



# City of Austin

P.O. Box 1088, Austin, TX 78767-1088

August 23, 2021

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

## **Re: Proposed 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals**

The City of Austin appreciates the opportunity to submit feedback on proposed rule 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

The City shares the goal of ensuring adequate access to services and other supports for persons experiencing homelessness. However, the City would like to share some concerns about some of the specific requirements as well as the possible discriminatory impact of the proposed rule.

### **Concerns about Evaluation Criteria**

The proposed rule requires a local government to meet four of five evaluative factors regarding local health care and mental health care services, indigent services, public transportation, local law enforcement resources, and coordination the local mental health authority. However, criteria specific to those factors will make it unlikely that local governments in the state would be able to submit a plan that complies with the requirements.

Section (f) (1) (A) of the proposed rule requires that local health care, including access to Medicaid services (or other comparable health services) and mental health services are “available at little or no cost for at least 90% of Proposed New Campers. The availability of Medicaid is a state function, and access to providers accepting Medicaid is largely out of the control of local governments. Stringent eligibility requirements, along with substantial barriers to establishing and maintaining enrollment result in a relatively small portion of people experiencing homelessness receiving Medicaid-funded services. As such, health care services would likely have to be locally funded. Additionally, Medicaid managed care insurance coverage and/or other providers may require a co-pay but the rule does not define “little” cost. Of the five evaluative criteria, Section (f) (1) (A) and Section (f) (1) (B), concerning health care and mental health services and indigent services, are very similar. For example, county indigent healthcare programs are listed as acceptable health care

*The City of Austin is committed to compliance with the Americans with Disabilities Act.  
Reasonable modifications and equal access to communications will be provided upon request.*

providers. It may be possible for the two criteria to become mutually exclusive. **Adding more specificity about plan requirements, defining what constitutes “little” cost for services and adding language addressing similarities and overlapping services between providers described under Sections (e) (4) (A) and (e) (4) (B) would provide clarity for evaluators and applicants.**

Section (f) (1) (A) and Section (f) (1) (B) of the proposed rule require that health care, mental health care and indigent services be “within one mile of the Proposed Property, are accessible via public transportation, or transportation is provided.” Mobile clinics that have the encampment location in their service area are listed as possible health or mental health providers in the Threshold Plan Requirements in Section (e), but are not included in the list of possible indigent services providers. As such, it is not clear that any mobile providers who come to the encampments would be acceptable under the proposed criteria. **The City respectfully requests that mobile providers are specifically included in the criteria for approval.**

The City also asks that additional details and clarification regarding proof of specific criteria be included in the proposed rule language. For example, it is unclear what level of specificity will be required in a plan submitted by a local government. As currently drafted, the proposed rule limits the length of the plan but does not explain how much information is required. For this reason, the rule is unclear as to whether the Department will require short and simple statements or complex explanations.

### **Fair Housing Concerns**

The City has concerns that the proposed rule makes assumptions about the individuals experiencing homelessness who will utilize the site. This is particularly true with the proposed rule’s focus on law enforcement needs and primary care and behavioral health resources. The City is also concerned that the proposed rule could create a scenario where compliance with the rule will conflict with the State’s and a municipality’s obligation to comply with the Fair Housing Act by fundamentally limiting where people can live based on their health and/or disability status.

The demographics of potential tenants or occupants is not a standard that the City uses when it decides whether housing is compatible with or should be available in a particular part of the City. However, the proposed rule requires a local government to make a determination about law enforcement based on the encampment demographics. This presents a risk that housing will be made available to them on unequal terms based on race or disability status.

Under the Fair Housing Act, if an entity regards an individual as disabled, even if they are not, then treating them differently can be discrimination based on disability. Requiring a local government to make a site decision based on proximity to local health care and mental health services means that the government is assuming that the individuals who will reside at the site are disabled. Additionally, such assumptions could result in different terms or conditions because of a disability. Lastly, as clinics that accept Medicaid or provide health / mental health services at little to no cost are typically located in low-income areas, encampments could functionally be concentrated in

underprivileged areas, which runs counter to the Fair Housing Act and TDHCA's policy goals around de-concentration of poverty.

Thank you for the opportunity to provide feedback on Proposed 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals. The City appreciates your consideration of the concerns raised in these comments as you continue your review of the proposed rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dianna Grey", with a stylized flourish at the end.

Dianna Grey  
Homeless Strategy Officer  
Homeless Strategy Division  
Austin Public Health