

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS AT COMMON INTEREST DEVELOPMENTS

INTRODUCTORY MEMORANDUM

Introduction: "To reduce the United States' greenhouse gas emissions by at least 80% from 1990 levels by 2050 will require... deployment of approximately 300 million alternative fuel vehicles, which for the purposes of this chapter consists of electric vehicles [EVs], hybrids (electric and gas) and hydrogen vehicles ['AFVs']. The goal is to shift 80%-95% of the miles driven from gasoline to lower carbon energy sources like electricity and hydrogen." LPDD, Ch. 14 at 353. AFVs face a number of barriers to reaching these goals, including infrastructure deficiencies. LPDD, Ch. 14 at 361.

Electric vehicle owners rely primarily on charging their vehicles at home on a daily basis. Even Tesla, which has installed a wide commercial charging network, expects that residential charging will remain dominant. Many Americans own a home that is part of a common-interest development, such as a condominium, and such developments are the fastest growing form of housing in the world today.^{1/} However, such developments may have covenants that restrict modifications such as those needed to install electric vehicle charging stations. This proposed statute seeks to remove and foreclose such impediments.

This proposed statute is closely based on California Civil Code Section 4745, which was enacted in 2012 and has been amended twice since then, most recently in 2018. California Civil Code §4600(a), enacted in 2012, addresses legal issues regarding the grant of exclusive uses in common interest developments. It provides that an affirmative vote of 67% of interests is required before the board may grant exclusive use of any portion of a common area to a member. However, subsection (b)(3) provides exemptions for certain actions, including to ... install and use an electric vehicle charging station in an owner's garage or a designated parking space ... where the installation or use of the charging station requires reasonable access through or across the common area for utility lines or meters" and to install and use an electric vehicle charging station through a license granted under California Civil Code Section 4745. States might consider adding similar provisions to their codes to bolster the legal basis for eliminating restrictions to EV charging in CC&Rs.

^{1/} McKenzie, Evan. *Privatopia: Homeowner Associations and the Rise of Residential Private Governments*. Yale University Press. p. 7