

Ordinance No. 498-2020

By Council Member Kelley

AN EMERGENCY ORDINANCE
Confirming the authority of the Cleveland Botanical Garden to charge admission fees and parking fees and to erect improvements on property leased or subleased to the Cleveland Botanical Garden, and authorizing the Director of Public Works to enter into a Fourth Supplemental Indenture of the Lease Agreement.

WHEREAS, on September 15, 1882, Jephtha H. Wade conveyed to the City of Cleveland (“City”) Wade Park to be used for no other purpose than a public park, and that if used for other purposes, the property reverts to the grantor or his heirs, under a deed dated that date (“Wade Deed”); and

WHEREAS, under Resolution No. 2420-64, adopted November 30, 1964, the City and the Cleveland Botanical Garden (formerly known as The Garden Center of Greater Cleveland) (“Garden”) entered into an Indenture of Lease Agreement (“Lease”) whereby the City leased to the Garden a designated portion of Wade Park (“Leased Premises”) for the purpose of enabling the Garden to erect and maintain on the Leased Premises buildings and other facilities and improvements related to the Garden’s purpose as a botanical garden; and

WHEREAS, under Ordinance No. 1305-68, passed July 15, 1968, Ordinance No. 1976-68, passed December 16, 1968 and Ordinance No. 1423-70, passed October 12, 1970, this Council authorized the lease of additional parcels in Wade Park to the Garden, all of which are now included within the Leased Premises; and

WHEREAS, under Ordinance No. 2233-03, passed December 15, 2003, this Council authorized the Director of Parks, Recreation and Properties to enter into a Supplemental Indenture of Lease Agreement with the Garden to allow the Garden to charge an admission fee for entrance to the Leased Premises and a parking fee for the use of the underground parking garage; and

WHEREAS, in reliance on Ordinance No. 2233-03, the Garden since 2003 has been charging admission fees and parking fees with the knowledge of the City; and

WHEREAS, under Ordinance No. 2233-03, the City and the Garden entered into a Third Supplemental Indenture of Lease Agreement dated June 4, 2014, authorizing

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the Garden to charge an admission fee for entrance to the Leased Premises and a parking fee for the use of the underground parking garage in accordance with the aforesaid Ordinance; and

WHEREAS, under Ordinance No. 1422-70, effective September 29, 1970, the City and University Circle, Incorporated (“UCI”) entered into a lease (the “UCI Lease”) for portions of Wade Park and, subsequently, UCI subleased portions of the property leased by the City to UCI to the Garden (“UCI Leased Premises”) under lease agreements dated September 18, 1988, September 2, 1998, January 23, 2001 and October 11, 2006 and further extended the term of one of the subleases under a sublease extension dated March 5, 2001 (collectively the “Subleases”); and

WHEREAS, under the Subleases, UCI authorized the Garden to make certain improvements to the UCI Leased Premises (the “Improvements”); and

WHEREAS, an individual has commenced a taxpayer’s action in the Court of Common Pleas of Cuyahoga County alleging, *inter alia*, that the charging of an admission fee and a parking fee by the Garden violates the Lease and provisions of the Wade Deed; and

WHEREAS, the Court of Common Pleas of Cuyahoga County, in a related case, has determined that the Garden’s charging of an admission fee and a parking fee do not violate the provisions of the Wade Deed and are consistent therewith, which determination has been affirmed by the Eighth District Court of Appeals; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Council finds and determines that the Garden enhances the park and cultural atmosphere of this community and its presence, operations and use of a portion of Wade Park contribute to the area developed by the City and private institutions as one of the most significant park, educational, and cultural centers of Cleveland.

Section 2. That Council finds and determines that it is in the best public interest to preserve the Garden’s continued presence in Wade Park.

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Section 3. That Council, having the authority to construe and determine the effect of its own ordinances, finds and determines that the provisions of Ordinance No. 2233-03 authorized the City to enter into a Supplemental Indenture of Lease Agreement to allow the Garden to charge an admission fee for entrance to the Leased Premises and a parking fee for the use of the underground parking garage and that the fourth whereas clause in Ordinance No. 2233-03 referencing the consent by all of the heirs of Jephtha H. Wade is neither a condition precedent nor is it legally binding.

Section 4. That Council acknowledges that the charging of an admission fee and a parking fee by the Garden since 2003 has been in reliance upon the passage of Ordinance No. 2233-03.

Section 5. That the Third Supplemental Indenture of Lease Agreement is reaffirmed and ratified in all respects to be effective as of December 22, 2003.

Section 6. That the Improvements enhance Wade Park and are permitted uses of the property subject to the Lease and the Subleases, notwithstanding any provisions of the Lease or the UCI Lease to the contrary.

Section 7. That Council authorizes the Director of Public Works to enter into a Fourth Supplemental Indenture of the Lease Agreement to consent, on such terms and conditions as he shall deem appropriate, to that certain leasehold mortgage recorded on December 10, 2010 as instrument no. 201012230195 in the Cuyahoga County (Ohio) Fiscal Office, Recording Division and its subsequent assignment recorded on September 9, 2014 as instrument no. 201409090153 in the Cuyahoga County (Ohio) Fiscal Office, Recording Division, such consent to be effective as of September 9, 2014.

Section 8. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

FOR Council President Kelley
6/17/2020
LSH/SKM:nl

