Table of Contents

Volume 1

CHAPTER 1. RISE AND PROGRESS OF MUNICIPAL INSTITUTIONS

I. MUNICIPAL INSTITUTIONS GENERALLY

§ 1:1 City as chief factor in human progress
§ 1:2 —First municipal institutions
§ 1:3 —City life in early civilizations
§ 1:4 —Cultural and intellectual developments
§ 1:5 —Effect on nation
§ 1:6 —Value of study of urban development
§ 1:7 —Modern urban progress

II. LOCAL GOVERNMENT IN THE UNITED STATES

§ 1:8 European influences
§ 1:9 Pre-Revolution incorporations
§ 1:10 Structure
§ 1:11 —New England
§ 1:12 —The South
§ 1:13 —Mid-Atlantic region
§ 1:14 Elections
§ 1:15 Mayors' powers
§ 1:16 Functions
§ 1:17 —Police system
§ 1:18 —Administrative; boroughs
§ 1:19 —Taxation
§ 1:20 Post-Revolution charters
§ 1:21 Public local corporations
§ 1:22 —Kinds
§ 1:23 —Creation, alteration or abolition of governmental areas
§ 1:24 —Regional types generally
§ 1:25 — Counties
§ 1:26 — — Definition
§ 1:27 — — Historical development
§ 1:28 — — Constitutional requirements
§ 1:29 — — Government
§ 1:30 — — Functions
§ 1:31 — — Home rule counties
§ 1:32 — Townships and towns
§ 1:33 — — Definitions
§ 1:34 — — Meetings
§ 1:35 — — New England town and western township contrasted
§ 1:36 — Cities, towns and villages
§ 1:37 — — Position in nation
§ 1:38 — — Local self-government
§ 1:39 — — — Antedating state authority
§ 1:40 — — — Theory and purpose
§ 1:41 — — — Relationship to state
§ 1:42 — — — Federal interference
§ 1:43 — — Home rule
§ 1:44 — — — Definition
§ 1:45 — — — Inherent right
§ 1:46 — — — Advantages and disadvantages
§ 1:47 People as power of government
§ 1:48 — Federal government’s restricted power

III. MUNICIPAL ADMINISTRATION IN THE UNITED STATES

§ 1:49 Growth of urban life
§ 1:50 — Relative rate of urban and rural increase
§ 1:51 — Causes
§ 1:52 — — Causes of farm-to-town trend
§ 1:53 Trek to suburbs
§ 1:54 The metropolitan area
§ 1:55 — Metropolitan governmental units
§ 1:56 — — Suggested plans
§ 1:57 — — — Councils of government
§ 1:58 The megalopolis
§ 1:59 City’s legal status
§ 1:60 — Restriction to public powers and affairs
§ 1:61 — Agency for state
§ 1:62 — Ownership and control of property
CHAPTER 2. NATURE AND KINDS OF MUNICIPAL CORPORATIONS

I. GENERAL CONSIDERATIONS

§ 2:1 Scope of chapter
§ 2:2 Private corporations
§ 2:3 Public corporations
§ 2:4 — Illustrations
§ 2:5 — — Nonmunicipal public corporations
§ 2:6 — — — United States and its states
§ 2:7 Municipal corporations
§ 2:8 — Definitions
§ 2:9 — Elements necessary to constitute
§ 2:10 — — Limitation of powers; effect
§ 2:11 — Purpose
§ 2:12 — Nature and status
§ 2:13 — — Duality of functions
§ 2:14 — Governing body’s status
§ 2:15 — Members
§ 2:16 — State’s status
§ 2:17 — Quasi-municipal corporations
§ 2:18 — Particular terms construed
§ 2:19 — — “Boroughs.”
§ 2:20 — — “Corporation.”
§ 2:21 — — “Corporation for municipal purposes.”
§ 2:22 — — “Hamlet.”
§ 2:23 — — “Municipal.”
§ 2:24 — — “Municipality.”
§ 2:25 — — “Other municipal corporations.”
§ 2:26 — — “Person.”

II. MUNICIPAL CORPORATIONS
DISTINGUISHED FROM QUASI-MUNICIPAL CORPORATIONS

§ 2:27 — General considerations
§ 2:28 — Tests to determine corporate status
§ 2:29 — — Constitutional or statutory designation of certain corporations as municipal corporations
§ 2:30 — — Effect
§ 2:31 — — Corporations held municipal or quasi-municipal for some purposes only
§ 2:32 — — — Within same state
§ 2:33 — Districts and authorities created by legislature
§ 2:34 — — Illustrations
§ 2:35 — — Authorities
§ 2:36 — — — Housing
§ 2:37 — — — Airport
§ 2:38 — — — Port authorities
§ 2:39 — Departments and boards
§ 2:40 — Commissions

III. CITIES AND VILLAGES

§ 2:41 — Cities
§ 2:42 — Corporate status
§ 2:43 — Classification
§ 2:44 — — Town, village or borough distinguished from city
IV. COUNTIES, TOWNS AND TOWNSHIPS

§ 2:53 Counties
§ 2:54 —Municipal corporations and counties distinguished
§ 2:55 Towns and townships
§ 2:56 —Distinction
§ 2:57 —Corporate status
§ 2:58 —Incorporated towns
§ 2:59 —“Town”, constitutional or statutory definition
§ 2:60 —“Town” as used in constitution or statute—“Town” in popular sense
§ 2:61 ——Incorporated towns
§ 2:62 ——Incorporated place.”

CHAPTER 3. CREATION OF MUNICIPAL CORPORATIONS

I. GENERAL CONSIDERATIONS

§ 3:1 Scope of chapter
§ 3:2 State legislature’s powers
§ 3:3 —Quasi-municipal districts and authorities
§ 3:4 —Incorporation by inhabitants
§ 3:5 —Conditions and limitations
§ 3:6 —Powers delegable
§ 3:7 —Territorial considerations
§ 3:8 Congress’ power
§ 3:9 Territory’s powers
§ 3:10 Delegation of legislature’s powers
§ 3:11 —Court as incorporating tribunal
§ 3:12 —Board of county supervisors
§ 3:13 Classification
§ 3:14 —Legislature’s powers
§ 3:15 — Constitutional requirements
§ 3:16 — Home-rule cities
§ 3:17 — Advancement or reduction in class or grade
§ 3:18 — — Self-executing statutory provisions
§ 3:19 — — Effect
§ 3:20 — Title of incorporation statutes
§ 3:21 — — Illustrations
§ 3:22 — Injunction to prevent incorporation
§ 3:23 — — Who entitled

II. CONDITIONS PRECEDENT

§ 3:24 — Generally
§ 3:25 — Population requirements
§ 3:26 — Territorial requirements
§ 3:27 — — Character of territory
§ 3:28 — — Size
§ 3:29 — — Urban or semi-urban
§ 3:30 — — — Villages
§ 3:31 — — — Farmland exclusion
§ 3:32 — — Contiguity
§ 3:33 — — Already-incorporated territory
§ 3:34 — Consent to incorporation; acceptance of charter

III. METHODS

§ 3:35 — Generally
§ 3:36 — Special act; historical background
§ 3:37 — — Constitutional provisions
§ 3:38 — — Construction
§ 3:39 — — “Municipal purposes.”
§ 3:40 — General incorporation statutes
§ 3:41 — — Pending annexation proceedings as bar to incorporation
§ 3:42 — — Concurrent jurisdiction
§ 3:43 — Home-rule charters
§ 3:44 — Purpose
§ 3:45 — Self-executing constitutional provisions
§ 3:46 — Applicability
§ 3:47 — Charter contents
§ 3:48 — Consolidated city and county

IV. PROCEDURE GENERALLY

§ 3:49 — Generally
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 3:50</td>
<td>Compliance with statute</td>
</tr>
<tr>
<td>§ 3:51</td>
<td>Petition</td>
</tr>
<tr>
<td>§ 3:52</td>
<td>Filing</td>
</tr>
<tr>
<td>§ 3:53</td>
<td>Concurrent</td>
</tr>
<tr>
<td>§ 3:54</td>
<td>Successive</td>
</tr>
<tr>
<td>§ 3:55</td>
<td>Annexation pending</td>
</tr>
<tr>
<td>§ 3:56</td>
<td>Contents</td>
</tr>
<tr>
<td>§ 3:57</td>
<td>Boundary designation</td>
</tr>
<tr>
<td>§ 3:58</td>
<td>Sufficiency</td>
</tr>
<tr>
<td>§ 3:59</td>
<td>“Commons.”</td>
</tr>
<tr>
<td>§ 3:60</td>
<td>Metes and bounds</td>
</tr>
<tr>
<td>§ 3:61</td>
<td>Maps and plats</td>
</tr>
<tr>
<td>§ 3:62</td>
<td>Amendment</td>
</tr>
<tr>
<td>§ 3:63</td>
<td>Signatures</td>
</tr>
<tr>
<td>§ 3:64</td>
<td>Qualifications</td>
</tr>
<tr>
<td>§ 3:65</td>
<td>Time requirements</td>
</tr>
<tr>
<td>§ 3:66</td>
<td>Sufficiency</td>
</tr>
<tr>
<td>§ 3:67</td>
<td>Proof</td>
</tr>
<tr>
<td>§ 3:68</td>
<td>Withdrawal</td>
</tr>
<tr>
<td>§ 3:69</td>
<td>Notice</td>
</tr>
<tr>
<td>§ 3:70</td>
<td>Compliance with statute</td>
</tr>
<tr>
<td>§ 3:71</td>
<td>Mode and method</td>
</tr>
<tr>
<td>§ 3:72</td>
<td>Territory description</td>
</tr>
<tr>
<td>§ 3:73</td>
<td>Cure of irregularities</td>
</tr>
<tr>
<td>§ 3:74</td>
<td>Objections, protests or remonstrances</td>
</tr>
<tr>
<td>§ 3:75</td>
<td>Time limitations</td>
</tr>
<tr>
<td>§ 3:76</td>
<td>Waiver</td>
</tr>
<tr>
<td>§ 3:77</td>
<td>Hearings</td>
</tr>
<tr>
<td>§ 3:78</td>
<td>Procedure</td>
</tr>
<tr>
<td>§ 3:79</td>
<td>Discretion of tribunal</td>
</tr>
<tr>
<td>§ 3:80</td>
<td>Irregularities; effect</td>
</tr>
<tr>
<td>§ 3:81</td>
<td>Elections</td>
</tr>
<tr>
<td>§ 3:82</td>
<td>Compliance with statute</td>
</tr>
<tr>
<td>§ 3:83</td>
<td>Majority or percentage of votes required</td>
</tr>
<tr>
<td>§ 3:84</td>
<td>Time</td>
</tr>
<tr>
<td>§ 3:85</td>
<td>Voting eligibility</td>
</tr>
<tr>
<td>§ 3:86</td>
<td>Conduct</td>
</tr>
<tr>
<td>§ 3:87</td>
<td>Irregularities</td>
</tr>
<tr>
<td>§ 3:88</td>
<td>Who may contest</td>
</tr>
<tr>
<td>§ 3:89</td>
<td>Decree, order or proclamation</td>
</tr>
<tr>
<td>§ 3:90</td>
<td>Contents</td>
</tr>
<tr>
<td>§ 3:91</td>
<td>Entry</td>
</tr>
</tbody>
</table>
§ 3:92 — Conclusiveness
§ 3:93 Review
§ 3:94 — Right to appeal
§ 3:95 — — Mandamus and prohibition

V. PROCEDURE TO OBTAIN HOME-RULE CHARTER

§ 3:96 Generally
§ 3:97 Drafting of charter
§ 3:98 Elections
§ 3:99 Ratification

VI. VOID AND VOIDABLE INCORPORATION

§ 3:100 Generally
§ 3:101 Void incorporation
§ 3:102 — Validation
§ 3:103 De facto corporations
§ 3:104 — Requisites
§ 3:105 — — Law under which to organize
§ 3:106 — — Powers
§ 3:107 Attack on corporate existence
§ 3:108 — Parties, pleading and practice
§ 3:109 — — Purported corporation neither de jure nor de facto
§ 3:110 — — De facto corporations
§ 3:111 — — Collateral attack in particular proceedings
§ 3:112 — Quo warranto
§ 3:113 — — Estoppel
§ 3:114 — — Laches

VII. PROOF OF INCORPORATION; JUDICIAL NOTICE

§ 3:115 Necessity
§ 3:116 Judicial notice
§ 3:117 — Creation and existence of municipality
§ 3:118 — — Private statutes
§ 3:119 — Unincorporated towns or villages
§ 3:120 — Population
§ 3:121 — Location
§ 3:122 — Area and boundaries
§ 3:123 Method of proving incorporation

xx
CHAPTER 3A. INTERGOVERNMENTAL RELATIONS

I. GENERAL CONSIDERATIONS

§ 3A:1 Scope of chapter
§ 3A:2 Federal spending influences
§ 3A:3 Unfunded federal mandates

II. COOPERATION

§ 3A:4 Introduction
§ 3A:5 Purposes
§ 3A:6 Approaches
§ 3A:7 Power to cooperate
§ 3A:8 —Home-rule
§ 3A:9 —Constitutional scheme
§ 3A:10 —Boundary limitations
§ 3A:11 Procedures
§ 3A:12 Consequences

III. DISPUTES

§ 3A:13 Introduction
§ 3A:14 Approaches—Doctrine of local self-government
§ 3A:15 10 Approaches—Entities as coequal
§ 3A:16 Units equally ranked
§ 3A:17 Units in same territory
§ 3A:18 —Extraterritorial action
§ 3A:19 —Equal service rights
§ 3A:20 —Service rights; regulatory powers
§ 3A:21 Local unit versus state agency
§ 3A:22 City versus county
§ 3A:23 Special versus general purpose unit
§ 3A:24 Proprietary activities
§ 3A:25 Eminent domain
§ 3A:26 Zoning
§ 3A:27 Taxes
§ 3A:28 Cost allocations
CHAPTER 4. LEGISLATIVE CONTROL OF MUNICIPAL CORPORATIONS

I. GENERAL CONSIDERATIONS AND RULES

§ 4:1 Scope of chapter
§ 4:2 Importance of the subject
§ 4:3 General rule as to legislative control
§ 4:4 —Changes in form
§ 4:5 —Limitations on municipal powers; liabilities
§ 4:6 —Change or revocation of powers
§ 4:7 —Limitation by state or federal constitution
§ 4:8 Delegation of powers by legislature
§ 4:9 —Municipal legislative powers
§ 4:10 —Statute effective only when adopted by municipality
§ 4:11 —Municipal powers under Dillon's Rule
§ 4:12 —Powers of commissions and boards
§ 4:13 —Delegation to judiciary
§ 4:14 —Powers which legislature may delegate to municipal corporations
§ 4:15 —Effect of delegation of powers
§ 4:16 Curative power of legislature

II. PARTICULAR PROVISIONS IN CONSTITUTIONS AFFECTING LEGISLATIVE CONTROL

A. IN GENERAL

§ 4:17 Scope of subdivision

B. PROVISIONS IN UNITED STATES CONSTITUTION

§ 4:18 In general
§ 4:19 Impairment of obligations of contract
§ 4:20 Equal protection of the laws
§ 4:21 Due process of law

C. PROVISIONS IN STATE CONSTITUTIONS

§ 4:22 In general
§ 4:23 Uniform system of local government
§ 4:24 Uniform operation of laws of a general nature throughout the state
§ 4:25 Restriction of financial powers of municipality
§ 4:26 Prohibiting release of municipal claims or credits
§ 4:27 Forbidding grant of special privileges
§ 4:28 Authorizing home rule charters
§ 4:29 — In accordance with existing laws
§ 4:30 — — State examples

D. PROHIBITION OF SPECIAL LAWS

1. General Considerations
§ 4:31 Scope of treatment
§ 4:32 Validity of special and local laws

2. Provisions in State Constitutions in Regard to Special Acts
§ 4:33 In general
§ 4:34 Conditional prohibition of special laws
§ 4:35 Particular provisions in state constitutions
§ 4:36 — Regulating internal affairs of municipality
§ 4:37 Statutes conferring corporate powers
§ 4:38 — Statutes granting special privileges
§ 4:39 — Where general law can be made applicable
§ 4:40 Changing special municipal charters

3. What are General, Special, Local and Public Laws
§ 4:41 Scope of inquiry
§ 4:42 Definitions in state constitutions
§ 4:43 General law
§ 4:44 — Statute applicable to all cities or municipalities
§ 4:45 Special law
§ 4:46 — "Local" law distinguished
§ 4:47 — Effective only when adopted by municipality
§ 4:48 Tests to determine whether the law is general or special
§ 4:49 Curative acts as special or local laws

4. Classification as Affecting Prohibition of Special Laws
§ 4:50 Definition of classification
§ 4:51 Constitutional provisions
§ 4:52 Classification not forbidden by prohibition of special acts
§ 4:53 Essentials of valid classification
§ 4:54 Statute applicable to only one municipality
§ 4:55 Classifications other than according to population
§ 4:56 Assessed valuation of property
§ 4:57 Geographical factors and considerations
§ 4:58 Population coupled with other factors
§ 4:59 Municipalities as separate class
§ 4:60 Home rule charter municipalities
§ 4:61 Municipal corporations previously created by special act
§ 4:62 Classification according to form of municipal government
§ 4:63 Separate classification of police officers and firefighters
§ 4:64 Miscellaneous classifications
§ 4:65 Review by the courts

5. Classification According to Population

§ 4:66 General classification in state constitution or statute
§ 4:67 —Limitation on number of classes
§ 4:68 Validity and propriety
§ 4:69 —Classification not applicable to future conditions
§ 4:70 —Statute applicable to only one city or county
§ 4:71 —Illustrations of valid population classifications
§ 4:72 —Illustrations of invalid classification
§ 4:73 Method of determining population
§ 4:74 Review by courts

III. CONTROL OF LEGISLATURE AS DEPENDENT ON SUBJECT MATTER OF LEGISLATION

§ 4:75 General considerations
§ 4:76 “State affairs” and “municipal affairs”
§ 4:77 “Public” and “private” municipal powers distinguished
§ 4:78 Control as dependent on subject matter
§ 4:79 Control over municipal affairs
Table of Contents

§ 4:80 Inherent right of local self-government
§ 4:81 —Home rule charters
§ 4:82 Inherent right to self-government—Home rule charters—Jurisdictional illustrations
§ 4:83 Control of legislature over state affairs
§ 4:84 State and municipal affairs distinguished
§ 4:85 —Effect of state constitutional provisions
§ 4:86 —Matters of mutual concern and interest
§ 4:87 —As legislative or judicial question
§ 4:88 Particular matters as state or municipal affairs
§ 4:89 —Animals
§ 4:90 —Building permits
§ 4:91 —Claims against municipality
§ 4:92 —Children, neglected and delinquent
§ 4:93 —Condemnation of property
§ 4:94 —Courts and court procedure
§ 4:95 —Education
§ 4:96 —Form of municipal government
§ 4:97 —Garbage disposition
§ 4:98 —Health
§ 4:99 —Method for changing or abrogating charter
§ 4:100 —Method of enacting ordinances
§ 4:101 —Method of publishing ordinances
§ 4:102 —Municipal bonds
§ 4:103 —Municipal elections
§ 4:104 —Municipal employees
§ 4:105 —Pension system
§ 4:106 —Police powers in general
§ 4:107 —Indigent persons
§ 4:108 —Sewers and drains
§ 4:109 —Slum clearance and housing
§ 4:110 —Special assessments
§ 4:111 —Tort liability of municipality
§ 4:112 —Zoning
§ 4:113 —Miscellaneous matters

IV. MUNICIPAL OFFICES AND OFFICERS

§ 4:114 General rules
§ 4:115 Control as dependent on nature of office or officer
§ 4:116 Creation of office
§ 4:117 Abolishment of office
§ 4:118 Selection of officers
§ 4:119 —Limitations
§ 4:120 Method of selection of officers
§ 4:121 Removal of officers
§ 4:122 Filling of vacancies
§ 4:123 Qualifications, tenure and duties
§ 4:124 Transfer of powers; municipal to state officers
§ 4:125 Transfer of powers; one municipal officer to another
§ 4:126 Compensation of officers

V. MUNICIPAL CONTRACTS
§ 4:127 In general
§ 4:128 Conditions for public work
§ 4:129 Limitation on hours of labor
§ 4:130 Minimum wage laws

VI. MUNICIPAL PROPERTY
§ 4:131 General rules
§ 4:132 Parks
§ 4:133 Waterworks
§ 4:134 Airports
§ 4:135 Cemeteries
§ 4:136 Wharves
§ 4:137 Ferries

VII. MUNICIPAL FUNDS AND REVENUES
§ 4:138 General rules
§ 4:139 Trust funds and property
§ 4:140 Revenue derived from license fees and ordinance violations
§ 4:141 Creation of financial commission

VIII. MUNICIPAL ELECTIONS
§ 4:142 General rules

IX. STREETS
§ 4:143 General considerations and rules
§ 4:144 State constitution provisions
§ 4:145 Opening streets
Table of Contents

§ 4:146 Improvement of streets
§ 4:147 Traffic regulations
§ 4:148 Railroad crossings

X. PUBLIC UTILITIES

§ 4:149 General considerations
§ 4:150 Acquisition of supply or service
§ 4:151 Grant of franchises to use streets
§ 4:152 Operation of public utility
§ 4:153 Regulation of service and rates

XI. POWER OF LEGISLATURE TO IMPOSE OBLIGATION, LIABILITY OR DUTY ON MUNICIPAL CORPORATION

A. GENERAL RULES AND APPLICATION

§ 4:154 Scope of legislative power
§ 4:155 Strictly municipal matters
§ 4:156 —Constitutional limitations
§ 4:157 —Statutory limitations
§ 4:158 —Compelling municipal tax levy
§ 4:159 Applications of rules—Bonds, issuance of and liability on
§ 4:160 —Court expenses
§ 4:161 —Election expenses
§ 4:162 —Expenses of state office
§ 4:163 —Financial administrative costs
§ 4:164 —Hospital
§ 4:165 —Housing authorities and costs
§ 4:166 —Insurance of municipal property
§ 4:167 —Compensation of nonofficer employees
§ 4:168 —Indigents’ support
§ 4:169 —Pensions
§ 4:170 —Police departments
§ 4:171 —Public improvements
§ 4:172 —School buildings
§ 4:173 —Streets
§ 4:174 —Water system

B. COMPELLING PAYMENT OF CLAIMS AGAINST MUNICIPALITY

§ 4:175 General rules
§ 4:176 Constitutional provisions
§ 4:177 Moral obligations
§ 4:178 Claims barred by statute of limitations
§ 4:179 Review by courts

CHAPTER 5. CORPORATE NAME
§ 5:1 Necessity for name and how acquired
§ 5:2 Misnomer or variation
§ 5:3 Name used in actions
§ 5:4 Judicial notice of name
§ 5:5 Change of name

CHAPTER 6. CORPORATE SEAL, EMBLEM OR LOGO
§ 6:1 Use of seal
§ 6:2 —First Amendment
§ 6:3 ——Standing
§ 6:4 ——Equal Protection
§ 6:5 Seal required
§ 6:6 Sufficiency of seal
§ 6:7 Proof of seal

CHAPTER 7. CORPORATE BOUNDARIES AND SUBDIVISIONS

I. IN GENERAL
§ 7:1 Scope of chapter

II. BOUNDARIES, GENERALLY
§ 7:2 Necessity of fixing corporate limits
§ 7:3 Power of legislature with respect to boundaries
§ 7:4 Sufficiency of description
§ 7:5 —Construction of boundary descriptions
§ 7:6 Body of water as a boundary
§ 7:7 —Rivers and streams
§ 7:8 Two public corporations in the same limits
§ 7:9 Effect of acquiescence in boundary location

III. ANNEXATION OF TERRITORY
   A. AUTHORITY
§ 7:10 Legislative authority
§ 7:11 —Special laws
§ 7:12 —Delegation of legislative power
§ 7:13 Municipal power to alter boundaries
§ 7:14 Power of city to alter boundaries—Preannexation agreements

B. METHODS AND RESTRICTIONS
§ 7:15 Methods of annexation
§ 7:15.50 State procedures for annexation
§ 7:16 Restrictions on annexation
§ 7:17 —Requirement to provide services

C. CONSENT
§ 7:18 Voluntary annexations
§ 7:19 Voting on annexation
§ 7:20 Voting on proposal—Voting Rights Act
§ 7:21 —One-person, one vote requirement
§ 7:22 Involuntary annexations
§ 7:22.50 Waiver of protest to annexation

D. TERRITORIAL QUALIFICATIONS
§ 7:23 General characteristics and requisites
§ 7:24 —Conditions for annexation generally
§ 7:25 Needed, useful, suitable areas; overall public interest
§ 7:26 Public lands
§ 7:27 —Federal lands
§ 7:28 Size and shape of area
§ 7:29 Vacant, uninhabited areas
§ 7:30 —Platted, Subdivided areas
§ 7:31 Contiguous or adjacent territory
§ 7:32 —Multiple tracts
§ 7:33 —Physical barriers
§ 7:34 —Corridor or strip annexations
§ 7:35 ——Island annexations
§ 7:36 Farm or agricultural lands
§ 7:37 Lands excluded
§ 7:38 Another municipal or incorporated area
§ 7:39 Lands in foreign counties

E. PENDING PROCEEDINGS
§ 7:39.1 Jurisdictional priority
F. FACTORS TO CONSIDER IN SUPPORT OF ANNEXATION

§ 7:39.6 Reasonableness requirement
§ 7:39.7 —Presumptions; Burden of proof
§ 7:39.8 —Factors determining reasonableness
§ 7:39.9 — —Interests of municipality
§ 7:39.10 — —Character of territory
§ 7:39.11 — —Consent
§ 7:39.12 — —Taxation and revenue considerations
§ 7:39.13 —Subfactors for annexation
§ 7:39.14 — —Financial ability
§ 7:39.15 — —Need for municipal services
§ 7:39.16 Challenging annexation
§ 7:39.16.50 —Standing
§ 7:39.16.55 —Remonstrance procedure

IV. DETACHMENT OF TERRITORY

§ 7:39.17 In general
§ 7:39.18 Detachment versus dissolution
§ 7:39.19 Statutes authorizing detachment
§ 7:39.20 Statutes authorizing—Constitutionality
§ 7:39.21 Detachable lands
§ 7:39.22 Nondetachable territory
§ 7:39.23 Pending or prior proceedings as effecting detachment

A. STATUTORY REQUIREMENTS

§ 7:39.24 In general
§ 7:39.25 Time limitations
§ 7:39.26 Compliance with statute
§ 7:39.27 —De facto annexation

B. PETITIONS

§ 7:39.28 Basic elements
§ 7:39.29 Multiple petitions
§ 7:43 —Grounds
§ 7:44 Acquiescence and estoppel
§ 7:45 —Right to seek detachment
§ 7:46 Direct actions to test validity
§ 7:47 Direct actions to test validity of proceedings—
   Injunctive relief
§ 7:48 —Pleadings and proof
§ 7:49 —Time limitations
§ 7:50 Presumptions

G. VALIDATION

§ 7:51 Curing defects

V. EFFECT OF CHANGES

§ 7:52 Municipal jurisdiction
§ 7:53 Jurisdiction of courts
§ 7:54 Jurisdiction of other governmental districts or
   public corporations
§ 7:55 Utility services
§ 7:56 Fire and police protection
§ 7:57 Franchise and contract rights
§ 7:58 Property rights
§ 7:59 Zoning
§ 7:60 Control over streets and highways
§ 7:61 Apportionment of public property and debts after
   change
§ 7:62 Taxation
§ 7:63 —Uniformity of exemptions
§ 7:64 —Detached lands
§ 7:65 —Enjoining tax collections

VI. MUNICIPAL SUBDIVISIONS AND WARDS

§ 7:66 Necessity
§ 7:67 Authority to establish wards
§ 7:68 Reapportionment
§ 7:69 —Factors considered
§ 7:70 —Officers
§ 7:71 Judicial review

xxxii
## Table of Contents

### CHAPTER 8. DISSOLUTION, REORGANIZATION, AND CONSOLIDATION OF MUNICIPAL CORPORATIONS

#### I. DISSOLUTION

§ 8:1  Introduction

#### II. NATURE AND BASIS OF DISSOLUTION

§ 8:2  In general  
§ 8:3  Circumstances not leading to dissolution  
§ 8:4  —Nonuse or misuse of municipal powers  
§ 8:5  —Failure to elect or appoint officers  
§ 8:6  Statutory conditions  
§ 8:7  Repeal of charter

#### III. PROCEDURES FOR DISSOLUTION; REINSTATEMENT

§ 8:8  In general  
§ 8:9  Forfeitures  
§ 8:10  Statutory provisions; petitions  
§ 8:11  Reinstatement of municipal corporations

#### IV. EFFECT OF DISSOLUTION AND REORGANIZATION

§ 8:12  In general  
§ 8:13  Rights of creditors of extinct corporation  
§ 8:14  Legislative apportionment of property and debts  
§ 8:15  Reorganization; reincorporation  
§ 8:16  Dissolution of illegal corporation; successor liability  
§ 8:17  Lapse of time; suspension of municipal functions prior to reorganization  
§ 8:18  Dissolution without substitution

#### V. CONSOLIDATION OF MUNICIPALITIES

§ 8:19  In general  
§ 8:20  Statutory provisions  
§ 8:21  Effect
CHAPTER 9. THE MUNICIPAL CHARTER

I. GENERAL CONSIDERATION
§ 9:1 Basis of municipal organization
§ 9:2 Definition and description of charter
§ 9:3 Nature, purpose, and scope of charter
§ 9:4 Functions of cities
§ 9:5 Classifications of municipal functions
§ 9:6 Special municipal powers and functions

II. LEGISLATIVE AND CONSTITUTIONAL CHARTERS
§ 9:7 In general
§ 9:8 Constitutional, home-rule, “freeholders” charters
§ 9:9 Constitutional, “home rule,” “freeholders” charters—Validity
§ 9:10 Constitutional, “home-rule,” “freeholders” charters—Conformity with state laws

III. MUNICIPAL ORGANIZATION
§ 9:11 Development
§ 9:12 —Decline of legislative body, increase of executive power
§ 9:13 —Legislative interference
§ 9:14 Forms of municipal government
§ 9:15 —Experimentation among American municipalities
§ 9:16 —Optional plan
§ 9:17 Importance of form
§ 9:18 Essential elements of municipal structure
§ 9:19 Greater New York
§ 9:20 District of Columbia
§ 9:21 Commission form
§ 9:22 City-manager plan

IV. CONSTRUCTION AND PROOF
§ 9:23 Construction of charter
V. AMENDMENT AND REVISION

§ 9:26 In general
§ 9:27 Direct amendment of constitutional charters
§ 9:28 — Scope of amendment
§ 9:29 — Procedure
§ 9:30 — — Majority vote
§ 9:31 — — Single subject rule
§ 9:32 Indirect or legislative amendment of constitutional charters
§ 9:33 General, special, local laws amending municipal charters
§ 9:34 Review

VI. REPEAL AND REINCORPORATION

§ 9:35 Repeal
§ 9:36 Adoption of new charter
§ 9:37 Reincorporation under general laws
§ 9:38 — Effect

CHAPTER 10. NATURE, CONSTRUCTION, AND EXERCISE OF GENERAL CORPORATE POWERS

I. GENERAL CONSIDERATIONS

§ 10:1 Scope of chapter
§ 10:2 Functions and powers distinguished
§ 10:3 Sources of municipal power
§ 10:4 Classifications and descriptions of municipal powers
§ 10:5 — Governmental and private
§ 10:6 — Legislative and executive
§ 10:7 — — Illustrations
§ 10:8 Extraterritorial powers
§ 10:9 Powers delegable to municipality by legislature
§ 10:10 Scope of powers—Dillon’s Rule
§ 10:11 — Powers expressly granted
§ 10:12 — Inherent powers, common-law powers
§ 10:13 —Implied powers
§ 10:14 — Illustrations
§ 10:15 Illustrations—Use of red light and speed cameras
§ 10:16 Powers of home rule municipalities
§ 10:17 —Constitutional provisions
§ 10:18 —Home Rule Amendment
§ 10:19 —Supplementary statutes
§ 10:20 —Charter provisions
§ 10:21 Custom or usage as affecting powers

II. CONSTRUCTION OF POWERS

§ 10:22 Scope of discussion
§ 10:23 Strict construction rule
§ 10:24 Doubtful powers; ambiguity
§ 10:25 Aid by general statutes
§ 10:26 Limitations on strict construction rule
§ 10:27 Governmental and proprietary powers
§ 10:28 Enumerated powers as exclusive
§ 10:29 General words or grants of power
§ 10:30 Home rule powers
§ 10:31 Regulatory powers

III. EXECUTION OF POWERS

§ 10:32 Method of execution of powers
§ 10:33 —Alternative methods
§ 10:34 —Where no method prescribed
§ 10:35 Necessity for municipal legislation
§ 10:36 Public purpose as limit of power
§ 10:37 Mandatory and discretionary powers
§ 10:38 Judicial noninterference with discretionary functions
§ 10:39 —Methods of exercise of power
§ 10:40 —Motives
§ 10:41 —Specific applications
§ 10:42 —Limitations
§ 10:43 Surrender of municipal powers
§ 10:44 Delegation of municipal powers
§ 10:45 —Legislative, governmental or discretionary power
§ 10:46 —Administrative and executive powers
§ 10:47 —Ministerial duties or powers

xxxvi
Volume 3

CHAPTER 11. MISCELLANEOUS MUNICIPAL POWERS AND FUNCTIONS

§ 11:1 Scope of chapter
§ 11:2 Aid to private corporations
§ 11:3 Airports generally
§ 11:4 Airports—Location of airport
§ 11:5 —Operation, control and regulation
§ 11:6 —As a nuisance
§ 11:7 —Noise regulations
§ 11:8 —Constitutional concerns
§ 11:9 —Heliports
§ 11:10 Military bonuses and other benefits
§ 11:11 Party walls
§ 11:12 Rewards
§ 11:13 [Deleted]
§ 11:14 Navigable waters
§ 11:15 —Submerged lands
§ 11:16 ——Accretions
§ 11:17 —Navigation and use
§ 11:18 —Interference with commerce; preemption
§ 11:19 —Riparian rights
§ 11:20 Bridges
§ 11:21 —Partially outside municipality
§ 11:22 Ferries; definition
§ 11:23 Ferries—Power to regulate
§ 11:24 —Leasing
§ 11:25 —License or franchise to operate
§ 11:26 [Deleted]
§ 11:27 Wharves and docks
§ 11:28 —Abdication of municipal control
§ 11:29 —Wharfage fees
§ 11:30 [Deleted]
§ 11:31 Wharves and docks—Wharfage fees—
   Interference with interstate commerce
CHAPTER 12. ELECTIONS, OFFICES AND OFFICERS, EMPLOYEES AND AGENTS AND MUNICIPAL DEPARTMENTS

I. IN GENERAL

§ 12:1 Regulation in general

II. MUNICIPAL ELECTIONS

§ 12:2 Manner of regulation
§ 12:3 —Balancing test
§ 12:4 —Proportional voting
§ 12:5 —Campaign contributions and expenditures
§ 12:6 —Prohibiting use of public funds for distribution of materials
§ 12:7 Equal Protection Clause
§ 12:8 —One-person, one-vote
§ 12:9 —Percent deviations
§ 12:10 —Boards and school committees
§ 12:11 —Exceptions
§ 12:12 —Nondilution of minority votes
§ 12:13 —Multimember or at-large districts
§ 12:14 —Factors contributing to dilution
§ 12:15 —Remedies
§ 12:16 Voting Rights Act of 1965
§ 12:17 —Vote dilution claims
§ 12:18 —Factors establishing
§ 12:19 Questions submitted to election
§ 12:20 —Primaries
§ 12:21 Voter qualifications
§ 12:22 —Citizenship and residence
§ 12:23 —Registration
§ 12:24 —Ownership of property
§ 12:25 Mode
§ 12:26 —Mandatory or directory requisites
§ 12:27 —Effect of irregularities on election
§ 12:28 —Corrupt practices acts
§ 12:29 —Petitions
§ 12:30 —Calling elections
§ 12:31 —Time and place
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:32</td>
<td>— —Conduct of election officials</td>
</tr>
<tr>
<td>§ 12:33</td>
<td>— —Polling places</td>
</tr>
<tr>
<td>§ 12:34</td>
<td>— —Hours</td>
</tr>
<tr>
<td>§ 12:35</td>
<td>—Ballot boxes</td>
</tr>
<tr>
<td>§ 12:36</td>
<td>—Ballots; marking; preservation</td>
</tr>
<tr>
<td>§ 12:37</td>
<td>— —Secrecy requirements</td>
</tr>
<tr>
<td>§ 12:38</td>
<td>— —First Amendment implications</td>
</tr>
<tr>
<td>§ 12:39</td>
<td>— —Write-in ballots</td>
</tr>
<tr>
<td>§ 12:40</td>
<td>—Voting machines</td>
</tr>
<tr>
<td>§ 12:41</td>
<td>—Absentee voting</td>
</tr>
<tr>
<td>§ 12:42</td>
<td>Ineligible person’s election to office</td>
</tr>
<tr>
<td>§ 12:43</td>
<td>Vote determination</td>
</tr>
<tr>
<td>§ 12:44</td>
<td>—Tabulation; canvass of returns; certifying result</td>
</tr>
<tr>
<td>§ 12:45</td>
<td>—Tie vote; run-off</td>
</tr>
<tr>
<td>§ 12:46</td>
<td>—Multiple office field elections</td>
</tr>
<tr>
<td>§ 12:47</td>
<td>—Separate propositions</td>
</tr>
<tr>
<td>§ 12:48</td>
<td>Election contests</td>
</tr>
<tr>
<td>§ 12:49</td>
<td>—Limitations on court’s jurisdiction</td>
</tr>
<tr>
<td>§ 12:50</td>
<td>—Who may institute</td>
</tr>
<tr>
<td>§ 12:51</td>
<td>—Time for filing</td>
</tr>
<tr>
<td>§ 12:52</td>
<td>—Procedure</td>
</tr>
<tr>
<td>§ 12:53</td>
<td>—Evidence</td>
</tr>
<tr>
<td>§ 12:54</td>
<td>—Ballot inspection; recount</td>
</tr>
<tr>
<td>§ 12:55</td>
<td>Appeal</td>
</tr>
</tbody>
</table>

### III. GENERAL CONSIDERATIONS
CONCERNING OFFICES AND OFFICERS, SUBORDINATES AND EMPLOYEES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:56</td>
<td>Designation and classification</td>
</tr>
<tr>
<td>§ 12:57</td>
<td>[Deleted]</td>
</tr>
<tr>
<td>§ 12:58</td>
<td>Nature and elements of “office” and “officer”</td>
</tr>
<tr>
<td>§ 12:59</td>
<td>Office distinguished from employment</td>
</tr>
<tr>
<td>§ 12:60</td>
<td>—Particular offices and employments</td>
</tr>
<tr>
<td>§ 12:61</td>
<td>Assistants</td>
</tr>
<tr>
<td>§ 12:62</td>
<td>Deputies</td>
</tr>
<tr>
<td>§ 12:63</td>
<td>Clerks</td>
</tr>
<tr>
<td>§ 12:64</td>
<td>Employees</td>
</tr>
<tr>
<td>§ 12:65</td>
<td>Day laborers</td>
</tr>
<tr>
<td>§ 12:66</td>
<td>Creating offices</td>
</tr>
<tr>
<td>§ 12:67</td>
<td>Nondelegability</td>
</tr>
</tbody>
</table>

xxxix
IV. MUNICIPAL DEPARTMENTS, BOARDS, OFFICERS, COMMISSIONERS, ETC.

§ 12:68 Various forms; creation and abolition
§ 12:69 Powers and liabilities
§ 12:70 Hearings
§ 12:71 Mayor or chief executive
§ 12:72 —Pro tempore
§ 12:73 —Powers and duties
§ 12:74 ——Supervisory
§ 12:75 ——Contractual
§ 12:76 ——Judicial
§ 12:77 [Deleted]
§ 12:78 Public works or improvements department
§ 12:79 Parks department
§ 12:80 Water department
§ 12:81 to 12:82 [Reserved]
§ 12:83 Health department
§ 12:84 Law department
§ 12:85 —City attorney
§ 12:86 ——Qualifications
§ 12:87 ——Election
§ 12:88 ——Assistants
§ 12:89 [Deleted]
§ 12:90 Library boards
§ 12:91 Civil service commission
§ 12:92 —Jurisdiction
§ 12:93 —Administration
§ 12:94 ——Rules and regulations
§ 12:95 —Review of actions
§ 12:96 Various municipal departments

V. ELIGIBILITY TO HOLD PUBLIC OFFICE OR PLACE

§ 12:97 Qualifications generally
§ 12:98 Citizenship
§ 12:99 Residence
§ 12:100 —Constitutionality
§ 12:101 —Officers and employees distinguished
§ 12:102 —Residence in ward
§ 12:103 [Deleted]
§ 12:104 Elector or voter
TABLE OF CONTENTS

§ 12:105 Property owner
§ 12:106 Criminal convictions
§ 12:107 Drug use
§ 12:108 Failure to pay taxes; debt
§ 12:109 Education
§ 12:110 Ceasing to possess prescribed qualifications
§ 12:111 Officer holding two offices generally
§ 12:112 Officer holding two offices—Incompatible offices
§ 12:113 — — Distinguished from conflict of interest
§ 12:114 — — Offices held incompatible
§ 12:115 — — Offices held not incompatible
§ 12:116 Removing disqualifications

VI. MANNER OF SECURING OFFICE AND PUBLIC PLACE; DETERMINING TITLE; QUALIFYING FOR OFFICE

§ 12:117 Manner of conferring office
§ 12:118 Authority to appoint
§ 12:119 — Exclusive to authority
§ 12:120 — Nondelegability
§ 12:121 — Mayor's or city manager’s authority
§ 12:122 — Council’s or governing body’s authority
§ 12:123 — Self-appointment
§ 12:124 Civil service
§ 12:125 — Classification
§ 12:126 — Examinations
§ 12:127 — — Competitive and noncompetitive
§ 12:128 — — Eligibility and qualifications
§ 12:129 — — Method
§ 12:130 — — — Personality traits test
§ 12:131 — — — Polygraph examinations
§ 12:132 — Eligible lists
§ 12:133 — Certification and appointment
§ 12:134 — Probationary appointments
§ 12:135 — Provisional and temporary appointments
§ 12:136 Preference in appointments; veterans
§ 12:137 Time to exercise power of appointment
§ 12:138 Manner of appointment
§ 12:139 Commission
§ 12:140 Completion of appointment
§ 12:141 Confirmation of appointment
§ 12:142 Ratification of irregular or void appointment
§ 12:143 Mandamus as to appointment
§ 12:144 Determining title to office; testing title
§ 12:145 Determining title to office—Quo warranto
§ 12:146 —Equity
§ 12:147 —Certiorari
§ 12:148 Legislative body as election judge
§ 12:149 [Deleted]
§ 12:150 Acceptance of office
§ 12:151 Qualifying to perform duties of office
§ 12:152 —Oath of office
§ 12:153 —Bond
§ 12:154 Beginning of office term
§ 12:155 Vacancies in office
§ 12:156 Authority to fill vacancy

VII. DE FACTO OFFICERS

§ 12:157 De facto officer defined
§ 12:158 Intruders or usurpers
§ 12:159 Absence of de jure office
§ 12:160 Hold-overs
§ 12:161 Acts
§ 12:162 Questioning title and authority of de facto officer

VIII. TENURE

§ 12:163 Offices
§ 12:164 —Appointed or elected to fill vacancy
§ 12:165 —Holding over; no successor
§ 12:166 —During good behavior
§ 12:167 —Tenure at will of authority
§ 12:168 —Change in municipal organization, class or grade
§ 12:169 —Changes in term
§ 12:170 Assistants and subordinates
§ 12:171 [Deleted]
§ 12:172 Vested right in office
§ 12:173 Change in or abolition of office
§ 12:173.1 —Offices subject; limitations on right
§ 12:173.2 —Civil service and veterans’ preference laws
§ 12:173.3 —Manner of abolishing offices
§ 12:173.4 Resignation of officer
§ 12:173.5 —Implied; abandonment of office


| § 12:173.6 | —Election to, or acceptance of, another office |
| § 12:173.7 | —Acceptance |

### IX. POWERS AND FUNCTIONS OF OFFICERS AND MISCELLANEOUS MATTERS

| § 12:173.8 | Powers and functions of officers in general |
| § 12:173.9 | —Binding effect of exercise |
| § 12:173.10 | Power to select subordinates, employees, agents, etc. |
| § 12:173.11 | [Deleted] |
| § 12:173.12 | [Deleted] |
| § 12:173.13 | Restrictions on outside employment; moonlighting |
| § 12:173.14 | Promotions |
| § 12:173.15 | —Examinations: list of eligibles |
| § 12:173.16 | —Veterans’ preference |
| § 12:173.17 | [Deleted] |
| § 12:173.18 | Demotions |
| § 12:173.19 | Transfers |
| § 12:173.20 | Reclassification |
| § 12:173.21 | Leaves of absence and vacations |
| § 12:173.22 | Conflicts of interest |
| § 12:173.23 | —Factors considered |
| § 12:173.24 | —Financial disclosure requirements |
| § 12:173.25 | Reimbursing or indemnifying officer |
| § 12:173.26 | —Factors influencing decision |
| § 12:173.27 | [Deleted] |
| § 12:173.28 | Engaging in politics; soliciting gifts or political contributions |
| § 12:173.29 | —Restricting speech of municipal employees |
| § 12:173.30 | —Matters of public concern |
| § 12:173.31 | [Deleted] |
| § 12:173.32 | Union recognition and membership |
| § 12:173.33 | —Collective bargaining |
| § 12:173.34 | —Arbitration |
| § 12:173.35 | —Striking and picketing |

### X. PENSIONS, BENEFITS AND INSURANCE

| § 12:173.36 | Pension laws—Introduction |
| § 12:173.37 | —Statutory construction |
| § 12:173.38 | —Constitutionality |
| § 12:173.39 | —Contract Clause |
§ 12:173.40 — ADEA and pensions
§ 12:173.41 [Deleted]
§ 12:173.42 Vested rights
§ 12:173.43 — Contractual interest
§ 12:173.44 — Vesting after happening of event fixed
§ 12:173.45 Vested rights; law applicable—
  Promissory estoppels
§ 12:173.46 Pension funds
§ 12:173.47 — Contributions and deductions
§ 12:173.48 Right to pension generally
§ 12:173.49 — Public service; membership in department
§ 12:173.50 — Disability
§ 12:173.51 — — Permanent disability
§ 12:173.52 — — Length of service
§ 12:173.53 — — Pendency of charges; effect
§ 12:173.54 — — Misconduct or commission of felony
§ 12:173.55 Pension rights on death of officer or employee
§ 12:173.56 — Surviving spouse's rights
§ 12:173.57 — — Marital status as factor
§ 12:173.58 — — Exclusions
§ 12:173.59 — — Workers' compensation benefits as factor
§ 12:173.60 — Setting aside beneficiary designation
§ 12:173.61 — Public service or employment of deceased
§ 12:173.62 — Cause of death
§ 12:173.63 Effect of divorce on pension rights
§ 12:173.64 Amount of pension or disability benefit
§ 12:173.64.50 Pension adjustments
§ 12:173.65 Waiver
§ 12:173.66 Effect of other employment
§ 12:173.67 Assignability; exemptions
§ 12:173.68 Procedure generally
§ 12:173.69 — Medical examination
§ 12:173.70 — Hearing
§ 12:173.71 — — Upon termination of benefits
§ 12:173.72 — — Discretion of board
§ 12:173.73 — — Order
§ 12:173.74 — — Res judicata
§ 12:173.75 — — Review
§ 12:173.76 — — Rehearing
Table of Contents

§ 12:173.77 Actions generally
§ 12:173.78 —Mandamus
§ 12:173.79 —Limitations and laches
§ 12:173.80 Discontinuance or reduction
§ 12:173.81 Benefit and relief associations
§ 12:173.82 Group insurance
§ 12:173.83 Sick leave
§ 12:173.84 —Family and Medical Leave Act

Volume 4

XI. SALARIES AND COMPENSATION, FEES AND COMMISSIONS

§ 12:174 In general
§ 12:175 —Construction
§ 12:176 —Right to salary
§ 12:177 ——Compliance with law
§ 12:178 ——When right to salary begins
§ 12:179 ——Implied contracts
§ 12:180 ————Unauthorized services
§ 12:181 ————Effect of custom
§ 12:182 Power to fix salaries and compensation
§ 12:183 —Federal statutory limitations
§ 12:184 —Delegation
§ 12:185 —Judicial review
§ 12:186 —Council or legislative body
§ 12:187 ——Salary-fixing ordinances
§ 12:188 ————Noncontractual nature
§ 12:189 ————What constitutes “fixing.”
§ 12:190 ————Judicial review
§ 12:191 —Officer fixing own salary
§ 12:192 —Manner of exercising
§ 12:193 Amount
§ 12:194 —Maximums and minimums
§ 12:195 —“Prevailing wage” provisions
§ 12:196 De facto officers defectively elected or appointed
§ 12:197 Salary as between de jure and de facto officer
§ 12:198 —Payment pending contest
§ 12:199 —De jure officer’s recovery from de facto officer
§ 12:200 Office or position legally abolished or vacant

xlv
§ 12:201 Removal or suspension
§ 12:202 —Right to salary for period of litigation
§ 12:203 —Wrongful removal or suspension
§ 12:204 — —Legal provisions
§ 12:205 —Indefinite term or tenure at sufferance
§ 12:206 —Effect of other employment
§ 12:207 —Acquiescence in removal or suspension
§ 12:208 —Exoneration and reinstatement
§ 12:209 Fees and commissions
§ 12:210 —City attorney’s commissions
§ 12:211 Expenses appertaining to public office
§ 12:212 Acceptance of less sum than allowed by law
§ 12:213 Assignment of salary
§ 12:214 Extra compensation
§ 12:215 —Fair Labor Standards Act
§ 12:216 —Extra duties
§ 12:217 —When extra compensation may be paid
§ 12:218 — —Overtime and holiday work
§ 12:219 Recovery of illegal salaries or fees
§ 12:220 Changing salaries or compensation of officers and employees
§ 12:221 —Salary reductions
§ 12:222 —Manner of effecting change
§ 12:223 Laws forbidding salary change during term
§ 12:224 —Applicability
§ 12:225 —Effect of date of salary ordinance
§ 12:226 —Holdovers and successive terms
§ 12:227 —What constitutes compensation change
§ 12:228 Attorneys and agents specially employed
§ 12:229 Compensation as dependent upon rendition of services
§ 12:230 —Prevention of performance of services
§ 12:231 —Absences; vacations; leaves of absence
§ 12:232 — —Sick or disability leave
§ 12:233 — —Military leave
§ 12:234 Salary after expiration of term or resignation
§ 12:235 Salaries of more than one office or position
§ 12:236 Certifying and paying salaries
§ 12:237 Action to recover salary or compensation
§ 12:238 —Evidence and proof
§ 12:239 — —Right to office or position
§ 12:240 —Reinstatement as condition precedent to recovery
### Table of Contents

- § 12:241 — Defenses
- § 12:242 — Mandamus
- § 12:243 — Damages

## XII. LIABILITIES

- § 12:244 Generally
- § 12:245 Statutory and charter provisions
- § 12:246 Federal Civil Rights Acts
- § 12:247 Federal Civil Rights Act—Conspiracy actions
- § 12:249 — Single or isolated act
- § 12:250 — Constitutionally protected rights
- § 12:251 — Detainees and prisoners
- § 12:252 — Employment discrimination
- § 12:253 — Hostile work environment claims
- § 12:254 — Pregnancy discrimination claims
- § 12:255 — Sexual harassment claims
- § 12:256 — Sexual orientation; sexual identity claims
- § 12:257 — Age discrimination claims
- § 12:258 — Disparate treatment
- § 12:259 — Disparate impact
- § 12:260 — Affirmative action
- § 12:261 — Retaliation claims
- § 12:262 — Americans with Disabilities Act; Rehabilitation Act
- § 12:263 — After-acquired evidence as defense
- § 12:264 — Immunities
- § 12:265 — Absolute immunity
- § 12:266 — Legislative actions
- § 12:267 — Judicial functions
- § 12:268 — Other government officials
- § 12:269 — Qualified immunity
- § 12:270 Private contractors and their employees
- § 12:271 Federal Civil Rights Acts—Exhaustion of state remedies
- § 12:272 — Limitations of actions
- § 12:273 — Back pay and restitution
- § 12:274 — Damages; Punitive damages
- § 12:275 Liability for costs; attorney fees
- § 12:276 Personal liability for negligence; torts
- § 12:277 — Employees
Municipal Corporations

§ 12:278 —Prison injuries
§ 12:279 —Defamation
§ 12:280 —Damage resulting from public work
§ 12:281 —Highway disrepair
§ 12:282 Personal liability on contracts
§ 12:283 Loss of public funds
§ 12:284 —Deposit of public funds
§ 12:285 — —Designation of depository
§ 12:286 — —Bonding of depository
§ 12:287 — —Liability exemptions
§ 12:288 — —Deposit in unsound or insolvent depository
§ 12:289 —Payment of funds to successor
§ 12:290 —Wrongful disbursement
§ 12:291 Wrongful tax levy
§ 12:292 Issuing and disposing of invalid paper
§ 12:293 Failure to cause municipal obligations to be satisfied
§ 12:294 Unlawfully removing another from office
§ 12:295 Personal liability for legislative acts
§ 12:296 Action on official bonds
§ 12:297 —Demand
§ 12:298 —Who may bring action
§ 12:299 —Defenses
§ 12:300 —Damages
§ 12:301 —Construction of bond provisions
§ 12:302 —Bond coverage
§ 12:303 — —Liability limited to performance of duties
§ 12:304 — —Period covered
§ 12:305 Acts of subordinates
§ 12:306 Civil liability of judicial and quasi-judicial officers
§ 12:307 Criminal liability
§ 12:308 —Misconduct in office
§ 12:309 — —Statutory provisions
§ 12:310 —Self-dealing

XIII. REMOVAL, SUSPENSION, REINSTATEMENT

§ 12:311 Removal and suspension
§ 12:312 —State whistleblower laws
§ 12:313 —Public policy exception to at-will employment
§ 12:314 —“Appropriate law enforcement authority”
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:315</td>
<td>Constitutionally protected interest in continued employment</td>
</tr>
<tr>
<td>§ 12:316</td>
<td>Removal and suspension generally—Handbook or policy manual as basis for rights</td>
</tr>
<tr>
<td>§ 12:317</td>
<td>—Constructive discharge</td>
</tr>
<tr>
<td>§ 12:318</td>
<td>—Summary removal</td>
</tr>
<tr>
<td>§ 12:319</td>
<td>——Appointive officers</td>
</tr>
<tr>
<td>§ 12:320</td>
<td>Cause</td>
</tr>
<tr>
<td>§ 12:321</td>
<td>—Cause only</td>
</tr>
<tr>
<td>§ 12:322</td>
<td>—Elective officers</td>
</tr>
<tr>
<td>§ 12:323</td>
<td>—Officers appointed for definite term</td>
</tr>
<tr>
<td>§ 12:324</td>
<td>Agency authorized to remove or suspend</td>
</tr>
<tr>
<td>§ 12:325</td>
<td>—Mayor or city manager</td>
</tr>
<tr>
<td>§ 12:326</td>
<td>—City council or legislative body</td>
</tr>
<tr>
<td>§ 12:327</td>
<td>—Two or more authorities</td>
</tr>
<tr>
<td>§ 12:328</td>
<td>—Governor</td>
</tr>
<tr>
<td>§ 12:329</td>
<td>—Delegability</td>
</tr>
<tr>
<td>§ 12:330</td>
<td>Sufficiency of cause</td>
</tr>
<tr>
<td>§ 12:331</td>
<td>—Incompetency and inefficiency</td>
</tr>
<tr>
<td>§ 12:332</td>
<td>—Disability</td>
</tr>
<tr>
<td>§ 12:333</td>
<td>—Age</td>
</tr>
<tr>
<td>§ 12:334</td>
<td>—Neglect of duty</td>
</tr>
<tr>
<td>§ 12:335</td>
<td>——Absence</td>
</tr>
<tr>
<td>§ 12:336</td>
<td>—Malfeasance, misfeasance, and misconduct</td>
</tr>
<tr>
<td>§ 12:337</td>
<td>——Illustrations</td>
</tr>
<tr>
<td>§ 12:338</td>
<td>—Protected speech—Citizen v. public employee</td>
</tr>
<tr>
<td>§ 12:339</td>
<td>———Burden of proof</td>
</tr>
<tr>
<td>§ 12:340</td>
<td>——“Public concern”</td>
</tr>
<tr>
<td>§ 12:341</td>
<td>—Protected speech; Citizen v. public employee—Applications</td>
</tr>
<tr>
<td>§ 12:342</td>
<td>—Protected speech—Citizen v. public employee—Pursuant to employment duties</td>
</tr>
<tr>
<td>§ 12:343</td>
<td>—Protected speech; Citizen v. public employee—“Adverse employment action”</td>
</tr>
<tr>
<td>§ 12:344</td>
<td>—Criticism of public officials</td>
</tr>
<tr>
<td>§ 12:345</td>
<td>——“Fighting words” as protected criticism</td>
</tr>
<tr>
<td>§ 12:346</td>
<td>——Motive as a factor</td>
</tr>
<tr>
<td>§ 12:347</td>
<td>——Precluding employees to bring § 1983 actions</td>
</tr>
<tr>
<td>§ 12:348</td>
<td>—Misconduct in another office or during prior term</td>
</tr>
<tr>
<td>§ 12:349</td>
<td>—Unbecoming conduct or moral turpitude</td>
</tr>
<tr>
<td>§ 12:350</td>
<td>—Intoxication</td>
</tr>
</tbody>
</table>
§ 12:351 — Drug testing
§ 12:352 — Insubordination
§ 12:353 — Violation of rules
§ 12:354 — Bankruptcy
§ 12:355 — Commission of crime or arrest
§ 12:356 — Violation of federal income tax laws
§ 12:357 — Claim of immunity from self-incrimination
§ 12:358 — Membership in society or organization
§ 12:359 — Political activity
§ 12:360 — Marriage of officer or employee
§ 12:361 — Economic reasons
§ 12:362 Restrictions on removal powers, by civil service and veteran’s; preference provisions
§ 12:363 — Rights conferred
§ 12:364 — Applicability
§ 12:365 — — Probationary appointees
§ 12:366 — — Illegal or ineligible appointees
§ 12:367 — Cause for removal
§ 12:368 — — Reasons of economy; abolition of position
§ 12:369 Removal of appointive officers without term
§ 12:370 Removal of subordinates and employees
§ 12:371 — Who authorized to remove
§ 12:372 Removal of patronage employees
§ 12:373 Removal by recall
§ 12:374 — Procedure
§ 12:375 — — Petition
§ 12:376 — — — Signatures and verification
§ 12:377 — — — Presentment and sufficiency
§ 12:378 — — Election
§ 12:379 — Judicial review
§ 12:380 — Recalled officer’s eligibility to return for balance of unexpired term
§ 12:381 Suspensions
§ 12:382 — Power to suspend
§ 12:383 — Agency authorized to suspend
§ 12:384 — Employees
§ 12:385 — Civil service employees
§ 12:386 Seniority rights
§ 12:387 — Computation
§ 12:388 Removal or suspension proceedings
§ 12:389 Pre-termination procedure
§ 12:390 Removal or suspension proceedings—Right to specification of charges, notice and hearing
TABLE OF CONTENTS

§ 12:391 — —Legal basis
§ 12:392 — —Who entitled
§ 12:393 — —Removal by council resolution
§ 12:394 — —Waiver
§ 12:395 — —Demand for arbitration
§ 12:396 — —Nature of proceedings
§ 12:397 — —Elective officers
§ 12:398 — —Presentation of charges
§ 12:399 — —Charge or statement of reasons
§ 12:400 — —Sufficiency
§ 12:401 — —Amendment
§ 12:402 — —Dismissal
§ 12:403 — —Notice
§ 12:404 — —Methods of service
§ 12:405 — —Sufficiency
§ 12:406 — —Hearing tribunal
§ 12:407 — —Delegation of hearing authority
§ 12:408 — —Disqualification to act
§ 12:409 — —Bias, prejudice or personal hostility
§ 12:410 — —Hearing or trial
§ 12:411 — —Due process
§ 12:412 — —Hearing to clear reputation
§ 12:413 — —Civil service hearings
§ 12:414 — —Jurisdictional requirements
§ 12:415 — —Time of hearing
§ 12:416 — —Incidents
§ 12:417 — —Subpoena power
§ 12:418 — —Cross-examination
§ 12:419 — —Presence of accused
§ 12:420 — —Adjournments; presence of accused
§ 12:421 — —Aid of counsel
§ 12:422 — —Evidence
§ 12:423 — —Admissibility
§ 12:424 — —Hearsay
§ 12:425 — —Presumptions and burden of proof
§ 12:426 — —Weight and sufficiency
§ 12:427 — —Judgment
§ 12:428 — —Vote necessary to decision
§ 12:429 — —Modification of penalty
§ 12:430 — —Specification of charges
§ 12:431 — —Findings of fact
§ 12:432 — —Record
§ 12:433 — —Conclusiveness
§ 12:434 —Rehearing or new trial
§ 12:435 Judicial review
§ 12:436 —Statutory provisions
§ 12:437 —Civil service proceedings
§ 12:438 —Procedure
§ 12:439 —Scope of review
§ 12:440 — —Cause for removal
§ 12:441 — —Legality of proceedings
§ 12:442 — —Weight or sufficiency of evidence
§ 12:443 — —Modification of order below; amelioration of punishment
§ 12:444 —Certiorari
§ 12:445 — —Function of writ
§ 12:446 — —Who entitled to writ
§ 12:447 — —Effect of delay
§ 12:448 — —Return and certification
§ 12:449 — —Weight and sufficiency of evidence
§ 12:450 Reinstatement
§ 12:451 —Agency authorized to reinstate
§ 12:452 —Conditions
§ 12:453 — —Demand
§ 12:454 —Grounds for denial
§ 12:455 —After wrongful removal, suspension or demotion
§ 12:456 —After resignation
§ 12:457 —After disability retirement
§ 12:458 —Veterans
§ 12:459 —Reemployment preference
§ 12:460 —Court proceedings
§ 12:461 — —Time limitations and laches
§ 12:462 — — —Justification for delay
§ 12:463 — —Mandamus
§ 12:464 — — —Procedure
§ 12:465 — — —Scope of review
§ 12:466 — — —When reinstatement refused
§ 12:467 — — — —De jure and de facto officers
§ 12:468 — — — —Economic reasons
§ 12:469 Damages
§ 12:470 Injunction to prevent discharge, removal or reinstatement
CHAPTER 13. MEETINGS AND PROCEEDINGS OF COUNCIL OR GOVERNING LEGISLATIVE BODY

I. GENERAL CONSIDERATIONS

§ 13:1 Municipal organization; where authority vested
§ 13:2 Powers of council
§ 13:3 Functions of council
§ 13:4 — Legislative
§ 13:5 — Judicial or quasi-judicial
§ 13:6 — Financial
§ 13:7 — Investigative
§ 13:8 — Judicial review
§ 13:9 Meetings of council
§ 13:10 — Legislative prayer
§ 13:11 — Public meeting laws
§ 13:12 — — Electronic communications
§ 13:13 Violations of open meeting laws
§ 13:14 Meetings of council—Public meeting laws—Requirements

§ 13:15 — — Public comment
§ 13:16 — — Access to public meetings
§ 13:17 — — Procedural matters
§ 13:18 — — Exemptions
§ 13:19 — — — Emergency exception
§ 13:20 — — — Litigation exception
§ 13:21 — — — Judicial exception
§ 13:22 — — — Minimum price exception
§ 13:23 — — Private recording of meetings
§ 13:24 — — Regular, special, and adjourned
§ 13:25 — Place
§ 13:26 — Time
§ 13:27 — Notice
§ 13:28 New England type town meetings
§ 13:29 — Issuance and service of notice or warning
§ 13:30 — Specification of matters to be acted on
§ 13:31 — Instances as to specification in notice or warrant
§ 13:32 De facto councils and officers
§ 13:33 Compelling council to function
§ 13:34 Presiding officer
II. QUORUM AND NUMBER OF VOTES REQUIRED TO ACT

§ 13:38 Quorum generally
§ 13:39 —Statutory provisions
§ 13:40 —Computation
§ 13:41 Boards, commissions, committees, and the like
§ 13:42 Number of votes required to act
§ 13:43 —Percentage required
§ 13:44 ——Majority
§ 13:45 ——More than majority
§ 13:46 —Votes of absent members, members present but not voting, and de facto members
§ 13:47 —Suspension of rules
§ 13:48 —Elections by council
§ 13:49 ——Plurality vote
§ 13:50 ——Mayor’s or presiding officer’s vote
§ 13:51 —Balloting and announcement of result
§ 13:52 Members’ interest as affecting quorum or majority
§ 13:53 —Illustrations
§ 13:54 Quorum of joint assemblies

III. PROCEEDINGS

§ 13:55 Special meetings
§ 13:56 —Notice
§ 13:57 ——Service
§ 13:58 —Purpose
§ 13:59 —Irregularities
§ 13:60 Adjournments
§ 13:61 —Vote required
§ 13:62 —Time and place
§ 13:63 —Business that may be transacted
§ 13:64 Council as continuous body
§ 13:65 Bicameral legislative bodies
§ 13:66 Procedural rules
§ 13:67 —Judicial review
§ 13:68 Mode of municipal action
Volume 5

CHAPTER 14. MUNICIPAL RECORDS

I. KEEPING
§ 14:1 Necessity
§ 14:2 Persons authorized to keep

II. SUFFICIENCY
§ 14:3 Showing required
§ 14:4 Presumptions
§ 14:5 Taking yeas and nays

III. EVIDENTIARY NATURE
§ 14:6 Legislative proceedings
§ 14:7 Committees and officer reports
§ 14:8 Parol evidence as supplement
§ 14:9 —Omissions
§ 14:10 —Improfections

IV. AMENDMENT
§ 14:11 Generally
§ 14:12 Method
§ 14:13 Court order to compel
§ 14:14 Effect of delay

V. INSPECTION
§ 14:15 Inspection rights
§ 14:16 —Federal and state statutes
§ 14:17 Records subject to inspection
§ 14:18 Limitations
§ 14:19 Enforcement
§ 14:20 Copying

VI. DELIVERY

§ 14:21 Remedies to compel

CHAPTER 15. NATURE, REQUISITES, AND OPERATION OF MUNICIPAL ORDINANCES

I. CHARACTERISTICS

§ 15:1 Definitions
§ 15:2 Resolutions and ordinances distinguished
§ 15:3 When ordinance necessary
§ 15:4 —Illustrations
§ 15:5 — —Municipal offices and salaries
§ 15:6 Action by resolution
§ 15:7 —Illustrations
§ 15:8 Motions, orders, regulations, and procedural rules distinguished
§ 15:9 Classifications—In general
§ 15:10 —General and special
§ 15:11 —Penal and nonpenal
§ 15:12 Force and effect
§ 15:13 —Charter or statute distinguished

II. REQUISITES

§ 15:14 In general
§ 15:15 Corporate distinguished from private matters
§ 15:16 Municipal distinguished from state matters
§ 15:17 Conformity to charter
§ 15:18 Conformity to state and federal laws
§ 15:19 —Types and tests for preemption
§ 15:19.50 —Field preemption
§ 15:20 —Public policy and common law
§ 15:21 —Permissible and impermissible variations
§ 15:22 Good faith
III. OPERATION

§ 15:26 Notice of existence
§ 15:27 —Persons bound
§ 15:28 —Property bound
§ 15:29 Territorial operation
§ 15:30 —Places included
§ 15:31 ——State and federal property
§ 15:32 ——Private premises
§ 15:33 ——Railroad property
§ 15:34 ——Wharves, docks and piers
§ 15:35 ——Illustrations
§ 15:36 ——Judicial limitation

IV. EFFECT, EXPIRATION AND SUSPENSION

§ 15:37 When ordinances take effect
§ 15:38 —Emergency
§ 15:39 —Contingency
§ 15:40 Expiration and suspension

CHAPTER 16. ENACTMENT OF ORDINANCES

I. ENACTMENT POWER AND GOVERNING PROCEDURAL PROVISIONS

§ 16:1 Necessity of proper enactment
§ 16:2 Legislature's power to grant
§ 16:3 —Departments, boards, commissions, etc
§ 16:4 Power to enact—In general
§ 16:5 —Express power
§ 16:6 —Implied or inherent power
§ 16:7 —Scope
§ 16:8 —Delegated power
§ 16:9 —Construction
§ 16:10 Governing procedural provisions

II. FORM AND PARTS

§ 16:11 In general
§ 16:12 Incorporation by reference
§ 16:13 Formal parts
§ 16:14 —Recital of authority to enact
§ 16:15 —Recital of necessity
§ 16:16 —Title
§ 16:17 — —One subject expressed in title
§ 16:18 — — —Mandatory or directory
§ 16:19 — — —Unity and consonance
§ 16:20 — — —Plurality and discordance
§ 16:21 — — —Amendatory ordinances
§ 16:22 — — —Illustrations
§ 16:23 —Preamble
§ 16:24 —Ordaining or enacting clause

III. INTRODUCTION AND PASSAGE
§ 16:25 Generally
§ 16:26 Time
§ 16:27 Interval between; reading requirements
§ 16:28 Bicameral bodies’ enactments
§ 16:29 Passage at regular, special, or adjourned session
§ 16:30 Continuity of legislative consideration
§ 16:31 Committee and report references
§ 16:32 Presentation to mayor
§ 16:33 —Signing and approval
§ 16:34 — —Distinction
§ 16:35 — —Mandatory or directory
§ 16:36 — —Sufficiency and proof
§ 16:37 — —Authority of signatory
§ 16:38 Approval by officers or boards
§ 16:39 Mayor’s veto
§ 16:40 —Return of bill or ordinance
§ 16:41 — —Requirement of statement of objections
§ 16:42 —Time limitations; adjournment
§ 16:43 —Legislative body’s consideration
§ 16:44 —Passage over veto

IV. INITIATIVE AND REFERENDUM
§ 16:45 Generally
§ 16:46 First Amendment implications
§ 16:47 Electors’ power directly legislate
§ 16:48 —Statutory authority
§ 16:49 — Construction of provisions
§ 16:50 Initiative generally; definition
§ 16:51 Referendum generally; definition
§ 16:52 Measures submissible
§ 16:53 — Legislative or administrative measures
§ 16:54 — Police and emergency measures
§ 16:55 — Illustrations
§ 16:56 Measures requiring submission
§ 16:57 Measures not requiring submission
§ 16:58 Modes of exercising power
§ 16:59 — Petition
§ 16:60 — — Signatures
§ 16:61 — — — Withdrawal
§ 16:62 — — Verification
§ 16:63 — — Filing or presentation
§ 16:64 — — Inspection and certification
§ 16:65 — Publication
§ 16:66 — Submission
§ 16:67 — — Judicial action
§ 16:68 — — Prior adjudication of validity
§ 16:69 — Voters’ decision

V. ATTESTATION, RECORDATION, PUBLICATION, CUSTODY, CODIFICATION AND REVISION

§ 16:70 Attestation or certification
§ 16:71 Recordation
§ 16:72 — Sufficiency
§ 16:73 — Failure to record
§ 16:74 Deposit and custody
§ 16:75 Publication and notice of pendency
§ 16:76 — Ordinances requiring
§ 16:77 — Mandatory or directory
§ 16:78 — Contents
§ 16:79 — — Incorporation by reference
§ 16:80 — Method and manner
§ 16:81 — — Newspaper publication
§ 16:82 English language requirement
§ 16:83 — Duration and frequency
§ 16:84 — — Sundays, holidays, and omitted days
§ 16:85 Books, codifications, revisions, and reenactments
VI. AMENDMENT ON PASSAGE

§ 16:86 Generally
§ 16:87 Publication

VII. INVALIDITY IN ENACTMENT; CURE

§ 16:88 Generally
§ 16:89 Judicial inquiry into legislators’ motives
§ 16:90 —Limitations, qualifications, and exceptions
§ 16:91 Judicial interference with passage
§ 16:92 Cure or validation generally
§ 16:93 —State legislation
§ 16:94 — —Bond issue and stock subscription ordinances
§ 16:95 — —Tax collection proceedings

CHAPTER 17. PENALTIES OF MUNICIPAL ORDINANCES

§ 17:1 Generally
§ 17:2 Effect of ordinance imposing no penalty
§ 17:3 Power to enforce ordinance by penalties
§ 17:4 —Implied power
§ 17:5 —Construction
§ 17:6 Form of penalty — Penalty as civil or criminal
§ 17:7 —Fines
§ 17:8 —Imprisonment
§ 17:9 —Forfeiture
§ 17:10 —Impoundment
§ 17:11 —Hard labor, other penalties; costs
§ 17:12 Certainty of penalty
§ 17:13 —Effect of discretion in court
§ 17:14 —Effect of no court discretion
§ 17:15 Amount of penalty
§ 17:16 —Compliance with specific provision of law
§ 17:17 —Conformity to general statutes
§ 17:18 —Continuous or separate offenses
§ 17:19 —Heavier penalty for subsequent offense
CHAPTER 18. REASONABLENESS OF ORDINANCES

I. NECESSITY OF AND WHAT CONSTITUTES REASONABLENESS

§ 18:1 Generally
§ 18:2 Ordinances under express and specific power
§ 18:3 General, implied, or incidental power
§ 18:4 Necessity of reasonable exercise of legislative power
§ 18:5 —Application to particular subject matter
§ 18:6 —What constitutes reasonableness
§ 18:7 ——Illustrations

II. UNIFORMITY

§ 18:8 Generally
§ 18:9 Reasonable classification
§ 18:10 Unreasonable discrimination
§ 18:11 —Standard for discretion in enforcement
§ 18:12 ——Enforcement officers’ discretion

III. RESTRAINT OF TRADE, BUSINESS, OR OCCUPATION

§ 18:13 Unreasonable restraint of trade
§ 18:14 Restrictions on business or occupation
§ 18:15 Discrimination in regulation

IV. PLEADING, PROOF, AND DETERMINATION OF UNREASONABLENESS

§ 18:16 Generally
§ 18:17 Pleading unreasonableness
§ 18:18 Question for court or jury
§ 18:19 Question as judicial or legislative
§ 18:20 Presumption and burden
§ 18:21 —Admissibility, competency, and relevancy
§ 18:22 —Weight and sufficiency
§ 18:23 Judicial determination
§ 18:24 —Judicial caution and legislative respect
CHAPTER 19. CONSTITUTIONALITY OF ORDINANCES

I. GOVERNING CONSTITUTIONAL PROVISIONS
§ 19:1 Conformity with constitutional provisions
§ 19:2 —Federal
§ 19:3 —State
§ 19:4 When court will pass on constitutionality
§ 19:5 —Standing
§ 19:6 Constitutionality favored
§ 19:7 Presumption of constitutionality
§ 19:8 Federal court review of state decisions on constitutionality

II. IMPAIRMENT OF CONSTITUTIONAL RIGHTS AND LIBERTIES
   A. IN GENERAL
      § 19:9 Common and fundamental rights
   B. DUE PROCESS OF LAW
      § 19:10 Generally
      § 19:11 Substantive due process
      § 19:12 —Discrimination
      § 19:13 —Definiteness or vagueness
      § 19:14 Procedural due process
   C. PRIVILEGES AND IMMUNITIES
      § 19:15 Generally
   D. EQUAL PROTECTION OF THE LAWS
      § 19:16 Generally
      § 19:17 —Selective enforcement; discretion
      § 19:18 —Special laws; uniform operation of general laws
      § 19:19 —Uniform operation of general laws
      § 19:20 —Presumptions and burden of proof
      § 19:21 Classification
      § 19:22 —Standards of review
TABLE OF CONTENTS

§ 19:23 —Illustrations of reasonable classifications
§ 19:24 Discrimination generally
§ 19:25 Discrimination—Nonresidents
§ 19:26 —Residents
§ 19:27 —Aliens
§ 19:28 —Race
§ 19:29 —Religion
§ 19:30 —Gender
§ 19:31 —Pregnancy
§ 19:32 —Sexual orientation
§ 19:33 —Age

E. PROPERTY RIGHTS

§ 19:34 Protection of private property
§ 19:35 —Use
§ 19:36 Public property rights

F. LIBERTIES OF THE PERSON

§ 19:37 Generally
§ 19:38 —Liberties protected
§ 19:39 Contracts
§ 19:40 Employment
§ 19:41 —Municipal
§ 19:42 —Minority set-aside programs
§ 19:43 Pursuit of business or occupation
§ 19:44 —Taxation and licensing
§ 19:45 Religion
§ 19:46 —Test for establishment clause violations
§ 19:47 —Legislative prayer
§ 19:48 —Religious land use legislation
§ 19:49 —Religious Freedom Restoration Act
§ 19:50 Speech and press
§ 19:50.50 Speech and press—Compelled truthful disclosure in commercial speech
§ 19:51 Speech and press—Commercial speech
§ 19:52 —Political speech
§ 19:53 —Religious speech
§ 19:54 —Anti-noise ordinances
§ 19:55 —Interference and criticizing police officers
§ 19:56 —Canvassing ordinances
§ 19:57 —Public forums and residential property
§ 19:58 —Public funding
§ 19:59 Association, assemblage, and petition
§ 19:60 Imprisonment for debt
§ 19:61 Physical restraint, arrest, search and seizure
§ 19:61.50 Administrative searches
§ 19:62 Movement
§ 19:63 —Curfew ordinances
§ 19:64 Personal habits and indulgences; smoking
§ 19:65 Solicitation for charity
§ 19:66 —Panhandling

G. PROCEDURAL RIGHTS
§ 19:67 Generally

III. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

§ 19:68 Constitutional provisions
§ 19:69 Federal and state determinations
§ 19:70 Test to determine constitutionality
§ 19:71 Ordinances as within prohibition
§ 19:72 —Ordinances under police powers
§ 19:73 Contracts protected
§ 19:74 —City’s own contracts
§ 19:75 —Franchises
§ 19:76 What constitutes “obligation.”
§ 19:77 What constitutes “obligation”—Governing law
§ 19:78 What constitutes impairment
§ 19:79 —Additional burden, restriction, or tax
§ 19:80 —City’s tax on own obligations
§ 19:81 —Accelerating or postponing payment
§ 19:82 —Violation of exclusiveness of right or franchise
§ 19:83 —Change in remedial procedure
§ 19:84 —Material change of remedy
§ 19:85 State’s impairment of municipal contracts
§ 19:86 Reservation of right to alter or repeal franchise
§ 19:87 Impairment of improvement contracts
§ 19:88 —Change of interest

IV. INTERFERENCE WITH FOREIGN OR INTERSTATE COMMERCE

§ 19:89 Generally
Table of Contents

§ 19:90 Basic considerations
§ 19:91 —Substantial effect on interstate commerce
§ 19:92 —Uniform or local treatment
§ 19:93 —Prior congressional action
§ 19:94 —Primary purpose of local regulations
§ 19:95 Foreign, interstate, and intrastate commerce
§ 19:96 —Contracts, insurance, professional practice, etc
§ 19:97 Property in transit
§ 19:98 —Stay, stoppage, or storage
§ 19:99 —“Original package” doctrine
§ 19:100 Tax ordinances
§ 19:101 —Instrumentalities
§ 19:102 —Operations or objects of commerce
§ 19:103 —Privileges, franchises, and gross receipts
§ 19:104 —Sales or sales proceeds
§ 19:105 —Exporting or importing
§ 19:106 Licensing ordinances
§ 19:107 —Police power purposes
§ 19:108 —Discriminatory regulations
§ 19:109 —Manufacture outside state
§ 19:110 ——Illustrations
§ 19:111 —Nonresidence of principal
§ 19:112 —Sale of goods
§ 19:113 ——Goods within state at sale
§ 19:114 ——Goods out of state at sale
§ 19:115 —Licenses taxes on poles and wire
§ 19:116 General police power regulations
§ 19:117 Police regulations—Permissible scope
§ 19:118 Basic considerations—Market regulation and market participation
§ 19:119 Police regulations—Miscellaneous examples
§ 19:120 —Waste disposal
§ 19:121 —Injurious foods and articles
§ 19:122 —Use of streets and motor vehicles
§ 19:123 —Railroad operations
§ 19:124 —Quarantine laws
§ 19:125 —Harbor and port regulations
CHAPTER 20. VALIDITY AND CONSTRUCTION OF ORDINANCES

I. VALIDITY IN GENERAL

§ 20:1 Generally; scope of treatment
§ 20:2 Judicial power to determine invalidity
§ 20:3 —Extent of power
§ 20:4 —Considerations governing exercise of power
§ 20:5 —Defence to legislature
§ 20:6 Presumption of validity
§ 20:7 —Application of presumption
§ 20:8 Burden, weight, and sufficiency of proof
§ 20:9 Validity determined by purpose, operation or enforcement
§ 20:10 When court will pass on validity
§ 20:11 Parts of ordinances that may be challenged
§ 20:12 Estoppel, waiver, and laches as challenge to ordinances
§ 20:13 Estoppel, waiver, and laches as to validity of ordinance—Operation against city
§ 20:14 Direct or collateral attack
§ 20:15 Res judicata

II. REMEDIES AND PROCEDURES TO DETERMINE VALIDITY

§ 20:16 Generally; scope of treatment
§ 20:17 Time for commencement of proceedings
§ 20:18 Necessary and proper parties
§ 20:19 —Citizens and taxpayers
§ 20:20 —Effect of property or pecuniary interest
§ 20:21 —Franchise and contract ordinances
§ 20:22 Pleading
§ 20:23 Remedies available generally
§ 20:24 Declaratory judgment as remedy
§ 20:25 Mandamus
§ 20:26 Injunction to restrain enforcement of ordinance
§ 20:27 —Grounds, prerequisites and limitations
§ 20:28 —Exhaustion of administrative remedies
§ 20:29 —Temporary and preliminary injunction
§ 20:30 —Preventing multiple lawsuits
§ 20:31 —Penal ordinances and prosecution
§ 20:32 —Ordinance abating or creating nuisances
§ 20:33 —Ordinance infringing rights and liberties
§ 20:34 —Ordinance burdening interstate commerce
§ 20:35 Injunction by city to prevent ordinance violation
§ 20:36 —By private party
§ 20:37 Certiorari
§ 20:38 —Who may institute
§ 20:39 —Laches
§ 20:40 —Effect of writ
§ 20:41 —Scope of review
§ 20:42 —Illustrative cases
§ 20:43 Quo warranto

III. CONSTRUCTION OF ORDINANCES

§ 20:44 Overview and scope
§ 20:45 Applying rules of statutory construction
§ 20:46 Construction determined by court, not jury
§ 20:47 Charter, state law, and public policy
§ 20:48 Legislative intent
§ 20:49 Construing unambiguous language
§ 20:50 —Ambiguous language
§ 20:51 Contemporaneous construction; official interpretation
§ 20:52 Consideration of context, history, usage
§ 20:53 Ordinary meanings and trade terms
§ 20:54 Practical construction and meanings
§ 20:55 Liberal or strict construction
§ 20:56 —Liberal construction in favor of validity
§ 20:57 —Strict construction in favor of individual rights
§ 20:58 —Penal ordinances
§ 20:59 —Franchise ordinances
§ 20:60 Construction of ordinance as a whole
§ 20:61 —Giving effect to each word, clause and part
§ 20:62 —Changing, ignoring and supplying words and parts
§ 20:63 Special, general, qualifying and associated words
§ 20:64 Mandatory and permissive effect
§ 20:65 Title and preamble
§ 20:66 Number and gender
§ 20:67 Punctuation
§ 20:68 Construing same subject ordinances together
§ 20:69 Amended ordinances
§ 20:70 Illustrative cases

IV. EFFECT OF INVALIDITY OF ORDINANCE IN PART OR IN PARTICULAR APPLICATIONS

§ 20:71 Voidness of part invalidating whole ordinance
§ 20:72 —Severability or saving clause
§ 20:73 Voidness of part invalidating whole ordinance
§ 20:74 —Illustrations of rules
§ 20:75 Ordinances void as applied

V. VALIDITY AND CONSTRUCTION AS TO TIME OF TAKING EFFECT

§ 20:76 Generally; prospective operation
§ 20:77 Validity and construction of retroactive ordinances
§ 20:78 —Restricting present and future use of property
§ 20:79 —Impairment of contract rights

CHAPTER 21. AMENDMENT, REPEAL, AND SUPERSEDING OF ORDINANCES

I. AMENDMENT OF ORDINANCES

§ 21:1 Generally
§ 21:2 Power to amend
§ 21:3 —Initiative and referendum measures
§ 21:4 Method
§ 21:5 Void, defective, or repealed ordinance
§ 21:6 Impairing contract or vested rights
§ 21:7 —Contract and franchise ordinances
§ 21:8 Penal ordinances

II. REPEAL OF ORDINANCES IN GENERAL

§ 21:9 Generally
§ 21:10 Power to repeal
§ 21:11 —Initiative and referendum measures
§ 21:12 Method
§ 21:13 —By subsequent ordinance
III. IMPLIED OR CONSTRUCTIVE REPEALS

§ 21:18 Generally
§ 21:19 Harmonization of later and earlier ordinances
§ 21:20 Implied or constructive repeals sustained
§ 21:21 —Conflict between later and earlier ordinances
§ 21:22 —Effect of later and earlier ordinances on same subject
§ 21:23 Revision as effecting repeal

IV. SUPERSEDING EFFECT OF CHARTERS, STATUTES, AND ORDINANCES

§ 21:24 Generally; scope of treatment
§ 21:25 Superseding effects of charter changes
§ 21:26 —On ordinances and charter provisions
§ 21:27 —Incident to corporate and territorial changes
§ 21:28 Charter or statute as superseding the other
§ 21:29 —Municipal affairs of local concern
§ 21:30 —Matters of statewide concern
§ 21:31 —Reconciliation of charter and statutory provisions
§ 21:32 Ordinance or statute as superseding the other
§ 21:33 —Matters purely local or solely within municipal power
§ 21:34 —Matters of statewide concern
§ 21:35 —Reconciliation of statutes and ordinances
§ 21:36 —Illustrative cases
§ 21:37 Effect of general act on special ordinance
§ 21:38 Effect of local law relating to municipality

V. OPERATION AND EFFECT OF REPEAL

§ 21:39 Generally
§ 21:40 Repeal as revival of general law
§ 21:41 Repeal of repeal as revival
§ 21:42 Repeal or expiration of statute as repeal of ordinance
§ 21:43 Previous violations as affected by repeal
CHAPTER 22. PLEADING, PROOF, AND EFFECT OF ORDINANCES IN CIVIL ACTIONS

I. EFFECT OF ORDINANCES ON CIVIL RIGHTS, LIABILITIES, AND ACTIONS

§ 22:1 Generally
§ 22:2 Violation of ordinance as cause of action or proof of negligence
§ 22:3 —As constituting negligence
§ 22:4 —As evidencing negligence
§ 22:5 —Necessity of breach of duty
§ 22:6 —Effect of purpose to protect persons and property
§ 22:7 —Application of rule of proximate cause
§ 22:8 Illustrative cases involving actions based on ordinances
§ 22:9 —Relating to streetcars and trains
§ 22:10 —Relating to elevators, hatchways, etc
§ 22:11 —Involving ordinances as to streets and sidewalks
§ 22:12 —Involving ordinances as to removal of ice and snow
§ 22:13 Contributory negligence as affected by ordinance
§ 22:14 —Violation of ordinance as contributory negligence
§ 22:15 Liability of owners, their tenants or agents as affected by ordinance
§ 22:16 Practice, procedure, and evidence as affected by ordinance

II. PLEADING OF ORDINANCES

§ 22:17 Generally; necessity of pleading ordinance
§ 22:18 Judicial notice of ordinances
§ 22:19 —Effect of character of court
§ 22:20 Sufficiency of pleading
§ 22:21 —Pleading words or substance of ordinance
Table of Contents

§ 22:22 —Pleading by reference or annexation
§ 22:23 —Pleading steps in enactment
§ 22:24 Pleading of facts relating to ordinances generally
§ 22:25 In negligence actions

III. PROOF OF ORDINANCES
§ 22:26 Generally; scope of treatment
§ 22:27 Burden of proof and presumptions in general
§ 22:28 Proof of authority to enact
§ 22:29 Proof of existence
§ 22:30 —Continued existence
§ 22:31 Proof of passage, steps, and proceedings
§ 22:32 —Of publication
§ 22:33 —How publication proved
§ 22:34 How proof of ordinance made
§ 22:35 —By ordinance book, pamphlet, or other collection
§ 22:36 —By records or minutes
§ 22:37 —By original or copy
§ 22:38 —Authentication
§ 22:39 —Parol evidence

CHAPTER 23. MUNICIPAL CONTROL OF OFFENSES AGAINST STATE
§ 23:1 Generally
§ 23:2 Basis of municipal control
§ 23:3 —Specific power
§ 23:4 —General power
§ 23:5 Scope of control
§ 23:6 —Effect of character of offense
§ 23:7 Conformity with state law and policy
§ 23:8 Acts not constituting state offenses
§ 23:9 Acts or omissions constituting state offenses
§ 23:10 —Act or omission also offense under ordinance
§ 23:11 —Act or omission not offense under ordinance
§ 23:12 —What constitutes double jeopardy
§ 23:13 Illustrative cases
Volume 6A

CHAPTER 24. MUNICIPAL POLICE POWER AND ORDINANCES

I. IN GENERAL

A. GENERAL NATURE AND SCOPE OF POLICE POWER

§ 24:1 Scope of chapter
§ 24:2 Nature and meaning
§ 24:3 —Difficulty of definition
§ 24:4 —Limits and differences
§ 24:5 — —Federal law
§ 24:6 —Public over private interests
§ 24:7 —Inalienability and nondelegability
§ 24:8 —Flexible nature
§ 24:9 Extent and limitations
§ 24:10 Basis of power
§ 24:11 Objects
§ 24:12 —Public order, health, safety and morals
§ 24:13 —Public welfare, convenience, and economy
§ 24:14 —Protection of private property
§ 24:15 —Esthetic considerations
§ 24:16 Subjects
§ 24:17 —Emergency and expediency
§ 24:18 —Economic matters
§ 24:19 —Contracts
§ 24:20 —Public contracts and franchises
§ 24:21 —Private property
§ 24:22 —Business regulations
§ 24:23 —Destruction under police power
§ 24:24 —Destruction of property—Fire prevention
§ 24:25 — —Limitations as to destruction
§ 24:26 — —Notice and hearing before destruction
§ 24:27 — —Liability for destruction
§ 24:28 Miscellaneous subjects
§ 24:29 Validity of exercise of power
§ 24:30 Judicial relief against invalid exercise of power
§ 24:31 —Judicial caution as the rule
§ 24:32 —Proof, presumption and burden
TABLE OF CONTENTS

§ 24:33 —Mode of judicial relief

B. POLICE POWER OF MUNICIPAL CORPORATIONS

§ 24:34 Generally; Police power as locally based
§ 24:35 Urban and rural police powers contrasted
§ 24:36 Municipal police power as not inherent
§ 24:37 Delegation of police power by state to municipality
§ 24:38 —Authority to delegate
§ 24:39 Mode of delegation
§ 24:40 Construction of grant
§ 24:41 —Relationship to delegation of licensing power
§ 24:42 —Inalienability and nondelegability by municipality
§ 24:43 —Withdrawal by state
§ 24:44 General welfare or grant of power clause
§ 24:45 —As delegating broad power
§ 24:46 —As confined to specific powers
§ 24:47 Limitations
§ 24:48 Applications and illustrations
§ 24:49 Judicial review of police power

C. POLICE ORDINANCES

§ 24:50 Generally
§ 24:51 Requisites for validity
§ 24:52 —Relationship to proper objects
§ 24:53 —Certainty
§ 24:54 —Reasonableness
§ 24:55 —Uniformity
§ 24:56 —Conformity or conflict with state law
§ 24:57 — —Implied preemption
§ 24:58 —Conformity or conflict with federal law
§ 24:59 Operation
§ 24:60 —Territorially
§ 24:61 —Extraterritorially

D. MUNICIPAL CONTROL AND SUPPRESSION OF NUISANCES

§ 24:62 What constitutes nuisance
§ 24:63 Classification of nuisances as per se or per accidens
§ 24:64 —Public or private
§ 24:65 —Future and anticipated
§ 24:66 —Nuisances created by municipal corporations or other governmental entities
§ 24:67 Municipal power
§ 24:68 —To declare a nuisance
§ 24:69 —To abate nuisances
§ 24:70 —Limited to nuisances by law or in fact
§ 24:71 —To legalize nuisance
§ 24:72 Ordinances concerning nuisances
§ 24:73 —Necessity of defining nuisance
§ 24:74 Abatement by municipality
§ 24:75 —Summary abatement
§ 24:76 —By destruction or removal
§ 24:77 —By injunctive or other judicial relief
§ 24:78 —Limitations and considerations
§ 24:79 —Practice and procedure
§ 24:80 —Pleadings
§ 24:81 —Notice and hearing
§ 24:82 —Appeal and error
§ 24:83 Charging cost of abatement to property or owner
§ 24:84 Judicial relief against declaration or abatement of nuisances
§ 24:85 —Effect of municipal determination
§ 24:86 —As presumptively correct
§ 24:87 —As persuasive on courts
§ 24:88 —As conclusive on courts
§ 24:89 —Nuisances per se or under statute
§ 24:90 —In doubtful cases
§ 24:91 Liability for wrongful abatement
§ 24:92 Duty of city and liability for failure to abate nuisance
§ 24:93 Particular nuisances

II. PUBLIC PEACE, ORDER, MORALS, AND DECENCY

A. IN GENERAL
§ 24:94 Generally
§ 24:95 Prevention of crime
§ 24:96 —Parental responsibility laws
§ 24:97 Trespass and encroachment offenses against property
lxxiv
§ 24:98 —Antigraffiti laws

B. PRESERVATION OF PEACE AND ORDER

§ 24:99 Disturbing the peace and disorderly conduct
§ 24:100 —Sufficiency of offense description
§ 24:101 Construction of ordinance
§ 24:102 —What constitutes and proof
§ 24:103 —Disturbance of peace of community or others
§ 24:104 —Occurrence in public or private place
§ 24:105 —Disturbance arising from religious activities
§ 24:106 —Use of sound amplifiers and trucks
§ 24:107 Proscribing the use of “fighting words” in public
§ 24:108 Prohibiting harassing telephone calls or texts
§ 24:109 Vagrancy
§ 24:110 —What constitutes and proof
§ 24:111 —Homeless persons
§ 24:112 Sex offender regulations
§ 24:113 Curfew laws
§ 24:114 Regulation of gang activity

C. OBSCENITY, PROSTITUTION, AND DISORDERLY HOUSES

§ 24:115 Regulation
§ 24:116 Public indecent exposure, lewdness
§ 24:117 Obscene language
§ 24:118 Obscene publications and matter
§ 24:119 Obscene films and broadcasts
§ 24:120 Regulation of contraceptive devices
§ 24:121 Prevention of sexually-transmitted diseases
§ 24:122 Prohibiting prostitution or solicitation
§ 24:123 Prohibiting the patronizing of prostitutes
§ 24:124 Prohibiting pimping, pandering, or promotion of prostitution
§ 24:125 Property used for criminal conduct
§ 24:126 —Abatement or suppression
§ 24:127 —What constitutes and proof
§ 24:128 —Leasing or renting premises for purpose
§ 24:129 Regulation of massage parlors
§ 24:130 —Specific regulations
§ 24:131 —Licenses and permits
§ 24:132 Regulation of adult businesses
§ 24:133 —Nude dancing and establishments that serve alcohol
§ 24:134 —Requirements and basis for regulation
§ 24:135 —Secondary effects as basis of regulation
§ 24:136 —Licensing of adult businesses
§ 24:137 —Location of adult businesses
§ 24:138 —No-touch provisions; buffer zones
§ 24:139 —Other aspects of adult businesses

D. GAMING
§ 24:140 Generally
§ 24:141 What constitutes and proof
§ 24:142 Municipal power
§ 24:143 Relationship of municipal and state regulation
§ 24:144 Gaming or gambling houses
§ 24:145 —As nuisances
§ 24:146 —What constitutes and proof
§ 24:147 Riverboat gambling
§ 24:148 Gaming devices, means and indicia
§ 24:149 Card playing
§ 24:150 Betting and betting establishments
§ 24:151 —Bookmaking and pool selling
§ 24:152 Slot machines
§ 24:153 —Effect of state law and regulation
§ 24:154 —Whether or not gambling devices
§ 24:155 —Regulation of slot machines not gambling devices
§ 24:156 Electronic gaming, pinball, marble, table, and similar machines and games
§ 24:157 —Effect of state law and regulation
§ 24:158 —For gambling or skill and pleasure
§ 24:159 Vending machines
§ 24:160 Lotteries
§ 24:161 —Effect of state law and regulation
§ 24:162 —What constitutes and proof
§ 24:163 Gifts or prizes
§ 24:164 Trading stamps
§ 24:165 Bowling alleys
§ 24:166 Pool and billiard halls, tables, and games
§ 24:167 Seizure, confiscation, and destruction of apparatus

lxxvi
### Table of Contents

- § 24:168 — Of money
- § 24:169 Injunctive and other judicial relief

#### E. INTOXICATING AND NONINTOXICATING BEVERAGES

- § 24:170 Generally
- § 24:171 Private rights and privileges
- § 24:172 Municipal power
- § 24:173 — Basis
- § 24:174 — Extent and limitations
- § 24:175 — Power to regulate as power to prohibit
- § 24:176 Effect of state statutes and policy
- § 24:177 — As requiring conformity of ordinances
- § 24:178 Local option
- § 24:179 Manufacture and transportation
- § 24:180 Possession, keeping, purchase, or drinking
- § 24:181 Sales
- § 24:182 — Areas, districts, limits and sites
- § 24:183 — Proximity to residence, school, church, other place of sale, etc.
- § 24:184 — Bars, stores and other establishments
- § 24:185 — Adult businesses
- § 24:186 — Leasing premises for liquor place
- § 24:187 — Municipal dispensary
- § 24:188 — Hours of sale
- § 24:189 — Sales on Sunday, holidays, or other days
- § 24:190 Liquor places or selling as nuisance; abatement
- § 24:191 Regulations as to minors
- § 24:192 Bartenders and other employees
- § 24:193 Intoxication and drinking
- § 24:194 — In public places
- § 24:195 — Driving under influence of intoxicating liquor
- § 24:196 Enforcement of ordinances; search and seizure; penalties
- § 24:197 Judicial proceedings and relief
- § 24:197.1 Nonintoxicating beverages

#### F. SUNDAY AND HOLIDAY OBSERVANCE

- § 24:197.2 Generally
- § 24:197.3 Basis of municipal power
§ 24:197.4 Reasonableness
§ 24:197.5 —Conformity to statute
§ 24:197.6 —Uniformity; classifications
§ 24:197.7 —Illustrations
§ 24:197.8 Exceptions
§ 24:197.9 —Persons whose Sabbath is not Sunday
§ 24:197.10 Hours of business
§ 24:197.11 Holiday observance
§ 24:197.12 Particular businesses and activities

Volume 7

III. PUBLIC AMUSEMENTS

§ 24:198 Generally
§ 24:199 Theaters, movies, and shows
§ 24:200 —Specific regulations
§ 24:201 Censorship
§ 24:202 —Injunctions
§ 24:203 Athletic and sporting activities, events, and places
§ 24:204 —Sports as nuisances
§ 24:205 —Boxing, wrestling matches, martial arts events
§ 24:206 —Swimming beaches, and bathing places
§ 24:207 ——Nude bathing
§ 24:208 —Skating rinks
§ 24:209 Dances, dance halls, dance schools
§ 24:210 —As nuisance
§ 24:211 —Specific regulations
§ 24:212 Night clubs, cabarets, etc.
§ 24:213 —Nude and topless dancing regulations
§ 24:214 ——Serving alcoholic beverages
§ 24:215 Endurance contests, walkathons, etc.
§ 24:216 Jukeboxes and other music machines
§ 24:217 Video game arcades
§ 24:218 Fortune-telling, palm reading, etc.
§ 24:219 Sunday Laws affecting amusements
§ 24:220 Amusements and recreation on Sunday—Shows and motion pictures

lxxviii
## IV. PUBLIC HEALTH AND SANITATION

### A. IN GENERAL

| § 24:221 | Generally |
| § 24:222 | Power of municipal corporations |
| § 24:223 | —Basis |
| § 24:224 | —Nature and extent |
| § 24:225 | Health boards and officials; functions and powers |
| § 24:226 | Ordinances and regulations |
| § 24:227 | —Extraterritorial operation |
| § 24:228 | —Examples of valid regulations |
| § 24:229 | Abortion regulations |
| § 24:230 | Abating unsanitary conditions as nuisances |
| § 24:231 | Hospitals and other similar municipal institutions |
| § 24:232 | Communicable, contagious, and infectious diseases |
| § 24:233 | —Sexually transmitted diseases |
| § 24:234 | —Vaccination measures |
| § 24:235 | —Quarantine |
| § 24:236 | —Taking or destruction of property |
| § 24:237 | Cigarettes and tobacco |
| § 24:238 | Cocaine, marijuana, and other drugs |
| § 24:239 | —Drug paraphernalia |
| § 24:240 | Food regulations |
| § 24:241 | Judicial relief and proceedings |

### B. CONTROL, COLLECTION, AND DISPOSAL OF WASTE

| § 24:242 | Generally |
| § 24:243 | Hazardous waste |
| § 24:244 | Removal of dead animals, manure |
| § 24:245 | Recycling |
| § 24:246 | Garbage and refuse |
| § 24:247 | —As nuisance |
| § 24:248 | —What constitutes; property rights |
| § 24:249 | —Specific regulations and measures |
| § 24:250 | Assessments for garbage removal |
| § 24:251 | Removal under public contract |
| § 24:252 | —Requirements, limitations, and considerations |
C. SEWERAGE, DRAINAGE, AND WATER SUPPLY

§ 24:256  Sewerage and drainage
§ 24:257  —As nuisance
§ 24:258  —Specific regulations
§ 24:259  —Assessment of costs
§ 24:260  Sewage systems and toilets
§ 24:261  —Requiring toilets and sewer connections
§ 24:262  Water supply
§ 24:263  —Fluoridation
§ 24:264  —Extraterritorial regulation
§ 24:265  Wells
§ 24:266  Judicial proceedings and relief

V. CEMETERIES, BURIALS, AND UNDERTAKERS

A. BURIAL OF THE DEAD AND CEMETERIES

§ 24:267  Generally
§ 24:268  Specific regulations
§ 24:269  Municipal ownership of cemeteries
§ 24:270  Cemetery as nuisance
§ 24:271  Location of cemeteries
§ 24:272  Prohibition to establish or enlarge cemeteries
§ 24:273  Prohibition of interments
§ 24:274  Discontinuance of cemeteries
§ 24:275  Crematories
§ 24:276  Judicial proceedings and relief

B. FUNERAL AND UNDERTAKING ESTABLISHMENTS

§ 24:277  Generally
§ 24:278  As nuisance
§ 24:279  Judicial proceedings and relief
§ 24:280  Admission taxes
§ 24:281  Ticket pricing; scalping
VI. ANIMALS; KEEPING AND SLAUGHTERING

A. IN GENERAL
§ 24:282 Generally
§ 24:283 Wild or exotic animals
§ 24:284 Cruelty to animals; anti-cruelty regulations

B. DOGS AND CATS
§ 24:285 Generally
§ 24:286 Barking as nuisance
§ 24:287 Vicious dogs; dangerous breeds
§ 24:288 Dog kennels, pounds.
§ 24:289 Vaccination requirements
§ 24:290 Muzzling
§ 24:291 Running at large; leash laws
§ 24:292 Destruction, impoundment or other disposition
§ 24:293 Liability of owners

C. LIVESTOCK
§ 24:294 Generally
§ 24:295 Cattle
§ 24:296 Hogs and hogpens
§ 24:297 —As a nuisance
§ 24:298 Horses and livery stables
§ 24:299 —As nuisance
§ 24:300 Poultry keeping
§ 24:301 Beekeeping
§ 24:302 Livestock auction and market places
§ 24:303 Animals running at large
§ 24:304 —As nuisance
§ 24:305 —Impounding, forfeiture, sale, or other disposition
§ 24:306 —Procedures for sale
§ 24:307 —Notice and hearing
§ 24:308 —Duty and liability of municipality
§ 24:309 Liability for damages caused by livestock
§ 24:310 Diseased animals; quarantine, destruction
§ 24:311 Judicial proceedings and relief

D. SLAUGHTERING
§ 24:312 Generally
§ 24:313 As nuisance
§ 24:314 Regulation
§ 24:315 Prohibition
§ 24:316 Restrictions as to location
§ 24:317 Judicial proceedings and relief

VII. INDUSTRY, COMMERCE, TRADE, AND OCCUPATIONS

A. IN GENERAL
§ 24:318 Generally; scope of treatment
§ 24:319 Regulation
§ 24:320 —Basis and extent
§ 24:321 —Limitations and considerations
§ 24:322 Prohibition
§ 24:323 Restriction as to location
§ 24:324 Judicial proceedings and relief

B. REGULATION OF BUSINESS HOURS
§ 24:325 Generally
§ 24:326 Requisites
§ 24:327 —Reasonableness, uniformity, nondiscrimination
§ 24:328 Specific businesses
§ 24:329 —Restaurants and bars
§ 24:330 —Adult businesses

C. SPECIFIC INDUSTRIES, BUSINESSES, OCCUPATIONS AND TRADES
§ 24:331 Generally
§ 24:332 Moneylending and pawnbrokers
§ 24:333 Barbershops, beauty salons
§ 24:334 Laundries and dry cleaners
§ 24:335 Plumbers
§ 24:336 Garages
§ 24:337 —As nuisance
§ 24:338 —Location
§ 24:339 —Consent of property owners
§ 24:340 —Effect on existing garages
§ 24:341 —Judicial proceedings and relief
§ 24:342 Automobile service stations

lxxxi
TABLE OF CONTENTS

§ 24:343 —As nuisance
§ 24:344 —Location
§ 24:345 —Consent of property owners
§ 24:346 —Effect of regulation on existing stations
§ 24:347 —Judicial proceedings and relief
§ 24:348 Junk, junkyards and secondhand dealers
§ 24:349 Junk, junkyards and secondhand dealers—Nuisance
§ 24:350 —Limitations and considerations
§ 24:351 —Location
§ 24:352 —Judicial proceedings and relief
§ 24:353 Quarries and quarrying operations
§ 24:353.50 Alternative energy systems
§ 24:353.75 Pet breeding and sales

D. MARKETS

§ 24:354 Generally
§ 24:355 Public markets
§ 24:356 —In street or highway
§ 24:356.50 Miscellaneous nuisances
§ 24:357 Public markets—Change and discontinuance
§ 24:358 —Leases, assignments, management contracts
§ 24:359 —Market stands, stalls, and privileges
§ 24:360 —Rights and duties of lessees, licensees, and permittees
§ 24:361 Regulation of private markets
§ 24:362 —Location
§ 24:363 —Days and hours
§ 24:364 Auctions and auctioneers

E. HAWKING, PEDDLING, SOLICITING, AND CANVASSING

§ 24:365 Generally
§ 24:366 Prohibition
§ 24:367 Conflict with state or federal law
§ 24:368 Persons subject to municipal measures
§ 24:369 On streets
§ 24:369.50 Roadside solicitation of employment
§ 24:370 On streets—Standing of peddler’s vehicle in street
§ 24:371 —Outcry, ringing, and other noise by peddlers
§ 24:372 —Sidewalk solicitation
§ 24:373 Residential and house-to-house soliciting
§ 24:374 Patronage drumming by businesses

F. BILLBOARDS, SIGNS, HANDBILLS, AND ADVERTISING
§ 24:375 Regulations of billboards, signs, and outdoor advertising
§ 24:376 —Limitations and requisites
§ 24:377 —Esthetic considerations
§ 24:378 —Effect as to existing structures
§ 24:379 —Types of regulations
§ 24:380 —Portable display signs
§ 24:381 —Proximity to streets, driveways, parks
§ 24:382 —“For sale” signs on own premises
§ 24:383 —Consent of other property owners
§ 24:384 —Abatement, removal, and destruction
§ 24:385 Regulation of handbills, leaflets and the like
§ 24:386 Regulation of advertising, handbills, circulars, and matter—Limitations, requisites, and considerations
§ 24:387 Display of commercial banners, placards, etc
§ 24:388 Vehicles carrying advertising
§ 24:389 Aircraft used for advertising

G. FAIR TRADE MEASURES
§ 24:390 Prevention of fraud
§ 24:391 Price regulation
§ 24:392 Weights and measures
§ 24:393 —Public scales, weighing, and measuring
§ 24:394 —Fees

H. PURITY AND QUALITY OF FOODS AND DRUGS
§ 24:395 Generally
§ 24:396 Meat
§ 24:397 Food handling requirements

I. REGULATION OF DAIRIES, MILK, AND DAIRY PRODUCTS
§ 24:398 Generally

lxxxiv
§ 24:399 Conformity or conflict with state law
§ 24:400 Price control
§ 24:401 Other milk products
§ 24:402 Milk quality; standards, grading, labeling
§ 24:403 —Pasteurization and certification
§ 24:404 —Contents and food value
§ 24:405 —Contaminated, adulterated, or watered milk
§ 24:406 Dairies, premises, equipment, and feeding conditions
§ 24:407 —Containers
§ 24:408 Inspection of premises, equipment, milk
§ 24:409 Inspection and tests of cattle
§ 24:410 Seizure, destruction, and forfeiture
§ 24:411 Examination and blood tests of milk handlers and others
§ 24:412 Judicial proceedings and relief

§ 24:413 Generally
§ 24:414 Municipal legislation on civil rights
§ 24:415 —Sexual orientation

§ 24:416 Generally
§ 24:417 Preemption under the National Labor Relations Act
§ 24:418 Regulation of hours of work
§ 24:419 —City employee or public contracts
§ 24:420 Regulation of wages
§ 24:421 Workers compensation
§ 24:422 Solicitation of union membership
§ 24:423 Picketing and strikes
§ 24:424 —Use of streets or other public places
§ 24:425 —Peaceful picketing and measures
§ 24:426 —Use of force, violence, threats, intimidation
§ 24:427 —Carrying and displaying of signs, etc.
§ 24:428 —Judicial proceedings and relief

VIII. POLITICAL, LABOR, SOCIAL, AND RELIGIOUS ACTIVITIES, SPEECH, AND LITERATURE

A. IN GENERAL

B. EMPLOYERS AND EMPLOYEES
C. POLITICAL, CONTROVERSIAL, AND INFORMATIONAL SPEECH AND WRITING

§ 24:429 Generally
§ 24:430 Commercial speech
§ 24:431 Forum analysis; time, place, and manner restrictions
§ 24:432 —Classification of forums
§ 24:433 —Religious activities
§ 24:434 —Limited public forum
§ 24:435 —Sex offender restrictions
§ 24:436 —Access to the Internet
§ 24:437 —Discretion of officials; permits
§ 24:438 Distribution of leaflets, pamphlets, and the like
§ 24:439 —Door-to-door distribution
§ 24:440 —Hospital “no solicitation” rules
§ 24:441 Political signs, posters, etc.

D. RELIGIOUS LITERATURE, SOLICITATION, AND ACTIVITIES

§ 24:442 Generally
§ 24:443 Solicitation of members and distribution of literature
§ 24:444 —At private residences
§ 24:445 —On streets and in public places
§ 24:446 Display of signs, symbols, and the like
§ 24:447 —Holiday displays
§ 24:448 —Ten Commandments displays
§ 24:449 Religious meetings and parades
§ 24:450 —Legislative prayer
§ 24:451 Engagement of children in religious activities
§ 24:452 Flag salutation, patriotism oath, loyalty tests
§ 24:453 Effect of discretion in enforcement officials

Volume 7A

IX. FIRE AND EXPLOSIONS; GUNS AND WEAPONS; ATMOSPHERIC POLLUTION

A. FIRE REGULATIONS

§ 24:457 Generally; preemption

lxxvii
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24:458</td>
<td>Extraterritorial protection</td>
</tr>
<tr>
<td>§ 24:459</td>
<td>Protective equipment and installations</td>
</tr>
<tr>
<td>§ 24:460</td>
<td>— Fire and heating apparatus</td>
</tr>
<tr>
<td>§ 24:461</td>
<td>— Sprinkling and extinguishing equipment</td>
</tr>
<tr>
<td>§ 24:462</td>
<td>— Alarm and communicating systems</td>
</tr>
<tr>
<td>§ 24:463</td>
<td>— Escapes, doors, and exits</td>
</tr>
<tr>
<td>§ 24:464</td>
<td>— Gas or draft shutoff and fire-retarding equipment</td>
</tr>
<tr>
<td>§ 24:465</td>
<td>Fire and safety drills</td>
</tr>
<tr>
<td>§ 24:466</td>
<td>Fire regulations as to particular buildings</td>
</tr>
<tr>
<td>§ 24:467</td>
<td>— Hotels</td>
</tr>
<tr>
<td>§ 24:468</td>
<td>— Apartments, condominiums, and rooming houses</td>
</tr>
<tr>
<td>§ 24:469</td>
<td>— Theaters</td>
</tr>
<tr>
<td>§ 24:470</td>
<td>Garbage, trash, and grass fires, etc.</td>
</tr>
</tbody>
</table>

**B. FIREWORKS, COMBUSTIBLES, AND EXPLOSIVES**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24:471</td>
<td>Fireworks</td>
</tr>
<tr>
<td>§ 24:472</td>
<td>Blasting</td>
</tr>
<tr>
<td>§ 24:473</td>
<td>Storage of explosives</td>
</tr>
<tr>
<td>§ 24:474</td>
<td>Limiting amount</td>
</tr>
<tr>
<td>§ 24:475</td>
<td>Proximity to buildings</td>
</tr>
<tr>
<td>§ 24:476</td>
<td>Transportation</td>
</tr>
<tr>
<td>§ 24:477</td>
<td>Inspection regulations</td>
</tr>
<tr>
<td>§ 24:478</td>
<td>Gasoline and oil storage and transportation</td>
</tr>
<tr>
<td>§ 24:479</td>
<td>— Storage regulations</td>
</tr>
<tr>
<td>§ 24:480</td>
<td>— Transportation regulations</td>
</tr>
<tr>
<td>§ 24:481</td>
<td>Oil and gas wells, refineries, and works</td>
</tr>
</tbody>
</table>

**C. FIRE LIMITS OR DISTRICTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24:482</td>
<td>Generally</td>
</tr>
<tr>
<td>§ 24:483</td>
<td>Requisites and considerations as to regulation</td>
</tr>
<tr>
<td>§ 24:484</td>
<td>Building regulations in fire districts</td>
</tr>
<tr>
<td>§ 24:485</td>
<td>Regulations pertaining to buildings in fire districts—Prohibition of wooden buildings</td>
</tr>
<tr>
<td>§ 24:486</td>
<td>— — Repair, alteration, reconstruction, or replacement</td>
</tr>
<tr>
<td>§ 24:487</td>
<td>Removal of buildings that violate regulations</td>
</tr>
</tbody>
</table>

**D. FIREARMS AND WEAPONS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24:488</td>
<td>Firearms and weapons</td>
</tr>
</tbody>
</table>
§ 24:489 —Nuisance and negligence actions
§ 24:490 —Toy guns, stun guns, and other devices as “weapons”
§ 24:491 Carrying concealed weapons
§ 24:492 —Effect of state law
§ 24:493 Discharge of firearms within city

E. SMOKE AND OTHER ATMOSPHERIC POLLUTION

§ 24:494 General power to regulate
§ 24:495 Atmospheric pollution as nuisance
§ 24:496 Validity generally
§ 24:497 Particular regulations
§ 24:498 Persons liable; procedure, proof, and penalty

X. REGULATION OF BUILDINGS, HOUSING, AND URBAN REDEVELOPMENT

A. BUILDING REGULATIONS

§ 24:499 Generally
§ 24:500 Basis and purpose of municipal power
§ 24:501 —Aesthetic considerations
§ 24:502 Municipal building codes and ordinances
§ 24:503 —Requisites; reasonableness and certainty
§ 24:504 —Uniformity
§ 24:505 —Effect of state law
§ 24:506 —Interpretation
§ 24:507 —Operation as to existing or future buildings
§ 24:508 Particular buildings and structures
§ 24:509 —State-owned
§ 24:510 —Loft laws
§ 24:511 —Residential
§ 24:512 —Apartments and condominiums
§ 24:512.50 —Manufactured house; mobile homes
§ 24:513 —Commercial and industrial
§ 24:514 —Theaters and places of amusement
§ 24:515 —Historical properties
§ 24:516 —Swimming pools
§ 24:517 —Hotels
§ 24:518 —Schools and universities
§ 24:519 —Churches

lxxxviii
Table of Contents

§ 24:520 Material used
§ 24:521 —Wood
§ 24:522 —Fireproof materials, fireproofing
§ 24:523 Building operations; erection
§ 24:524 —Excavation
§ 24:525 —Repair, alteration, and reconstruction
§ 24:526 —What constitutes
§ 24:527 Particular parts and equipment
§ 24:528 —Foundations and floors
§ 24:529 —Doors, porches, ramps, entrances, and exits
§ 24:530 —Windows, ventilation, air, lighting, etc
§ 24:531 —Walls
§ 24:532 —Roofs, gutters, spouts, etc
§ 24:533 —Boilers, elevators, hoistways, and hatchways
§ 24:534 —Stairways
§ 24:535 —Electrical apparatus
§ 24:536 —Plumbing and sanitation
§ 24:537 —Walks and ways adjacent to buildings
§ 24:538 —Lot conditions
§ 24:539 Location of buildings
§ 24:540 —Setback, building, and boundary lines
§ 24:541 —Distances between buildings
§ 24:542 —Number of buildings or dwellings on lot
§ 24:543 —Front on street or alley
§ 24:544 Access to street or road
§ 24:545 Size of buildings; floor area
§ 24:546 Height restrictions
§ 24:547 —Esthetic considerations
§ 24:548 —Reasonableness, uniformity, and other requisites
§ 24:549 —Particular restrictions
§ 24:550 Use of buildings
§ 24:551 —Prohibition of use and occupancy
§ 24:552 Administration and enforcement of regulations
§ 24:553 —Duty to enforce building regulations
§ 24:554 —Requisites and limitations as to officials power
§ 24:555 —Submission and approval of plans and specifications
§ 24:556 —Inspection

lxxxix
§ 24:557 Buildings that are public nuisances
§ 24:558 —Condemnation and abatement
§ 24:559 —Vacation
§ 24:560 —Removal or destruction
§ 24:561 ——Determination that building is dangerous/unsafe
§ 24:562 ——Summary removal in emergencies
§ 24:563 ——Liens and reimbursement for destruction; damages
§ 24:564 ——Sufficient notice and hearing
§ 24:565 Judicial proceedings and relief
§ 24:566 Judicial notice

B. REGULATION OF HOUSING AND URBAN RENEWAL

§ 24:567 Municipal housing regulation generally
§ 24:568 —Limitations on regulation
§ 24:569 Urban redevelopment plan requirements
§ 24:570 —Precondition of “blight”
§ 24:571 —Limitations on powers
§ 24:572 —Funding for urban redevelopment
§ 24:573 —Specificity of urban renewal plan
§ 24:574 —Federal law; discrimination in urban development
§ 24:575 Judicial review
§ 24:576 Rent control ordinances
§ 24:577 —Conformity with federal and state law
§ 24:578 Conversion of housing to condominiums, cooperatives and commercial uses
§ 24:579 Public housing tenants’ rights; tenancy violations
§ 24:580 —Eviction for illegal conduct
§ 24:581 Restrictions on landlords
§ 24:582 Mandatory cable access to rental property
§ 24:583 Mobile home and trailer parks

XI. POLICE REGULATION OF STREETS AND PUBLIC PLACES; MEETINGS AND PARADES

A. IN GENERAL

§ 24:584 Generally

xc
TABLE OF CONTENTS

§ 24:585 Right or privilege to use streets and public places
§ 24:586 —Newsracks
§ 24:587 Duties in use of streets and public places
§ 24:588 Ways or area subject to police power
§ 24:589 —Street lines as determinative
§ 24:590 Cleaning and repair of streets and sidewalks
§ 24:591 Loitering, congregating, camping in streets and public places
§ 24:592 —Homeless persons
§ 24:593 —Picketing
§ 24:594 Music, noise, and sound on streets

B. POLICE PROTECTION OF PUBLIC USE OF STREETS AND PUBLIC PLACES

§ 24:595 Generally
§ 24:596 Municipal regulation and prohibition
§ 24:597 Interference with public use as nuisance
§ 24:598 —Temporary or permanent character
§ 24:599 Interference with public use; as nuisance—Consented to by municipality
§ 24:600 Removal of cause of interference
§ 24:601 —Estoppel, waiver, laches, time limitation
§ 24:602 —Mode and manner
§ 24:603 —Summary action
§ 24:604 —Where notice required
§ 24:605 —Through judicial proceeding
§ 24:606 —Wrongful removal
§ 24:607 Particular matters
§ 24:608 —Signs, awnings, marquees, and similar structures
§ 24:609 Police protection of streets as to particular matters—Poles, wire, pipes, underground conduits, etc.
§ 24:610 Judicial proceedings and relief

C. MEETINGS AND PARADES

§ 24:611 Right or privilege to assemble or parade
§ 24:612 Regulation
§ 24:613 —Signs, banners, and the like
§ 24:614 —Insurance requirements
§ 24:615 Prohibition
§ 24:616 Reasonableness
§ 24:617 Time, place and route; stands; notice to authorities
§ 24:618 Dispersal by police

XII. VEHICLES, TRAFFIC, AND TRANSPORTATION

A. IN GENERAL
§ 24:619 Generally
§ 24:620 Rights, privileges, and duties of persons
§ 24:621 Requisites and limitations
§ 24:622 [Reserved]
§ 24:623 [Reserved]
§ 24:624 Regulation as to particular matters—Pedestrians and pedestrian crossings
§ 24:625 —Horses and horse-drawn vehicles
§ 24:626 —Bicycles and mopeds
§ 24:627 —Motorcycles
§ 24:628 —Horses, bicycles, vehicles, on sidewalks
§ 24:629 —Anti-cruising ordinances
§ 24:630 Judicial notice
§ 24:631 Judicial proceedings and relief

B. TRAFFIC
§ 24:632 Generally
§ 24:633 Scope and extent of municipal regulation
§ 24:634 Conformity of municipal with state regulation
§ 24:635 Use of camera systems for traffic violations
§ 24:636 Direction and routing
§ 24:637 —At intersections
§ 24:638 —By signs and other devices
§ 24:639 Regulation and direction by police
§ 24:640 Exclusion from certain streets

C. MOTOR VEHICLES
§ 24:641 Generally
§ 24:642 Relationship between municipal and state control
§ 24:643 —Effect of state motor vehicle codes
§ 24:644 —In particular matters
§ 24:645 Requisites of municipal regulation

xcii
**Table of Contents**

§ 24:646 Motor vehicles on private grounds  
§ 24:647 Operation and equipment  
§ 24:648 Tires  
§ 24:649 Size and weight of vehicles and loads  
§ 24:650 Inspection of vehicles  
§ 24:651 Towing on streets; public and private  
§ 24:652 Motor caravans  
§ 24:653 Drivers  
§ 24:654 —Age  
§ 24:655 —Drunk driving  
§ 24:656 —Duty in case of accident  
§ 24:657 Financial responsibility of owners and operators  

**D. SPEED LIMITS AND REGULATION**  
§ 24:658 Generally  
§ 24:659 Effect of state regulation  
§ 24:660 General speed limit  
§ 24:661 Special speed limits—Place, time, and circumstances  
§ 24:662 Vehicles exempted from speed regulation  

**E. PARKING ORDINANCES AND REGULATION**  
§ 24:663 Regulation of vehicles stopped or standing  
§ 24:664 Parking regulations  
§ 24:665 —Reasonableness and other requirements  
§ 24:666 Parking rights and privileges  
§ 24:667 What constitutes parking  
§ 24:668 Parking in particular places  
§ 24:669 —Congested and other areas  
§ 24:670 —Municipal parking lots  
§ 24:671 —On-street reserved parking  
§ 24:672 —Private parking  
§ 24:673 Time restrictions  
§ 24:674 Parking meters  
§ 24:675 Enforcement of parking regulations  

**F. MOTOR CARRIERS, TRUCKS, AND COMMERCIAL VEHICLES IN GENERAL**  
§ 24:676 Generally
§ 24:677 Requisites of regulation
§ 24:678 State law and regulation
§ 24:679 Carriers; Public or private
§ 24:680 Routing; restrictions as to streets
§ 24:681 Moving services
§ 24:682 “Drive-it-yourself” and rented vehicles
§ 24:683 Financial responsibility

G. TAXICABS
§ 24:684 Generally
§ 24:685 Operation of taxicabs—Rights; privileges
§ 24:686 —Grant of privilege, franchise, or contract
§ 24:687 State and federal law
§ 24:688 Requisites; reasonableness
§ 24:689 —Uniformity and nondiscrimination
§ 24:690 Financial responsibility
§ 24:691 Nonresidency of owners or operators
§ 24:692 Drivers
§ 24:693 Number of taxicabs; number of passengers
§ 24:694 Charges or fares
§ 24:695 Signs, meters; display of rates and mileage
§ 24:696 Stands, agencies, solicitation of passengers
§ 24:697 —Exclusive, favored or specific stands
§ 24:697.50 Ridesharing services
§ 24:698 Judicial proceedings and relief

XIII. MOTOR BUSES, STREET RAILWAYS, AND RAILROADS

A. IN GENERAL; RIGHTS AND DUTIES OF CARRIERS
§ 24:699 Generally; scope of treatment
§ 24:700 Municipal power
§ 24:701 Financial responsibility
§ 24:702 Right or privilege to operate
§ 24:703 Duties of carriers
§ 24:704 Rights and duties of pedestrians, motorists, and others
§ 24:705 Municipal regulation as nuisance prevention
§ 24:706 Judicial proceedings and relief

B. MUNICIPAL REGULATION GENERALLY
§ 24:707 Regulation of motor buses

xciv
TABLE OF CONTENTS

§ 24:708 —Reasonableness, uniformity, and other requisites
§ 24:709 —State regulation
§ 24:710 —Interurban, extraurban, and interstate buses
§ 24:711 —School, hotel, airport, and special bus services
§ 24:712 Regulation of street railways
§ 24:713 —Reasonableness, uniformity, and other requisites
§ 24:714 Regulation of railroads
§ 24:715 —State and federal regulation

C. ROUTES AND PASSENGER STOPS

§ 24:716 Routes and termini
§ 24:717 Exclusions from certain streets or areas
§ 24:718 Passenger stations, depots, and stops

D. OPERATION, SPEED, EQUIPMENT, AND SERVICE

§ 24:719 Generally
§ 24:720 Employees
§ 24:721 —Number of employees; full crew requirements
§ 24:722 Speed limits and regulation
§ 24:723 —Reasonableness, uniformity, and other requisites
§ 24:724 —State regulation
§ 24:725 Traffic regulations; due care
§ 24:726 Traffic stops
§ 24:727 Signals and warnings
§ 24:728 —Whistles or bells
§ 24:729 Equipment
§ 24:730 —Lights
§ 24:731 Service
§ 24:732 —Schedules
§ 24:733 Fares and transfers; reports to city

E. TRACKS AND ROADBED

§ 24:734 Generally; construction and maintenance
§ 24:735 Location in street
§ 24:736 Paving
§ 24:737 Conformity to grade and surfacing of street
§ 24:738 Removal of ice and snow
§ 24:739 Sprinkling
§ 24:740 Fencing

F. RAILROAD AND STREET RAILWAY CROSSINGS OF STREETS

§ 24:741 Generally
§ 24:742 State regulation
§ 24:743 Construction and maintenance
§ 24:744 Operation at crossings
§ 24:745 —Right-of-way and duty to stop
§ 24:746 —Obstruction of streets by trains
§ 24:747 Precautions at crossings
§ 24:748 —Lighting
§ 24:749 —Guarding; guards
§ 24:750 —Gates
§ 24:751 Safety equipment; precautions at crossings—Signals and signs
§ 24:752 Precautions at crossings—Warnings
§ 24:753 —Speed and care
§ 24:754 Railways at street crossings or intersections
§ 24:755 Crossings by one railroad of another

G. SEPARATED CROSSINGS, SUBWAYS AND ELEVATED WAYS

§ 24:756 Generally
§ 24:757 State law and regulation
§ 24:758 By and at expense of railroad
§ 24:759 At municipal expense, in whole or part
§ 24:760 Reasonableness of requirement; considerations
§ 24:761 Franchise or contract with railroad
§ 24:762 Judicial proceedings and relief

Volume 8

CHAPTER 25. ZONING

I. IN GENERAL

A. INTRODUCTION

§ 25:1 Nature and scope
### Table of Contents

§ 25:2 Need and desirability  
§ 25:3 History  
§ 25:4 Comprehensive municipal zoning  
§ 25:5 Constitutionality and validity generally  
§ 25:6 —Facial challenge  
§ 25:7 —Substantive due process  
§ 25:8 —Religious freedom concerns  
§ 25:9 Adoption generally  
§ 25:10 Definitions and distinctions  
§ 25:11 City zoning and planning distinguished  
§ 25:12 Deeds restrictions compared and contrasted  
§ 25:13 Zoning and police power  
§ 25:14 Zoning and eminent domain  
§ 25:15 Zoning and nuisances  
§ 25:16 Zoning and licensing  
§ 25:17 Effect of emergencies on zoning  
§ 25:18 Persons, property and uses bound  
§ 25:19 —Public property and uses  
§ 25:20 —Federal property and uses

### B. PURPOSES OF ZONING

§ 25:21 In general  
§ 25:22 Necessity of purpose within police power  
§ 25:23 Public good or general welfare  
§ 25:24 —What constitutes  
§ 25:25 Public health  
§ 25:26 Environmental protection and conservation  
§ 25:27 Public safety  
§ 25:28 Appropriate uses of land  
§ 25:29 Preservation of character of neighborhood  
§ 25:30 Stabilization and protection of property uses and values  
§ 25:31 Enhancement of value and utility of property  
§ 25:32 Safeguarding of future development and use  
§ 25:33 Stability of plan and conditions  
§ 25:34 Esthetic considerations  
§ 25:35 —In connection with other objectives  
§ 25:36 —Justification on primarily esthetics  
§ 25:37 —Historical preservation

### C. POWER TO ZONE

§ 25:38 In general
§ 25:39 Under eminent domain
§ 25:40 Under police power
§ 25:41 Delegation of power—Zoning by municipalities
§ 25:42 —Zoning commissions and boards
§ 25:43 —Zoning by counties and townships
§ 25:44 Mode of delegation
§ 25:45 Limitations on power
§ 25:46 Compensation for taking or damaging property

D. BALANCING OF PUBLIC INTEREST IN ZONING AND PRIVATE INTERESTS IN PROPERTY

§ 25:47 In general
§ 25:48 Subordination of property to zoning
§ 25:49 Protection of property against wrongful zoning
§ 25:50 Reasonableness as measure
§ 25:51 Effect of hardship, loss or gain to owner
§ 25:52 —Unique hardship or complete loss
§ 25:53 Balancing of interests in each case as necessary

II. ZONING LAWS AND REGULATIONS

A. CONSTITUTIONAL, STATUTORY AND CHARTER PROVISIONS

§ 25:54 Constitutional provisions
§ 25:55 Zoning statutes
§ 25:56 —Standard Zoning Act
§ 25:57 —Legislative authority
§ 25:58 Charter provisions

B. ORDINANCES AND REGULATIONS

§ 25:59 Generally
§ 25:60 Legislative function
§ 25:61 Legislative discretion
§ 25:62 Notice taken
§ 25:63 Requisites and validity
§ 25:64 —Conformity to other laws
§ 25:65 —Telecommunications
§ 25:66 —Certainty and definiteness
§ 25:67 —Reasonableness
§ 25:68 —Uniformity and nondiscrimination
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 25:69</td>
<td>Standard to govern administration</td>
</tr>
<tr>
<td>§ 25:70</td>
<td>Invalidity in part or particular application</td>
</tr>
<tr>
<td>§ 25:71</td>
<td>Temporary or interim measures</td>
</tr>
<tr>
<td>§ 25:72</td>
<td>Amendments and repeal</td>
</tr>
<tr>
<td>§ 25:73</td>
<td>Opposing rights and privileges</td>
</tr>
<tr>
<td>§ 25:74</td>
<td>Power and discretion of municipal authorities</td>
</tr>
<tr>
<td>§ 25:75</td>
<td>Requisites and validity</td>
</tr>
<tr>
<td>§ 25:76</td>
<td>Grounds</td>
</tr>
<tr>
<td>§ 25:77</td>
<td>Public purpose</td>
</tr>
<tr>
<td>§ 25:78</td>
<td>Change of conditions</td>
</tr>
<tr>
<td>§ 25:79</td>
<td>Effect on earlier enactments</td>
</tr>
</tbody>
</table>

#### C. CONSTRUCTION OF ZONING MEASURES AND PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 25:80</td>
<td>Generally</td>
</tr>
<tr>
<td>§ 25:81</td>
<td>Strict construction</td>
</tr>
<tr>
<td>§ 25:82</td>
<td>Liberal construction</td>
</tr>
<tr>
<td>§ 25:83</td>
<td>Effect of administrative construction</td>
</tr>
<tr>
<td>§ 25:84</td>
<td>Particular words and phrases</td>
</tr>
</tbody>
</table>

#### III. TERRITORIAL ASPECTS OF MUNICIPAL ZONING

##### A. IN GENERAL

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 25:85</td>
<td>Generally</td>
</tr>
<tr>
<td>§ 25:86</td>
<td>Power and discretion in municipal authorities</td>
</tr>
<tr>
<td>§ 25:87</td>
<td>Zoning plans</td>
</tr>
<tr>
<td>§ 25:88</td>
<td>Temporary plans</td>
</tr>
<tr>
<td>§ 25:89</td>
<td>Comprehensive plans</td>
</tr>
<tr>
<td>§ 25:90</td>
<td>Factors and elements</td>
</tr>
<tr>
<td>§ 25:91</td>
<td>Limited and partial zoning</td>
</tr>
<tr>
<td>§ 25:92</td>
<td>Illegal spot zoning</td>
</tr>
<tr>
<td>§ 25:93</td>
<td>Valid spot zoning</td>
</tr>
<tr>
<td>§ 25:94</td>
<td>Streets, parks, airports, water fronts, etc.</td>
</tr>
<tr>
<td>§ 25:95</td>
<td>Area subject to zoning</td>
</tr>
<tr>
<td>§ 25:96</td>
<td>Creation and classification of districts</td>
</tr>
<tr>
<td>§ 25:97</td>
<td>Power and discretion in zoning authorities</td>
</tr>
<tr>
<td>§ 25:98</td>
<td>Purpose, reasonableness and uniformity</td>
</tr>
<tr>
<td>§ 25:99</td>
<td>Designation and delimitation</td>
</tr>
<tr>
<td>§ 25:100</td>
<td>Boundaries, size and shape</td>
</tr>
<tr>
<td>§ 25:101</td>
<td>Street as boundary</td>
</tr>
<tr>
<td>§ 25:102</td>
<td>Buffer areas</td>
</tr>
</tbody>
</table>
§ 25:103 —Floating zones
§ 25:104 —Planned unit developments
§ 25:105 Rezoning and extension of districts
§ 25:106 —Conditional zoning
§ 25:107 —Contract zoning
§ 25:108 —Grounds and requisites
§ 25:109 —Opposing rights and privileges

B. RESIDENTIAL DISTRICTS
§ 25:110 Generally
§ 25:111 Justification
§ 25:112 Power and discretion in zoning authorities
§ 25:113 Requirements
§ 25:114 Classes
§ 25:115 —Single-family house districts
§ 25:116 Area included
§ 25:117 —Effect of existing uses within area
§ 25:118 —Effect of existing uses near area
§ 25:119 —Inclusion of vacant land
§ 25:120 Territorial and status changes

C. APARTMENT, DUPLEX, MULTIPLE-FAMILY DWELLING DISTRICTS
§ 25:121 Generally
§ 25:122 Reasonableness, uniformity and other requisites
§ 25:123 Territorial and status changes

D. BUSINESS DISTRICTS
§ 25:124 Generally
§ 25:125 Reasonableness, uniformity and other requisites
§ 25:126 Classes of business districts
§ 25:127 Territorial and status changes
§ 25:128 Residential district in business area
§ 25:129 Shopping and business center in residential district

E. INDUSTRIAL ZONES
§ 25:130 Generally
§ 25:131 Territorial and status changes
TABLE OF CONTENTS

§ 25:132 Industrial zone containing or contained in other district

F. SUBDIVISIONS

§ 25:133 Generally
§ 25:134 Authority to review plats and impose conditions
§ 25:135 Approval or disapproval of subdivisions
§ 25:136 Dedications or “in lieu” fees
§ 25:137 —Land dedicated for open space
§ 25:138 —Linkage payments
§ 25:139 —Impact fees, developmental fees and other governmental exactions
§ 25:140 —The rational relationship or nexus test
§ 25:141 —The reasonable relationship test
§ 25:142 —Relative burden test
§ 25:143 —Specifically and uniquely attributable test
§ 25:144 —Rough proportionality test

IV. USES; RESTRICTIONS AND EXCLUSIONS

A. IN GENERAL

§ 25:145 Use control through zoning laws
§ 25:146 Uses subject to control
§ 25:147 —Prohibitions of uses
§ 25:148 Discretion of zoning authorities
§ 25:149 Exclusionary zoning
§ 25:150 Low-income housing
§ 25:151 Requisites and limitations as to restrictions
§ 25:152 Classification
§ 25:153 Differences and distinctions; discrimination
§ 25:154 Primary and accessory uses
§ 25:155 Residential uses and restrictions
§ 25:156 —Single-family uses; exclusion of apartments
§ 25:157 —Multiple-family uses; apartments
§ 25:158 —Hotels, motels, rooming houses
§ 25:159 —Mobile homes and mobile home parks
§ 25:160 —Definitions and distinctions
§ 25:161 —Group homes in residential districts
§ 25:162 —Fair Housing Act
§ 25:163 Business, occupational, and industrial uses and restrictions
§ 25:164 —Business use and premises defined
§ 25:165 —Accessory and incidental uses
§ 25:166 Home occupations
§ 25:167 Agricultural and farming uses
§ 25:168 Recreational uses
§ 25:169 Miscellaneous particular uses
§ 25:170 —Automobile storage, service, repair, sales
§ 25:171 —Oil and gas wells and storage
§ 25:172 —Shopping centers and retail establishments
§ 25:173 —Religious uses
§ 25:175 Wind turbine and solar power development
§ 25:176 Miscellaneous particular uses—Educational uses
§ 25:177 —Hospitals, nursing homes
§ 25:178 —Medical clinics, offices
§ 25:179 —Funeral homes and cemeteries
§ 25:180 —Signs and billboards
§ 25:181 —Senior housing
§ 25:182 Restrictions on proximity of certain uses to certain buildings
§ 25:183 Change of uses and restrictions
§ 25:184 Termination of restrictions
§ 25:185 Control of use of land apart from buildings
§ 25:186 Regulation of uses of vacant land

B. BUILDING RESTRICTIONS UNDER ZONING
§ 25:187 Generally
§ 25:188 Building and setback lines
§ 25:189 Rear lines
§ 25:190 Yard space and distance between buildings
§ 25:191 Minimum area, width, frontage of lots
§ 25:192 Portion of lot used for buildings
§ 25:193 Off-street parking area and access requirements
§ 25:194 Floor area, size and cubic space content of buildings
§ 25:195 Facing of buildings
§ 25:196 Conformity of new to old buildings
§ 25:197 Height restrictions under zoning
**Table of Contents**

§ 25:198  Fire protection requirements and restrictions  
§ 25:199  Dedication as condition precedent to development  

**V. PERMITS UNDER ZONING**

§ 25:200  Generally  
§ 25:201  Constitutional challenges  
§ 25:202  Nomenclature  
§ 25:203  Governing law  
§ 25:204  Purposes  
§ 25:205  Subject matter  
§ 25:206  Comprehensive permits  
§ 25:207  Consent as condition  
§ 25:208  Operation and effect  
§ 25:209  —Unlawfully issued  
§ 25:210  Estoppel  
§ 25:211  Operation and effect—Conflict with prospective zoning  
§ 25:212  —Before exclusion or regulation  
§ 25:213  —Issuance before exclusion of use  
§ 25:214  —Effect of change of position  
§ 25:215  Revocation  

**VI. VARIANCES, EXCEPTIONS AND SPECIAL USES**

**A. IN GENERAL**

§ 25:216  Statutory and ordinance provisions  
§ 25:217  Nature and purpose  
§ 25:218  —Use and area variances; tests applied  
§ 25:219  Constitutionality and validity  
§ 25:220  Public policy of minimizing variances  
§ 25:221  Interest in property  
§ 25:222  —Transfer of interest  

**B. GROUNDS**

§ 25:223  Generally  
§ 25:224  Necessity and effect of specification in ordinance  
§ 25:225  Unnecessary hardship or difficulty; definitions and comparisons
§ 25:226 Unnecessary hardship or difficulty—Self created hardship
§ 25:227 Variance by estoppel

C. REQUISITES AND GOVERNING CONSIDERATIONS
§ 25:228 Generally
§ 25:229 Public welfare
§ 25:230 Zoning measures, plans and purposes
§ 25:231 Substantial justice
§ 25:232 Uses in fact, changes in use and other factors

D. MARGINAL ADJUSTMENTS AND ACCOMMODATIONS
§ 25:233 Generally
§ 25:234 Grounds and considerations
§ 25:235 Limitations, conditions and safeguards

E. RELATION TO PARTICULAR USES AND RESTRICTIONS
§ 25:236 Miscellaneous uses
§ 25:237 Wireless telecommunications
§ 25:238 Automobile-related uses
§ 25:239 Parking lots and spaces
§ 25:240 Funeral businesses
§ 25:241 Retail establishments
§ 25:242 Building or set-back lines
§ 25:243 Oil and gas development; fracking—Definitions
§ 25:244 —Techniques and environmental concerns
§ 25:245 —Preemption
§ 25:246 Oil and gas operations—Standing to contest state statute
§ 25:247 Oil and gas operations; storage

Volume 8A

VII. NONCONFORMING USES

A. IN GENERAL
§ 25:248 General nature and definition

civ
Table of Contents

§ 25:249 Basis of right to continue nonconforming use; vested rights
§ 25:250 Nonconforming use versus nonconforming structure
§ 25:251 To what extent protected from zoning
§ 25:252 Extent subject to zoning
§ 25:253 Registration of nonconforming uses
§ 25:254 Policy to minimize nonconforming uses
§ 25:255 Construction of statutes, ordinances and regulations; preemption
§ 25:256 Effect of changes in ownership

B. ELEMENTS, REQUISITES AND PROOFS
§ 25:257 Definition and nature
§ 25:258 Existence before and when zoning becomes effective
§ 25:259 Lawful use requirement
§ 25:260 Public knowledge of use as requisite
§ 25:261 Mere intentions and preparations
§ 25:262 Substantial expenditures prior to operation; vesting rights doctrine
§ 25:263 Evidence and burden of proof

C. DURATION OF NONCONFORMING USE
§ 25:264 Generally
§ 25:265 Amortization of use
§ 25:266 —Reasonableness of amortization period
§ 25:267 —Application of rule
§ 25:268 Termination for nonuse: abandonment v. discontinuance
§ 25:269 —Common law abandonment: question of intent
§ 25:270 — —Temporary nonuse
§ 25:271 —Zoning provisions eliminating intent requirement
§ 25:272 —Voluntary destruction
§ 25:273 —Involuntary destruction
§ 25:274 —During war or emergency
§ 25:275 Resumption of nonconforming use
§ 25:276 Temporary nonconforming uses

D. EXTENT, PRESERVATION, CHANGE AND ENLARGEMENT OF USE
§ 25:277 Extent of nonconforming uses generally
§ 25:278 Preservation and continuance; minor repairs and maintenance
§ 25:279 Structural restorations and replacements
§ 25:280 —Partial destruction ordinances
§ 25:281 Change of use
§ 25:282 —To use of same or higher classification
§ 25:283 —To use of lower classification
§ 25:284 —Structural changes or substantial alterations
§ 25:285 Enlargement or extension of use
§ 25:286 —Doctrine of natural expansion
§ 25:287 —Increase in volume of business or use
§ 25:288 —Increase in area, size, and number of buildings
§ 25:289 ——Quarrying operations
§ 25:290 Uses incidental and auxiliary to nonconforming use
§ 25:291 Modernization and use of improved instrumentalities

E. PARTICULAR NONCONFORMING USES AND CHANGES
§ 25:292 Illustrations—Nonconforming uses generally
§ 25:293 —Repairs, restorations
§ 25:294 —Changes of uses
§ 25:295 —Enlargements, extensions

VIII. ZONING COMMISSIONS, BOARDS OF ADJUSTMENT, BODIES, AND OFFICIALS

A. IN GENERAL
§ 25:296 General nature of administrative organization
§ 25:297 Delegation of powers and functions to boards and agencies
§ 25:298 —Administrative and discretionary powers
§ 25:299 —Legislative, arbitrary, or ungoverned power
§ 25:300 Reservation of powers and functions
§ 25:301 Enforcement bodies and officials
§ 25:302 Conflicts of interest and undue influence
§ 25:303 Actions against board members and boards
§ 25:304 Open meeting and sunshine laws

B. PLANNING AND ZONING COMMISSIONS
§ 25:305 Generally

cvi
Table of Contents

§ 25:306 Standard State Zoning Enabling Act
§ 25:307 Creation and abolition
§ 25:308 Relationship of planning and zoning commissions
§ 25:309 — Planning as zoning commission
§ 25:310 Personnel; appointment, tenure and removal
§ 25:311 Powers
§ 25:312 — Formulating zoning plans
§ 25:313 — Recommend, advise, approve and report
§ 25:314 — Legislate or regulate

C. BOARDS OF ADJUSTMENT, REVIEW AND ZONING APPEALS

§ 25:315 Generally
§ 25:316 Status
§ 25:317 — Advisory, legislative, or quasi-judicial
§ 25:318 Creation; personnel; tenure
§ 25:319 Powers
§ 25:320 — Permit or recommend uses and variances
§ 25:321 — Relative to nonconforming uses
§ 25:322 — Administrative appellate powers
§ 25:323 — Procedure and procedural powers
§ 25:324 — Determining constitutionality or validity
§ 25:325 — Legislate, regulate, amend or set aside ordinances
§ 25:326 — Zoning or changing boundaries or uses
§ 25:327 — Revoking permits and authorizations
§ 25:328 — Limitations

IX. LEGISLATIVE FUNCTIONS AND PROCEDURES

§ 25:329 Scope of subdivision
§ 25:330 Statutes and laws governing procedure
§ 25:331 Proceedings of zoning commissions, boards and committees
§ 25:332 — Meetings, quorum and voting
§ 25:333 Enactment, amendment and repeal procedure
§ 25:334 Initiative and referendum
§ 25:335 Applications and petitions
§ 25:336 Protests and objections
§ 25:337 Notice

cvii
X. ADMINISTRATIVE FUNCTIONS AND PROCEDURES

§ 25:342 Scope of administrative functions
§ 25:343 Nature and requisites of proceedings
§ 25:344 Enforcement functions, devices and procedures
§ 25:345 Rules governing practice and procedure before boards
§ 25:346 Time limitations on proceedings
§ 25:347 Appeals to boards from officials or other boards
§ 25:348 Original applications and petitions to boards
§ 25:349 Protests and objections
§ 25:350 Notice and publication; notice of appeal
§ 25:351 Conduct of board
§ 25:352 Ex parte communications with interested parties
§ 25:353 Hearing
§ 25:354 —Record
§ 25:355 —Scope of inquiry
§ 25:356 —Evidence
§ 25:357 —Witnesses
§ 25:358 —Presumptions and burden of proof
§ 25:359 Action or decision of board
§ 25:360 —Quorum and vote
§ 25:361 —Necessity that board act
§ 25:362 —Imposition of conditions
§ 25:363 —Findings and statement of reasons and grounds
§ 25:364 —Operation and effect
§ 25:365 Rehearings; reconsiderations of decisions
§ 25:366 New applications for same relief; collateral estoppel
§ 25:367 Action or review by legislative body

XI. JUDICIAL PROCEEDINGS AND RELIEF

A. IN GENERAL

§ 25:368 Powers of courts
## Table of Contents

| § 25:369 | Limitations on courts          |
| § 25:370 | —Judicial attitude             |
| § 25:371 | Reasonable acts                |
| § 25:372 | Unreasonable acts; abuse of discretion |
| § 25:373 | Doubtful cases; “fairly debatable” rule |
| § 25:374 | Each case determinable on own facts |
| § 25:375 | Necessity of resort to administrative remedies |
| § 25:376 | —Absence or inadequacy of remedies |
| § 25:377 | —Invalidity of laws providing remedies |
| § 25:378 | Evidence; judicial notice       |

### B. AGAINST ZONING ORDINANCES AND REGULATIONS

| § 25:379 | Generally          |
| § 25:380 | Character of proceeding     |
| § 25:381 | —Appeal             |
| § 25:382 | —Certiorari         |
| § 25:383 | —Injunction        |
| § 25:384 | —Mandamus          |
| § 25:385 | —Declaratory judgment |
| § 25:386 | Grounds for relief   |
| § 25:387 | Defenses; other remedies; res judicata |
| § 25:388 | Time limitations; waiver, estoppel and laches |
| § 25:389 | Parties generally    |
| § 25:390 | —Aggrieved and proper parties |
| § 25:391 | —Parties to contracts of sale |
| § 25:392 | —Indispensable, intervening, and necessary parties |
| § 25:393 | —Standing to challenge exclusionary zoning |
| § 25:394 | —Standing for associations |
| § 25:395 | Presumption of standing |
| § 25:396 | Pleading, process and notice |
| § 25:397 | Proof               |
| § 25:398 | —Presumptions       |
| § 25:399 | —Burden            |
| § 25:400 | Hearing or trial; questions of law or fact |
| § 25:401 | Judgment or decree   |
| § 25:402 | —Compelling amendment of ordinance or rezoning |
| § 25:403 | —Terms and conditions |
| § 25:404 | —Damages           |
| § 25:405 | Appeal and error    |
C. AGAINST ADMINISTRATIVE DECISIONS

§ 25:406 Generally
§ 25:407 Character of proceeding
§ 25:408 —Collateral attack
§ 25:409 —Appellate proceeding
§ 25:410 —Certiorari
§ 25:411 —Mandamus
§ 25:412 —Injunctive or other equitable relief
§ 25:413 Grounds for relief or reversal of administrative decision
§ 25:414 —Abuse of discretion or unreasonableness
§ 25:415 —Invalidity of statute or ordinance
§ 25:416 —Absence or insufficiency of proof before board
§ 25:417 —Fraud or bad faith
§ 25:418 —Error of law
§ 25:419 —Clear right to permit or use
§ 25:420 —Unreasonable and unnecessary hardship
§ 25:421 Defenses; time limitations; waiver, estoppel or laches
§ 25:422 Parties generally
§ 25:423 —Aggrieved parties
§ 25:424 ——Associations as aggrieved parties
§ 25:425 —Proper, necessary, and indispensable parties
§ 25:426 —Parties to challenge exclusionary zoning
§ 25:427 —City or board; municipal officers
§ 25:428 —Defendants
§ 25:429 —Intervention
§ 25:430 Pleading and procedure
§ 25:431 —On review or appeal
§ 25:432 —On certiorari
§ 25:433 —Return to writ
§ 25:434 Proof
§ 25:435 —Presumptions
§ 25:436 —Burden
§ 25:437 —Weight and sufficiency
§ 25:438 —Force and effect of board’s findings of fact
§ 25:439 Questions of law and fact
§ 25:440 Hearing or trial
§ 25:441 —By court or jury
§ 25:442 —Scope of inquiry or review
§ 25:443 —Taking of evidence or additional evidence
§ 25:444 —Trial de novo

cx
TABLE OF CONTENTS

§ 25:445 Judgment or decree
§ 25:446 —Law governing judgment
§ 25:447 —Imposing conditions and modification of board's decision
§ 25:448 —Allowance or direction by court of permit or variance
§ 25:449 —Operation and effect
§ 25:450 Appeal and error
§ 25:451 —Parties

D. INJUNCTIVE AND OTHER RELIEF AGAINST VIOLATIONS

§ 25:452 Generally
§ 25:453 —Temporary injunction
§ 25:454 Grounds for relief
§ 25:455 —Zoning violations as constituting nuisances
§ 25:456 —Zoning violations not nuisances
§ 25:457 —Particular uses
§ 25:458 Compelling enforcement of zoning laws
§ 25:459 Defenses to injunctive relief
§ 25:460 —Waiver, estoppel and laches
§ 25:461 Parties generally
§ 25:462 Private parties; necessity of special interest or damages
§ 25:463 Pleading, notice and process
§ 25:464 Proof
§ 25:465 Hearing or trial; judgment; appeal and error

E. PROSECUTION OR PROCEEDING FOR VIOLATION

§ 25:466 Generally
§ 25:467 Violations; what constitutes
§ 25:468 Process and pleadings
§ 25:469 Defenses
§ 25:470 Proof
§ 25:471 Trial; judgment; appeal and error
§ 25:472 Attorney fees; costs
§ 25:473 Penalties; continuing violations
CHAPTER 26. MUNICIPAL LICENSES AND PERMITS

I. IN GENERAL
   A. INTRODUCTION
      $ 26:1$ Scope of chapter
      $ 26:2$ Definitions; nature of municipal license
      $ 26:3$ Purposes and functions
      $ 26:4$ Licensing ordinances
      $ 26:5$ —Contents
      $ 26:6$ —Requisites and validity
      $ 26:7$ —Prospective or retrospective operation
      $ 26:8$ Construction
      $ 26:9$ Conditions and terms
      $ 26:10$ Licensing beyond corporate limits
      $ 26:11$ Duration
      $ 26:12$ Renewal
      $ 26:13$ Transfer of interest
      $ 26:14$ Operation and effect
      $ 26:15$ —As contract, right or privilege
   
   B. TAXATION COMPARED AND DISTINGUISHED
      $ 26:16$ Generally
      $ 26:17$ Determining and distinguishing factors; fee versus tax
      $ 26:18$ Determining and distinguishing factors—Amount of exaction
      $ 26:19$ General taxes distinguished
      $ 26:20$ Occupation taxes compared and contrasted
      $ 26:21$ Excise and other taxes distinguished
      $ 26:22$ Illustrations
   
   C. POWER TO LICENSE
      $ 26:23$ Generally
      $ 26:24$ Grant of power
      $ 26:25$ —Specificity of grant
TABLE OF CONTENTS

§ 26:26 —Withdrawal of power
§ 26:27 Effect of state laws
§ 26:28 —State versus local licensing statutes
§ 26:29 —Penal laws
§ 26:30 —Superseding, amending, repealing, revoking acts
§ 26:31 Construction of grant of power
§ 26:32 —Specified or enumerated subjects
§ 26:33 Licensing power as power to regulate
§ 26:34 Regulatory power to power to license
§ 26:35 Licensing power as power to prohibit
§ 26:36 Power to license: regulation or revenue
§ 26:37 —Revenue raising not within licensing power
§ 26:38 —Raising revenue within licensing power

II. LICENSE FEES AND TAXES

§ 26:39 Generally
§ 26:40 Determining and fixing amount
§ 26:41 —Limitations on amount
§ 26:42 —Reasonableness
§ 26:43 —Prohibitive and confiscatory exactions
§ 26:44 Presumptions and burden of proof
§ 26:45 Factors and bases of measurement
§ 26:46 —Costs of policing
§ 26:47 —Sales, income, receipts
§ 26:48 —Graduation of fee or tax
§ 26:49 —Separate elements of same business
§ 26:50 —Separate businesses of same owner
§ 26:51 License tax and occupation tax on same business
§ 26:52 Extraterritorial license charges
§ 26:53 Reasonable charges; illustrative cases
§ 26:54 Excessive or illegal charges; illustrative cases

III. PERSONS, SUBJECTS AND CLASSIFICATION

A. PERSONS

§ 26:55 Generally
§ 26:56 Persons subject
§ 26:57 Persons entitled
§ 26:58 —Good character and fitness
§ 26:59 Exemptions and exceptions
B. SUBJECTS

§ 26:65 Generally
§ 26:66 Adult businesses
§ 26:67 Intoxicating Liquor
§ 26:68 Intrastate, Interstate commerce
§ 26:69 Keeping animals
§ 26:70 —Dogs
§ 26:71 Dangerous articles
§ 26:71.50 —Weapons
§ 26:72 Soliciting, distributing, protesting
§ 26:72.50 —Charitable solicitations
§ 26:73 —Religious activities
§ 26:74 Sound amplification

C. CLASSIFICATION

§ 26:75 Uniformity and nondiscrimination
§ 26:76 Reasonable classifications
§ 26:77 —Illustrations
§ 26:78 Unreasonable classification; illustrations

IV. LICENSING BOARDS AND OFFICIALS

§ 26:79 Authority to issue license
§ 26:80 —Council or legislative body
§ 26:81 Delegation of powers to boards or officials
§ 26:82 —Guides and standards
§ 26:83 ——Ordinary business rule
§ 26:84 ——Administrative, discretionary and ministerial functions
§ 26:85 —Effect of character of business or activity
§ 26:86 —Unlawful delegation
§ 26:87 —Lawful delegation cases

V. PROCEDURE; ENFORCEMENT; REVOCATION; JUDICIAL RELIEF

A. LICENSING PROCEDURE

§ 26:88 Generally; applications
TABLE OF CONTENTS

§ 26:89 Filing of indemnity bond or financial security
§ 26:90 Health and blood tests
§ 26:91 Examinations, investigations and inspections
§ 26:92 Protests
§ 26:93 Grant or denial of license or permit
§ 26:94 —Grounds for denial
§ 26:95 —Unreasonable or wrongful denial
§ 26:96 Administrative review and relief

B. ENFORCEMENT OF LICENSING

§ 26:97 Generally
§ 26:98 Civil actions for license fees or taxes
§ 26:99 Penalties

C. REVOCATION OR SUSPENSION OF LICENSES OR PERMITS

§ 26:100 Generally
§ 26:101 Power and discretion of officials
§ 26:102 Rights of licensees
§ 26:103 —Arbitrary or discriminatory revocation
§ 26:104 ——Property right approach
§ 26:105 ——Contract right approach
§ 26:106 ——Class revocation
§ 26:107 ——First Amendment
§ 26:108 —Substantial work, expenditures and obligations
§ 26:109 —Character of business or activity
§ 26:110 Grounds
§ 26:111 —Adequate grounds
§ 26:112 —Inadequate grounds
§ 26:113 —Constitutionality
§ 26:114 Forfeiture as penalty
§ 26:115 Revocation through change of ordinance or law
§ 26:116 Procedure
§ 26:117 —Summary revocation or suspension
§ 26:118 —Notice and hearing
§ 26:119 —Proof

D. RECOVERY OF PAID FEE OR TAX

§ 26:120 Grounds for recovery
§ 26:121 Action to recover
E. JUDICIAL PROCEEDINGS AND RELIEF

§ 26:122 Generally
§ 26:123 Time governing applicable law
§ 26:124 Remedies
§ 26:125 —Declaratory relief
§ 26:126 —Mandamus
§ 26:127 —Injunction
§ 26:128 —Action for damages
§ 26:129 Parties and pleadings
§ 26:130 Proof; presumptions
§ 26:131 Trial
§ 26:132 Judgment
§ 26:133 Appeal and error

VI. LICENSING OF BUSINESSES, OCCUPATIONS, SOLICITORS AND PUBLIC ENTERTAINMENT

A. IN GENERAL

§ 26:134 Scope of municipal powers

B. MISCELLANEOUS PARTICULAR BUSINESSES AND OCCUPATIONS

§ 26:135 Coverage of topic
§ 26:136 Auctions and auctioneers
§ 26:137 Automobile, used car and auto accessory dealers
§ 26:138 Bakeries
§ 26:139 Barber shops, beauty shops, salons, spas
§ 26:140 Boats and ships
§ 26:141 Coal, lumber, and fuel dealers, yards
§ 26:142 Contractors and master builders
§ 26:143 Electricians and electrical work
§ 26:144 Engineers and mechanics
§ 26:145 Filling stations
§ 26:146 Garages
§ 26:147 Gasoline and oil transportation, storage and sales
§ 26:148 Gas and oil wells
§ 26:149 Food, food trucks, and produce businesses
| § 26:150 | Hospitals, nursing homes, etc |
| § 26:151 | Hotels; rooming houses and boardinghouses etc |
| § 26:152 | Insurance companies; agents and brokers |
| § 26:152.50 | Medical marijuana dispensaries |
| § 26:153 | Junk and secondhand dealers, stores and yards |
| § 26:154 | —Definitions |
| § 26:154.1 | —Conditions and qualifications |
| § 26:154.2 | Laundries and dry cleaners |
| § 26:154.3 | Loan businesses; pawnbrokers |
| § 26:154.3.50 | Pet stores |
| § 26:154.4 | Massage Parlors |
| § 26:154.5 | Meat, poultry and fish businesses |
| § 26:154.6 | Milk and milk product businesses |
| § 26:154.7 | Parking lots, parking on private premises |
| § 26:154.8 | Plumbers and plumbing |
| § 26:154.9 | —Bond requirement |
| § 26:154.10 | Professions |
| § 26:154.11 | —Architects |
| § 26:154.12 | —Doctors, dentists, nurses, and therapists |
| § 26:154.13 | —Attorneys |
| § 26:154.13.50 | Funeral directors |
| § 26:154.14 | Public utilities |
| § 26:154.15 | —Telecommunications |
| § 26:154.16 | Restaurants and the like |
| § 26:154.17 | Quarries |
| § 26:154.18 | Garbage removal; dumps and dumping |
| § 26:154.19 | Tobacco and cigarette businesses |
| § 26:154.20 | Tour guides |
| § 26:154.21 | Trading stamps |
| § 26:154.22 | Vending machines |

C. MERCHANTS, PEDDLERS AND SOLICITORS

| § 26:154.22.50 | Merchants and dealers |
| § 26:154.23 | —Wholesalers |
| § 26:154.24 | —Character, measure and amount of fee or tax |
| § 26:154.25 | —Examples of merchants effected |
| § 26:154.26 | —Chain stores |
§ 26:154.27 Peddlers, vendors and transient merchants
§ 26:154.28 —Character, measure, qualifications, and amount of fee or tax
§ 26:154.29 —Definitions
§ 26:154.30 —Exemptions
§ 26:154.31 Canvassers and solicitors
§ 26:154.32 —Noncommercial solicitation
§ 26:154.32.50 —Time restrictions
§ 26:154.32.75 Canvassers, solicitors and drummers—Charitable solicitation
§ 26:154.33 Sale and distribution of pamphlets and other literature
§ 26:154.34 —Noncommercial purposes
§ 26:154.35 — —Regulation of time, place, and manner
§ 26:154.36 — —Discretionary licensing
§ 26:154.37 — —Discriminatory licensing

D. PUBLIC ENTERTAINMENT

§ 26:154.38 Generally
§ 26:154.39 Fees or taxes
§ 26:154.40 Denial or grant
§ 26:154.41 —Relief
§ 26:154.42 —Qualification of licensees
§ 26:154.43 —Other considerations
§ 26:154.44 —Revocation
§ 26:154.45 Ticket scalping
§ 26:154.46 Theaters, shows, motion pictures, and television
§ 26:154.47 —Censorship
§ 26:154.48 —Procedural safeguards
§ 26:154.49 Adult businesses; adult dancing establishments
§ 26:154.50 —Alcholic beverages
§ 26:154.51 Adult escort services
§ 26:154.52 Athletic and other exhibitions, contests and places
§ 26:154.53 Dances, dance halls
§ 26:154.54 Skating rinks
§ 26:154.55 Juke boxes and similar devices
§ 26:154.56 Video game arcades
§ 26:154.57 Gambling and gaming devices
§ 26:154.58 —Riverboat casinos
§ 26:154.59 Pinball machines and like devices
§ 26:154.60 Pool and billiard centers
§ 26:154.61 Bowling alleys
§ 26:154.62 Palm readers, psychics, and spiritual counselors

Volume 9A

VII. LICENSING OF STREET USES AND VEHICLES

A. STREET USES
§ 26:155 In general
§ 26:156 Particular uses
§ 26:157 Meetings and parades

B. VEHICLES AND THEIR USE AND OPERATION
§ 26:158 Generally
§ 26:159 Driver, operator, or chauffeur license
§ 26:160 Effect of state licensing or regulation
§ 26:161 License or permit as right, privilege, or franchise
§ 26:162 Charges, taxes, and fees
§ 26:163 Financial responsibility
§ 26:164 Noncommercial; personal; pleasure vehicles
§ 26:165 Commercial vehicles and carriers
§ 26:166 Vehicles of nonresidents
§ 26:167 —Interstate commerce
§ 26:168 Parking on streets
§ 26:169 —Meters and meter fees

C. BUSES AND STREET RAILWAY SYSTEMS
§ 26:170 Generally
§ 26:171 Qualifications
§ 26:172 Fees
§ 26:173 School buses
§ 26:174 State licensing and regulation
§ 26:175 Uniformity and nondiscrimination
§ 26:176  Extraurban, interurban, and interstate buses
§ 26:177  Terminals and depots

D. TAXICABS
§ 26:178  Generally
§ 26:179  Charges, fees, and taxes
§ 26:180  Qualifications of licensees; conditions and terms
§ 26:181  Public need; number of licenses
§ 26:182  Discrimination
§ 26:183  Franchises; monopolies
§ 26:184  Revocation and renewal
§ 26:185  Assignment; transfer
§ 26:186  Taxicab stands

VIII. BEVERAGE LICENSES
A. LIQUOR AND BEER
§ 26:187  Generally
§ 26:188  Municipal power and discretion
§ 26:189  State licensing and regulation
§ 26:190  —Constitutional provisions
§ 26:191  —Local option and county licensing
§ 26:192  Ordinances
§ 26:193  Persons and places affected
§ 26:194  —Adult businesses
§ 26:195  Charges, taxes, and fees
§ 26:196  Bond
§ 26:197  Conditions and terms
§ 26:198  Qualifications of licensees
§ 26:199  Approval, consent, or protest of neighboring owners
§ 26:200  Limiting number of licenses
§ 26:201  Limiting licenses as to areas and sites
§ 26:202  —Proximity to other licensed establishments
§ 26:203  —Proximity to churches, schools, etc.
§ 26:204  Administrative bodies and proceedings
§ 26:205  Operation and effect of license
§ 26:206  —As right or privilege
§ 26:207  Transfer of license to other place or person
§ 26:208  Termination
§ 26:209  —Revocation and forfeiture
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:210</td>
<td>— — Grounds</td>
</tr>
<tr>
<td>§ 26:211</td>
<td>— — Procedure, notice, etc.</td>
</tr>
<tr>
<td>§ 26:212</td>
<td>— — Appeals</td>
</tr>
<tr>
<td>§ 26:213</td>
<td>Other sanctions</td>
</tr>
<tr>
<td>§ 26:214</td>
<td>Renewal</td>
</tr>
<tr>
<td>§ 26:215</td>
<td>— — Procedure, notice, etc.; appeals</td>
</tr>
</tbody>
</table>

#### B. NONINTOXICATING BEVERAGE LICENSES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:216</td>
<td>In general</td>
</tr>
</tbody>
</table>

#### IX. BUILDING PERMITS

##### A. IN GENERAL

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:217</td>
<td>Nature and purpose</td>
</tr>
<tr>
<td>§ 26:218</td>
<td>— — Municipal immunity</td>
</tr>
<tr>
<td>§ 26:219</td>
<td>Validity and effect of laws</td>
</tr>
<tr>
<td>§ 26:220</td>
<td>Fees</td>
</tr>
<tr>
<td>§ 26:221</td>
<td>Structures, uses, and activities regulated</td>
</tr>
<tr>
<td>§ 26:222</td>
<td>— — Repairs and alterations</td>
</tr>
<tr>
<td>§ 26:223</td>
<td>Discretion of authorities; necessity of standards</td>
</tr>
<tr>
<td>§ 26:224</td>
<td>Prerequisites and conditions</td>
</tr>
<tr>
<td>§ 26:225</td>
<td>— — Illustrations</td>
</tr>
<tr>
<td>§ 26:226</td>
<td>Consent or approval of other property owners</td>
</tr>
<tr>
<td>§ 26:227</td>
<td>Compliance with requirements</td>
</tr>
</tbody>
</table>

##### B. PROCEDURE FOR ISSUANCE OR REFUSAL; REVOCATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:228</td>
<td>Application</td>
</tr>
<tr>
<td>§ 26:229</td>
<td>— — Plans and maps</td>
</tr>
<tr>
<td>§ 26:230</td>
<td>Administrative appellate proceedings</td>
</tr>
<tr>
<td>§ 26:231</td>
<td>Hearing; decision; rehearing</td>
</tr>
<tr>
<td>§ 26:232</td>
<td>Grant of permit</td>
</tr>
<tr>
<td>§ 26:233</td>
<td>Denial of permit</td>
</tr>
<tr>
<td>§ 26:234</td>
<td>— — Vested rights</td>
</tr>
<tr>
<td>§ 26:235</td>
<td>— — Sufficient grounds for denial</td>
</tr>
<tr>
<td>§ 26:236</td>
<td>— — Insufficient grounds for denial</td>
</tr>
<tr>
<td>§ 26:237</td>
<td>Revocation of permit</td>
</tr>
<tr>
<td>§ 26:238</td>
<td>— — Grounds</td>
</tr>
<tr>
<td>§ 26:239</td>
<td>— — Estoppel of or waiver by city; laches</td>
</tr>
<tr>
<td>§ 26:240</td>
<td>Work or change of position under permit</td>
</tr>
</tbody>
</table>
C. CONSTRUCTION, OPERATION, AND EFFECT OF PERMIT

§ 26:241 Generally
§ 26:242 Effect of application for permit
§ 26:243 Effect of illegality, mistake, or fraud
§ 26:244 Permit as authorizing violation of law
§ 26:245 Effect of change of law

D. JUDICIAL PROCEEDINGS AND RELIEF

§ 26:246 Generally
§ 26:247 Against denial of permit
§ 26:248 —Mandamus
§ 26:249 —Certiorari
§ 26:250 —Section 1983 actions
§ 26:251 —Tortious interference actions
§ 26:252 —Racketeer Influenced and Corrupt Organizations Act (RICO) actions
§ 26:253 Against grant of permit
§ 26:254 Against revocation of permit
§ 26:255 Interference with building operations
§ 26:256 Pleading, practice, and procedure

E. PROSECUTIONS OR PROCEEDINGS FOR VIOLATIONS

§ 26:257 Penalties; prosecutions and defenses
§ 26:258 Injunctive relief against violations

CHAPTER 27. ACTIONS TO ENFORCE POLICE ORDINANCES

I. THE COURT AND ITS JURISDICTION

§ 27:1 Establishment and continuance of courts
§ 27:2 Jurisdiction of municipal courts
§ 27:3 Territorial limits of jurisdiction
§ 27:4 Judges, jurors, and witnesses

II. THE ACTION; ITS FORM, NATURE, AND INSTITUTION

§ 27:5 Ordinance enforcement; form of action
III. THE STATEMENT, COMPLAINT, OR INFORMATION

§ 27:13 Formal parts of complaint or information
§ 27:14 Averment of power to pass ordinance
§ 27:15 Requisites of statement—Complaint
§ 27:16 —Indictment or information
§ 27:17 Form of complaint: Verification and conclusion
§ 27:18 Pleading ordinance—Judicial notice
§ 27:19 —Reference to ordinance
§ 27:20 Negating exceptions
§ 27:21 Several offenses: Joinder
§ 27:22 Sufficiency of complaint or statement—Traffic violations
§ 27:23 —Disturbing the peace and disorderly conduct
§ 27:24 —Intoxication
§ 27:25 —Obscenity, prostitution, and gambling
§ 27:26 —Disobeying court or police orders
§ 27:27 —License violations
§ 27:28 —Nuisance
§ 27:29 —Miscellaneous actions
§ 27:30 Sufficiency of police report
§ 27:31 Amendment of statement or information
§ 27:32 Curing defects

IV. THE TRIAL; SUMMARY OR JURY; PROCEEDINGS

§ 27:33 Arraignment and plea
§ 27:34 Mode of conducting trial; civil or criminal
§ 27:35 Pleading defenses
§ 27:36 Summary jurisdiction—Basis and history
§ 27:37 —Offenses cognizable
§ 27:38 Jury trials—Constitutional rights
§ 27:39 —When allowed
§ 27:40 — Criminal prosecutions
§ 27:41 — Obscenity prosecutions
§ 27:42 — Crime and municipal offense distinguished
§ 27:43 — Misdemeanors
§ 27:44 — On appeal from summary proceedings
§ 27:45 — Demand or waiver of jury; selection
§ 27:46 — Method of conducting jury trial
§ 27:47 — Regular municipal practices; rules disregarded
§ 27:48 — Right to attorney
§ 27:49 — Attorney’s fees
§ 27:50 — Costs

V. THE CASE FOR THE CORPORATION

§ 27:51 — Proof of ordinance
§ 27:52 — Judicial notice
§ 27:53 — Proof of offense
§ 27:54 — Illustrative cases
§ 27:55 — Proof of intent or knowledge
§ 27:56 — Liability of participants, keepers, subordinates, and servants
§ 27:57 — Liability of principal for acts of employees and servants
§ 27:58 — Burden of proof
§ 27:59 — Variance between proof and allegations

VI. DEFENSES

§ 27:60 — In general
§ 27:61 — Challenging ordinance: Estoppel
§ 27:62 — Corporate existence
§ 27:63 — Validated ordinance
§ 27:64 — Former prosecution
§ 27:65 — Estoppel of municipality
§ 27:66 — Ignorance or knowledge of ordinance; nonresidence
§ 27:67 — Discriminatory enforcement
§ 27:68 — Miscellaneous defenses
§ 27:69 — Illustrative cases

VII. THE JUDGMENT, RECORD, AND EXECUTION

§ 27:70 — The verdict
**TABLE OF CONTENTS**

§ 27:71 The judgment  
§ 27:72 —Nature and extent of penalties  
§ 27:73 —Fine or imprisonment  
§ 27:74 —Suspension of fine  
§ 27:75 —Probation  
§ 27:76 —Revocation or suspension of license  
§ 27:77 —Hard labor  
§ 27:78 —Cumulative and consecutive sentences  
§ 27:79 —Definiteness of sentence or judgment  
§ 27:80 —postjudgment actions  
§ 27:81 Record of conviction  
§ 27:82 Execution  

**VIII. REVIEW**

§ 27:83 Right of review  
§ 27:84 Review by appeal  
§ 27:85 —Municipality’s right to appeal  
§ 27:86 —Time and method of taking  
§ 27:87 —Trial de novo on appeal  
§ 27:88 — —Procedure  
§ 27:89 —Sufficiency of record  
§ 27:90 —Scope of review  
§ 27:91 —Judgments and orders, on appeal  
§ 27:92 Review by certiorari  
§ 27:93 —Procedure and scope of review  
§ 27:94 Writ of error  
§ 27:95 Habeas corpus  
§ 27:96 Injunction  
§ 27:97 Writ of prohibition  

---

**Volume 10**

**CHAPTER 28. CORPORATE PROPERTY**

**I. CONTROL OVER, TITLE TO, AND POWER TO ACQUIRE**

§ 28:1 Scope of chapter  
§ 28:2 Power to acquire property in general  
§ 28:3 —Property mortgaged  
§ 28:4 —Purchase at tax and judicial sales

---

cxxv
§ 28:5 —Real property beyond corporate limits
§ 28:6 —Consideration and conditions
§ 28:7 —Unincorporated bodies; quasi-municipal corporations
§ 28:8 Title to land under water; riparian rights
§ 28:9 Power to become lessee
§ 28:10 Purposes for which property may be acquired
§ 28:11 —Applications of “corporate purpose” rule
§ 28:12 Power to acquire, erect or repair buildings
§ 28:13 Purposes for which property may be acquired—Auditoriums, assembly halls, sports stadiums
§ 28:14 How property may be acquired
§ 28:15 —Gifts and bequests
§ 28:16 —Statutory and charter restrictions; appraisement or vote
§ 28:17 —Who may act in behalf of municipality
§ 28:18 Character of title acquired by municipality
§ 28:19 Joint tenancy or tenancy in common
§ 28:20 Who may question purchase by municipality
§ 28:21 Buildings subject to police power
§ 28:22 Power to insure
§ 28:23 Change of use of public property
§ 28:24 Constitutional rights and government-owned property
§ 28:25 Constitutional rights and government-owned property—Limited public forum
§ 28:26 Government speech
§ 28:27 —Monuments on public property

II. HOLDING PROPERTY AS TRUSTEE

§ 28:28 In general
§ 28:29 Trust purpose—Municipal purpose
§ 28:30 —Benefit of the poor
§ 28:31 —Hospitals
§ 28:32 —Library
§ 28:33 —Educational purposes
§ 28:34 —Religious purposes
§ 28:35 —Burial grounds
§ 28:36 Certainty of beneficiaries
§ 28:37 Protection and preservation of charitable trusts

III. PLEDGE, MORTGAGE, SALE, LEASE OR OTHER DISPOSITION OF PROPERTY

§ 28:38 Right to dispose of property in general

cxxvi
Table of Contents

§ 28:39 —Property devoted to public use
§ 28:40 —Navigable water
§ 28:41 —Streets
§ 28:42 —Public parks and squares
§ 28:43 —Property not devoted to public use
§ 28:44 —Property acquired for specific uses
§ 28:45 —Statutory power to dispose of property
§ 28:46 Power to mortgage or pledge property
§ 28:47 Power to lease or permit use of corporate property
§ 28:48 —Discretion to lease or permit use
§ 28:49 —Lease or use of wharves, lands under navigable water
§ 28:50 —Lease or use of airports
§ 28:51 —Leasing to private lessees
§ 28:52 —Partial leasing or use of corporate property
§ 28:53 —Contract requirements
§ 28:54 —Future leases
§ 28:55 Power to transfer, donate, or dedicate property for particular uses
§ 28:56 Methods and procedures for transfer of title
§ 28:57 —Preliminary steps; elections
§ 28:58 —Authorizations of officers; ordinances and resolutions
§ 28:59 —Instruments of transfer; form, content, and effect
§ 28:60 —Advertising sale; public auctions; competitive bidding
§ 28:61 Delegation of power; employment of broker
§ 28:62 Presumptions in favor of conveyance
§ 28:63 Ratification of invalid or unauthorized sales, leases
§ 28:64 Effect of want of power to transfer municipal property

IV. PUBLIC PARKS AND SQUARES

§ 28:65 Definitions; state and municipal powers
§ 28:66 Commissions and boards
§ 28:67 Power to acquire and establish parks
§ 28:68 Titles and rights in park property
§ 28:69 —Restrictions in grants
§ 28:70 —Illustrations of municipal uses
§ 28:71 —Leases, licenses, and permits
§ 28:72 Regulation of use by public
§ 28:73 —Constitutional law considerations

V. ADVERSE RIGHTS AGAINST MUNICIPAL PROPERTY
§ 28:74 Adverse possession and prescription
§ 28:75 Estoppel
§ 28:76 Attachment and execution
§ 28:77 Mechanics’ liens
§ 28:78 Taxation

CHAPTER 29. CONTRACTS IN GENERAL

I. INTRODUCTION
§ 29:1 Scope of chapter
§ 29:2 Essentials in considering validity
§ 29:3 Ordinance, resolution, or motion as contract
§ 29:4 Notice imputed to one contracting with municipality
§ 29:5 Retaliation against contractor for exercise of constitutional rights
§ 29:6 —Employees of independent contractor

II. CREATION
§ 29:7 Power to make contracts
§ 29:8 —Express power
§ 29:9 —Implied power
§ 29:10 —Contracting with governments or agencies
§ 29:11 Contracts prohibited
§ 29:12 —Contracts limiting legislative power
§ 29:13 —Contract to perform public duty
§ 29:14 —Incurring indebtedness beyond debt limit
§ 29:15 —Ultra vires contracts
§ 29:16 Power to contract for legal services
§ 29:17 —Contracts for extra legal services
§ 29:18 —Compensation; contingent fee
§ 29:19 —Interest of the municipality
§ 29:20 Who may act in behalf of municipality
§ 29:21 —Who authorized to employ attorney

cxxviii
Table of Contents

§ 29:22 —Contract made by wrong officer or board
§ 29:23 Conditions precedent or subsequent to making contract
§ 29:24 —Ordinance or resolution
§ 29:25 —Appropriation
§ 29:26 Mode of executing, form, and contents
§ 29:27 —Writing
§ 29:28 —Signature
§ 29:28.50 —Approval; countersignature
§ 29:29 —Seal
§ 29:29.50 —Irregularities; effect of performance
§ 29:30 Compelling municipality to enter into contract

III. COMPETITIVE BIDS

§ 29:30.50 General considerations
§ 29:31 Bids contrasted with request for proposals
§ 29:31.50 Purpose of requiring bids
§ 29:32 Mandatory requirements
§ 29:33 Absence of requirements; permissive laws
§ 29:34 Ordinances requiring bids
§ 29:35 Exceptions to bidding requirements
§ 29:35.50 Applicability to particular contracts
§ 29:36 —As dependent on amount involved
§ 29:37 —“Sole source” bids
§ 29:38 —Personal services
§ 29:39 Statutory authority to dispense with bid requirements
§ 29:40 Work abandoned by contractor
§ 29:40.50 Extra work; repairs
§ 29:41 Effect of not following competitive bidding requirements
§ 29:42 Patented articles or materials required
§ 29:43 Advertisements for bids and restrictions on competition
§ 29:44 —Restricting hours of labor; labor requirements
§ 29:44.50 —Fixing wages
§ 29:45 —Preference to minorities and women-owned businesses
§ 29:46 —Preferences to local work, materials, etc.
§ 29:47 —Requiring employment of union labor

cxxix
§ 29:48 — Restricting bids those from particular locality or company
§ 29:49 Void, ambiguous, or defective specifications
§ 29:50 Form and contents of advertisement
§ 29:51 — Detailed plans and specifications
§ 29:51.50 — Indefinite or uncertain elements of contract
§ 29:52 — Alternative materials or work
§ 29:53 — Requiring bidder to specify specifications
§ 29:54 — Reference to plans and specifications on file
§ 29:55 Publication and posting of the advertisement; mode and sufficiency
§ 29:56 Publication of the advertisement; mode and sufficiency—Posting notices
§ 29:56.50 — Length and time
§ 29:57 — Presumptions and proof of publication
§ 29:58 — Republication
§ 29:59 — Board or officer required to publish
§ 29:60 Change of specifications
§ 29:61 Disqualification of contractors from bidding
§ 29:62 — Suppliers
§ 29:62.50 Bid conformity to advertisement
§ 29:63 Bid conformity to advertisement—Slight or substantial noncompliance
§ 29:64 The bid conformity to advertisement—Form and construction
§ 29:65 Deposit or other security
§ 29:66 Withdrawal of bid
§ 29:66.50 Modification of bids
§ 29:67 Collusion, fraud, among bidders or municipal agents
§ 29:68 Opening and considering bids
§ 29:69 Acceptance of bids and notice
§ 29:70 Reconsideration of bids
§ 29:71 Awarding contracts
§ 29:72 — To “lowest,” or “lowest responsible” bidder
§ 29:72.50 Awarding contracts; discretion—To “lowest,” or “lowest responsible” bidder—Determining “responsible” bidder
§ 29:73 Awarding contracts—To other than lowest bidder
§ 29:74 — — Minorities and women-owned businesses
§ 29:75 — — Residents
§ 29:76 — Where there is only one bid
Volume 10A

IV. VALIDITY AND DURATION

§ 29:91 Validity generally
§ 29:92 —Procuring legislation
§ 29:93 —Creating monopolies, exclusive franchises
§ 29:94 —Wages and labor preference requirements
§ 29:95 —Municipal insurance contracts
§ 29:96 —Partial invalidity of contract
§ 29:97 —Presumption as to validity
§ 29:98 —Unconscionability
§ 29:99 Interest of officer in contract with city
§ 29:100 —Illustrations
§ 29:101 —Interest in partnership or corporation which is contracting party
§ 29:102 Duration of contract
§ 29:103 —Binding successors
§ 29:104 —Perpetual contracts

V. RATIFICATION AND ESTOPPEL

§ 29:105 In general
§ 29:106 Contracts which may be ratified
§ 29:107 Contracts upon which estoppel can be based
§ 29:108 —Promissory estoppel
§ 29:109 Voidable contracts
§ 29:110 Ultra vires or illegal acts
§ 29:111 Contracts in which municipal officer interested
§ 29:112 Mode of ratifying contract
§ 29:113 Knowledge as a condition precedent
§ 29:114 Who may ratify
§ 29:115 Ratification by legislative curative acts

VI. IMPLIED CONTRACTS
§ 29:116 In general
§ 29:117 Matters within corporate powers
§ 29:118 Ultra vires matters; illegal agreements
§ 29:119 Agreements invalid for defects in execution
§ 29:120 Interest of officer in municipal agreement
§ 29:121 Benefits; mere acceptance
§ 29:122 Liability after expiration of contract

VII. CONSTRUCTION, OPERATION, TERMINATION, AND ASSIGNMENT
§ 29:123 Construction of contracts
§ 29:124 —Particular rules
§ 29:125 Law applicable
§ 29:126 Performance or breach
§ 29:127 —Extra work
§ 29:128 —“No damages for delay” provisions
§ 29:129 Rescission
§ 29:129.50 Termination for convenience
§ 29:130 Modification
§ 29:131 Assignment

VIII. REMEDIES
§ 29:132 In general
§ 29:132.50 Waiver of remedies
§ 29:133 Miscellaneous remedies
§ 29:134 Action for breach of contract
§ 29:135 —Measure of damages
§ 29:136 ——Total cost theory
§ 29:137 ——Liquidated damages
TABLE OF CONTENTS

§ 29:138 —Attorney’s fees
§ 29:139 Action on implied contract
§ 29:140 Recovery of property
§ 29:141 Specific performance and injunction
§ 29:142 Third-party action on contract
§ 29:143 Action for rescission or cancellation
§ 29:144 —Restoration of benefits
§ 29:145 Recovery of money paid
§ 29:146 Invalidity of contract

CHAPTER 30. STREETS AND ALLEYS

I. DEFINITIONS, WHAT CONSTITUTE, AND OTHER GENERAL CONSIDERATIONS

§ 30:1 Scope of chapter
§ 30:2 Highway defined
§ 30:3 Streets and avenues; definition and nature
§ 30:4 —Boulevard
§ 30:5 —Parkway; park
§ 30:6 —Areas within a “street”
§ 30:7 —Bridge as part of street
§ 30:8 —Wharves; piers
§ 30:9 —Distinguished from extra-urban roads
§ 30:10 —“Highway” or “road”
§ 30:11 Alleys
§ 30:12 Sidewalks
§ 30:13 Bicycle paths; trails
§ 30:14 Roads in territory annexed or incorporated
§ 30:15 Width and extension of streets
§ 30:16 Names of streets
§ 30:17 Grade of street
§ 30:18 Snow removal
§ 30:19 Use of streets as public or private
§ 30:20 Sewers in streets

II. ESTABLISHMENT AND OPENING

§ 30:21 Method of establishing streets
§ 30:22 —Presumptions; burden of proof
§ 30:23 Prescription
§ 30:24 —Adverse possession distinguished
§ 30:25 —Dedication distinguished
§ 30:26 —Basis of rule
§ 30:27 —Rule stated
§ 30:28 Basis of rule—Sufficiency of user
§ 30:29 —Duration of user
§ 30:30 —Against whom it may be asserted
§ 30:31 —Extent acquired
§ 30:32 —Statutes and charter provisions
§ 30:33 Judicial interference in opening streets
§ 30:34 Opening streets

III. TITLE TO STREETS OR ALLEYS

§ 30:35 Ownership of streets
§ 30:36 —Jurisdictional illustrations
§ 30:37 Title of municipality is that of trustee
§ 30:38 Soil and mineral rights under the street

IV. GENERAL CONTROL OVER AND USE BY MUNICIPALITY

§ 30:39 Paramount state powers
§ 30:40 —Delegations of power; state law preemption
§ 30:41 Municipal powers
§ 30:42 —Preemption by state law
§ 30:43 —Scope and extent
§ 30:44 County versus municipal jurisdiction
§ 30:45 Leases of portions of streets
§ 30:46 Municipal uses other than travel
§ 30:47 —Waterworks, sewers
§ 30:48 Power to permit encroachments
§ 30:49 —Obstructions in streets
§ 30:50 — —Removal
§ 30:51 — —Estoppel of municipality to remove
§ 30:52 —Streets excavations
§ 30:53 Effect of municipal permits
§ 30:54 —Revocation of permits

V. ABUTTING OWNERS—THEIR RIGHTS AND LIABILITIES

§ 30:55 Rights of abutting owners
§ 30:56 —Who is an abutter
§ 30:57 —Preventing improper use of streets
§ 30:58 —Unopened streets; “paper streets”
**Table of Contents**

§ 30:59 — Street improvements  
§ 30:60 — Parking of vehicles  
§ 30:61 — Subways near street  
§ 30:62 Liabilities of abutting owners  
§ 30:63 Sidewalk rights and use  
§ 30:64 Right of access to street  
§ 30:65 — Driveways  
§ 30:66 Light, air, and view  
§ 30:67 Shade and ornamental trees  
§ 30:68 — Municipal rights and duties  
§ 30:69 — Abutters against third persons  
§ 30:70 Consent or permit by abutter to obstruction  
§ 30:71 Estoppel to object to obstruction  

**VI. ENCROACHMENTS ON STREETS AND USE OTHER THAN TRAVEL**

§ 30:72 General consideration  
§ 30:73 Nature and extent of encroachment  
§ 30:74 Effect of laches and acquiescence  
§ 30:75 Effect of laches and acquiescence generally—Prescription  
§ 30:76 Classification of encroachments  
§ 30:77 Abutter’s right to encroach temporarily  
§ 30:78 — Obstructions related to delivery/removal of goods  
§ 30:79 — Custom and usage as defense  
§ 30:80 — Building materials in street  
§ 30:81 Overhead encroachments in general  
§ 30:82 — Overhead bridge across a street  
§ 30:83 Subsurface of street and excavations  
§ 30:84 Pipes and drains in streets  
§ 30:85 Wells in streets  
§ 30:86 Effect of permit  
§ 30:87 — Revocation of permit  
§ 30:88 Awnings and other like projections  
§ 30:89 Signs and billboards  
§ 30:90 Steps  
§ 30:91 Buildings or other structures in streets  
§ 30:92 — Gas stations  
§ 30:93 Docks and wharves  
§ 30:94 Fences, gates, and doors  
§ 30:95 Sale of goods and merchandise on sidewalks
§ 30:96 Newsracks, newstands, and newspaper vending boxes
§ 30:97 Taxicab stands
§ 30:98 Public markets
§ 30:99 Moving buildings through streets
§ 30:100 Platforms
§ 30:101 Poles, flagstaffs, wires, and ropes
§ 30:102 Railroad tracks
§ 30:103 Railroad and bus depots; bus stops

VII. REMEDIES

§ 30:104 Remedies for unauthorized obstructions
§ 30:105 Ejectment, trespass, or possessory action by municipality
§ 30:106 Defenses
§ 30:107 Summary removal by municipality
§ 30:108 —Procedure for removal
§ 30:109 —Defenses
§ 30:110 —Recovery of removal expenses
§ 30:111 Municipal action to abate or enjoin nuisance
§ 30:112 —Conditions precedent
§ 30:113 —Defenses
§ 30:114 Penalties under ordinances
§ 30:115 Criminal prosecutions
§ 30:116 Remedies of private persons for street obstructions
§ 30:117 Ejectment by abutting owner
§ 30:118 Private action to enjoin or abate nuisance
§ 30:119 —Conditions precedent
§ 30:120 —Adequacy of legal remedy
§ 30:121 —Remedy by indictment
§ 30:122 —Prematurity of action
§ 30:123 —Enjoinable obstructions or encroachments
§ 30:124 —Parties
§ 30:125 —Joinder of causes and election
§ 30:126 —Defenses
§ 30:127 Certiorari
§ 30:128 Mandamus
§ 30:129 Injunction against authorized obstructions
§ 30:130 Special injuries and damages
§ 30:131 —Action by private person for damages
§ 30:132 —Where complainant is not abutter

cxxxvi
TABLE OF CONTENTS

§ 30:133 —Interference with access
§ 30:134 —Obstruction of light, air, and view
§ 30:135 —Injury to business
§ 30:136 —Depreciation in value of property
§ 30:137 —Injury to mere traveler
§ 30:138 —Personal injuries
§ 30:139 —Pleading and proof
§ 30:140 Action by state for abutter

Volume 11

VIII. USE OF STREET BY PUBLIC

§ 30:141 Scope
§ 30:142 Public use paramount
§ 30:143 Relative rights of travelers
§ 30:144 —Due care
§ 30:145 —Emergencies
§ 30:146 —Street traffic regulations
§ 30:147 —Public vehicles and ambulances
§ 30:148 —Anticipation of usual street conditions
§ 30:149 —Children
§ 30:150 —Due care of others
§ 30:151 —Crossing or walking in streets
§ 30:152 Street workers
§ 30:153 Pedestrian's duty of care
§ 30:154 Automobiles
§ 30:155 —Operation
§ 30:156 —Law of the road
§ 30:157 —Speed limit
§ 30:158 Automobiles-Photo enforcement of traffic violations
§ 30:159 Automobiles—Streetcars
§ 30:160 Right of action for personal injuries
§ 30:161 —Questions of law and fact
§ 30:162 —Comparative and contributory negligence
   proximate cause
§ 30:163 —Violation of law
§ 30:164 ——By plaintiff

IX. DISCONTINUANCE OF STREETS

§ 30:165 In general

cxxxvii
§ 30:166 Adverse possession—Against municipality
§ 30:167 —Against abutting owner
§ 30:168 —Estoppel
§ 30:169 Abandonment
§ 30:170 —Alteration of way
§ 30:171 —Effect of statutory provisions
§ 30:172 Vacation—In general
§ 30:173 —Methods
§ 30:174 —Types of streets
§ 30:175 —Partial or conditional vacation
§ 30:176 —Motives
§ 30:177 —Public vs. private purposes
§ 30:178 —Discretion as reviewable
§ 30:179 Damages for vacation—In general
§ 30:180 —City compensation
§ 30:181 —Statute of limitations
§ 30:182 —“Special” injuries
§ 30:183 — —Cutting off access
§ 30:184 — —Land in different block
§ 30:185 — —Depreciation
§ 30:186 Proceedings to vacate—In general
§ 30:187 —Jurisdiction
§ 30:188 —Pleadings and parties
§ 30:189 —Notice
§ 30:190 Injunction and certiorari
§ 30:191 Assessment of benefits
§ 30:192 Discontinuance
§ 30:193 —Fee simple
§ 30:194 —Private easements
§ 30:195 Temporary street closing
§ 30:196 Hearing—In general
§ 30:197 —Trial
§ 30:198 —Findings
§ 30:199 —Attacking vacating orders
§ 30:200 Burden of showing discontinuance
§ 30:201 Estoppel
§ 30:202 Reestablishment of street
§ 30:203 Curative acts

CHAPTER 31. SEWERS AND DRAINS
§ 31:1 Origin
§ 31:2 Definitions

cxxxviii
CHAPTER 32. EMINENT DOMAIN

I. GENERAL CONSIDERATION

§ 32:1 Scope of chapter
§ 32:2 Definition and nature of power
§ 32:3 Other powers distinguished
§ 32:4 Police power
§ 32:5 Taxing power
§ 32:6 Power of special assessment
§ 32:7 Contract powers
§ 32:8 State and national powers
§ 32:9 Constitutional provisions
§ 32:10 Regulatory taking
§ 32:11 Inherent power of state
§ 32:12 Derived municipal powers
§ 32:13 What is “property”?
§ 32:14 Surrender or restriction of municipal power
§ 32:15 Delegation of power to municipalities
§ 32:16 Implied delegation
§ 32:17 Powers under home-rule charter
§ 32:18 Condemning property for temporary use
§ 32:19 Construction of statutes
§ 32:20 Designation of purposes
§ 32:21 Corporations on which power conferred
§ 32:22 Private corporations
§ 32:23 Amount of property which may be condemned
§ 32:24 Necessity as limit of power
§ 32:25 Legislative and judicial questions distinguished
§ 32:26 Bad faith takings

II. “TAKING” OF PROPERTY

§ 32:27 Meaning of “taking”
§ 32:28 Essential nexus and rough proportionality
§ 32:29 Damage or destruction of property
§ 32:30 Interference with property
§ 32:31 Flooding
§ 32:32 Temporary takings
§ 32:33 Taking under police power distinguished
§ 32:34 Regulations
§ 32:35 Regulations—Conditions, exactions
§ 32:36 Taking under police power distinguished—
  Regulations—Zoning and planning
§ 32:37 Health
§ 32:38 Environmental protection
§ 32:39 Public Utilities
§ 32:40 Telecommunications
§ 32:41 Preliminary steps as a taking
§ 32:42 Change of grade of street

cxl
TABLE OF CONTENTS

§ 32:43 Closing of street or alley
§ 32:44 Public improvements
§ 32:45 Historic preservation ordinances
§ 32:46 Interfering with franchises
§ 32:47 Tax or assessment as a taking
§ 32:48 Injury to lateral support

III. “PUBLIC” USES

§ 32:49 Basis of public use doctrine
§ 32:50 —Economic development
§ 32:51 Definitions and distinctions
§ 32:52 Legislative determination of public use
§ 32:53 Incidental benefits to individuals
§ 32:54 Unlawful purposes
§ 32:55 Who may raise objection to public use designation
§ 32:56 Airports
§ 32:57 Cemeteries
§ 32:58 Commercial or industrial development
§ 32:59 Educational purposes
§ 32:60 Ferries
§ 32:61 Garbage disposal sites and landfills
§ 32:62 Environmental protection
§ 32:63 Public health
§ 32:64 Historic preservation
§ 32:65 Light, heat or power supply
§ 32:66 Marketplaces; malls; convention centers
§ 32:67 Off-street parking facilities
§ 32:68 Parks and recreational facilities
§ 32:69 Pipelines
§ 32:70 Public buildings
§ 32:71 Public utilities
§ 32:72 Railroads, subways and bridges
§ 32:73 River and harbor improvement
§ 32:74 Sewers and drains
§ 32:75 Urban renewal; slum clearance; housing
§ 32:76 —Blight removal
§ 32:77 Streets and alleys
§ 32:78 Telecommunications
§ 32:79 Water supply and irrigation
§ 32:79.1 Wharves, marinas, piers, and docks

cxli
IV. WHAT PROPERTY MAY BE TAKEN

§ 32:79.21 Kinds of property that may be taken
§ 32:79.22 Property outside corporate limits
§ 32:79.23 Property already devoted to public use
§ 32:79.24 —Inconsistent uses
§ 32:79.25 —Same or similar use
§ 32:79.26 —Property not devoted to public uses
§ 32:79.27 —Railroad property
§ 32:79.28 —Municipal property
§ 32:79.29 —Distinguishing federal powers
§ 32:79.30 Public lands
§ 32:79.31 Exemptions

V. DISCONTINUANCE OF PROCEEDINGS

§ 32:79.50 Right to discontinue proceedings
§ 32:79.51 Recovery of damages and costs
§ 32:79.52 Reinstatement
§ 32:79.53 Discontinuance as bar to new proceedings

Volume 11A

VI. COMPENSATION

§ 32:80 Basis of right
§ 32:81 —Public property taken
§ 32:82 Parties responsible for payment
§ 32:83 Parties entitled to compensation
§ 32:84 —Jointly owned property, coowners, cotenants, etc.
§ 32:85 —Lessor and lessee
§ 32:86 —Mortgagees; other lienholders
§ 32:87 —Licensees
§ 32:88 Manner of payment
§ 32:89 —Payment to court
§ 32:90 —Security for payment
§ 32:91 Estoppel and waiver
§ 32:92 Additional servitudes
§ 32:93 Measures of damages
§ 32:94 —Injury to property not taken
§ 32:95 —Regulatory takings
§ 32:96 —Less than fee interests; leaseholds
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 32:97</td>
<td>Elements of damage</td>
</tr>
<tr>
<td>§ 32:98</td>
<td>Partial takings</td>
</tr>
<tr>
<td>§ 32:99</td>
<td>Valuation</td>
</tr>
<tr>
<td>§ 32:100</td>
<td>“Market” value</td>
</tr>
<tr>
<td>§ 32:101</td>
<td>Capitalization of income method</td>
</tr>
<tr>
<td>§ 32:102</td>
<td>“Before and after” values</td>
</tr>
<tr>
<td>§ 32:103</td>
<td>Project influence rule</td>
</tr>
<tr>
<td>§ 32:104</td>
<td>Replacement costs</td>
</tr>
<tr>
<td>§ 32:105</td>
<td>Elements of value</td>
</tr>
<tr>
<td>§ 32:106</td>
<td>Uses to which property adaptable</td>
</tr>
<tr>
<td>§ 32:107</td>
<td>Zoning or rezoning</td>
</tr>
<tr>
<td>§ 32:108</td>
<td>Improvements and fixtures</td>
</tr>
<tr>
<td>§ 32:109</td>
<td>Crops, trees, deposits and water</td>
</tr>
<tr>
<td>§ 32:110</td>
<td>Elements—Dedication as enhancing value</td>
</tr>
<tr>
<td>§ 32:111</td>
<td>Elements of value—Environmental factors</td>
</tr>
<tr>
<td>§ 32:112</td>
<td>Proof of value</td>
</tr>
<tr>
<td>§ 32:113</td>
<td>Sales of other property, “comparable sales”</td>
</tr>
<tr>
<td>§ 32:114</td>
<td>Tax documents</td>
</tr>
<tr>
<td>§ 32:115</td>
<td>Expert witnesses</td>
</tr>
<tr>
<td>§ 32:116</td>
<td>Sufficiency of evidence</td>
</tr>
<tr>
<td>§ 32:117</td>
<td>Burden of proof</td>
</tr>
<tr>
<td>§ 32:118</td>
<td>Consequential damages</td>
</tr>
<tr>
<td>§ 32:119</td>
<td>Nominal damages</td>
</tr>
<tr>
<td>§ 32:120</td>
<td>Remote, speculative, and contingent damages</td>
</tr>
<tr>
<td>§ 32:121</td>
<td>Blight of summons damage</td>
</tr>
<tr>
<td>§ 32:122</td>
<td>Attorney’s fees, other costs</td>
</tr>
<tr>
<td>§ 32:123</td>
<td>Time compensation computed</td>
</tr>
<tr>
<td>§ 32:124</td>
<td>Deductions; setoffs; special benefits</td>
</tr>
<tr>
<td>§ 32:125</td>
<td>Excessive damages</td>
</tr>
<tr>
<td>§ 32:126</td>
<td>Railroad rights-of-way</td>
</tr>
<tr>
<td>§ 32:127</td>
<td>Timing of payment—Constitutional regulation</td>
</tr>
<tr>
<td>§ 32:128</td>
<td>Sufficiency of compliance</td>
</tr>
<tr>
<td>§ 32:129</td>
<td>No constitutional regulation</td>
</tr>
<tr>
<td>§ 32:130</td>
<td>Interest</td>
</tr>
<tr>
<td>§ 32:131</td>
<td>Fund from which compensation is paid</td>
</tr>
<tr>
<td>§ 32:132</td>
<td>The award, judgment, or decree</td>
</tr>
</tbody>
</table>

**VII. TITLE AND RIGHTS ACQUIRED, ABANDONMENT, AND REVERSION**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 32:133</td>
<td>Title acquired by municipality</td>
</tr>
<tr>
<td>§ 32:134</td>
<td>Legislative authorization of condemnation in fee simple</td>
</tr>
</tbody>
</table>
§ 32:135 —Statutory construction
§ 32:136 —Effect
§ 32:137 Title acquired to streets and alleys
§ 32:138 Title acquired to parks
§ 32:139 Reversion—Abandoned or impossible use
§ 32:140 What constitutes abandonment
§ 32:141 Other rights acquired by municipality
§ 32:142 Effect of condemnation on owner rights

VIII. PROCEDURE

§ 32:143 Scope
§ 32:144 What law governs
§ 32:145 Nature of proceeding
§ 32:146 Compliance with procedural statutes
§ 32:147 Preliminary procedures
§ 32:148 —Attempt to agree; quick take proceedings
§ 32:149 Jurisdiction and venue
§ 32:150 Parties
§ 32:151 Pleadings and defenses
§ 32:152 Notice of proceedings
§ 32:153 —Preliminary proceedings
§ 32:154 —Proof of notice
§ 32:155 Assessment of damages
§ 32:156 Remedies
§ 32:157 —Rights of lienors
§ 32:158 —Injunctions; possessory actions
§ 32:159 —Certiorari to review condemnation
§ 32:160 —Appellate review of condemnation
§ 32:161 —Mandamus, prohibition, declaratory relief
§ 32:162 —Damage actions or proceedings
§ 32:163 ——Exclusiveness of statutory remedy
§ 32:164 —Inverse condemnation
§ 32:165 —Inaction as basis for inverse condemnation claim
§ 32:166 —Inverse condemnation—Maintaining action
§ 32:167 —“Inverse” condemnation—Maintaining action—Standing
§ 32:168 ——Grounds for action
§ 32:169 —Inverse condemnation—Damages
§ 32:170 —“Inverse” condemnation—Attorney fees
§ 32:171 —Time limitations; laches

cxliv
CHAPTER 33. DEDICATION

I. NATURE, KINDS AND ELEMENTS

§ 33:1 General considerations
§ 33:2 Definition and nature
§ 33:3 Types and distinguishing characteristics
§ 33:4 —Implied dedication
§ 33:5 Dedication effect on title
§ 33:6 Statutory dedications
§ 33:7 —Curing defects
§ 33:8 —Effect on common-law dedications
§ 33:9 Mandatory dedication
§ 33:10 Parties
§ 33:11 Necessity for specific grantee
§ 33:12 Purposes for which dedication is proper
§ 33:13 Property which may be dedicated
§ 33:14 Conditions and reservations by dedicat°r
§ 33:15 —Proper conditions
§ 33:16 —Improper conditions
§ 33:17 Pleading and proof

II. WHO MAY DEDICATE

§ 33:18 General rules
§ 33:19 Agent
§ 33:20 Public and private corporations
§ 33:21 Persons acting in certain representative capacities
§ 33:22 Persons under disability
§ 33:23 Lessors, lessees, and tenants
§ 33:24 Tenant in common
§ 33:25 Mortgagor or grantor in deed
§ 33:26 Holder of equitable title

III. PLATS AND MAPS

§ 33:27 In general
§ 33:28 Definitions
§ 33:29 Requisites; official approval
§ 33:30 Operation and effect of plat
§ 33:31 Sufficiency of description
§ 33:32 Construction of plats; “park,” “common,” “square”
§ 33:33 Purchaser’s rights to places not abutting
§ 33:34 Vacation of plat

IV. INTENTION TO DEDICATE

§ 33:35 Necessity for intent to dedicate
§ 33:36 How intent shown
§ 33:37 Public use as showing intent to dedicate
§ 33:38 User as showing intent—Permissive user
§ 33:39 —Length of use
§ 33:40 Blanks on plat or map as showing intent
§ 33:41 Showing absence of intent to dedicate
§ 33:42 Intent must be clearly indicated
§ 33:43 Presumptions and burden of proof
§ 33:44 Sufficiency of evidence
§ 33:45 Admissibility
§ 33:46 —Testimony of dedicator
§ 33:47 Intent as question of fact

V. ACCEPTANCE

§ 33:48 Power to accept
§ 33:49 Necessity for acceptance
§ 33:50 —Statutory dedication
§ 33:51 —Sale of lots with reference to plat
§ 33:52 —Presumptions
§ 33:53 Mode and sufficiency of acceptance
§ 33:54 —Acts of municipal officers
§ 33:55 ——Improving, repairing, maintaining property
§ 33:56 ——Bringing action relating to land dedicated
§ 33:57 ——User by public
§ 33:58 ——Statutory user provisions
§ 33:59 ——Ordinances and resolutions
§ 33:60 Acts showing intention not to accept
§ 33:61 Sufficiency of evidence to show acceptance
§ 33:62 Time for acceptance
§ 33:63 Estoppel to assert or to deny acceptance
§ 33:64 Partial acceptance
§ 33:65 Acceptance as subject to conditions
§ 33:66 Burden of proof; questions of law and fact

VI. REVOCATION

§ 33:67 Right to revoke
Table of Contents

§ 33:68 Rededication

VII. ESTOPPEL

§ 33:69 Estoppel to assert dedication
§ 33:70 Estoppel to deny dedication

VIII. RIGHTS AND TITLE ACQUIRED OR AFFECTED

§ 33:71 Persons to whose benefit dedication inures
§ 33:72 Effect generally
§ 33:73 Effect on rights of dedicator
§ 33:74 Rights acquired by citizens
§ 33:75 Title acquired by dedication
§ 33:76 —Statutory dedication
§ 33:77 Rights acquired by municipality
§ 33:78 Right of dedicator to sue
§ 33:79 Right of municipality to sue
§ 33:80 Rights of purchasers and abutters

IX. USER, MISUSER AND ABANDONMENT

§ 33:81 Uses consistent with dedication; misuser
§ 33:82 —Sale or lease of property dedicated
§ 33:83 —Power of legislature to authorize diversion or sale
§ 33:84 —Change of use by consent
§ 33:85 What constitutes abandonment
§ 33:86 —Statutes as to failure to open, work, use streets
§ 33:87 Effect of abandonment or misuser

Volume 12

CHAPTER 34. FRANCHISES

I. DEFINITION, NATURE AND GENERAL RULES

§ 34:1 Introduction
§ 34:2 Franchise defined
§ 34:3 —Corporate franchise distinguished
§ 34:4 —Grant as license rather than franchise
§ 34:5 —Franchise as contract
§ 34:6 —Grant to use streets
§ 34:7 Public utility defined
§ 34:8 —What are not public utilities
§ 34:9 —State commissions

II. POWER TO GRANT OR REFUSE FRANCHISE
§ 34:10 Franchise grant as exercise of sovereign power
§ 34:11 Power of state legislature
§ 34:12 Need for municipal consent
§ 34:13 —Telecommunication services
§ 34:14 ——Telecommunications towers
§ 34:15 ——Antennas
§ 34:16 ——Management of public rights-of-way
§ 34:17 ——Fair and reasonable compensation
§ 34:18 ——Scope and authority under the TCA of 1996
§ 34:19 ——Jurisdiction issues and the TCA of 1996
§ 34:20 —By implication, waiver or estoppel
§ 34:21 Power of municipality
§ 34:22 —Implied power
§ 34:23 —Curative legislation
§ 34:24 —Construction
§ 34:25 —Streets not owned by municipality
§ 34:26 —Grant for private purposes
§ 34:27 —Delegation by municipality
§ 34:28 —Refusal of street use
§ 34:29 —Eligibility for franchise
§ 34:30 ——Cooperatives
§ 34:31 ——Grant before organization of corporation
§ 34:32 ——Judicial review

III. EXCLUSIVE RIGHTS
§ 34:33 Power to grant exclusive franchises
§ 34:34 —Violation of antitrust laws
§ 34:35 —Emergency services
§ 34:36 —Waste management contracts
§ 34:37 —First Amendment protection for cable television
TABLE OF CONTENTS

§ 34:38 — —Cable Communications Policy Act of 1984
§ 34:39 — —1992 Cable Act; “must-carry” provisions
§ 34:40 Exclusive street use distinguished from exclusive franchise
§ 34:41 Construction
§ 34:42 Effect of authorized exclusive grant
§ 34:43 Effect of unauthorized exclusive grant

IV. PROCEDURE TO OBTAIN FRANCHISE
§ 34:44 Application and subsequent action
§ 34:45 Vote of people
§ 34:46 Consent of abutters
§ 34:47 Sale to highest bidder
§ 34:48 Who may grant franchise
§ 34:49 Certificate of public convenience and necessity
§ 34:50 Review of franchise ordinance
§ 34:51 Cable television
§ 34:52 Open access requirements: cable and Internet service
§ 34:53 Open video systems

V. CONTENTS, CONDITIONS, ACCEPTANCE, CONSTRUCTION AND ASSIGNMENT
§ 34:54 Contents
§ 34:55 — —Conditions
§ 34:56 — —Requirement to include conditions
§ 34:57 — —Compensation
§ 34:58 — — —Services to municipality
§ 34:59 — — —Cable television
§ 34:60 — —Completion within fixed time
§ 34:61 — —Street paving
§ 34:62 — —Railway crossing construction
§ 34:63 — —Effect and construction
§ 34:64 Acceptance
§ 34:65 Amendment or modification
§ 34:66 Construction
§ 34:67 — —Illustrations
§ 34:68 Assignment

VI. DURATION, TERMINATION, EXTENSION, RENEWAL, SURRENDER, REVOCATION, AND FORFEITURE
§ 34:69 Duration

cxlix
§ 34:70 — Constitutional, statutory, or charter limitations
§ 34:71 — Construction of grant as to duration
§ 34:72 — Termination
§ 34:73 — Rights of parties
§ 34:74 — Extension and renewal
§ 34:75 — Cable television
§ 34:76 — Surrender and withdrawal from public service
§ 34:77 — Duty to render service
§ 34:78 — Lines of road or parts
§ 34:79 — Revocation
§ 34:80 — Constitutional or statutory provisions
§ 34:81 — Damages for wrongful revocation
§ 34:82 — Forfeiture
§ 34:83 — Declaration of forfeiture or resort to courts
§ 34:84 — Who may assert forfeiture
§ 34:85 — Waiver of forfeiture and estoppel to assert
§ 34:86 — Procedure
§ 34:87 — Extent and effect

VII. EFFECT OF GRANT; GRANTEE’S RIGHTS AND DUTIES

A. IN GENERAL
§ 34:88 — Effect of grant
§ 34:89 — Unnecessary or invalid grant
§ 34:90 — Impairment of grant
§ 34:91 — Rights as between grantees
§ 34:92 — Territorial limits
§ 34:93 — Public improvements interfering with grant
§ 34:94 — Municipality’s liability for grantee’s acts

B. POLICE POWER
§ 34:95 — Effect of grant on subsequent exercise of police power
§ 34:96 — Relocation of facilities
§ 34:97 — Reasonableness of regulations
§ 34:98 — General illustrations
§ 34:99 — Street excavations
§ 34:100 — Poles and wires
§ 34:101 — Underground wires
§ 34:102 — Railways
TABLE OF CONTENTS

§ 34:103 License fees
§ 34:104 —Fees imposable
§ 34:105 —Reasonableness
§ 34:106 —Collection and enforcement

C. RIGHT TO ATTACK FRANCHISE
§ 34:107 Who may attack franchise; collateral attack
§ 34:108 Estoppel or laches of municipality
§ 34:109 —Effect of long-continued user of streets
§ 34:110 Estoppel of grantee

D. DUTIES AND LIABILITIES OF GRANTEE
§ 34:111 Governmental control of service and rates
§ 34:112 Duty to furnish a supply or service
§ 34:113 —Grounds for refusal
§ 34:114 ——Amounts due at other premises
§ 34:115 ——Debt of another
§ 34:116 ——Disputed bills
§ 34:117 —Pure water
§ 34:118 —Fee for restoring supply after shutoff
§ 34:119 Discrimination
§ 34:120 —Statutory provisions
§ 34:121 ——Common-law rule compared
§ 34:122 —Classification
§ 34:123 —In the public interest
§ 34:124 Liabilities
§ 34:125 —Abutters
§ 34:126 —Losses resulting from insufficient water supply

VIII. COMPENSATION TO ABUTTING OWNERS
§ 34:127 General considerations
§ 34:128 Commercial railroads
§ 34:129 Street railroads
§ 34:130 Elevated railroads
§ 34:131 Subways
§ 34:132 Cable, telephone, and cellular poles, wires, and towers
§ 34:133 Electricity: poles and wires
§ 34:134 Subsurface street use
§ 34:135 Additional track or other enlargement of use
IX. COMPANY RULES

§ 34:136 Power to make
§ 34:137 Reasonableness
§ 34:138 —Reasonable rules examples
§ 34:139 —Unreasonable rules examples
§ 34:140 —Payments in advance
§ 34:141 —Shutting-off supply
§ 34:142 —Meters and meter rates
§ 34:143 Violations; Effect; Waiver

X. CONTRACTS BETWEEN GRANTEE AND MUNICIPALITY

§ 34:144 In general
§ 34:145 Power to make
§ 34:146 —Water supply contracts
§ 34:147 —Electricity and power supply contracts
§ 34:148 —Waste management services
§ 34:149 Validity
§ 34:150 Duration
§ 34:151 Construction and operation
§ 34:152 Municipal liability for supply or services furnished
§ 34:153 Rescission or modification
§ 34:154 Judicial review

XI. RATES

A. GENERAL CONSIDERATIONS

§ 34:155 Limitations on amount
§ 34:156 —Federal Power Act
§ 34:157 Meter rates
§ 34:158 Minimum charges
§ 34:159 Incidental charges; Meter rent
§ 34:160 Payment of meter cost
§ 34:161 Tampering costs
§ 34:162 Definiteness and certainty
§ 34:163 Construction

B. POWER TO FIX RATES

§ 34:164 Power to contract and regulate rates
§ 34:165 Deregulation of utility rates

CLI
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 34:166</td>
<td>State regulatory powers</td>
</tr>
<tr>
<td>§ 34:167</td>
<td>—Delegation to public utility commission</td>
</tr>
<tr>
<td>§ 34:168</td>
<td>Municipal regulatory powers</td>
</tr>
<tr>
<td>§ 34:169</td>
<td>—Implied power</td>
</tr>
<tr>
<td>§ 34:170</td>
<td>—Express power</td>
</tr>
<tr>
<td>§ 34:171</td>
<td>——Exercise and construction</td>
</tr>
<tr>
<td>§ 34:172</td>
<td>———Annexed territory</td>
</tr>
<tr>
<td>§ 34:173</td>
<td>———Withdrawal, surrender or delegation</td>
</tr>
<tr>
<td>§ 34:174</td>
<td>Rate regulations impairing obligation of contract</td>
</tr>
<tr>
<td>§ 34:175</td>
<td>—State’s power to change rates</td>
</tr>
<tr>
<td>§ 34:176</td>
<td>—State’s power to change rates fixed by municipality—Rates fixed as condition to consent to street use</td>
</tr>
<tr>
<td>§ 34:177</td>
<td>Municipal power to contract rates</td>
</tr>
<tr>
<td>§ 34:178</td>
<td>Municipal power to contract as to rates—Construction of rate provision</td>
</tr>
<tr>
<td>§ 34:179</td>
<td>Cable television</td>
</tr>
<tr>
<td>§ 34:180</td>
<td>Regulating rates outside municipality</td>
</tr>
<tr>
<td>§ 34:181</td>
<td>Company’s attack on rate fixed</td>
</tr>
<tr>
<td>§ 34:182</td>
<td>Separability clause</td>
</tr>
</tbody>
</table>

C. MODE OF FIXING RATES

§ 34:183 | Generally |
§ 34:184 | City officers as impartial tribunal |

D. REASONABLENESS OF RATES

§ 34:185 | Generally |
§ 34:186 | —Presumption of reasonableness |
§ 34:187 | Judicial review |
§ 34:188 | —Rule in federal courts |
§ 34:189 | —Rate-fixing by courts |
§ 34:190 | ——Modification of commission orders |
§ 34:191 | Determination of reasonableness |
§ 34:192 | Valuation methods |
§ 34:193 | Patrons’ versus company’s interests |
§ 34:194 | Present property value |
§ 34:195 | —Advertising or promotional costs |
§ 34:196 | —Charitable contributions costs |
§ 34:197 | —Low rates as to certain patrons |
§ 34:198 | —Low rates to certain items or customers—Low or fixed income consumers |
§ 34:199 —Public Utilities Regulatory Policies Act
§ 34:200 —Construction costs plus improvements
§ 34:201 —Reproduction cost
§ 34:202 —Substitute systems
§ 34:203 —Franchise value
§ 34:204 —Going concern value
§ 34:205 —Goodwill
§ 34:206 —Depreciation
§ 34:207 —Property not used
§ 34:208 —Effect of rate reduction on future business
§ 34:209 —Capitalization and bonded indebtedness
§ 34:210 Profit determined to be reasonable

XII. REMEDIES

§ 34:211 Private individuals
§ 34:212 —Injunction
§ 34:213 —Certiorari
§ 34:214 —Quo warranto
§ 34:215 State
§ 34:216 Municipalities
§ 34:217 —Quo warranto
§ 34:218 —Mandamus
§ 34:219 —Injunction
§ 34:220 —Resisting street use by force
§ 34:221 —Restraining company from discontinuing business
§ 34:222 Public service companies
§ 34:223 —Suits against competitors attacking their franchises
§ 34:224 Patrons
§ 34:225 —Mandamus
§ 34:226 —Injunction
§ 34:227 —Damage actions
§ 34:228 — ——Recovery of penalties
§ 34:229 Abutters

CHAPTER 35. MUNICIPAL OWNERSHIP OF PUBLIC UTILITIES

§ 35:1 Scope of chapter
§ 35:2 State's power to authorize municipal ownership of public utilities
§ 35:3 Municipal power to own and operate public utilities
§ 35:4 — Determination of provider as public utility
§ 35:5 — Power derived from charter
§ 35:6 — Duplicate service
§ 35:7 — Implied power
§ 35:8 Types of municipally owned utilities—
   Waterworks
§ 35:9 — Incidental powers necessary
§ 35:10 — Regulation by county
§ 35:11 — Electricity plants
§ 35:12 — Windpower
§ 35:13 — Transportation systems
§ 35:14 Construction and operation of competing plant
§ 35:15 — Certificates of convenience and necessity
§ 35:16 — Conditions precedent
§ 35:17 — Remedies against municipal competition
§ 35:18 — Contract not to compete
§ 35:19 Acquisition of property outside territorial limits
§ 35:20 Acquisition of existing company’s plant
§ 35:21 — Option to purchase
§ 35:22 — Requisites, validity, operation, construction, and effect
§ 35:23 — Payment as condition precedent
§ 35:24 — Specific performance
§ 35:25 — Exercise
§ 35:26 Duty to purchase existing plant
§ 35:27 Valuation of plant bought
§ 35:28 State’s power to compel city to operate
§ 35:29 Ownership, operation as discretionary
§ 35:30 Procedure required to acquire plant; submission to voters
§ 35:31 Financing the utility
§ 35:32 — Special assessments
§ 35:33 Contracts in connection with municipal utility ownership
§ 35:34 Furnishing utility service to individuals or private businesses
§ 35:35 Furnishing surplus supply for private purposes
§ 35:36 Furnishing supply outside territorial limits
§ 35:37 — Express authority
§ 35:38 — — Construction
§ 35:39 — Refusing extraterritorial supply
§ 35:40 —Public service commission jurisdiction
§ 35:41 —Only surplus may be furnished
§ 35:42 —Contracts for extraterritorial supply
§ 35:43 — —Revocation
§ 35:44 Rights, duties, and liabilities
§ 35:45 —Rule-making
§ 35:46 —Management and control—Legal actions
§ 35:47 —Purchased plant operation
§ 35:48 —Cutting off supply
§ 35:49 —Enlargements and extensions
§ 35:50 —Discrimination between users
§ 35:51 — —Racial discrimination
§ 35:52 — —Illegal conditions of service
§ 35:53 — —Extraterritorial users
§ 35:54 —Liabilities
§ 35:55 —Sale or lease of plant
§ 35:56 Rates and service charges
§ 35:57 —Reasonableness and nondiscrimination required
§ 35:58 — —Rates based on consumer classification
§ 35:59 — —Service for resale
§ 35:60 —Profit on operation
§ 35:61 —Return on investment
§ 35:62 —Depreciation and expansion
§ 35:63 —Amount of indebtedness
§ 35:64 —Free services or supplies
§ 35:65 —Combined water and sewer rates
§ 35:66 —Extraterritorial rates
§ 35:67 — —State commission jurisdiction
§ 35:68 —Remedies of municipality
§ 35:69 —Remedies of patrons
§ 35:70 Rates as taxes, assessments or liens
§ 35:71 —Subrogation to liens
§ 35:72 Privatization of utilities

CHAPTER 36. MUNICIPAL ENTERPRISES

I. IN GENERAL

§ 36:1 Definition
§ 36:2 Power to engage in business

cvii
Chapter 37. Public Improvements

I. Power to Make

§ 37:1 Purpose and definition
§ 37:2 Purpose and definition of public improvements—Illustrations
§ 37:3 Nature of power
§ 37:4 Municipal power
§ 37:5 Joint powers
§ 37:6 Public improvements as legislative matters
§ 37:7 Uniformity
§ 37:8 Roads, bridges, and sewers
§ 37:9 Authority to provide for improvements
§ 37:10 Delegation of power
§ 37:11 Compliance with local, state, and federal laws
§ 37:12 Improvements beyond corporate limits
§ 37:13 Property not owned by municipality
§ 37:14 Improvements by property owners
§ 37:15 Compulsory regulations
§ 37:16 Notice
§ 37:17 Extent of power and duty
§ 37:18 Street improvements
§ 37:19 —Sidewalks
§ 37:20 —Alterations
§ 37:21 —Paving, repaving, and repairing distinguished
§ 37:22 Construction of improvement laws

II. MUNICIPAL DISCRETION

§ 37:23 Municipal discretion as beyond court control
§ 37:24 —Illustrations
§ 37:25 Constitutional limitations
§ 37:26 Compelling municipality to make improvements
§ 37:27 Plans
§ 37:28 Materials
§ 37:29 —Selection by property owners
§ 37:30 Mode and time of doing work

III. EXERCISE OF POWER

A. GENERAL CONSIDERATIONS; PRELIMINARY PROCEEDINGS

§ 37:31 Street establishment required prior to improvement
§ 37:32 Street grade establishment
§ 37:33 —Grade change
§ 37:34 Water and gas pipes prior to improvement
§ 37:35 Interference with franchise rights
§ 37:36 Discontinuance, suspension, abandonment of improvement
§ 37:37 Preliminary proceedings
§ 37:38 —Notice
§ 37:39 ——Waiver
§ 37:40 ——Form, requisites, and validity
§ 37:41 ———Improvement description
§ 37:42 ——Persons entitled to notice
§ 37:43 ——Time
§ 37:44 ——Manner of giving
§ 37:45 ——Return of service or proof of publication
§ 37:46 ——Petition or consent of property owners
§ 37:47 ——Form and requisites
§ 37:48 ——Withdrawal of consent
§ 37:49 ——Hearing
§ 37:50 ——Protest or remonstrance
§ 37:51 ——Validation actions
### Table of Contents

| § 37:52 | — —Who may protest or remonstrate |
| § 37:53 | — —Operation and effect |
| § 37:54 | — —Withdrawal |
| § 37:55 | Submission to and approval of electors |
| § 37:56 | Mode of payment for improvement |
| § 37:57 | —Recapture agreements |
| § 37:58 | —Citizens’ and property owners’ agreements to pay |
| § 37:59 | —Installment payments |
| § 37:60 | Estimate of improvement cost |
| § 37:61 | —How and by whom made |
| § 37:62 | —Time |
| § 37:63 | —Sufficiency |
| § 37:64 | —Amendment, modification, or correction; second estimate |
| § 37:65 | Means of payment |
| § 37:66 | —Certification of sufficient funds available |
| § 37:67 | Provision for means of payment—Appropriations |
| § 37:68 | Ordinance or resolution |
| § 37:69 | Preliminary procedures—Declaration of necessity |
| § 37:70 | Plans and specifications |
| § 37:71 | —Change |
| § 37:72 | —Materials |

#### B. FORMAL ACTION PROVIDING FOR IMPROVEMENT

| § 37:73 | Ordinance, resolution, or the like |
| § 37:74 | —Sufficiency of improvement order |
| § 37:75 | —Publication |
| § 37:76 | —Recital of authority |
| § 37:77 | —Separate ordinances for separate improvements |
| § 37:78 | Preliminary investigation and report |
| § 37:79 | Recommendation of ordinance by municipal board |
| § 37:80 | Enactment procedure |
| § 37:81 | —Notice |
| § 37:82 | —Referendum |
| § 37:83 | —Description of improvement |
| § 37:84 | — —Resolutions |
| § 37:85 | — —Street improvements |
§ 37:86 — Sewer construction
§ 37:87 — Description by reference
§ 37:88 Variances between formal action elements
§ 37:89 Certainty and validity
§ 37:90 Reasonableness
§ 37:91 Validation of defects, irregularities, void acts
§ 37:92 Validation of defects, irregularities, and void acts—Cure by legislature
§ 37:93 Amendment
§ 37:94 Repeal
§ 37:95 Construction
§ 37:96 — Time and manner of doing work

IV. CONTRACTS

A. EXECUTION AND VALIDITY

§ 37:97 Scope of subdivision
§ 37:98 Municipal contractual powers
§ 37:99 — Imputation to contractors
§ 37:100 — Authorization required
§ 37:101 Constitutional and statutory requirements
§ 37:102 — Racial preferences
§ 37:103 — Gender based set-asides
§ 37:104 — Resident quotas
§ 37:105 — Minimum wage, prevailing wage requirements
§ 37:106 Mode of contracting
§ 37:107 Competitive bidding
§ 37:108 Written and parol contracts
§ 37:109 Formal defects and irregularities
§ 37:110 Defects in preliminary proceedings
§ 37:111 Limitations and conditions
§ 37:112 — Cost of work provisions
§ 37:113 — Guaranty of work and stipulations for repairs
§ 37:114 — Single contract for several improvements
§ 37:115 — Multiple contracts for one improvement
§ 37:116 Unauthorized and void contracts
§ 37:117 — Recovery on implied assumpsit
§ 37:118 — Severable contracts
§ 37:119 Estoppel
§ 37:120 Compliance with specifications

clx
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 37:121</td>
<td>Compliance with improvement statute or ordinance</td>
</tr>
<tr>
<td>§ 37:122</td>
<td>Nonconformance in part</td>
</tr>
<tr>
<td>§ 37:123</td>
<td>Approval</td>
</tr>
<tr>
<td>§ 37:124</td>
<td>Ratification</td>
</tr>
<tr>
<td>§ 37:125</td>
<td>Modification</td>
</tr>
<tr>
<td>§ 37:126</td>
<td>Manner</td>
</tr>
<tr>
<td>§ 37:127</td>
<td>Assignment or subletting</td>
</tr>
<tr>
<td>§ 37:128</td>
<td>Effect</td>
</tr>
<tr>
<td>§ 37:129</td>
<td>Assignee's rights</td>
</tr>
<tr>
<td>§ 37:130</td>
<td>Construction</td>
</tr>
<tr>
<td>§ 37:131</td>
<td>Forfeiture and restoration</td>
</tr>
</tbody>
</table>

**B. PERFORMANCE**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 37:132</td>
<td>Contractor's performance of contract as condition precedent to recovery</td>
</tr>
<tr>
<td>§ 37:133</td>
<td>Defective performance</td>
</tr>
<tr>
<td>§ 37:134</td>
<td>—Waiver</td>
</tr>
<tr>
<td>§ 37:135</td>
<td>—Excuses: nonperformance</td>
</tr>
<tr>
<td>§ 37:136</td>
<td>Acceptance of work by municipality</td>
</tr>
<tr>
<td>§ 37:137</td>
<td>Authority to accept</td>
</tr>
<tr>
<td>§ 37:138</td>
<td>Refusal to accept</td>
</tr>
<tr>
<td>§ 37:139</td>
<td>Acts constituting acceptance</td>
</tr>
<tr>
<td>§ 37:140</td>
<td>Delay and waiver</td>
</tr>
<tr>
<td>§ 37:141</td>
<td>Liquidated damages or penalty</td>
</tr>
<tr>
<td>§ 37:142</td>
<td>Partial performance</td>
</tr>
<tr>
<td>§ 37:143</td>
<td>Time as essence of contract</td>
</tr>
<tr>
<td>§ 37:144</td>
<td>Abandonment, rescission, or annulment of contract</td>
</tr>
<tr>
<td>§ 37:145</td>
<td>Extension of time for performance</td>
</tr>
<tr>
<td>§ 37:146</td>
<td>Completion of abandoned work</td>
</tr>
<tr>
<td>§ 37:147</td>
<td>Contractor’s reliance on plans and specifications; implied warranty</td>
</tr>
<tr>
<td>§ 37:148</td>
<td>Laborers’ rights</td>
</tr>
<tr>
<td>§ 37:149</td>
<td>Suppliers’ rights</td>
</tr>
<tr>
<td>§ 37:150</td>
<td>Property owners’ rights</td>
</tr>
<tr>
<td>§ 37:151</td>
<td>Subcontractors’ rights</td>
</tr>
<tr>
<td>§ 37:152</td>
<td>Damage claims</td>
</tr>
<tr>
<td>§ 37:153</td>
<td>Certificate of approval of work</td>
</tr>
<tr>
<td>§ 37:154</td>
<td>—Officer authorized to give</td>
</tr>
<tr>
<td>§ 37:155</td>
<td>—Necessity</td>
</tr>
<tr>
<td>§ 37:156</td>
<td>—Sufficiency</td>
</tr>
</tbody>
</table>
C. PAYMENT FOR WORK

§ 37:157 Liability of municipality to contractor
§ 37:158 — Contractor’s right to recover
§ 37:159 — Breach of contract
§ 37:160 — Default or neglect of municipality
§ 37:161 Assumpsit
§ 37:162 Quantum meruit
§ 37:163 Extra pay for extra work
§ 37:164 — Determination of liability
§ 37:165 — Fault or negligence of municipality
§ 37:166 — Work outside contract
§ 37:167 — Work covered by contract
§ 37:168 — Unauthorized work
§ 37:169 — Arbitration provisions
§ 37:170 Method of payment
§ 37:171 — Proportionate cost
§ 37:172 — Special assessment
§ 37:173 — — Municipality’s liability to contractor
§ 37:174 — — — Limited liability
§ 37:175 Method and time of payment — Special assessment — Municipality’s liability to contractor — Unauthorized assessments
§ 37:176 — — — Unrealized assessments
§ 37:177 — — When assessment made
§ 37:178 Method — Special assessment — Compelling assessment
§ 37:179 Method of payment — Special assessment — Proceeds as trust fund
§ 37:180 — — Default, failure, or neglect of municipality
§ 37:181 Conditions
§ 37:182 Special fund
§ 37:183 Amount of recovery
§ 37:184 — Prospective profits
§ 37:185 — Interest
§ 37:186 Defenses
§ 37:187 — Setoff, recoupment, and counterclaim
§ 37:188 Retention of part by municipality
§ 37:189 Recovery of payments made by municipality

D. LIENS

§ 37:190 Laborers’ and suppliers’ liens
§ 37:191 — Construction of lien laws
### Table of Contents

§ 37:192 —Persons entitled to lien
§ 37:193 —Property subject to lien
§ 37:194 —Extraterritorial operation
§ 37:195 —Priorities
§ 37:196 Perfection
§ 37:197 Loss, discharge, or waiver
§ 37:198 Enforcement
§ 37:199 Assignment by contractor
§ 37:200 —Priorities

#### E. BOND

§ 37:201 Performance of work
§ 37:202 —Time for giving
§ 37:203 —Requisites, validity, and contents
§ 37:204 Security of laborers, suppliers, and subcontractors
§ 37:205 —Express requirement by statute or charter
§ 37:206 —Coverage
§ 37:207 ——Subcontractors and their suppliers
§ 37:208 —Who may sue on bond
§ 37:209 —What law governs
§ 37:210 —Form, requisitesm and sufficiency
§ 37:211 —Time to sue
§ 37:212 —Manner of instituting suit
§ 37:213 Liability on bond
§ 37:214 —Release, discharge, or exoneration of sureties
§ 37:215 —Extent of recovery
§ 37:216 —On abandonment of work
§ 37:217 —Officers’ personal liability
§ 37:218 Actions and defenses
§ 37:219 —Conditions precedent
§ 37:220 —Defenses
§ 37:221 Interpretation and construction

#### V. DAMAGES

§ 37:222 Scope of subdivision
§ 37:223 Consequential damages
§ 37:224 —Lateral support removal
§ 37:225 —Delay in doing work
§ 37:226 ——“No damage for delay” clauses
§ 37:227 Lost profits

clxiii
§ 37:228 Constitutional provisions
§ 37:229 Statutory and charter provisions
§ 37:230 Retroactive provisions
§ 37:231 Authorization or ratification of improvement
§ 37:232 Fixing damages by agreement
§ 37:233 Change of street grade
§ 37:234 — Grade change as prerequisite
§ 37:235 — Compensation
§ 37:236 — “Taking” or “damaging” property as constitutionally prohibited
§ 37:237 — Nature and extent of grade change
§ 37:238 Nature and extent of grade change—Bringing street to first established grade
§ 37:239 Bridges, viaducts
§ 37:240 Railways
§ 37:241 Street vacations
§ 37:242 Sewer and drain construction
§ 37:243 Who liable
§ 37:244 — Municipality or contractor
§ 37:245 — Other parties
§ 37:246 Who may recover damages
§ 37:247 — Property conveyance, effect
§ 37:248 Estoppel
§ 37:249 — Municipality ability to deny liability
§ 37:250 Waiver
§ 37:251 When damages accrue
§ 37:252 Location of property; nonabutting property
§ 37:253 Measure of damages
§ 37:254 — Interest
§ 37:255 Damage assessment proceedings
§ 37:256 — Assessing body
§ 37:257 — Review
§ 37:258 Payment of damages
§ 37:259 — Deduction of benefits
§ 37:260 Delay in bringing action
§ 37:261 Remedies of property owners
§ 37:262 Elements of damages
§ 37:263 — Burden of proof
§ 37:264 — Interference with access to property
§ 37:265 — Restoration cost
§ 37:266 — Shade tree destruction
§ 37:267 Surface water
VI. REMEDIES

§ 37:268 Judicial interference with public improvements
§ 37:269 Injunction
§ 37:270 —Adequate remedy at law
§ 37:271 —Grounds
§ 37:272 —Irregularities
§ 37:273 —Restraining alteration of grade, street width
§ 37:274 —Restraining street vacation
§ 37:275 —Time limitations
§ 37:276 —Who entitled
§ 37:277 —Pleadings and proof
§ 37:278 Conclusiveness and collateral attack
§ 37:279 Defects and objections
§ 37:280 Who may object
§ 37:281 Waiver
§ 37:282 —Estoppel
§ 37:283 Review by appeal
§ 37:284 Certiorari

Volume 14

CHAPTER 38. SPECIAL TAXATION AND LOCAL ASSESSMENTS

§ 38:1 Nature of special assessments
§ 38:2 Distinction between tax and special assessment
§ 38:3 —Contrasted with property tax
§ 38:4 —Contrasted with regulatory fee
§ 38:5 Distinctions between tax and special assessments—Contrasted with usage fee
§ 38:6 Nature of special assessment or taxation—Benefit conferred theory
§ 38:7 —Under police power
§ 38:8 —Landmark caselaw
§ 38:9 —Special services distinguished
§ 38:10 —Payment in lieu of taxes
§ 38:11 Constitutional restrictions
§ 38:12 —Double taxation
§ 38:13 —Equal protection; classifications
§ 38:14 —Uniformity and equality; classifications
§ 38:15 Power to levy assessments
§ 38:16 —Construction
§ 38:17 Law must authorize improvement when made
§ 38:18 Assessments for improvements already made
§ 38:19 Authority to make improvement

I. KINDS OF IMPROVEMENTS AUTHORIZED

§ 38:20 Purposes of special assessments; improvement as local
§ 38:21 Street improvements
§ 38:22 —Exercise of police power
§ 38:23 —Nature of street improvements
§ 38:24 —Intersections
§ 38:25 Original construction, reconstruction, and repair of streets
§ 38:26 —Effect of repair provisions on assessment
§ 38:27 —Widening; vacating streets
§ 38:28 Railroad tracks
§ 38:29 Toll roads and turnpikes
§ 38:30 Retaining walls; embankment; handrail
§ 38:31 Street sprinkling and cleaning
§ 38:32 Sewers and drains
§ 38:33 —Reconstructing or repairing
§ 38:34 —New or additional sewers; extensions
§ 38:35 —Acquisition of existing sewers and drains
§ 38:36 Street lighting
§ 38:37 Waterworks; water pipes
§ 38:38 Parks and marketplaces
§ 38:39 Parking lots
§ 38:40 Miscellaneous improvements

II. PROPERTY SUBJECT TO ASSESSMENT

A. BENEFITS

§ 38:41 In general
§ 38:42 Necessity of benefit to property
§ 38:43 —General and special benefits
§ 38:44 —Character and extent
§ 38:45 —Availability for use
§ 38:46 —Market value
§ 38:47 —Effect of existing similar improvement
§ 38:48 Presumptions and burden of proof
§ 38:49 —Questions of law and fact
§ 38:50 Benefits where part of property taken
### Table of Contents

#### B. VACANT, UNPLATTED PROPERTY, ETC.

§ 38:51 Vacant property or unimproved property  
§ 38:52 Unplatted and rural lands

#### C. RAILROAD PROPERTY

§ 38:53 In general  
§ 38:54 —Necessity for special benefit  
§ 38:55 Specific railroad property assessable

#### D. ASSESSMENT DISTRICTS

§ 38:56 In general  
§ 38:57 Creation or establishment  
§ 38:58 —Initiative and referendum  
§ 38:59 —Miscellaneous districts  
§ 38:60 —Water and sewer districts  
§ 38:61 —Designation and description of district  
§ 38:62 Benefits prior to establishment of districts  
§ 38:63 Boundaries and area of district  
§ 38:64 —Annexed territory  
§ 38:65 Power of municipal authorities  
§ 38:66 Discretion of municipal authorities  
§ 38:67 Conclusiveness; review of action of authorities  
§ 38:68 Injunction  
§ 38:69 Property assessable and reassessment

#### E. SEWERS AND DRAINS

§ 38:70 In general  
§ 38:71 Necessity of showing benefit  
§ 38:72 Requirement that property abut, be adjacent

#### F. RELATION TO IMPROVEMENT

§ 38:73 Property beyond municipal area  
§ 38:74 Waterworks  
§ 38:75 Property abutting  
§ 38:76 —Platted and unplatted lands  
§ 38:77 Property fronting  
§ 38:78 —Squares  
§ 38:79 —Corner lots  
§ 38:80 Property contiguous, adjoining or adjacent  
§ 38:81 Property not abutting improvement
§ 38:82 Restricting property by depth or distance
§ 38:83 Property “benefited” but not abutting

G. PROPERTY DEVOTED TO PUBLIC USE
§ 38:84 In general
§ 38:85 County property
§ 38:86 Federal government property
§ 38:87 Indian lands

H. PROPERTY OF PUBLIC UTILITIES
§ 38:88 In general

I. LEASEHOLDS
§ 38:89 In general

III. PROPERTY EXEMPT FROM ASSESSMENT
§ 38:90 Power to exempt; statutory construction
§ 38:91 —Religious and charitable institutions
§ 38:92 —Educational institutions
§ 38:93 —Cemeteries and burial grounds
§ 38:94 —Homestead property
§ 38:95 Exemption for improvements paid by owners
§ 38:96 Exemption by agreement
§ 38:97 —Dedication of land

IV. EXERCISE OF POWER
A. POWER TO LEVY ASSESSMENT
§ 38:98 In general
§ 38:99 Municipal officers empowered to make assessments
§ 38:100 —Commissioners

B. QUALIFICATIONS AND COMPENSATION OF OFFICERS
§ 38:101 Qualifications of assessors; oath
§ 38:102 —Commissioners
§ 38:103 Compensation of commissioners

C. NOTICE AND HEARING
§ 38:104 Notice of assessment to property owners
Table of Contents

§ 38:105 —Time of giving notice
§ 38:106 —Persons entitled to notice
§ 38:107 Sufficiency of the notice; in general
§ 38:108 —Authority to give notice
§ 38:109 —Designation and description of property
§ 38:110 Manner of giving notice
§ 38:111 —Publication
§ 38:112 —Posting
§ 38:113 Waiver of notice
§ 38:114 Hearing on proposed assessment

D. MAKING ASSESSMENT

§ 38:115 Time for making assessment
§ 38:116 —With reference to completion of improvement
§ 38:117 Levy of assessment generally
§ 38:118 —Ordinance, resolution or order
§ 38:119 Manner of levying assessment
§ 38:120 —Assessment according to benefits; market value
§ 38:121 —“Block-by-block” method
§ 38:122 —“Zone” method
§ 38:123 —“Quarter-block” method
§ 38:124 —Agricultural lands
§ 38:125 —Land in bulk or separate parcels
§ 38:126 —Two or more improvements in one assessment
§ 38:127 —Against part of lot or tract

E. APPORTIONMENT AND REAPPORTIONMENT OF ASSESSMENTS

§ 38:128 In general
§ 38:129 Ad valorem assessments
§ 38:130 Reapportionment
§ 38:131 According to benefits
§ 38:132 Zoning factor
§ 38:133 According to value
§ 38:134 Future and prospective benefits
§ 38:135 By front foot
§ 38:136 Superficial area
§ 38:137 Each lot abutting improvement
§ 38:138 Corner lots
§ 38:139  Omission of property
§ 38:140  Deduction of damages

F. LIMITATION OF AMOUNT OF ASSESSMENT

§ 38:141  In general
§ 38:142  Estimate of cost
§ 38:143  Unit for determining limit
§ 38:144  Determination of amount or value
§ 38:145  Costs and expenses included
§ 38:146  Interest
§ 38:147  What may not be included

G. CONFIRMATION, CORRECTION, REVISION AND SETTING ASIDE OF ASSESSMENT

§ 38:148  In general
§ 38:149  Correction of assessments
§ 38:150  Objections
§ 38:151  Nature of proceedings; notice
§ 38:152  By court; petition or application
§ 38:153  Jurisdiction of court
§ 38:154  Evidence
§ 38:155  Judgment
§ 38:156  Conclusiveness of judgment
§ 38:157  Equitable relief
§ 38:158  Direct and collateral attack; impeachment

H. ASSESSMENT RECORD

§ 38:159  In general
§ 38:160  Formal requisites

I. BONDS, CERTIFICATES, WARRANTS, OR SPECIAL TAX BILLS

§ 38:161  In general
§ 38:162  Bonds
§ 38:163  Special tax bills
§ 38:164  Warrants, certificates, and other evidences of indebtedness
§ 38:165  Prima facie evidence
§ 38:166  Formal requisites
Table of Contents

§ 38:167 Assignability
§ 38:168 Interest
§ 38:169 Actions

V. THE LIEN

§ 38:170 Definition and nature
§ 38:171 Creation and existence
§ 38:172 —Persons entitled to enjoy lien
§ 38:173 —Property subject to lien
§ 38:174 —Steps required to perfect lien
§ 38:175 —Commencement or attachment of lien
§ 38:176 ——Relation back of lien
§ 38:177 —Duration, release, and discharge of lien
§ 38:178 Priorities and preferences of liens
§ 38:179 —Priority between mortgages, deeds of trust, and assessment liens
§ 38:180 —First in time, as first in right rule
§ 38:181 —Constitutionality of legislation
§ 38:182 Enforcement of lien

VI. VALIDITY AND REMEDIES

A. IN GENERAL

§ 38:183 Nonobservance of law authorizing improvement
§ 38:184 —Nonessential defects and irregularities
§ 38:185 —Essential defects and irregularities
§ 38:186 —What law governs
§ 38:187 Defects and irregularities affecting validity
§ 38:188 Defects and irregularities affecting validity of assessment—Fatal defects and irregularities
§ 38:189 —Cures for minor defects and irregularities
§ 38:190 Failure to advertise for bids for the work
§ 38:191 Legal existence of street or way improved
§ 38:192 Change of title to avoid assessment

B. DETERMINATION OF VALIDITY OF ASSESSMENT

§ 38:193 In general
§ 38:194 Presumption of validity generally
§ 38:195 —Presumption as to special benefit
§ 38:196 —Assessment roll and record
§ 38:197 —Weight and sufficiency of evidence
§ 38:198 Impeachment of commissioner’s report
§ 38:199 Collateral attack
§ 38:200 Questioning validity of assessment; remedies
§ 38:201 —Right to contest assessment
§ 38:202 Limitations and laches
§ 38:203 Estoppel to question validity; elements of estoppel
§ 38:204 —Application to special assessments
§ 38:205 —Acquiescence
§ 38:206 —By petitioning for improvement
§ 38:207 —By recital in deed
§ 38:208 —By payment or part payment
§ 38:209 —Failure to object or appeal
§ 38:210 —Apportionment of assessment
§ 38:211 —By acceptance of benefits
§ 38:212 Trial by jury
§ 38:213 Raising and waiving objections
§ 38:214 Evidence
§ 38:215 Judgment

C. EQUITABLE RELIEF

§ 38:216 In general
§ 38:217 Function and scope
§ 38:218 Limitations and laches
§ 38:219 Conditions precedent
§ 38:220 Parties
§ 38:221 Adequate remedy at law
§ 38:222 Pleading and evidence
§ 38:223 Raising and waiving objections
§ 38:224 Defenses and affirmative relief
§ 38:225 Operation and effect of suit
§ 38:226 Judgment or decree
§ 38:227 Costs and attorney’s fees

D. REASSESSMENTS AND SUPPLEMENTAL OR ADDITIONAL ASSESSMENTS

§ 38:228 In general
§ 38:229 Mandamus
§ 38:230 Constitutionality of reassessment statutes
§ 38:231 Basis of reassessment
§ 38:232 Conditions precedent
§ 38:233 Property subject to reassessment
§ 38:234 Reassessment proceedings
§ 38:235 —Notice and hearing
§ 38:236 —Time limitations
§ 38:237 Amount of reassessment
§ 38:238 Protest or remonstrance
§ 38:239 Reassessment certificates
§ 38:240 Assessment district
§ 38:241 Equitable relief against reassessment
§ 38:242 Appellate review

E. APPEALS IN ASSESSMENTS PROCEEDINGS
§ 38:243 In general
§ 38:244 Limitations as to time
§ 38:245 Perfection of appeal
§ 38:246 Parties and persons entitled to appeal
§ 38:247 Appealability of judgment or order
§ 38:248 Objections and exceptions
§ 38:249 Scope and extent of review
§ 38:250 Hearing and determination of appeal
§ 38:251 Judgment on appeal
§ 38:252 —Rule of decision on appeal
§ 38:253 —Dismissal of appeal
§ 38:254 Presumptions on appeal
§ 38:255 Waiver or loss of right to appeal
§ 38:256 Effect of appeal
§ 38:257 Law on appeal

F. CERTIORARI TO REVIEW ASSESSMENTS
§ 38:258 In general
§ 38:259 Limitations and laches
§ 38:260 Adequate remedy at law
§ 38:261 Notice and hearing
§ 38:262 Scope of review
§ 38:263 Judgment on appeal

VII. COLLECTION AND ENFORCEMENT
A. REMEDIES AND METHODS OF ENFORCEMENT
§ 38:264 In general
§ 38:265 Duty of municipal officers
§ 38:266 Receivers
§ 38:267 Nature of proceedings

B. MODE OR FORM OF ACTION
§ 38:268 In general
§ 38:269 Pleadings
§ 38:270 Foreclosure proceedings
§ 38:271 Summons and service of process
§ 38:272 Action at law
§ 38:273 Warrants
§ 38:274 Scire facias
§ 38:275 Execution
§ 38:276 In equity
§ 38:277 —Pleadings and defenses
§ 38:278 —Adequate remedy at law
§ 38:279 Special tax bill or certificate of indebtedness actions
§ 38:280 Sale of land

C. PAYMENT AND DELINQUENCY
§ 38:281 When due
§ 38:282 Manner of payment
§ 38:283 —Installment payments
§ 38:284 Delinquent assessments
§ 38:285 Conditions precedent
§ 38:286 —Demand of payment

D. LIMITATIONS OF ACTIONS
§ 38:287 In general
§ 38:288 Commencement of running of statute
§ 38:289 Operation and effect
§ 38:290 Tolling of statute and suspension of running of statutory bar
§ 38:291 Actions by sovereign
§ 38:292 Installment payments
§ 38:293 Pleading statute

E. PROCEDURE
§ 38:294 Jurisdiction and venue
§ 38:295 Pleadings and evidence

clxxiv
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 38:296</td>
<td>Parties plaintiff</td>
</tr>
<tr>
<td>§ 38:297</td>
<td>— Assignee</td>
</tr>
<tr>
<td>§ 38:298</td>
<td>— Pleadings</td>
</tr>
<tr>
<td>§ 38:299</td>
<td>— J oinder of parties</td>
</tr>
<tr>
<td>§ 38:300</td>
<td>Parties defendant; owner of land</td>
</tr>
<tr>
<td>§ 38:301</td>
<td>— Spouse of property owner</td>
</tr>
<tr>
<td>§ 38:302</td>
<td>— Mortgagees, lienholders and other incumbrancers</td>
</tr>
<tr>
<td>§ 38:303</td>
<td>— Co-owners and cotenants</td>
</tr>
<tr>
<td>§ 38:304</td>
<td>— Mentally incompetent persons; heirs, executors, etc</td>
</tr>
<tr>
<td>§ 38:305</td>
<td>— Municipality</td>
</tr>
<tr>
<td>§ 38:306</td>
<td>— State</td>
</tr>
<tr>
<td>§ 38:307</td>
<td>— Introducing new parties</td>
</tr>
<tr>
<td>§ 38:308</td>
<td>— Intervention</td>
</tr>
<tr>
<td>§ 38:309</td>
<td>Joinder of actions</td>
</tr>
<tr>
<td>§ 38:310</td>
<td>Defenses</td>
</tr>
<tr>
<td>§ 38:311</td>
<td>— Jurisdictional defenses</td>
</tr>
<tr>
<td>§ 38:312</td>
<td>— Defects and irregularities</td>
</tr>
<tr>
<td>§ 38:313</td>
<td>— Noncompliance with improvement contract</td>
</tr>
<tr>
<td>§ 38:314</td>
<td>— Failure to complete improvement</td>
</tr>
<tr>
<td>§ 38:315</td>
<td>— Inequalities in assessments</td>
</tr>
<tr>
<td>§ 38:316</td>
<td>— Setoff and counterclaim</td>
</tr>
<tr>
<td>§ 38:317</td>
<td>— Pleadings, issues, and proof</td>
</tr>
<tr>
<td>§ 38:318</td>
<td>Instructions</td>
</tr>
<tr>
<td>§ 38:319</td>
<td>Judgment, decree, and findings</td>
</tr>
<tr>
<td>§ 38:320</td>
<td>Satisfaction of judgment</td>
</tr>
</tbody>
</table>

## F. Sale of Property

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 38:321</td>
<td>In general</td>
</tr>
<tr>
<td>§ 38:322</td>
<td>Injunctions</td>
</tr>
<tr>
<td>§ 38:323</td>
<td>What law governs</td>
</tr>
<tr>
<td>§ 38:324</td>
<td>Notice and advertisement</td>
</tr>
<tr>
<td>§ 38:325</td>
<td>Certificate of purchase or sale</td>
</tr>
<tr>
<td>§ 38:326</td>
<td>Return or report</td>
</tr>
<tr>
<td>§ 38:327</td>
<td>Deed to purchaser</td>
</tr>
<tr>
<td>§ 38:328</td>
<td>Power of municipality to purchase at sale</td>
</tr>
<tr>
<td>§ 38:329</td>
<td>Approval or confirmation, setting aside of sale</td>
</tr>
<tr>
<td>§ 38:330</td>
<td>Operation and effect of sale</td>
</tr>
<tr>
<td>§ 38:331</td>
<td>Upset price and resale</td>
</tr>
<tr>
<td>§ 38:332</td>
<td>Distribution of proceeds of sale</td>
</tr>
<tr>
<td>§ 38:333</td>
<td>Purchaser’s title and rights</td>
</tr>
</tbody>
</table>
G. PERSONAL LIABILITY

§ 38:334 In general
§ 38:335 Who liable
§ 38:336 Actions
§ 38:337 Costs and attorney’s fees

VIII. RIGHTS AND REMEDIES OF TAXPAYER

§ 38:338 Equitable and declaratory relief
§ 38:339 Mandamus
§ 38:340 Redemption of the property
§ 38:341 —Who entitled to redeem
§ 38:342 —Limitations as to time
§ 38:343 Recovery of assessments paid
§ 38:344 —Common law action
§ 38:345 —Actions
§ 38:346 —Burden of proof
§ 38:347 —Statute of limitations
§ 38:348 —Defenses
§ 38:349 —Judgment
§ 38:350 Refund or rebate
§ 38:351 —Distribution of surplus
§ 38:352 Abatement of assessment

Volume 15

CHAPTER 39. FINANCIAL POWERS IN GENERAL

I. INTRODUCTION

§ 39:1 Necessity for revenue
§ 39:2 —Accumulation of funds
§ 39:3 Sources of revenue
§ 39:4 —Government exactions
§ 39:5 ——Impact and linkage fees
§ 39:6 ——Development agreements
§ 39:7 ——Dedication of land
§ 39:8 ——Reimbursements from state
§ 39:9 Investigation of municipal finances
§ 39:10 Financial reports and statements

dlxxvi
II. POWER TO BORROW, LOAN AND GIVE NOTES OR ISSUE BILLS

§ 39:11 Power to borrow money
§ 39:12 —Limitation
§ 39:13 —Prohibition
§ 39:14 —Interest
§ 39:15 Power to execute promissory notes
§ 39:16 —Manner of executing power
§ 39:17 —Rule of decision in federal courts
§ 39:18 Power to issue bills as currency
§ 39:19 Loan or investment of public moneys
§ 39:20 —Payment of interest
§ 39:21 —Accounting for profits

III. POWER TO INCUR INDEBTEDNESS AND MAKE EXPENDITURES

§ 39:22 General rules
§ 39:23 —What law governs
§ 39:24 Public purpose required; tests applied
§ 39:25 Public purpose required—Legislative power to authorize
§ 39:26 —Illustrations
§ 39:27 —First Amendment violations
§ 39:28 —Expenditures for celebrations, entertainments, pageants, conventions, etc
§ 39:29 —Expenditures to obtain or oppose legislation
§ 39:30 —Moral claims
§ 39:31 —Donations
§ 39:32 —Release of municipal claims or credits
§ 39:33 —Aid to private individuals, corporations or associations
§ 39:34 —Interpretation and application of statutory authorization
§ 39:35 —Railroads
§ 39:36 —Conditions precedent to subscription
§ 39:37 —Enforcement and avoidance of subscription
§ 39:38 —Constitutional prohibitions
§ 39:39 —Leases of municipally-owned property
§ 39:40 Amount limitations
§ 39:41 Conditions precedent and procedure
§ 39:42 —Multi-year contract
§ 39:43 Necessity for first making provision for payment of debt
§ 39:44 —Requiring provision for levy of taxes
§ 39:45 Certificate that funds are available or indebtedness lawful
§ 39:46 Effect of unauthorized debts or expenditures

IV. COLLECTION AND DISTRIBUTION OF FUNDS

§ 39:47 Fiscal year
§ 39:48 Budget law
§ 39:49 —Preparation and contents
§ 39:50 —Time of preparation
§ 39:51 —Mandamus
§ 39:52 —Remedies to resist budget
§ 39:53 Municipal funds
§ 39:54 General funds
§ 39:55 Special funds
§ 39:56 General expense fund and contingent fund
§ 39:57 Custody of funds
§ 39:58 Deposit of funds
§ 39:59 —Bond or security of depository
§ 39:60 Withdrawal of funds
§ 39:61 Adjustment of accounts with state or other political divisions
§ 39:62 Surplus funds at end of fiscal year
§ 39:63 Transfer of moneys from one fund to another
§ 39:64 Payments of debts
§ 39:65 —Liability for interest
§ 39:66 —Medium or manner of payment
§ 39:67 —Priorities
§ 39:68 —Setoffs
§ 39:69 —Recovery of payments
§ 39:70 Effect of insufficient funds
§ 39:71 Municipal bankruptcy
§ 39:72 —Sovereign immunity abolished
§ 39:73 —Debtor requirements
§ 39:74 —Municipality defined
§ 39:75 —State authorization
§ 39:76 —Insolvent defined
§ 39:77 —Plan of adjustment
§ 39:78 —Creditor negotiation
# Table of Contents

§ 39:79  —Alternatives
§ 39:80  Preference of municipality

## V. Appropriations

§ 39:81  Definition, classification and power to make
§ 39:82  —Limitations, restrictions and conditions precedent
§ 39:83  —Budget and estimate
§ 39:84  Necessity for appropriation
§ 39:85  —Effect on municipal liability
§ 39:86  Annual appropriations
§ 39:87  Ordinance, passage and contents
§ 39:88  Construction of appropriations
§ 39:89  Effect of appropriations
§ 39:90  Transfer or diversion of appropriations
§ 39:91  Mandamus and other remedies to compel appropriations

# Chapter 40. Elections Relating to Indebtedness or Issuance of Bonds

§ 40:1  General consideration
§ 40:2  Authority to hold elections
§ 40:3  Necessity for election
§ 40:4  —Condition precedent to issuing bonds
§ 40:5  —Transactions not calling for election
§ 40:6  Procedure for calling election
§ 40:7  Notice of election
§ 40:8  Submission of question to voters
§ 40:9  —Single or dual propositions
§ 40:10  Holding and conduct of election
§ 40:11  —Qualifications of voters
§ 40:12  —Ballot considerations
§ 40:13  —Counting the votes, return, and record
§ 40:14  Number of votes necessary
§ 40:15  Effect of irregularities on validity of election
§ 40:16  Attack on validity of election—Procedure
§ 40:17  —Effect of fraud
§ 40:18  —Presumptions
§ 40:19  —Validation of election and curative acts
§ 40:20  Effect of favorable vote

cxxix
CHAPTER 41. DEBT LIMIT OF MUNICIPALITIES

I. INTRODUCTORY
§ 41:1 General considerations

II. CONSTITUTIONAL, STATUTORY AND CHARTER PROVISIONS
§ 41:2 In general
§ 41:3 Constitutional provisions
§ 41:4 Debt limits prescribed by legislature
§ 41:5 Debt limits governed by charter
§ 41:6 Debt limit for utilities

III. FORMS OF DEBT LIMITATION
§ 41:7 Assessed value of property as basis of calculation
§ 41:8 —New town and cities; indebtedness incurred before first assessment
§ 41:9 Provisions limiting indebtedness to income and revenue for current year

IV. CONSTRUCTION AND OPERATION OF DEBT-LIMITATION LAWS
§ 41:10 Construction
§ 41:11 Debt limit provisions applications
§ 41:12 —Political divisions having same or conflicting territory
§ 41:13 —Effect of annexation or consolidation
§ 41:14 Evading debt-limit provisions
§ 41:15 —TIF districts
§ 41:16 —Leasing instead of purchasing

V. OBLIGATIONS TO WHICH DEBT LIMITATIONS APPLY
§ 41:17 In general
§ 41:18 Indebtedness defined
§ 41:19 —Necessity of right to compel payment
§ 41:20 —Effect of available treasury money to meet liabilities

clxxx
§ 41:21 —Judgment against municipality as an indebtedness
§ 41:22 Purpose and necessity of indebtedness
§ 41:23 —Contingent debts
§ 41:24 —Current expenses
§ 41:25 Debts in anticipation of collection of revenues
§ 41:26 —Option to purchase creating debt
§ 41:27 —Interest as indebtedness
§ 41:28 Involuntary obligations
§ 41:29 —Indebtedness arising by tort
§ 41:30 —Implied obligations; duty to repay money
§ 41:31 Liabilities payable out of special fund only
§ 41:32 —PILOTS
§ 41:33 —Obligations payable from special assessments
§ 41:34 —Mortgage or pledge without personal liability
§ 41:35 —Liability payable solely from income of property
§ 41:36 —Fund created by levy of tax
§ 41:37 —Funding or refunding debts

VI. TIME INDEBTEDNESS INCURRED AND CONTRACT VALIDITY
§ 41:38 In general
§ 41:39 Contracts for payments for a term of years

VII. COMPUTATION OF INDEBTEDNESS
§ 41:40 In general
§ 41:41 Sinking funds

VIII. EFFECT OF EXCEEDING DEBT LIMIT; REMEDIES
§ 41:42 In general
§ 41:43 Validity of contract; ratification
§ 41:44 Effect of debt limit upon municipal acts
§ 41:45 Remedies

CHAPTER 42. MUNICIPAL WARRANTS AND OTHER EVIDENCE OF INDEBTEDNESS

I. DEFINITION AND NATURE
§ 42:1 Definition

clxxxi
§ 42:2  Nature—General characterization
§ 42:3  —Negotiability
§ 42:4  —Uniform Commercial Code
§ 42:5  [Reserved]

II. ISSUANCE
§ 42:6  Power to issue—In general
§ 42:7  Conditions precedent; audit and allowance of claim
§ 42:8  Issuance at a discount
§ 42:9  Delivery
§ 42:10  Duty to issue warrants

III. FORM, CONTENTS AND VALIDITY
§ 42:11  Form and contents
§ 42:12  —Seal; date
§ 42:13  —Signature
§ 42:14  Validity
§ 42:15  —Effect of recitals

IV. RIGHTS OF HOLDERS
§ 42:16  In general
§ 42:17  —Rights of holder in due course under Uniform Commercial Code
§ 42:18  Assignment of warrants

V. PAYMENT, REISSUANCE AND FUNDING
§ 42:19  Negotiation under Uniform Commercial Code
§ 42:20  Payment of warrants
§ 42:21  —From what fund payable
§ 42:22  —Priority of payment
§ 42:23  Warrants as receivable in payment of taxes and debts
§ 42:24  Interest on warrants
§ 42:25  Reissuance, funding and calling in for examination

VI. REMEDIES
§ 42:26  Actions on warrants
§ 42:27  —Time to sue
TABLE OF CONTENTS

§ 42:28 —Pleading
§ 42:29 —Defenses
§ 42:30 —Burden of proof
§ 42:31 Mandamus

CHAPTER 43. MUNICIPAL BONDS

I. DEFINITIONS AND GENERAL CONSIDERATIONS

§ 43:1 Definitions
§ 43:2 Status of municipal bonds market
§ 43:3 Practice considerations—Investigating bond issues
§ 43:4 State securities regulations
§ 43:5 Federal securities regulation
§ 43:6 —Municipal Securities Rulemaking Board
§ 43:7 —SEC Rule 15c2-12
§ 43:8 ——“Pay to play” practices
§ 43:9 Uniform Commercial Code—Investment securities

II. KINDS OF BONDS

§ 43:10 In general
§ 43:11 Registered bonds
§ 43:12 Coupon bonds
§ 43:13 Improvement bonds
§ 43:14 Revenue bonds
§ 43:15 Funding and refunding bonds

III. VALIDITY AND CONSTRUCTION

§ 43:16 In general
§ 43:17 Validity of bonds
§ 43:18 Governing law
§ 43:19 Decisions of state courts as binding on federal courts

IV. POWER TO ISSUE

A. GENERALLY

§ 43:20 In general
§ 43:21 Express power
§ 43:22 —Construction of statutes
§ 43:23 —Scope of power
§ 43:24 Discretion of municipal authorities
§ 43:25 Person or body authorized to issue bonds
§ 43:26 Issuance by de facto municipal corporation
§ 43:27 Debt-limit provisions
§ 43:28 —Effect of bonds in excess of debt limit
§ 43:29 Effect of want of authority to issue bonds

B. PURPOSE OF BOND ISSUE
§ 43:30 Statement of rule
§ 43:31 Private purposes illustrated
§ 43:32 Public purposes illustrated
§ 43:33 —Buildings
§ 43:34 —Industrial and commercial development
§ 43:35 —Public improvements

C. PARTICULAR KINDS OF BONDS
§ 43:36 Revenue bonds
§ 43:37 Improvement bonds
§ 43:38 Funding and refunding bonds
§ 43:39 —Construction of statutes
§ 43:40 —Obligations which may be funded or refunded
§ 43:41 —Unmatured obligations
§ 43:42 —Effect of change in municipal boundaries

V. CONDITIONS PRECEDENT TO ISSUANCE
§ 43:43 In general
§ 43:44 Petition or consent
§ 43:45 Ordinance or resolution; publication
§ 43:46 Election
§ 43:47 Approval of bond issue

VI. ISSUANCE, DELIVERY AND REGISTRATION
§ 43:48 In general
§ 43:49 What constitutes issuance
§ 43:50 Time for issuance
§ 43:51 Delivery
§ 43:52 Registration or certification
§ 43:53 —Necessity and sufficiency
# Table of Contents

## VII. FORM AND CONTENTS

§ 43:54 General rules  
§ 43:55 Date  
§ 43:56 Seal  
§ 43:57 Signature  
§ 43:58 —Necessity for purchaser to investigate signatures  
§ 43:59 Denomination  
§ 43:60 To whom made payable  
§ 43:61 Provisions as to maturity  
§ 43:62 Provision for payment  
§ 43:63 —Place of payment  
§ 43:64 —Medium of payment

## VIII. SALE OR OTHER DISPOSITION

§ 43:65 In general  
§ 43:66 Method of sale  
§ 43:67 —Competitive bidding  
§ 43:68 Sale at less than par or at premium  
§ 43:69 Disposition of sale proceeds  
§ 43:70 —Discretion to expend bond proceeds

## IX. NEGOTIABILITY AND RIGHT OF TRANSFER

§ 43:71 In general  
§ 43:72 Power to issue negotiable bonds  
§ 43:73 Requisites of negotiability  
§ 43:74 Mode of transfer  
§ 43:75 Stolen or lost bonds

## X. ESTOPPEL AND RATIFICATION

§ 43:76 Municipality bound by ratification or estoppel  
§ 43:77 Curative statutes  
§ 43:78 Estoppel as to conditions precedent by mere issuance of bonds  
§ 43:79 Estoppel by record

## XI. RIGHTS OF HOLDERS

### A. IN GENERAL

§ 43:80 General principles
§ 43:81 Use of bonds as payment

B. BONA FIDE PURCHASERS

§ 43:82 Definition
§ 43:83 Actual notice
§ 43:84 Constructive notice
§ 43:85 —Existence and contents of enabling statutes
§ 43:86 —Debt-limit provisions
§ 43:87 —Matters of record
§ 43:88 —Matters appearing upon face of bonds
§ 43:89 —Judicial decisions
§ 43:90 —Performance of conditions precedent
§ 43:91 —Matured coupons and bonds as notice
§ 43:92 —Pendency of suit as notice
§ 43:93 Gross negligence, effect of
§ 43:94 Effect of status
§ 43:95 —Irregularities
§ 43:96 —Conditions precedent
§ 43:97 —Fraud; want or failure of consideration
§ 43:98 Purchaser from a bona fide purchaser

XII. RECITALS IN BOND

§ 43:99 In general
§ 43:100 Purpose
§ 43:101 Effect
§ 43:102 Who may rely on estoppel by recitals
§ 43:103 Recitals as to law as distinguished from facts
§ 43:104 Authority to make recitals
§ 43:105 Sufficiency of general recitals
§ 43:106 Recitals—Constitutional provisions
§ 43:107 —Contrary to matters of record
§ 43:108 —Ordinances, resolutions or orders of court
§ 43:109 —As to consideration
§ 43:110 —Purpose of issue
§ 43:111 —Compliance with conditions
§ 43:112 —Debit limit provisions
§ 43:113 Compliance with conditions—Illustrations of defenses estopped by recitals
§ 43:114 Recitals in funding or refunding bonds
§ 43:115 Recitals showing on their face statutory noncompliance
§ 43:116 Effect of recital where no power to issue bonds

cxxvii
### XIII. MATURITY OF BONDS

- § 43:117 Recitals as affecting maturity
- § 43:118 Constitution and statutes as mandatory or directory
- § 43:119 Discretion of corporate authorities
- § 43:120 Redemption prior to maturity

### XIV. PAYMENT

A. GENERAL PRINCIPLES

- § 43:121 In general
- § 43:122 Laws affecting payment as impairing obligation of contract
- § 43:123 Time, place and medium of payment
- § 43:124 Demand and presentment
- § 43:125 Priorities
- § 43:126 —Contractual and statutory provisions
- § 43:127 —Pro rata payments

B. SOURCE OF PAYMENT

- § 43:128 In general
- § 43:129 Bonds as general obligations
- § 43:130 Taxation
- § 43:131 Revenue bonds
- § 43:132 Special funds
- § 43:133 Sinking funds
- § 43:134 —Disposition of fund; investment

C. IMPROVEMENT BONDS

- § 43:135 In general
- § 43:136 Collection and custody of assessment fund
- § 43:137 Disbursement of fund

### XV. INTEREST

- § 43:138 In general
- § 43:139 Rate
- § 43:140 Coupons

### XVI. REMEDIES

- § 43:141 In general
Volume 16

CHAPTER 44. TAXATION

I. GENERAL CONSIDERATIONS

§ 44:1 Scope of chapter
§ 44:2 Definitions and distinctions
§ 44:3 Nature and history
§ 44:4 [Reserved]

II. POWER TO TAX

§ 44:5 In general
§ 44:6 Legislative power
§ 44:7 —Conflicting charter provisions
§ 44:8 Delegation of tax authority
§ 44:9 —Constitutional provisions
§ 44:10 —Statutes
§ 44:11 —Charter provisions and ordinances
Table of Contents

§ 44:12  —Implied authority
§ 44:13  — —Inapplicability of exception
§ 44:14  Construction of tax grants and laws
§ 44:15  —Express powers
§ 44:16  —Strict construction
§ 44:17  Modifying, limiting, or revoking tax power
§ 44:18  Loss of tax power by user, nonuser, estoppel, or limitation
§ 44:19  Delegation of tax power by municipal body
§ 44:20  Delegation of tax power to other than corporate authorities
§ 44:21  Curing defects in proceedings

III. LIMITATIONS ON TAX POWER
GENERALLY

§ 44:22  In general
§ 44:23  —Constitutional restrictions
§ 44:24  User fees distinguished from “taxes”
§ 44:25  Taxation for municipal purposes requirement
§ 44:26  Uniformity
§ 44:27  —Classifications
§ 44:28  — —Property exemptions
§ 44:29  —Tax districts
§ 44:30  — —Downtown development districts
§ 44:31  [Reserved]
§ 44:32  Double taxation

IV. LIMITATIONS ON TAX RATE OR AMOUNT

§ 44:33  In general
§ 44:34  Constitutional and statutory provisions
§ 44:35  —Construction and application
§ 44:36  —Mandatory nature—Sufficiency of compliance
§ 44:37  Taxes includable or not includable within limits—Special taxes
§ 44:38  Levy above tax limit—Effect
§ 44:39  Emergency authorizing rate increase

V. DUTY TO TAX

§ 44:40  In general
§ 44:41  Legislature’s power to compel taxation
§ 44:42  Enforcement of duty
VI. TAX PURPOSES
§ 44:43 Public purpose required
§ 44:44 —Application of rule
§ 44:45 ——Schools and universities
§ 44:46 ——Streets and highways
§ 44:47 ——Payment of bonds
§ 44:48 ——Encouraging industry

VII. PERSONS AND PROPERTY TAXABLE
§ 44:49 In general
§ 44:50 —Statutory authority and construction
§ 44:51 Real property
§ 44:52 —Equitable interests
§ 44:53 Personal property
§ 44:54 Payroll expense tax
§ 44:55 Earnings tax
§ 44:56 Fixtures and improvements
§ 44:57 Corporations
§ 44:58 Property not receiving benefits
§ 44:59 Property in annexed territory
§ 44:60 Municipal bonds
§ 44:61 Interstate commerce
§ 44:62 Foreign commerce
§ 44:63 Franchise grantee’s property
§ 44:64 —Telecommunications equipment
§ 44:65 Property in court custody and bankruptcy
§ 44:66 United States property
§ 44:67 —Property subject to taxation
§ 44:68 Property of foreign nations
§ 44:69 National banks
§ 44:70 Federal agencies, obligations and securities
§ 44:71 State, state agency and county property
§ 44:72 Municipal corporations and property
§ 44:73 —Constitutional and statutory provisions
§ 44:74 —Tax immunity
§ 44:75 ——Property leased by or to city
§ 44:76 ——Municipally owned utilities
§ 44:77 ——Housing authority property
§ 44:78 Rural property
§ 44:79 Other taxable incidents

VIII. TAX EXEMPTIONS
§ 44:80 In general

cxc
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 44:81</td>
<td>Legislative authority</td>
</tr>
<tr>
<td>§ 44:82</td>
<td>Municipal authority</td>
</tr>
<tr>
<td>§ 44:83</td>
<td>—Charter provisions</td>
</tr>
<tr>
<td>§ 44:84</td>
<td>Construction of exemption provisions</td>
</tr>
<tr>
<td>§ 44:85</td>
<td>—Strict rule is favored</td>
</tr>
<tr>
<td>§ 44:86</td>
<td>Taxes to which exemption laws apply</td>
</tr>
<tr>
<td>§ 44:87</td>
<td>Persons and property exempt—Generally</td>
</tr>
<tr>
<td>§ 44:88</td>
<td>—Specific exemptions</td>
</tr>
<tr>
<td>§ 44:89</td>
<td>—Property devoted to public use</td>
</tr>
<tr>
<td>§ 44:90</td>
<td>—Property leased from exempt owners</td>
</tr>
<tr>
<td>§ 44:91</td>
<td>—Native American lands</td>
</tr>
<tr>
<td>§ 44:92</td>
<td>—War veterans</td>
</tr>
<tr>
<td>§ 44:93</td>
<td>—Homesteads</td>
</tr>
<tr>
<td>§ 44:94</td>
<td>—Manufacturing and industrial enterprises</td>
</tr>
<tr>
<td>§ 44:95</td>
<td>— —Limitations</td>
</tr>
<tr>
<td>§ 44:96</td>
<td>—Public utilities privately owned</td>
</tr>
<tr>
<td>§ 44:97</td>
<td>—Scientific, literary and charitable bodies</td>
</tr>
<tr>
<td>§ 44:98</td>
<td>— —Illustrations of exemptions</td>
</tr>
<tr>
<td>§ 44:99</td>
<td>— —Property subject to exemption</td>
</tr>
<tr>
<td>§ 44:100</td>
<td>— —Property not subject to exemption</td>
</tr>
<tr>
<td>§ 44:101</td>
<td>—Hospitals</td>
</tr>
<tr>
<td>§ 44:102</td>
<td>—Nursing Homes</td>
</tr>
<tr>
<td>§ 44:103</td>
<td>—Educational institutions</td>
</tr>
<tr>
<td>§ 44:104</td>
<td>— —Construction of exemption provisions</td>
</tr>
<tr>
<td>§ 44:105</td>
<td>— —Institutions entitled or not entitled to exemption</td>
</tr>
<tr>
<td>§ 44:106</td>
<td>— —Property subject to exemption</td>
</tr>
<tr>
<td>§ 44:107</td>
<td>—Fraternal organizations</td>
</tr>
<tr>
<td>§ 44:108</td>
<td>—Churches, religious societies</td>
</tr>
<tr>
<td>§ 44:109</td>
<td>—Cemeteries</td>
</tr>
<tr>
<td>§ 44:110</td>
<td>Partial exemptions—Divisible uses</td>
</tr>
<tr>
<td>§ 44:111</td>
<td>Assignability</td>
</tr>
<tr>
<td>§ 44:112</td>
<td>Repeal or revocation</td>
</tr>
<tr>
<td>§ 44:113</td>
<td>Waiver and estoppel</td>
</tr>
<tr>
<td>§ 44:114</td>
<td>Establishing and enforcing exemption</td>
</tr>
<tr>
<td>§ 44:115</td>
<td>—Burden of proof</td>
</tr>
</tbody>
</table>

## IX. Place of Taxation

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 44:116</td>
<td>In general</td>
</tr>
<tr>
<td>§ 44:117</td>
<td>Situs of property</td>
</tr>
<tr>
<td>§ 44:118</td>
<td>—Intangible property</td>
</tr>
</tbody>
</table>
§ 44:119 — Decedents' estates—Trusts and guardianships
§ 44:120 — Vessels
§ 44:121 Property or persons outside corporate limits
§ 44:122 Excise taxes

X. LEVY

§ 44:123 Definition
§ 44:124 Conditions precedent
§ 44:125 — Voter approval as necessary
§ 44:126 Time for making and period covered
§ 44:127 Authorities empowered to make
§ 44:128 Procedure—Generally
§ 44:129 — Ordinance or resolution
§ 44:130 — Statement of purpose of levy
§ 44:131 Review—Validity and presumptions

XI. ASSESSMENT

§ 44:132 In general
§ 44:133 Assessment officers—Appraisers and tax ferrets
§ 44:134 Time of assessment
§ 44:135 Persons assessable
§ 44:136 Property assessable
§ 44:137 Mode of assessment
§ 44:138 — Taxpayer's return or list of property
§ 44:139 — Property description
§ 44:140 Valuation generally
§ 44:141 — Market or sales comparison approach
§ 44:142 — Cost approach
§ 44:143 — Income approach
§ 44:144 — Equality and uniformity
§ 44:145 — Making the assessment
§ 44:146 — Illustrations of property valuations
§ 44:147 — Elements and factors considered
§ 44:148 — Prior valuations
§ 44:149 — State or county assessment
§ 44:150 — Change in valuation
§ 44:151 Assessment rolls, books and maps
§ 44:152 Omitted property
§ 44:153 Amendment and reassessment
§ 44:154 Review, correction and equalization generally
Table of Contents

§ 44:155 —Boards of equalization
§ 44:156 —Review by state tax board or commission
§ 44:157 Judicial proceedings generally
§ 44:158 —Certiorari
§ 44:159 —Equitable remedies
§ 44:160 —Appeal
§ 44:161 —Presumptions
§ 44:162 —Burden of proof
§ 44:163 —Sufficiency of evidence

XII. PAYMENT

§ 44:164 In general
§ 44:165 Time
§ 44:166 Medium
§ 44:167 Partial payment—Installments
§ 44:168 Compromise, remission or release of taxes
§ 44:169 Forfeitures, penalties and interest upon nonpayment
§ 44:169.50 Refunds

XIII. COLLECTION

§ 44:170 In general
§ 44:171 Tax collectors
§ 44:172 Contracts for tax collection
§ 44:173 Remedies generally
§ 44:174 —Action for recovery of taxes
§ 44:175 ——Exclusiveness of remedy or statutory power to sue
§ 44:176 ——Against nonresidents
§ 44:177 ——Form of action
§ 44:178 ——Parties
§ 44:179 ——Procedure
§ 44:180 ——Defenses
§ 44:181 ——Receivers
§ 44:182 ——Subrogation
§ 44:183 ——Setoff and counterclaim

XIV. TAX LIENS

§ 44:184 In general
§ 44:185 Property subject
§ 44:186 When lien attaches
§ 44:187 Priorities—Generally
§ 44:188 —Liens of other governmental units
§ 44:189 —Mortgage liens
§ 44:190 —Assessment liens
§ 44:191 Assignment and transfer
§ 44:192 Duration—Extinguishment
§ 44:193 Foreclosure
§ 44:194 —Notice
§ 44:195 —Parties
§ 44:196 —Judgment or decree
§ 44:197 —Redemption
§ 44:198 —Sale

XV. SALE FOR NONPAYMENT OF TAXES
§ 44:199 In general
§ 44:200 Procedure generally
§ 44:201 Property subject to sale
§ 44:202 Conditions precedent
§ 44:203 Notice required
§ 44:204 Time and place
§ 44:205 Mode and conduct of sale
§ 44:206 Terms of sale
§ 44:207 Purchasers
§ 44:208 —Rights and title
§ 44:209 Notice to redeem
§ 44:210 —Notice to mortgagee
§ 44:211 Deed
§ 44:212 Redemption generally
§ 44:213 —Law applicable
§ 44:214 —Persons entitled
§ 44:215 —Time for redemption; termination of right
§ 44:216 —Terms and conditions
§ 44:217 —Procedure
§ 44:218 Setting aside sale or deed
§ 44:219 —Time to sue
§ 44:220 Purchaser’s recovery of money paid

XVI. REMEDIES FOR WRONGFUL TAXATION
§ 44:221 In general
§ 44:222 Injunction generally
§ 44:223 —Existence of other adequate remedy

cxciv
Table of Contents

§ 44:224 —Grounds
§ 44:225 —Pleading
§ 44:226 —Tender of money due
§ 44:227 —Procedure
§ 44:228 —Federal court injunctions
§ 44:229 —Civil rights challenges
§ 44:230 Recovery of taxes paid
§ 44:231 —Payment as voluntary or involuntary
§ 44:232 —Payment under protest
§ 44:233 —Actions maintainable
§ 44:234 —Conditions precedent; exhaustion of other remedies
§ 44:235 —Procedure; limitations
§ 44:236 —Judgment; interest
§ 44:237 —Action for damages

XVII. DISPOSITION OF TAXES COLLECTED

§ 44:238 In general
§ 44:239 Apportionment
§ 44:240 Interest, penalties and costs

XVIII. POLL AND EXCISE TAXES

§ 44:241 Poll tax
§ 44:242 Excise taxes
§ 44:243 —Municipal powers; preemption
§ 44:244 —Constitutionality
§ 44:245 —Extraterritorial effect
§ 44:246 —Taxable subject matter
§ 44:247 Business and occupation taxes
§ 44:248 Gross receipts tax
§ 44:249 —Public utilities
§ 44:250 —Gambling
§ 44:251 Income taxes
§ 44:252 —Solicitation of orders
§ 44:253 —Apportionment and allocation of income
§ 44:254 Sales and use taxes generally
§ 44:255 —Persons taxable
§ 44:256 —Goods and transactions taxable
§ 44:257 —Internet transactions
§ 44:258 —Use tax application
§ 44:259 —Assessment, collection and payment

cxcv
§ 44:260 —Priorities
§ 44:261 —State Streamlined Sales Tax Agreement/Project
§ 44:262 [Reserved]
§ 44:263 [Reserved]

Volume 16A

CHAPTER 45. FIRE AND POLICE DEPARTMENTS

I. ORGANIZATION AND CONTROL

A. IN GENERAL
§ 45:1 Legislative control

B. FIRE DEPARTMENTS
§ 45:2 Generally
§ 45:3 Nature; organization; management
§ 45:4 Fire commissioners and boards
§ 45:5 Volunteer fire companies
§ 45:6 Private fire companies
§ 45:7 Extraterritorial assistance

C. POLICE DEPARTMENTS
§ 45:8 Definition
§ 45:9 Creation of position
§ 45:10 Status, organization and powers
§ 45:11 Police boards and commissions
§ 45:12 —Removal
§ 45:13 —Powers and duties
§ 45:14 Rules and regulations
§ 45:15 Chief of police
§ 45:16 City marshal

II. EMPLOYMENT

A. QUALIFICATIONS AND APPOINTMENT
§ 45:17 Chief of police
§ 45:18 Positions as “public officers” or “employees.”
TABLE OF CONTENTS

§ 45:19 Appointment
§ 45:20 —Probationary period
§ 45:21 Promotions
§ 45:22 Discrimination
§ 45:23 —Anti-retaliation provisions
§ 45:24 —Age discrimination
§ 45:25 Physical requirements
§ 45:26 Psychological requirements

B. COMPENSATION, BENEFITS AND INJURY RECOVERIES

§ 45:27 Compensation
§ 45:28 Pensions
§ 45:29 —Disability or death in line of duty
§ 45:30 Mandatory retirement
§ 45:31 Workers’ compensation
§ 45:32 Injuries on private premises
§ 45:33 “Firefighter’s rule”, “rescue doctrine”

III. POWERS, RIGHTS AND DUTIES

§ 45:34 Firefighters
§ 45:35 Police officers
§ 45:36 —Conduct; discipline
§ 45:37 —Collective bargaining
§ 45:38 —Warrantless searches of premises
§ 45:39 — —Exigent circumstances
§ 45:40 — —Knock-and-announce requirements
§ 45:41 — —Open fields and curtilage
§ 45:42 —Execution of warrants
§ 45:43 —Detentions and searches
§ 45:44 —Vehicle stops and searches
§ 45:44.50 Search incident to arrest exception—Cell phones
§ 45:45 Police officers—Vehicle stops and searches—Impounded vehicles
§ 45:46 — —Police roadblocks
§ 45:47 —Arrests
§ 45:48 — —Warrantless entry of home
§ 45:49 — —Americans With Disabilities Act (ADA)
§ 45:50 —Use of force

 ecxvii
IV. ACTIONS AGAINST POLICE OFFICERS AND FIREFIGHTERS

A. INJUNCTIONS

§ 45:51 Police officers

B. LIABILITIES

1. In General

§ 45:52 Police officers
§ 45:53 —Police officer bonds
§ 45:54 Firefighters
§ 45:55 Supervisory personnel
§ 45:56 —Negligent supervision or training
§ 45:57 Municipality

2. Particular Actions

§ 45:58 False arrest or imprisonment
§ 45:59 Failure to investigate
§ 45:60 Use of excessive force
§ 45:61 Mistreatment of prisoners
§ 45:62 Abuse of process; malicious prosecution
§ 45:62.50 Intentional Infliction of emotional distress
§ 45:63 Misfeasance, nonfeasance and mistake
§ 45:64 Trespass—Police officers
§ 45:65 —Firefighters
§ 45:66 Operation of motor vehicles—Police officers
§ 45:67 —Firefighters

V. REGULATION OF CONDUCT

A. IN GENERAL

§ 45:68 Residency requirements
§ 45:69 Personal appearance regulations
§ 45:70 Off-duty conduct
§ 45:71 —Moonlighting
§ 45:72 Drug and alcohol use

B. REGULATION OF SPEECH

§ 45:73 Generally
§ 45:74 —Vagueness and overbreadth
§ 45:75 —Balancing of interests
§ 45:76 Criticism of department/superiors
§ 45:77 Confidentiality provisions

C. REGULATION OF ASSOCIATION
§ 45:78 General principles
§ 45:79 Social relationships
§ 45:79.50 —Sexual privacy
§ 45:80 Political and ideological associations
§ 45:81 Union and fraternal associations

D. REGULATION OF POLITICAL ACTIVITY
§ 45:82 Generally
§ 45:83 Active participation—Partisan political activities
§ 45:84 —Nonpartisan activities
§ 45:85 Contributions and fund-raising activities
§ 45:86 Candidacy for office

VI. COMPULSORY DISCLOSURES
§ 45:87 Generally
§ 45:88 Financial disclosure
§ 45:89 —Public disclosure of information
§ 45:90 Departmental files and records
§ 45:91 —Public access
§ 45:92 —Governmental access
§ 45:93 —Access in judicial proceedings
§ 45:94 Right against self-incrimination
§ 45:95 Polygraph examinations
§ 45:96 Right against unreasonable search
§ 45:97 Drug and alcohol testing

VII. DISCIPLINE, REMOVAL AND TERMINATION

A. IN GENERAL
§ 45:98 Suspensions
§ 45:99 —Authorization to suspend
§ 45:100 Removal
§ 45:101 —Police chiefs

B. GROUNDS FOR DISCIPLINARY ACTIONS
§ 45:102 Incompetency
§ 45:103 Neglect of duties
§ 45:104 Unbecoming conduct
§ 45:105 Insubordination or violation of rules
§ 45:106 —Exercise of constitutional rights
§ 45:107 —Particular violations
§ 45:108 Malfeasance, misfeasance and misconduct
§ 45:109 Violations of criminal laws
§ 45:110 Intoxication
§ 45:111 —Illicit drug use
§ 45:112 Excessive absences or tardiness
§ 45:113 Reduction of force

C. RIGHT TO HEARING

§ 45:114 Sources of hearing rights
§ 45:115 —Constitutional right to hearing
§ 45:116 —Statutory right to hearing
§ 45:117 —Hearing from collective bargaining
§ 45:118 Minor disciplinary actions
§ 45:119 Probationary employees

D. PROCEDURE

§ 45:120 Notice of charges
§ 45:121 Time of hearing
§ 45:122 —Right to counsel
§ 45:123 Nature of hearing
§ 45:124 Conduct at hearing
§ 45:125 —Evidence
§ 45:126 —Admissibility
§ 45:127 —Burden of proof; weight/sufficiency of evidence
§ 45:128 Findings of fact and decision

E. JUDICIAL REVIEW AND REMEDIES

§ 45:129 Judicial review
§ 45:129.50 —Arbitration
§ 45:130 Injunctions to restrain disciplinary actions
§ 45:131 Reinstatement after wrongful termination or suspension
§ 45:132 Action for damages
CHAPTER 46. PUBLIC EDUCATION

I. IN GENERAL

§ 46:1 Scope of chapter
§ 46:2 Public school establishment
§ 46:3 —“Public school” defined
§ 46:4 Public school establishment and government—Compulsory authority of legislature
§ 46:5 Public school establishment—Formation of and changes in school districts
§ 46:6 —Length of school year
§ 46:7 Public schools and religion; Establishment Clause
§ 46:8 Public schools and religion—Free Exercise Clause of First Amendment
§ 46:9 —Pledge of Allegiance
§ 46:10 —Use of premises for extracurricular activities
§ 46:11 —Prayers; moments of silence
§ 46:12 —Curriculum and teaching
§ 46:13 —Equal Access Act
§ 46:14 Individuals with Disabilities Education Act (IDEA)
§ 46:15 —Requirements under IDEA
§ 46:16 —Placement of disabled children
§ 46:17 —Mainstreaming
§ 46:18 —Private placement; reimbursement to parents
§ 46:19 —Procedural safeguards under IDEA

II. SCHOOL BOARDS AND SCHOOL DISTRICTS

§ 46:20 Status
§ 46:21 Members of school boards; eligibility to serve
§ 46:22 —Election or appointment
§ 46:23 —Removal
§ 46:24 Powers of boards of education
§ 46:25 —Funds
§ 46:26 —Property
§ 46:27 ——Ownership
§ 46:28 ——Construction and location
§ 46:29 — —Building and zoning requirements
§ 46:30 —Contracts
§ 46:31 — —Ratification, estoppel and implied contracts
§ 46:32 — —Liability of school board officials
§ 46:33 —Taxes
§ 46:34 —Public school financing
§ 46:35 — —Limitation on indebtedness
§ 46:36 —Rules governing schools
§ 46:37 —Textbooks and studies
§ 46:38 School libraries
§ 46:39 Actions and suits
§ 46:39.50 Appeal of school board decisions
§ 46:40 Meetings of boards of education
§ 46:41 —Open meeting law requirements
§ 46:42 Collective bargaining

III. OFFICERS, TEACHERS AND EMPLOYEES

A. IN GENERAL
§ 46:43 Superintendent; appointment and removal
§ 46:44 —Powers
§ 46:45 Teachers; license or certificate
§ 46:46 —Teacher's rights under certificate
§ 46:47 Employment of teachers
§ 46:48 —Racial discrimination
§ 46:49 —Gender discrimination
§ 46:50 —Age discrimination
§ 46:51 —Authority to employ
§ 46:52 —Discretion in employment
§ 46:53 Nonteaching officers and employees
§ 46:54 Personal liability for torts
§ 46:55 Drug testing

B. TENURE
§ 46:56 Generally
§ 46:57 Probationary period and grant of tenure
§ 46:58 —Nontenured teachers
§ 46:59 Change of tenure statute
§ 46:60 Reduction of staff and vacancies
§ 46:61 Rights of tenured teachers
§ 46:62 Transfer, reassignment or demotion
C. DISCIPLINE AND TERMINATION

§ 46:65 Generally
§ 46:66 Procedure
§ 46:67 Notice of nonrenewal or disciplinary action
§ 46:68 Right to hearing
§ 46:69 Nature of hearing
§ 46:70 —Evidence
§ 46:71 —Findings of fact and decision
§ 46:72 Grounds
§ 46:73 —Incompetence; neglect of duties
§ 46:74 —Insubordination
§ 46:75 —Immorality or criminal conduct
§ 46:76 —Criticism of school officials or policies
§ 46:77 —Union activities
§ 46:78 —Unauthorized or excessive absences or tardiness
§ 46:79 —Abolition of position; economic necessity
§ 46:80 —Miscellaneous
§ 46:80.50 Wrongful termination
§ 46:81 Remedies for wrongful termination
§ 46:82 —Damages
§ 46:83 Resignation
§ 46:84 Contract termination
§ 46:84.50 Reinstatement

D. COMPENSATION AND BENEFITS

§ 46:85 Compensation
§ 46:86 —Action to recover
§ 46:87 —Increase or decrease
§ 46:88 Leave of absence
§ 46:89 Sick leave
§ 46:90 Retirement and pensions
§ 46:91 [Deleted]

IV. STUDENTS

A. IN GENERAL

§ 46:92 Government and discipline
§ 46:93 —Residency requirements
§ 46:94 Health supervision
§ 46:95 Transportation
§ 46:96 Segregation and desegregation
§ 46:97 —School site selection
§ 46:98 —Busing
§ 46:99 —Financing desegregation
§ 46:100 Control away from school
§ 46:101 Social and other extracurricular school organizations
§ 46:102 Participation in interscholastic sports
§ 46:103 Personal grooming regulations

B. CONSTITUTIONAL RIGHTS OF STUDENTS

§ 46:104 Right of free speech
§ 46:104.50 Due Process
§ 46:105 Unreasonable search and seizure protection
§ 46:106 Protection against unreasonable search and seizure—Drug testing
§ 46:107 Right to be free of sexual abuse and harassment
§ 46:108 Right of promotion
§ 46:109 Right to privacy

C. STUDENT DISCIPLINE

§ 46:110 Corporal punishment
§ 46:111 Expulsion or suspension
§ 46:112 —Athletic suspensions
§ 46:113 Review of expulsion, exclusion decisions
§ 46:114 Bullying
§ 46:115 —Discretionary and ministerial acts

Volume 17

CHAPTER 47. CHARITIES, WELFARE AND CORRECTION

§ 47:1 Charities defined
§ 47:2 —Public versus private charity
§ 47:3 Municipal administration of charity and welfare programs
CHAPTER 47. CHARITIES AND RELIEF

§ 47:1 Historical background
§ 47:2 Federal government’s role
§ 47:3 Jurisdiction
§ 47:4 Municipal regulation of private charity
§ 47:5 Duty of municipal corporations to support indigent persons
§ 47:6 Definitions of indigent, pauper
§ 47:7 Homeless persons’ right to shelter
§ 47:8 Reimbursement
§ 47:9 Municipal power to support the poor
§ 47:10 Delegating municipal power
§ 47:11 Municipal liability for relief of poor by others
§ 47:12 Providing medical care
§ 47:13 Residence of indigent persons
§ 47:14 Aliens
§ 47:15 Welfare administrators and agencies
§ 47:16 Charity and correction boards
§ 47:17 Public housing-eligibility
§ 47:18 Property in trust for charitable uses
§ 47:19 Municipal hospitals, mental institutions, etc
§ 47:20 Property
§ 47:21 Reformatories and industrial schools
§ 47:22 Juvenile courts
§ 47:23 —Jurisdiction
§ 47:24 —Custody

CHAPTER 48. CLAIMS AGAINST MUNICIPAL CORPORATIONS

§ 48:1 Valid claims against municipalities
§ 48:2 Presentation or filing of claims
§ 48:3 Claims requiring presentation
§ 48:4 By whom presented
§ 48:5 To whom presented
§ 48:6 When cause of action accrues for filing purposes
§ 48:7 Time within which to present—Time requirements
§ 48:8 Computation of time
§ 48:9 Notice; infancy and incapacity
CHAPTER 49. ACTIONS BY AND AGAINST MUNICIPAL CORPORATIONS IN GENERAL

I. GENERAL CONSIDERATION

§ 49:1 Scope of chapter
§ 49:2 Right to sue and be sued
§ 49:3 —Immunity under the Eleventh Amendment
§ 49:4 —Form of action
§ 49:5 —Actions between governmental subdivisions
§ 49:5.50 —Negotiations and settlements
§ 49:6 Limitation of actions
§ 49:7 —Actions by municipal corporations
§ 49:8 —Actions against municipal corporations
§ 49:9 —Running of statute; discovery rule; tolling
§ 49:9.50 —Motion for accounting
§ 49:10 Laches
§ 49:11 —Elements of laches
§ 49:12 Procedure generally
§ 49:13 Conditions precedent
§ 49:14 —Presentation of claim
§ 49:15 —Notice of intention to sue
§ 49:16 Jurisdiction
Table of Contents

§ 49:17  Venue
§ 49:18  Name in which action should be brought
§ 49:19  —Effect of variance or misnomer
§ 49:20  Action by attorney general of state
§ 49:21  Parties, generally
§ 49:22  —Plaintiffs
§ 49:23  —Defendants
§ 49:24  —Joinder of municipal officers
§ 49:25  —Tort actions
§ 49:26  Pleading generally
§ 49:27  —Corporate existence
§ 49:28  Pleading, generally—Conditions precedent
§ 49:29  —Statutes and ordinances
§ 49:30  —Equitable actions
§ 49:31  —Actions relating to contracts
§ 49:31.50  —Immunity and contract actions
§ 49:32  —Tort actions
§ 49:33  —Answer
§ 49:34  Process
§ 49:35  —Fees
§ 49:36  Representation by counsel; appearance
§ 49:37  Depositions; pretrial procedure
§ 49:38  Defenses
§ 49:39  —Estoppel
§ 49:40  Trial; juries
§ 49:41  Judgment against municipality
§ 49:42  —By consent
§ 49:43  —Construction and conclusiveness
§ 49:44  —Vacating; amending
§ 49:45  Enforcement of judgment, generally
§ 49:46  —Source of payment
§ 49:47  —Execution
§ 49:48  New trial
§ 49:49  Appeal and error
§ 49:49.50  —Bill of exceptions
§ 49:49.75  Damages
§ 49:50  Attorney fees and costs
§ 49:51  —Methods of awarding attorney fees
§ 49:52  —Post-judgment interest
§ 49:53  —Civil rights litigation

ccvii
II. PARTICULAR ACTIONS
   A. IN GENERAL
      § 49:54 General considerations
      § 49:55 Creditors’ remedies
      § 49:56 Contempt proceedings
      § 49:56.50 Qui tam actions
   B. EQUITABLE REMEDIES
      § 49:57 In general
      § 49:58 Injunction against city
      § 49:59 —Application of rules
      § 49:60 —Enactment of ordinances
      § 49:61 —Enforcement of ordinances
      § 49:62 —Nuisances
      § 49:63 —Public officers and employees
      § 49:64 Injunction by municipal corporation
      § 49:65 —Enforcement of laws
      § 49:66 —Abatement of nuisances
   C. CONTRACT ACTIONS
      § 49:67 Express contracts
      § 49:68 Implied contracts
   D. RECOVERY OF PAYMENTS
      § 49:69 In general; voluntary payments
      § 49:70 Involuntary payments
   E. CERTIORARI
      § 49:71 Nature and object of writ
      § 49:72 —Writ as discretionary
      § 49:73 —As a writ of review
      § 49:74 —When writ of error lies
      § 49:75 Tribunals to which writ may be directed
      § 49:76 Review of acts of a judicial character
      § 49:77 —Quasi-judicial acts
      § 49:78 Review of legislative, administrative, or ministerial acts
      § 49:79 Review of jurisdiction
      § 49:80 Procedure generally
TABLE OF CONTENTS

§ 49:81  Procedure—Application for; direction of writ
§ 49:82  Procedure, generally—Return of writ
§ 49:83  Record; scope of review
§ 49:84  Matters of practice

F. PROHIBITION
§ 49:85  In general
§ 49:86  Requisites to issuance of writ
§ 49:87  Existence of other remedies
§ 49:88  To whom writ may be issued
§ 49:89  Illustrations of use of writ

G. DECLARATORY RELIEF
§ 49:90  In general
§ 49:91  Necessity of justiciable controversy
§ 49:92  —Uniform Declaratory Judgments Act
§ 49:93  Litigable issues
§ 49:94  Procedure generally
§ 49:95  Procedure, generally—Parties

H. GARNISHMENT
§ 49:96  In general
§ 49:97  Equitable garnishment

I. MUNICIPAL’S RECOVERY OF COSTS
§ 49:97.10  Municipalities and opioid
§ 49:97.20  —Deceptive practices
§ 49:97.30  —Fraudulent practices
§ 49:97.40  —Unfair practices
§ 49:97.50  —Local ordinances
§ 49:97.60  —Unjust enrichment

III. CRIMINAL LIABILITY
§ 49:98  In general
§ 49:99  Liability for maintaining a nuisance
§ 49:100  Defective sewer systems
§ 49:101  Defective public ways
§ 49:102  —Bridges
§ 49:103  Environmental pollution; clean-up penalties
§ 49:104  Violation of antitrust laws
§ 49:105 —State action exemption
§ 49:106 —State antitrust laws
§ 49:107 RICO liability

CHAPTER 50. QUO WARRANTO

I. INTRODUCTORY
§ 50:1 Scope of discussion
§ 50:2 Nature and purpose

II. CONSIDERATIONS AFFECTING ISSUANCE OF WRIT
§ 50:3 In general; existence of another remedy
§ 50:4 Discretion in instituting proceedings
§ 50:5 Discretion of court in allowing writ

III. GROUNDS AND OCCASIONS FOR REMEDY
§ 50:6 In general
§ 50:7 Determining right to public office
§ 50:8 —Existence of office
§ 50:9 Questioning legal existence of municipal corporation
§ 50:10 Questioning annexation proceedings
§ 50:11 Ouster from exercise of franchise

IV. PROCEDURE
§ 50:12 In general; time to sue
§ 50:13 Parties plaintiff
§ 50:14 —Suit to determine right to public office
§ 50:15 Parties defendant
§ 50:16 Sufficiency of petition or information
§ 50:17 Subsequent pleadings
§ 50:18 Matters of practice
§ 50:19 Burden of proof and evidence
§ 50:20 Relief; judgment
§ 50:21 Effect of judgment; vacation and review

CHAPTER 51. MANDAMUS

I. GENERAL CONSIDERATION
§ 51:1 Scope of chapter
§ 51:2 Mandamus defined
§ 51:3 Nature and object of writ; historical background
§ 51:4 Nature and object of writ, generally—Equitable nature

II. GENERAL PRINCIPLES GOVERNING REMEDY

§ 51:5 In general
§ 51:6 Necessity and efficacy
§ 51:7 —Expiration of time for performance of act
§ 51:8 Discretion in granting writ
§ 51:9 Existence of another remedy
§ 51:10 Limitation and laches
§ 51:11 Officers, boards and tribunals subject to mandamus

III. RIGHTS AND DUTIES ENFORCEABLE

§ 51:12 In general
§ 51:13 Necessity of clear legal right to performance
§ 51:14 Compelling performance of official act; nature of duty
§ 51:15 Demand and refusal of alleged duty
§ 51:16 Discretionary acts
§ 51:17 —Application of rule
§ 51:18 —Abuse of discretion
§ 51:19 Ministerial acts

IV. SPECIFIC INSTANCES WHERE WRIT WILL BE GRANTED OR REFUSED

A. IN GENERAL

§ 51:20 General considerations
§ 51:21 Constitutionality or validity of ordinance
§ 51:22 Enactment and authentication of ordinances
§ 51:23 Enforcement of ordinances
§ 51:24 Abatement of nuisances
§ 51:25 Enforcement of civil rights
§ 51:26 Municipal records and reports
§ 51:27 Public funds
§ 51:28 Schools
§ 51:29 Inferior courts and court officers
B. PUBLIC OFFICERS AND EMPLOYEES

§ 51:30 In general
§ 51:31 Appointment, induction and qualification
§ 51:32 Compelling transfer of books, etc., of office
§ 51:33 Reinstatement
§ 51:34 Pensions

C. CLAIMS AND INDEBTEDNESS

§ 51:35 In general
§ 51:36 Auditing and payment of claims
§ 51:37 Payment of salaries
§ 51:38 Payment of judgments
§ 51:39 Necessity of appropriation or available funds
§ 51:40 Setoffs

D. BONDS AND OTHER EVIDENCE OF INDEBTEDNESS

§ 51:41 In general
§ 51:42 Compelling signing or issuing of warrants

E. PUBLIC IMPROVEMENTS

§ 51:43 In general
§ 51:44 Compelling construction of improvements
§ 51:45 Compelling street repairs; removal of obstructions

F. TAXES AND ASSESSMENTS

§ 51:46 In general
§ 51:47 Compelling levy of taxes
§ 51:48 —To pay bonds and warrants
§ 51:49 —To pay judgments
§ 51:50 Compelling levy of assessments

G. ELECTIONS

§ 51:51 In general
§ 51:52 Compelling calling of election
§ 51:53 Determining the vote and certifying the result

H. MUNICIPAL CONTRACTS

§ 51:54 In general

ccxii
§ 51:55 Compelling award of contract

I. LICENSES AND PERMITS

§ 51:56 Compelling issuance
§ 51:57 — Illustrations of issuance
§ 51:58 — Discretion of authorities
§ 51:59 — Building permits
§ 51:60 Cancellation and revocation
§ 51:61 Restoration

V. PROCEDURE

§ 51:62 In general
§ 51:63 Parties, generally
§ 51:64 Name under which action is brought
§ 51:65 Joinder; intervention
§ 51:66 — Abatement; substitution of parties
§ 51:67 Pleading
§ 51:68 — Illustrations
§ 51:69 Alternative writ
§ 51:70 — To whom directed
§ 51:71 Answer or return
§ 51:72 Subsequent pleadings
§ 51:73 Objections, demurrers and motions
§ 51:74 Amendments
§ 51:75 Trial; matters of practice
§ 51:76 Presumptions
§ 51:77 Burden of proof
§ 51:78 Dismissal and nonsuit
§ 51:79 Judgment and peremptory writ
§ 51:80 — Enforcement
§ 51:81 — Attorney’s fees
§ 51:82 Review

Volume 18

CHAPTER 52. CITIZENS’ AND TAXPAYERS’ SUITS

I. IN GENERAL

§ 52:1 Scope of chapter
§ 52:2 Definition and distinctions
§ 52:3 Attorney general proceedings
§ 52:4 Nature and elements

II. PROPRIETY OF PROCEEDINGS
§ 52:5 In general
§ 52:6 Historical basis of equity jurisdiction
§ 52:7 Statutory provisions
§ 52:8 Illegality of act
§ 52:9 Exhaustion of administrative remedies
§ 52:10 Title to office
§ 52:11 Right of taxpayers to intervene or defend
§ 52:12 Motive of plaintiff

III. WHO MAY SUE; STANDING REQUIREMENTS
§ 52:13 Standing in general
§ 52:13.50 —“Concrete” injury requirement
§ 52:14 —Against federal and state governments
§ 52:15 Pecuniary interest
§ 52:16 Injury different from other taxpayers
§ 52:17 Estoppel to sue

IV. REMEDIES GENERALLY
§ 52:18 Form of action
§ 52:19 Actions on behalf of municipality
§ 52:20 —Recovery of money wrongfully paid
§ 52:21 Certiorari

V. INJUNCTION
§ 52:22 In general
§ 52:23 Discretionary acts
§ 52:24 Passage and enforcement of ordinances
§ 52:25 Act relating to bonds
§ 52:26 Contracts
§ 52:27 —Bids and specifications
§ 52:28 —Performance
§ 52:29 Licenses and franchises
§ 52:30 Incurring indebtedness above debt limit
§ 52:31 Unlawful expenditures
VI. PROCEDURE

§ 52:40 In general
§ 52:41 Time to sue; limitations and laches
§ 52:42 Conditions precedent; demand
§ 52:43 —Bond or security requirement
§ 52:44 Parties generally
§ 52:45 —Defendants
§ 52:46 Complaint or petition
§ 52:47 —Statutory action
§ 52:48 Answer
§ 52:49 Burden of proof
§ 52:50 Issues and evidence
§ 52:51 Judgment
§ 52:52 —Conclusiveness; res judicata
§ 52:53 Costs and attorney’s fees
§ 52:54 Appeal

CHAPTER 53. MUNICIPAL LIABILITY FOR TORTS

I. IN GENERAL
   A. INTRODUCTION
      § 53:1 Scope
      § 53:2 Basic municipal responsibilities
      § 53:3 Common law rule: municipalities liable for torts

   B. IMMUNITIES
      § 53:4 In general
      § 53:5 Sovereign immunity—Abrogation of doctrine
      § 53:6 —Development of proprietary/corporate distinction and other exceptions
§ 53:7 Statutory provisions providing municipal immunity
§ 53:7.50 Legislative immunity
§ 53:7.75 Prosecutorial immunity
§ 53:8 Statutory provisions providing municipal immunity—Waiver of immunity
§ 53:9 —Liability insurance
§ 53:10 —Exemptions, limitations, conditions
§ 53:10.50 —Application of immunity to legislatively created body
§ 53:11 Fundamental issues of municipal liability
§ 53:12 Discretionary-ministerial distinction
§ 53:13 —Defining “discretionary”; “ministerial”
§ 53:14 —Exceptions to immunity
§ 53:15 —Rationale behind rule
§ 53:16 —Planning-operational distinction
§ 53:17 —Design plan immunity
§ 53:18 Public duty rule and the special relationship exception
§ 53:19 —Applications of special duty exception
§ 53:20 —Safety inspections
§ 53:21 —Police protection
§ 53:22 ——Emergency or 911 calls
§ 53:23 ——Motorists
§ 53:24 ——Fire protection
§ 53:25 Immunity of quasi-municipal corporations
§ 53:26 —Exceptions
§ 53:27 —Boards, districts, etc
§ 53:28 —School boards and districts
§ 53:29 Municipal property
§ 53:30 —Recreational use immunity
§ 53:31 —Unimproved land immunity
§ 53:32 —Supervision immunity
§ 53:33 —Unintended use immunity
§ 53:34 —Safety inspection immunity
§ 53:35 —Dangerous conditions on municipal property
§ 53:36 —Motor vehicle and dangerous equipment
§ 53:37 Willful, wanton, reckless, gross, or malicious misconduct
§ 53:38 Immunity in foreign jurisdictions

C. CHARACTER AND CAUSE OF INJURY
§ 53:39 In general

cxxvi
§ 53:40 Damage outside municipal boundaries
§ 53:41 Injury caused by third person
§ 53:42 Nonfeasance
§ 53:43 Injuries to property
§ 53:44 Personal injuries
§ 53:44.50 Future Injury
§ 53:45 Loss of consortium
§ 53:46 Trespass and conversion
§ 53:47 Nuisances
§ 53:48 Conspiracy; fraud
§ 53:49 Invasion of privacy
§ 53:50 Tortious interference

D. ACTIONS

§ 53:51 Immunity from contributory negligence
§ 53:52 Joint tort-feasors; contribution
§ 53:53 Negligence as basis of recovery
§ 53:54 Wrongful death actions
§ 53:55 Punitive damages
§ 53:56 Municipal liability for punitive damages—Statutory caps on damages
§ 53:57 Municipal liability for interest on damage awards
§ 53:57.50 Incidental Injuries
§ 53:58 Who may sue
§ 53:59 —City employees
§ 53:60 —Independent contractors’ employees
§ 53:61 Worker’s compensation
§ 53:62 Personal tort liability of city employees

E. DISCRETIONARY/JUDICIAL/LEGISLATIVE VS. MINISTERIAL/OPERATIONAL FUNCTIONS

§ 53:63 Discretionary distinguished from ministerial duties
§ 53:64 —Judicial acts
§ 53:65 —Exercise of police power
§ 53:66 —Passage, enforcement and repeal of ordinances
§ 53:67 —Granting, refusing, or revoking licenses and permits
§ 53:68 —Defects in plan of construction
§ 53:69 —Construction or repair of public improvements or works

F. GOVERNMENTAL VS. CORPORATE/PROPRIETARY FUNCTIONS

§ 53:70 Corporate or proprietary acts
§ 53:71 “Governmental” acts
§ 53:72 Criticism of government-corporate distinction
§ 53:73 Exceptions
§ 53:74 Rule in admiralty
§ 53:75 To whom immunity extends
§ 53:76 Statutes imposing liability
§ 53:77 Waiver and estoppel
§ 53:77.1 —Liability insurance as waiver
§ 53:77.2 Governmental and corporate duties distinguished
§ 53:77.3 —“Governmental” functions; illustrations
§ 53:77.4 —“Corporate” functions; illustrations
§ 53:77.5 Streets
§ 53:77.6 —Traffic lights and signs
§ 53:77.7 —Parking meters
§ 53:77.8 —Safety zones
§ 53:77.9 —Street lighting
§ 53:77.10 Operation of motor vehicles
§ 53:77.11 Cleaning streets; dumping; garbage collection
§ 53:77.12 Police department
§ 53:77.13 Fire department
§ 53:77.14 —Failure to provide adequate fire protection
§ 53:77.15 Emergency medical services
§ 53:77.16 Collection of taxes or special assessments
§ 53:77.17 Infringement of patent or copyright
§ 53:77.18 Events held by municipality; celebrations
§ 53:77.19 Charitable institutions
§ 53:77.20 Destruction of property

II. NUISANCES

§ 53:77.21 Nuisances
§ 53:77.22 —Streets and public places
§ 53:77.23 —On private property
§ 53:77.24 —Creation or maintenance by city
§ 53:77.25 —Application of rules
III. ULTRA VIRES ACTS

§ 53:77.28 In general
§ 53:77.29 Willful or malicious acts
§ 53:77.30 Acts outside corporate limits
§ 53:77.31 Parks, stadiums, fairs
§ 53:77.32 Streets, sewers
§ 53:77.33 Municipal businesses; utilities; hospitals
§ 53:77.34 Acts under void ordinances

IV. RESPONDEAT SUPERIOR

§ 53:77.35 In general
§ 53:77.36 Master and servant relationship as necessity
§ 53:77.37 Master and servant as necessity—By whom appointed or paid immaterial
§ 53:77.38 —Duties directly imposed by statute on officer
§ 53:77.39 Scope of authority
§ 53:77.40 Scope of authority of officer or servant—Ratification
§ 53:77.41 Boards, commissions, committees, authorities, etc
§ 53:77.42 De facto officers
§ 53:77.43 Licensees
§ 53:77.44 City engineers
§ 53:77.45 Independent contractors; definition
§ 53:77.46 —Rule of nonliability
§ 53:77.47 Independent contractors—Exceptions to rule—Control
§ 53:77.48 ——Imposed duties
§ 53:77.49 ——Dangerous work
§ 53:77.50 Independent contractors; definition—Exceptions to rule—Unlawful acts
§ 53:77.51 Independent contractors—Exceptions to rule—Notice
§ 53:77.52 Liability agreements with contractor
§ 53:77.53 Sections 1981 and 1983 actions
§ 53:77.54 Exceptions to respondeat superior doctrine
V. ACTS OF PARTICULAR OFFICERS

§ 53:78 Negligent hiring
§ 53:79 Police officers
§ 53:80 —Immunity
§ 53:81 — —Intentional torts
§ 53:82 —Common-law liability
§ 53:83 —Statutory liability
§ 53:84 —Nonfeasance
§ 53:85 — —Failure to restrain intoxicated motorist
§ 53:86 —Negligence
§ 53:87 —Off-duty officers
§ 53:88 —Discharge of weapons
§ 53:89 —Assault and battery
§ 53:90 —Unlawful arrest; imprisonment; mistreatment
§ 53:91 — —Liability under ADA
§ 53:92 —Taking or damaging property
§ 53:93 [Deleted]
§ 53:94 [Deleted]
§ 53:95 Police officers—Defamation; invasion of privacy
§ 53:96 —Operation of vehicles
§ 53:97 —Wrongful death
§ 53:98 —Persons assisting police officers
§ 53:99 Firefighters, ambulance drivers and paramedics
§ 53:100 School officials and educational personnel
§ 53:101 —Negligent supervision
§ 53:102 —Travel to and from school
§ 53:103 —Negligent hiring, supervision of teachers
§ 53:104 Animal control officers
§ 53:105 [Deleted]
§ 53:106 Health officers
§ 53:107 Coroners and medical examiners
§ 53:108 Hospital employees
§ 53:109 Social workers
§ 53:110 Bridge employees
§ 53:111 Boat operators
§ 53:112 Building officers and inspectors
§ 53:113 Acts of mayor

ccxx


**Table of Contents**

### VI. PROPERTY OWNED BY MUNICIPALITY

| § 53:114 | Historical view on liability |
| § 53:115 | Modern view on liability; statutory basis |
| § 53:116 | Conducting business for profit |
| § 53:117 | Public housing |
| § 53:118 | Municipal and public buildings |
| § 53:119 | Schools |
| § 53:120 | Jails; workhouses; police stations |
| § 53:121 | Fire stations, equipment, etc |
| § 53:122 | Airports |
| § 53:123 | [Deleted] |
| § 53:124 | Wharves, piers, ports, etc |
| § 53:125 | Quarries and gravel pits |
| § 53:126 | Public utilities generally |
| § 53:127 | Light and power plants |
| § 53:128 | Gasworks |
| § 53:129 | Waterworks |
| § 53:130 | —Supplying water for public purposes |
| § 53:131 | —Inadequate supply of water to extinguish fire |
| § 53:132 | —Injuries in connection with hydrants |
| § 53:133 | —Polluted water |
| § 53:134 | Garages; parking places |
| § 53:135 | Buses |
| § 53:136 | Railways |
| § 53:137 | Subways |
| § 53:138 | Ferries |
| § 53:139 | Parks |
| § 53:140 | Beaches and swimming pools |
| § 53:141 | Playgrounds; recreation centers; camps |
| § 53:142 | Golf courses |
| § 53:143 | Stadiums |
| § 53:144 | Cemeteries |

### VII. SEWERS AND DRAINS

| § 53:145 | In general |
| § 53:146 | Sewers as to which liability exists |
| § 53:147 | Duty to provide |
| § 53:148 | Abandonment |
| § 53:149 | Defective plans |
| § 53:150 | —Municipal liability |
| § 53:151 | Inadequate sewers or drains |

ccxxi
§ 53:152 —Extraordinary floods or rains
§ 53:153 Negligent construction
§ 53:154 Failure to maintain or repair
§ 53:154.50 Bridges
§ 53:155 Notice of defects or obstructions
§ 53:156 Nuisances
§ 53:157 —Liability for personal injury
§ 53:158 Sewage discharge upon private property
§ 53:159 —Remedies
§ 53:160 Sewage disposal plants

VIII. WATERCOURSES
§ 53:161 In general
§ 53:162 Public improvement obstructing watercourse
§ 53:163 Culverts
§ 53:164 Levees and flood control measures
§ 53:165 Riparian owners rights
§ 53:166 Use of streams by sewers
§ 53:167 Pollution of waters
§ 53:168 —By sewage
§ 53:169 —Remedies

IX. SURFACE WATER
§ 53:170 In general
§ 53:171 Surface water; definitions
§ 53:172 Liability for public improvements; “common enemy” rule
§ 53:173 [Deleted]
§ 53:174 Statutory provisions affecting recovery
§ 53:175 —Casting surface water on private land

X. MOBS AND RIOTERS
§ 53:176 Common-law rule of immunity
§ 53:177 Statutory liability
§ 53:178 —Construction
§ 53:178.1 —Definitions
§ 53:178.2 —Notice of threatened danger
§ 53:178.3 Actions

XI. NOTICE OF THE “ACCIDENT”
§ 53:178.4 In general

cxxxi
**Table of Contents**

§ 53:178.5 Statutory and charter provisions
§ 53:178.6 —Conflict with state and federal law
§ 53:178.7 —Compliance with statute
§ 53:178.7.50 Failure to comply with notice requirement; excuse
§ 53:178.8 Statutory and charter provisions—Object and purpose
§ 53:178.9 Notice as a condition precedent to suit
§ 53:178.10 When notice required
§ 53:178.11 Waiver
§ 53:178.12 By whom given
§ 53:178.13 —Persons under disability
§ 53:178.14 —Minors
§ 53:178.15 To whom given
§ 53:178.16 Time for giving
§ 53:178.17 Service; filing
§ 53:178.18 Sufficiency generally
§ 53:178.19 Form and contents
§ 53:178.20 —Residence of claimant
§ 53:178.21 —Time of accident
§ 53:178.22 —Place of accident
§ 53:178.23 —How injury occurred
§ 53:178.24 —Nature of injury
§ 53:178.25 Amendment
§ 53:178.26 Pleading and proof

**XII. SECTION 1983 LIABILITY**

§ 53:178.27 In general; who are “persons” under the Act
§ 53:178.28 In general—Federal statutory rights
§ 53:178.28.50 In general—Federal statutory rights—Constitutional right to bodily integrity
§ 53:178.28.60 ——Pleading and proof
§ 53:178.28.70 In general; who are “persons” under the Act—“shocks the conscience”
§ 53:178.29 State-created danger theory
§ 53:178.30 Procedural considerations
§ 53:178.31 Damages recoverable
§ 53:178.32 Under color of state law
§ 53:178.33 When private actor becomes state actor
§ 53:178.34 Policies and customs
§ 53:178.35 ——Inadequate training

ccxxiii
§ 53:178.36 Custodial relationships giving rise to constitutional rights
§ 53:178.37 —Detainees and prisoners
§ 53:178.38 Retaliation
§ 53:178.39 Immunity and Eleventh Amendment issues
§ 53:178.40 Applications

Volume 19

CHAPTER 53A. ENVIRONMENTAL LIABILITY

I. IN GENERAL
§ 53A:1 Environmental regulation
§ 53A:2 Toxic torts

II. STATUTORY VIOLATIONS
§ 53A:3 Municipal liability under CERCLA
§ 53A:3.50 Indemnification
§ 53A:4 Municipal liability under CERCLA—Cleanup under Superfund
§ 53A:5 —Liability for arrangers
§ 53A:6 —Disposal of municipal solid waste
§ 53A:7 Legislation limiting municipal liability
§ 53A:8 EPA policies limiting municipal liability; allocation; capping liability
§ 53A:9 Cleanup under Superfund (CERCLA/SARA)—Involuntary ownership/control exception
§ 53A:10 —Secured creditor exception
§ 53A:11 —Innocent landowner exception
§ 53A:12 —Emergency response exception
§ 53A:13 —Other defenses to municipal liability
§ 53A:14 —Response costs
§ 53A:15 Management of solid waste disposal (RCRA)
§ 53A:16 Clean air
§ 53A:17 Clean water
§ 53A:18 —Drinking water
§ 53A:19 Asbestos hazard in schools
CHAPTER 54. MUNICIPAL LIABILITY FOR DEFECTIVE STREETS

I. GENERAL RULES

§ 54:1 Municipal corporations
§ 54:2 Quasi-municipal corporations
§ 54:3 Common-law
§ 54:4 —Basis of liability
§ 54:5 —Duty to construct, maintain and repair public ways
§ 54:6 —Control of public ways
§ 54:7 —Minority rule
§ 54:8 Statutory provisions
§ 54:9 —Statutes limiting or abolishing liability
§ 54:10 —Statutes creating liability
§ 54:11 —Statutes granting immunity
§ 54:12 Charter provisions exempting or limiting liability
§ 54:13 Requirements imposed by Americans with Disabilities Act
§ 54:14 Strict liability
§ 54:15 Actions based on products liability
§ 54:16 Absolute duty
§ 54:17 Scope, extent and nature of duty
§ 54:18 Scope, extent and nature of duty of municipality—Travel in usual modes
§ 54:19 Necessity for showing municipal negligence
§ 54:20 Ordinary care generally
§ 54:21 Standards and tests
§ 54:22 —Degree of care and amount of care distinguished
§ 54:23 —Anticipation of danger
§ 54:24 —Duty to inspect
§ 54:25 ——Latent defects
§ 54:26 Delegation of duty
§ 54:27 —To contractors
§ 54:28 —To private companies; railroads
§ 54:29 —To abutters
§ 54:30 Lack of municipal authority to remedy conditions
§ 54:31 Lack of municipal funds to repair

II. WAYS TO WHICH LIABILITY EXTENDS

§ 54:32 Requirement that way be open to public use
§ 54:33 Dedicated streets
§ 54:34 —Informally established streets
§ 54:35 Streets not controlled by municipality
§ 54:36 Streets outside city limits
§ 54:37 Streets not opened or improved
§ 54:38 Terms included in “street.”
§ 54:39 —Conditions not on surface of street
§ 54:40 Area near the street curb
§ 54:41 Ways in outlying districts and parks
§ 54:42 Streets in annexed territory
§ 54:43 Accidents outside, or from sources outside, street limits
§ 54:44 Abandoned streets
§ 54:45 Ultra vires streets

III. PARTS OF WAYS TO WHICH LIABILITY EXTENDS

§ 54:46 Width of way
§ 54:47 —Traveled portion
§ 54:48 Sidewalks
§ 54:49 —Requisite that sidewalk be public
§ 54:50 —Not constructed by municipality
§ 54:51 —Subject to multiple governmental interests
§ 54:52 —Composition
§ 54:53 —Care required
§ 54:54 — —Parts of way to which it extends
§ 54:55 — —Population and extensive use as affecting care required
§ 54:56 — —Snowy or icy sidewalks
§ 54:57 — —Wholly or partly outside street limits
§ 54:58 —Failure to construct
§ 54:59 Parking strips
§ 54:60 Curbs and gutters
§ 54:61 Crosswalks
§ 54:62 Alleys
§ 54:63 Bridges
IV. LIABILITY

§ 54:65 Liability of third persons
§ 54:65.50 Parking lots
§ 54:66 Liability of third persons—Abutters
§ 54:67 — —Negligent sidewalk construction or repair
§ 54:68 — —Creating dangerous condition through special use of sidewalk
§ 54:69 —Contractors
§ 54:70 Municipal liability for acts of third persons
§ 54:71 —Licensees
§ 54:72 — —Amusements in streets
§ 54:73 —Abatement of street nuisances
§ 54:74 Joint and several liability

V. WHO MAY Sue

§ 54:75 Who may sue generally
§ 54:76 Travelers
§ 54:77 Persons improperly using public way
§ 54:78 Municipal officers and employees
§ 54:79 Children
§ 54:80 Disabled persons
§ 54:81 Cyclists
§ 54:82 Abutters, occupants and tenants

VI. PARTICULAR CONDITION AS CAUSE OF INJURY

A. STREETS

§ 54:83 Street defects and obstructions
§ 54:84 —Defective plans or design
§ 54:85 —Slight defects or obstructions
§ 54:86 Obstructions generally
§ 54:87 —Permissible obstructions
§ 54:88 —Temporary obstructions
§ 54:89 —Vehicles left in street
§ 54:90 —Defective or missing covers
§ 54:91 —Miscellaneous actionable obstructions
§ 54:92 —Miscellaneous nonactionable obstructions
§ 54:93 Defects or obstructions between driveway and sidewalk
§ 54:94 Openings, excavations, potholes, and other holes, generally
§ 54:95 —Excavations
§ 54:96 —Ditches
§ 54:97 —Trenches
§ 54:98 —Ruts
§ 54:99 —Gutters
§ 54:100 —Culverts
§ 54:101 —Grade differentials
§ 54:102 Moving objects
§ 54:103 Causes outside street limits
§ 54:104 —Private property
§ 54:105 —Noises or acts
§ 54:106 —Openings or obstructions close to street
§ 54:107 ——Obstructions on visibility
§ 54:108 ——Statutory provisions
§ 54:109 ——Distance from street
§ 54:110 Overhanging or falling objects
§ 54:111 ——Trees or limbs
§ 54:112 ——Structures adjacent to streets
§ 54:113 Defects in or on road shoulders
§ 54:114 Embankments
§ 54:115 Slipperiness generally
§ 54:116 ——Snow and ice

B. SIDEWALKS
§ 54:117 Sidewalk defects and obstructions
§ 54:118 ——Defects in plans or design
§ 54:119 ——Slight defects or obstructions
§ 54:120 ———Sufficiency of defect or obstruction
§ 54:121 Steps or abrupt slopes
§ 54:122 Obstructions generally
§ 54:123 ——Awnings
§ 54:124 Excavations, holes, openings and irregularities, generally
§ 54:125 ——Holes, crevices and cracks
§ 54:126 ——Differences in sidewalk levels
§ 54:127 ——Catch basins, cellarways, coalholes, ditches, elevators, gratings, gutters, manholes, sewers, trapdoors, water meter holes, etc.
# Table of Contents

| § 54:128 | —Areaways and areaway steps |
| § 54:129 | Slipperiness generally |
| § 54:130 | —Construction causing slipperiness |
| § 54:131 | Snow and ice |
| § 54:132 | —Statutory exemption from liability |
| § 54:133 | —Determination of municipal negligence |
| § 54:134 | —Slippery slopes |
| § 54:135 | —Concurrence with sidewalk defect |
| § 54:136 | —Ridges, drifts, hills, etc |
| § 54:137 | —Snow removal obstructions |
| § 54:138 | —Later storms as affecting liability |
| § 54:139 | —Artificial ice accumulations |
| § 54:140 | Defects outside sidewalk limits |

## C. CROSSWALKS, BRIDGES, ALLEYS

| § 54:141 | Crosswalk defects |
| § 54:142 | Design plan, or construction defects |
| § 54:143 | —Holes and excavations |
| § 54:144 | —Snow and ice |
| § 54:145 | Bridge defects |
| § 54:146 | Alley defects |

## VII. DUTY TO GUARD AND WARN AGAINST DANGER

| § 54:147 | General rule |
| § 54:148 | Dangers created by third persons |
| § 54:149 | Statutory provisions |
| § 54:150 | —Immunity for traffic control devices |
| § 54:151 | Care required |
| § 54:152 | —Extent of care |
| § 54:153 | Obstructions |
| § 54:154 | Excavations, ditches, holes, pits and other openings |
| § 54:155 | Streets used for construction |
| § 54:156 | Obvious dangers |
| § 54:157 | Dangers outside street limits |
| § 54:158 | —Declivities and embankments |
| § 54:159 | Persons passing to or from private property and street |
| § 54:160 | Guards erected by third persons |
| § 54:161 | Closing or blocking off street |
§ 54:162 Closing or blocking off portion of street—  
Closing during repair
§ 54:163 —Street open during repair
§ 54:164 Sufficiency of guards, barricades, or warnings
§ 54:165 Duty as continuing one; removal of guards
§ 54:166 Street lighting and warning lights
§ 54:167 —Lack of street lighting
§ 54:168 —Lighting unsafe places
§ 54:169 —Sufficiency of lighting

VIII. NOTICE OF DEFECTS AND OBSTRUCTIONS
§ 54:170 Necessity for notice
§ 54:171 —Municipality’s active negligence as exception
§ 54:172 —Defects in original construction or design exception
§ 54:173 Notice imputable to municipality
§ 54:174 —Notice to police officers
§ 54:175 —Notice to agents, contractors and others
§ 54:176 Actual notice
§ 54:177 Timeliness of notice
§ 54:178 Actual notice—Statutory provisions
§ 54:179 —Sufficiency of notice given
§ 54:180 —Statutory provisions—Construction
§ 54:181 — —Notice as condition precedent to suit
§ 54:182 — —Officer to be served
§ 54:183 Constructive notice
§ 54:184 —Notice based on time lapse
§ 54:185 —Intermittent or continuous dangers
§ 54:186 —Latent defects
§ 54:187 —Notice of one defect as notice of other defects
§ 54:188 —Notice of defect after repair
§ 54:189 Necessity for time lapse between notice and accident
§ 54:190 Notice of snowy or icy condition
§ 54:191 —General climatic conditions as notice
§ 54:192 —Effect of later storms or weather conditions
§ 54:193 —Actual notice

IX. CONTRIBUTORY AND COMPARATIVE NEGLIGENCE
§ 54:194 Contributory negligence as a defense
§ 54:195 — Incidents of defense
§ 54:196 Comparative negligence
§ 54:197 Pure comparative negligence
§ 54:198 Modified comparative negligence
§ 54:199 Traveler’s rights and duties
§ 54:200 — Speeding or running
§ 54:201 Ordinary care as test
§ 54:202 — Amount of care distinguished from degree of care
§ 54:203 — Amount of care as dependent on circumstances
§ 54:204 — Latent defects
§ 54:205 — Ways obstructed by public work or building operations
§ 54:206 — Acts in emergencies
§ 54:207 Right to assume safety of public way
§ 54:208 Traveler’s duty to look for defects
§ 54:209 — Patent “open and obvious” defects
§ 54:210 Acts and defects establishing contributory negligence
§ 54:211 Acts and defects not establishing contributory negligence
§ 54:212 Traveler’s duty to look for defects—Traveler as diverted or distracted
§ 54:213 Knowledge of defects or dangers
§ 54:214 — As contributory negligence
§ 54:215 — Refraining from travel on known defective way
§ 54:216 — Forgetfulness
§ 54:217 — — Previous knowledge
§ 54:218 — Choice of ways
§ 54:219 Night travel
§ 54:220 — Amount of care required
§ 54:221 — Particular nighttime acts considered
§ 54:222 Pedestrian not on sidewalk or crosswalk
§ 54:223 — Pedestrian in parkway
§ 54:224 — Crossing street other than on crosswalk
§ 54:225 Entering or exiting from vehicles
§ 54:226 Traveler outside street limits
§ 54:227 Children
§ 54:228 — Child’s capacity for contributory negligence
§ 54:229 — Imputability of parent’s or guardian’s negligence

cxxxi
§ 54:230  Blind, aged or infirm persons
§ 54:231  Intoxicated persons
§ 54:232  Abutters
§ 54:233  Imputed negligence
§ 54:234  Last clear chance doctrine

X. PROXIMATE CAUSE
§ 54:235  Street defect as proximate cause of injury
§ 54:236  Foreseeableness
§ 54:237  Failure to guard and warn against danger
§ 54:238  Concurring causes
§ 54:239  —Act of injured person
§ 54:240  —Act of third person
§ 54:241  —Snow, ice, rain
§ 54:242  Intervening causes
§ 54:243  —Moving vehicles

XI. PRACTICE AND PROCEDURE
§ 54:244  In general
§ 54:245  Elements creating action against municipality
§ 54:246  Parties
§ 54:247  Conditions precedent
§ 54:248  Initial pleadings
§ 54:249  —Public nature of way
§ 54:250  —Negligence or nuisance
§ 54:251  —Notice or knowledge
§ 54:252  —Answers
§ 54:253  —Defenses
§ 54:254  ——Violation of law
§ 54:255  ——Contributory negligence
§ 54:256  ——Lack of funds to repair
§ 54:257  ——Act of God
§ 54:258  Amendment of pleadings
§ 54:259  Issues, proof and variance
§ 54:260  —Proof of negligence and proximate cause
§ 54:261  —Variances
§ 54:262  Competency, relevancy and admissibility of evidence
§ 54:263  —Financial ability of municipality
§ 54:264  —Subsequent repairs
§ 54:265  —Prior accidents at same place
Table of Contents

§ 54:266 —Subsequent accidents at same place
§ 54:267 —Absence of accidents at same place
§ 54:268 —Declarations and admissions
§ 54:269 —Judicial notice
§ 54:270 Presumptions and inferences
§ 54:271 —Res ipsa loquitur
§ 54:272 Burden of proof
§ 54:273 —Contributory negligence
§ 54:274 Weight and sufficiency of evidence
§ 54:275 Municipal negligence as question of fact
§ 54:276 —When question of law
§ 54:277 —Miscellaneous examples of fact questions
§ 54:278 —Notice of dangerous condition
§ 54:279 —Guards and warnings
§ 54:280 Contributory negligence as question of fact
§ 54:281 —Illustrative examples
§ 54:282 —Children, persons under disability, and intoxicated persons
§ 54:283 Proximate cause as question of fact
§ 54:284 Instructions
§ 54:285 —Contributory negligence
§ 54:286 Verdict, findings and trial court conclusions
§ 54:287 Damages
§ 54:288 Appellate practice

Volume 20

Index