

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Dir.
Re: Development and Installation of Electric Vehicle Supply Equipment or Make-Ready Parking Spaces Pursuant to N.J.S. 40:55D-66.19 - 66.20
Date: May 08, 2023

MEMORANDUM

Project Summary

On July 09, 2021, Governor Phil Murphy signed into law an “Act concerning electric vehicle supply equipment and Make-Ready parking spaces...”¹ The Act sets forth “land use solution[s] to promote and require the expansion of electric vehicle... charging station infrastructure” throughout the State of New Jersey.²

Under the Act, applications for the installation of electric “vehicle supply equipment” and/or “Make-Ready” parking spaces may occur in one of three contexts. An application may be made for the installation of electric vehicle supply equipment or Make-Ready parking spaces at existing gasoline service stations, existing retail establishments, or any other existing building.³ Next, as a condition of preliminary site plan approval, the Act requires the installation of electronic vehicle supply equipment and/or Make-Ready parking spaces for multiple dwelling projects held under certain types of ownership.⁴ Finally, a parking lot or garage not covered by a multiple dwelling application is required to install a specific number of Make-Ready parking spaces contingent upon the amount of off-street parking spaces provided by the project.⁵

A preliminary review of the Act raises several questions that are unanswered by the current statutory scheme. Regardless of the type of application, the Act does not specify what happens when the requirements of the Act are not met;⁶ whether the construction official is a part of the review process prior to the issuance of a zoning permit;⁷ what happens when the requirements for the issuance of a zoning permit are not satisfied;⁸ and, whether a municipality may require an applicant to install a specific type of electric vehicle supply equipment.⁹

Consistent with the State’s goal of “total conversion of State’s energy production profile to 100% clean energy sources on or before January 1, 2050,”¹⁰ and at the request of a member of the public¹¹ Staff undertook an examination of this subject matter.

¹ P.L. 2021, c.171, eff. Jul. 09, 2021.

² Cosmas P. Diamantis, *How New Jersey's New Land Use Law Makes Way for Electric Vehicles*, N.J. Law., June 2022, at 24.

³ N.J. STAT. ANN. § 40:55D-66.19(a) (2023).

⁴ N.J. STAT. ANN. § 40:55D-66.20(a)(1).

⁵ N.J. STAT. ANN. § 40:55D-66.20(b)(1).

⁶ Diamantis, *supra* note 2, at 26.

⁷ *Id.*

⁸ *Id.*

⁹ Conference with Peter A. Vignuolo, Esq., Partner, Clarkin & Vignuolo, PC, (Mar. 16, 2023). *See also* discussion *infra* p. 5 regarding universal charging stations.

¹⁰ Exec. Order No. 28 (2018).

¹¹ Vignuolo, *supra* note 9.

Statutes Considered

N.J.S. 40:55D-66.19. Application for development for the installation of electric vehicle supply equipment or Make-Ready parking spaces at existing gas stations, retail establishments, or other existing buildings; requirements

a. An application for development for the installation of electric vehicle supply equipment or Make-Ready parking spaces at an existing gasoline service station, an existing retail establishment, or any other existing building shall not be subject to site plan or other land use board review, shall not require variance relief pursuant to P.L.1975, c. 291 (C.40:55D-1 et seq.) or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the administrative officer, provided the application meets the following requirements:

(1) the proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;

(2) all other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and

(3) the proposed installation complies with the construction codes adopted in or promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c. 217 (C.52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.

b. An application shall be deemed complete if:

(1) the application, including the permit fee and all necessary documentation, is determined to be complete;

(2) a notice of incompleteness is not provided within 20 days after the filing of the application; or

(3) a one-time written correction notice is not issued by the jurisdiction within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.

* * * *

40:55D-66.20. Make-Ready parking spaces and installation of electric vehicle supply equipment; site plan approval; multiple dwellings; requirements

a. (1) As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is a building held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed use development, the developer or owner, as applicable, shall:

(a) prepare as Make-Ready parking spaces at least 15 percent of the required off-street parking spaces, and install electric vehicle supply equipment in at least one-third of the 15 percent of Make-Ready parking spaces;

* * *

(3) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required by this subsection.

b. (1) As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in subsection a. of this section shall:

(a) install at least one Make-Ready parking space if there will be 50 or fewer off-street parking spaces.

* * *

(d) install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities, if there will be 101 to 150 off-street parking spaces.

* * *

(2) In lieu of installing Make-Ready parking spaces, a parking lot or garage may install electric vehicle supply equipment to satisfy the requirements of this subsection.

(3) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required by this subsection.

* * *

c. Notwithstanding the provisions of subsections a. and b. of this section, a retailer that provides 25 or fewer off-street parking spaces or the developer or owner of a single-family home shall not be required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

* * * *

Background & Analysis¹²

Administrative Review Process at Existing Sites

In New Jersey, when an existing gasoline service station, existing retail establishment, or any other existing building wishes to install electric vehicle supply equipment or Make-Ready parking spaces, they must participate in the administrative review process set forth in N.J.S. 40:55D-66.19.¹³ This process is deemed complete if certain conditions are met.¹⁴

¹² The background and analysis for this project have been combined because they are inextricably intertwined.

¹³ N.J. STAT. ANN. § 40:55D-66.19(b).

¹⁴ *Id. Compare* N.J. STAT. ANN. § 40:55D-66.19(b) (incorporating a completeness determination prior to the issuance of a zoning permit) *with* N.J. STAT. ANN. § 40:55D-18 (providing that the administrative officer “shall issue or deny a zoning permit within 10 business days of receipt of request therefor.”).

In the statute's current form, it is unclear whether an applicant must satisfy one or all of the following statutory requirements for the application to be considered complete:

b. An application shall be deemed complete if: (1) the application, including the permit fee and all necessary documentation, is determined to be complete; (2) a notice of incompleteness is not provided within 20 days after the filing of the application; **or** (3) a one-time written correction notice is not issued by the jurisdiction within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.¹⁵

The punctuation contained in a statute “is a part of an act and may be considered in its interpretation.”¹⁶ When interpreting a statute, “the word ‘or’... is to be considered a disjunctive particle indicating an alternative.”¹⁷ The presence of the term “or,” as opposed to “and,” suggests that if any one of the three conditions is met, the application is deemed to be complete.

In addition to the ambiguity regarding how the “completeness” requirements are to be interpreted, a plain reading of the statute raises additional questions. First, the statute does not indicate what occurs when any or all of these requirements are not met.¹⁸ The statute also does not set forth what process the administrative officer must follow once the application is considered to be complete.¹⁹ Further, the statute does not provide for the participation of the municipalities construction official as part of the review process, to confirm compliance with the Uniform Construction Code Act (“UCC”),²⁰ prior to the issuance of a zoning permit.²¹ Finally, the statute²² is “ambiguous about what happens when the requirements for the issuance of a zoning permit are not met.”²³

Multiple Dwelling Developments

As a condition of preliminary site plan approval, the Act requires a multiple dwelling project with five or more units,²⁴ and certain parking lots and garages²⁵ to install electric vehicle supply equipment (“EVSE”) and Make-Ready parking spaces. The number of EVSE and Make-

¹⁵ N.J. STAT. ANN. § 40:55D-66.19(b)(1) - (3) (emphasis added).

¹⁶ *In re Est. of Fisher*, 443 N.J. Super. 180, 192 (App. Div. 2015) (quoting *Com. Bancorp, Inc. v. InterArch, Inc.*, 417 N.J. Super. 329, 336 (App. Div. 2010)).

¹⁷ *Id.* (quoting *State v. Kress*, 105 N.J. Super. 514, 520 (Law Div. 1969)).

¹⁸ *Id.* See also *Diamantis*, *supra* note 2, at 26.

¹⁹ N.J. STAT. ANN. § 40:55D-66.19(b). See also *Diamantis*, *supra* note 2, at 26 (suggesting that like in the case of a typical zoning permit “the administrative officer [should] have 10 business days from the completeness determination to grant or deny the application....”).

²⁰ N.J. STAT. ANN. §§ 52:27D-119 – 141.24.

²¹ N.J. STAT. ANN. § 40:55D-66.19(b). See also *Diamantis*, *supra* note 2, at 26 (noting the need for the construction official to be made part of the review process prior to the issuance of a zoning permit because it is typically the function of the construction official to confirm compliance with the UCC).

²² N.J. STAT. ANN. § 40:55D-66.19(b).

²³ *Diamantis*, *supra* note 2, at 26 (positing whether the administrative officer can require the applicant to obtain a bulk variance or site plan review by the land use board if the application does not comply with the property's bulk regulations and violates a condition of approval on a prior site plan).

²⁴ N.J. STAT. ANN. § 40:55D-66.20(a)(1) – (3).

²⁵ N.J. STAT. ANN. §§ 40:55D-66.20(b)(1) – (4) (parking lots or garages not covered in subsection (a)).

Ready parking spots and the timing of their installation are set forth in subsections (a) and (b) of N.J.S. 40:55D-66.20.²⁶

Subsections (a) and (b) permit the installation of EVSE or Make-Ready parking spaces at a faster or more expansive rate than required by the Act.²⁷ Neither subsection, however, addresses whether a municipality may require an applicant to install a specific type of EVSE or infrastructure to permit universal access to the equipment.^{28, 29} A member of the public inquired whether “the statute [should] indicate that a universal charging station... be supplied. . . rather than a proprietary charging station which only services particular vehicles....”³⁰

Electric Vehicle Parking Space Credit

The installation of numerous EVSE or Make-Ready parking spots may, under certain circumstances, eliminate the need for an applicant to seek a bulk variance and may also incidentally reduce the number of non-electric parking spaces. For purposes of complying with the minimum parking space requirement, the Act provides that “a parking space prepared with electric vehicle supply equipment or Make-Ready equipment... shall count as at least two parking spaces....”³¹ This benefit may be used to reduce the total required parking by ten percent.³²

The electric vehicle parking space credit may ultimately lead to “a significant reduction in the number of spaces available for non-electric vehicles.”³³ Consider a commercial applicant’s project that “requires a minimum of 100 off-street parking spaces pursuant to a local ordinance, but site constraints prevent the developer from providing more than ninety off-street parking spaces.”³⁴ Before the Act, the applicant would be required to seek a bulk variance for ten parking spaces. Under the Act, the applicant is required to install at least three Make-Ready parking spaces thereby reducing the bulk variance request to seven parking spaces.³⁵ Since the Act permits the minimum parking space requirement to be reduced by 10% through the installation of Make-Ready parking spots or EVSE,³⁶ an applicant who installs ten Make-Ready parking spots or EVSE would no longer be required to seek a bulk variance.³⁷

²⁶ The efficacy of these requirements exceeds the scope of this Memorandum.

²⁷ N.J. STAT. ANN. §§ 40:55D-66.20(a)(3), (b)(3).

²⁸ Jon Linkov, Jeff S. Bartlett, Alex Knizek, *How Well Do Tesla Superchargers Work for Non-Tesla EVs?* CONSUMER REPORTS, Mar. 17, 2023 (available at <https://www.consumerreports.org/cars/ev-chargers/how-well-do-tesla-superchargers-work-for-non-tesla-evs-a4713673565/>) (noting that “Tesla’s U.S. Superchargers use a proprietary charging plug” and that to charge a non-Tesla vehicle requires the station to have a “Magic Dock” which incorporates the popular Combined Charging System (“CCS”) and are not widely available).

²⁹ Vignuolo, *supra* note 9.

³⁰ E-mail from Peter A. Vignuolo, Esq., Partner, Clarkin & Vignuolo, PC, to Samuel M. Silver, Dep. Dir., N.J. Law Revision Comm’n (Apr. 27, 2023, 8:37 AM) (on file with the NJLRC).

³¹ N.J. STAT. ANN. § 40:55D-66.20(e).

³² *Id.*

³³ Vignuolo, *supra* note 30.

³⁴ Diamantis, *supra* note 2, at 28.

³⁵ *Id.* See also N.J. STAT. ANN. § 40:55D-66.20(b)(1)(C).

³⁶ N.J. STAT. ANN. § 40:55D-66.20(e).

³⁷ Diamantis, *supra* note 2, at 28.

As a practical matter there will be fewer “total spaces than ordinarily required under the land development ordinance and a portion of those spaces [would be dedicated] electric vehicle spaces.”³⁸

Practical Ambiguity

The term retailer is not defined in the Act. The absence of a definition leads to a practical ambiguity.³⁹ The Act exempts a retailer that provides twenty-five or fewer off-street parking spaces from providing or installing any electric supply equipment or Make-Ready parking spaces.⁴⁰ It is unclear whether this term exempts small office buildings or restaurants from the requirements of the Act if they have fewer than twenty-five onsite parking spaces.⁴¹

Similarly, the developer of a single family home is not “required to provide or install any electric vehicle supply equipment or Make-Ready Parking spaces.”⁴² The Act does not specify whether a developer of a two, three, or four family home is also exempt from the requirements of the Act.⁴³

Pending Bills

There are no bills pending relative to N.J.S. 40:55D-66.19. There is one bill pending in the Legislature that seeks to amend, N.J.S. 40:55D-66.20, but this bill does not address the issue raised in this Memorandum.⁴⁴

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether N.J.S. 40:55D-66.19 and N.J.S. 40:55D-66.20 should be modified to clarify: the process the administrative officer must follow once the application is considered to be complete; whether the construction official is required to participate in the review process to confirm compliance with the Uniform Construction Code Act (“UCC”); what happens when the requirements for the issuance of a zoning permit are not met; whether a municipality may specify the type EVSE and Make-Ready equipment that must be installed at a given site; or whether the statute should be modified to provide for the installation of universal charging stations.

³⁸ Vignuolo, *supra* note 30.

³⁹ Diamantis, *supra* note 2, at 28.

⁴⁰ N.J. STAT. ANN. § 40:55D-66.20(c).

⁴¹ Diamantis, *supra* note 2, at 28.

⁴² N.J. STAT. ANN. § 40:55D-66.20(c). *See also* Diamantis, *supra* note 2, at 28.

⁴³ *Compare* N.J. STAT. ANN. § 40:55D-66.20(c) (exempting the developer of *single family homes* from the requirements of the Act) *with* N.J. STAT. ANN. § 40:55D-66.20(a) (mandating the installation of Make-Ready parking spaces and EVSE for each application involving a dwelling with *five or more units*). *See also* Diamantis, *supra* note 2, at 28.

⁴⁴ A.B. 5124, 2023 Leg., 220th Sess. (N.J. 2023) (amends certain requirements for installation of electric vehicles supply equipment and Make-Ready parking spaces). S.B. 3490, 2023 Leg., 220th Sess. (N.J. 2023) (identical to A.B. 5124).

For Reference

N.J.S. 40:55D-4. Definitions; D to L.

* * *

“Electric vehicle supply equipment” or “electric vehicle service equipment” or “EVSE” means the equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, and point of sale equipment and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. “EVSE” may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. “EVSE” is synonymous with “electric vehicle charging station.”

* * * *

N.J.S. 40:55D-5. Definitions; M to O

“Make-Ready” means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a “plug and play” basis. “Make-Ready” is synonymous with the term “charger ready,” as used in P.L.2019, c. 362 (C.48:25-1 et al.).