

CITY OF CHARLOTTESVILLE, VIRGINIA CITY COUNCIL AGENDA



Agenda Date:	October 3, 2022
Action Required:	Public hearing and second reading
Presenter:	Michael Rogers, City Manager, Robin Burroughs, Venable LLP
Staff Contacts:	Mary Ann Hardie, Director of Human Resources
Title:	City Manager's Proposed Collective Bargaining Ordinance (2nd reading)

Background

Historically the Virginia General Assembly has prohibited localities, their elected officials and City officials, from recognizing a labor union or employee association as a bargaining agent for the locality's employees. *See* Va. Code §40.1-57.2 (copy attached). In April 2020 the legislature amended the statute to expressly grant authority to local governing bodies to make their own local decisions as to whether or not to implement collective bargaining. The amended statute took effect May 1, 2021.

- In March 2021 City employee Greg Wright, on behalf of himself and members of the City's Fire Department submitted a proposed ordinance to City Council for consideration.
- In October 2021 John Ertl, a representative of the Amalgamated Transit Union (ATU), notified the City Council that ATU is requesting recognition as the representative of a group of employees within Charlottesville Area Transit (CAT). The ATU submitted a proposed ordinance to City Council for consideration.

In June 2022, on behalf of the City, Michael C. Rogers, Interim City Manager (hereinafter, referred to in short form as "City Manager") engaged the law firm of Venable LLP to advise and assist the City in preparing a proposed collective bargaining ordinance suited to the size and particular organizational units of the City organization, taking into consideration (i) the proposed ordinances previously presented to Council by CFD and ATU, (ii) ordinances recently enacted in other Virginia localities, including in the cities of Richmond and Alexandria, and in Loudoun County, and (iii) ordinances, processes and procedures utilized within long-established collective bargaining programs throughout the country. Both the Robert Bobb Group and the attorneys at Venable, LLP have practical experience in collective bargaining, as do several current City department heads.

From June 2022 to the present, the City Manager consulted with key department heads who have prior professional experience with collective bargaining and brought those key City leaders together in consultation with Venable's legal experts. The attached proposed ordinance represents the City Manager's recommendation to City Council for a collective bargaining ordinance that, in his opinion, will best fit the City's organizational and budgetary capacity.

Discussion

Throughout the proposed Ordinance, the City Manager has been guided by the principle that the City should "walk before it runs." Introduction of collective bargaining is a substantial undertaking, and both the City and its employees require time to gain experience with the bargaining process. Particularly considering the unknown budgetary impact of implementing a collective bargaining program (discussed in more detail below), the proposed Ordinance was drafted to balance quickly providing meaningful bargaining rights to employees who choose to engage in collective bargaining with ensuring that the City remains a good steward of public funds and is able to continue providing high-quality services to its residents.

Following are the key policies and decision points that form the framework of the proposed Ordinance, along with information about the basis of the City Manager's recommendation:

Number of Bargaining Units and Bargaining Unit Composition: The Ordinance prioritizes providing bargaining rights to three groups of non-supervisory City employees: **(i)** sworn uniformed police officers, **(ii)** sworn uniformed firefighters, **and (iii)** certain operations and maintenance employees within Charlottesville Area Transit. A common approach within municipalities that engage in collective bargaining is to exclude supervisory personnel from the bargaining units, and that is the City Manager's proposal for each of these three units. It is important to understand,

however, that even if supervisors are not authorized within a proposed bargaining unit, the new Virginia law will allow the City Manager to meet and confer with them on issues common to their interests. The City Manager is recommending these three initial bargaining units for several reasons. First, employees in the public safety and public transit sectors are first responders and individuals in daily contact with the public. Second, employees in the fire and transit departments were the first to come forward to express interest in collective bargaining for public safety and transit employees. Third, the City Council is facing a number of urgent fiscal and budgetary issues in the next several budget years, and the City Manager strongly advises that starting with these three authorized bargaining units will allow the City Manager and Council an opportunity to gain a practical understanding of the administrative, operational, and financial impact of each new bargaining unit. Finally, it is the opinion of the City Manager that, given a need for key personnel within the City administration to either be hired or to obtain training in connection with collective bargaining procedures, starting out with more than three units will be extremely challenging both administratively and operationally. Beginning a nascent bargaining program with these three initial units provides representation to employees in both the public safety and transit sectors, and will provide the City and its employees with the opportunity to focus on bargaining and administering highly consequential first contracts. Once sufficient staff and managerial capacity is built out and funded, additional bargaining units could be permitted in the future.

Update: *On 8-15-2022 Councilors noted that no national or state union has made known to City staff that it will be seeking to become the authorized representative of the police department. The collective bargaining ordinance proposed by Greg Wright on March 6, 2021 included a request that, among other proposed units, one authorized unit for collective bargaining should be “all sworn employees of the Police Department at and below the rank of lieutenant.” Art. VII.F.1.a. (among other proposed units). It should also be noted that no collective bargaining unit could be entered into which would abrogate requirements established by City Council (including, without limitation, the role of the PCOB).*

Also: *On 8-15-2022 Councilors noted the exclusion of seasonal and temporary employees from the definition of “employee” (see Sec. 19-202 of the Proposed Ordinance). Human Resources Director Mary Ann Hardie recommends the following modification of the definitions of “seasonal” and “temporary” employee within the Proposed Ordinance:*

“Seasonal employee means a temporary employee, as defined in this section, an employee who is hired into a position for which the customary annual employment is four (4) months or less, and for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter, for reasons related to work demands that arise during those parts of the year.”

“Temporary employee means an employee who works variable hours, but fewer than 20 hours per week, and fewer than 36 weeks per year, on an as-needed basis. is hired into a time-limited position that lasts for four (4) consecutive months or less, and who actually works for the City for 4 consecutive months or less; provided, that Any employee who has worked for the City for more than four consecutive months shall not be considered a temporary employee for purposes of this ordinance.”

Unit Certification and Decertification: Employees with bargaining rights should have a free choice to form or join an organization for the purpose of representation, or to refrain from joining such an organization. In order to ensure that the City is recognizing the true desire of the employee group as a whole, the Ordinance provides that unions may be certified or decertified through a secret ballot election.

Authorized subjects of Collective Bargaining: The proposed Ordinance provides employees with meaningful bargaining rights regarding certain wages and salaries, hours of work, non-health/welfare benefits, and working conditions. Some topics of bargaining are excluded, either because they are controlled by state or other local laws, or because bargaining in these areas is likely to interfere with the efficient administration of the City’s services. The included subjects of bargaining provide an important seat at the table for employee groups and are an effective foundation for the negotiation of first collective bargaining agreements. *(Note: The proposed ordinance excludes medical, dental, life insurance and similar health/welfare benefits from collective bargaining. The City Manager proposes to exclude these topics from bargaining, because affordability and economy of scale is best achieved by maintaining the ability of management to create packages for the entire workforce.)*

Update: *On 8-15-2022 the City Manager’s team noted that the Virginia jurisdictions which have included “health and welfare benefits” as an authorized subject of collective bargaining are larger than Charlottesville and therefore have ability to achieve economies of scale even within units of bargaining. (For comparison: according to the City’s published FY23 Budget, Appendix N, pp. N-8 and N-9, the City of Charlottesville has 1036.68 FTEs (Police: 155 FTEs authorized (not filled) and Fire 95 FTEs) and a total annual budget of \$198,783,884)*

Fairfax County (Annual Budget: \$4.2 BILLION)
Total employees: 12,000
Police: 1,632 FTE (1,376 uniformed; 256 other)
Fire: 1,695 FTE (1,402 uniformed; 293 other)

Loudoun County (Annual Budget: \$3.5 BILLION)
Total employees: 4,672.76
Sheriff (no police department): 736 FTE (566 uniformed; 170 other)
Fire: 748 FTE (600 uniformed; 148 other)

City of Alexandria (Annual Budget: \$839,200,000)
Total employees: 2,765.34
Police: 432.63 FTE (335.13 uniformed; 97.5 other)
Fire: 321.50 FTE (274 uniformed; 47.5 other)

City of Richmond (Annual Budget: \$838,715,828)

Total employees: 4,251.71

Police: 823.50 FTE (720 uniformed; 103.5 other)

Fire: 421 FTE (393 FTE uniformed; 28 other)

Dispute Resolution and Labor Administration: While the City Manager hopes to have harmonious and collaborative relationships with any certified bargaining units, it is necessary to have a process to resolve disputes should they occur. In order to facilitate negotiated agreement, the Ordinance incorporates mandatory mediation in its dispute resolution procedure. In the event that mediation is not appropriate or fails, the Ordinance provides that a third-party neutral will issue findings of fact and recommendations to resolve the dispute. In accordance with state law, City Council retains its budgetary authority. Also included within the proposed Ordinance are provisions for selection of a neutral Labor Relations Administrator, who will be responsible for overseeing the process for certification/decertification of bargaining agents, resolving labor/management disputes, and assisting with the selection of mediators.

Commitment to Further Review: Transitioning to a new paradigm of collective bargaining will require considerable investment of resources and attention by both the City's employees and the administration. The Ordinance initially takes a measured approach to ensure success in this new endeavor. The Ordinance also provides for the opportunity to review its procedures and to allow for the potential expansion of collective bargaining to additional groups in the City. After the Ordinance has been effective for two years, the City will be better able to judge its capacity for collective bargaining and will be in a better position to determine impact of collective bargaining on the City's resources and budget.

Alignment with City Council's Vision and Strategic Plan

The collective Bargaining initiative aligns with Goal 5 of the Strategic plan: A Well-managed and Responsive organization. Structuring a framework for engaging with our employees as they seek bargaining unit representation is foundational to a well-managed and responsive organization. Providing employees, a mechanism to express their aspirations as part of the city workforce is critical to employee satisfaction and a responsive organization.

Community Engagement

The public introduction of the proposed ordinance will be at Council's 4:00 session on Monday, August 15, 2022. Following the introduction, City Council can set the date on which it will conduct a first reading of the proposed ordinance for adoption. It is recommended that a public hearing should be conducted on the date of Council's first reading.

Budgetary Impact

We are unable to provide a projection of budgetary impact at this time, due to the as-yet unknown total expected number of staff and staff time involved in preparing for and conducting bargaining, and the total cost (including operational and contractual costs) associated with implementing collective bargaining agreements. The City Manager expects the budgetary impact of implementing a traditional collective bargaining program to be substantial.

The current FY2023 budget includes some support costs for administering the collective bargaining environment, including additional City staff and contracted services. One (1) FTE has been added to the Department of Human Resources Budget for FY23, (Labor Relations Analyst), which was recently proposed for a reclassification to an Employee and Labor Relations Manager, whose job will include serving as lead negotiator at the bargaining table, preparing employer positions for bargaining, managing the negotiation process and preparing and formulating contract language; advising and training City management on compliance with union contracts, employment policies and laws.

The following potential costs/ expenditures are not addressed within the current (FY23) City Budget:

- a collective bargaining administrator (the proposed ordinance would require this to be an independent contractor);
- additional personnel within the Human Resources department, to bargain contracts and handle employee and labor relations (in correlation to the number of collectively bargained contracts that may be authorized by council)
- a budget for the legal services associated with negotiation of individual collective bargaining agreements for each bargaining unit authorized by the ordinance;
- a budget reserve for the funding needed to implement the terms of each individual collective bargaining unit.
- a budget for implementation of specific provisions within negotiated collective bargaining agreements, as those agreements do not yet exist.

For these reasons, the City Manager recommends that an Implementation Calendar be followed, once the Ordinance is adopted (see "Recommendation" section, below)

Recommendation

The City Manager recommends that City Council adopt the attached proposed Ordinance, after conducting a public hearing and two readings of the ordinance. If the ordinance is adopted, the City Manager recommends the following **Implementation Calendar**:

- **Effective Date of Ordinance, and First date on which a union could submit a petition for election:** January 1, 2023 (to allow for engagement of the administrator)
- **Earliest date to conduct an election for union representation,** pursuant to the secret ballot election procedures in the Ordinance: mid-February 2023
- **Earliest date for a union to be certified as exclusive bargaining representative,** pursuant to procedures in the Ordinance; bargaining for a first collective bargaining agreement could potentially begin: early March 2023
- **Potential period for bargaining of first collective bargaining agreement:** March - October 2023
- **If necessary, opportunity for mediation to resolve outstanding bargaining issues:** Fall 2023
- **If necessary, time for fact-finding and recommendations on outstanding bargaining issues:** late 2023 - early 2024
- **Incorporation of bargaining proposals and/or fact-finding recommendations in City Manager's Proposed Budget:** early March 2024
- **Adoption of FY2025 Budget by the City Council:** April 2024
- **Proposed effective date of first collective bargaining agreement(s),** to align with the City's fiscal year budget cycle: July 1, 2024 (FY 2025)

Alternatives

City Council, at its sole option, may decide that it does not wish to establish a collective bargaining program at this time.

There exist many variations of the issues and procedures set forth within the proposed ordinance, all of which have operational impacts, budgetary impacts, or both. Council may explore variations, at its discretion.

Attachments

1. Charlottesville Draft Ordinance Outline(55914403.14) (002)
2. Charlottesville Ordinance Revisions Summary(56560389.4) (002)
3. Charlottesville Ordinance Revisions Summary(56560389.3)
4. Charlottesville Draft Ordinance (55914403.13) (Track Changes)
5. CBO_Charlottesville - City Council Revisions Presentation1032022