

**ASSEMBLY CONCURRENT  
RESOLUTION No. 77**

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**STATE OF NEW JERSEY  
219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Morris, Somerset and Union)**

**Assemblyman BRIAN BERGEN**

**District 25 (Morris and Somerset)**

**Co-Sponsored by:**

**Assemblymen McGuckin, DiMaio, Clifton, Rooney, Assemblywoman**

**B.DeCroce, Assemblymen Bramnick, Thomson, S.Kean and Auth**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 3/17/2021)**

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 General Assembly of the State of New*  
5       *Jersey (the Senate 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.

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

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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.