1. **Size**

   Clarify the 50% of floor area for attached ADU versus the required allowable 800 sq ft for an ADU in subsection (e). Also, how do you measure square footage?

   The most common interpretation is that homeowners can build 800 sf or 50% of the main house, whichever is larger. And that cities can cap the size at 850 (studio/1 bedroom) or 1000 (2+ bedroom) regardless of the size of the main house.

   The ordinance does not give guidance on how to measure square footage or if garages count. Cities should be consistent with how they measure square footage for other purposes.

   **We’re assuming that if combined with a JADU on the lot, you can limit the ADU to 800 SF. Is this correct? Does the 50% include the combined square footage of the ADU and JADU, if someone wants to do both?**

   Currently, if an owner wants to build an ADU and a JADU, the ADU must be in a new freestanding building and the ADU can be limited to 800 sf. Even if the combined area exceeds 50 percent of the area of the primary dwelling, the owner is entitled to the 800 sf ADU and a JADU.

   **Similarly, if you have an existing 1,000 SF ADU, you would not be able to add a JADU (because the ADU exceeds 800 SF). Is this correct?**

   That is correct.
Someone has an existing 1,200 SF primary dwelling. They would like to create a new 1,000 SF ADU, which consists of converting 400 SF of the existing house and adding 600 SF to the rear of the house. In this case, would the proposed ADU exceed 50% of the existing house (1,000 SF > 50% of existing FAR)? Or are we only counting the 400 SF of the existing house being converted as not “exceeding 50% of the existing primary dwelling”.

Attached ADUs are limited to 800 sf or 50% of the existing house, whichever is greater, unless cities want to allow more. In this case, the attached ADU would be limited to 800 sf.

2. Special (e)

Q - Does Govt Code require approval of garage conversions when the ADU/JADU could have been constructed to its fullest size allowance in existing unconditioned space?

It is the homeowner’s choice which unconditioned space or garage to convert to an ADU.

Q - Can cities impose front yard setbacks for streamlined ADUs approved under subsection (e). Cities have received letters from non-governmental organizations stating otherwise.

There is a minority interpretation that concludes special (e) units are exempt from all zoning rules and can be built in the front yard. The majority interpretation is that cities are free to apply additional standards as long as they do not prevent the development of special (e) ADUs.

Q. Building separation for detached ADUs. Some cities have been applying fairly large building separation requirements. These zoning ordinances are related to usable open space, and not safety. May such separation requirements be applied to special (e) ADUs? What prevents cities from all adopting large building separation requirements?

Cities may apply building separation standards as long as they do not preclude an 800 sf ADU.

3. Owner Occupancy

Q - Does Govt Code restrict the City’s ability to require owner occupancy in primary residence, ADU, or JADU; or in any combinations thereof?

Cities may not impose owner occupancy rules for ADUs built between 2020-2025. The main house and the ADU may each be rented separately. Units with JADUs must be owner occupied unless owned by a governmental agency, land trust, or housing organization (which is not defined).
4. Review/Approval Process

Q - Can a city require that they first obtain a ministerial ADU permit with the Planning Division (no neighborhood notification or public hearing required) and then submit for a building permit?

Yes, you can still require a ministerial Planning Division permit if you meet the 60 day timeline. You could also have a neighbor notification requirement as long as it does not slow the approval process. Although neighbor notification could be required, most agencies avoid this because compliant ADUs must be approved regardless of the impacts on the neighbors. There are pros and cons to this approach.

Q - What is the definition of “completed application”?

Completed application is not defined. The most reasonable interpretation is that it is a 'complete application.'

Q - Clarify 60-day shot clock tolling. Are the 60-days tolled when the jurisdiction has provided comments to the applicant?

The 60 day deadline applies to complete applications, and likely the application is not complete if there are unanswered comments or questions. If the application is incomplete, the 60-day deadline hasn't started. The 60 day time limit can be tolled if the homeowner requests the delay.

Q. Would discretionary review or subjective design standards be permitted for ADUs voluntarily allowed above and beyond the State requirements. For example, new ADUs over detached garages. While a SFH is being reviewed discretionally, can the city toll the review of the attached ADU? Would this include reviews that require public hearings?

The statute requires that all ADUs be approved ministerially. However, if the ADU is not compliant with local rules (and the local rules match the state rules), cities could provide a discretionary application for a variance or other exemption procedure separate from ADU approval. The 60 day timing would not apply if the ADU does not meet the rules and the homeowner is applying for an exemption.

If an ADU is proposed in connection with a new single-family home, the statute provides that the agency should first complete the review of the new single-family home and then approve the ADU within 60 days. An occupancy permit can't be issued for the ADU until an occupancy permit is obtained for the single-family home.
5. Number of Units

Q - What is the maximum number of ADUs/JADUs permitted on a lot? Our understanding is that you can have one ADU (attached or detached to the primary dwelling) and one JADU (within the existing primary dwelling) on a lot, but not two ADUs. Is this correct?

Cities must permit one new detached ADU up to 800 sf and one JADU on a lot. Cities could choose to allow two or more ADUs on a lot or an attached ADU and a JADU, but these are not required to be allowed.

Q. If our jurisdiction allowed an ADU above a garage, then could a resident convert the garage at a later date? Since State has removed replacement parking for ADUs.

Owners can only build one ADU. Since the ADU is not a 'new detached' ADU, a JADU in addition would not be permitted.

6. JADU

Q. Are JADUs only allowed within the walls of an existing or proposed primary dwelling? Or can a JADU be added to an existing primary dwelling?

A JADU must be located within the walls of an existing or proposed primary dwelling.

Q. In 65852.2 (e)(1)(B), the legislation states (B) [...] The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area of not more than 800 square feet.
(ii) A height limitation of 16 feet.

My question is would a local agency have to enact those specified conditions by ordinance?

A jurisdiction needs to meet the requirements of the law. It may be possible to reference the state law rather than having all of the specific rules in the local ordinance. Cities need to have local ordinances that are compliant or their entire ordinance is null and void.

7. Zoning Standards

Q. State law states that ADUs up to 800 SF are not subject to lot coverage and FAR requirements. Our understanding is that for any ADU exceeding 800 SF, the entire ADU is counted towards lot coverage and FAR, not just the portion exceeding 800 SF. Is this correct?

Yes, that is correct.
Q. State law states parking is not required if “The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure”. We’re interpreting “accessory structure” in this sentence as an existing accessory structure. Is this correct?

Yes.

Q. Can a homeowner build an ADU if they have an existing nonconforming single family dwelling in a commercial zone?

If the commercial or mixed-use zone allows single family or multifamily uses, the owner can build an ADU. However, if the commercial zone does not allow single-family residences, then the owner cannot build an ADU unless the City chooses to allow it. The special (e) provisions only apply in residential and mixed use zones.

Q. It would be helpful to know HCD’s interpretation regarding whether cities can prohibit ADUs within the front yard setback since the legislation speaks to only side and rear setbacks, but is silent on the front setback.

HCD has said, informally, that you can prohibit ADUs in the front yard, as long as a property owner can build an 800/16/4/4 in the backyard. (However, some advocates disagree with this interpretation.)

Daylight plane / shadows for detached ADUs. Can cities apply daylight plane rules on special (e) ADUs if they prohibit the ADU from meeting the 4’ rear and side setbacks? Some cities have daylight plane rules that they apply to accessory structures that would not allow (e) ADUs to be as little as 4’ from the property lines, even if they have minimal height (normal 8’ walls on a slab and low-sloped roof).

The statute states that only four foot rear and side setbacks can be required. If there were a health and safety reason to have larger setbacks (such as accommodating snow loads), possibly those would be permitted, but it is unlikely that daylight plane standards would be upheld.

Can a jurisdiction default to its own existing building height maximums provided those limitations allow for at least a 16 foot tall building height?

Yes
8. 150 SF Additions

Q. Are these additions also exempt from lot coverage and floor area? Are these additions subject to setback and declining height envelope (daylight plane) requirements?

These are intended to allow a stairway so people can leave the ADU. Similar to other special (e) units, HCD’s interpretation is that cities can negotiate about the exact details, but at the end of the day the homeowners must be allowed to build the staircase.

9. Multifamily Properties

Q. State law states you can add up to two detached ADUs and are “subject to a height limit of 16 feet and four-foot rear yard and side setbacks”. Does this mean that a minimum four-foot side and rear setback is required? Can we require greater side and rear setbacks?

Cities can reduce the setbacks and increase the height, but they may not be more restrictive.

Q. Can a City limit the number of garages converted as part of a multifamily conversion? (Ex. 100 unit apartment w/200 parking spaces. Using the 25% multifamily rule, can you covert all 200 parking spaces to 25 ADUs?)

The property owner may be required to provide parking if the ADUs are not exempt (e.g. near transit).

If a single family home converts a garage to an ADU, they do not need to make up the parking. It is not clear if this applies to multifamily. Because the wording of the relevant section of the law is singular (an ADU), there is an argument that it does not apply to multifamily ADUs.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

Q. Can cities choose to allow conversion of “livable space” for multifamily ADUs?

Yes

Q. How are fractions considered from the 25% multifamily rule? Are you required to round up or down with fractional units?

No guidance is given.
10. Deed Restrictions

Q. Are deed restrictions for ADUs and JADUs required? Or is it up to each city to decide if it’s required?

A deed restriction is required for JADUs. The statute specifies what must be included in the deed restriction.

Without an owner-occupancy requirement, cities can elect whether to record a deed restriction for an ADU. Many elect to do so, so owners are on notice that they cannot use the ADU for short-term rentals.

11. Fire Safety

Q. Can a city’s fire department require an Alternative Means and Methods Request (AMMR) in lieu of fire sprinklers for a detached ADU? Can these mitigation measures then ultimately result in fire sprinklers?

No fire sprinklers can be required unless they are required for the single-family home. If fire sprinklers cannot be required, then there would be no grounds for a fire department to require AMMR in lieu of fire sprinklers.

Q. The State Fire Marshall released an information bulletin in regards to sprinklers in January 2017. Will there be an updated information bulletin in response to the new state laws?

We aren’t aware of any new plans at present but have asked the Fire Marshall for an update.