

9-18-21

Ca. Department OF Housing and Community Development
Attention: Greg Nickless
Re: Ojai Valley Sanitary District - fees

Dear Mr. Nickless

I am a General Contractor who has processed a permit for two detached contiguous Accessory Dwelling Units (ADUs) in the City of Ojai Ca. Currently these units have been permitted by the City of Ojai and are under construction at 307 E. Aliso St., Ojai Ca. I am writing this letter on behalf of my client, Kim McLin (Owner), who resides at 307 E. Aliso St., Ojai Ca.

Within a week of commencement of the ADU construction the Owner received a letter from the Ojai Valley Sanitary District (OVSD) stating that the Owner was in violation (Violation NO.:2021-0412) of the OVSD Code of Regulations (Chapter 6, Section 608) and further stating that the violation must be corrected within 30 days. OVSD stated that the violation is based on an unpermitted connection of a structure to the District's sewer system.

The City of Ojai does not require a sewer will serve letter for the construction of an ADU. It appears to be the City's position that, based on State legislative intent, capacity charges and or connection fees (and associated will serve letters) should not be mandated unless the ADU is built in conjunction of a new Single Family Dwelling. The legislative intent in this regard is clear. We have a housing crisis in the State and the purpose of the legislation is to remove, not create barriers to build ADUs. Accordingly, under conditions where there are certain existing improvements, including existing water and sewer connections, no water or sewer connection or capacity charges should be levied, rather any associated utility or sewer district impact and cost should be absorbed by the system as a whole.

Based on Government Code 65852.2 and the Department Of Housing And Community Development's handouts and technical letters of assistance, there appears to be very narrow instances in which a sewer district may charge a connection fee or Capacity charge. For the record, notwithstanding Government Code 65852.2, subdivision (e), it makes no sense that subdivision (e) would isolate, beyond all new construction, one instance (a detached ADU) in which an ADU connection or capacity fee could be charged, and other instances (attached ADU or ADU built within the context of an existing detached structure), that equal the exact same impact, where no capacity or connection fee can be charged.

State ADU Law expressly prohibits local agencies, special districts, and water corporations from considering ADUs as a new residential use. Under narrow circumstances Govt. Code 65852.2, subdivision (e) allows fees to be calculated and

HCD LETTER

assessed proportionate to the burden of the ADU. In HCD's technical advisory letter of November 23, 2020 to Ojai Valley Sanitary District, HCD qualified ADU's for which no separate "connection" may be required and ADU's for which a "connection" or "capacity" fee may be charged.

"ADUs that are not described in Government Code section 65852.2, subdivision (e) may be subject to a new utility connection directly between the ADU and the utility". "If such a connection is mandated, then a fee or charges may be imposed but shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed".

Currently a direct connection between the Owner's ADUs under construction and the utility is not mandated, or necessary, as the intent is to tie into the Owner's existing sewer line on the property that is servicing the existing dwellings.

Regardless of the fact that no additional connection is mandated or necessary, OVSD is taking the position that Capacity charges are due in the amount of \$17,614.76 for the construction of one 640 sq. ft. ADU and one 750 sq. ft. ADU (\$8,807.38 each) based on plumbing fixture counts of each ADU.

Section G of the ADU handbook states that ADU's less than 750 sq. ft. are exempt from special district impact fees. HCD's letter to OVSD states that ADU's cannot be treated the same as single family dwellings and directs OVSD to utilize a "proportionate" approach towards fees (if fees are warranted). OVSD charges a flat fee of \$16,498.82 for a new single family dwelling regardless of dwelling size and the number of plumbing unit fixtures. In fact the flat fee would apply to a ten thousand square foot house with 70 or more plumbing fixture units. If an ADU of 1200 square feet or less utilizes 22 fixture units, the fee charged by OVSD is \$14,575.94. One might construe this is mathematically a proportionate number based on a comparison to a flat fee, however the fee cannot be proportionate based on comparative unlimited plumbing fixture units or dwelling size. At this juncture it is unclear if additional ADU fixture units could exceed the flat fee for a new primary dwelling.

OVSD seems to be creating a work around for fees and taking an apples and oranges approach in regards to HCD's directive and the legislative intent. In order to meet the intent of proportionality, there needs to be a ratio between two directly proportional quantities. This is impossible to develop by qualifying ADU fixture unit counts against a flat fee that represents the impact of any number of fixture units and any size dwelling.

Page 8, Government Code 65852.150 (b) of HCD's ADU Handbook notes:

" It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary , excessive, or burdensome so as to unreasonably restrict the ability of

homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.”

OVSD is not exempt from Government Code 65852.150

The following are the fees paid by the owner to permit the ADU's:

City of Ojai and Planning and Building and Safety

Permit issuance fee:	\$ 103.00
Permit fee:	930.00
Document fee:	4.12
Document hard copy:	10.60
Permit fee additional 100 sq. ft.:	372.00
General plan surcharge:	925.00
Mechanical plan review and insp.:	282.72
Electrical plan and insp.:	282.72
Plumbing plan and insp.:	282.72
Technology surcharge:	277.50
Plan filing fee:	18.75
Building standards fee:	8.00
Plan filing fee:	<u>18.79</u>

Sub Total: \$ 3,521.10

Department of Public Works:	00
Traffic Mitigation:	00
AQMD:	00
Casitas Municipal Water (water purveyor):	00
SCE:	00
Ojai Unified School District:	00

Ojai Valley Sanitary District: \$17, 614.76

Excluding OVSD, all the other participating agencies fees appear to be following the legislative intent. Notwithstanding OVSD's matrix for plumbing unit counts, OVSD fees appear to be arbitrary and excessive.

My client is requesting that HCD review this and provide further directive. Additionally please provide further clarification:

If no new connection is mandated can Capacity fees be charged?

Thank You



Andrew Stasse

cc: Shannan West

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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November 23, 2020

Jeff Palmer
General Manager
Ojai Valley Sanitary District
1072 Tico Road
Ojai, CA 93023

Dear Jeff Palmer:

RE: Ojai Valley Sanitary District's Accessory Dwelling Unit (ADU) Fees and Charges – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the Ojai Valley Sanitary District (OVSD or District) regarding the development of legally permissible connection fees and capacity charges as applied to accessory dwelling units (ADUs) under the State ADU Law (Gov. Code, §§ 65852.2, 65852.22.) during the current housing crisis. The California Department of Housing and Community Development (HCD) appreciates that the changes in the law are complicated and have been evolving quickly in recent years. HCD hopes that the following technical assistance is useful to the District and assists OVSD in expeditiously bringing its practices and regulations into compliance with state law.

Most of the mandates contained in State ADU Law apply to local agencies (cities, counties, or cities and counties) rather than districts (Gov. Code, § 65852.2, subd. (j)(5).) There are key provisions of State ADU Law that apply to districts, however. These sections delineate the permissible connection fees or capacity charges for a new ADU. State ADU Law places significant limits on two kinds of fees: (1) impact fees and (2) connection fees and capacity charges. OVSD's regulations and practices appear to exceed the limitations on the latter. These fees are prohibited in some cases and limited in others.

ADUs for which no separate "connection" may be required and no connection fee or capacity charge may be imposed

ADUs constructed entirely within an existing single family home or other accessory structure that satisfies the requirements of Government Code section 65852.2, subdivision (e), are exempt from any requirement to install a new or separate sewer connection; they are also exempt from connection fee or capacity charge (Gov.

Code, § 65852.2, subds. (e)(1)(A) and (f)(4). See also HCD's ADU Handbook¹ September 2020, at pp. 13-14.) OVSD's regulations appear to acknowledge these mandates under state law (District Code of Regulations, Chapter 3, s. 301.4.).

ADUs for which a “connection” or “capacity” fee may be charged

ADUs that are not described in Government Code section 65852.2, subdivision (e), may be subject to a new utility connection directly between the ADU and the utility. If such a connection is mandated, then a fee or charges may be imposed but shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed. (Gov. Code, § 65852.2, subd. (f)(5) and Gov. Code, § 66013.) State ADU Law places two important restrictions on the imposition of such fees or charges:

- (1) State ADU Law expressly prohibits local agencies, special districts, and water corporations from considering ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. (Gov. Code, § 65852.2, subd. (f).)
- (2) State ADU Law prescribes in detail the method by which the fees may be calculated and assessed. Such fees may be assessed only proportionate to the burden of the ADU based upon its “*square feet or the number of its drainage fixture unit (DFU) values.*” (Gov. Code, § 65852.2, subd. (f)(5).)

The effect of these two provisions is that the District may not treat an ADU the same as it would a single-family home and charge the same fee. In this context, “proportionate” is to be determined in comparison to a similar fee for a single-family dwelling (Gov. Code, § 65852.2, subd. (f)(5); HCD's Accessory Dwelling Unit Handbook September 2020, at pp. 13-14.). Thus, for example, using a square-foot approach, a capacity fee for a 1,000 square foot ADU would be expected to be about half of the capacity fee for a 2,000 square foot single family home. Likewise, using a drainage-fixture approach, an ADU with 10 drainage fixtures would be charged about one-third of the capacity fee of a single-family home with 30 drainage fixtures. (See HCD's ADU Handbook September 2020, at pp. 13-14.)

The District's regulations do not comply with these requirements and thus appear to be impermissible. While the District's regulations apply a drainage-fixture approach for commercial uses, they treat all residential uses equally. (Compare, for instance, District Code of Regulations, Chapter 3, s. 301.12.1 with s. 301.12.2.) This is true for Treatment Plant Capacity Charges (s. 301.11.1), for Truck Sewer Capacity Charges (s. 301.12.1), and Local Sewer Capacity Charges (s. 301.13.1). There is no suggestion in the regulations that fees or charges are based on the proportionate burden based on either square feet or drainage feature units for

¹ HCD's ADU Handbook can be referenced here: <https://www.hcd.ca.gov/policy-research/docs/adu-ta-handbook-final.pdf>.

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ADUs. Rather, single family homes and ADUs are treated interchangeably. This appears to be borne out in the District's practices; as HCD understands it, the District charges a combined connection fee of roughly \$16,000 for all residential uses, including ADUs, regardless of their size or their proportionate burden on the district using the methodology prescribed by law. The District's regulations and current fee structure is not legally sound, subjects the District to significant legal risk, is serving as a significant impediment to housing in this current housing crisis, and must be modified to conform to statute.

We appreciate the District's efforts to comply with State ADU Law and welcome the opportunity to assist the District in fully and expeditiously complying with State ADU Law. Please feel free to contact Greg Nickless, of our staff, at (916) 274-6244 or greg.nickless@hcd.ca.gov.

Sincerely,



Shannan West
Land Use & Planning Unit Chief

cc: Robert N. Kwong
Arnold LaRochelle Mathews
VanConas & Zirbell LLP

David Pai
Department of Justice
Office of the Attorney General