City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 3, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/

DOCKET TITLE:
Introduction and First Reading. Consideration. Passage on First Reading of an Ordinance to amend Title 2 of the Code of the City of Alexandria, Virginia, General Government, Chapter 5, Officers and Employees, by adding Article E, Collective Bargaining.

ISSUE: Presentation of a revised proposed draft ordinance to establish collective bargaining between the City and certain City employees.

RECOMMENDATION: Adopt the proposed ordinance establishing collective bargaining on first reading and set the ordinance for second reading and public hearing on March 13, 2021 and, after public hearing, adopt the proposed ordinance.

BACKGROUND: On February 9, 2021, City Council introduced the proposed collective bargaining ordinance for discussion. Outside of discussing the substantive aspects of the ordinance, the main procedural issue before Council was whether it should (1) adopt the ordinance on first reading or (2) decline to adopt the ordinance and issue feedback to Staff with the intention of discussing and potentially adopting the updated ordinance at the March 9, 2021 legislative meeting. Council chose the second option. Moreover, Council instructed Staff to work with the Employee Organizations to seek to find mutually agreeable solutions on five major topics that remained open for discussion:

1. The Scope of Bargaining.
2. The Number of Bargaining Units.
3. Public Safety Supervisors Excluded from Bargaining.
4. Procedures Relating Selection of the Labor Relations Administrator (LRA).
5. Resolution of Negotiation Impasses.

As instructed, Staff engaged with the Employee Organizations on these topics and came to some areas of agreement, although some areas of disagreement between the parties remain. Consequently, the result of these

conversations are reflected in the updated proposed ordinance (*See* **Attachment 1, New Draft of the proposed Ordinance, and Attachment 2, redline showing changes from February 9, 2021 draft ordinance**).

DISCUSSION:

Staff's approach to discussions with the Employee Organizations about updating the proposed ordinance were informed by two sources. The first is set forth in the initial docket memo (*See* Link here <https://alexandria.legistar.com/LegislationDetail.aspx?ID=4775842&GUID=2BE7FFCF-33C7-4B5F-AEA5-FCAD4F80A701&Options=&Search=>) where Staff examined a considerable amount of information such as the history and purpose of collective bargaining, the General Assembly's rejection of an expansive collective bargaining bill, the legal constraints contained in Virginia Code § 40.1-57.2(B), the fiscal and opportunity costs of collective bargaining, the effects the ordinance would have on the City's operational efficiency in serving the public, and other practical considerations regarding management-employee relations. Staff's conversations with the Employee Organizations were also guided, necessarily, by Council's inquiries about the areas of difference between the Organizations and Staff regarding five particular issues in the ordinance. Finally, Staff addressed the remaining issues through the lens of 3 overarching themes: (1) the need to proceed with collective bargaining in an incremental fashion given the City's relative lack of contemporary experience with collective bargaining and managing a unionized work force; (2) the need for precision and clarity in language in order to minimize as much as possible the need for time- consuming and costly dispute resolution; and (3) and the need to continue to be responsive, nimble and responsible to the public in the delivery of City programs and services.

As a reminder, this proposed ordinance would apply to all departments that report to the City Manager. The School Board is also authorized to establish a collective bargaining structure for their employees, but their employees would not be subject to this proposed ordinance. Constitutional Officers and State Agencies are not authorized under the state law to establish collective bargaining, so the Commonwealth Attorney's Office, the Court, the Sherriff's Office, Court Services and the Health Department are not included in the City's collective bargaining, nor are they authorized to establish their own. Some employees who work in State Agencies such as the Health Department are city employees and those individual employees would be included in the City's program. Additionally, city authorities such as AlexRenew and ARHA are separate political subdivisions and therefore, do not yet have authority by the state to establish collective bargaining. Lastly, the library system in Alexandria is a little different than in other parts of Virginia in that it is governed by an entity, established by General Assembly charter in 1799, which is not the City and may be an independent political subdivision whose authority to engage in collective bargaining at all requires further examination. We will continue to review that matter as we move into implementation if collective bargaining in Alexandria is adopted.

This docket memo sets forth the outcomes the work staff has done to come to closer to an agreement with the Employee Organizations, and the rationale for Staff's position on matters where differences remain. For your information we are attaching an updated version of the side by side documents showing the areas of agreement (**Attachment 3**) and the areas of disagreement (**Attachment 4**).

1. Scope of Bargaining.

As noted in the initial docket memo, the "scope of bargaining" refers to the labor issues about which the City would be legally *required* to enter into negotiations and agreements with the Employee Organizations (i.e., *mandatory* bargaining subjects). Staff and the Organizations understand and agree that identification of mandatory bargaining subjects would not preclude the City from *voluntarily* bargaining and contracting with

the various Employee Organizations recognized as exclusive bargaining agents about other matters not identified as mandatory (i.e., *permissive* bargaining subjects). As a result, the City and the Employee Organizations may still bargain and reach an agreement on pressing concerns that are not subject to mandatory bargaining.

In the original proposed ordinance, Staff recommended limiting the scope of bargaining to wages and benefits. Although the term "Wages" was left undefined in the ordinance, "Benefits" was defined to include paid and unpaid leave, holidays, insurance plans, and applicable retirement provisions. In contrast to Staff's position, the Employee Organizations asserted that the scope of bargaining should include "wages, hours and all terms and conditions of employment," which is in turn defined as, "personnel policies, practices, and matters, whether established by directive, regulation or otherwise, affecting working conditions, including but not limited to, compensation, the pay plan established in accordance with Chapter 8 of the City Charter, hours, working conditions, retirement, pensions established in accordance with Chapter 8 of the City Charter, discipline and other benefits." The Employee Organizations' position had the practical effect of putting all aspects of the employer-employee relationship on the table as mandatory subjects of bargaining. The Employee Organizations also want to modify the "management rights" clause of the ordinance, which would substitute the "city's rights and authority" clause with one that is narrower, necessarily, given the expansive nature of the scope of bargaining. Staff submits that this approach is arguably less clear in its meaning and application. Indeed, the relative lack of precision could breed disputes regarding its application to varying and unforeseen circumstances.

After a number of discussions regarding whether there is a middle ground here, the Employee Organizations maintained the position that the scope of bargaining must include all terms and conditions of employment as defined by them in a "redlined" draft of the proposed ordinance where they made changes to the definition of the scope of bargaining and the "management rights" section of the ordinance (as described above).

Staff believes Council should not adopt the Employee Organizations' proposed approach to the scope of bargaining. The Employee Organizations' approach starts at the presumption that *all* subjects are included in bargaining unless they are specifically excluded under the management rights clause. This method, Staff believes, would promote uncertainty and regular analysis of matters regarding their negotiability, leading to frequent dispute resolution and litigation between the parties. In fact, unlike federal law where there are regulations and case law covering these issues, Staff believes that potential litigation arising from these types of disputes are more likely occur due to the dearth of Virginia statutes, regulations, and case law addressing disagreements during bargaining. Consequently, the resulting fiscal and opportunity costs arising from the Employee Organizations' approach is incalculable.

To that end, Staff still recommends limiting the scope of bargaining to wage and benefits, even though Council expressed some interest in expanding the scope beyond those subjects. Staff's approach to the scope contrasts with the Employee Organizations' approach in that it would set a finite and clearly identifiable set of mandatory bargaining subjects. More concrete, definitive language that lends itself to clearer identification of what is and is not a mandatory subject of bargaining is, Staff submits, the more efficient and effective approach. And in keeping with Staff's overall approach to the proposed ordinance, limiting the scope of bargaining to wages and benefits allows Council to build a solid foundation for the collective bargaining ordinance and to later build upon that foundation in subsequent iterations of the ordinance if and as Council deems appropriate.

2. Number of Bargaining Units.

In the original ordinance, Staff identified four bargaining units: (1) the Police Unit; (2) the Fire Unit; (3) the Labor and Trades Unit; and (4) the General Government Unit.

As noted previously, Staff met with the Employee Organizations after Council's February 9th legislative meeting. Moreover, the Employee Organization most likely to organize the City's non-public safety workforce, the American Federation of State, County and Municipal Employees (AFSCME), expressed that it preferred more bargaining units than the four identified by Staff in the original ordinance. AFSCME explained that it was seeking more bargaining units to give the employee groups with different perspectives than other employees a greater voice over the concerns particular to them. So, AFSCME proposed splitting the General Government Unit and the Labor and Trades Unit into 5 bargaining units: (1) Library Unit; (2) Service and Maintenance Unit; (3) Clerical and Administrative Unit; (4) Professional Unit; (5) DCHS Professional and Technical Unit.

Although Staff maintains that AFSCME's concerns could be addressed most efficiently through the bargaining process, Staff agreed , as shown in the now revised ordinance, to split the General Government Unit into 2 units, namely, the Professional and Technical Unit and the Administrative and Clerical Unit. Staff believes this is an appropriate concession to make in order to address some of the concerns AFSCME raised about differences between employee groups. This change also takes into the account the prospect of bargaining over permissive subjects and/or the possible expansion of scope of bargaining in the future where it will be important to have more precisely similarly situated employees grouped together to address a wider range of labor issues. Therefore, Staff proposes that Council accept the changes to the ordinance in expanding the recognized bargaining units to 5: (1) the Police Unit; (2) the Fire Unit; (3) the Labor and Trades Unit; (4) the Professional and Technical Unit; and (5) the Administrative and Clerical Unit.

3. Public Safety Supervisors Excluded from Bargaining.

A common feature of collective bargaining statutes and ordinances is to exclude employees who, by virtue of their positions, have potential conflicts in the negotiation and administration of collective bargaining agreements. One group of employees sometimes excluded from bargaining due to potential conflicts are those who are considered "supervisory." Under the proposed ordinance, a supervisory employee is defined as having the responsibility to supervise two or more employees and authority " to hire, transfer, suspend, layoff, recall, promote, demote, discharge, assign, evaluate, reward or discipline other employees, or adjust grievances, *or effectively to recommend* any such actions." (emphasis added). Simply put, these employees are on the "front lines" in enforcing management policy and, inevitably, the agreed upon collective bargaining ordinance and any resulting contracts. The conflicts that may arise from such enforcement is the reason why supervisory employees may either be excluded from collective bargaining altogether or assigned to separate supervisor units, thereby further fragmenting the workforce for bargaining purposes. The proliferation of bargaining units runs counter to the goals of administrative efficiency and the incremental approach Staff recommends in this early phase of collective bargaining experience.

Like the scope of bargaining, Council instructed Staff to discuss areas of compromise with the Fire and Police Organizations regarding the public safety supervisors. With this mandate, Staff arranged meetings with the International Union of Police Associations (IUPA), the International Association of Fire Fighters (IAFF), and the Southern States Police Benevolent Association (SSPBA). The organizations expressed disagreement with these employees being excluded from bargaining. IUPA noted that other states and localities typically include Sergeants in bargaining while most states and localities include Lieutenants in bargaining. Similarly, the IAFF explained that other states and localities include, at a minimum, Lieutenants and Captains in collective bargaining. They noted the concerns regarding salary "compression" issue that may occur if these employees are completely left out of bargaining. Salary compression results where rank-and-file employee salaries and

benefits increase as a result of bargaining or otherwise, while higher ranking employee salaries and benefits remain stagnant, creating a situation where employees are disincentivized to seek higher ranking positions with more responsibilities.

After soliciting this feedback, Staff still recommends that Council continue to exclude from bargaining eligibility Sergeants and Lieutenants for Police and Lieutenants and Captains for Fire. However, to address the salary and benefit compression issues identified by SSPBA (which seeks to represent police supervisors), Staff now proposes a modification to the ordinance that imposes an *obligation* on the City Manager to meet and confer with these employees to address that issue. Although Staff acknowledges that these employees are often included in collective bargaining statutes, we believe the approach of having a mandatory meet and confer provision is preferable when taking a long-range view on the development of the collective bargaining ordinance over time. That is to say, the scope of bargaining in the ordinance may expand as the City becomes more experienced with collective bargaining; it is thus recommended that the City not create unforeseen conflicts of interest by including higher ranking employees in collective bargaining at the outset.

4. Procedures Relating to the Labor Relations Administrator.

Council also instructed Staff to confer with the Employee Organizations to discuss and clarify some of the procedures related to the Labor Relations Administrator. On this topic, Staff was able to come to agreement with the Employee Organizations on how the initial Labor Relations Administrator would be selected by the parties. At the outset, it is important to note that there was no disagreement between the parties on the selection procedure for the LRA other than how selection would occur prior to recognition of any exclusive bargaining agent. With regard to the issue of selecting the LRA before exclusive bargaining agents are recognized, Staff and the Employee Organizations agree that all *interested* labor organizations should participate in the selection of the initial LRA, whether they end up being the exclusive bargaining representative for a bargaining unit or not. “Interested” labor organizations are those who advise the City of their intent to seek exclusive representative status for a defined unit. As a result, the City Manager’s designees and all interested labor organizations will be involved in formulating a list of 3 candidates that the City Manager will pick from in the appoint process for the initial LRA.

5. Resolution of Negotiation Impasses.

The last area of difference between Staff and the Organizations involves the resolution of bargaining impasses between the parties, whether by non-binding mediation (Staff) or by binding arbitration (Employee Organizations). Staff still recommends subjecting impasses to mediation because the General Assembly explicitly stated in Code of Virginia § 40.1-57.2(B) that a locality’s governing body’s ability to establish a budget or appropriate funds shall not be constrained by collective bargaining. In an apparent acknowledgment of these constraints, the Employee Organizations proposed a dispute resolution procedure where matters not affecting appropriations or the expenditure of funds would be settled by binding arbitration. Staff does not believe such a procedure is particularly helpful as the proposed mandatory bargaining matters (and so many other matters that may become subjects of bargaining) involve the expenditure of funds in one way or another. As such, the Employee Organizations suggested procedure would likely constrain Council’s ability to establish a budget or appropriate funds, which would likely be in contravention of Section 40.1-57.2(B). Thus, Staff recommends subjecting impasses in negotiations to mediation and not binding arbitration with the understanding that failure to mediate to successful and acceptable resolution by either side may raise "good faith" bargaining issues that drive ultimate resolution. It should be noted that if negotiations are close to reaching an impasse, the City Manager and City Council would have been in close consultation in establishing the final City’s position, so if an impasse was reached and the issue(s) went to arbitration, it would be likely

(given the experience of arbitrators often seeking a "middle" ground) that the arbitrator would make a decision that would be more in the union's interest than the position taken by City Council.

FISCAL IMPACT:

1. Cost and Budget Impact

The fiscal impact of a shift to a collective bargaining environment is likely to be material both in the short and long term, as personnel costs comprise some two-thirds of the overall City operating expenses. It is expected that collective bargaining agreements will result in City employee pay and benefits likely being higher than they otherwise would have been absent collective bargaining.

To put the potential collective bargaining fiscal impact in perspective, currently the City expends about $229 million per year on pay and benefits for City employees. Each increase of 1% above what would otherwise have been funded and approved will cost the City some $2.3 million per year and each 5% increase some $11.5 million per year. This does not include the Alexandria City Public Schools (ACPS) which will decide on allowing collective bargaining for ACPS, although the City would likely fund nearly all the added costs of an ACPS collective bargaining agreement. Each 1% of pay and benefits for ACPS is some $2.1 million, with 5% being equal to $10.5 million annually. Together this means that each 1% for City and ACPS equals $4.4 million per year and each 5% some $ 22 million per year. It should be noted that these total costs are hypothetical as there is no collective bargaining agreement yet to cost out. These numbers are presented to provide an order of magnitude calculation. The actual costs could be more or less, but likely annually more over a five or ten-year period.

The impact of a wages and benefits cost increase on the City's operating budget and tax rates will likely have varying budget impact depending on what decisions City Council makes during the annual budget and tax rate setting process. Like any additional dollar added to the City's budget, a new dollar of expense either uses a dollar of new revenue gained either through tax revenue growth, through a tax rate(s) increase (or tempers a tax rate decrease), or through some combination of these factors. Any personnel cost increases caused by the outcome of collective bargaining, like any other new program or service, displaces funding that could have been allocated to some other service or program enhancement or increase. Finally, as is the case with any operating budget increase, the added costs of collective bargaining will be competing with City capital investments which are funded using City budget resources.

Under the Virginia law that authorizes collective bargaining, an approved collective bargaining agreement is subject to appropriation by the local government governing body. This means that even after a jurisdiction's governing body approves a collective bargaining agreement and indicates its good faith intention to fund it, legally that local governing body can later decide (such as in the case of a recession, or, using a recent example, a pandemic) to defund all or a portion of the fiscal elements of collective bargaining agreements. It also retains the authority to set and amend the amount that the City General Fund transfers to fund the ACPS operating budget. However, after making a good faith pledge, there will be significant employee and union pressure to maintain it, and it will be politically very difficult for a governing body to reverse that pledge, even in the case of an economic emergency. For example, the unions (using their parent union's national staff) may present their own advocacy analyses of the fiscal situation, arguing that the situation is not as dire or that the City has other options. In the end, while Council retains the legal authority to not fund a collective bargaining agreement, there will be significant pressure on a Council to continue to fund collective

bargaining agreements once they are approved.

Finally, although City Council would not have direct authority to defund an ACPS collective bargaining agreement, it would retain its existing authority to set and amend the total amount of the ACPS general appropriation, as well as the amount that the City General Fund transfers to ACPS's operating budget. Like the situation of not fully funding City collective bargaining agreements, not fully funding ACPS so their collective bargaining agreements can be fulfilled would be controversial and politically problematic. A governing body can expect if it is considering because of financial conditions not funding or not fully funding a collective bargaining agreement, strong public advocacy by unions to fully fund collective bargaining agreements.

2. Impact on City's Bond Ratings

Bond rating agencies determine the credit rating of jurisdictions using a multitude of factors. A constant in the ratings process is how does a major policy or practice impact costs and does that policy or practice limit a jurisdiction's financial flexibility. The City's financial advisor Davenport & Company LLC was asked about the impact on ratings of collective bargaining and Davenport reported back after consulting with current and former bond rating agency analysts that "collective bargaining is not a credit positive", that it would be considered a "constraining factor" in the determination of a jurisdiction's bond rating, and would be "definitely more limiting on the expenditure side and creates pressures that were not there before". That said, the mere presence of collective bargaining would be highly unlikely to result in a downgrade of a jurisdiction's bond rating, as it is just one of many factors that are utilized to determine bond ratings. There are localities and states with collective bargaining that have AAA ratings.

However, it remains that the "bottom line with any of the rating agencies is that expenditure flexibility will be constrained and will take away one of the credit positives for all Virginia localities." The Virginia law that makes collective bargaining agreements subject to appropriation by a local governing body will be a tempering factor, but one that will be eventually based on actual experience. In the end, if there was a negative impact to the City's AAA/Aaa bond ratings due to collective bargaining, it would likely have to be one of multiple negative factors occurring at the same time. The City currently has very strong AAA/Aaa bond ratings which are not at risk if collective bargaining is approved and all other ratings factors remain solid.

3. Costs of Administration

In addition to the costs described above, there are costs related to the negotiations and the ongoing administration of collective bargaining agreements. These include an added Chief Labor Relations Officer in the City Manager's Office, several positions needed in the Human Resources Department, an additional Assistant City Attorney, funding for the outside neutral Labor Relations Administrator, as well as periodic funding for outside legal and technical assistance. The cost of this is estimated at approximately $500,000 to $1,000,000 per year depending on whether collective bargaining is limited to wages and benefits (lower end of administrative costs) or is expanded to cover all terms and conditions of employment (higher end of administrative costs) In addition, the negotiation and administration of a collective bargaining agreement will draw upon staff resources in many departments (i.e., Office of Management and Budget, Human Resources Department, as well as each department impacted by the issues being bargained or covered in a collective bargaining agreement, etc.). In addition, there will be significant time that union officers and shop stewards will spend (while being paid by the City) on union business such as representing employees.

ATTACHMENTS:

Attachment 1: Proposed Revised Ordinance
Attachment 2: Changes from February 9, 2021 Ordinance
Attachment 3: Areas of Agreement with the Employee Organizations and the City
Attachment 4: Areas of Continued Disagreement with the Employee Organizations and the City

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