

# LEGISLATOR'S GUIDE TO THE ISSUES 2021-2022

## Property Rights and the Local Government Permitting Process

### The Issue

Private property is a constitutionally protected fundamental right that represents both limited government and a free market economy. Respect for this right is the foundation of liberty, financial independence, and economic opportunity in Texas. However, the government's commitment to protecting private property rights has eroded over time as a result of its prioritization of burdensome regulations.

The lengthy, complex, and tedious local government permitting process infringes on private property rights and violates the foundation and ideals that Texas was built upon. Overregulation of Texans and how they use and profit from their land threatens their opportunity to prosper and become self-sufficient.

As it stands, government regulations on average account for nearly [25% of the final sales price](#) for a new single-family home. This is partly because local governments often change permitting and development rules, affecting development projects midway through construction. Regulatory interruptions not only reduce the profit margin for builders, they also diminish the number of units developed and raise the cost of housing and operating a business. According to the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC), government regulations account for [“32.1 percent of the cost of an average multifamily development.”](#)

Between unnecessary reviews, onerous regulations, and repeated checks, businesses are left to suffer huge delays within the permit approval process. For example, in Austin, regulatory delays can add an average of 3.5 months to the already 4-month long permit approval process. Compared to the 3 weeks of delay in Denver, Colorado, or less than a week in Raleigh, North Carolina, Austin's lengthy delays are costing Texans too much time and money.

While there are regulations that serve a reasonable and necessary purpose, there remains too many regulations that impose costly consequences on developers, consumers, and businesses. In Harris County, businesses can experience a delayed opening of up to 6 months due to the approval process. 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 the business, such as grease taps and vent hoods. This caused almost a 2-month delay to opening.

These government regulations impose burdensome, costly, and inconsistent complications that negatively affect developers, businesses, and consumers. Regulatory costs, including fees, development standards, reviews, and more, add considerable time and costs to the economy, hinder construction projects, and hurt entrepreneurs.

One reason cities can add such costs is because they are exempt from the Texas Private Real Property Rights Preservation

Act (PRPRPA). Passed into law in 1995, PRPRPA allows property owners to receive compensation for loss of property value due to new regulations on land use. Since the act exempts municipalities, none of the cities' zoning and permitting regulations are subject to PRPRPA, rendering the act essentially ineffective.

### The Facts

- Unnecessary and burdensome regulations in the permitting process can cause delays of up to 6 months in some municipalities.
- Due to 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%.”
- The Texas Private Real Property Rights Preservation Act, in Section 2007.002 of the Government Code, allows property owners to seek compensation for any government action that reduces the market value of private property by 25% or more.
- Last session, state lawmakers passed [House Bill 3167](#), which streamlined the development and permitting process to provide greater predictability to developers and lower costs for consumers by requiring municipality approval of development plans within 30 days of filing. However, some cities are seeking to circumvent its requirements with creative rulemaking.

### Recommendations

- 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.
- The Texas Private Real Property Rights Preservation Act should be amended to apply to municipal actions relating to the permitting process.
- Ensure municipalities are not circumventing HB 3167.

### Resources

[“Shot Clock’ bill resets development review time”](#) by Jo Clifton, *Austin Monitor* (June 28, 2019).

[“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).

[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](#), Texas Attorney General (Accessed July 15, 2020).

[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 28, 2017).

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

