

## Mostly Invisible: The Cost of Valid Petitions in Texas

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The Texas legislature is currently considering reforms to its valid petition law. Valid petitions are an obscure zoning procedure that have been used to try to obstruct a Dallas hospital expansion,<sup>1</sup> student housing in Bryan,<sup>2</sup> and Habitat for Humanity houses in Austin.<sup>3</sup> The law has come under scrutiny as a potential contributor to the scarcity of housing—and thus its high cost. Legislators ought to either reform the valid petition process to be less onerous and more democratic or do away with it altogether.

Twenty states still have rezoning protest petition laws. Texas' version is relatively strict, but the mechanics are the same as in other states: when a rezoning is proposed, the state must notify the owners of nearby land. In Texas, if owners of 20 percent of the land within 200 feet of a proposed rezoning site protest the rezoning, their protest constitutes a “valid petition.”<sup>4</sup> Figure 1 shows a typical rezoning proposal, with the site and 200-foot buffer highlighted. Once a valid petition is filed, the city council can approve the rezoning only by a three-fourths supermajority. However, because of rounding, the margin is often higher; for example, if a city council is composed of seven members, six members (or 86 percent) must vote in favor. By contrast, Oklahoma's moderate petition law only allows protests once owners of 50 percent of the land within a 300-foot buffer file an objection and allows such rezonings to pass with five yeas from a seven-member council.

Texas' valid petitions have been called “undemocratic”<sup>5</sup> because the 20-percent rule gives an outsize voice to a few unhappy nearby landowners. Indeed, 5 of the 16 petitions in Dallas and Austin we examined could have been triggered by a single protesting neighbor's signature. Furthermore, renters have no say in valid petitions.

Unlike in other states, Texas' petition law now endangers citywide rezonings, thanks to a 2022 court opinion in *City of Austin v. Acuña* that blocked Austin from overhauling its own zoning

### **The Power of One**

The valid petition process is asymmetric: it gives power only to opponents of a rezoning, not to supporters. In a Plano case, four neighboring landowners wrote in favor of rezoning to allow the development of an assisted living retirement home. But one neighbor whose land constituted more than 20 percent of the buffer area wrote in opposition, making it a valid petition. Although Planning and Zoning Commission members could take all responses into consideration in deciding how to vote, Texas' valid petition law automatically gave the single opposing letter the equivalent of two votes. The rezoning proposal was denied.

Source: City of Plano, Planning and Zoning Commission, Zoning Case 2021-031.

(which was done to comply with its comprehensive plan, as paradoxically required under state law). In that case, a mere 1.4 percent of the city's population was enough to force the supermajority at city council per the valid petition law. The court's ruling jeopardizes future zoning overhauls in the Fourteenth Court of Appeals District and casts a shadow over any Texas city's efforts to comprehensively rezone.

The power to alter city council voting thresholds lies with the legislature. Valid petitions implicitly delegate a substantial share of a city council's power to a few private individuals. Their use of that power need not comply with the city's comprehensive plan—and in fact often confounds it. And their use of that power is clearly in service of personal interests, not the public interest.

A bill filed by state Rep. Justin Holland, HB 1514,<sup>6</sup> would increase the proportion of buffer area ownership share required for a valid petition from 20 to 50 percent. In the previous legislative session, HB 2989<sup>7</sup> (not enacted) would have reversed the court's ruling, allowing valid petitions to apply only to limited, contiguous areas.

### **VALID PETITION CAPITAL OF THE WORLD**

There is no Texas-sized data source on the use of valid petitions, but even a cursory evaluation suggests that they are exceptionally frequent in Austin. For this policy brief, we read in detail two years' worth of valid petitions from the city of Austin and 15 months' worth from the city of Dallas.<sup>8</sup> We interviewed seven development professionals from the Austin area.<sup>9</sup> And we received information on the number of valid petitions filed in 2021 and 2022 from 10 other cities in North Texas (listed in table 1).

Twenty valid petitions were filed against Austin rezonings, but only three were filed in Dallas and four in the other 10 North Texas cities combined. Other data showed that rezonings are not exceptionally frequent in Austin, so that does not seem to explain the high incidence. Instead, we hypothesize that the capital's well-organized neighborhood associations and *City of Austin v. Acuña* have raised awareness of valid petitions. Interviewees agreed that Austin is a valid petition hot spot,<sup>10</sup> and two noted that 2020 and 2021 were especially active years for valid petitions. One

Table 1. Valid Petitions by City, 2021–2022		
CITY	POPULATION	2021–2022 VALID PETITIONS
Austin	959,549	20
Dallas	1,304,442	3*
Plano	285,900	2
Grand Prairie	196,272	1
Fate	17,988	1
Frisco	200,675	0
McKinney	195,057	0
Lewisville	111,676	0
Bedford	49,965	0
Little Elm	46,361	0
Forney	23,490	0
Celina	16,771	0

\* Dallas data cover only 15 months.

Notes: Population data are from the 2020 Census. Note that Austin’s quantity in the table here covers 2 years; for the detailed analysis in this policy brief, we used only 2021 cases.

accessory dwelling unit builder told us that a hostile neighborhood association convinced immediate neighbors to create a valid petition against his rezoning request, even though until then they did not personally oppose it.

Valid petitions are mainly used to block multifamily housing. In Austin, 25 percent of rezonings to a multifamily use faced a valid petition, compared to just 5 percent for commercial use. Our interviewees agreed that rezoning for multifamily housing was the likeliest to face a valid petition. In all the cases we read, valid petitions protested the loosening, not tightening, of land use regulations.

### INVISIBLE IMPACT OF VALID PETITIONS

Valid petitions have a mostly invisible impact. Developers told us they have limited capacity, and thus they are less likely to invest time and money on a project that might fail to win city council approval. They tend to stick to sure things.<sup>11</sup> One builder of starter homes shared how he speaks to neighbors before embarking on a project; if neighbors are opposed, he walks away. He estimates that half of his projects end at this stage. Once a project is green lighted, developers variously contact the neighborhood association, knock on doors, send letters, or hire consultants to pitch their plans to neighbors in hopes of heading off a fight.

Rather than risk a valid petition, few developers apply for rezonings in well-organized, affluent neighborhoods. Instead, we found that rezonings for multifamily development were concentrated on main roads;<sup>12</sup> just 4 out of 28 were on local roads. Of the 24 multifamily rezonings on main

roads, only 10 had sidewalks. Multifamily homes should ideally be within an easy walk of a park because they have little outdoor space on-site. But, instead, Austin’s regulatory norms shunt them to locations least appropriate for residences.

Most Austin interviewees agreed that valid petitions were a major barrier to development there. However, the city council’s public records are in apparent tension with this belief. Austin City Council strives for consensus, almost always making its rezoning votes unanimously.<sup>13</sup> Professionals told us that the public consensus masks backroom debates and negotiations. Developers prefer to delay planning commission and city council votes until passage is likely, and the higher threshold required by valid petitions therefore results in more delays in order to reach it. In this opaque forum, a valid petition is one of several factors affecting the outcome.

Another major caveat to the role of valid petitions is that they matter only in places where market demand cannot be met under the preexisting zoning. If the most valuable land uses are already allowed, no developer seeks a rezoning and no valid petition can be filed.

## **VISIBLE IMPACT OF VALID PETITIONS**

To compare zoning changes with and without valid petitions, we gathered data on all 126 rezonings in Austin that commenced in 2021.<sup>14</sup> Although valid petitions’ impact is mostly invisible, the data show that developments facing valid petitions spend several months before the city council and are more likely to get less from the rezoning than originally requested.

For example, owners of 901 and 907 Stobaugh Street (shown in figure 1) requested a rezoning from single-family to MF-4 multifamily zoning.<sup>15</sup> The staff and Austin Planning Commission each recommended approving a less intensive MF-3 designation. Neighbors filed a valid petition, with several of them appending letters in opposition, noting the prospect of increased traffic and its attendant safety risks. The city council unanimously approved a rezoning to MF-2, a multifamily designation even more restrictive than MF-3. As a consequence, fewer housing units will be built on the site.

The majority of rezonings are relatively minor changes, such as a shift from one type of industrial district to another or relief from a “conditional overlay” (a method of customizing zoning commonly used in Austin). Setting these aside, we looked at 27 more complicated rezonings to get closer to understanding the effects of a valid petition.<sup>16</sup>

Table 2 compares the protested to the non-protested cases in this group. Although we cannot know what would have happened to the protested cases in the absence of a protest petition law, the differences in outcomes are consistent with professionals’ belief that petitions can impose months of delays and alter projects’ results—although valid petitions rarely terminate projects potentially due to risk avoidance mentioned by interviewees.

**Figure 1.** The 200-Foot Buffer Around a Proposed Austin Rezoning



Source: Zoning Change Review Sheet, C14-2021-0055, 901 & 907 Stobaugh Street, City of Austin, Texas, August 26, 2021, <https://www.austintexas.gov/edims/document.cfm?id=365728>. We have edited the legend for clarity.

	VALID PETITION	NONE
Cases	10	17
Approved as requested	4	12
Approved with changes	5	4
Time before the city council	204 days	123 days
Unresolved	1	1

Notes: Cases include those that came before the city council for a first reading in 2021 in which the zoning changed category; the requested zoning was multifamily, mixed use, or multiple districts; and the case spent at least one month before the city council. The two unresolved cases are not factored into the calculation of time before the city council; each has been postponed for over a year at the time of writing.

## OPTIONS FOR REFORM

As Texas legislators reconsider the role of valid petitions in shaping the evolution of zoning in their cities, they can consider several models for reform.

*Oklahoma.* To make the valid petition process more democratic and less likely to be captured by one or two neighbors, Texas could increase the validity threshold from 20 to 50 percent (as Texas HB 1514 proposes) and expand the buffer from 200 to 300 feet, or more. Texas could also follow

Montana, Missouri, and many other states by lowering the supermajority threshold from three-fourths to two-thirds.

*Massachusetts.* A recent reform to Massachusetts law makes it more difficult for cities to impose new regulations than to ease old ones. Texas could better defend property rights by adapting this approach—for example, by eliminating the supermajority vote threshold for upzonings and retaining it for downzonings.

*Arizona.* Unlike Texas, Arizona gives condominium owners a distinct voice in its valid petition process. Texas could go further by giving a voice to all residents, including renters. Expanding participation is especially urgent given that Texas' valid petition law now affects citywide zoning overhauls.

*Texas before City of Austin v. Acuña.* The valid petition process is an old wineskin never intended for citywide zoning reforms, which ought to be a broadly inclusive exercise in representative government. The legislature could revive last session's HB 2989 (87th R.), or if lawmakers want to have a citywide protest process, they should tailor a new one for that purpose.

*North Carolina and Wisconsin.* In the past decade, these two states dispensed entirely with their protest petition laws. In Wisconsin, cities were left to decide whether to integrate a protest petition ordinance.

Texas legislators could also make valid petitions less relevant by making zoning less restrictive in areas with high land prices. After all, as more than one interviewee pointed out, projects that do not need rezoning do not have to worry about the vagaries of the valid petition.

## **ABOUT THE AUTHORS**

Salim Furth is a senior research fellow and director of the Urbanity project at the Mercatus Center at George Mason University. His research focuses on housing production and land use regulation. He has published in *Critical Housing Analysis* and the *IZA Journal of Labor Policy* and has testified before several state legislatures as well as the US Senate and House of Representatives. He frequently advises local government officials on zoning reform and housing affordability. Furth earned his PhD in economics from the University of Rochester.

C. Whit Ewen is a businessman who grew up in Austin and Belgium. Community leadership roles led to his service on the Austin Planning Commission, catalyzing his interest in city and regional planning. In the private sector, he founded a customer data analytics startup and angel-funded healthcare tech companies such as ESO Solutions. In the public sector, he has researched subjects such as public-private partnerships in urban parks as well as technical innovations in transportation planning. Prior to his entrepreneurial endeavors, Whit had a distinguished career in international business management in Europe. He earned his BA in psychology from the University of Texas at Austin.

## NOTES

1. Rachel Stone, “Kessler Neighbor Wins Appeal from City of Dallas Over Fitness Center Zoning Vote,” *Advocate Oak Cliff*, April 12, 2022.
2. Bill Oliver, “Bryan City Council Approves Rezoning for Student Housing Across the Street from the Blinn College Bryan Campus, Over Neighborhood Opposition,” *WTAW*, May 18, 2022.
3. Megan Kimble, “Desperate for Housing, Austin Seeks Relief in Rezoning,” *Bloomberg CityLab*, April 29, 2022.
4. The common usage of “valid petition” is specific to Texas. Protest petition laws are less known in other states.
5. Timothy Bray, “Should You Have to Own Property to Vote? Opponents of More Housing in Austin Think So,” *AURA—An Austin for Everyone* (blog), July 16, 2020.
6. Relating to Protest Changes to Municipal Zoning Regulations and Boundaries, H.B. 1514, 88th Texas Legislature (2023).
7. Relating to Certain Notice and Protest Provisions Applicable to Municipal Zoning Changes, H.B. 2989, 87th Texas Legislature (2021).
8. We thank Arthur Wright for timely and careful research assistance throughout this project. The Austin data includes rezonings that came before the city council for a first reading in 2021. We gathered the Austin data from city records posted online. The Dallas data are from the *City Plan Commission Annual Report FY 2021–2022* and personal communication with staff.
9. Our interviewees included three zoning consultants, a land use attorney, a high-rise developer, an affordable housing developer, and a small-scale builder. Most of the interviewees asked for anonymity. We also corresponded or spoke with officials from three Texas cities and several other people with knowledge of the rezoning process.
10. Professionals working in and around Austin noted that many of the suburbs have zoning that is much more restrictive than the cities’, yet valid petitions are very rare in the suburbs. This is likely because city development is cheek to cheek with older buildings, making disagreements more common. City land prices are also higher, reflecting market demand for denser development, which some people dislike.
11. Our data confirms this: only three rezonings that came before Austin City Council in 2021 have not yet been approved, and two of those are still pending.
12. We categorized local, collector, arterial, and frontage roads. For ease of presentation, we grouped the latter three as “main roads.”
13. We identified only five contested votes out of hundreds on rezonings. Four of those votes concerned projects facing valid petitions.
14. We chose 2021 to ensure that most cases would have been fully resolved by the time of writing; only 2 remain unresolved.
15. Zoning Change Review Sheet, C14-2021-0055, 901 & 907 Stobaugh Street, City of Austin, Texas, August 26, 2021, <https://www.austintexas.gov/edims/document.cfm?id=365728>.
16. For this exercise, we began with our sample of 116 rezonings that came before Austin City Council in 2021 for a first reading. We retained only those that proposed multifamily, mixed use, or multiple zoning districts; changed from one broad category of zoning to another; and took the city council at least a month to decide. This left us with 27 cases, 10 of which involved valid petitions.