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Via First Class Mail and E-Mail
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Ric Vane
30 La Cumbra Street
Oak View, CA 93022

Subject: Ojai Valley Sanitary District's ("District") Responses to Questions About Connection Fees, Capacity Charges, and Other Fees as Applied to Accessory Dwelling Units ("ADUs")

Dear Mr. Vane:

Our firm is the general legal counsel for the District and this letter answers (in *italics*) the questions in your September 15, 2020 email ("Email") to me. It also specifies the applicable District connection fee, capacity charge, and other fees for the detached ADU you intend to construct on your 30 La Cumbra Street in Oak View, California property ("Property").

1. Where is the document titled "Appendix C" that was mistakenly omitted from the copy of Ordinance No. OVSD-80 ("Ordinance"), an ordinance amending the District's Code of Regulations to accommodate and comply with the 2017 and 2018 amendments to California Government Code § 65852.2, also referred to as the ADU Law ("ADU Law")?

First, we apologize for not providing you a complete copy of the Ordinance, including all the appendices. Appendix C is a reference to the District's then-applicable Sewer Service Charges. I have attached a true copy of Appendix C, as used in the Ordinance, as well as the District's current Sewer Service Charges, which were adopted by the Board of Directors in Ordinance No. OVSD-81 and became effective July 1, 2019, to this letter (see Exhibit "A"). These two documents should answer this question.

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2. What is meant by the statement “[t]he treatment plant capacity charge cannot include costs for anything which is not already in existence. The capacity charge is a buy-in of the current plant” as found on page 3 of the District’s Connection Fees or Capacity Charges”?

We have reviewed this statement contained in the February 18, 2010 letter from the former District General Manager, John K. Correa, to the District’s Board of Directors. In this letter, Correa was advising the District Board to review the District’s current capacity charges because: (a) some of the District’s customers had been exempted from the capacity charges under a previous policy; and (b) he was developing a revised sewer capacity charge that would require all the District’s sewer customers to share the costs of the District’s sewer treatment plant. Correa’s letter is consistent with the California Constitutional requirement that any fee or charge imposed by the government must be for a service that is actually used by, or immediately available to, the owner of the property in question. (See Cal. Const. Art. XIII D, §6(b)(4)). This same Constitutional provision provides that a governmental entity like the District may not charge for potential or future use of its services.

In the same letter, Correa states “[t]he treatment plant capacity charge cannot include costs for anything which is not already in existence,” and thus he informs the District Board that any capacity charge issued by the District must be related to the District’s then-existing debt for the initial construction of the sewer treatment plant and the ongoing costs for its operation, maintenance, and administration. Therefore, Correa’s statement that a “capacity charge is a buy-in of the current plant” is an accurate statement of the law and the facts as presented at the time.

In conclusion, Correa’s statement and the District’s policy on charges and fees complies with the statutory requirements for capacity charges provided in Government Code § 66013(b) (which was cited and explained in our initial August 18, 2020 correspondence).

3. Where and how has the District determined that the District’s current capacity charge is “proportionate to the burden” of a proposed ADU and how does the District determine the “reasonable cost of providing” sewer service?

The District’s Code of Regulations contains an in-depth explanation of the methods used to calculate the District’s capacity charges. A copy of the District’s Code of Regulations may be found here: <http://www.ojaisan.org/finances/ordinances.html>. Specifically, please review the definitions in Section 101.10, starting on page 1-4 and Chapter 3 which provides in-depth regulations for the District’s fees and rates for “Capacity Charges,” “Local Sewer Capacity Charge” and “Trunk Sewer Capacity Charges.”

4. Did the District submit a copy of its Code of Regulations to California Department of Housing and Community Development (“CaDHCD”) within 60 days of adopting the Ordinance?

Although paragraph (h) of the ADU Law requires some local agencies to submit their ADU ordinances to CaDHCD, it only applies to local agencies who are adopting ordinances that

“provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.” Gov. Code §65852.2(a). This statutory text does not apply to the District because the District does not have land use and zoning decision-making authority as a sanitary district formed under the Sanitary District Act of 1923 (Health & Safety Code § 6400 et seq.).

Now regarding the proposed ADU on your Property, the plans you provided to me for my review indicate clearly that you intend to add a detached, prefabricated ADU to your Property. A detached or stand-alone ADU (as opposed to the creation of an ADU in an existing single-family dwelling or accessory structure) does not fall within the scope of Government Code §65852.2(e)(1)(A), and thus, pursuant to Government Code § 65852.2(f)(5), the District “may require a new or separate utility connection directly between the accessory dwelling unit and the utility.” The District’s current policy is to exercise its discretion and charge any ADU that does not fall within the scope of §65852.2(e)(1)(A) the applicable sewer connection fee and capacity charge.

Under the District’s Code of Regulations, a detached or stand-alone ADU is considered one service unit. The applicable connection fees for one service unit are as follows:

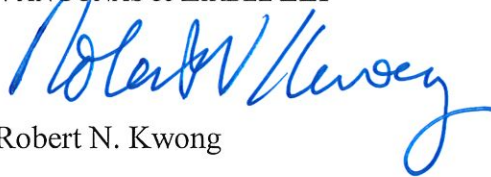
- A treatment plant capacity charge of \$5,140.21.
- A trunk sewer capacity charge of \$2,966.44.
- A local sewer capacity charge of \$7,917.17.

These connection fees total **\$16,023.82**. Other fees are also required to connect a detached ADU to the District’s sewer system. These include a Will Serve Letter & Permit Fee of \$75.00, a Permit/Plan Check fee of \$200.00, and an Inspection Fee of \$200.00. Please note that these additional “other Fees” are not “fees” as the that term is defined in Government Code §66000(b), and thus outside the scope of Government Code §65852.2(f)(2).

Should you have additional comments or questions, please feel free to contact me or my associate, Joshua Smith, at our office at (805) 988-9886 or via email or jsmith@atozlaw.com.

Sincerely,

ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP



Robert N. Kwong

RNK:JSS:em
Enclosure

EXHIBIT A

APPENDIX C
Effective as of July 1, 2015
(Ord. 71, 2013)(Ord. 77, 2015)

SEWER SERVICE CHARGES*

	Fiscal Year 2015-2016	Fiscal Year 2016-2017
Basic Sewer Service Charge	\$53.47 per Service Unit per month	\$54.54 per Service Unit per month
Debt Service Sewer Charge for Parcels Located Within the City of Ojai	\$3.37 per Capacity Unit per month	\$3.37 per Capacity Unit per month
Debt Service Sewer Charge for Parcels Located Outside the City of Ojai	\$1.89 per Capacity Unit per month	\$1.89 per Capacity Unit per month

* The methodology for calculating the total monthly sewer service charge that may be imposed on a given property is set forth in detail in Chapter 3, Section 302.7 of the Ojai Valley Sanitary District Code of Regulation.

“EXHIBIT A”

APPENDIX C
Effective as of July 1, 2019
(Ord. 71, 2013)(Ord. 77, 2015)(Ord. 81, 2019)

SEWER SERVICE CHARGES*

	Fiscal Year 2019-2020	Fiscal Year 2020-2021
Basic Sewer Service Charge	\$55.90 per Service Unit per month	\$57.30 per Service Unit per month
Debt Service Sewer Charge for Parcels Located Within the City of Ojai	\$2.70 per Capacity Unit per month	\$2.34 per Capacity Unit per month
Debt Service Sewer Charge for Parcels Located Outside the City of Ojai	\$1.55 per Capacity Unit per month	\$1.34 per Capacity Unit per month

* The methodology for calculating the total monthly sewer service charge that may be imposed on a given property is set forth in detail in Chapter 3, Section 302.7 of the Ojai Valley Sanitary District Code of Regulation.