CRP 381 Foundations of Planning Law

Fall 2019

University of Texas at Austin

Unique Numbers 01395 Tues/Thurs 9:30 – 11:00 am & 01400 T/TH 12:30-2:00 pm

Sutton Hall 2.114

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Course Description

This core class introduces students to the legal and institutional system that both defines the opportunities for, and the constraints on professional planning practice in the United States. Planners must make sure planning practice protects individual and collective rights as guaranteed under the constitution (federal and state), statutes (federal and state) and case law. While planners are not expected to practice law, they must be reasonably sophisticated and knowledgeable about planning law to avoid making mistakes that might create unnecessary litigation or harm. Planning law informs the way planners craft ordinances, programs, plans and projects so they do not violate individual and collective rights.

The class will consist of readings and discussions. Student centered learning is the goal of the class. Each class reading after the first week will have a presenter and discussant that will have a one-page hand out the summarizes the key points of the readings and the most important “take always” for professional planning practice. When we begin reviewing case law readings in class, the presenter handout will follow a fixed format that the instructor will provide to students. Legal analysis is initially a little foreign to many students, but once we get a few done in class you will see why we focus on the cases in the manner we do to extract “rules” of practice (the logic of the majority opinion holding). For each class every student needs to have at least one “QQC” (questions, quotations, or comment), these should be compiled over the course of the semester and will be turned in at the end of the semester as part of the class participation grade. It doesn’t need to be long, but might be an aspect of the reading that was unclear, a specific quotation from the reading that you found useful or problematic and why, or a comment might be a life experience that you connected to the reading in some personal way (e.g., family, workplace, a news article you read that relates, places you have lived).
There is method to this instructional approach, the handouts and notes will help you prepare for professional practice and the AICP exam. The law is always changing, and there are actually 50 sets of state planning laws in the US: so, one objective of this class is start you on your journey of always staying on top of what the law is in each state you practice. A top-notch planner always attends Planning Law update sessions at state and national APA conferences.

In part 1 of the class, we will review the institutional framework and the role of the courts, executive and judiciary branches of government within a federated system. The class begins by reviewing the evolution of the US legal system from its historical roots in 1776 up to present times. We will discuss the role of case law and precedent in interpreting laws to given fact situations, and the role of legal theories in defining the law. In addition to constitutional, statutory and case law, planners must also be sophisticated users and creators of administrative regulations and rules. “Think global, act local” is not just a mantra for sustainability, it also reflects where most of the action happens in planning – the local level. We will review specific aspects of local government law that are important to local land use, environmental, social justice and economic development issues for planners. This includes the various forms of government, types of local governments, local powers, local jurisdiction, and the city as a “public utility.”

Part II of the class focuses on the individual and collective property rights and constitutional rights that must be balanced in professional planning practice. We begin with land ownership and real property and how the bundle of rights that comprise real property can be contested or used to aid planning practice. It is important for planners to understand ownership types (land and water), how nuisances are handled in the legal system, how easements can be used and abused as part of land use practice. Next, we deal with core constitutional issues in land use and other elements of city planning. This includes procedural and substantive due process, equal protection (strict scrutiny, discriminatory intent v. impact), eminent domain and takings (per se, ripeness, and regulatory versions), first amendment (sign controls, adult businesses, religion) and regional general welfare. We will then review legal issues surrounding land use regulation more generally including zoning, subdivision, nonconforming uses, vested rights, development agreements, design review, exclusionary zoning and exactions.

Part III of the course covers important federal statutes impacting planning practice including the National Historic Preservation Act (s. 106 and national register), the Fair House Act, the National Environmental Policy Act, the Clean Air Act (NAAQs and Climate Change), Clean Water Act (NPDES, s. 303d, TMDLs), Wetlands (s. 404 CWA), the Coastal Barriers Resources Act, the Coastal Zone Management Act, Endangered Species Act (Public Trust Doctrine), and the Disaster Mitigation Act of 2000/Stafford Act. All of the above statutes are important federal laws and programs that create opportunities and constraints on planning practice and are always on the study guide for the AICP exam.
**Course Grading:**

Class content will be evaluated through 3 quizzes following each part of the class that will comprise multiple choice questions, short answer questions and one essay question. Each student will be required to attend one city administrative hearing or board meeting and to write a brief summary of how well it aligned with the spirit and intent of legal due process, transparency and fairness. This is a graduate seminar; all students are expected to be well prepared to discuss readings and engage in discussions each day. Quiz content will be drawn from both readings and discussions (including material that is only presented in class by the instructor).

**Grade Allocation**

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<th>Part 1 Quiz</th>
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<td>Part 2 Quiz</td>
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<td>Class Participation</td>
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Class participation grade will be based on completion of public meeting report, presenter and discussant responsibilities and QQCs given in class and reported at the end of the semester.