

- **SAN JOSÉ STATE UNIVERSITY**
- **URBAN AND REGIONAL PLANNING DEPARTMENT**
- **URBP 229: PLANNING AND ENVIRONMENTAL LAW**
- **SPRING 2012**

- **Course Catalog Description:**

The role of public law in meeting problems of urban growth and environmental change; legal aspects of preparing and administering planning controls and incentives; the law of real property with respect to the planning process.

- **Course Description:**

The purpose of this course is to give the student a practical and usable understanding of the legal underpinnings of most of the laws regulating land use in the state of California. The course will include an overview of California Zoning and General Plan law, as well as other laws which implicate the land use planning process. The course will also explore the challenge of balancing land use prescriptions designed for the public good, against private property rights and other constitutional considerations.

This class is not just about learning what the law is, but, more significantly, it is about learning a method of analysis for determining what legal issues may exist in a given planning scenario and how to handle those issues accurately and successfully. It is about learning how to ensure that a particular ordinance, application, or plan is consistent with applicable legal principals and laws. Students should come away not just knowing what the law is, but understanding how to determine what legal issues and challenges may be presented by a wide range of planning scenarios which he or she will face in the course of a career.

Course work will focus on review of statutory authority for various land use and planning regulations, and on case law interpreting and applying these laws. Students will be provided with reading materials comprised case law excerpts. Each of the assigned cases deal with the application or misapplication of planning and land use laws in the context of real life planning and entitlement scenarios.

Students should come to class well prepared to answer questions dealing with the assigned material. Lectures will be liberally interspersed with questions to students, asking them to apply authorities under consideration to hypothetical factual scenarios.

I can be reached by e-mail, and usually respond within the day. This is my preferred mode of communication, however, students are welcome to call me at (831)336-9566.

In addition to the lectures, we will have regular exercises involving role play. The exercises will center around hypothetical planning scenarios created by the instructor. Students will have to identify all legal issues presented by the hypothetical and present argument for or against the hypothetical request for entitlements. These exercises are meant to prepare the student for the exams, as well as real life handling of potential planning conundrums.

- **Exams:**

There will be one mid terms exam and one final exam. Both are take home exams. The Mid-term and the Final are to be completed alone, and without help or consultation with other students or individuals. The Mid-terms and Final will deal with of 2-3 hypothetical planning scenarios which present multiple

legal issues. The hypotheticals (hypos) will be handed out in class, and completed at home. The mid-term will be sent home after the sixth week.

● **Student Learning Objectives:**

Upon successful completion of the course, students will be able to:

- 1 Describe the Constitutional principles underpinning California's land use, general plan, and zoning law.
- 2 Describe how CEQA functions and its relationship to California's state and local land use regulations.
- 3 Describe the rights of property owners and developers in legal land-use disputes involving property owners opposing government entities, as well as in cases of legal disputes between private property owners.
- 4 Describe the law of entitlements and the difference between legislative and quasi-judicial decision making in the land use law.
- 5 Describe the law of takings and how to draft land use ordinances without implicating the fourth amendment.
- 6 Describe how to use the principle of stare decisis and case law in developing and interpreting California land use law.
- 7 Describe the basic land-use litigation procedure in California.
- 8 Apply land use law from the perspectives of the regulator, the proponent, and the opponent.
- 9 Identify the social, political, ethical and cultural concerns that inform interpretation and implementation of land use and planning laws.
- 10 Develop legally cognizable solutions to land-use planning scenarios using the following procedure:
 11. Identify the pertinent facts needed to perform cogent legal analysis of the planning scenario in question.
 12. Identify the specific legal ambiguities/issues that must be resolved in order to perform cogent legal analysis of the planning scenario in question.
 13. Identify the specific rules of law that are implicated by the planning scenario in question.
 14. Apply the appropriate laws to the facts of the situation, to derive a legally defensible outcome.
 15. Develop land use decisions that correctly follow legal requirements, so that the decision will withstand judicial and administrative challenge.
 16. Explain complex legal analysis, in writing, so that it is easily comprehensible to members of the public.
 17. Describe the difference between legal analysis and policy analysis, as well as the importance of the distinction.

- **Planning Accreditation Board (PAB) Knowledge Components**

This course partially covers the following PAB Knowledge Components: 4.2.1.(d) and 4.2.2.(h). A complete list of the PAB Knowledge Components can be found at <http://www.sjsu.edu/urbanplanning/courses/pabknowledge.htm>.

- **Required Course Readings:**

All course readings are from “California Land Use and Planning Law, Twenty 9th Edition” (Solano Press, 2010 ISBN 978-0923956-80-6) and from case law handed down from the United States Supreme Court, the California State Supreme Court, and the California State Court of Appeal. All case law will be provided by the instructor on the MUP website. The cases will be edited by the instructor, so please don't read any cases not provided by the instructor.

● **Course Assignments and Grading Policy:**

Your grade for the course will be based on the following assignments:

● **Other grading/assignment issues**

Extra Credit assignments are available in the later half of the semester for students who were unhappy with their performance on the mid term exam. The make up midterm will consist of one planning hypothetical which the student must discuss and adduce all land use law issues. Note that SJSU policy requires all classes to meet during the exam period, unless a waiver is granted by the dean.

Class participation grade is based on student participation in discussion, asking and answering questions posed by the instructor, and briefing the class on cases and other reading assignments.

Late exams will be docked one full grade.

● **Academic integrity statement, plagiarism, and citing sources properly**

SJSU's Policy on Academic Integrity states: "Your own commitment to learning, as evidenced by your enrollment at San Jose State University, and the University's Academic Integrity Policy requires you to be honest in all your academic course work. Faculty members are required to report all infractions to the Office of Student Conduct and Ethical Development" (Academic Senate Policy S07-2). [The policy on academic integrity can be found at http://www.sjsu.edu/senate/S07-2.htm](http://www.sjsu.edu/senate/S07-2.htm).

Plagiarism is the use of someone else's language, images, data, or ideas without proper attribution. It is a very serious offense both in the university and in your professional work. In essence, plagiarism is both theft and lying: you have stolen someone else's ideas, and then lied by implying that they are your own.

Plagiarism will lead to grade penalties and a record filed with the Office of Student Conduct and Ethical Development. In severe cases, students may also fail the course or even be expelled from the university.

If you are unsure what constitutes plagiarism, it is your responsibility to make sure you clarify the issues before you hand in draft or final work.

Learning when to cite a source and when not to is an art, not a science. However, here are some examples of plagiarism that you should be careful to avoid:

- If you use a sentence (or even part of a sentence) that someone else wrote and don't reference the source, you have committed plagiarism.
- If you paraphrase somebody else's theory or idea and don't reference the source, you have committed plagiarism.
- If you use a picture or table from a webpage or book and don't reference the source, you have committed plagiarism.
- If your work incorporates data someone else has collected and you don't reference the source, you have committed plagiarism.

The University of Indiana has developed a very helpful website with concrete examples about proper paraphrasing and quotation. See in particular the following pages:

- [Overview of plagiarism at http://www.indiana.edu/~istd/overview.html](http://www.indiana.edu/~istd/overview.html)
- [Examples of plagiarism at http://www.indiana.edu/~istd/examples.html](http://www.indiana.edu/~istd/examples.html)
- [Plagiarism quiz at http://www.indiana.edu/~istd/test.html](http://www.indiana.edu/~istd/test.html)

If you still have questions, feel free to talk to me personally. There is nothing wrong with asking for help, whereas even unintentional plagiarism is a serious offense.

● **Citation style**

It is important to properly cite any references you use in your assignments. The Department of Urban and Regional Planning uses Kate Turabian's "A Manual for Writers of Research Papers, Theses, and Dissertations, 7th edition" (University of Chicago Press, 2007, ISBN-10: 0-226-82336-9). Copies are available in the SJSU King Library. Additionally, the book is relatively inexpensive, and you may wish to purchase a copy. Please note that Turabian's book describes two systems for referencing materials: (1) "notes" (footnotes or endnotes), plus a corresponding bibliography, and (2) in-text parenthetical references, plus a corresponding reference list. You may chose for yourselves which system to use.

● **Accommodation for Disabilities**

If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. Presidential Directive 97-03 requires that students with disabilities requesting accommodations must register with the DRC (Disability Resource Center) to establish a record of their disability.

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TENTATIVE COURSE SCHEDULE

All readings and lectures subject to change.

January 26

The Legal System: An introduction to the law of regulation.
Finding, Reading, and Understanding the law: Some Basics

February 2

The Police Power: The basis of all land use regulation.

Village of Belle Terre v. Boraas 416 U.S. 1 (1971)
Village of Euclid v. Amber Realty Corp., 272 U.S. 365 (1926)
Metromedia Inc. v. City of San Diego 26 C3d 848 (1980)
Associated Homebuilders Inc. v. City of Livermore, 18 C3d 582, (1976)

February 9 and 16

The General Plan: The Constitution of all local land use planning.

Cal. Gov't Code Section 65300, et seq.

Curtain Chapter 2

Authority and Purpose

Leshar Communications Inc. v. City of Walnut Creek 52 C3d 531 (1990)

Application

Sequoyah Hills Homowners Assn. v. City of Oakland (1994) 23 Cal.App.4th 704

February 23 and March 1

Zoning: Land use prescriptions for the general welfare.

Cal. Gov't Code Section 65800, et seq.

Curtain Chapter 4

Novi v. Pacifica, 169 CA3d 678 (1985)

MID TERM EXAM: March 8. Take home - open book. Two Hypotheticals. Answers due March 17.

Due Process Considerations
Cal Gov't Code Sections 65850 – 65858

Variances
Gov't Code Sections 65906, 65852.1
Orinda Association v. Board of Supervisors, 182 CA3d 1145

Conditional Use Permits

March 15 & March 22

The California Environmental Quality Act: Public Disclosure and Informed Decision Making.

Curtain Chapter 6

Keith Sugar *CEQA Primer*

Laurel Heights Improvement Association v. Regents of the University of California, 47 CA3d 376 (1989)

- March 28 SPRING BREAK
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April 5

- **Interim Ordinances and Moratoria**

Gov't Code Section 65858
Building Industry Legal Defense Fund v. Superior Court 72 CA4th 1410 (1999)
First Evangelical Lutheran Church v. County of L.A. 482 U.S. 304 (1987)

April 12

The Subdivision Map Act: Regulation, design and control of land divisions.

Gov't Code Section 66400, et seq.
Curtain Chapter 5

- April 19

Vested Rights and Due Process

Curtain Chapter 10

Development Agreements

Gov't Code Sections 65864-65867

Fair Play

Clark v. City of Hermosa Beach 48 CA4th 1152

April 26 and May 3

Inverse Condemnation, Takings and Exactions

Curtain Chapter 12

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)

Dolan v. City of Tigard, 512 U.S. 374 (1994)

Erlich v. City of Culver, 12 C4th 854 (1994)

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May 10

Annexations and Redevelopment

Health and Safety Code Sections 33300, et seq.

Gov't Code Sections 54900, et seq.

Kehoe v. City of Berkeley (1977)67 CA3d 666

Curtin, Chapter 16,

FINAL: Final review and summation will be held on May 17 at 4:00 p.m. The take home Final Exam essay questions will be e-mailed to all students on May 10. The Final will be due on May 17.