

**No. 21-1037**

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**In the Supreme Court of Texas**

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BRUCE R. HOTZE,

*Petitioner,*

v.

SYLVESTER TURNER, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF  
HOUSTON, TEXAS, AND THE CITY OF HOUSTON, TEXAS,

*Respondents.*

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On Appeal from the Fourteenth Court of Appeals,  
Harris County, Texas, No.14-19-00959-CV; and  
the 333rd Judicial District Court  
Harris County, Texas, No. 2014-19507

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**RESPONSE TO PETITIONER HOTZE'S PETITION FOR REVIEW**

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## TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES .....	v
STATEMENT OF THE CASE .....	ix
STATEMENT REGARDING JURISDICTION .....	xiii
RESTATEMENT OF THE ISSUES PRESENTED .....	xv
STATEMENT OF FACTS .....	1
I.    The Houston City Charter’s and Texas Constitution’s Conflict Resolution Provisions .....	1
II.   Propositions 1 and 2 in the 2004 Election .....	2
III.  Propositions G and H in the 2006 Election .....	4
IV.  Proposition A in the 2018 Election .....	5
V.   Texas’ 2019 Revenue Cap .....	6
VI.  Prior Litigation Regarding Propositions 1 and 2 .....	6
SUMMARY OF ARGUMENT .....	9
ARGUMENT .....	11
I.    REVIEW IS UNWARRANTED FOR UNSUPPORTED ARGUMENTS HOTZE WAIVED BY FAILING TO RAISE THEM IN A TIMELY-FILED ELECTION CONTEST .....	11
II.   REVIEW IS UNWARRANTED BECAUSE HOTZE ALSO WAIVED HIS BASELESS ARGUMENT THAT PROPOSITION 2 SOMEHOW DOES NOT FALL WITHIN THE PRIMACY CLAUSE’S AMBIT .....	15
III.  REVIEW `IS ALSO UNWARRANTED BECAUSE THE DISSENT RAISES A <i>BARRED</i> ELECTION ISSUE TO FIND PURPORTED PREEMPTION WHERE HOTZE NEVER RAISED OR PLEADED IT .....	16

A.	Hotze improperly attempts to raise a new argument on appeal he never pleaded below in arguing that the primacy clause conflicts with Texas Local Government Code § 9.004. ....	16
B.	Hotze already tried to litigate his Section 9.004 issues in related civil litigation but lost because such claims are barred outside election contests. ....	17
C.	From his pleadings to his petition here, Hotze never alleged that the primacy clause violated Texas Local Government Code § 9.005(b), which addresses when charter provisions take effect <i>but not</i> whether they are valid. ....	17
D.	Hotze successfully argued in related litigation that issues concerning Sections 9.005(a) and (b) were part of the election process; therefore, he cannot collaterally attack them here. ....	18
E.	Hotze successfully argued in related litigation that Houston could comply with <i>both</i> Sections 9.005(a) and (b), whether Proposition 1’s primacy clause is enforceable or not; therefore, he is estopped from arguing that Section 9.005 and the primacy clause irreconcilably conflict here.....	18
F.	Even the dissent concedes that there is no actual conflict between Proposition 1’s primacy clause and Texas Local Government Code § 9.005(a).....	20
CONCLUSION AND PRAYER FOR RELIEF.....		21
CERTIFICATE OF COMPLIANCE .....		22
CERTIFICATE OF SERVICE.....		22
APPENDIX ( <i>all admitted Defendants’ trial exhibits may be found in volume three of the Reporter’s Record which is not page-numbered</i> )		

Exh. A - Order dated May 2, 2016 [2016CR538]

Defs’ Exh. 1  
(‘DX1”) - Election Ordinance - Ordinance No. 2004-887

Defs' Exh. 2  
(“DX2”) -

Houston City Charter, article IX, section 19

Defs' Exh. 4  
(“DX4”) -

Adoption Ordinance - Ordinance No. 2005-568

## INDEX OF AUTHORITIES

Page

### Cases

<i>Arredondo v. City of Dallas</i> , 79 S.W.3d 657 (Tex. App.—Dallas 2002, pet. denied).....	11
<i>Bertrand v. Holland</i> , No. 01-16-00946-CV, 2018 WL 1720742 (Tex. App.—Houston [1st Dist.] Apr. 10, 2018, pet. denied) .....	15
<i>Black v. Strength</i> , 112 Tex. 188, 246 S.W. 79 (1922).....	13
<i>Blum v. Lanier</i> , 997 S.W.2d 259 (Tex. 1999).....	xiii, 17
<i>Brown v. Blum</i> , 9 S.W.3d 840 (Tex. App.—Houston [14th Dist.] 1999, pet. dism'd w.o.j.) .....	13
<i>City of Lorena v. BMTP Holdings, L.P.</i> , 409 S.W.3d 634 (Tex. 2013).....	15
<i>Coalson v. City Council of Victoria</i> , 610 S.W.2d 744 (Tex. 1980).....	xv, 20
<i>Dacus v. Parker</i> , 383 S.W.3d 557 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) .....	14
<i>Dacus v. Parker</i> , 466 S.W.3d 820 (Tex. 2015).....	13, 14
<i>Dickson v. Strickland</i> , 114 Tex. 176, 265 S.W. 1012 (1924) .....	xiii, 11
<i>Ferguson v. Bldg. Materials Corp. of Am.</i> , 295 S.W.3d 642 (Tex. 2009).....	3, 18, 19
<i>Grant v. Ammerman</i> , 437 S.W.2d 547 (Tex. 1969).....	xiii

<i>Greater Houston P’ship v. Paxton</i> , 468 S.W.3d 51 (Tex. 2015).....	15
<i>Hotze v. Turner</i> , 634 S.W.3d 508 (Tex. App.—Houston [14th Dist.] 2021, pet. filed).....	xii
<i>Hotze v. White</i> , No. 01-08-00016-CV, 2010 WL 1493115 (Tex. App.—Houston [1st Dist.] Apr. 15, 2010, pet. denied) .....	passim
<i>In re Hotze</i> , No. 14-08-00421-CV, 2008 WL 4380228 (Tex. App.—Houston [14th Dist.] July 10, 2008, no pet.) (mem. op.).....	8
<i>In re Robinson</i> , 175 S.W.3d 824 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding) .....	passim
<i>In re Roof</i> , 130 S.W.3d 414 (Tex. App.—Houston [14th Dist.] 2004, no pet.).....	xv, 20
<i>Robinson v. Parker</i> , 353 S.W.3d 753 (Tex. 2011).....	7, 8
<i>Rossano v. Townsend</i> , 9 S.W.3d 357 (Tex. App. —Houston [14th Dist.] 1999, no pet.) .....	11
<i>State v. City Comm’n of San Angelo</i> , 101 S.W.2d 360 (Tex. Civ. App.—Austin 1937, no writ).....	12
<i>Turner v. Robinson</i> , 534 S.W.3d 115 (Tex. App.—Houston [14th Dist.] 2017), pet. denied).....	x, xii, 5, 7
<i>White v. Robinson</i> , 260 S.W.3d 463 (Tex. App.—Houston [14th Dist.] 2008).....	7
<b>Constitution and Statutes</b>	
Tex. Const. art. XI, § 5.....	2
Tex. Elec. Code § 221.002 .....	8

Tex. Elec. Code § 221.005 .....	11
Tex. Elec. Code § 233.006 .....	8, 11
Tex. Gov't Code § 311.011 .....	15
Tex. Loc. Gov't Code § 9.004.....	xi
Tex. Loc. Gov't Code § 9.005.....	xiii, 7
Tex. Loc. Gov't Code § 9.007.....	6
Tex. Loc. Gov't Code § 211.013 .....	20
Tex. Tax Code § 26.01, <i>et seq.</i> .....	6
Utah Code Ann. § 20A-7-211 (Supp. 1994) .....	1

**Other Authorities**

City of Houston, Tex., <i>Charter</i> , art. III, § 1 .....	7
City of Houston, Tex., <i>Charter</i> , art. VI-a, § 7.....	7
City of Houston, Tex., <i>Charter</i> , art. VI-a, § 7(1).....	3
City of Houston, Tex., <i>Charter</i> , art. VI-a, § 7(2).....	3
City of Houston, Tex., <i>Charter</i> , art. IX, § 13.....	ix
City of Houston, Tex., <i>Charter</i> , art. IX, § 14.....	1, 5
City of Houston, Tex., <i>Charter</i> , art. IX, § 20.....	7
City of Houston, Tex., <i>Charter</i> , art. IX, § 22(d) .....	5
City of Houston, Tex., <i>Code of Ordinances</i> § 44-26 .....	2
City of Houston, Tex., <i>Code of Ordinances</i> , Ordinance No. 2004-887 (Aug. 26, 2004) .....	x, 2, 3
City of Houston, Tex., <i>Code of Ordinances</i> , Ordinance No. 2005-568 (May 4, 2005).....	3, 7

City of Houston, Tex., <i>Code of Ordinances</i> , Ordinance No. 2006-893 (Aug. 23, 2006) .....	4
K.K. DuVivier, <i>By Going Wrong All Things Come Right: Using Alternate Initiatives to Improve Citizen Lawmaking</i> , 63 U. Cinn. L. Rev. 1185 (1995) .....	20
Tex. R. App. P. 52.2 .....	xv
Tex. R. App. P. 53.2 .....	xiii
Tex. R. App. P. 53.3 .....	x, xv, 1
Tex. R. App. P. 53.4 .....	xvi



## STATEMENT OF THE CASE

Respondents, Mayor Sylvester Turner and the City of Houston (collectively “Houston”) are dissatisfied with Petitioner Bruce Hotze’s (“Hotze”) purported Statement of the Case because it contains argument and material factual misstatements. *See* Tex. R. App. P. 53.3(b). Houston respectfully requests that this Court utilize the following:

***Nature of the case:*** This lawsuit was filed on April 8, 2014. 1CR6. It is one of a series of lawsuits, spanning 18 years, that have addressed the validity and alleged violation of two competing charter amendments, Propositions 1 and 2, both passed in 2004 and both purporting to cap Houston’s annual revenue.<sup>1</sup>

***Initial Trial Court Proceedings:*** Hotze and two other plaintiffs, one of whom is now deceased and the other who is not a Houston taxpayer,<sup>2</sup> filed this lawsuit against then-Mayor Annise Parker and the City of Houston, alleging that Houston had violated a revenue cap, Proposition 2, that was approved by voters in 2004 but that could never be enforced because it was superseded by Proposition 1, a competing, alternative revenue cap approved by a larger number of voters in the same election. In his Second Amended

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<sup>1</sup> *See* 3RR(DX1 - City of Houston, Tex., *Code of Ordinances*, Ordinance No. 2004-887 (Aug. 26, 2004)) (these and other provisions shall be cited as “Code of Ordinances”); *see also* City of Houston, Tex., *Charter*, art. IX, §13, *Pleading Ordinances* (these and other provisions shall be cited as “Charter”). *See infra* Section VI in the Statement of Facts, pages 6-8, for a detailed discussion of prior related litigation.

<sup>2</sup> Although he pursued claims against Houston for many years, former-plaintiff Carroll Robinson finally admitted at trial that he was not a Houston taxpayer who had standing to assert the claims raised here. The Court dismissed his claims. RR105.

Original Petition and Request for Declaratory Judgment and Injunction Relief (“Second Amended Petition”), 1CR40, Hotze sought, among other things, declaratory and injunctive relief that 1) Houston has passed annual budgets since 2006 (through 2016) that exceeded the permissible revenue caps contained in both Proposition 1 and 2; and 2) compliance with the refund and audit provisions of Proposition 2. 1CR55-56.

Six years ago, former trial judge Tad Halbach of the 333d Judicial District Court denied without explanation Houston’s plea to the jurisdiction and motion for summary judgment on the merits. *See* 2016CR5383 (Order, dated May 2, 2016), attached as Exhibit “A”); 2016CR28 (Defendants’ Plea to the Jurisdiction and, Subject to the Plea, Motion for Summary Judgment with Exhibits, filed March 16, 2015). Houston filed an interlocutory appeal.

***Prior Appellate Court Proceedings:***

On appeal to the Fourteenth Court of Appeals, Justices Donovan, Busby, and Brown, Houston argued that the trial court erred in denying its plea for two reasons: the plaintiffs lacked standing, and Houston’s immunity had not been waived. *See Turner v. Robinson*, Brief of Appellants, 2016 WL 3799880, at \*xii-xiii (Tex. App.—Houston [14th Dist.] July 5, 2016). The Court of Appeals affirmed the trial court’s order in *Turner v. Robinson*, 534 S.W.3d 115, 127 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Although it decided the jurisdictional issues, the Court expressly declined to decide the merits of Hotze’s claims. *Id.*, 130, n.6 (Busby, J. concurring). After the Supreme Court denied

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<sup>3</sup> This order, the plea, and motion for summary judgment that led to it, and some other documents relating to the 2016 motions and appeal were not included in the Clerk’s Record. Houston, however, filed a motion to supplement the record with the 2016 record on appeal which was already numbered. Consequently, such supplemental items are referred to by that record’s year and the page number. In addition, some items specifically referred to here are attached as exhibits.

review, the case was remanded to the trial court. *Id.*, 127.

***Trial Court  
Proceedings:***

After remand, Houston filed a Supplemental, Traditional Motion for Summary Judgment, and Motion for Reconsideration of the Court's May 2, 2016, Order Denying Defendants' Plea to the Jurisdiction and Motion for Summary Judgment ("Supplemental Motion"). 1CR58. Hotze also filed a motion for summary judgment in which he sought a declaration that Propositions 1 and 2 are not inconsistent, or in the alternative, that Proposition 1 and article IX, section 19 of the City Charter are unconstitutional. 2CR917-18. In the further alternative, Hotze asked the trial court to reconcile the requirements of Propositions 1 and 2. 2CR917;960. He also sought a finding that Proposition 1's primacy provision was not included in the text of Proposition 1 submitted to the voters. 2CR960. None of these purported declarations was sought in Hotze's last live petition. Houston specifically pleaded that Propositions 1 and 2 were inconsistent and could not be reconciled; therefore, Proposition 2 was void and unenforceable. 3CR2027-28.

Although Judge Daryl Moore granted Houston's Plea as to Proposition 2's invalidity, he held only that Proposition 1 itself rendered Proposition 2 unenforceable. *See* 3CR2031/Pet.Appx.E (Order Denying Partial Summary Judgment and Granting Plea to Jurisdiction in Part, dated Sept. 16, 2019). The trial court declared, however, that Proposition 1's language did not trigger Houston's Charter provision governing inconsistent charter amendments, art. IX, § 19, and that Propositions 1 and 2 were not substantively inconsistent even though Hotze had never pleaded for such relief. *Id.* The Court denied Houston's motion as to Proposition 1 and required trial on the merits. *Id.*

After a bench trial, the trial court found that Houston had complied with Proposition 1 at all relevant times. It entered Final Judgment for Defendants/ Respondents on October 29, 2019. 3CR2032 (Pet.Appx.D). All parties appealed. 3CR2038;2040.

***Appellate Court  
Proceedings:***

The Court of Appeals, through Justices Hassan and Zimmerer, affirmed the judgment of the trial court; therefore, it did not reach the issues raised in Houston’s cross-appeal which addressed the irreconcilable conflict between Propositions 1 and 2. *Hotze v. Turner*, 634 S.W.3d 508 (Tex. App.—Houston [14th Dist.] 2021, pet. filed) (“Opin.”). Justice Jewell dissented. *Id.* at 518. Hotze filed a Petition for Review.

## STATEMENT REGARDING JURISDICTION

Tellingly, Petitioner Hotze omitted from his Petition for Review any Statement of Jurisdiction and did not discuss jurisdiction in that Petition. *See* Tex. R. App. P. 53.2(e). It is too late to include one in his Reply because Houston will have no opportunity to challenge any grounds for jurisdiction alleged. Hotze’s Petition should, therefore, be denied. Subject to Houston’s objection to Hotze’s adding a jurisdictional statement in future filings, it states as follows:

**1. This Court has no jurisdiction to hear claims that were required to be but were not brought in a timely-filed election contest or limited pre-election proceedings.** Hotze’s claims boil down to Houston’s alleged failures to comply with Tex. Loc. Gov’t Code §§ 9.004 and 9.005. Under Texas law, duties under these provisions are part of the election process and can only be brought in a timely-filed election contest or limited kinds of pre-election lawsuits. *Blum v. Lanier*, 997 S.W.2d 259, 262–63 (Tex.1999); *Dickson v. Strickland*, 114 Tex. 176, 265 S.W. 1012, 1018 (1924) (“[a]n election in this state is not a single event, but a process, and that the entire process is subject to contest”); *see also Grant v. Ammerman*, 437 S.W.2d 547, 548–49 (Tex. 1969) (“canvassing of votes [after the election] is a part of the election procedure and is necessary to the determination of the result”). The same conclusion was reached in prior, related litigation. *See*

*Hotze v. White*, No. 01-08-00016-CV, 2010 WL 1493115, at \*5 (Tex. App.—Houston [1st Dist.] Apr. 15, 2010, pet. denied) (“these claims [§ 9.004] are challenges to the election process itself...”); *In re Robinson*, 175 S.W.3d 824, 827–28 (Tex. App.—Houston [1st Dist.] 2005, no pet.). This lawsuit is not an election contest and no relevant pre-election challenges were filed here. Consequently, this Court has no jurisdiction to grant or hear Hotze’s Petition.

**2. This Court has no jurisdiction because there are no remaining reviewable issues that are important to the State’s jurisprudence.** While a dissent ordinarily suggests that there may be important issues warranting review, the dissenter here apparently did not realize that Hotze had neither pleaded nor argued at any stage of the proceedings the Section 9.005(b) issue on which the dissenter focused. Apparently recognizing that the dissent’s Section 9.005(b) issue had not been previously pleaded or argued in his lawsuit, Hotze appropriately omitted any mention of it in his Petition for Review and does not even include the provision in his Table of Authorities. Even Hotze concedes, therefore, that the dissent’s 9.005(b) issue cannot justify review here.

The only remaining, un-waived, preserved “issue” is the reading of Proposition 2, the contents of which Hotze simply misrepresents as a “spending” cap. Mere duplicity cannot create grounds for review. The provision’s plain

language shows it to be a revenue cap clearly encompassed by Proposition 1's primacy clause. Its "interpretation" is unimportant to the State's jurisprudence.

### **RESTATEMENT OF THE ISSUES PRESENTED**

Houston is dissatisfied with Hotze's purported Issues Presented. *See* Tex. R. App. P. 53.3(c). It contains argument, misstatements, and misrepresentations of law and facts, and does not meet the conciseness requirements of Tex. R. App. P. 53.2(f). The Court should utilize the following:

1. Whether Hotze waived and thus barred any challenge he may once have had to the adoption and efficacy of Proposition 1's primacy clause, including his constitutional challenges under Tex. Loc. Government Code Sections 9.004 and 9.005, because he failed to raise such challenges in a timely-filed election contest?
2. Whether Proposition 2's plain language places it squarely within Proposition 1's primacy clause's ambit, if Hotze has not waived that argument too?
3. Whether the dissent raises an otherwise barred election issue to find purported preemption where Hotze never pleaded or argued that issue, does not include it in his Petition for Review, and where Texas courts have already addressed and resolved such issues in cases like *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980), and *In re Roof*, 130 S.W.3d 414, 418 (Tex. App.—Houston [14th Dist.] 2004, no pet.)?

4. **[UNBRIEFED ISSUE]** Whether Propositions 1 and 2 irreconcilably conflict and thus trigger conflict provisions in Houston's City Charter?<sup>4</sup>
5. **[UNBRIEFED ISSUE]** Whether the relief Hotze still seeks or was awarded is legally available to him or was even sought in his pleadings?
6. **[UNBRIEFED ISSUE]** Whether Hotze is entitled to any fees for work in *different* lawsuits, for which did not satisfy UDJA requirements, when he cannot establish that such fees were reasonable and necessary, and when he did not and cannot prevail on any pleaded issue?

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<sup>4</sup> This issue was not reached by the Court of Appeals and, should this Court take review and rule against Houston on the issues the majority and dissent addressed, Houston asks that it be remanded to the Court of Appeals for resolution by that court. *See* Tex. R. App. P. 53.4.



## STATEMENT OF FACTS

Houston is dissatisfied with Hotze's Statement of Facts. Tex. R. App. P. 53.3(b). It contains improper argument, legal conclusions, inappropriate personal invective, and misstates and/or misrepresents facts. The majority's factual description is also partially incorrect because it misstates that Hotze pleaded for relief that was not included in his Second Amended Petition. *Compare* Opin.511-12 *with* 1CR55-56. Instead, he received relief on summary judgment for which he never pleaded. 3CR2031 (Pet.Appx.E).

Houston asks this Court to utilize the following:

### **I. HOUSTON CITY CHARTER'S AND THE TEXAS CONSTITUTION'S CONFLICT RESOLUTION PROVISIONS**

Like the U.S. Constitution, a dozen state constitutions,<sup>5</sup> and hundreds of municipal charters, Houston's charter contains primacy clauses that resolve conflicts between inconsistent provisions. Article IX, section 19 provides in part that, "at any election for the adoption of amendments if the provisions of two or more proposed amendments approved at said election are inconsistent the amendment receiving the highest number of votes shall prevail."<sup>6</sup> 3RR(DX2).

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<sup>5</sup> Twelve states have constitutional clauses, virtually identical to those in Houston's City Charter, that govern which of alternative initiatives on the same subject prevail if both are approved. *See, e.g.*, Utah Code Ann. § 20A-7-211 (Supp. 1994).

<sup>6</sup> *See* 3RR(DX2). This Court is required to take judicial notice of the contents of Houston's City Charter. *Charter*, art. IX, §14.

Article IX, section 18 also provides in part “that all laws and parts of laws in conflict herewith be and the same are hereby repealed...”

The Texas Constitution, article XI, section 5, also contains a primacy clause in its home-rule provision: “no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” *Id.*

## **II. PROPOSITIONS 1 AND 2 IN THE 2004 ELECTION**

In 2004, Houston voters chose between two competing charter propositions. Proposition 1 required that voters approve by majority vote annual increases in City property tax<sup>7</sup> levy above indexed amounts, but otherwise retained City Council’s authority to assess and collect revenue.<sup>8</sup> Proposition 2’s alternative limits Council’s authority to assess and collect any City revenue above limits calculated by a different formula, requires a super-majority vote to exceed that limit, and imposes refund requirements Proposition 1 does not. 3RR(DX1, 4-6).

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<sup>7</sup> In 2004, Houston already had a cap on *ad valorem* tax revenue and rates. *See Code of Ordinances* § 44-26.

<sup>8</sup> Ordinance No. 2004-887, 3RR(DX1, 2-4), attached, contains the full text of both proposed charter amendments that are now codified as article III, section 1 (Prop 1), and article VI-a, section 7 (Prop 2).

By its plain language, Proposition 2 does not impose direct limits on City *spending*.<sup>9</sup> Instead, Section 7(2) includes detailed refund and audit requirements, tied directly to section 7(1)'s limitations on City *revenues*.

Both Propositions 1 and 2 were placed on the November 2004 ballot by Ordinance No. 2004-887 (“Election Ordinance”). 3RR(DX1).

In both the Election Ordinance and Ordinance No. 2005-568 (“Adoption Ordinance”),<sup>10</sup> passed *after* the election and in which Council adopted the election results, Council stated that its intention in passing the Election Ordinance was to offer two alternative, “single unified plans” to limit the City revenues that most impacted the public. 3RR(DX1, 1;DX4, 1). “The purpose of placing both Proposition 1 and Proposition 2 on the ballot for the Election was to provide the voters of the City with the opportunity to consider alternative

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<sup>9</sup> 3RR(DX1, 5 (art. VI-a, §7(1)); PetRev.16 (quoting ballot language reflecting that voter approval is required before Houston “may increase total revenues...”)) Proposition 2 refers to City *budgets* only in a section entitled “Certification of City Compliance,” which requires that, before Houston’s annual budgets are approved, its Controller must certify that the budget complies with Section 1’s limitations. *Id.*, §7(2).

<sup>10</sup> 3RR(DX4). Hotze argues that this Court should rely on Ordinance No. 2004-1168, which recites only the ultimate *charter language*, but not the full text of each *proposition*, for the notion that Proposition 1’s primacy clause was not part of Proposition 1. *See* 3RR(PXIB). As demonstrated below, Hotze challenged actions reflected in Ordinance 2004-1168, seeking and receiving mandamus requiring that Houston pass a replacement ordinance, No. 2005-568, that placed Proposition 2 in its Charter, although the Court expressed no view as to Proposition 2’s validity. *See In re Robinson*, 175 S.W.3d 824, 826-27 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding). Having prevailed on these issues, Hotze is judicially estopped from arguing that Ordinance 2004-568 is dispositive here. *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009).

unified plans for limiting increases in the sources of City revenue...” 3RR(DX1,2). The Election Ordinance and November 2004 ballot thus presented to voters the “single unified plan” proposed by Council (Proposition 1) and the alternative “single unified plan” advocated by Hotze and others (Proposition 2). 3RR(DX4,1). As the majority found, the alternative nature of the propositions was widely echoed in Houston newspapers and media prior to the election. Opin.514.

Proposition 1 passed with 64%, or 280,596 votes. 3RR(DX4,1). Proposition 2 also passed with 56%, or 242,697 votes. *Id.* Proposition 1, however, contained a primacy clause: “if another proposition for a charter amendment *relating to limitations of City revenues* is approved at the same election at which this proposition is also approved, and if this proposition receives the higher number of favorable votes, then *this proposition shall prevail* and the other shall not become effective.” See 3RR(DX1,4) (emphasis supplied).

### **III. PROPOSITIONS G AND H IN THE 2006 ELECTION**

In 2006, Houstonians again approved charter amendments governing Houston’s ability to collect revenue.<sup>11</sup> Proposition G removed enterprise funds

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<sup>11</sup> See 3RR(DX3 - *Code of Ordinances*, Ordinance No. 2006-893 (Aug. 23, 2006)); see also *Hotze v. White*, No. 01-08-00016-CV, 2010 WL 1493115, \*3 (Tex. App.—Houston [1st Dist.] Apr. 15, 2010, pet. denied) (which lists the vote totals).

from any caps. *See* 3RR(DX3) (*quoted in Turner v. Robinson*, 534 S.W.3d at 121). Proposition H allowed Houston to raise revenues for police, fire, and emergency medical services above any charter limitations.

Consequently, under article IX, sections 18 and 19, even if Proposition 2 had been enforceable from 2004, any provisions purporting to limit the items encompassed by the new amendments would have been repealed or rendered unenforceable.

#### **IV. PROPOSITION A IN THE 2018 ELECTION**

Among other things, 2018's Proposition A charter amendment, 3RR(DX5), passed overwhelmingly,<sup>12</sup> removed drainage fee revenues from any revenue cap that included them. *Charter*, art. IX, §§14, 22(d). Proposition 1 does not. Consequently, under article IX, sections 18 and 19, Proposition A repealed any provisions in Proposition 2 purporting to limit collection and assessment of drainage fees. Hotze did not contest that election. Moreover, at trial, Hotze non-suited his claims challenging the drainage fee's inclusion in the revenue caps. RR105.

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<sup>12</sup> *See* Harris County, Tex., 2018 Election Results, available at <https://www.harrisvotes.com/HISTORY/20181106/cumulative/cumulative.pdf>.

## **V. TEXAS' 2019 REVENUE CAP**

In 2019, Texas enacted a statewide property tax rate cap for such revenue devoted to maintenance and operations, but not debt service. *See* Tex. Tax Code § 26.01, *et seq.* Proposition 1's cap is, therefore, *more* restrictive in application. Although obviously not asserted below, Proposition 2's cap is surely preempted by the state cap because it would allow Houston property tax rates to exceed the state cap [and Proposition 1's] if other city revenues were correspondingly restricted and its super-majority election requirements conflicts with Texas' [and Houston's] simple majority requirements.

## **VI. PRIOR LITIGATION REGARDING PROPOSITIONS 1 AND 2**

Multiple incarnations of Hotze's claims have been pending for 18 years. They are noteworthy because they bar his claims here.

In 2005, Hotze and others sought mandamus, *based on alleged standing under the Election Code*, complaining that Houston failed to perform ministerial duties regarding the 2004 election process and Proposition 2. *In re Robinson*, 175 S.W.3d at 826-27. Finding that *the adoption of ordinances after elections was part of the election process*, the Court held that the then-Mayor had a non-discretionary duty to certify all amendments, including Proposition 2, *id.* at 829-30 (citing Tex. Loc. Gov't Code § 9.007(a)), and that City Council had a non-discretionary duty to enter an order in City records declaring that voters had adopted all

propositions. *Id.*, 830-32 (citing § 9.005). Council passed Ordinance No. 2005-568, 3RR(DX4), to comply. *Robinson v. Parker*, 353 S.W.3d at 754 (citing *Charter*, arts. III, §1; VI-a, §7; IX, §20). The Court cautioned, however, that “*we express no opinion as to whether propositions 1 and 2 are inconsistent or whether the language of the proposition 1 and the City Charter requires that proposition 2 be declared invalid.*” 175 S.W.3d at 832 (emphasis supplied).

In *White v. Robinson*, 260 S.W.3d 463 (Tex. App.—Houston [14th Dist.] 2008), *vacated sub nom. Robinson v. Parker*, 353 S.W.3d 753 (Tex. 2011) (as unripe), Hotze and others sued Houston and its former mayor, seeking a declaration that Propositions 1 and 2 must both be added to the City Charter. *See Turner v. Robinson*, 534 S.W.3d at 120 (which contains a detailed procedural history of the case). After the parties filed cross-motions for summary judgment, Hotze’s was granted. *Id.* *The trial court, however, again expressed no opinion on Proposition 2’s validity and enforceability. Id.*

Instead, the Court held that Hotze lacked standing. *White*, 260 S.W.3d.at 473. In denying Hotze the ability to utilize the standing provision added in Proposition 2 (which it found invalid), the Court explained: “[s]ection 9.005(b) does not mandate that the amendment is necessarily *valid* upon entry of the

order.” *See id.* Indeed, when compelling Houston to enter the prescribed order, the Court acknowledged that *issues remained regarding validity of Prop. 2.*<sup>13</sup>

In July 2008, Hotze again petitioned for mandamus to compel Houston to verify that its budget complied with Proposition 2. *In re Hotze*, No. 14-08-00421-CV, 2008 WL 4380228 (Tex. App.—Houston [14th Dist.] July 10, 2008, no pet.) (mem. opin.). The Court dismissed Hotze’s claim for lack of standing to assert such claims under Texas Election Code § 273.061’s jurisdictional grant.

In November 2006, Hotze filed another declaratory judgment action against Houston seeking a declaration that Proposition G was “illegal and invalid as a matter of law.” *See Hotze v. White*, 2010 WL 1493115, at \*2-3; Tex. Elec. Code §§221.002, 233.006(a)-(b). The Court granted Houston’s amended plea and dismissed Hotze’s claims. *Id.* The First Court of Appeals held that the trial court lacked jurisdiction to hear any claims challenging the validity of Propositions G and H and that Hotze lacked standing to maintain his suit. *Id.*, \*5-7. That Court, however, remanded to allow Hotze to replead. *Id.*, \*8. Rather than replead, in 2014, Hotze and two former plaintiffs filed this lawsuit.

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<sup>13</sup> *Id.* at 475 (citing *In re Robinson*, 175 S.W.3d at 830–32). Instead of repleading, Hotze petitioned this Court for review. This Court vacated the court of appeals’ judgment and dismissed the case because it found that his claims were not ripe. *See Robinson v. Parker*, 353 S.W.3d at 756.



## SUMMARY OF ARGUMENT

In 2004, Houston voters were presented with two competing charter amendments “[t]o provide the voters of the City with the opportunity to consider *alternative [single] unified plans* for limiting increases in the sources of City revenue...” 3RR(DX1,2) (emphasis supplied). There is no evidence here that any reasonable voter believed that both alternatives would be enforced together, even if that were possible [it isn’t]. Instead, under long-standing Texas election law, Houston voters are presumed to have understood and relied upon Proposition 1’s primacy clause that stated that, if both proposals passed, only the one receiving the larger number of votes would “prevail” and be enforced.

Petitioner Hotze has never accepted the people’s choice and, for 18 years, has sought to enforce concurrently both Propositions 1 and Proposition 2. This Court should end his doomed quest and the continuing financial uncertainty it has created and deny review.

First, Hotze’s attacks on Proposition 1’s primacy clause and its adoption were waived because he failed to raise them in a timely-filed election contest. In fact, Hotze successfully obtained *Election Code* jurisdiction over similar challenges in related litigation and is, therefore, judicially estopped from arguing that he could raise such issues here.

Second, notwithstanding Hotze's misrepresentation of its provisions, Proposition 2's plain language demonstrates that it falls squarely within the primacy clause's ambit. Such an unremarkable reading provides no issue for review.

Finally, the dissent offers Hotze no assistance in seeking review. First, its discussion of Texas Local Government Code § 9.004 is misplaced because Hotze never pleaded it below and improperly raised a new argument on appeal that the primacy clause conflicts with that provision. Worse, Hotze already tried to litigate identical Section 9.004 issues in related election litigation *but lost* because such claims are *barred outside election contests*. They are likewise barred here.

The dissent's arguments concerning Section 9.005(b) are also misdirected because, from his pleadings to his petition here, Hotze never pleaded or argued that the primacy clause violated Section 9.005(b), which addresses when charter provisions take effect, the dissent's core argument. *The provision is not even listed in Hotze's Table of Authorities here.* Worse, Hotze successfully argued in related litigation that Section 9.005's requirements were part of the election process; therefore, they must be challenged in election contests and are barred here.

Because Hotze's claims are waived, barred, demonstrably baseless, or were never preserved, review should be denied.

## ARGUMENT

### I. REVIEW IS UNWARRANTED FOR UNSUPPORTED ARGUMENTS HOTZE WAIVED BY FAILING TO RAISE THEM IN AN ELECTION CONTEST

Hotze collaterally attacks the validity of Proposition 1's primacy clause, claiming that Houston somehow failed properly to adopt it. *See* Pet.Rev.23-25; 1CR50-51. Hotze's baseless attacks have been waived.

Challenges to election *processes* by which charter amendments are adopted may be raised only in timely-filed election contests. *Hotze v. White*, 2010 WL 1493115, \*4 (quoting *Rossano v. Townsend*, 9 S.W.3d 357, 362 (Tex. App. — Houston [14th Dist.] 1999, no pet.)); *see Dickson*, 265 S.W. at 1018 (“[a]n election in this state is not a single event, but a process [that may extend beyond election day], and that the entire process is subject to contest”). When no timely election contest is filed, *it is conclusively presumed that the election as held and the result as declared are valid and binding. See Arredondo v. City of Dallas*, 79 S.W.3d 657 (Tex. App.—Dallas 2002, pet. denied); Tex. Elec. Code §§221.005, 233.006. Hotze thus waived all of his collateral attacks upon the election process by which Proposition 1's primacy provision was adopted—alleged failures to publish items or surround them with quotation marks—by failing to file a timely election contest. *See* Pet.Rev.24-25. As one court explained, a plaintiff may not

raise the question in this [civil] proceeding of the failure to publish notices and send copies thereof to the voters prior to the election. Such matters constitute mere irregularities, which could have been

determined by a contest of the election, *and cannot be raised in collateral proceedings.*

*State v. City Comm'n of San Angelo*, 101 S.W.2d 360, 362 (Tex. Civ. App.—Austin 1937, no writ) (emphasis supplied). Houston, therefore, objects to any consideration of Hotze's primacy clause challenges here and includes the following arguments only *subject to that objection.*

Review of Proposition 1's primacy clause is unwarranted for the following reasons:

First, as the majority noted, Houston's not ultimately including implementing language in the charter itself does not render such language inoperative. *See* Opin.513-14. Virtually every law, *including Proposition 2*, includes implementing language, *outside quotation marks*, indicating where new provisions are to be placed in codes, and what needs to be removed *and is thus rendered ineffective.* None of these implementing instructions ever ends up in the codes themselves. Moreover, as the Court below noted, Opin.513, there is no Texas authority holding that placing language of implementation, like Proposition 1's primacy clause, *outside quotation marks*, but in all relevant election records, somehow renders such language inoperative. Hotze *still* fails to provide any here. *Id.*

Second, although he tries to confuse the issue, Hotze concedes that the primacy clause was included in the official language of the Election Ordinance,

setting Proposition 1 for election. 3RR(DX1, 2-4,16). Hotze likewise concedes that the primacy clause was included in the text of Proposition 1 in the City's election records and the Adoption Ordinance, declaring the election results. 3RR(DX4); *see supra* note 10. Under Texas election law, Proposition 1's primacy clause was thus an integral part of the "proposed amendment," because it was included in *both* the Election and Adoption Ordinances that presented the proposition to voters and adopted it as part of the charter. 3RR(DX1,4; DX4,2,5).

Moreover, because the primacy provision was included in the Election Ordinance, 3RR(DX1), and filed in Houston's official election records, 3RR(DX4), under well-settled Texas election law, *Houston voters are presumed to have been aware of the primacy provision and thus the fact that only one of the two alternative charter amendments would ever be implemented. Brown v. Blum*, 9 S.W.3d 840, 847-48 (Tex. App.—Houston [14th Dist.] 1999, pet. dismiss'd w.o.j.), *disapproved of on other grounds by Dacus v. Parker*, 466 S.W.3d 820 (Tex. 2015); *see also Dacus*, 466 S.W.3d at 825. And this is true even if the language was not included elsewhere. Opin.513-14; 3CR2031 (Sept. 16, 2019 order; Pet.Appx.E). Houstonians are further presumed *to have relied on the primacy provision when voting in the November 2004 election. See Black v. Strength*, 112 Tex. 188, 193, 246 S.W. 79, 80-81 (1922) (such directives become a part of the proposition voted

and control more general language found in orders or ordinances calling the election). Hotze has never produced contrary authority or challenged these presumptions.

Third, Houston's former counsel *did not* admit that the primacy clause was not part of Proposition 1 as Hotze has continually misrepresented, citing "evidence" to which Houston objected. Pet.Rev.20, n.8; 1CR646-47. Instead, Atlas merely made the self-evident and immaterial point that such implementing language was not included in the text that was ultimately included in the Charter.

Finally, the primacy provision addresses only *the effect of a voter's vote* and how the charter amendments are to be implemented. Hotze never disputes that Texas appellate courts reaffirmed that language of *implementation*, such as the primacy clause here, is *not* considered a chief feature of charter amendments that must be summarized on a ballot.<sup>14</sup> Consequently, Houston had no obligation to include such language on the November 2004 *ballot* and such omission does nothing to undermine the primacy clause's validity. *See Dacus*, 466 S.W.3d at

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<sup>14</sup> *See Dacus v. Parker*, 383 S.W.3d 557, 568 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (quoting *Hotze v. White*, 2010 WL 1493115, at \*5). This reaffirmation of Texas law was not addressed or overturned by this Court in *Dacus*.

823; *Bertrand v. Holland*, No. 01-16-00946-CV, 2018 WL 1720742, \*2 (Tex. App.—Houston [1st Dist.] Apr. 10, 2018, pet. denied).

Review of this waived and unsupported argument is not important to the State’s jurisprudence and should, therefore, be denied.

## **II. REVIEW IS UNWARRANTED BECAUSE HOTZE ALSO WAIVED HIS BASELESS ARGUMENT THAT PROPOSITION 2’S PLAIN LANGUAGE SOMEHOW DOES NOT FALL WITHIN THE PRIMACY CLAUSE’S AMBIT**

In the trial court, Hotze did not dispute that Proposition 2 falls squarely within Proposition 1’s primacy clause that expressly encompasses “charter amendment[s] relating to limitations of City revenues.” 1CR435; Tex. Gov’t Code §311.011(a). Consequently, he has also waived that argument here and Houston objects to its consideration here.

Subject to Houston’s objection, to determine whether one statute falls within the ambit of another, this Court must look first to their statutory language. *See, e.g., Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 58 (Tex.2015) (citing *City of Lorena v. BMTP Holdings, L.P.*, 409 S.W.3d 634, 641 (Tex.2013)).

Proposition 2 is not a spending cap, as Hotze misrepresents here.<sup>15</sup> Instead, it is subtitled “Relating to Limits on All Combined City Revenues.”

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<sup>15</sup> *See, e.g.,* Pet.Rev.21 (“[P]roposition 2 does not limit any increases in City revenues whatsoever”). This Court should also take judicial notice that, at oral argument in *Perez v. Turner*, No. 20-0382, on March 22, Hotze’s counsel, Andy Taylor, assured this Court that

3RR(DX1,4). Its article VI-a, section 7 is similarly entitled “Limits on All City Revenues” and Section 7(1) is entitled “Limitation on Growth in Revenues.” *Id.*, 5 (emphasis supplied). The operative language of Proposition 2 also expressly limits the amount of combined revenue Houston can collect annually without voter approval. *Id.*, 5, § 7(1). Even Proposition 2’s ballot language described it as a revenue cap. *See supra* note 9. Thus, the plain language of each respective proposition is dispositive of the question of whether Proposition 2 falls under Proposition 1’s primacy language. It clearly does.

This straight-forward reading of a local charter provision has no importance to the State’s jurisprudence. Review is unwarranted.

### **III. REVIEW IS ALSO UNWARRANTED BECAUSE THE DISSENT RAISES A BARRED ELECTION ISSUE TO FIND PURPORTED PREEMPTION WHERE HOTZE NEVER RAISED OR PLEADED IT**

Review is unwarranted because the issue raised by the dissent has been waived, is legally-barred, and lacks merit. The reasons are summarized as follows:

**A. Hotze improperly attempts to raise a new argument on appeal he never pleaded below in arguing that the primacy clause conflicts with Texas**

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Proposition 2 was a *revenue cap* since a *spending cap* would not qualify for the refunds sought in *Perez*. Taylor and Hotze cannot have it both ways.



**Local Government Code § 9.004.** Compare Pet.Rev.27-28 with 1CR40. Houston also objected to Hotze’s raising this new argument in the court of appeals. Response Brief of Appellees, 24.

**B. Hotze already tried to litigate his Section 9.004 issues in related civil litigation but lost because such claims are barred outside election contests.** In *Hotze v. White*, 2010 WL 1493115, at \*4, the Court held that Hotze’s challenges under Section 9.004 were challenges to the election process and, therefore, could only be raised in an election contest. See *Blum v. Lanier*, 997 S.W.2d 259, 262-63 (Tex.1999). His claims are similarly barred here.<sup>16</sup>

**C. From his pleadings to his petition here, Hotze has never alleged that Proposition 1’s primacy clause violated Texas Local Government Code § 9.005(b), which addresses when charter provisions take effect but not whether they are valid or enforceable.** Hotze’s only pleaded conflict is with Section 9.005(a), which addresses whether proposed charter amendments have been adopted. 1CR50-51. The dissent acknowledges the difference between Sections 9.005(a) and (b) and that 9.005(a) does not address effectiveness. Diss.Opin.525, n.12. Nevertheless, it states: “I would therefore hold that the poison pill provision violates section 9.005(a) because it purports to deny effectiveness

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<sup>16</sup> Although collateral estoppel would also bar Hotze’s claim, Houston had no opportunity to assert that defense because Hotze never pleaded any Section 9.004 claims. See 1CR40.

to a charter amendment...” *Id.*, 526 (emphasis supplied). This Court cannot review a claim improperly added by a dissenter that Hotze never pleaded, included in his summary judgment motion, raised or argued in the court of appeals, *and does not include in his petition for review.*

**D. Hotze successfully argued in related litigation that issues concerning Sections 9.005(a) and (b) were part of the election process; therefore, he cannot collaterally attack them here.** In *In re Robinson*, 175 S.W.3d at 828, Hotze successfully sought mandamus requiring Houston to place Proposition 2 in its charter, under Local Government Code § 9.005, *based on jurisdiction under Texas Election Code §273.061*, which covers only matters involving the election process. *In re Robinson*, 175 S.W.3d at 827, 830-31. Hotze is, therefore, judicially estopped from arguing that he may collaterally attack this aspect of the election process in this civil lawsuit. *Ferguson*, 295 S.W.3d at 643. Indeed, Hotze has never denied Houston’s argument that this Court in *Dacus* and the Houston court of appeals in *Bertrand* reaffirmed that he has challenged Proposition 1’s primacy clause’s enactment *in the wrong proceeding* and could do so only in an election contest. *See* 1CR449.

**E. Hotze successfully argued in related litigation that Houston could comply with both Sections 9.005(a) and (b), whether Proposition 1’s primacy clause is enforceable or not; therefore, he is estopped from arguing that**

**Section 9.005 and the primacy clause irreconcilably conflict here.** In *In re Robinson*, the Court held, among other things, that City Council had a ministerial duty to enter an order in City records declaring that Propositions 1 and 2 had been adopted by voters, as required by Section 9.005(a) & (b). *Id.* at 830-32. The Court was not asked to decide whether Proposition 1's primacy clause was valid. Having successfully argued in that case that Houston must comply with Section 9.005 whether Proposition 1's primacy clause is valid or not, however, Hotze is *now judicially estopped from arguing that Houston cannot comply with one in the face of the other.* *Ferguson*, 295 S.W.3d at 643.

Neither the Court in *White* nor *In re Robinson* Court purported to decide Proposition 2's validity or enforceability because, whether either Sections 9.005(a) or (b) render an approved charter amendment *effective*, neither ensures its validity or *enforceability*. Were that not the case, no citizen-initiated charter amendment could ever be held preempted or unconstitutional, and Houston would have to enforce even diametrically conflicting charter provisions despite article IX, sections 18 and 19's conflict resolution provisions.

The ability to enact primacy provisions to resolve conflicts is particularly essential because cities have no ability to challenge citizen-driven charter amendments prior to their passage. So long as they garner the required signatures, proposed measures can reinstitute slavery or deprive women of the

vote within city borders. Consequently, whether charter provisions have been rendered effective and whether they are enforceable are two different things. *See Coalson*, 610 S.W.2d at 747; *In re Roof*, 130 S.W.3d at 418 (“such questions concerning the validity of proposed charter amendments *are properly litigated later*”) (emphasis supplied).

The courts in *In re Robinson* and *White* recognized that. The dissent and Hotze do not. Instead, both would essentially outlaw primacy provisions in Texas elections even though its state law is rife with them, other states use them routinely for initiatives, and they provide voters with more choice. *See, e.g.*, Tex. Loc. Gov’t Code § 211.013(a); K.K. DuVivier, *By Going Wrong All Things Come Right: Using Alternate Initiatives to Improve Citizen Lawmaking*, 63 U. Cinn. L. Rev. 1185 (1995).

**F. Even the dissent concedes that there is no actual conflict between Proposition 1’s primacy clause and Texas Local Government Code § 9.005(a).** 1CR448-49. Subsection 9.005(a) addresses how a charter amendment is approved. As the whole panel below agreed, that provision does *not* address when or if a provision actually *becomes effective, let alone enforceable*. Opin.517-18; Diss.Opin.525, n.12. Consequently, there can be no conflict with the primacy clause here.

**PRAYER FOR RELIEF**

Houston respectfully requests that this Court deny Hotze's Petition and grant to Houston such other relief as to which this Court finds it entitled.

Respectfully submitted,

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Chief, General Litigation Section

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and the City of Houston*

## CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared in Microsoft Word 2016 Version 14.0 in Calisto MT 14 point font; the word-count function shows that, excluding those sections exempted under TRAP 9.4(i)(1), the response contains 4,456 words.

/s/ Collyn A. Peddie  
Collyn A. Peddie

## CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2022, a true and correct copy of the foregoing has been served on counsel below via e-service.

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Exh. A

CAUSE NO. 2014-19507

CARROLL G. ROBINSON,  
BRUCE R. HOTZE  
AND JEFFREY N. DAILY  
Plaintiffs

VS.

ANNISE D. PARKER, MAYOR  
AND CITY OF HOUSTON,  
Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

333RD JUDICIAL DISTRICT

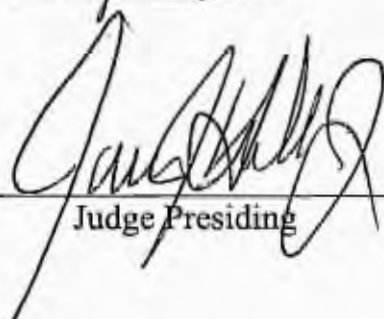
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**ORDER**

The Court has considered Defendants' Plea to the Jurisdiction and Motion for Summary Judgment and Plaintiffs' Response and all other things properly before it, and is of the opinion that the Motion should be DENIED.

Accordingly, it is ORDERED that Defendants' Plea to the Jurisdiction and Motion for Summary Judgment is DENIED.

SIGNED this 2<sup>ND</sup> day of May, ~~2015~~ 2016

  
\_\_\_\_\_  
Judge Presiding

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
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Defs' Exh. 1

City of Houston Ordinance No. 2004- 887

**AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON NOVEMBER 2, 2004, JOINTLY WITH OTHER GOVERNMENTAL ENTITIES, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF HOUSTON, TEXAS, VARIOUS PROPOSITIONS FOR THE AMENDMENT OF THE CITY CHARTER RELATING TO LIMITS ON ANNUAL INCREASES IN CITY PROPERTY TAXES AND UTILITY RATES, LIMITS ON ALL COMBINED CITY REVENUES AND THE CONDUCT OF PERFORMANCE AUDITS OF CITY DEPARTMENTS BY THE CITY CONTROLLER; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR A REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, in 2001, the City of Houston, Texas ("the City"), received a citizen petition (the "Petition") proposing an amendment of the City Charter pertaining to limits on all future City revenues; and

**WHEREAS**, by Resolution No. 2003-25, passed on September 10, 2003, the City Council validated the Petition; and

**WHEREAS**, the City Council is authorized by Section 9.004(a), Texas Local Government Code, to submit proposed amendments to the City Charter to the qualified voters of the City on its own motion; and

**WHEREAS**, based on its review of City financial reports, the City Council recognizes that various sources and uses of City revenues are interrelated and acknowledges that in many past years City property tax revenues have increased at a rate greater than the combined rates of increases in inflation and population growth in the City; and

**WHEREAS**, the City Council determines that it is in the best interest of the residents of the City, and necessary to achieve effective financial relief for such residents, to propose a single unified plan that limits annual increases in the sources of City revenue that have the primary impact upon residents, property taxes, including requiring annual increases in senior and disabled property tax exemptions, and water and sewer rates; and



EXHIBIT 1

**WHEREAS**, the City Council wishes to provide authority for the City Controller to conduct internal audits of City departments, offices, agencies and programs to provide greater efficiencies in City government; and

**WHEREAS**, the Texas Election Code authorizes political subdivisions to call and hold elections only on certain dates in the year and November 2, 2004, is the next date that an election to submit proposed amendments to the City Charter may be held; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That a special election (the "Election") shall be held on the second day of November, 2004, between the hours of seven o'clock a.m. and seven o'clock p.m. at which Election the following propositions for proposed amendments to the Charter of the City of Houston shall be submitted to the qualified voters of the City:

**CHARTER AMENDMENT - PROPOSITION NO. 1**

**[Relating to Limits on Annual Increases in City Property Taxes and Utility Rates]**

The City Charter of the City of Houston shall be amended by amending the first paragraph of Section 1 of Article III and adding a new Section 20 to Article IX to read, respectively, as follows:

**Article III**

**"Section 1. Taxation.**

In each tax year beginning in tax year 2005:

- (a) The City Council shall not, without voter approval, levy ad valorem taxes at combined rates expected to result in total ad valorem tax revenues for the then current fiscal year that exceed the lower of (i) the allowable ad valorem tax revenues increased by the rate of inflation (based on the change in the Designated Index for the

preceding calendar year) plus the rate of growth in the city's population (based on the published estimates of the U. S. Census Bureau for the most recently available twelve month period), but not less than zero (the "indexed ad valorem tax revenues"), or (ii) the amount of total ad valorem taxes, both current and delinquent, actually collected during the prior fiscal year, increased by 4.5% of that amount and, as to the calculations in (a)(i) and (a)(ii) hereinabove, excluding ad valorem tax revenues required by state law to be deposited in a tax increment fund and adding those attributable to each annexation occurring after July 1, 2005, for the first year after such annexation. The allowable ad valorem tax revenues for fiscal year 2006 shall be the actual total ad valorem tax revenues, both current and delinquent, collected during the fiscal year ending June 30, 2005. In each subsequent fiscal year, the allowable ad valorem tax revenues shall be the prior fiscal year's indexed ad valorem tax revenues. In any fiscal year for which the voters have approved an increase in total ad valorem tax revenues above the limit set forth in this subsection, the total ad valorem tax revenues authorized by the voters for such fiscal year or a future fiscal year shall become the amount to be adjusted in (a)(i) and (a)(ii) hereinabove for the fiscal year succeeding the authorized increase; and

- (b) The City Council shall provide for a minimum annual increase through the 2008 tax year of 10% in the amount of the exemption from all ad valorem taxes levied by the city on the appraised value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors and Disability Insurance, or its successor, or of married or unmarried persons 65 years of age or older, including those living alone. The amount of such exemption in the 2008 tax year shall be maintained thereafter unless increased by the City Council.

The inflation rate calculation in subsection (a) of this section shall be based on the change in the Designated Index for the preceding calendar year which shall mean the United States Consumer Price Index for All Urban Consumers (also known as the CPI-U) for the Houston-Galveston-Brazoria, Texas Metropolitan Area (1982-1984=100), as published by the Bureau of Labor Statistics, U.S. Department of Labor. If such index is subject to adjustment later, then the later adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, shall be used, or if such publication is

discontinued, the Designated Index shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published, on the most frequent basis available, by an agency of the United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected by the City.

The limitation on annual increases in ad valorem tax revenues provided in subsection (a) of this section shall not apply to additional revenues necessitated by city expenditures related to the inclusion of the city in any declaration of an emergency or disaster by federal or state authorities, provided that such additional revenues shall not be included in computing the allowable ad valorem tax revenues in any succeeding fiscal year.

City Council may adopt procedures as necessary to implement this section.

The City Council shall have full authority to assess and collect any and all revenues of the city without limitation, except as to ad valorem taxes and water and sewer rates."

#### Article IX

##### **"Section 20. Limits on Water and Sewer Rates.**

Beginning July 1, 2005, the average annual rates for water and sewer services over the period beginning January 1, 2005, shall not be increased, without voter approval, in any fiscal year by an amount greater than the combined rates of inflation and population growth in the city, identified as provided in Article III, Section 1(a)(i) of this Charter, excluding rate increases required by bond covenants and rates established by contract. Notwithstanding the above, each year the city council may review and adjust the rate design for the combined utility system such that the overall average of all rates does not exceed the limit set out above."

If another proposition for a Charter amendment relating to limitations on increases in City revenues is approved at the same election at which this proposition is also approved, and if this proposition receives the higher number of favorable votes, then this proposition shall prevail and the other shall not become effective.

#### CHARTER AMENDMENT - PROPOSITION NO. 2

##### **[Relating to Limits on All Combined City Revenues]**

The City Charter of the City of Houston shall be amended by adding a new Section 7 to Article VI-a to read as follows:



**"Section 7. Limits on All City Revenues.**

**SUBSECTION ONE-LIMITATION ON GROWTH IN REVENUES.** City Council shall not, without the prior approval of 60% of those voting at a regular election, increase the City's "Combined Revenues" (see SUBSECTION SIX for definition) for any fiscal year in an amount greater than the City's Combined Revenues for the immediately preceding fiscal year, increased/decreased for: (a) the rate of change in the federal Consumer Price Index ("CPI") in the immediately preceding full calendar year for the Houston Primary Metropolitan Statistical Area ("PMSA"); and (b) the rate of change in the City's "Population" (see SUBSECTION SIX for the source of population data) in the last twelve months for which such data is available from the specified source. If the actual Combined Revenues in anyone year result in an amount less than the amount allowed under this SUBSECTION ONE, then such reduced amount shall become that year's Combined Revenues base amount for the following year's computation.

If the City is included in any National Disaster Area by federal declaration, the City may immediately increase its Combined Revenues. Such emergency revenue increases must be limited to the amount of emergency expenditures specifically identified and justified in the City's accounting records. Such emergency revenues will not be included in computing the following year allowable Combined Revenues.

**SUBSECTION TWO-CERTIFICATION OF CITY COMPLIANCE.** Before each year's City budget can be officially authorized by City Council, the City Controller must furnish written verification that the budget complies with the requirements of SUBSECTION ONE of this Charter amendment. Further, within four months after the end of each fiscal year, the City's independent accountants (firm that performs the City's regular financial audit) shall furnish a written verification that the City complied during such complete fiscal year with SUBSECTION ONE of this Charter amendment, or specify the amount of noncompliance. If the City exceeds the Combined Revenues allowable under SUBSECTION ONE, then, within 30 days after receiving notification from the City's independent accountants, the City shall transfer such excess amount to an interest-bearing Taxpayers Relief Fund. Monies in the Taxpayers Relief Fund cannot be used for City expenditures. Any time the Taxpayers Relief Fund balance reaches ten million dollars (\$10,000,000) the entire balance shall be refunded to Houston citizens and business owners within 90 days in the manner deemed by City Council to be the most equitable and practicable. Within 30 days after the last refund check has been mailed, the City Controller shall furnish written assurance to City Council that all refunds have been mailed, in what total amount, in what manner the refunds were calculated and the total costs of calculating, preparing and mailing the refund checks. The total costs of calculating, preparing, and mailing such refund checks must be

paid for out of the City's Combined Revenues for the year in which the checks are mailed, not out of the Taxpayers Relief Fund.

**SUBSECTION THREE-VOTER COVENANTS WITH BONDHOLDERS.** The City shall always honor its covenants with bondholders on long-term debt. However, SUBSECTION ONE of this Charter Amendment is inviolate. Therefore, shortfalls in debt coverage on long-term debt shall be made up from reductions in other expenditures.

**SUBSECTION FOUR-REQUIRED ELECTION NOTICES.** Before any election required for voter approval under SUBSECTION ONE or for voter approval required for issuance of long-term debt, City Council shall: (a) have published in the major Houston newspaper, at least six weeks prior to the election date, analyses of related anticipated debt service, revenues, expenditures, cash flows, and debt service coverage for each year until final maturity; and (b) hold at least three public hearings thereon at least ten days before the election, each at least a week apart from the other hearing. Two of such required public hearings will be held in the evening and one during the day.

**SUBSECTION FIVE-EFFECTIVE DATE OF THIS AMENDMENT.** This Charter Amendment shall become effective with the City of Houston's first fiscal year beginning after the date this Amendment is approved by the voters. The allowable Combined Revenues for the City for this initially effective fiscal year will be determined by using the actual Combined Revenues derived from the City's audited Comprehensive Annual Financial Report for the fiscal year ended June 30, 2001, increased by: (a) the percentage by which the estimated population (see SUBSECTION SIX for source) of the City at the last available reportable date prior to the beginning of this first effective fiscal year exceeds or drops below the City's population per the official 2000 Census by the United States Department of Commerce-Bureau of the Census; plus (b) the percentage by which the CPI for the City's PMSA at the end of the calendar year immediately preceding the beginning of this initially effective fiscal year exceeds or drops below the CPI for the City's PMSA at the end of calendar year 1999. For fiscal years ending after this initially effective fiscal year the allowable Combined Revenues shall be computed as described in SUBSECTION ONE.

**SUBSECTION SIX-DEFINITIONS.** Within this Charter Amendment:

- a. "REVENUES" means that term as used for cities by the Governmental Accounting Standards Board and the Government Finance Officers Association, and is to include both operating and non-operating revenues.
- b. "COMBINED REVENUES" means the combined revenues of the City's General Fund, Enterprise Funds and Special Revenue Funds. However, "COMBINED REVENUES" shall exclude: (1) grant monies and other revenues received from other governmental entities; and (2) IntraCity (in other words, InterFund) revenues.

- c. The annual "POPULATION" data shall be obtained from the State of Texas' State Data Center, and will be adjusted every ten years to the City's official census per the United States Department of Commerce-Bureau of the Census.

**SUBSECTION SEVEN-SEVERABILITY.** If any provision or paragraph of this Charter Amendment is declared unlawful by a court of proper jurisdiction, then such portion shall be deleted from the Charter and the remainder of this Amendment will remain in effect.

**SUBSECTION EIGHT-ENFORCEMENT AND SANCTIONS FOR VIOLATION.** Any person who voted in a City of Houston election held on this Amendment shall have the right and standing to enforce the provisions of any Charter Amendment approved by the voters at this election by injunction, declaratory judgment, contempt and/or any other remedy provided by law, notwithstanding any other valid law of equal or lesser authority in conflict, including all of the above paragraphs of this Amendment."

### CHARTER AMENDMENT - PROPOSITION NO. 3

#### **[Relating to the City Controller's role in performing internal audits]**

Article VIII of the Charter of the City of Houston shall be amended by adding a new Section 7 to read as follows:

#### **"Section 7. Audits.**

The City Controller shall be responsible for conducting internal audits, in accordance with professionally recognized auditing standards, of the operations of all City departments, offices, agencies and programs. The scope of internal auditing shall encompass an objective and systematic examination of evidence to provide an independent assessment of the efficiency and effectiveness of the City's system of internal controls and the quality of performance based on quantifiable criteria in meeting objectives. Nothing in this section shall extend the authority of the City Controller to initiate or implement policy beyond the financial oversight already granted by the Charter."

**Section 3.** That the Election shall be held within the precincts established and at the polling places to be designated by ordinance, subject to such changes as may be necessary.

**Section 4.** That the Election shall be held under the provisions of the Charter of the City of Houston, Texas, the Constitution and laws of the State of Texas and United States, and of this Ordinance. Only voters of the City of Houston, Texas, who are qualified under



state and federal law shall be allowed to vote at the Election, and each voter shall vote at the polling place designated for the Election precinct in which such voter resides.

**Section 5.** That the City Secretary is hereby authorized and directed to prepare the ballots for the Election in accordance with the provisions of the Texas Election Code and Texas Local Government Code § 43.130(a), as applicable. On such ballots shall appear a proposition corresponding to each proposed charter amendment set forth above in Section 2 of this Ordinance (collectively, the "Propositions"), with provision on such ballots to vote "For" or "Against" each proposition separately, as follows:

**PROPOSITION NO. 1**

**CHARTER AMENDMENT**

**[Relating to Limits on Annual Increases In City Property Taxes and Utility Rates]**

The Charter of the City of Houston shall be amended to require voter approval before property tax revenues may be increased in any future fiscal year above a limit measured by the lesser of 4.5% or the cumulative combined rates of inflation and population growth. Water and sewer rates would not increase more than the cumulative combined rates of inflation and population growth without prior voter approval. The Charter Amendment also requires minimum annual increases of 10% in the senior and disabled homestead property tax exemptions through the 2008 tax year.

**PROPOSITION NO. 2**

**CHARTER AMENDMENT**

**[Relating to Limits on All Combined City Revenues]**

The City Charter of the City of Houston shall be amended to require voter approval before the City may increase total revenues from all sources by more than the combined rates of inflation and population, without requiring any limit of any specific revenue source, including water and sewer revenues, property taxes, sales taxes, fees paid by utilities and developers, user fees, or any other sources of revenues.

**PROPOSITION NO. 3  
CHARTER AMENDMENT**

**[Relating to the City Controller's role in performing internal audits]**

The City Charter of the City of Houston shall be amended to provide for the City Controller to conduct internal audits of City departments, offices, agencies and programs.

**Section 6.** That the voting at the Election shall utilize voting systems approved pursuant to the provisions of the Texas Election Code and/or the United States Department of Justice, as applicable ("an approved voting system"). The manner of indicating the votes on each of the Propositions shall be substantially as follows:

**a. Early Voting by Personal Appearance**

**Early Voting by Personal Appearance—Harris County**

Voting will be conducted utilizing an approved direct recording electronic ("DRE") voting system or such other approved voting system and procedures as the Early Voting Clerk may select for use at the precinct polling places in the Election. The Propositions shall appear on the ballot label for City of Houston voters. Immediately opposite or below each Proposition there shall appear the words "For" and "Against." A voter desiring to vote for the adoption of the amendment represented by a proposition shall make a selection opposite the word "For," and a voter desiring to vote against the adoption of such amendment shall make a selection opposite the word "Against," such vote to be indicated pursuant to the following procedure:

A voter presents his or her voter registration identification to an election official who will then provide the voter with a four-number code which will confirm to the DRE voting system the voter's precinct number and cause the appropriate ballot that applies to the voter's particular precinct to be selected. The voter will select either English, Spanish or Vietnamese for instructions on how to proceed. Following prompts by the DRE voting system, the voter will cast his or her ballot by making the appropriate selection.

The Early Voting Clerk shall keep the early balloting station open for that period of time required by the Texas Election Code and shall not permit any person to vote early by personal appearance on any day or at any time when the station is not open to the public.

### **Early Voting by Personal Appearance—Fort Bend and Montgomery Counties**

Voting will be conducted using an approved optical scan voting system. The Propositions shall appear on the ballot label for City of Houston voters. Immediately opposite or below each of the Propositions there shall appear the words "For" and "Against" A voter desiring to vote for a Proposition shall darken the circle opposite the word "For," and a voter desiring to vote against a Proposition shall darken the circle opposite the word "Against."

Each respective Early Voting Clerk shall keep the early balloting station open for that period of time required by the Texas Election Code and shall not permit any person to vote early by personal appearance on any day or at any time when the station is not open to the public.

#### **b. Early Voting by Mail.**

Early voting by persons desiring to vote by mail shall be accomplished by the use of an approved voting system. Each respective Early Voting Clerk shall provide each voter with a ballot card with instructions that provide as follows:

In Harris County: Voting shall be conducted upon a punch card ballot system in conformity with the Texas Election Code. A voter wishing to vote for the adoption of a Proposition shall be instructed to make a punch hole on a space on the ballot card that corresponds to the same space displayed on the ballot a voter voting "For" utilizes on the voting equipment at a precinct polling place in the Election, and a voter desiring to vote against the adoption of a Proposition shall be instructed to make a punch hole on the space on the ballot card that corresponds to the same space displayed on the ballot a voter voting "Against" utilizes on the voting equipment at a precinct polling place in the Election.

In Fort Bend and Montgomery Counties: Voting shall be conducted upon optical ballots prepared in conformity with the Texas Election Code. A voter wishing to vote for a Proposition shall be instructed to darken the circle opposite the word "For," and a voter desiring to vote against a Proposition shall be instructed to darken the circle opposite the word "Against."

**Section 7.** That the County Clerk of Harris County is designated as the Early Voting Clerk and to perform that function for City voters in Harris County who are qualified under state and federal law. The Elections Administrators for Fort Bend and Montgomery Counties are hereby designated as the Early Voting Clerks and to perform that function for City voters in their respective counties who are qualified under state and federal law; provided, however, that in the event the City is unable to execute a final agreement with

the County Clerk of Harris County or the Elections Administrators of Fort Bend and Montgomery Counties pursuant to their duty to contract upon request by the City under Sec. 31.093(a) of the Texas Election Code, the Mayor is authorized to order any changes necessary to facilitate early voting by City voters of those Counties.

For City of Houston voters residing in Harris County, in accordance with the terms of any final Joint Election Agreement that may be executed, the County Clerk of Harris County is hereby authorized and instructed to provide and furnish all necessary election supplies to conduct the Election. Voting at the Election shall utilize an approved voting system.

For City of Houston voters residing in Fort Bend County, in accordance with the terms of any final Joint Election Agreement that may be executed, the Fort Bend County Elections Administrator is hereby authorized and instructed to provide and furnish all necessary election supplies to conduct the Election. Voting at the Election shall utilize an approved voting system.

For City of Houston voters residing in Montgomery County, in accordance with the terms of any final Joint Election Agreement that may be executed, the Montgomery County Elections Administrator is hereby authorized and instructed to provide and furnish all necessary election supplies to conduct the Election. Voting at the Election shall utilize an approved voting system.

**Section 8.** Early voting by personal appearance shall in a like manner utilize an approved voting system and shall be conducted at the following locations and times shown below:

**HARRIS COUNTY VOTERS ONLY****Main Early Voting Polling Place**16<sup>th</sup> Floor, Anderson Clayton Building  
1310 Prairie  
Houston, Texas 77002**Hours for Early Voting by Personal Appearance**

Monday	October 18, 2004	8:00 a.m.- 4:30 p.m.
Tuesday	October 19, 2004	8:00 a.m.- 4:30 p.m.
Wednesday	October 20, 2004	8:00 a.m.- 4:30 p.m.
Thursday	October 21, 2004	8:00 a.m.- 4:30 p.m.
Friday	October 22, 2004	8:00 a.m.- 4:30 p.m.
Saturday	October 23, 2004	7:00 a.m.-7:00 p.m.
Sunday	October 24, 2004	1:00 p.m.-6:00 p.m.
Monday	October 25, 2004	8:00 a.m.-4:30 p.m.
Tuesday	October 26, 2004	8:00 a.m.-4:30 p.m.
Wednesday	October 27, 2004	8:00 a.m.-4:30 p.m.
Thursday	October 28, 2004	7:00 a.m.-7:00 p.m.
Friday	October 29, 2004	7:00 a.m.-7:00 p.m.

**MONTGOMERY COUNTY VOTERS ONLY****Main Early Voting Polling Place**Election Central  
225 Collins Street  
Conroe, Texas 77301**Hours for Early Voting by Personal Appearance**

Monday	October 18, 2004	8:00 a.m.-5:00 p.m.
Tuesday	October 19, 2004	8:00 a.m.-5:00 p.m.
Wednesday	October 20, 2004	8:00 a.m.-5:00 p.m.
Thursday	October 21, 2004	8:00 a.m.-5:00 p.m.
Friday	October 22, 2004	8:00 a.m.-5:00 p.m.
Saturday	October 23, 2004	7:00 a.m.-7:00 p.m.
Sunday	October 24, 2004	12:00 p.m.-5:00p.m.
Monday	October 25, 2004	7:00 a.m.-7:00 p.m.
Tuesday	October 26, 2004	7:00 a.m.-7:00 p.m.
Wednesday	October 27, 2004	7:00 a.m.-7:00 p.m.
Thursday	October 28, 2004	7:00 a.m.-7:00 p.m.
Friday	October 29, 2004	7:00 a.m.-7:00 p.m.



**FORT BEND COUNTY VOTERS ONLY**

**Main Early Voting Polling Place**

Rosenberg Annex  
4520 Reading Road  
Rosenberg, Texas 77471

**Hours for Early Voting by Personal Appearance**

Monday	October 18, 2004	8:00 a.m. - 5:00 p.m.
Tuesday	October 19, 2004	8:00 a.m. - 5:00 p.m.
Wednesday	October 20, 2004	8:00 a.m. - 5:00 p.m.
Thursday	October 21, 2004	8:00 a.m. - 5:00 p.m.
Friday	October 22, 2004	8:00 a.m. - 5:00 p.m.
Saturday	October 23, 2004	7:00 a.m. - 7:00 p.m.
Sunday	October 24, 2004	12:00 p.m. - 5:00 p.m.
Monday	October 25, 2004	7:00 a.m. - 7:00 p.m.
Tuesday	October 26, 2004	7:00 a.m. - 7:00 p.m.
Wednesday	October 27, 2004	7:00 a.m. - 7:00 p.m.
Thursday	October 28, 2004	7:00 a.m. - 7:00 p.m.
Friday	October 29, 2004	7:00 a.m. - 7:00 p.m.

Additionally, each Early Voting Clerk, in his or her discretion, may establish one or more additional early voting locations throughout the City, and the City Secretary shall cause notice of all early voting locations and the hours of operation to be given as required by law.

**Section 9.** That, for the use of those voters who are entitled by law to vote early by mail, the Early Voting Clerk of the county of the voter's residence shall receive applications for early voting ballots to be voted by mail in accordance with the Election Code.

Applications for ballot by mail for the Election for City of Houston, Harris County residents should be mailed to:

Beverly Kaufman, Harris County Clerk  
P. O. Box 1525  
Houston, Texas 77251

Applications for ballot by mail for the Election for City of Houston, Fort Bend County residents should be mailed to:

Steve Raborn, Elections Administrator  
Fort Bend County  
301 Jackson St., Suite 624  
Richmond, Texas 77469

Applications for ballot by mail for the Election for City of Houston, Montgomery County residents should be mailed to:

Carol Gaultney  
Elections Administrator  
Montgomery County  
P. O. Box 2646  
Conroe, Texas 77305

**Section 10.** That, in the event the Mayor shall, from time to time, find that additional matters require designation or substitution prior to the Election, the Mayor shall be authorized to make such substitutions or designations as may be necessary, giving such notice as he deems sufficient and to make such other provision for the orderly conduct of the Election as he may deem necessary.

**Section 11.** That, in accordance with all applicable federal and state law, the City Secretary shall also provide Spanish and Vietnamese translations of all ballots; and all other election materials shall be available and distributed in Vietnamese and Spanish as well as the English language.

**Section 12.** That this Ordinance shall constitute the election order for the Election. The City Secretary is hereby authorized and directed to cause notice of the Election to be published in a daily newspaper of general circulation in the City of Houston as required by the Texas Election Code and the Mayor and City Secretary are authorized to give such other notices regarding the Election as may be required by law, including but not limited to, any notice required pursuant to Texas Local Government Code § 43.130(a).

A copy of this Ordinance also shall be officially filed in the office of the City Secretary, and pursuant to Section 4.003(b), Tex. Election Code, the City Secretary shall post on the bulletin board used for posting notices of the meetings of the City Council a

notice of the Election, including the location of polling places, not later than the twenty-first (21st) day before the Election. After publication of the notice of the Election, as published, and any notice given pursuant to Section 43.130(a), Texas Local Government Code, shall be filed in the office of the City Secretary, together with the name of the newspaper in which each notice was published and the dates of publication. All publications directed to be made shall be published in English, Spanish and Vietnamese in accordance with applicable state and federal law.

**Section 13.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, invalid, or unenforceable, neither the remaining portions of this Ordinance nor their application to other persons or sets of circumstances shall be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, invalidity or unenforceability of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 14.** That the provisions of Resolution No. 2003-23, relating to the submission of a Charter amendment to require a two-thirds vote of City Council prior to the levy of ad valorem taxes beyond a certain rate, are hereby repealed.

**Section 15.** That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall Annex of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof



has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

**Section 16.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 25<sup>th</sup> day of August, 2004.

APPROVED this 26<sup>th</sup> day of August, 2004.



\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

Prepared by Legal Dept. \_\_\_\_\_

RDC:asw 08/25/2004

Requested by Honorable Mayor Bill White

L.D. File No. 023400013001

  
Senior Assistant City Attorney

Vote on Ordinance 2004-887 including  
Proposition Nos. 1 and 3  
Roll call vote

AYE	NO	
✓		MAYOR WHITE
....	....	COUNCIL MEMBERS
✓		LAWRENCE
✓		GALLOWAY
✓		GOLDBERG
	✓	EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
	✓	QUAN
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

MAY 017 Rev. 1/04

Vote on Ordinance 2004-887 including  
Proposition No. 2

AYE	NO	
✓		MAYOR WHITE
....	....	COUNCIL MEMBERS
✓		LAWRENCE
	✓	GALLOWAY
✓		GOLDBERG
	✓	EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
✓		QUAN
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

MAY 017 Rev. 1/04

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy Ordinance No. 2004-0887, passed and approved by the City Council of said City on the 25th day of August, 2004, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 21st day of May, 2010.

A handwritten signature in black ink, appearing to read 'Anna Russell', written in a cursive style.

Anna Russell  
City Secretary of the City of Houston

Defs' Exh. 2

Section 19. - Effect of Adopting Inconsistent Amendments.

Any amendment to the Charter of the City of Houston which may be adopted which is inconsistent with any existing provision of the City Charter shall by such adoption repeal such inconsistent provision, and at any election for the adoption of amendments if the provisions of two or more proposed amendments approved at said election are inconsistent the amendment receiving the highest number of votes shall prevail. (Added by amendment October 15, 1913)

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EXHIBIT 2

Defs' Exh. 4

**AN ORDINANCE DECLARING THE RESULTS OF THE CITY CHARTER AMENDMENT ELECTION HELD ON NOVEMBER 2, 2004, PURSUANT TO SECTION 9.005(b) OF THE TEXAS LOCAL GOVERNMENT CODE; MAKING VARIOUS FINDINGS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

WHEREAS, at a special election held on November 2, 2004 ("Election"), three propositions relating to the amendment of the City Charter ("Charter") were submitted to the qualified voters of the City of Houston, Texas, in accordance with the applicable provisions of the Texas Election Code ("Election Code"), the Texas Local Government Code ("Local Government Code") and the Charter; and

WHEREAS, the Election was held pursuant to Ordinance No. 2004-887, passed August 25, 2004, to which reference is made here for all purposes, in which City Council determined that "it is in the best interest of the residents of the City, and necessary to achieve effective financial relief for such residents, to propose a single unified plan that limits annual increases in the sources of City revenue that have the primary impact upon residents, property taxes, including annual increases in the senior and disabled property tax exemptions, and water and sewer rates;" and

WHEREAS, in Ordinance No. 2004-887, City Council voted to place on the ballot a single unified plan in the form of the proposed Charter amendment submitted as Proposition 1 ("Proposition 1"), which generally requires voter approval before property tax revenues may be increased in any future fiscal year above a limit measured by the lesser of 4.5% or the cumulative combined rates of inflation and population growth; provides that water and sewer rates would not increase more than the cumulative combined rates of inflation and population growth without prior voter approval; and requires minimum annual increases of 10% in the senior and disabled homestead property tax exemptions through the 2008 tax year; and

WHEREAS, in Ordinance No. 2004-887, City Council voted to place on the ballot another single unified plan in the form of the proposed Charter amendment submitted as Proposition 2 ("Proposition 2"), which requires voter approval before the City may increase total revenues from all sources, including water and sewer revenues, property taxes, sales taxes, fees paid by utilities and developers, user fees, or any other sources of revenues by more than the combined rates of inflation and population; and

WHEREAS, in Ordinance No. 2004-887, City Council voted to place on the ballot a proposed Charter amendment submitted as Proposition 3 ("Proposition 3"), which authorizes the City Controller to conduct internal audits of City departments, offices, agencies and programs; and



WHEREAS, Proposition 1 reserves in the City Council full authority to assess and collect any and all revenues of the City without limitation except that it limits the growth of property tax revenues and water and sewer rates, and Proposition 2 would limit increases in not only the City's water and sewer and property tax revenues but also other City revenues including sales taxes, fees paid by utilities and developers, user fees, and other sources of revenues; and

WHEREAS, Article IX, Section 19, of the Charter provides that "at any election for the adoption of amendments if the provisions of two or more proposed amendments approved at said election are inconsistent the amendment receiving the highest number of votes shall prevail"; and

WHEREAS, Proposition 1 included the following language: "If another proposition for a Charter amendment relating to limitations on increases in City revenues is approved at the same election at which this proposition is also approved, and if this proposition is also approved, and if this proposition receives the higher number of favorable votes, then this proposition shall prevail and the other shall not become effective"; and

WHEREAS, the purpose of placing both Proposition 1 and Proposition 2 on the ballot for the Election was to provide the voters of the City with the opportunity to consider alternative unified plans for limiting increases in the sources of City revenue, and City Council was advised in a Council meeting that the proposition that received the most votes would prevail; and

WHEREAS, there was widespread media coverage in the City of the determination that if both Propositions 1 and 2 passed, the one that received the most votes would prevail; and

WHEREAS, the Election was regularly ordered and notice thereof regularly given in the manner provided by law, including the requirements prescribed in the Local Government Code, §§ 9.004 and 43.130(a); and

WHEREAS, City Council, pursuant to applicable provisions of the Election Code, tabulated the votes cast for each submitted proposition by the passage of Ordinance No. 2004-1168, on November 15, 2004, to which reference is made here for all purposes; and

WHEREAS, in Ordinance No. 2004-1168 City Council certified ballot tabulations indicating that Proposition 1 received 280,596 votes for adoption and 158,152 votes against adoption; Proposition 2 received 242,697 votes for adoption and 187,169 votes against adoption; and Proposition 3 received 352,063 votes for adoption and 63,596 votes against adoption; and

WHEREAS, the single unified plan for limiting increases in the sources of City revenue that received the most votes was Proposition 1; and

WHEREAS, on April 14, 2005, the First Court of Appeals, in Cause Nos. 01-04-01276-CV and 01-05-00374-CV, ruled that article 9.005(b) of the Local Government Code "imposes a nondiscretionary duty on City Council to enter an order in the records of the City of Houston declaring that propositions 1, 2 and 3 have been adopted," and said Court stated that it would "express no opinion as to whether propositions 1 and 2 are inconsistent or whether the language of the proposition 1 and the City Charter requires that proposition 2 be declared invalid;" and



WHEREAS, the City Council now desires to enter an appropriate order in the records of the City for the purpose of declaring the results of the Election as they relate to the approval of the amendments to the Charter voted upon at that time; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That by virtue of the ballots cast at the Election and the findings of the City Council regarding the three proposed amendments to the Charter, the City Council does hereby declare the results of the Election as follows:

a. The provisions of the proposed amendments to the Charter, as reflected in Propositions 1, 2 and 3, were approved by a majority of the qualified voters voting in the Election and are adopted, with Proposition 1 receiving a higher number of votes than Proposition 2.

b. Propositions 1, 2 and 3, which were ordered to be submitted to the electorate at the Election pursuant to Ordinance No. 2004-887, provide as follows:

**CHARTER AMENDMENT - PROPOSITION NO. 1**

**[Relating to Limits on Annual Increases  
in City Property Taxes and Utility Rates]**

The City Charter of the City of Houston shall be amended by amending the first paragraph of Section 1 of Article III and adding a new Section 20 to Article IX to read, respectively, as follows:

**Article III**

**"Section 1. Taxation.**

In each tax year beginning in tax year 2005:

- (a) The City Council shall not, without voter approval, levy ad valorem taxes at combined rates expected to result in total ad valorem tax revenues for the then current fiscal year that exceed the lower of (i) the allowable ad valorem tax revenues increased by the rate of inflation (based on the change in the Designated Index for the preceding calendar year) plus the rate of growth in the city's population (based on the published estimates of the U. S. Census Bureau for the most recently available twelve month period), but not less than zero (the "indexed ad valorem tax revenues"), or (ii) the amount of total ad valorem taxes, both current and delinquent, actually collected during the prior fiscal year, increased by 4.5% of that amount and, as to the calculations in (a)(i) and (a)(ii) hereinabove, excluding ad valorem tax revenues required by state law to be deposited in

a tax increment fund and adding those attributable to each annexation occurring after July 1, 2005, for the first year after such annexation. The allowable ad valorem tax revenues for fiscal year 2006 shall be the actual total ad valorem tax revenues, both current and delinquent, collected during the fiscal year ending June 30, 2005. In each subsequent fiscal year, the allowable ad valorem tax revenues shall be the prior fiscal year's indexed ad valorem tax revenues. In any fiscal year for which the voters have approved an increase in total ad valorem tax revenues above the limit set forth in this subsection, the total ad valorem tax revenues authorized by the voters for such fiscal year or a future fiscal year shall become the amount to be adjusted in (a)(i) and (a)(ii) hereinabove for the fiscal year succeeding the authorized increase; and

- (b) The City Council shall provide for a minimum annual increase through the 2008 tax year of 10% in the amount of the exemption from all ad valorem taxes levied by the city on the appraised value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors and Disability Insurance, or its successor, or of married or unmarried persons 65 years of age or older, including those living alone. The amount of such exemption in the 2008 tax year shall be maintained thereafter unless increased by the City Council.

The inflation rate calculation in subsection (a) of this section shall be based on the change in the Designated Index for the preceding calendar year which shall mean the United States Consumer Price Index for All Urban Consumers (also known as the CPI-U) for the Houston-Galveston-Brazoria, Texas Metropolitan Area (1982-1984=100), as published by the Bureau of Labor Statistics, U.S. Department of Labor. If such index is subject to adjustment later, then the later adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, shall be used, or if such publication is discontinued, the Designated Index shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published, on the most frequent basis available, by an agency of the United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected by the City.

The limitation on annual increases in ad valorem tax revenues provided in subsection (a) of this section shall not apply to additional revenues necessitated by city expenditures related to the inclusion of the city in any declaration of an emergency or disaster by federal or state authorities, provided that such additional revenues shall not be included in computing the allowable ad valorem tax revenues in any succeeding fiscal year.

City Council may adopt procedures as necessary to implement this section.

The City Council shall have full authority to assess and collect any and all revenues of the city without limitation, except as to ad valorem taxes and water and sewer rates "

#### Article IX

##### "Section 20. Limits on Water and Sewer Rates.

Beginning July 1, 2005, the average annual rates for water and sewer services over the period beginning January 1, 2005, shall not be increased, without voter approval, in any fiscal year by an amount greater than the combined rates of inflation and population growth in the city, identified as provided in Article III, Section 1(a)(i) of this Charter, excluding rate increases required by bond covenants and rates established by contract. Notwithstanding the above, each year the city council may review and adjust the rate design for the combined utility system such that the overall average of all rates does not exceed the limit set out above."

If another proposition for a Charter amendment relating to limitations on increases in City revenues is approved at the same election at which this proposition is also approved, and if this proposition receives the higher number of favorable votes, then this proposition shall prevail and the other shall not become effective.

#### CHARTER AMENDMENT - PROPOSITION 2

##### [Relating to Limits on All Combined City Revenues]

The City Charter of the City of Houston shall be amended by adding a new Section 7 to Article VI-a to read as follows:

##### "Section 7. Limits on All City Revenues.

~~SUBSECTION ONE-LIMITATION ON GROWTH IN REVENUES:~~ City Council shall not, without the prior approval of 60% of those voting at a regular election, increase the City's "Combined Revenues" (see SUBSECTION SIX for definition) for any fiscal year in an amount greater than the City's Combined Revenues for the immediately preceding fiscal year, increased/decreased for: (a) the rate of change in the federal Consumer Price Index ("CPI") in the immediately preceding full calendar year for the Houston Primary Metropolitan Statistical Area ("PMSA"); and (b) the rate of change in the City's "Population" (see SUBSECTION SIX for the source of population data) in the last twelve months for which such data is available from the specified source. If the actual Combined Revenues in anyone year result in an amount less than the amount allowed under this SUBSECTION ONE, then such reduced amount shall become that year's Combined Revenues base amount for the following year's computation.

If the City is included in any National Disaster Area by federal declaration, the City may immediately increase its Combined Revenues. Such emergency revenue increases must be limited to the amount of emergency expenditures specifically identified and justified in the City's accounting records. Such emergency revenues will not be included in computing the following year allowable Combined Revenues.



**SUBSECTION TWO-CERTIFICATION OF CITY COMPLIANCE.** Before each year's City budget can be officially authorized by City Council, the City Controller must furnish written verification that the budget complies with the requirements of SUBSECTION ONE of this Charter amendment. Further, within four months after the end of each fiscal year, the City's independent accountants (firm that performs the City's regular financial audit) shall furnish a written verification that the City complied during such complete fiscal year with SUBSECTION ONE of this Charter amendment, or specify the amount of noncompliance. If the City exceeds the Combined Revenues allowable under SUBSECTION ONE, then, within 30 days after receiving notification from the City's independent accountants, the City shall transfer such excess amount to an interest-bearing Taxpayers Relief Fund. Monies in the Taxpayers Relief Fund cannot be used for City expenditures. Any time the Taxpayers Relief Fund balance reaches ten million dollars (\$10,000,000) the entire balance shall be refunded to Houston citizens and business owners within 90 days in the manner deemed by City Council to be the most equitable and practicable. Within 30 days after the last refund check has been mailed, the City Controller shall furnish written assurance to City Council that all refunds have been mailed, in what total amount, in what manner the refunds were calculated and the total costs of calculating, preparing and mailing the refund checks. The total costs of calculating, preparing, and mailing such refund checks must be paid for out of the City's Combined Revenues for the year in which the checks are mailed, not out of the Taxpayers Relief Fund.

**SUBSECTION THREE-VOTER COVENANTS WITH BONDHOLDERS.** The City shall always honor its covenants with bondholders on long-term debt. However, SUBSECTION ONE of this Charter Amendment is inviolate. Therefore, shortfalls in debt coverage on long-term debt shall be made up from reductions in other expenditures.

**SUBSECTION FOUR-REQUIRED ELECTION NOTICES.** Before any election required for voter approval under SUBSECTION ONE or for voter approval required for issuance of long-term debt, City Council shall: (a) have published in the major Houston newspaper, at least six weeks prior to the election date, analyses of related anticipated debt service, revenues, expenditures, cash flows, and debt service coverage for each year until final maturity; and (b) hold at least three public hearings thereon at least ten days before the election, each at least a week apart from the other hearing. Two of such required public hearings will be held in the evening and one during the day.

**SUBSECTION FIVE-EFFECTIVE DATE OF THIS AMENDMENT.** This Charter Amendment shall become effective with the City of Houston's first fiscal year beginning after the date this Amendment is approved by the voters. The allowable Combined Revenues for the City for this initially effective fiscal year will be determined by using the actual Combined Revenues derived from the City's audited Comprehensive Annual Financial Report for the fiscal year ended June 30, 2001, increased by: (a) the percentage by which the estimated population (see SUBSECTION SIX for source) of the City at the last available reportable date prior to the beginning of this first effective fiscal year exceeds or drops below the City's population per the official 2000 Census by the United States Department of Commerce-Bureau of the Census; plus (b) the percentage by which the CPI for the City's PMSA at the end of the calendar year immediately preceding the beginning of this initially effective fiscal year exceeds or drops below the CPI for the City's PMSA at the end of calendar year 1999. For fiscal years ending after this

initially effective fiscal year the allowable Combined Revenues shall be computed as described in SUBSECTION ONE.

**SUBSECTION SIX-DEFINITIONS.** Within this Charter Amendment:

- a. "REVENUES" means that term as used for cities by the Governmental Accounting Standards Board and the Government Finance Officers Association, and is to include both operation and non-operating revenues.
- b. "COMBINED REVENUES" means the combined revenues of the City's General Funds, Enterprise Funds and Special Revenue Funds. However, "COMBINED REVENUES" shall exclude: (1) grant monies and other revenues received from other governmental entities; and (2) IntraCity (in other words, InterFund) revenues.
- c. The annual "POPULATION" data shall be obtained from the State of Texas' State Data Center, and will be adjusted every ten years to the City's official census per the United States Department of Commerce-Bureau of the Census.

**SUBSECTION SEVEN-SEVERABILITY.** If any provision or paragraph of this Charter Amendment is declared unlawful by a court of proper jurisdiction, then such portion shall be deleted from the Charter and the remainder of this Amendment will remain in effect.

**SUBSECTION EIGHT-ENFORCEMENT AND SANCTIONS FOR VIOLATION.** Any person who voted in a City of Houston election held on this Amendment shall have the right and standing to enforce the provisions of any Charter Amendment approved by the voters at this election by injunction, declaratory judgment, contempt and/or any other remedy provided by law, notwithstanding any other valid law of equal or lesser authority in conflict, including all of the above paragraphs of this Amendment."

### **CHARTER AMENDMENT - PROPOSITION NO. 3**

**[Relating to the City Controller's role in performing internal audits]**

Article VIII of the Charter of the City of Houston shall be amended by adding a new Section 7 to read as follows:

**"Section 7. Audits.**

The City Controller shall be responsible for conducting internal audits, in accordance with professionally recognized auditing standards, of the operations of all City departments, offices, agencies and programs. The scope of internal auditing shall encompass an objective and systematic examination of evidence to provide an independent assessment of the efficiency and effectiveness of the City's system of internal controls and the quality of performance based on quantifiable criteria in meeting objectives. Nothing in this section shall extend the authority of the City Controller to initiate or implement policy beyond the financial oversight already granted by the Charter."

Section 3. This Ordinance shall constitute the official act of the City Council in declaring the results of the Election for the Amendments submitted at the Election.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at City Hall for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof have been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND ADOPTED this 4<sup>th</sup> day of May 2005.

APPROVED this 4<sup>th</sup> day of May 2005.

B. S. White  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

Prepared by Legal Dept.  
RDC/psh 04/28/05  
L.D. File No. \_\_\_\_\_

Jose Chestnam SA  
Senior Assistant City Attorney

AYE	NO	2005-568
✓		MAYOR WHITE
....	....	COUNCIL MEMBERS
✓		LAWRENCE
	ABSENT-DEATH OR FFL ONLY	GALLOWAY
✓		GOLDBERG
✓		EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
✓		QUAN
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance No. 2005-568 passed and adopted by the City Council of said City on the 4th day of May 2005, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 5th day of May, 2005



A handwritten signature in cursive script, reading "Anna Russell", is written over a horizontal line.

Anna Russell  
City Secretary of the City of Houston



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Bruce Holbrook on behalf of Collyn Peddie  
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Associated Case Party: Bruce Hotze

Name	BarNumber	Email	TimestampSubmitted	Status
William A. Taylor	19727600	ataylor@andytaylorlaw.com	4/15/2022 1:59:58 PM	SENT

Associated Case Party: City of Houston

Name	BarNumber	Email	TimestampSubmitted	Status
Collyn A.Peddie		collyn.peddie@houstontx.gov	4/15/2022 1:59:58 PM	SENT
Suzanne R.Chauvin		suzanne.chauvin@houstontx.gov	4/15/2022 1:59:58 PM	SENT
Arturo G.Michel		arturo.michel@houstontx.gov	4/15/2022 1:59:58 PM	SENT
Patricia LCasey		pat.casey@houstontx.gov	4/15/2022 1:59:58 PM	SENT