

February 20, 2020

File No. 190112-001  
via email to: [andyclarocque@gmail.com](mailto:andyclarocque@gmail.com)

The Owners, Strata Plan VR255  
1355 Harwood Street  
Vancouver, BC  
V6E 3W3

Attention: Andrew Larocque, Strata Council President

Dear Mr. Larocque,

**Re: Regulation of Common Property Electric Vehicle Charging**  
**Our Client: The Owners, Strata Plan VR255 aka. Vanier Court (the “Strata Corporation”)**

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The Owners, Strata Plan VR255 (the “**Strata Corporation**”) has asked us to provide guidance on the regulation of electronic vehicle charging within the Strata Corporation. The information provided in this correspondence is general in nature and is not intended to constitute legal advice with respect to any specific bylaw or rule enforcement action.

### **Obligation of Strata Corporation to Manage Common Property Electrical System**

The Strata Corporation is responsible for managing and maintaining the common property and common assets of the Strata Corporation for the benefit of all owners.<sup>1</sup> This responsibility is exercised by the strata council of the Strata Corporation (the “**Strata Council**”), unless the *Strata Property Act*, SBC 1998, c.43 (the “**Act**”), the regulations or the bylaws provide otherwise.<sup>2</sup>

The Act defines “common property” to include, “...wires... and other facilities for the passage or provision of... electricity...” if they are part of the land or buildings shown on a strata plan that is not part of a strata lot, or within a strata lot if they are intended to be used in connection with the enjoyment of another strata lot or common property.<sup>3</sup> The electrical systems located on common property or intended for use as part of the common system are part of the common property as defined under the Act (the “**Electrical System**”). Expenses relating to the Electrical System are “common expenses” and are the responsibility of the Strata Corporation.<sup>4</sup>

The Strata Corporation has a statutory obligation to manage and maintain the Electrical System, and this responsibility must be carried out by the Strata Council. When carrying out the Strata Corporation’s statutory obligations, Strata Council members must act honestly and in good faith with a view to the best interests of the Strata Corporation.<sup>5</sup>

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<sup>1</sup> *Strata Property Act*, SBC 1998, c.43, s.3.

<sup>2</sup> *Strata Property Act*, SBC 1998, c.43, s.4.

<sup>3</sup> *Strata Property Act*, SBC 1998, c.43, s.1 definition of “common property”.

<sup>4</sup> *Strata Property Act*, SBC 1998, c.43, s.1 definition of “common expenses” and s.91.

<sup>5</sup> *Strata Property Act*, SBC 1998, c.43, s.31(a).

### **Restrictions on Use of Electrical System**

The Strata Corporation manages and maintains the common property, including the Electrical System, in part by regulating its use through bylaws and rules.<sup>6</sup> While historically many strata corporations have not regulated the occasional use of common property electrical systems by owners to, for example, run small appliances such as vacuum cleaners, it is now common for strata corporations to prohibit or tightly regulate the use of common property electrical systems to charge electric vehicles.

The use of common property electrical systems to charge electric vehicles has a material impact on strata corporation budgets and may have a negative impact on electrical system infrastructure if left unregulated. Use of common property electrical systems by individual owners to charge their personal electric vehicles is as a form of subsidy for the benefit of those individual owners, at the expense of the Strata Corporation, if the cost of electricity consumed through electric vehicle charging and any related infrastructure costs are not recovered.

Based on the monetary and structural impact that electric vehicle charging may have on the Electrical System and the Strata Corporation's budget, the Strata Corporation, and by extension the Strata Council, has a statutory obligation to regulate the use of the Electrical System to charge electric vehicles. Failure to prohibit individual owners from using the Electrical System to charge their electric vehicles, failure to institute a reasonable user fee to recover electrical costs where charging is permitted, or failure to monitor and assess the impact of electric vehicle charging on the Electrical System itself may constitute a breach of that duty.

Recent amendments to *Strata Property Regulation* 6.9 make it easier for strata corporations to institute cost recovery schemes for electric vehicle charging. Provided the user fee amount or formula is set out in a strata corporation's bylaws or a rule ratified by the owners at a general meeting, strata corporations are now permitted to charge owners a fixed amount or an amount determined on a reasonable basis for the use of electricity and related infrastructure that may include, but is not limited to, the following criteria:

- (a) the user's rate of consumption;
- (b) the recovery of operating or maintenance costs by the strata corporation;
- (c) the number of users; and
- (d) the duration of use.

If the Strata Corporation elects to allow individual owners to charge their electric vehicles using the Electrical System, elects to allow owners to install or use individual charging stations, or elects to install one or more shared charging stations, we recommend that a reasonable and equitable cost recovery user fee be structured and implemented in accordance with the Act.

### **Enforcement of Current Bylaws and Rules**

We have reviewed the Strata Corporation bylaws provided to us on Tuesday, February 11, 2020 and note that current bylaw 37(18) prohibits owners, tenants and occupants from recharging their electric-drive motor vehicles in the parking garages without Strata Council permission (the "EV Bylaw").

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<sup>6</sup> *Strata Property Act*, SBC 1998, c.43, s.119(2) and 125(1).

We have also reviewed Rule 9 that prohibits use of the Electrical System to charge electric vehicles and prohibits the charging of electric vehicles on common property generally (“**Rule 9**”). We understand that Rule 9 was approved and distributed in accordance with the Act.

The EV Bylaw and Rule 9 appear to comply with the Act, and the Strata Council has a statutory obligation to enforce both.<sup>7</sup> While the EV Bylaw allows the Strata Council to grant written exemptions from its application, such exemptions must not be granted arbitrarily or in a manner that results in the unfair application of the bylaw between owners of electric vehicles.

Please note, however, that bylaws and rules are unenforceable to the extent they contravene the *Human Rights Code* or another enactment of law.<sup>8</sup> For example, where an owner or occupant suffers from a physical disability that requires the charging of a mobility device on common property using the Electrical System, the EV Bylaw and Rule 9 may become unenforceable to the extent they prohibit the Strata Corporation from providing reasonable accommodation of a person’s disability where required by the *Human Rights Code*.

### **Concluding Matters**

Provided the Strata Corporation does not enforce its bylaws and rules in contravention of the *Human Rights Code* or another enactment of law, enforcing the EV Bylaw and Rule 9 is both lawful and required under the Act. We recommend that the EV Bylaw and Rule 9 be reviewed periodically and amended as needed to reflect the Strata Corporation’s evolving electric vehicle charging policy and infrastructure.

We also recommend that the the Strata Corporation obtain legal advice if any issues arise in the enforcement of the EV Bylaw or Rule 9 so that underlying facts and concerns can be reviewed and legal advice specific to the enforcement action be provided.

If you have any questions or concerns about enforcing or amending the EV Bylaw or Rule 9, or implementing a user fee, please contact us at your earliest convenience.

Yours truly,

**Bell Alliance LLP**

Per:



Neil Mangan, BBA, JD

*If the Strata Corporation elects to share this correspondence with owners or occupants, such disclosure does not constitute a waiver of confidentiality or privilege with respect to any current or future bylaw or rule amendment or enforcement action.*

*The foregoing guidance is general in nature.*

<sup>7</sup> *Strata Property Act*, SBC 1998, c.43, s.26.

<sup>8</sup> *Strata Property Act*, SBC 1998, c.43, s.121(1)(a).