

AN ORDINANCE TO AMEND CHAPTER 42 OF THE CITY CODE REGARDING PERMITS FOR CERTAIN RESIDENTIAL PROPERTY OWNERS AND OCCUPANTS TO USE, INSTALL, AND MAINTAIN CURBSIDE CHARGING CORDS AND ELECTRIC VEHICLE CHARGING STATIONS IN THE PUBLIC RIGHT-OF-WAY

#0400

Sponsor:

**Council
Member
Johnson**

WHEREAS, the 151st Delaware General Assembly adopted Senate Bill No. 187, which required the City of Wilmington to adopt an ordinance by July 1, 2023 establishing 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, upon finding that the provisions of the proposed ordinance would further the public health, safety, and welfare, City Council passed Substitute No. 1 to Ordinance No. 23-027 (the “Original Ordinance”), which adopted a procedure for City residents to obtain permits for the use and installation of curbside charging cords and electric vehicle charging stations in the public right-of-way, with a delayed effective date of July 1, 2024; and

WHEREAS, in the Original Ordinance, City Council ordained the establishment of a working group (the “Electric Vehicle Working Group”) to study the Original Ordinance and formulate recommendations to City Council for any and all appropriate changes to the Original Ordinance on or before January 1, 2024; and

WHEREAS, the Electric Vehicle Working Group carefully reviewed the Original Ordinance, meeting on October 17, November 7, November 28, December 12, 2023, and January 16, 2024, and agreed to recommend the amendments set forth herein to City Council; and

WHEREAS, City Council deems it necessary and appropriate to amend Chapter 42, Article III, Division 3 of the City Code as recommended by the Electric Vehicle Working Group and as set forth herein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON

HEREBY ORDAINS:

SECTION 1. Chapter 42, Article III, Division 3 of the City Code is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

DIVISION 3. - ELECTRIC VEHICLE CHARGING STATIONS IN THE PUBLIC RIGHT-OF-WAY

Sec. 42-246 - Definitions.

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~~ at or below 20 amp breaker on a 120 volt AC circuit.

b. ~~Level 2 charging equipment means electric vehicle supply equipment that operates on over 20 amps up to 40 amp 120 to 208/240 volt circuit and provides power between 3.3 kW and 6.2kW.~~ Level 2 charging equipment means electric vehicle supply equipment that operates over 20 amps on a 208/240 volt circuit and provides power between 3.3 kW and 19.2kW.

Electric vehicle is defined by 22 Del. Code Section 119(b) and means either a battery electric motor vehicle that draws uses 1 or more motors for propulsion energy solely from an on-board electrical energy storage device during operation and which is powered through an internal battery that is charged from using an external source of electricity or source, including a plug-in hybrid electric vehicle, which operates with an on-board electrical energy storage device internal combustion engine and an electric motor that can be recharged from plugged into an external power source of electricity which also has to charge the capability to run on another fuel internal battery and an all-electric vehicle, which operates solely from an internal electric battery.

Frequent operator of an electric vehicle means a person who establishes to the satisfaction of the City that they use an electric vehicle as their primary mode of transportation.

Sec. 42-247. - Use of curbside charging cord – Permit required.

(a) A person who owns or lawfully occupies a residential property, owns, ~~or leases,~~ or is the frequent operator 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:

(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) and other applicable sections of the National Electric Code (NEC), as most recently amended, restated or replaced.

(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 Review.

(g) This section concerning the use and permitting of curbside charging cords shall become inoperative on July 1, 2030, and as of that date is repealed, unless an ordinance is enacted and becomes operative on or before July 1, 2030, that deletes or extends the “sunset” date on which this section becomes inoperative and is repealed.

Sec. 42-248 - Electric vehicle charging station – Permit required.

(b) *Application.* A person who owns or lawfully occupies a residential property, owns, ~~or leases,~~ or is the frequent operator of 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:

(2) A completed application which must include:

d. A map or drawing marked to show where the charging station will be ~~marked~~ located 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~~ underground, 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~~ an application that has been ~~filed with~~ approved by the City DRPC;

l. The applicant’s and, if the applicant is not the owner, also the property 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. When the applicant is not also the owner of the residential property where a charging station is to be installed and maintained, the property owner is deemed to be a permit holder along with the applicant and to be subject to all of the conditions, obligations, and enforcement actions that are authorized by this Division against the applicant.

(c) *Community Notice and Hearing.*

(2) Notwithstanding the eligibility requirement set forth above in subsection (b), as part of the approval process the City may grant a variance to a person who has off-street parking available on the residential property if the person is otherwise eligible to apply for a permit, satisfies the other requirements of this section, and provides substantial evidence to the City that the block has sufficient parking space available for others. An application for a permit for a person seeking such a variance is not complete until such proof is provided to the City.

~~(2)~~ (3) 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.

(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:

(2) Be installed and fastened in place with a retracting cable, or other cable management system satisfactory to the City, to ensure the charging cable is not a tripping hazard when not in use;

(5) Be installed with a locking cover, or other mechanism meant to prevent unauthorized use, for the connector/cable ~~when not in use;~~

(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) and other applicable portions 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.

Sec. 42-249 - Curbside charging cord and electric vehicle charging station grant of authority.

(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~~ violation 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~~ transferring owner's expense. In lieu thereof, an owner who is also 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 the permit may not be transferred to another person.

Sec. 42-250 - Charging station inspections.

(b) A critically damaged charging station, that is, one that in the opinion of the City cannot be used safely, 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.

SECTION 2. This Ordinance shall effectively amend the Original Ordinance upon its passage by City Council and approval by the Mayor. The Original Ordinance, as amended by this Ordinance, will go into effect on July 1, 2024.

First ReadingMarch 7, 2024
Second ReadingMarch 7, 2024
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2024.

Mayor

SYNOPSIS: This Ordinance amends Chapter 42, Article III, Division 3 of the City Code, a division that creates 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, with the recommended changes of the Electric Vehicle Working Group charged with that task. Among other things, this Ordinance: (i) harmonizes the definition of electric vehicle with State law; (ii) allows a frequent operator/non-owner of an electric vehicle to obtain a permit for a charging station or cord; (iii) clarifies that when the permit holder and property owner are not the same person the property owner is jointly responsible for code compliance; (iv) allows the City to grant a variance for a property owner with off-street parking on the owner’s property to have a charging station if parking conditions in the neighborhood permit; (v) sunsets the curbside charging cord permitting process if not reenacted by July 1, 2030; and (vi) corrects unintended typographical and grammatical errors.

FISCAL IMPACT STATEMENT: This Ordinance is not expected to have any significant fiscal impact.