

Analysis — ADU Capacity Fees, Connection Authority, and OVSD

Core Proposition

OVSD's authority to impose an ADU sewer connection fee or capacity charge under Gov. Code § 66311.5(e) / former § 65852.2(f)(5) is linked to the statutory authority to require a new or separate utility connection directly between the ADU and the utility.

The strongest reading is not that all non-protected ADUs are automatically fee-bearing. Rather, the statute establishes a conditional framework: agencies may require a new or separate direct utility connection for certain ADUs; if such a connection is required, the connection may be subject to a connection fee or capacity charge, subject to statutory limits.

Technical Assistance Letter Context (November 23, 2020)

HCD's November 23, 2020 Technical Assistance Letter to OVSD is significant because it structures the issue around connection authority first.

HCD stated that ADUs not falling within the protected category "may be subject to a new utility connection directly between the ADU and the utility." HCD then stated: "If such a connection is mandated, then a fee or charges may be imposed," subject to Gov. Code § 66013 and the ADU statutes.

The sequencing matters:

- Connection authority
→ possible fee authority.
- Mandated connection
→ fees may be imposed.
- No mandated connection
→ the statutory predicate becomes contested.

How the Proportionate-Fee Language Fits

The proportionality requirement does not necessarily operate independently of connection authority.

HCD's TAL and handbook materials explain that where fees are lawfully imposed, they may not treat ADUs as equivalent to a new single-family residence and must be proportionate to the ADU's burden using square footage or DFUs.

Under this interpretation, proportionality governs the amount and method of a permissible charge after the statutory connection framework has been invoked.

Application to OVSD's Actual Practice

Your argument depends on OVSD's own engineering and operational decisions.

If OVSD:

- inspects the property,
- evaluates the existing private lateral,
- determines the lateral is adequate,
- allows continued use of the already-approved existing lateral, and
- elects not to require a new/separate/direct utility connection,

then OVSD has chosen not to invoke the statutory pathway centered on a new direct utility connection.

At that point, the legal basis for imposing a residential-style capacity charge becomes materially weaker.

OVSD Fee Structure as Supporting Evidence

OVSD's apparent fee structure strengthens this interpretation.

You have asserted that OVSD's practice effectively treats one direct residential sewer connection as corresponding to one flat residential capacity charge, largely independent of square footage, fixture counts, or actual hydraulic loading.

That tends to support the view that OVSD's residential model is fundamentally connection-based rather than individualized-burden-based.

If the property already possesses an approved residential sewer connection entitlement, and OVSD determines no additional direct utility connection is required, then imposing a second residential-style charge is legally and conceptually disputed.

Likely OVSD Counterarguments and Responses

1. Added demand theory.

OVSD will likely argue that capacity fees fund treatment, collection, and system capacity, and therefore ADUs create compensable sewer demand regardless of plumbing configuration.

Response: That is a plausible utility-economics argument. But the statute and HCD's TAL frame the issue through connection authority and impose specific limits on when and how charges may be assessed.

2. Non-protected ADUs are generally chargeable.

OVSD may argue that subsection (e) broadly permits proportional charges for non-protected ADUs.

Response: This is a serious competing reading. However, HCD's TAL language—"If such a connection is mandated, then a fee or charges may be imposed"—supports a conditional interpretation tied to the exercise of connection authority.

3. Existing lateral adequacy does not equal public-system adequacy.

OVSD may contend that a private lateral can be adequate even while the ADU increases treatment and infrastructure burdens.

Response: Your argument is not merely “the pipe has room.” It is that OVSD’s own decision not to require a new direct utility connection matters under the statutory framework and under HCD’s interpretation.

Candid Assessment

Your position is legally serious and stronger than a generalized fairness objection.

Its strengths include:

- statutory text and syntax;
- HCD’s November 2020 Technical Assistance Letter;
- the relationship between connection authority and fee authority;
- OVSD’s apparent connection-based fee structure; and
- OVSD’s own engineering determinations regarding existing laterals.

A competing interpretation remains possible. However, your position presents a substantial statutory interpretation argument that warrants adjudication on the merits rather than summary dismissal.