

July 28, 2021

New Jersey Governor Signs Into Law Bill Requiring Electric Vehicle Charging Stations

Several years ago, Governor Murphy established an aggressive plan to move New Jersey away from fossil fuels and toward a future fueled by clean and renewable energy technologies and to achieve 100 percent clean energy by 2050. In advancing these goals, on July 9, 2021, Murphy signed into law S3223, a landmark bill amending the Municipal Land Use Law (MLUL) (the law) to streamline permitting for electric vehicle charging stations (EVCS). The law establishes numerical standards and zoning standards for installation of EVCS and charging-ready parking spaces.

Under the law, the MLUL definition of "inherently beneficial use" is expanded to specifically include electric vehicle charging infrastructure. EVCS are a permitted accessory use and a permitted accessory structure in all zoning districts of a municipality. The law affects applications for new development and modifications of existing buildings:

- For an existing building, an application for the installation of electric vehicle supply equipment (EVSE) or "Make-Ready"^[1] parking spaces does not require site plan approval and shall be approved through the issuance of a zoning permit, provided the application meets certain conditions.
- For new applications for a multiple dwelling development consisting of five or more units, the law requires the developer to (1) provide 15 percent of the proposed parking spaces as Make-Ready; (2) install charging equipment in one-third of the 15 percent Make-Ready spaces as part of initial construction; (3) install the additional required charging equipment over the course of six years after receiving a certificate of occupancy, subject to a particular schedule set forth in the law; and (4) ensure at least 5 percent of the Make Ready parking spaces comply with the Americans with Disabilities Act.
- For a site plan application for developments that include a parking lot or a garage that is not supporting multiple dwelling use, the following conditions of approval apply: (1) install at least one Make-Ready parking space if there will be 50 or fewer off-street spaces; (2) install at least two Make-Ready parking spaces if there will be 51 to 75 off-street spaces; (3) install at least three Make-Ready parking spaces if there will be 76 to 100 off-street spaces; (4) install at least four Make-Ready parking spaces if there will be 101 to 150 off-street spaces; and (5) install at least 4 percent Make-Ready parking spaces if there will be 151 or more off-street spaces. In lieu of the foregoing, a developer is permitted to install EVSE.

Of note, the law permits a parking space prepared with EVSE or Make-Ready equipment to count as at least two parking spaces for the purposes of complying with a minimum parking space requirement, but this cannot result in a reduction of more than 10 percent of the total required parking. The law does not apply to a retailer that provides 25 or fewer off-street parking spaces or the developer of a single-family house.

Pursuant to the law, by August 8, 2021, the commissioner of the Department of Community Affairs (DCA) is required to publish a model land use ordinance that addresses installation, sightline, setback requirements, and other health- and safety-related specifications for EVSE and Make-Ready parking spaces by incorporating the requirements of the law. This model land use ordinance will be effective in each municipality. Each municipality is permitted to deviate from the reasonable

standards by adopting a separate electric vehicle ordinance, which cannot require more than the requirements in the model land use ordinance. Additionally, the State Uniform Construction Code Act will incorporate the requirements of the law, and the Residential Site Improvement Standards may be amended to incorporate the requirements if approved by the DCA.

A planning board, board of adjustment or land use board must require compliance with the law for all preliminary approvals effective immediately. As such, though developers are already responding to the changing market as car manufacturers announce deadlines to convert their fleets to electric vehicles, some as soon as 2025, developers must consider and implement the requirements for EVCS when designing projects and in connection with currently pending and future site plan applications.

This Alert serves only as a summary of the law. For more information or if you have questions, please contact the authors or any member of the Day Pitney Land Use team.

[1] "Make-Ready" means prewiring of electrical infrastructure at a parking space or a set of parking spaces to facilitate easy and cost-efficient future installation of electric vehicle supply or service equipment, including but not limited to Level Two EVSE and direct-current fast chargers. Make-Ready includes expenses related to service panels, junction boxes, conduit, wiring and other components necessary to make a particular location able to accommodate electric vehicle supply or service equipment on a "plug and play" basis. Make-Ready is synonymous with the term "charger ready" as used in P.L.2019, c.362 (C.48:25-1 et al.).

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