

# 1.21 GIGAWATTS! ELECTRIC CARS AND NEW CHARGING STATION LAWS

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In the 1989 film **Back to the Future Part II**, Marty McFly (Michael J. Fox) and Dr. Emmett Brown (Christopher Lloyd) travel through time to the year 2015; October 21, 2015, to be precise. In this futuristic 2015 world, highways float in the sky and all cars are equipped to fly, teenagers have traded their skateboards for hoverboards, a Pepsi costs \$50, your Nike shoes can self-lace, the Cubs just won the World Series and, much to the chagrin of this author, “the justice system works swiftly now that they’ve abolished lawyers!”

Although October is still a month away, my car doesn’t fly, a can of Pepsi costs about \$1.00, I am tying my own shoes and I am still licensed with the California State Bar to practice law. While many of the predictions in this movie remain science-fiction (put aside the fact that the Cubs are making a legitimate run at the World Series this year), the world of automobile transportation is rapidly changing with the introduction of electric cars. With manufacturers such as Ford, Nissan, Chevrolet, Mitsubishi, Volkswagen, Kia, Mercedes-Benz and BMW all offering 100% electric models, and Tesla planning to unveil its more affordable Model 3 in 2016, electric cars are becoming part of the mainstream and could someday eclipse gas-powered vehicles.

One of the biggest challenges for electric car owners is the distance one can travel on a single charge and the accessibility of charging stations away from home. In response to this growing demand, many commercial property owners have elected to install electrical vehicle charging stations (“EV Stations”) in their parking lots.

And, to assure you all that lawyers are not going away soon, our friends in the California Legislature have passed a law which attempts to remove perceived obstacles for tenants wanting to install EV Stations on the landlord’s property, while seemingly ignoring the interests of the landlords.

Effective January 1, 2015, California Civil Code section 1952.7 renders any term in a commercial lease or amendment “void and unenforceable” if that term prohibits or unreasonably restricts

the installation of EV Stations. Before discussing the restrictions created by this new law, there are a few important exemptions which should be noted. The new law does not apply to (i) a commercial property where charging stations already exist for use by tenants in a ratio equal to or greater than two stations for every 100 parking spaces, or (ii) a commercial property having less than 50 parking spaces. (Do I hear you landlords saying I'm going to go out and install the minimum number of EV Stations to avoid this law? Good strategy!)

If a landlord does not fall into one of the foregoing exemptions, the following provisions of the law apply:

- A tenant may install a number of EV Stations equal to (yes, "equal to," not a typo) the number of parking spaces allotted under its lease. If the lease does not allot a specific number of spaces to the tenant, the tenant may install EV Stations in a number of parking spaces determined by multiplying the total number of parking spaces 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 leased by the tenant.
- If a tenant utilizes an unreserved parking space for installation of an EV Station, the landlord may treat the space as a reserved parking space and impose a reasonable monthly fee for that space.
- If, under the terms of a lease, landlord approval is required for installation of an EV Station, approval or denial of the application must be in writing and may not be "willfully avoided or delayed."
- The landlord may impose "reasonable restrictions," so long as those restrictions do not significantly increase the cost of the EV Station or its installation, or significantly decrease its efficiency or specified performance.
- When landlord approval is required, the statute requires the tenant to comply with the landlord's reasonable restrictions, engage a licensed contractor to install the EV Station and, within 14 days of landlord's approval, provide a certificate of insurance naming the landlord as an additional insured.
- Once installed, the tenant is responsible for any damages to the property resulting from the installation, maintenance, repair or replacement of the EV Station, all costs for maintenance, repair and replacement, all costs of electricity associated with the EV Station and the maintenance of liability insurance in the amount of one million dollars,

naming the landlord as an additional insured with a right to notice of cancellation.

While the new law does not require the landlord to install EV Stations (see above, however, you may want to do so!) and does not require the landlord to maintain stations once they have been installed, it does preclude landlords from unreasonably prohibiting or conditioning installation. We recommend that commercial landlords consider alterations to their lease forms and/or the rules and regulations for their properties to address the potential issues with EV Stations and remain compliant with the laws. EV Station provisions could include restrictions such as the designation of specific areas for installation of EV Stations, reserve the landlord's right to relocate EV Stations and to confirm the tenant's obligation to remove the EV Station at the termination of its lease.

Although the sight of a flying DeLorean cruising through the skies remains a matter of science fiction, as electric cars grow in popularity, expect to see the presence of EV Stations increase in dramatically in the future. Unless the legislature fulfills the prophecy from Back the Future Part II and abolishes all lawyers (I'm going to join the PGA!), we will be here ready to assist landlords navigate and implement reasonable restrictions to comply with this new law.