which shall be known as "Legion Field Community Garden".

Garden plots shall remain in the area on Exhibit A designated "Plots." This area and the area marked "Community Garden" shall be maintained by Our F.A.M.I.L.Y. on behalf of the City. There may, in the future, be additional areas of Legion Field to be gardened or maintained by Our F.A.M.I.L.Y. in which case the City Manager and Our F.A.M.I.L.Y. Executive Director shall agree upon specifications and mutual responsibilities for maintenance of these additional areas. Unless otherwise so specified, remaining areas will be mowed and maintained by the City. If either party encounters difficulty performing their respective responsibilities articulated in this paragraph, that party shall inform the other immediately, and the City Manager and Our F.A.M.I.L.Y. Executive Director shall come to a mutual agreement for resolving the difficulty. If during the term of this agreement or any subsequent extensions thereof, areas cultivated and used by Our F.A.M.I.L.Y. exceed 50 percent of the total Legion Field area, then Our F.A.M.I.L.Y. shall assume full maintenance responsibility for all of Legion Field during such time that Our F.A.M.I.L.Y.'s usage and/or cultivation exceeds the 50%.

2. **Term.** For the purpose of the management of the Legion Field Community Garden, Our F.A.M.I.L.Y. shall have the right to occupy said portion of "Legion Field" from the date of execution of this Agreement until December 31, 2019. Either party shall have the right to terminate this agreement by providing sixty (60) days advance written notice to the other.

3. **Structures.** During the period of authorized management and occupation by Our F.A.M.I.L.Y. of the portion of "Legion Field" outlined on Exhibit A, Our F.A.M.I.L.Y. shall maintain no fewer than 16 raised beds in the "Plots" section. No permanent structures shall be erected on the site during the term of this agreement. Other non-permanent structures may be erected according to procedures that are mutually agreed to in writing by the City Manager and Our F.A.M.I.L.Y. Executive Director, and following review and approval by the Oberlin Planning Commission, if required. In conjunction with seasonal brush and leaf collection, the City will make wood chips available to Our F.A.M.I.L.Y. Our F.A.M.I.L.Y. will have access to leaf mulch and wood chips for free pick-up on those days when the same are available to the general public from the City's Class IV compost facility.

4. **Signage.** Our F.A.M.I.L.Y. may install a sign identifying the "Legion Field Community Garden" in accordance with Oberlin Sign Codes, following review and approval by the Oberlin Planning Commission. Our F.A.M.I.L.Y. may install pathways for accessibility into and throughout the designated site only after the complete review and approval of plans by the

Oberlin Planning Commission. Such plans are to be submitted in the proper format to the Oberlin Planning and Development Department.

5. **Fees, priorities, and user agreements for individuals using garden.** Our F.A.M.I.L.Y., in operating and supervising the community garden on behalf of City, shall be authorized to charge fees for the use of the "Plots" and "Open Gardening" areas of the community garden. The fee for gardening in a raised bed in the "Plots" section may be collected and used by Our F.A.M.I.L.Y. to offset the fixed costs of Our F.A.M.I.L.Y. in establishing and operating the community garden and shall not exceed Twenty Dollars (\$20.00) for a resident of the City of Oberlin and Twenty-five Dollars (\$25.00) for a non-resident of the City of Oberlin, however Our F.A.M.I.L.Y. may establish a sliding scale to ensure access to the raised beds are affordable to all residents. Our F.A.M.I.L.Y. may establish a fee of up to \$50/season for gardeners choosing to garden in the "Open Gardening" area. The fee for "Open Gardening" shall be based on the budget established by mutual agreement of all participating gardeners and divided proportionately, however there shall be a reduced fee or other method to include gardeners in "Community Gardening" who cannot otherwise afford this option at a lower rate. City residents shall have first priority in participating in the community garden. Our F.A.M.I.L.Y. will create a use agreement with each gardener that outlines these various terms and conditions.

6. **Hours of occupancy.** The hours of occupancy each day for the community garden shall be as required by City ordinance for City parks. The City shall post signs 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.

7. **Use of crops grown on garden.** 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. However, Our F.A.M.I.L.Y. may organize gardeners to pool harvest for donation to a charitable cause. Gardeners participating in the "Open Garden" may pool or donate their harvest by mutual agreement, but commercial resale of crops is prohibited.

8. **Nuisances and hazardous or toxic substances including pesticides and fertilizers.** Our F.A.M.I.L.Y. shall not create any nuisance on the property. Nuisance is defined by law. If the City reasonably believes that a nuisance has been created on the property, the City Manager shall

notify Our F.A.M.I.L.Y. Executive Director immediately. Except in cases of immediate danger to health, property, or life, Our F.A.M.I.L.Y. shall be given thirty (30) days to remedy the nuisance. Conditions reasonably expected in a recreational park facility shall not be considered nuisances. Our F.A.M.I.L.Y. shall not deposit any hazardous or toxic substance on the property except legally authorized pesticides and fertilizers. Our F.A.M.I.L.Y. 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.

9. **Loud Noises and Assemblies.** As the community garden is located adjacent to a residential zone, loud noises and assemblies are strictly prohibited. Our F.A.M.I.L.Y. 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.

10. **Parking.** Our F.A.M.I.L.Y. shall be responsible to advise all gardeners and staff that parking is not permitted at the Oberlin Fire Station and that all municipal parking regulations regarding street parking shall be followed. If space is available, gardeners and staff may park at the Hamilton Recreation Complex. No vehicles are allowed to park or drive on Legion Field without prior approval of the City Manager or designee.

11. **Non Discrimination.** The community garden shall be open to all authorized persons, without discrimination of any kind, including that based on race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation or gender identity or expression. Our F.A.M.I.L.Y. shall be responsible for communicating to Oberlin residents the availability of the garden plots and the process by which residents may apply for a plot. This communication shall be reasonably calculated to notify residents from across Oberlin of the availability of plots.

12. **Water.** Maintenance and annual testing of any required backflow prevention equipment shall be the responsibility of Our F.A.M.I.L.Y. The City will provide an initial credit of \$50 on the Legion Field water account for the term of this agreement. Thereafter, Our F.A.M.I.L.Y. shall be responsible for the monthly charges as metered for water consumed at Legion Field used for gardening. If, at the end of this agreement there remains a balance due, Our

F.A.M.I.L.Y. will remit payment to the City within 30 days, if a credit balance exists, such balance will not carryforward to any future term(s) and will not be payable to Our F.A.M.I.L.Y.. If Our F.A.M.I.L.Y. decides to have a portable toilet on site, a portable toilet is permitted, but it shall be serviced and maintained by Our F.A.M.I.L.Y., or its agents, in accordance with sanitary and prudent practices relating to same.

13. **Soil disturbance.** No soil disturbing activities of any kind shall take place within thirty feet of the centerline of Evans Ditch without the advance written permission of the Public Works Department.

14. **Reporting.** During the term of this agreement and any subsequent extensions, Our F.A.M.I.L.Y. shall provide the City with a comprehensive report concerning the activities (including an accounting for all costs associated with the maintenance and operation of the community garden, including but not limited to all fees collected. The report shall be provided to the City Manager no later than December 31 each year that this Agreement or any extensions hereof shall be in force. The City shall have the right to request, and Our F.A.M.I.L.Y. 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 or otherwise in accordance with the terms of this Agreement.

15. **Removal and restoration of property.** Upon termination or expiration of this Agreement or any extension hereof, and unless otherwise agreed to between the Parties, Our F.A.M.I.L.Y. shall immediately remove all 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 first commencement of Our F.A.M.I.L.Y.'s occupation of the land.

16. **Independent contractor.** Nothing contained within this agreement shall create or constitute either an employee-agent relationship or partnership between the City and Our F.A.M.I.L.Y., it being the intent of this agreement that Our F.A.M.I.L.Y. be acting on behalf of the City as an independent contractor during the course of their occupancy of the property.

17. **Indemnification.** Our F.A.M.I.L.Y. agrees to hold harmless, defend 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 Our F.A.M.I.L.Y. of the property or relating to any activities occurring there during the term of this agreement. Further, Our

F.A.M.I.L.Y. 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.

18. **Notice.** Any notice that is to be given to Our F.A.M.I.L.Y. 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:

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

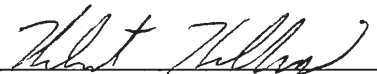
To Our F.A.M.I.L.Y.:

Our F.A.M.I.L.Y.
234 Hemlock Drive
Elyria, Ohio 44035

19. **Authorization.** This Agreement was approved by the City Council of City by Ordinance No. 19-36 AC CMS, effective June 18, 2019, a copy being attached hereto and incorporated herein by reference, and by Our F.A.M.I.L.Y. by action of its Board of Directors at a duly convened directors' meeting held on _____, 2019, as evidenced by the certified copy of the minutes of said meeting, attached hereto and incorporated herein by reference.

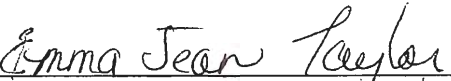
IN WITNESS WHEREOF, we have hereunto signed this agreement at Oberlin, Ohio, on the day and year set forth hereinbefore.

CITY OF OBERLIN, OHIO

By: 


Robert Hillard, City Manager

Our F.A.M.I.L.Y.

By: 

Its: Emma Jean Taylor

APPROVED AS TO FORM:

 6/24/19

Jon D. Clark, Oberlin Law Director