

From: [Conor Kenny](#)
To: [Clerk, City](#)
Subject: Appeal of adopted Austin Energy rule R161-21.13
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CITY CLERK

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Please notify the city manager that I wish to appeal the adoption of Austin Energy rule R161-21.13.

To Whom It May Concern,

Civiltude and Capital A Housing are leading Austin civil engineering and affordable housing development/consulting firms, respectively, responsible for hundreds of units of income-restricted housing either already built or in the pipeline. We are writing to request that changes to two sections, 1.3.12 and 1.10.3, be modified as specified below.

In Section 1.3.12, the Austin Energy Line Extension fee waivers are revised to no longer tied to the SMART housing fee waiver schedule, and now have their own independent schedule of fee waivers, with the substantially reduced level of fee waiver compared for developments that incorporate non-residential uses or use a mix of market-rate and income-restricted units.

We are concerned that any such reduction in the value of fee waivers should only be made in consultation with the city's Housing and Planning Department and the Housing and Planning committee of the City Council, as they negatively impact the ability of the SMART housing program to generate income-restricted units. The changes cite Austin City Council Resolution No. 20140612-057, but that resolution does not direct Austin Energy to reduce the value of affordable housing waivers. We are also not aware of any other direction from Council to reduce the value of the Line Extension Fee waivers.

The City of Austin has also taken recent efforts to harmonize affordable housing policies, and this takes us in the other direction by complicated fee waivers while also lowering their value. While the SMART Housing fee waiver ordinance could be revised, we request that the rule be modified so that Austin Energy continues to schedule Line Extension Fee waivers per the SMART housing ordinance and abandon the contrary revisions proposed for section 1.3.12.

Secondly, the changes in section 1.10.3 that expand the clear distance from powered wires from what appears to be the OSHA standard of 10' to a new, Austin Energy-specific clear distance of 15' and now the inclusion of neutral wires, which are not included in OSHA standards, should be modified to conform to national standards. We are unaware of Austin-specific conditions that would require a greater clear distance from national standards that have gone through a rigorous, evidence-based and public process. This expansion of the no-build area on a lot will severely constrain new infill development, especially development under the Affordability Unlocked program, which reduces setbacks.

Such a drastic departure from current and national standards merits a more rigorous process by Austin Energy that presents the justifying evidence. The AE response to comments that AE is making this change in response to service requests to de-energize lines for maintenance appears to be a massive reduction in potential housing in order to reduce an AE service issue

of undetermined size, and should not be made without substantial evidence of the cost to AE.

Power lines are omni-present in central Austin and this new rule will substantially reduce the amount of buildable area, thus reducing the number of affordable units that can be built in Austin, which is of particular concern as Council and the Housing and Planning Department look towards multi-story infill housing for our affordable housing needs. Indeed, one of our Affordability Unlocked developments, A at Lamppost, would have lost between 2-4 income-restricted homes under the changes currently proposed.

We note that AE's response to critical comments regarding the impact on buildable floor area was that taller poles can be installed. This is a simply infeasible cost for any small-scale or affordable project to bear, and will result in projects not getting built or ultimately put upon the city as affordable housing projects grow in cost. We believe such a transfer of costs from AE to the city's affordable housing funding programs should be undertaken with more consultation and evidence, and should at least offer waivers of costs for installing taller poles for affordable housing projects per the SMART Housing fee waiver schedule. We also note that for multi-family infill projects in the city core, installing a pole to clear a 3-5 story building is not physically possible, and thus this rulemaking would most impact affordable housing in some of our highest opportunity areas along transit corridors. Accordingly, we request that the rule be modified to adopt national OSHA standards for clear distance.

Respectfully submitted,
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