

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of**10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping
by Political Subdivisions for Homeless Individuals****Disclaimer**

Attached is a draft of proposed 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, that was approved by the TDHCA Governing Board on July 8, 2021. This is a new rule. This document, including its preamble, is expected to be published in the July 23, 2021, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: **Start: 8:00 a.m. Austin local time on July 23, 2021**

End: 5:00 p.m. Austin local time on August 23, 2021

Comments received after 5:00 p.m. Austin local time on August 23, 2021, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Preamble proposing new 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping Political Subdivisions for Homeless Individuals. The purpose of the rule is to implement new requirements established by the 87th Regular Texas Legislature that establishes in Chapter 2306, Texas Government Code, new Subchapter PP. Subchapter PP provides that a political subdivision may not designate a property to be used by homeless individuals to camp unless the Texas Department of Housing and Community Affairs (the Department) has approved a plan as further described by Subchapter PP. The rule proposed provides clear objective guidance for political subdivisions on how they can submit such plans, the content of the plans, how plans will be reviewed, and the criteria by which such plans will be approved.

The Department has analyzed this rulemaking action and the analysis is described below for each category of analysis performed.

Tex. Gov't Code §2001.0045(b) does not apply to the rule. §2001.0045(c)(9) provides that the requirements of the section do not apply to a rule that is "necessary to implement legislation, unless the legislature specifically states this section applies to the rule."

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect, the rule does not create or eliminate a government program, but only provides the process and framework for how a political subdivision may submit a plan to designate a property to be used by homeless individuals to camp, what must be included in the plan, and provides how the Department will review and approve such plans.

2. The enacted law does create additional work associated with the review and processing of such plans, however the rule only formalizes that process created by statute. Therefore, the rule does not require a change in work that will require the creation of new employee positions, nor will the rule reduce work load to a degree that any existing employee positions are eliminated.

3. The rule does not require additional future legislative appropriations.

4. The rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is creating a new regulation; the regulation is applicable only to those political subdivisions seeking to obtain plan approval to designate a property to be used by homeless individuals to camp.

6. The action will not repeal any rule.

7. The rule will increase the number of individuals subject to the rule's applicability as the rule currently does not exist. When adopted, those political subdivisions seeking such plan approvals will become subject to the rule's applicability.

8. The rule will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this rule and determined that the rule will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the rule would be the provision of a clear policy for how a political subdivision may designate a property to be used by homeless individuals to camp through submission of a plan to the Department. The rule proposed provides clear guidance for political subdivisions on how they can submit such plans, what must be included in the plan, how plans will be reviewed, and the criteria by which such plans will be approved. There will not be economic costs to individuals required to comply with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the rule is in effect, enforcing or administering the rule has minimal implications related to costs or revenues of the state or local governments. There may be negligible costs associated with the time required of a political subdivision to prepare and submit the plan, and respond to questions from the Department, but these processes and costs are necessary to ensure implementation of the newly enacted law. All costs are borne by the political subdivision.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 23, 2021, to August 23, 2021, to receive input on the proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time August 13, 2021.

STATUTORY AUTHORITY. The rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules and Tex. Gov't Code §§2306.1121-1124, which establish Subchapter PP requiring the plan process covered by the rule. Except as described herein the rule affect no other code, article, or statute.

§1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

(a) Purpose.

Subchapter PP of Chapter 2306, Texas Government Code, Property Designated by Political Subdivision for Camping by Homeless Individuals, was enacted in September 2021. §2306.1122 provides that a Political Subdivision may not designate a property to be used by homeless individuals to Camp unless the Department has approved a Plan as further described by Subchapter PP. This rule provides the Department's policies for such Plans, including the process for Plan submission, Plan requirements, the review process, and the criteria by which a Plan will be reviewed by the Department.

(b) Applicability.

- (1) This rule applies only to the designation and use of a property designated for camping by homeless individuals that first begins that use on or after September 1, 2021, except that the rule and requirements of Subchapter PP, Chapter 2306, Texas Government Code, do not apply to a Proposed Property to be located on/in a Public Park. Public Parks are ineligible to be used as a Camp by homeless individuals per Subchapter PP, Chapter 2306, Texas Government Code.
- (2) The designation and use of a Proposed Property described by Subchapter PP, Chapter 2306, Government Code that first began before September 1, 2021, is governed by the law in effect when the designation and use first began, and the former law is continued in effect for that purpose.
- (3) A Political Subdivision that designated a property to be used by homeless individuals to Camp before September 1, 2021, may apply on or after that date for approval of a Plan pursuant to this section.

(c) Definitions.

- (1) **Camp**--Has the meaning assigned by Section 48.05 of the Texas Penal Code.
- (2) **Department**--the Texas Department of Housing and Community Affairs.
- (3) **Plan**--Specifically an application drafted by a Political Subdivision, submitted to the Department by the Political Subdivision, with the intention of meeting the requirements provided for in subsection (e) of this Section (relating to Threshold Plan Requirements).
- (4) **Plan Determination Notice**--the notification provided by the Department to the Political Subdivision stating a Plan's Approval or Denial.
- (5) **Political Subdivision**--a local government as defined in Chapter 2306, Texas Government Code.
- (6) **Proposed New Campers**--Homeless individuals that the Political Subdivision intends to allow to Camp at the Proposed Property for which a Plan is submitted.
- (7) **Proposed Property**--that property proposed for use for Proposed New Campers and submitted in the Plan, owned, controlled, leased, or managed by the Political Subdivision.

(8) Public Park--Any parcel of land dedicated and used as parkland, or land owned by a political subdivision that is used for a park or recreational purpose that is under the control of the political subdivision, which is designated by the political subdivision.

(d) Plan Process.

(1) Submission.

(A) Plans may be submitted at any time. Plan resubmissions may also be submitted at any time.

(B) All Plans must be submitted electronically to campingplans@tdhca.state.tx.us.

(C) At least one designated email address must be provided by the Political Subdivision; all communications from the Department to the Political Subdivision regarding the Plan will be sent to that email address. No communication will be sent by traditional postal delivery methods. Up to two email contacts may be provided.

(2) Review Process.

(A) Upon receipt, Department staff will send a confirmation email receipt to the designated email address and initiate review of the Plan. The Plan will be reviewed first to determine that all information specified in subsection (e) of this Section (relating to Threshold Plan Requirements) have been included and that sufficient information has been provided by which to evaluate the Plan against the Plan Criteria provided for in subsection (f) of this Section (relating to Plan Criteria).

(B) If a Plan as submitted does not sufficiently meet the requirements of §2306.1123, Texas Government Code, and subsection (e) of this Section, or does not provide sufficient explanation by which to assess the Plan Criteria provided for in subsection (f) of this Section, staff will issue the Political Subdivision a notice of deficiency. The Political Subdivision will have five calendar days to fully respond to all items requested in the deficiency notice.

(i) For a Political Subdivision that satisfies all requested deficiencies by the end of the five calendar day period, the review will proceed.

(ii) For a Political Subdivisions that does not satisfy all requested deficiencies by the end of the five calendar day period, no further review will occur. A Plan Determination Notice will be issued notifying the Political Subdivision that its Plan has been denied and stating the reason for the denial. The Political Subdivision may resubmit a Plan at any time after receiving a Plan Determination Notice.

(C) Plan Determination Notice.

(i) Upon completion of the review by staff, the Political Subdivision will be notified that its Plan has been Approved or Denied in a Plan Determination Notice.

(ii) Not later than the 30th day after the date the Department receives a plan or resubmitted Plan, the Department will make a final determination regarding approval of the Plan and send a Plan Determination Notice to the Political Subdivision. For a Political Subdivision that had a deficiency notice issued, and that satisfied all requested deficiencies by the end of the five calendar day period, the Department will strive to still issue a final determination notice by the 30th day from the date the Plan was originally received, however the date of issuance of the Plan Determination Notice may extend past the 30th day by the number of days taken by the Political Subdivision to resolve the deficiencies.

(iii) A Political Subdivision may appeal the decision in the Plan Determination Notice using the appeal process outlined in §1.7 of this Chapter (relating to Appeals Process).

(e) Threshold Plan Requirements.

A Plan submitted for approval to the Department must include all of the following items for the property for which the Plan is being submitted:

(1) pertinent contact information for the Political Subdivision as specified by the Department in its Plan template;

(2) the physical address or if there is no physical address the legal description of the property;

(3) the estimated number of Proposed New Campers to be located at the Proposed Property;

(4) a description with respect to the property of the following five evaluative factors that addresses all of the requirements below:

(A) Local Health Care. Provide:

(i) A description of the availability of local health care for Proposed New Campers, including access to Medicaid services and mental health services;

(i) A description of the specific providers of the local health care and mental health services available to Proposed New Campers. Local health/mental health care service providers do not include hospitals or other emergency medical assistance, but contemplate access to ongoing and routine health and mental health care. Providers of such services can include, but are not limited to: local health clinics, local mental health authorities, mobile clinics that have the location in their service area, and county indigent healthcare programs;

(iii) A description or copy of a communication from the Texas Department of Health and Human Services specific to the Political Subdivision and specific to the population of homeless individuals must be provided to establish the availability of access to Medicaid services;

(iv) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property;

(v) The cost of such care and services, whether those costs will be borne by the Proposed New Campers or an alternative source, and if an alternative source, then what that source is; and

(vi) A description of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such care and services from the specific providers.

(B) Indigent Services. Provide:

(i) A description of the availability of indigent services for Proposed New Campers. For purposes of this factor, indigent services are any services that assist individuals or households in poverty with their access to basic human needs and supports. Indigent service providers include, but are not limited to: community action agencies, area agencies on aging, and local nonprofit or faith-based organizations providing such indigent services;

(ii) A description of the specific providers of the services and what services they provide;

(iii) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property; and

(iv) A description of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such services from the specific providers.

(C) Public Transportation. Provide:

(i) A description of the availability of reasonably affordable public transportation for Proposed New Campers. Transportation provided by a homeless service provider is not considered public transportation. Reasonably affordable for the purposes of this section means the rate for public transportation for the majority of users of that public transportation; if for instance the standard bus fare in an area is \$2 per ride, then that rate is considered the

reasonable affordable rate for the Proposed Property; Proposed New Campers should not have to pay a rate higher than that standard fare;

(ii) A description of the specific providers of the public transportation services and their prices;

(iii) A description of the closest proximity of the property to a specified entrance to a public transportation stop or station, with a sidewalk for pedestrians, including a map of the closest stop and public transportation route shown in relation to the Proposed Property;

(iv) A description of the route schedule of the closest proximate public transportation route; and

(v) If public transportation is available upon demand at the property location, identification of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such transportation services from that specific on-demand provider.

(D) Law Enforcement Resources. Provide:

(i) A description of the local law enforcement resources in the area;

(ii) The description should include a brief explanation of which local law enforcement patrol beat covers the Proposed Property;

(iii) A description of local law enforcement resources and local coverage in several other census tracts or law enforcement beats/areas with similar demographics to that of the beat/area of the Proposed Property to provide a comparative picture;

(iv) a description of any added resources for the area or proposed specifically for the property, and how proximate those resources are; and

(v) any explanation of reduced (or lower than typical of similar demographic areas) local law enforcement coverage in the area.

(E) Coordination with Local Mental Health Authority. Provide:

(i) A description of the steps the Political Subdivision has taken to coordinate with the Local Mental Health Authority to provide services for any Proposed New Campers; and

(ii) A description must include documentation of meetings or conversations, dates when they occurred, any coordination steps resulting from the conversations, and whether any ongoing coordination is intended for the Proposed Property.

(5) The Political Subdivision must provide evidence that establishes that the property is not a Public Park. Evidence must include documentation addressing the definition of a Public Park as defined in subsection (c)(8) of this Section.

(6) Plans should be limited in length. Plans in excess of 15 pages of text, not including documentation and attachments, will not be reviewed.

(7) Any Plan that is a resubmission of a denied Plan, submitted again for the same Proposed Property, must include a short summary at the front of the Plan explaining what has been changed in the resubmitted Plan from the original denied Plan.

(f) Plan Criteria

(1) Approval. In no case will a Plan be approved if the Department has determined that the Proposed Property referenced in a Plan is a Public Park as defined in subsection (c)(6) of this Section. Plans for other properties will be approved if the following five factors are satisfied:

(A) Local health care, including access to Medicaid services (or other comparable health services) and mental health services, are within one mile of the Proposed Property, are accessible via public transportation, or transportation is provided, and are expected to be available at little or no cost for at least 90% of Proposed New Campers (some limited exceptions from providers

as may be described in accordance with (d)(5)(A)(v) of this section will not preclude approval for this factor);

(B) There are indigent services providers that have locations within one mile of the Proposed Property, are accessible via public transportation, or transportation is provided, and 90% of Proposed New Campers are expected to be eligible;

(C) The property is within 1/2 mile or less from a public transportation stop or station that has scheduled service at least several times per day for at least six days per week, or there is on demand public transportation available, and the political subdivision estimates that least 90% of the Proposed New Campers are eligible for that on-demand public transportation;

(D) The local law enforcement resources for the patrol zone or precinct that includes the Proposed Property are not materially less than those available in other zones or precincts of the local law enforcement entity; and

(E) the Political Subdivision has had at least one meeting to discuss initial steps and coordination with the Local Mental Health Authority, specific to this particular Proposed Property and the volume/service needs of Proposed New Campers.

(2) A Plan that meets at least four of the five factors in paragraph (1) of this subsection, may be approved if significant and sufficient mitigation is provided that delivers similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through some other means.

(3) Denial.

An Application that does not meet all of the requirements in paragraph (1) of this subsection, or that does not meet the requirements of paragraph (2) of this paragraph will be issued a Plan Determination Notice within 30 days of Plan application (which may be extended by the amount of calendar days the Political Subdivision took to respond to deficiencies) reflecting denial.