

Summary Interpretations of Recent ADU Amendments

Gov. Code Sections 65852.2 and 65852.22

Prepared by Casita Coalition, with input from HCD.

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Members of Casita Coalition prepared this document, reflecting questions received from many people concerning recent amendments to California ADU laws. We've reviewed the questions and answers with HCD, and they tentatively agree with these positions. Nonetheless, please treat these interpretations as interim – i.e., the best we've all been able to do within the time available. We continue to work with HCD on these interpretations and will update this document as necessary. Additional analysis underpinning many of these conclusions is available upon request (contact Debbie Sanderson, debsanderson51@gmail.com). Please address questions on this document to her as well. Code references are to Gov. Code 65852.2, as amended by AB881, AB68, and SB13 (2019).

Category 1: Maximum ADU sizes:

Q1.1: How do you reconcile the three standards for ADU size – 800 sq. ft, 850/1000 sq. ft., and 50% of main dwelling:

Answer:

- Minimum 800 sq. ft rule requires local governments to allow **freestanding** ADUs of at least 800 sq. ft/16 ft. high/4 ft. setbacks on lots with a single-family home. Requirements in subdivisions (a) through (d) and local zoning standards do not apply to these ADUs. [Item e.1]
- Minimum 800 sq. ft. rule also requires local governments to allow an **attached** ADU of these same dimensions, waiving any size, percentage, lot coverage, etc. requirements necessary to allow its construction. [See item c.2.C]
- 850/1000 sq. ft rule applies to the maximum-size standards that local governments may adopt for ADUs; these standards may not be less than 850 sq. for studios and 1-bedroom ADUs, and not less than 1,000 sq. ft. for ADUs that are two bedrooms or more [See Item c.2.A-C]
- 50% size rule restricts the maximum size of ADUs **attached to** a single-family dwelling but is secondary to the 800 sq. ft. rule. In sum, the maximum size of an attached ADU is 50% of the size of the single-family home, or 800 sq. ft, **whichever is larger**. [See Item c.2.C]
- No size limit applies to an internal ADU that qualifies under Gov. Code § 65852.2(1)(A)

Q1.2: Does the requirement in item c.2.B.ii mean that a local government must allow 1,000 sq. ft. for a 2-bedroom ADU and must allow 2-bedroom ADUs?

Answer: Yes. Local governments **may not** restrict the number of bedrooms in ADUs. They must allow at least 1000 sq. ft. size for ADUs with 2 or more bedrooms.

Q1.3: Under what circumstances may an ADU or JADU be increased over the maximum allowed size by 150 sq. ft?

Answer: The 150 sq. ft. may be added to an ADU created by converting an accessory structure, not to a JADU or to an ADU within the main house.

Category 2: JADUs & ADUs

Q2.1: How do we distinguish between an ADU with an efficiency kitchen and a JADU? We don't.
Answer: The definitions of JADU and ADU now overlap. The owner gets to decide what to call it, if it meets the requirements of the type chosen (i.e., if a JADU, must be 500 sq. ft. max, within main dwelling, etc.)

Q2.2: Does the new owner-occupancy restriction for ADUs also apply to JADUs?
Answer: No. However, a local government may waive this requirement if it chooses.

Q2.3: Must a local government allow a JADU to be attached to an ADU?
Answer: No. See other answers about JADUs – they must be within the main dwelling.

Q2.4: Does the provision that allows local governments to designate “non-ADU” areas apply to JADUs as well?
Answer: No, unless they apply the same restrictions on other homes in the area. See 65852.22(d)

Q2.5: Accessory structure conversion: May an accessory structure be converted to a JADU or must JADUs always be conversion of existing space in the main dwelling?
Answer: JADU must be conversion of space in the main dwelling, not in an accessory structure.

Q2.6: Replacement structure: If the accessory structure is demolished, rebuilt as an ADU using the same footprint, must local governments allow it to be expanded to 800 sq. ft?
Answer: Depends on local standards:

- The setback preservation provision [a.1.D.vii] applies to the conversion of an accessory structure to an ADU or to “a portion of an ADU”, but not to any expansion beyond the accessory structure.
- Under Item e.1.A.i, owners may add 150 sq. ft. to the size of the original accessory structure for ingress/egress reasons if the additional space does not increase the ADUs nonconformity.
- Expansions beyond the 150 sq. ft. are subject to local ADU standards. Any additional square footage may not increase the ADUs nonconformity.

Q2.7: Accessory Structure Demolition: If an existing accessory structure is demolished in order to convert it to a JADU/ADU, is the demolition permit also ministerial?
Answer: Yes.

Category 3: Numbers and Types of Units per parcel:

Q3.1: ADU and JADUs: Do the provisions in e.1.A and e.1.A.i mean that local governments must allow (a) an ADU *and* a JADU within the same main dwelling? (b) A freestanding ADU and an internal ADU?
Answer: Yes, when the cleanup bills (AB953 and SB773) are adopted, but not under current law.

3.2: Attached ADUs: Subdivision (e) does not address “attached ADUs.” Does e.1.B apply to attached ADUs as well as detached ADUs?
Answer: No. Treat them separately. Item c.2.C waives specific standards to allow an 800/16/4/4 Attached ADU.

Category 4: Application of Local Standards (All ADUs)

Questions in this category address what local standards may be applied to ADUs and JADUs, including ADUs generally, as well as those that meet the standards in **Item e.1**, which include the following:

Q4.1. Exemption /Subdivision (e) ADUs: What ADUs and JADUs are exempt from Subdivisions (a) through (d)? [Note—we use the shorthand “800/16/4/4” to refer to ADUs that are **800 sq./16’ tall /4’ rear setback/4’ side setback.**]

- a. On lot with single-family dwelling:
 - 800 sq./16’/4’/4’ freestanding ADUs
 - Junior ADUs created by converting space within the main dwelling
 - Internal ADUs created by converting space within a main dwelling or an accessory structure.
- b. On a lot with a multifamily dwelling structure:
 - At least one ADU, and up to 25 percent of the number of units in primary, may be created from unused space within multi-family dwelling structure
 - At least one (and up to 2) 800/16/4/4 freestanding ADUs on a lot with a multi-family dwelling.

These restrictions do not apply to the following types of ADUs:

- Attached ADUs of any size
- Any ADUs larger than 800 sq. ft. or taller than 16’.

Q4.2: Daylight planes: The APA/HCD Webinar note that local governments may still apply standards for daylight and shadows. What limits the application of these standards?

Answer: Daylight planes are a type of setback. Only a 4-ft side and rear setback may be applied to both freestanding and attached ADUs. [See Item e.1 and c.2.C]

Q4.3: Front Yard: Would an ADU be allowed in the front yard under Subdivision (e)?

Answer: Yes, for freestanding ADUs up to 800 sq. ft. in size that qualify under subdivision (e). Attached ADUs and non-subdivision (e) detached ADUs are subject to other zoning standards.

Q4.4: Front Yard: If a backyard is large enough for the ADU, then could local governments require that it be placed in the backyard rather than the front yard?

Answer: Not for ADUs up to 800 sq. in size that qualify under subdivision (e), but yes for any ADUs that do not qualify under subdivision (e)

Q4.5: Corner Lots: Do the 4-foot side and rear yard setbacks apply to corner lots?

Answer: Yes.

Q4.6: Sewer and Water: Do the provisions in Item e.1.A for multiple units per lot take precedence over the density standards established by local sewer and water services?

Answer: Yes. ADUs never count as a unit for any density calculation.

Q4.7: Building Separation: Do local building separation requirements that prevent construction of a freestanding ADU take precedence over the provisions in Subdivisions (c) and (e)?

Answer: For ADUs that qualify under subdivision (e), only the building code requirements may be applied. For other ADUs, other standards may be applied, but they are subject to Subdivision (c)’s provision requiring a city to allow an 800/16/4/4 unit.

Q4.8: Other Local Standards: Items a.5 and a.6.A state that local governments may not apply other standards than those listed herein. Yet Item a.1.B allows additional unspecified standards to be applied. How do we know what additional standards are allowed and which are not allowed?

Answer: Item a.5 states clearly that no other standards, except those identified in this subdivision, may be “the basis for the delay or denial of a building permit or use permit under this subdivision.”

Q4.9: Design review standards are frequently vague and require interpretation, such as “be compatible with the surrounding architecture.” Do such generalized standards meet the requirements that the permit be issued ministerially?

Answer: No. Ministerial standards must be objective and independently verifiable.

Q4.10: Can local governments prohibit construction of “exemption ADUs” for reasons in Item a.1.A (such as fire safety and congestion)?

Answer: No. Requirements in subdivisions (a) through (d) may not be applied to ADUs covered by subdivision (e)

Q4.11: Do the short-term rental rules apply to any secondary unit that meets the current ADU definition or just to those being created after 1/1/2020?

Answer: The rules apply if the unit meets the State’s definition of an ADU, which includes no “before” or “after” dates.

Q4.12: Indemnification. To what extent can a local government require an applicant to indemnify such government as a condition of approval to an ADU application?

Answer: May not require indemnification (1) because it’s not included in Building Permit requirements, (2) local governments may not attach additional conditions on the ADU permit, and (3) additional standards may not be applied to ADUs meeting the qualifications of Item e.1.

Q4.13: Deed Restrictions. To what extent can a local government require an applicant to record a deed restriction on the property noting development standards or prohibitions required by the local government or state law?

Answer: Unless required by law, deed restrictions may not be required of ADUs because they add time, hassle, and cost to building an ADU. (See Item A.5 and Item a.6.A).

Category 5: Multi-unit Parcels/Structures

Q5.1: Multi-unit building: If a multi-unit building is currently non-conforming for density (i.e., the zoning district allows two units and the parcel now contains 4 units), can ADUs still be added to this building and to the area outside the building?

Answer: Yes, See Item e.2.

Q5.2: Multi-unit building: Do the multi-unit portions of the code (e.1.C & D) apply to mixed use structures – i.e., those with ground floor commercial and upper floors housing?

Answer: Yes. See Item e.1.

Q5.3: Multi-unit building: Must local governments allow the commercial portion of the building be converted to ADUs?

Answer: No. They may allow it, but they are not required to.

Q5.4: #s of units: Is a property with an existing multifamily building allowed to have both interior ADUs and detached ADUs?

Answer: Yes. See Item e.1.C and D.

Q5.6: 25%: How does the “up to 25 percent of existing multifamily dwelling units” provision of (e)(1)(C)(ii) apply when the resulting product is greater than 1 but not a whole number? I.e., on a 7-unit project, how many ADUs can be added under (e)(1)(C)?

Answer: Round down to the nearest whole number.

Q5.7: Existing Structures: Do the provisions of Subdivision (e) apply only to multi-family structures that existed on January 1, 2020?

Answer: No. The provisions apply to any multi-family structure, independent of when it was built. Once it has a Certificate of Occupancy, it becomes an “existing multifamily dwelling structure” independent of when it became “existing.”

Q5.8: Parking Structures: Do parking garage areas of a multi-family dwelling structure qualify as unused areas that may be converted to an ADU? (see Item e.1.C.1)

Answer: Yes, if the ADUs created meet the state building standards

Category 6: Identifying ADUs:

Q6.1: What qualifies as a residential or mixed-use zone in 65852.2(e)(1)?

Answer: Where residential uses are allowed, with or without another use on the site.

Q6.2: Date restrictions: Does the term “accessory dwelling unit” apply only to those created after the State or local government began using this term, or does it apply to any secondary unit that meets the current definition?

Answer: It applies to any secondary unit that meets the State definition of an ADU, which includes no “before” or “after” rules.

Q6.3: Non-habitable portions: To what extent must non-habitable portions of ADUs (e.g., porches, covered patios, garages) be allowed with respect to new construction of attached or detached ADUs? For instance, can an Exemption ADU have a 150 sq. ft. covered patio in addition to 800 sf of interior living space?

Answer: Size requirements apply to the internal, habitable portions of an ADU.

Q6.4: Mini Lots: Some jurisdictions allow for small/mini lot developments (e.g., Oakland) where each unit is on its own legal parcel (not a condominium) but may be attached to adjacent units. What qualifies as a single-family dwelling for purposes of 65852.2?

Answer: A townhouse is an attached single-family home that occupies a separate residential lot. It qualifies as a lot with a single-family home under Section 65852.2 and 22.