

California's New Electric Vehicle Charging Station Law: What Boards Can & Should Do

Jeffrey A. Beaumont, Esq., Beaumont Gitlin Tashjian

General Comments: Effective January 1, 2012, a new California law will govern installation of electric vehicle charging stations ("EVC's") within common interest developments. The new law provides that any covenant, condition, or restriction that "effectively prohibits or restricts" installation of an EVC is void and unenforceable. The law permits associations to impose reasonable restrictions, such as architectural guidelines, and requires the installing owner to bear the costs associated with installing, maintaining, and operating the EVC (including the cost of electricity) and to carry liability insurance. All associations with common area parking areas and garages are strongly encouraged to review their architectural guidelines and requirements, and consult the association's legal counsel to evaluate the impact this law will have on their respective community.

Technical Information: Senate Bill 209 has now been codified as new Civil Code Section 1353.9. The law voids any covenant or rule that effectively prohibits EVC installations, but allows for "reasonable restrictions" on EVC's -- placing the "burden of proof" on the association to show that any restriction does "not significantly increase the cost of the station or significantly decrease its efficiency or specified performance." If the EVC is to be installed upon common area or exclusive use common area, the owner is required to bear all costs for installation, maintenance and repairs, as well as the cost of electricity, and to bear 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 requirements. The owner wishing to install an EVC on common areas must also carry liability insurance to protect the association. The association's approval process must move quickly: except for "reasonable" delays for information gathering, a request not denied within 60 days is deemed approved by law. An association that violates this law faces damages and a \$1,000.00 civil penalty, as well as attorney's fees.

How to Address Requests to Install an EVC: The approval process for an EVC is similar to approving a modification generally. Associations should first determine whether the EVC would be installed entirely within the separate interest, or within exclusive use common areas or common areas. If the EVC will be installed in a common area or exclusive use common area, the homeowner must agree in writing to all of the following:

- (1) comply with architectural standards;
- (2) use a licensed contractor;
- (3) provide a certificate of insurance naming the association as additional insured; and
- (4) pay for all electricity used by the EVC, if ascertainable.

The homeowner (and all successors in title) will be liable – whether or not agreed in writing – for all costs and damages arising from installation, operation, maintenance, repair, and removal or replacement of the EVC, as well as all costs of electricity. The homeowner (and successors in title) is also legally required to maintain a one million dollar umbrella liability policy, naming the association as additional insured, in perpetuity.

Boards and architectural committees are encouraged to consult legal counsel to determine the effect any aesthetic requirements in their CC&Rs and architectural guidelines will have on such installations; aesthetic requirements are valid, so long as they do not "significantly increase the cost of the station or significantly decrease its efficiency or specified performance."