

ALMONTE SANITARY DISTRICT

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May 23, 2017

Jay Hamilton-Roth, Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 949030

Subject: Grand Jury Report: *Overcoming Barriers to Housing Affordability*
Report Date: April 12, 2017

Dear Jay,

The subject Grand Jury Report requires Almonte Sanitary District to respond to Recommendation R5 ("Each utility district should adopt waivers for hook-ups fees for low-income housing projects and accessory dwelling units.").

The member agencies of SASM quickly recognized that adopting waivers for hook-up fees might be in conflict Proposition 218 and requested review by our Marin County Counsel.

Our counsel researched the issue and provided a written opinion. That opinion indicates that the issue of reduction of fees and/or waiver of connection fees is very problematic for a JPA sewage agency, sanitary district or county sanitation district. The problematic issues include: (1) a possible violation of the California Constitution's prohibition of a gift of public funds [Article XVI, Section 6]; and (2) whether opening the door to such reductions involves a violation of equal protection in the sense that other ratepayers might provide proof that they fall under the poverty level and should also be given reductions or waivers. In both situations (waiver of connection fees or waiver/reduction of user fees), the district has no funding mechanism to recoup the loss of funds.

Our counsel recognized that other public agencies including, for example, the Marin County Community Development Agency, do provide fee waivers for affordable housing. However, the County's program recovers the fee waivers through a Housing Fund Trust that is funded by developer's affordable housing fees. In our counsel's opinion, such a program is not available or feasible for our public agency since we would not be a viable recipient of a Housing Fund Trust. This agency is governed by the Sanitary District Act of 1923 (California Health and Safety Code Sections 6400 et seq.). This Act does not provide any authority for the waiver of fees.

Should the Grand Jury provide competent legal authority for the waiver of connection fees by a sanitary district, this district will consider the authority and re-visit this issue.

Therefore, the Almonte Sanitary District, while sensitive to the issues of housing affordability within the County of Marin, cannot adopt waivers for hook-up fees for low-income housing projects and accessory dwelling units pursuant to Recommendation R-5 of the Grand Jury report.

Please do not hesitate to contact the District if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'Lew Kious', written in a cursive style.

Lew Kious
Chair