

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 96

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10 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

11 AN ACT

12 RELATING TO CHILD CARE; PROVIDING THAT REGISTERED CHILD CARE  
13 HOMES, LICENSED FAMILY CHILD CARE HOMES AND LICENSED GROUP  
14 CHILD CARE HOMES BE TREATED AS RESIDENTIAL USES IN THE  
15 APPLICATION OF LOCAL ORDINANCES AND REGULATIONS; PROHIBITING  
16 LOCAL AUTHORITIES FROM IMPOSING ADDITIONAL REGULATIONS THAT DO  
17 NOT ALSO APPLY TO OTHER PRIVATE RESIDENCES WITHIN THE SAME  
18 ZONING DISTRICT; PROVIDING THAT LOCAL AUTHORITIES SHALL NOT  
19 ASSESS OR COLLECT CERTAIN FEES OR REGULATORY TAXES FROM  
20 REGISTERED CHILD CARE HOMES, LICENSED FAMILY CHILD CARE HOMES,  
21 LICENSED GROUP CHILD CARE HOMES OR LICENSED CHILD CARE CENTERS;  
22 PROVIDING THAT LICENSED CHILD CARE CENTERS BE PERMITTED BY  
23 RIGHT USE IN ZONES DESIGNATED AS COMMERCIAL; DEFINING  
24 "PERMITTED BY RIGHT" AND OTHER TERMS; LIMITING ZONING  
25 AUTHORITIES' REGULATION OF OFF-STREET PARKING AS IT APPLIES TO  
CHILD CARE HOMES AND CHILD CARE CENTERS; CLARIFYING THE

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1 APPLICATION OF RULES PROMULGATED PURSUANT TO CHAPTER 59A,  
2 ARTICLE 52 NMSA 1978; PROVIDING THAT A HOMEOWNER ASSOCIATION  
3 SHALL NOT PROHIBIT THE OPERATION OF, OR ASSESS OR COLLECT A FEE  
4 OR TAX FOR THE OPERATION OF, A REGISTERED CHILD CARE HOME,  
5 LICENSED FAMILY CHILD CARE HOME OR LICENSED GROUP CHILD CARE  
6 HOME.

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 **SECTION 1.** Section 3-21-1 NMSA 1978 (being Laws 1965,  
10 Chapter 300, Section 14-20-1, as amended) is amended to read:

11 "3-21-1. ZONING--AUTHORITY OF COUNTY [OR]--MUNICIPALITY--  
12 EXCEPTIONS--REGISTERED CHILD CARE HOMES--LICENSED FAMILY CHILD  
13 CARE HOMES--LICENSED GROUP CHILD CARE HOMES--LICENSED CHILD  
14 CARE CENTERS.--

15 A. For the purpose of promoting health, safety,  
16 morals or the general welfare, ~~[a county or municipality is]~~ a  
17 zoning authority ~~[and]~~ may regulate and restrict within its  
18 jurisdiction the:

19 (1) height, number of stories and size of  
20 buildings and other structures;

21 (2) percentage of a lot that may be occupied;

22 (3) size of yards, courts and other open  
23 space;

24 (4) density of population; and

25 (5) location and use of buildings, structures

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1 and land for trade, industry, residence or other purposes.

2 B. The ~~county or municipal~~ zoning authority may:

3 (1) divide the territory under its  
4 jurisdiction into districts of such number, shape, area and  
5 form as is necessary to carry out the purposes of Sections  
6 3-21-1 through 3-21-14 NMSA 1978; and

7 (2) regulate or restrict the erection,  
8 construction, reconstruction, alteration, repair or use of  
9 buildings, structures or land in each district. All such  
10 regulations shall be uniform for each class or kind of  
11 ~~[buildings]~~ building within each district, but regulation in  
12 one district may differ from regulation in another district.

13 C. All state-licensed or state-operated community  
14 residences for persons with a mental or developmental  
15 disability and serving ten or fewer persons may be considered a  
16 residential use of property for purposes of zoning and may be  
17 permitted use in all districts in which residential uses are  
18 permitted generally, including particularly residential zones  
19 for single-family dwellings.

20 D. A board of county commissioners of the county in  
21 which the greatest amount of the territory of the petitioning  
22 village, community, neighborhood or district lies may declare  
23 by ordinance that a village, community, neighborhood or  
24 district is a "traditional historic community" upon petition by  
25 twenty-five percent or more of the qualified electors of the

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1 territory within the village, community, neighborhood or  
2 district requesting the designation. The number of qualified  
3 electors shall be based on county records as of the date of the  
4 last general election.

5 E. Any village, community, neighborhood or district  
6 that is declared a traditional historic community shall be  
7 excluded from the extraterritorial zone and extraterritorial  
8 zoning authority of any municipality whose extraterritorial  
9 zoning authority extends to include all or a portion of the  
10 traditional historic community and shall be subject to the  
11 zoning jurisdiction of the county in which the greatest portion  
12 of the traditional historic community lies.

13 F. Zoning authorities ~~[including zoning authorities  
14 of home rule municipalities]~~ shall accommodate  
15 multigenerational housing by creating a mechanism to allow up  
16 to two kitchens within a single-family zoning district, such as  
17 conditional use permits.

18 ~~[G. For the purpose of this section,  
19 "multigenerational" means any number of persons related by  
20 blood, common ancestry, marriage, guardianship or adoption.]~~

21 G. Notwithstanding the provisions of Subsections A  
22 through F of this section, a child care home shall be  
23 considered a residential use of property for purposes of zoning  
24 and shall be permitted by right. In the application of local  
25 ordinances or regulations to a child care home, a local

1       authority shall not:

2               (1) impose additional regulations or  
3 requirements or require other discretionary local government  
4 review or approval, including conditional or special use  
5 permits, that do not also apply to other private residences  
6 within the same zoning district;

7               (2) assess or collect a fee or tax for the  
8 privilege of operating a child care home; or

9               (3) impose off-street parking regulations that  
10 exceed the off-street parking regulations for a single-family  
11 residence within the same zoning district.

12               H. Notwithstanding the provisions of Subsections A  
13 through F of this section, a licensed child care center shall  
14 be permitted by right in any zoning district designated as  
15 commercial, mixed-use or multifamily residential. In the  
16 application of local ordinances or regulations to a licensed  
17 child care center, a local authority shall not:

18               (1) assess or collect a fee or tax for the  
19 privilege of operating a licensed child care center;

20               (2) impose a different or more restrictive  
21 building, safety or nuisance ordinance than the ordinances  
22 applied within the same zoning district; or

23               (3) impose off-street parking restrictions or  
24 requirements; provided, however, that a zoning authority may  
25 require a licensed child care center to provide designated on-

site stacking spaces or a lane for the safe and efficient  
loading and unloading of children; and provided further that:

(a) the number of stacking spaces required by the zoning authority shall not be more than one space per ten children of the center's proposed licensed capacity; and

(b) the licensed child care center shall be permitted to meet the staff parking needs through the use of available on-street parking spaces, shared parking agreements or off-site parking.

### I. As used in this section:

(1) "child care center" means a licensed, nonresidential facility that provides child care and services to and supervision of children for less than twenty-four hours of any day;

(2) "child care home" includes a registered child care home, licensed family child care home or licensed group child care home, as defined in Section 9-29-2 NMSA 1978;

(3) "local authority" means a county or municipality, a zoning authority or any board, instrumentality or other body of a county or municipality that has authority to enact ordinances or adopt regulations;

(4) "multigenerational" means any number of persons related by blood, common ancestry, marriage, guardianship or adoption;

(5) "permitted by right" means a use that is designated as an allowed use within a zoning district and does not require conditional use approval, special exceptions or permits, variances or any other discretionary approval by a local authority beyond compliance with the applicable standards of the zoning district; and

(6) "zoning authority" means the planning, zoning or land use regulatory body of a county or municipality."

SECTION 2. Section 3-21-11 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-9) is amended to read:

"3-21-11. CONFLICTS BETWEEN ZONING REGULATIONS AND OTHER STATUTES AND ORDINANCES.--Except as provided in Subsections G and H of Section 3-21-1 NMSA 1978, if any other statute or regulation or other local ordinance, resolution or regulation adopted under authority of Sections [14-20-1 through 14-20-12 New Mexico Statutes Annotated, 1953 Compilation] 3-21-1 through 3-21-14 NMSA 1978 is applicable to the same premises, the provision shall govern which requires:

A. the greater width or size of yards, courts or other open spaces;

B. the lower height of building or a less number of stories;

C. the greater percentage of lot or land to be left unoccupied; or

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1                   D. ~~[or imposes]~~ other higher standards."

2                   SECTION 3. Section 3-38-4 NMSA 1978 (being Laws 1981,  
3 Chapter 37, Section 4, as amended) is amended to read:

4                   "3-38-4. BUSINESS LICENSING--BUSINESS REGISTRATION--  
5 APPLICATION TO DO BUSINESS--ISSUANCE OF LICENSE OR  
6 REGISTRATION--PRORATION OF LICENSE FEE--RENEWAL OF  
7 REGISTRATION--STAGGERED PERIODS FOR BUSINESS REGISTRATION.--

8                   A. Prior to engaging in any business, any person  
9 proposing to engage in a business, except for a child care  
10 facility, shall pay to the municipality any applicable business  
11 registration fee or any applicable business license fee. A  
12 municipality may provide by ordinance for the prorating of the  
13 business license fee and the issuing of a business license for  
14 the remainder of the calendar year in which the business is to  
15 be operated.

16                   B. Each year, any person engaging in a business  
17 within a municipality shall apply for the renewal of any  
18 applicable business license as authorized in Section 3-38-1  
19 NMSA 1978 or any applicable business registration as authorized  
20 in Section 3-38-3 NMSA 1978 with the municipal clerk. A  
21 municipality may provide by ordinance for a staggered system of  
22 business registration.

23                   C. Any person filing an application for issuance or  
24 renewal of any business license as authorized in Section  
25 3-38-1 NMSA 1978 or any business registration as authorized in

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1 Section 3-38-3 NMSA 1978 shall include on the application [his]  
2 the applicant's current [revenue division] taxation and revenue  
3 department taxpayer identification number or evidence of  
4 application for a current [revenue division] taxation and  
5 revenue department taxpayer identification number. No  
6 municipality shall issue or renew a business license or a  
7 business registration authorizing the conduct of a business to  
8 any person who has not furnished to the municipality the  
9 information required in this section.

10 D. As used in this section, "child care facility"  
11 includes a licensed child care center, registered child care  
12 home, licensed family child care home or licensed group child  
13 care home as defined in Section 9-29-2 NMSA 1978."

14 SECTION 4. Section 47-16-18 NMSA 1978 (being Laws 2019,  
15 Chapter 30, Section 10) is amended to read:

16 "47-16-18. ENFORCEMENT OF COVENANTS--DISPUTE RESOLUTION--  
17 REGISTERED CHILD CARE HOMES--LICENSED FAMILY CHILD CARE HOMES--  
18 LICENSED GROUP CHILD CARE HOMES--CONFLICTS.--

19 A. Each association and each lot owner and the  
20 owner's tenants, guests and invitees shall comply with the  
21 [Homeowners] Homeowner Association Act and the association's  
22 community documents.

23 B. Notwithstanding the provisions of Subsection A  
24 of this section:

25 (1) an association shall not, within the

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1 association, prohibit the operation of a child care home or  
2 assess or collect a fee or tax for the operation of a child  
3 care home; and

4 (2) in the event of a conflict between an  
5 association's community documents and the early childhood  
6 education and care department's registration or licensing  
7 requirements for a child care home, the association shall  
8 provide reasonable exceptions to the association's community  
9 documents to allow any child care home within the association  
10 to comply with the applicable child care home registration or  
11 licensing requirements of the department.

12 [B.] C. Unless otherwise provided for in the  
13 community documents, the association may, after providing  
14 written notice and an opportunity to dispute an alleged  
15 violation other than failure to pay assessments:

16 (1) levy reasonable fines for violations of or  
17 failure to comply with any provision of the community  
18 documents; and

19 (2) suspend, for a reasonable period of time,  
20 the right of a lot owner or the lot owner's tenant, guest or  
21 invitee to use common areas and facilities of the association.

22 [C.] D. Prior to imposition of a fine or  
23 suspension, the board shall provide an opportunity to submit a  
24 written statement or for a hearing before the board or a  
25 committee appointed by the board by providing written notice to

1 the person sought to be fined or suspended fourteen days prior  
2 to the hearing. Following the hearing or review of the written  
3 statement, if the board or committee, by a majority vote, does  
4 not approve a proposed fine or suspension, neither the fine nor  
5 the suspension may be imposed. Notice and a hearing are not  
6 required for violations that pose an imminent threat to public  
7 health or safety.

8 [D.] E. If a person against whom a violation has  
9 been alleged fails to request a hearing or submit a written  
10 statement as provided for in Subsection [E] D of this section,  
11 the fine or suspension may be imposed, calculated from the date  
12 of violation.

13 [E.] F. A lot owner or the association may use a  
14 process other than litigation used to prevent or resolve  
15 disputes, including mediation, facilitation, regulatory  
16 negotiation, settlement conferences, binding and nonbinding  
17 arbitration, fact-finding, conciliation, early neutral  
18 evaluation and policy dialogues, for complaints between the lot  
19 owner and the association or if such services are required by  
20 the community documents.

21 G. As used in this section "child care home" means  
22 a registered child care home, licensed family child care home  
23 or licensed group child care home as defined in Section 9-29-2  
24 NMSA 1978."

25 SECTION 5. Section 59A-52-18 NMSA 1978 (being Laws 1984,  
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1 Chapter 127, Section 964, as amended) is amended to read:

2 "59A-52-18. RULES--STATEWIDE EFFECT--RESERVED POWER OF  
3 MUNICIPALITIES--TRAINING.--

4 A. The rules promulgated pursuant to Chapter 59A,  
5 Article 52 NMSA 1978 shall have uniform force and effect  
6 throughout the state and no municipality or subdivision shall  
7 enact or enforce any ordinances or rules inconsistent with the  
8 statewide rules promulgated pursuant to that article. Nothing  
9 in that article shall ~~[in any way]~~ impair the power of any  
10 municipality to regulate the use of its land by zoning,  
11 building codes or restricted fire district rules, except as  
12 provided in Subsection B of this section.

13 B. The rules promulgated pursuant to Chapter 59A,  
14 Article 52 NMSA 1978 shall:

15 (1) not impose regulations on registered child  
16 care homes, licensed family child care homes or licensed group  
17 child care homes as defined in Section 9-29-2 NMSA 1978 that do  
18 not also apply to other private residences;

19 (2) treat licensed child care centers as  
20 defined in Section 9-29-2 NMSA 1978 as a permitted by right use  
21 in all zones designated as commercial, mixed-use or multifamily  
22 residential; and

23 (3) not impair the power of the early  
24 childhood education and care department to determine standards  
25 and regulate registered child care homes, licensed family child

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care homes or licensed group child care homes.

[B.] C. The state fire marshal shall offer training to certified firefighters to assist with fire and fire safety inspections.

D. As used in this section, "permitted by right"  
means a use that is designated as an allowed use within a  
zoning district and does not require conditional use approval,  
special exceptions or permits, variances or any other  
discretionary approval by the zoning authority beyond  
compliance with applicable standards of the zoning district."

**SECTION 6. EFFECTIVE DATE.--**The effective date of the provisions of this act is July 1, 2026.

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