

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 202

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Doreen Y. Gallegos and Gail Armstrong and Ambrose Castellano
and Tara Jaramillo

AN ACT

RELATING TO CHILD CARE; PROVIDING THAT COUNTY AND MUNICIPALITY
ZONING AUTHORITIES SHALL TREAT REGISTERED CHILD CARE HOMES,
LICENSED FAMILY CHILD CARE HOMES AND LICENSED GROUP CHILD CARE
HOMES AS RESIDENTIAL USE IN THE APPLICATION OF LOCAL
REGULATIONS, INCLUDING ZONING, LAND USE DEVELOPMENT, FIRE AND
SAFETY, SANITATION AND BUILDING CODES AND CANNOT IMPOSE
ADDITIONAL REGULATIONS THAT DO NOT ALSO APPLY TO OTHER PRIVATE
RESIDENCES; CLARIFYING THE APPLICATION OF RULES PROMULGATED
PURSUANT TO CHAPTER 59A, ARTICLE 52 NMSA 1978.

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.--

underscored material = new
[bracketed material] = delete

1 A. Except as provided in Subsection H of this
2 section, for the purpose of promoting health, safety, morals or
3 the general welfare, a county or municipality is a zoning
4 authority and may regulate and restrict within its jurisdiction
5 the:

6 (1) height, number of stories and size of
7 buildings and other structures;

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

9 (3) size of yards, courts and other open
10 space;

11 (4) density of population; and

12 (5) location and use of buildings, structures
13 and land for trade, industry, residence or other purposes.

14 B. The county or municipal zoning authority may:

15 (1) divide the territory under its
16 jurisdiction into districts of such number, shape, area and
17 form as is necessary to carry out the purposes of Sections
18 3-21-1 through 3-21-14 NMSA 1978; and

19 (2) regulate or restrict the erection,
20 construction, reconstruction, alteration, repair or use of
21 buildings, structures or land in each district. All such
22 regulations shall be uniform for each class or kind of
23 buildings within each district, but regulation in one district
24 may differ from regulation in another district.

25 C. All state-licensed or state-operated community

.227101.3

underscoring material = new
~~[bracketed material] = delete~~

1 residences for persons with a mental or developmental
2 disability and serving ten or fewer persons may be considered a
3 residential use of property for purposes of zoning and may be
4 permitted use in all districts in which residential uses are
5 permitted generally, including particularly residential zones
6 for single-family dwellings.

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

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

25 F. Zoning authorities, including zoning authorities

.227101.3

underscored material = new
[bracketed material] = delete

1 of home rule municipalities, shall accommodate
2 multigenerational housing by creating a mechanism to allow up
3 to two kitchens within a single-family zoning district, such as
4 conditional use permits.

5 G. For the purpose of this section,
6 "multigenerational" means any number of persons related by
7 blood, common ancestry, marriage, guardianship or adoption.

8 H. County and municipal zoning authorities,
9 including zoning authorities for home rule municipalities,
10 shall treat registered child care homes, licensed family child
11 care homes and licensed group child care homes, as defined in
12 the Early Childhood Education and Care Department Act, as
13 residential use in the application of local regulations,
14 including zoning, land use development, fire and life safety,
15 sanitation and building codes, and shall not impose additional
16 regulations that do not also apply to other private
17 residences."

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

20 "3-21-11. CONFLICTS BETWEEN ZONING REGULATIONS AND OTHER
21 STATUTES AND ORDINANCES.--Except as provided in Subsection H of
22 Section 3-21-1 NMSA 1978, if any other statute or regulation or
23 other local ordinance, resolution or regulation adopted under
24 authority of Sections [14-20-1 through 14-20-12 New Mexico
25 Statutes Annotated, 1953 Compilation] 3-21-1 through 3-21-14

.227101.3

underscoring material = new
[bracketed material] = delete

1 NMSA 1978 is applicable to the same premises, the provision
2 shall govern which requires:

3 A. the greater width or size of yards, courts or
4 other open spaces;

5 B. the lower height of building or a less number of
6 stories;

7 C. the greater percentage of lot or land to be left
8 unoccupied; or

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

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

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

14 A. The rules promulgated pursuant to Chapter 59A,
15 Article 52 NMSA 1978 shall have uniform force and effect
16 throughout the state and no municipality or subdivision shall
17 enact or enforce any ordinances or rules inconsistent with the
18 statewide rules promulgated pursuant to that article. Nothing
19 in that article shall in any way:

20 (1) impair the power of any municipality to
21 regulate the use of its land by zoning, building codes or
22 restricted fire district rules; provided that a municipality,
23 including a home rule municipality, shall not impose
24 regulations on registered child care homes, licensed family
25 child care homes or licensed group child care homes that do not

.227101.3

underscoring material = new
~~[bracketed material] = delete~~

1 also apply to other private residences; or
2 (2) impair the power of the early childhood
3 education and care department to determine standards and
4 regulate registered child care homes, licensed family child
5 care homes and licensed group child care homes.

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

9 SECTION 4. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2024.