

## HPZ-99 Purpose.

Halsbury's Laws of Canada - Planning and Zoning (2021 Reissue)

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### VI. Zoning and Other Site Development Controls

#### 1. Zoning and Land Use By-laws

##### (1) General

###### Purpose.

Zoning involves the division of territory into districts and the establishment of development regulations that are, generally speaking, uniform within districts but that vary from district to district, particularly in regard to permitted uses.<sup>1</sup> It has its origins in the United States of America, where cities and towns in the early decades of the twentieth century enacted by-laws classifying land uses into broad categories – residential, commercial, and industrial – and assigning permitted use categories to particular districts, primarily with the objective of protecting property values from the effects of incompatible uses.<sup>2</sup> Municipalities had other legislative powers that could be exercised in relation to actual nuisances, but zoning was seen as a mechanism for preventing the creation of nuisances by maintaining separation between land uses that are inherently incompatible, as well as preserving property values from erosion due to the possibility of incompatible uses being established nearby. Early Canadian planning enabling legislation embraced the concept of zoning, and it has remained at the core of local government regulatory powers in relation to land use. Zoning is an effective tool for regulating land use in the first generation of development, but has proven less useful for dealing with redevelopment, in part because the basic premise about the incompatibility of land uses in different categories has weakened as the nature of uses, and public perceptions as to their compatibility, have changed. Zoning has accordingly been supplemented with more sophisticated controls, in both the U.S. and Canada, for cities and towns experiencing their second and subsequent generations of building. When the *Town and Country Planning Act, 1947*<sup>3</sup> was enacted in Britain after World War II and the country was largely concerned with the redevelopment of cities damaged during the war, the zoning tool was not employed; rather, a more *ad hoc* form of control referred to as “planning permission” was established, and continues in use today. Canadian site plan approval schemes and direct control districts take a similar approach.

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Footnote(s)

- <sup>1</sup> Zoning by-laws are inherently discriminatory. For that reason they are not subject to being set aside on the administrative law grounds that regulatory powers may not be exercised in a discriminatory fashion: *Scarborough (Township) v. Bondi*, [1958] S.C.J. No. 71, [1959] S.C.R. 444 (S.C.C.); *Lacewood Development Co. v. City of Halifax and Provincial Planning Appeal Board*, [1975] N.S.J. No. 394, 58 D.L.R. (3d) 383 (N.S.C.A.); *2550-9613 Québec Inc. v. Val d'Or (Ville)*, [1997] J.Q. no 2347 (Que. C.A.).

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- 2 The constitutionality of zoning as an element of the municipal police power was first affirmed by the U.S. Supreme Court in *Euclid (Village) v. Ambler Realty Co.* (1926), 47 S. Ct. 114 (U.S.), with the result that this basic form of districting is sometimes referred to as "Euclidean zoning". The first enabling legislation for planning and zoning in many Canadian provinces was being written around this time.
- 3 (U.K.), 10 & 11 Geo. VI, c. 51.

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