

# Table of Contents

## Volume 1

### CHAPTER 1. INTRODUCTION: PUBLIC CONTROL OF PRIVATE LAND

#### I. OVERVIEW OF TREATISE

§ 1:1 Scope of treatise; arrangement of sections

#### II. INTRODUCTION

§ 1:2 Public control of private land

§ 1:3 Historical development

#### III. PLANNING

§ 1:4 Planning defined

§ 1:5 The development of urban planning; the early years

§ 1:6 The Sanitary Reform Movement

§ 1:7 The “City Beautiful” movement

§ 1:8 The “City Practical” period

§ 1:9 Planning during the 1930’s

§ 1:10 Contemporary urban planning

#### IV. THE LEGAL CONTEXT OF EARLY COMPREHENSIVE ZONING

§ 1:11 Determination of validity—Generally

§ 1:12 —Early zoning

§ 1:13 Common law nuisance

§ 1:14 Restrictive covenants

§ 1:15 Eminent domain

§ 1:16 The police power

#### V. IMPLEMENTING PLANS FOR COMMUNITY DEVELOPMENT

§ 1:17 Generally

§ 1:18 Zoning defined

§ 1:19 Development of zoning

§ 1:20 Subdivision control; definition and development

§ 1:21 Official maps; definition and development

§ 1:22 Other devices for controlling the use of land

- Appendix 1A. Standard City Planning Enabling Act
- Appendix 1B. Standard State Zoning Enabling Act
- Appendix 1C. ABA Model Land Development Code

## **CHAPTER 2. AUTHORITY TO ENACT LAND USE REGULATIONS**

### **I. INTRODUCTION**

- § 2:1 Nature and source of the power to zone

### **II. STATE ZONING POWER**

- § 2:2 Effect of state constitutions
- § 2:3 State guidelines for local regulation

### **III. MUNICIPAL ZONING POWER; HOME RULE**

- § 2:4 Generally
- § 2:5 Inherent home-rule powers
- § 2:6 Constitutional home-rule powers
- § 2:7 Legislative home-rule powers
- § 2:8 Municipal charters

### **IV. DELEGATION OF POWER; THE ENABLING ACTS**

- § 2:9 Authority to delegate
- § 2:10 General delegation of power
- § 2:11 The Standard State Zoning Enabling Act
- § 2:12 The grant of power
- § 2:13 —Districts
- § 2:14 —Purposes
- § 2:15 —Adoption, amendment, and repeal
- § 2:16 —Administration; board of adjustment
- § 2:17 —Remedies
- § 2:18 —Conflicts
- § 2:19 Fragmentation of power

### **V. EARLY ZONING RESTRICTIONS—JUDICIAL APPRAISAL**

- § 2:20 The first comprehensive zoning ordinances
- § 2:21 The early state decisions
- § 2:22 *Village of Euclid v. Ambler Realty Company*
- § 2:23 *Nectow v. City of Cambridge*
- § 2:24 Comprehensive zoning after Euclid and *Nectow*
- § 2:25 Constitutionality of new regulations applied to specific property
- § 2:26 The intersection of constitutional litigation and community planning

TABLE OF CONTENTS

**CHAPTER 3. INTERJURISDICTIONAL  
DYNAMICS IN LAND USE CONTROL**

- § 3:1 Introduction
- § 3:2 Federal role in land use planning and zoning
- § 3:2.10 The Fire Island National Seashore Act of 1964
- § 3:3 The Coastal Zone Management Act of 1972
- § 3:3.10 The Endangered Species Act of 1973
- § 3:4 American with Disabilities Act of 1990
- § 3:5 Federal Fair Housing Act and the Fair Housing Act  
Amendments of 1988
- § 3:6 The Telecommunication Act of 1996
- § 3:7 The Religious Land Use and Institutionalized Person Act  
of 2000
- § 3:8 Disaster Mitigation Act of 2000
- § 3:8.10 Energy Policy Act of 2005
- § 3:9 State role in planning
- § 3:10 Interstate planning compacts
- § 3:11 Regional planning

**CHAPTER 3A. SUNSHINE ACTS: OPEN  
MEETINGS AND FREEDOM OF INFORMATION  
LAWS**

**I. INTRODUCTION**

- § 3A:1 Importance of Sunshine Acts to land use planning

**II. OPEN MEETINGS LAWS**

- § 3A:2 Open meetings laws, generally
- § 3A:3 Statutory construction of open meetings laws
- § 3A:4 Public policy of open meetings laws
- § 3A:5 Definition of a meeting
- § 3A:6 Quorum
- § 3A:7 Entities subject to open meetings laws
- § 3A:8 Notice of open meetings
- § 3A:9 Timing of meetings
- § 3A:10 Subject matter of meetings
- § 3A:11 Location of meetings
- § 3A:12 Public participation at meetings
- § 3A:13 Use of recording devices at meetings
- § 3A:14 Minutes of meetings
- § 3A:15 Voting at Open Meetings
- § 3A:16 Executive sessions
- § 3A:17 Enforcing open meetings laws
- § 3A:18 Cures for violations of open meetings laws
- § 3A:19 Defenses for Open Meetings violations
- § 3A:19.50 Remote participation and live-streaming public  
meetings

### **III. FREEDOM OF INFORMATION LAWS**

- § 3A:20 Freedom of Information Laws, generally
- § 3A:21 Statutory construction of Freedom of Information Laws
- § 3A:22 Public policy of freedom of information laws
- § 3A:23 Entities subject to Freedom of Information Laws
- § 3A:24 Records subject to Freedom of Information Laws
- § 3A:25 Geographical Information System data and access to records
- § 3A:26 Records exempt from Freedom of Information Laws
- § 3A:27 Grounds for denying a Freedom of Information request
- § 3A:28 Requests and responding, generally
- § 3A:29 Access, storage, and fees for records disclosure
- § 3A:30 Appealing a denial of access
- § 3A:31 Defending a denial of access
- § 3A:32 Remedies for a wrongful denial of access

### **IV. SPECIAL CONSIDERATIONS**

- § 3A:33 Use of social media in land use planning and decision-making

## **CHAPTER 4. PLAYERS IN THE LAND USE GAME**

- § 4:1 Introduction
- § 4:2 Professional planners—Generally
- § 4:3 Regulation and certification of professional planners
- § 4:4 Professional planners—Training requirements
- § 4:5 Local legislative bodies—Generally
- § 4:6 Planning board and commission members
- § 4:7 Zoning boards of appeal and boards of adjustment members
- § 4:8 Required training for planning and zoning board members
- § 4:9 Building inspector
- § 4:10 Zoning administrator
- § 4:11 Other professionals

## **CHAPTER 5. MUNICIPAL PLANNING AND THE COMPREHENSIVE PLAN**

- § 5:1 Introduction and history of comprehensive planning
- § 5:2 Requirement of a comprehensive plan as a prerequisite to zoning
- § 5:3 Planning agencies
- § 5:4 Authority of the planning board
- § 5:5 Planning procedures
- § 5:6 Elements of the comprehensive plan
- § 5:7 Agricultural element plans
- § 5:8 Community facilities element plans
- § 5:9 Economic development element plans
- § 5:10 Environmental conservation element plans

## TABLE OF CONTENTS

- § 5:11 Housing element plans
- § 5:12 Infrastructure element plans
- § 5:13 Land use element plans
- § 5:14 Safety element plans
- § 5:15 Transportation element plans
- § 5:16 Regional and state planning
- § 5:17 Subplans *[Reserved]*
- § 5:18 Comprehensive plan consistency
- § 5:19 Comprehensive plan implementation
- § 5:20 Amendment and review of the comprehensive plan
- § 5:21 Referenda *[Reserved]*
- § 5:22 Appeals
- § 5:23 Ethics

## **CHAPTER 6. ANNEXATION**

- § 6:1 Annexation
- § 6:2 Annexation procedures
- § 6:3 Annexation; reasonableness
- § 6:4 Annexation; contiguous boundaries
- § 6:5 Annexation; urban areas
- § 6:6 Zoning annexed land
- § 6:7 Extraterritorial zoning
- § 6:8 Conflicting zoning jurisdictions

## **CHAPTER 6A. SPOT ZONING AND OTHER REZONING ISSUES**

- § 6A:1 Spot zoning; generally
- § 6A:2 Spot zoning; size of rezoned property
- § 6A:3 Spot zoning; comprehensive plan consistency
- § 6A:4 Spot zoning; benefits to property owners and the general public
- § 6A:5 Spot zoning; consistency with surrounding uses
- § 6A:6 Spot zoning; standard of review and burden of proof
- § 6A:7 Reverse spot zoning
- § 6A:8 The change or mistake rule
- § 6A:9 Exceptions to the change or mistake rule
- § 6A:10 Variations of the change or mistake rule
- § 6A:11 Change or mistake; standard of review and burden of proof
- § 6A:12 Changed circumstances
- § 6A:13 Zoning mistakes

## **CHAPTER 7. THE LEGITIMATE OBJECTIVES OF ZONING**

### **I. INTRODUCTION**

- § 7:1 The purpose of zoning regulation

- § 7:2 Legislative limitations; the enabling acts
- § 7:3 Constitutional limitations; the police power

## **II. OBJECTIVES ARTICULATED IN ENABLING LEGISLATION**

### **A. HEALTH, SAFETY, AND MORALS**

- § 7:4 Health, generally
- § 7:5 Health—Generally—Adequate light and air
- § 7:6 — —Overcrowding of land; undue concentration of population
- § 7:7 — —Adequate recreation
- § 7:8 Safety
- § 7:9 —To lessen congestion in the streets; traffic control
- § 7:10 To secure safety from fire, panic, and other dangers
- § 7:11 Morals
- § 7:12 Conserve the value of buildings; make the most appropriate use of land

### **B. GENERAL WELFARE; AESTHETICS**

- § 7:13 Zoning for the general welfare
- § 7:14 Public funds; eminent domain
- § 7:15 Common-law nuisance
- § 7:16 Billboards as subject of general regulation
- § 7:17 Zoning ordinances, generally
- § 7:18 —Exclusion of certain uses
- § 7:19 Zoning ordinances—Generally—Setback requirements
- § 7:20 — —Lot area regulations
- § 7:21 — —Floor space regulations
- § 7:22 Restrictions based upon aesthetics alone
- § 7:23 Aesthetics as an allowable secondary purpose
- § 7:24 Aesthetics and property values
- § 7:25 Aesthetic purpose and balancing interests

### **C. GENERAL WELFARE; MISCELLANEOUS OBJECTIVES**

- § 7:26 Preservation of character of neighborhood
- § 7:27 Zoning to insure adequate governmental services
- § 7:28 Zoning to regulate competition
- § 7:29 —Antitrust liability
- § 7:30 Zoning to increase or maintain tax revenues
- § 7:31 Zoning to minimize condemnation costs
- § 7:32 Zoning to promote economy in government
- § 7:33 Zoning to conserve natural resources
- § 7:34 Zoning to quiet protest or prevent disturbance

TABLE OF CONTENTS

**CHAPTER 8. LEGISLATIVE LIMITATIONS  
AND THE ENACTMENT, AMENDMENT, AND  
REPEAL OF ZONING ORDINANCES**

**I. PROCEDURAL LIMITATIONS ON MUNICIPAL  
ZONING POWER, IN GENERAL**

- § 8:1 Judicial attitude, generally
- § 8:2 Patterns of enabling legislation
- § 8:3 Mandatory requirements
- § 8:4 Directory or discretionary requirements

**II. COMPLIANCE WITH PROCEDURAL  
REQUIREMENTS**

- § 8:5 Strict compliance
- § 8:6 Substantial compliance
- § 8:7 Prejudice
- § 8:8 Waiver; delay

**III. PRELIMINARY PLANNING**

- § 8:9 Zoning commission
- § 8:10 Planning boards

**IV. NOTICE AND HEARING**

- § 8:11 Notice and hearing, generally
- § 8:12 Timeliness of notice
- § 8:13 Publication or service of notice
- § 8:14 Contents of notice
- § 8:15 Necessity for a second hearing
- § 8:16 Nature of hearing
- § 8:17 —Public hearing; executive session

**V. FINAL LEGISLATIVE ACTION**

- § 8:18 Voting requirements
- § 8:19 Entry in minutes
- § 8:20 Publication, posting, and personal service
- § 8:21 Miscellaneous legislative errors or omissions

**VI. AMENDMENT AND REPEAL**

- § 8:22 Amendment and repeal, generally
- § 8:23 Power to amend
- § 8:24 Limitations on power to amend; reliance on existing zoning regulations
- § 8:25 Reconsideration of legislative action
- § 8:26 Miscellaneous limitations

- § 8:27 Amendment procedure
- § 8:28 —Planning review
- § 8:29 Application for zone change
- § 8:30 Protest petitions
- § 8:31 —Time, place, and form
- § 8:32 —Computing the requisite number of signers
- § 8:33 Consent requirements
- § 8:34 Repeal

## **CHAPTER 9. TYPES OF ZONING REGULATION**

### **I. INTRODUCTION**

- § 9:1 General description

### **II. DISTRICTS AND BOUNDARY LINES**

- § 9:2 Zoning districts, generally
- § 9:3 Zoning maps
- § 9:4 District boundary lines—Legislative discretion
- § 9:5 — —Certainty
- § 9:6 — —Streets and alleys
- § 9:7 — —Construction
- § 9:8 Boundary lines between unlike districts
- § 9:9 Boundary lines separating like areas
- § 9:10 Districts abutting municipal borders
- § 9:11 Buffer districts
- § 9:12 Split lots
- § 9:13 Shorelines and underwater land

### **III. GENERAL CHARACTERISTICS OF ZONING ORDINANCES**

- § 9:14 Cumulative zoning ordinances
- § 9:15 Exclusive zoning
- § 9:16 Prohibition of uses
- § 9:17 Devices employed to make zoning more flexible, generally
- § 9:18 Special permit
- § 9:19 Exceptions
- § 9:20 Conditional zoning
- § 9:21 Contract zoning
- § 9:22 —Statutory authority
- § 9:23 Incentive zoning
- § 9:23.10 Uniformity

### **IV. USE RESTRICTIONS**

#### **A. RESIDENTIAL DISTRICTS**

- § 9:24 Residential districts, generally



## TABLE OF CONTENTS

- § 9:25 —Exclusion of industrial uses
- § 9:26 —Exclusion of commercial uses
- § 9:27 —Exclusion of access routes
- § 9:28 —Accessory uses
- § 9:29 Single family districts, generally
- § 9:30 Family defined; unrelated persons
- § 9:31 Group homes, generally
- § 9:32 —The federal Fair Housing Act Amendments of 1988
- § 9:33 —The Americans with Disabilities Act
- § 9:34 —Foster homes
- § 9:35 —Children in need of supervision
- § 9:36 —Rehabilitation centers—Halfway houses
- § 9:37 —Developmentally disabled persons
- § 9:38 —Fraternalities and similar uses
- § 9:39 —Facilities for servants and guests
- § 9:40 —Rentals
- § 9:41 —Exclusion of apartments
- § 9:42 Multiple-residence districts

### B. COMMERCIAL USE DISTRICTS

- § 9:43 Generally
- § 9:44 Exclusion of residential uses
- § 9:45 Accessory uses

### C. INDUSTRIAL USE DISTRICTS

- § 9:46 Generally
- § 9:47 Performance standards

### D. AGRICULTURAL DISTRICTS

- § 9:48 Rural zoning, generally
- § 9:49 Agricultural uses and districts

### E. MISCELLANEOUS USE DISTRICTS

- § 9:50 Solar access
- § 9:51 Wind power
- § 9:52 Offstreet parking, generally
- § 9:53 Offstreet parking—Generally—Offsite parking space
- § 9:54 — —Construction; administrative application
- § 9:55 — —Variances

## V. HEIGHT, BULK, AND AREA RESTRICTIONS

- § 9:56 Generally
- § 9:57 Height regulations
- § 9:58 Setback regulations
- § 9:59 —Variances
- § 9:60 Yard regulations

- § 9:61 Corner lots, through lots, and lots with special characteristics
- § 9:62 Encroachment—Porches, eaves, steps, etc.
- § 9:63 — —Fences and walls
- § 9:64 — —Porches, eaves, steps, etc—Accessory buildings
- § 9:65 Encroachment: porches, eaves, steps, etc—Parking and storage of motor vehicles
- § 9:66 Lot area regulations
- § 9:67 Frontage regulations
- § 9:68 Substandard lots
- § 9:69 — —Common ownership of adjacent lots
- § 9:70 — —Checkerboarding
- § 9:71 Lot coverage regulations
- § 9:72 Area requirements for dwelling units
- § 9:73 Floor area regulations
- § 9:73.50 Property maintenance regulations

## **VI. CONTROL OF EXTERIOR DESIGN**

- § 9:74 Regulations, generally
- § 9:75 Design controls in and around public parks and boulevards
- § 9:76 Community-wide design controls; the patterns of regulation
- § 9:77 Validity of community-wide controls—The police power
- § 9:78 — —The enabling acts
- § 9:79 — —Standards of design

## **VII. THE FLOATING ZONE**

- § 9:80 The floating zone
- § 9:81 Judicial review of the floating zone technique
- § 9:82 Judicial review of the floating zone standards

# **Volume 2**

## **CHAPTER 10. METROPOLITAN AND REGIONAL PLANNING**

### **I. INTRODUCTION**

- § 10:1 Metropolitan and regional planning, generally
- § 10:2 Definitions
- § 10:3 Development

### **II. ESTABLISHMENT AND ORGANIZATION**

- § 10:4 Establishment of regional boards and commissions; the enabling acts
- § 10:5 Membership; qualifications; terms of office
- § 10:6 Organization; staff

## TABLE OF CONTENTS

- § 10:7 Meetings; rules; records
- § 10:8 Finance; compensation

### **III. POWERS AND DUTIES**

- § 10:9 Generally
- § 10:10 Research; technical services
- § 10:11 Preparation of regional plan
- § 10:12 Adoption of plan; effect of adoption
- § 10:13 Review of municipal planning decisions
- § 10:14 Zoning decisions
- § 10:15 Municipal cooperation; subdivision control

## **CHAPTER 11. INITIATIVE AND REFERENDUM**

### **I. ZONING INITIATIVE AND REFERENDUM**

- § 11:1 Zoning initiative and referendum generally
- § 11:2 Origins of initiative and referendum
- § 11:3 Initiative and referendum defined
- § 11:4 Initiative
- § 11:5 Referendum

### **II. LEGAL TRENDS**

- § 11:6 General issues
- § 11:7 Due process/equal protection
- § 11:8 Legislative/administrative distinction
- § 11:9 Legislative
- § 11:10 Administrative
- § 11:11 Fatal procedural/technical defects of zoning initiative and referendum
- § 11:12 The voting pool
- § 11:13 The physical ballot and its filing
- § 11:14 The single subject rule
- § 11:15 Overview of substantive flaws
- § 11:16 Violation of statutory law
- § 11:17 The use of excessive legislative authority
- § 11:18 Quasi-judicial actions

### **III. OTHER LAND USE LAW RELATED INITIATIVES**

- § 11:19 Pro-growth v. no-growth
- § 11:20 Property rights/takings

## **CHAPTER 12. NONCONFORMING USES**

- § 12:1 Generally
- § 12:2 State law nonconforming use requirements
- § 12:3 Registration

- § 12:4 Police power regulations
- § 12:5 Standard of review; burden of proof
- § 12:6 Substantial evidence
- § 12:7 Strict construction
- § 12:8 Appeals
- § 12:9 Municipal estoppel
- § 12:10 Vested rights
- § 12:11 Nonconforming structures
- § 12:12 Substandard lots
- § 12:13 Scope of property within nonconforming use
- § 12:14 Due process and equal protection
- § 12:15 Retroactive zoning; takings
- § 12:16 Requirement of preexisting use
- § 12:17 Requirement of lawful prior use
- § 12:18 Change of nonconforming use
- § 12:19 Expansion of nonconforming use
- § 12:20 Damage and reconstruction
- § 12:21 Remedies for illegal change, expansion, or reconstruction
- § 12:22 Abandonment and discontinuance
- § 12:23 Amortization
- § 12:24 Termination

## CHAPTER 13. VARIANCES

- § 13:1 Variances generally
- § 13:2 Variances distinguished from special permits, conditional uses, PUDs, and nonconforming uses
- § 13:3 Statutory variance provisions
- § 13:4 Authority to grant variances
- § 13:5 Standard of review and burden of proof
- § 13:6 Substantial evidence and “dollars and cents” proof
- § 13:7 Procedural requirements
- § 13:8 Appeals
- § 13:9 Use and area variances
- § 13:10 Unnecessary hardship
- § 13:11 Practical difficulties
- § 13:12 Inherently beneficial uses
- § 13:13 Variance factors—Reasonable use
- § 13:14 —Unique circumstances
- § 13:15 —Personal hardship
- § 13:16 —Self-created hardship
- § 13:17 —Size of the variance
- § 13:18 —Minimum variance necessary
- § 13:19 —Nonconformance
- § 13:20 —Alternatives to the variance
- § 13:21 —Public interest and neighborhood impacts
- § 13:22 —Consistency with the spirit of the zoning ordinance and comprehensive plan
- § 13:23 Subdivision variances

## TABLE OF CONTENTS

- § 13:24 Variance conditions
- § 13:25 Variance expiration
- § 13:26 Inconsistency in granting and denying variances
- § 13:27 Takings

## **CHAPTER 14. SPECIAL AND CONDITIONAL USE PERMITS**

- § 14:1 Special use permits, generally
- § 14:2 Enabling legislation
- § 14:3 Constitutional issues
- § 14:4 Special use permit procedures
- § 14:5 Delegation of special permit authority
- § 14:6 Burden of proof; substantial evidence
- § 14:7 Legislative special permits
- § 14:8 Uses eligible for special permit approval
- § 14:9 Special permit criteria, generally
- § 14:10 Neighborhood harmony criteria
- § 14:11 Public need criteria
- § 14:12 Comprehensive plan criteria
- § 14:13 Health and safety criteria
- § 14:14 Traffic and congestion criteria
- § 14:15 Infrastructure criteria
- § 14:16 Environmental criteria
- § 14:17 Special permit conditions
- § 14:18 Subsequent permit applications and amendments
- § 14:19 Revocation

## **CHAPTER 15. SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION**

### **I. SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION, GENERALLY**

- § 15:1 Constitutional zoning issues, generally; standards of review
- § 15:2 Substantive due process, generally
- § 15:3 Federal court review of substantive due process claims
- § 15:4 Equal protection—Rational basis review
- § 15:5 Equal Protection—Variations on the rational basis test
- § 15:6 Equal protection—Suspect and quasi-suspect classifications meriting heightened scrutiny
- § 15:7 Federal court ripeness requirements for substantive due process and rational basis equal protection claims

### **II. PRESUMPTIONS, BURDENS OF PROOF, AND STANDARDS OF PROOF**

- § 15:8 The presumption of constitutionality
- § 15:9 Modifications of the presumption of constitutionality

§ 15:10 Burden of proof; standards of proof; quality of proof

### **III. FACTORS RELEVANT TO SUBSTANTIVE DUE PROCESS CHALLENGES**

§ 15:11 Factors relevant to determining whether a regulation is arbitrary and unreasonable

## **CHAPTER 16. TAKINGS**

- § 16:1 Takings—History and constitutional basis
- § 16:2 Comparison of federal and state takings clauses
- § 16:3 Inverse condemnation
- § 16:4 Protected property interests
- § 16:5 Causation
- § 16:6 Physical takings
- § 16:7 Total takings
- § 16:8 Exactions generally
- § 16:9 Exactions—Essential nexus
- § 16:10 —Rough proportionality
- § 16:11 —Impact fees
- § 16:12 The Penn Central takings test
- § 16:13 Penn Central—Economic impact of regulation
- § 16:14 —Investment-backed expectations
- § 16:15 —Character of government action
- § 16:16 The total parcel rule
- § 16:17 Temporary regulatory takings
- § 16:18 Ripeness
- § 16:19 Regulatory takings compensation statutes
- § 16:20 Judicial takings
- § 16:21 Equity takings

## **CHAPTER 17. EMINENT DOMAIN**

- § 17:1 Eminent domain; Constitutional considerations
- § 17:2 Delegation of the power
- § 17:3 Property Subject to Condemnation
- § 17:4 Supreme Court Jurisprudence
- § 17:5 The public use requirement; generally
- § 17:6 State court decisions interpreting the Public Use requirement narrowly
- § 17:7 Economic development as a public purpose
- § 17:8 Pretextual public purposes and private benefits
- § 17:9 Other instances of condemnations made in bad faith
- § 17:10 Statutory necessity requirements
- § 17:11 Condemnation proceedings; generally
- § 17:12 Pre-condemnation negotiation for purchase
- § 17:13 Resolution of necessity
- § 17:14 Inverse condemnation
- § 17:15 Quick-take condemnation procedures

TABLE OF CONTENTS

- § 17:16 Federal condemnation proceedings
- § 17:17 Just compensation; valuation
- § 17:18 Post-*Kelo* eminent domain reforms; generally
- § 17:19 Laws restricting the definition of “public use” or prohibiting takings for economic development
- § 17:20 Laws modifying the application of eminent domain to blighted properties
- § 17:21 Laws strengthening various procedural requirements
- § 17:22 Laws specifying the definition of “just compensation” as greater than fair-market value
- § 17:23 Condemnation of “Underwater” Mortgages
- § 17:24 Application of the Fair Housing Act to Redevelopment

## Volume 3

### CHAPTER 18. THE REGULATION OF SPECIFIC USES

#### I. AIRPORT ZONING

- § 18:1 Airport zoning—Generally
- § 18:2 —Federal preemption
- § 18:3 —Enabling acts
- § 18:4 —Constitutionality; takings
- § 18:5 Condemnation of flight hazards
- § 18:6 Zoning to exclude airports
- § 18:7 Heliports

#### II. REGULATION OF ANIMALS

- § 18:8 Animals—Dogs and cats
- § 18:9 —Pet pigs
- § 18:10 —Pet chickens
- § 18:11 —Animal hospitals and shelters
- § 18:12 —Miscellaneous and exotic pets
- § 18:13 —Pigeons

#### III. REGULATION OF MISCELLANEOUS OTHER USES (A THROUGH G)

- § 18:14 Auction houses
- § 18:15 Beaches; public and private
- § 18:16 Billiard rooms
- § 18:16.50 Shooting ranges
- § 18:17 Bowling alleys
- § 18:18 Campgrounds
- § 18:19 Cemeteries
- § 18:20 Cybercafes
- § 18:21 Funeral homes—Generally

- § 18:22 —Exclusion from zoning districts
- § 18:23 —Rezoning
- § 18:24 —Special permits
- § 18:25 —Variances
- § 18:26 Golf courses
- § 18:27 —Miniature golf courses; driving ranges
- § 18:28 Governmental uses, generally
- § 18:29 Municipal uses, generally
- § 18:30 Municipal uses—Specific ordinances and statutes
- § 18:31 —Governmental-proprietary function test
- § 18:32 —Intermunicipal problems and power of eminent domain test
- § 18:33 —Intermunicipal problems and the balancing of interests rule
- § 18:34 —Intermunicipal problems and the legislative intent test
- § 18:35 State uses, generally (traditional doctrine)
- § 18:36 —Statutory construction problems; Conflict with state law
- § 18:37 Greenhouses and nurseries

#### **IV. REGULATION OF MISCELLANEOUS OTHER USES (J THROUGH L)**

- § 18:38 Junkyards—Generally
- § 18:39 —Common law nuisance
- § 18:40 —Legislative controls; zoning
- § 18:41 —Exclusion from certain districts
- § 18:42 —Exclusion from the municipality
- § 18:43 —Location in relation to other uses
- § 18:44 —Special permits
- § 18:45 —Licenses
- § 18:46 —Enclosure of junkyards
- § 18:47 —Nonconforming junkyards
- § 18:48 Landfills; disposal of solid waste—Local regulations
- § 18:49 —Flow control laws and the Dormant Commerce Clause
- § 18:50 —Federal and state regulations, preemption
- § 18:51 Drycleaners and laundromats
- § 18:52 Liquor stores; beer sales

#### **V. REGULATION OF MISCELLANEOUS OTHER USES (M THROUGH P)**

- § 18:53 Marinas
- § 18:54 Mining and Quarrying—Generally
- § 18:55 —Preemption by state or federal law
- § 18:56 —Special permits and variances
- § 18:57 —Regulatory takings
- § 18:58 —Nonconforming uses
- § 18:59 —Oil and gas



## TABLE OF CONTENTS

- § 18:60 Regulation of News racks
- § 18:61 Nursing homes and assisted living facilities, generally
- § 18:62 Nursing homes and assisted living facilities—Variances and special permits
- § 18:63 —The Federal Fair Housing Act and the American with Disabilities Act
- § 18:63.10 Pawn shops
- § 18:63.20 Payday loan stores and other alternative financial services providers

## **VI. REGULATION OF MISCELLANEOUS OTHER USES (R THROUGH V)**

- § 18:64 Racetracks
- § 18:65 Research laboratories
- § 18:66 Restaurants, generally
- § 18:67 Restaurants—Sale of alcoholic beverages
- § 18:68 Restaurants, generally—Drive-in and fast food restaurants
- § 18:68.10 Retail sales
- § 18:68.20 —Formulat retail (chain store) operations
- § 18:68.30 —Large retail (“big box”) operations
- § 18:68.40 Special events zoning
- § 18:69 Swimming pools—Public pools
- § 18:70 —Semi-public pools
- § 18:71 —Private pools
- § 18:71.10 Tattoo parlors and body piercing studios
- § 18:72 Tennis
- § 18:72.50 Vacation rentals
- § 18:73 Vending machines

## **CHAPTER 19. HOME OCCUPATIONS**

### **I. INTRODUCTION**

- § 19:1 Background
- § 19:2 Broadening the definition of home occupations
- § 19:3 Home occupations, generally

### **II. REGULATION OF HOME OCCUPATIONS**

- § 19:4 Patterns of regulation
- § 19:5 Modern methods of regulation
- § 19:6 Special use permits—Standards and requirements
- § 19:7 Performance standards
- § 19:8 Regulating the size of the home occupation
- § 19:9 Regulating the number of home occupations per dwelling unit
- § 19:10 Restricting the number of employees on site
- § 19:11 Parking

- § 19:12 Traffic generation
- § 19:13 Signs
- § 19:14 Other requirements

### **III. PROFESSIONS AND SIMILAR OCCUPATIONS**

- § 19:15 Professions and similar occupations
- § 19:16 Doctors, dentists, and surgeons
- § 19:17 Optometrists
- § 19:18 Veterinary medicine
- § 19:19 Attorneys
- § 19:20 Engineers and architects
- § 19:21 Accountants
- § 19:22 Real estate brokers
- § 19:23 Insurance agents
- § 19:24 Music studios
- § 19:25 Dance studios
- § 19:26 Artists' studios

### **IV. MISCELLANEOUS OCCUPATIONS**

- § 19:27 Barbershops; beauty parlors
- § 19:28 Dressmaking
- § 19:29 Child care
- § 19:30 Funeral homes
- § 19:31 Boardinghouses and roominghouses
- § 19:32 Miscellaneous business uses

### **V. OTHER RESTRICTIONS ON HOME OCCUPATIONS**

- § 19:33 Mechanical equipment
- § 19:34 Stock in trade
- § 19:35 Exterior evidence of home occupation
- § 19:36 Area limitations
- § 19:37 Nuisances
- § 19:38 Termination of home occupations

### **VI. ENFORCEMENT**

- § 19:39 Takings

## **CHAPTER 20. MOBILE HOMES AND MOBILE HOME PARKS**

- § 20:1 Generally
- § 20:2 Authority to regulate mobile homes; The enabling acts
- § 20:3 Definitions
- § 20:4 Exclusion from the municipality
- § 20:5 Exclusion from certain districts
- § 20:6 Confinement to mobile home parks
- § 20:7 Storage of mobile homes; recreational vehicles

## TABLE OF CONTENTS

- § 20:8 Accessory use
- § 20:9 Special permits
- § 20:10 Regulation of parks
- § 20:11 Rent control ordinances
- § 20:12 “Adults only” parks
- § 20:13 Time limitations
- § 20:14 Licensing
- § 20:15 Taxation
- § 20:16 Nonconforming use
- § 20:17 Modular homes

## **CHAPTER 21. ZONING FOR AN AGING POPULATION**

- § 21:1 Introduction: Our aging population
- § 21:2 Federal legislation that impacts age-restricted housing—  
The Fair Housing Act Amendments
- § 21:3 —The Americans with Disabilities Act
- § 21:4 The comprehensive plan and senior housing
- § 21:5 Zoning for age-restricted housing
- § 21:6 Constitutional considerations for age-restricted housing
- § 21:7 Senior housing districts
- § 21:8 Accessory apartments
- § 21:9 Elder cottages
- § 21:10 Shared living residences
- § 21:11 Multi-family housing for seniors
- § 21:12 Mobil homes and manufactured housing for seniors
- § 21:13 Zoning incentives for senior housing

## **CHAPTER 22. EXCLUSIONARY AND INCLUSIONARY ZONING**

### **I. HISTORY AND DEVELOPMENT OF EXCLUSIONARY ZONING**

- § 22:1 Introduction
- § 22:2 Suburban development and exclusionary zoning
- § 22:3 Early criticism of exclusionary zoning
- § 22:4 Federal challenges to exclusionary zoning; *Arlington Heights*
- § 22:5 State challenges to exclusionary zoning; *Mount Laurel*

### **II. EXCLUSIONARY ZONING CHALLENGES**

#### **A. TYPES OF EXCLUSIONARY ZONING**

- § 22:6 Introduction
- § 22:7 Large-lot zoning
- § 22:8 Exclusion or restriction of multiple dwellings
- § 22:9 Limitations on bedrooms

§ 22:10 Exclusion or restriction of mobile homes

## B. DEFENSES TO EXCLUSIONARY ZONING CHALLENGES

§ 22:11 General considerations

§ 22:12 Municipal finances

§ 22:13 Infrastructure and traffic

§ 22:14 Property values

§ 22:15 Rural, historic, or unique community character

§ 22:16 Open space, agricultural land, and environmentally sensitive areas

## C. OTHER CONSIDERATIONS

§ 22:17 Burden of proof

§ 22:18 Site-specific relief—The “builder’s remedy”

§ 22:19 Federal court standing

§ 22:20 State court standing

§ 22:21 The federal Fair Housing Act

§ 22:22 Equal protection claims

§ 22:23 Shared residences and group homes

§ 22:24 Residency restrictions for convicted sex offenders

§ 22:25 The right to travel

## III. STATE AFFORDABLE HOUSING LAWS

§ 22:26 California

§ 22:27 Connecticut

§ 22:28 Florida

§ 22:29 Illinois

§ 22:30 Maryland

§ 22:31 Massachusetts

§ 22:32 New Hampshire

§ 22:33 New Jersey

§ 22:34 New York

§ 22:35 North Carolina

§ 22:36 Oregon

§ 22:37 Pennsylvania

§ 22:38 Rhode Island

§ 22:39 Washington

## IV. INCLUSIONARY ZONING

§ 22:40 Introduction

§ 22:41 State inclusionary housing policies

§ 22:42 Mandatory inclusionary housing set-asides

§ 22:43 Mandatory inclusionary housing fees

§ 22:44 Zoning incentives for affordable housing

§ 22:45 Affordable housing preservation

TABLE OF CONTENTS

- § 22:46 Accessory apartments
- § 22:47 Affordable senior housing

**CHAPTER 23. FORM-BASED CODES**

- § 23:1 Emergence of form-based codes
- § 23:2 Authority for form-based codes
- § 23:3 Content of form-based codes
- § 23:4 Implementation of form-based codes
- § 23:5 Different approaches to form-based codes
- § 23:6 Due process
- § 23:7 Takings issues
- § 23:8 First Amendment concerns
- § 23:9 Federal interests

**CHAPTER 24. PLANNED DEVELOPMENT DISTRICTS AND PLANNED UNIT DEVELOPMENT**

**I. INTRODUCTION**

- § 24:1 General considerations

**II. PLANNED DEVELOPMENT DISTRICTS**

- § 24:2 Generally
- § 24:3 Creation of planned development districts
- § 24:4 Benefits of planned development districts
- § 24:5 Standards for planned development districts
- § 24:6 Judicial review of planned development districts

**III. PLANNED UNIT DEVELOPMENT (PUD)**

- § 24:7 Generally
- § 24:8 The definition of planned unit development
- § 24:9 The benefits of planned unit development
- § 24:10 Creation of planned unit developments
- § 24:11 Establishment of planned unit development through floating zones
- § 24:12 Application Process
- § 24:13 Final legislative action
- § 24:14 Establishment by special permit or exception
- § 24:15 Standing to challenge planned unit development
- § 24:16 Challenges to planned unit development
- § 24:17 Delegation of Authority
- § 24:18 Lack of specific enabling legislation
- § 24:19 Not in accordance with a comprehensive plan
- § 24:20 Mixture of uses
- § 24:21 Lack of Uniformity
- § 24:22 Model Law

## **CHAPTER 25. WIRELESS FACILITIES**

- § 25:1 Wireless facility zoning—The federal Telecommunications Act of 1996
  - § 25:2 —Discrimination among providers of functionally equivalent services
  - § 25:3 The federal Telecommunications Act of 1996 (TCA)—Section 253
  - § 25:4 Wireless facility zoning—Prohibitions on the provision of personal wireless services
  - § 25:5 —Action within a reasonable period of time
  - § 25:6 —Decision to deny siting request “in writing”
  - § 25:7 —Decision to deny siting request “supported by substantial evidence”
  - § 25:8 —Judicial review under the TCA
  - § 25:9 —Regulation on the basis of environmental effects of radio frequency emissions
  - § 25:10 —Small cell wireless facilities
  - § 25:11 —The Spectrum Act
  - § 25:12 —Amateur radio facilities and information services
- Appendix 25A. City of Syracuse Small Wireless Facilities Aesthetic Design Standards

## **CHAPTER 26. SIGNS AND BILLBOARDS**

- § 26:1 Sign Regulation-Introduction
- § 26:2 Highway Beautification Act
- § 26:3 Power to regulate signs
- § 26:4 Purpose of sign regulations—Aesthetics & traffic safety
- § 26:5 Preemption
- § 26:6 Signs & free speech—General
- § 26:7 Commercial & noncommercial speech: content & viewpoint neutrality
- § 26:8 On-premises & off-premises signs
- § 26:9 Prior restraint & overbreadth doctrines
- § 26:10 Miscellaneous constitutional provisions
- § 26:11 Nonconforming signs & amortization
- § 26:12 Exclusion of signs
- § 26:13 Different types of signs
- § 26:14 Signs near highways or parks
- § 26:15 Electronic signs and billboards
- § 26:16 Attorney’s fees

## **CHAPTER 27. HISTORIC PRESERVATION**

- § 27:1 The American preservation movement
- § 27:2 The National Historic Preservation Act
- § 27:3 —Section 106
- § 27:4 Other federal statutes relating to historic preservation
- § 27:5 State historic preservation statutes
- § 27:6 Procedures for enacting local historic district regulations

## TABLE OF CONTENTS

- § 27:7 Certificates of appropriateness and hardship exemptions
- § 27:8 General constitutional issues
- § 27:9 Takings challenges
- § 27:10 Free exercise and RLUIPA challenges to historic preservation regulations
- § 27:11 Free speech challenges

## CHAPTER 28. RELIGIOUS USES

### I. RELIGIOUS LAND USE, GENERALLY

- § 28:1 Introduction
- § 28:2 Religious land use and the constitution
- § 28:2.10 State Religious Freedom Restoration Acts

### II. RLUIPA

- § 28:3 Religious land use and institutionalized persons act
- § 28:4 RLUIPA: Substantial burden
- § 28:5 RLUIPA: substantial burden—Actions that have and have not constituted a substantial burden
- § 28:6 RLUIPA: compelling governmental interests
- § 28:7 RLUIPA: nondiscrimination and equal terms
- § 28:8 RLUIPA: attorney’s fees
- § 28:8.50 RLUIPA: Ripeness

### III. THE ESTABLISHMENT CLAUSE

- § 28:9 Establishment clause

### IV. MUNICIPAL EXCLUSION AND RESTRICTION OF RELIGIOUS USES

- § 28:10 Exclusion of religious uses
- § 28:11 Restrictions on religious use; special permits

## CHAPTER 29. REGULATION OF SEXUALLY ORIENTED BUSINESSES

- § 29:1 Background and basic constitutional considerations
- § 29:2 Historical approaches: Obscenity prosecution, nuisance abatement, and time, place, and manner regulation
- § 29:3 Content-based versus content-neutral regulations
- § 29:4 Four-part test for content-neutral regulations: *United States v. O’Brien*
- § 29:5 *O’Brien* applied to adult businesses: *Young v. American Mini-Theatres*
- § 29:6 Government’s power validated: *City of Renton v. Playtime Theatres, Inc.*
- § 29:7 Place regulation: defining and zoning adult businesses
- § 29:8 Defining “adult businesses”

- § 29:9 Limitations on zoning power
- § 29:10 Overview of zoning approaches
- § 29:11 How much land is “Reasonable”?
- § 29:12 Whether land is “Available”?
- § 29:13 Amortization
- § 29:14 Moratoria
- § 29:15 Time and manner regulation: hours of operation, licensing regulations, interior layout requirements, and conduct regulations
- § 29:16 Time restrictions
- § 29:17 Manner regulation: substantial government interests
- § 29:18 Licensing
- § 29:19 Avoiding prior restraints
- § 29:20 Discretion of licensor
- § 29:21 Time limits for issuing or denying a license
- § 29:22 License fees
- § 29:23 Disclosure requirements
- § 29:24 Civil disability provisions
- § 29:25 Vicarious liability of adult business operators
- § 29:26 Enforcement of licensing provisions: Inspections
- § 29:27 Conclusion

## **CHAPTER 30. THE ADOPTION AND AMENDMENT OF OFFICIAL MAPS**

### **I. INTRODUCTION**

- § 30:1 Official maps—Definitions and distinctions
- § 30:2 —Development and purpose
- § 30:3 —Constitutional problems

### **II. ADOPTION OF OFFICIAL MAP**

- § 30:4 Enabling acts—Generally
- § 30:5 —Adopting agencies
- § 30:6 —Procedure for adoption; notice and hearing

### **III. AMENDMENT OF OFFICIAL MAPS**

- § 30:7 Amendment of official maps, generally
- § 30:8 Filing an approved plat
- § 30:9 Dedication
- § 30:10 Vacation

### **IV. EFFECT OF OFFICIAL MAP**

- § 30:11 Effect of adoption of official map—Generally
- § 30:12 —Evidence of location
- § 30:13 —Approval of subdivision plats
- § 30:14 —Permits for building in mapped streets



TABLE OF CONTENTS

- § 30:15 —Municipal improvements; Buildings not on mapped streets
- § 30:16 Administrative relief

## Volume 4

### CHAPTER 31. SUBDIVISION CONTROLS

#### I. SUBDIVISION CONTROLS, GENERALLY

- § 31:1 The history and development of subdivision controls
- § 31:2 Subdivision and related terms defined and applied
- § 31:3 The objectives of subdivision control
- § 31:4 The power to control subdivision, generally
- § 31:5 Enabling legislation
- § 31:6 Extraterritorial jurisdiction

#### II. REVIEW OF SUBDIVISION PLATS

- § 31:7 Review of subdivision plats
- § 31:8 Delegation of power to review plats
- § 31:9 The reviewing agencies
- § 31:10 Procedure for review of plats, generally
- § 31:11 Application for approval
- § 31:12 Notice and hearing
- § 31:13 Preliminary and final plats; tentative approval
- § 31:14 Approval by co-ordinate municipal departments
- § 31:15 Decisions of the reviewing board; reasons for disapproval
- § 31:16 Delay of decision
- § 31:17 Filing and recordation

#### III. STANDARDS OF REVIEW, SUBDIVISION REGULATIONS

- § 31:18 Standards of review, generally
- § 31:19 —Subdivision regulations

#### IV. CLUSTER ZONING

- § 31:20 Cluster zoning, generally
- § 31:21 Establishment of cluster developments—Subdivision controls
- § 31:22 — —Special permits

#### V. STANDARDS OF REVIEW, ZONING REGULATIONS

- § 31:23 Standards of review, generally—Official map; master plan
- § 31:24 —Zoning regulations
- § 31:25 —Permissible deviations from the zoning regulations
- § 31:26 Effect of approval on the power to rezone

§ 31:27 Conditional approval, generally

## **VI. RESERVATION OR DEDICATION**

- § 31:28 Dedication or reservation of land
- § 31:29 Statutory dedication
- § 31:30 Common law dedication—Offer to dedicate
- § 31:31 — —Acceptance of dedication
- § 31:32 — —Revocation
- § 31:33 — —Abandonment; vacation
- § 31:34 Common law dedication; offer to dedicate—Construction
- § 31:35 Streets and highways—Dedication
- § 31:36 — —Size and design
- § 31:37 — —Suitable improvement
- § 31:38 — —Access problems
- § 31:39 — —Off-site problems
- § 31:40 Monuments; street markers
- § 31:41 Fire alarm signal devices
- § 31:42 Parks and recreational areas—Reservation or dedication
- § 31:43 — —Money in lieu of land
- § 31:44 Reservation or dedication for education and other uses
- § 31:45 — —Money in lieu of land

## **VII. MISCELLANEOUS MATTERS**

- § 31:46 Water, drainage, and sewers
- § 31:47 Effect of annexation of subdivision
- § 31:48 Processing and inspection fees
- § 31:49 Performance bonds to insure installation of improvements
- § 31:50 — —Reduction of bond; enforcement
- § 31:51 Variances and exceptions
- § 31:52 Waiver of conditions
- § 31:53 Intergovernmental dynamics

## **CHAPTER 32. VESTED RIGHTS AND DEVELOPMENT AGREEMENTS**

- § 32:1 Introduction
- § 32:2 Vested rights, generally
- § 32:3 Vested rights, timing
- § 32:4 Landowner reliance upon the Government Act
- § 32:5 Requirement of good faith
- § 32:6 Permit granted in error
- § 32:7 Expiration of vested rights
- § 32:8 Transferability of vested rights to subsequent owners
- § 32:9 Movement toward earlier vesting
- § 32:10 Interim development ordinances/moratoria
- § 32:11 Limitations on power to amend; reliance on existing zoning regulations
- § 32:12 Vested right, model law

## TABLE OF CONTENTS

- § 32:13 Development agreements
- § 32:14 Development agreements, model law
- § 32:15 Community benefits agreements
- § 32:16 —Enforceability
- § 32:17 Checklist for CBAs

## **CHAPTER 33. AGRICULTURAL USES AND PRESERVATION**

- § 33:1 Definitions; uses considered to be “agricultural” or “farming”
- § 33:2 Agricultural zoning, generally
- § 33:3 Special permits, variances and rezonings
- § 33:4 Agricultural exemptions
- § 33:5 Right to farm laws
- § 33:6 Residential development in agricultural districts
- § 33:7 Animal husbandry and livestock; dogs, horses, and other animals
- § 33:8 Feed lots, confined animal feeding operations, and commercial poultry houses
- § 33:9 Agricultural preservation districts
- § 33:10 Agricultural preservation planning

## **CHAPTER 33A. REGULATING MARIJUANA DISPENSARIES AND CULTIVATION FACILITIES**

- § 33A:1 Marijuana land uses, generally
- § 33A:2 Federal preemption under the Controlled Substances Act
- § 33A:3 Federal court challenges
- § 33A:4 State preemption
- § 33A:5 Zoning definitions
- § 33A:6 Moratoria
- § 33A:7 Exclusion of marijuana land uses
- § 33A:8 Separation requirements
- § 33A:9 Licenses and permits
- § 33A:10 Environmental review

## **CHAPTER 34. GROWTH CONTROLS**

### **I. INTRODUCTION**

- § 34:1 Growth controls, generally

### **II. GROWTH CONTROL TECHNIQUES**

- § 34:2 Euclidian zoning
- § 34:3 Interim controls; Moratoria
- § 34:4 Innovative Programs
- § 34:5 Urban growth boundaries

- § 34:6 The Petaluma plan
- § 34:7 Comment on the Petaluma plan
- § 34:8 The Ramapo plan
- § 34:9 Comment on the Ramapo plan
- § 34:10 Population ceilings
- § 34:11 Land banking
- § 34:12 Purchase of development rights, conservation easements,  
and transfer of development rights
- § 34:13 Adequate public facilities ordinances

### **III. BASIC LEGAL ISSUES**

- § 34:14 Enabling legislation; Ultra vires
- § 34:15 General welfare; Substantive due process
- § 34:16 Exclusionary zoning

## **CHAPTER 35. MORATORIA**

- § 35:1 Introduction
- § 35:2 Reasonable Time Frame
- § 35:3 Valid Public Purpose
- § 35:4 Compliance with Laws and Procedures

## **CHAPTER 36. LOCAL ENVIRONMENTAL LAW**

- § 36:1 Introduction
- § 36:2 Sources of Authority
- § 36:3 Federal Preemption
- § 36:4 State Preemption
- § 36:5 Administrative and Judicial Review of Local  
Environmental Decisionmaking
- § 36:6 Nuisance Abatement
- § 36:7 Zoning
- § 36:8 Planning and Smart Growth
- § 36:9 Site Plan Review
- § 36:10 Subdivision Controls
- § 36:11 Green Building Codes
- § 36:12 Environmental Impact Fees
- § 36:13 Environmental Overlay Districts
- § 36:14 Local Wetlands Regulation
- § 36:15 Floodplain regulations
- § 36:16 Tree preservation
- § 36:17 Soil, Excavation and Grading
- § 36:18 Steep Slopes and Hillsides
- § 36:19 Critical Habitat Areas
- § 36:20 Viewsheds
- § 36:21 The National Environmental Policy Act
- § 36:22 State Environmental Policy Acts
- § 36:23 Categorical Exclusions from Environmental Policy Acts
- § 36:24 Threshold Review under Environmental Policy Acts

TABLE OF CONTENTS

- § 36:25 Programmatic Environmental Review under Environmental Policy Acts
- § 36:26 Adequacy of Environmental Review under Environmental Policy Acts
- § 36:27 Environmental Justice and Equity

## **CHAPTER 36A. PLANNING AND ZONING IN THE COASTAL ZONE**

### **I. INTRODUCTION**

- § 36A:1 Introduction to planning and zoning in the coastal zone
- § 36A:2 Jurisdiction over coast and nearshore waters

### **II. THE COASTAL ZONE MANAGEMENT ACT**

- § 36A:3 Legislative History of the 1972 Act
- § 36A:4 Amendments to the CZMA
- § 36A:5 Structure of the CZMA
- § 36A:6 Administration of the CZMA
- § 36A:7 Definition of coastal zone
- § 36A:8 National Policy
- § 36A:9 The national policy and climate change
- § 36A:10 CZMA administration in states—Overview
- § 36A:11 Development and approval of state programs
- § 36A:12 Amendments to state programs
- § 36A:13 Implementation of state programs—Overview
- § 36A:14 —Development restrictions
- § 36A:15 —Near-shore and offshore energy development
- § 36A:16 —Constitutional challenges
- § 36A:17 Financial assistance to states
- § 36A:18 Federal consistency
- § 36A:19 Activities and effects triggering consistency review
- § 36A:20 Maximum extent practicable
- § 36A:21 Consistency determination for federal agency activities
- § 36A:22 State objection to a federal agency consistency determination
- § 36A:23 Consistency determinations for federal licenses or permits
- § 36A:24 Consistency determinations for outer continental shelf plans
- § 36A:25 Appeals of consistency determinations
- § 36A:26 Overview of the Coastal Zone Enhancement Program
- § 36A:27 National Priorities for Section 309 Enhancement Program
- § 36A:28 Overview of the Coastal Nonpoint Pollution Control Program
- § 36A:29 Management measures—Nonpoint pollution control
- § 36A:30 Development and approval of State Coastal Nonpoint Pollution Control Programs

- § 36A:31 Technical Assistance and Funding—Nonpoint Pollution Control
- § 36A:32 National Estuarine Research Reserve (NERR) System
- § 36A:33 CZMA Administration at the Local Level

### **III. OTHER FEDERAL LAWS AFFECTING PLANNING AND ZONING IN COASTAL AREAS**

- § 36A:34 Coastal Barrier Resources Act
- § 36A:35 Federal jurisdiction over offshore energy development
- § 36A:36 Overview of other water-related laws

## **CHAPTER 37. ENERGY AND CLIMATE CHANGE**

- § 37:1 Introduction
- § 37:2 International initiatives to mitigate climate change
- § 37:3 United States initiatives to mitigate climate change
- § 37:4 *Massachusetts v. Environmental Protection Agency* and other litigation
- § 37:5 Regional initiatives to mitigate climate change
- § 37:6 State initiatives to mitigate climate change
- § 37:7 Local initiatives to mitigate climate change
- § 37:8 Private sector initiatives to mitigate climate change
- § 37:9 Renewable energy—Wind power
- § 37:10 Internet resources

## **CHAPTER 38. ETHICAL CONSIDERATIONS**

- § 38:1 Introduction
- § 38:2 Conflicts of interest, generally
- § 38:3 Common law conflict of interest rules
- § 38:4 State and local ethics laws
- § 38:5 Financial disclosure
- § 38:6 Alternate board members
- § 38:7 Conflicts based on financial interests
- § 38:8 Conflicts based on employment
- § 38:9 Conflicts based on familial and personal relationships
- § 38:10 Conflicts arising from residency
- § 38:11 Conflicts based on associations or memberships
- § 38:12 Campaign contributions
- § 38:13 Advisory boards and outside consultants
- § 38:14 Prejudgment
- § 38:15 Bias
- § 38:16 Ex parte communications
- § 38:17 Incompatible offices
- § 38:18 Disqualification of attorneys
- § 38:19 Disqualification of judges
- § 38:20 Criminal conduct
- § 38:21 American Institute of Certified Planners (AICP) Code of Ethics and Professional Conduct

## **CHAPTER 39. ZONING ADMINISTRATION**

### **I. INTRODUCTION**

§ 39:1 The unique problem of zoning administration

### **II. THE INSTRUMENTS AND AGENCIES OF ENFORCEMENT**

§ 39:2 Building permits—Zoning certificates

§ 39:3 Occupancy permits

§ 39:4 Registration of uses

§ 39:5 Administrative enforcement

### **III. THE ZONING BOARD OF APPEALS**

#### **A. THE DEVELOPMENT AND PURPOSES OF THE ZONING BOARD OF APPEALS**

§ 39:6 Development of the zoning board of appeals

§ 39:7 Purposes of the zoning board of appeals, generally

§ 39:8 —To provide a safety valve

§ 39:9 Purposes of the board of appeals, generally—To perfect the zoning ordinance

§ 39:10 Purposes of the zoning board of appeals generally—To safeguard the constitutionality of the zoning ordinance

§ 39:11 Purposes of the zoning board of appeals, generally—To interpret the zoning ordinance

#### **B. CREATION AND COMPOSITION**

§ 39:12 Establishment of the zoning board of appeals

§ 39:13 Effect of failure to establish a board of appeals

§ 39:14 Composition of the board of appeals—Qualifications of members

§ 39:15 Appointments—Terms of office; vacancies

#### **C. ORGANIZATION AND STAFF**

§ 39:16 Organization; officers

§ 39:17 Staff services

§ 39:18 Compensation of members

#### **D. MEETINGS, RULES, AND QUORUMS**

§ 39:19 Meetings

§ 39:20 Rules

§ 39:21 Records

#### **E. POWERS AND DUTIES**

§ 39:22 Review of administrative decisions

- § 39:23 Processing applications for variances
- § 39:24 Processing applications for special permits and exceptions

## **CHAPTER 40. PROCEDURE BEFORE THE ZONING BOARD OF APPEALS**

### **I. INTRODUCTION**

- § 40:1 Board of appeals procedure—The problems of informality

### **II. JURISDICTION AND POWERS**

- § 40:2 Jurisdiction of the board of appeals, generally
- § 40:3 Original or appellate jurisdiction—Exceptions and special permits
- § 40:4 Appellate jurisdiction—Variances
- § 40:5 —Review of administrative decisions
- § 40:6 Power to stay proceedings
- § 40:7 Power to require building inspector or other official to act
- § 40:8 Power to make final disposition
- § 40:9 Authority to rule on validity of ordinance
- § 40:10 Power to make rules

### **III. PARTIES**

- § 40:11 Who may apply for administrative relief
- § 40:12 Who may resist administrative action

### **IV. PLEADINGS**

- § 40:13 Application for relief, generally
- § 40:14 —Content of application
- § 40:15 —Time limitations
- § 40:16 —Filing fees

### **V. NOTICE**

- § 40:17 Notice and hearing, generally
- § 40:18 —Timeliness
- § 40:19 —Persons entitled to notice
- § 40:20 —Publication, posting, and service
- § 40:21 —Content
- § 40:22 —Multiple hearings
- § 40:23 —Waiver of irregularity

### **VI. HEARING**

- § 40:24 Fair hearing, generally
- § 40:25 Public hearing—Executive session
- § 40:26 A legally constituted board—Quorum requirements
- § 40:27 Record of proceedings



## TABLE OF CONTENTS

- § 40:28 The right to counsel
- § 40:29 Privilege

### **VII. EVIDENCE**

- § 40:30 The production of evidence
- § 40:30.10 Subpoenas
- § 40:31 The rules of evidence
- § 40:32 Substantial evidence—Competent evidence
- § 40:33 The right of cross examination
- § 40:34 Testimony not under oath
- § 40:35 Hearsay
- § 40:36 Opinion evidence; experts and others
- § 40:37 Personal knowledge of board members
- § 40:38 Personal inspection by board members
- § 40:39 Governmental reports—The planning staff
- § 40:40 The municipal attorney

### **VIII. FINDINGS**

- § 40:41 Findings, generally
- § 40:42 Adequacy of findings, generally
- § 40:43 Findings which omit decisive issues
- § 40:44 Conclusory findings—Failure to make findings of fact

### **IX. DECISION**

- § 40:45 Required majorities
- § 40:46 Ethical considerations
- § 40:47 Delay of decision
- § 40:48 Record of vote

### **X. REHEARING; NEW APPLICATION**

- § 40:49 Authority to rehear—Res judicata
- § 40:50 Express provision for rehearing
- § 40:51 Change of circumstances
- § 40:52 New application for identical relief
- § 40:53 New application for different relief

## **CHAPTER 41. THE LANGUAGE OF ZONING**

- § 41:1 Introduction
- § 41:2 Maxims of construction; statutory construction acts
- § 41:3 Construction provisions in zoning ordinances
- § 41:4 Strict construction
- § 41:5 —Extension by implication
- § 41:6 Adoption of construction that upholds the ordinance
- § 41:7 The intent of the legislature
- § 41:8 Void for vagueness
- § 41:9 Liberal construction

- § 41:10 Administrative construction
- § 41:11 The context of the language
- § 41:12 Preambles, captions, and purpose clauses
- § 41:13 Repeal by implication
- § 41:14 Common meaning
- § 41:15 Definitions, generally
- § 41:16 Glossary of terms

## **CHAPTER 42. JUDICIAL REVIEW: APPEAL AND CERTIORARI**

### **I. INTRODUCTION**

- § 42:1 Judicial review of zoning and planning decisions, generally
- § 42:2 Statutes

### **II. DECISIONS SUBJECT TO REVIEW**

- § 42:3 Board of adjustment decisions
- § 42:4 Planning board decisions
- § 42:5 Decisions of the legislative body

### **III. PERSONS ENTITLED TO REVIEW**

- § 42:6 Standing to seek review, generally
- § 42:7 Persons aggrieved by administrative decisions
- § 42:8 —Specific cases
- § 42:9 —Owners
- § 42:10 —Equitable owners: contract vendors, vendees, and option holders
- § 42:11 —Lessees
- § 42:12 —Mortgagees
- § 42:13 —Insurers
- § 42:14 —Representational standing: Homeowners', environmental, and civic associations
- § 42:15 —Taxpayers and citizens
- § 42:16 —Business competitors
- § 42:17 —Nearby residents and property owners
- § 42:18 —Owners of property outside the municipality
- § 42:19 —The municipality and other government agencies
- § 42:20 Indispensable parties

### **IV. APPLICATION FOR REVIEW**

- § 42:21 Generally
- § 42:22 Pleading
- § 42:23 Time limitations
- § 42:24 —Length of time limits for appeal
- § 42:25 —Strict enforcement of time periods for appeal
- § 42:26 —Reduction of statutory time periods

## TABLE OF CONTENTS

- § 42:27 —Substantial compliance with time periods for appeal
- § 42:28 —Extension of time period for appeal due to error of the board
- § 42:29 —Extension of time period due to lack of notice of decision
- § 42:30 —Determination of triggering event commencing running of time period for appeal
- § 42:31 —Determination of decision commencing running of time period for appeal
- § 42:32 —Requirement that indispensable parties be joined within time period for appeal
- § 42:33 Transcripts, records
- § 42:34 Bonds
- § 42:35 Exhaustion of administrative remedies
- § 42:36 —When exhaustion is required
- § 42:37 —Exceptions to the exhaustion rule

## V. SCOPE OF REVIEW

- § 42:38 Presumption of regularity, burden of proof
- § 42:39 The substantial evidence rule
- § 42:40 Acceptance of additional evidence by the reviewing court
- § 42:41 Review de novo
- § 42:42 Appeal from the reviewing court when no additional evidence is taken
- § 42:43 Appeal from the reviewing court where additional evidence is taken and/or the matter was reviewed de novo
- § 42:44 Specific issues before reviewing court

## VI. DISPOSITION OF APPEAL

- § 42:45 Effect of amendment during pendency of appeal
- § 42:46 Final decision or remand

# Volume 5

## CHAPTER 43. JUDICIAL REVIEW: MANDAMUS

- § 43:1 Mandamus to require administrative action, generally
- § 43:2 Persons entitled to relief
- § 43:3 Application for relief
- § 43:4 Mandamus to require approval of subdivision plat
- § 43:5 Mandamus to require issuance of a permit
- § 43:6 Mandamus to require the granting of a variance
- § 43:7 Mandamus to require public officials to enforce the zoning ordinance
- § 43:8 Mandamus to require legislative action
- § 43:9 Mandamus to test the validity of the zoning ordinance
- § 43:10 Exhaustion of administrative remedies
- § 43:11 Effect of amendment while action is pending

## **CHAPTER 44. JUDICIAL REVIEW: INJUNCTION**

### **I. INTRODUCTION; THE USES OF INJUNCTION**

- § 44:1 Generally
- § 44:2 The enabling acts
- § 44:3 Injunction to restrain violation of zoning regulations
- § 44:4 Injunction to restrain enforcement of zoning regulations
- § 44:5 Injunction to restrain or require legislative action
- § 44:6 Injunction to review administrative decisions
- § 44:7 Injunction to restrain a nuisance
- § 44:8 Temporary injunctions

### **II. STANDING**

- § 44:9 The municipality
- § 44:10 Taxpayer's action
- § 44:11 Private action; special interest

### **III. LIMITATIONS**

- § 44:12 Availability of alternative remedy
- § 44:13 Restraint on criminal conduct
- § 44:14 Exhaustion of administrative remedies
- § 44:15 Laches
- § 44:16 Effect of subsequent amendment

## **CHAPTER 45. JUDICIAL REVIEW: DECLARATORY JUDGMENT**

- § 45:1 Availability of the remedy
- § 45:2 Justiciable controversy
- § 45:3 Standing to seek declaratory judgment—Special damages
- § 45:4 — —Owners and tenants
- § 45:5 —Governmental agencies
- § 45:6 —Associations
- § 45:7 —Vendors and vendees
- § 45:8 Indispensable parties
- § 45:9 Pleading
- § 45:10 —Timeliness
- § 45:11 Exhaustion of administrative remedies
- § 45:12 —Pleading exhaustion of remedies
- § 45:13 Effect of compliance, violation, or application for administrative relief
- § 45:14 Presumption of validity—Scope of review
- § 45:15 Effect of declaratory judgment, generally
- § 45:16 Declaration of invalidity—Order to reclassify
- § 45:17 Effect of amendment while action is pending

TABLE OF CONTENTS

**CHAPTER 46. ACTIONS UNDER 42 U.S.C.A.  
§ 1983**

- § 46:1 Actions under Section 1983, generally
- § 46:2 “Color of law”
- § 46:3 Adequate pre-deprivation post-deprivation remedies
- § 46:4 Judicial and quasi-judicial immunity
- § 46:5 Legislative immunity
- § 46:6 Qualified immunity
- § 46:7 Sovereign immunity
- § 46:8 *England* reservation
- § 46:9 *Pullman* abstention
- § 46:10 *Burford* abstention
- § 46:11 *Younger* abstention
- § 46:12 *Colorado River* abstention
- § 46:13 The *Rooker-Feldman* doctrine and res judicata
- § 46:14 Remedies and attorneys fees
- § 46:15 Jury trials

**CHAPTER 47. JUDICIAL ENFORCEMENT OF  
ZONING AND PLANNING REGULATIONS:  
CRIMINAL PROCEEDINGS**

- § 47:1 Criminal penalties for zoning and planning offenses,  
generally
- § 47:2 The enabling acts
- § 47:3 Accusation
- § 47:4 Presumptions and burden of proof
- § 47:5 Defenses
- § 47:6 —Discriminatory enforcement

**CHAPTER 48. LAND USE RESOURCES ON  
THE INTERNET**

- § 48:1 Introduction
- § 48:2 Comprehensive sites
- § 48:3 Federal government sponsored sites
- § 48:4 Land use codes
- § 48:5 Nonprofit organizations
- § 48:6 Academic sponsored sites
- § 48:7 Miscellaneous sources and topics of interest
- § 48:8 Blogs
- § 48:9 Blogs national in scope
- § 48:10 State specific blogs
- § 48:11 Blogs on environmental law and climate change
- § 48:12 Blogs on eminent domain
- § 48:13 Blogs on social justice and community development
- § 48:14 Conclusion

**Table of Laws and Rules**

**Table of Cases**

**Index**