

1 SENATE BILL 96

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

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10 AN ACT

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

7

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

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

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

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

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

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

11       I. As used in this section:

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

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

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

22               (4) "permitted by right" means a use that is  
23       designated as an allowed use within a zoning district and does  
24       not require conditional use approval, special exceptions or  
25       permits, variances or any other discretionary approval by a

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1       local authority beyond compliance with the applicable standards  
2       of the zoning district; and

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

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

8               "3-21-11. CONFLICTS BETWEEN ZONING REGULATIONS AND OTHER  
9       STATUTES AND ORDINANCES.--Except as provided in Subsections G  
10       and H of Section 3-21-1 NMSA 1978, if any other statute or  
11       regulation or other local ordinance, resolution or regulation  
12       adopted under authority of Sections [14-20-1 through 14-20-12  
13       New Mexico Statutes Annotated, 1953 Compilation] 3-21-1 through  
14       3-21-14 NMSA 1978 is applicable to the same premises, the  
15       provision shall govern which requires:

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

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

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

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

23       SECTION 3. Section 47-16-18 NMSA 1978 (being Laws 2019,  
24       Chapter 30, Section 10) is amended to read:

25               "47-16-18. ENFORCEMENT OF COVENANTS--DISPUTE RESOLUTION--  
26       .232874.4SA

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1        REGISTERED CHILD CARE HOMES--LICENSED FAMILY CHILD CARE HOMES--  
2        LICENSED GROUP CHILD CARE HOMES--CONFLICTS.--

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

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

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

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

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

25                        (1) levy reasonable fines for violations of or  
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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

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1 arbitration, fact-finding, conciliation, early neutral  
2 evaluation and policy dialogues, for complaints between the lot  
3 owner and the association or if such services are required by  
4 the community documents.

5 G. As used in this section "child care home" means  
6 a registered child care home, licensed family child care home  
7 or licensed group child care home as defined in Section 9-29-2  
8 NMSA 1978."

9 **SECTION 4.** Section 59A-52-18 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 964, as amended) is amended to read:

11 "59A-52-18. RULES--STATEWIDE EFFECT--RESERVED POWER OF  
12 MUNICIPALITIES--TRAINING.--

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

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

24 (1) not impose regulations on registered child  
25 care homes, licensed family child care homes or licensed group

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1       child care homes as defined in Section 9-29-2 NMSA 1978 that do  
2       not also apply to other private residences;

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

7               (3) not impair the power of the early  
8       childhood education and care department to determine standards  
9       and regulate registered child care homes, licensed family child  
10       care homes, licensed group child care homes or licensed child  
11       care centers.

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

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

21               **SECTION 5. [NEW MATERIAL] FEE OR TAX ON CHILD CARE**  
22       **HOME--PROHIBITED.--**Notwithstanding any authority granted to a  
23       county or municipality by law, a county or municipality shall  
24       not assess or collect a business license, fee or regulatory tax  
25       for the operation of a registered child care home, licensed

1 family child care home or licensed group child care home as  
2 defined in Section 9-29-2 NMSA 1978.

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

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