

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>

**AN OVERVIEW:
MODEL ORDINANCE TO STREAMLINE PERMITTING OF
CHARGING INFRASTRUCTURE FOR ELECTRIC VEHICLES**

Background

The number of electric vehicles (EVs) in the United States is growing rapidly and is expected to continue doing so for the foreseeable future. Federal and state government policies are encouraging greater production and adoption of EVs to achieve environmental goals, including reducing pollutants and greenhouse gas emissions. Consumer demand for EVs is rising as consumers realize that the cost of ownership is generally lower (e.g., for maintenance and fuel) and as they have been able to choose from a greater variety and range of EVs offered by automobile manufacturers. And indeed, automobile manufacturers have begun shifting more of their production to EVs as they respond to policy incentives and requirements and evolving consumer tastes, as well as the economic reality that manufacturing and selling EVs can be more profitable than manufacturing and selling traditional gasoline-powered vehicles.

To support the growing number of EVs, more charging capacity will be needed to power these vehicles, and this capacity must be deployed in a variety of settings, including at home, at work, at the roadside, and in public areas. To meet this demand, utilities, governments, and private companies are poised to invest billions of dollars to enhance the supply of EV charging stations, and as a result, there will be a corresponding increase in permitting requests to install EV charging stations. Permitting decisions for EV charging stations are made at the local level, and there is tremendous variation in the levels of expertise and experience among the local authorities having jurisdiction (AHJs) that will be called upon to evaluate the swelling number of EV charging station permitting requests.

Currently, applicants seeking permits for EV charging stations face an uneven and sometimes challenging landscape, depending on where they seek to site and operate them. Delays and surprises in the permitting process can occur due to a variety of factors, including undefined permitting requirements and processes, local AHJs' lack of familiarity or comfort with the technology, extended zoning reviews, and suboptimal coordination with electrical utilities. Lack of clarity and predictability in the permitting process can be unduly resource-intensive and time-consuming for all parties involved—including applicants, local AHJs, zoning boards, inspectors, and utilities.

Based on best practices that have emerged from jurisdictions that have been early leaders in installing EV charging stations, there are some key steps that can help make the permitting process more efficient and effective. At a minimum, publicly disclosing the process for seeking a permit—including where to find the permit application, the required steps and associated timelines, fees, and points of contact—can help set expectations and facilitate a more predictable process. From a substantive perspective, clear articulation of the requirements for a complete permit application will increase transparency and enable applicants to develop permit submissions that are more likely to be successful. Relatedly, specifying the grounds for rejecting a permit application can help applicants identify potential red-flag issues in their submissions, as well as limit discretionary factors that could unexpectedly (and in some cases, arbitrarily) derail an application. For example, California has limited permit reviews to health

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>

and safety issues so that aesthetic concerns (e.g., landscaping) are not grounds for rejecting a permit application.

The ability to review and approve permit applications for EV charging stations is a rate-limiting factor for how quickly EV charging infrastructure can be scaled to support the rapid adoption of EVs. Also, a greater consistency in permitting requirements across local AHJs in a region would help promote a more even and continuous distribution of charging capacity across geographic areas—which is critical to avoid problematic gaps in charging capacity and to enable more equitable utilization of EVs across adjacent communities. Local AHJs can help attract EV charging stations to their communities by streamlining their permitting processes and making as much information available as possible about the AHJ’s approach to permitting. In general, the more an applicant knows about the permitting process and requirements in advance, the more time and effort all parties are likely to save.

Therefore, to facilitate a more transparent and efficient process for permitting EV charging stations, we have drafted a model ordinance that reflects best practices developed and honed in more experienced jurisdictions. We encourage local AHJs to adapt and implement this model ordinance to streamline the permitting of EV charging stations and thereby accelerate the development of charging infrastructure across local jurisdictions. In so doing, local AHJs will hopefully catalyze the establishment of a robust EV charging network across states and ultimately, across the entire country.

Key Features of the Model Ordinance

The proposed model ordinance has been drafted for adoption and implementation by municipalities and counties because EV station permitting decisions are made at this local level of government. The terms and structure of the model ordinance are inspired by California’s EV charging station permit streamlining law, AB 1236, as well as similar laws that have been enacted in other jurisdictions, such as Atlanta, Des Moines, and Denver. The model ordinance allows each local AHJ to tailor the provisions to other relevant laws and regulations (e.g., electrical standards, building codes, zoning ordinances) and conditions in its jurisdiction. Key provisions of the model ordinance include:

- Allowing EV charging stations in all zoning districts/designations (Section 3)
- Specifying that only EVs may occupy areas designated as EV charging stations, and that it is unlawful for an EV to occupy an EV charging station when not connected for charging purposes (Section 8)
- Setting minimum requirements for the number of parking spaces with EV charging capacity in newly constructed or substantially altered parking facilities serving commercial buildings, industrial buildings, and residential settings (Section 3)
- Requiring AHJs to establish an expedited, streamlined permitting process for EV charging stations and to publish the checklist of requirements for expedited review on the municipality/county website (Section 4)
- Specifying that prior to submitting an application, an applicant or its authorized representative must verify that an EV charging station satisfies all requirements in the municipality’s/county’s adopted checklist, is in conformance with applicable codes and legal requirements, and will not

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>

have a “specific, adverse impact” with respect to infrastructure affected by charging station equipment, based on the enumerated criteria (Section 5)

- Allowing permit applications and supporting documentation to be submitted electronically, including with e-signatures rather than wet signatures (Section 5)
- Limiting technical review of a permit application to the local AHJ with a focus on health and safety (Section 6), and expressly stating that no homeowner’s, condominium, or other building association or neighborhood housing authority may prohibit the installation of electric vehicle charging stations, except in very specific circumstances (Section 3)
- Specifying that EV charging station equipment shall meet the requirements of relevant electrical codes and standards, and that the permit applicant is responsible for obtaining authorization and approval to connect the EV charging station to the local utility’s electricity grid (Section 7)
- Requiring an inspection prior to AHJ approval (Section 7)

These key provisions are intended to address certain core issues that local AHJs have found to be particularly important for streamlining the EV charging station permitting process; however, depending on local circumstances, AHJs also may want to consider other measures that could complement the provisions of the model ordinance, such as:

- Providing opportunities for pre-application meetings between the local AHJ and prospective applicants to align expectations and maximize the likelihood of application success;
- Appointing an ombudsperson to help applicants during the permitting process; and
- In jurisdictions with minimum parking space requirements for zoning purposes, clarifying that an EV charging space can count toward minimum parking space requirements (or alternatively, counting an EV charging space as more than one parking space for zoning purposes to incentivize the installation of EV charging spaces).

Finally, a model checklist of requirements for expedited EV charging permit applications has been provided to facilitate implementation of Section 4 of the model ordinance.

* * * * *