

Regulated Child Care Zoning Requirements

SUMMARY

Under the leadership of Governor Michelle Lujan Grisham, and with the bipartisan support of the Legislature, New Mexico is the first state in the nation to establish Universal Child Care (UCC). To ensure that all families seeking safe, high-quality child care in New Mexico can find it in their communities, the Legislature passed Senate Bill 96. Until the passage of this law, establishing or expanding child care operations involved navigating a patchwork of local zoning codes, causing a significant "time tax" for both providers and local government staff.

This resource provides guidance to local governments and providers related to Senate Bill 96, details changes codified under emergency rulemaking, and guidance around what local implementation might look like.

KEY CHANGES AT A GLANCE

The following changes took effect on July 1, 2026 under Senate Bill 96 and the New Mexico Early Childhood Education and Care Department's (ECECD) emergency rulemaking:

- Licensed child care homes are permitted by right in residential zones and are no longer subject to discretionary local zoning approval.
- Local governments verify zoning designation for child care homes rather than issue written zoning approval for homes operating by right in residential zones.
- ECECD now conducts fire safety inspections for licensed and registered child care homes. Written approval from a local or state fire authority is no longer required.
- Licensed child care centers remain subject to applicable local building and fire codes and are permitted by right in commercial, mixed-use, and multi-family residential zones.
- Local governments may require a non-discretionary business registration for informational purposes but may not charge business licensing or registration fees to home-based child care providers.

A family gathers at the groundbreaking ceremony for the Kewa Child Care Center



CORE DIMENSIONS OF SENATE BILL 96

Senate Bill 96 changes how local cities and counties are required to handle child care center and family child care home approvals through their zoning, land use, and business licensing rules and processes. The law achieves this by designating child care homes and centers as land uses that are permitted by right and not subject to fees, discretionary public hearings, variance applications, or conditional approvals, in accordance with the following:

Home-Based Child Care (Registered, Licensed Family, and Licensed Group Homes)

Child care homes are recognized as a standard residential use of property in all residential zones. Local authorities are prohibited from enforcing fees, rules, or regulations on child care homes in residential zones that do not apply uniformly to all other private residences within the same zoning district. While local jurisdictions are still entitled to track child care operations through a local business licensing or registration process, they cannot charge or collect business licensing fees or registration fees from these home-based child care providers. Local jurisdictions can apply any rules that otherwise apply to homeowners in a residential district, for example a sign ordinance.

The responsibility for ensuring fire safety compliance of home based child care shifts to ECECD. ECECD compliance specialists complete a 16-week onboarding and field-training curriculum aligned with federal Child Care and Development Fund (CCDF) standards. These specialists will conduct all fire safety reviews during regular on-site initial and annual licensing inspections, and during any complaint investigations. This means local fire marshals are no longer required to inspect licensed or registered child care homes and home-based child care operators do not need to provide proof of fire inspection to ECECD to be issued a license.

The law also considers the case of child care homes operating in homeowners' associations. HOAs must treat child care homes with the same standards as any other residential property and cannot impose greater restrictions on child care homes than they would on homes used as a residence. HOAs cannot charge or collect special fees for the operation of a child care home. HOAs can still enforce uniform rules regarding parking, noise, safety, architectural standards, and access to or use of common elements, provided they are applied equally to all lot owners and do not restrict child care homes to any greater degree than any other residence, and provided they do not impair the ability of the child care home from complying with the regulatory standards set by ECECD.

Child Care Centers

Under the law, licensed child care centers are permitted by right in all zones designated for commercial, mixed-use, or multi-family residential development. Under the law, local authorities must ensure that building, safety, or nuisance ordinances applied to child care centers are the same as those applied to other uses within the same zoning district. According to the law, a city or county cannot impose off-street parking requirements but can require that a licensed child care center provide a lane or designated on-site stacking spaces for the safe and efficient loading and unloading of children.

EMERGENCY RULEMAKING: CHANGES TO 8.9.4 NMAC

To ensure a seamless transition on July 1, ECECD initiated emergency rulemaking to reconcile existing New Mexico Administrative Code (NMAC) language with the statutory provisions of Senate Bill 96, as follows:

Zoning Verification: 8.9.4.31(A)(4) NMAC has been amended to require child care homes to have written verification of zoning designation from the appropriate local authority. This verifies that the proposed location of a child care home is either in a zone that allows licensed child care uses by right, or the operator has followed the appropriate local process to get approval to operate a child care home in the proposed zone if the location is in a zone other than residential.

Fire Safety Inspections for Homes: 8.9.4.31(A)(4) NMAC has been amended to remove the requirement for child care homes to provide a written approval of the state fire marshal office or other appropriate city, county or state authority. Homes will still be required to pass a safety inspection conducted by ECECD specialists.

IMPLEMENTATION FRAMEWORK AND INTERPRETATION

Consistent zoning requirements amongst child care providers, the NM Early Childhood Education and Care Department, and local municipalities will support the expansion of child care supply across the state. The partnership between local municipalities and ECECD ensures that early education and care opportunities are high-quality, safe, and accessible.

These changes support a streamlined and straightforward path for child care providers to get local approval to operate in those zones where families need care the most. Local jurisdictions support providers and ECECD's licensing by verifying the zoning designation where the child care program intends to operate through a zoning verification letter. If a city or county does not have a zoning code, it still needs to formally communicate that information to the department through the zoning verification letter.

While local municipalities cannot charge fees for operating child care, they may require child care businesses to complete a local business registration application for informational purposes. Local municipalities retain the responsibility of ensuring that child care centers in commercial structures conform to local building and safety codes and communicate this threshold by providing a building approval for child care centers prior to an operator receiving a license.

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Frequently Asked Questions

Question

Answer

Can a municipality require a special use or conditional use permit if a child care center wants to locate in a single-family residential zone? What about if a child care home wants to locate in a commercial district?

“By-right” land use for family child care homes only exists within residential zones and for child care centers within commercial, multifamily, or mixed use zones. If, for example, a child care center wishes to establish operations within a residential district not designated for multi-family use, the local government may require a standard special use or conditional use permit process.

Will ECECD complete the fire inspection in child care homes? Will Child Care Centers in commercial zones still be able to be inspected by the local Fire Department?

As a result of Senate Bill 96, local fire marshals and the state Fire Marshal are no longer required to conduct inspections of family child care homes regulated by the Early Childhood Education and Care department (ECECD). For licensed and registered child care homes, ECECD inspectors will conduct the inspections related to ECECD-required regulations and safety requirements during initial and annual licensing inspections. These inspections will continue to ensure that home-based providers comply with the Department’s robust safety standards.

The authority and inspection process for child care centers will remain unchanged, and local fire authorities and the State Fire Marshal will continue in their role for these non-residential facilities.

Do municipal sign regulations still apply to home-based child care providers?

The Regulated Child Care Zoning Requirements Act does not prohibit the enforcement of any regulations in a zoning district that apply uniformly to all uses of that zoning district. If there are sign restrictions for all homes in a residential zone, the child care home must abide by those as well. For example, a child care provider looking to build onto their home would be required to obtain and display a building permit the same as any other resident in that zone.

Will ECECD require a local business registration before issuing a state child care license?

No. ECECD does not condition the issuance of a state child care license or registration upon the completion of local business registration.

Where should neighbors or local officials submit property owner complaints or reports of capacity violations (e.g., observing 20 children at a home facility)?

All operational, safety, or capacity complaints must be directed directly to the ECECD Intake Hotline at 1-888-351-0037 or via email at ChildCare.Complaint@eecd.nm.gov. ECECD categorizes and addresses incoming complaints using a strict priority framework:
Priority 1 (High Risk): Onsite investigation initiated within 24 hours;
Priority 2 (Medium Risk): Onsite investigation initiated within 3 business days;
Priority 3 (Low Risk): Onsite investigation initiated within 5 business days.

RESOURCES

- [Email the ECECD Child Care Services Bureau Licensing Unit](#)
- [Email Application Processing](#)
- Call the Provider Support Hotline at 1-800-832-1321
- Local Code Alignment and Policy Technical Support
- [Email Dr. Shelly Masur, ECE Vice President of Advisory and State Policy at the Low Income Investment Fund \(LIIF\)](#)

