

ORDINANCE NO. 58-25

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A REAL ESTATE DONATION AGREEMENT WITH THE BOARD OF PARK COMMISSIONERS, LORAIN COUNTY METROPOLITAN PARK DISTRICT TO TRANSFER FIVE (5) PARCELS OF LAND (PPN 04-00-013-000-068, 04-00-013-000-143, 04-00-013-000-141, 04-00-013-000-136, & 04-00-013-000-125) AND DECLARING AN EMERGENCY

WHEREAS, the City of Avon has acquired five (5) parcels of land (04-00-013-000-068, 04-00-013-000-143, 04-00-013-000-141, 04-00-013-000-136, & 04-00-013-000-125) located on the north side of Mills Road in close proximity to the French Creek wetlands area; and

WHEREAS, in 2003 the City applied for and received a grant from the Ohio Public Works Commission for parcels 04-00-013-000-068 & 04-00-013-000-143 in the amount of \$226,347 and constructed the French Creek Restoration project; and

WHEREAS, since that time three (3) additional parcels were acquired by the city without any outside assistance; and

WHEREAS, these parcels have been deemed undevelopable by the Administration and The Board of Park Commissioners, Lorain County Metropolitan Park District have expressed an interest in acquiring these lands for park use; and

WHEREAS, Avon City Council finds that it is in the best interest of the health, safety, and welfare of the Community that the City of Avon donate the above parcels of land owned by the city to The Board of Park Commissioners, Lorain County Metropolitan Park District.

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

Section 1 - That the Mayor is hereby authorized to execute a Real Estate Donation Agreement with The Board of Park Commissioners, Lorain County Metropolitan Park District in substantially the form as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Execution of said Agreement will result in the transfer (by deed) of five (5) parcels of land, to wit: Permanent Parcels Nos. 04-00-013-000-068, 04-00-013-000-143, 04-00-013-000-141, 04-00-013-000-136, & 04-00-013-000-125, all of which are located on the north side of Mills Road in the French Creek wetlands area. See the map in Exhibit B.

Section 2 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise 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 immediately necessary for the preservation of the public health, safety and welfare of the citizens

of the City of Avon, the immediate emergency being the necessity for the City to donate five (5) parcels of land (04-00-013-000-068, 04-00-013-000-143, 04-00-013-000-141, 04-00-013-000-136, & 04-00-013-000-125) located on Mills Road in the French Creek wetlands to The Board of Park Commissioners, Lorain County Metropolitan Park District; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: June 23, 2025 DATE SIGNED: June 23, 2025

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: June 24, 2025

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: June 25, 2025
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director, City of Avon

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 58-25, passed by the Council of said City on June 23, 2025.

IN WITNESS WHEREOF, I have on this 25th day of June, 2025, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

REAL ESTATE DONATION AGREEMENT

THIS REAL ESTATE DONATION AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF AVON, OHIO** ("Donor"), an Ohio municipal corporation, and **BOARD OF PARK COMMISSIONERS, LORAIN COUNTY METROPOLITAN PARK DISTRICT** ("Park District").

WITNESSETH:

WHEREAS, Donor owns real property in Avon, Ohio designated by the Lorain County Auditor as Parcel Nos. 04-00-013-000-068, 04-00-013-000-143, 04-00-013-000-141, 04-00-013-000-136 and 04-00-013-000-125, having a combined area of approximately 28.84 acres, and depicted on Exhibit A attached hereto and made a part hereof, together with all improvements thereon and together with all appurtenances thereto (the "Property"); and

WHEREAS, Donor desires to donate the Property to Park District, and, subject to the terms and conditions hereinafter set forth, Park District desires to accept such donation;

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

1. **Donation.** Upon and subject to the terms and conditions hereinafter set forth, Donor agrees to donate the Property to Park District, and, subject to the satisfaction or waiver by Park District of the conditions set forth in Section 3 hereof, Park District agrees to accept the donation of the Property.

2. **Access to Property.** After execution of this Agreement and until the transfer of title or the termination of this Agreement, Park District and Park District's employees, agents, representatives and contractors shall have the right of ingress and egress over and through the Property for the purposes of inspections, surveys, engineering and/or architectural drawings, and other such observations as are desired by Park District. Any such inspection shall be made at the Park District's sole cost and expense.

3. **Conditions to Acceptance of Donation.** Park District's acceptance of the donation of the property is subject to the satisfaction or waiver by Park District of the following conditions:

- (a) The Lorain County Common Pleas Court, Probate Division issues an order approving the donation of the Property to Park District;
- (b) Park District approves the condition of title to the Property;
- (c) Park District is satisfied with the results of its inspections of the Property;

- (d) A perpetual easement is granted to Park District over the property of Fairway Estates Homeowners Association Inc. for access and the construction and maintenance of a recreational trail connecting the Property to property of Park District northeast of the Property, the size and configuration of the easement area and the form and substance of the easement grant to be acceptable to Park District;
- (e) Avon Properties, Inc. ("Avon Properties") grants to Park District the perpetual right to use for access and the construction and maintenance of a recreational trail connecting the Property to property of Park District northeast of the Property a portion of that property of Park District over which Avon Properties reserved a Golf Easement in the deed from Avon Properties to Park District recorded at File #2023-0912698 of Lorain County Records, the size and configuration of the portion and the form and substance of the grant to be acceptable to Park District;
- (f) All encroachments onto the Property have been removed; and
- (g) The Declaration of Restrictions (the "Declaration") executed by Donor in March 2008 is amended:
 - (i) To eliminate the possibility that Park District can be penalized for any violation of the Declaration that occurred prior to the time that Park District acquires title to the property encumbered by the Declaration; and
 - (ii) To modify the penalty provisions of the Declaration in a manner acceptable to Park District.

Park District shall notify Donor when and if the above conditions are satisfied or waived. If Park District does not notify Donor by _____, 2026, that the above conditions have been satisfied or waived, then this Agreement shall automatically terminate, and the parties shall be released of all further obligations under this Agreement.

4. Delivery of Deed; Title Conveyed. Within twenty-five (25) days after Park District notifies Donor that the conditions of Section 3 have been satisfied or waived, Donor shall execute and deliver to Park District a Limited Warranty Deed (the "Deed"), conveying to Park District Donor's entire interest in the Property, free and clear of all Monetary Liens (hereinafter defined). Prior to delivery of the Deed to Park District, Donor shall, at no expense to Park District, cause the Property to be released from all mortgages, deeds of trust, financing statements and other instruments evidencing or securing the repayment of debt, judgment liens, mechanic's liens, tax liens and other liens of a liquidated amount evidencing a monetary obligation (other than the lien for real estate taxes and installments of assessments not yet due and payable) encumbering the Property (collectively the "Monetary Liens"). During the time that this Agreement is in effect, Donor shall not permit any lien or encumbrance to be filed against the Property. The Deed shall

be prepared by Park District's legal counsel at Park District's expense and submitted to the Law Director for the City of Avon for approval.

5. **Taxes.** There shall be no proration of real estate taxes or assessments that are not due and payable at the time of delivery of the Deed.

6. **Condition of Property.** Donor hereby represents that: (i) Donor has obtained or, prior to the delivery of the Deed, will obtain all approvals required for Donor to convey the Property to Park District; (ii) Donor has full right and authority to convey the Property to Park District; (iii) to Donor's actual knowledge, without investigation, there are no gas wells or other wells (whether or not capped) on or about the Property; (iv) to Donor's actual knowledge, without investigation, there are no hazardous, toxic or dangerous wastes, materials or substances in, on or about the Property; and (v) Donor has not engaged in or permitted any disposal or dumping of any hazardous, toxic or dangerous waste, material or substance on or about the Property, nor engaged in or permitted the illegal or unauthorized storage of any hazardous, toxic or dangerous waste, material or substance on or about the Property. Park District acknowledges that, except for the foregoing representations, Donor has made no warranty or representation as to the condition of the Property and if Park District accepts the donation, Park District will be accepting the Property in "AS IS" condition.

7. **Notices.** Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, by prepaid overnight express courier, or confirmed electronic transmission and addressed as follows:

To Donor: City of Avon
Attention: Bryan K. Jensen, Mayor
36080 Chester Road
Avon, Ohio 44011
Email: contactmayor@cityofavon.com

With a copy to: John Gasior, Law Director
36815 Detroit Road
Avon, Ohio 44011
Email: jgasior@ssgavonlaw.com

To Park District: Board of Park Commissioners,
Lorain County Metropolitan Park District
Attention: James E. Ziemnik, Director/Secretary
12882 Diagonal Road
LaGrange, Ohio 44050
Email: jziemnik@loraincountymetroparks.com

With a copy to: Abraham Lieberman, Esq.
Gembala, McLaughlin & Pecora Co., LPA
5455 Detroit Road
Sheffield Village, Ohio 44054-2904
Email: alieberman@gmpfirm.com

Notices shall be effective upon receipt, if delivered personally, electronically or by overnight courier, or three (3) business days after deposit in the mails if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith. Notices may be given on behalf of a party by such party's legal counsel.

8. Terms. The terms "Park District," and "Donor" shall include all parties designated and their respective heirs, executors, administrators, successors, nominees, and assigns, and wherever the singular is used, it shall include the plural, and wherever the masculine gender is used, it shall include the neuter and feminine, and vice versa, as the context requires. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective assigns, heirs, personal representatives, or nominees.

9. Binding Effect. All covenants, promises, understandings and agreements herein contained shall be made as of the date hereof, shall be deemed to be made again upon delivery of the Deed, and shall survive the delivery and recording of the Deed.

10. Authorization. Each person executing this Agreement in a representative capacity individually represents and warrants that he or she is authorized to do so.

11. Entire Agreement. This Agreement contains the entire agreement among the parties hereto, and the parties hereto are not bound by any agreements, understandings or conditions except those stipulated herein.

12. Counterparts. This Agreement may be executed in multiple counterparts by Donor and Park District, each acting at different times and at separate locations, whether or not in the presence of each other, and any copy of this Agreement to which the signatures of Donor and Park District have been appended shall constitute an original hereof for all purposes, all such copies constituting one and the same original, and one of which shall constitute proof of the terms of this Agreement without the necessity of producing any other original copy.

13. Facsimile Signatures. A facsimile or electronic signature shall be deemed an original signature for all purposes.

IN WITNESS WHEREOF, the parties hereto have affixed their hands as of the dates set forth opposite their signatures below.

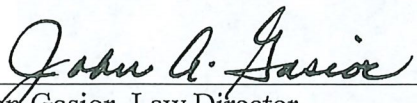
DONOR:

CITY OF AVON, OHIO

Date: June 24, 2025

By: 
Bryan K. Jensen, Mayor

Approved as to form:


John Gasior, Law Director
City of Avon, Ohio

PARK DISTRICT:

**BOARD OF PARK COMMISSIONERS,
LORAIN COUNTY METROPOLITAN
PARK DISTRICT**

Date: JUNE 23, 2025

By: 
James E. Ziemnik, Director/Secretary

EXHIBIT B TO ORDINANCE NO. 58-25

