

# Electric Vehicles In Communities Legal and Practical Approaches

Thursday, April 6, 2023  
1:00 pm – 2:00 pm  
Webinar

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# SPEAKERS

## **Erik Shaughnessy, Esq.**

*Mirrione, Shaughnessy & Uitti, LLC*

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*Phone: 508-510-5727      Email: [eshaughnessy@msullc.com](mailto:eshaughnessy@msullc.com)*

Erik is one of the founding members of the law firm, Mirrione, Shaughnessy and Uitti, LLC, which specializes in representing condominium and homeowner's association in Massachusetts, New Hampshire and Rhode Island. He regularly represents condominiums and advises Boards on day-to-day governance issues.

## **Ed Futcher, Trustee | Treasurer**

*Fisherman's Watch Condominium*

*Swampscott, MA*

Ed is Trustee and Treasurer for Fisherman's Watch. In 2022 Fisherman's Watch was presented the CAI New England Chapter Board Excellence in Community Leadership for their in-depth research and commitment to installing EV charging stations for residents.

## **Ryan Severance, Esq.**

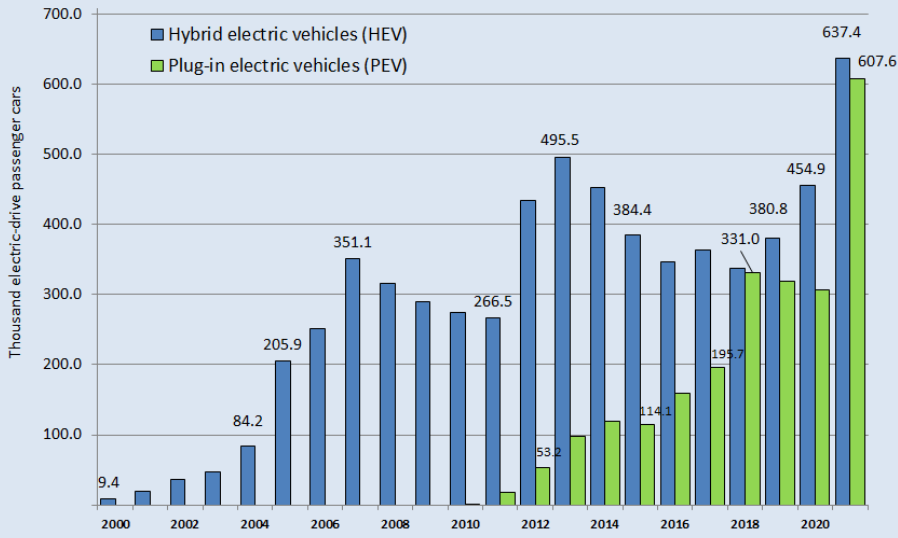
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*One Adams Place, 859 Willard St, Quincy, MA 02169*

*Phone: 781-817-4900      Email: [rseverance@lawmtm.com](mailto:rseverance@lawmtm.com)*

Ryan is an associate with the firm Moriarty Troyer & Malloy LLC with experience in condominium and real estate transactions. His practice includes a focus on the general representation of condominium associations, including document interpretation, drafting, rules enforcement, and lien enforcement.

**Annual sales of Hybrid-electric versus Plug-in electric vehicles in the U.S. (2000-2021)**



[https://en.wikipedia.org/wiki/Plug-in\\_electric\\_vehicles\\_in\\_the\\_United\\_States#/media/File:Annual\\_US\\_sales\\_HEVs\\_vs\\_PHEVs\\_2000\\_2019.png](https://en.wikipedia.org/wiki/Plug-in_electric_vehicles_in_the_United_States#/media/File:Annual_US_sales_HEVs_vs_PHEVs_2000_2019.png)

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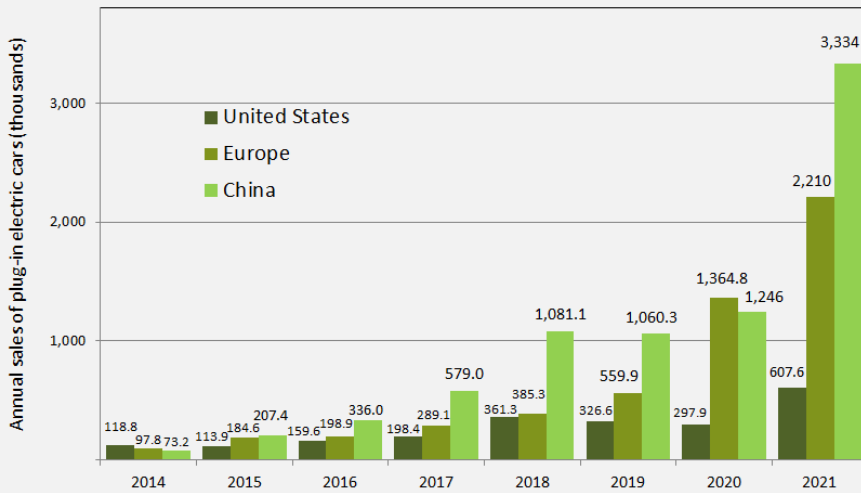
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**Comparison of Chinese, European and U.S. annual sales of plug-in electric passenger cars (2014-2021)**



[https://en.wikipedia.org/wiki/Plug-in\\_electric\\_vehicles\\_in\\_the\\_United\\_States#/media/File:Comparison\\_PEV\\_sales\\_US\\_vs\\_China\\_2011\\_-\\_2017.png](https://en.wikipedia.org/wiki/Plug-in_electric_vehicles_in_the_United_States#/media/File:Comparison_PEV_sales_US_vs_China_2011_-_2017.png)

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## The Data – Number of Tesla vehicles sold in the U.S.:

- 2017
  - 50,067
- 2018
  - 197,517
- 2019
  - 195,125
- 2020
  - 292,902
- 2021
  - 301,998
- 2022
  - 536,069



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## Looking to the Future:

- California and Massachusetts
  - By 2035 all new cars sold must run on electric or hydrogen power
- Other States considering or adopting same/similar
  - Maryland
  - New Jersey
  - New York
  - Oregon
  - Washington

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# Legal Considerations for Adding EVCS:

- Is there a Local/Town/City Ordinance which requires you to allow them?
  - Boston's went into effect in February 2019
  - Need to confirm if your municipality has any ordinance that applies
  - The Boston one **requires** permission to be granted to Owners to install EVCS with limited exceptions
    - Location of EVCS:
      - Exclusive use area; or
      - Common area
        - Must be within a "reasonable" distance of a dedicated / exclusive use parking space
      - Association can impose "reasonable" restrictions

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# Boston Ordinance – But considerations for any Assoc.

## Who pays?

- Installed at Owner's expense
- Includes the cost for modification to common area (if applicable)

## Application Process?

- Association can require an application
- Association can charge a "reasonable" processing fee
  - Applications and processing fee only permissible if Association requires an application and application fee for architectural modifications



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# Boston Ordinance – But Considerations for any Assoc.

Approval, denial, or request for additional information must be made in writing and within 60 days of the application

- Failure to respond within 60 days and application is deemed approved

Additional Unit Owner obligations:

- Must disclose to buyers of his/her unit
  - The installation of the EVCS
  - Whether the EVCS is removable or not
  - Whether the seller intend to take the EVCS
- Responsible for the costs of
  - Maintenance, repair, and replacement of the EVCS
  - Restoration of the common area following the installation and removal of the EVCS
  - Damages caused as a result of the EVCS or its use
  - Cost of electricity for the EVCS

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# Legal Considerations

How should your Association handle EVCS?

- Boston provides a template and guidance

**First question** the Association should address is:

**Do you want to allow EVCS?**

- For individual unit owners to install and maintain?  
OR
- For Association to install and maintain as community items?

**Second Question:**

How many EVCS can the existing condominium power supply handle?



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# Legal Considerations

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Why permit or install EVCS?

- Number of electric vehicles continues to increase
- Laws changing regarding sales of gas vehicles and EVs (electric vehicles)
- With increase in use of EVs, these charging stations become a desirable amenity
  - Improving marketability
  - Revenue for Association?



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# Legal Considerations

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The Board has decided to install one or more community charging stations, now what?

- Where to locate the stations?
  - Is all parking assigned/exclusive use (limited common area) or general common area?
  - How feasible is it to run the necessary wiring to the parking area?
    - How many stations?
    - What is the demand today, and expected demand tomorrow?



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# Legal Considerations: Owner vs Association EVCS

## Association installed EVCS versus Owner Installed EVCS

- Owner:
  - Does Owner have an exclusive use parking space?
  - Does the installation of the EVCS impact other Owners from being able to park or use common area?
  - How feasible is it to connect EVCS to power?
  - Owner will need an easement or license from Association
    - Why? To run wiring and permit the install of the EVCS on common area
    - Who grants: review docs, typically just a majority of the Board
    - Easement is typically permanent
    - License is temporary and can be revoked
    - Want to draft an agreement executed by the Unit Owner and Association detailing the responsibilities of the parties with respect to the EVCS and any impact the EVCS has on the Association



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# Legal Considerations: Owner vs Association EVCS

## Association to install EVCS

- There is a change to the common elements
- Will likely need to grant easement to run new electrical equipment in common area
- Is an improvement vote necessary?
  - 75% of beneficial interest must approve pursuant to Chapter 183A in Massachusetts
  - What is the requirement per your governing docs?



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# Legal Considerations

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## Supply versus Demand

- Association has more Owners with EVs than charging stations
  - Need to establish rules and protocols regarding usage of charging stations
  - May want to consider increasing number of stations
    - Increasing the number after the fact may result in the need for more easements/licenses and for another improvement vote
    - If station breaks down, Owners still need to commute



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# Thoughts and Recommendations

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With such an increase in popularity, EVs are coming to the Association, it is just a question of when

Association may want to adopt an EVCS policy and corresponding application

- If in Boston, also develop architectural modification application as you need the architectural one first before you can have an EVCS one

Associations should analyze if they are in a position to grant individual Owners permission to have EVCS installed or if it should be a community amenity



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# Thoughts and Recommendations

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If granting individual Owners permission, develop a standard agreement (license) for the Owners to sign to protect the Association

If Association to install, consult with counsel about need for an improvement vote

Does Association charge Owners or is this a free community amenity

Does Association enter into a license agreement with 3<sup>rd</sup> party vendor for that vendor to oversee and charge for use of EVCS

Consider location for a multi-serve EVCS

Confirm whether or not EVCS has any impact on insurance and address accordingly (fee shifting)



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# Thoughts and Recommendations

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## Plan Ahead:

- If one or more charging stations are being installed, consider adding additional infrastructure (wires, conduits, etc.) to make the system expandable in the future without the need to dig up the common area and run more wiring
- Also, if an improvement vote is necessary, consider voting at the time to allow more than the number of stations currently needed so that the Board can expand in the future (up to the amount approved) without the need to go back to the owners for another vote
- When allowing one or more stations, develop the protocols and rules to address EVCS to apply in the future so that there is uniformity



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## Real Life Implementation: Background

- Fisherman’s Watch is a 3 year old condominium development in Swampscott, MA.
- The Condominium consists of 28 units.
- Each unit has one dedicated parking space in an underground garage. Some units also have a dedicated outdoor garage and there is shared parking for all outside.
- I’m Ed Futch, Trustee and Treasurer for the association.
- We installed an EV charging solution in 2022.



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## History and Initial Issues

- After the development was turned over to the owners a few owners (mainly board members) sought permission to install EV chargers in their basement spaces.
- The board gave permission with little research, and this was published in the board meeting minutes.
- Soon thereafter these installations were challenged by another owner because the installations would preclude other owners from also installing chargers.
- No work was done.
- A committee was formed to investigate options.



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# Problem

- The building did not have enough excess capacity to support 28 chargers.
- The cost to install excess capacity was >\$100K and it was clear a lot of owners were opposed to any expenditure of this size.
- The committee had to find a solution that allowed some owners to install chargers without precluding others from installing in the future.
- Each unit did not have enough supply to also feed an EV charger.



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# Solution 1

- We examined devices that would share a unit's supply with an electric dryer.
- This would not work for us due to the physical separation between the charger location and the breaker box or dryer.



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## Solution 2

- Install multiple shared chargers outside.
- This was not pursued since it would not be usable for all owners if/when all 28 owners needed access to an EV charger.



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## Solution 3

- Upgrade the electric supply.
- At a cost of >\$100K this was not pursued since the board did not think there would be sufficient support in the community.



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## Solution 4



- Investigated providers of a complete solution:
- Each involved a turnkey solution to provide shared managed infrastructure in the garage closet.
- Solution will not initially (or ever) require a power upgrade to the building.
- Each space has the same access to EV charging.
- Potential access to rebates from National Grid and Massachusetts.



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## Our Solution

- We interviewed each company and did reference checks.
- Price points were similar.
- We had entire infrastructure paid by National Grid.
- The MA EVIP rebate did not work for us since they wanted assurance of access to the chargers for the disabled and we could not provide that access.



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## Implementation

- Once the committee decided on the best way forward it was approved by the board.
- The board's attorneys were engaged to provide the legal framework.
- All owners were asked if they wanted a charger installed and 50% said yes.
- They were required to pay their portion of the cost up front and sign legal docs.
- There was zero cost to other owners.
- Our property manager was engaged to be the program manager.
- We signed an installation contract with the general contractor.



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## What does it look like?

- Installation took a few days.
- 14 spaces have a dedicated charger.
- Individual subscriptions can be turned on/off on a monthly basis.
- If you don't use it there is no monthly charge, but if you do use it then there is a \$20/month charge + electric cost.
- For those using the system, all billing is handled by the vendor and a check is sent to the association monthly for electric cost.
- The system is managed by the Board's property manager – minimal effort is required for the board.
- Support is directly from the vendor.



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# Billing

- The association can determine the electric cost as well as the charging algorithms from the vendor.
- The association could have decided to charge extra for the electricity, but we have decided on a zero profit model.
- We have visibility into usage etc. via a dashboard.



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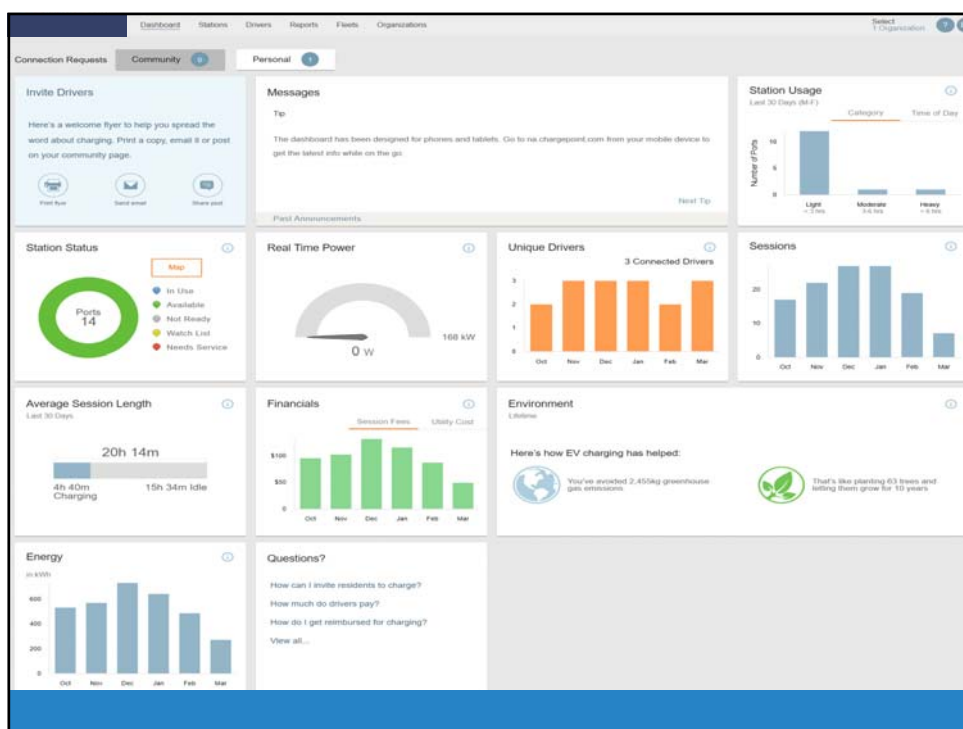
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## EVCS Takeaways

- The growth of electric vehicles appears to be inevitable, especially in Massachusetts as the sale of electric cars is mandated come 2035.
  - Owners will expect EVCS to be installed, as with any other form of utility.
  - Installation of EVCS will contribute to the marketability of the units.
- Some municipalities are requiring associations to allow EVCS
  - More municipalities will likely follow
- Think ahead:
  - Does your municipality require you to allow electric vehicle charging stations?
  - Will you install an association system, or will you allow or work with individual owners to install systems in their own parking spaces?
  - Can the association's power grid handle your intended capacity? Discuss with electrician or charging system provider.
  - How many charging stations will you put in? Will you leave room for expansion?
  - How many owners are there? How many are willing to pay for an install now?
  - Is there enough space for multiple chargers and meters or does a shared system make more sense?
  - Is there another, "lower impact" system that makes sense, such as an electric dryer splitter? Discuss with an electrician.



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## EVCS Takeaways

- Communicate with your attorney as you start the process.
  - How will use be granted? Easement? License?
  - What portions of the common area will be impacted/modified as a result?
- How will the EVCS installation be approved and paid for?
  - If the association will install the EVCS, will an improvement vote be needed? Will the association pay from common funds? Discuss with association attorney.
  - If a unit owner will install a personal EVCS system, they will be responsible for payment. Discuss with association attorney as to the grant of space.
  - Review the scope of payment, if the association incurs expenses, will only those owners who want to pay for the project be responsible for payment?
  - Look into local grants and rebates from your power provider, these might be available for the association itself or an individual owner.



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# EVCS Takeaways

- Assemble a committee of Board Members and Owners
  - Communication with unit owners is important to gauge their desire/enthusiasm for EVCS.
  - Are a majority enthusiastic about the project?
- Who will manage the process, metering of power and subsequent billing of that power?
  - Will the association do so?
  - Does it make sense to use a third party?



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# Electric Vehicles in Communities: Legal and Practical Approaches

## Takeaways

April 6, 2023

- The growth of electric vehicles appears to be inevitable, especially in Massachusetts as the sale of electric cars is mandated come 2035.
  - Owners will expect electric vehicle charging stations (“EVCS”) to be installed, as with any other form of utility.
  - Installation of EVCS will contribute to the marketability of the units.
- Some municipalities are requiring associations to allow EVCS and more municipalities will likely follow.
- Thinking ahead while planning to have EVCS installed:
  - Does your municipality require you to allow electric vehicle charging stations? If so, what are those specific requirements that must be followed?
  - Will you install an association system, or will you allow or work with individual owners to install systems in their dedicated parking spaces?
  - Can the association’s power grid handle your intended capacity? Discuss with electrician or charging system provider.
  - How many charging stations will you put in? Will you leave room for expansion? Plan ahead and think of having additional infrastructure installed “now” so that future expansion is more easily accomplished.
  - How many owners are there? How many are willing to pay for an install now?
  - Is there enough space for multiple chargers and meters or does a shared system make more sense?
  - Is there another, “lower impact” system that makes sense? Speak with an electrician.
- Communicate with your attorney as you start the process.
  - How will use be granted? Easement? License?
  - What portions of the common area will be impacted/modified as a result?
- How will the EVCS installation be approved and paid for?
  - If the association will install the EVCS, will an improvement vote be needed? Will association pay from common funds? Discuss with association attorney.
  - If an owner will install a personal EVCS system, they will be responsible for payment? Discuss with association attorney as to the grant of space.
  - Review the scope of payment, if the association incurs expenses, will only those owners who want to pay for the project be responsible for payment?
  - Look into local grants and rebates from your power provider, these might be available for the association itself or an individual owner.
- Assemble a committee of Board Members and Owners
  - Communication with owners is important to gauge their desire/enthusiasm for EVCS.
  - What do owners want?
- Who will manage the process, metering of power and subsequent billing of that power?
  - Will the association do so?
  - Does it make sense to use a third party?

The logo features the year '2023' in large, stylized numbers. The '2' is blue, the '0' is yellow with a crown on top and a gear-like base, the second '2' is grey, and the '3' is orange. A green horizontal line runs behind the numbers. To the right of the numbers, the words 'Chapter Partners' are written in a large, black, serif font.

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