

SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 96

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHILD CARE; PROVIDING THAT REGISTERED CHILD CARE HOMES, LICENSED FAMILY CHILD CARE HOMES AND LICENSED GROUP CHILD CARE HOMES BE TREATED AS RESIDENTIAL USES IN THE APPLICATION OF LOCAL ORDINANCES AND REGULATIONS; PROHIBITING LOCAL AUTHORITIES FROM IMPOSING ADDITIONAL REGULATIONS THAT DO NOT ALSO APPLY TO OTHER PRIVATE RESIDENCES WITHIN THE SAME ZONING DISTRICT; PROVIDING THAT LOCAL AUTHORITIES SHALL NOT ASSESS OR COLLECT CERTAIN FEES OR REGULATORY TAXES FROM

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REGISTERED CHILD CARE HOMES, LICENSED FAMILY CHILD CARE HOMES, LICENSED GROUP CHILD CARE HOMES OR LICENSED CHILD CARE CENTERS; PROVIDING THAT LICENSED CHILD CARE CENTERS BE PERMITTED BY RIGHT USE IN ZONES DESIGNATED AS COMMERCIAL; DEFINING "PERMITTED BY RIGHT" AND OTHER TERMS; LIMITING ZONING AUTHORITIES' REGULATION OF OFF-STREET PARKING AS IT APPLIES TO CHILD CARE HOMES AND CHILD CARE CENTERS; CLARIFYING THE APPLICATION OF RULES PROMULGATED PURSUANT TO CHAPTER 59A, ARTICLE 52 NMSA 1978; PROVIDING THAT A HOMEOWNER ASSOCIATION SHALL NOT PROHIBIT THE OPERATION OF, OR ASSESS OR COLLECT A FEE OR TAX FOR THE OPERATION OF, A REGISTERED CHILD CARE HOME, LICENSED FAMILY CHILD CARE HOME OR LICENSED GROUP CHILD CARE HOME.

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

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

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

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

.233511.3AIC February 12, 2026 (12:25pm)

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

B. The ~~[county or municipal]~~ zoning authority may:

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

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

for single-family dwellings.

D. A board of county commissioners of the county in which the greatest amount of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of qualified electors shall be based on county records as of the date of the last general election.

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

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

~~[6. For the purpose of this section,~~

~~"multigenerational" means any number of persons related by blood, common ancestry, marriage, guardianship or adoption.]~~

G. Notwithstanding the provisions of Subsections A through F of this section, a child care home shall be considered a residential use of property for purposes of zoning and shall be permitted by right. In the application of local ordinances or regulations to a child care home, a local authority shall not:

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

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

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

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

(1) assess or collect a fee or tax for the

privilege of operating a licensed child care center;

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

(3) impose off-street parking restrictions or requirements; provided, however, that a zoning authority may 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

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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

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

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

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

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

B. Each year, any person engaging in a business within a municipality shall apply for the renewal of any applicable business license as authorized in Section 3-38-1

NMSA 1978 or any applicable business registration as authorized in Section 3-38-3 NMSA 1978 with the municipal clerk. A municipality may provide by ordinance for a staggered system of business registration.

C. Any person filing an application for issuance or renewal of any business license as authorized in Section 3-38-1 NMSA 1978 or any business registration as authorized in Section 3-38-3 NMSA 1978 shall include on the application ~~[his]~~ the applicant's current [revenue division] taxation and revenue department taxpayer identification number or evidence of application for a current [revenue division] taxation and revenue department taxpayer identification number. No municipality shall issue or renew a business license or a business registration authorizing the conduct of a business to any person who has not furnished to the municipality the information required in this section.

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

Sf11 → ~~SECTION 4. Section 47-16-18 NMSA 1978 (being Laws 2019, Chapter 30, Section 10) is amended to read:~~

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

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

~~B. Notwithstanding the provisions of Subsection A of this section:~~

~~(1) an association shall not, within the association, prohibit the operation of a child care home or assess or collect a fee or tax for the operation of a child care home; and~~

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

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

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

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

~~{C.} D. Prior to imposition of a fine or suspension, the board shall provide an opportunity to submit a written statement or for a hearing before the board or a committee appointed by the board by providing written notice to the person sought to be fined or suspended fourteen days prior to the hearing. Following the hearing or review of the written statement, if the board or committee, by a majority vote, does not approve a proposed fine or suspension, neither the fine nor the suspension may be imposed. Notice and a hearing are not required for violations that pose an imminent threat to public health or safety.~~

~~{D.} E. If a person against whom a violation has been alleged fails to request a hearing or submit a written statement as provided for in Subsection {C} D of this section, the fine or suspension may be imposed, calculated from the date of violation.~~

~~{E.} F. A lot owner or the association may use a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation, settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues, for complaints between the lot~~

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~~owner and the association or if such services are required by the community documents.~~

~~G. As used in this section "child care home" means 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."~~←Sf11

Sf11→SECTION 4. Section 47-16-18 NMSA 1978 (being Laws 2019, Chapter 30, Section 10) is amended to read:

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

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

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

(1) an association shall not adopt or enforce a restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document or master deed provision or take any other action that effectively prohibits, unreasonably restricts or limits, directly or indirectly, the use of a lot as a child care home. Any such adoption or enforcement shall not be deemed a de facto prohibition solely because it imposes reasonable requirements that are uniformly applied to and

imposed on all lot owners in the association and is not directed at prohibiting, restricting or limiting child care homes;

(2) an association shall not require, assess or collect a fee, tax or assessment on a child care home or for the operation of a child care home that is not also required, assessed or collected on all other lots within the same association, except for generally applicable fees or assessments reasonably related to actual, documented costs or impacts and imposed uniformly on all lot owners in the association; and

(3) in the event of a conflict between an association's restriction, covenant, condition, bylaw, rule, regulation, provision of a governing document or master deed provision and the early childhood education and care department's registration or licensing requirements for a child care home, that department's requirements shall take precedent to the extent necessary to allow compliance with state licensing requirements, and the association shall provide reasonable accommodations for requirements applicable to child care homes; provided that such accommodations do not materially impair the association's ability to protect the health, safety or property of the association's lot owners.

C. Nothing in this section prohibits an association from adopting or enforcing on all lot owners uniformly applied

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restrictions, covenants, conditions, bylaws, rules or regulations that apply equally to all lot owners in the association and do not restrict child care homes to any greater degree than any other lot owner, including restrictions, covenants, conditions, bylaws, rules or regulations regarding:

(1) parking and traffic;

(2) noise or nuisance impacts;

(3) safety and security measures;

(4) architectural or exterior appearance

standards; or

(5) use, scheduling or access to common

elements.

D. Compliance with state child care licensing or registration requirements shall not exempt a licensed child care home from compliance with association rules that do not conflict with those requirements.

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

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

(2) suspend, for a reasonable period of time, the right of a lot owner or the lot owner's tenant, guest or

invitee to use common areas and facilities of the association.

~~[C.]~~ F. Prior to imposition of a fine or suspension, the board shall provide an opportunity to submit a written statement or for a hearing before the board or a committee appointed by the board by providing written notice to the person sought to be fined or suspended fourteen days prior to the hearing. Following the hearing or review of the written statement, if the board or committee, by a majority vote, does not approve a proposed fine or suspension, neither the fine nor the suspension may be imposed. Notice and a hearing are not required for violations that pose an imminent threat to public health or safety.

~~[D.]~~ G. If a person against whom a violation has been alleged fails to request a hearing or submit a written statement as provided for in Subsection [C] F of this section, the fine or suspension may be imposed, calculated from the date of violation.

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

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I. As used in this section, "child care home" means 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."←Sf11

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

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

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

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

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

(2) treat licensed child care centers as defined in Section 9-29-2 NMSA 1978 as a permitted by right use

in all zones designated as commercial, mixed-use or multifamily residential; and

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

- 17 -

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