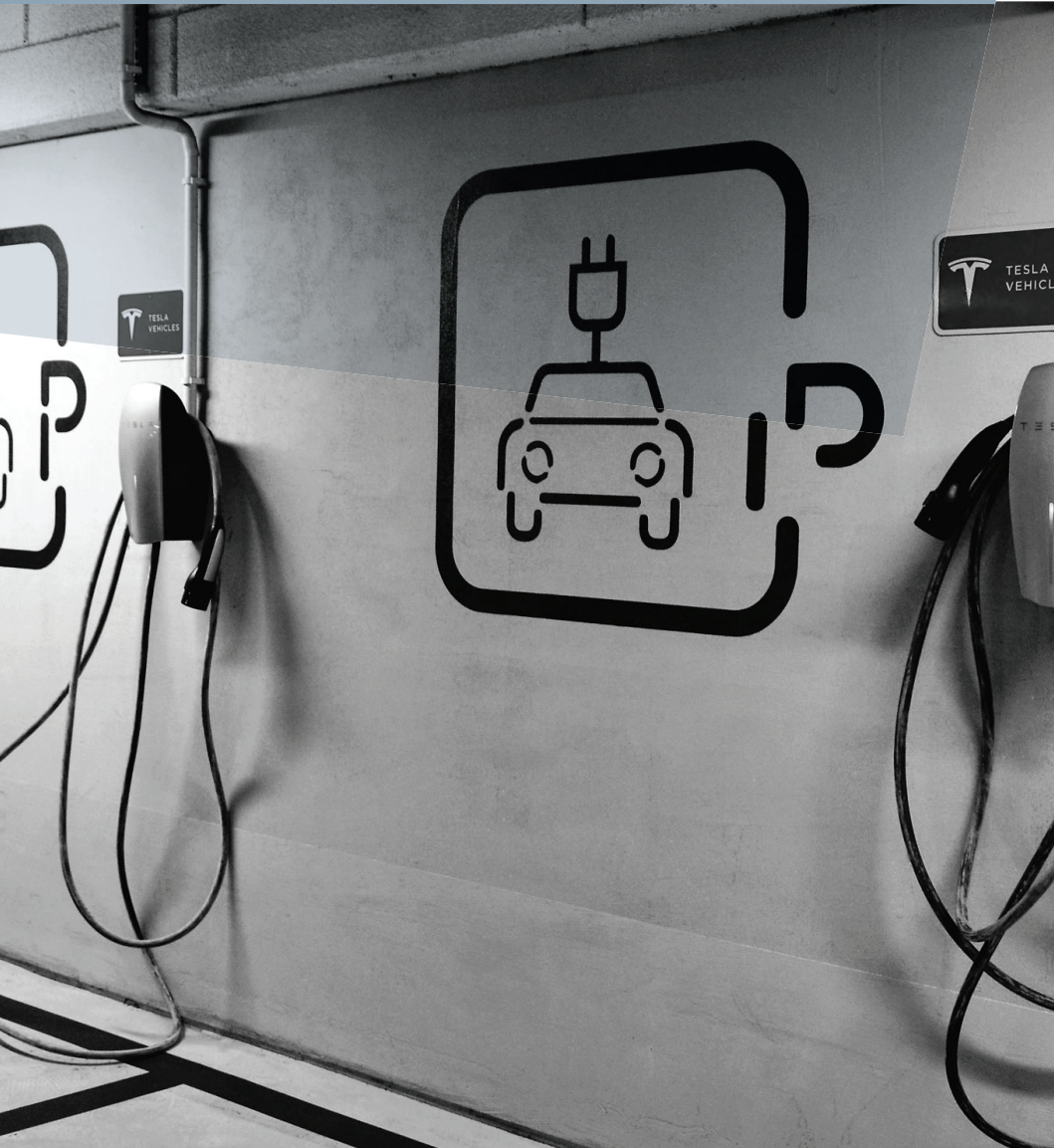


OUR CONDO EXPERTISE

ELECTRIC VEHICLE CHARGING STATIONS IN CONDOS

A GUIDE FOR BOARD MEMBERS
AND MANAGERS

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ELECTRIC VEHICLE CHARGING STATIONS IN CONDOS

The Condominium Act, 1998 (the “Act”) and its regulations were amended in May 2018 to incorporate the installation of Electric Vehicle Charging Stations (“EVCS”) in condominium corporations (“Corporation”). The Act establishes a process for requests from owners to install an EVCS and for the installation of EVCS on the common elements by the Corporation.

This guide will take you through the legal requirements and will provide you with some guidance so that you will be well prepared when you receive requests from owners.

1. **Time to Conduct a Load Capacity Assessment**

Whether the Corporation is considering the installation or whether you are getting requests from owners, the first step is to determine whether there is sufficient electrical capacity and the required infrastructure to handle the installation and use of EVCS.

Why do the assessment now?

If an application is received from an owner to install an EVCS, Regulation 48/01 to the Act (the “Regulations”) now requires that the Corporation respond within 60 days of the request. In order to respond in a fully informed manner, you will need to know whether the installation is even possible.



2. Review your documents

There may be provisions either in your condominium documentation or agreements that were entered into by the developer for your site that would govern the installation of EVCS on the property. You may find that there are restrictions on installations in the visitors parking area, for example, so it is important to undertake this initial review to ensure that any future installations are compliant with the Corporation's governing documents.

3. Implement a Policy

Although there is no legal requirement to implement an EVCS policy – it is strongly recommended.

What should the policy contain?

The policy can be used to set out the requirements for unit owner applications, so that owners will know well ahead of their application submission what will be required in order to install an EVCS, including:

1. An outline of the due diligence that the board has conducted to ensure EVCS installations are permissible (i.e. capacity limits, charging time limits, etc.);
2. The permitted types of EVCS and permitted areas for installation, if applicable;
3. The information owners must include in their applications;
4. Some of the various terms of the agreement that owners will be required to enter into; and
5. Responsibility for costs, including metering.



4. Installation by the Corporation

Although there is no legal obligation for a Corporation to install common element or communal EVCS or to improve the electrical infrastructure to accommodate a greater number of EVCS, many Corporations may choose to do so if there is sufficient space and capacity and/or as a proactive measure to increase capacity.

Does Section 97 of the Condominium Act, 1998 apply to EVCS?

A Corporation is exempt from Section 97 of the Act in two circumstances.

1. Cost is 10% of budget or less and no reduction in use/enjoyment by owners


Where:

(i) the cost to carry out the installation is not greater than 10% of the annual budgeted common expenses; AND

(ii) the Board does not believe that the owners would regard the EVCS as causing a material reduction or elimination of their use or enjoyment of the units, common elements or assets of the Corporation,

The Corporation can install an EVCS 60 days after sending a notice with the required information to owners.

2. Cost is greater than 10% of budget and/or reduction in use/enjoyment by owners.



If, however, the cost of the installation is **greater than 10%** of the annual budgeted common expenses OR if the Board believes that the owners would regard the proposed installation as causing a material reduction or elimination of their use or enjoyment of the units, common elements or assets of the Corporation, then the Corporation can install an EVCS 60 days after sending the notice as long as owners do not requisition a meeting where the owners vote against the installation at the meeting.

5. **Application by an owner**

Is an application by an owner exempt from Section 98 of the Act?

Yes, as long as the unit owner complies with the provisions set out in the Regulations.

What does an application require?

1. Delivery to the Corporation
2. Drawings, specifications or information with respect to the installation.
3. Identify the owner's address for service and be signed by the owner

*A copy of the application can be found on the Condominium Authority of Ontario (CAO) website.

What is the Corporation required to do?

1. If further information is requested in writing by the owner in order to assist them in fulfilling the application requirement, then the Corporation must provide that information as soon as reasonably possible.



2. The Corporation must also advise the owner as soon as reasonably possible if the application does not meet the requirements or contain the information prescribed in the Regulations.
3. Once the application is completed, the Corporation has 60 days (or other period agreed to in writing by both parties) to inform the owner in writing if the application is accepted or rejected.

BEWARE!

If the Corporation does not issue a response to the owner in writing either accepting or rejecting the application within the 60-day period (or other period agreed to in writing by both parties), then the Corporation will be deemed not to have rejected the application, and the owner can proceed with the installation, subject to entering into an agreement with the Corporation.


When can the Corporation reject an application?

Only in very limited circumstances, such as the installation being contrary to applicable law.

What is required to reject an application?

The Corporation must obtain a report or an opinion from a professional (i.e. an engineer, lawyer, etc.) stating that the installation:

- i. will be contrary to another law – i.e. Electrical Safety Act, Building Code, Fire Code, etc. – but not including anything in the Corporation’s declaration, by-laws or rules;

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- ii. will adversely affect the structural integrity of the property or assets; or
 - iii. will pose a serious risk (i) to the health and safety of an individual, or (ii) of damage to the Corporation's property or assets.

Can the Corporation require changes to the owner's application?

Yes, the Corporation has the discretion to require the installation to be carried out in an alternate location or manner than what was proposed by the owner, as long as it would not cause the owner to incur unreasonable additional costs and if it is necessary so that:

- i. the remaining owners would not regard the installation as causing a material reduction or elimination of their use or enjoyment of the units, common elements or the Corporation's assets; or
- ii. there is no resulting violation of the declaration, by-laws, rules or shared facilities agreements.

6. Owner Agreement – not a Section 98 Agreement

What are the timelines for entering into the Agreement

Once the application is accepted or is deemed not to have been rejected, then the owner and the Corporation must take all reasonable steps to enter into an agreement within 90 days (or other time period agreed to in writing by both parties).



What is in the Agreement?

Although the agreement is not a section 98 agreement, its form is substantially similar, since it has to be registered on title to the owner's unit and must address such matters as, among other things:

- i. the manner of installation;
- ii. the allocation of costs for the installation;
- iii. the ongoing duties and responsibilities with respect to the EVCS, including costs for the use, operation, repair after damage, maintenance, and insurance;
- iv. the ownership of the EVCS; and
- v. the cessation of the use and operation of the EVCS, or the termination of the agreement.

Who pays the costs of the application and the agreement?

The owner and the Corporation bear their own costs relating to the application (assessment of the application and responding). Similar to a section 98 agreement, the cost of drafting and registering the agreement on title would typically be borne by the owner. Cost responsibilities can be modified by the agreement.



7. **Upgrading infrastructure**

The regulations are silent as to whether or not a Corporation must upgrade its infrastructure in order to further accommodate EVCS. This is, however, a step that many Corporations are taking as a proactive measure due to the anticipated increase in condo owners driving electric vehicles.

8. **Consult your lawyer**

With so many variables and timelines to consider, make sure to consult your Corporation's legal counsel to ensure that your Corporation is compliant with the law.



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CONTACT US

📞 416-309-4499

✉️ info@lashcondolaw.com

📍 2110 – 4950 Yonge Street, North York, ON M2N 6K1

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