

**MUNICIPAL LAW and SUSTAINABLE LAND USE  
LAW 343-2**

**COURSE INFORMATION**

<b>Prerequisites</b>	<b>None</b>
<b>Unit Value</b>	<b>1.5 units</b>
<b>Term Offered</b>	<b>Spring 2012</b>
<b>Classes</b>	<b>Monday and Wednesday 1:30 to 3:00 pm Rm. 265</b>
<b>Instructor</b>	<b>Deborah Curran</b>
	<b>Telephone: 250.853.3105</b>
	<b>Email: dlc@uvic.ca</b>
	<b>Office Hours: By appointment, office 213</b>

**MAJOR EDUCATIONAL GOALS/COURSE OBJECTIVES**

Local governments, in particular municipalities and regional districts, have broad authority to regulate a wide range of activities in communities. They also operate many services and own substantial assets. Local governments are arguably the most visible form of government as they regulate the physical development of cities and towns through land use controls, and take care of day-to-day services such as water, liquid and solid waste, and parks. How they do this – the infrastructure systems and land use patterns they put in place – has a significant impact on personal behavior and resource consumption. The course of municipal law reviews the parameters of the legislative, administrative and quasi-judicial powers of local governments. It also explores how local governments respond to and shape the public interest.

The purpose of this course is to provide students with an introduction to some of the principles of municipal law in Canada, with a particular focus on the legislative regime in B.C. The central focus of the course will be on the diverse powers of municipal governments, and how the courts review and define municipal action. Using case studies, consideration will also be given to the structural problems in the operation of local governments. Roughly half of the course is devoted to land use planning and issues related to sustainable communities.

**SUBJECT MATTER TO BE COVERED**

- (1) The nature of local government and judicial control
- (2) Statutory basis and governance (conflict of interest)
- (3) Business regulation and licensing
- (4) Raising revenue (property taxation)
- (5) Tort and limitations
- (6) Growth management and land use planning
- (7) Zoning and site-specific land use control, including environmental protection
- (8) Agricultural land

## REQUIRED MATERIALS

Most materials for the course can be accessed online through the course Moodle page or through this course description by web link. Print materials are on reserve. In particular please note the following four sources of information:

1. Pdfs of course materials. The cases and articles for the course are compiled into one pdf document available at the top of the Moodle site;
2. Notes, available under each week's topic on the Moodle site, which provide an overview of the week's topic so that you have some background information before beginning the readings because there is no textbook for the course. I recommend that you read these Notes and any substantive articles first, before reading the case law;
3. Lecture outlines for ease of note taking. These will either be emailed to you or available from the Moodle site; and
4. Legislation, largely found through [www.bclaws.ca](http://www.bclaws.ca). It is imperative that students have the legislative sections available to refer to in class.

There are also several excellent practice resources available (see below under Resources) should you need further clarification of the subject matter.

## RESOURCES

Legislation (see BC Laws [www.bclaws.ca](http://www.bclaws.ca) for current version):

*Community Charter*, S.B.C. 2003, c. 26  
*Local Government Act*, R.S.B.C. 1996, c. 323  
*Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241  
*Land Title Act*, R.S.B.C. 1996, c. 250

Local Government Information:

Canadian Institute of Planners - <http://www.cip-icu.ca/web/la/en/default.asp>  
CivicInfo BC – [www.civicinfo.bc.ca/](http://www.civicinfo.bc.ca/)  
Federation of Canadian Municipalities – [www.fcm.ca](http://www.fcm.ca)  
Links to all Local Governments in B.C. - <http://www.ubcm.ca/EN/main/about/ubcm-members.html>  
Ministry of Community, Sport and Cultural Development, Local Government Department <http://cscd.gov.bc.ca/lgd/>  
Regulatory Best Practices Guide - [www.cscd.gov.bc.ca/lgd/gov\\_structure/library/regulatory\\_best\\_practices\\_guide.pdf](http://www.cscd.gov.bc.ca/lgd/gov_structure/library/regulatory_best_practices_guide.pdf)  
Union of B.C. Municipalities – [www.ubcm.ca](http://www.ubcm.ca)

Texts:

Rogers, *The Law of Canadian Municipal Corporations* (on reserve)  
Buholzer, *British Columbia Planning Law and Practice* (on reserve)  
Buholzer, *The Community Charter: B.C. Local Government in Transition* (on reserve)  
Annotated BC Local Government Act (Courthouse Library)

## METHODOLOGY

**Lectures:** Lectures will outline a framework within which students can organize the detailed subject matter for the course. A lecture outline is posted on the Moodle site for most weeks.

**Readings:** The readings contain the detailed subject matter for the course. Students should carefully review the assigned legislation and other materials as some of their specific content will not be conveyed in lectures. Cases should also be read carefully, not only as a statement of the present state of the law in that area, but to identify the court's approach to the problem and the general principles expressed. The assigned articles provide excellent overviews of topic areas, and a two to three page precis of each topic area is posted on the Moodle site for most weeks. It is expected that students will have read assigned materials prior to class and will be prepared to discuss them.

**Class discussion:** Class discussion will encourage students to critically reflect upon the materials as well as to apply knowledge from the readings and lectures to practical problems.

**Field trip:** We will attend a municipal council meeting to get a sense of how governance and law occur at the local government level.

**Short presentation:** Each student will present their research paper topic to practice public speaking skills and to share their knowledge with the rest of the class.

**Research paper and final examination:** The research paper gives students an opportunity to practice writing and synthesizing information, and both grading requirements allow students to consolidate their understanding of the material covered in the course.

## EVALUATION

- |    |                                     |           |
|----|-------------------------------------|-----------|
| 1. | Paper                               | 50%       |
| 2. | Short presentation (on paper topic) | pass/fail |
| 3. | Open book final examination         | 50%       |

1. Research Paper (50%)  
Students must write a research paper on a local government issue related to the topics covered in the first half of the course (regulation, servicing, tort, governance, taxation). The paper may not be on the area of land use planning and regulation covered in the second half of the course. The issue may be generic (such as the involvement of local governments in property taxation, the jurisdictional issues involved in regulating businesses, or the exercise of discretion in licencing), or specific to one local government (such as the limitations of Victoria's ability to raise funds to replace the Johnson

Street/Blue Bridge or Langford's use of civil law to recoup money spent on removing protestors from development sites). This requirement may be met by attending a municipal council meeting and writing a report on an issue addressed at the meeting, or exploring a new case and what it means for that particular issue/area of law. See the paper topic ideas document on the course Moodle site, and I am happy to help you craft a manageable research topic.

All papers will state a thesis issue or question and will answer that question. A strong paper will be original, analytical and incisive. It will demonstrate a firm grasp of the relevant doctrines and principles and apply them to the thesis question throughout the paper. A strong paper will come to a well-reasoned conclusion based on the sources cited. It will use statutes, case-law, secondary materials such as academic articles and other materials such as commentary/opinion as persuasive authorities for the points raised, to analogize where appropriate, and to strengthen and further the arguments made. A strong paper will recognize the complexity of the issue at hand, while clearly answering the questions. A strong paper will have few, if any, errors in grammar or punctuation. The writing style will be individualized and interesting. Technical terminology will be used appropriately. In format, including citations, the paper will be virtually flawless. In contrast, a weak paper will review an area of law and offer few insights or analysis.

Please note that this is a research paper – do not rely solely on case law introduced in the course or on media reports accessed on the internet. I suggest that the Research Paper be around 3500 words (excluding footnotes) in length, and double spaced. I will not read more than 12 pages double spaced Times New Roman 12 point font in Word format. Please note below that students will submit papers electronically and I will ensure the font size is 12 point before grading each paper. Extensions may be granted in advance of the due date for reasonable grounds. Papers submitted after the deadline without prior approval will be penalized at a rate of 1 letter grade per day (the paper is marked out of 50). Up to two students may fulfill their major paper requirement in this course. Finally, I am willing to provide general comments on final draft papers if submitted to me electronically at [dlc@uvic.ca](mailto:dlc@uvic.ca) by Thursday February 23. Please note that I will review draft papers not half finished work. Also note that if you take advantage of this opportunity it is likely that anonymity in the grading process for your research paper will not be maintained.

Using your mid-term code name only, research papers are due on Thursday March 1 by email to [lawaoa@uvic.ca](mailto:lawaoa@uvic.ca). Submit papers with the subject line of the email and saved as a file in the following manner: the initial of your first name and full last name, dash, Municipal Law Spring 2012 (i.e. DCurran – Municipal Law Spring 2012). Bev Asplin, Assistant to the Manager, Academic Administration and Student Services (Yvonne Lawson) will confirm receipt of your paper with you on Friday March 2 or shortly thereafter.

2. Short presentation (pass/fail)  
Each student will make a maximum five minute presentation to the class on their paper topic or a portion of their paper topic. Time limits will be strictly enforced. The

presentation will clearly and succinctly set out the jurisdiction (from where do municipalities obtain their jurisdiction to deal with the subject topic), issue addressed, and student insights. The purpose is to practice public speaking skills and to foster co-learning in the course whereby students can learn from each other's research. The presentations introduce the class to a wide range of topics involving municipal government that cannot be covered in the class materials. Students will summarize their paper or part of their paper in one page and email it to me for posting on the Moodle site three days in advance of their presentation. No electronic support for the presentations (i.e. Powerpoint or Prezzie) are permitted. Up to two students will present at the beginning of each class starting in March. There will be one exam question related to the student presentations.

3. Open book final examination (50%)

The final examination is scheduled for Tuesday April 17 and will be two (2) hours in length, twenty minutes of which will be a dedicated reading period. It is your responsibility to check the final exam schedule for the date, time and location of the exam. The exam will be open book. You may bring any notes and materials you have prepared, as well as the course materials (cases, articles, and legislation). No library reference or practice materials will be allowed in the examination room. Please obtain your final code names from the law school administration. The exam will cover only the materials in the last half of the course (guest lecture of Mariana Valverde and course topics February 27/growth management to the end), and information covered in student presentations.

The Faculty's grading system will be used to translate numerical grades to letter grades. The relevant equivalencies between numerical and letter grades are as follows:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 or below	Unsatisfactory performance.

## OTHER

**Regulations:** Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011 (“U Vic Calendar”), both generally and specifically for the Faculty of Law. The Undergraduate Academic Regulations of the UVic Calendar set out the University’s expectations about attendance and assignments (<http://web.uvic.ca/calendar2011/FACS/UnIn/UARe/index.html>).

**Classroom Climate:** An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavour to be respectful in our language, our examples, and the manner in which we conduct our discussions. We have both an ethical and legal obligation to support this kind of environment (see the University’s Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecdocs/policies/GV0205\\_1150.pdf](http://www.uvic.ca/shared/shared_usecdocs/policies/GV0205_1150.pdf)), and the Faculty is committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. If you have any concerns about the climate of the class, please contact me.

**Academic Integrity:** As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. If you have any concerns or questions, or require clarification, do not hesitate to drop by my office or to send me an e-mail. The policy on academic integrity can be found on the web at the following address:  
<http://web.uvic.ca/calendar2011/FACS/UnIn/UARe/PoAcI.html>.

**Students with a Disability:** If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/about.html>) and I would be more than happy to work with you to ensure your success in this course.

**Accommodation of Religious Observances:** The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday. If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday please speak with me so that we can work out a satisfactory arrangement.

**COURSE OUTLINE**

<p>Week 1 January 9</p>	<p><b>PART I: NATURE OF LOCAL GOVERNMENT</b></p> <p><b>1. What is Local Government?</b> Ron Levi &amp; Mariana Valverde. Freedom of the City: Canadian Cities and the Quest for Governmental Status 44 <i>Osgoode Hall Law Journal</i> 409 (2006)</p> <p><b>2. Constitutional Basis</b></p> <p>2.1 Constitutional Position &amp; Application of the Charter of Rights <i>Comox Strathcona (Regional District) v. Hansen</i></p> <p>2.2 Legislative Basis <i>Greenbaum v. Toronto</i></p> <p><b>3. Relationships with First Nations</b></p> <p>3.1 Providing Services <i>Burns Lake Indian Band v. Burns Lake (Village)</i></p> <p>3.2 Application of Bylaws <i>Rempel Bros. Concrete v. Chilliwack (City)</i></p> <p>3.3 Treaty Settlement &amp; Community Relations</p> <p><b>4. Structure of Local Government in B.C.</b></p>	<p><b>Legislation:</b> Community Charter (CC) Local Government Act (LGA)</p> <p>CC ss. 1-12 276-279</p> <p>CC s. 8(3)(a), 13, 13.1, 18</p>
<p>Week 2 January 16</p>	<p><b>5. Provincial Legislative Structure - <i>Community Charter &amp; Local Government Act</i></b></p> <p>5.1 Broad Powers and Corporate Authority William Buholzer (2006). “Broad Municipal Powers” Under B.C.’s Community Charter (Vancouver: Continuing Legal Education Society of BC)</p> <p>5.2 Regulate, Prohibit, Provide Services, Tax, Self-Govern</p> <p>Case Studies: Dangerous Dogs <i>Capital (Regional District) v. Kuo</i></p> <p>Buildings &amp; Nuisance <i>Sahota v. Vancouver (City)</i> <i>Prince George v. Reimer</i></p> <p>Growing/Manufacturing Illegal/Dangerous Substances <i>Arkininstall v. Surrey (City)</i> <i>Rastad Construction Ltd. v. Port Moody (City)</i></p>	<p>CC ss. 8-9 (recap)</p> <p>ss. 8(3)(k), 47-49</p> <p>ss. 8(3)(l), 9, 16-17, 53-56, 63-64</p>

<p>Week 3</p> <p>January 23</p>	<p><b>6. Judicial and Legislative View of Local Government</b></p> <p>6.1 Judicial deference to local government &amp; approach to statutory interpretation  <i>Shell Canada Products Ltd. v. Vancouver (City)</i> (in note for this week)  <i>Rascal Trucking v. Nanaimo (City)</i>  <i>Halifax (Regional Municipality) v. Ed DeWolfe Trucking Ltd</i>  <i>Cenam Construction v. Cowichan Valley (Regional District)</i></p> <p><b>7. Judicial Control of Local Government (how to challenge a municipal decision)</b></p> <p>7.1 Substantive grounds  <i>Spray Tech v. Hudson (Town)</i>  <i>Dhillon v. Richmond</i>  <i>Save Richmond Farmland</i></p> <p>7.2 Procedural Fairness  <i>Cameron v. Sechelt (District)</i></p> <p>7.3 Standard of Review</p>	<p>LGA ss.260-265  <i>Judicial Review Procedure Act</i></p>
<p>Week 4</p> <p>January 30</p> <p>Guest lecture:  Mayor Dean Fortin, City of Victoria</p> <p><b>No Class  February 2</b></p>	<p><b>8. Governance</b></p> <p>8.1 Disqualification and Conflict of Interest  <i>Re Hoepfner</i>  <i>King v. Nanaimo</i>  <i>Fairbrass v. Hansma</i></p> <p>8.2 Municipal Procedure &amp; Operations</p> <ul style="list-style-type: none"> <li>• Exercise of Authority by Bylaw and Resolution</li> <li>• Procedure Rules</li> <li>• Council</li> <li>• Delegation</li> <li>• Bylaw Enforcement</li> <li>• Revenue</li> <li>• Providing Services  <i>Skinnydipper Services v. Burnaby</i></li> </ul> <p>8.3 Public Oversight  <i>Botterill v. Cranbrook</i>  Assent of Electors – Johnson Street/Blue Bridge</p>	<p>CC ss.81, 100-113  LGA ss. 66, 67(1-2), 68, 86-88, 143</p> <p>CC ss.6,8  122,135-140  89-93, 123-124  114-118  154-156  260-264  192-194, 197</p> <p>CC. ss.84-86, 94-99</p>

Week 5 February 6	<p><b>9. Business Regulation &amp; Licencing</b></p> <p>9.1 <i>Constitution Act</i> s.92(9)</p> <p>9.2 Definition of Business &amp; Authority to Regulate</p> <p>9.3 Discretion  <i>Sunshine Valley Co-op Assoc. v. Grand Forks</i>  <i>International Bio Research v. Richmond (City)</i>  <i>Royal City Jewellers v. New Westminster (City)</i>  <i>Heller v. Vancouver (City)</i>  <i>Re Conmac Stages and Town of Sidney</i>  <i>Prince George (City) v. Payne</i>  <i>Brownrigg v. North Cowichan (District)</i>  <i>377050 BC Ltd dba the Inter-City Motel v. Burnaby (City)</i>  <i>Dragonwood Enterprises v. Surrey (City)</i></p>	CC ss.8(6)&(9), 12,14,15, 59-61
February 9 Field Trip	Thursday February 9 – field trip to City of Victoria Council Meeting 7:00 p.m. #1 Centennial Square (enter from Pandora Street between Douglas & Government Streets)	
February 13	<b>Reading Week</b>	
Week 6 February 20	<p><b>10. Taxation</b></p> <p><i>Catalyst Paper Corp. v. North Cowichan (District)</i></p> <p><b>11. Tort</b></p> <p>11.1 Immunities, Limitations &amp; Liabilities</p> <p>11.2 Negligence  Daniel Bennett &amp; Holman Wang (2006). <i>Negligence and Nuisance: Liability and Limitations</i> (Vancouver: Continuing Legal Education Society of B.C.)  <i>Sullivan v. Victoria</i>  <i>Parsons v. Finch</i> (Trial)  <i>Parsons v. Finch</i> (Court of Appeal)  <i>Lovely v. Kamloops (City)</i></p> <p>11.3 Abuse of Public Office  Timothy Leadem (2002). <i>Tort of Abuse of Public Office</i> (Vancouver: Continuing Legal Education Society of B.C.)</p>	CC ss. 197, 199  LGA ss.285-286, 288-291
February 24	<b>Guest Lecture – Mariana Valverde 12-1:30 p.m.</b> Professor, Centre for Criminology and Sociological Studies University of Toronto	

<p>Week 7</p> <p>February 27</p> <p><b>No class February 28</b></p> <p><b>Research Paper due Thursday March 1 at 12:00 p.m. via email to <a href="mailto:lawaoa@uvic.ca">lawaoa@uvic.ca</a></b></p>	<p><b>PART II: LAND USE CONTROLS</b></p> <p><b>1. Growth Management</b></p> <p>1.1 Layers of Growth Management/Land Use Control Capital Regional District Regional Growth Strategy Bylaw (skim) <a href="http://www.crd.bc.ca/regionalplanning/growth/index.htm">http://www.crd.bc.ca/regionalplanning/growth/index.htm</a> (under “Background Information”)</p> <p>1.2 “Takings” (regulatory/de facto/effective expropriation) <i>Mariner Real Estate v. Nova Scotia</i> <i>535534 British Columbia Ltd. v. White Rock (City)</i></p> <p>1.3 Sustainability Deborah Curran (2008). Local Government Sustainability Trends (Vancouver: Continuing Legal Education Society of B.C.)</p> <p>Case Study: Capital Regional District &amp; Central Saanich</p>	<p>LGA ss.849-850 863-866</p> <p>LGA s.914</p>
<p>Week 8</p> <p>March 5</p>	<p><b>2. Planning</b></p> <p>2.1 Official Community Plan</p> <p>2.2 Consistency Requirements <i>Heritage Preservation Society of New Westminster v. City of New Westminster</i> <i>Residents &amp; Ratepayers of Central Saanich Society v. Central Saanich</i></p> <p>2.3 Public Hearings <i>Brooks v. Courtenay</i> <i>Cameron v. Sechelt (District) reprise</i></p>	<p>LGA ss.875-879, 884 890-896</p>
<p>Week 9</p> <p>March 12</p>	<p><b>3. Zoning</b></p> <p>3.1 Zoning – Overview &amp; Jurisdiction</p> <p>3.2 Interpretation of Zoning Bylaw Provisions <i>Burton v. Harris</i> <i>Abbotsford v. Marshall Pacific Development Corp.</i></p> <p>3.3 Legitimate/Illegitimate Distinctions in Zoning <i>Common Exchange v. Langley</i> <i>Central Saanich v. Amaryllis Enterprises</i> <i>Hauff v. Vancouver</i> <i>Yuen v. Oak Bay</i> <i>Petro-Can v. North Vancouver (District)</i> <i>Greater Victoria School District No. 61 v. Oak Bay</i></p>	<p>LGA ss.903-904</p>

	<p>3.4 “People zoning” <i>R. v. Bell</i> <i>Whistler v. Wright</i></p> <p>3.5 Non-conforming Uses <i>Cowichan Valley Regional District v. Ward</i></p>	CC s.911
<p>Week 10</p> <p>March 19</p>	<p><b>4. Subdivision of Land</b></p> <p>4.1 Development requirements</p> <p>4.2 Approving Officer &amp; the Public Interest <i>Vancouver v. Simpson</i> <i>Hlynsky v West Van</i> <i>Edwards v. Spallumcheen</i> <i>Morgan v. Vancouver</i> <i>Cole v. Campbell River Approving Officer</i> <i>Cole v. Campbell River Approving Officer</i> <i>Island View Beach Estates v. Central Saanich</i></p> <p>4.3 Development Cost Charges</p>	<p>LGA ss.938, 941(1)&amp;(4), 943 Land Title Act ss. 77, 83, 85-87, 91</p> <p>ss.933(1-2), 933.1</p>
<p>Week 11</p> <p>March 26</p>	<p><b>5. Site-specific Development Controls</b></p> <p>5.1 Overview</p> <p>5.2 Development Permits Kathleen Higgins &amp; Olga Rivkin (2007). Development Permits and Development Variance Permits (Vancouver: Continuing Legal Education Society of B.C.) <i>Bignell Enterprises v. Campbell River</i> <i>Westfair Foods v. Saanich</i> <i>511784 B.C. Ltd. et al v. Salmon Arm (District)</i></p> <p>5.3 Variances</p> <p>5.4 Interaction Between Bylaws and Permits <i>Costello v. Hornby Island Local Trust Committee</i></p> <p>Case Study: City of Colwood, Aquattro project</p>	<p>CC s.25 LGA ss. 919.1- 920.1</p> <p>LGA s.901</p>
<p>Week 12</p> <p>April 2</p>	<p><b>6. Agricultural land</b></p> <p><i>Farm Practices Protection (Right to Farm) Act</i> ss.2-3 <i>Davison v. Maple Ridge</i> <i>Central Saanich v. Jopp Ventures Corp.</i></p> <p><b>Review practice exam question</b></p>	<p>LGA ss.903(5-7), 917-918, 920(10) Land Title Act ss.86(1)(c)(x)</p>