



# CITY OF HOUSTON

**Sylvester Turner**

Mayor

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Everyone loves firefighters, and everyone wants them to be paid commensurate to what other firefighters are making around the state. Prop. B goes even further, and links firefighters pay to that of Houston police officers even though the organizational structures and promotional requirements are vastly different. Prior to and after the passage of Prop B, the city's finance department and the Controller's Office said the costs would exceed \$100 million a year. Because no funding source was included in Prop B. and the City is required to balance its books by June 30<sup>th</sup> of each year, the implementation of the voter approved measure places the City in a dilemma; increase the firefighters' pay by 29 percent which will invariably cause a reduction in personnel and services, seek a determination from the court on whether Prop B conflicts with state law which could only be done after voters approved it, and/or negotiate with the union to phase in the costs of Prop B over multiple years.

As mayor, I have made sure the city is pursuing all three paths. We have forwarded to the Union a proposal that would phase in the costs of Prop B over five years which would substantially eliminate the need to lay off or reduce services beyond the normal budgetary process. All pay raises would be retroactive to January 1, 2019. If there is an agreement, it would mitigate the continuation of any court action, and this entire matter would be behind us.

At the same time, the City, in the lawsuit filed by the Houston Police Officers Union (HPOU) in Nov. 2018, asked the court to rule on the legality of Prop. B. If the court rules as a matter of law, Prop B was preempted by state law, the HPOU lawsuit is terminated subject to appeal and Prop B is no longer before us.

However, until the court rules, the City is obligated to move forward in implementing Prop B with the effective date being January 1, 2019.

Since there have been some misstatements and confusion on the legal action the City has or has not taken surrounding Prop B, let me take a moment to lay out what we have done.

The Houston Police Officers' Association sued the City of Houston and Houston Professional Fire Fighters Association, IAFF Local 341 on November 30, 2018. In the 2018 HPOU litigation, the court is asked to determine whether Prop B can stand, since it conflicts with state law. The City answered and appeared in the case as required and, later, also made an affirmative claim within the HPOU suit, seeking a declaration that Prop B conflicts with state law. No new, separate lawsuit was filed by the

City. No new parties were added in the 2018 HPOU lawsuit by the City. No money damages are sought by the City.

The Houston Professional Fire Fighters' Association, Local 341, the firefighters' union, sued the City of Houston in 2017 seeking a pay raise for fiscal year 2018 after the union, not the City, walked away from the collective bargaining table. The union ignored the City's requests that it return to the table. The union sued the City and asked a state court judge to set (not negotiate) all employment terms.

The City is not mounting a broadside attack, constitutional or otherwise, on the Fire and Police Employee Relations Act (FPERA). In fact, the City wants the firefighters' union to return to the bargaining table so that a Judge is not asked to set pay without reference to any standards.

In my 30 years of public service, I have supported collective bargaining. I fought for collective bargaining for firefighters in the Texas Legislature in 2005. To this day, I am committed to collective bargaining.

Lastly, if an agreement cannot be reached with the union to phase in the costs of Prop B over multiple years and if the court does not timely rule on the legality of Prop B, the City is already defining parity between police and fire, re-programming its systems and preparing for a reduction in force as needed to balance the budget.

On January 15, 2019, the Houston Professional Fire Fighters Association, IAFF Local 341 and Intervenor-Plaintiffs Patrick "Marty" Lancton, Gabriel Angel Dominguez, Roy Anthony Cormier, Brian Ray Wilcox, and Delance Shaw filed brand new claims in the 2018 HPOU litigation against new parties: Mayor Sylvester Turner, Finance Director Tantri Emo, Controller Chris Brown, and all elected city council members. The firefighters and their union seek the immediate implementation of Prop B.

None of the elected officials needed to be sued. Director Emo, who is not an elected official and does not "sit" at or on City Council, did not need to be sued. Although the process for radically restructuring the City's Human Resource System and payroll methodology to accurately issue salary checks is difficult, it is well underway and will be done. Moreover, the City plans to make payments under Prop B effective as of January 1, 2019.

The fact is that the City did not start any of the pending litigation involving the firefighters. Firefighters sued the city to destroy the City's historic pension reform; not just the part relating to firefighters, but *all* the reforms for *all* municipal employees. That litigation could add hundreds of millions of dollars to the City's costs, scuttle some or all the employee pension systems and financially ruin the City. Fire fighters sued the City in 2017 prior to Prop B, asking a court for a pay raise for the fiscal year 2018. They have not dropped that lawsuit. They caused Prop B to be enacted. Now, again, in the 2018 HPOU litigation, they have sought the immediate implementation of Prop B as a way to expedite the receipt of money from the taxpayers.

Prop B requires that the City substantially increase firefighter compensation. It was misrepresented to the public as bringing about pay "parity." In fact, Prop B requires that firefighters benefit if police officers get benefits or raises, even though their working conditions are completely different, but police officers do not benefit from firefighter benefits or raises.

Citizen-driven charter amendments like Prop B are not always carefully-drafted, much less fully-vetted documents when they arrive at City Hall. When they are not, there is next to nothing a city can do to correct even the most glaring constitutional and legal errors in a citizen-driven charter amendment. A

city's only meaningful opportunity to save itself from unconstitutional additions to the City Charter, or obvious efforts like Prop B, comes after the proposed charter amendment passes. After an election, such determinations should be made by our courts.

The City contends that Section 24 to Article IX of the City Charter, approved by voters on November 6, 2018, as Proposition B ("Prop B"), is preempted by State law because:

1. Chapter 174, the State of Texas' collective bargaining law, contains an express preemption clause that states, "(t)his chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality" and Prop B is contrary to the provisions of Chapter 174;
2. If not expressly preempted, Prop B is impliedly preempted because it frustrates both the express policies of the State of Texas stated in LGC Section 174.002, and numerous other provisions of LGC Chapter 174 regarding compensation, bargaining, and conditions of employment; and
3. Prop B is void under art. XI, § 5 of the Texas Constitution because it is inconsistent with the general laws of the State of Texas.

In this case, the City has asked a court of law to have the final say. That is how our system of law should work.

Let me end where I started. We love and respect our firefighters and want them to be appropriately compensated. Having said that, I don't believe the voters intended to place our City in financial turmoil, cause our credit rating to tumble and increase the costs of City debt. As mayor, I have a fiduciary responsibility to protect the financial stability of this city and that includes presenting a balanced budget. Prop B threatens to erase all the financial gains of pension reform and place us in a financial crisis. As a city, we cannot let that happen. We must work together to find a path forward no matter how bumpy the course or how hot the rhetoric.

There is just too much at stake.

Sincerely,

A handwritten signature in black ink, appearing to read "Sylvester Turner". The signature is fluid and cursive, with the first name being more prominent.

Sylvester Turner  
Mayor