

**CITY OF MASON  
SPECIAL COUNCIL MEETING  
MAY 18, 2018**

The meeting was called to order at 1:00 p.m. Councilmember Honerlaw opened the meeting in prayer. All those present recited the Pledge of Allegiance.

**ATTENDANCE**

The following members of Council were present: Diana K. Nelson, Barbara Berry-Spaeth, Ashley Chance, Michael Gilb, T. J. Honerlaw, and Victor Kidd. Kathy Grossmann arrived at 1:03 p.m.

Mayor Kidd advised he called this meeting to address the procedure leading to the City's purchase of two downtown Mason properties acquired to facilitate development of Downtown Mason. He said every member of Council shares a commitment to maintaining the highest level of integrity in all aspects of City business. Any suggestion taken to the contrary is taken seriously and addressed appropriately. Most Councilmembers have been Mason residents for many years and therefore have numerous personal and business relationships throughout the community. Those who have businesses in Mason will inevitably vote on issues that affect people with whom they have business relationships. He quoted the Ohio Ethics Commission, "conflicts of interest are normal because public servants have family and friends and may have businesses, professions, investments, property interests, and other connections to their communities. Any of these connections could result in a conflict of interest for the official. The issue is how the public servant responds to his/her conflict of interest." He said the description continues with "a public official has a conflict of interest when his/her ability to be an objective decision maker is impaired by his/her interests or the interest of family members or business associates." He quoted from the Ohio Revised Code, "no public official shall knowingly authorize or employ the authority or influence of the public officials office to secure authorization of any public contract in which the public official, a member of the public official's family or any of the public official's business associates has an interest." To avoid any question of inappropriate bias, Council has always been very careful to follow the guidance and advice of the Law Director when a particular transaction involves a relationship between a Councilmember and anyone with whom the City may be doing business. The City's Law Director is present for all Executive Session discussions regarding the acquisition of property and gives direction when necessary. Any Councilmembers who may have concerns are welcome to submit those concerns to the City's Law Director for review and a professional legal response. Mayor Kidd advised he voluntarily abstained from voting on Ordinance 2018-61 even though the relationship does not fall under the conflict of interest definition provided by the Ohio Ethics Commission or State Statute. He was involved in early discussion regarding this property due to interest in developing Downtown Mason. He chose to remove himself from discussion once an attempt was made to cast doubt on his objectivity. He reviewed that he was supportive of this property because they are contiguous to four acres currently owned by the City which increases the opportunity to facilitate a substantial Downtown development and it leverages the opportunity for economic development as done in other areas of the City. He stated he was approached two years ago by a Mason resident who shares the desire to see Downtown more economically vibrant and

presented a development concept as a possibility for the four acres the City owns. They met with City staff, two additional developers, and an adjacent property owner, Ramesh Malhotra with the possibility of working collaboratively on the mixed-use development. Mr. Malhotra expressed his interest in selling his property rather than participation in the development. Council discussions and negotiations on the property then began. Mayor stated neither he nor his family benefit financially or otherwise from this transaction. He has requested the City's Law Director to make a formal ruling on conflict of interest and for the City Manager to seek an outside review from a neighboring Law Director and to submit a request to the Ohio Ethics Commission to examine the facts and offer an opinion. Mayor stated he is dedicated to maintaining the highest level of integrity in every aspect of City business and will continue that commitment.

Mayor Kidd recused himself from the meeting and Vice Mayor Spaeth continued the meeting.

### **LAW DIRECTOR STATEMENT**

Law Director Jeff Forbes stated the Ohio Ethics Law is comprised of numerous statutes; two are relevant to this meeting. "No public official shall knowingly authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest." There is a separate provision providing, "no public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties." He stated a business associate is not defined in ethics law, but ethics opinions have described it as any individuals, companies, or organizations with which the official is acting together to pursue a common business purpose. Examples from Ohio Ethics Commission Advisory Opinions include partners in a partnership, co-owners of a business, outside employers, and co-members of an LLC. Also according to Ethics Opinions, not all perceived conflicts of interest are prohibited by the Ethics Law, but only those in which a public official has a dual interest that would impair his independence of judgment in making decisions. Based on this guidance from Ethics Commission Advisory Opinions, and the facts and information that have been presented to him, as well as his discussion with municipal law colleagues, it is his opinion that there is no violation of the Ohio Ethics laws with respect to the approval of Ordinance 2018-61. However, only the Ohio Ethics Commission can issue formal advisory opinions. He stated the Mayor has requested that he make contact with the Ohio Ethics Commission to obtain further guidance, as well as request further review from outside legal counsel. He stated the Mayor has also requested contact with the Ohio Ethics Commission to provide training for City officials.

### **DISCUSSION OF THE REPEAL OF ORDINANCE 2018-61**

Councilmember Gilb stated this purchase began with previous Council and he will continue to do what's best for the City of Mason. He does not have knowledge of the history and initial process of this transaction and supported the Ordinance as appropriate for economic development. He advised he is open to discussion of reconsidering the Ordinance as needed.

Vice Mayor Spaeth stated she would like to see this Ordinance move forward to revitalize Downtown and will wait for outside review to ensure no ethical violations in acquiring this property.

Councilmember Chance agrees with Vice Mayor Spaeth and spoke on Monday night's Council Meeting review of economic development's accomplishments. He stated this property is a good choice for the City in the same regards to economic development.

Councilmember Nelson advised this land acquisition is a great opportunity for Mason. The City owns land around this property and is excited about developing Downtown. She respects opinions in regards to transactions and appreciates outside professionals not vested in this property to help decide the integrity of this acquisition and do what's best for our City.

Councilmember Honerlaw does not agree with the City purchasing this land and does not think property on Mason-Montgomery will help develop Downtown. He stated the City overpaid for this property due to a property near it selling for less.

Jeff Forbes advised this Special Meeting is for the consideration for the possible repeal of Ordinance 2018-61. A motion to add Ordinance 2018-65 repealing Ordinance 2018-61 to the agenda was made by Councilmember Gilb, seconded by Councilmember Honerlaw. VOTE: 4 YEAS (Spaeth, Grossmann, Honerlaw, Gilb), 2 NAYS (Nelson, Chance), 1 ABSTAIN (Kidd).

**ORDINANCE 2018-65 REPEALING ORDINANCE 2018-61 RELATED TO A LAND INSTALLMENT CONTRACT WITH MALHOTRA FAMILY LLC RELATED TO 118 EAST MAIN STREET AND 108 EAST CHURCH STREET AND DECLARING AN EMERGENCY**

A motion to suspend the rule and allow for adoption after the first reading was made by Councilmember Chance, seconded by Councilmember Nelson. VOTE: 4 YEAS (Spaeth, Grossmann, Honerlaw, Gilb), 2 NAYS (Nelson, Chance), 1 ABSTAIN (Kidd).

Jeff Forbes said pursuant to the Charter, to suspend the rule and allow for adoption after the first reading requires five votes from Council. Ordinance 2018-65 has received a first reading and cannot move forward with adoption or consideration of the Ordinance.

Councilmember Gilb requested amending Ordinance 2018-65 pending the requested information being reviewed by Council. Jeff advised Ordinance 2018-65 has received a First Reading and cannot be amended until it appears back on the agenda in June. A new Ordinance can be introduced that would include language Council determines. Councilmember Chance advised Council has discussed this property and this ordinance has already passed. A motion requesting the City Manager not to execute the closing of this real-estate transaction until further authorization by this Council was made by Councilmember Chance, seconded by Councilmember Nelson. VOTE: 3 YEAS (Nelson, Spaeth, Chance), 3 NAYS (Grossmann, Honerlaw, Gilb), 1 ABSTAIN (Kidd). Eric Hansen said the ordinance purchasing this property has not gone in to effect yet because it was not an emergency ordinance. After the ordinance becomes effective next week, the City would then go to closing on the property. Councilmember

Gilb was concerned the City may not be able to get out of the contract and may subject the City to possible issues. Councilmember Honerlaw expressed concern with not being able to get out of the contract and Councilmember Grossmann advised delaying the contract still leaves the City vulnerable. Councilmember Grossmann advised Council should repeal transaction on this property and re-address at a later date. Jeff stated although Council can prohibit the City Manager to culminate the contract. The ordinance would still be effective; delaying the ordinance does not give the ability to stop consummation of the contract. A repeal of Ordinance 2018-61 would remove the ability to move forward. This motion failed.

A motion to reconsider the vote to suspend the rule and allow for adoption after the first reading of Ordinance 2018-65 was made by Councilmember Gilb, seconded by Councilmember Honerlaw. VOTE: 6 YEAS, 1 ABSTAIN (Kidd).

Councilmember Nelson would like to act quickly once information in regards to conflict of interests comes back to Council from outside professionals. She is concerned with losing the opportunity to purchase this property. Jeff advised a Special Meeting may be called by the Mayor or three Councilmembers.

A motion to suspend the rule and allow for adoption after the first reading was made by Councilmember Chance, seconded by Councilmember Nelson. VOTE: 6 YEAS, 1 ABSTAIN (Kidd).

Councilmember Grossmann presented concerns of acquiring this property with honest services, misuse of public funds, and economic detriment to the City of Mason.

A motion to adopt Ordinance 2018-65 was made by Councilmember Gilb, seconded by Councilmember Grossmann. VOTE: 6 YEAS, 1 ABSTAIN (Kidd). Jeff Forbes stated Ordinance 2018-61 is now repealed effective immediately.

### **ADJOURN**

A motion to adjourn was made by Councilmember Gilb, seconded by Councilmember Chance. VOTE: ALL YEAS. TIME: 1:55 p.m.