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HOUSE BILL 425

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Cynthia Borrego and Reena Szczepanski

AN ACT

RELATING TO HOUSING; ALLOWING FOR AN ADDITIONAL DWELLING UNIT ON A LOT WITHIN A SINGLE-FAMILY ZONING DISTRICT UNDER CERTAIN CIRCUMSTANCES; PROVIDING THAT RESTRICTIONS ON AN ADDITIONAL DWELLING UNIT IN AN INSTRUMENT FOR THE SALE OR TRANSFER OF AN INTEREST IN A PLANNED DEVELOPMENT OR HOMEOWNER ASSOCIATION ARE VOID.

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.--

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:

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

9 B. The county or municipal zoning authority may:

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

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

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1 for single-family dwellings.

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

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

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

25 G. ~~For the purpose of this section,~~

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

3 SECTION 2. A new section of Chapter 3, Article 21 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] ADDITIONAL DWELLING UNIT IN SINGLE-FAMILY
6 ZONING DISTRICTS.--

7 A. A zoning authority, including a zoning authority
8 of a home rule municipality, shall accommodate the construction
9 of one additional dwelling unit for each lot within a single-
10 family zoning district regardless of the size of the lot.

11 B. The additional dwelling unit shall:

12 (1) be equal to or less than one thousand
13 square feet;

14 (2) be with or without kitchen facilities; and

15 (3) have side and rear setbacks that are no
16 more than five feet from the property line and ten feet from
17 any other structure on the property.

18 C. The owner of the additional dwelling unit shall
19 obtain approval from the appropriate health officer prior to
20 any installation of a private liquid waste disposal system.

21 D. A zoning authority, including a zoning authority
22 of a home rule municipality, shall not:

23 (1) impose single-family or owner-occupancy
24 requirements on the additional dwelling unit;

25 (2) charge additional impact fees if the

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1 existing utility infrastructure is sufficient to accommodate
2 the additional dwelling unit;

3 (3) require alternate covered or off-street
4 parking when an existing garage is converted into the
5 additional dwelling unit; and

6 (4) use additional standards to evaluate the
7 proposed additional dwelling unit, except that a zoning
8 authority may require that the additional dwelling unit shall
9 be used for rentals of terms longer than thirty days.

10 E. A zoning authority, including a zoning authority
11 of a home rule municipality, shall consider a permit
12 application for the additional dwelling unit without a
13 discretionary review, hearing or the issuance of a variance or
14 special use permit.

15 F. A local ordinance, policy, regulation or
16 neighborhood or homeowner association restriction shall not be
17 a basis for a delay or a denial of a building permit for the
18 additional dwelling unit.

19 G. An additional dwelling unit that conforms to
20 this section shall not be deemed to exceed the allowable
21 density of dwellings for the lot on which it is located and is
22 considered a permissive, residential use that is consistent
23 with the existing general plan and zoning designations for the
24 lot."

25 SECTION 3. A new section of Chapter 47, Article 16 NMSA
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1978 is enacted to read:

"[NEW MATERIAL] COVENANT RESTRICTING ADDITIONAL DWELLING UNIT IN SINGLE-FAMILY ZONING DISTRICT--VOID.--A covenant, restriction or condition contained in a deed, community document, contract, security instrument or other instrument affecting the sale or transfer of an interest in a development or association that prohibits or restricts the construction or use of an additional dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 2 of this 2023 act is void as against public policy and unenforceable."