

NOTICE OF AMENDED RULE ADOPTION

ADOPTION DATE: January 3, 2012

By: Larry Weis,
General Manager, Austin Energy

Austin Energy has adopted an amended version of a proposed rule. Notice of the proposed rule was posted on October 5, 2011. Public comment on the proposed rule was solicited in the October 5, 2011 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

EFFECTIVE DATE OF ADOPTED RULE

The rule adopted by this notice is effective on January 3, 2012.

TEXT OF ADOPTED RULE

A copy of the complete text of the adopted rule is attached to this posting and available for public inspection and copying at the following locations. Copies may be purchased at these locations at a cost of ten cents per page:

Austin Energy, located at 811 Barton Springs Road, 3rd Floor, Austin, Texas.

Office of the City Clerk, City Hall, located at 302 West 2nd Street, Austin, Texas.

BRIEF EXPLANATION OF AMENDED ADOPTED RULE

This rule defines the administrative requirements and procedures necessary to implement Chapter 6-7 of the Austin City Code relating to energy conservation audit and disclosure requirements for residential, multi-family, and commercial facilities located within the Austin city limits and receiving electricity from Austin Energy. As provided in City Code Chapter 6-7, this rule prescribes and explains the process, procedures, and forms to be used in the performance and disclosure of the required energy audits and the disclosure of high energy use multi-family facilities. This rule also provides guidance on the scope and timing of the audit and disclosure requirements and sets forth procedures for applying for variances provided for in Chapter 6-7. This rule replaces R161-09.35, the previously adopted administrative rule which implemented Chapter 6-7 of the Austin City Code.

Changes Made to Proposed Rule: Staff has integrated new disclosure documents for multi-family tenants and prospective tenants in this Rule Adoption which differ from the disclosure documents included in the Notice of Proposed Rule. The amended multi-family forms include changes made based on stakeholder input. Austin Energy has also clarified section 3.1 of these rules, prescribing the residential audit form to be used, removing any perception that it relates to disclosure deadlines. Staff also made minor, non-substantive wording changes and corrections.

SUMMARY OF COMMENTS

Austin Energy received comments on the Notice of Proposed Rule, R161-11.32, during the public comment period. Several comments were received which were outside the scope of these administrative rules. Some comments requested that Austin Energy perform detailed assessments of multi-family facility highest and lowest energy users to determine whether the determination of high energy users is accurate. Other comments dealt with timing and enforcement of the 20% reduction in the average per-square-foot energy usage of a high energy use multi-family facility. No rules regarding the calculation methodology for High Energy Use Facilities is required by City Code. Austin Energy will post this methodology along with results once final results are achieved. In addition, Ordinance requirements cannot be amended through a rule adoption, and the requirements for High Energy Use Facilities can be found in the City Code

Below is a summary of comments received which relate to the proposed rule and City staff responses to those comments.

Commenter: Brooke Mahoney, Austin Apartment Association

Comment: Exhibits C and D require disclosure of air duct leakage percentages obtained during Energy Audit measurements, without acknowledging that the simplified ASTM E1554 Test Method D used is declared in these standards to be inappropriate for energy use calculations, because “it does not separate supply from return leakage, leakage to inside from leakage to outside, or estimate leakage pressures at operating conditions”.

Staff Response: Austin Energy’s staff of energy efficiency experts has determined that the current, commonly-used duct leakage test is both accurate and cost effective. However, the energy audit does not restrict auditors to a single testing method. If an owner prefers, he or she may choose a more extensive and costly duct leakage test.

Commenter: Brooke Mahoney, Austin Apartment Association

Comment: Exhibits D and E contain statements about “energy use”, derived from EUI data, which omit the necessary “per square foot” qualifier. Exhibit E contains a provocative statement that “You may incur an electric bill % HIGHER than average...” which is very likely to be incorrect and misleading and prejudicial to MF owners, and which is not susceptible to calculation from the EUI data gathered.

Staff Response: Exhibits D and E have been amended and improved based on input from stakeholders.

Commenter: Brooke Mahoney, Austin Apartment Association

Comment: How is HEU compliance to be determined, given that the improvements may take 18 months to complete, and EUI data is gathered annually, and a particular property may fall into or out of compliance every time that new annual data are analyzed?

Staff Response: This comment is outside the scope of these administrative rules. To be in compliance the multi-family facility must have achieve a 20% reduction in the average per-square-foot energy usage of the facility within 18 months.

Commenter: Carol Biedrzycki, Texas ROSE – Ratepayers Organization to Save Energy

Comment: Sec. 3.1 of the proposed rule states:

“The owner of a residential facility subject to the requirements of chapter 6-7 must provide audit results to a purchaser or a prospective purchaser on a complete SINGLE FAMILY ENERGY AUDIT form, attached hereto as Exhibit A.”

This language is not consistent with the ECAD amendment that was written to assure that those purchasing homes had the energy audit information in time to opt out of the sale (or renegotiate the terms) if the results were unacceptable. Our request is that the language in Sec 3.1 of the rule be made consistent with § 6-7-12 DISCLOSURE REQUIRED of the ECAD ordinance

Staff Response: Section 3.1 of these administrative rules does not address time deadlines for the disclosure of a residential energy audit. This section simply provides that an audit must be provided on the attached form. The City Code contains all applicable disclosure deadlines, and this section does not affect the deadlines. Section 3.1 of the rules has been amended to clarify that it deals only with the Energy Audit Form, which the City Code requires to be adopted by rule.

AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority to adopt administrative rules for the implementation of the Energy Conservation Audit and Disclosure Ordinance is established in Section 6-7-3.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED AT THE END OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption (R161-11.32), the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Larry Wels
General Manager
Austin Energy

Date: 12/20/11





Karen Kennard
City Attorney

Date: 12/21/2011



**CITY OF AUSTIN
RULES FOR IMPLEMENTATION
OF AUSTIN CITY CODE CHAPTER 6-7
ENERGY CONSERVATION AUDIT
AND DISCLOSURE REQUIREMENTS**

1.0 GENERAL

These rules define administrative requirements and procedures necessary to implement Chapter 6-7 of the Austin City Code relating to energy conservation audit and disclosure requirements for residential, multi-family, condominium, and commercial facilities located within the city limits of Austin and receiving electricity from Austin Energy. Also, as provided in Chapter 6-7, these Rules prescribe the forms to be used in the performance and disclosure of the required energy audits.

1.1 Definitions

In addition to the definitions provided in Austin City Code § 6-7-1, the following definitions are used in the implementation of Chapter 6-7:

- A. DWELLING UNIT means a residence with living, kitchen, and bathroom facilities contained within the unit.
- B. CONSTRUCTED means improvements or conversions of a facility that require issuance of building, electrical, and mechanical permits which bring the entire facility and all its fixtures into compliance with the most recently adopted Building Code and Energy Code.
- C. DEMOLITION means a total demolition.
- D. MANUFACTURING means a use that has met all requirements of a State of Texas sales tax exemption for manufacturing, processing, or fabricating tangible personal property for sale and the utility account holder has qualified for a Predominant Use Exemption for the utility account(s) of the entire commercial facility.

1.2 Computation of Time

- A. Facility Age Date: All date requirements involving the age of the facility are calculated using the calendar year of construction as shown by the central appraisal district or reasonably determined by the Director.
- B. Energy Efficiency Program or Rebate Date: All date requirements related to participation in an energy efficiency or rebate program are calculated using the calendar year of such participation as determined by the Director.

2.0 **CERTIFICATION QUALIFICATIONS AND AUDITOR**

2.1 Auditor Certification

A list of agencies or entities approved by the director to certify a person as a residential or multi-family building performance analyst or equivalent will be maintained on the Austin Energy website. No certification is necessary for individuals to complete a commercial facility rating.

2.2 Certified Auditors

Austin Energy will maintain on its website a list of certified energy auditors who are registered to perform residential or multi-family energy audits in compliance with Chapter 6-7.

3.0 **RESIDENTIAL FACILITIES**

3.1 Residential Energy Audit Form

The owner of a residential facility subject to the requirements of Chapter 6-7 must use the SINGLE FAMILY ENERGY AUDIT form, attached hereto as Exhibit A.

3.2 Residential Variance for Substantial Remodel

A request for a variance due to an application for a permit to substantially remodel a facility must be submitted on the Substantial Remodel Variance Application available on Austin Energy's website. The application must include a binding agreement between the owner and purchaser of the facility, whereby the purchaser agrees to complete an energy audit within a specified period of time. The director will not approve the form of an agreement if the specified period of time to complete an energy audit is longer than 30 days after the remodel is complete.

3.3 Residential Variance for Demolition

A request for a variance due to an application for a permit to demolish a facility must be submitted on the Demolition Variance Application available on Austin Energy's website.

4.0 **MULTI-FAMILY FACILITIES**

4.1 Multi-Family Energy Audit

The owner of a multi-family facility subject to the requirements of Chapter 6-7 must have an energy audit completed using the MULTI-FAMILY ENERGY AUDIT form, attached hereto as Exhibit B. The audit results must be posted and provided to current and prospective tenants using the MULTI-FAMILY DISCLOSURE NOTICE, attached hereto as Exhibit C.

4.2 Multi-Family Energy Audit Disclosure

- A. The owner of a multi-family facility must disclose energy audit results to tenants in the following ways:
 - (1) Energy audit results must be prominently displayed in facility common areas, where public and legal notices are regularly posted, to reasonably assure all tenants will see it. Posted results for the most recent energy audit performed in accordance with Chapter 6-7 must remain in place.
 - (2) Copies of the full MULTI-FAMILY ENERGY AUDIT for the facility must be available for tenant review at the leasing or manager's office.
- B. The owner of a multi-family facility must disclose energy audit results to prospective tenants in the following ways:
 - (1) A copy of the ENERGY GUIDE FOR PROSPECTIVE TENANTS, attached hereto as Exhibit D, must be provided to prospective tenants at the same time that standard disclosures are presented and prior to execution of the lease.
 - (2) Copies of the full MULTI-FAMILY ENERGY AUDIT for the facility must be available for tenant review at the leasing or manager's office.

4.3 Disclosure of High Energy Use Designation

The owner of a multi-family facility required under Austin City Code § 6-7-23(D) to disclose that the facility has been designated a high energy use facility must use the NOTICE OF HIGH ENERGY USE PROPERTY form attached hereto as Exhibit E.

5.0 **COMMERCIAL FACILITIES**

5.1 Commercial Facility Rating System

The Director has approved ENERGY STAR® Portfolio Manager as an acceptable commercial facility rating system and may approve other audit or rating systems as appropriate through notification on the Austin Energy website.

Exhibit A



SINGLE FAMILY

Energy Audit Data

DATA SUMMARY

Submission Date: _____

PROPERTY

Austin Energy Electric Meter Number _____ Tax Assessor's Property ID _____
Owner Name _____ Year Built _____
Street Address _____ Estimated Square Footage _____
City, State, Zip Code _____

AUDITOR

Auditor _____ Phone Number _____
Company Name _____ Property Audit Date _____

WINDOWS & SHADING

Type(s) of Window(s) _____
Type(s) of Existing Solar Shading _____

ATTIC INSULATION

Attic Insulation Type _____ Average R-Value _____
Open Chase(s) _____

HEATING & COOLING AIR DUCT SYSTEM

HVAC SYSTEM: Condenser: Manufacturing Date _____ Estimated EER _____
Furnace/AH: Manufacturing Date _____ Estimated AFUE _____
Pressure Leakage _____ % Leakage _____
Duct System Type(s) _____ No Duct System _____
Enrolled in the Austin Energy Power Partner Thermostat Program _____

ADDITIONAL SYSTEM: Condenser: Manufacturing Date _____ Estimated EER _____
Furnace/AH: Manufacturing Date _____ Estimated AFUE _____
Pressure Leakage _____ % Leakage _____
Duct System Type(s) _____ No Duct System _____
Enrolled in the Austin Energy Power Partner Thermostat Program? _____

AIR INFILTRATION/WEATHERIZATION

Exterior doors: weather-stripped or not weather-stripped? _____
Plumbing penetrations: sealed or unsealed? _____

ADDITIONAL AUDIT INFORMATION

Domestic Water Heater Type(s) _____
Type(s) of Toilet(s) _____

Exhibit B



MULTIFAMILY

Energy Audit Data

In compliance with the
City of Austin's Energy Conservation
Audit and Disclosure Ordinance,
Austin City Code Chapter 6-7, June 2009.

DATA SUMMARY

Submission Date: _____

PROPERTY

Tax Assessor's Property ID _____
Property Name _____ Owner Name _____
Street Address _____ Street Address _____
City, State, Zip Code _____ City, State, Zip Code _____

AUDITOR

Auditor _____ Phone Number _____
Company Name _____ Property Audit Date _____

PROPERTY INFORMATION

Yr. built _____ Yr. of last major renovation _____ Total sq. footage _____ Total rentable sq. footage _____
HVAC replaced in last 10 years? _____ If yes: _____ coils replaced and _____ air handlers replaced.
Number of Buildings _____ Number of Floor Plans _____ Number of Dwelling Units _____
Location of Laundry Washers and Dryers _____
Type(s) of Electric Meter(s) _____
Type(s) of Domestic Hot Water Heating _____
Enrolled in the Austin Energy Power Partner Thermostat Program? _____
Enrolled in the Austin Energy Cycle Saver Timer Program? _____

BUILDING DATA

Building Name _____
WINDOWS/SHADING: Type(s) of Window(s) _____
Type(s) of Existing Solar Shading _____
Date of last solar shading Improvement _____
ROOF/ATTIC: Roof Type _____ Roof Material _____
Roof Insulation _____ Roof R-Value _____
Reflective Roof Coating _____
Attic Insulation _____ Attic Insulation Material _____
Attic R-Value _____ Radiant Barrier _____ If yes, Radiant Barrier Type _____
Open Chase(s) _____
HVAC SYSTEM: Floor Plan Type _____
Dwelling Units per floor plan _____
Dwelling Unit Number Tested _____
Condenser: Manufacturing Date _____ Estimated EER _____
Air handling type _____
Duct System Type(s) _____ No Duct System _____
Pressure Test Leakage _____

Note: This information (above) should be provided for each building.

Exhibit C



MULTI-FAMILY DISCLOSURE NOTICE ENERGY AUDIT RESULTS

Posted in accordance with the Austin City Conservation Code Chapter 6-7, Energy Conservation Audit and Disclosure Ordinance No. 20110421-001.

12345 APARTMENT AVENUE, AUSTIN TX 78000

STREET ADDRESS

ENERGY EFFICIENCY MEASURES EVALUATED	AUSTIN ENERGY RECOMMENDS	AUDIT RESULTS (AVERAGED)
Air Duct System	Less Than <u>10%</u>	44% Leakage
Attic or Roof	Between R22-R30	R-21
Solar Screens or Window Film	On all East, South and West Windows	Needed

"Average" values are calculated from results obtained from multiple buildings and systems.

CONSTRUCTION YEAR: 1995 ENERGY UTILITIES: Electric ENERGY AUDIT CONDUCTED BY: Sample Auditor
NUMBER OF UNITS: 229 DATE OF ENERGY AUDIT: May 2011 DATE OF DISCLOSURE NOTICE: June 30, 2011

The Austin City Code Chapter 6-7 of the Energy Conservation Audit and Disclosure Ordinance applies to multi-family properties 10 years old and older owned by Austin Energy and located within Austin city limits. Some exemptions apply. Under the ordinance, the owner of a multi-family facility must post and provide results of an energy audit of the property to current and prospective residents. Detailed copies of the audit are available upon request to the property owner/manager. For more information about the ordinance, visit austinenrg.com/go/ECAD, email ECAD@austinenrg.com or call 512-478-7827.

Exhibit D



Austin City Code Chapter 6-7, Energy Conservation

2011

ENERGY GUIDE

FOR PROSPECTIVE TENANTS

ESTIMATED MONTHLY ELECTRIC COST

\$120



THIS PROPERTY

This graph above represents the range of electric costs for Austin properties of a similar type to this one.

This property is:

- all electric
- built before 1985
- 800 sq. ft. average apartment size

Cost information:

- is based on this facility's average size apartment,
- based on a cost of \$0.10 per kWh, and
- is updated annually.

1,200 kWh

ESTIMATED MONTHLY ELECTRIC USE

For details, visit the web site austinenenergy.com/go/ECAD, call 482-5278 or see QR Code:



YOUR BILL

Your actual bill will depend on many factors:

- Weather (bills are higher in extreme heat and cold – especially if electric heat is used),
- Thermostat settings,
- Number of occupants,
- Lifestyle habits,
- Size and location of unit (upper floors and south and west facing units are generally warmer),
- Energy efficiency measures in place, and
- Age and type of heating/cooling equipment.

ENERGY AUDIT RESULTS FOR THIS PROPERTY:

4321 APARTMENT AVENUE, AUSTIN, TX 78700

STREET ADDRESS

ENERGY EFFICIENCY MEASURES EVALUATED

AUSTIN ENERGY RECOMMENDS

AUDIT RESULTS (AVERAGED)

Air Duct System

Less Than 15%

44% Leakage

Attic or Roof

Between R22–R30

R-14

Solar Screens or Window Film

On all East, South and West Windows

Complete

"Average" values are calculated from results obtained from multiple buildings and systems.

CONSTRUCTION YEAR: 1978, 1982

ENERGY UTILITIES: All Electric

ENERGY AUDIT CONDUCTED BY: A Qualified Auditor

NUMBER OF UNITS: 57

DATE OF ENERGY AUDIT: September, 2011

DATE OF DISCLOSURE NOTICE: June 30, 2011

I acknowledge that I have been given an opportunity to review the results of this multi-family property's energy audit conducted in accordance with Austin City Code, Chapter 6-7.

Signature/Date

Owner's Representative

Signature/Date

Exhibit E



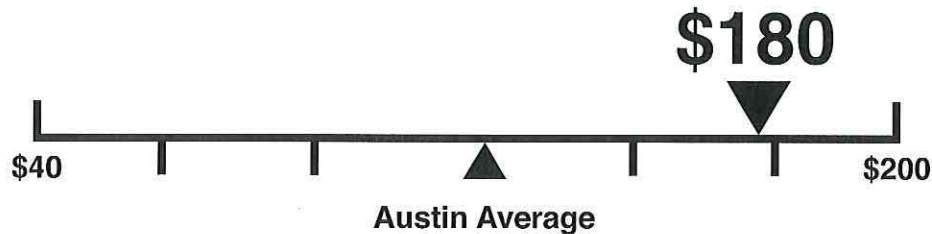
Austin City Code Chapter 6-7, Energy Conservation

2011

NOTICE OF HIGH ENERGY USE PROPERTY

1234 APARTMENT AVENUE, AUSTIN, TX 78700

ESTIMATED MONTHLY ELECTRIC COST



THIS PROPERTY

This graph above represents the range of electric costs for Austin properties of a similar type to this one.

This property is:

- all electric
- built in 1986
- 800 sq. ft. average apartment size

Cost information:

- is based on this facility's average size apartment,
- based on a cost of \$0.10 per kWh, and
- is updated annually.

1,800 kWh
ESTIMATED MONTHLY ELECTRIC USE

YOUR BILL

Your actual bill will depend on many factors:

- Weather (bills are higher in extreme heat and cold – especially if electric heat is used),
- Thermostat settings,
- Number of occupants,
- Lifestyle habits,
- Size and location of unit (upper floors and south and west facing units are generally warmer),
- Energy efficiency measures in place, and
- Age and type of heating/cooling equipment.

This property uses 15 % more energy per square foot than an average multi-family property in the Austin area. This may result in a higher electric bill than would be incurred in a similar unit in an average energy use property.

For details about energy use per square foot for Austin multi-family properties, visit austinenergy.com/go/ECAD, call 482-5278, or see QR code:



I acknowledge that I have been given an opportunity to review the results of this multi-family property's energy audit conducted in accordance with Austin City Code, Chapter 6-7.

Signature/Date

Owner's Representative

Signature/Date