



# City of Fort Wright

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## City of Fort Wright Caucus Meeting Wednesday, March 17, 2021 – 6:00 PM

### CALL TO ORDER

The Caucus Meeting was called to order at 6:00 PM by Mayor Dave Hatter. Mayor Hatter led the Pledge of Allegiance and moment of silence. City Clerk Maura Russell called the roll.

Councilman Abeln	Present
Councilman Feinauer	Present
Councilman Wall	Present
Councilman Weber	Present
Councilman Wessels	Present
Councilwoman Witt	Present

Also present for this meeting were:

City Administrative Officer Jill Bailey  
City Attorney Tim Theissen  
Fire/EMS Chief Steve Schewe  
Police Chief Ed Butler  
Public Works Director Jeff Bethell  
City Clerk Maura Russell

### CITIZEN COMMENTS/GUESTS

There were no citizen comments.

### ITEMS FOR DISCUSSION

Mayor Hatter requested an amendment to the agenda to include discussion on lowering payroll taxes. A motion to amend the agenda was made by Councilman Weber. Councilman Wessels made a second. Ms. Russell called the roll.

Councilman Abeln	Yes
Councilman Feinauer	Yes
Councilman Wall	Yes
Councilman Weber	Yes
Councilman Wessels	Yes
Councilwoman Witt	Yes

MOTION CARRIED

**Kentucky Sidewalk Partial Replacement Request** – Ms. Bailey said a resident reached out requesting to be compensated for a portion of their driveway replacement where Kentucky Walk crosses. She said the resident has not yet given a price or estimate for the request.

Mr. Bethell said the resident lives at 38 West Crittenden where Kentucky Walk comes through from Lorup Avenue and an easement does exist on the deed allowing for the sidewalk. He said the resident had spoken with former Public Works Director Tim Maloney about this request in the past. Mayor Hatter commented that it is public right-of-way, and one cannot be replaced without the other.

Mr. Bethell said the area in question is about 96 feet long, four feet wide, and four inches thick, which would require about five yards of concrete. He said he reached out to Ideal Supplies in Ludlow and was quoted approximately \$600 for five yards. He asked Council if the City could just offer a specific amount of money to the resident for this portion. Councilman Wessels inquired on the precedent set by paying for materials on private property and the Mayor commented that it serves a public purpose, and it is in the City's right-of-way. Mr. Theissen said this would be different than replacing a driveway apron because the resident is not the only one using the area.

Councilman Wessels asked how this is different from a utility easement, noting that it is not a lot of money but asked if there was another way to take care of this project. Councilman Weber asked if other homeowners would need to be compensated if the walk is replaced on their property. Councilman Abeln said the two homeowners on Lorup may request financial assistance as well.

Ms. Bailey recommended Council ask the resident to submit a reimbursement request after the work is complete and set a cap on how much the resident can request. Mayor Hatter suggested a \$700 cap to cover any labor costs for that area in the right-of-way. Mr. Theissen further suggested that the area be marked in some way, so it is known moving forward which portion is the City right-of-way. Mr. Bethell said he will request a control joint be added. There was also discussion of certain standards being applied in case of heavy vehicles damaging the property and Councilman Weber added there should be a stipulation of no sub-par work.

**COFW Nuisance Code Update** – Ms. Bailey said the Community Improvement Committee has discussed the Nuisance Code regarding littering and delivery of items in a certain manner. She said the Code calls for a Nuisance Board but there is no Chairperson currently in place. Additionally, she said the Ordinance adopted in 2016 does not match the language found in the online codification of the City's Ordinances, but she assumes the Ordinance is correct. She said an Executive Order was also located, appointing Police Chief Ed Butler as head of the Nuisance Board when he was the City Administrator.

Ms. Bailey continued by saying the plan may have been to not have a Code Enforcement Board and to move that assignment to PDS [Planning and Development Services of Kenton County] eventually. Chief Butler had previously advised Ms. Bailey that he remembered discussion of transitioning that Board when he was City Administrator. Ms. Bailey asked Council if they wanted to have their own Board or request PDS handle it.

Ms. Bailey added that other issues with the Ordinances were found, including a lack of information about a Code Enforcement Officer, and a 1992 Ordinance having a Building Inspector and the City Administrative Officer appointed for the Board. She also said there is no citation process or form. She commented that this is a housekeeping item but is preventing the City from taking care of nuisance issue and staff will need direction from Council to move forward. Mr. Bethell added that he cannot cite

someone for a violation because there is no Nuisance Board. Ms. Bailey said this means there is no way for residents to appeal a violation.

Ms. Bailey said Frank Henn is currently appointed to the Joint Code Enforcement Board and the City can request that Board handle nuisance cases, but the current Ordinance does not give that option. She said City staff recommend moving to this as that Board is already being used and works for the City, then Mr. Bethell can be the Citation Officer though this will require the Ordinance be rewritten.

Councilman Weber asked the other Councilmembers for their thoughts on having PDS handle the nuisance issues. Councilwoman Witt said it makes sense as residents need somewhere to appeal citations. Councilman Feinauer said PDS could handle the issues once a citation issued, but he does not want them finding code violations. Councilwoman Witt said this issue comes when someone is cited, as they have a right to appeal and PDS could handle that because it is very hard to find people to serve on City boards.

Mayor Hatter offered historical perspective, saying he has more confidence in PDS now and it is difficult to find people to sit on the City's boards. He said Mr. Theissen's legal opinion is that Council cannot enforce anything, and a process is needed for enforcement when necessary. He also said he agrees that he does not want PDS looking for violations, but he is okay with the City telling PDS there is an issue, and they handle it from there.

Councilman Weber asked the Mayor to clarify on who will be issuing citations – Councilmembers or staff. Mayor Hatter said staff will issue the citations but working under Council's guidance.

Ms. Bailey said the City currently responds to complaints as they are reported, and no staff members are driving around looking for issues. She said if Council sees something blatant happening then it should be brought up and discussed. Mayor Hatter said he knows that the City staff understands their perspective and that no one is looking to go out and mess with residents. He also said there are times he has asked Mr. Bethell to look into an issue and he has come back to say there is not anything the City can do.

Ms. Bailey brought up the International Property Maintenance Code, saying the City has previously identified via Ordinance that it was using the 2009 version and there is a 2018 version available now, so this is another housekeeping item to address. Mayor Hatter expressed concern with blindly adopting any type of international codes and wants to have it reviewed first so a conscious decision can be made, and the City staff and Council understand what is being adopted. Councilman Wessels requested a list of the changes from the older version to the newest. Councilman Weber and Councilman Feinauer added that it would be used as a backdrop for Mr. Bethell's decisions, giving him authority and direction.

Ms. Bailey clarified, saying the most recent Ordinance adopted says the City will follow the International Property Maintenance Code's most recent version, while another Ordinance says the City will follow the 2009 version, so this discussion is about cleaning up the contradiction. Mayor Hatter requested a review first before any updates are made, making a conscious decision to adopt it.

There was further discussion about why the Code of Ordinances are so out of date and Mayor Hatter asked what the City needs to do in the future to make sure Ordinances are not conflicting. Ms. Bailey said the City had been understaffed and things possibly fell by the wayside. She said as the City grew larger and quicker staff had a hard time keeping up with changes being made. Ms. Bailey proposed going

through the Codifications chapter-by-chapter to be sure everything is updated, the Codification matches the Ordinance passed, and monitoring changes in the future.

Ms. Bailey said the City staff is working to be sure policies are created and updated and the tracking of City documents is done in one spot, so it is easier in the future. Ms. Bailey said each City Administrator that is hired will have systems that are slightly different, so there is a need to be sure everything is in one area and easy to identify and review as changes are made. She said there are best practices that can be followed and utilized, but it is a matter of taking advantage and using those resources. Mayor Hatter said there are not really policies and procedures and things have been done in such a way that there are gaps. Ms. Bailey said a Policy Binder has been created to hold them as they are created, including the Credit Card Policy, Flower Policy, and Digital Sign Policy. She said those are housekeeping things that are being tracked.

Mayor Hatter said they are essentially running a \$9 million business and has added eight or nine people and doubled revenue in the last 10 years. He said there needs to be more structure so that when this Council is gone there is a way to move forward.

Councilwoman Witt asked about searching the City Ordinances, and Ms. Bailey told her the Codification is done by American Legal and available for searching at the City's website. She also clarified that the only searchable information was the City Ordinances, as Executive Orders, Resolutions, Municipal Orders are not currently searchable by the public, but are available electronically on the City's servers.

Mayor Hatter said a document management system was needed but in the short term the City would be utilizing SharePoint. He then asked Mr. Theissen if the City should be looking to him for assistance anytime there are changes needed to Ordinances. Mr. Theissen said every time a new Ordinance is considered, there is a need to be sure it is written correctly and then the current Ordinances need to be reviewed for conflicts from legal and administrative standpoints. Ms. Bailey mentioned KRS [Kentucky Revised Statutes] referenced within the Ordinances and the need to be sure those are double-checked, as well as any fines or penalties are checked for compliance. She suggested Mr. Theissen write the Ordinances and cross-check them. Mayor Hatter said his concern is when they are conflicting or out-of-date and the consequences that could come about from trying to save money. He suggested doing the front-end work to get these corrected and conflicts resolved to make these processes more manageable. Councilwoman Witt agreed, saying there is no need to reinvent the wheel when the processes and procedures exist already, they just need to be modified.

Councilman Wall asked what role the International Property Maintenance Code plays. Mayor Hatter said it is our reference and can give our Ordinances more weight and authority. Mr. Theissen commented on using the International Property Code, saying adopting this kind of Code as a City, separate from the established one, could mean one Ordinance is 100 to 200 pages thick. He said there is a profound rational basis for the findings in that Code and the City would have to justify using its own Code and why it is different. He said having the uniform Code adopted would make it easier and creating separate standards is not worth it. Councilman Wall asked if the County adheres to this International Code and it was confirmed they do. Mayor Hatter said he wants to make a conscious decision based on what is in the International Property Maintenance Code.

Councilman Feinauer commented that this would just be to fall back on, and that Mr. Bethell will still have to go out and cite violations. He said it is there and proven and does not require justification in use.

Councilman Wessels said he wants to keep standards high in Fort Wright. He said just like the beautification measures at the Kyles Lane and Dixie Highway intersection, this is one tool the City has to keep those high standards.

**TBNK Franchise Update & COFW ROW Ordinance** – Ms. Bailey said that there was a meeting recently with local City Administrators, Tim Broering [Executive Director, TBNK], and Bill Gullett [Legal Counsel, TBNK], to discuss franchise agreements with Cincinnati Bell and Spectrum which have not been resolved for a significant period. She said there is concern that TBNK [Telecommunications Board of Northern Kentucky] has taken on significant legal bills because of this and Cincinnati Bell has retained Mark Guilfoyle [Partner, DBL Law]. She reminded Council that when they passed the franchise agreement with Verizon, they wanted to make sure everything is on the same playing field, and a 5% fee is a part of that. She said TBNK has been trying to negotiate a 5% franchise agreement and are asking them to pay PEG [Public Education and Government Access] fees on top of the 5%, but Cincinnati Bell and Spectrum are pushing back saying they do not want to pay more than 5%. Ms. Bailey said there is concern about the ongoing legal fees and what TBNK is spending, which is being paid for via the City's franchise agreements. She said the entities are at a stopping point on negotiations because of PEG fees and right-of-way standards.

Ms. Bailey continued on the issue of right-of-way standards, saying each community has different standards. She said in Fort Wright, the City's right-of-way Ordinance requires utilities to restore the area back to certain standards. She said the concern in this area is in how TBNK is representing right-of-way restoration and a suggestion is that TBNK foregoes these standards in their agreement and each community adopts their own standards. She said this discussion led her and Mr. Bethell to review the City's Ordinance on right-of-way restoration and some issues were found.

Mayor Hatter said he has previously served on TBNK, and served as Chair at one time, and he said federal laws have changed and their authority is almost completely useless now. He said the giant companies are grinding down TBNK. He continued, saying there are many ways to stream meetings and the City does not necessarily need them to do that in the grand scheme of things. He also questioned their viewership and mentioned the city of Florence never being involved in TBNK and the city of Elsmere leaving.

Ms. Bailey said she asked TBNK if their expenses are coming down because of technology change and they said there has been a decrease, but she has not reviewed a budget. She mentioned that the City's representative to TBNK is Tom Litzler and he may be willing to come before Council to discuss these issues.

Mayor Hatter said this is a point of contention because the cable companies do not want to make space for government meetings, and they fight back because it would consume resources someone could be paying for versus setting aside specific channels. He said he does think it is a valuable service to provide people the opportunity to watch, but TBNK may have outlived its usefulness. Councilman Wessels asked if there could be an interlocal agreement to negotiate the contracts, with one city leading the charge. Ms. Bailey said that could happen and that each city present at the meeting had a strong desire to resolve the issue. Mayor Hatter suggested having the three counties negotiate.

Councilman Weber asked if this process could be taken out of negotiation and sent to the courts, potentially saying the franchises are not acting in good faith. Mayor Hatter asked Mr. Theissen to reach out to TBNK attorney Bill Gullett to discuss the potential for court action. Ms. Bailey said in 2014 Council adopted legislation that any utility company that comes in and tears up the right-of-way, it must be restored to certain standards. Mayor Hatter agreed that is reasonable. Ms. Bailey said the Ordinance needs to be updated slightly to address new construction, as it currently only references utility companies making repairs. She also said the Ordinance does not have specification sheets attached that are referenced within, even though they were later found. She also referenced other items that need to be updated, including the name of the cable company, fees, and timelines.

Ms. Bailey recommended sending it to the Economic Development Committee for review. Councilman Wessels asked that Ms. Bailey and Mr. Bethell draft what they think the Ordinance should look like and send it to the Committee for review.

Councilman Wessels brought up the cluttering of the poles, saying more vendors are cluttering the telephone poles and tearing up streets and sidewalks to run extra wires. He suggested anytime poles or wires are replaced they should go underground. Mayor Hatter said he does not disagree, but it would cost more to bury lines. Councilman Wessels continued, saying all new developments have underground wires and it is not an enormous fee.

Councilman Wessels suggested implementing a 10-year plan to make the vendors start going underground. Mayor Hatter questioned if the vendors could then charge residents more because it may cost more for this and Mr. Theissen said he was not sure, but the City does negotiate fees. He suggested negotiating burying cables underground within the fees, so if they previously paid \$55,000, the City could request they pay \$35,000 and go underground.

Ms. Bailey said a draft Ordinance would be created and sent to Council for review. Mayor Hatter asked for Mr. Litzler to come to an upcoming Council meeting to give an update and discuss the potential of an interlocal agreement.

**Payroll Tax Discussion** – Mayor Hatter said when the economy went downhill in 2008 or 2009, funding was very tight, and the City went several years without the street program. When former Mayor Joe Neinaber, Jr., served, the City focused on paying off debt and bringing in revenue. He said a car sticker fee was instituted, payroll tax was increased from 1% to 1.15%, and there were changes to the insurance premium tax to generate approximately \$150,000 each. He said a promise was made at the time to eliminate one or more of these items when the City was able.

Mayor Hatter continued, saying the car sticker tax was removed once the City was out of debt, but the insurance premium and payroll taxes have not been reviewed again. He said the City has already received \$600,000 in CARES [Coronavirus Aid, Relief, and Economic Security] Act funding to offset salaries, and anticipates receiving an additional \$1 million with the passage of the next bill. Mayor Hatter said with this potential money, he spent time looking at the payroll tax information and Susan Ellis [Treasurer/Senior Deputy Clerk] provided historical information on the last five years for review. Mayor Hatter said in the last five years, the taxable value of payroll has increased by 30%, averaging a 6% increase each year. He elaborated, saying in the 2015-2016 fiscal year, the taxable value was \$102

million and last year it was almost \$134 million. He continued, saying he did a quick projection averaging out what the amount collected to-date is based on last fiscal year, which was impacted by the pandemic, and the City has already received 76% of the entire last year's payroll tax. He said if the projection based on average monthly amounts continues, the City is projected to earn \$154 million this year, versus nearly \$134 million last year.

Mayor Hatter said if the payroll tax rate is cut to 1% the City would still come out ahead by \$6,000. He said in his opinion the City should roll back the payroll tax rate, with the caveat that no one knows what will happen with the pandemic and there are two lawsuits in Ohio regarding payroll tax issues. He also said that going lower could increase the likelihood that people will want to come to Fort Wright. Councilman Wessels added that he spoke with Ms. Ellis and asked her to review last year's Covid-impacted months to see what the City would have brought in if the payroll tax were 1% and the amount coming in would still be higher.

Councilman Weber requested clarification that there are two items for discussion, the potential \$1 million coming in and what to do with it, and also potentially decreasing the payroll tax. Mayor Hatter confirmed that, saying the two topics are intermingled because part of the justification of lowering the payroll tax is the cushion. He continued, saying he feels the City owes it to residents because Council has previously said this would happen.

Mayor Hatter said he also did a projection of lowering the payroll tax to 0.95% from 1.15% and that would only result in a cut of approximately \$71,000. He said if the pandemic goes further than expected the City can absorb that hit for some time with the \$1.6 million. He also said he thinks the 0.95% is a good marketing tool and tells the public that the City lived up to the promise it made, and things are going great in Fort Wright. Mayor Hatter said that his wife mentioned this is incentive for people to pay Fort Wright's tax versus another city's.

Councilman Weber said if the federal government is giving this money to local governments it should be given back to the people, and he thinks it should be used to bring taxes even lower for a year because of the cushion. Mayor Hatter agreed and said the City already reduced property taxes and those could be reduced again or left flat, which means the City is giving back to residents by not raising those rates. He also recommended rapidly increasing the street program by doing twice as many streets for one year. He admitted that the payroll tax is an unknown but that he would like to give the money back to the people by improving more streets.

Councilman Feinauer asked about the insurance premium tax, which would also allow residents to see an immediate deduction on their taxes. Mayor Hatter said he would be willing to lower the payroll tax to 0.95% and remove the insurance premium tax to see what happens. Councilman Weber expressed concern with what may happen if the insurance premium tax is dropped and then must be brought back for some reason, as residents will not be happy about it coming back. He said streets will help residents and have an end point. Councilman Wessels suggested staying focused on the payroll tax decrease for now and revisiting the insurance premium tax in a few months.

Mayor Hatter further explained the spreadsheet and his conclusions, saying the City could absorb increasing the street program and removing the insurance premium tax, but he is concerned about the payroll tax lawsuits in other states that could impact the City later. He said this could give the City time to recover if something goes wrong. Councilman Abeln said he recalls when the payroll tax went from



1% to 1.15% and Councilmembers at the time did not like it but said they would try to undo it when they could, and he is fine with honoring that promise.

Mayor Hatter suggested putting this item on the next agenda and having the Finance Committee review other ideas and make recommendations.

Ms. Bailey reminded Council that to level the playing field for franchise agreements, Council needs to implement a fee for Duke Energy. She said that will become a revenue stream, though it will not be a lot. Councilman Weber asked if Verizon has paid the \$5,000 minimum that was stipulated in their agreement. Ms. Bailey said the company's infrastructure in the City is not complete and they have not added customers yet, but she has requested Ms. Ellis investigate.

Mayor Hatter closed by noting that, without including the taxable income for this year, \$592,449,000 in payroll went through the City of Fort Wright in the last five years.

### EXECUTIVE SESSION

Mayor Hatter requested a motion to adjourn to Executive Session under KRS 61.810 (1)(c), discussions of proposed or pending litigation against or on behalf of the public agency. A motion was made by Councilman Weber. Councilman Feinauer made a second. Ms. Russell called the roll.

Councilman Abeln	Yes
Councilman Feinauer	Yes
Councilman Wall	Yes
Councilman Weber	Yes
Councilman Wessels	Yes
Councilwoman Witt	Yes

MOTION CARRIED

The Caucus Meeting was adjourned to Executive Session at 7:27 PM.

The Caucus Meeting was reopened to the public at 8:26 PM.

### ADJOURNMENT OF THE CAUCUS MEETING

There being no further business, Councilman Abeln made a motion to adjourn the Caucus Meeting. Councilman Wall made a second. All voting in favor.

The Caucus Meeting was adjourned at 8:27 PM.

Respectfully submitted,

Dave Hatter, Mayor

Attest:

  
Maura Russell, City Clerk