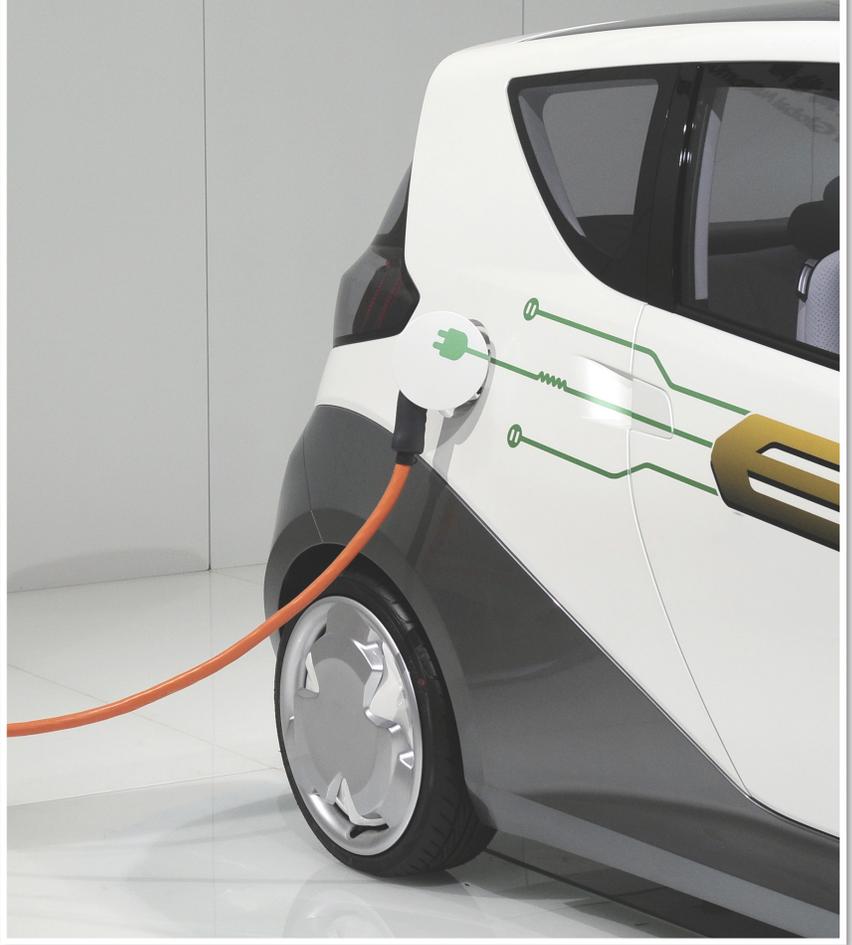


Electric Car Charging Stations in Condos



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On March 26, 2018, the province released new regulations aimed at facilitating the installation of electric vehicle charging stations in existing condo corporations.

Until recently, legislation had not entirely caught up with evolving technologies and the growing fleet of electric cars available on the market. This often leads to frictions between environmentally-conscious owners wishing to drive electric cars and corporations having to manage existing common assets – including limited parking spaces and common electricity.

Things are now easier in Ontario with the adoption of a new set of regulations dealing with the installation of charging stations on common elements. The new regulations (which came into effect on May 1, 2018) provides for two distinct situations:

- When the corporation wishes to install a charging station;
- When an owner is the one proposing to install a charging station.

INSTALLATION BY THE CORPORATION

Section 97 of the Act already dictates how corporations may make changes to common elements or to services provided to owners. Most changes require a form of notice to owners and, in some cases, they allow for (or even require) a vote from owners. The installation of electric charging stations will be exempt from section 97 in certain circumstances but will follow a similar pattern.

Option 1: no vote by owners

Corporations will be able to “unilaterally” install an electric charging station on 60-day notice to owners if the following 2 conditions are met:

The cost of installation is not greater than 10% of the annual budgeted common expenses for the current fiscal year. The cost to be considered in this calculation is limited to the cost of buying and installing the equipment and does not include cost related to the use, operation, repair, maintenance and insurance of the system; AND,

In the reasonable opinion of the board, owners would not regard the installation of the charging station as causing a material reduction or elimination of the use or enjoyment of units or of common elements or assets of the corporation.

If both these conditions are met, the board can proceed to install the charging station 60 days after having given proper notice to owners. Owners do not get to vote on this.

What goes in the notice to owners?

The notice to be provided to owners must describe the installation, provide an estimated cost of installation and indicate how it will be paid for. It must also contain a statement confirming that, in the reasonable opinion of the board, owners would not regard the proposed installation as causing a material reduction or elimination of owners’ use or enjoyment of their unit, the common elements or the assets.

Option 2: Possible vote by owners

If either of the above two conditions is not met (i.e., if the cost of installation is more than 10% of the annual budgeted common expenses or if the board is of the view that owners may regard the installation of the charging station as materially impacting the enjoyment of their unit, common elements or assets of the corporation), the board can instead follow a second path which specifically allows owners to requisition a meeting to vote on the proposed installation.

Under this option, the corporation would give notice to owners of its intention to install a charging station and would specifically advise them of their right to requisition a meeting of owners to vote on the issue. For such a meeting to take place, it needs to be requisitioned within 60 days by at least 15% of the units. The corporation is able to proceed with the installation of the charging station only if:

- the owners of at least 15% of the units have not requisitioned a meeting within 60 days of the notice;
- If a meeting is requisitioned, no quorum has been met at the first attempt to hold said meeting;
- If quorum has been met at the meeting, the owners do not vote against the proposed installation.

What goes in the notice to owners?

The notice to owners must describe the installation; must contain a statement of the estimated cost and must indicate how the corporation will pay for it. The notice must advise owners of their right to requisition a meeting of owners within 60 days to vote on the issue. Finally, the notice must contain a copy of section 46 of the Act.

INSTALLATION BY OWNERS

Section 98 of the Act already dictates how owners may make changes to common elements. Such modifications can only be made with the approval of the board of directors and if other requirements are met. For instance, the corporation and the owner wishing to make the modification to common elements must enter into a “Section-98 Agreement”, which must be registered on the unit’s title. In certain cases, notice must be given to the other owners and their approval must be obtained prior to the change being implemented.

The new regulations carve out an exception to section 98 when the proposed modification provides for the installation of a charging station. The following is the process to be followed by owners wishing to ask permission to install such charging stations on common elements.

The owner must apply in writing

First, the owner must make an application in writing to the corporation. The application must be signed and properly delivered to the corporation. The owner must include, at his/her costs, all of the required drawings, specifications or information regarding the proposed installation. It is to be noted that corporations must cooperate and provide the owner, as soon as possible, any information, permission or authorization required by the owner to be able to put together the application (for instance plans, drawings and information on the electrical grid).

Limited reasons to reject a proposal

The corporation will have 60 days to respond to this request. This time frame can be extended if both the owner and the corporation agree to it in writing.

The corporation can only reject the request if, based on the opinion or report of a qualified professional, the installation would be

contrary to the Act or to the Electrical Safety Code or if it would adversely affect the structural integrity of the property or would pose a serious health and safety risk to someone or a serious risk of damage to property. If the corporation rejects the proposed installation, it must provide a copy of the report on which it based its decision.

In any other case, the corporation must accept the proposed installation. The corporation can also propose an alternate installation (for instance, proposing to install the charging station elsewhere or in a different manner) provided that the proposed alternative would not impose on the owner unreasonable additional costs.

The parties must enter into an agreement

The owner and corporation then have 90 days to enter into a “Section-98 Agreement” specifying who is responsible to install, maintain, insure and repair the installation as well as who owns it and who can use it. The terms of the agreement must be “reasonable” and “necessary” to facilitate the installation of the charging station. While many of the terms of the agreement are left to be agreed to by the owner and the corporation, there is an expectation that the owner will be responsible for the cost of the installation. This agreement must be registered on the title of the owner’s unit. The agreement does not take effect until it is registered.

The corporation may add any costs, charges, interests and expenses resulting from an owner’s failure to comply with the agreement to the common expenses payable by the owner.

Arbitration and mediation

Any disagreement between the corporation and the owner with respect to the proposed installation of a charging station must be submitted to mediation and arbitration. An owner will have 6 months to submit any such disagreement to mediation or arbitration and failure to do so within this timeframe will result in the owner’s application to be deemed to have been abandoned.

Things to keep in mind

These changes came into effect on May 1st, 2018;

These changes only deal with the installation of charging stations on common elements;

All costs associated with the charging station installed by the corporation are common expenses to be paid by owners on the established prorated basis;

This is just a summary. For further details, it is important to consult sections 24.3 to 24.6 of O.Reg 48/01, adopted pursuant to the Condo Act. ■

Rod Escayola is a partner at Gowling WLG focusing his practice on condominium law. Rod is also a director at his condo and the co-founder of the Condo Directors Group, which provides directors with a forum to network and learn from each other. The preceding article is adapted and reprinted with permission from CondoAdviser.ca.