

SUBSTITUTE NO. 1 TO ORDINANCE NO. 23-027

AN ORDINANCE TO AMEND CHAPTER 42 OF THE WILMINGTON CITY CODE TO PERMIT PERSONS RESIDING IN CERTAIN RESIDENTIAL PROPERTY TO USE, INSTALL, AND MAINTAIN CURBSIDE CHARGING CORDS AND ELECTRIC VEHICLE CHARGING STATIONS IN THE PUBLIC RIGHT-OF-WAY.

#0324

Sponsor:

Council
Member
Johnson

WHEREAS, the 151st General Assembly adopted Senate Bill No. 187 which requires the City of Wilmington to adopt an ordinance that establishes a procedure to obtain a permit for the installation of an electric vehicle charging station on real property zoned for residential use in the public right-of-way; and

WHEREAS, Council finds that the provisions of the ordinance with further the public health, safety, and welfare.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 42 of the City Code is hereby amended to add a new Division 3 in Article III with the language as follows:

**Division 3. – ELECTRIC VEHICLE CHARGING STATIONS IN THE PUBLIC
RIGHT-OF-WAY**

Sec. 42-246 Definitions.

(a) *ADA* means the Americans with Disability Act and any substantially similar state or local law or regulation related to accessibility standards for individuals with a disability.

(b) *Aggrieved person* is a person whose legal rights or property interests have been, or likely will be, injured in fact by the approval, denial, or revocation of a permit or by the issuance of a civil violation under this Division and includes a person who is entitled to receive community notice and submits a timely written objection to the installation of an electric vehicle charging station in the public right-of-way.

(c) A *block* means: the portion of the public right-of-way located between two adjacent intersections if the distance between them is greater than 200 feet; or, if the distance is not greater than 200 feet, then that portion of the public right-of-way running 100 feet in both directions away from the location of a proposed electric vehicle charging station regardless

of any intersection located within that portion; or, if the location of the proposed charging station is on a corner lot, then that portion of the public right-of-way running 100 feet in all directions away from the intersection in which the corner lot is situated.

(d) *Curbside charging cord* means an electric vehicle charging system that operates on a 15 to 20 ampere (amp) breaker on a 110-120 volt AC circuit connected to an electric vehicle with a UL listed power-supply cord that is used to facilitate a Level 1 charging system.

(e) *Charging level* means the standardized indicators of electrical power or voltage at which an electric vehicle's battery is recharged. Levels 1 and 2 are the only electric vehicle charging levels that may be permitted in the City under this Division and operate under the following specifications:

a. *Level 1* means a 110-120 volt AC charging system that operates on a 15 to 20 amp breaker on a 120 volt AC circuit.

b. *Level 2* charging equipment means electric vehicle supply equipment that operates on up to 40-amp 120 to 208/240-volt circuit and provides power between 3.3 kW and 6.2kW.

(f) *City* means the City of Wilmington and, in the context of the permitting components of City government, the Department of Land Use and Planning, Department of License and Inspection and Department of Public Works, and their Directors, Commissioners, and designees.

(g) *DRPC* means the City of Wilmington Design Review and Preservation Commission.

(h) *Electric vehicle* means either a battery electric vehicle that draws propulsion energy solely from an on-board electrical energy storage device during operation that is charged from an external source of electricity or a plug-in hybrid electric vehicle with an on-board electrical energy storage device that can be recharged from an external source of electricity which also has the capability to run on another fuel.

(i) *Electric vehicle charging station* or *charging station* means equipment that connects an electric vehicle to an external source of electricity to recharge the electric vehicle's internal propulsion battery and may refer to Level 1 and Level 2 charging equipment.

(j) *Permit holder* means a person who has received a permit from the City for the use of a curbside charging cord or the installation of a Level 2 electric vehicle charging station adjacent to a residential property and the cord or charging station runs across or encroaches upon or into the public right-of-way of the City.

(k) *Residential property* means a lot or parcel in the City fronting a public right-of-way upon which a structure laid out as a single-family dwelling is located, regardless of whether it is detached, semidetached, a rowhome or townhouse, that is also currently being lawfully used as a single-family dwelling.

(l) *Residential street* means a street upon which a residential property is located.

(m) *Public right-of-way* broadly means the streets, roads, alleys and walkways in the City that are open or dedicated for use by the general public; but, in the specific context of where the City will permit the use or installation and maintenance of a curbside charging cord or electric vehicle charging station under this Division, it means the pedestrian sidewalk and any landscape or streetscape elements between the true building line of the street and the curb because an electric vehicle charging station may not encroach beyond the curb onto the bed of a public street, road, or alley and a curbside charging cord may not run across any portion of a public street, road, or alley where it may be in the path of lawful vehicular traffic.

Sec. 42-247. Use of Curbside Charging Cord – Permit Required.

(a) A person who owns or lawfully occupies a residential property, owns or leases an electric vehicle, and does not have off-street parking for a vehicle located on the residential property where they reside may request a permit from the City for on-street charging with a curbside charging cord in the public right-of-way when the person obtains from the City the Curbside Charging Cord Manual (the Manual) and certifies in writing that they have read the Manual and will comply with its requirements. The City may issue the permit if, in addition to the foregoing requirements, it determines that the curbside charging cord will:

- (1) Comply in all respects with the requirements of the Manual;
- (2) Charge an electric vehicle only at Level 1;
- (3) Be covered by a UL listed power-supply compliant cord cover approved by the City;
- (4) Not be a tripping hazard to the public;
- (5) Be placed completely in front of the residential property the person owns or lawfully occupies and run perpendicular to the flow of foot traffic on the walkway when the cord is in use;
- (6) Be plugged into an outside receptacle located on the ground floor of the residential property the person owns or lawfully occupies when the cord is in use;
- (7) Be removed from and stored out of sight of the public right-of-way along with its covering equipment when the cord is not in use actively charging an electric vehicle, except that if a charge has started but is not completed by 11:00 pm, then the cord may remain until no later than 8:00 am the next day; and
- (8) Not otherwise violate any applicable law, code, including Article 625 (Electric Vehicle Charging and Supply Equipment Systems) of the National Electric Code (NEC), as most recently amended, restated or replaced or regulation, or constitute a risk to public health and safety.

(b) As a condition of retaining a permit under this section, a permit holder has the continuing duty to use and maintain the curbside charging cord in compliance with the requirements of this section and all applicable law, including Article 625 (Electric Vehicle Charging and Supply Equipment Systems) of the National Electric Code (NEC), as most recently amended, restated or replaced.

(c) If a permit holder's use of a curbside charging cord becomes, or is discovered to be, noncompliant with this section or any applicable law, the City may revoke the permit and remove the cord from the public right-of-way.

(d) An aggrieved person may appeal the City's approval, denial, or revocation of a permit for a curbside charging cord or the issuance of a civil violation under this section to the Board of License and Inspection Review pursuant to Wilmington City Charter Section 5-705 within 30 days of the action being appealed.

(e) Enforcement.

(1) Criminal violation. A person who uses a curbside charging cord for charging an electric vehicle in the public right-of-way without first obtaining a permit is guilty of a violation and may be fined up to \$200 for each offense and, upon conviction, shall be ordered by the court to refrain from using an unpermitted charging cord. No notice is required before a person may be charged, and the City's decision to charge this violation may not be appealed to the Board of License and Inspection.

(2) Civil Violation. A person who uses a curbside charging cord for charging an electric vehicle in the public right-of-way after a permit has been denied or revoked, or in a manner that is otherwise prohibited by this Division, may be issued a notice of violation and fined \$100 for each day a violation is documented by the City. The City's order revoking or denying the permit and the accrual of fines shall not be stayed while an appeal is pending before the Board of License and Inspection; except, however, if the Board grants the appeal, no civil fines shall be issued.

(f) The City shall promulgate the Curbside Charging Cord Manual as a regulation issued by the Administrative Board.

Sec. 42-248 Electric Vehicle Charging Station – Permit Required.

(a) Prohibition. No person may install or maintain, or cause or permit to be installed or maintained, an electrical vehicle charging station beyond the true building line of the streets of the city, or at such other location that encroaches upon the public right-of-way, except under conditions prescribed in this section.

(b) Application. A person who owns or lawfully occupies a residential property, owns or leases an electric vehicle, and does not have off-street parking for a vehicle located on the residential property may apply to the City for a permit to install and maintain an electric vehicle charging station in the public right-of-way by submitting to the City:

(1) An application fee of \$100.00;

(2) A completed application which must include:

a. The applicant's name, address, phone number, and, if available, email address;

b. Either proof that the applicant owns the residential property where the charging station is to be located, or, if the applicant is not the owner, an affidavit from the owner of the residential property authorizing the application;

c. The written approval of the Department of Transportation of either the State of Delaware or the City, depending upon which governmental entity is responsible for the maintenance of the particular street, road, or alley adjacent to the public right-of-way on which the electric vehicle charging station is proposed to be located. Notwithstanding the written approval from the State to install a charging station when located in the public right-of-way adjacent to a state owned or maintained street, road, or alley, an applicant for a permit must satisfy all other requirements and conditions set forth in this section.

d. A map or drawing marked to show where the charging station will be marked on public right-of-way;

e. An installation plan for the charging station that includes a diagram of all electrical connection upgrades, trenching, how the electrical line will be run under the sidewalk, and a plan how the public right-of-way will be returned to its pre-installation condition;

f. If the charging station is to be located in a Historic or Conservation District of the City, a completed copy of a DRPC application that has been filed with the City;

g. Proof of approval from the electrical utility provider;

h. The names, addresses, phone numbers and, if available, email addresses of all contractors and subcontractors who will install the charging station;

- i. An agreement satisfactory to the City to indemnify the City for any harm to property or persons caused by the charging station;
- j. A certificate of insurance coverage satisfactory to the City for the charging station, including proof of comprehensive general liability coverage for personal injury, including death, and property damage associated with ownership of the charging station from a financially sound and reputable carrier;
- k. Proof of the community notice required in subsection (c); and
- l. The applicant's and, if the applicant is not the owner, also the owner's, sworn affidavit promising to maintain the charging station in good and safe working condition up to all applicable codified standards, to remove the charging station if the City determines that the charging station is no longer in use or is not being maintained in the condition required by this Division, and to return the public right-of-way to its preinstallation condition at the permit holder's expense.

(c) Community Notice and Hearing.

(1) An applicant for an electric vehicle charging station must fill out and then hand-deliver the following notice to resident neighbors on both sides of the street of the block where the charging station is to be located:

“PLEASE BE ADVISED THAT BECAUSE YOU ARE A RESIDENT LIVING ON THE SAME BLOCK WHERE IT IS BEING PROPOSED THAT AN ELECTRIC VEHICLE CHARGING STATION WILL BE INSTALLED AT _____ [address], YOU MAY LODGE A WRITTEN OBJECTION TO ITS INSTALLATION BY DELIVERING TO THE CITY OF WILMINGTON DEPARTMENT OF LAND USE AND PLANNING A SIGNED OBJECTION WITH YOUR NAME, ADDRESS AND PHONE NUMBER NO LATER THAN THE CLOSE OF BUSINESS ON _____ [due date of a timely objection to be provided by the City].”

The notice with the due date filled in must be delivered no later than 14 days before the due date in order to constitute valid community notice.

(2) If the City receives one or more timely objections from a resident neighbor on the block where the charging station is to be located, then the City must hold a public hearing before deciding whether to grant or deny the application.

(d) Review. Whether or not a public hearing is required or held, the City must either approve or deny an application for the installation of an electric vehicle charging station that will encroach upon the public right-of-way within 90 days of the final submission of a completed application to the City, or, by operation of law, the application will be automatically approved.

(e) Notwithstanding a decision to approve an application under this section, an applicant must obtain all other building permits that may be required for the work to be done.

(f) Requirements for a Permit to Install an Electric Vehicle Charging Station. The City may not grant, and must deny, a permit for an electric vehicle charging station unless the specifications in the application show it will:

(1) Meet all applicable legal requirements under municipal, state, and federal law, including Article 625 (Electric Vehicle Charging and Supply Equipment Systems) of the National Electric Code (NEC), as most recently amended, restated or replaced;

- (2) Be installed and fastened in place with a retracting cable to ensure the charging cable is not a tripping hazard when not in use;
- (3) Be UL-listed, rated for outdoor use;
- (4) Be installed according to manufacturer's specifications;
- (5) Be installed with a locking cover for the connector/cable when not in use;
- (6) Not have any exposed energized components or above ground supply lines;
- (7) Be installed by a licensed electrician;
- (8) Be installed where street parking is currently permitted;
- (9) Have an emergency shut-off switch (which need not be on the charging station itself); and

(10) Have the written permission of the owner of the residential property.

(g) Other Required Considerations for Installation of an Electric Vehicle Charging Station. The City must consider whether, and may deny an application for a permit if:

(1) An application remains incomplete for 3 months after the City notifies the applicant of its deficiency; or

(2) The installation of the charging station as proposed by the applicant would:

- a. Adversely impact compliance with ADA Standards for Accessible Design by impeding access to a sidewalk, bus shelter, curb cut, or other existing or planned accessibility accommodation;
- b. Interfere with any existing or planned utility infrastructure;
- c. Be inconsistent with an existing or planned streetscape or landscape design for the public right-of-way;
- d. Interfere with existing or planned stormwater, drain management, or other infrastructure in the public right-of-way;
- e. Cause there to be inadequate pedestrian walkway space;
- f. Be so close to the street as to prevent, or render unsafe, motor vehicle parking or a person exiting a parked motor vehicle at the location;
- g. Not adequately provide for or ensure a permit holder's maintenance of the electric vehicle charging station or removal and restoration of the public right-of-way when an unused or noncompliant charging station is removed;
- h. Be contrary to the recommendation of the DRPC after its review of the installation plan in a historic or conservation district, or
- i. Pose a risk to public health and safety.

(h) The DRPC may promulgate regulations of design standards for electric vehicle charging stations within historic and conservation districts.

(i) Conditional retention of a permit and revocation. As a condition of retaining the permit, a permit holder under this section has the continuing duty to use and maintain the electric vehicle charging station: in compliance with the requirements of this section, municipal, state and national law, including Article 625 (Electric Vehicle Charging and Supply Equipment Systems) of the National Electric Code (NEC), as most recently amended, restated or replaced; in a manner that is consistent with the permit holder's application as it was approved by the City; and in compliance with all additional requirements the City may have imposed upon the permit holder at the time of approval. As a further condition, the permit holder must ensure that any person the permit holder permits to use and/or maintain the charging station fulfills the foregoing duties. In addition to any other remedies available to the City at law or in equity, if the City finds that the permit holder is in violation of these

duties, then the City may revoke the permit and require the charging station to be immediately deenergized, and either order the permit holder to remove the electric vehicle charging station from the public right-of-way within 30 days at the permit holder's sole expense, or, if the permit holder refuses or fails to remove the charging station within 30 days or to deenergize the charging station, then the City may deenergize and/or remove it and charge the permit holder for the costs of deenergizing, removal, and/or restoration of the public right-of-way to its pre-installation condition. The imposition of all such costs shall be a lien upon the residential property.

(j) An aggrieved person may appeal the City's approval, denial, or revocation of a permit for an electric vehicle charging station or the issuance of a civil violation under this section to the Board of License and Inspection Review pursuant to Wilmington City Charter Section 5-705 within 30 days of the action being appealed.

(k) Enforcement.

(1) Criminal violation. A person who installs or maintains an electric vehicle charging station in the public right-of-way without applying for a permit, or after beginning the application for a permit process before being fully approved, is guilty of a violation and may be fined up to \$200 for the offense, and that person shall be guilty of a separate offense and may be fined up to \$200 for each subsequent 7 day time period during which the violation continues to exist. No notice is required before a person may be charged, and the City's decision to charge this violation may not be appealed to the Board of License and Inspection.

(2) Civil Violation. A person who continues to maintain an electric vehicle charging station that was installed before the effective date of this Division without applying for a permit; installs or maintains an electric vehicle charging station for which a permit was denied; installs or maintains an electric vehicle charging station after being notified by the City that the permit has been revoked and that the charging station must be deenergized or removed; or installs or maintains an electric vehicle charging station in a manner that is otherwise prohibited by this Division may be issued a notice of violation and fined \$200 for each 7 day time period during which the violation continues to exist; except that the accrual of fines for the violation shall be stayed upon the filing of a timely appeal to the Board of License and Inspection, and if the Board grants the appeal, no civil violation will be found and no fines shall be issued.

(l.) A written extension of time may be granted by the City for any requirement under this section. The City's failure or refusal to grant an extension is not appealable to the Board of License and Inspection.

Sec. 42-249 Curbside Charging Cord and Electric Vehicle Charging Station Grant of Authority.

(a) A permit holder may use a curbside charging cord or install and maintain an electric vehicle charging station in the public right-of-way, at the approved location adjacent to the residential property. A permit holder may permit a guest or visitor to use their charging cord or charging station but is responsible for any use, action and/or violation of this Division that the guest or visitor using the equipment may undertake, cause or commit.

(b) Any person who blocks, marks, or designates an on-street parking space with the intent or effect of preventing others from parking on the street adjacent to where a curbside

charging cord or electric vehicle charging station has been requested, approved or installed violates section 27-249 of this Code. Any person found responsible for a violation of this section shall be subject to and liable for a civil penalty of not less than Level 7 fine for a first offense and not less than a Level 11 fine for each subsequent violation. Furthermore, a person who defaces the public right-of-way or curb by applying paint or other markings will be responsible for the cost of removal or covering the paint or markings which shall be a lien on the residential property.

(c) Unless abandoned or revoked, a permit for an electric vehicle charging station will be valid so long as it is used and maintained in compliance with this Division; except that if the permit holder conveys ownership of the residential property to another person, the charging station must be removed, and the public right-of-way restored to its preinstallation condition at the permit holder's expense. In lieu thereof, a permit holder may transfer the permit to the a transferee who would otherwise be eligible to apply for a permit by providing in writing to the City the transferee's correct name, address, phone number, and email; an agreement of indemnification satisfactory to the City executed by the transferee; and notarized declaration satisfactory to the City that the transferee thereby is assuming all of the duties, conditions, and liabilities of the transferring permit holder pertaining to the lawful use, maintenance and/or removal and restoration of the charging station under this Division.

(d) A permit held by a permit holder for a curbside charging cord is no longer valid if the permit holder moves from the residential property and may not be transferred.

Sec. 42-250 Charging Station Inspections.

(a) Before a charging station is first used to charge an electric vehicle, a permit holder must arrange for an inspection of the electric vehicle charging station by an inspector approved by the City. In addition, the City may conduct further inspections regularly or as necessary to ensure compliance with the law and the public health and safety.

(b) A damaged charging station must be immediately deenergized and may not be reenergized until the charging station has been repaired or replaced and the charging station has been determined after inspection to be compliant with this Division. The permit holder of the charging station shall be solely responsible for any costs associated with the replacement or repair of the charging station.

(c) The permit holder is responsible for the costs of any inspections undertaken under this Division.

SECTION 2. A working group is established consisting of 20 members, 10 of which are to be selected by the President of Council and 10 to be selected by the Mayor for the purpose and with the duty to study this Ordinance and to formulate recommendations to Council for any and all appropriate changes on or before January 1, 2024.

SECTION 3. This Ordinance shall be effective on July 1, 2024.

First Reading June 15, 2023
Second Reading June 15, 2023
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2023.

Mayor

SYNOPSIS: This ordinance satisfies the City’s statutory duty by amending Chapter 42 of the Wilmington City Code to create a procedure for residents to obtain permits for the use and installation of curbside charging cords and electric vehicle charging stations in the public right-of-way. In doing so, it defines relevant terms, establishes standards, requirements and prohibitions, and inspections related to their use and maintenance, and creates civil and criminal penalties for certain violations.

FISCAL IMPACT STATEMENT: The ordinance is not expected to have any significant fiscal impact.

