

Charging Up in the Parking Lot: The New Electric Vehicle Charging Station Law

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With the costs and problems of fossil fuels multiplying, and environmental concerns growing with every added oil spill and subtracted iceberg, all-electric vehicles are an increasingly attractive idea. The President has set a goal of adding one million plug-in vehicles in America's driveways by 2015, and models already range from the electrifying Tesla Roadster to the new Chevy Volt and Nissan Leaf, and there is no end in sight. However, plug-ins need specialized charging (EVC) stations, and there are only about 1000 of those at present - and tens of thousands will be needed in order to reach the President's goal. EVC stations range from the size of a gasoline pump (for a fast, half-hour charge) down to the size of a parking meter (for an overnight charge). EVC stations can be installed in the home garage, but are notably absent from almost any common interest development where parking is accomplished on common areas. That may be about to change.

Sponsored by Senator Corbett, Senate Bill 209 adds a new section to the Davis-Stirling Act. This new law would prevent community associations from prohibiting or restricting installation of EVC stations, including on common areas, by homeowners. The bill would permit associations to impose reasonable restrictions, such as architectural guidelines, and if the EVC is to be installed on common areas, it requires the installing owner to pay for installation, maintenance and repairs, as well as electricity, and to compensate associations for costs of any damage. The EVC station (which may supply one or more electric vehicles) must meet all applicable safety standards and all local permitting and similar requirements. The bill also requires any owner wishing to install an EVC on common areas to carry liability coverage to protect the association. An association that violates the law faces damages and a \$1000.00 civil penalty, as well as attorney's fees.

The bill is similar to the recent solar energy system legislation (e.g., *Civil Code* Section 714) in structure and effect. The stated purpose of SB-209 is to "remove obstacles to the use of electric vehicle charging stations," and its author cites the example of an association in Hawaii that denied an owner permission to install an EVC. The law provides that any covenant, condition, or restriction that "effectively prohibits or restricts" installation of an EVC is void and unenforceable. However, there is an exception for "reasonable restrictions" -- placing the "burden of proof" on the association to show that any restriction regarding EVC's passes the reasonableness test: that the restriction does "not significantly increase the cost the station or significantly decrease its efficiency or specified performance." Any association approval process must also move quickly: except for "reasonable" delays for information gathering, any application not denied within 60 days is deemed approved.

But to further eliminate resistance, the law states that associations *shall* approve the installation as long as the installing owner agrees in writing to do the following: comply with architectural standards, use a licensed contractor, provide insurance covering the association, and pay for the electricity. Once the EVC is installed, the owner (and his or her successors in title) becomes responsible for any damage to the station, surrounding property (including common areas, exclusive use areas, and separate interests) caused by the installation, repair, removal, or replacement of the EVC. The owner is also responsible for maintenance, repair, and replacement of the EVC, and the cost of electricity for the EVC, and for carrying a million-dollar liability insurance policy, in perpetuity.

Unfortunately, the law also has the effect of granting exclusive use of the EVC location to a single owner, which interferes with the rights of all other owners and conflicts with the 67% membership approval requirement of Civil Code Section 1363.07. It may also cause a rare type of "regulatory taking," in which the regulation expressly requires one property owner to allow another the use of his or her real property. In such cases, for example, the Supreme Court has found that building codes compelling property owners to permit installation of cables required compensation for property owners; airports have also been required to compensate landowners for noise, risk, and other invasions. Therefore, the very foundation of the law itself is questionable.

Nevertheless, the future is here, and beginning January 1, 2012, EVC's may begin to transform common area driveways and subterranean garages into power stations -- and enterprising associations can also profit by amping up their parking areas. At least one leading EVC vendor sells "subscriptions" to vehicle owners, allowing them to charge up at any participating EVC, anywhere in the country, with the swipe of a key fob. But simultaneously, the owner of the EVC receives up to 80% of the subscription fees! Forward-thinking associations may catch lightning in a bottle, and improve their bottom lines. But in any event, the future has arrived and as they say, resistance may be futile.

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