APPENDIX B

REFERENDUM ORDINANCES ADOPTED AT ELECTIONS

Because Art. VIIb, the referendum and initiative article in the city charter, provides that ordinances adopted under its provisions may not be thereafter amended or repealed except as therein provided, such ordinances have until so repealed practically the same effect as charter provisions. The following brief statement is made of the subject matter of the ordinances below referred to, adopted at elections indicated and apparently never repealed or amended pursuant to the provisions of Art. VIIb (except as noted below), but without expression of opinion either as to their initial or present validity, effectiveness, or binding force, except to the limited extent below indicated:

2½% ANNUAL LIBRARY TAX

At the election held February 9, 1921, the ordinance calling which is in Vol. 9, page 9, of the city secretary's books, the taxpaying voters of the city approved a proposition stated on the ballots as follows:

> "For the levy and collection by the City Council of the City of Houston of a direct ad valorem tax of not less than two and one-half (2½) cents, as may be determined by the city Council, on every One Hundred ($100.00) Dollars of value thereof, on all property real, personal and mixed within the City of Houston upon which a tax is authorized by law to be levied in the City of Houston, and upon all franchises of all individuals and corporations holding a franchise from the City of Houston, said tax to be appropriated for maintaining the Public Library System in the City of Houston."

Upon question of binding effect of this ordinance on future city councils, *see Denman v. Quinn*, 116 S.W.2d 783 (Tex. Civ. App.—San Antonio 1938, writ ref'd), holding that a city's annual tax levying ordinance passed by the city council was not subject to referendum under board referendum provision containing in San Antonio charter. *See*, however, contrary view as to a different type of ordinance as stated in *Taxpayers Association v. City of Houston*, 129 Tex. 629, 106 S.W.2d 655 (1937). Note also that the foregoing ordinance was not submitted to the general electorate of the city as contemplated by Art. VIIb of the charter for referendum or initiative submission of ordinance, but was submitted only to the tax-paying voters.

ORDINANCE ABOLISHING JITNEYS

An election hold January 19, 1924, the ordinance calling which is in Vol. 11, page 435, of the city secretary's ordinance books, there was approved a very lengthy and detailed ordinance abolishing jitney busses and jitney routes and virtually prohibiting operation along fixed routes of any passenger vehicle with a seating capacity of less than fifteen persons and prohibiting the operation of motor vehicles carrying passengers along fixed routes upon streets on which street cars were operated.

By order of the United States District Court for the Southern District of Texas dated March 31, 1994, in Cause No. H-89-1245, the foregoing jitney ordinance was declared unconstitutional.

1936 GENERAL EMPLOYEES' MINIMUM SALARY ORDINANCE

At election held on August 22, 1936, the ordinance calling which appears in Vol. 26, page 441, of the city secretary's ordinance books, there was approved an ordinance fixing minimum monthly salaries of various and sundry appointive officers and employees of the city, the employees being classified by departments in extreme detail and including apparently all employees from the department head on down. The fire department was not included in this ordinance, but apparently all other departments were included, including police department.

Note the 1946 ordinance referred to below granting blanket salary increases to city employees except police and fire department personnel, and note that the 1946 police department minimum salary ordinance referred to below in all certainty repealed so much of the foregoing 1936 ordinance as referred to the police department. For validity and effect of this type of ordinance adopted by referendum, *see Taxpayers Association*

v. City of Houston, 129 Tex. 629, 105 S.W.2d 655 (1937), and *Dry v. Davidson*, 115 S.W.2d 689 (Tex. Civ. App.—Galveston 1938, writ ref'd).

1936 FIRE DEPARTMENT MINIMUM SALARY ORDINANCE

At election held August 22, 1936, the ordinance calling which appears in Vol. 26, page 436, of the city secretary's ordinance books, there was approved an ordinance fixing minimum salaries within detailed classifications of fire department personnel.

Note the 1946 fire department minimum salary ordinance referred to below, the provisions of which in all certainty superseded the foregoing 1936 ordinance. For validity and effect see cases referred to under the 1936 general employees minimum salary ordinance.

1946 FIRE DEPARTMENT MINIMUM SALARY ORDINANCE

At election held on June 22, 1946, the ordinance calling which is in Vol. 40, page 322, of the city secretary's ordinance books, there was approved an ordinance prescribing in detail positions and classifications of employees in the fire department and fixing in detail salaries in such department.

Note that the foregoing 1946 ordinance in all certainty superseded the similar 1936 ordinance. For validity and effect, see cases referred to above under the 1936 general employees' salary ordinance. Note also general legislation from time to time passed by the State Legislature in the matter of minimum salaries of firemen.

1946 POLICE DEPARTMENT MINIMUM SALARY ORDINANCE

At election held June 22, 1946, the ordinance calling which is in Vol. 40, page 327, of the city secretary's ordinance books, there was approved an ordinance prescribing in extreme detail positions and classifications of employees in the police department and fixing minimum salaries of police department personnel.

Note that the foregoing ordinance in all certainty repealed so much of the 1936 general city employees' minimum salary ordinance as dealt with the police department. For validity and effect, see cases cited above under 1936 general employees' minimum salary ordinance. Note also general state laws covering minimum hours and minimum salaries of police officers.

GENERAL CITY EMPLOYEES' SALARY ORDINANCE OF 1946

At an election held on June 22, 1946, the ordinance calling which is in Vol. 40, page 332, of the city secretary's ordinance books, there was approved an ordinance which very briefly provided blanket percentage salary increases for certain city employees and for a flat $30.00 per month increase for all or at any rate nearly all other employees (except fire and police department personnel covered by the two ordinances adopted the same day hereinabove referred to).

For validity and effect, see cases cited above under 1936 general city employees' salary ordinance, noting that the 1946 ordinance did not designate or establish positions and did not prescribe minimum salaries for any positions, it not being within the scope of this work to attempt a determination of the effect of this 1946 ordinance on salary schedules in general.

POLICEMEN'S AND FIREMEN'S CIVIL SERVICE, STATE LAW, 1947

Article 1269m, Vernon's Texas Civil Statutes, enacted by the 1947 Legislature now codified as Tex. Loc. Gov't Code Ann. ch. 143, provides for civil service system for policemen and firemen under a uniform plan provided by the Legislature. Pursuant to a command contained in the Act, cities were required to submit to popular vote the question of adoption or rejection of the Act, with provision that upon its adoption it would supersede charter provisions or ordinances covering its subject matter.

At an election held in the city January 31, 1948, this Act was adopted by a majority vote of the votes cast at the election. It differs in many important respects from the city's civil service charter provisions (Art. Va of the foregoing charter) and no action should be taken in the matter of civil service, whether pertaining to policemen and

firemen or to other employees without first consulting ch. 143, Tex. Loc. Gov't Code Ann., since some of its provisions touch upon the entire subject of composition of the city's civil service commission and of the executive administration of the civil service functions.

1950 FIRE DEPARTMENT MINIMUM SALARY ORDINANCE

At an election held on July 22, 1950, an ordinance was adopted that established various positions and salaries for those positions in the classified service of the Fire Department. The ordinance contains a repealer clause, and it presumably repealed the 1946 ordinance, which is discussed above.

1954 POLICE AND FIRE DEPARTMENT SALARY ORDINANCE

At an election held on August 28, 1954, an ordinance was adopted that increased the salaries of firefighters and police officers by forty-five dollars per month. This ordinance contained a repealer clause, and it repealed the salaries contained in the other police and fire salary ordinances, which are described above.

CONCLUSION

In the foregoing brief reference to ordinances adopted at elections no effort has been made to include those ordinances so adopted which merely authorized the doing once of some one particular thing, which, when done, thereby accomplished the entire purpose of the ordinance, as for example ordinances authorizing purchase of a certain parcel of land or sale of a certain parcel of land.