



**City of Fort Wright Council Caucus Meeting  
Wednesday, October 16, 2019 6:00 p.m.**

**CALL TO ORDER**

The meeting was called to order at 6:11 PM following the conclusion of the Special Council Meeting.

The following Council Members were present for the meeting:

Councilman Abeln  
Councilman Feinauer  
Councilman Weber  
Councilman Wessels  
Councilwoman Witt

Also present for the meeting were:

City Administrative Officer Jill Bailey  
City Attorney Todd McMurtry  
Police Captain Jonathan Colwell  
Fire/EMS Chief Steve Schewe – arrived at 6:12 PM  
Public Works Director Jeff Bethell  
City Clerk Susan Ellis

**CITIZEN COMMENTS**

There were no Citizen Comments.

**ITEMS FOR DISCUSSION**

**TBNK – Tim Broering (MCI/Verizon Franchise Agreement)**

Mr. Tim Broering of the Telecommunications Board of Northern Kentucky was present to provide additional information regarding this agreement. He passed out handouts with updates from the FCC. He reported that the Verizon/MCI Metro agreement is not about a service to the home at this time. A build out of the entire city would not apply. The FCC can no

longer require a build out. Mayor Hatter commented that the FCC is slowly eradicating controls. Mr. Broering commented that the lobbying is business oriented. Larger companies are putting in small cells in high traffic areas. He said in 2016 he helped to advise and put an agreement together when Ed Butler was City Administrator. Small cell agreements had to go through PDS. Fort Wright already has this in place.

Mr. Broering stated that providers are attempting to do fiber transport to avoid franchise fees. In 2006 a telecom tax was enacted, but in 2017 the state supreme court ruling created changes. It brought franchise fees back. It did not void the telecom tax, but fees would be coming directly from the providers rather than the state. For the cable provider, if a franchise tax is enforced, they receive a credit toward what they pay to the state. Under the cable law the fee can be up to 5%. The other telecom rule on fees is that a reasonable, justifiable, non-discriminatory fee can be charged. In other areas of country, fees for telephones must be cost based only and a percentage of income. Fees above 3% may generate lawsuits. Mr. Broering discussed how to charge fees including structuring them at the going rate for a third party or a minimum charge for example of \$10,000 a year until the percentage generates more.

The mixed-use rule was discussed. If a franchise is given to the phone company, a cable fee cannot be charged. Also, under cable law, other services cannot be regulated. If the cable company is paying 5%, then they get the rest of their services for free. It does not work the other way. Boston and other cities are now suing over this.

This agreement is about providing fiber to businesses. Typically, they are going to put cable in and then come in with small cell.

Mayor Hatter commented on the three services -- cable, telecom, and internet -- saying that it will eventually be all packets, but it still needs to go over some kind of wire. Mr. Broering responded that it is all going back haul. Wireless is only wireless on the front end. The back end is back haul.

Mr. McMurtry asked if fees were at 3% if a reasonable charge per mile could also be charge. Mr. Broering recommend researching that. Mr. McMurtry commented regarding the urgency to move forward so as not to lose rights to right-of-way. Mr. Broering was in agreed that the City needed to act. He reminded that the FCC order covered wiring and small cell and that for small cell larger fees could not be charged. They must be cost based only.

While discussing working on the agreement, Mr. McMurtry asked if Cincinnati Bell needed to sign for non-cable services. Mr. Broering replied that the Cincinnati Bell agreements had lapsed, and they should sign new ones otherwise other providers could argue that the City is not charging Cincinnati Bell so they should not have to pay either. Fees may need to be negotiated. Mr. McMurtry asked if the group of cities that hired Bill Goulet were able to get the providers to agree on the same charges. Mr. Broering replied they did not. He stated that the FCC says they cannot have a moratorium. If any company goes to the FCC, that company can take the city to court. Mr. Broering recommended getting caught up.

Mr. Broering suggested that Crestview Hills did a rights of way ordinance and doing something consistently across the cities. He recommended finishing this agreement and then considering a rights of way ordinance in the future.

Councilman Abeln inquired about the length of the agreement. Mr. Broering replied that it is typically ten years. Councilman Abeln then asked just because Fort Wright is not collecting from Cincinnati Bell if the state was charging. Mr. Broering replied that it is a state law to franchise. A provider cannot use the right of way without paying.

Mr. McMurtry asked if the state was charging 1.3%, would it be a problem for the City to go to 3 %. Mr. Broering replied that all need to be charged same.

Councilman Weber verified with Mr. Broering that the City had completed the “opt out”. Mr. Broering stated that it also enabled the city to charge these other fees for wireline, wireless, etc. He recommended charging all of them.

Safety concern with small cell (5g) service was discussed. The FCC conducted safety measurements and testing and determined it to be safe. The FCC has removed any chance to stop deployment. It has to be allowed on every pole they want to put them on. It was recommended to have published aesthetics guidelines ahead of time and to heck with PDS for a model ordinance. The document should be published on the website. Considerations should include places to hide the towers such as church steeples. It was recommended to start thinking about an ordinance.

Mayor Hatter verified with Mr. McMurtry that he was able to proceed. Mr. Broering commented to think shorter term using the phrase “similarly situated”. He also recommended to “rent on your property” not tax.

### **Text Amendment – Self Storage Units/HOC Zone**

Mayor Hatter asked if there were any questions about this. He did not have a whole lot of new information. Councilman Weber had no objections to the conditions. There was discussion regarding conditional use versus permitted use. Councilman Wessels disagreed with permitted use as then it becomes permitted in all HOC zones. No one has to come back for approval. Trying to get rid of hurdles for people to come here. Ms. Bailey commented that it specifically should be conditional use. Distance of 200 feet from another facility and a minimum of 5 acres were discussed. Mayor Hatter and Councilman Wessels recommended conditional use with the addition of a minimum of 5 acres. Ms. Bailey reported that the application has already been submitted for this to be on the November agenda. Mr. McMurtry stated that the City through the Mayor and City Administrator can amend the text amendment to include item G (5 acre minimum).

### **Ongoing 'Project & Issues" List Review**

Councilwoman Witt inquired if any progress was being made on any of these items. Ms. Bailey responded that anything marked in progress is moving through cycle at various speeds. These items will be referenced in her reports on Friday. Anyone can call or talk after the meeting.

### **Motion to Amend the Agenda to Include Executive Session**

Councilwoman Witt made a motion to amend agenda to include Executive Session.  
Councilwoman Witt made a second. City Clerk Susan Ellis called the roll.

Councilman Abeln	Yes	
Councilman Feinauer	Yes	
Councilman Weber	Yes	
Councilman Wessels	Yes	
Councilwoman Witt	Yes	MOTION CARRIED

### **ADJOURNMENT OF THE CAUCUS MEETING TO EXECUTIVE SESSION**

Councilman Weber made a motion to adjourn the Caucus Meeting to Executive Session pursuant to KRS 61 810 Paragraph (g) to discuss a business or development proposal.  
Councilman Feinauer made a second. City Clerk Susan Ellis called the roll.

Councilman Abeln	Yes	
Councilman Feinauer	Yes	
Councilman Weber	Yes	
Councilman Wessels	Abstain	
Councilwoman Witt	Yes	MOTION CARRIED

Councilman Wessels excused himself from the meeting and left before Executive Session.

The Caucus Meeting was adjourned to Executive session at 7:26 PM.

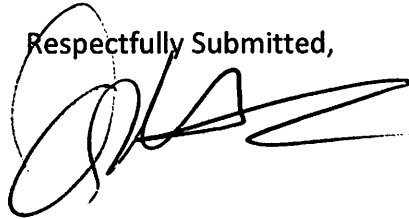
The meeting was re-opened to the public at approximately 7:44 PM.

## ADJOURNMENT OF THE CAUCUS MEETING

Councilman Feinauer made a motion to adjourn the Caucus Meeting. Councilwoman Witt made a second. All voting in favor.

The Caucus Meeting was adjourned at 7:45 PM.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dave Hatter", written over a faint circular stamp.

Dave Hatter, Mayor

Attest:

A handwritten signature in black ink, appearing to read "Susan Ellis", written in a cursive style.

Susan Ellis, CMC, KCMC  
City Clerk