



ELECTRIC VEHICLE (EV) CHARGING STATIONS AND THE COMMERCIAL LANDLORD IN CALIFORNIA: RISE OF THE EV MACHINES AND THE EFFECT OF CIVIL CODE SECTION 1952.7



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-A neutron walks into a bar and asks "How much for a drink?" The bartender replies "For you, no charge."

RISE OF THE EV MACHINES...BUT NOT MANY EV CHARGING STATIONS (YET)

When it comes to zero-emission vehicles, the State of California has established some ambitious goals: by 2025, the State hopes to see 1.5 million zero-emission vehicles on our roads, and 5 million by 2030. There are currently only roughly 18,000 public EV charging stations in California, but the California Energy Commission has estimated that some 250,000 stations will be needed to support the 2025 zero-emission goal.

CIVIL CODE SECTION 1952.7: INVALIDATING LEASE PROVISIONS THAT ARE UNREASONABLE “OBSTACLES” TO THE INSTALLATION OF EV STATIONS

To encourage the installation of EV charging stations on commercial properties, the Legislature has enacted Section 1952.7 of the Civil Code, which became effective on January 1, 2017. It is important to note that this law does *not* mandate that landlords install or maintain EV stations. The stated intent of the law is remove “obstacles” to the installation of EV stations, by rendering unenforceable any lease provision that either “prohibits or unreasonably restricts” the tenant’s ability to install and use an EV station. In this article, I suggest some modifications to the landlord’s lease that would survive scrutiny under Civil Code Section 1952.7.

WHAT LEASES AND COMMERCIAL PROPERTIES ARE AFFECTED?

The law applies to any lease that is executed, renewed, or extended on or after January 1, 2015. The law does not apply to a property where charging stations already exist for use by tenants in a ratio that is equal to or greater than two available parking spaces for every 100 parking spaces at the commercial property, or where there are fewer than 50 parking spaces. (There are analogous statutes for common-interest developments, found at Section 4745 of the Civil Code, and for residential properties, at Section 1947.6 of the Civil Code, but this article is limited to discussing commercial properties.)

THE TENANT’S RIGHT TO INSTALL EV STATIONS

Subject to the limitations discussed below, a commercial tenant has the right to install the same number of EV stations as they have been allocated parking spaces under the terms of the lease. If the lease does not allocate a specific number of parking spaces to the tenant, the maximum number of EV stations allowable is determined by multiplying the total rentable square feet at the property by a fraction, the denominator of which is the total rentable square feet at the property and the numerator of which is the rentable square feet of the Tenant’s premises.

THE LANDLORD’S RIGHT TO IMPOSE REASONABLE CONDITIONS

The statute does not operate to override the parties’ agreement, as stated in the lease, on “reasonable” restrictions on the installation of EV stations, and

specifically recognizes the following terms as being permissible limitations on the tenant's rights:

➤ **Reasonable Monthly Fee**

If the installation of the EV station has the effect of granting the tenant a reserved parking space and a reserved parking space has not allotted to the tenant under the lease, the landlord may charge "a reasonable monthly rental amount" for the parking space. Civil Code Section 1952.7 gives no guidance as to what would constitute a "reasonable monthly rental amount," but I think it is safe to assume that the landlord can charge their going rate for reserved spaces (or if the landlord is not then charging a fee for reserved parking, an amount equal to the fair market value of such spaces).

➤ **Landlord Approval Rights and Conditions**

Assuming the lease requires the landlord's approval for installation of an EV station (which a typical well-drafted commercial lease would, particularly if a multi-tenant building is involved—see my recommendations below) such approval "shall not be willfully avoided or delayed" and any approval or denial of an application must be in writing. The landlord may condition its approval of the tenant's installation of an EV station upon compliance with reasonable requirements, such as the following:

- The EV installation must comply with the applicable terms of the lease (provided that such provisions are consistent with the provisions of Civil Code Section 1952.7);
- The EV installation must comply with all applicable legal requirements;
- The EV installation must comply with the landlord's reasonable standards;
- The tenant must bear all responsibility for the costs of installing the EV station and its infrastructure including the cost of permits, supervision and construction;
- The tenant must be responsible for any electrical usage, damage, maintenance, repair, removal or replacement of the EV station; and

- The tenant must maintain a policy of liability insurance in the amount of “one million dollars (\$1,000,000), and shall name the lessor as a named additional insured under the policy with a right to notice of cancellation and property insurance covering any damage or destruction caused by the charging station, naming the lessor as its interests may appear.” Tenant must provide proof of this insurance within 14 days of the landlord’s approval of the EV installation.

UPDATING LANDLORD LEASE FORMS IN LIGHT OF CIVIL CODE SECTION 1952.7

Prudent landlords are encouraged to update their lease forms in a manner that takes advantage of the fact that Civil Code Section 1952.7 will honor “reasonable” restrictions on a tenant’s right to install an EV station. Some commentators have recommended that the landlord form lease should now include a new, lengthy provision in the body of the lease that addresses all the conditions that the landlord may impose in response to a tenant request to install an EV station; that approach strikes me as unnecessary (as attorneys, we hear complaints that our form leases are already too long), and as an invitation to the tenant to exercise a right (namely, the installation of an EV station) that might not have otherwise occurred to the tenant.

I suggest that the best practices for a landlord in light of Civil Code Section 1952.7 are as follows:

- Ensure that the form lease contains a comprehensive “alterations” provision (this is the provision that typically limits the tenant’s ability to alter its premises or the balance of the property without the landlord’s consent). A well-drafted “alterations” provision will prohibit the tenant from making modifications to the parking areas, thus triggering the need for landlord consent and granting the landlord to impose reasonable conditions on that consent.
- Address the specifics of EV station installation in a new provision to appear in the rules and regulations exhibit to the lease; while adding the new provision will make the lease longer, I have found that additions to the rules and regulations generally are less objectionable to (and generally given little scrutiny by) tenants and landlords alike. Those terms should include all the protections listed in the “Landlord Approval Rights and Conditions” provision above (if not already addressed in the “alterations” provision of the Lease), and perhaps the following protections as well: (i) establish a maximum number of parking spaces that may be converted to EV stations, for the entire property, (ii) establish (or reserve the right to

establish later) a monthly rate per space; (iii) reserve the right to designate particular areas of the parking facility for installation of the EV stations, and the right to relocate those stations in the event of future development of the property; (iv) make it clear that any parking spaces used for EV stations are included in the total parking allocated to the tenant; (v) confirm the tenant's obligations relating to the removal of the EV station. Finally, consider adding a sentence such as the following, to the end of the provision: "Tenant agrees that the terms and conditions set forth in this Section ___ are reasonable and not violative of any rights conferred on Tenant pursuant to California Civil Code section 1952.7 or any similar or successor law governing the installation or use of electric vehicle charging stations."

- As a condition to proceeding with the installation of the EV station, require the tenant to sign a formal amendment to the lease that contains all the protections suggested in the preceding paragraph.

CONCLUSION

Electric vehicles are an ever-increasing presence here in California. If you are the owner or manager of commercial property here, you will eventually have to deal with tenant requests for the installation of EV stations. This is an area where an experienced and knowledgeable lawyer can add a lot of value; I encourage you to get ahead of the issue and have your lawyer update your lease forms now.

DISCLAIMER: This article does not constitute legal advice. Readers should consult with their own legal counsel for the most current information and to obtain professional advice before acting on any of the information presented.

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