



Agenda Date: 2/15/2017

Agenda Placement: 8A

Napa Sanitation District Board Agenda Letter

TO: Honorable Board of Directors

FROM: Timothy Healy - General Manager
NS-General Manager Office

REPORT BY: Jeff Tucker, Director of Administrative Services/CFO - 707-258-6000

SUBJECT: Receive Legal Briefing on AB 2299 (Accessory Dwelling Units) and Provide Direction

RECOMMENDATION

Receiving legal briefing of AB 2299 regarding Accessory Dwelling Units, and provide direction to staff.

EXECUTIVE SUMMARY

Assembly Bill No. 2299 ("AB 2299") was signed by the Governor on September 27, 2016. The intent of the new law is to encourage second units, now called "accessory dwelling units", or ADUs, in single-family and multi-family residential areas, AB 2299 amends Government Code 65852.2 ("Section 65852.2), within the Planning and Zoning Law, to address items of concern regarding regional housing needs, zoning, compliance with Health and Safety Code, and of interest to NapaSan, connection fees and capacity charges for ADUs.

Definition of ADU

Section 65852.2 defines "Accessory Dwelling Unit" as an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An ADU also includes an efficiency unit and a manufactured home as defined in state law.

Two Types of ADUs

As it relates to connection fees or capacity charges, Section 65852.2 makes a distinction between ADUs that are created within the existing space of a single-family residence or accessory structure, and ADUs that are separate buildings or expand the existing space. For example, an ADU that converts an existing attached or detached garage into a dwelling unit, but does not increase the size of the garage, would be considered the first type of ADU, created within the existing space. But if the garage was increased in size and the footprint of the space expanded, then the ADU would be considered the second type of ADU, created in an expanded or new space.

Capacity Charges Based on Type of ADU

Section 65852.22 states that if the ADU is the first type of ADU, created within the existing space, then the local agency cannot charge a new connection fee or capacity charge for that development. However, if the new ADU expands beyond the existing dwelling, or is developed as a new building, then a connection fee or capacity charge can be assessed. Section 65852.2 provides that the fee or charge must be "proportionate to the burden of the proposed ADU, based on either its size or the number of its plumbing fixtures."

Definition of Local Agencies / Application to Napa Sanitation District

The provisions of Section 65852.2 regarding connection fees and capacity charges do not apply to NapaSan. The provisions apply to "local agencies," and Section 65852.2 defines "local agency" as a city, county, or city and county, whether general law or chartered. Therefore, NapaSan Legal Counsel has indicated that Section 65852.2 does not apply to NapaSan because NapaSan is not a city or county. The Department of Housing and Community Development came to the same conclusion (see Accessory Dwelling Unit Memorandum dated December 2016, p.11 - attached).

Nonetheless, the District could choose as a policy matter to comply with the intent of Section 6585.2. This policy judgment would reflect the goals of the state, the City, and the County to encourage development of ADUs.

Changes Required to Implement Section 65852.2's Intent

At present, the District's capacity charge is \$8,950 for each residential unit. (See District Code, Section 5.02.030 - attached.) Senior dwellings/residential care facility single room occupancy are charged \$5,370 per unit. There is no category for ADUs, and they would be charged at the residential unit rate. Section 65852.2 directs that local agencies use the lesser size or lesser plumbing fixtures as a basis to reduce capacity charges to ADUs. Presently, size and plumbing fixtures are not directly used to calculate capacity charges under the District's capacity charge. The Board could direct District staff to develop a capacity charge category for ADUs that reflects the typically smaller size and lower occupancies of ADUs. Staff would ensure that the proposal meets the intent of Section 65852.2 and the other requirements of applicable law. Section 66013, for example, requires that capacity charges not "exceed the estimated reasonable cost of providing the service for which the charge is imposed." A fee study would be prepared to provide evidence to support the ADU rate.

Recommendation

The purpose of the briefing is to inform the Board of various issues pertaining Section 65852.2, including its applicability to NapaSan.

If the Board is interested in implementing a change to NapaSan Code to accommodate ADUs, the recommendation is for the Board to direct staff to study and recommend a new methodology for residential capacity charges. The City of Napa has already adopted an ordinance for Accessory Second Units (Napa Municipal Code 17.52.015 - see attached). NapaSan would prepare a study to evaluate the methodology it uses to set capacity charges for residential units, in light of Section 6585.2, the city's ordinance, and Government Code 66013. Once completed, the staff would recommend a new methodology for Board consideration.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Capacity Charges
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification: The Board has the option of implementing Section 65852.2, which could impact the amount of capacity charges received.

Is the general fund affected? Yes

Future fiscal impact: If the Board were to implement Section 65852.2, the impact would be to reduce the amount of capacity charges collected in future fiscal years.

Consequences if not approved: If Section 65852.2 is not implemented, then the revenue forecast for capacity charges remains without change.

Additional Information: None.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

None.

SUPPORTING DOCUMENTS

- A . Section 65852.2
- B . Accessory Dwelling Unit Memorandum
- C . District Code 5.02.030
- D . Napa Municipal Code 17.52.015 Accessory Second Units

Napa Sanitation District: Approve

Reviewed By: Timothy Healy