

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
**TDHCA Governing Board Approved Draft of proposed new 10 Texas Administrative Code, Chapter 10,  
Subchapter I, Public Facility Corporation Compliance Monitoring**

**Disclaimer**

Attached is a draft of proposed new 10 TAC Chapter 10, Public Facility Corporation Compliance Monitoring Rule that was approved by the TDHCA Governing Board on October 26, 2023. This document, including its preamble, is scheduled to be published in the November 10, 2023 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

In compliance with Texas Government Code, §2001.023(c), a summary of the proposed rule follows:

The Texas Department of Housing and Community Affairs (the Department) through legislative action in HB 2071 (88th Regular Legislature) has been tasked with the compliance monitoring oversight of Public Facility Corporation (PFC) multifamily residential developments that are initiated on or after June 18, 2023. The proposed new rule outlines audit and reporting requirements for PFC developments subject to the new law. Also in compliance with Texas Government Code, §2001.023(c), this cover sheet and summary are provided in both English and Spanish.

**Public Comment**

**Public Comment Period: Starts: 8:00 a.m. Austin local time on November 10, 2023  
Ends: 5:00 p.m. Austin local time on December 11, 2023**

Comments received after 5:00 p.m. Austin local time on December 11, 2023 will not be accepted.

Written comments may be submitted, in hard copy or electronic formats to:

Texas Department of Housing and Community Affairs  
Attn: Wendy Quackenbush  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@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 citation 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  
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Departamento de Vivienda y Asuntos Comunitarios de Texas  
**Borrador aprobado por la Junta Directiva del TDHCA de la nueva propuesta: subcapítulo I [“Supervisión de cumplimiento para corporaciones de instalaciones públicas”] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC)**

**Descargo de responsabilidad**

Se adjunta un borrador de la nueva propuesta (“Regla de supervisión de cumplimiento para corporaciones de instalaciones públicas”) del capítulo 10 del título 10 del Código Administrativo de Texas (TAC), que fue aprobada por la Junta Directiva del TDHCA el 26 de octubre de 2023. Este documento, incluyendo su preámbulo, está programado para publicarse en la edición del *Texas Register* del 10 de noviembre de 2023; esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión aquí mencionada es solo informativa y no debe considerarse como fundamento para comentarios del público

De conformidad con la sección (§) 2001.023 del Código de Gobierno de Texas, se incluye a continuación un resumen de la regla propuesta:

Al Departamento de Vivienda y Asuntos Comunitarios de Texas (el Departamento), a través de la acción legislativa en la Ley 2071 de la Cámara de Representantes (HB), 88.ª Legislatura Ordinaria, se le ha encomendado la supervisión de cumplimiento de las urbanizaciones residenciales multifamiliares de corporaciones de instalaciones públicas (PFC) que inician a partir del 18 de junio de 2023. La nueva regla propuesta describe los requisitos de auditoría y de elaboración de informes para las urbanizaciones de PFC sujetas a la nueva ley. Asimismo, de conformidad con la sección §2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se ofrecen tanto en inglés como en español.

**Comentarios del público**

**Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 10 de noviembre de 2023**  
**Finalización: 5:00 p. m., hora local de Austin, del 11 de diciembre de 2023**

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 11 de diciembre de 2023.

Los comentarios por escrito pueden presentarse en formatos impreso o electrónico a la siguiente dirección:

Departamento de Vivienda y Asuntos Comunitarios de Texas  
A la atención de: Wendy Quackenbush  
P.O. Box 13941  
Austin, Texas 78711-3941  
Correo electrónico: [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us)

Los comentarios por escrito pueden presentarse en formato impreso o por correo electrónico dentro del período designado de comentarios del público. Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario.

Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

**DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS**

Dirección: 221 East 11<sup>th</sup> Street, Austin, TX 78701

Dirección de correspondencia: P.O. Box 13941, Austin, TX 78711-3941

Número principal: 512-475-3800 Número gratuito: 1-800-525-0657

Correo electrónico: [txhaf@tdhca.state.tx.us](mailto:txhaf@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**OCTOBER 26, 2023**

Presentation, discussion, and possible action on an order proposing new 10 Texas Administrative Code Chapter 10, Uniform Multifamily Rules, Subchapter I, Public Facility Corporation Compliance Monitoring and directing its publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, the proposed new rule is responsive to the passage of HB 2071 (88<sup>th</sup> Regular Legislature), which granted the Texas Department of Housing and Community Affairs (Department) compliance monitoring oversight of Public Facility Corporation developments that are initiated on or after June 18, 2023;

**WHEREAS**, HB 2071 requires the Department to adopt rules necessary to implement §303.421 and §303.0425 of Chapter 303, Local Government Code; and

**WHEREAS**, such new proposed rulemaking will be published in the *Texas Register* for public comment to be received and returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed new rulemaking of 10 TAC §10.1101 Public Facility Corporation Compliance Monitoring, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

**BACKGROUND**

The Texas Department of Housing and Community Affairs (the Department) through legislative action in HB 2071 (88<sup>th</sup> Regular Legislature) has been tasked with the compliance monitoring oversight of Public Facility Corporation (PFC) multifamily residential developments that are initiated on or after June 18, 2023. The bill requires the Department to adopt rules related to the new compliance monitoring function by January 1, 2024. The law amends Chapter 303 Local Government Code, to only apply to PFC-owned multifamily residential developments that do not:

1. Have at least 20% of the development units reserved for public housing;
2. Participate in the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD);

3. Receive financial assistance administered under Chapter 1372, Government Code, or receive financial assistance from a tax-exempt bond; or
4. Receive financial assistance administered under Subchapter DD, Chapter 2306, Government Code, the Low Income Housing Tax Credit program.

The first audit reports for the PFC developments subject to the new law are required to be submitted to the Department by June 1, 2024. Subsequent reports are due to the Department no later than June 1 of each year.

Upon Board approval, the new rulemaking will be published in the *Texas Register* and released for public comment from November 10, 2023, through December 11, 2023. Staff will return to the Board for final adoption of the rules.

## **Attachment A: Preamble for proposed new 10 TAC Subchapter I §10.1101 Public Facility Corporation Compliance Monitoring**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Subchapter I, §10.1101, Public Facility Corporation Compliance Monitoring. The purpose of the proposed new rule is to provide compliance with recent statutory requirements, and as authorized by Tex. Gov't Code §2306.053. The new rule provides guidance on auditing and reporting requirements for Public Facility Corporation multifamily residential developments that are required to be audited no later June 1, 2024, and the results reviewed and published by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program. This rule provides for an assurance that required monitoring requirements tasked to the Department are clearly relayed to Responsible Parties of Public Facility Corporations and their Sponsors.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new rule does not require additional future legislative appropriations.
4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed new rule is creating a new regulation, which is created as a result of the approved HB 2071.
6. The proposed new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed new rule is necessary to ensure compliance with HB 2071 and for the Department to establish rules.
7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability;
8. The proposed new rule will not negatively or positively affect the 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, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of HB 2071 and Tex. Gov't Code §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. To the extent that PFC multifamily residential developments are considered small or micro-businesses subject to the proposed new rule, the economic impact of the rule is projected to be \$0. There are no

rural communities subject to the proposed new rule, so the economic impact of the rule is projected to be \$0.

3. The Department has determined that because the rules apply to Public Facilities Corporation multifamily residential development approved on or after June 18, 2023, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new 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 new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because the new rule only relates to monitoring Public Facilities Corporation multifamily residential developments; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that this new rule will only impact monitoring of Public Facilities Corporation multifamily residential developments that are not allocated or funded by the Department, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will provide a new procedure of monitoring Public Facilities Corporations multifamily residential developments that are generally exempt from ad valorem taxation. There will not be any economic cost to any individuals required to comply with the new rule because there are no fees collected by the Department to perform compliance monitoring on Public Facilities Corporation multifamily residential developments.

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 new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because there are no fees collected by the Department.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 10, 2023, to December 11, 2023, to receive input on the newly proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 11, 2023.

STATUTORY AUTHORITY. The new rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new rules affect no other code, article, or statute.

## **Chapter 10 Uniform Multifamily Rules**

### **Subchapter I Public Facility Corporation Compliance Monitoring**

#### **§10.1101 Purpose**

The purpose of Chapter 10, Subchapter I is to:

- (a) Establish rules governing Multifamily Residential Developments owned or sponsored by a Public Facility Corporation (PFC) that are subject to Sections 303.0421 and 303.0425 of Local Government Code.
- (b) To enable the Department to communicate with responsible persons and parties, not limited to the PFC, sponsor of a PFC, governing body of a PFC, the Operator, the Texas Comptroller of Public Accounts, and, if the PFC's Sponsor is a Housing Authority, the Housing Authority governing board regarding the results of the Audit Report.
- (c) To establish qualifications for third party Auditors and reporting standards and formats.
- (d) To establish compliance requirements, tenant protections, and affirmative marketing requirements.

#### **§10.1102 Definitions**

The capitalized terms or phrases used herein are defined in the title. Any other capitalized terms in the subchapter shall have the meaning defined in Tex. Gov't Code 2306, Chapter 303 Local Government Code, Chapter 392 Local Government Code, and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

- (1) Audit Report--A report completed by an approved third party auditor, in a manner and format prescribed by the Department.
- (2) Auditor--Independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters.
- (3) Board--The governing board of the Texas Department of Housing and Community Affairs.
- (4) Business Day--Any day that is not a Saturday, Sunday, or holiday observed by the State of Texas.
- (5) Business hours--8:00 a.m. to 5:00 p.m. Central local time.
- (6) Department--The Texas Department of Housing and Community Affairs.
- (7) Director--The Executive Director of the Department.
- (8) Development--A multifamily residential development owned by a Public Facility Corporation created under Chapter 303 Local Government Code.
- (9) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437(f)).
- (10) Public Facility Corporation (PFC)--A nonprofit corporation that can be created by a municipality, county, school district, housing authority or a Sponsor, as outlined in Chapter 303 of Local Government Code.



(11) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, or Deed Restriction.

(12) Responsible Parties--The PFC, Sponsor of a PFC, governing body of a PFC, the Operator, the Texas Comptroller of Public Accounts, and, if the PFC's Sponsor is a housing authority, the housing authority governing board.

(13) Sponsor--A municipality, county, school district, housing authority, or special district that causes a corporation to be created to act in accordance with Chapter 303 of Local Government Code.

(14) Unit Type--Means the type of unit determined by the number of bedrooms.

### **§10.1103 Reporting Requirements**

The following reporting requirements apply to Public Facility Corporation (PFC) or a Sponsor of a PFC Multifamily Residential Development where final financing was approved by the governing body on or after June 18, 2023.

(1) No later than June 1 of each year, the PFC will submit to the Department an Audit Report from an Auditor, obtained at the expense of the PFC.

(2) The first Audit Report must be submitted no later than the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied multifamily residential development; or

(B) The date a newly constructed PFC multifamily residential development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the report on its website. A copy of the report will also be provided to the Development and all Responsible Parties.

(4) If noncompliance is identified by the Auditor, the Development will be notified within 45 days and given 60 days to correct. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Development will lose the tax exemption for the taxable year.

(6) The PFC must provide the Department a copy of their PFC Regulatory Agreement with its first Audit Report submission.

(7) The PFC must annually complete the contact information form available on the Department's website and submit it with the Audit Report.

(8) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing low income housing, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent and/or Auditor that has or had oversight of the property or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(9) The PFC may not engage the same Auditor for more than three consecutive years. After the third consecutive audit, the PFC must procure a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(10) Audit Reports and supporting documentation and required forms must be submitted to the following email address: [pfc.monitoring@tdhca.state.tx.us](mailto:pfc.monitoring@tdhca.state.tx.us).

### **§10.1104 Audit Requirements**

(a) The Auditor must use the Department's Public Facilities Corporation monitoring forms made available on the website. The review performed by the Auditor may either be completed onsite or done electronically. Original records must be made available to the Auditor.

(b) The Auditor will ensure Development meets the following requirements and will report any deficiencies found:

(1) The sample must contain twenty percent (20%) of the total number of restricted units for each Development, but no more than a total of fifty (50) household files. The selection of units should primarily be new move-ins but should also include a ten percent (10%) sample of household files that have recertified.

(2) The Development has a properly recorded Regulatory Agreement with a minimum 10-year term.

(3) Ten percent (10%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) Area Median Income (AMI) and paying no more than sixty percent (60%) rents, as determined by the U.S. Department of Housing and Urban Development (HUD).

(4) An additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI and paying no more than eighty percent (80%) rents, as determined by HUD.

(5) Any additional rent and occupancy restrictions outlined in the Regulatory Agreement are being complied with.

(6) The restricted units are dispersed across all Unit Types in substantially the same percentage (the greater of 5.0% or one unit) as the market rate units, and in a manner that does not violate fair housing laws.

(7) Restricted units are required to recertify annually, no later than the anniversary of move-in, the income of the household using a Department-approved Income Certification form. Households that exceed the income limit at an annual income recertification should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code.

(8) The Audit Report must calculate the annual savings to households living in rent restricted units (when compared to the annual rental income that would've been collected on those units if they were charged market rate for a unit of the same bedroom size at the Development). The total savings for rent-restricted households must be no less than sixty percent (60%) of the estimated amount of the annual ad-valorem taxes that would be imposed on the development without an exemption.

(9) The Development must affirmatively market to individuals and families participating in the Housing Choice Voucher program and local housing authorities.

(10) Review the PFC's website for requirements with: Policies on the acceptance of Housing Choice Vouchers holders and list of affordable properties owned or sponsored by the PFC.

(11) The following tenant protections exist for Developments covered by this subsection:

(A) Owner cannot refuse to rent to families participating in a Housing Choice Voucher program.

(B) Owner cannot require a minimum income standard for families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(C) Each lease agreement must provide the following:

(i) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization; and

(ii) The landlord may only choose to not renew the lease if the tenant is in material noncompliance with the lease, including nonpayment of rent; committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that: disrupt the livability of the property, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(D) To non-renew a lease, the owner must provide, at minimum, a thirty (30)-day written notice.

(E) Tenants may not waive these protections in a lease or lease addendum.

(12) The Auditor must maintain monitoring records and papers for three years, and must provide the Department and/or the Appraisal District a copy of their monitoring records upon request.

#### **§10.1105 Income and Rent Requirements**

(a) Annual Income shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (HUD), using the definitions of annual income described in 24 CFR §5.609 as furthered described in the HUD Handbook 4350.3, as amended from time to time.

(b) Income and rent limits will be derived from data released by federal agencies including HUD.

(c) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted. In the absence of specified income and or rent limit in a Regulatory Agreement, the Development must rely on a method approved by the Department in writing.

#### **§10.1106 Penalties**

Failure to comply with Sections 303.0421 and or 303.0425 of Local Government Code, or this Subchapter will result in a Department report to the Texas Comptroller, and recommendation of loss of tax exempt status.

#### **§10.1107 Options for Review**

(a) A Public Facility Corporation is entitled to appeal any noncompliance issued by the Auditor. The Auditor should be contacted directly to file an appeal.

(b) If the initial appeal cannot be resolved with the Auditor, a PFC may request to meet with a Compliance Director or Manager at the Department. The PFC and Auditor must provide all requested documentation prior to meeting with the Department.

(c) A PFC may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (related to Alternative Dispute Resolution).