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February 20, 2017

MEMORANDUM

From: Roger K. Gannam
Assistant Vice President of Legal Affairs

Re: Mayor Curry Can Still Veto the HRO

Summary

- **The City Charter does not allow the mayor to give an ordinance immediate effect without his signature.**
- **Mayor Curry's announcement that he will allow the HRO to become law without his signature does not give the HRO immediate effect.**
- **Mayor Curry still has the power to veto the HRO at or before the February 28 City Council meeting.**

Relevant Facts

On February 14, 2017, the Jacksonville City Council voted to adopt bill 2017-15, the so-called "Human Rights Ordinance" or "HRO." The ordinance contained standard language making the ordinance "effective upon signature by the Mayor or upon becoming effective without the Mayor's signature." Barely an hour after the vote to adopt the HRO, Mayor Curry announced to the Council that he would allow the HRO to become law without his signature. Around the same time, Mayor Curry issued a public message:

As your Mayor, I promised to convene community conversations about discrimination. At the conclusion of those conversations, I exercised an executive action to implement a clear policy for city of Jacksonville employees and contractors. I said then and continue to believe additional legislation was unnecessary. But this evening, a supermajority of the City Council decided otherwise. This supermajority, representatives of the people from both parties and every corner of the city, made their will clear.

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Now, with the issue resolved, I invite City Council and all the people of Jacksonville to join me as we confront serious issues like the final steps of pension reform to bring us financial security and increase our efforts to end the violence and crime hurting innocent people in our city.

Following these announcements, it was widely claimed that the HRO had become law. For the reasons below, this claim is *false*. Accordingly, **Mayor Curry can still veto the HRO.**

Legal Analysis

The Charter of the City of Jacksonville provides the mayor three options for responding to an ordinance adopted by the city council: The mayor can approve the ordinance, disapprove (veto) the ordinance, or do nothing:

Section 6.05. – Mayor’s veto power.

....

Any ordinance or resolution adopted by the council over which the mayor has a *veto* power shall be presented to the mayor for his consideration and recommendations. If he approves the ordinance or resolution he shall sign it and it shall become effective according to the terms thereof. If he disapproves he shall return the ordinance or resolution to the council without his signature, accompanied by a message indicating the reasons for his disapproval and recommendations. . . . Any resolution or ordinance shall become effective on the date provided therein unless it be disapproved by the mayor and returned to the council at or prior to the next regular meeting of the council occurring 10 days or more after the date when the ordinance or resolution was delivered to the mayor's office for consideration. . . .

According to the foregoing Charter Section 6.05, the mayor may approve an ordinance by signing it, in which case it becomes effective upon his signature. The mayor may disapprove an ordinance by returning it to council without his signature, “accompanied by a message indicating the reasons for his disapproval and recommendations,” in which case the ordinance is vetoed. Or, the ordinance will become effective without the mayor’s signature if he does not veto it—*i.e.*, does nothing—before the next regular council meeting which is ten or more days after the ordinance was “delivered to the mayor's office for consideration.”

Assuming the final, amended version of the HRO (2017-15-E) was “presented to the mayor for consideration” under Charter Section 6.05 above, Mayor Curry had three options: (1) approve the ordinance by signing it, (2) disapprove the ordinance by returning it without his signature (with his disapproval message and recommendations), or (3) do nothing. Which option did Mayor Curry choose? As a legal matter, **Mayor Curry did nothing.**

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During the same council meeting in which the HRO was adopted by the council, Mayor Curry communicated to the council that he would allow the ordinance to become law without his signature. Around the same time, Mayor Curry delivered a public message, containing both a reason for his disapproval (“legislation was unnecessary”) and a recommendation (“Now . . . join me as we confront serious issues”).

It apparently is the position of the City, and it has been widely reported by the local media, that the HRO became law upon Mayor Curry’s announcement that he would let the ordinance become law without his signature. Charter Section 6.05, however, does not provide any mechanism for an ordinance to become law immediately upon an announcement by the mayor that he would not sign it. Only signing the ordinance could accomplish immediate effect. Because Mayor Curry did not sign it, **the HRO did not take immediate effect.**

So what is the legal effect of Mayor Curry’s messages to the council and the public? There are only two possible answers under Charter Section 6.05: Mayor Curry’s messages either had no effect, or they had the effect of a veto.

A compelling argument can be made that Mayor Curry actually vetoed the HRO, *as a matter of law*, because he performed the two statutory acts effecting a veto: (1) He “returned” the ordinance “without his signature,” (2) “accompanied by a message indicating the reasons for his disapproval and recommendations.” But, given that Mayor Curry also announced he intended to let the ordinance become law without his signature, it is unlikely a court would ultimately conclude that the ordinance was vetoed.

Nonetheless, it has been argued (erroneously) that the reason Mayor Curry’s announcement during the council meeting gave the ordinance immediate effect was because Mayor Curry “returned” the ordinance to the council. Putting aside the fact that there is no basis in the Charter to conclude that a “return” *without a signature* can give an ordinance immediate effect, a court also could not easily find that the HRO was “presented to the mayor for his consideration” in the first place, just minutes after it was adopted, when the final version with amendments would not be typed until the next day. Nor could a court easily find that Mayor Curry then “returned” the as-yet untyped ordinance to the council during the same meeting. But, if a hypothetical court could get around these significant obstacles, then it may also interpret Mayor Curry’s “return” without his signature, accompanied by his “message” of disapproval and recommendations, as a legal veto.

In any event, the more compelling argument is that Mayor Curry’s announcement that he would allow the HRO to go into effect without his signature, and accompanying public message, had no legal effect whatsoever. The ordinance itself specifies that it will “become effective upon signature by the Mayor or upon becoming effective without the Mayor’s signature.” Mayor Curry did not sign the ordinance, and it can only become effective without his signature according to Charter Section 6.05, which does not allow for an ordinance to take immediate effect without signature, and certainly does not allow the mayor to decide when an unsigned ordinance takes effect. Accordingly, the HRO will not become law until the conclusion of the council meeting on February 28, 2017. Until then, **Mayor Curry still has the power to veto the HRO.**