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CON·STRUCT

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Innovative Transportation Solutions: CleanBC and Charging Stations

With great fanfare, the Province of British Columbia in December 2018 released a new climate action strategy known as the CleanBC plan. A primary objective of the CleanBC strategy is for every new car sold in B.C. to be a zero emission vehicle by 2040. A zero emission vehicle is one that has no tailpipe emissions and runs on a fuel cell or battery.

One strong criticism of the strategy is that the proposed legislation behind CleanBC does not include a clear plan on how to increase the number of charging stations or handle electricity demands. As electric vehicles become more affordable, a lack of charging station infrastructure may be hindering widespread adoption. Within this context, there are steps that local governments can take now to prevent a lag between infrastructure supply and electric vehicle ("EV") demands.

How It Is Being Done

Although the CleanBC plan is a new initiative, many municipalities have already been supporting low emission and zero emission vehicle infrastructure through development requirements.

For example, a number of municipalities in the lower mainland now require developers, as a condition of rezoning, to enter into section 219 covenants to secure the provision, installation and maintenance of electric charging infrastructure within the development's parking areas. Such infrastructure typically includes energized outlets dedicated for EV charging, as well as the provision of EV supply equipment. These section 219 covenants are often coupled with statutory rights of way and/or easements to ensure that strata owners and occupiers have access to the EV charging infrastructure.

Similarly, some municipalities are also requiring all residential parking spaces for new dwelling units to include an energized outlet capable of supporting EV charging. Outlets capable of EV charging differ, ranging from a standard household outlet (L1), to DC Fast Chargers (L3), which require high powered equipment to be installed and maintained and are typically found in clusters. A benefit to requiring charging capabilities in each stall rather than in a cluster of L3 fast charging stations is that parking spaces in strata are often reassigned or sold without regard to charging station location. Therefore, clustering may lead to not all residents having access to a charging station when needed. The downside, of course, is that residents may bear the cost of providing commercial charging stations rather than the developer if fast charging capabilities are desired.

These requirements are either being negotiated as part of a rezoning process or are being mandated through amendments to zoning bylaws and parking requirements. A number of local governments are also including supporting language in their OCPs, Environmental Sustainability Plans or other high-level policy documents to support their EV policy initiatives and the imposition of EV infrastructure requirements through rezoning processes. Local governments may also use mechanisms such as density bonuses and community amenity contributions to ensure charging stations will be available for new developments.

The more challenging problem is where there are existing multifamily buildings without the necessary EV charging infrastructure in place. Renovating to provide a source of electricity for EV charging stations in existing shared parking areas is often expensive and complicated, especially where an existing strata corporation is involved or where you have a landlord of a non-stratified rental building reluctant to permit retrofitting.

Thinking Ahead

Is everyone going to fund their own electric vehicle charging station? No. Instead, a viable cost-effective solution is necessary to achieve B.C.'s goal.

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If there is sufficient EV infrastructure available at an affordable price, then consumers will consider investing in electric vehicles rather than keeping their own gas-powered vehicles, which will depreciate and become valueless as soon as this policy is set into motion. Two key barriers prevent private sector EV infrastructure deployment: onerous requirements for approval under the *BC Utilities Commission Act* in respect of charging a fee for using EV infrastructure; and the small number of vehicles (potential customers) presently in British Columbia.

So, how can EV stations be encouraged, particularly in small municipalities where providers may not see an incentive to enter the market?

One solution may be partnering agreements. The empowering provision for partnering agreements is s. 8(2) of the *Community Charter*, which states "[a] municipality may provide any service that the council considers necessary or desirable and may do this directly or through another public authority or another person or organization." A "service" is defined in the schedules to the *Community Charter* and the *Local Government Act* to mean an activity, work, or facility undertaken or provided by or on behalf of a municipality or regional district. Because a British Columbia local government may provide any service that the council or regional board considers necessary or desirable, this criterion would appear to be easy to satisfy, subject of course, to the interest of the local government in providing the service. Should a local government pursue this approach, legislation allows assistance to businesses in this situation, which would otherwise be prohibited, enabling some creative solutions to incentivize a service provider to partner with the local government to provide the service. Further, subsidies by local governments could encourage EV infrastructure placement in areas that otherwise would be cost prohibitive from an operational standpoint.

Using a partnering agreement to provide EV charging infrastructure has the benefit of removing the service from political involvement in day to day operations. Long term strategic plans and objectives can be set by agreement, and the local government would remove itself from the operational decisions related to the service. This could potentially result in better infrastructure solutions than a wholly public or wholly private option.

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Emily has been working in the area of local government and commercial real estate law since she moved to B.C. in 2015. With a background in Urban and Environmental Planning, Emily brings a practical approach to the legal advice that she provides. Emily has experience in relation to a broad range of solicitor and litigation matters. Emily has acted for local governments in mediation and has appeared in Provincial and Supreme Court, as well as a variety of administrative tribunals, including an expropriation inquiry hearing, a development permit appeal and representing a municipality as an intervenor in a Federal Public Sector Labour Relations and Employment Board matter. Emily has written and presented on a variety of topics of interest to local governments, including environmental issues, urban agriculture and development legislative tools.

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