

**SENATE CONCURRENT
RESOLUTION No. 98**

**STATE OF NEW JERSEY
220th LEGISLATURE**

INTRODUCED MARCH 7, 2022

Sponsored by:
Senator HOLLY T. SCHEPISI
District 39 (Bergen and Passaic)

SYNOPSIS

Proposes amendment to New Jersey Constitution to prohibit exclusionary zoning and clarify municipal obligations regarding affordable housing construction.

CURRENT VERSION OF TEXT

As introduced.



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1 A **CONCURRENT RESOLUTION** proposing to amend Article IV,
2 Section VI, paragraph 2 of the New Jersey Constitution.

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4 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
5 General Assembly concurring):

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7 1. The following proposed amendment to the Constitution of the
8 State of New Jersey is agreed to:

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10 PROPOSED AMENDMENT

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12 Amend Article IV, Section VI, paragraph 2 to read as follows:

13 2. The Legislature may , except as otherwise provided in this
14 paragraph, enact general laws under which municipalities, other
15 than counties, may adopt zoning ordinances limiting and restricting
16 to specified districts and regulating therein, buildings and
17 structures, according to their construction, and the nature and extent
18 of their use, and the nature and extent of the uses of land, and the
19 exercise of such authority shall be deemed to be within the police
20 power of the State. Such laws shall be subject to repeal or
21 alteration by the Legislature. The Legislature shall not enact laws
22 that authorize a municipality to engage in any exclusionary zoning
23 activity that would prevent the development of housing options for
24 low and moderate income residents of the State. The prohibition on
25 exclusionary zoning shall not create an affirmative obligation on
26 any municipality to construct, or cause to be constructed, housing
27 options to be occupied by low and moderate income residents.

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29 2. When this proposed amendment to the Constitution is finally
30 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
31 shall be submitted to the people at the next general election
32 occurring more than three months after the final agreement and
33 shall be published at least once in at least one newspaper of each
34 county designated by the President of the Senate, the Speaker of the
35 General Assembly and the Secretary of State, not less than three
36 months prior to the general election.

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38 3. This proposed amendment to the Constitution shall be
39 submitted to the people at that election in the following manner and
40 form:

41 There shall be printed on each official ballot to be used at the
42 general election, the following:

43 a. In every municipality in which voting machines are not used,
44 a legend which shall immediately precede the question as follows:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 If you favor the proposition printed below make a cross (X), plus
2 (+), or check (✓) in the square opposite the word "Yes." If you are
3 opposed thereto make a cross (X), plus (+) or check (✓) in the
4 square opposite the word "No."

5 b. In every municipality the following question:
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	YES	<p>CONSTITUTIONAL AMENDMENT TO CLARIFY LEGISLATIVE ZONING POWER CONCERNING AFFORDABLE HOUSING</p> <p>Do you approve amending the Constitution to prohibit exclusionary zoning by towns in New Jersey? Exclusionary zoning can prevent the development of low income housing units and has been declared illegal by federal and State courts.</p> <p>Pursuant to the amendment, towns would not have an obligation to actually construct, or cause to be constructed, affordable housing units.</p>
	NO	<p>INTERPRETIVE STATEMENT</p> <p>This proposed amendment would prohibit exclusionary zoning by towns in New Jersey. Exclusionary zoning can prevent the development of low income housing units and has been declared illegal by federal and State courts.</p> <p>Pursuant to the amendment, towns would not have an obligation to actually construct, or cause to be constructed, affordable housing units. This would eliminate lawsuits that result in the forced construction of specific housing projects.</p>

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STATEMENT

11 This concurrent resolution proposes a constitutional amendment
12 to clarify municipal obligations regarding affordable housing. The
13 amendment would place language in the State Constitution to
14 specifically prohibit the practice of exclusionary zoning.
15 Exclusionary zoning can prevent the development of low income
16 housing units and has been declared illegal by federal and State
17 courts. Pursuant to the amendment, towns would not have an
18 obligation to actually construct, or cause to be constructed,

1 affordable housing units. This would eliminate litigation that
2 results in the forced construction of specific residential projects.

3 It has been more than 40 years since the first court case was
4 initiated in New Jersey concerning the opportunities for poor and
5 minority families to obtain affordable housing. The opinion of the
6 New Jersey Supreme Court in this case and subsequent decisions
7 have become known as the *Mount Laurel* doctrine. Since that time,
8 the demographics of the State have changed markedly, including
9 increased population growth and density, wider disparity of income
10 levels among residents, and perhaps most importantly, tremendous
11 increases in the average cost of housing.

12 The early judicial decisions concerning this issue identified
13 certain local government zoning practices as a bar to increasing the
14 opportunities for housing for low and moderate income households.
15 A somewhat melded judicial and statutory scheme was created to
16 impel municipalities to eliminate these practices voluntarily.
17 Certain regulatory measures were implemented requiring municipal
18 financial expenditures if certain zoning mechanisms were not
19 embraced. Competing financial concerns for resources, such as new
20 infrastructure and schools, have played a role in the complicated
21 interpretation of the *Mount Laurel* mandate. This amendment is
22 intended to overturn the *Mount Laurel* mandate regarding the actual
23 construction of affordable housing units and eliminate the so-called
24 “builder’s remedy” lawsuit, while reaffirming the State’s
25 commitment to elimination discriminatory zoning practices. The
26 courts could remedy constitutional violations of the prohibition on
27 discriminatory zoning by striking down zoning ordinances, rather
28 than forcing the specific construction of any particular project.