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Monthly  
Newsletter  
September 2022

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Real Estate

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# Legal Aspects of Electric Vehicle Charging Stations

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## Key Take-aways

- 1.** In the case of co-ownership, the installation of electric vehicle charging stations (still) requires a qualified majority decision, but not unanimity.
- 2.** Tenants have no legal entitlement to an electric vehicle charging station. Where the landlord does, however, equip the parking spaces with charging stations, this may result in rent increases.
- 3.** Electric vehicle charging stations must be installed in compliance with the cantonal building regulations. Furthermore, there are differing cantonal and municipal subsidy programs.

## 1 Introduction

More and more **electric vehicles circulate** on Swiss roads. Pursuant to the Federal Statistical Office, the number of newly registered electric cars **increased by over 62%** in 2021 compared to 2020. Electric cars are usually charged at home at a private electric vehicle (EV) charging station. This presents **owners** of residential and commercial properties with various legal issues.

## 2 Private Law Aspects

### 2.1 Ownership

No special questions arise in the case of properties under **sole ownership**. However, in the case of **condominium ownership**, the parking spaces located on the property are usually jointly owned by the condominium owners. In particular underground garages typically constitute a separate condominium unit which is **co-owned by the entitled condominium owners**. In such cases, each parking space generally represents a co-ownership share. The allocation of the respective parking spaces (exclusive right of use), the use and the relationship between the co-owners is regulated in separate **co-owner regulations**. If a condominium owner wishes to install an EV charging station in the parking space allocated to him or her, he or she must **have this approved by the co-ownership**, as this results in a change to the co-owned areas.

If a condominium owner only intends to install an electric vehicle charging station for his own use in his/her parking space, this should not cause any complications as long as said co-owner pays for the individual connection and the electricity him or herself. If a large number of owners connect to the electricity network of the building, the capacity of the building network is unlikely to be sufficient, and there is a risk of a network breakdown. Accordingly, it will regularly be necessary to **establish a garage-wide electric vehicle charging infrastructure with the necessary capacity**. Possible options are the installation of the complete infrastructure for the entire garage or the installation of a basic infrastructure that allows each individual parking space to be connected to the system at a later point if necessary. In both cases, there is **potential for conflict if not all co-owners are willing to** participate in such an investment.

The law addresses such conflicts by requiring a **certain quorum of consent from the co-owners**, depending on the type of works to be carried out on co-owned areas.

- **Necessary structural measures** serve to maintain, restore and renew the co-owned areas. They are necessary to maintain the value and usability of the co-owned areas. Decisions on implementing such measures require a **simple majority in numbers of owners**.
- **Useful structural measures** are aimed at increasing the value, improving the economic efficiency or usability of the co-owned areas. Decisions on implementing such measures requires a **majority in numbers as well as in value of** the co-ownership shares.
- **Luxurious structural measures** are only aimed at improving the appearance and convenience of the co-owned areas. In principle, they require the **consent of all co-own-**

**ers**. Exceptionally, a qualified majority (majority of votes and shares) is sufficient, provided that the opposing co-owners are **not permanently impaired in their right of use** and the other co-owners **assume their share of the costs**.

The co-ownership regulations may deviate from these statutory rules or special rules may be agreed for certain installations. If there are no special regulations, the question arises as to whether the installation of an **electric vehicle charging station** constitutes a **necessary, useful, or luxurious structural measure**. So far, there is **no case law** on this issue. The majority of legal doctrine and practice qualify the construction of an electric vehicle charging station in the co-owned areas as a **useful structural measure**. Thus, an electric charging station is not merely for convenience, but is also not to be considered a strictly necessary investment in the maintenance of the property. Rather, the installation increases the value of the garage and improves its economy and, in particular, its usability. Accordingly, a resolution to install a charging infrastructure generally requires a **majority of votes and co-ownership shares**. If in the future only electric cars will be permitted as new vehicles, the installation of an electric charging station may be qualified as a necessary structural measure, which would only require the consent of the (simple) majority of the co-owners.

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## A majority of votes and co-ownership shares is required.

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If the co-owners decide to invest in an electric vehicle charging station for their parking area or underground garage, it is advisable to govern the organization and use of the charging station or stations and, in particular, allocate the costs of the respective electricity consumption in the co-ownership regulations.

If a co-owners' association agrees to the installation of an electric vehicle charging station, all co-owners are obliged to bear the costs in proportion to their shares. However, if the installation is limited to the basic extension, the options for action of the co-owners' association are limited if a co-owner continues to charge his or her vehicle at a general socket in the garage (without a separate meter) in order to avoid the costs for the connection to the basic extension. In principle, the co-ownership regulations shall expressly provide for an obligation to connect to the electric charging station infrastructure. If this is the case, the co-owners' association could take legal action against the co-owner in question. However, in practice, taking legal action will likely be disproportionate to the costs involved. Exclusion from the co-owners' association would also likely not be possible for lack of a sufficiently serious violation of the regulations.

## 2.2 Leases

In the case of leases, **the tenant is in principle not entitled** to the installation of an electric vehicle charging station unless this has been expressly assured by the landlord. If the landlord complies with the tenant's request voluntarily or on the basis of a contractual obligation, entering into a binding agreement on the organization of the installation of the charging station and, in particular, the costs for the electricity supply is advisable.

If there is no contractual entitlement to an electric vehicle charging station and the landlord does not install a charging station even on a voluntary basis, the tenant may install an **electric vehicle charging station in the rented parking space at his or her own expense**. However, in such case the consent of the landlord must be obtained (Art. 260a of the Swiss Code of Obligations ("CO")). If the landlord consents to the installation of an electric vehicle charging station by the tenant on the rented parking space, the landlord may only demand the restitution to original condition upon termination or expiry of the lease if this has been agreed in writing. Otherwise, upon termination or expiry of the lease, the tenant is free to either remove the electric vehicle charging station or to leave it at the leased property. If the tenant decides in favor of the latter, he or she may **claim compensation for the added value**, as the leased property has increased in value due to the charging station financed by the tenant.

The initiative to invest in an electric vehicle charging station or electric charging infrastructure does not necessarily have to come from tenants. Landlords are also likely to have noticed the trend towards electromobility and have an interest in modernizing and adapting their properties to current and future needs. This raises the question of whether the landlord may **pass on the costs** of an investment in an electric vehicle charging infrastructure to **the tenant**.

In principle, a **rent increase is always possible as of the next possible termination date**, provided this does not lead to an excessive rent. In the case of additional services, the increase is also permissible during the fixed term of a lease if this has been expressly reserved. As a rule, there is no excessiveness if the rent increase is due to an additional service provided by the landlord (Art. 269a let. b CO). The installation of an electric vehicle charging station will likely be qualified as such an additional service. Pursuant to Art. 14 para. 4 of the Ordinance on Tenancy and Lease (VMWG), rent increases are not excessive if they are within the reasonable interest rate, amortization and maintenance of the investment. Accordingly, a **reasonable rent increase for the installation of an electric vehicle charging station will likely be considered permissible**. However, the landlord must notify the tenant of the rent increase at least ten days prior to the start of the notice period, using the form approved by the respective canton, and provide the underlying reasons.

## 3 Public Law Aspects

Buildings and installations may only be erected or altered with **permission from the competent authorities**. Whether the construction of an electric vehicle charging station in a car park or parking garage requires a **building permit** varies from canton to canton. In the canton of Zurich, for example,

the construction of facilities, equipment and fittings as well as the construction of vehicle parking spaces require a building permit. This will likely include the installation of electric vehicle charging stations. In the canton of Zurich, the permit can be obtained through the notification procedure (except in the case of increased commercial use).

Some cantons provide for an **obligation to install** charging stations under certain conditions. In the canton of Berne, operators of traffic-intensive projects (annual average of 2,000 or more trips per day) are obliged to install charging stations for electric vehicles. The same applies to the canton of Basel Stadt, where an appropriate proportion - but at least 25% - of parking spaces must be equipped with charging stations for electric cars (§ 74 of the Building and Planning Act of the canton of Basel Stadt).

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## Cantons and municipalities promote investments in electric vehicle charging stations.

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## 4 Cantonal Subsidy Programs

The growing need for electric vehicle charging stations is undeniable given the trend towards more electro mobility. There are various political initiatives with the aim at ensuring that this need is met. For example, under motion no. 21.3371, the **Federal Council** was instructed to create a legal framework for an entitlement to tenants and co-owners to charging stations for electric cars. The Federal Council has requested that the motion be rejected. The motion is currently being discussed in Parliament.

To further promote electro mobility, various cantons and municipalities provide for **cantonal and municipal subsidy programs**. For example, the canton of Berne subsidizes charging stations for electric cars at companies with a maximum of CHF 20,000 per charging station or CHF 60,000 per location. In the canton of Zurich, the cantonal government recently applied to the cantonal parliament for a framework credit of CHF 50 million. The city of Zurich has launched a subsidy program that provides a subsidy of up to 60% of the costs of the charging infrastructure and the direct installation costs or CHF 150 per kW of connected load for private electric vehicle charging stations.

## 5 Conclusion

Due to increasing electro mobility, there is a growing need for new electric vehicle charging stations. In the case of co-ownership associations, the question of installing electric vehicle

charging stations will probably arise regularly in the future. At least today, the installation of electric vehicle charging stations requires a qualified majority of votes and shares of the co-owners. The need for charging stations will likely also increase in the case of leases, whereby landlords are likely to be entitled to pass on the costs of installation, at least partially, to the tenants through appropriate rent increases.



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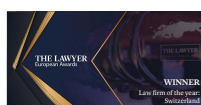
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