

New Laws Require Installation of Electric Vehicle Charging Stations on Leased Property

BY KEVIN NIMMONS

Governor Brown recently signed into law two new additions to the California Civil Code governing lessees' rights to install electric vehicle ("EV") charging stations on leased residential and commercial property. Civil Code section 1947.6 applies to residential properties while section 1952.7 applies to commercial properties. As electric vehicles and EV charging stations grow in number and popularity throughout California, the laws governing EV charging stations will become more important. Lessors and lessees, and their attorneys, should understand these new laws and how to incorporate them into lease negotiations to avoid future disputes when a lessee desires to install a charging station on lessor property.

A. Civil Code Section 1952.7: Commercial Lease EV Charging Stations

Section 1952.7 provides: "Any term in a lease that is executed, renewed, or extended on or after January 1, 2015, that conveys any possessory interest in commercial property that either prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a parking space associated with the commercial property, or that is otherwise in conflict with the provisions of this section, is void and unenforceable." Lessors are permitted to impose "reasonable restrictions" or "reasonable standards," statutorily defined terms, on the installation of charging stations. (Civ. Code § 1952.7(a)(2).) Section 1952.7 does not apply to:

A commercial 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.

A commercial property where there are less than 50 parking spaces.

A commercial lessee is only permitted to install the same number of charging stations as it is allotted parking spaces under the lease. Even if there is no parking allotted, the lessee is still permitted to install EV charging stations. This may come as a surprise to lessors, but it is consistent with

"the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations." (Civ. Code § 1952.7(2).) As a result, even if the lease does not allot any parking to the lessee, the lessee may install the same number of charging stations equal to the number of parking spaces calculated by multiplying the total number of parking spaces located at the commercial



Kevin Nimmons

property by a fraction, the denominator of which is the total rentable square feet at the property, and the numerator of which is the number of total square feet rented by the leaseholder. (Civ. Code § 1952.7(a)(3).)

Even though lessors understandably would be reluctant to permit a lessee to install an EV charging station, lessors will at least be relieved to know that the lessee must pay all costs of installation and the lessee's installation of an EV charging station must meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use, or other ordinances, or land use permit requirements. (Civ. Code § 1952.7(d).) In addition, the lessee is responsible for all costs for damage to property and the charging station resulting from the installation, maintenance, repair, removal, or replacement of the charging station, costs for the maintenance, repair, and replacement of the charging station, and the cost of electricity associated with the charging station. (Civ. Code § 1952.7(f)(2).)

If the installation of a charging station has the effect of granting the leaseholder a reserved parking space and a reserved parking space is not allotted to the leaseholder in the lease, the owner of the commercial property may charge a reasonable monthly rental amount for the parking space. (Civ. Code § 1952.7(a)(4).) This provision may have the effect of granting a lessee an exclusive parking space, even if the lease does not.

Section 1952.7 implies that unless the lease requires the lessor's prior approval to install a charging station, the lessee may install a charging station so long as it meets the minimum statutory requirements. The lessor cannot avoid or delay its approval and the approval or denial shall

Continued on page 13

Nimmons, *continued from page 10*

be in writing. “If lessor approval is required, the lessee first shall obtain approval from the lessor to install the electric vehicle charging station and the lessor shall approve the installation if the lessee complies with *the applicable provisions of the lease* consistent with the provisions of this section.” (Civ. Code § 1952.7(e).) The lessee must comply with the lessor’s reasonable standards for the installation of the charging station, hire a licensed contractor to install the charging station, and within 14 days of approval, provide a certificate of insurance that names the lessor as an additional insured under the lessee’s minimum \$1,000,000 liability insurance policy. Therefore, it is imperative for lessors to ensure that the lease (1) requires approval by lessor of any installation or modification of the property for a charging station and (2) imposes reasonable conditions for installation of EV charging stations. If not, then the lessee may have the right to install a charging station so long as it meets only the minimum requirements in section 1952.7, and as discussed above, even if the lease does not provide the lessee a right to park.

B. Civil Code section 1947.6: Residential Lease EV Charging Stations

Section 1947.6 is similar to section 1952.7. There are some notable differences, however. Section 1947.6 provides that “For any lease executed, extended, or renewed on and after July 1, 2015, a lessor of a dwelling shall approve a written request of a lessee to install an electric vehicle charging station at a parking space allotted for the lessee that meets the requirements of this section and complies with the lessor’s procedural approval process for modification to the property.” The law does not apply where:

- (1) Electric vehicle charging stations already exist for lessees in a ratio that is equal to or greater than 10 percent of the designated parking spaces.
- (2) Parking is not provided as part of the lease agreement.
- (3) A property where there are less than five parking spaces.
- (4) A dwelling that is subject to the residential rent control ordinance of a public entity.

A lessor is not obligated to provide an additional parking space to a lessee in order to accommodate an electric vehicle charging station. (Civ. Code § 1947.6(d).) If the EV charging station has the effect of providing the lessee with a reserved parking space, the lessor may charge a monthly rental amount for that parking space. (Civ. Code § 1947.6(e).) An EV charging station and all modifications and improvements to the property shall comply with federal, state, and

local law, and all applicable zoning requirements, land use requirements, and covenants, conditions, and restrictions. (Civ. Code § 1947.6(f).)

The lessee must request in writing the lessor’s consent to any modification. Based on the language of the statute, it is this author’s opinion that the lessor can condition its consent on the lessee satisfying reasonable conditions, in addition to those specified in section 1947.6: “A lessee’s written request to make a modification to the property in order to install and use an electric vehicle charging station shall include, *but is not limited to*, his or her consent to enter into a written agreement that includes, *but is not limited to*, the following” and the subsection goes on to list five minimum requirements. Because of the language “including but not limited to,” used twice within subsection (g), the lessor can most likely attach any other reasonable conditions consistent with section 1947.6.

C. Considerations in the Lease Negotiation Process

Given the new requirements in Sections 1947.6 and 1952.7, commercial and residential property owners to whom these new laws apply would be wise to confront these issues in the lease negotiation process. For example, section 1947.6 governing residential leases does not apply where parking is not provided as part of the lease agreement. A lessor of residential property may consider entering into *separate* parking contracts with its lessees to avoid application of Section 1947.6. Whereas, section 1952.7 governing charging stations at commercial properties may require the commercial lessor to allow installation of a charging station even if there are *no* parking spaces allotted to the tenant. (*See*, Civ. Code §1952.7(a)(3).) Lessors may want to consider in the lease the location of any future EV charging station so it is installed in a location that does not disrupt business or other tenants, and is near existing infrastructure, such as electricity.

As another example, Civil Code sections 1947.6 and 1952.7 each provide that if the EV charging station has the effect of providing the lessee with a reserved parking space, the lessor may charge a monthly rental for that parking space. In order to avoid future disputes over the monthly rental amount, the parties should consider including in the lease either a predetermined monthly rental or a mechanism to calculate the rental.

As another example, a commercial lessee is required to provide a certificate of general liability insurance to the commercial lessor, but there is no requirement to do so in the residential context under Section 1947.6. Both residential and commercial lessors should consider requiring the les-

see to present to the lessor a certificate of such insurance well prior to commencement of any work to modify the property.

Both residential and commercial lessors should consider reasonable standards to condition the lessor's consent to any modifications to its property for installation of an EV charging station. Such reasonable standards should be in addition to those requirements already imposed by sections 1947.6 or 1952.7, whichever applies. The lessor's conditions should not contravene "the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations." (Civ. Code § 1952.7(2).) Only "reasonable restrictions" or "reasonable standards" that do not significantly increase the cost of the electric vehicle charging station or its installation or significantly decrease the charging station's efficiency or specified performance may be considered.

Commercial and residential lessors should consider reserving in the lease the right to make future rules governing the installation, use, maintenance, and removal of any charging station, and installation, use, and maintenance of the infrastructure for the charging station.

The residential and commercial lessor should consider provisions in the lease in the event the lessee does not finish the modifications due to early termination of the lease or other reason, or if the lessee does not pay the contractors who conduct the modifications. This is particularly a concern for residential lessors who have leases with shorter terms than with commercial lessors who generally have longer lease terms and tenants with a vested commercial interest in the leased premises. However, any lessor should be concerned about the economics of installing an EV charging station. The lessor does not want to be left holding the bag if the lease terminates early and/or the lessee refuses to finish the installation or modification. The

parties should consider whether the lessee will defend and indemnify lessor from any mechanic's lien actions in connection with the modification. The lease guaranty, if any, should include the tenant's obligations to cover all costs of the EV charging station.

The parties should consider whether at the termination of the lease the lessee is obligated to remove the EV charging station and, if so, who pays for the costs of removal. The lessor may desire the lessee to remove the EV charging station if it is unlikely the EV charging station will be used by others when the lessee no longer possesses the premises. A standard provision that the lessee must remove all improvements to the property may require the lessee to remove any installed EV charging station, but it may not cover improvements to parking spaces that are not exclusively for the tenant's use and are located in "common areas."

Considering these and other concerns in the lease negotiation process, a special addendum to the lease or within the lease itself, and ensuring the lease guaranty covers such issues, will likely help avoid future disputes between lessors and lessees who desire to install EV charging stations. ■

Kevin Nimmons is a shareholder at the law firm of Hollister & Brace, PC. Kevin practices in the areas of both real estate and business. He represents commercial and residential lessors and lessees in Southern California. He can be contacted at kernimmons@hbsb.com with any questions.

PETRU CORPORATION
A FULL SERVICE LAND COMPANY

Title Searches/Reports
Title Consulting/Research
Oil, Gas, Mineral Land Consulting
Water, Geothermal, Wind & Solar
Management/Administration
Leasing & Land Contracts
Title Engineering
Right-of-Way Consulting
Environmental Studies
Subdivisions/Parcel Maps
Permits/Regulatory Compliance
Expert Witness & Due Diligence
Map Drafting / AutoCAD

TIMOTHY B. TRUWE
Registered Professional Landman
Registered Environmental
Property Assessor
250 Hallock Dr., Suite 100
Santa Paula, CA 93060-9218
(805) 933-1389
Fax (805) 933-1380
<http://www.PetruCorporation.com>
Petru@PetruCorporation.com

Have you renewed your
membership in the Santa
Barbara County Bar
Association?

See page 6 for the
2015 SBCBA Renewal
Application.