City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 3, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK 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 draft ordinance to establish collective bargaining between the City and certain City employees.

RECOMMENDATION: Receive and discuss the attached draft ordinance on collective bargaining and determine whether to:

1. Introduce and adopt on first reading the attached draft ordinance establishing collective bargaining between the City and certain City employees and set for second reading, public hearing and final adoption on February 20, 2021

or

2. Provide feedback and guidance to staff on the draft ordinance and request that it be brought back for introduction and adoption on first reading on March 13, 2021

BACKGROUND:

Collective bargaining - the process by which employees negotiate with their employers through a chosen representative to set various contractual terms and conditions of their employment - has its roots in private sector employment with the passage of the National Labor Relations Act in the 1930s. That statute expressly exempts employees of state and local governments from its coverage.

Collective bargaining in the public sector emerged in the 1950s when Wisconsin first extended the right

to its public employees. The practice rapidly spread, in varying degrees, from state to state and to the federal government over the years. In fact, the level of public employee collective bargaining has since surpassed the level of private sector collective bargaining with nearly 35% of public employees represented by unions, compared to less than 10% of private sector employees. Virginia, however, before last year, had expressly banned collective bargaining for public employees since 1977 and was one of only three states since then that did not permit any public sector employees to bargain collectively. Collective bargaining was in place in nineteen Virginia localities (including Alexandria) under prior court rulings that relied upon an implied authority doctrine until the Virginia Supreme Court ruled against the authority of localities to collectively bargain in 1977 absent authorizing state legislation.

It may be an understatement to say that the state of municipal labor relations is (or should be) a paramount concern to the general public, whether or not the public is always immediately and consciously aware of its conceptual importance. The work that City employees perform directly affects the personal lives of every resident given that it is through their efforts that the most basic and necessary public services are provided: public safety, sanitation, land use and all of the other mission critical services that constitute what we have come to view as core government services. The cost of those personal services constitutes the largest single element of the City budget. These basic points support public employers' (including the City's) strong incentive to find ways to ensure the smoothest route to attracting and retaining a quality workforce on mutually agreeable terms and conditions which better stabilize labor relations. It is Staff's understanding that City Council seeks to consider enabling collective bargaining as a means by which this goal may be obtained.

During the 2020 Legislative Session, the General Assembly considered HB 582 (Guzman) and SB 1022 (Boysko). Both bills sought to repeal the Commonwealth’s prohibition on collective bargaining for public employees. HB 582 and SB 1022 would have required localities and state agencies to engage in collective bargaining and set up a statewide system to address issues that arise before, during, and after bargaining. Both bills stalled and, ultimately, SB 939 (Saslaw) was introduced, and presented a different approach that gave localities the option to adopt a collective bargaining ordinance for public employees.

By Joint Conference Committee action, the local option was the method eventually passed by the General Assembly and signed by the Governor. The local option is codified in Virginia Code § 40.1-57.2 and has an effective date of May 1, 2021. Section 40.1-57.2 provides that any collective bargaining ordinance must set forth procedures for the certification and decertification of exclusive bargaining representatives for employee units. However, it also states that no collective bargaining ordinance shall restrict a locality’s governing body’s ability to establish a budget or appropriate funds. Finally, the employees of local elected constitutional officers are entirely excluded from collective bargaining.

While the new state law does not mandate that a locality extend collective bargaining rights to its employees, it does require a locality that has not adopted such an ordinance to take a vote to adopt or not adopt an ordinance "within 120 days of receiving certification from a majority of public employees" in an appropriate bargaining unit. This Council indicated its interest in consideration of such an ordinance in advance of such a certification. Accordingly, the City Manager and the City Attorney’s Office began work on a proposed ordinance shortly after passage of the enabling legislation. The City Attorney’s Office retained outside counsel to assist with the ordinance, and since August 2020, the City Manager’s Office, the City Attorney’s Office, and outside counsel have elicited feedback on the ordinance from stakeholder groups on multiple occasions. These groups include department heads, employee unions and other employee associations, and an internal employee group. As a result, the collective bargaining ordinance has been revised multiple times to include stakeholder feedback that Staff believes aligns with City interests.

DISCUSSION:

Staff has approached the task of development of a draft collective bargaining ordinance with certain guiding principles: (1) that the City must provide the comprehensive procedural and substantive framework for collective bargaining that is not included in the enabling statute; and (2) that the City must be mindful that those substantive and procedural choices respect the need for the Council, as the elected voice of resident taxpayers, to promote efficiency, cost-effectiveness, and public responsiveness in its efforts to maintain a harmonious employee-management relationship.

With these factors in mind, this draft collective bargaining ordinance provides for "the basics" found in most comprehensive public sector collective bargaining laws: establishment, definition and limitation of the right to bargain collectively; procedures for employee selection of a representative union/employee association; defines the scope (subjects) of bargaining; identifies prohibited practices and procedures for redress; establishes procedures for addressing negotiation impasses; contract approval procedures and timelines; provides a means to resolve disputes arising under union-management contracts; and establishes a means for administering all of the components of the ordinance. In addition, the ordinance makes clear that collective bargaining in the City is to be conducted at all times with the necessary understanding that the community's interest in uninterrupted and effective government is paramount. It is within these confines that the ordinance attempts to strike a balance, and it is that principle that has driven many of the choices made in the ordinance as drafted.

As currently drafted, the current employees would be allocated as shown in the chart below. Note, these numbers are an estimate based on best knowledge of the work performed by general classifications of employees. Once the ordinance is adopted, a specific analysis of each position will be done at the department level in order to determine what category the employees would be assigned to.

Fire Department Unit:	206
Police Department Unit:	244
Labor and Trades Unit:	180
General Government Unit:	948
Excluded from Bargaining:	1009
Total:	2,587

Discussion Points:

City Staff has undertaken considerable efforts over the last six months to elicit input from a variety of management and employee stakeholder groups. Through this process, Staff and Employee Organizations have identified numerous areas of agreement and common ground. See *Attachment #2* which outlines the changes that were made to previous drafts to accommodate employee organizations requests. Nevertheless, there are still some areas where the labor organizations and City Staff disagree on how to approach collective bargaining for Alexandria. See *Attachment #3* which provides a side by side of the City's position and the employee organization's position on these issues. As a result, we believe there are four significant decision points for Council to consider regarding the collective bargaining ordinance which we will discuss in detail below.

1. The Scope of Bargaining.

Perhaps the most important decision that Council can make regarding the collective bargaining ordinance is the scope of bargaining between the City and the Employee Organizations. The scope of

bargaining is a critical issue to be resolved because it defines the particular subject matters about which the parties will bargain. Public sector bargaining laws vary in this respect from a very broad scope of bargaining (e.g., "all terms and conditions of employment, including but not limited to wages, benefits, scheduling, work hours, all personnel policies, working conditions, etc.") to a narrow scope (e.g., "wages and benefits, including retirement plan provisions"). It is not, however, an either-or choice between these extremes. Review of collective bargaining statutes and ordinances across the country reveal a range of choices in between (e.g., "wages, benefits, working conditions, and employee discipline"; "wages, benefits, and matters affecting employee health and safety").

The City of Alexandria government, similar to other Northern Virginia local governments, operates with general efficiency and effectiveness, and is considered sound and stable. The bond rating agencies have recognized that. Alexandria, in particular, is known as a government that is very customer service oriented for its residents and business community. In order to be responsive, creative and flexible, the government needs to have flexibility to adjust and change as external influences and needs surface. The recent COVID-19 pandemic is a large-scale macrocosmic example of how the City government needs to respond to crises and needs large and small, often immediately. COVID-19 required major shifts in how work was undertaken, immediate safety protocol development and implementation, reassignment of many City employees to new tasks not in their job descriptions, and dramatically changed work environments.

Decisions to protect the public needed to be made in some instances immediately. If there had been collective bargaining agreements in place that covered work rules and work conditions, moving with alacrity and being able to be responsive to immediate threats would have been likely impaired. While the COVID-19 threat and response are outsized in comparison to the typical day-to-day, or month-to-month, challenges and demands that the City government faces, the issues are very similar in the ability of the City government to be able to be flexible and timely in responding to the needs of the Alexandria community, its residents and businesses.
The expansion of collective bargaining to all conditions of employment could also potentially undermine current internal organizational improvement efforts aimed at fostering collaboration and teamwork among City employees within and across departments in that collective bargaining that encompasses all conditions of employment can create an adversarial environment rather than a process that produces collaboration. All conditions of employment would also mean the ability of the City to contract for services would also be subject to collective bargaining.

In making this threshold policy choice, it is important to note that whatever scope is set will determine whether the matters specified are *mandatory subjects of bargaining* - matters about which the city will have a legally enforceable obligation to bargain - as opposed to those that are merely *permissive subjects of bargaining.* In other words, identifying and limiting the subjects of bargaining in the ordinance sets a floor. Importantly, perhaps, it does not set a ceiling. If the parties mutually agree to add to its negotiations a given subject at a given time that is not a mandatory subject, they are not precluded from doing so by the ordinance (though other law may apply to limit the city's ability to do so). At the very least, however, staff recommends taking the approach of setting a finite and clearly identifiable set of subjects in the ordinance to establish "the line". Very often costly and time-consuming dispute resolution arises from the vagueness or breadth of language such as "matters affecting the health and safety of employees" or "conditions of employment". 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. That said, the range of subject matters is itself many and varied. See *Attachment 4*, list of subjects often specified by statute or ordinance as within the scope of bargaining, either altogether or selectively.

Having considered carefully over the last several months all of the factors set forth here, staff recommends limiting the scope of bargaining at this new and fledgling stage of the City's experience with collective bargaining to matters of wages and benefits (as defined in the draft ordinance to include paid and unpaid leave, holidays, insurance plans, and applicable retirement provisions). There are significant public policy and practical reasons for limiting the scope of bargaining like matters of sovereignty and politically determined decision-making. Bargaining decisions in the public sector are always political to some degree in that the City's administrative management is accountable to City Council and Council to the residents. It is Council that must decide ultimate questions regarding revenue generation and how that revenue is allocated across the range of City obligations and services. Accordingly, as a public employer with the license provided by enabling legislation, the City may make an effective argument to assertive Employee Organizations about the public policy basis for a limitation on the scope of bargaining, e.g., that the City chooses not to narrow and, effectively, delegate its sovereign spending decision making authority to unelected third parties.

The Employee Organizations from whom staff has received feedback strongly disagree with the limitation of the scope of bargaining to wages and benefits. They contend that for many employees matters such as shift determinations, scheduling, and overtime assignment may be more important. Accordingly, they seek to extend the scope of bargaining to "all terms and conditions of employment".

Perhaps as important as what is included in the scope of bargaining is what should not be included in the scope of bargaining. Staff has noted that among the significant areas of difference with the Employee Organizations is the staff position to date to continue the uniform and sole application of the state-law-mandated employee grievance procedure to matters covered by it, rather than allow bargaining for different procedures applicable to different units of employees. The reasons are two-fold: First, State law requires not only that the City have a grievance procedure, but that it contain, at a minimum, certain provisions, and there is nothing in the enabling law that alters the application of that mandate by collective bargaining - even if a bargained procedure is only added as "elective" alternate procedure. Thus, there may be local authority issue. Secondly, there is the practical inefficiency and opportunity cost associated with city administration of multiple and varying grievance procedures. As discussed at the outset, a guiding principle in the drafting of this ordinance has been to keep city service priorities paramount.

2. The Number of Bargaining Units.

Outside of the scope of bargaining, the next important decision point is the number and nature of bargaining units the City will recognize for bargaining. Indeed, employee organizations have categorized the number of bargaining units among their most important issues. The number of bargaining units is important because it determines who the employee associations can organize and what employees can vote in representation elections. As presently written, the proposed ordinance suggests recognizing four bargaining units: (1) the Police Unit; (2) the Fire Unit; (3) the Labor and Trades Unit; and (4) the General Government Unit. Of note, the Police and Fire Units only include uniformed personnel, with the civilian personnel being placed in either the Labor and Trade Unit or the General Government Unit, depending on the nature their work. The Labor and Trade Unit includes employees who conduct a service for the City whereas the General Government Unit includes administrative, technical, service, and professional employees.

By specifically identifying a limited set of broad bargaining units in the ordinance, the City avoids the "bargaining unit fragmentation" or proliferation of units that might be more likely to occur when applying a set of criteria by which units are defined on a case-by-case basis by the "community of interests" they share. This approach would also have the effect of making the bargaining unit determination process less predictable and manageable.

That said, the Employee Organization that Staff understands is most likely to organize the City's non-public safety workforce, the American Federation of State, County and Municipal Employees (AFSCME), has not objected to the City's approach of identifying specific bargaining units in the ordinance. Instead, AFSCME seeks identification of a greater number of units that, in effect, breaks down the Labor and Trade Unit and General Government Unit into more bargaining units (i.e., "fragments"). Specifically, AFSCME proposes creating a Library Unit, Service and Maintenance Unit, Clerical and Administrative Unit, a Professional Unit, and a DCHS Professional and Technical Unit. In seeking these units, AFSCME follows the approach taken in private sector labor relations based on guidance of the federal labor relations law (not applicable to states and localities), which specifies some groups of employees as either required or expressly permitted to have representation separate from others, notably professionals. The reason traditionally given for separating certain groups of employees, such as professionals, is that they typically don't share identifiable common work interests with other employees. Thus, under AFSCME's proposal, the City would have 8 bargaining units instead of the 4 units set forth in the proposed ordinance.

Staff believes AFSCME's request can be accommodated most efficiently through the bargaining process. Like the scope of bargaining, there are good policy reasons for limiting the number of bargaining units in public sector bargaining. Indeed, there is an opportunity and fiscal cost in expending City time in complicated, protracted negotiations with multiple representatives throughout the year and at possibly overlapping times. Under AFSCME's proposed ordinance, the City would have to negotiate 8 contracts, which could create a situation where Staff is engaged in a perpetual state of negotiations with Employee Organizations. Staff believes that AFSCME's proposal could be implemented in the more efficient and cost-effective approach of allowing certain employee groups to raise concerns during contract negotiations. This would allow employees who raise negotiable issues sufficiently different from the rest of the unit to address them in the actual contract between the City and the bargaining unit.

Lastly, the proper number of bargaining units relates in some ways to the scope of bargaining. If Council were to decide that it wanted to expand bargaining beyond wages and benefits, then it becomes more likely that additional bargaining units are needed in order to accommodate the different concerns affecting each employee group. For example, the Police Unit would likely have different grievance concerns than the General Government Unit. Conversely, if Council limited the scope of bargaining to wages and benefits, then many of the differences between employee groups become either less important or are obviated in their entirety. As a result, Council's decision on the scope of bargaining may have some bearing on its decisions about bargaining unit identification.

3. Employees Ineligible to Bargain: Supervisors, Managerial Employees, and Confidential Employees.

Managerial Employees are, typically, excluded from bargaining because they are the agents through whom the City implements its policies and, as such, they are "the City" for purposes of bargaining. They represent the City in the bargaining process. These individuals are usually significant drivers of policy but may or may not have actual supervisory responsibilities. They are policy makers whose inclusion in bargaining may create conflicts of interest with arising from their responsibilities to manage operations or services in management's direct interest.

The main decision points for Council regarding employees excluded from collective bargaining involve what employees constitute Confidential Employees, Managerial Employees, and Supervisors. For instance, Confidential Employees - those employees who have access to management information pertinent to collective

bargaining - are excluded from bargaining because of that access to confidential or strategic budgetary and fiscal information, personnel information, or attorney-client privileged information or other information that may affect the City's positions in collective bargaining or in dispute resolution arising from union-management relations. They are excluded from bargaining to avoid conflicts or the appearance of conflicts in this regard and opportunities to influence union-management matters by sharing (even innocently) the information they may have. Employees clearly falling within the scope of this exception are those who work directly for City Council, the City Manager's Office, the City Attorney's Office, the Department of Human Resources and any other department or position where the employee has authorized access to city personnel files, and the Office of Management and Budget.

The usual rationale stated for exclusion of Supervisory Employees is that they are extension of management, and that management cannot negotiate with itself. (Even if permitted to bargain, there is historically recognized concern about supervisors and the persons they supervise being in the same bargaining unit, or even if in different bargaining units within the same union (since a union will likely roll up many similar issues of different bargaining units that union represents into a single bargaining process). Permitting supervisor bargaining, therefore, would likely lead to the proliferation in the number of bargaining units that Staff recommends should be avoided in the interest of operational and administrative efficiency.)

Note too that the definition of Supervisory Employees in the ordinance allows the City Manager to make the final determination as to who is a supervisor excluded from bargaining. The unions have objected to the Manager's retention of that authority. The ordinance currently provides for a definition of supervisor that will guide the City Manager in making this determination. However, the City government structure is so varied in job titles and duties that enacting an across the board determination of what classifications are supervisors in the ordinance is not feasible. In regard to the Police and Fire Departments on the other hand, the structure is such that defining a certain rank that is considered a Supervisor is feasible. The City Manager, after consulting with the Police Chief, Fire Chief and Chief Human Resources Officer, has concluded that employees from the rank of Sergeant and up will be considered Supervisors and not able to bargain for the Police Unit, while employees from the rank of Lieutenant and up will be considered Supervisors and not able to bargain the Fire Unit. The reason this rank was chosen is that the work duties of a Police Sergeant and a Fire Lieutenant and above are such that they are an integral part in implementing the City's management policies and therefore should not be included the bargaining units. It should be noted that employee groups excluded from collective bargaining will retain the ability to meet and confer with the City Manager, the Human Resources Department and/or the overall City administrative or managerial structure for "meet and confer" purposes. In addition, similar to many localities with collective bargaining, a practice would likely be followed so that those excluded from collective bargaining, would be granted salary increases and benefits which would be equitable and consistent with those provided for in collective bargaining agreements.

4. Model for Collective Bargaining Administration

The fourth major decision point for Council is determining the means by which the City will implement and administer the rights and processes that constitute collective bargaining as enabled by the ordinance. A body, entity or individual(s) is necessary to determine and manage procedures for recognition of employee organizations as bargaining agents for the units of employees identified and to address disputes occurring before, during, and after bargaining.

Models for such labor relations administration vary to some degree. Staff has focused on two

approaches with the overarching goal of promoting efficiency and responsiveness: One is the individual labor relations practitioner model (referred to as a Labor Relations Administrator (LRA) in the draft ordinance), and the other is a labor relations board (committee, commission, or other "body"). The LRA model, proposed by Staff in the ordinance, contemplates assigning the responsibility of processing election, negotiation, and contract disputes to a single neutral individual or entity who is neither a City employee nor a representative of any Employee Organization. In contrast, a labor board manages the same issues but is multi-member (usually 3 -person) body with one member selected by management, one selected by labor, and the third member jointly selected by labor and management.

The proposed ordinance suggests using the LRA model. Staff recommends the LRA model over a labor board because of the apparently greater efficiency. It may also be easier and quicker to execute. Under the LRA model, the City Manager would select the LRA from a list jointly proposed by the City and the Employee Organizations, subject to Council confirmation. Removal would also require union involvement. The removal of the LRA is also subject to Council's approval.

Once confirmed, the LRA would have the responsibility of conducting representation elections, initiating a process to resolve contract negotiation disputes, and administering the actual collective bargaining agreement. As for dispute resolution/adjudication, under the proposed ordinance, any impasse (disagreements in the course of negotiating a contract) between the parties would be submitted to the LRA for mediation. Labor -management disputes arising under the collective bargaining agreement can be submitted to the LRA for mediation or binding arbitration.

To date, the Employee Organizations have not raised any significant disagreements to Staff's recommendation to adopt the LRA structure. Rather, the Employee Organizations have focused mainly on Staff's recommendation in the proposed ordinance to make impasses during contract negotiations subject to mediation and not binding arbitration. Staff acknowledges the Employee Organizations' concern that subjecting impasses to mediation may lead to the parties not reaching an agreement due to the nature of mediation; that is, mediation is a non-binding process while arbitration is a final and binding process. However, Staff believes that Code of Virginia § 40.1-57.2(B) severely curtails the City's ability to adopt an ordinance that subjects' impasses in contract negotiations to binding arbitration. As noted previously, Section 40.1-57.2(B) prohibits localities from adopting collective bargaining ordinances that "restrict the governing body's authority to establish the budget or appropriate funds." Staff contends that an ordinance making impasses in negotiations subject to binding arbitration would restrict Council's authority to establish a budget or appropriate funds. It would, in essence, allow a third-party to make budget decisions for Council. Staff therefore believes that any binding arbitration process between the parties for impasses would be contrary to Section 40.1-57.2(B) and unenforceable as a matter of law.

Collective Bargaining Calendar (no less than every 3 years)

The proposed ordinance includes a proposed calendar cycle for collective bargaining (which would occur no less than every three years) that is aimed at completing collective bargaining, holding the proposed public hearing and City Council endorsement prior to City Council setting its forthcoming fiscal year budget guidance to the City Manager in mid-November. Given the time it would take to negotiate terms and conditions of multiple written collective bargaining agreements, it is recommended that the notification from the recognized bargaining units that they wish to start collective bargaining negotiations occur no later than March 1 of those years when collective bargaining would occur. Negotiations would then start within 30 days of March 1.

That starting timeframe provides five months for negotiations with at least three different labor organizations representing at least four (or as many as 8) different bargaining units, with the goal of finishing negotiations by September 1 of each year, leaving time to formally address impasses which may need to be mediated, and then holding the required public hearing and taking Council action endorsing the proposed labor agreements by the end of October. This then provides the time for the preparation and the holding of the annual City Council Retreat which focuses in large part on the forthcoming fiscal year's budget, and then the adoption of budget guidelines for the next fiscal year by City Council by mid-November. This proposed schedule also allows adequate time for planning budget strategies aimed at accommodating the fiscal impact of the various collective bargaining agreements and any other council action required to effectuate contract provisions.

Given that under state law the earliest time that an ordinance may become effective is May 1, 2021, the process of establishing and certifying exclusive bargaining agents cannot officially start before then. The first step necessary to establish bargaining units would be through petition which requires signature gathering of either 30% or a majority of the eligible employees in a bargaining unit. Time would also be needed to confirm the validity of the petitions. In addition, if there are two unions competing to be the bargaining agent for a bargaining unit, then an election would be necessary and that would add time to the process. The result is that it would likely be late June, July or longer before the process of selecting and certifying bargaining agents would occur. That leaves inadequate time in 2021 to undertake the collective bargaining negotiations and complete them within the timeframe for the FY2023 proposed budget. That means that the first collective bargaining cycle would occur in 2022 with the first budget being impacted as a result of collective bargaining being FY 2024.

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 Ordinance
Attachment 2: Areas of agreement
Attachment 3: Areas of disagreement
Attachment 4: List of Topics Often included in the Scope of Bargaining

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