

WHAT TO DO ABOUT ELECTRIC VEHICLE CHARGING STATION REQUESTS?

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In 1886, we were introduced to the first gasoline automobile powered by an internal combustion engine. [i] Today, we fast forward to more and more vehicles powered partially or totally on electricity. In 2018, the world saw a 64% increase in the use of electric vehicles (“EVs”), rising from 3.4 million to 5.6 million [ii]. Today nearly 7 million EVs are in operation. [iii]

As people look for more ways to save money or reduce emissions or follow the latest trend, the demand for electric vehicles will surely continue to rise. And what does that mean for community associations? More requests for EV Charging Stations.

What is an EV? Simply put, it’s a vehicle that runs either partially (combined with power from an internal combustion engine) or totally on electricity. While there are many types of EVs, the two main ones are:

- The Plug-In Hybrid Electric Vehicle (PHEV) – Combines an internal combustion engine with a battery (which can be charged directly from an external power source) and electric motor. Plug-ins run on electric power up to a certain point, then the internal combustion engine takes over.
- The Battery Electric Vehicle (BEV) – This vehicle is 100% electric. It has no internal combustion engine and must be plugged into the electric power grid for recharging.

So why should community associations pay attention to the growing number of EVs? Because owners of EVs will need an external power station, or an EV charging station, to charge their vehicles. And, Colorado law prohibits community associations from denying an owner the right to install an EV charging station in certain areas.

I. Summary of Law

On May 3, 2013, [SB 13-126](#) was signed into law (“EV Bill”). The EV Bill is codified in C.R.S. 38-33.3-106.8, which is part of the Colorado Common Interest Ownership Act (“[CCIOA](#)”). In summary, the bill prohibits a residential (not commercial) association from denying an Owner the right to use or install:

1. A Level 1 or Level 2 Electric Vehicle Charging System (“EV Charging System” or “System”)
2. In the following locations:
 - On or in a Unit, or
 - On a Limited Common Element parking space, carport or garage that is owned by the Unit Owner or otherwise assigned to the Owner in the Declaration or other recorded document IF:
 - the system otherwise complies with the Declaration, Bylaws and Rules and Regulations of the association and
 - the Owner agrees in writing to certain conditions relating to the design, installation, expense and insurance of the System
3. Subject to additional regulations related to safety, registration of the System, and aesthetics
4. At the Owner’s expense

Each section of the EV Bill is discussed in detail below.

II. What is an EV Charging System?

Residential associations must allow Owners to use or install a Level I or Level 2 EV Charging System in certain locations. The EV Bill defines an EV Charging System as:

A device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle’s control system so that the electricity flows at an appropriate voltage and current level.

An EV Charging System must meet the above safety requirements by complying with: (i) the current version of Article 625 of the National Electrical Code, and (ii) the SAE International J1772 standard (discussed below) with respect to the cord connector. Systems that meet the foregoing requirements may be “wall-mounted or pedestal style”, and “may provide multiple cords to connect with electrical vehicles”.

In addition, the EV Charging System must be certified by [Underwriters Laboratories](#) or an equivalent certification.

III. What is the Difference Between a Level 1 and Level 2 EV Charging System?

Associations are only required to permit Level 1 or Level 2 EV Charging Systems. The difference between the levels is volt and time for charging. The EV Bill defines the levels as follows:

- “Level 1” means a system that provides charging through a 120 Volt AC Plug with a cord connector that meets the SAE International J1772 standard or a successor standard.
- “Level 2” means a system that provides charging through a 240 Volt AC Plug with a cord connector that meets the SAE International J1772 standard or a successor standard.

Note that the cord connector for both level systems must meet the [SAE International](#) J1772 standard or a successor standard. The SAE establishes various standards based on broadly accepted engineering practices or specifications. The standards become legally enforceable if a particular jurisdiction adopts them, such as Colorado did when adopting the SAE J1772 standard for EV Charging Systems.

There are several types of EV Charging Systems^[iv], with connectors that are compatible with the SAE J1772 standard.

IV. Where can an Owner Install the EV Charging System?

First, note that the general assembly encourages common interest communities to fund the installation of EV Charging Systems *on common property* as an amenity for residents, and has provided financial incentives (discussed below) to help associations pay for such installation. If an association does not want

to install an EV Charging System on the common elements, where is the owner entitled to install it?

A. On or In the Owner's Unit

An Owner may install the System on or in the Owner's Unit. For single family home communities, this likely includes the garage and driveway, as these are usually located within the Unit boundaries. Some townhome communities also include garages and/or parking spaces as part of the townhome Unit. With condominium communities, however, parking spaces are usually part of the Common Elements rather than the Unit.

B. Limited Common Element (LCE) Garages, Carports, Parking Spaces

In communities where parking is available on the Common Elements rather than the Unit, an Owner has the option of installing the System on the LCE parking space, carport, or garage: (i) owned by the Owner or (ii) otherwise assigned to the Owner in the Declaration or other recorded document.

How does one know whether a particular parking space qualifies as a potential EV Charging System location? Many declarations will contain parking exhibits, which list the assignment of LCE parking spaces to specific Units. Or, the developer may have recorded a separate LCE parking assignment document, or assigned spaces on the recorded condominium map or plat of the community. Alternatively, the Owner may own the exclusive right to use a particular LCE space, as established in the deed or other recorded document of the Owner. Associations must consent to an Owner's request to install an EV Charging System on all of the foregoing areas.

In addition, the EV Bill excludes *General Common Element* parking spaces from the areas on which the association is required to permit installation of an EV Charging System.

V. Additional Conditions for Installation of EV Charging Systems

Although an association is prohibited from banning installation of an EV Charging System on or in a Unit, or on an LCE garage, carport or parking spaces, the association may still regulate installation and use of the System by:

1. Adopting bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons or property;
2. Requiring the Owner to register the System with the association within 30 days after installation;
3. Adopting reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of the EV Charging System.

If the Owner is installing an EV Charging System on an LCE parking space, carport or garage, the System must otherwise comply with the Declaration, Bylaws and Rules and Regulations of the association. In addition, the Owner must agree in writing to:

1. Comply with the association's design specifications for installation of the system;
2. Engage the services of a duly licensed and registered electrical contractor familiar with the installation and core requirements of an EV Charging System;
3. Bear the expense of installation, including the costs to restore any common elements disturbed in the process of installing the system; and
4. Provide:
 - a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to installation, maintenance, or use of the system, within 14 days after receiving the association's consent OR,
 - if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, within 14 days after receiving the association's invoice for the amount attributable to the System.

VI. Who Pays for Installation and Use of the EV Charging System?

The cost of installing an EV Charging System is at the Owner's sole expense. Level 1 Systems require standard wall outlet charging, so additional wiring may not be necessary, but Level 2 Systems require a dedicated 240-volt circuit.

In addition to paying for installation of the EV Charging System, the Owner pays for the cost of electricity. If that electricity is provided by the association then the association may either:

1. Require reimbursement for the actual cost of electricity provided by the association that was used by the EV Charging System, or
2. Charge a reasonable fee for access.

And, if the EV Charging System is part of a network for which a network fee is charged, the association's reimbursement may include the amount of the network fee.

With respect to reimbursement of the actual cost of electricity, if the Owner is connecting to the Unit and the Unit is separately metered then calculating the cost of electricity can be done by reading the meter.

However, many communities have either a single meter system for the entire project, or meters that are attached to specific buildings or more than one Unit, without the ability to monitor actual cost of electricity being used by a particular Unit. In such circumstances, an Owner who wants to pay for the actual electricity being used (rather than being allocated some uniform amount) may install, at the Owner's cost and with the association's approval, a separate meter or some other device that accurately reads the electricity used by the System.

Alternatively, the association can charge a "reasonable fee" for access. How does the association calculate what the "reasonable fee" should be? The association should consider the cost per kilowatt hour (kWh) to charge the EV as well as the time it takes to charge the EV. One kWh is defined as the amount of energy consumed at a constant rate of one kilowatt for one hour.

The cost of electricity varies tremendously in the U.S., averaging from 9.3 cents in Louisiana to 28.9 cents in Hawaii.^[v] The cost of electricity is much more stable than the cost of gasoline, but it varies tremendously in the U.S. The residential average per kilowatt-hour currently ranges from 9.3 cents in Louisiana to 28.9 cents in Hawaii. Here is a [state-by-state list](#) of the average cost per kilowatt-hour. As of August, 2021, Colorado's average residential cost per kilowatt-hour is 12.86 cents.

Electricity rates vary widely. Associations should consult their electricity providers for reasonable fees to be charged for access to EV Charging Systems, as well as any special offers that may be applicable.

VII. Who Pays for Maintenance of the System or Damage Caused by Installation or Use of the System?

Installing and using an EV Charging System in an LCE parking space, carport or garage area could result in increased costs for maintenance, repair, replacement or damage caused by the System. The EV Bill addresses these potential costs by providing that the Owner (and each successive Owner with exclusive rights to the LCE where the System is installed), unless otherwise specified in a written contract or in the association's declaration, bylaws or rules and regulations, is responsible for any costs for:

- damages to the System, and any other LCE or General Common Element of the Community, and any adjacent Units, garage stalls, carports or parking spaces
- that arise or result from the installation, maintenance, repair or replacement of the System.

In addition, successive Owners with exclusive rights to the LCE where the System is installed must assume responsibility for the repair, maintenance, removal, and replacement of the System until the System has been removed.

What if the association has to perform maintenance or repair of the Common Elements and needs the System to be removed to perform this work? The EV Bill requires the Owner and each successive Owner to remove the System "if reasonably necessary or convenient for the repair, maintenance, or replacement of the Limited Common Elements or General Common Elements of the Common Interest Community."

With respect to insurance costs, the Owner and each successive Owner:

- Shall at all times have and maintain an insurance policy covering the obligations of the Owner under Subsection 5 of the EV Bill,
- Is subject to all obligations specified under Subsection 4(a)(IV) of the EV Bill, and
- Shall name the association as an additional insured under the policy.

VIII. Must an Owner Remove the System if Selling the Unit?

No. Owners have two options under the EV Bill. Upon sale of the Unit “if the Charging System is removable, the Unit Owner may either remove it or sell it to the buyer of the Unit or to the association for an agreed price.” Neither the association nor the buyer is required to purchase the System.

Note, however, that each successive Owner with exclusive rights to the LCE parking space in which the EV Charging System is installed “shall assume responsibility for the repair, maintenance, removal and replacement of the charging system until the system has been removed.”

IX. What about Tenants?

Colorado law does not require associations to allow tenants or non-Owner residents to install EV Charging Systems. However, Section 1 of SB 13-126, codified under C.R.S. 38-12-601, imposes restrictions on landlords with respect to tenant requests for installation of EV Charging Systems that are similar to those imposed on associations discussed in this article. So, any tenants who wish to install an EV Charging System will have to make the request through the landlord Owner, who can then make the request to the association.

X. Are There any Financial incentives for an Association or Owner that Wishes to Install an EV Charging System?

A. The EV Grant Fund for Associations

With the passage SB 13-126 came the creation of an EV Grant Fund (“Fund”), which is used to provide grants to install recharging stations for EVs. The Fund was already available to local governments, under [C.R.S. 24-38.5-103](#), but SB 13-126 expanded the potential recipients of Fund grants to landlords of multi-family apartment buildings and common interest community associations. Of the potential recipients, who gets priority over the grants? Priority will be “based upon prospective recipients’ potential for, and commitment to energy efficiency.” The Fund is administered by the Colorado Energy Office.

So how does an association apply for this grant? For details contact the [Colorado Energy Office](#). Or download the [application](#).

B. Other Tax Incentives

Along with the EV Bill came HB [13-1247](#), which is called the Innovative Motor Vehicle Income Tax Credit. This bill secures state tax credits for EV purchasers or lessees but only through 2021. The bill specifically covers any EV that can be recharged from external sources, including plug-in hybrids. The bill also covers vehicles that are converted into PEVs, which are eligible for a tax incentive of \$7500.

Also, the federal government offers a tax credit for EV Charging Systems known as the [Alternative Fuel Infrastructure Tax Credit](#), for equipment and installation costs.

XI. Readiness Checklist

Given the above, what should the association be doing to get ready for EVs?

1. Determine appropriate locations for installation of EV Charging Systems, including which areas are permitted LCE parking spaces, carports or garages and whether they are assigned to the Owners under the Declaration or other recorded document
2. Adopt an EV Charging Policy, which should include:
 - reference to the law and definitions of the various technical terms,

- procedure for obtaining installation approval,
 - locations where the EV System can and cannot be installed,
 - additional conditions for installation of the System, including reference to any applicable design, safety, registration and insurance requirements, and
 - responsibility for costs to install, use, maintain, and remove the System.
3. If desirable, adopt design and aesthetic guidelines for the System (which can be included as an exhibit to the Policy).
 4. If the EV Charging System is to be installed on a Limited Common Element parking space, carport, or garage owned by the Owner or otherwise assigned to the Owner in the Declaration or other recorded document, adopt a standard agreement under which the Owner agrees to:
 - Comply with the association's design specifications for installation of the system;
 - Engage the services of a duly licensed and registered electrical contractor familiar with the installation and core requirements of an EV Charging System;
 - Bear the expense of installation, including the costs to restore any common elements disturbed in the process of installing the system; and
 - Comply with the insurance requirements set forth under the EV Bill.
 5. Determine whether the association should install an EV Charging System on the General Common Elements and, if so, apply for a grant under the EV Grant Fund.
 6. Research additional financial incentives and determine whether they could be applicable to the association.

Finally, what happens when more and more Owners wish to install EV Charging Systems? Will the overall power structure and equipment be able to sustain an EV Charging System in every single parking space? Is there a maximum number of EV Charging Systems that may be installed in a particular building before it presents a safety hazard? Keep in mind that the association is able to adopt bona fide safety requirements, consistent with an applicable building code or recognized safety standard. This may allow for the limitation of the number of EV Charging System installations to a certain number. Given that electric vehicles are increasing in popularity, the Board needs to start thinking about this now, and speaking with experts about limits, safety issues, etc., so as to craft the appropriate regulations for its community.

CONCLUSION

Electric Vehicles are here to stay. And, just like with satellite dishes, political signs, and solar panels, to name a few, Colorado community associations are now prohibited from denying an owner the right to install Systems for charging EVs. Make sure you review the new EV Bill in detail, and go through the Readiness Checklist.

For additional information on EV Charging Systems or to assist with drafting an EV Charging Policy or recommended agreement, please feel free to contact any of our Altitude attorneys at 303-432-9999 or hoalaw@altitude.law.

[i] Automobile Firsts <http://www.loc.gov/rr/scitech/mysteries/auto.html>

[ii] Electric Car Statistics in the US and Abroad <https://tinyurl.com/s49yhaj>

[iii] How Many Electric Cars Are on the Road in the United States? <https://www.treehugger.com/how-many-electric-cars-are-on-the-road-in-the-us-5192754>

[iv] Top 10 EV Chargers 2021 [Top 10 EV Chargers 2021 \(buyersguide.org\)](https://www.buyersguide.org/top-10-ev-chargers-2021).

[v] The True Cost of Powering an Electric Car [The True Cost of Powering an Electric Car | Edmunds](https://www.edmunds.com/true-cost-of-powering-an-electric-car/)

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