



Overcoming Barriers: Land Use Regulatory Landscape for Child Care in New Mexico



Analyzing how land use zoning, permitting, and fee structures impact child care facilities across New Mexico and identifying opportunities for reform

Table of Contents

Executive Summary	3
• Key Findings	
Methodology	5
Regulatory Landscape	6
• Finding the Rules	
Statewide Zoning Snapshot	8
• Definitions	
• Zoning Analysis	
• Urban and Rural Differences	
• The Regulatory Cliff	
The Approval Process	12
• The Role of Public Hearings	
• The Burden of Time	
Fee Structures and Financial Uncertainty	17
Fire and Life Safety Bottlenecks	19
Opportunity for Policies and Practice	21
• Highlighting Best Practices	
• Recent State-Level Land Use Reforms	
• Opportunities for Local Reform	
• Opportunities for State-Level Action and Support	

Executive Summary

In 2022, New Mexican residents made a historic commitment to children and families by passing a constitutional amendment guaranteeing a right to early care and education. This landmark decision positioned the state as a national leader and created a mandate to ensure an adequate supply of high-quality, accessible child care. In 2025, New Mexico became the first state in the nation to adopt a universal child care policy. Realizing the vision of a universal early childhood system is complex, requiring investments in human capital, in physical infrastructure, and addressing policies that impact child care at the local and state levels.

Local land use regulations - the ways in which cities and counties define how land can be used - play a significant role in determining the ease with which child care operators can establish or expand seats. An initial survey conducted by the Low Income Investment Fund (LIIF) found that 30% of providers cited zoning as a barrier to expansion. As a result, LIIF conducted further analysis to better understand existing local regulations that impact child care. This report provides the first comprehensive statewide analysis of how municipal and county zoning ordinances, permitting processes, and fee structures impact the establishment and expansion of child care facilities across New Mexico.

LIIF undertook a comprehensive assessment of 46 New Mexico jurisdictions, integrating insights from 15 direct survey responses from land use and zoning officials and an extensive artificial intelligence analysis of 31 further municipal codes.

Key Findings:

A widespread lack of clear, consolidated, and easily accessible online information regarding land use requirements acts as a significant initial barrier, likely deterring less-resourced providers before they can even begin a formal application. The analysis reveals a significant information gap, where over 50% of jurisdictions lack clear, accessible regulations for child care. This number includes counties that explicitly state they have no county-wide zoning ordinances (like Otero, McKinley, and Cibola), as well as numerous smaller cities and rural counties whose websites do not contain digitized, searchable, or complete versions of their zoning codes or fee schedules. A child care provider's only option for finding information in many of these jurisdictions is to call or visit municipal offices in person, which represents a significant initial barrier to opening or expanding a child care facility. Child care providers care for children during business hours, making time-consuming trips to municipal offices extremely difficult.

Local regulatory frameworks frequently treat child care not as an essential piece of community infrastructure, like a school or a park, but as a potentially disruptive commercial enterprise. A significant barrier identified in this research is the pervasive use of the zoning prohibitions and the Conditional Use Permit (CUP) process. Rather than allowing child care facilities "by right" in residential and commercial zones where they are most needed, many jurisdictions either simply deny child care in certain zones or require providers to undergo a lengthy, costly, and unpredictable discretionary review process. This process often includes public hearings, subjecting providers to potential community opposition and placing the approval of a vital service in the hands of planning commissions or city councils on a case-by-case basis.

A complex web of permitting fees, business license costs, and miscellaneous charges from various departments creates a system of "fee stacking" that can impose a significant upfront financial burden on providers, who typically operate on thin margins.

The data also uncovered **a widespread "regulatory cliff" for home-based providers wishing to expand.** The transition from a small family child care home (serving 1-6 children) to a slightly larger group home (7-12 children) triggers, in many cases, a disproportionate increase in regulatory scrutiny, costs, and procedural complexity, including the shift from a simple administrative approval to the full CUP process. This regulatory structure actively disincentivizes expansion and traps providers at a less economically sustainable scale.

As this report was being finalized during the 2026 legislative session, New Mexico achieved a landmark victory for early childhood infrastructure with the passage of Senate Bill 96, the Regulated Child Care Zoning Requirements Act. Directly addressing many of the local regulatory barriers identified in this analysis, the legislation creates consistent statewide rules that automatically allow child care homes in residential areas, child care centers in commercial, mixed use, and high density residential areas, and finally prevents homeowner associations from restricting care. The signing of SB 96 into law marks a transformative step forward in treating child care as essential community infrastructure across all New Mexico jurisdictions.

For New Mexico to fulfill its constitutional promise to its children, it now should focus on implementation of this law and resolving the remaining administrative bottlenecks. Key recommendations include:

- Provide technical assistance to municipalities and counties so they can rapidly update their local zoning codes to comply with The Regulated Child Care Zoning Requirements Act.

- Launch an awareness campaign to inform child care providers, local planning departments, and Homeowner Associations (HOAs) about the new zoning rights and protections established by the law.
- Improve inter-agency coordination, particularly for fire and life safety inspections

Methodology

To provide a comprehensive assessment of the regulatory landscape for child care in New Mexico, this study employed a mixed-methods approach, combining direct surveys of municipalities with deep artificial intelligence (AI) research. This strategy allowed for the collection of accurate data from local planning departments while simultaneously conducting a systematic audit of digital public records across the state.

Jurisdictions were selected to create a sample that reflects New Mexico's diverse demographic and geographic landscapes. The sample was constructed based on the following four criteria:

1. **Primary Urban and Economic Centers (cities with greater than 10k population):** The study included 18 cities with populations exceeding 10,000, such as Albuquerque, Las Cruces, Rio Rancho, and Santa Fe. Because these urban centers are home to a significant portion of the state's population, their land use policies have the broadest impact on the greatest number of families and potential child care providers.
2. **Rural and Exurban Populations:** To prevent urban bias, the study targeted counties with a population of over 10,000 residing *outside* of major municipal boundaries. This criterion captured counties like Bernalillo, Doña Ana, San Juan, and Valencia.
3. **High Need Areas (Supply Gap >250 Seats):** Using data from the Low Income Investment Fund's (LIIF) [Childcare Access Study](#), the research prioritized counties with a demonstrated, acute need for increased capacity. Counties such as Lea, Sandoval, and McKinley, which exhibit supply gaps exceeding 250 seats, were included in the analysis to investigate the extent to which local regulations may be a contributing barrier to market entry or saturation.
4. **Stakeholder Interest:** The sample also included the Village of Ruidoso and the City of Eunice, jurisdictions that explicitly expressed interest in child care-related land use reform.

Data collection involved a targeted survey adapted from the Low Income Investment Fund's survey that has been used in other states. The survey is designed to specifically examine the relationship between local land use and child care access within the New Mexico context. This instrument gathered direct feedback on the regulatory environment.

Fifteen jurisdictions, including Bernalillo County, City of Las Cruces, City of Santa Fe, Doña Ana County, Eddy County, Grant County, Lea County, Rio Arriba County, San Juan County, San Miguel County, Santa Fe County, Sierra County, Torrance County, Town of Ruidoso, and Valencia County, provided comprehensive responses to this survey.

To supplement the survey data, a deep research artificial intelligence model was deployed to systematically analyze the publicly available digital records of 31 additional New Mexico jurisdictions. This method involved a comprehensive, multi-step review of official city and county websites, specifically targeting Planning, Zoning, and Community Development departments by a researcher. The AI search model then located and parsed key governing documents, including comprehensive plans, unified development codes, zoning ordinances, and fee schedules. Within these documents, targeted searches were conducted for specific terms such as "child care," "day care," "conditional use permit," and "home occupation" to extract precise data points corresponding to each survey question. Where information was not available through this exhaustive online search of official public-facing sources, it was documented as "Data Not Found Online," which itself constitutes a key finding on the lack of accessibility of local land use regulations in parts of the state.

The Regulatory Landscape for Child Care in New Mexico

In New Mexico, the State's Early Childhood Education and Care Department manages the licensing of child care facilities, yet the authority to determine where these facilities can be located resides almost entirely with local city and county governments. This bifurcation has created a complex regulatory patchwork across the state, where the ease or difficulty of opening a child care facility is highly dependent on the specific zoning code of the jurisdiction in question. The survey data reveals that child care is frequently subjected to a higher level of regulatory scrutiny than similar services. These stricter rules often limit its availability.

Finding the Rules

Before a potential child care provider can address the substantive requirements of zoning codes, they face the more fundamental challenge of finding and understanding local rules. The process of obtaining information about land use regulations, timelines, and fees is often fragmented, inconsistent, and difficult to navigate. This lack of a clear, accessible "front door" to the regulatory process presents a significant initial barrier for providers. The informational asymmetry disproportionately burdens small providers who lack the resources to hire consultants or lawyers to guide them. A clear and supportive "information infrastructure" is therefore a critical component of a supportive regulatory environment.

The initial step for any prospective business owner is to understand the rules of operation. The survey sought to measure the ease of this first step by asking jurisdictions if their local zoning regulations for child care are consolidated in one easily accessible place and if this information is available online. The responses reveal a wide disparity in informational accessibility across the state.

A minority of jurisdictions, typically larger urban centers, have invested in modern, relatively user-friendly online platforms. The City of Albuquerque, for example, maintains a [comprehensive website](#) for its Integrated Development Ordinance (IDO), complete with interactive maps, step-by-step guides, and searchable text. Similarly, Santa Fe County offers a "[ZoningHub](#)" portal designed to help users find zoning information for specific properties. These systems represent a best practice, providing transparent, 24/7 access to critical regulatory information. In some places like [San Diego, CA](#) and [Savannah, Georgia](#), officials have complemented a digital, searchable code like these with clear one-page documents outlining the key steps providers must take to child care homes or centers.

However, this level of accessibility is the exception rather than the rule. While seventy percent (32/46) have consolidated land use information available online, only 33% (15/46) have consolidated their child care regulations into one accessible place. In many jurisdictions, providers have to call the planning department or visit municipal offices in person to gather information about local rules. Only 9% (4/46) of jurisdictions have a designated primary contact for child care providers. This reliance on direct contact with staff who may not be trained in childcare regulations presents several issues. Significantly, it means that providers can only gather information during limited business hours and they must rely on the institutional knowledge of individual planners, which can lead to inconsistent advice that can be lost with staff turnover. This approach lacks the transparency and predictability of well-documented, publicly accessible online regulations. For a child care provider, who is often simultaneously caring for children while trying to start or expand their business, the requirement to make multiple phone

calls or in-person trips to a government office is a significant time tax and a potentially substantial deterrent.

Statewide Zoning Snapshot: Where Can I Operate?

While information gaps affect all prospective child care providers, the specific nature of regulatory and financial barriers varies significantly depending on the type of facility. Land use codes across New Mexico create distinct challenges for commercial child care centers, which are often treated as intensive businesses, and for home-based providers, who face a unique set of pressures related to operating within a residential setting. The analysis reveals a system that not only makes it difficult to establish new facilities of any type but also creates a powerful and specific *disincentive* for small, home-based providers to expand their capacity.

Local zoning ordinances are the primary factor in determining the feasibility of establishing a child care facility. A use can be "permitted by right," meaning it is allowed in a specific zone as long as it meets all objective, predetermined standards in the code. This pathway provides certainty, predictability, and a streamlined administrative approval process. Conversely, a use may require a "Conditional Use Permit" (CUP), also known as a special use permit. This designation fundamentally changes the nature of the approval process. It requires a discretionary decision by a public body, such as a Planning and Zoning Commission or a City Council, typically after a public hearing. Neighbors are notified and invited to participate in the public hearing. Approval is not guaranteed even if all standards are met. It is contingent on a finding that the proposed use is appropriate for the specific location and will not adversely affect the surrounding area and relies on subjective assessments of both.

Definitions

The New Mexico Administrative Code (NMAC) establishes a clear typology for child care facilities. These state-level definitions serve as the basis for licensing and are the standard by which local governments should, in principle, craft their zoning regulations. The three primary categories are:

- **Child Care Center:** A licensed, non-residential facility that provides care for less than 24 hours a day.
- **Family Child Care Home:** A licensed private dwelling where the licensee resides and provides care for no more than six children for less than 24 hours a day. This is the smallest scale of licensed care.

- **Group Child Care Home:** A licensed private dwelling where the licensee resides and provides care for at least seven but not more than 12 children. This category represents a moderate increase in scale from a family child care home but remains a residential-based operation.

These definitions are critical because they delineate different scales and intensities of use, which in turn are treated differently within local zoning ordinances. The state's regulatory framework, administered by ECECD, focuses on the health, safety, and quality of care within these facilities, overseeing aspects like background checks, staff-to-child ratios, and mandatory training. *However, the foundational decision of whether a provider can operate at a given location is a local land use matter, and ECECD requires a “zoning verification letter” to be completed by the local jurisdiction in which a child care facility proposes to operate.*

Zoning Analysis

An analysis of zoning regulations across the 46 cities and counties in New Mexico reveals a clear pattern: the CUP is the dominant regulatory pathway for most forms of child care, particularly as the scale of the facility increases. This effectively treats child care as an exceptional use that requires special justification rather than a standard and necessary public benefit.

In residential zones, where the need for child care is often most acute (because families live in residential zones), small family child care homes (1-6 children) are frequently treated as a permitted use, consistent with their residential character. For example, the City of Rio Rancho allows these small facilities through a simple administrative process. However, the transition to a group child care home (7-12 children) frequently triggers the requirement for a CUP or is outright prohibited. This is explicitly the case in jurisdictions like Rio Rancho and is a common practice statewide. In Farmington, group child care home facilities are considered commercial enterprises and treated as such in the land use code.

They are often prohibited entirely from single-family residential zones and typically require a CUP even in multi-family or mixed-use residential districts. In Roswell, for instance, a child care center in an R-3 Residential District is a conditional use.

Commercial zones offer a more permissive environment for child care centers, but even here, a CUP is frequently required. While some jurisdictions, like Roswell, permit child care centers by right in certain commercial districts (e.g., MXP Mixed Use and C-1 Neighborhood Commercial), many others still require a discretionary review process. The prevailing regulatory approach is one of caution and control, placing a significant procedural and financial burden on prospective providers. For example, as the statewide data in Table 2.1 reveals, a CUP is more commonly required for residential

and commercial centers than outright prohibition. By subjecting child care to the uncertainty, delays, and costs of the CUP process, local governments are creating substantial barriers to entry and expansion, a reality that stands in direct opposition to the goal of increasing the supply of accessible child care.

Table 2.1: Statewide Zoning Treatment of Child Care Facilities by Zone Type

Facility Type	Zone	By Right	Conditional Use Permit (CUP)	Prohibited	Unknown / No data found
Centers	Residential	7% (3)	20% (9)	20% (9)	54% (25)
	Commercial	33% (15)	13% (6)	0% (0)	54% (25)
	Industrial	9% (4)	9% (4)	28% (13)	54% (25)
Family Home (1-6)	Residential	35% (16)	11% (5)	2% (1)	52% (24)
	Commercial	11% (5)	4% (2)	33% (15)	52% (24)
	Industrial	15% (7)	2% (1)	30% (14)	52% (24)
Group Home (7-12)	Residential	20% (9)	11% (5)	17% (8)	52% (24)
	Commercial	9% (4)	13% (6)	26% (12)	52% (24)
	Industrial	7% (3)	4% (2)	37% (17)	52% (24)

Urban and Rural Differences

The regulatory landscape for child care is not uniform across New Mexico's diverse geography. Larger cities in New Mexico are generally characterized by highly structured

and complex regulatory systems, a stark contrast to the often undefined environments found in rural cities and counties.

Major cities like Albuquerque and Santa Fe have developed extensive and detailed land use codes, such as Albuquerque's Integrated Development Ordinance, which is published online. While these codes can be difficult to navigate due to their complexity, they provide a clear, albeit challenging, process for applicants. At the time of the writing of this report, the City of Albuquerque was undergoing a biannual update to the Integrated Development Ordinance, and notably was including significant reforms to child care land use regulations.

In contrast, a number of rural counties, including Otero, McKinley, and Cibola, have no county-wide zoning ordinances for their unincorporated areas. On the surface, this lack of zoning might appear to create a more permissive environment, as there are no use-based restrictions on where a child care facility can be located. However, this absence of a clear regulatory framework can create its own form of uncertainty. Providers in these areas may still have to contend with subdivision regulations, floodplain development rules, and state-level requirements from agencies like the New Mexico Environment Department without a clear local point of contact or a defined process to guide them. This can leave providers unsure of the requirements and process, potentially leading to unforeseen delays and costs. The lack of zoning does not necessarily equate to a lack of regulation, but rather a less predictable and potentially more confusing regulatory environment.

The Regulatory Cliff in Home-Based Child Care

For home-based child care, the most significant regulatory barrier is the stark distinction in how local ordinances treat Family Homes (1-6 children) versus Group Homes (7-12 children). This distinction creates a "regulatory cliff" that makes the incremental step of expanding from six to seven children a leap in terms of procedural complexity, cost, and risk.

The analysis of zoning permissions shows that small family child care homes are often permitted by right or as a simple accessory use in residential zones, requiring minimal administrative review. This reflects a general acceptance of small-scale child care as a compatible residential activity. The moment a provider wishes to care for a seventh child, their classification changes to a Group Home, and the regulatory landscape shifts dramatically. In residential zones, 35% of jurisdictions allow Family Homes (1-6 children) by right, but this drops to 20% for Group Homes (7-12 children), where prohibition rates jump to 17%. In the vast majority of jurisdictions, a Group Home requires a CUP. This shift is clearly delineated in the ordinances of municipalities like the City of Rio Rancho,

where care for 1-6 children is an administrative approval, but care for 7-12 children requires a full CUP with a public hearing.

This procedural escalation is often accompanied by additional or more stringent general commercial standards. A provider who previously had no specific parking requirements may now be required to provide additional off-street parking spaces. Noise and fencing regulations may also become more explicit and restrictive. The financial costs also jump significantly. Permitting fees for a Group Home are often higher than for a Family Home, and many jurisdictions that do not require a business license for a small Family Home will require one for a Group Home. In Las Cruces, Family Home provider pays a flat annual business license fee of \$50. When they expand to a Group Home, the fee basis changes and is calculated based on the number of children served, meaning the cost automatically increases as the business grows.

In the City of Rio Rancho, expanding a child care home from six to seven children significantly increases the complexity and cost of the approval process. What could be a simple administrative approval instead becomes a lengthy and uncertain CUP requiring a public hearing. This change introduces unpredictability for the operator, not only in terms of the process itself but also regarding potential property improvement costs. The application fee alone jumps from a basic \$35 business registration to a \$500 CUP application fee, plus additional public notice costs. Under a CUP, the Planning and Zoning Board can impose specific conditions to address concerns such as traffic, noise, and visibility. These are not pre-written rules but are conditions that can be added to the permit on a subjective case-by-case basis.

The cumulative effect of these changes creates a powerful disincentive for small providers to expand. The desire to add just one or two children to their program, which is a move that could significantly improve their financial sustainability, and support the State's goals, triggers a cascade of new regulations, fees, and bureaucratic processes. This regulatory cliff effectively traps many providers at a smaller, less profitable scale, limiting the overall supply of child care slots and constraining the economic potential of these small businesses.

The Approval Process

Child care centers, as non-residential facilities, are typically subject to the most stringent land use regulations. Local zoning codes often treat them as commercial enterprises with significant potential impacts on traffic, noise, and neighborhood character, leading to a restrictive and costly approval process.

The primary barrier for centers is their limited geographic eligibility. As shown in Table 2.1, 20% of jurisdictions explicitly prohibit Child Care Centers in residential zones, and another 20% require a Conditional Use Permit. Perhaps most alarmingly, for 54% of jurisdictions, the regulations for centers in residential zones were either ambiguous or not found online, leaving center based providers in a state of regulatory limbo. This zoning treatment likely pushes centers away from the neighborhoods where families live. This constraint may create access issues for families, forcing them to travel farther for care and undermining the goal of creating neighborhood-based resources.

Even when a center is proposed in a permissible zone, it might contend with significant scrutiny regarding site design and neighborhood impact. Rather than contending with clear, use-specific standards, providers are forced to navigate a regulatory vacuum, defaulting to general commercial standards. For example, only 6.5% (3/46) of jurisdictions have specific parking standards for child care centers. Without use-specific parking requirements, jurisdictions often default to general commercial parking standards, which fail to account for the fact that pick-up and drop-off are narrow time windows where the center needs to meet intense short-term parking demand. Consequently, requirements for traffic circulation, noise mitigation, and buffering are often imposed ad-hoc, creating a landscape of unpredictability and added cost that can make a project financially unfeasible.

This financial burden is exacerbated by a system of "fee stacking." A single project may require separate reviews and separate fees from the planning department, building safety division, fire marshal, public utilities department, and environmental health department. The City of Albuquerque's General Planning Fee Schedule, for example, lists distinct fees for site plan review, public notices, and various engineering and hydrology reviews, which are separate from the building permit fees themselves. These cumulative costs, which can easily run into thousands of dollars before construction even begins, create a high barrier to entry. The appeal process for a denied permit adds another potential layer of expense, with fees required simply to file an appeal.

Finally, the entire process for a child care center is typically governed by a discretionary CUP process. This means that even if a provider secures funding, finds a suitable location in a permissible zone, and develops plans that meet all use-specific standards, the project's fate rests in the hands of a discretionary body following a public hearing. This introduces a level of risk and uncertainty that may deter operators and financing entities and may ultimately prevent the development of much-needed child care slots.

The Role of Public Hearings

A defining feature of the Conditional Use Permit (CUP) process is the near-universal requirement for a public hearing. The research reveals that among jurisdictions where

child care centers are a conditional use, 82% mandate a public hearing in all cases regardless of the project's size or impact, a figure that rises to 100% among the jurisdictions that directly responded to the survey. This data confirms that there is effectively no administrative shortcut or staff-level approval option for these providers. If a CUP is required, a hearing is unavoidable. While these hearings are intended to promote transparency, they introduce significant barriers, including additional costs for notifications and unpredictable delays, that effectively grant neighbors veto power over essential community services. Ultimately, this requirement transforms the approval process into a forum for community opposition, where projects can be derailed by subjective public opinion rather than evaluated solely on technical standards.

The issues typically raised by opponents, including concerns about increased traffic during drop-off and pick-up times, noise from children playing outdoors, and perceived impacts on property values, are common in land use debates. However, by making the approval of a child care facility discretionary and dependent on these subjective concerns, the system places the burden of proof squarely on the provider. Providers must not only meet all technical requirements of the code but also effectively convince a panel of appointed or elected officials and a room of neighbors that their business will not be a nuisance. This transforms the approval process from an administrative review of compliance into a political negotiation. This structure outsources critical land use decisions about the provision of public goods (child care) to the sentiments of the immediate community, prioritizing the mitigation of perceived inconveniences over the public good of expanding child care access.

Provider Snapshot: When “By Right” Isn’t a Straight Path

Even in jurisdictions that have taken the progressive step of making child care a "by right" use in residential areas, providers can find themselves entangled in a web of conflicting regulations. The story of one home provider in a city that made all home-based care “by right,” illustrates this disconnect. After purchasing a house with the specific intent to expand her small, licensed family child care into a group home, she believed the city’s updated zoning code gave her a clear path forward. The code reform was celebrated as a move to eliminate barriers, yet her journey was anything but straightforward. The "by right" zoning approval was only the first step in a much more convoluted process.

The primary hurdle emerged not from the zoning department, but from the business licensing office. While zoning permitted her use, the city's requirements for a "home occupation" business license triggered a separate, mandatory notification of all neighbors within a 150-foot radius. This requirement, buried in a different section of

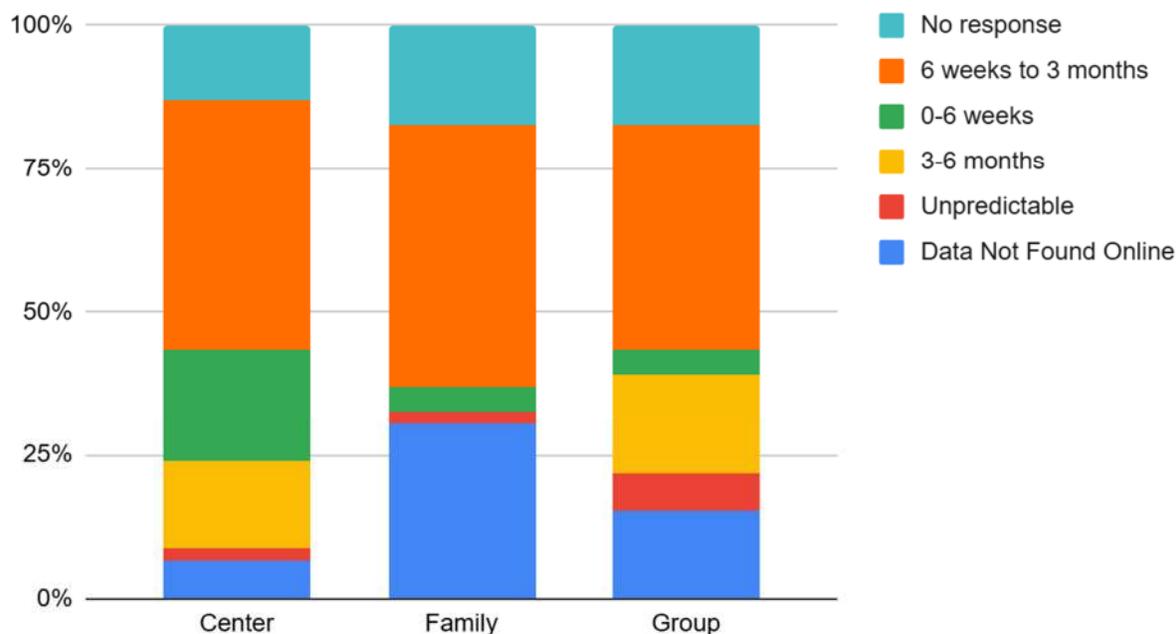
the municipal code, effectively reinstated the public scrutiny that the "by right" zoning was designed to avoid. As the provider explained, this "opened up a whole can of worms." Neighbors gathered in opposition, citing concerns over traffic and noise, and made a cascade of complaints to various city and state agencies, significantly delaying her expansion and creating a stressful, adversarial environment. "I was just stumbling through the dark," she recalled, highlighting the lack of a single, clear source of information to guide her through the overlapping and at times contradictory requirements of different departments. This not only slowed her licensure but also triggered reviews from agencies like the New Mexico Environment Department regarding her septic system, which was an issue that had been approved during her home purchase but was now being re-examined due to neighbor concerns.

This experience is a textbook example of the "regulatory cliff." The provider's plan to expand from six to seven children, a modest increase that would improve her program's financial stability and add needed child care spaces, subjected her to an entirely new and more burdensome regulatory reality. What should have been an administrative process became a drawn-out negotiation involving multiple agencies, from the local fire marshal to the New Mexico Environment Department, all while she was trying to run her existing business. Her story underscores a critical finding: zoning reform alone is insufficient if it is not aligned with all other aspects of local business licensing and permitting. Without holistic, coordinated local regulations, providers will continue to face unexpected barriers that discourage expansion and limit the availability of care.

The Burden of Time

For any business, time is a critical resource. The land use approval process, particularly when it involves discretionary reviews, can introduce long and unpredictable delays, imposing significant costs on applicants. These "holding costs," which can include rent on an unused facility, loan interest, and lost potential income, are especially damaging for child care providers operating with limited capital and thin margins.

Permit Review Timelines by Facility Type



The analysis of permit review timelines reveals a landscape defined by opacity and unpredictability. As illustrated in the chart above, the most common timeline for child care centers and group homes is simply unknown. For nearly 40% of jurisdictions, no information regarding review duration is publicly available, leaving providers unable to accurately plan their business launch. Where data *is* available, a sharp divergence emerges based on facility size. While 30% of jurisdictions process small Family Home (1-6 children) applications in under six weeks, the timeline elongates significantly for those providers seeking to add capacity or establish a Group Home. In 17% of jurisdictions, Group Home applicants face an average waiting period of three to six months. This subjects small, home-based businesses to the same delays as large commercial centers, forcing providers to carry the carrying costs of a facility they cannot yet use.

While simple, by-right permits may be processed in a matter of weeks, the timeline expands dramatically for any application requiring a CUP. A review period of three to six months is common for applications requiring a CUP. This unpredictability makes business planning exceptionally difficult. For example, a provider may secure a lease on a promising property, only to have it sit vacant for half a year while they navigate the public hearing and approval process. This extended timeline not only drains financial resources but also creates a period of uncertainty that may cause promising projects to fail before they ever open their doors. The combination of an opaque informational environment at the front door and an unpredictable, lengthy review process on the back

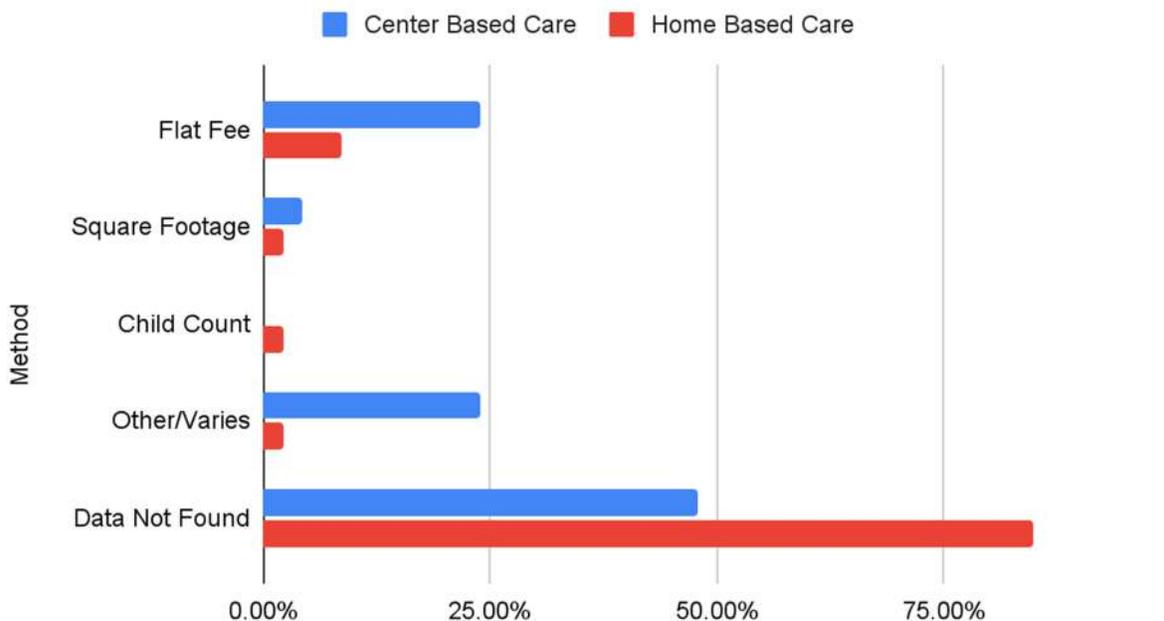
end create red tape that may be too challenging for all but the most well-resourced and persistent providers to navigate successfully.

Fee Structures and Financial Uncertainty

The financial viability of a new or expanding child care business is heavily influenced by the predictability and magnitude of upfront costs. The analysis of fee structures across New Mexico reveals variability that creates significant financial uncertainty for providers. Consistent with other findings in this report, the vast majority of jurisdictions do not publish either fee schedules or the methods used to calculate fees.

Some jurisdictions utilize a flat fee system for permits and licenses, which provides a high degree of predictability. As indicated in the “How Are Permit Fees Calculated” chart, Centers are more likely to have a defined flat fee (26%) than homes (9%), suggesting that the commercial regulations are slightly better defined than home-based ones. A flat fee enables a provider to know the exact regulatory cost from the outset.

How Are Permit Fees Calculated?



However, many other jurisdictions calculate fees based on the square footage of the facility or the total valuation of the construction project. While this approach may be intended to scale the fee to the size of the project, it creates significant uncertainty for the provider. A provider may not know the final fee until architectural plans are complete and they have obtained a construction estimate, making it difficult to budget accurately

during the crucial early stages of planning. This financial unpredictability, combined with the practice of fee stacking across multiple departments, creates a daunting financial landscape for providers and can be a major barrier to securing the necessary capital to launch a project.

Table 4.1: Comparative Analysis of Upfront Costs for Child Care Facility Types

<i>Facility Type</i>	<i>Fee Type</i>	<i>N (Data Found)</i>	<i>Range (Min - Max)</i>	<i>Unknown / No data found</i>
Child Care Center	Permit Application	14	\$35 – \$1,650.00	32
	Business License	26	\$0 – \$50	20
Family Home (1-6)	Permit Application	5	\$20 - \$260	41
	Business License	13	\$35 – \$50	23
Group Home (7-12)	Permit Application	15	\$0 - \$200	31
	Business License	11	\$35 – \$50	35

Provider Snapshot: The Cost and Stress of Public Hearings

For home-based providers, expansion can be derailed by costly fees and scrutiny by neighbors. One provider experienced this when she decided to expand her five-star bilingual family child care home from six to twelve children. The process began with seeking a "zoning verification letter" from the city, a requirement from the ECECD. She described a frustrating lack of consistent information, noting, "Every time I went to the city, they never gave me the same person."

While her initial city business license was only \$35, the mandatory zoning application to approve the expansion came with a steep and unexpected price tag. "It was almost \$700 [...] it's not a cheap investment," she recalled, describing it as a significant financial barrier. She had to incur this fee before she could even be considered for



approval, highlighting how local application costs can create a significant financial hurdle, acting as a strong disincentive for small child care businesses seeking to expand.

The most difficult part of the three-month process was the mandatory public hearing that the zoning application triggered. The provider was required to post a large sign on her home and the city notified her neighbors, generating significant, organized opposition. "I had at least 18 community members there [at the Governing Body hearing] against me [...] it was pretty terrifying," she shared. At the hearing, she was forced to publicly defend her business against neighbor complaints about noise and traffic. Her application was ultimately approved, but the experience demonstrates how subjecting essential services to an adversarial public hearing process creates profound stress and uncertainty for providers.

Fire and Life Safety Bottlenecks

A particularly acute challenge that emerges at the local level during the licensure process is the fire and life safety review process, which is required for state licensure. This introduces a critical bottleneck for providers, and there is significant confusion and lack of standardization in this area.

The analysis of 46 jurisdictions confirms this fragmentation. When asked if the local fire marshal conducts inspections for home-based child care, only 4 jurisdictions (9%) could definitively answer "Yes." The remaining responses were either "No," "Unsure," or had no data available, highlighting a widespread lack of clarity regarding local enforcement roles.

Reasons cited for not conducting inspections include a lack of clear fire codes for home-based businesses and, notably, "jurisdictional confusion between our office, ECECD, and/or CID." This points to a systemic misalignment where local fire departments are not clear on the standards established by the state's Construction Industries Division (CID) and the Early Childhood Education and Care Department (ECECD).

The New Mexico ECECD regulations (8.9.4 NMAC) create a rigorous safety framework that explicitly relies on local approval, mandating that providers obtain clearance from the Fire Marshal before a state license can be issued. To ensure physical safety, the code requires smoke detectors in every sleeping and activity room, carbon monoxide detectors in homes with fuel-burning sources, and kitchen-mounted fire extinguishers that are professionally inspected annually. Operational readiness is maintained through

mandatory monthly fire drills and quarterly evacuation drills. ECECD also requires that children under 2.5 years old must be housed on the ground floor to facilitate rapid egress. Furthermore, the regulations strictly prohibit unvented heaters and smoking while children are present and require that any room without a direct door to the outside must have a usable emergency exit window, ensuring that safety hardware and building layout work together to protect children in care.

The timing of these life safety inspections is equally inconsistent and creates significant risk for childcare operators. Survey data indicates that local jurisdictions do not standardize inspection timing. Some jurisdictions indicate that they will only conduct fire inspections after ECECD has formally issued a state license. This sequence creates a precarious scenario where a provider may invest in licensing and set up their home, only to face conflicting local census requirements after the fact. Furthermore, while most respondents confirmed their codes align with state standards by *not* requiring sprinklers for small homes, some answered that this was determined on a "case-by-case" basis, introducing a "hidden cost" risk that can make a project financially unviable.

Provider Snapshot: Trapped by Inter-Agency Conflict

For one provider in a major New Mexico city, a planned expansion to add 30 new child care seats, stalled in a bureaucratic stalemate, costing her tens of thousands of dollars for empty, unusable classrooms. This provider proactively contacted ECECD, which provided clear, but expensive, requirements for the expansion. These included adding a new door, new windows for more light, and new walls to divide the space. The provider spent \$32,000 on this construction, thinking this is all that would be required to expand her center's licensed capacity.

However, as of this interview, the expansion is completely stalled, leaving her "worn out emotionally, physically and financially." She has two new classrooms, fully equipped and ready for children, that she cannot get a license to operate. The stalemate rests on an inter-agency conflict: ECECD is requesting a letter from the Fire Marshal that approves *each new classroom individually*. The Fire Marshal refuses, stating he only inspects the building as a whole, which he already did and passed.

Opportunities for Policy and Practice

Addressing the demand for childcare services in New Mexico requires a multi-faceted approach, encompassing, among many other factors, availability of provider credentialing, accountability systems, fair wages, and access to operational and development capital. This report's analysis further suggests that integrating childcare into essential infrastructure and aligning local land use practices with the state's constitutional commitment to early care and education are also critical steps which the State recognized with the passage of SB 96.

Highlighting Best Practices

While many jurisdictions present significant barriers, some have adopted practices that can serve as models for statewide reform. The City of Santa Fe, for instance, passed an ordinance in 2022 that amended its land development code to permit both small (6 or fewer children) and large (more than 6 children) preschool and childcare facilities by right in nearly all residential and commercial zoning districts. This simple change from a conditional to a permitted use provides providers with a degree of certainty and predictability needed to invest in new facilities.

Over the last decade, multiple states have enacted comprehensive reforms to clear the way for the rapid expansion of child care supply. Colorado, Connecticut, California, Oregon, and Montana have paved the way by legally classifying family child care homes as a residential use of property for zoning purposes and restrict local governments from enforcing additional restrictions, fees, or special zoning permits that are not required of other standard residential dwellings in the same zone.

National best practices also highlight the need to remove bureaucratic hurdles and fees for property updates and facility expansion. Based on findings from Oregon's House Bill 2727, a key regulatory barrier is the discretionary review process for minor site modifications. Oregon's best practices document, a key outcome of this bill, recommends that minor site alterations necessary to meet state licensing standards like installing fences, accessibility ramps, or converting parking to an outdoor play area, should be allowed "by right" rather than triggering lengthy local reviews. In both Oregon and California, local jurisdictions are prohibited from imposing fees on specific types of child care institutions.

States are also reforming how child care centers are zoned. California's Assembly Bill 752 provides a blueprint for integrating care into high-density areas. The California legislation requires that child care centers colocated with multifamily housing be considered a residential use of property and a use by right. Oregon treats child care

centers as permitted use in all areas zoned for commercial or industrial use, except in areas designated as heavy industrial use.

Finally, states are pursuing other regulatory authorities, like Homeowners Associations, that potentially limit the supply of child care through private rules. California SB 234 voids any provision in a written instrument (like HOA's CC&Rs) that forbids or restricts a property's use as a family daycare home.

Recent State-Level Land Use Reforms

During the 2024 legislative session, New Mexico attempted to enact state level protections for home-based child care through House Bill 202, which sought to classify licensed home-based care as a residential use by right. While that legislation was not ultimately introduced, the idea persisted. During the 2026 legislative session, ECECD along with Senators Heather Berghmans and Linda Trujillo and Representative Linda Serrato, introduced Senate Bill 96, the Regulated Child Care Zoning Requirements Act, which draws heavily from the national land use reforms discussed previously.

Senate Bill 96 creates a statewide land use framework that treats child care as essential residential infrastructure. The legislation clarifies that child care homes are allowed in residential areas and classifies them as a residential use of property by right.

Furthermore, the bill standardizes rules by prohibiting cities and counties from imposing stricter fire, building, or parking codes on child care homes than those applied to standard residences. To provide clearer standards for larger facilities, the act also clarifies that child care centers are allowed by right in all commercial, mixed-use, and “high density” zoning districts. The bill explicitly strips local governments of the authority to require Conditional Use Permits (CUPs), public hearings, or special business registration fees for these providers. Furthermore, the bill standardizes development rules by prohibiting cities and counties from imposing stricter fire, building, or parking codes on child care homes than those applied to standard residences.

Crucially, the legislation takes steps to protect providers from private restrictions by preventing Homeowner Associations (HOAs) from banning child care operations. During the legislative process, SB 96 passed through three Senate committees, where an amendment was added to further clarify these HOA rules, before passing the Senate floor with a vote of 25-13. The legislation then moved to a single House committee before successfully passing the House of Representatives with a vote of 41-23. The bill has been signed into law effectively resolving many of the most significant local zoning barriers outlined in this report.

Opportunities for Local Reform

Municipal and county governments are on the front lines of early childhood infrastructure. With the passage of Senate Bill 96, the primary role of local jurisdictions shifts from deciding whether to allow child care by right, to swiftly implementing the state's new mandates and planning for long term growth. Local jurisdictions should focus on the following land use reforms:

- **Rapidly Update Zoning Codes and Permitting Processes:** Local governments should proactively audit and amend their zoning codes to comply with The Regulated Child Care Zoning Requirements Act. Jurisdictions should immediately codify that child care homes are classified as a residential use of property by right. Local planning departments should ensure their codes are updated to permit child care centers by right in all commercial, mixed-use, and "high density" zoning districts.
- **Eliminate Fees:** To align with state law, localities cannot assess or collect a fee or tax for the privilege of operating a licensed child care home or center.
- **Reform the Conditional Use Permit Process:** While SB 96 disallows the CUP process in a number of situations, in those where a CUP is allowed, the process can be streamlined. The criteria for approval should be clear, objective, and limited to essential health and safety standards, rather than subjective considerations of neighborhood character. The default process should be an administrative review by planning staff, with a public hearing required only if significant, specific concerns are raised, reversing the current model where hearings are the default.
- **Integrating Child Care into Long-Range Planning:** Finally, a fundamental, long-term shift is needed in how communities plan for the future. The survey found that child care is often not included as a specific land use in a jurisdiction's General or Comprehensive Plan. Only 15% (7/46) of jurisdictions explicitly include child care as a specific land use in their General or Comprehensive Plan. This omission is significant. When child care is absent from these guiding policy documents, it is treated as an afterthought in the development process. Local governments should explicitly integrate child care into their comprehensive plan updates. Child care should be framed as essential infrastructure, on par with housing, utilities, and schools. Plans should include specific goals and policies aimed at ensuring an adequate supply of child care, co-locating facilities with affordable housing and transit hubs, and removing regulatory barriers. By elevating child care to a strategic priority in long-range planning, New Mexico communities can ensure that as they grow and develop, they are building a

foundation that supports working families and provides every child with the opportunity to thrive.

Opportunities for State-Level Action and Support

While land use is a local matter, the state has a powerful role to play in guiding, incentivizing, and supporting local reforms. With a new baseline established by state law, strategic state level actions should focus on implementation, education, and resolving remaining administrative bottlenecks:

- **Launch a Statewide Awareness Campaign:** The state should spearhead a comprehensive public information campaign to ensure the new law's impact is fully realized which could be done in partnership with an external organization. This campaign should be designed to inform child care providers, local planning departments, and Homeowner Associations (HOAs) about the new zoning rights and protections established by the law, empowering providers to expand with a clear view into the rules.
- **Support local governments** in developing clear, one-page documents or online guidelines that outline the key steps providers must take to open a facility. The information should indicate the interaction between licensing requirements and local regulations.
- **Improve Inter-Agency Coordination:** The confusion and delays surrounding fire and life safety inspections represent a critical bottleneck. ECECD should reconvene a task force with representatives from the State's Fire Marshal's office, the Construction Industries Division, and local fire and planning officials. This task force should develop a single, statewide fire safety code specifically for home-based child care facilities and to create a standardized, streamlined inspection process that eliminates the "chicken and egg" ambiguity between ECECD and local jurisdictions. Additionally, this group should work to disseminate to local fire marshals recent changes to the fire code and residential code that eliminate sprinkler system requirements and two exits for home-based care.

New Mexico is widely regarded as a leader in providing child care for families and its efforts are being watched across the country and internationally. To truly achieve its goals will require all sectors to engage and play a role. The often-overlooked role of local governments in facilitating supply-building offers significant opportunities for locally elected officials to build infrastructure, contribute to economic stability, and ensure families can stay in their communities.