



## Written Code Interpretation – Applicability of Use Definition and Use Limitations to Electric Vehicle Charging Station as a Primary Use

DZC Sections Affected: Section 11.4.18 and 11.4.19  
Issued by: Tina Axelrad, Zoning Administrator  
Date of Interpretation: March 28, 2023  
Authority for Interpretation: Denver Zoning Code (DZC) Section 12.4.6 and Former Chapter 59 (FC59)

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### Summary of Written Code Interpretation

This determination can be summarized as follows:

1. For properties with a zoning designation under the Denver Zoning Code, electric vehicle charging as a primary use is a specific use type under the Automobile Services, Light use, which falls within the Vehicle / Equipment Sales, Rentals, Service and Repair Use Category.
2. For those properties retaining a zoning designation under Former Chapter 59, electric vehicle charging as a primary use may be permitted under the same conditions and limitations as an Automobile Gasoline Filling, or Emissions Inspection Station use, as defined in Sec. 59-2(33).
3. Limitations on an Automobile Services, Light or on an Automobile Gasoline Filling or Emissions Inspection Station use shall also apply to electric vehicle charging as a primary use. Specific language in the DZC, Article 11 use limitations, FC59 definition or use limits, or other zoning standards applicable to a “fuel pump” shall also apply to each individual electric vehicle charging unit.

### Authority and Review Criteria for Interpretation

**DZC Section 12.4.6.1.A.** authorizes the Zoning Administrator to make Code Interpretations when additional clarity is required to guide general application of the Code. DZC Section 12.4.6.4 allows the Zoning Administrator to make Code Interpretations only upon finding that the interpretation is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue.

### Request for Interpretation

This interpretation clarifies how the Denver Zoning Code and Former Chapter 59 will respond to electric vehicle charging as a primary use. On February 14, 2023, BRCM, LLC, requested an unlisted use determination or code interpretation for how to categorize electric vehicle charging as a primary use under the Denver Zoning Code, specifically as it relates to the C-MX-5 zone district and the property located at 2006 Bryant Street.

## Justification for Code Interpretation

Without a specific definition or a determination for electric vehicle charging as a primary use, the applicant notes that there is confusion and risk in knowing whether a project for electric vehicle charging can move forward. The applicant also notes that a previous attempt to submit plans for concept review returned an unsatisfactory result due to an interpretation of the proposed use as surface parking – a listed use in the Denver Zoning Code, but one that is not permitted in the C-MX-5 zone district. Further, as adoption of electric vehicles increases and consumer demand for electric vehicle charging expands, it will be important to clarify that this use can be permitted by-right in certain zone districts. As noted in the Denver Electric Vehicle Action Plan, the City identifies EV charging as an important component of meeting the City’s climate goals and expects to take a leading role in expanding access to electric vehicle charging (pg. 4).<sup>1</sup>

## What is Electric Vehicle Charging as a Primary Use?

As defined in the Denver Zoning Code, a “primary” use means “the main or primary purpose for which land and the structures thereon are used.” Electric vehicle charging as a primary use involves providing electricity to customers for a fee through multiple charging station units grouped together on a zone lot. There may or may not be other primary uses located on the same zone lot as a primary electric vehicle charging use. The illustrative renderings provided by the applicant include a canopy and lighting above the units. The charging units are typically ground- or wall-mounted and electricity is transmitted through a cord with a handle that connects the unit to the vehicle. Payment for the service would be made by customers either online or at the charging units.



**Figure 1 Rendering provided by applicant**

Charging for electric vehicles can be offered at three different levels distinguished by the amount of power they supply and the rate at which they can charge a vehicle. The Level 2 and 3 types of chargers are most commonly found in commercial settings. Level 2 chargers can charge a vehicle battery to 80 percent in a few hours and the Level 3 chargers can do so in 20-30 minutes. The proposed use would offer Level 3 charging and the applicant notes that the length of stay to complete a transaction could take up to 40 minutes.

As a primary use, electric vehicle charging would fall neatly within the “Vehicle / Equipment Sales, Rentals, Service and Repair” use category and the Automobile Services, Light use type, which is how gas stations, car washes, and minor vehicle repair are categorized under the Denver Zoning Code. Under Former Chapter 59, electric vehicle charging as a primary use would also fit within the definition of

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<sup>1</sup> Denver Electric Vehicle (EV) Action Plan, 2020. [Denver Electric Vehicle \(EV\) Action Plan \(denvergov.org\)](https://denvergov.org/transportation/active-transportation/electric-vehicle-action-plan)

Automobile Gasoline Filling or Emissions Inspection Station. At its core, this is an automobile-oriented use with potentially fewer external effects that accompany other types of Automobile Services, Light uses, and the range of services specified under Automobile Gasoline Filling Station or Emissions Inspection Station, such as car washes, minor repair, and gas stations.

### Electric Vehicle Charging as Accessory Use

As an accessory use, electric vehicle charging is commonly provided as a secondary or incidental use associated with a different primary use, such as grocery stores, multi-family residential buildings, and office buildings throughout Denver. These charging stations offer charging for a fee or as a free benefit to drivers accessing the primary use. Charging stations as an accessory use typically make up a small proportion of the parking in larger parking lots. This proportion and the general proliferation of electric vehicle charging as a service is expected to grow as new mandates for charging are implemented through the Energize Denver program or as state and federal incentives are expanded. From the perspective of Community Planning and Development, this service is secondary and subordinate to the primary use and the installation of electric vehicle chargers may be treated as part of the infrastructure of the accessory or primary parking lot use, similar to necessary curbing, striping or paving.<sup>2</sup>

### Intent of the Denver Zoning Code

The Denver Zoning Code is “enacted to implement Denver’s Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants.” (DZC, Section 1.1.1) More specifically, the Code “is intended to achieve design excellence in the built environment by... providing building and site design standards that address the public aspects of private development and how building form, placement, and uses contribute to the quality of the public realm.” (DZC, Section 1.1.2.) Finally, the Code is intended to guide Denver’s prosperous and sustainable future by “Providing clear regulations and processes that result in predictable, efficient, and coordinated review processes.”

This interpretation supports this intent by clarifying that this use is allowed in any zone district where the Automobile Services, Light, use type and the Automobile Gasoline Filling or Emissions Inspection Station are permitted. This determination ensures that this new use would meet the design standards that would be applied to any other new vehicle fueling station in Denver. By providing clarity about how this use would be defined under the DZC and FC59, this determination supports the adoption of electric vehicles, and the air quality benefits that will accompany wider adoption.

### Intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue

This interpretation would allow electric vehicle charging stations to be permitted in the same manner as other specific use types that fall under the Automobile Services, Light, and Automobile Gasoline Filling and Emissions Inspection Station uses. In all neighborhood contexts and zone districts regulated by the

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<sup>2</sup> Community Planning and Development staff reserve the authority to determine, on a case-by-case basis, whether a proposed electric vehicle charging use will be treated as an accessory or primary use under the Denver Zoning Code or Former Chapter 59, taking into consideration, among other factors, the overall scale of the above-ground structures associated with the proposed electric vehicle charging.

Denver Zoning Code, this use is permitted with limitations. These limitations, outlined in DZC Sections 11.4.18 and 11.4.19, focus on external impacts from lighting, noise from loudspeakers, potential for disturbing adjacent uses due to movement of vehicles. These limitations would apply to electric vehicle charging stations as a primary use, which would help to reduce any impacts shared between electric vehicle charging stations and other Automobile Services, Light, uses. Similar limitations and conditions on the Automobile Gasoline Filling or Emissions Inspection Station use regulated by Former Chapter 59 serve the same purpose and intent.

Under the Denver Zoning Code, in neighborhood contexts with areas of focus on pedestrian activity, certain standards restrict the Automobile Services, Light, use by limiting where it can be located or how structures associated with the use must be sited. These limitations would apply to electric vehicle charging stations under this interpretation:

**Street Level Active Uses:** The Downtown and Urban Center neighborhood contexts and certain overlay districts explicitly note that the Automobile Services, Light, use is not permitted where street level nonresidential active uses are required.

**Geographic Limitation on Drive Thru Services:** The building form most likely to be applied to new gas stations developed under the DZC is the Drive Thru Services building form. This building form is not permitted on zone lots within 1/4 mile of a Rail Transit Station Platform in neighborhood contexts and zone districts that prioritize pedestrian activity, such as the MX and MS zones within the General, Urban and Urban Edge neighborhood contexts. This geographic limitation reduces the degree of impact that this vehicle-oriented use can have on the pedestrian-focused areas around transit. The subject property is located more than 1/3 of a mile to the nearest rail transit station platform (approximately 2,300 feet as the crow flies) and, therefore, would be eligible to utilize the Drive Thru Services building form standards if the applicant chooses.

In Former Chapter 59, as in the DZC, pedestrian-focused areas are protected by prohibiting auto-related uses, as in the mixed-use C-MU-10 zone district, and by applying limitations. In some Mixed Use and Main Street zone districts, the Automobile Gasoline Filling or Emissions Inspection Station is subject to a special review to evaluate the use for compatibility with the surrounding context, including the visual, noise and traffic impacts of this unenclosed use. Main Street districts also apply limitations on the type of activity that can occur on the property (such as minor or major auto repair).

### [Similarity to Other Permitted Uses](#)

Under the Denver Zoning Code, the Automobile Services, Light, use definition encompasses the sale of fuel and other vehicle services:

“A retail establishment engaged in the provision of one or more of the following types of services, but not including heavy automobile service uses or any servicing of large-scale motor vehicles and trailers or Recreational Vehicles, Large:

- a. The sale of automotive fuel, motor oil, and/or services; and/or

- b. Routine maintenance and minor repair serving of automobiles, which may include washing, polishing, greasing, tire repair, wheel alignment, brake repair, muffler replacement, engine tune-up, flushing of radiators, servicing of air conditioners, and other activities of minor repair and servicing; and/or
- c. Washing, cleaning, and/or waxing of automobiles by hand or with manually operated equipment or automatic machinery.
- d. This definition includes the uses in the following SIC groups:
  - i. 5541 Gasoline service stations, except truck stops; and
  - ii. 7549 Automotive services, except the following: towing service, automotive; and wrecker service (towing), automotive.”

The Former Chapter 59 definition of “automobile gasoline filling, or emissions inspection station” includes a similarly wide range of vehicle services:

“A retail establishment engaged in the sale of automotive fuel, motor oil, and/or services, which provide for the routine maintenance of automobiles. Such services may include washing, polishing, greasing, emissions testing, tire repair, wheel alignment, brake repair, muffler replacement, engine tune-up, flushing of radiators, servicing of air conditioners, and other activities of minor repair and servicing. The establishment may include the sale of compressed natural gas, liquefied petroleum, or other types of fuel for vehicles as regulated by the fire department. Any above ground fuel tanks shall be located a minimum of one thousand (1,000) feet from a protected use, as defined by the fire department; provided, however, that such spacing may be reduced by the zoning administrator with the review and concurrence of the fire department. Need not be enclosed.”<sup>3</sup>

**Similarity to Gas Stations:** Electric vehicle charging and gas stations share the key feature of providing fuel for vehicles for a fee and, in fact, the purchase of fuel is the primary reason for vehicle trips to the site. In both cases, vehicles are parked alongside a fueling unit in a dedicated parking space and transactions take place at point of service. There are minor variations in how payment is made, such as at a cash register in gas stations or online for electric vehicle charging. Some impacts of gas stations would likely be reduced for electric vehicle charging, such as noise and traffic impacts from truck trips to refill underground gasoline storage tanks. Supporting equipment for electric vehicle charging stations, such as transformers, would be located above ground, rather than underground. In these cases, supporting electrical equipment would be required to meet the general screening requirements of Section 10.5.7.1.B, General Screening Standards. In Former Chapter 59, similar requirements are applied to off-street parking generally, which similarly reduce the effects of off-street parking and vehicle movements on adjacent properties. These standards include screening (Sec. 59-585(5)), landscaping (Sec. 59-585(11)), and prohibition of loudspeakers (Sec. 59-585(8)).

**Similarity to Car Wash and Detailing Services:** Some car wash and detailing services utilize a similar site configuration with multiple bays where vehicles are parked while being serviced. A 20 to 40-minute length of stay would be a reasonable expected time frame for these services to be completed, which aligns with the expected length of the electric vehicle charging transaction. These services may also

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<sup>3</sup> This definition goes on to discuss signage and queuing standards for emissions testing, which are omitted here.

produce greater noise impacts due to use of vacuums or other equipment. However, it would be reasonable to expect that vacuuming, cleaning, or other related services could occur concurrently with electric vehicle charging depending on the business model of the operator.

For the reasons described above, I find that the character and impact of electric vehicle charging as a primary use are similar in nature, function, and duration to the listed uses of “Automobile Services, Light” and “Automobile gasoline filling, or emissions inspection station” in the Denver Zoning Code and Former Chapter 59, respectively. Further, the description of the sale of fuel under both the DZC and the Former Chapter 59 use definitions clearly describes the same transaction taking place when electric vehicle charging is provided as a service.

## Conclusion and Reasonable Conditions

The proposed use, electric vehicle charging as a primary use on a zone lot, shares many similarities with other specific use types within the Automobile Services, Light use under the DZC and with the defined Automobile Gasoline Filling Station use under FC59. The expected expansion of electric vehicle charging as a primary use in the city in the coming years point to a clear need to clarify how this use fits into the Denver’s zoning codes.

## Denver Zoning Code

Due to the clear similarities and alignment with other automobile service uses in the city, such as gas stations and car washes, I find that electric vehicle charging as a primary use would be appropriately permitted as an Automobile Services, Light within the Vehicle / Equipment Sales, Rentals, Service and Repair use category in the Denver Zoning Code. As such, electric vehicle charging as a primary use is permitted in all zone districts regulated by the Denver Zoning Code where Automobile Services, Light, use is allowed, subject to the same limitations referenced for all Automobile Services, Light, uses.

While most of the applicable Article 11 use limitations in DZC, Sections 11.18 and 11.19, can be applied without modification, the following additional interpretation is necessary to clarify how the limits will apply to an electric vehicle charging use to meet the limitations’ purpose and intent:

1. All references to “fuel pumps” in an applicable use limitation shall mean the individual electric vehicle charging units as applied to a proposed electric vehicle charging use. The individual electric vehicle charging units may offer charging at any level.
2. Above-ground electrical equipment supporting the operation of a primary electric vehicle charging station, such as electrical transformers, shall be screened according to the minimum standards stated in Denver Zoning Code, Section 10.5.7.1.B, General Screening Standards.

## Former Chapter 59

For those properties retaining a zoning designation under Former Chapter 59, electric vehicle charging stations shall be permitted as an “Automobile Gasoline Filling or Emissions Inspection Station” for zoning review/permitting purposes. As such, electric vehicle charging as a primary use is permitted in all zone districts regulated by the Former Chapter 59 where the Automobile Gasoline Filling or Emissions Inspection Station use is allowed, subject to the same limitations referenced for all primary uses of the same type.

The following additional interpretation is necessary to clarify how the FC59 limits will apply to an electric vehicle charging use:

1. All references to “fuel pumps” in an applicable use limitation shall mean the individual electric vehicle charging units as applied to a proposed electric vehicle charging use. The individual electric vehicle charging units may offer charging at any level.
2. Above-ground electrical equipment supporting the operation of a primary electric vehicle charging station, such as electrical transformers, shall be screened according to the minimum standards stated in Section 59-585 of Former Chapter 59.

### Final Decision and Appeals

This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this determination according to Denver Zoning Code, Section 12.4.8, Appeal of Administrative Decision, and according to Former Chapter 59, Section 59-39, Appeals from the Department.