

Description of Regulatory Proposal under the Condominium Act, 1998

1. Introduction

The Ministry of Government and Consumer Services (the ministry) is seeking feedback on proposed changes to a regulation (O. Reg. 48/01) under the Condominium Act, 1998 (Condo Act).

In 2016, the Ontario government introduced the Climate Change Action Plan (CCAP). CCAP establishes a province-wide electric and hydrogen passenger vehicle sales target of five per cent in 2020. In order to accommodate the growing use and charging needs of electric vehicles (EVs), CCAP proposes to increase access to the infrastructure required to charge EVs. CCAP commits the government to establish requirements as soon as possible to make it easier for condo owners or condo corporations to install EV charging stations in existing condominiums.

2. Lower the minimum consent requirement for condominium declaration amendments to facilitate the exchange of EV parking spaces

Currently, the Condo Act provides that amending a condominium declaration requires, among other things, the written consent of the owners of at least 90 or 80 per cent of all units, depending on the type of amendment. Some condo communities may wish to amend their declaration to permit owners with EVs to exchange their assigned or deeded parking spaces with parking spaces that provide, or may be upgraded to provide, access to EV charging stations.

Proposal

The proposed change would lower the level of owners' consent required for declaration amendments to enable an EV parking exchange. The owners of at least 50 per cent of all units of a condominium would need to consent in writing to such changes, instead of 80 or 90 per cent as required by the Condo Act. The proposed change would apply to amendments to declarations that would require owners to exchange their assigned or deeded parking spots to allow owners with EVs to access EV charging stations or a parking space that is suitable for the installation of an EV charging station.

The implementation of this proposal would need to coincide with the coming into force of certain amendments to the Condo Act which would allow regulations to set different levels of consent by condo owners to certain amendments to condominium declarations.

Please feel free to provide feedback on the above proposal.

3. Eliminate notice and approval requirements to install EV chargers and related equipment

Installing EV charging equipment in a condo property may require a change to the common elements, assets of the corporation or a service provided by the corporation to the owners. Currently, changes by a unit owner to the common elements (whether exclusive or non-exclusive use) require the approval of the condo corporation's board of directors and may require notice to other owners or their approval. Similarly, changes made by the condo corporation to the common elements, assets, or a service may require notice to unit owners or their approval. In both cases, whether notice or approval is required depends on the nature, purpose or cost of the change.

Proposal

The proposed change would provide an exemption to these notice and approval requirements if the change is for installing EV charging equipment and related infrastructure (e.g. electrical conduits, subpanels and wiring).

The implementation of this proposal would involve creating a new regulation under the existing regulation-making power to exempt the application of section 97 or 98 of the Condo Act.

In addition to providing general feedback on the above proposal, please provide feedback on the following questions:

1. Should there be any restrictions or limitations on this exemption (e.g., if the installation involved expenses above a certain dollar or percentage threshold)?
2. What controls (if any) should be put in place to ensure that any expenses incurred by the condo corporation are incurred responsibly?

4. Require condo boards to approve the installation of an EV charging station by owners if certain conditions are met

Proposal

The proposed change would specify that a condominium corporation must approve a condo owner's request to install an EV charging station if the proposed installation meets certain conditions. This would apply where a unit owner owns the parking space or has an exclusive right to use it. Conditions could include:

- The installation complies with applicable safety requirements and the Ontario Electrical Safety Code.
- The equipment is installed by a licensed electrical contractor.
- Installation costs, associated electrical costs, and any future modifications must be made at the owner's expense.
- A requirement for a condo owner to carry insurance regarding the charging station and indemnify the corporation.
- A requirement for a condo owner to obtain and pay for an electrical capacity audit, if needed, and if directed by the condominium corporation.
- A requirement for a condo owner to obtain and pay for a structural integrity assessment regarding the installation request, if needed, and if directed by the condominium corporation.

The proposal would allow the condominium corporation to specify the type of EV charging equipment permitted for installation. This would allow condo corporations to manage electrical capacity and enable a common electrical infrastructure to facilitate installation of additional EV charging stations.

The proposal would specify that the condominium corporation could decline approving a unit owner request to install an EV charging station only for the following reasons:

- The installation does not meet the above conditions.
- Even if the installation meets the above conditions, the board determines that the installation would:
 - adversely affect the electrical capacity of the condominium property or assets of the corporation;
 - adversely affect the structural integrity of the condominium property or assets of the corporation; or,
 - result in a substantial expense to the corporation.

The proposal would specify that no owner could be prohibited, restricted or subject to unreasonable delay or cost by a condominium corporation when requesting to install an EV charging station. Further, the proposal would specify that a request for approval

shall not be wilfully avoided or delayed. These specifications would be made under certain provisions of the Condo Act which allow regulations to prescribe provisions that are deemed to be included in the declarations of all condos in Ontario. No condo corporation would be able to amend or repeal the provisions that are deemed to be included in the declarations of all condos as a part of this proposal.

If a condo owner's request was approved by the board, the owner would be required to enter an agreement with the condo corporation under section 98 of the Condo Act (to deal with matters such as allocating the cost of the proposed alteration between the corporation and the owner).

In addition to providing general feedback on the above proposal, please provide feedback on the following questions:

1. What should the process be for an owner to request the installation of an EV charging station and a board to respond to a request made by an owner? Should there be a minimum amount of time for a board to respond to and approve or decline a request?
2. If a unit owner met all conditions, are there other costs that a condominium corporation might incur in approving a unit owner's request to install an EV charging station? What should be considered a substantial cost?
3. What should the process be to determine the need for a structural assessment or electrical capacity audit? Who should be able to conduct a structural integrity assessment and an electrical capacity audit and determine if there are adverse effects to either the structural integrity or electrical capacity? Are there any processes or best practices that should be followed to complete this assessment and determine if there are any adverse effects? Do you agree that an owner should pay for a structural assessment or electrical capacity audit?

5. Use of reserve funds to support EV charging installation

Proposal

The proposed change would permit condominium boards to use a condominium corporation's reserve fund to pay for electrical capacity upgrades to support EV charging equipment installation. This would require proclaiming into force new provisions on the use of reserve funds in the Condo Act and supporting regulations.

The proposed change would also mandate that every condominium corporation's reserve fund study must include in the financial analysis the estimated costs to install

supporting EV charging infrastructure in parking facilities (if any) by 2022. The proposed change in the reserve fund study would, at minimum, require that installed electric subpanels:

- be distributed within 40 metres of any parking space;
- be appropriately placed to serve 33% of parking spaces; and,
- provide for a minimum 40 amp current to each subpanel.

In addition, regulations would require every condo property that has parking facilities to:

- Conduct a reserve fund study update within 12 months of the changes taking effect to include the estimated costs of electrical subpanels specified above.
- Develop and implement a plan to fund the reserve fund that reflects the updated reserve fund study amounts for electrical subpanels.
- Install electrical subpanels in parking facilities by 2022.

In addition to providing general feedback on the above proposal, please provide feedback on the following questions.

1. Are there any situations where a condo corporation should be temporarily exempted from the requirement to include the costs of subpanels in the reserve fund study (e.g., a condominium corporation is currently in a budget deficit, the reserve fund does not have enough money to pay for other repairs, or that owners are levied a special assessment to pay for emergency repairs)?
2. For how long a time period should the exemption described in question 1 apply?
3. What is the likely cost impact of this proposal for condos?
4. Should this proposal apply to all condos with parking spaces (i.e., including commercial and industrial condos) or should it only apply to residential condos?

6. Requirement to install Level-2 charging stations upon request of owners

The proposed change would require a condominium corporation to install a minimum of two Level-2¹ charging stations in parking spaces that are part of the common elements, upon written request from at least the lesser of the owners of five (5) condominium units or the owners of five percent of all condominium units. This would include, but not be limited to temporary parking or visitor parking spaces, provided that cumulatively two such parking spaces exist, or could reasonably be designated.

¹ Level 2 charging stations use a 240 volt system and can fully charge a non-charged vehicle in about four to six hours.

The charging stations would need to be installed without unreasonable delay and the condominium corporation would retain the right to levy fees for use of the charging stations.

In addition to providing general feedback on the above proposal, please provide feedback on the following questions.

1. Are there any situations where a condo should be temporarily exempted from the requirement to install EV chargers (e.g., a condominium corporation is currently in a budget deficit, the reserve fund does not have enough money to pay for other repairs, or that owners are levied a special assessment to pay for emergency repairs)?
2. For how long a time period should the exemption described in question 1 apply?
3. What is the likely cost impact of this proposal for condos?
4. Should this proposal apply to all condos with parking spaces (i.e. including commercial and industrial condos) or should it only apply to residential condos?
5. Should this requirement only be triggered if, for example, five distinct unit owners make the request or should a single owner of five units be able to trigger the requirement? If the latter, should a unit owner's parking and storage lockers count towards the number of units or only their primary (e.g. residential) units count?