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**MEMORANDUM**

**TO:** Richard A. Mullaney, General Counsel  
**FROM:** Steven E. Rohan, Managing Deputy General Counsel  
**RE:** Millage Setting Process  
**DATE:** August 2009

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Chief Deputy Cindy Laquidara, as lead counsel for the Executive Branch, and I, as lead counsel for the Legislative Branch, have carefully reviewed Chapter 200, Florida Statutes, and the Charter, in order to make recommendations to you as to the Office of General Counsel position regarding the legal process by which the City is obligated to set the 2009 ad valorem millage and the 2009-2010 budget.

Our analysis leaned heavily on principles of statutory construction in general, and recognition of the two terms of art utilized throughout Chapter 200, those being the "Taxing Authority", well understood to be the City of Jacksonville (City), and the "Governing Body" well understood to mean the City Council (Council). This analysis is similar to that used in Legal Advisory Opinion 05-02 wherein you determined the relative responsibilities of the City Council and the Mayor in the establishment of pension benefits in collective bargaining.

**The Proposed Millage Resolution; 2009-510**

The first obligation of the City is to advise the Property Appraiser of the City's proposed millage rate by August 5<sup>th</sup>. We believe there is no dispute that this is a responsibility of the "City," which means that the "Council" must pass a resolution, which the Mayor must either approve by signature, disapprove by veto, or allow to become approved by operation of law if neither signed nor timely vetoed.

Of importance is the fact that Section 200.065 provides that if the "City" fails to notify the Property Appraiser by August 5<sup>th</sup>, the Property is obligated by law to advertised the proposed millage rate as the "Rolled Back Rate" (this year 9.272 mills) which also becomes, as a matter of law, the highest millage rate that may be imposed by the City.

Obviously, the ability of the City to notify the Property Appraiser of its proposed millage rate

is affected by the timing of the Council's passage of Resolution 2009-510 and the manner by which the Mayor exercises his veto authority. While there is a risk that the maximum millage rate may be set "by default," this would occur as a matter of law. This protocol can be improved by either an amendment to the Charter, changing the manner and timing of Mayoral vetoes, or by changing by ordinance the timing in which the proposed millage rate resolution is considered.

### **The Millage Ordinance; 2009-511**

The City's final 2009 millage rate will be set in Ordinance 2009-511, in accordance with Section 200.065 Fla. Stat. The millage rate and budget must be established within 100 days of July 1<sup>st</sup>.

Given the strict time frame and the lack of a statutory alternative to timely setting the millage rate, we looked very closely to determine whether the Mayor has veto authority over the ordinance setting the final millage rate or the budget. Generally speaking, the Charter grants the Mayor the authority to veto all resolutions and ordinances not specifically identified specified in the Charter. You will recall, however, that in Legal Advisory opinion 97-\_\_\_, the General Counsel recognized that quasi judicial ordinances of the Council were not subject to Mayoral veto even though the Charter allowed for them, and even though it had been an established "right" of the Mayor for years.

Though it is the "Taxing Authority's" obligation to set the "proposed" millage rate, the law requires the "Governing Body" to establish the "tentative" and "final" millage rates. Section 200.065 states:

"(c) Within 80 days of the certification of value pursuant to subsection (1), but not earlier than 65 days after certification, the governing body of each taxing authority shall hold a public hearing on the tentative budget and proposed millage rate. Prior to the conclusion of the hearing, the governing body of the taxing authority shall amend the tentative budget as it sees fit, adopt the amended tentative budget, recompute its proposed millage rate, and publicly announce the percent, if any, by which the recomputed proposed millage rate exceeds the rolled-back rate computed pursuant to subsection (1).

Not only does the above section reference the "Governing Body's" authority, but so do all of the prescribed public hearing advertisements, which make clear that the millage rate will be set at the above described public hearing. The law contemplates that the millage rate will be established by the City Council at the public hearing, unfettered by a veto. The Mayor's "line item" veto authority of the budget, provided for in the Charter, does not conflict with the statutory millage and budget setting process.

Complementing the above analysis is the recognition that a sustained mayoral veto would defeat Ordinance 2009-511, and not provide for the subsequent setting of a millage rate in

accordance with the statute.

For all of the above reasons, we recommend to you that the Office of General Counsel position be that the official City of Jacksonville 2009 ad valorem millage rate will be established by the City Council at their Council meeting on September 22<sup>nd</sup>; and that the Mayor has no authority to veto Ordinance 2009-511.

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