

Lexington-Fayette Urban County Government

*200 E. Main St
Lexington, KY 40507*



Tuesday, August 18, 2020

3:00 PM

Virtual Meeting Packet

Council Chamber

Urban County Council Work Session

**Urban County Council
Schedule of Meetings
August 17, 2020 – August 24, 2020**

Monday, August 17

No Meetings

Tuesday, August 18

Planning & Public Safety Committee.....1:00 pm
Video Teleconference

Council Work Session.....3:00 pm
Video Teleconference

Wednesday, August 19

No Meetings

Thursday, August 20

Corridors Commission.....12:00 pm
Video Teleconference

Friday, August 21

No Meetings

Monday, August 24

No Meetings

Lexington-Fayette Urban County Council
Work Session Agenda
August 18, 2020

- I. Requested Rezoning/ Docket Approval – No**
- II. Approval of Summary – Yes , p. 1-3**
 - a. Table of Motions: Council Work Session, August 11, 2020
- III. Budget Amendments – No**
- IV. New Business – Yes, p. 4-12**
- V. Continuing Business/ Presentations**
 - a. Neighborhood Development Funds: August 18, 2020, p. 13
 - b. Committee Summary: Planning & Public Safety, June 16, 2020, p. 14-23
- VI. Council Reports**
- VII. Mayor's Report – No**
- VIII. Adjournment**

Administrative Synopsis - New Business Items

- a** **0753-20** Authorization to execute an agreement with NAMI-Lexington (National Alliance on Mental Illness) providing ongoing funding for the Fayette County Mental Health Court in the amount not to exceed \$170,000. Funds are budgeted. (L0753-20) (Ruddick/Hamilton) p. 4-5
- b** **0773-20** Authorization to execute Change Order No. 1 to the agreement with Churchill McGee, LLC, for the Dartmouth Drive Culvert Replacement Project, increasing the contract price by the sum of \$3,916.29, from \$507,900.00 to \$511,816.29, and extending the date of completion by 158 days, to May 22, 2020. Funds are budgeted. (L0773-20) (Martin/Albright) p. 6-9
- c** **0774-20** Authorization to execute a Memorandum of Agreement with the Commonwealth of Kentucky, for the use and benefit of the University of Kentucky, for the replacement of sanitary sewer infrastructure in connection with a parking structure expansion project, at a cost estimated not to exceed \$110,828.50. Funds are budgeted. (L0774-20) (Martin/Albright) p. 10-11
- d** **0775-20** Authorization to enter into an agreement with the Kentucky Board of Emergency Medical Services, to continue the Community Paramedicine Program. No budgetary impact. (L0775-20) (Chilton/Armstrong) p. 12

**URBAN COUNTY COUNCIL
WORK SESSION SUMMARY
& TABLE OF MOTIONS
August 11, 2020**

Mayor Gorton called the meeting to order at 3:10pm. All Council Members were present. The 6th District Council seat was vacated by Angela Evans. Lisa Higgins-Hord was present as the newly appointed representative for the 6th Council District.

Gorton opened the meeting with the following statement: "Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting of the Urban County Council is being held via video-teleconference pursuant to Senate 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting."

- I. Public Comment – Issues on Agenda
- II. Requested Rezonings/Docket Approval

Motion by Farmer to approve the August 13, 2020 council meeting docket. Seconded by Plomin. Motion passed without dissent.

Motion by Swanson to place ordinance #1 [An Ordinance changing the zone from a Single Family Residential (R 1D) zone to Neighborhood Business (B 1) zone, for 0.061 net (.095 gross) acres, for property located at 706 Aurora Ave. (Schilling Properties; Council District 3). Approval 8 0 (To be heard by September 23, 2020) [Div. of Planning, Duncan]] on the docket without a public hearing. Seconded by Mossotti. Motion passed without dissent.

Motion by Higgins-Hord to place ordinance #3 [An Ordinance changing the zone from a Highway Service Business (B 3) zone to a Wholesale and Warehouse Business (B 4) zone, for 1.744 net (2.745 gross) acres, for properties located at 1540 Eastland Parkway (a portion of). (Centennial American Properties; Council District 6). Approval 10 0 (To be heard by September 23, 2020) [Div. of Planning, Duncan]] on the docket without a public hearing. Seconded by Ellinger. Motion passed without dissent.

Motion by McCurn to place ordinance #2 [An Ordinance changing the zone from a Neighborhood Business (B 1) zone to a Wholesale and Warehouse Business (B 4) zone, for 0.6 net (0.69 gross) acre, from a Light Industrial (I 1) zone to a Wholesale and Warehouse Business (B 4) zone, for 0.466 net (0.482 gross) acre, and from a Planned Neighborhood Residential (R 3) zone to a Wholesale and warehouse Business (B 4) zone (ROW) for 0.038 gross acre, for properties located at 132 and 148 Louie Pl. (Centennial American Properties; Council District 2). Approval 10 0 (To be heard by September 23, 2020) [Div. of Planning, Duncan]] on the docket without a public hearing. Seconded by Plomin. Motion passed without dissent.

Motion by McCurn to place ordinance #4 [An Ordinance changing the zone from a Highway Service Business (B 3) zone to a High Density Apartment (R 4) zone, for 8.163 net (8.727 gross) acres, and from a Professional Office (P 1) zone to a High Density Apartment (R 4)

zone, for 0.027 net (1.352 gross) acres, for properties located at 2679 Leestown Rd. (a portion of). (MVO Acquisitions, LLC; Council District 2) Approval 10 0 (To be heard by September 23, 2020) [Div. of Planning, Duncan]] on the docket without a public hearing. Seconded by Swanson. Motion passed without dissent.

III. Approval of Summary

Motion by Farmer to approve the July 7, 2020 work session summary. Seconded by Ellinger. Motion passed without dissent.

IV. Budget Amendments

Motion by McCurn to approve budget amendments. Seconded by Kay. Motion passed without dissent.

V. New Business

A motion by J. Brown to Approve to suspend public comment because there isn't a way to check they are valid, seconded by Susan Lamb, the motion passed without dissent.

Motion by Farmer to approve new business. Seconded by Kay. Motion passed without dissent. Reynolds recused from item S.

Motion by J. Brown to suspend public comment for this meeting. Seconded by Lamb. Motion passed without dissent.

VI. Continuing Business/Presentations

Motion by Kay to approve council capital projects. Seconded by Higgins-Hord. Motion passed without dissent.

Lamb provided a summary of the June 9, 2020 General Government & Social Services Committee meeting.

Motion by Lamb to approve an ordinance creating section 21-34.2 of the code of ordinances to create a leave category related to organ or bone marrow donation and define benefits provided under such leave category (as presented at the June 9, 2020 General Government & Social Services Committee meeting). Seconded by Plomin. Motion passed without dissent.

There were no additional motions to report from the meeting.

Co-Chairs of the Mayor's Commission on Racial Justice and Equity, Roszalyn Akins and Dr. Gerald L. Smith, provided an update on the commission's work.

Mayor Gorton and Brandi Peacher and provided a presentation on the covid relief fund.

Motion by J. Brown to refer to the Budget, Finance & Economic Development Committee tasking Grants, social Services, and Finance to develop a plan for what a residential assistance program would look like. Seconded by Farmer. Motion passed without dissent.

Bledsoe talked about potentially scheduling a special BFED Committee instead of the 8/25 BFED meeting to handle all CARES Act discussion topics (administration, Kay, and Bledsoe are to discuss the best schedule)

Motion by Bledsoe to put all CARES Act funding recommendations into the August 25, 2020 Budget, Finance & Economic Development Committee [as amended twice: at the same time move forward with \$1.9M for the household assistance program; the approval is contingent upon council satisfied with a plan for the program. Seconded by McCurn. Motion passed 14-1. Kay, Ellinger, J. Brown, McCurn, Lamb, Farmer, Higgins-Hord, Worley, F. Brown, Mossotti, Bledsoe, Reynolds, Plomin and Swanson voted yes. Moloney voted no.

Motion by Kay to Amend to amend and allocate \$1.9M for the household assistance program [as amended: contingent upon council is satisfied with a plan for the program]. Seconded by Swanson. Motion passed 13-2. Kay, Moloney, Ellinger, J. Brown, McCurn, Lamb, Higgins-Hord, Worley, Mossotti, Bledsoe, Reynolds, Plomin and Swanson voted yes. Farmer and F. Brown voted no.

Motion by Worley to amend the amendment to add that the approval is contingent upon council satisfied with a plan for the program. Seconded by Kay. Motion passed 13-2. Kay, Moloney, Ellinger, J. Brown, McCurn, Lamb, Higgins-Hord, Worley, Mossotti, Bledsoe, Reynolds, Plomin and Swanson voted yes. Farmer and F. Brown voted no.

VII. Council Reports

Mayor Gorton asked, in response to Farmer's request for another practice session of an in-person meeting, Stacey and Chris to work on another test meeting.

Motion by Swanson to suspend all public comment until IT can work up a better solution. Seconded by Farmer. Motion passed without dissent.

VIII. Mayor's Report

Motion by Plomin to approve the Mayor's report. Seconded by Kay. Motion passed without dissent.

IX. Public Comment – Issues Not on Agenda

X. Adjournment

A motion by Farmer to adjourn at 6:41 pm. Seconded by Ellinger. Motion passed without dissent.

MAYOR LINDA GORTON



LEXINGTON

SALLY HAMILTON
CHIEF ADMINISTRATIVE OFFICER

TO: Mayor Linda Gorton

Urban County Council

FROM: Polly A Ruddick, Director, Office of Homelessness Prevention and Intervention

CC: Sally Hamilton, CAO

DATE: July 30, 2010

SUBJECT: Fayette County Mental Health Court

Request

Authorization to: execute an agreement with NAMI-Lexington (National Alliance on Mental Illness) providing ongoing funding for the Fayette County Mental Health Court in the amount not to exceed \$170,000.

Why are you requesting?

Department needs this action completed because: The 2013 report of the Mayor's Commission on Homelessness included among its top recommendations support for the creation of a Mental Health Court in Lexington. This court is a diversion program similar to drug court which seeks to treat nonviolent offenders with mental illness as an alternative to incarceration. Clients will be referred to the court of District Judge John Tackett for the program where they will participate in intensive case management as part of their diversion.

What is the cost in this budget year and future budget years?

The cost for this FY is: \$170,000

The cost for future FY is: \$0

Are the funds budgeted? Yes

The funds are budgeted or a budget amendment is in process:



Account number: 1101-900349-0001-71101

File Number: 0753-20

Director/Commissioner: Ruddick/Hamilton



MAYOR LINDA GORTON



LEXINGTON

CHARLES H. MARTIN, P.E.
DIRECTOR
WATER QUALITY

TO: Mayor Linda Gorton
Urban County Council

FROM: 
Charles H. Martin, P.E., Director
Division of Water Quality

DATE: August 5, 2020

SUBJECT: Change Order No. 1 (Final) – Dartmouth Drive Culvert Replacement, Contract No. 148-2019

Request

The Division of Water Quality requests authorization to execute Change Order No. 1 (Final) to the agreement with Churchill McGee, LLC for the Dartmouth Drive Culvert Replacement project, increasing the contract price by the sum of \$3,916.29 from \$507,900.00 to \$511,816.29, and extending the contract term 158 calendar days from December 16, 2019 to May 22, 2020.

Why are you requesting?

The requested change provided site restoration to areas disturbed by construction which was not included in original bid. This change extended the time of completion by 158 calendar days. The final contract completion date is May 22, 2020.

What is the cost in this budget year and future budget years?

The cost for this FY is: \$3,916.29
The cost for future FY is: N/A

Are the funds budgeted?

The funds are budgeted in: 4052-303204-3334-92211 2018 LFUCG WILSONDARTMOUTH CONSTRUCT

Martin / Albright



LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CONTRACT CHANGE ORDER

DATE:	July 9, 2020
Contract Modification:	No. 1 (Final)
CONTRACT #:	148-2019

PROJECT: Dartmouth Drive Culvert Replacement
 Bid No. 63-2019
 Resolution No. 386-2019

TO: Churchill McGee, LLC
 1315-C W. Main St
 Lexington, KY 40508

Original Contract Amount		\$507,900.00
Cumulative Amount of Previous Contract Modifications		
Percent Change of Previous Contract Modifications		0%
Existing Contract Amount		\$507,900.00
Net (increase/decrease) in Contract Amount - (From following pages)		\$3,916.29
Percent Change of This Contract Modification		1%
Original Contract Amount		\$507,900.00
Cumulative Amount of all Contract Modifications		\$3,916.29
Percent Change of all Contract Modifications		1%
New Contract Amount Including this Change Order		\$511,816.29
Recommended by 	(Proj. Engr.)	Date <u>8/6</u>
Accepted by 	(Consultant)	Date <u>8/5/20</u>
Accepted by 	(Contractor)	Date <u>8/7/2020</u>
Approved by _____	(Director)	Date _____
Approved by _____	(Commissioner)	Date _____
Approved by _____	(Mayor or CAO)	Date _____

DATE:	July 9, 2020
Contract Mod #:	No. 1 (Final)

Contract Mod #:	No. 1 (Final)
CONTRACT #:	148-2019

July 9, 2020
No. 1 (Final)
148-2019

You are hereby requested to comply with the following changes from the contract plans and specifications:

[illegible]

Page 3 of 3	
JUSTIFICATION FOR CHANGE	PROJECT: Dartmouth Drive Culvert Replacement
	CONTRACT NO. 148-2019
	CHANGE ORDER: No. 1
1. Necessity for change: To provide site restoration to areas disturbed by construction & was not included in original bid. These changes extend the time of completion by 158 calendar days. The final contract completion date is May 22, 2020. 2. Is proposed change an alternate bid? ___Yes ___X___No 3. Will proposed change alter the physical size of the project? ___Yes ___X___No If "Yes", explain. 4. Effect of this change on other prime contractors: N/A 5. Has consent of surety been obtained? ___Yes ___X___Not Necessary 6. Will this change affect expiration or extent of insurance coverage? ___Yes ___X___No If "Yes", will the policies be extended? ___Yes ___No 7. Effect on operation and maintenance costs: N/A 8. Effect on contract completion date: Extend Construction 158 Calendar Days (May 22, 2020) Mayor Date	

MAYOR LINDA GORTON

**LEXINGTON**

CHARLES H. MARTIN, P.E.
DIRECTOR
WATER QUALITY

TO: Mayor Linda Gorton
Urban County Council

FROM: 
Charles H. Martin, P.E., Director
Division of Water Quality

DATE: July 31, 2020

SUBJECT: Memorandum of Agreement with University of Kentucky – Sanitary Sewer Upgrade

Request

The Division of Water Quality (DWQ) requests approval of a Memorandum of Agreement with the University of Kentucky (UK) for replacement of the existing sanitary sewer infrastructure adjacent to the S. Limestone Parking Facility.

Purpose of Request

Prior to the expansion of UK's parking structure, DWQ wanted the existing sewer line under the proposed expanded structure protected and upgraded. It was determined that the vitrified clay pipe should be upgraded to ductile cast iron prior to expanding the garage. Relocating the pipe to a different location had a negative impact on UK's garage construction schedule and DWQ's design for proposed upstream sewers. Ultimately, it was decided that an in-place upgrade was in the best interest of both parties and that a cost share agreement should be developed.

This agreement allows DWQ to reimburse UK's contractor for the upgrade of the pipeline, for a not to exceed amount of \$110,828.50, which represents 50% of the total project cost.

Project Cost in FY21 Budget and Future Budget Years

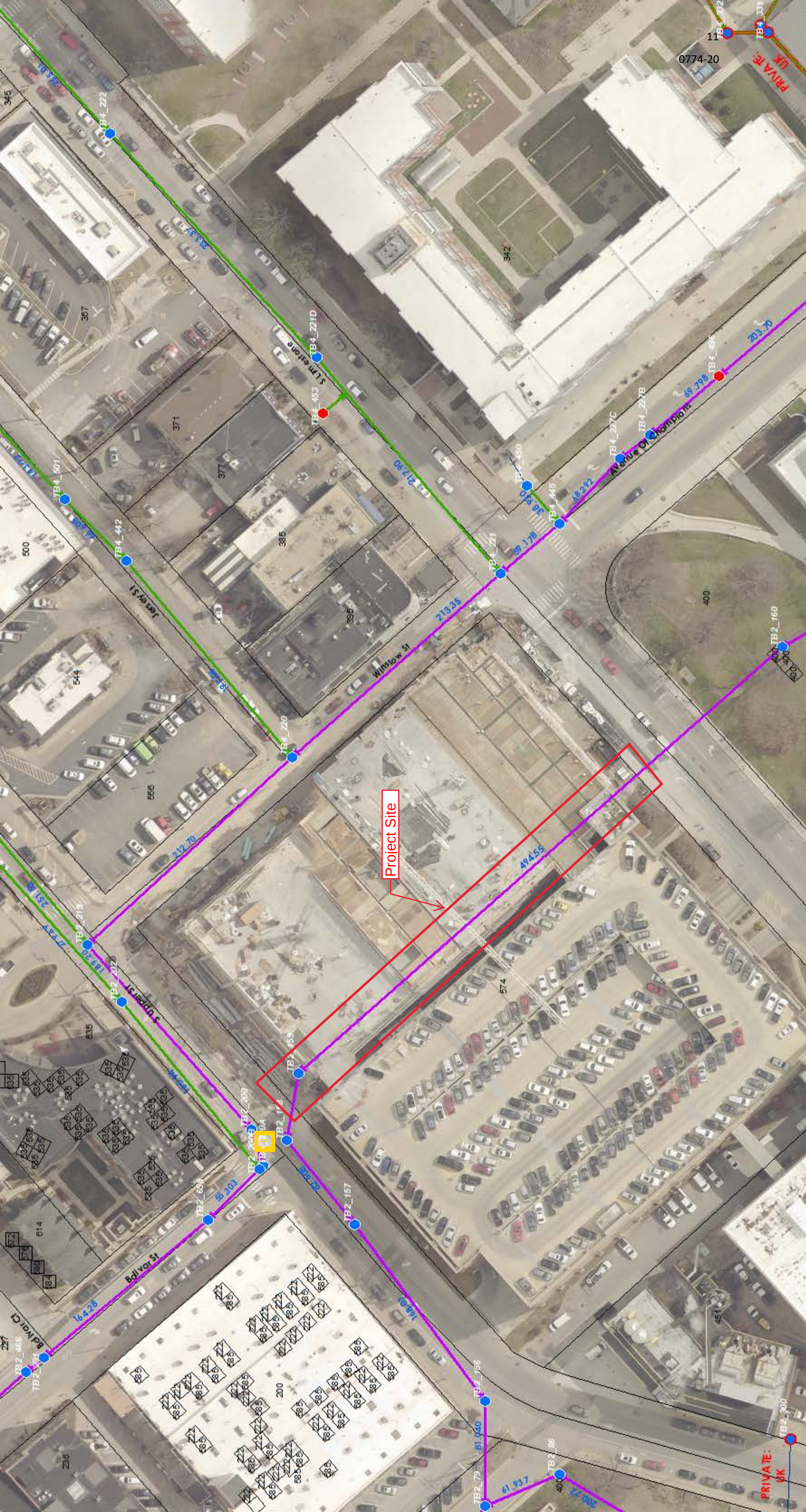
The FY21 budget impact is not to exceed \$110,828.50. There is no budgetary impact in future years.

Are Funds Budgeted

Funds are budgeted in: 4003-303408-3466-92811-UKTRUNKCD_2017-CONSENT_DE

Martin/Albright





Project Site

MAYOR LINDA GORTON



LEXINGTON

Kristin D. Chilton
Fire Chief

TO: Linda Gorton, Mayor

FROM: Kristin Chilton, Fire Chief

DATE: August 10, 2020

SUBJECT: MOU between the Division of Fire and Emergency Services and the Kentucky Board of Emergency Medical Services

The Division of Fire and Emergency Services request authorization to enter into an agreement with the Kentucky Board of Emergency Medical Services.

Why are you requesting? We are requesting so that we will be able to continue the Community Para Medicine Program.

What is the cost in this budget year and future budget years?

The cost for this FY is: N/A

The cost for future FY is: N/A

Are the funds budgeted?

The funds are budgeted or a budget amendment is in process: N/A

Account number: N/A

File Number:

Director/Commissioner: Chilton/Armstrong



Neighborhood Development Funds
August 18, 2020
Work Session

Amount	Recipient	Purpose
\$ 100.00	Bryan Station High School Alumni Assoc., Inc. 677 Northside Drive Lexington, KY 40505 John Hiller	To assist with their annual golf scramble.
\$ 300.00	William Wells Brown Neighborhood Assoc., Inc. 2680 Trailwood Lane Lexington, KY 40511 Robert Hodge	To assist with their annual backpack and school supply drive.
\$ 50.00	St. Paul African Methodist Episcopal Church, Inc. 251 N. Upper Street Lexington, KY 40507 Rev. Dr. Robert Strode	To assist with their 200th church anniversary booklet.
\$ 1,000.00	The Salvation Army 736 W. Main Street Lexington, KY 40508 Bruce Manor	To assist with ongoing programming.
\$ 600.00	Tanbark Association of Neighbors 4192 Heartwood Road Lexington, KY 40515 Marcia Watts	To assist with neighborhood beautification.



Planning and Public Safety Committee Virtual Meeting

June 16, 2020

Summary and Motions

Chair Mossotti called the meeting to order at 1:05 p.m. Council Members Kay, Moloney, Ellinger, J. Brown, McCurn, Swanson, Lamb, Farmer, Evans, Worley, F. Brown, Bledsoe, Reynolds, and Plomin were present and all Council Members were recognized as voting members.

Mossotti began the meeting with the following statement: Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting is being held via teleconference pursuant to Senate Bill 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.

I. Approval of May 26, 2020 Committee Summary

A motion was made by McCurn to approve the May 26, 2020 Planning and Public Safety Committee Summary, seconded by Swanson, the motion passed without dissent.

II. Lexington Police Department Policies and Procedures

Mossotti provided a brief explanation for this item. She explained this meeting is intended to review the Lexington Police Department policies and procedures as well as to address concerns that have been submitted by constituents. The agenda for this meeting has been divided into 5 subtopics: *Statutory Authority, No-Knock Warrants, Collective Bargaining Agreements, Fraternal Order of Police, and #8 Can't Wait.*

a. Statutory Authority

Keith Horn, Attorney with the Law Department, provided information on police discipline reviewing the ordinances that regulate this process. He said the source of discipline process derives from Statutes (KRS 95.450 and KRS 15.520), Ordinances (Section 23-43 and 23-44), Collective Bargaining Agreements (CBA), and the Police General Order (G.O. 1973-02K). He emphasized that KRS 15.520, commonly referred to as "Police Officer's Bill of Rights", applies to police officers while KRS 95.450 applies to police and firefighters. He said amendments to KRS 15.520 created a distinction between law enforcement procedures and general employment policies. He said if it is a violation of law enforcement procedure, this would be regulated under KRS 15.520. He reviewed the policies and rights set forth in KRS 15.520. He highlighted language in this statute as well as in our ordinance that prohibits public statements concerning an alleged violation until final disposition of the charges and he noted that this is where the "no public statement" provision comes from. He explained that Article 15 in the CBA sets forth the disciplinary procedure and the bill of rights. He said, for disciplinary purposes, the CBA provides a 5-year look back for progressive discipline which means anything that has occurred within 5 years can be used in considering what level of discipline is appropriate for a police officer, but anything outside 5 years cannot be considered. He said informal complaints are investigated at the bureau level and that action is limited to counseling and remedial training which are not considered discipline. He said formal complaints are investigated by the Public Integrity Unit (PIU) and the CBA sets forth a 60-day period to complete an investigation. After the investigation is complete, the Chief may meet with the officer to

make a recommendation of discipline or he can send the matter to the Disciplinary Review Board. The board will make a recommendation to the Chief and the Chief can accept, reject, or alter the recommendation before meeting with the officer to make his final decision. If the officer does not agree, it is sent to the Law Department and charges are prepared and sent to the Council Clerk within 60 days and he noted that the police officer cannot be fired until charges are filed and the case is heard by Council. If the officer accepts the disciplinary recommendation, there is an *Agreement of Conformity* which is what appears before Council for approval at a regular Council Meeting.

Lamb asked about KRS 15.520 which says a police officer cannot be fired until there is a disciplinary hearing and she asked if this applies specifically to LFUCG. Horn explained that it applies to any city that would fall under the application of KRS 15.520 and he explained that there are different systems set up in different cities. As an example, he said Louisville is a consolidated government operating under 67C and LFUCG is merged government operating under 67A. He said Louisville has statutory authority for a Police Merit Board and based on those statutes, it appears the Chief can take action including firing an officer and the officer has to appeal to the board. He added that in order to dismiss a Civil Service employee here, charges have to be filed and it is not an appellate process.

Ellinger asked how the make-up of the review board is determined and Horn responded that it is part of the CBA.

Evans asked why remedial training and counseling are not considered discipline. Horn explained that discipline is defined in statute and there is no reference to counseling or re-training. Evans asked about the “no comment” rule and how this came about. Horn said the statute was passed in 1980 and he believes this was intended to avoid tainting a system of discipline for officers.

J. Brown asked if “use of force” discipline follows the same guidelines. Horn said if discipline is being pursued, it would follow the same process set forth in the “Bill of Rights” and CBA. J. Brown asked about the 5 year look-back with regard to progressive discipline. He asked if the five years of discipline is expunged from the file or if it stays in the file but just can’t be considered when making progressive discipline. Horn said it still there but can't be used. J. Brown asked where the body worn cameras policy is described. Horn explained that there is a general order and there are statutory references but it is more for what the video can be used for as opposed to the usage of the camera.

Reynolds asked if a Citizens Review Board is something that would have to be lobbied for at the state level. Horn said it is and he referenced Louisville’s statutory scheme which provides for a Police Merit Board. Horn clarified that the board is a recommendation body which the Chief utilizes to determine what occurred and what the appropriate level of discipline should be. The board makes a recommendation to the Chief, but they have no other authority.

Kay emphasized that we have to abide by state regulations and suggested that Council form a resolution and lobby at the state level for changes.

Bledsoe asked if Louisville’s Police Merit Board takes action only if the officer does not accept the Chief’s recommended disciplinary action. Horn said that is correct according to statute. Bledsoe emphasized that when a recommendation is not accepted here, an appeal can be made to Council for a hearing and it is important we do not know on the front end so we can be an unbiased jury and hearing board. Horn reiterated the statutory restriction on making public comment regarding disciplinary action until the

action is final. Horn said under our system we cannot file an appeal, we have to file charges and discipline does not exist until Council makes a decision.

Moloney asked for clarification that if the Civil Service Review Board found an employee in violation, that is the end of it and it would not come back before Council and Horn confirmed. Moloney asked if the Citizen Review Board would be set up like the Civil Service Review Board and use the same process for police. Horn said typically it would, and he explained that the only appeal from that board is to court and not to Council.

Evans asked what titles serve on the Civil Service Review Board given that their decision is final. Horn said there are 5 members but he is unsure what the exact qualifications are. Evans asked if the Chief could interject at any time during the police disciplinary process. Horn explained that before it goes to the review board, the Chief and the officer have a discussion and if it goes to the review board, the board will make a recommendation and the Chief will have another meeting with the officer and he can make a decision at that time whether to accept or alter the recommendation. He explained that the board is established as it is needed and would vary depending on the case.

Swanson asked if the membership of the discipline review board is set by statute and Horn explained that the CBA establishes the membership.

Lamb asked if Lexington's current disciplinary process provides subpoena power and if Louisville's Police Merit Board has subpoena power and Horn confirmed that any due process hearing like either of these would be granted subpoena power, but subpoena power is a statutory grant. Lamb asked if the Civil Service Commission has subpoena power and Horn said they do.

b. *No-Knock Warrants*

Lawrence Weathers, Chief of the Lexington Police Department (LPD), explained that obtaining a no-knock warrant is a lengthy process and there are steps that have to be taken before one can be approved. Weathers explained that the no-knock search warrant authorizes police to enter a building without knocking and announcing, but as they enter they continually announce "police – search warrant". He added that this is only used for extenuating circumstances and when life is in danger. He emphasized that there is explicit information that must be included in the warrant and this type of warrant goes through several approvals before being presented to a judge.

Mossotti asked how the decision was made to enact the moratorium. Weathers explained that very few of these are executed and only in extreme situations so it made sense to issue a moratorium given that one would only be executed if life was in danger. Mossotti asked if the moratorium is indefinite and Weathers confirmed.

Moloney asked if there should be an ordinance or resolution to enforce this and he expressed concern that the moratorium is not a permanent solution. Weathers said these are life and death situations and there are times a life could be saved with this procedure and potential risk of a life if these are never allowed. He said these are restricted so much that they are rarely ever used and he added that in the course of 5 years, a total of 4 have been used.

Lamb asked if body worn cameras are worn during every no-knock and Weathers confirmed that each no-knock is recorded. He said it is likely that 100% of time there is someone recording.

J. Brown asked for an example of a life and death situation and he also asked if federal agencies can obtain a no-knock warrant. Weathers confirmed the moratorium would not apply to federal agencies and other police entities. Weathers used kidnapping or a hostage situation as examples of situations where an innocent life is at risk.

Kay asked where regulation of the no-knock policy can be found and Weathers explained it is in the LPD policies and procedures and also in the Emergency Response Unit policies and procedures. Kay asked the Chief if these policies and procedures are something he could modify. Weathers said he could, but would not change something unless it is an acceptable standard nationwide. Kay asked what the intent is and Weathers confirmed it is to protect the public and/or police. Kay explained that his concern is the attention this has received nationwide. He said these have been overused or poorly executed and sometimes results in the loss of life. He added that in Lexington these are rarely used and only in issues where there is a concern that operating otherwise could jeopardize a life. Weathers said he understands the Council's concern with everything happening nationwide and this is something that can be reviewed for additional examples to explain how these are handled. Kay said he would like to have a full discussion of this policy and how it is used here and he is reluctant to take a policy off the table that, if used well, is in the best interest of the community.

Ellinger asked what the difference is between a regular search warrant and no-knock warrant and he asked how to make sure there is a body worn camera or videographer present for the no-knock warrant. Weathers clarified that with a knock and announce, you knock and announce yourself, but if the person(s) don't come to the door within a certain time, you breach the door and enter. He confirmed that body cameras are worn for the no-knocks as well as some of the regular search warrants. Ellinger asked if passing a resolution to ban no-knocks would be to the detriment of the community and the police force. Weathers explained why this would be a disadvantage and said the moratorium is the best option.

Reynolds asked if body cameras are required to be on when serving a warrant and Weathers explained that if an officer has a body camera it should be on. Reynolds asked for examples of officers who would not have a body camera and Weathers explained that some officers are assigned administrative duties and would not be required to wear a body camera. Reynolds said we need to look at this more closely to determine if these are something we need to continue to have.

J. Brown asked where the body camera policies can be found and he also asked where recommendations can be made. Weathers said the policies are all online and we are open to suggestions. J. Brown asked if these policies are listed anywhere in CBA and Weathers said the only reference in CBA regarding body cameras is making the officer aware when video footage is to be released. J. Brown said the concern is that this policy should be more punitive if the body camera was not activated. Weathers said if there is a suggestion for something that would affect working conditions, it would go through collective bargaining.

Swanson asked for clarification regarding the moratorium and Weathers said it means there will be a stop on no-knocks and they will not be used unless it is a life threatening or dangerous situation. He added that this is likely to be placed into committee for further review to determine whether or not changes need to be made.

Farmer asked if there is an easy distinction between LPD and LPD as presented by Fraternal Order of Police (FOP) and CBA. Weathers said they are two separate entities. He said he cannot speak for FOP or CBA, but the LPD has a duty to the citizens of Lexington to protect and serve. He said the FOP and CBA have the same duty and they may have additional ones as well, but he cannot speak to those because they are different from LPD.

McCurn asked who does and does not wear a body camera and what the importance behind this is. Weathers explained that officers not in a position to wear them would not need to wear them and examples of those would be someone in an administrative position or a non-enforcement position. He said there is a cost associated with these and it does not make sense financially to pay for cameras that are not worn. McCurn asked about the frequency of diversity training and Weathers said it takes place annually or every two years.

c. Collective Bargaining Agreements

David Barberie, Attorney with Law Department, reviewed the CBA for Police and Sergeants which will be in place until a new agreement is reached. He explained that the CBA covers quite a bit and the table of contents provides a summary. He highlighted the item regarding body cameras which can be found on p. 35 of the contract and in section 14-14 it states that if someone asks to see the video, the officer is alerted. He said the disciplinary issues are covered under Article 15 which incorporates state law so in order to make changes, state law would need to change. He said the actual bargaining process includes a team for each side including a negotiator and typically each side knows what changes to make. He noted that with COVID-19 and the current budget situation, there has not been the normal urgency to negotiate this.

F. Brown asked if we are mandated to have this completed by a particular time. Barberie said there is a misconception that the agreement ends at expiration, but there is a clause that states the agreement will continue until a new agreement is reached. F. Brown asked if it would be acceptable for either party to ask for a delay. Barberie said there is a legal obligation to negotiate a new contract in good faith, but if it is in the union's interest it can be delayed.

Reynolds asked if negotiations would continue as long as the two parties cannot come to an agreement. Barberie said they typically take a break and come back together to try to mutually agree to terms. Reynolds asked about Council's involvement and Barberie said Council is not involved on the front end of the process, but since 2011 they have been ratifying the contracts. Reynolds spoke about the authority of officers in article 3 of the CBA and asked if Council has the authority to make changes. Barberie explained that there are certain things that would fall under this that Council could change, but there are certain policies that are not adopted by a legislative body.

J. Brown asked if there is a penalty for either side not coming to the bargaining table and Barberie said it would be considered an unfair labor practice if one side wanted to bargain and the other did not, but that would go to the Labor Cabinet to determine what should happen moving forward. J. Brown asked if Council can push the administration as to whether or not they go to the bargaining table. Barberie said historically it has been the administration's decision whether and when to bargain.

Ellinger spoke about Council making potential changes and asked if we would go through the administration and have them bargain on our behalf. Barberie said that would be the cleanest way for

this to work and with the best understanding. He stressed the importance of confidentiality during negotiations and said leverage is lost when one side knows what the other side wants to do.

Evans spoke about the CBA being based on state statute and said we need to look at diversity on the promotional panels because we may have some authority when it comes to diversity and inclusivity. Barberie explained that the entire agreement is not based on state statute but the focus has primarily been on the disciplinary article and most of those things are in state statute. He said there are other things in the contract that have no statutory basis.

Moloney asked if Council has the right to enter negotiations if the contract impacts the budget. Barberie said the contract would be brought to Council with the funding highlighted and Council could ask for the funding in contract to be renegotiated.

J. Brown asked if the FOP has notified the city that they are ready to negotiate. Barberie said there was a brief conversation going into the budget process, but we are still trying to determine whether or not we want to have meaningful bargaining at this time. J. Brown asked if the existing agreement in place goes to month-to-month and Barberie said it stays effective until it is replaced with a new agreement.

Bledsoe asked what the promotional panel membership is and she also asked about the makeup of officers who are not members of the FOP. Bastian said the promotional panel is set in CBA which requires 5 members. He said FOP chooses one member of the panel which has to be at or above the rank being tested and the police department chooses the other 4 members. He said approximately 20 of the current police officers in the LPD are not members of the FOP and all are white males.

J. Brown asked if the FOP has specific items they would like to see negotiated and if they are interested in coming to the table at this time. Bastian said there is a committee of 8 members trying to gather important issues for our membership and as restrictions are lifted regarding face-to-face meetings, he anticipates entering negotiations with the city. J. Brown spoke about strengthening CBA to better equip the panel to hire diverse candidates and asked if this is something in the works. Bastian said he can't speak to what the membership will and will not accept, but the entire committee will negotiate in good faith and it is important to our department to be as reflective of the community as possible. Weathers said the hiring board is covered by ordinance which speaks to what the makeup should be and this includes diversity.

F. Brown asked if FOP is involved in diversity with the hiring process. Bastian said there is little input from FOP when it comes to the hiring process because they are not technically members of the FOP. He said the only input from FOP is to outline the promotional process. F. Brown asked if historically most of the negotiation is financial. Bastian explained that past conversations should remain confidential, but they look for non-financial incentives during every negotiation as well as financial incentives. F. Brown asked if they would consider delaying negotiations and Bastian said the FOP team is working to finalize what the important issues are so when the time comes, they can negotiate in good faith.

Evans asked if members of FOP who lobby could add language or a diversity statement in the CBA and also look at the discipline review board. Bastian said he cannot speak to what we will or will not negotiate, but for positions such as lobbyists, he would need volunteers to do this. Evans asked why the FOP has not denounced the actions taking place in other cities. Bastian spoke about the incident in Minneapolis and he said that was 100% unacceptable and with the training and leadership we have, that

would never happen here. He added that the leadership of FOP and LPD do not accept police brutality as an acceptable solution and we do not accept the callous killing of another human being.

Ellinger asked if there are suggestions for how Lexington can improve. Bastian said it is a fact finding effort to see what is going on in Lexington and he emphasized that what may be a problem in other cities may not be happening here. Ellinger asked if potential improvements could be included in the contract. Bastian said as part of CBA, before a policy is formal, the FOP can review it and make comments. Ellinger asked how the steps go forward when the agreement is in a continued status. Bastian said the steps continue for officers and sergeants the first pay period after July 1, but for lieutenants and above, the steps continue the first pay period after November 1.

Reynolds asked for FOP to consider listening to concerns from those who feel they have not been treated well. Bastian said he appreciates this and he believes there is always an area for improvement, but some of the concerns raised are not based entirely on fact.

d. *Fraternal Order of Police*

Jonathan Bastian, Lieutenant and President of the FOP, provided a presentation on FOP policies and procedures and provided some clarification to demands that have been highlighted in recent protests. He reviewed the list of those demands and explained how FOP policies relate to those. He explained that letters of counseling are not discipline, but they are designed to improve performance. He spoke about personnel file limitations and said those are only limited internally, but personnel records are available through open records requests. He reviewed the "use of force" policy which is an open recommendation, meaning the Chief of Police can recommend anything up to and including termination.

Lamb asked if there is a definition or an example of a "minor offense" and Bastian said the disciplinary system does not specifically identify a major or minor offense. He said, as a supervisor, certain things do not rise to the level of punishment. Lamb asked if the Division of Police uses the same performance appraisals we use for non-sworn personnel and Bastian said sworn personnel use a form that was previously approved and the civilian personnel of the department are in the People Soft System. Lamb asked if the retention schedule is updated and reviewed by the FOP and Bastian said this is not an FOP issue.

Moloney asked if FOP has to stop their investigation for the court to look a complaint alleging mistreatment in a civil lawsuit. Bastian said CBA does not specifically address the issue of whether or not a criminal case slows or stops a PIU investigation. He said historically, we wait for a criminal case to be adjudicated before an associated complaint is completed. Horn explained that criminal cases can slow down an internal investigation but civil cases do not typically slow things down. He said with criminal proceedings, you don't want to interfere with prosecution so you let that proceed before PIU completes the investigation, but that is not true for civil court.

F. Brown asked where the demands in the presentation came from and Bastian explained that lead organizers of the current protests have referred to these demands on web sites and social media pages. F. Brown said these appear to be articulated well because they cite the appropriate article and he appreciates the presentation trying to clear up the discrepancies and address the demands.

Plomin asked who is on the Public Integrity Committee (Bastian clarified this is the Public Integrity Unit)

and she asked what they do. Bastian said it is made up of 2 lieutenants, a commander, and civilian staff and their role is to receive and investigate complaints. Plomin asked if counseling for anger management issues would be beneficial to remain in the file should this behavior continue. Bastian explained that this type of counseling would be more of a medical record and is not the same as a disciplinary record. He said the Chief of Police has the authority to reassign, require mental health treatments, or remove that officer's police authority. He said a letter of counseling is typically for an issue such as preventing a collision which does not rise to the level of discipline unless it happens multiple times. He said medical and psychological records are considered private documents.

Ellinger spoke about a person resisting arrest who later filed charges against the arresting officer for "excessive force". He asked if the internal investigation would wait until the court case is complete. Horn said nothing prevents a complaint from being taken and the process being initiated. Ellinger asked if it is true that nothing can happen with the officer until the criminal case is complete. Horn said that is a fair statement and delaying this type of investigation could avoid accusations of misconduct during an internal affairs investigation coming forward in the criminal process. Ellinger spoke about someone who was mistreated and the criminal defense says they resisted arrest which takes the onus off the officer, but because the matter goes to court, it delays the internal disciplinary process. He asked if this is something that could happen. Horn said it could delay the discipline process but it is possible that a police officer could make a legitimate arrest and still use too much excessive force in making the arrest. Ellinger asked if there was a way to fast track the complaint by the defendant. Horn said they are typically not parallel, but depending on the circumstances, the case could proceed and you could also end up with an officer suspended while this is pending. Ellinger asked what happens if there is an egregious complaint and someone wants a quick decision. Horn said there are critical incident reviews outside the disciplinary process and independent of any complaint filed against a police officer. Ellinger asked if they can make a determination while this is going through the court system and Horn confirmed they can.

Kay asked why there is a difference with a civil case and criminal case when there is a related complaint about the use of force. Horn explained that criminal proceedings are more serious in the sense that criminal penalties result from crime and civil cases tend to be someone suing another for money. He said if an officer did something wrong, it will only impact the civil side in the sense of defending it in court and criminal cases arguably have more serious consequences. As an example, Kay referenced someone having a criminal case pending and that same person filed a complaint for mistreatment by the police officer who made the arrest. He asked if that person could wave their criminal case to have the complaint against the officer heard. Horn said it is not based on the defendant waving their case because this could potentially appear as prosecutorial interference which is avoided as much as possible during criminal proceedings. Kay asked if there are any exceptions. Horn said he is unaware of all situations police have had in terms of a formal complaint, but standard practice is that while the criminal case is pending, the internal investigation is on hold. Kay asked if Horn could speculate as to whether or not this is standard procedure in other jurisdictions. Horn said he does not believe this procedure is uncommon. Kay asked who is in jeopardy from an investigation that is taking place while a criminal case is also taking place and if it would be the criminal defendant who stands to be harmed. Horn said it is potentially both the criminal defendant and the prosecution because you will have arguments in court with the judge regarding what is relevant or irrelevant and what gets presented or not.

Evans asked what the FOP is planning to do in response to potential federal laws coming down. Bastian said FOP is always willing to talk and educate people on where we are. He said many of the demands

were not based on fact or were misinterpreted and it is important to gather facts so you can determine areas for improvement and work together to come to a resolution. Evans asked how FOP will fulfill their role in this discussion and Bastian said members have heard the primary messages and have demonstrated unity and we are willing to work with whomever to get where we need to be, but it needs to be a thoughtful process and not reactionary.

Swanson spoke about the FOP comments which have been useful in a fact finding way, but have only criticized the protestors' demands. He suggested that the FOP make significant contribution to the community by proposing solutions to the problems the community has identified and be an active participant in solving the problem of police community relations and police violence. Bastian responded that he has formed a committee that is currently taking steps to look at what can be done in reaction to this.

Worley said he appreciates the factual discrepancies and setting the record straight. He said now we know this is something being worked on and he expressed appreciation to Bastian for providing the information we requested for this meeting.

e. *#8CANTWAIT*

Lawrence Weathers, Chief of LPD, spoke about Campaign Zero's *#8CANTWAIT*. He explained that the LPD policy referenced on this web site is not a current version. He explained that *#8CANTWAIT* is a campaign to bring immediate change to police departments. As part of his presentation, Weathers read an excerpt from the campaign's website. "While we stand by the idea that any political leaders truly invested in protecting black lives should adopt the *#8CANTWAIT* policies, we also believe the end goal for all of us should be absolute liberation from policing, and encourage visitors to the site to support the range of organizers who are making progress in employing other strategies towards abolition: defunding the police and reinvesting in community." He explained that when local and national events occur, the LPD reviews current policies to determine if they fit best practices. He said the web site states we only use 3 of the 8 policies, but he said that is not true and he reviewed each of those 8 policies and how Lexington employs each policy in training and techniques.

Reynolds asked what would be defined as taking someone down and putting a knee in their neck or back. Weathers said our officers do not put knees on the neck or back and they are expressly trained to avoid contact with the body as this could cause issues with breathing. Reynolds asked if it would be a disciplinary matter if an officer did this. Weathers said it could be, but you have to consider that it could be a dynamic situation. Reynolds asked about the "duty to intervene" policy and if there are consequences for officers who do not intervene. Weathers said there could be because it is a policy violation and this would go through the disciplinary process.

Lamb asked how policies are reviewed when there are issues in other cities/towns. Weathers said, for example, when a search warrant goes bad in another city, we look at our policy to see what can be done different and we look for ways we can improve and make things safer. Lamb suggested that we use these situations to have conversations with our officers to show how things can escalate and she asked if we have these conversations when issues occur. Weathers agreed that we have to talk about this, especially considering what is going on today. He spoke about resistance tactics and said we have to talk about what to do if certain things happen, but also how to react differently if the situation changes.

Evans asked if chokeholds are still allowed in instances of deadly force and Weathers explained that this

is not a taught procedure, but the officer is taught to do what they need to do in order to save a life. Evans asked for clarification of the policy that says an officer is not to shoot at a vehicle unless it is an extraordinary circumstance. Weathers said this is not a taught procedure, it is just a reaction. He said if someone were trying to kill an officer with a vehicle and that officer had nowhere to go, this would be the best option. He said officers are trained to avoid getting in a position where these tactics would be used, but things happen and not everything can be controlled.

Moloney asked if we know what the rules are when we partner with other departments. He asked if the state police would trump local law enforcement and Weathers said the state has equal authority in Fayette County. He said if another agency is assisting, we are in charge but we do not control their policies and procedures and how they react to certain threats. He said he can only account for Lexington police officers. Moloney suggested that we send a message to state officials to look at regulations across Kentucky.

III. Public Comment

Public comment was placed on this agenda for the purpose of allowing the citizens of Lexington to phone in at the conclusion of the meeting to provide comments and voice concerns. Over 100 people signed in for public comment throughout the course of this agenda item. Several comments were provided; however, due to time constraints, this portion of the meeting was continued to a Special Committee of the Whole (COW) meeting the following day for the purpose of hearing public comment on the issue.

No further comment or action was taken on this item.

A motion by Reynolds to adjourn, seconded by Swanson, the motion passed without dissent.

The meeting was adjourned at 7:13 p.m.

KT 07.21.2020