

# Governments to Accommodate Electric Vehicle Charging Stations

*The Legislature acts to assure the availability of suitable charging stations for electric vehicles.*

**F**our years ago Governor Brown made development and success of zero-emission vehicles a priority for the State of California. Executive Order B-16-2012 (available at <https://www.gov.ca.gov/news.php?id=17472>) directed the California Air Resources Board, California Energy Commission, Public Utilities Commission, and other agencies to work with stakeholders to establish benchmarks for significantly increasing the number of zero-emission vehicles in operation.

The ultimate goal is to achieve by 2050 a reduction of transportation-sector greenhouse gas emissions to 80% less than 1990 levels. A key component of the Executive Order seeks expansion of the state’s zero-emission vehicle infrastructure to the point where it is capable of supporting one million vehicles by 2020. That’s only four years away.

## NEW LEGISLATION

In the wake of the Executive Order, the Legislature has passed numerous laws to promote plug-in electric vehicle infrastructure. Common-interest developments are precluded from effectively prohibiting or unreasonably restricting the installation or use of an electric vehicle charging station

*Terence Rex Boga is a shareholder of the law firm Richards, Watson & Gershon in the Los Angeles office. He serves as City Attorney for the City of Westlake Village and provides general counsel services for the Burbank-Glendale-Pasadena Airport Authority.*



Matej Kastelic/Shutterstock

in an owner’s designated parking space. (See Cal. Civ. Code §§ 4745, 6713.) Lessors of designated residential and commercial properties generally must allow tenants to install electric vehicle charging stations. (See Cal. Civ. Code §§ 1947.6, 1952.7.) The California Building Standards Commission is required to establish standards for installation of electric vehicle charging infrastructure for parking spaces in multifamily dwellings and nonresidential development. (See Cal. Health & Saf. Code § 18941.10.) Still more legislation, the Electric Vehicle Charging Stations Open Access Act, restricts subscription

fees and membership requirements for use of electric vehicle charging stations that require a fee payment. (See Cal. Health & Saf. Code §§ 44268 – 44268.2.)

Now, with the enactment of AB 1236—introduced by Assemblymembers David Chiu (D-San Francisco) and Evan Low (D-Campbell)—the Legislature has turned its focus to the role cities and counties play with respect to land use and building permit approvals for plug-in electric vehicle infrastructure. Supporters of the measure included the American Institute of Architects, the American Lung Association in California, the Natural Resources Defense

Council, and Pacific Gas and Electric Company. The measure was opposed by an equally diverse range of groups including the California Building Industries Association and the League of California Cities.

**PERMIT STREAMLINING**

AB 1236 adds Section 65850.7 to the Government Code as part of the Planning and Zoning Law. With one narrow exception, the statute requires cities and counties to approve administratively an electric vehicle charging station installation application via issuance of a building permit or similar nondiscretionary permit. A building official may only consider whether an application meets health and safety requirements. However, if a building official determines, based on substantial evidence, that a proposed installation “could have a specific, adverse impact upon the public health or safety,” then the city or county may require the applicant to obtain a use permit. (See Cal. Gov. Code § 65850.7(b).)

This threshold for imposing a use permit requirement is very high. AB 1236 defines the term “specific, adverse impact” as “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (See Cal. Gov. Code § 65850.7(i)(4).) Thus, it is likely that a use permit requirement can be imposed on an electric vehicle charging station only in rare instances.

Typically, a use permit requirement affords a municipality broad discretion both as to approval or denial of an application and as to imposition of conditions. AB 1236 significantly limits local government autonomy

in both respects. The measure precludes cities and counties from denying a use permit for an electric vehicle charging station absent findings that the proposed installation “would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.” The findings also must identify the basis for rejection of potential feasible alternatives of preventing the adverse impact. (See Cal. Gov. Code § 65850.7(c).) Moreover, if conditions of approval are imposed, they must be designed to mitigate the adverse impact at the lowest cost possible. (See Cal. Gov. Code § 65850.7(e).)

**ORDINANCE REQUIREMENT**

AB 1236 also requires cities and counties to enact an ordinance that creates an expedited, streamlined permitting process for electric vehicle charging stations. Jurisdictions with a population of 200,000 or more residents must adopt the ordinance by September 30, 2016. All other jurisdictions must adopt the ordinance by September 30, 2017. (See Cal. Gov. Code § 65850.7(g)(1).)

The ordinance must be prepared in consultation with the local fire department and the utility director (if the city or county operates a utility). In developing an expedited permitting process, cities and counties must adopt a checklist of all requirements that electric vehicle charging stations must satisfy to be eligible for expedited review. Applications that satisfy the information requirements in the checklist must be deemed complete. Upon confirmation of the application and supporting documents being complete, the city or county must issue all required permits or authorizations

unless there are adequate grounds for imposition of a use permit requirement. If an incomplete application is received, the city or county must issue a written correction notice detailing the deficiencies and any additional information that is required to be eligible for expedited permit issuance. (See Cal. Gov. Code § 65850.7(g)(1).)

AB 1236 is ambiguous with respect to one element of the ordinance mandate. The measure declares that, in developing the ordinance, cities and counties “may refer to” the *Zero-Emission Vehicles in California: Community Readiness Guidebook* published by the Governor’s Office of Planning and Research. Immediately after that seeming grant of authority, however, the measure declares that cities and counties may adopt an ordinance that modifies *Guidebook* checklists and standards “due to unique climatic, geological, seismological, or topographical conditions.” (See Cal. Gov. Code § 65850.7(g)(2).) This suggests that local governments actually must adhere to the *Guidebook* absent special circumstances.

**MISCELLANEOUS MANDATES**

AB 1236 imposes two other noteworthy mandates on local governments. Cities and counties that have a publically accessible website must post online the checklist of expedited review eligibility requirements and the necessary permitting documentation. Additionally, all cities and counties must accept electronic submittal of permit applications and associated documentation. (See Cal. Gov. Code § 65850.7(g)(2).)

In sum, as plug-in electric vehicles proliferate, local governments must take greater steps to accommodate the infrastructure that supports them.