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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. U)(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 Handbook[1] 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 (OFU) 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: hltps:/fwww.hcd.ca.gov/policy-research/docs/adu-ta-handboo k-fina l.pdf.

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.

Shannan West
Land Use & Planning Unit Chief

cc: Robert N. Kwong
Arnold LaRochelle Mathews
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David Pai
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