

THE TYRANT'S VETO: VALID PETITION REFORM

WRITTEN BY **John Bonura**, Policy Analyst, Taxpayer Protection Project
NOVEMBER 2024

KEY POINTS

- The current threshold required to reject housing reforms allows for a few landed people to hold their neighbors hostage.
- The ease of rejecting zoning changes restricts the supply of housing.
- Restricting the supply of housing makes housing more expensive.

"Nationwide, homeownership has become increasingly inaccessible since 2020, the beginning of the pandemic due to the shortage of available homes and building materials, inflation, high interest rates and the tightening of mortgage credit rates. Those who manage to buy a home often find themselves stretched to the limit financially as they struggle to balance the cost of owning a home with costs for food, utilities, health care and other basic needs."

~Texas Governor Greg Abbott

INTRODUCTION

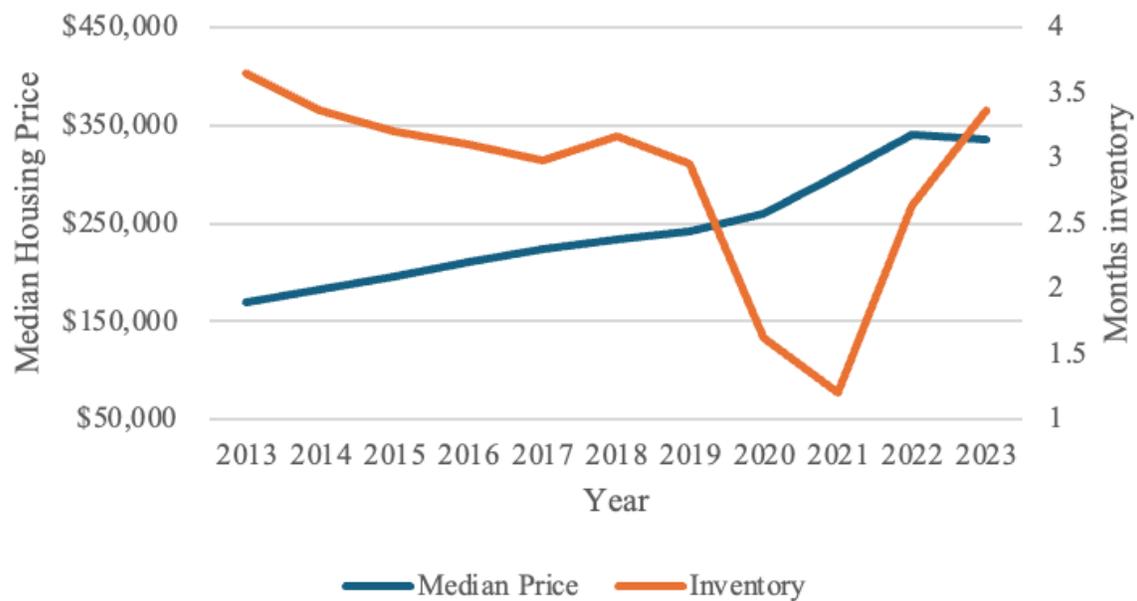
Today, nearly three-fourths of Texans are unable to afford a new home at the current median housing price ([Zhao, 2024](#)). According to Robert Dietz, Chief Economist of the National Association of Home Builders (NAHB), the primary factors influencing the cost of housing are the price of labor and building materials, interest rates, the availability of land, and zoning regulations ([Dietz, 2023](#)). While the heavy hand of government is felt in each of these categories to some extent, the place where it is most present—and most damaging—is within the zoning and land-use space. In fact, the effects of these policy decisions are so pronounced that the NAHB warns, "Regulatory requirements alone account for 25 percent of the cost of constructing a single-family home, and 30 percent of the cost of a multifamily unit" ([NAHB, n.d., p. 2](#)). In addition to the immediate costs added, regulations that restrict housing supply create artificial scarcity and prevent the market from reacting organically to consumer demands ([Weeks, 2023](#)).

So, when city councils take action to remove these regulations a minority of landowners should not be able to delay or even completely deny the implementation of these pro-housing reforms. This is the reality under current statute which allows for the owners of 20% of the property within 200 feet of the proposed affected area could file a petition to halt development ([Texas Local Government Code, Sec. 211.006 \(d\), 2023](#)). This is referred to in statute as a "valid petition" but is known more commonly as the "tyrant's veto."

continued

Figure 1

Median Housing Price and Housing Inventory 2012–2023



Note: Data from *Housing Activity*, by Texas Real Estate Research Center, n.d., (<https://trerc.tamu.edu/data/housing-activity/?data-State=Texas>).

Figure 1 shows the trend of median housing price compared to the inventory of houses in Texas over the last 10 years from data collected by the Texas Real Estate Research Center (n.d.). This data helps demonstrate the relationship between supply and cost. As supply falls, price increases at a nearly proportional rate. Between 2019 and 2021, the sharpest decline in inventory coincides with the sharpest increase in median housing price. As inventory begins to increase in 2022 into 2023 and approaches pre-2019 levels, the median housing price begins to trend downwards as well.

In recent years, there have been attempts at the state and local levels to ease overregulation in order to allow for increased housing supply, all with varying levels of success. According to the Texas Comptroller of Public Accounts, “In 2022, about 39 percent of Texas households were cost burdened. Cost burdens are particularly acute in lower-income households—88 percent of households with annual incomes less than \$20,000 were cost burdened, compared to 8 percent of households with incomes

of \$75,000 or more” (Texas Comptroller of Public Accounts, 2024, p. 8).

THE TYRANT’S VETO

An issue that has been exacerbating the housing supply shortage and interfering with private property rights is the valid petition—or as it is more colloquially known, the “tyrant’s veto.” Under current law, a protest to any changes in zoning regulations, zoning district boundaries, or both can be initiated by the owners of at least 20% of:

- “1) the area of the lots or land covered by the proposed change; or
- 2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area” (Texas Local Government Code, Sec. 211.006 (d), 2023).

The protest can only be overridden by a vote of at least three-fourths of the municipality’s governing body, provided that such a vote has been allowed through ordinance (Texas Local Government Code,

[Sec. 211.006 \(f\), 2023](#)). This means that after the often-arduous task of getting zoning reform passed, a small minority of property owners could hold reforms for an entire city hostage. This was the case in 2019 where 19 property owners were able to force a supermajority vote in the Austin City Council after the council attempted to pass zoning reforms to address the growing housing affordability problem. After years of litigation, the Texas 14th Court of Appeals found that as the statute is written, the City of Austin was obligated to adhere to the valid protest of those 19 individuals ([City of Austin v. Acuña, 2022](#)). Thanks to this protest, it would be five more years before the City of Austin was able to pass its housing reform initiative.

In addition to potentially slowing—and even stifling—housing development, the entire concept of allowing a minority of citizens to dictate the use of their neighbors’ privately owned property violates core Texas values. Allowing a minority to overrule the will of the majority contradicts the constitutional guarantee of a republican form of government. Keeping this unfair procedure in its current form infringes upon the rights of property owners because it removes the decision-making power regarding personal property from the hands of individual owner and places it in the hands of his neighbors. In the 1921 Supreme Court case *Spann v. City of Dallas*, attorney Lawrence Bates argued that “a citizen has the right to make

any use of his property which is not detrimental to the public peace, health or safety” ([Spann v. City of Dallas, 1921](#)). The Court agreed, declaring in its opinion, “property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal” (1921).

RECOMMENDATION

To return to a more democratic process while also addressing the concerns of all property owners in an area where a zoning change is being considered, the threshold required to initiate a protest must be raised from 20% of the property within 200 feet of proposed change to 60%, and the threshold required for the governing body of the affected area should be reduced from a supermajority to a simple majority.

CONCLUSION

Allowing a few landed individuals to hold zoning reform hostage is not just contrary to Texan values; it is economically impractical. This ease of rejecting reforms has created artificial scarcity and has made housing less affordable. Cities should be encouraged to roll back zoning regulations—effectively creating less government—which can be done by reforming the valid petition process, which, in its current form, hinders deregulation. While citizens have a right to petition their governments for a redress of grievances, the few do not have the right to act as tyrants over their neighbors. ■

MODEL LEGISLATION

A BILL TO BE ENTITLED

AN ACT

Relating to procedures for changes to a zoning regulation or district boundary in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 211, Local Government Code, is amended by adding Section 211.0065 to read as follows:

Sec. 211.0065. ALTERNATIVE PROCEDURES FOR CHANGES TO ZONING REGULATIONS OR DISTRICT BOUNDARIES IN ALL MUNICIPALITIES. (a) This section applies to all home-rule municipalities.

(b) To the extent of a conflict between Section 211.006 or Section 211.007 and this section, this section controls for a municipality subject to this section.

(c) A protest of a proposed change to a zoning regulation or district boundary authorized under Section 211.006(d) that is allowed pursuant to Subsection (e) below must be written and signed by the owners of at least 60 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(d) If a proposed change to a regulation or district boundary is protested in accordance with Subsection (c), the proposed change must receive, in order to take effect, the affirmative vote of at least:

(1) three-fourths of all members of the governing body for a protest described by Subsection (c)(1); or

(2) a majority of all members of the governing body for a protest described by Subsection (c)(2).

(e) Section 211.006(d) only applies to a proposed change in zoning regulation or district boundary requested by the owner of the area that is subject to the proposed change and a proposed change in zoning regulation or district boundary initiated by a municipality that is more restrictive than the zoning regulations that are subject to the proposed change. Section 211.006(d) does not apply to any proposed change in zoning regulations or district boundaries that is not described in the foregoing sentence.

(f) The notice described by Section 211.006(a) or 211.007(d), as applicable, is the only notice required for a proposed change that is not subject to Section 211.006(d) pursuant to Subsection (e) above.

(g) The following persons may bring an action against the municipality for declaratory and injunctive relief to compel the municipality to adopt a proposed change to a zoning regulation or district boundary that is not subject to Section 211.006(d) pursuant to subsection (e) above:

(1) a person who applies for a change to a zoning regulation or district boundary applicable to the area subject to the proposed change;

(2) a person eligible to apply for residency in a housing development project in the area subject to the proposed change; or

(3) a nonprofit organization.

(h) In an action brought under Subsection (g), a court shall:

(1) ensure that its order or judgment is implemented; and

(2) award the claimant reasonable attorney's fees and costs if the claimant prevails.

(i) (1) Notwithstanding any other law, including Chapter 15, Civil Practice and Remedies Code, a civil action brought under Subsection (g) may be brought in:

(A) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(B) the county of a defendant's residence at the time the cause of action accrued if a defendant is an individual;

(C) the county of the principal office in this state of a plaintiff or defendant that is not an individual; or

(D) the county of the claimant's residence if the claimant is an individual residing in this state.

(2) If a civil action is brought under Subsection (g) in a venue described by Subsection (i)(1), the action may not be transferred to a different venue without the written consent of all parties.

(j) Notwithstanding any other law, the Fifteenth Court of Appeals shall have exclusive jurisdiction over any appeal arising out of a civil action brought under Subsection (g).

(k) A change to a zoning regulation that is not subject to Section 211.006(d) pursuant to Subsection (e) above and that is less restrictive of residential development than the previous regulation is conclusively presumed valid and to have occurred in accordance with all applicable statutes and ordinances if an action to annul or invalidate the change has not been filed before the 60th day after the effective date of the change.

SECTION 2. The change in law made by this Act applies only to a proposal to change a municipal zoning regulation or district boundary made on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2025.

REFERENCES

- City of Austin v. Acuña*, No. 14-20-00356-CV (Tex. App. Mar. 17, 2022). <https://casetext.com/case/city-of-austin-v-acuna-2>
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ABOUT THE AUTHOR



John Bonura is a Policy Analyst for the Taxpayer Protection Project with Texas Public Policy Foundation.

Prior to joining TPPF John served in the University system as a Graduate Assistant until he was given the opportunity to teach Principles of American Government. John holds a Master of Arts in Political Science from Texas State University and a Bachelor of Arts in Political Science from Sam Houston State University.

As a proud Eagle Scout John is an avid camper and enjoys spending time in the outdoors as well as at home with his wife.

