

RETAILER PRIMER ON ELECTRIC VEHICLE CHARGING STATIONS: PART II

Brian W. Blaesser
Robinson & Cole LLP
Boston, MA

Sorell E. Negro
Robinson & Cole LLP
Hartford, CT

Electric vehicle (EV) charging stations are being installed at stand-alone stores and at shopping centers, and in parking garages as well as parking spaces. If a retailer has multiple locations, the provider typically will work with the retailer in determining in which locations to launch EV charging stations. Considerations include: whether there are already charging stations in the area and, if so, how many; whether EVs are being sold in the area; and how many customers currently traffic the area.

Practice Tips

- Consider which store locations would best promote your marketing goals. For example, areas where EVs are sold will appeal to more customers in need of charging up. Alternatively, a retailer may decide that having a policy of installing at least one EV charging station at each new location best promotes its green program.
- Know at which store locations you would like to install the charging stations, and present your preferences to the provider.

Which Parking Spaces?

Once the retailer has determined the store location(s), it should determine where in the parking area the charging station(s) should be installed. The provider most likely will be

highly involved in this process, as the provider should have the expertise, or contract with those who do, to determine the location of the origin of power and the most cost effective placement of the charging station. The further away the charging station is from the power source, the more expensive it will be to install.

The host must also consider how many spaces it would like to devote to charging stations and how prominent these stations should be. Charging stations close to the store are more convenient and attractive to EV drivers, and they will also attract the attention of non-EV driving customers, who may be interested in the retailers' green, modern initiative. In addition, charging stations that offer advertisements will need to be placed near significant foot traffic. Finally, as discussed further below, the charging station should be placed in a location that allows for sufficient space for the station, the cord and a vehicle in order to meet accessibility, safety and zoning requirements.

Practice Tips

- Installing charging stations close to the store entrances is often the most cost-effective approach because that puts the stations near the power source. However, giving prime parking spaces to EV

drivers may trigger animosity from gas-fueled-car drivers, who may see this as giving an unfair advantage.

- Most jurisdictions do not have laws against gas-fueled-car drivers parking in spaces designated for EV charging (although some are beginning to adopt such regulations), so it may be difficult to do anything more than issue warnings reminding the gas-fueled car drivers that these EV charging spots are reserved for EV vehicles only.

Lease Considerations: Who Is in Control?

Providers contract with retailers who are tenants that lease their premises, with retailers who own their property, and with landlords of shopping centers. According to Brian Koontz, Director of Strategic Corporate Development in North America for ECotality, his company partners with whoever is championing the effort, whether the retailer is a tenant or a landlord.

The Tenant Host. The retailer tenant who wants to install EV charging stations must seek necessary approvals from the landlord before it can proceed with the program. As Koontz explained, when ECotality works with a retailer who is leasing its premises, the retailer has the responsibility of securing permission from the landlord.

The retailer tenant may need permission from the landlord, not only for the charging station and related infrastructure, but also for additional lighting and signage or advertisement. Lighting and signage must comply with the landlord's rules and regulations for the center, as well as with any applicable governmental regulations, which are dis-

cussed below. Of course, if installation of a charging station conflicts with any existing provision under the lease, the tenant must seek the requisite approvals or seek to amend the lease. For example, if all parking spaces are shared in common with other tenants, the host should obtain written consent from the other tenants to install charging stations in specific spaces, or seek an amendment to its lease that allows for protected parking spaces over which the tenant has complete control.

Practice Tips for the Tenant Host

- The tenant should know how much control it has under its lease over the parking lot and its related maintenance obligations.
- The tenant should know whether its request to install an EV charging station would infringe on any existing provision in its lease. If so, the tenant should suggest possible amendments to the lease to reasonably allow for the EV charging station.
- The tenant should determine that its plans to install an EV charging station will not infringe on other tenants' rights. If it is not feasible to negotiate a plan with the provider that will not infringe on other tenants' rights, the tenant may approach the landlord with reasonable suggestions for amendments to all the tenants' leases. This is a more demanding request, so the tenant may need to demonstrate that the EV charging stations are desirable for the shopping center as a whole.
- If advertising will be located on the charging station itself, adequate permission for the scope of the advertisement must be obtained from the landlord.

As stated above, this may be the responsibility of the tenant, or the provider, and the responsible party should be clearly designated in the retailer's contract with the provider.

Practice Tips for the Landlord of the Tenant Host

- If the tenant does not already have responsibility for the parking area and related maintenance obligations, the landlord should consider shifting responsibility and liability to the tenant so that the landlord does not incur any additional responsibilities or risks from the installation and operation of the EV charging station.
- The landlord should communicate directly with the provider regarding any advertising so that it understands clearly the scope of the advertising.

The Landlord Host. The landlord of a shopping center must make sure that the installation and operation of EV charging stations would not violate rights of tenants under their respective leases. If it would, the landlord must obtain all requisite approvals, or negotiate with tenants to amend their leases, or arrange with the provider that the installation proceed in a way that would not infringe on tenants' rights. For example, a tenant retailer, particularly a major one, may have protected rights with regard to the parking lot, and the lease may prohibit the landlord from adversely affecting the tenant's operation and use of the parking lot, or signage, without the tenant's approval. The construction period and inconvenience required for installation, as well as the location of the charging stations and corresponding signage, would not necessarily adversely

affect the tenant in a material way, but if so, the tenant's consent may be required.

Practice Tips

- If EV drivers can learn about the charging station on a mobile app, they will locate the stations through their smartphones and there may be less of a need for signage. However, whatever signage is used, it must comply with local zoning requirements.
- EV charging stations can be installed in a variety of commercial parking locations, including single parking spaces, double spaces, parking garages, parking decks and street parking. If a proposed location or charging station type does not work well with all tenants, the provider should be able to assist with considering other options.

Working With the Utility

The host, either as a tenant after obtaining the requisite permission from the landlord, or as a landlord, should contact the utility and let the utility know of its plan to install an EV charging station. It is worth asking whether the utility offers any incentives for installing charging stations or rate structures for the increased electricity use. Especially if a host is interested in installing many charging stations, it should ask the utility whether or not a service upgrade may be needed.

If an entity other than the host owns the power supply, such as a utility or a landlord, the retailer must secure permission from the owner to use the power supply.

Practice Tips

- If the host does not own the power supply, it should seek written permission from the owner to use the power supply for charging stations.
- The tenant host should allow the provider to communicate directly with the utility regarding the charging stations, including the stations' electricity use, installation procedures and installation progress.

Regulatory Compliance

EV Charging Station Permits. A host should ensure that proper governmental approvals are in place to allow for the charging station. As stated above, the host must be clear on whether it or the provider is responsible for obtaining the necessary permits. If the provider is responsible, which is often the case, the host should request written confirmation that all requisite permits have been obtained.

For whichever party is responsible for obtaining the permits, it is crucial to understand the governing jurisdiction's requirements, as state and local governments' requirements vary significantly. To ensure compliance with the local authorities, for example, Car Charging Group always hires local electricians, who are familiar with local requirements. Some municipalities require only an electrical permit, such as Darien and Fairfield, CT, and Fairfax County, VA. Other municipalities and counties require both an electrical permit and a building permit, such as Baltimore County, MD. Still other local governments also require a site-plan amendment showing exactly where the charging station(s) will go, such as Clearwater, FL., or one-line diagrams (*i.e.*, electrical drawings), such as Honolulu, HI.

In addition, the site may need to pass an inspection, either before installation, such as in Honolulu, or an inspection throughout the installation process, such as in Wellesley, MA.

For local governments that have not yet addressed a request for installing an EV charging station, or have not yet streamlined their permitting process, obtaining the requisite approvals can be a lengthy and burdensome process. The local authority may not know what information to ask for initially, and the applicant may be required to go back multiple times with supplemental information. The applicant should clearly and thoroughly explain to a local authority that is seeing this type of application for the first time exactly what the charging station is.

Practice Tips

- Understand the state and local permitting requirements in your jurisdiction and what information is required in the application.
- Know which party is responsible for obtaining the requisite permits and request verification that all approvals have been obtained.
- The party responsible for obtaining proper permitting should consider hiring local electrical contractors who are familiar with the particular requirements of the jurisdiction.
- If the charging station is installed in a parking space, the length of the parking space must still meet any applicable zoning regulations.

ADA Compliance. EV charging stations must not violate any Americans with Disabilities Act (ADA) standards, including standards for parking spaces, sidewalks and accessibility. There currently are no ADA standards specifically for EV charging stations, but because the charging stations are a relatively new development, ADA standards may be on the horizon. Many providers and hosts are anticipating new ADA standards by offering at least one charging station that is handicap accessible. To be adequately accessible, the charging station should also be close to the building's entrance, and the route to the entrance must also be ADA accessible. Specifically, the ADA requires an accessible parking space to be at least 96 inches wide. That space must have at least one accessible route from an accessible parking space, and that route must be at least 36 inches wide. ADA Accessibility Guidelines for Buildings and Facilities §§ 4.3.3, 4.6.3.

Any state accessibility standards must also be met. For example, Washington State's model ordinance for EV infrastructure, which municipalities are adopting, requires that accessible EV charging stations be provided in specific ratios—for 1-50 charging stations, for example, a minimum of one station must be ADA accessible; for 51-100, a minimum of two must be ADA accessible. Washington Model Ordinance Regarding Electric Vehicle Infrastructure and Batteries, § 3.3.01 (2010). The city of Auburn Hills, MI, in a text amendment to its zoning ordinance regarding EV infrastructure, strongly encourages, but does not require, that commercial entities provide at least one accessible EV charging station. City of

Auburn Hills, MI, Ordinance No. 11-836, § 1834(6)(B) (2011).

Safety. The EV charging stations must meet any local regulations for safety including clearance. This may require that, in order to have a charging station, the parking space be so many feet long and/or wide. In addition, the charging station may have to be a certain number of feet away from the building's entrance. The charging station itself may require bollarding to protect the equipment from damage. For example, Auburn Hills requires adequate charging station protection such as concrete-filled steel bollards or curbing if the station is at least 24 inches from the face of the curb. City of Auburn Hills, MI, Ordinance No. 11-836, § 1834(6)(D)(2) (2011). It also prohibits the charging station from impeding pedestrian travel or creating trip hazards on sidewalks. City of Auburn Hills, MI, Ordinance No. 11-836, § 1834(6)(D)(1) (2011).

In addition, the local government may require certain information on the charging station. For example, the City of Auburn Hills requires, and Washington State's model ordinance suggests, that the charging station provide information identifying voltage and amperage levels, contact information for reporting any problems, and any safety information related to the charging station. City of Auburn Hills, MI, Ordinance No. 11-836, § 1834(6)(G) (2011); Washington Model Ordinance Regarding Electric Vehicle Infrastructure and Batteries, § 3.2.01(D) (2010).

Lighting. Adequate lighting around the charging station is important to facilitate

charging and plugging in the vehicle. It will also serve safety goals by making it less likely that drivers will hit the charging stations. Any host must ensure that lighting complies with local zoning regulations. For example, both the Auburn Hills and Washington State's model ordinances require that site lighting be provided unless the charging station is available only during the daytime. City of Auburn Hills, MI, Ordinance No. 11-836, § 1834(C); Washington Model Ordinance Regarding Electric Vehicle Infrastructure and Batteries, §§ 3.2.01(D)(1)(d), 4.1(C)(1)(e) (2010).

Signage. In addition to the landlord's rules and regulations, the charging station must comply with applicable governmental regulations regarding signage. For example, Washington State's model ordinance requires signs that prominently indicate the parking regulations, time limits, hours of operation, and that the parking space is reserved for charging EVs. Washington Model Ordinance Regarding Electric Vehicle Infrastructure and Batteries, § 2.3.01 (2010). The

Model Ordinance also suggests directional signs at the parking lot entrance and at appropriate decision points to guide the drivers to the stations. Washington Model Ordinance Regarding Electric Vehicle Infrastructure and Batteries, § 3.2.01(D)(2) (2010). Auburn Hills also requires signage indicating that the space is only for EV charging purposes. City of Auburn Hills, MI, Ordinance No. 11-836, § 1834(6)(F) (2011).

Conclusion

As the price of gasoline continues to rise, consumers are increasingly concerned with fuel economy when purchasing vehicles. In addition, as more EV models come to the market this year and beyond, there will be an increased need for public EV charging stations. Retailers and shopping center landlords who wish to enhance their "green" profile are uniquely positioned to install EV charging stations, which provide an added attraction for customers and give the hosts a strategic position on the nation's cutting-edge electric grid.

BRIAN W. BLAESSER is a partner in the Boston, MA, office of Robinson & Cole LLP, where he heads its Land Use and Real Estate Development Practice Group. His practice areas include commercial real estate development, leasing, environmental law and litigation. Mr. Blaesser is a LEED Accredited Professional, LEED AP BD+C, and is an appointed member of ICSC's National Environmental Subcommittee.

SORELL E. NEGRO is an attorney in the Hartford, CT, office of Robinson & Cole LLP, where she is a member of the Land Use and Environmental Law Practice Groups. Her practice areas include land use and zoning, real estate, environmental law and related litigation.
