Dear Accountability and Enforcement Department.

We believe the Ojai Valley Sanitary District (OVSD) has been collecting illegal ‘capacity fees’ from homeowners building ADUs on their own properties.

We have completed the appeal process as prescribed by the Ojai Valley Sanitary District so now we await your assistance.

The appeal to the Executive Board was the last step in the process, and they denied the appeal. The General Manager confessed that they relied only on their own ordinances to come to the determination. He told the Board, and I quote: “***So the appeal is based on our ruling. The appeal is not based on our interpretation of a state code.*** ***If the board wants to have a discussion, make some sort of ruling about*** **whether or not our code complies with state law.*That's different than the action that's before you tonight***,.”

OVSDs own ordinance 100.11 affirms that the State of California governing codes shall automatically supersede their code, but this was completely ignored.

I have the full WebEx recording of the final appeal hearing, plus all relevant documentation available for your review. I can send you the links… just respond to this email.

======= Short Synopsis =======

In early 2020, I called the Ojai Valley Sanitary District to request a will-serve letter for sewage service for my proposed ADU which was necessary to obtain a building permit from the Ventura County Building and Safety Department. OVSD informed me that beyond paying them an extra set of monthly sewer service fees at my property, I must first promise to pay a total of $16,498.82.

After researching the legality of the fees being charged, I saw that the OVSD had adopted an ordinance that was contrary to the relevant Gov. Code, § 65852.2, subd. (f)(5). They continued to press for a payment from me, withholding my will-serve letter, delaying my building permit, and as a result, causing me significant additional material fees related to the project. I reached out to the HCD and communicated multiple times with Mr. Greg Nickless regarding this issue. Eventually, the HCD sent a Technical Assistance letter to the OVSD (Seen here on the HCD website: [Ojai Valley Sanitary District’s Accessory Dwelling Unit (ADU) Fees and Charges – Letter of Technical Assistance](https://www.hcd.ca.gov/policy-research/accessorydwellingunits/adu-technical-assistance-letters/ovsd-adu-letter.11.23.2020.pdf)). The OVSD then stopped collecting ‘capacity fees’ from **all** ADUs, then supplied me a will-serve letter at no cost, and with no promise to pay, in which it stipulated, after inspection, if my ADU had more ‘unit counts’ than indicated in my plan they would charge me ‘additional fees’. Since my ADU was constructed exactly as indicated in the plan, I did not expect to pay any fees.

A few months later, the OVSD amended their Ordinance No. 82 coming into compliance with one of the provisions indicated in the HCD’s letter – they no longer charged **all** ADUs the set amount of $16,498.82 **but** they neglected to revise their ordinance to comply with the second provision highlighted in the Technical Assistance Letter, the provision restricting ‘capacity fees’ to only be charged in the case where an ADU has a mandated direct connection to the District’s utility. This meant that ADUs that make sewer connections to their own lateral, on their own property, that previously had paid for that direct connection would be charged ‘capacity fess’ by the OVSD. This type of charge is not allowed as described in Gov. Code, § 65852.2, subd. (f)(5) which constrains these fees to being charged only to **mandated direct connections** to the utility itself, and Gov. Code § 65852.2 subd. (f)(2) “(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.”

A short time after the OVSD amended their ordinance, months after stopping collecting ‘capacity fees’ from any ADU, and months after providing a will-serve letter to me, they requested to inspect my ADU. I logically assumed that it was only to confirm that the number of ‘units’ included in it did not exceed the number in my plan that I submitted to them with my application. I of course agreed to allow them to visit. To my surprise, a few days later I received an invoice from them demanding that I retroactively pay $12,653.08. This is wrong on five levels.

1. State ADU law prohibits charging capacity fees to ADUs that do not make a mandated direct connection to the utility.
2. The District had no valid adopted fees when supplying the will-serve letter, with no payment or promise to pay, so the current fee for ADUs was $0. The OVSD cannot retroactively charge fees.
3. The OVSD cannot charge for primary connections to their utility a second time.
4. Reliance on the OVSD provided will-serve letter, allowing me to complete my project, promising to only charge additional fees when the ‘unit’ count is above the count in the original application plans is prohibited as per California Supreme Court decision on vested rights in the 1972 “Avco” decision.
5. OVSDs admission, in their OVSD-82 ordinance, that a connection to their utility can be classified as ‘**indirect**’ precludes them from claiming that all connections to their utility are ‘direct’ as would be necessary for charging ‘capacity fees’ as per State ADU Law.

======= Relevant OVSD Citations =======

OVSD Ordinance No. 82 section 301.4 ignores the central requirement of Government code §65852.2(f)(5) which states that any fees charged are to be based on having required a direct connection between the ADU and the utility. No such direct connection was made nor was one required therefore our understanding is no fees are permitted.

OVSD Ordinance No. 82 section 301.4 (c) pg. 20 reads:

ADUs Subject to Proportional Capacity Charges and Connection Fees:

An ADU is subject to the District's Capacity Charges set forth herein if it does not meet the exempt conditions in 301.4(b) above. If the ADU is subject to the District's connection fees, the District shall impose a connection fee on the ADU proportional to the ADU's burden on the District's wastewater system. The ADU Connection Fee shall be calculated by counting the number of drainage fixture units (DFUs) in the proposed ADU and dividing the number of counted DFUs in the proposed ADU by the District's applicable Capacity Unit for a Single Dwelling Unit (25 DFUs)

OVSD definition - Connection: A physical connection between any type of piping (or any other sewage conveyance system) not owned by the District to another type of piping which is directly or **indirectly** (?) connected to the District’s Sewage System.

OVSD definition - Capacity Charge: A one-time Charge for a new connection to the District Sewer System or expansion of use to the sewer system to cover a Parcel's proportionate cost of: (1) the existing District Sewer System benefit conveyed to the Parcel being charged; and (2) the new or modified District Sewer System Facilities to be acquired or constructed in the future that are of proportional benefit to the Person or Parcel being charged.

OVSD definition - Connection Fee: A fee paid by a new District Sewer System user for the capital costs of capacity made available for his or her use.

======= Relevant California ADU Law Citations =======

California ADU - Government Code §65852.2(f)(5) reads:

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation **may require a new or separate utility connection directly between the accessory dwelling unit and the utility**. Consistent with Section 66013, **the connection may be subject to a connection fee or capacity charge** that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

California ADU - Government Code §65852.2(f)(2) reads:

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

======= Summary =======

We believe our understanding of the government code is also consistent with the guidelines sent by the Department of Housing and Community Development (HCD) to the OVSD dated November 23, 2020. After reading the OVSD’s regulations and practices the legal department of the HCD wrote, with copy to David Pai, DOJ, Office of the Attorney General: “**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 (my emphasis). These fees are prohibited in some cases and limited in others**.”

HCD goes on to write in their letter to the OVSD: “**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.)**”

I reached out to the California Department of Justice, and I was advised by mail (dated 12/2/2020) that I needed to work through the district’s appeal process prior to getting other agencies involved in my dispute.

The OVSD appeal process has been completed.

As stated earlier, in the final hearing in front of the OVSD board of directors, the General Manager, Jeff Palmer, defended his earlier Notice of Determination where he denied my appeal, by confessing that he and his staff relied only on their own ordinance, OVSD-82 and 301.4, not consulting State ADU Law, to determine that my ADU was not ‘exempt’ and their ‘capacity fees’ were appropriate in my situation since their code was written so that the only exceptions to exempt fees as “described in subparagraph (A) of paragraph (1) of subdivision (e),” did not apply to my case. Mr. Palmer admitted that the State Laws were not, and should not, be considered during the appeal. By relying on their own ordinance which omits the relevant provision that a direct line must be required before fees can be charged, the Board of Directors, conforming to the General Manager’s judgment, denied my final appeal to them.

Please let us know if we are missing something in our analysis.

If not, please help us bring the OVSD into compliance with California State ADU Laws.

The OVSD practices are not only affecting me but other people in the service area are being forced to pay what seems to me to be illegal fees. I have also learned from homeowners in our group that the OVSD is also charging ‘capacity fees’ for ADUs under 750 square feet. Again, directly contrary to State ADU law.

For more information on this issue, please see our website: [OVSD-82 Conflicts – OVSD-82 Conflicts with California ADU Law](https://ovsd-82.com/)

Thank you for your attention and continued interest.

-Ric Vane
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