

AUSTIN ENERGY DEPARTMENT – R161.21-13

**NOTICE OF DECISION ON APPEAL
OF AN ADOPTED RULE**


ADOPTION DATE: July 13, 2021

By: Spencer Cronk,
City Manager

The City Manager has reached a decision regarding the appeal of Austin Energy Rule R161-21.13 by Mr. David Glenn on behalf of the Home Builders Association of Greater Austin. The adoption of the R161-21.13 Rules was posted on May 14, 2021. An appeal of the adopted rule by Mr. David Glenn on behalf of the Home Builders Association of Greater Austin was conveyed to the City Clerk on June 14, 2021 (Attachment 1). This Notice of Decision on an Appeal of an Adopted Rule is issued under Chapter 1-2 of the City Code.

After considering the rulemaking record, which includes the rule, the appeal and response of city personnel, the City Manager hereby affirms the rule and adopts the justification as outlined by City personnel in Attachment 2, which is hereby incorporated by reference.

REVIEWED AND APPROVED



Spencer Cronk,
City Manager

Date: 7.13.2021

OCC RECEIVED AT
JUL 13 '21 PM 12:15

This NOTICE OF DECISION ON APPEAL OF AN ADOPTED RULE was posted on the City Clerk's Notices webpage. Time and date stamp are on the front of the Notice.

FILED IN THE OFFICE OF CITY CLERK
ON 14th DAY OF June 20 21
AT 4:54 PM
C. H.
CITY CLERK

Formal appeal to Austin Energy Rule Number R161-21.13

Section 1.10.3 – Permanent Clearances from AE Overhead Distribution Lines and Facilities (Pg. 95)

Appealed by David W. Glenn, Senior Director of Government Relations, on behalf of the Home Builders Association of Greater Austin

8140 Exchange Dr., Austin, TX 78754

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Email: david@hbaaustin.com

Phone: 512 982-9175

Rule adoption date: May 14, 2021

Date of appeal: June 14, 2021

Executive Summary

The Home Builders Association of Greater Austin is formally appealing the recent Austin Energy (AE) rule change, Rule Number R161-21.13, regarding the expanded permanent clearances for AE distribution lines and facilities.

Although we understand the intent and spirit behind the rule change, we believe that the rule goes too far, exceeding nationally recognized standards and sacrificing potential housing supply during a historic housing shortage with very little demonstrable benefit. We also believe that the additional clearance amounts to an unlawful *de facto* expansion of easement rights and taking of private property without just compensation. We respectfully request that the City Manager review our appeal and overturn the new rule. In this appeal, we have outlined numerous reasons as to why we believe this rule should be overturned.

Several other organizations share our concern about the new rule, including the Real Estate Council of Austin, the Austin Board of Realtors, and Austin Habitat for Humanity.

We request a meeting with the City Manager's office to discuss our appeal further before a ruling on the appeal is issued.

Explanation of the new rule

Section 1.10.3 of the new rule, related to permanent clearances from AE overhead distribution lines and facilities expands the permanent clearance between buildings and power lines from the OSHA required 10' radius clearance around overhead distribution lines to a 15 foot radius clearance from both overhead distribution lines and neutral conductors.

The new clearance will have a radical and disproportionate effect on development and will further exacerbate the City's difficulty in meeting its housing goals contained in the Strategic Housing Blueprint. The new rule effectively expands the area that is precluded from development via an administrative rule, effectively taking private property for a public purpose

without just compensation, impacting thousands of homes along hundreds of miles of overhead lines, many in areas where housing is desperately needed.

Reason #1: The new rule seeks to address an uncommon safety risk

Austin Energy drafted this rule in part as a response to a recent lawsuit where AE was held partially liable for an incident involving contact with a powerline during maintenance for an existing structure. It was determined by the court that AE's power line was out of position and out of compliance. Maintenance activities between existing lines and existing buildings were cited as the activity most likely to cause an OSHA clearance violation by Austin Energy, but no data was provided as to the number of violations, injuries caused, etc. It is not clear if Austin Energy tracks this data. The issue at hand is one of inadequate enforcement and education during maintenance work and inadequate implementation of maintenance programs. In other words, the nexus for the rule is not compliant development activity near the lines but potential City liability if line position was not maintained after construction.

There are existing local and national safety protocols specifically intended to allow safe work within and around the OSHA mandated clearance that include permanently moving the line, insulating the line temporarily or permanently, de-energizing the line during work, or the use of a Qualified Contractor who is licensed to work within the OSHA clearances. These protocols are heavily researched and certified as safe practice. They are required and enforced on a daily basis for building maintenance across the country by thousands of municipalities. It is not clear if Austin Energy tracks the use of these protocols.

Reason #2: Austin Energy should focus on inspection, maintenance, and enforcement

The rule reduces the usable area of a property in an attempt to reduce the risk of contractors not following OSHA requirements. Once a building is built in compliance with line clearances, it is Austin Energy's responsibility to maintain a safe distance between the building and their adjacent overhead lines. This rule has the effect, however, of reducing the line maintenance required of Austin Energy, allowing for more leaning and sagging, without the need for correction, while maintaining OSHA mandated clearances. Rather than taking private property to move the building away from the line, as this rule requires, pole specifications could easily be increased to prevent the kind of movement that caused the tragedy in the lawsuit. Property owners are being asked to reduce Austin Energy's maintenance obligations via this rule. The reduction of buildable area amounts to a taking of private property by Austin Energy to fix a problem that the City has and one that is not one created by development. Moreover, the City has done and does not propose to do any "rough proportionality" determinations under Section 212.904 to support this regulatory taking.

Requiring additional clearance does not change the situation that caused a tragedy - contractors not following OSHA safety protocols - nor does it change the risk to contractors working on fully compliant existing structures adjacent to existing lines, a risk that these OSHA protocols were specifically intended to mitigate.

Common sense would say that the further from the line, the safer you are. But to use an analogy, common sense would also say the slower you drive, the safer you are. So do you reduce the speed limit or increase enforcement? Is the reduction proportionate to the gain? What other impact does the reduction have? Increased enforcement increases compliance without lowering the speed limit, by comparison.

A more appropriate rule structure to address this risk would be enhanced education, licensing, pre-construction meetings and regular inspections to ensure that power poles are in a good and safe condition prior to maintenance, renovations, remodeling or new construction takes place and that the work will be done safely.

Reason #3: New rule is inconsistent with other utilities and nationally recognized safety standards

During our conversations with AE, we learned that the new rule is not based on any other nationally recognized safety standards. The OSHA standards, including line clearances, are heavily researched and are considered the national standard for safety.

We surveyed other utilities to better understand common safety practices in other parts of the state. We learned that most utilities in major cities adhere to the OSHA safety clearance requirements, or a slight variation of them. The one utility that had similar clearance requirements to the proposed rule was Pedernales Electric Coop, which serves largely rural areas where lots are large and can accommodate the 15' clearance. We suggest that other utilities' safety standards be considered in this appeal, as an indicator of safe practice in similar settings.

Reason #4: The new rule conflicts with the City's stated housing and affordability goals

The City has adopted a number of important housing goals, such as the Strategic Housing Blueprint, the City's 10-year plan to address the critical need for housing across all income levels. Recently, significant efforts have been set in motion to provide housing for those who assistance or are experiencing homelessness. According to the most recent data from the HousingWorks Strategic Housing Blueprint Scorecard 2019, we are already five years behind on our ten year goal of 135,000 more units, and 15 years behind our affordable housing goal of 60,000 more units. An Affordability Impact Statement was not provided for this rule. Given its impact on housing capacity, it clearly will have an impact on the supply and affordability of housing.

The new rule will set us back further, dramatically restricting buildable area that could previously be used for housing. Increased building height allows more housing to be built on less land, using less impervious cover. The new clearance requirements will make building a second story (or taller) impossible, limiting height and unit yield accordingly. This rule will disproportionately affect dense zones in the City's core, where housing is needed most.

For higher intensity zones, those capable of generating the most housing, required utility easements and other regulations already prevent a site from reaching the maximum impervious cover allowed, particularly on smaller sites like those near overhead lines, where height becomes even more important for unit yield. Impervious cover is restricted by zoning in order to limit density and prevent excessive runoff. Two story homes and other taller structures have a smaller footprint, reducing the impervious cover necessary for the same number of units. It is impossible to reach 95% impervious cover, for example, where the capacity for housing is greatest, when the increased clearances are combined with utility, watershed protection, protected trees, and other requirements that limit the buildable area on a site.

Reason 5: The rule amounts to a regulatory taking of private property.

The new rule amounts to a regulatory taking and unlawful exaction of an additional 5' of area from private property owner without just compensation, without a development being the cause of such added area, and without being proportionate. The result of this lost property has significant, adverse consequences on the ability to add on to an existing home, add ADU, or add units.

AE is essentially attempting a *de facto* expansion of existing easements without formally acquiring that additional easement area in the manner required by the Texas and US Constitutions. AE is attempting to acquire the additional 5 foot add-on area through administrative rule process. This is a "regulatory taking" that physically appropriates private property for a public purpose.

The 5 foot add-on area is not a lawful exaction because (a) there is no nexus between development and the need for area (i.e. the area is being required because the City (not a landowner) was found liable for failing to maintain poles within its easements), and (b) the 5 foot exaction has major, adverse impacts that are not roughly proportionate to the impact of adding an ADU or adding on to a home.

To make a lawful exaction, the City is required to make a determination required by Section 212.904 of the Texas Local Government Code regarding the proportionality of this exaction to the impact of proposed development. The City will need to do this on a case-by-case basis and will be opening itself up to numerous City Council and District Court appeals under Section 212.904 of the Texas Local Government Code.

Reason #6: The new rule is expensive and difficult for new construction to comply with.

The alternatives offered by AE in order to comply with the new rule are expensive and impractical. One option was to increase the height of the pole, moving the power lines further away from the structure. The estimated cost to raise one pole is at least \$4,000. A builder would likely require two poles to effectively move the lines. Another option is to reroute the powerline. This is impractical as it could potentially impact a neighboring property. It would require the neighboring property owner's blessing, which a builder is unlikely to receive. Running the line underground is considered so costly that it is only done for very large projects, according to AE.

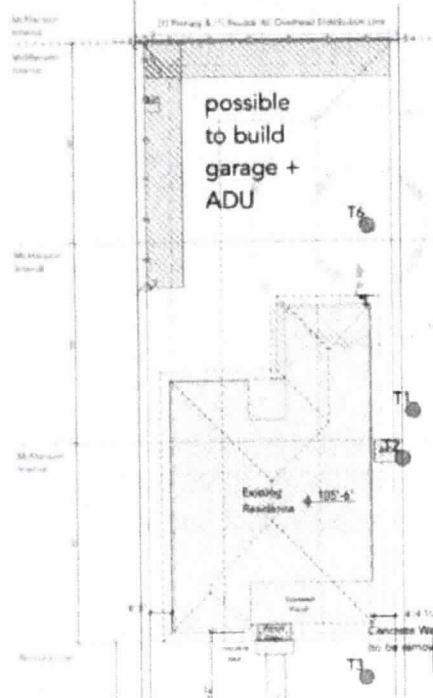
Existing structures can always de-energize or insulate the line during maintenance near lines, but new construction cannot comply with the new permanent clearance except by moving the building away from the lines. There are better alternatives to consider, as stated above.

Reason #7: The new rule conflicts with the City's tree preservation efforts.

Required clearances for protected and heritage trees are particularly problematic, as the older, protected trees that make up our urban canopy are in established areas served by overhead lines. City subcontractors routinely and safely trim tree limbs within and away from the 10' OSHA line clearances. The inherent conflict between trees and power lines must be acknowledged and should have been considered as a part of the cross departmental review for the rule. The diagram below shows how easy it is for the new rule and a single protected tree to prevent an ADU from being built on a typical residential lot. As can be seen from the diagram, this rule's conflict with tree preservation requirements will reduce the amount of housing the city can produce. These kind of inter-departmental regulatory conflicts should be acknowledged and resolved as a part of the rule making process, not adjudicated on a case by case basis in the field.

CURRENT AE RULES

Paved Alley (20' ROW)



PROPOSED AE RULES

Paved Alley (20' ROW)

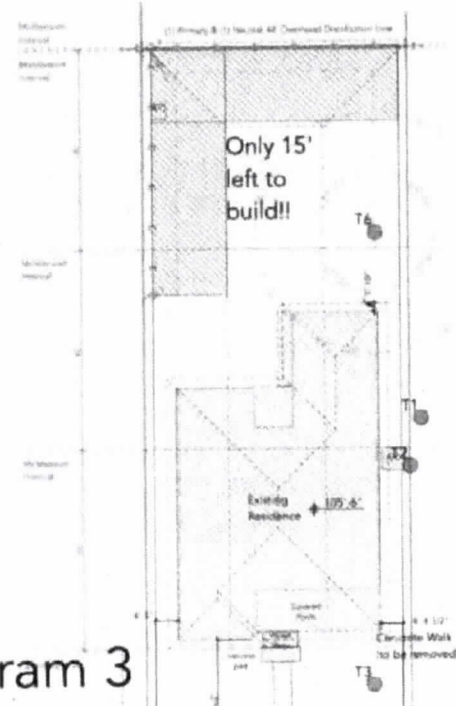


Diagram 3

Reason #8: Accessory dwelling units will be more difficult to build.

Accessory Dwelling Units (ADUs) are highly impacted by the new rule. ADUs are more affordable than surrounding homes, they add to the city's housing supply in existing neighborhoods where housing is limited, and they allow homeowners to age in place, accommodating multigenerational households or generating income from the property to offset high property taxes. On April 6, 2020, Austin's City Council approved the Affordable ADU Resolution 20200409-080 (attached to this appeal), stating "ADUs are a critical component of the City's affordable housing supply."

By code, ADUs must be built behind or next to the main house on a lot, exactly where protected trees and overhead lines are located. They are often two stories or built over garages to work around protected tree root zones and preserve impervious cover, putting them in greater conflict with the new expanded clearances, especially the lower neutral line. In less than 30 days since the new rule went into effect, it has already prevented approval of ADUs that were designed and planned for months. Property owners who want to build an ADU have no feasible alternative to the new clearances, as it will never be cost effective to permanently move power lines to build a single, more affordable, ADU in addition to the already high permitting and utility improvement costs they incur. Considering the construction of an ADU to be a reasonable use would allow

the removal of a protected tree where conflicts with lines occur, but again, this should have been resolved during the rule making process, not afterward.

Reason #9: Neighborhoods with alleys will be affected by this new rule.

Alleys are favored by homeowners, neighborhoods and city planners because they can accommodate both parking and additional housing more easily and without impacting the neighborhood streetscape. Building setbacks are reduced along alleys for exactly this reason, and garages and ADUs are plentiful along them. Almost every alley in the city has an overhead line running along it, however, most of which are on low poles. The increased clearance effectively creates a 15' rear building line or setback, eliminating the benefit of building parking or housing on the alley.

Reason #10: Missing middle housing will be even more difficult to build.

During the land development code rewrite process, it was well established that the City's current code and related regulations severely limited the supply of "missing middle" housing, so much so that missing middle housing was specifically prioritized in Council's May 2019 LDC Policy Direction Resolution. Missing middle housing, where the zoning allows it, is typically built on smaller, more residential scale lots. Missing middle lots and developments are severely impacted, where the myriad of departmental site plan requirements must also be accommodated. There simply isn't enough site area to accommodate the increased clearance as well.

Reason #11: This rule will make it even more difficult to build affordable housing via Affordability Unlocked.

Affordable housing and ending homelessness are top policy priorities that will be affected by the new rule. The Affordability Unlocked ordinance, which increases entitlements, including reduced setbacks in exchange for providing at least 50% permanently affordable housing on site, has already accepted applications for over 3400 new units in the two years since inception. The benefits of Affordability Unlocked are directly impacted by the reduction in buildable area caused by the increased clearance, demonstrating both negative impact on affordable housing capacity that the rule will cause and the need to identify and resolve conflicts between proposed rules and other city policies prior to adoption.

Reason #12: The new rule calls for unnecessary clearances around the neutral line.

The new rule includes clearances around the neutral line, which is always lower than the powered lines and typically about 20' off the ground. The neutral line is not included in the

required 10' OHSA clearances. Requiring 15' clearance around the neutral line further increases the area of a lot rendered unusable by the new rule. The new rule including the neutral line effectively creates an easement almost to the ground and completely prevents two story structures.

Reason #13: Project Connect and the Austin Strategic Mobility Plan will be impacted by the new rule.

By reducing housing capacity in every area served by overhead lines, the rule will also exacerbate one of Austin's most intractable problems--traffic. In addition to the goals defined in the Austin Strategic Mobility Plan, Austin voters recently approved Project Connect, the City's first comprehensive multi-modal transit solution. For Project Connect to succeed, significantly more people will need to live near the new stops and stations. Many of these areas are located in areas served by overhead lines.

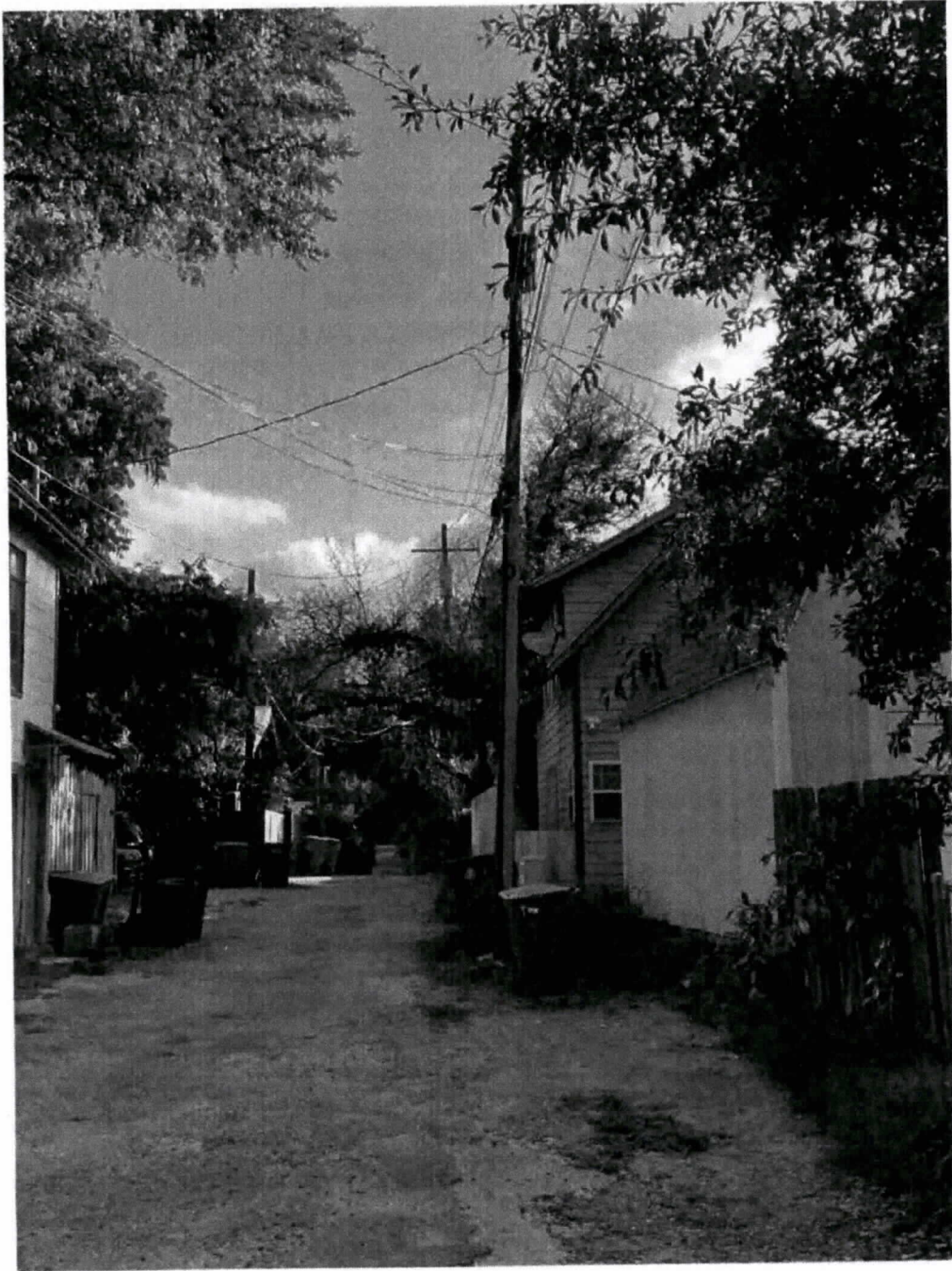
On June 10, 2021, Council approved the Equitable Transit Oriented Development Resolution, further affirming the need to provide enough housing and jobs around Project Connect to meet our transit goals. Reducing the amount of available land for housing near transit will reduce the amount of people who can live near transit.

We would like to request that the City's Transportation Department provide an assessment of this rule's impact on the goals of Project Connect's Transit Oriented Development Plan. We also request that the City Manager review and provide us with copies of all cross departmental review records related to the new rule, as potential conflicts with housing, transit and other departmental regulations, city policies and adopted goals should have been considered and resolved prior to adoption.

The following images demonstrate the interaction between residential structures and overhead power lines.



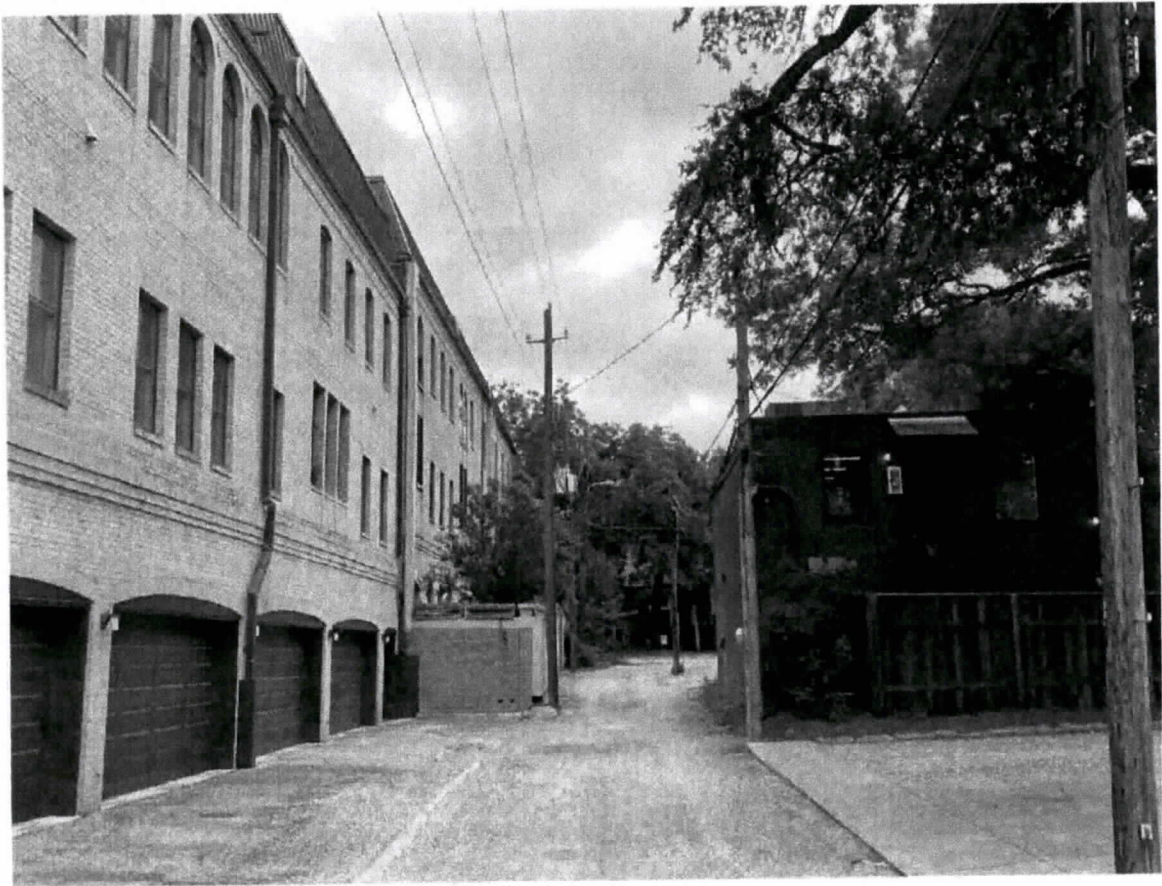
Here you see existing compliant overhead power lines and nearby structures, both low density condos and an ADU, that would not be allowed under the proposed rule.



Overhead lines in an alley, next to an accessory dwelling unit.



This one story residential building would be out of compliance with the new rule.



This photo shows compliant overhead lines and structures along an alley that would not be allowed under the new rule. The entire building would have to shrink by 5' to comply with the new rule, a significant reduction on an infill site like this.

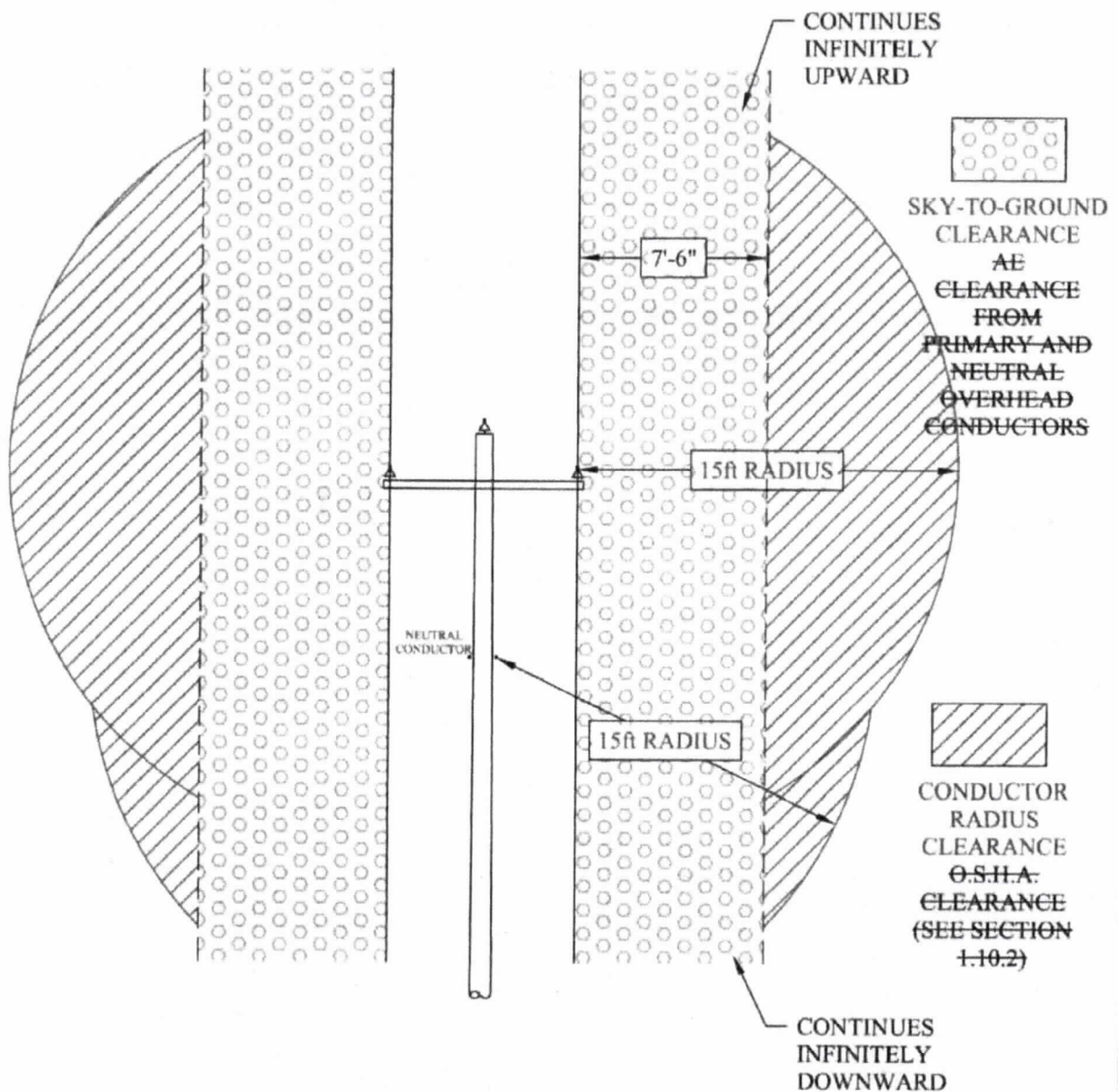


Both the residential structure and the commercial structure would be out of compliance with the new rule, and there is significant maintenance needed on the pole.

1.10.3 Permanent Clearances from AE Overhead Distribution Lines and Facilities

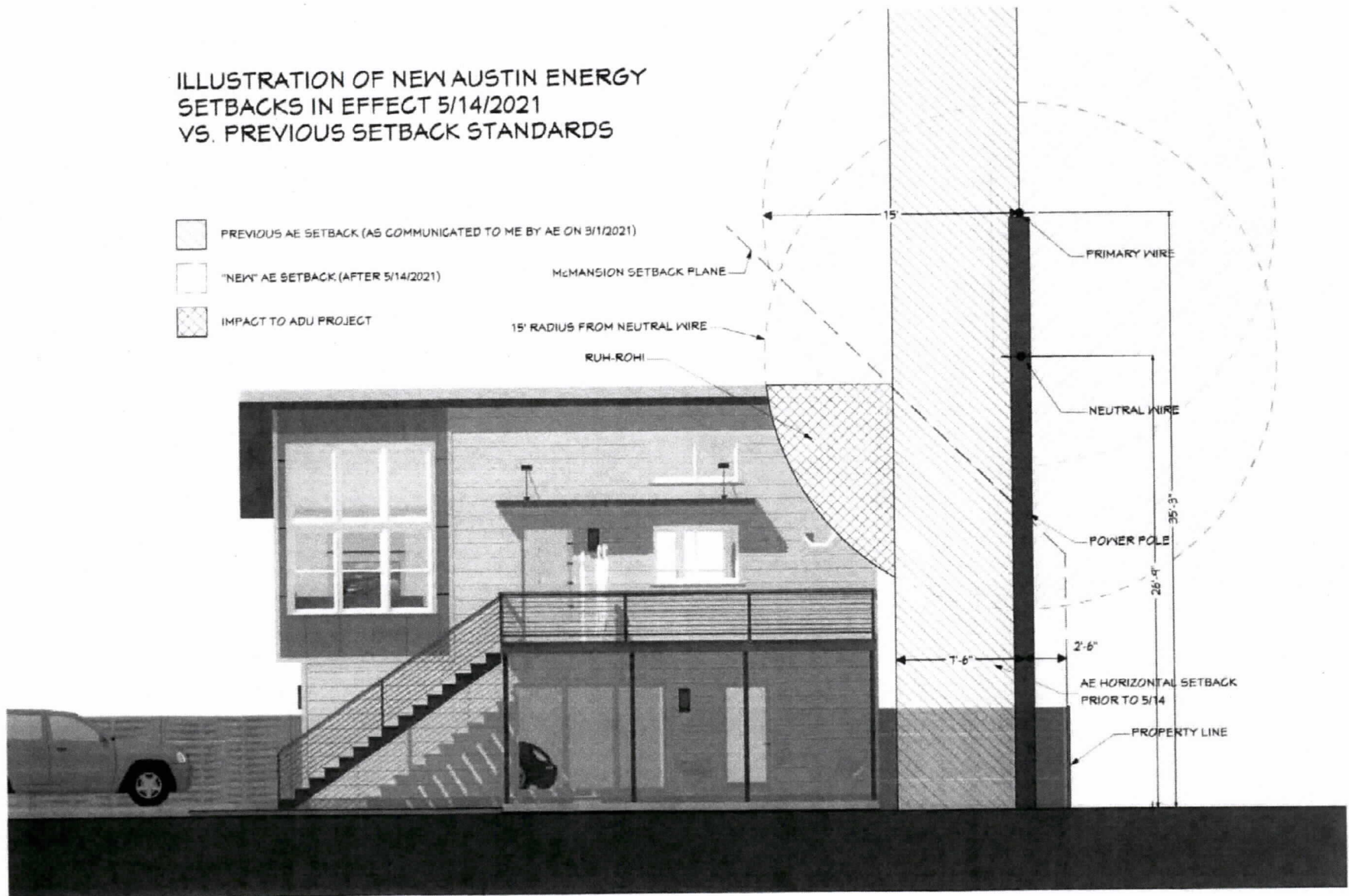
The Customer's facilities/installations shall maintain clearances from AE electric distribution overhead facilities as required in Section 234 of the NESC. In addition, the Customer's facilities shall not be installed under or over AE overhead distribution facilities and shall maintain a minimum horizontal sky-to-ground clearance of 7 feet-6 inches from overhead primary and neutral ~~(PM14)~~, and secondary (not including service drops to the individual buildings on the same lot) ~~overhead AE distribution conductors and 5 feet from covered multi-plex secondary conductors (PM15)~~ a 15-foot-radius clearance from overhead distribution primary and neutral conductors (see representation drawing below). Additional clearance and access easements may be required by Austin Energy to ensure accessibility to safely maintain AE infrastructure.

See the NESC and Austin Energy Permanent Clearance Envelopes and the OSHA/~~TXHSC~~ TXHSC Working Clearance Envelopes shown in the diagram below and in Appendix C – Exhibits, Figures ~~1-33, 1-34, 1-35,~~ and 1-36. (Also see Section 1.10.6 for service drop clearances and Section 1.10.7 for clearances from swimming pools). These include, but are not limited to, clearances from Customer's buildings, parking garages, light poles, signs, billboards, chimneys, radio and television antennas, tanks, and other installations. As required by AE Design, the Customer shall provide AE with a survey showing the proximities of the Customer's existing and/or proposed facilities to existing AE primary voltage facilities. For more information, contact AE Design.



[PM16]

ILLUSTRATION OF NEW AUSTIN ENERGY
SETBACKS IN EFFECT 5/14/2021
VS. PREVIOUS SETBACK STANDARDS



CHRIS ALLEN, ARCHITECT 5-25-2021

NOTE: WIRE HEIGHTS APPROXIMATE! BASED ON ROUGH FIELD MEASUREMENT WITH LASER.

RESOLUTION NO. 20200409-080

WHEREAS, in 2015, Austin adopted Ordinance 20151119-080, which codified certain changes to allow accessory dwelling units throughout much of the city; and

WHEREAS, a 2016 analysis conducted by The University of Texas ("Strategies to Help Homeowners Finance Accessory Dwelling Units in Austin") found that this action addressed land use barriers associated with ADU construction and resulted in a doubling of ADU construction in Austin in 2016 from 2015 levels; and

WHEREAS, the University of Texas report concluded that the increase in ADU construction in Austin was most likely completed by developers rather than by homeowners; and

WHEREAS, the report found that financing remained a major barrier to "low- and middle-income homeowners wishing to build an ADU"; and

WHEREAS, the report identified three primary problems that exist for individuals seeking private financing: debt to income ratios, equity, and a high enough credit to score to qualify for a loan with a preferable interest rate; and

WHEREAS, the report also found that in addition to the financial barriers, concerns about potential effects on property taxes could arise due to the ADU's impact on property values; and

WHEREAS, the report identified public funding streams that could be used to provide income-qualified homeowners with access to low-risk capital for the construction of ADUs; and

WHEREAS, acknowledging that each of these funding streams have different eligibility requirements and certain restrictions, potential funding sources for such a program could include the Housing Trust Fund, the Tax Increment Reinvestment Zone (TIRZ) in the Homestead Preservation District (HPD) A, the City of Austin's Down Payment Assistance Program, the City of Austin's Rental Housing Development Assistance Program, General Obligation (G.O.) funds, the General Fund, and Community Development Block Grants (CDBG); and

WHEREAS, the report states that these funds could also be used to populate a Revolving Loan Fund (RLF), which can be regenerated through the payback of previously issued loans; and

WHEREAS, in May of 2016, the Austin Community Design and Development Center (now Community Powered Workshop) and the University of Texas Center for Sustainable Development released the "Alley Flat Financing Strategies," report, which affirmed that conventional loans fail to serve lower-income homeowners for the reasons stated above; and

WHEREAS, Resolution No. 20161006-050 created a housing lending advisory group comprised of affordable housing experts, local lending institutions, nonprofit organizations and others that offer or are involved in programs to provide new lending tools for purchasing a home or financing an accessory dwelling unit (ADU) for households between 80% - 120% MFI; and

WHEREAS, the housing lending advisory group was directed to:

- Engage lenders to develop more mechanisms for residents between 80-120% MFI to receive loans for home buying or ADUs;
- Partner with organizations to host or market home-buying education classes;
- Compile and assess existing lending resources available to homeowners and buyers;
- Evaluate how easily homeowners and buyers can access existing lending resources or educational materials;
- Review creative lending alternatives used in other cities and determine their applicability to Austin; and

WHEREAS, in a presentation made to Council on December 8, 2016, staff affirmed conclusions from The University of Texas report regarding the challenges homeowners face when attempting to construct ADUs and indicated that loans would likely have to come from public funds since the private market is not meeting this need; and

WHEREAS, Resolution No. 20171109-048 created the Family Homestead Initiative which, among other actions, directed the creation of processes that would streamline smaller residential projects, including the construction of secondary dwelling units; and

WHEREAS, a permitting process that offers the efficiency of a menu of pre-approved ADU models would streamline design and permitting processes, which also reduces costs; and

WHEREAS, organizations like Community Powered Workshop have the expertise, as evidenced by their Alley Flat Initiative, to produce such a menu of pre-approved ADU models for use by homeowners seeking to build an ADU; and

WHEREAS, while the permitting for ADUs has become more streamlined, financing remains a hurdle for many households; and

WHEREAS, other cities have funded and created programs to address this need; and

WHEREAS, for example, the West Denver Single Family Plus ADU Pilot Program helps mid-and low-income homeowners to construct ADUs by providing design, permitting, and financing assistance; and

WHEREAS, Community Powered Workshop has extensively researched other municipalities' programs and is seen as a national resource as cities and nonprofits advance ADU construction as a means of assisting low and moderate-income homeowners in increasing household income and enabling them to remain in their communities; and

WHEREAS, other cities have also created programs to help homeowners construct ADUS, such as Los Angeles' LA-Más Backyard Homes Project, an incentive program that offers homeowners optional financing, design, permitting, construction, and leasing support to build and rent a new ADU to a Section 8 voucher holder for a minimum of five years; and

WHEREAS, Community Powered Workshop has executed memorandums of understanding with Austin Housing Finance Corporation with the intent to help homeowners finance ADUs, but it has yet to be funded; and

WHEREAS, with the support of Neighborhood Housing and Community Development and in partnership with the Business and Community Lenders of Texas and Guadalupe Neighborhood Development Corporation, Community Powered Workshop

applied for a grant to enable households to access mortgages and construction financing for the purposes of constructing ADUs; and

WHEREAS, the results of that grant process should be released this spring; and

WHEREAS, acknowledging that ADUs are a critical component of the City's affordable housing supply, the City should analyze funding sources and devise programs that could be used to provide financial capital for low-income homeowners and, if an appropriate funding source can be identified, for moderate-income households for the purpose of creating affordable ADUs throughout the City; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council directs the City Manager to explore eligible funding sources that could be used to provide low-interest loans or possibly supplement Community Powered Workshop's grant, should it be successful, and, if eligible funding sources are found, devise program and income eligibility guidelines for Council consideration no later than September 30, 2020.

BE IT FURTHER RESOLVED:

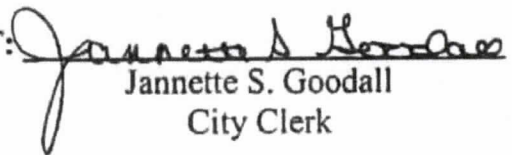
The City Council directs the City Manager to explore partnerships with organizations such as Community Powered Workshop that can provide a menu of pre-approved ADU models as part of a streamlined permitting process and to report back to Council no later than August 30, 2020.

BE IT FURTHER RESOLVED:

The City Council further directs the City Manager to explore the viability of a tax abatement or grants for property owners who construct income-restricted ADUs to offset increases in property valuations and, if viable, provide the Council with a budgetary impact analysis, recommendation, and mechanism for enacting such a measure no later than September 30, 2020. The City Council also directs the City Manager to initiate conversations with local taxing authorities to explore the potential to minimize property taxes for property owners who construct income-restricted ADUs and to report back to Council the outcome of those conversations no later than September 30, 2020.

ADOPTED: April 9, 2020

ATTEST:


Jannette S. Goodall
City Clerk

**Direction in Response to City Manager's March 15, 2019 Memo re:
Land Development Code Revision Policy Guidance**

Each of the City Manager's five questions is restated below and followed by specific direction.

Question 1. Scope of Code Revision. To what extent should the Land Development Code be revised?

- Option A** Adopt a new Land Development Code, consisting of:
- i. A new Land Development Code (text) and Zoning Map, to take effect concurrently; or
 - ii. A new Land Development Code (text) only, with the effective date deferred until Council adopts a new Zoning Map.
- Option B** Adopt a limited set of amendments to the existing Land Development Code, targeting improvements in one or more policy areas.

In response to Question 1, the City Council selects Option A.i. and provides the following additional direction:

1. **Overall Scope.** The new code should prioritize all types of homes for all kinds of people in all parts of town (our Strategic Housing Blueprint goals) and a development pattern that supports 50/50 Transportation Mode share by 2039 (our Austin Strategic Mobility Plan). The code revision process should use the staff-recommended Draft 3 (text and map) as a baseline, with revisions made to implement policy direction provided below and in response to Questions 2-5. Staff should also review recommendations previously made by boards and commissions on Draft 3 and incorporate those with which staff agrees (all or in part), using a process such as that used for the Austin Strategic Mobility Plan. The Manager should work to deliver a new code that is simplified, can be applied consistently, and furthers the goals of the Imagine Austin Comprehensive Plan.
2. **Timeline.** The manager should have a revised Land Development Code (text) and Zoning Map ready for Council action on First Reading in October of this year (after Planning Commission issues their report on the text and map as part of the required process).

3. Communication. The Manager should establish and communicate clearly the public input process for Council's adoption of the revised Land Development Code, including timelines and opportunities for public input. Include a transparent and educational public process under which stakeholders are informed on how their input has been received and is being evaluated.
4. Code Text. The revised Land Development Code should be sufficiently clear and unambiguous that administrative criteria manuals are not relied upon to establish policy, except in circumstances where Council has directed that particular requirements be established administratively.
 - a. The revised Code text and map should result in reduced allowable city-wide impervious cover, improved city-wide water quality, and reduced overall flood risk.
 - b. The new land development code should not weaken current City of Austin floodplain regulations, drainage criteria, and water quality regulations and criteria. Methods to measure and options to reduce allowable impervious cover in each watershed relative to current code, and methods to measure and options to improve water quality in each watershed, should be developed for the new code and the following goals incorporated:
 - i. Reductions in impervious cover city-wide should either decrease allowable impervious cover for, or make no change to, each individual watershed (relative to current code).
 - ii. Improvements in water quality city-wide should result in improvements in water quality for each individual watershed.
 - c. The Atlas 14 floodplain regulations should be approved and incorporated with the most current rainfall data as soon as possible.
 - d. The Manager will report on how revisions to the land development code will likely affect existing environmental regulations, understanding that the goal of the council is to preserve, or increase, our current level of environmental protections and sustainability with respect to flooding, water quality and usage, air quality, and greenhouse gas emissions.

- e. Staff to provide options for timelines and methods for implementation of the new code and map and to achieve additional housing capacity and affordable housing goals beyond those contained in the new code and map.
- f. Creative Spaces. Propose options to preserve creative space, including but not limited to zoning categories specific to cultural spaces and incentives to create dedicated, below market rate creative spaces in developments along corridors and in centers.
- g. Age Friendly Policies. Propose options for provisions in the LDC to carry out the land use recommendations from the Age Friendly Action Plan, including supports for multigenerational housing, visitability, and other provisions. Additionally, there should be provisions that enable day cares and senior living centers in all parts of the City, at a scale commensurate with its surroundings.
- h. Land Use and Zoning Categories.
 - i. The new LDC should focus on the size and scale of the built environment and regulate uses through context-sensitive policies that are clearly identified in the code and apply equitably throughout the City instead of through by-lot zoning regulations. Use restrictions should continue and be improved through a framework that identifies a range of incompatible uses among zoning categories, such as to avoid adult entertainment, hazardous industrial, or other activities that aren't supportive to surrounding residential or civic uses. Simple, clear requirements of conditions should be established, such as distance requirements and hours of operation.
 - ii. Propose options for prohibiting uses along corridors that displace potential housing opportunities, such as self-storage facilities or other uses that do not contribute to overall policy goals.
- i. Transportation and VMT. Developments should be able to use a predetermined set of transportation demand management tools such as building additional bike lanes or sidewalks, providing bike storage, public transit stops and other mechanisms.
- j. The new LDC should provide for the following as it relates to shaping the City's sustainable water future by preventing flooding, protecting water quality, and promoting water conservation:

- i. Developments should retain more water on-site and encourage beneficial reuse.
 - ii. Require developments where total of new and redeveloped impervious cover is 5,000 sq. ft. and greater to treat water quality. Through the land development code process, this provision should be tested, and staff should potentially create separate requirements for missing middle housing if such separate requirements are needed to achieve the goals of producing more small and missing middle housing types, while improving water quality in the city and the region overall.
 - iii. Expand the use of Green Stormwater Infrastructure (GSI) controls to treat residential subdivisions including roads.
 - iv. Provide options to significantly reform and/or remove exemptions to impervious cover limits in the redevelopment exceptions throughout the water quality section for all watersheds. Provide such options with the goal of actually achieving the most meaningful reductions in impervious cover locally and regionally, while balancing near-term and longer-term needs to reduce impervious cover and improve water quality.
 - v. Coordinate with Water Forward to Reduce Water Demand.
5. Zoning Map. The revised zoning map should limit the Former Title 25 (F25) zoning classification to unique zoning districts (e.g., NCCDs and PDAs) for which no similar district exists under the revised Land Development Code. Specialized zoning districts that exist today and are of a type contained in the new Code, such as Planned Unit Developments and regulating plans, should be carried over and not be classified as F25.
- a. Existing NCCDs should be preserved and carried forward in the new code and map, however, Code and Zoning Map changes related to ADUs, Parking, Preservation Bonuses, Affordability Bonuses, lot size, and Transition Area mapping (consistent with Council direction provided below and in response to Questions 2-5) should be applied to those NCCDs. Unique zoning districts (e.g., NCCDs) should be reevaluated in the current context of Austin's housing and transportation needs in addition to analyzing the extent to which NCCDs provide missing middle housing.
 - b. COs that are generally incorporated into the new code are not to be carried forward; other, unique COs are carried forward and are subject to change with any future rezoning.

- c. Determinations about mapping should also be informed by appropriate analyses available to staff, including but not limited to the "Zoning Capacity and Redevelopment Analysis" completed by city staff and the Fregonese study.
6. Additional. To ensure that the Land Development Codes and permitting process are streamlined to the greatest extent possible upon adoption of any revision to the Land Development Code, the regulatory requirements adopted as part of Water Forward, Austin's 100-year integrated water resource plan, that are related to the Land Development Code and are able to be accelerated and implemented this year should be codified and implemented as part of this comprehensive land development code revision process. Staff should report back at least on the following areas if not able to accelerate and implement this year, especially as concerns large buildings over 250,000 square feet: water benchmarking, dual plumbing, landscape transformation, and alternative water.

Question 2. Housing Capacity. To what extent should the Land Development Code provide for additional housing capacity in order to achieve the 135,000 additional housing units recommended by the *Strategic Housing Blueprint*?

- Option A** Maintain the level of housing capacity provided by current Code (i.e., approximately 145,000 new units);
- Option B** Provide a level of housing capacity comparable to Draft 3 of CodeNEXT (i.e., approximately 287,000 new units); or
- Option C** Provide greater housing capacity than Draft 3, through enhanced measures to allow construction of additional residential units.

In response to Question 2, the City Council selects Option C and provides the following additional direction:

- 1. Objective. The revised Land Development Code should provide a greater level of housing capacity than Draft 3, and the City Manager should consider this goal in developing proposed revisions to the Code text and zoning map.
 - a. The new code and map should allow for housing capacity equivalent to at least three times the Austin Strategic Housing Blueprint (ASHB) goal of 135,000 new housing units, as well as for ASHB goals of 60,000 affordable housing units, preservation of 10,000 affordable housing units, production of sufficient numbers

of Permanent Supportive Housing (PSH) units each year sufficient to address needs and 30% Missing Middle Housing, and be achieved in a manner consistent with direction provided throughout this document.

- b. In general, within activity centers, along activity corridors, along the transit priority network, and in transition areas, additional entitlements beyond current zoning should only be provided:
 - i. to increase the supply of missing middle housing, which shall include an affordable housing bonus program where economically viable or,
 - ii. through a density bonus that requires some measure of affordable housing.
- c. The granting of new entitlements in areas currently or susceptible to gentrification should be limited so as to reduce displacement and dis-incentivize the redevelopment of multi-family residential development, unless substantial increases in long-term affordable housing will be otherwise achieved. Existing market rate affordable multifamily shall not be mapped to be upzoned.
- d. In general, housing affordability should be the primary policy driver of code and mapping revisions and the Manager should explore:
 - i. options to allow some level of administrative variances for some building form regulations (setbacks, height, building cover, etc.) to help maximize the shared community values of housing, tree preservation, parks, and mitigating flood risk; and
 - ii. the feasibility of how regulations can overlap (e.g., how a drainage field can also safely serve as open space).
- e. The City Manager shall provide estimates for the potential impacts of the new map on transit ridership as well as affordable housing goals.
- f. Code and map revisions should maximize potential for employment and residential units within Downtown, in accordance with the Downtown Austin Plan and the guidance in this document, with affordable housing benefits included and calibrated. Code and map revisions should maximize potential for employment and residential units within Regional Centers, in accordance with the guidance in this document, with affordable housing benefits included and calibrated.

- g. Generally, revisions to the Zoning map should not result in a downzoning of an existing use.
 - h. The new LDC provisions should:
 - i. Improve the City's fiscal health by (1) facilitating fiscally sound infrastructure investment for both public and private interests; and (2) applying the code in strategic locations that maximize public infrastructure investment and minimize long term obligations.
 - ii. Continue including and enhance a site plan process that assesses the infrastructure needs of developments, including the cumulative impact of development, and facilitate the installation of new infrastructure funded in whole or in part by new development.
 - iii. To the greatest extent possible, include code restrictions that provide properties zoned for multi-family will develop with multi-family and not single-family structures. At the same time, however, make allowances for existing single-family structures that become non-conforming to be maintained, remodeled, and potentially expanded, so long as they are not demolished or substantially rebuilt. Staff should provide options for minimum unit yield based on the zone.
2. Code Text. Code revisions to provide additional housing capacity should include:
- a. Options for reducing minimum lot size and width to achieve the goals elsewhere in this document, including preservation goals, while also considering public safety concerns.
 - b. For parcels within activity centers and on activity corridors, application of non-zoning regulations should be prioritized in a manner that allows for greater potential housing unit yields than would otherwise be achieved without prioritization.
 - c. Non-zoning regulations should provide flexibility to allow for higher unit yields for parcels within activity centers and activity corridors. The code should create alternative equivalent means to ensure the balance of needs, while protecting environment and sustainability (landscaping, parkland and tree preservation), public safety, transportation, utility and right of way needs. Review non-zoning regulations related to Austin Energy and Austin Water (other than regular fees) that can significantly impact the cost of development. Review and suggest

changes to non-zoning regulations that may encourage demolition rather than the redevelopment of existing structures.

- i. The application of non-zoning regulations to smaller, remaining downtown sites should allow for greater potential for employment and residential units than Draft 3, with affordable housing benefits included and calibrated in accordance with the Downtown Austin Plan and the direction of this document.
- d. Should the testing and modeling of the draft code demonstrate that any non-zoning regulations significantly constrain housing capacity within activity centers and on activity corridors, staff should provide council with options for best achieving the goals of non-zoning regulations while minimizing impact on achieving our housing capacity goals.
- e. A city-led testing process to assess the impact of revised regulations that includes participation by outside design and technical professionals, including architects, landscape architects, and engineers, in addition to city staff and the substantial involvement of the public. The initial testing should examine how the proposed zoning and non-zoning code provisions perform when applied to various types and scales of development and staff should complete this testing prior to review by boards and commissions. Staff should provide accurate and careful testing and modeling of corridor and transition area regulations so that Council and community discussions can focus on achieving policy results and include proposed non-zoning regulations.
- f. Measures to dis-incentivize the demolition and replacement of an existing housing unit(s) with a single, larger housing unit.
- g. Identifying and implementing opportunities throughout the code to encourage preservation of existing housing, especially market affordable housing.
- h. Residential uses should be allowed in commercial zoning categories. Draft 3 mapping included affordability requirements for commercial properties where residential uses are not permitted and these requirements should be maintained in the new draft.

- i. Preservation incentives should be expanded City-wide, so that an additional unit, beyond what would otherwise be allowed, is allowed with the preservation of an existing structure. Remodeling or adding units should be very simple, so it is much easier to preserve an existing home than to tear down and replace it with another larger structure. Provide options to revise McMansion ordinance that provide for ability to add a room or limited remodel but constrain ability to demolish existing home and replace with another larger single family home. If an existing affordable home is preserved, the balance of the lot's entitlements can be used to add more dwelling units.
3. Zoning Map. Map revisions to provide additional housing capacity should include broader use of zones that allow for affordable housing density bonuses than in Draft 3.
- a. 75% of new housing capacity should be within ½ mile of transit priority networks as identified by the Austin Strategic Mobility Plan and Imagine Austin activity centers and corridors. Staff should update the growth maps for Imagine Austin including both corridors and centers.
 - b. All parts of town should be expected to contribute to reaching our ASHB and Austin Strategic Mobility Plan (ASMP) housing and mode shift goals as well.
 - c. Additional direction to staff to develop specific, context-sensitive criteria for areas where the distance between corridors is less than ½ mile.

Question 3. Missing Middle Housing Types. To what extent should the Land Development Code encourage more “missing-middle” housing types, such as duplexes, multiplexes, townhomes, cottage courts, and accessory dwelling units?

- Option A** Maintain the range of housing types provided for by the current Land Development Code;
- Option B** Provide for a range of housing types comparable to Draft 3;
or
- Option C** Provide for a greater range of housing types than Draft 3.

In response to Question 3, the City Council selects Option C and provides the following additional direction:

1. **Code Text.** Code revisions to increase the supply of missing middle housing should include:
 - a. Allowing accessory dwelling units (ADUs), both external and internal/attached, to be permitted and more easily developed in all residential zones;
 - b. Where appropriate, allowing new housing types to qualify as ADUs, including existing homes being preserved, mobile and manufactured homes, tiny homes on wheels, Airstream-style trailers, modular homes, and 3D-printed homes; and
 - c. Reduced site development standards as appropriate for missing middle housing options such as duplexes, multiplexes, townhomes, cooperatives and cottage courts in order to facilitate development of additional units. Council will need to determine the appropriate criteria to achieve more affordable housing while protecting environment and sustainability, public safety, transportation, utility and right of way needs.

- 2 **Zoning Map.** The goal of providing additional missing middle housing should inform the mapping of missing middle zones, consistent with the direction provided throughout this document.
 - a. Map new Missing Middle housing in transition areas adjacent to activity centers, activity corridors, or the transit priority network.
 - i. Generally, the transition area should be two (2) to (5) lots deep beyond the corridor lot.
 - ii. The depth and scale of any transition area should be set considering context-sensitive factors and planning principles such as those set out in the direction for Question 4.

Question 4. Compatibility Standards. To what extent should the City's "compatibility standards" (i.e., rules limiting development near residential properties) be modified to provide additional opportunities for development?

- Option A** Maintain compatibility standards comparable to those in the current Land Development Code;
- Option B** Reduce the impact of compatibility standards on development to a degree consistent with changes proposed in Draft 3; or
- Option C** Reduce the impact of compatibility standards on development to a greater degree than Draft 3.

In response to Question 4, the City Council selects Option C and provides the following additional direction:

1. **Objective.** The code revision should reduce the impact of compatibility standards on development within activity centers and activity corridors to a greater extent than Draft 3.
2. **Code Text.** Maintain Draft 3's no-build and vegetative buffers between residential and commercial uses, as well as other compatibility triggers and standards for properties adjacent to a Residential House-Scale zone. The only exception should be that the highest density Residential House-Scale zones should not trigger compatibility onto the lowest density Residential Multifamily zones in order to create smooth transitions. The revision should provide options for the following:
 - i. Standards related to noise, uses, utility screening, side buffers, trash, loading and pick-up zones as well as shielded lighting.
 - ii. Standards related to Green Infrastructure, tree preservation, as well as increasing tree canopy along corridors and centers to enhance walkability and curb heat island effect.
3. **Zoning Map.** Compatibility standards and initial mapping should work together in a way that maximizes housing capacity on parcels fronting activity corridors, the Transit Priority Network, and within activity centers, consistent with applicable base zoning regulations and with any Affordable Housing Bonus otherwise available. Employment and other uses to create "complete communities" along transit and Imagine Austin corridors and centers should also be allowed in a way that is context-sensitive. In addition, regulations should still allow "village center" type low-density mixed-use and commercial use in neighborhoods to create "complete communities".

- a. In general, consider revisions that minimize the impact of compatibility standards on properties facing transportation corridors, particularly in relation to shallow lots.
- b. The revised zoning maps should reduce the impact of compatibility standards on development for parcels along all activity corridors and within activity centers. In redefining compatibility standards, the code revision should:
 - i. Define the maximum height allowed by-right plus affordable housing bonus, along activity corridors and in activity centers, and then establish regulations that create a step-down effect in the transition zones.
- c. The revised zoning map should include a transition zone that will eliminate the impact of compatibility for parcels along all activity corridors and within activity centers.
 - i. Lot(s) adjacent to parcels fronting an activity corridor will not trigger compatibility and will be in scale with any adjacent residential house-scale zones.
 - ii Mapping of lots within a transition area should be responsive to existing situations, including instances where market affordable missing middle housing is adjacent or proximate to a property fronting a corridor, and specific context sensitive general criteria provided by Council.
- d. The LDC Revisions should map properties for missing middle housing in transition areas that meet some or all of the following criteria. Entitlements and length of transition areas should be relatively more or less intense for areas that meet more or fewer of the criteria listed below, respectively:
 - i. Located on Transit Priority Network, or Imagine Austin Centers or Corridors
 - ii. Located within the Urban Core as defined by the Residential Design and Compatibility Standards Area (McMansion Ordinance)
 - iii. Has a well-connected street grid
 - iv. Located in a high opportunity area as defined in the Enterprise Opportunity360 Index
- e. The depth and scale of transition zones should be reduced so that the transition zone(s) do not overlap with the majority of the existing single-family neighborhood area.

- f. The length and level of entitlement in transition zones should be substantially reduced in "Vulnerable" areas identified in the UT Gentrification Study, regardless of the number of criteria met above.
- g. Lot(s) adjacent to parcels fronting an activity corridor will be mapped with a zone that does not trigger compatibility and that could provide a step-down in scale from the zone of the parcel fronting an activity corridor. For a shallow lot on a corridor, consideration will be given to maintaining the zoning of the corridor-fronting lot to the adjoining rear lot, if appropriate.
- h. Transition areas should step down to residential house scale as quickly as possible, while providing for a graceful transition in scale from the zone of the parcel fronting an activity corridor.
- i. Four units within a house scale should be the least intense zone within a transition area, subject to staff's consideration of what is appropriate.
- j. Staff will provide a projection of how much missing middle housing capacity the mapping of transition areas consistent with these guidelines will provide, and how effectively the map enables us to achieve ASHB and ASMP goals.
- k. The City Manager shall also use the following conditions as appropriate when mapping transition areas:
 - i. Orientation of blocks relative to corridors
 - ii. Residential blocks sided by main street or mixed use type zoned lots
 - iii. Bound by other zones, use, or environmental features (including topography)
 - iv. Drainage and flooding considerations
 - v. Whether it is most appropriate to split zone or not split zone a lot.
- l. The City Manager shall provide to Council an analysis of the affordable housing and housing capacity yield when presenting the proposed mapping and potential for redevelopment using the Envision Tomorrow tool.
- m. If the transition area is not on an Imagine Austin corridor, but is on a residential transit priority network street, the street facing lot should generally begin with missing middle zoning, rather than corridor zoning.
- n. Staff will consider mapping missing middle areas in high opportunity areas not impacted by environmental concerns in order to help achieve goals related to housing throughout the city

Question 5. Parking Requirements. To what extent should the City's minimum parking requirements be modified to provide additional opportunities for development and/or encourage transit options consistent with the *Imagine Austin* comprehensive plan?

Option A Maintain minimum parking requirements comparable to those established in the current Land Development Code;

Option B Reduce the impact of minimum parking requirements on development to the same degree as Draft 3; or

Option C Reduce the impact of minimum parking requirements on development to a greater than Draft 3.

In response to Question 5, the City Council selects Option C and provides the following additional direction:

1. Objective. The code revision should seek to reduce the impact of minimum parking requirements on development to a greater degree than Draft 3.

2. Code Text.

- a. Minimum parking requirements should be generally eliminated in areas that are within the ¼ mile of activity centers, activity corridors, and transit priority network, except that some parking requirements may be maintained for areas where elimination of parking requirements would be particularly disruptive (conditions to be proposed by staff).
- b. The City's visitability ordinance should be retained and expanded to ground floor missing middle housing in the new code and staff shall provide options for how it is expanded. ADA-compliant parking should be required for commercial and multifamily developments, even if no minimum parking is otherwise required to ensure adequate number of dedicated parking spaces exist to safeguard those with permanent disabilities, temporary illness or injury are afforded a place to park near where they live, shop, or visit others. Off-site or on-street parking may challenge safety and accessibility and should be carefully considered before being used as a means to provide for this parking. This is of critical importance with an aging population and generational housing.

- c. Code revisions should provide that parking structures are able to evolve over time as transportation patterns change, including design standards for structured parking that will facilitate eventual conversion to residential or commercial uses.
- d. The Manager should:
 - i. Explore options for adopting parking maximums or minimum unit-yield in areas necessary to ensure sufficient transit-supportive development (e.g., TODs);
 - ii. Determine if parking in certain areas should be counted against FAR;
 - iii. Explore the feasibility of decoupling parking from leases; and
 - iv. Explore options for utilizing public parking and ROW to provide more ADA-compliant parking across the City.

Addition 1. Planning

1. Objective. The Manager should as soon as possible develop a proposed district level (e.g., ERC, North Burnet/Gateway Neighborhood Plan) planning process for Imagine Austin Activity Centers and Corridors susceptible to change, and include specific objectives for each plan related to achieving the goals of the Austin Strategic Mobility Plan, Austin Strategic Housing Blueprint, and other Council policy priorities, such as:
 - a. housing capacity to reach the city's 10-year goals and beyond,
 - b. affordable housing, especially in high opportunity areas,
 - c. anti-displacement and anti-gentrification measures where relevant,
 - d. shared parking,
 - e. regional storm water and water quality planning,
 - f. parkland accessibility,
 - g. utility infrastructure,
 - h. walkability and connectivity,
 - i. increasing opportunities for missing middle housing, and
 - j. policy priorities associated with complete communities.

2. Code Text. The City Manager shall draft language for Council approval to codify the district level planning process and the criteria for selecting planning areas in the Land Development Code as follows:

- a. Selection of Planning Areas: Identify geographic areas along corridors throughout the city where district level planning will have maximum public benefit, paying particular attention to corridors (including streets and arterials) identified in the ASMP, Project Connect, and where construction, planning, and land acquisition with done dollars will be applied and can be leveraged.
- b. Planning Process Criteria: Determine when district-level planning for an area is needed to align with our adopted city goals and plans, including Imagine Austin, ASHB, ASMP, Age Friendly Austin Action Plan, the upcoming Parks Master Plan, and other relevant plans. Criteria should include, but not be limited to, the following information sources:
 - i. Planned transportation investments, including corridors with transportation bonds and public transit investments;
 - ii. Affordable housing investments;
 - iii. Significant number or scale of private development;
 - iv. Market force indicators expressing need and opportunity to leverage an area's potential or significant public investment via facilities or other infrastructure;
 - v. Areas of vulnerability identified using the mapping tool from the UT Gentrification & Displacement Study, "Uprooted"; and
 - vi. Include consideration for inhibiting displacement, preserving cultural and historic assets, promoting multi-generational housing, and support neighborhood schools, particularly schools with under -enrollment or in areas of rapid displacement.
- c. Planning Process Types:
 - i. Areas facing gentrification and/or displacement should have planning processes that focus on equity, community and economic development, and anti-displacement measures.
 - ii. Higher opportunity areas should have planning processes that focus on reaching housing capacity goals and furthering fair housing/integration.

3. Timeline. Multiple planning efforts for Activity Centers and Activity Corridors should occur concurrently, with a goal of completing those most susceptible to change within 5 years.

4. Resources. The Council recognizes that additional resources will be required to achieve this scale of planning in this time frame, and the use of consultants should be considered to allow for multiple district-level plans to be developed in order to meet this timeline. The City Manager should ensure that planning processes have robust community engagement that incorporates door-to-door outreach, multi-language access, community organizing, and popular education regarding planning, zoning, equity, gentrification, displacement, and affordable housing.

5. Community engagement. The City Manager should review the 2016 Neighborhood Plan Audit and incorporate recommendations into any new planning processes. Planning should include robust engagement of adjacent stakeholders, but also include participation from across our city, as all parts of Austin have an interest in each part of Austin contributing equitably to our goals being met. Community engagement should specifically focus on elevating the voices of populations that have historically been underrepresented in planning processes (as was done with the Austin Strategic Mobility Plan), including: renters, lower-income residents, youth, seniors, people of color, and people with disabilities. Staff should develop and track participation metrics for each planning area and target participation to be representative of the diversity of the planning area and the City as a whole.

6. Triggers for Plan Updates. The planning horizon for each plan should align with Imagine Austin and be assessed and updated approximately every 5 years. Staff should explore mechanisms to trigger when a Small Area Plan is updated, such as demographic changes or infrastructure improvements, and return to Council with recommendations.

Addition 2. Affordable Housing

1. Objective: The Land Development Code should support the city's 10-year Affordable Housing Goals and align resources and ensure a unified strategic direction to achieve a shared vision of housing affordability for all Austinites in all parts of the city. The City

Manager should identify and propose for Council approval amendments to the Land Development Code that will (1) further the housing goals established in the Austin Strategic Housing Blueprint (ASHB) and (2) implement recommendations for achieving these goals included in the Austin Strategic Housing Blueprint (ASHB) and the ASHB Implementation Plan (if adopted by Council).

- At least 75% of new housing units should be within ½ mile of Imagine Austin Centers and Corridors (see the Figure 10 map showing Imagine Austin Centers and Corridors).
- Preserve 10,000 affordable housing units over 10 years.
- Produce Permanent Supportive Housing (PSH) in sufficient numbers to meet the need.
- At least 25% of new income-restricted affordable housing should be in high opportunity areas.
- At least 30% of new housing should be a range of housing types from small-lot single-family to eight-plexes to help address Austin's need for multi-generational housing.

2. Code Text: Code revisions for Council approval should include provisions to achieve the following ASHB "Key Actions" that are related to the Land Development Code in addition to those already included in response to City Managers question 1 to 5 (* indicating strategies with highest potential impact):

a. Prevent Households from Being Priced Out of Austin

- Allow Homeowners to Rent a Portion of Their House as a Separate Housing Unit
- Increase the Supply of Multi-Bedroom Housing for Families with Children
- Prevent Displacement of Low-and Moderate-Income Homeowners
- Preserve and Create Ownership Options for Households at 80% to 120% MFI

b. Foster Equitable, Integrated and Diverse Communities

- *Implement the City of Austin's Fair Housing Action Plan and Bolster Enforcement of Existing Fair Housing Requirements
- Implement Tenant Relocation Assistance Program
- Protect Renters from Discrimination Based on Source of Income

- Add Flexibility to Occupancy Limits
 - Support Community Goal for At Least 25% of New Income-Restricted Affordable Housing to be in Moderate-to-High Opportunity Areas
- c. Invest In Housing for Those Most in Need
- Incentive Programs
 - Expand the Supply of Housing for People with Disabilities
- d. Create New and Affordable Housing Choices for All Austinites in All Parts of Austin
- *Implement Consistent Density Bonus Programs for Centers and Corridors
 - *Streamline City Codes and Permitting Processes
 - Better Utilize Land for Affordable Housing
 - Revise S.M.A.R.T. Housing Program
 - Implement Density Bonus Program for Missing Middle Housing
 - Allow the Development of Smaller Houses on Smaller Lots
 - Create Pre-Approved Standard Plans for Infill Development
 - Relax Regulations on More Affordable Housing Products
 - Relax Regulations on Housing Cooperatives (Co-Ops)
 - Utilize Planned Unit Developments (PUDs) to Provide a Range of Affordability
 - Increase Housing Diversity in New Subdivisions
 - Consider Building and Fire Code Modifications to Allow Six Stories of Wood Frame Construction
- e. Help Austinites Reduce their Household Costs
- *Minimize the Displacement of Core Transit Riders
 - *Link Housing Choices with Transportation Choices
 - *Comprehensive Parking Reform
3. Zoning Map. Propose options for mapping the provisions above dependent on geographic locations (such as high opportunity areas, centers, corridors, and transit) to achieve affordable housing goals over the next ten years.

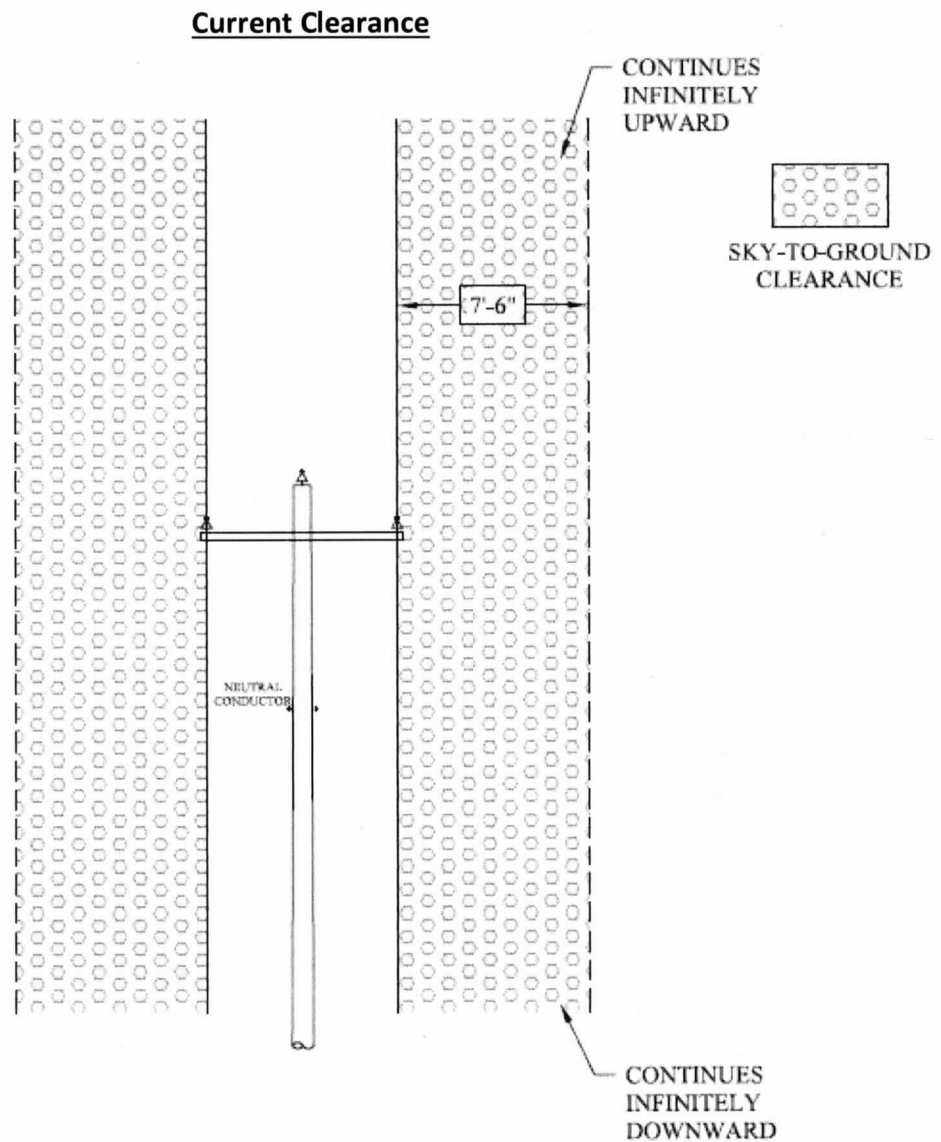
Austin Energy Response to the Appeal of Rule R161-21.13 (Design Criteria Manual)

Austin Energy Permanent Clearances from AE Overhead Distribution Lines

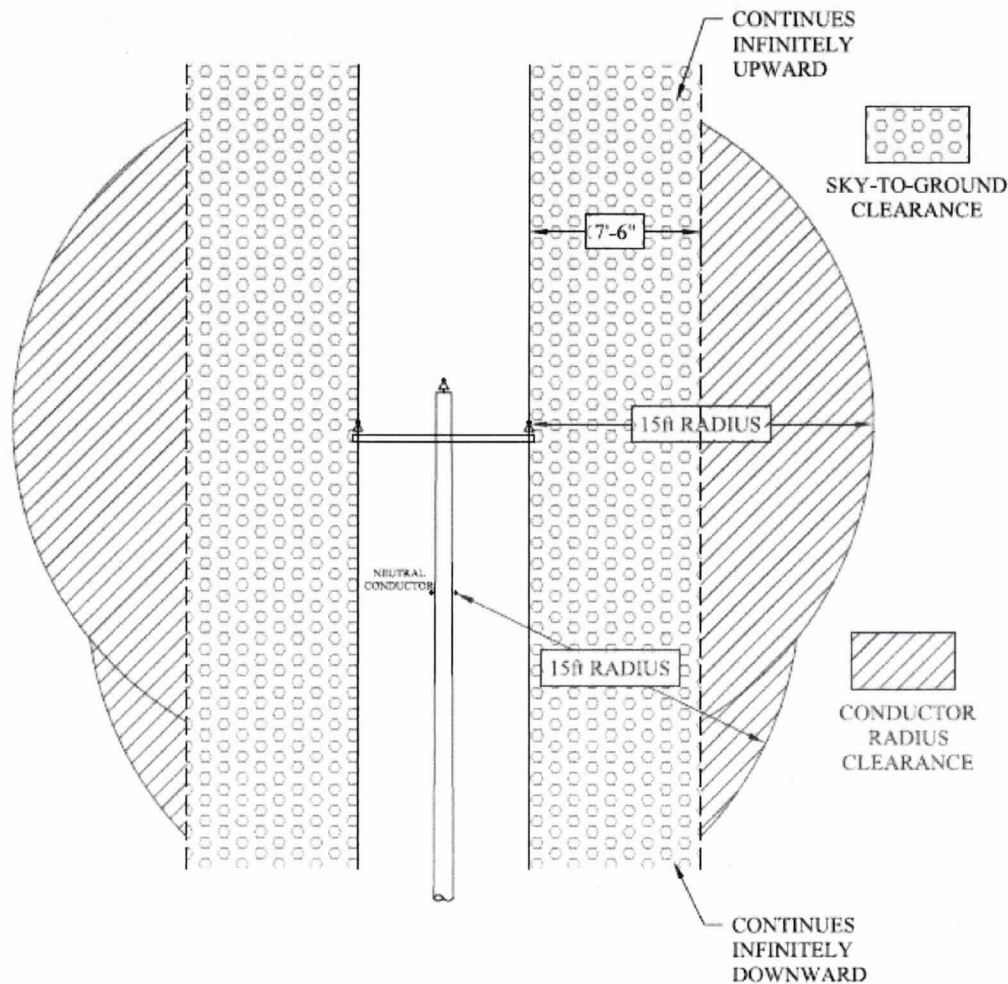
Summary of 1.10.3

Overview of Issue and Background Information

- Background: Austin Energy adopted an increased clearance from 7.5ft sky-to-ground to include a 15ft radius around a primary-voltage (7.2kV) and neutral conductor.



Proposed Clearance



Rationale for Austin Energy's Change in Clearance from Overhead Distribution Lines

- **Reason for Change:** The change is required to ensure customers have sufficient clearance from energized conductors to safely build and maintain their structures. Austin Energy has seen many instances of non-compliance to OSHA standards that requires unqualified workers to stay out of a 10ft-radius zone around energized primary conductor. One incident of non-compliance resulted in an electrocution fatality. Austin Energy is mindful that buildable space is limited and valuable, and we would not pursue this change unless absolutely necessary for safety of workers and the public.

Engagement with Stakeholders

- **History of Engagement:** Austin Energy, in compliance with the COA Rules Posting process, met with stakeholders to review the changes and received comments.
 - 1/12/21 - Customers notified and invited to DCM proposed changes meeting
 - 1/22/21 - Customer meeting and discussion of DCM proposed changes
 - 2/9/21 – AGC (Associated General Contractors, Austin Chapter) Meeting included a presentation regarding upcoming clearance update to attendees.
 - 5/3/21 - Received and replied to customer comments.

AE Response to Appeal of Clearance Increase

- **Comments and Responses:** Austin Energy responded to customers via online meetings and emails. Some responses were attached to the Notice of Adoption. Highlights included the following:
- Extra clearance reduces buildable property, especially on ADU's and developments that are creating more availability of affordable housing.
 - Austin Energy is mindful of the need for more housing within our city, including the need for more affordable housing. This is why Austin Energy waives line extension costs for affordable housing meeting SMART Housing certification requirements. However, development in proximity to high voltage power lines must be done safely. Austin Energy will continue to explore ways to remove barriers to income-restricted housing, and we look forward to continuing to examine this issue with stakeholders, particularly as related to ADUs.
 - How will architects/developers get specific measurements when planning and determining whether purchase of properties is feasible, not knowing the pole heights?
 - Customers will need to consult with Austin Energy on clearance requirements.
 - Austin Energy has created drawings that show clearance requirement examples for each pole height. Therefore, Austin Energy would only need to look up the pole height on GIS and provide the appropriate drawing to the customer.
 - What about line sag? Do builders and designers have to account for line sag in between poles?
 - Yes, line sag is a consideration, same as when customers need to meet OSHA requirements. Customers must use the same method that they use for determining OSHA when considering line sag. If customer is not already doing so, they may not be in compliance with worker safety requirements.
 - It will impact not just impact second-story structures. A single-story house has to move back an additional 3' to maintain the proposed line clearances.
 - It depends on the pole size and dimensions of the single-story building. A common 50ft pole is usually set about 8ft deep. The braces holding the primary line is usually set about 2ft below the top of the pole, and the neutral about 9ft-6in below that, leaving you with a ground level clearance to the neutral of about 30.5ft, and to the primary lines about 40ft. That puts the 15ft radius well above the eaves of most single-story buildings. However, we are aware that there are many variations of that in the field. For our next-typical 45ft pole, the measurements are typically 27.5ft ground-to-neutral and 35ft to the upper primary lines. Agreed that with your drawing showing 20ft to the neutral, and with the pole set 7.5ft back laterally from the structure to the upper primary lines (about 9ft laterally from the pole), the structure could be impacted by the 15ft radius from the neutral, depending on the exact structure dimensions.
 - It will significantly impact 2nd story structures. A 2-story house would need to be set back an additional 7'-3" to maintain the proposed line clearances.
 - It is correct that 2-story and taller structures have the most risk of being within an unsafe distance of energized conductors.
 - The idea that customers would pay to raise poles is not practical. It is time consuming for AE and the customers. It is expensive. The cost for a new pole is around \$4K from AE.

I would assume that taller poles cost even more. You can't replace just 1 pole. Likely it will be a 2 minimum. The cost to the client would be around \$10K in AE fees plus the cost for someone to manage and oversee this effort, for an additional \$2.5K. Housing is already expensive enough in the city of Austin. \$12.5K is a significant and meaningful cost.

- We are sympathetic to the cost impact on developers, but we have given much thought to this and consider that the safety hazard reduction warrants this increase in clearance.
- The proposed language for permanent clearances greatly exceeds the OSHA provisions. Most distribution lines are 7.2kV or 14.4kV. The required OSHA clearances while working near lines less than 50kV is either 10' for unqualified contractors or just 2' for qualified contractors.
 - 15' is required for structures in order to maintain 10' OSHA clearances for those performing work. A 10' clearance for the structure would provide no clearance for workers to allow construction and maintenance of structures within a safe (OSHA) working distance. Most persons working on these structures are not qualified to work near power lines and are thus unfamiliar with their particular hazards. The 15' permanent clearance is required to be consistent with 10' OSHA because the person as well as scaffolding, ladders, etc. must remain outside the 10'. If the building is at 10', that leaves no space for the worker.
- The proposed AE requirements appear to incorporate OSHA standards into the permanent clearance requirements. Aren't the OSHA standards related to working, not permanent facilities?
 - Yes, OSHA requirements are working clearance. Where Austin Energy is sometimes unable to insulate or de-energize lines to allow nonqualified persons to enter the approach distance to maintain or work on their structures, Austin Energy is providing the minimal space to assist customers in safely working on their structures within OSHA standards.
 - We are concerned about the number of electrical hazard notices we have placed and the ones we didn't catch that could have led to injuries or fatalities.
- What is the need that is driving this change? The 7'6" sky to ground clearances + the OSHA rules have been in place for a few years. Have there been any documented issues with what is currently written?
 - Yes, there have been many conflicts where customers were unable to safely construct and maintain structures near energized lines. In one instance, scaffolding erected by contractors using 2x4's to push the primary out of the way. Customer's contractors worked within the minimum approach distance which resulted in an electrocution fatality. We have issued 70 Notices of Electrical Hazard since 2017.
- If we get a permit application submitted and in review prior to May 14th, we are grandfathered in under the existing rules, correct? Or is it the June 2nd appeal date?
 - Yes, if you get permitted before May 14th then we will honor it under our existing code.
- What if it is already in permit review on May 14th? Normally, that is how the city handles it. If you get your application before rules go into effect that is the date that matters.
 - Correct, as long as you have something that shows when it was formally submitted.
- What are other utilities requiring in order to alleviate this concern?

- Utilities vary in their approach. Some have larger easements, which are essentially sky-to-ground clearances, and some have larger sky-to-ground clearances. Austin Energy benchmarked other utilities and determined that we are within range of what other utilities require in areas with a high density of development.

➤ **Specific Concerns Raised on Appeal of Permanent Clearance Rule:**

- Regarding the appeal reason asserting that the rule seeks to address an uncommon safety risk:
 - There have been numerous conflicts where customers were unable to safely construct and maintain structures near energized lines. Austin Energy has seen evidence of this hazard via electric hazard notices and a fatality. Any reduction to the proposed clearance would be a safety risk.
 - After a history of non-compliance to OSHA standards that require unqualified workers to maintain a ten-foot radius from primary conductors, including a number of Notices of Electrical Hazard, Austin Energy made these changes to ensure customers have sufficient clearance from conductors to install scaffolding and maintain their buildings.
 - The new rules explicitly require a 15-foot radius from primary and neutral conductors to allow for OSHA working clearance of ten feet by including five feet for scaffolding or other equipment needed to construct or maintain the siding of structures (Section 1.10.3 of the Utilities Criteria Manual).
- Regarding the appeal reason asserting that Austin Energy should focus on inspection, maintenance, and enforcement:
 - Austin Energy prioritizes inspection, maintenance, and enforcement as necessary and important components of safety.
 - For this reason, new projects go through site plan review. Enforcement happens on many levels, including Austin Energy employee enforcement, as well as enforcement by inspectors, and code enforcement officers.
 - Where Austin Energy is sometimes unable to insulate or de-energize lines such that nonqualified persons can enter the approach distance to maintain or work on their structures, Austin Energy seeks to ensure the minimal space is available to allow customers to safely working on their structures while complying with OSHA standards.
 - In addition to inspection, maintenance, and enforcement, it is imperative to increase permanent clearance in order to reduce the safety hazard to customers. While Austin Energy maintains lines, customers must be able to safely maintain their structures.
- Regarding the appeal reason asserting that the rule is inconsistent with other utilities and nationally recognized safety standards:
 - Other utilities have a variety of ways to alleviate this concern, including larger sky-to-ground clearances and larger easements, for example. Each utility is obligated to prioritize addressing safety concerns.
- Regarding the appeal reasons asserting that the rule conflicts with the City's stated housing and affordability goals; that the new rule is expensive and difficult for new construction to comply with; that Accessory Dwelling Units will be more difficult to build; that neighborhoods with alleys will be affected by this new rule; that missing middle housing will be more difficult to build; and that the new rules make it more difficult to build affordable housing via Affordability Unlocked:
 - Austin Energy is mindful of the need for more housing, including the need for more affordable housing, within the City of Austin. For this reason, Austin Energy waives line extension costs for affordable housing meeting SMART Housing certification requirements.
 - However, development in proximity to high voltage power lines must be done safely. The documented safety hazard warrants increased clearance.

- Regarding the appeal reason asserting that the rule amounts to a regulatory taking of private property:
 - The updated clearance requirement does not amount to a regulatory taking of private property under Section 212.904 of the Texas Local Government Code. Rather, Austin Energy has authority to regulate clearance under the Texas Utilities Code, which specifically refers to the NESC (National Electrical Safety Code).
- Regarding the appeal reason asserting that the new rule is expensive and difficult for new construction to comply with.
 - We are sympathetic to the cost impact on developers, but we have given much thought to this and consider that the safety hazard reduction warrants this increase in clearance.
- Regarding the appeal reason asserting that the new rule conflicts with the City's tree preservation efforts:
 - The requirements for trees vary from the requirements for structures.
 - Section 1.10.3-4 clarifies that some utility-compatible trees are allowed within a closer range to utility lines.
 - While Austin Energy recognizes many lots face numerous building constraints between trees and overhead lines, single-story structures with clearance issues may be resolved with taller poles.
 - Austin Energy Design can work with customers where appropriate to create needed clearance and troubleshoot solutions.
- The new rule calls for unnecessary clearances around the neutral line.
 - Neutral wires have the potential to carry the same electrical hazard as energized primary lines, so the same clearance for neutral wires should apply.
 - Many individuals working on structures near overhead power lines are not qualified to work near power lines and are thus unfamiliar with their particular hazards.
 - Including neutral wires is necessary to protect customer safety.
- Project Connect and the Austin Strategic Mobility Plan will be impacted by the new rule.
 - Austin Energy recognizes the challenges that safe clearance requirements present to affordable housing. However, development in proximity to high voltage power lines must be done safely.
 - Austin Energy is dedicated to removing barriers to affordable housing and is dedicated to working with stakeholders with the goal of attaining a balance between restricting barriers to housing and maintaining safe conditions. Austin Energy Design can work with customers where appropriate to troubleshoot solutions.

➤ **Requested Action: Austin Energy respectfully requests the City Manager affirm the changes to Section 1.10.3 of the Utilities Criteria Manual found in Rule No. R161-21.13 without any modification in order to ensure public safety around energized lines. Austin Energy has seen evidence of this hazard via electric hazard notices and a fatality. Any reduction to the proposed clearance would be a safety risk, and the proposed clearance should have been adhered to prior to it being a requirement.**