

1 SENATE BILL 421

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO ZONING; LIMITING THE AUTHORITY OF COUNTIES AND
12 MUNICIPALITIES; LIMITING THE AUTHORITY OF ZONING COMMISSIONS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 3-17-1 NMSA 1978 (being Laws 1965,
16 Chapter 300, Section 14-16-1, as amended) is amended to read:

17 "3-17-1. ORDINANCES--PURPOSES.--

18 A. The governing body of a municipality may adopt
19 ordinances or resolutions not inconsistent with the laws of New
20 Mexico for the purpose of:

21 [~~A.~~] (1) effecting or discharging the powers
22 and duties conferred by law upon the municipality;

23 [~~B.~~] (2) providing for the safety, preserving
24 the health, promoting the prosperity and improving the morals,
25 order, comfort and convenience of the municipality and its

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1 inhabitants; and

2 [~~6-~~] (3) enforcing obedience to the ordinances
3 by prosecution in the municipal court and metropolitan courts
4 and upon conviction the imposition of:

5 [~~(1)~~] (a) except for those violations of
6 ordinances described in [~~Paragraphs (2) and (3)~~] Subparagraphs
7 (b) and (c) of this [~~subsection~~] paragraph, a fine of not more
8 than five hundred dollars (\$500) or imprisonment for not more
9 than ninety days or both;

10 [~~(2)~~] (b) for a violation of an
11 ordinance prohibiting driving a motor vehicle while under the
12 influence of intoxicating liquor or drugs, a fine of not more
13 than one thousand dollars (\$1,000) or imprisonment for not more
14 than three hundred sixty-four days or both; and

15 [~~(3)~~] (c) for violations of an
16 industrial user wastewater pretreatment ordinance as required
17 by the United States environmental protection agency, a fine of
18 not more than one thousand dollars (\$1,000) a day for each
19 violation.

20 B. The authority of municipalities to adopt
21 ordinances or resolutions that regulate agricultural
22 operations, mining activities and oil and gas activities is
23 expressly preempted. The provisions of state law, and of rules
24 promulgated pursuant to state law, exclusively occupy the field
25 of regulating agricultural operations, mining activities and

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1 oil and gas activities.

2 C. For the purposes of Subsection B of this
3 section:

4 (1) "agricultural operation" means
5 "agricultural operation" as defined in Subsection B of Section
6 47-9-5 NMSA 1978;

7 (2) "mining" means "mining" as defined in
8 Subsection H of Section 69-36-3 NMSA 1978; and

9 (3) "oil and gas activities" means activities
10 subject to regulation pursuant to the Oil and Gas Act,
11 including the exploration, development, production and
12 transportation of oil and gas, and any associated remediation
13 and reclamation activities related thereto."

14 SECTION 2. Section 3-21-1 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-20-1, as amended by Laws 2007, Chapter
16 46, Section 3 and by Laws 2007, Chapter 270, Section 1) is
17 amended to read:

18 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

19 A. For the purpose of promoting health, safety,
20 morals or the general welfare, except as provided in
21 Subsections H and I of this section, a county or municipality
22 is a zoning authority and may regulate and restrict within its
23 jurisdiction the:

24 (1) height, number of stories and size of
25 buildings and other structures;

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- 1 (2) percentage of a lot that may be occupied;
2 (3) size of yards, courts and other open
3 space;
4 (4) density of population; and
5 (5) location and use of buildings, structures
6 and land for trade, industry, residence or other purposes.

7 B. The county or municipal zoning authority may:

- 8 (1) divide the territory under its
9 jurisdiction into districts of such number, shape, area and
10 form as is necessary to carry out the purposes of Sections
11 3-21-1 through 3-21-14 NMSA 1978; and
12 (2) regulate or restrict the erection,
13 construction, reconstruction, alteration, repair or use of
14 buildings, structures or land in each district. All such
15 regulations shall be uniform for each class or kind of
16 buildings within each district, but regulation in one district
17 may differ from regulation in another district.

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

25 D. A board of county commissioners of the county in

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1 which the greatest amount of the territory of the petitioning
2 village, community, neighborhood or district lies may declare
3 by ordinance that a village, community, neighborhood or
4 district is a "traditional historic community" upon petition by
5 twenty-five percent or more of the registered qualified
6 electors of the territory within the village, community,
7 neighborhood or district requesting the designation. The
8 number of registered qualified electors shall be based on
9 county records as of the date of the last general election.

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

18 F. Zoning authorities, including zoning authorities
19 of home rule municipalities, shall accommodate
20 multigenerational housing by creating a mechanism to allow up
21 to two kitchens within a single-family zoning district, such as
22 conditional use permits.

23 G. For the purpose of this section,
24 "multigenerational" means any number of persons related by
25 blood, common ancestry, marriage, guardianship or adoption.

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1 H. The authority of a county or municipality to
2 adopt zoning ordinances to regulate agricultural operations,
3 mining activities and oil and gas activities is expressly
4 preempted. The provisions of state law, and of rules
5 promulgated pursuant to state law, exclusively occupy the field
6 of regulating agricultural operations, mining activities and
7 oil and gas activities.

8 I. For the purposes of Subsection H of this
9 section:

10 (1) "agricultural operation" means
11 "agricultural operation" as defined in Subsection B of Section
12 47-9-5 NMSA 1978;

13 (2) "mining" means "mining" as defined in
14 Subsection H of Section 69-36-3 NMSA 1978; and

15 (3) "oil and gas activities" means activities
16 subject to regulation pursuant to the Oil and Gas Act,
17 including the exploration, development, production and
18 transportation of oil and gas, and any associated remediation
19 and reclamation activities related thereto."

20 SECTION 3. Section 3-21-21 NMSA 1978 (being Laws 1965,
21 Chapter 206, Section 7, as amended) is amended to read:

22 "3-21-21. POWERS OF THE COMMISSION.--

23 A. Except as provided in Subsections C and D of
24 this section, the commission shall have power within the
25 district as part of the building and zoning ordinances,

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1 regulations and restrictions adopted by it in the manner
2 otherwise provided by law to regulate and restrict:

3 (1) the height, number of stories and size of
4 buildings and other structures;

5 (2) the percentage of a lot that may be
6 occupied;

7 (3) the size of yards, courts and other open
8 spaces;

9 (4) the density of populations;

10 (5) the location and use of buildings and
11 structures; and

12 (6) the use of lands for trade, industry,
13 residence or other purposes.

14 B. The commission shall adopt a comprehensive
15 zoning plan or ordinance for the district that includes a
16 master land use plan.

17 C. The authority of the commission to adopt
18 ordinances or resolutions that regulate agricultural
19 operations, mining activities and oil and gas activities is
20 expressly preempted. The provisions of state law, and of rules
21 promulgated pursuant to state law, exclusively occupy the field
22 of regulating agricultural operations, mining activities and
23 oil and gas activities.

24 D. For the purposes of Subsection C of this
25 section:

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1 (1) "agricultural operation" means
2 "agricultural operation" as defined in Subsection B of Section
3 47-9-5 NMSA 1978;

4 (2) "mining" means "mining" as defined in
5 Subsection H of Section 69-36-3 NMSA 1978; and

6 (3) "oil and gas activities" means activities
7 subject to regulation pursuant to the Oil and Gas Act,
8 including the exploration, development, production and
9 transportation of oil and gas, and any associated remediation
10 and reclamation activities related thereto."

11 SECTION 4. Section 4-37-1 NMSA 1978 (being Laws 1975,
12 Chapter 312, Section 1) is amended to read:

13 "4-37-1. COUNTIES--POWERS--ORDINANCES.--

14 A. All counties are granted the same powers that
15 are granted municipalities except for those powers that are
16 inconsistent with statutory or constitutional limitations
17 placed on counties. Included in this grant of powers to the
18 counties are those powers necessary and proper to provide for
19 the safety, preserve the health, promote the prosperity and
20 improve the morals, order, comfort and convenience of any
21 county or its inhabitants. The board of county commissioners
22 may make and publish any ordinance to discharge these powers
23 not inconsistent with statutory or constitutional limitations
24 placed on counties.

25 B. The authority of counties to adopt ordinances or

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1 resolutions that regulate agricultural operations, mining
2 activities and oil and gas activities is expressly preempted.
3 The provisions of state law, and of rules promulgated pursuant
4 to state law, exclusively occupy the field of regulating
5 agricultural operations, mining activities and oil and gas
6 activities.

7 C. For the purposes of Subsection B of this
8 section:

9 (1) "agricultural operation" means
10 "agricultural operation" as defined in Subsection B of Section
11 47-9-5 NMSA 1978;

12 (2) "mining" means "mining" as defined in
13 Subsection H of Section 69-36-3 NMSA 1978; and

14 (3) "oil and gas activities" means activities
15 subject to regulation pursuant to the Oil and Gas Act,
16 including the exploration, development, production and
17 transportation of oil and gas, and any associated remediation
18 and reclamation activities related thereto."