



# A Guide to Electric Vehicle Charging in Ontario

By Bradley Chaplick,

On May 1, 2018, new regulations under the *Condominium Act, 1998* came into effect with respect to electric vehicle charging systems (EVCS). The 2018 regulations established a mandatory approval process for EVCS in Ontario condominium build-



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ings, which replaced section 98 of the *Condominium Act, 1998* (for EVCS applications only). The intent was to promote electric vehicles by making it easier for both condominium boards of directors and unit owners to install an EVCS and prohibit condominium boards of directors from arbitrarily refusing to allow them.

This article provides an introductory guide for the two main types of

EVCS installations:

1. By the condominium corporation on the common elements for shared use.
2. By unit owners in their own parking spaces.

We will also provide practical advice so that you can be well-prepared for the growing demand for electric vehicle charging in multiple-dwelling residential buildings.

## **EVCS Installations by Condominium Corporations on the Common Elements for Shared Use**

Under the 2018 EVCS regulations, if the cost of the EVCS installation is less than 10% of the common expense budget, then a 60-day notice to owners must be given, but there is no opportunity for owners to request a vote of

owners on the proposed installation.

However, if the installation cost is greater than 10% of the common expense budget, then a 60-day notice to owners is required and owners have 60 days to request a vote of owners (a simple majority vote). If owners do not request a vote within the 60-day notice period, then the installation may proceed.

Additional factors may apply in rare circumstances, so we recommend that any condominium corporation that intends to install a common element charging station seek assistance from its condominium lawyer when preparing the appropriate notice to owners.

## **EVCS Installations by Unit Owners in Their Own Parking Space**

The most common type of EVCS installation is by a unit owner in their

own parking space. For these EVCS installations, there is a 2-step approval process.

**Unit Owner Installations, Step 1:** The unit owner must submit a written application. The owner's application must describe the installation and include relevant drawings and the scope of work. A sample application and response form are available on the Condominium Authority of Ontario (CAO) website. However, most condominium corporations prefer to create their own application/response form with the assistance of legal counsel

and pre-approved EVCS drawings and scope of work with the assistance of a qualified EVCS contractor.

Having your own pre-approved EVCS document package customized to your building will make the review process much easier and less costly for all parties.

Upon receiving the unit owner's application, the condominium corporation must check it for completeness "as soon as reasonably possible." As a rule of thumb, we suggest that applications be checked for completeness within one

week of receipt, ideally sooner.

If the application form is complete, then the condominium corporation must assess and respond to the application within 60 days of receipt. If a condominium corporation does not respond to the owner's application within the 60-day time limit, then the application is deemed to be approved.

There are three possible responses to a unit owner's EVCS application:

(a) Approve the application without changes.

(b) Approve the application with changes: The condominium corporation may require that the EVCS be installed in a different manner or in a different location to prevent a significant interference with another owner's use and enjoyment of the property, or if the specific method of installation or location would contravene the corporation's governing documents. When requiring changes to an installation, the proposed changes cannot result in any unreasonable additional cost to the unit owner, and the corporation must provide the owner with new drawings showing how the altered EVCS installation is to be carried out.

(c) Reject the application: An application may only be rejected if the condominium corporation has obtained a report of a qualified professional stating that the proposed EVCS: (1) contravenes electrical safety legislation; (2) will adversely affect the structural integrity of the building; (3) poses a serious risk to health and safety; or (4) poses a serious risk of damage to property. A copy of the expert report showing why the application has been rejected must be provided to the owner at the time of rejecting the application (except in very rare circumstances).

**Unit Owner Installations, Step 2:** The EVCS Installation Agreement. Within 90 days of approving the unit owner's EVCS application (with or without changes), the unit owner and the condominium corporation must enter into a written agreement that:

- Describes the manner of the installation.
- Allocates the cost of the installation.
- Sets out who is responsible for the use, operation, repair after damage, maintenance, and insurance of the EVCS, and the cost of same.
- Sets out who is responsible for the



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cost of preparing and registering the installation agreement on title to the owner's unit.

- Specifies who owns the EVCS.
- Describes the cessation of the use and operation of the EVCS and, if necessary, the termination of the agreement.

The EVCS installation agreement should be prepared with the assistance of a condominium lawyer, and in this regard, most corporations opt for a pre-approved "fill-in-the-blank" agreement.

The signed installation agreement is then registered on title to the owner's condominium unit as soon as reasonably possible, at which time the EVCS installation can finally proceed.

### **Dispute Resolution, Cost Recovery, and Concluding Remarks**

Disputes between condominium corporations and unit owners regarding a unit owner's EVCS proposed installation are subject to mandatory mediation/arbitration under section 132 of the *Condominium Act, 1998*. Disputes are relatively rare and can often

be avoided by ensuring that both the condominium corporation and the unit owner have an adequate understanding of the approval process at the outset.

Another important consideration is that a condominium corporation cannot require a unit owner to reimburse the cost of having a qualified engineer review the owner's application as a condition of granting approval. This is because, unless the parties specifically agree otherwise, the unit owner and the condominium corporation are each responsible for bearing their own costs of any step that they are respectively required to complete in this regulatory scheme.

If there is no pre-approved EVCS drawings and scope of work available, then this means that a unit owner must incur the cost of creating his or her own custom drawings and scope of work, and then the condominium corporation must incur the cost of having its engineer review them.

To avoid these potentially significant costs, we recommend that condominium corporations pro-actively establish a pre-approved EVCS drawing and scope of work from an approved contractor. This

pre-approved installation plan should be provided in advance to any owner who is interested in installing an EVCS in their own parking space. We also recommend having a pre-approved fill-in-the-blank application/response form and installation agreement for the same reason.

In conclusion, we hope that this how-to guide will allow condominium managers and boards of directors to approach the growing demand for electric vehicle charging confidently and in compliance with the legislative scheme. Anticipating future demand and having a pre-approved document package available for owners will help to avoid disputes and reduce costs for all parties. ■

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