

ORDINANCE NO. 53-15

**AN ORDINANCE ESTABLISHING A MORATORIUM ON
NEW DEVELOPMENT WITHIN
THE FRENCH CREEK WATERSHED
AND DECLARING AN EMERGENCY**

WHEREAS, large storms with heavy rains settled into the area on Monday, May 12th, 2014 and persisted through the evening into early Tuesday morning, May 13th; and

WHEREAS, these rains caused the French Creek, Mills Creek and Schwartz Creek to flood, exceeding their banks in some cases by several feet; and

WHEREAS, residents and businesses alike suffered losses to real property and valuable personal property as a result of the excessive amount of stormwater generated by this series of storms; and

WHEREAS, after hearing from concerned citizens, the City Engineer, the Service Director and the Mayor determined that the damage caused by the flooding was a serious concern not only for those property owners immediately affected but for those in that particular watershed; and

WHEREAS, in an effort to try to begin to understand and eventually remedy the problem of stormwater flooding during periods of heavy rain and/or snow melt in this watershed, Council passed Ordinance No. 60-14 on May 27, 2014, a ninety (90) day moratorium on new development of any type within the French Creek watershed; and

WHEREAS, when that moratorium expired, the City had yet to complete the study and so Council, at the request of the Administration, passed Ordinance No. 111-14 on September 8, 2014 to grant a one hundred and twenty (120) day moratorium on development in the area of concern; and

WHEREAS, this moratorium was extended on December 22, 2014 (Ord. No. 153-14) for a period of approximately one hundred and ten (110) days to April 14, 2015; and

WHEREAS, the Administration, together with the City's Consulting Engineer, consider it necessary to further extend this moratorium and additional One Hundred and Thirty (130) to August 12, 2015 to give the Administration an opportunity to continue to explore remedial measures that can be adopted to alleviate this flooding concern; and

WHEREAS, Council finds that the recommendation to extend the aforementioned moratorium period to be reasonable and in furtherance of preserving the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
AVON, COUNTY OF LORAIN AND STATE OF OHIO:**

Ordinance No. 53-15 (Con't)

Section 1 - That Council hereby extends a Moratorium on the submission, consideration or approval of all applications for any development which requires review, recommendation or approval of Planning Commission within the area identified in Exhibit A, which is attached hereto and incorporated herein by this reference to August 12th, 2015.

Section 2 - That this Moratorium shall become effective on the date that Ordinance No. 153-14 expires (April 14, 2015) and shall remain in effect for the entire period of time through August 12, 2015. Thereafter, upon a passage by Council and approval by the Mayor, the moratorium may be continued in effect for an additional period of time if Council determines that such continuance is reasonable and necessary to allow sufficient time to complete the engineering study and follow up with the recommendations thereof, if any, that the City of Avon should take to safeguard the public health, safety and welfare relating to any and all land development through the provision of adequate land-use and/or other regulatory controls that are specifically applicable to the flooding issues in the French Creek watershed.

Section 3 - That this Moratorium suspends and tolls any time periods, prescribed by law, within which the Planning Commission, or any other public official or official public body within the City of Avon is required to take action upon an application for any subdivision and/or development plan submitted to Planning Commission pursuant to the Codified City Ordinances or the City Charter. No such application shall be deemed to be approved by the failure of the Planning Commission, or any other public official or official public body to approve or deny said application during the time when this moratorium shall be in effect.

Section 4 - This Ordinance does exempt from its scope any such applications for a Special Use Permit, Building Permit or site-plan approval that has been presented to the Planning Commission, are presently pending before the Planning Commission or City Council, or that have been approved by Planning Commission and/or City Council on or before the effective date of this Moratorium.

Section 5 - That the City's Consulting Engineer, in conjunction with the Planning Commission, City Council, the Mayor/Safety Director, the Service Director and Superintendent of Utilities, is hereby directed to continue, upon passage of this Ordinance, and to complete, if possible, within the effective period of this moratorium, the study to recommend what action, if any, the City of Avon should take to preserve the public health, safety and welfare through the provision of adequate planning, zoning, land-use, or other regulatory controls that are specifically applicable to the management and control of stormwaters draining into the French Creek watershed as those flows impact development within the City of Avon.

Section 6 - If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 7 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this

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Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 8 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to proceed with an extension of the Moratorium on all land development through August 12, 2015 in order to adequately study and/or define the nature of the flooding problems directly related to stormwaters draining into the French Creek watershed; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Craig L. Witherspoon, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Ellen R. Young
Clerk of Council

POSTED: _____
In Five Places as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director