

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS**

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MEMORANDUM FOR: Jim McGowan, Executive Director
California Building Standards Commission

FROM:  Richard Weinert, Deputy Director
Division of Codes and Standards

SUBJECT: Review of 2013 CALGreen Code Rulemaking Regarding
"Accessibility of Electrical Vehicle Charging Stations"

This memorandum provides an overview of the issues related to the proposed CALGreen regulations for EVSE and EVCS as noted by Department of Housing and Community Development (HCD) Division of Codes and Standards Legal Affairs Division, as requested by the California Building Standards Commission Code Advisory Committee (CAC) Chair, Robert Raymer.

The Legal Affairs Division (LAD) of the Department of Housing and Community Development (HCD) researched the impact of the various civil rights laws, both Federal and State, as applied to construction, design of EVSE and EVCS located in common use areas of multifamily dwelling units, specifically if there would be any violations of these laws as it relates to persons with disabilities. The relevant laws reviewed were the Federal Fair Housing Amendments Act^{1,2} (FHAA), the Americans with Disabilities Act (ADA) Title III (public accommodations)³, Architectural Barriers Act⁴, the Fair Employment and Housing Act⁵, and the Unruh Civil Rights Act (Unruh Act)⁶.

We have provided the results of our analysis below for your use and information.

I. Does the FHAA, the ADA, the FEHA, or the Unruh Act require a housing provider, if such provider installs EVSE and EVCS in a common use area on the building site, to dedicate an EVCS to be used only by persons with disabilities?

The FFHA, the ADA, the FEHA and the Unruh Act would not require a housing provider to dedicate an EVSE/EVCS to persons with disabilities nor would it require any signage (for persons with disabilities) for the EVSE/EVCS. However, these laws mandate that

¹ 42 U.S.C. section 3604

² FFHA purpose is to insure that newly constructed multifamily housing is built in accordance with the Fair Housing Act's accessibility requirements so that it is accessible to and usable by people with disabilities, and, in particular, those who use wheelchairs.

³ 42 U.S.C.A. section 1983 and 28 C.F.R. Part 36 which applies only to public accommodations for the general public.

⁴ 42 U.S.C. sections 4151 *et seq.* The ABA requires access to facilities designed, built, altered, or leased with Federal funds.

⁵ Cal. Gov. Code, sections 12955 *et seq.*

⁶ Cal. Civ. Code sections 54 *et seq.*

there shall be equal access by all users of any amenities provided in the common use areas or in the delivery of goods and services. As HCD continues to examine this issue, it is more appropriate for the EVSE/EVCS to be denoted as providing a service as opposed to treating the “charging station” as a parking space.

Additionally, the legislative intent of the various civil rights laws are implemented to not discriminate on the basis of disability and to safeguard equitable treatment between persons with disabilities and persons without disabilities, not to give any group or class of citizens an unfair advantage.⁷

The review is based upon an EVSE/EVCS located in a common use area of multifamily dwellings with 17 or more dwelling units and available to all residents and guests authorized to be on the private property.

The proposed regulations mandate a specified percentage, similar to ADA requirements, that EVSE/EVCS will be of a uniform size, i.e., including accessible elements found in parking spaces (slope, length and width) to be used by a person with disabilities in a van or a car. HCD has provided language that the EVSE/EVCS be located near an approved accessible parking space that does, in fact, contain signage identifying the accessible parking space (where practicable). An access aisle leading to an accessible route in the primary or an alternate location on an accessible path, with an access aisle within a short distance of the main facility, is mandated. Thus, in most instances, a person with disabilities would have equal or greater access to the installed EVSE/EVCS because when installed, it would be adjacent to an accessible parking space providing persons with disabilities with not only one EVSE/EVCS, but two charging stations, with one being a dedicated parking space.

It should be noted that persons with disabilities are entitled to “equal” access. Specific designation of a dedicated EVSE/EVCS for persons with disabilities may create an advantage that is not legally mandated.

II. Does federal law require that the EVCS be available and accessible to persons with disabilities?

Federal law does not require a State to provide a level of care of specific services, *but* once a State chooses to provide the service or mandate that the service is provided, the service must be done in a non-discriminatory fashion. Therefore, in this case, if the State mandates that all newly constructed multifamily dwellings of 17 dwelling units or more have EVCS equivalent to at least 3 percent of the total mandated parking spaces and at least one EVCS, then the law requires that the EVCS be readily accessible and usable by persons with disabilities.^{8,9}

⁷ Elbert vs. Department of Corrections (S.D.N.Y 2010) 751 Fed. Supp. 2d, 590)

⁸ 42 U.S.C. section 3604 (f) and 24 C.F.R. section 100.200 *et seq.*; Final Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9, 472 (Mar. 6, 1991)

⁹ Title III of the ADA provides, “No individual may be discriminated against on the basis of disability in full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person, private entity, who owns leases or operates a place of public accommodation.”

III. Would requiring housing developers/providers to build the “infrastructure” for future installation of the EVSE trigger accessibility requirements?

Possibly. If a final plan is approved and permitted and the infrastructure for the future EVSE does not appear to provide for an accessible EVCS, challenge to that building plan could be made through civil litigation. The FHAA and the ADA are civil rights laws, not building codes. The fact that there are presently no specific requirements or guidelines for accessible EVCS do not mean that there is no need to make any EVCS accessible and the same would apply to the plans submitted indicating the future infrastructure.

IV. Would the construction of an EVCS that is: 1) on an accessible route; 2) provides the length, width, slope and access aisle identical to the dimensional requirements of an accessible parking space; 3) does not contain “accessibility signage,”; and 4) is available for all users, with or without disabilities, satisfy the requirements of the fair housing and public accommodation laws?

Yes. The construction of an EVCS that is: 1) on an accessible route; 2) provides the length, width, slope and access aisle identical to the dimensional requirements of an accessible parking space; and 3) is available for all users, with or without disabilities, does satisfy the requirements of the fair housing and public accommodation laws and no signage for persons with disabilities is required.

It is important to note that the EV charging stations, as proposed by HCD, are not required to be accessible until the charging service is provided in the common use areas of the multifamily housing development. Only then, under the law, a service provider must provide equal access.

V. Can an EVCS and an accessible parking space share the same 5-foot access aisle required for the accessible parking space?

Yes. An EVCS and an accessible parking space can share the same access aisle required for accessibility. Parking spaces must be wide enough to allow people using wheelchairs or mobility aids to move between cars and to enter cars or vans. Accessible parking spaces must be at least 96 inches wide and have an adjacent access aisle that is 60 inches wide. The 60-inch access aisle is regarded as a minimum and it is standard for people using wheelchairs to transfer into and out of cars, though it is deemed by some users as too narrow for safe and comfortable use for people who drive vans. The Fair Housing Act guidelines do not require nor specify the size of van accessible access aisles. It should be noted that the only nationally accepted design standard that contains such a specification is the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which specify that a van parking access aisle must be a least 96 inches wide and required at sales and rental offices.¹⁰

If the EVCS is going to meet the needs of all potential users of the electric vehicle charging service, HCD should mandate at least the minimum of 60 inches for the aisle.

¹⁰ ANSI 117

VI. Would a housing provider that installs an EVCS in a common use area be required to provide equal access for: 1) reach ranges; 2) clear floor spaces; 3) controls and operating mechanism (tight grasping, pinching or twisting of the wrist); 4) force required to activate controls at 5 pounds; 5) accessible route from vehicle to the charger; 6) accessible route from charger to buildings on site; 7) accessible route from the charger to other common use areas/on the housing site?

The Federal and State civil rights laws mandate that there is full and equal enjoyment for all persons including persons with disabilities, but does not mandate any special privilege. A violation of the FHAA, the ADA when applicable, the FEHA and the Unruh Civil Rights Act occurs when there is discrimination, in this case, on the basis of persons with disabilities. The goals of these laws are to ensure evenhanded treatment between persons with disabilities and persons without disabilities, not to give any group of persons or class an unfair advantage.

In applying the legislative intent and the law of the civil rights laws, if 1) reach ranges; 2) clear floor spaces; 3) controls and operating mechanism (tight grasping, pinching or twisting of the wrist); 4) force required to activate controls at 5 pounds; 5) accessible route from vehicle to the charger; 6) accessible route from charger to buildings on site; 7) accessible route from the charger to other common use areas/on the housing site will provide equal access for persons with disabilities to use the EVSE and the EVCS, the same as persons without disabilities, then these requirements must be mandated and complied with to avoid violating Federal and State law.

I hope this information is useful. As always, you may contact me or the State Housing Law staff if you have any questions or concerns.