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SENATE BILL 96

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

INTRODUCED BY

Heather Berghmans and Linda M. Trujillo and Linda Serrato

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 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 LOCAL 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.

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~~
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

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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--
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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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1 failure to comply with any provision of the community
2 documents; and

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

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

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

22 ~~[E.]~~ F. A lot owner or the association may use a
23 process other than litigation used to prevent or resolve
24 disputes, including mediation, facilitation, regulatory
25 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

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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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