

August 9, 2024

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

Disclaimer

Attached is a draft of proposed amendments to 10 TAC Chapter 10, Public Facility Corporation Compliance Monitoring Rule that was approved by the TDHCA Governing Board on July 25, 2024. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the August 9, 2024 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 amended rule follows:

The Texas Department of Housing and Community Affairs (the Department) was tasked with the compliance oversight of Public Facility Corporations' (PFC) multifamily residential developments as a result of HB 2071 (the Act) being passed by the 88th Texas Legislature. The Department is amending the rule to codify Section 10(d) of HB 2071, so that all PFC multifamily residential developments owned by a corporation created under Chapter 303 of the Texas Local Government Code, with the exception of those described in Tex. Local Gov't Code §303.0421(a)(1)-(4), must annually submit an Audit Report to the Department. All PFC multifamily residential developments, regardless of when the development was acquired, approved, or occupied, must submit an Audit Report in accordance with Tex. Local Gov't Code §303.0426(b). The Department is granting a one-time extension to allow all PFC-owned multifamily residential developments subject to this rule amendment to submit the required Audit Report no later than December 1, 2024. Subsequent reports are due to the Department no later than June 1 of each year. To comply 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 August 9, 2024
Ends: 5:00 p.m. Austin local time on September 9, 2024**

Comments received after 5:00 p.m. Austin local time on September 9, 2024 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.texas.gov

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

Email: info@tdhca.texas.gov Web: www.tdhca.texas.gov

9 de agosto de 2024

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS
Borrador aprobado por la Junta Directiva del TDHCA de modificaciones propuestas al 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 modificaciones propuestas a la regla del subcapítulo I [“Supervisión de cumplimiento para corporaciones de instalaciones públicas”] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC), que fue aprobado por la Junta Directiva del TDHCA el 25 de julio de 2024. Este borrador incorpora cambios efectuados por la Junta como resultado de comentarios del público en la reunión. Este documento, incluyendo su preámbulo, está programado para publicarse en la edición del *Texas Register* del 9 de agosto de 2024, y 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(c) del Código de Gobierno de Texas, se incluye a continuación un resumen de la modificación propuesta:

Al Departamento de Vivienda y Asuntos Comunitarios de Texas (el Departamento) se le asignó la tarea de supervisar el cumplimiento de urbanizaciones residenciales multifamiliares de corporaciones de instalaciones públicas (PFC) como resultado de la aprobación de la Ley 2071 de la Cámara de Representantes (HB 2071, la Ley) por parte de la 88.ª Legislatura de Texas. El Departamento está modificando la regla para codificar la sección 10(d) de la Ley 2071, de manera que todas las urbanizaciones residenciales multifamiliares de PFC pertenecientes a una corporación creada en virtud del capítulo 303 del Código de Gobierno Local de Texas, con excepción de aquellas descritas en la sección [§] 303.0421(a)(1)-(4) del Código de Gobierno Local de Texas, deben presentar cada año un informe de auditoría al Departamento. Todas las urbanizaciones residenciales multifamiliares de PFC deben presentar un informe de auditoría, sin importar cuándo se adquirieron, aprobaron u ocuparon dichas urbanizaciones, de conformidad con la sección [§] 303.0426(b) del Código de Gobierno Local de Texas. El Departamento está otorgando una prórroga por única vez con el fin de permitir que todas las urbanizaciones residenciales multifamiliares pertenecientes a PFC sujetas a esta modificación de la regla presenten el informe de auditoría exigido a más tardar el 1 de diciembre de 2024. Los informes posteriores deben presentarse al Departamento a más tardar el 1 de junio de cada año. Para acatar la sección [§] 2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se facilitan tanto en inglés como en español.

Comentarios del público

Periodo de comentarios del público:

Inicio: 8:00 a. m., hora local de Austin, del 9 de agosto de 2024

Finalización: 5:00 p. m., hora local de Austin, del 9 de septiembre de 2024

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 9 de septiembre de 2024.

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.texas.gov

Los comentarios por escrito pueden presentarse en formatos impreso o de 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

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BOARD ACTION REQUEST

COMPLIANCE DIVISION

JULY 25, 2024

Presentation, discussion, and possible action on an order proposing amendments to 10 Texas Administrative Code Chapter 10, Uniform Multifamily Rules, Subchapter I, Public Facility Corporation Compliance Monitoring §1.1103 Reporting Requirements 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 current rule relating to applicability of HB 2071 (88th Regular Legislature), and report requirements is in need of revisions to ensure that all Developments owned by a Public Facility Corporation (PFC) are required to submit an annual Audit Report to the Department in accordance with the provisions of HB 2071;

WHEREAS, staff proposes amending the current Public Facility Corporation rule to clarify and add requirements for PFC Developments for which the Department has compliance monitoring oversight; and

WHEREAS, such 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 amendments of 10 TAC §10.1103 Public Facility Corporation Compliance Monitoring in the form presented to this meeting, to be published in the *Texas Register* for public comment 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 Department was tasked with the compliance monitoring oversight of Public Facility Corporation (PFC) multifamily residential developments as a result of HB 2017 (the Act) being passed by the 88th Texas Legislature. The Department is seeking to amend the rule to codify in rule Section 10(d) of HB 2071, so that all PFC multifamily residential developments owned by a corporation created under Chapter 303 of the Texas Local Government Code, with the exception

of those described in Tex. Local Gov't Code §303.0421(a)(1)-(4), must annually submit an Audit Report to the Department. PFC Developments acquired, approved or occupied prior to the effective date of the Act, as described in Sections 10(b) and (c) of HB2071, are governed by the law in effect on the date the Development was approved by the corporation or sponsor. However, as Section 10(d) applies "notwithstanding any other provision of this section," all PFC-owned multifamily residential developments with respect to which an exemption is sought or claimed under §303.042(c) – regardless of when the Development was acquired, approved, or occupied – must submit an Audit Report in accordance with Tex. Local Gov't Code §303.0426(b). For those PFC-owned developments that pre-date the Act (as described in Sections 10(b) and (c) of the Act, the Audit Report requirements of Tex. Local Gov't Code §303.0426(b)(1) will be satisfied by simply demonstrating its eligibility to continue under the former law, but the Audit Report must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

The first audit reports for PFC developments subject to the new law were required to be submitted to the Department by June 1, 2024. The Department is granting a one-time extension to allow all PFC-owned multifamily residential developments subject to this rule amendment to submit the required Audit Report no later than December 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 August 9, 2024, through September 9, 2024. Staff will return to the Board for final adoption of the rules.

Attachment A: Preamble and proposed amendments of 10 TAC Subchapter I §10.1103 Public Facility Corporation Compliance Monitoring

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Subchapter I, Public Facility Corporation Compliance Monitoring, §10.1103. The purpose of the proposed amended rule is to provide compliance with Tex. Gov't Code §2306.053. The proposed amended rule codifies requirements on which Public Facility Corporation multifamily residential developments are required to submit audit reports to the Department by June 1 of each year.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program. The proposed amended rule provides 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 amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full time employees through 2025.
3. The proposed amendment to the rule will not require additional future legislative appropriations.
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will create a new regulation; which is created and codified because of HB 2071.
6. The proposed amendment to the rule will not repeal an existing regulation; but will expand the existing regulations on this monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071 and for the Department to amend rules to codify monitoring applicability.
7. The proposed amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit to the Department.
8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be clarification of the audit report requirements for PFC multifamily residential developments. There will be a nominal economic cost to PFC entities required to comply with the amendment to engage in services with an independent auditor.

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 because it applies to all Public Facilities Corporation multifamily residential developments regardless when approved.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from August 9, 2024, through September 9, 2024. 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.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, September 9, 2024.

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

CHAPTER 10 UNIFORM MULTIFAMILY RULES

SUBCHAPTER I PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

§10.1103 Reporting Requirements

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) to be grandfathered under previous law pursuant to the criteria established by of House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) – regardless of when the Development was acquired, approved, or occupied – must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 1, 2024), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC 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 Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. 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 Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, 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 that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

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