



CHARGING AHEAD.....

ELECTRIC VEHICLE CHARGING STATIONS AND THEIR IMPACT ON COMMON INTEREST

By Matthew L. Grode, Esq. and Philip C. Zvonicek, Esq.
of Gibbs, Giden, Locher, Turner & Senet LLP

The California legislature recently enacted Senate Bill No. 209 (codified as Civil Code Section 1353.9) which expressly mandates that those provisions of governing documents that prohibit or unreasonably restrict the installation or use of an electric vehicle charging station (“EVCS”) is void and unenforceable.¹

If an owner intends to place a charging station within the common area or an exclusive use common area, he or she must first obtain Association approval prior to such installation. An Association must, however, approve such application if the owner agrees, in writing, to do all of the following:

- a. Comply with the associations architectural standards
- b. Engage a licensed contractor to install the station,
- c. Within 14 days of approval, provide a certificate of insurance which identifies the Association as an additional insured under the homeowner’s insurance policy, and
- d. pay for the electricity usage associated with the station.

The new law also provides that a homeowner, who installs an EVCS, and each of his /her successors, shall be responsible for all of the following:

- Costs for damage to the station, common areas, exclusive common areas, or adjacent units which results from the installation, maintenance, repair, removal or replacement of the station.
- Costs for the maintenance, removal, repair and replacement of the EVCS until it has been removed from the common area or exclusive use common area.
- The cost of electricity associated with the station.
- Disclosure to prospective purchasers of the existence of any EVCS and the related responsibilities of the homeowner, and
- Maintenance of an umbrella liability insurance policy in the amount of one million (\$1,000,000.00) covering the obligations of the owner and which names the Association as an additional insured with a right to notice of cancellation.

While this law certainly furthers the legislature’s stated policy to “promote, encourage, and remove obstacles to the use of EVCS,” it also raises very serious questions and concerns. For example, the requirement that an association essentially grant exclusive use of a common element to a single owner might be considered a “taking” by the state in violation of constitutional protections. Also, in most communities, common elements may not be converted into exclusive use areas without membership approval. Another concern is how can

¹ “Reasonable Restrictions” are those that do not significantly increase the cost of the status or significantly decrease the efficiency or specified performance. This new law authorizes associations to impose reasonable restrictions and requires EVCS’s to meet applicable health and safety standards adopted by State and local permitting authorities.

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association's address the situation where inadequate parking resources already exist when one or more owners request for permission to convert parking spaces into charging stations.

Boards should be cautioned that, in most cases, they or the architectural control committee must respond to applications to install EVCS within sixty (60) days or they may be deemed approved. Although the Bill's author plans to introduce legislation which will protect the rights of common interest developments to establish reasonable rules for any use of common areas for charging stations, it remains unknown whether such protections will be adequate.

Where the installation of individual charging stations is not feasible, a Board may consider installing one or more common EVCS. Some of these potential issues raised by such a course of action include:

- **Limited Parking:** In many complexes, the number of parking spaces is inadequate and therefore, there may not be any available locations to install an EVCS.
- **Location:** The distance between utility meters, parking spaces and unit electrical panels may create logistical issues. Electrical panels are often located far from the parking area. Among other things, this can impose significant cost barriers.
- **Charging Rates:** EVCS may require a new meter and utility service. In some communities meters are clustered in a central location and there may be inadequate space to accommodate another meter.
- **Building Age:** Older buildings may have limited electrical capacity. Upgrading may be very costly and may trigger requirements to bring the property up to today's building code standards.
- **Costs:** Acquisition, installation and operation. To address the operational and utility costs, use of a charging unit with a billing system may require electric vehicle drivers pay-as-they-go and not place an unreasonable financial burden on non-electric vehicle drivers.

Without question, society must adopt new technologies in order to address environmental, financial and political concerns. While development and use of electric vehicles is a positive step in this direction, the numerous obstacles and issues raised by this new law must be adequately addressed before this alternative can be incorporated into general use.



Matthew L. Grode is a partner with the law firm of Gibbs, Giden, Locher, Turner & Senet LLP in Los Angeles, where he practices exclusively in the representation of community associations in California and Nevada.

Phone: 310.552.3400

Email: mgrode@gglts.com



Philip C. Zvonicek is a partner with the law firm of Gibbs, Giden, Locher, Turner & Senet LLP in Los Angeles where he represents homeowners associations and practices commercial, construction, business litigation, and alternative dispute resolution in California.

Phone: 310.552.3400

Email: pzvonicek@gglts.com

Should you have any questions concerning EVCS or any other matter relating to your community, please feel free to call Matthew Grode at 310-552-3400.