

# LEGISLATORS' GUIDE TO THE 85th LEGISLATURE

S P E C I A L S E S S I O N 2 0 1 7

## Property Rights and the Local Government Permitting Process

### The Issue

Current local government permitting is a lengthy, burdensome, and complex process that infringes upon private property rights and violates the foundation and ideals that Texas was built upon.

Overall, government regulations can comprise as much as 25 percent of a unit's final sales price. One reason for this cost is that local governments often change permitting and development rules midway through construction projects. Imposing additional regulations in the middle of the construction process not only reduces the profit margin for builders, but diminishes the number of units developed and raises the cost of housing and of operating a business. A builder can, for instance, purchase a lot, gather laborers and supplies, commence construction, and then be stopped multiple times during the process in order to dismantle and redesign the structure to meet evolving municipal regulatory standards. For every occurrence where work is stopped and regulations require changes in the project, costs go up and time that could have been spent building additional units is lost. For buyers, this translates to higher prices and decreased selection—an undesirable outcome for producers and consumers alike.

But it is not just changing the rules in the middle of the game that makes housing and other projects more expensive. The number of onerous regulations, repeated checks, and unnecessary reviews that businesses have to pass for permits generally causes a huge delay within the approval process. In Austin, for instance, regulatory delay adds on average 3.5 months to the process, compared to just three weeks of regulatory delay in Denver, Colorado, or less than a week in Raleigh, North Carolina, suggesting that Austin is dragging its feet in the approval of site plans.

In Harris County, the approval process for business permits can cause delays to opening for up to six months while trying to comply with unnecessary provisions. In one instance, an individual rented a space to make and bottle fresh juices, but was forced to have equipment and amenities completely unrelated to their business, such as grease traps and vent hoods. This caused almost a two-month delay to opening. The effects of these regulations are not localized; they have far-reaching effects on the lives of all individuals across the state. The tedious permitting process adds considerable time and costs to many sectors of the economy; it hinders construction projects and imposes undue burdens upon entrepreneurs and companies. This results in delays, higher construction costs, higher housing costs, and higher prices paid by consumers, fewer jobs, and less economic growth.

This difficult permitting process infringes upon basic private property rights by imposing costs on the applicant. These costs are then transferred directly onto consumers as seen with the housing market. For example, Austin recently has had a large influx of

new residents, and because of regulatory delays, rental costs rose more rapidly than wages. The types of codes and regulations that businesses have to meet often don't have anything to do with the production of their product and force them to meet arbitrary and expensive standards. If Texas seeks to continue its history of being a free market state that protects the private property rights of its citizens, lawmakers should seek to reel in the burdensome and unnecessary local permitting process.

One reason cities can add these costs with impunity is because they are not subject to the Texas Real Private Property Rights Preservation Act (RPPRPA). Passed into law by the Legislature in 1995, RPPRPA allows property owners to receive compensation for loss of property value due to new regulations on land use. Its authors sought a method of protection and a deterrent against local government regulations that would damage the value of someone's property. Since the act exempts municipalities, none of the cities' zoning and permitting regulations are subject to RPPRPA, rendering the act essentially ineffective.

### The Facts

- Meeting unnecessary criteria for the permitting process causes large delays of up to 6 months for businesses in certain municipalities.
- A report done in 2015 found that in Austin regulatory delay adds an average of 3.5 months to the already 4 month long approval process.
- Austin is a very popular city to move to and because of significant regulatory delays in the Austin permit review process, which stifles the production of new housing, "between 2004 and 2013 average rents in the Austin area increased by 50% while median incomes increased by just 9%."
- According to the National Association of Homebuilders (NAHB), a nationwide survey of hundreds of single-family home builders found that "government regulations represented 25 percent of unit's final sales price."
- The Texas Real Private Property Rights Preservation Act, in Section 2007.002, allows property owners to seek compensation for any government action that reduces the market value of private property by 25 percent or more.

### Recommendations

- Reduce the regulatory burden that local municipalities like Austin have on businesses and building by lowering the time for approval and certain code requirements for permits.
- Prohibit municipal and county governments from imposing new regulations or requirements after property owners have acquired the necessary permits and permission to begin development or construction.

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- The Texas Real Private Property Rights Preservation Act should be amended to apply to municipal actions relating to the permitting process.

## **Resources**

[“Here’s what business owners have to say about city, county permitting processes”](#) by Danica Smithwick, *Community Impact Newspaper* (May 19, 2017).

[Affordable Housing Starts with Private Property Rights](#) by Kathleen Hunker, Texas Public Policy Foundation (Nov. 2015).

[Quantifying the Impacts of Regulatory Delay on Housing Affordability and Quality in Austin, Texas](#) by Megan Elizabeth Shannon, University of Texas at Austin (May 2015).

[Zucker Final Report](#) by Paul Zucker, City of Austin (April 2015).

[“Austin renters face soaring costs in ‘extraordinary market’”](#) by Marty Toohey, Austin American Statesman (May 3, 2014).

[Private Real Property Rights Preservation Act Guidelines](#), Attorney General of Texas.

[Private Property Interrupted](#) by Kathleen Hunker, Texas Public Policy Foundation (July 2014) .

[Time to Defend Our Property Rights](#) by Bryan Mathew, Texas Public Policy Foundation (April 2017).

[Building a More Affordable Texas](#) by Kathleen Hunker, Texas Public Policy Foundation (Jan. 2016).

