

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC §1.1, Reasonable Accommodation Requests

Disclaimer

Attached is a draft of proposed new 10 TAC §1.1, Reasonable Accommodation Requests, that was approved by the TDHCA Governing Board on May 24, 2018. This action will entail the repeal of the current rule at this section, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the June 8, 2018, 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 June 11, 2018
End: 5:00 p.m. Austin local time on July 11, 2018

Comments received after 5:00 p.m. Austin local time on July 11, 2018, will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats 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

Written comments may be submitted in hard copy or email formats within the designated public comment period. 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
Street Address: 221 East 11th Street, Austin, TX 78701
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
Email: info@tdhca.state.tx.us Web: www.tdhca.state.tx.us

Preamble and proposed new 10 TAC §1.1, Reasonable Accommodation Requests to the Department

The Texas Department of Housing and Community Affairs (the "Department") proposes new §1.1, Reasonable Accommodation Requests to the Department. The purpose of the proposed new section is to make changes that include: minor changes to the description of the process, adding the Department's Fair Housing Manager in accommodation request decision-making, reflecting that accommodation requests do not have to be in writing, revising the title to make it clear these are only requests to the Department (not to our subrecipients), and providing the statutory authority and purpose of the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with Comptroller rules and increased clarity and organization. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. 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, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.1, Reasonable Accommodation Requests to the Department

(a) Purpose. The purpose of this section is to establish the procedures by which a Requestor may ask that a Reasonable Accommodation is made by the Department. For rules governing the handling of reasonable accommodation requests and responsibilities of entities receiving funds or resources from the Department see Subchapter B, §1.204 of this Chapter. This rule is statutorily authorized by Tex. Gov't Code, 2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs, and in accordance with the Fair Housing Act, and other federal and state civil rights laws.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--Texas Department of Housing and Community Affairs Governing Board.

(2) Division Manager or Director--Department staff member supervising the division or area of a division containing the program for which a Reasonable Accommodation is being requested.

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, or as defined by other applicable federal or state law.

(4) Fair Housing Act--Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968.

(5) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(6) Requestor--Includes applicants, members of the public, clients of Department programs, and program participants.

(7) Section 504--Section 504 of the Rehabilitation Act of 1973, as amended.

(c) Procedures.

(1) The Requestor of the Reasonable Accommodation shall submit a request to the Division Manager or Director. A request does not have to be in writing. A request can be made in a face-to-face conversation with a Division Manager or Director or using any other method of communication. A request is any communication in which an individual clearly asks or states that they need the Department to provide or to change something because of a Disability.

(2) The request, whether oral or written, must contain, at minimum:

(A) The Department program or procedure for which an accommodation is being requested;

(B) Household information to include name and address;

(C) Description of the Reasonable Accommodation being requested; and

(D) Reason the Reasonable Accommodation is necessary.

(E) In the case of oral requests, the Division Manager or Director will create a written summary of the request.

(3) The Division Director will coordinate with the Fair Housing Manager and the supervising Deputy Executive Director/Chief, if any, and may ask for additional information from the Requestor. Staff should address Reasonable Accommodations requests promptly. If making such a Reasonable Accommodation would involve incurring expense, staff should consult with their Division Manager or Director to ensure that they remain within their approved budget or, if additional measures beyond those within budget are required, that they are promptly considered and a compliant decision made. Upon having the applicable information, the Division Director or Manager and Fair Housing Manager will determine:

(A) If the proposed Reasonable Accommodation is covered under Section 504 and/or the Fair Housing Act, or any other federal or state law; and

(B) Whether to recommend to the Executive Director approval, an alternative Reasonable Accommodation, or denial.

(4) The request and recommendation, are then sent to the Executive Director or their designee, resulting in one of the following steps:

(A) The Executive Director determines Board action is not necessary and approves the request;

(B) The Executive Director proposes an alternative Reasonable Accommodation to the Requestor;

(C) The Executive Director determines Board action is necessary and presents the request and any proposed alternative Reasonable Accommodation at an ensuing Board meeting. The Executive Director can choose to include a recommendation for or against the request;

(D) The Executive Director refers the request to the Department's Dispute Resolution Coordinator for an Alternative Dispute Resolution procedure as outlined in 10 TAC §1.17; or

(E) The Executive Director denies the request. In the case of a denial, the Requestor can ask that their request be placed on the agenda for the next available Board meeting.