



# City of Austin

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## **Re: Public Safety Office Rule Review**

The City of Austin appreciates the opportunity to submit feedback on proposed rule 1 TAC §§3.9401 - 3.9407, concerning the Determination of Defunding Municipalities. For your review, the City submits the following comments on the proposed rules:

### **1. The description of resources under 3.9403(d)(2)&(3) should be narrowly tailored to ensure uniformity and accuracy of information provided**

The description of resources under 3.9403 (d)(2) & (3) that the Public Safety Office (PSO) may consider during the municipal budget review process, particularly the term “publicly sourced data,” is overly broad, potentially conflicting with the scope of the statute.

In making a determination of whether a municipality is a defunding municipality, [Section 109.0035](#) of the Texas Local Government Code, which was added by the 87th Legislature, Regular Session, in House Bill 1900, clearly directs the criminal justice division of the office of the governor to “compare the appropriation to the municipality's police department in that budget to the appropriation to that department in the budget of the preceding fiscal year or the second preceding fiscal year, whichever is greater.” H.B. 1900 does not include language that authorizes the PSO to consider other resources – especially resources not specifically derived from budget appropriations. Therefore, the City requests that either subsections (2) and (3) be stricken from the proposed rule (see below) or language be added to subsections (2) and (3) clarifying that the data derive from the comparison of police budget appropriations.

The City also respectfully requests that resources used in the comparison be narrowly tailored to information that cities are already required by law to make publicly available through the City’s website. The City recommends the language in subsection (d)(4) noted in red below. Texas Local Government Code Chapter 102 requires that municipalities post the adopted budget on the City website. The City’s proposed language would not only be consistent with the requirement under 39.9403 (c) but correlating data under this section with data that municipalities already provide as mandated by the Local Government Code would ensure that the Public Safety Office receives uniform and accurate information to review.

*Suggested Language*

**§3.9403.Review Process for Municipal Budgets.**

(d) The PSO may also consider the following resources in each annual review:

- (1) law enforcement agency budget office data;
- (2) ~~publicly sourced data; and~~
- (3) ~~any other relevant data necessary for the PSO to meet the requirements in Chapter 109, Local Government Code.~~
- (2) data required to be developed by the City and published on the City's website in accordance with Texas Tax Code Chapter 26;
- and
- (3) the Budget that is required to be filed with the City Clerk and published on the City's website in accordance with Chapter 102 of the Texas Local Government Code; and
- (4) any other relevant data required by law to be submitted to a state agency or made publicly available by a municipality.

**2. The application deadline under 3.9404(d) is too early in the budgeting process to ensure that municipalities have the data they need to determine the need for an exception.**

The application deadline under 3.9404 (d) of 60 business days before the formal adoption of the budget is too early in the budget process for the City to have access to enough data to provide in the application. 30 days out from budget adoption, the City is still conducting community budget input meetings and public meetings to narrow its focus on the community's priorities and public meetings to vet out assumptions and data. Requiring applications to be due 60 days before the formal adoption would require the City to apply before fully knowing all of the assumptions, budget allocations, revenue data, management decisions, and other information that informs the budget. Additionally, the State's response deadline of 30 business days does not provide the City with enough time to make any necessary changes should the application be denied.

The City recommends changing the deadline of 60 *business* days to 45 *calendar* days before budget adoption and the state response deadline to 30 *calendar* days instead of 30 *business* days. A deadline of 45 calendar days will ensure that Cities have a majority of the data for the proposed budget finalized and have a clearer picture of the overall budget, and subsequently the Police budget, and allow for more certainty about the need for an exception. Similarly changing the State's response to calendar days will ensure the City has a response before budget adoption and allow for any necessary changes if our request is denied.

*Suggested Language*

(d) Applications must be postmarked no later than ~~60 business~~ 45 calendar days prior to the formal adoption of the proposed budget. The PSO shall make a determination on granting the exception within 30 ~~business~~ calendar days after it receives the application. PSO shall not grant an exception under this section after a municipality has adopted a budget for the fiscal year for which it seeks an exception.

**3. “Capital expenditure” under 3.9405(1) needs a more specific definition of what qualifies.**

The City has concerns about what would qualify as a “capital expenditure” under 3.9405 (1), particularly with regards to when capital expenditures are made to pay down debt. The City believes that a reduction of debt is not a reduction of needs. Therefore, the City recommends the PSO provide a more specific definition of what qualifies as “capital expenditures.” One way that the City recommends the PSO achieve this is to add “within the police operating budget” to subsection (1) as reflected below in red.

*Suggested Language*

**§3.9405.Criteria for Approval of Certain Reductions to Budget.**

(1) the municipality's capital expenditures related to law enforcement **within the police operating budget** during the preceding fiscal year;

**4. The definition of ‘public safety’ under 3.9405(3) is overly broad and does not account for different factors that impact response times or change in peace officer to population ratios.**

The term ‘public safety’ is overly broad and the criteria listed under 3.9405 (3)(B) does not account for different factors that can and regularly do impact public safety, response times, and change in peace officer to population ratios. Considering response times without considering the priority of those calls will most likely result in data that is not reflective of public safety. For example, response times to low-priority calls can take longer if majority of officers are responding to high priority calls. Additionally, change in response times to non-ongoing crimes which are separated by the DPS Crime Index as “Property Crimes,” such as Burglary, Larceny-Theft, and Motor Vehicle Theft which have already occurred and are not putting persons in current danger, should not be considered the same as crimes which are separated by the DPS Crime Index as “Violent Crimes,” such as murder, rape, robbery, and aggravated assault. Therefore, the City recommends specifying that PSO’s consideration of response times be limited to responses to ongoing violent crimes and over a period of time in order to ensure a more fair and accurate measurement. These recommendations are captured in the language in red below under subsections (3)(A), (B), (C), and (D).

Furthermore, as shared under sections above, the City believes that utilizing data already collected for reporting or performance metrics already submitted to the PSO would provide a more accurate and uniform set of criteria for use when reviewing the approval of reductions to municipal budgets. Consistent with the requirement under 39.9403 (c), the City recommends that, when evaluating applications, the PSO utilize performance metrics already required to be reported to the Office of the Governor for state grant applications or annual crime data that cities already collect and report to the Federal Bureau of Investigation or the Texas Department of Public Safety. This recommendation is captured in the language in red below under subsections (3)(E).

*Suggested Language*

**§3.9405.Criteria for Approval of Certain Reductions to Budget.**

(3) any additional factors relevant to the application **that are reported to federal agencies, state agencies, or the Office of the Governor and are available to the public**, including, but not limited to:

~~(A) effect on public safety;~~

~~(B) change in peace officer response times~~ **to ongoing violent crimes;**

~~(C) change in peace officer to population ratios;~~

**(B) Change in violent crime rates over a three-year period;**

**(C) Change in property crime rates over a three-year period;**

**(D) Percent of crimes cleared by exception or arrest over a three-year period;**

(E) Performance metrics required by the Office of the Governor in response to grant solicitations and with programmatic award reports.

**5. Section 3.9405 should take into consideration the movement of functions within City's budget that do not impact safety**

Proposed section 3.9405 does not take into consideration the movement of functions from the police department to other departments within the City's budget that do not impact public safety. Research shows it may be more effective and transparent if some functions are taken outside of the department and funded elsewhere within the City budget. For example, moving the forensics lab or 911 call center to a different part of the City budget would not impact public safety. Therefore, the City recommends the addition of the language proposed below in red.

*Suggested Language*

**§3.9405. Criteria for Approval of Certain Reductions to Budget.**

The PSO's decision whether to grant approval for a reduction to the appropriation to a municipality's police department shall be based upon the following factors:

(1) the municipality's capital expenditures related to law enforcement during the preceding fiscal year;

(2) the municipality's response to a state of disaster declared under Section 418.014, Government Code; and

(3) Budgetary items moved from the police department budget but which remain in the City's overall proposed budget;

Thank you for the opportunity to provide feedback on proposed rule 1 TAC §§3.9401 - 3.9407. The City appreciates your consideration of the concerns raised in these comments as you continue your review of the proposed rule.

Sincerely,



Rey Arellano  
Assistant City Manager

Cc: Spencer Cronk, City Manager  
Anne Morgan, Interim Deputy City Manager  
Ed Van Eenoo, Chief Financial Officer  
Chief Joseph Chacon, Austin Police Chief