

**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



**ENVIRONMENTALLY-CONSCIOUS
COMMUNITIES**

MAY 27, 2023

PRESENTED BY

LUCIA ANNA TRIGIANI, ATTORNEY AT LAW

SCOTT E. REID, ESQUIRE

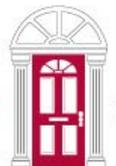
MERCERTRIGIANI LLP

MERCERTRIGIANI



Program Overview

- Electric Vehicle (EV) Charging Stations
- Solar Panel Installation
- Trash and Recycling Contracts



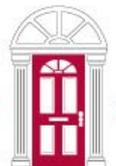
EV Charging Stations

Condominium Act

§ 55.1-1962.1

Property Owners' Association Act

§ 55.1-1823.1



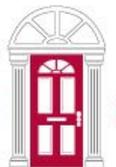
Why consider Electronic Vehicle Charging Stations now?

- Experts predict that market share will grow to **50%** by 2030.
- 2021 Virginia “Clean Car” law.
- 2020 Virginia “Right-to-Charge” law.



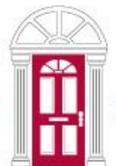


MERCERTRIGIANI



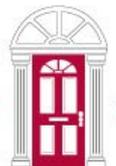
Roadmap

- Owner requests to install equipment in Units or Limited Common Element parking spaces – for private use.
- Owner requests Association to install equipment in Common Elements or Common Area – for community use.
- Owner requests to install equipment in Common Area – for private use.
- Different considerations for condominium and property owners associations.

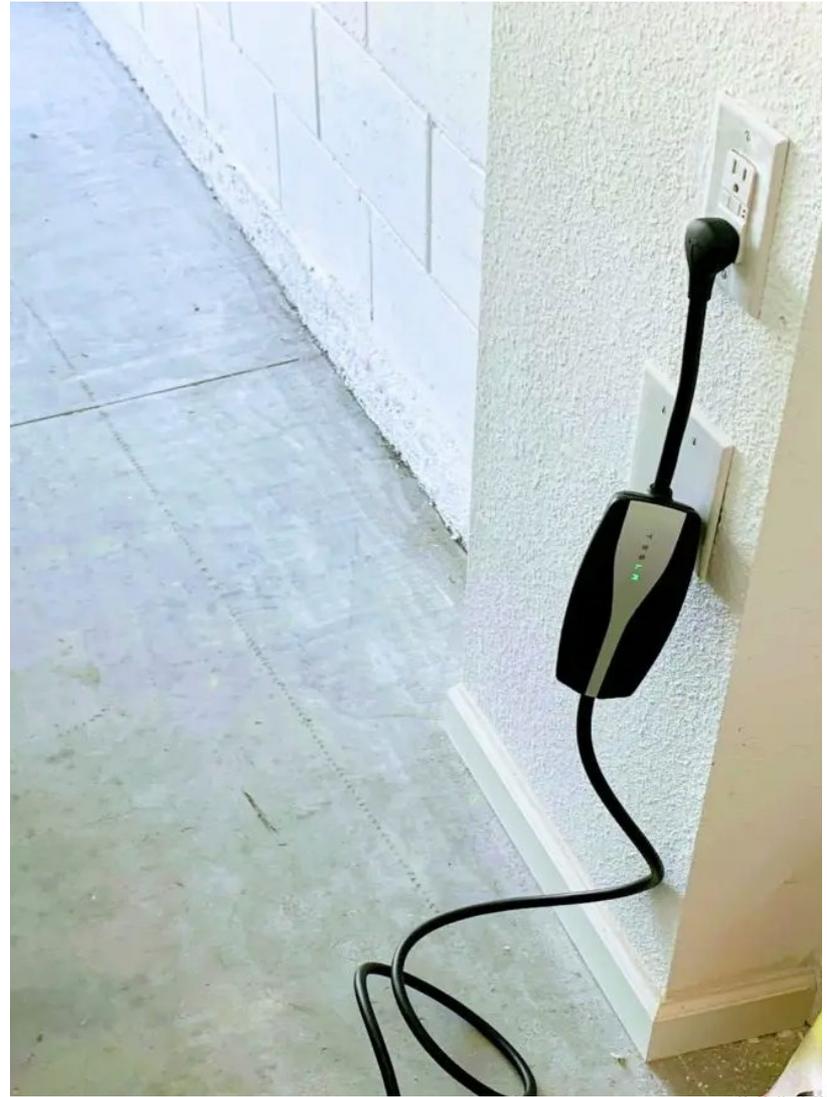


Terminology

- Electric Vehicle - **EV**
- EV Charging Station
- EV Charging Equipment



Scenario #1:
Unplugged!



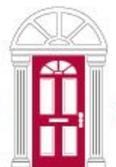
A regular 110-volt wall outlet is located in front of Mike's assigned parking space in the condominium parking garage. Mike has a charging cable and plugs into the outlet every evening to "trickle charge" his EV overnight.

Carol, whose parking space is two spaces away, buys an EV and a 20' charging cable. Carol gets home from work earlier than Mike and uses the wall outlet to charge her EV.

Mike, seeing "his" outlet occupied for hours on end, starts unplugging Carol's charger when he gets home in the evening.

Carol says nothing until one morning when she really needed the full overnight charge to get to a 9:00am meeting in Richmond -- 100 miles away.

Both unit owners demand action from the board and management.



**Installation of
EV Charging Stations
in a Unit
or
Limited Common Element
Parking Space**





Condominium Act

§ 55.1-1962.1

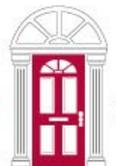
MERCERTRIGIANI



Owners May Install EV Charging Stations . . .

Except to the extent that the condominium instruments provide otherwise, no unit owners' association shall prohibit any unit owner from installing an electric vehicle charging station for the unit owner's personal use within the boundaries of a unit or limited common element parking space appurtenant to the unit owned by the unit owner.

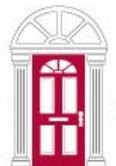
Condominium Act § 55.1-1962.1A.



. . . Unless not feasible or practicable

Notwithstanding any other provision of this chapter or the condominium instruments, the unit owners' association may prohibit a unit owner from installing an electric vehicle charging station if installation of the electric vehicle charging station is not technically feasible or reasonably practicable due to safety risks, structural issues, or engineering conditions.

Condominium Act § 55.1-1962.1B.

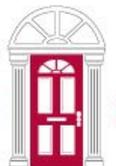


Conditions for Approval

The unit owners' association may establish conditions for approving installation of an electric vehicle charging station that the unit owner.

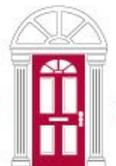
Condominium Act § 55.1-1962.1C.

Conditions are **NOT** duplicated in the Property Owners' Association Act.



Applicants may be required to provide:

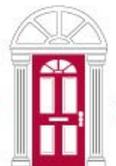
1. Detailed plans and drawings by a licensed contractor
2. Code compliance
3. Architectural guideline compliance
4. Owner pays installation, maintenance, operation, and use expenses
5. Owner indemnifies Assoc. against contractor claims
6. Owner pays removal costs
7. Owner pays for submetering
8. Installed by a licensed contractor
9. Insurance policy
10. Owner reimburses Association for any increase to common expenses



Conditions apply to future unit owners

The conditions imposed pursuant to this section on unit owners for installation of an electric vehicle charging station shall run with title to the unit to which the limited common element parking space is appurtenant.

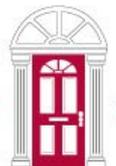
Condominium Act § 55.1-1962.1D.



Indemnification

Any unit owner installing an electric vehicle charging station in a unit or on a limited common element parking space appurtenant to the unit owned by the unit owner **shall indemnify and hold the unit owners' association harmless** from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station.

Condominium Act § 55.1-1962.1E.



Insurance

A unit owners' association may require the unit owner to **obtain and maintain insurance** covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the unit owners' association to be included as a named insured on such policy.

Condominium Act § 55.1-1962.1E.





Scenario #2: **Empowerment**

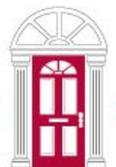
MERCERTRIGIANI



Mike and Carol each complained to the Board. The Board amended the parking rules to make clear that no one can plug into the 110V wall sockets.

Carol, who paid a \$275 Uber fare to get to Richmond, does not want to be caught powerless again. Carol buys a Level II charging station online that needs a 220V outlet but gets 60 miles of charge per hour.

Carol emails the on-site manager, asking “what do we need to do to get this charger installed in front of my parking space within the next two weeks?”



Installing EV Charging Stations on Common Elements and Common Area





MERCERTRIGIANI



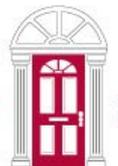
Reserved Common Elements and Common Area

- Reserved common elements (area) are common elements.
- Owners have no authority to install charging stations even in reserved common element (area) spaces.



Practical Considerations

- Installation
- Maintenance, Repair, and Replacement
- Use Policies, Rules, Compliance and Enforcement
- Fair Housing Compliance





MERCERTRIGIANI



Solar Panel Installation

Condominium Act

§ 55.1-1951.1

Property Owners' Association Act

§ 55.1-1820.1



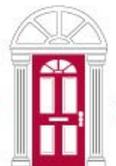
The Principle

No community association shall prohibit an owner from installing solar panels on that owner's property ***unless*** the recorded declaration for that community expressly prohibits solar panels.



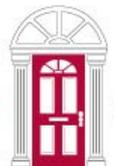
Associations May Adopt Reasonable Rules

- Rulemaking authority is statutory.
- Amendments adopted in 2020 added standards to define *reasonableness*.
- Changes require careful review to confirm association authority as well as policies and architectural restrictions.



Rulemaking Authority Applies To --

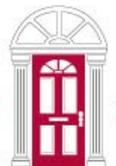
- Individual Property
- Common Property



Reasonableness Defined

A solar panel rule is ***not*** reasonable if the rule –

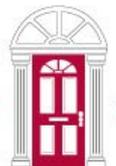
- ***Increases the cost of installation*** of the solar panel by ***five percent*** over the projected cost of the initially proposed installation ***or***
- ***Reduces the energy production*** by the solar panel by ***ten percent*** below the projected energy production of the initially proposed installation.



Unreasonableness

Burden is on the Owner

- Owner must provide sufficient documentation, satisfactory to the association, that the restriction is not reasonable.
- Documentation must be prepared by an **independent** solar panel design specialist **certified** by the North American Board of Certified Energy Practitioners and licensed in Virginia.



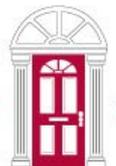
Resale Disclosure

Resale certificates issued on behalf of a community association must contain a statement setting forth any restriction, limitation or prohibition on installation or use of solar energy collection devices.



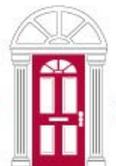
Are Restrictions Reasonable and Goal-Oriented?

- Does the declaration prohibit or limit installation of solar energy collection devices?
- Is the restriction consistent with goals and architectural standards?
- Is the restriction clearly drafted (does it make sense)?



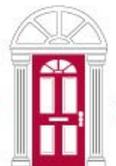
Are Restrictions Reasonable and Goal-Oriented?

- Is the rule the least restrictive way to achieve architectural standards goals?
 - Prevent or limit solar energy collection?
 - Prevent effective use of solar energy collection?
 - Create excessive expense for the property owner?
- Is the collection of solar energy for primary or exclusive use of the property?



Recommendations

- Amend recorded documents **if** community supports prohibition or limitations.
- Invite opportunity for community comment.
- Ensure architectural guidelines and changes are drafted clearly.
- Review current application forms and revise to reflect requirements.
- Ensure resale certificates solar panel restrictions are included and up to date.

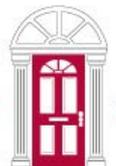


Trash & Recycling Contracts



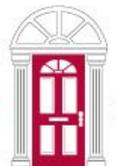
Issues

- Increased operating costs
 - Labor costs
 - Tipping fees
 - Fuel costs
- Disappearing market for recyclables
- Local government regulation
- Contract Protections



Contract Terms

- Clear terms – set expectations
- Termination –
 - **Without** cause
 - Avoid rights of first refusal
 - Definitive cure provisions
- Cost increase controls
- Performance measurements



Resources

- Guides for Association Practitioners (“GAP”), CAI Press
- Best Practice Series, CAI Press
- CAIonline.org



Discussion



**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



**ENVIRONMENTALLY-CONSCIOUS
COMMUNITIES**

MAY 27, 2023

PRESENTED BY

**LUCIA ANNA TRIGIANI, ATTORNEY AT LAW
SCOTT E. REID, ESQUIRE
MERCERTRIGIANI LLP**

MERCERTRIGIANI

