

1 AN ACT

2 RELATING TO CHILD CARE; PROVIDING THAT REGISTERED CHILD CARE
3 HOMES, LICENSED FAMILY CHILD CARE HOMES AND LICENSED GROUP
4 CHILD CARE HOMES BE TREATED AS RESIDENTIAL USES IN THE
5 APPLICATION OF LOCAL ORDINANCES AND REGULATIONS; PROHIBITING
6 LOCAL AUTHORITIES FROM IMPOSING ADDITIONAL REGULATIONS THAT
7 DO NOT ALSO APPLY TO OTHER PRIVATE RESIDENCES WITHIN THE SAME
8 ZONING DISTRICT; PROVIDING THAT LOCAL AUTHORITIES SHALL NOT
9 ASSESS OR COLLECT CERTAIN FEES OR REGULATORY TAXES FROM
10 REGISTERED CHILD CARE HOMES, LICENSED FAMILY CHILD CARE
11 HOMES, LICENSED GROUP CHILD CARE HOMES OR LICENSED CHILD CARE
12 CENTERS; PROVIDING THAT LICENSED CHILD CARE CENTERS BE
13 PERMITTED BY RIGHT USE IN ZONES DESIGNATED AS COMMERCIAL;
14 DEFINING "PERMITTED BY RIGHT" AND OTHER TERMS; LIMITING
15 ZONING AUTHORITIES' REGULATION OF OFF-STREET PARKING AS IT
16 APPLIES TO CHILD CARE HOMES AND CHILD CARE CENTERS;
17 CLARIFYING THE APPLICATION OF RULES PROMULGATED PURSUANT TO
18 CHAPTER 59A, ARTICLE 52 NMSA 1978; PROVIDING THAT A HOMEOWNER
19 ASSOCIATION SHALL NOT PROHIBIT THE OPERATION OF, OR ASSESS OR
20 COLLECT A FEE OR TAX FOR THE OPERATION OF, A REGISTERED CHILD
21 CARE HOME, LICENSED FAMILY CHILD CARE HOME OR LICENSED GROUP
22 CHILD CARE HOME.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 3-21-1 NMSA 1978 (being Laws 1965,

1 Chapter 300, Section 14-20-1, as amended) is amended to read:

2 "3-21-1. ZONING--AUTHORITY OF COUNTY--MUNICIPALITY--
3 EXCEPTIONS--REGISTERED CHILD CARE HOMES--LICENSED FAMILY
4 CHILD CARE HOMES--LICENSED GROUP CHILD CARE HOMES--LICENSED
5 CHILD CARE CENTERS.--

6 A. For the purpose of promoting health, safety,
7 morals or the general welfare, a zoning authority may
8 regulate and restrict within its jurisdiction the:

9 (1) height, number of stories and size of
10 buildings and other structures;

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

13 (3) size of yards, courts and other open
14 space;

15 (4) density of population; and

16 (5) location and use of buildings,
17 structures and land for trade, industry, residence or other
18 purposes.

19 B. The zoning authority may:

20 (1) divide the territory under its
21 jurisdiction into districts of such number, shape, area and
22 form as is necessary to carry out the purposes of Sections
23 3-21-1 through 3-21-14 NMSA 1978; and

24 (2) regulate or restrict the erection,
25 construction, reconstruction, alteration, repair or use of

1 buildings, structures or land in each district. All such
2 regulations shall be uniform for each class or kind of
3 building within each district, but regulation in one district
4 may differ from regulation in another district.

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

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

23 E. Any village, community, neighborhood or
24 district that is declared a traditional historic community
25 shall be excluded from the extraterritorial zone and

1 extraterritorial zoning authority of any municipality whose
2 extraterritorial zoning authority extends to include all or a
3 portion of the traditional historic community and shall be
4 subject to the zoning jurisdiction of the county in which the
5 greatest portion of the traditional historic community lies.

6 F. Zoning authorities shall accommodate
7 multigenerational housing by creating a mechanism to allow up
8 to two kitchens within a single-family zoning district, such
9 as conditional use permits.

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

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

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

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

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

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

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

12 (3) impose off-street parking restrictions
13 or requirements; provided, however, that a zoning authority
14 may require a licensed child care center to provide
15 designated on-site stacking spaces or a lane for the safe and
16 efficient loading and unloading of children; and provided
17 further that:

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

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

1 I. As used in this section:

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

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

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

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

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

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

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

3 "3-21-11. CONFLICTS BETWEEN ZONING REGULATIONS AND
4 OTHER STATUTES AND ORDINANCES.--Except as provided in
5 Subsections G and H of Section 3-21-1 NMSA 1978, if any other
6 statute or regulation or other local ordinance, resolution or
7 regulation adopted under authority of Sections 3-21-1 through
8 3-21-14 NMSA 1978 is applicable to the same premises, the
9 provision shall govern which requires:

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

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

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

16 D. other higher standards."

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

19 "3-38-4. BUSINESS LICENSING--BUSINESS REGISTRATION--
20 APPLICATION TO DO BUSINESS--ISSUANCE OF LICENSE OR
21 REGISTRATION--PRORATION OF LICENSE FEE--RENEWAL OF
22 REGISTRATION--STAGGERED PERIODS FOR BUSINESS REGISTRATION.--

23 A. Prior to engaging in any business, any person
24 proposing to engage in a business, except for a child care
25 facility, shall pay to the municipality any applicable

1 business registration fee or any applicable business license
2 fee. A municipality may provide by ordinance for the
3 prorating of the business license fee and the issuing of a
4 business license for the remainder of the calendar year in
5 which the business is to be operated.

6 B. Each year, any person engaging in a business
7 within a municipality shall apply for the renewal of any
8 applicable business license as authorized in Section 3-38-1
9 NMSA 1978 or any applicable business registration as
10 authorized in Section 3-38-3 NMSA 1978 with the municipal
11 clerk. A municipality may provide by ordinance for a
12 staggered system of business registration.

13 C. Any person filing an application for issuance
14 or renewal of any business license as authorized in Section
15 3-38-1 NMSA 1978 or any business registration as authorized
16 in Section 3-38-3 NMSA 1978 shall include on the application
17 the applicant's current taxation and revenue department
18 taxpayer identification number or evidence of application for
19 a current taxation and revenue department taxpayer
20 identification number. No municipality shall issue or renew
21 a business license or a business registration authorizing the
22 conduct of a business to any person who has not furnished to
23 the municipality the information required in this section.

24 D. As used in this section, "child care facility"
25 includes a licensed child care center, registered child care

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

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

5 "47-16-18. ENFORCEMENT OF COVENANTS--DISPUTE
6 RESOLUTION--REGISTERED CHILD CARE HOMES--LICENSED FAMILY CHILD
7 CARE HOMES--LICENSED GROUP CHILD CARE HOMES--CONFLICTS.--

8 A. Each association and each lot owner and the
9 owner's tenants, guests and invitees shall comply with the
10 Homeowner Association Act and the association's community
11 documents.

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

14 (1) an association shall not adopt or
15 enforce a restriction, covenant, condition, bylaw, rule,
16 regulation, provision of a governing document or master deed
17 provision or take any other action that effectively prohibits,
18 unreasonably restricts or limits, directly or indirectly, the
19 use of a lot as a child care home. Any such adoption or
20 enforcement shall not be deemed a de facto prohibition solely
21 because it imposes reasonable requirements that are uniformly
22 applied to and imposed on all lot owners in the association
23 and is not directed at prohibiting, restricting or limiting
24 child care homes;

25 (2) an association shall not require, assess

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

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

20 C. Nothing in this section prohibits an association
21 from adopting or enforcing on all lot owners uniformly applied
22 restrictions, covenants, conditions, bylaws, rules or
23 regulations that apply equally to all lot owners in the
24 association and do not restrict child care homes to any
25 greater degree than any other lot owner, including

1 restrictions, covenants, conditions, bylaws, rules or
2 regulations regarding:

- 3 (1) parking and traffic;
- 4 (2) noise or nuisance impacts;
- 5 (3) safety and security measures;
- 6 (4) architectural or exterior appearance
7 standards; or
- 8 (5) use, scheduling or access to common
9 elements.

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

14 E. Unless otherwise provided for in the
15 community documents, the association may, after providing
16 written notice and an opportunity to dispute an alleged
17 violation other than failure to pay assessments:

- 18 (1) levy reasonable fines for violations of
19 or failure to comply with any provision of the community
20 documents; and
- 21 (2) suspend, for a reasonable period of
22 time, the right of a lot owner or the lot owner's tenant,
23 guest or invitee to use common areas and facilities of the
24 association.

25 F. Prior to imposition of a fine or suspension,

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

11 G. If a person against whom a violation has
12 been alleged fails to request a hearing or submit a written
13 statement as provided for in Subsection F of this section,
14 the fine or suspension may be imposed, calculated from the
15 date of violation.

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

24 I. As used in this section "child care home" means
25 a registered child care home, licensed family child care home

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

3 SECTION 5. Section 59A-52-18 NMSA 1978 (being Laws
4 1984, Chapter 127, Section 964, as amended) is amended to
5 read:

6 "59A-52-18. RULES--STATEWIDE EFFECT--RESERVED POWER OF
7 MUNICIPALITIES--TRAINING.--

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

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

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

23 (2) treat licensed child care centers as
24 defined in Section 9-29-2 NMSA 1978 as a permitted by right
25 use in all zones designated as commercial, mixed-use or

1 multifamily residential; and

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

6 C. The state fire marshal shall offer training to
7 certified firefighters to assist with fire and fire safety
8 inspections.

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

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

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