LOCAL GOVERNMENT LAW
Prof. Audrey G. McFarlane
Mon. & Wed., 3:00-4:15pm
Office Hours: Tues. 3:00pm-4:15pm
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FALL 2015
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SYLLABUS


TWEN Web Site: http://lawschool.westlaw.com for Course syllabus, Assignment Changes, posting Weekly Comments and Web Handouts. Please register for the TWEN website using an email address that you actually check.

Course Overview & Goals: Local governments play an important role in our daily lives. They enjoy substantial law-making power, are responsible for providing and financing many public goods and services and are the location for political participation. Yet they often operate in the background, almost invisible to us unless we have a complaint. This course examines the ways in which our conflicted assumptions about the virtues or the dangers of government and, in particular, our views about decentralized decision-making affect the outcomes in local government law disputes. Throughout the semester we will see the ways local government is at the heart of some of the major issues of our time and examine how the competing concepts of local government power affect a number of topics including local government formation, boundary change; home rule, intergovernmental relations, local voting, redevelopment, city property ownership, municipal and school finance and regional governance. The goal is that students will develop an ability to conduct a probing and thoughtful analysis of local government law: by understanding applicable legal principles and standards for the exercise of local governmental power; becoming aware of the subtleties and difficulties of applying the law presented by competing underlying policy assumptions; and becoming familiar with strategies to balance public v. private demands as well as see possibilities for future law.

Course Requirements: Grades will be based on a 3 hour, open book, open notes, final examination (approx. 60%); Weekly Comment Posts (approx. 15%); Topical Report (approx. 20%) and class participation (approx. 5%):

1. Attendance. The expectation is that you will attend class but each student is entitled to 3 unexcused absences. After that, students who are absent or unprepared may be excused up to 2 times for 1) illness, 2) family emergency, 3) out-of-town job interviews, and 4) other compelling reasons not within your control. In accordance with ABA rules and UB policy, if you miss more than 5 classes you will not be allowed to sit for the final exam. Since we are a small class, please email me in advance of class if you are not able to attend.

2. Class Discussion. The success of this class will depend on your preparedness and active
participation during class. This requires that you read the materials closely and critically. Your class participation will be evaluated satisfactory based on your demonstration of preparedness and engagement in discussion either by volunteering to answer questions or answering when called on. Grades may be lowered for habitual absence or unpreparedness.

3. Weekly Comment Postings. Every week for ten weeks you must post to the TWEN discussion forum a written comment consisting of ½ to ¾ of a typewritten page, double spaced,(ie.150 to 200 words) describing your reaction to the reading: A) The purpose of the comments is for you to share: which reading(s) was exciting? Engaging? Annoying? Enlightening – you’d never heard of this issue before? Confusing? Perplexing? Was inadequate or incorrectly reasoned or argued? Based on faulty assumptions? Left you numb? And most importantly, explain why you had this reaction. The reaction posting may also include relevant current events or personal experiences.

B) Each comment will be graded on a satisfactory or unsatisfactory basis and each one will count as 2 points for up to a total of 20 points added to your final exam score; C) The reaction paper is due in advance of class by 1:00pm on the day of the class during which the assigned reading will be discussed but upon request the posting will be accepted after class only on that same day by9pm; E) You will be responsible for sequentially numbering each comment in order to keep track that you will meet the required 10 submissions.

4. Topical Report. You must prepare a 3-4 page written report and analysis of a current example of local government in action or a local government controversy. The report MUST include 1) a learned discussion of the controversy; 2) some supporting research to shed further light on the topic; and 3) discussion of how the topic relates to themes raised in class. Time permitting, you will be required to present your report to the class accompanied by at least one but no more than three PowerPoint slides. The report will be graded based on the quality of your research efforts and write-up and will be worth 25 points added to your final exam score.

REQUIRED READING:
Mon, Aug. 17, 2015

1. Introduction to the Problems of Decentralization –xiii-xvii
      i. Italo Calvino, Invisible Cities
      ii. Alexis de Tocqueville, Democracy in America
      iii. The Federalist
      iv. Romer v. Evans


2. The City as a Public or Private Entity -- pp. 23-56
   i. Frug, City Making: Building Communities Without Building Walls
   ii. Oregon v. City of Rajneespuram
   iii. Marsh v. Alabama
   iv. Intl. Society for Krishna Consciousness, Inc. v. Lee
   v. NJ Coalition Against War in the Middle East v. JMB Realty Cor.
   vi. Mazdabrook Commons Homeowners’ Assn., v. Khan

**Mon., Aug. 24, 2015**

b. **Forms of Local Power** - pp. 65-104; p.518-519; Web Handout
   i. Robert Ellickson, Cities and Homeowners Assns.
   ii. Evan McKenzie, Privatopia
   iii. Gary J. Miller, Cities by Contract
   iv. Joel Garreau, Edge City, p.518
   v. Kramer v. Union Free School District (Web Handout)
   vi. Municipal Bldg. Authority v. Lowder
   vii. Ball v. James

**Wed., Aug. 26, 2015**

c. **The City and Democratic Theory: Perspectives on Decentralization** - Economic, Political and Cross-Cultural -- pp. 104-126; Web Handout
   i. Italo Calvino, Invisible Cities
   ii. Charles Tiebout, A Pure Theory of Local Expenditures
   iii. Robert Nozick, Anarchy, State and Utopia
   iv. James M. Buchanan, Principles of Urban Fiscal Strategy
   v. Frank I. Michelman, Political Markets and Community Self-Determination: Competing Judicial Models of Local Govt. Legitimacy
   vi. Iris Young, Justice & The Politics of Difference
   vii. Manuel Castells, The City and the Grass Roots (Web Handout)

**Mon., Aug. 31, 2015**

3. **The Relationship Between Cities and States** - pp. 128-129
   a. **The City-State Relationship as a Matter of Federal Constitutional Law** - pp. 129-147
      i. Hunter v. City of Pittsburgh
      iii. Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati
      iv. David J. Barron, The Promise of Cooley’s City: Traces of Local Constitutionalism

**Wed., Sept. 2, 2015**

b. **Dillon’s Rule** -- pp. 147-166
   i. John Dillon, Municipal Corporations
   ii. Gerald Frug, City Making: Building Communities Without Building Walls
   iii. Olesen v. Town (City) of Hurley
   iv. Arlington County v. White
   vi. State v. Hutchinson

**Wed., Sept. 9, 2015**

c. **Special Legislation** -- pp. 166-174; Web Handout
   i. Chicago Natl. League Ball Club, Inc. v. Thompson
   ii. Empire State Chapter of Associated Builders & Contractors, Inc. v. Smith
   iii. Republic Investment v. Town of Surprise (Web Handout)

**Mon., Sept. 14, 2015**

d. **Home Rule Initiative** -- pp. 174-197
   i. David J. Barron, Reclaiming Home Rule
ii. City of Ocala v. Nye
iii. McCrory Corp. v. Fowler
iv. Gary Schwartz, The Logic of Home Rule and the Private Law Exception
v. Marshal House, Inc. v. Rent Review and Grievance Board of Brookline
vi. New Mexicans for Free Enterprise v. City of Santa Fe

e. Home Rule as Protection Against State Power -- pp. 198-218
   i. New Orleans Campaign for a Living Wage v. City of New Orleans
   ii. Town of Telluride v. Lot Thirty-Four Venture (see Web Handout Colorado Const. Home
       Rule Provision)
   iii. Webb v. City of Black Hawk
   iv. City of Tucson v. State of Arizona

Mon., Sept 21, 2015
f. State Legislative Preemption -- pp. 219-234
   i. Town of Telluride v. Lot Thirty-Four Venture (reprise)
   ii. Holt’s Cigar Co., Inc. v. City of Philadelphia
   iii. American Financial Services v. City of Oakland,
       Boston
   v. Cincinnati Bell Tel. Co. v. City of Cincinnati

   a. Natl. League of Cities v. Usery
   b. Garcia v. San Antonio Metropolitan Transit Authority
   c. Printz v. United States
   e. David Barron, A Localist Critique of the New Federalism
   f. Lawrence County v. Lead-Deadwood School District
   g. Nixon v. Missouri Municipal League
   h. Note on the Federal City Relationship
   i. David Barron, Foreword: Blue State Federalism at the Crossroads

Mon., Sept. 28, 2015
5. The Relationship Among Neighboring Cities
   a. An Introduction to the Relationship Between Cities and Suburbs - pp. 321-357
      i. Peter Hall, Cities of Tomorrow
      ii. Kenneth T. Jackson, Suburbs Into Neighborhoods
      iii. Lewis Mumford, The City in History
      iv. Kenneth Jackson, The Federal Housing Administration
         Analysis
      vi. Robert Fishman, Bourgeois Utopias: The Rise and Fall of Suburbia
      vii. Rosalyn Baxandall and Elizabeth Ewen, Picture Windows (How the Suburbs Happened)
      viii. Margaret Weir, Justice for the Poor in the New Metropolis

b. City Formation - pp. 357-375
i. Richard Briffault, Our Localism: Part I - The Structure of Local Government Law
ii. Gary J. Miller, The Political Origins of the Lakewood Plan
iii. Robert E. Lang et. al, Reluctant Cities? Exploring Big Unincorporated Census Designated Places
iv. Board of Supervisors of Sacramento County v. Local Agency Formation Commission
v. City of Tucson v. Pima County

Mon., Oct. 5, 2015
c. The Distinction Between Residents and Non-Residents -- pp. 375-393
i. Holt Civic Club v. City of Tuscaloosa
ii. May v. Town of Mountain Village
iii. Wit v. Berman

d. The Ability of Cities to Favor Their Residents Over Outsiders -- pp. 393-410
i. Martinez v. Bynum
ii. Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural resources
iii. White v. Massachusetts Council of Construction Employers, Inc.
iv. United Building & Construction Trades Council of Camden County v. Camden
v. Leydon v. Town of Greenwich

Mon., Oct. 12, 2015
e. The Ability of Cities to Annex Outsiders - pp. 410-422
i. Hunter v. Pittsburgh
ii. Town of Lockport v. Citizens for Community Action
iii. David Rusk, Lessons from Urban America
iv. Gary J. Miller, Municipal Incorporation Under LAFCO
f. Secession: The Ability to Become Outsiders -- pp. 422-438
i. City of Herriman v. Bell
ii. Note on the Staten Island Secession Attempt
iii. Gerald Frug, Is Secession From the City of Los Angeles a Good Idea?
iv. Michelle Wilde Anderson, Dissolving Cities

6. Conflicts Among Cities - p.418-419
a. Exclusion: Race & Class Segregation -- pp. 438-471; (Web Handout)
i. Village of Arlington Heights v. Metropolitan Housing Development Corp.
ii. Texas Dept. Housing & Community Affairs v. The Inclusive Communities Project, Inc. (June 21, 2015) (Web Handout)
iii. Southern Burlington County NAACP v. Township of Mt. Laurel (Mt. Laurel I)
iv. Note on the Developments after Mt. Laurel I
v. Sheryll Cashin, Middle-Class Black Suburbs and the State of Integration
vi. Richard T. Ford, Geography and Sovereignty: Jurisdictional Formation and Racial Segregation
vii. Note on Milliken v. Bradley

Mon., Oct. 19, 2015
b. The Distribution and Redistribution of Local Wealth -- pp. 471-504
i. San Antonio Independent School District v. Rodriguez
ii. Edgewood Independent School District v. Kirby
iii. Claremont School District v. Governor
iv. Sheff v. O’Neill
v. Richard Schragger, Consuming Government


c. Sprawl and Efforts to Control It -- pp. 504-536
   i. John M. Findley, Magic Lands: Western Cityscapes and American Culture After 1940
   ii. Langdon Winner, Silicon Valley Mystery House
   iii. Edward Soja, Postmodern Geographies: The reassertion of Space in Critical Social Theory
   iv. Joel Garreau, Edge City: Life on the New Frontier
   vi. Carl Abbott, The Portland Region: Where City and Suburbs Talk to Each Other – And Often Agree
   vii. Gregg Easterbrook, Comment on Karen A. Danielsen, Robert E. Lang, and William Fultons, Retracting Suburbia: Smart Growth and the Future of Housing

Mon., Oct. 26, 2015

7. Regional Solutions to Interlocal Conflict
   a. Joint Undertakings - pp.536-548
      i. Gary J. Miller, The Political Origins of the Lakewood Plan (reprise)
      ii. Interlocal Agreements
      iii. Gerald Frug, Empowering Cities in a Federal System
   b. Public Authorities and Special Districts - 548-560; Web Handout
      i. Richard Briffault, Our Localism: Part II-Localism and Legal Theory
      ii. People ex rel. younger v. County of El dorado
      iii. Note on the Georgia Regional Transportation Authority
      iv. Carmel Realty Associates v. Baltimore Development Corp. (Web Handout)


c. Regional Planning, Regional Government and Beyond? -- pp. 548-596; Web Handout
   i. American Planning Association, Growing Smart Legislative Guidebook: Model Statutes for Planning and the Mgmt. of Change, Phases I and II
   ii. Education/Instruction v. Moore
   iii. David Rusk, Cities Without Suburbs
   iv. Note on Regional Government
   v. Margaret Weir, Coalition Building For Regionalism
   vi. Gerald Frug, Beyond Regional Government
   vii. Plan Maryland (Web Handout)
   viii. Opportunity Collaborative Recommendations(Web Handout)

Mon., Nov. 2, 2015

8. The Relationship Between Cities and Their Citizens - pp. 621-660
   a. City Control of Community Character - pp. 615-650
      i. Village of Belle Terre v. Boraas
      ii. City of Cleburne, Texas v. Cleburne Living Center
      iii. City of Renton v. Playtime Theaters, Inc.
      iv. Michael Warner, The Trouble With Normal
      v. Richard T. Ford, Bourgeois Communities
Wed., Nov. 4, 2015
b. Community Self-Defense Against Changes in Character -- pp. 660-689
   i. Italo Calvino, Invisible Cities
   ii. Keith Aoki, Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification
   iii. Robert Caro, The Power Broker
   v. Audrey G. McFarlane, When Inclusion Leads to Exclusion
   vi. Evan McKenzie, Private Gated Communities in the American Urban Fabric

Mon., Nov. 9, 2015
9. Paying the City's Expenses - pp. 689-691
   a. Taxes & Fees -- pp. 692-709
      i. Nordlinger v. Hahn
      iii. California Legislative Analyst’s Office, Reconsidering AB 8: Exploring Alternative Ways to Allocate Property Taxes
      iv. Laurie Reynolds, Taxes, Fees, Assessments, Dues and the Get What You Pay For Model of Government
      v. Gerald Frug & David Barron, City Bound: How States Stifle Urban Innovation
      vi. Eric Montarti, A Brief Lesson in Tax Increment Financing (“TIF”)

Wed., Nov. 11, 2015
b. Land Use and “Linkage” - pp. 709-720
   i. Fred Bosselman & Nancy Stroud, Mandatory Tithes: The Legality of Land Development Linkage
   iii. Inclusionary Housing Challenge? (Web Handout)

Mon., Nov. 16, 2015
c. City Property Ownership --720-761
   i. Gerald Frug, Property and Power: Hartog on the Legal History of NYC
   ii. David Osborne & Ted Gaebler, Enterprising Government: Earning Rather than Spending
   iii. American Telephone & Telegraph Co. v. The Village of Arlington Heights
   iv. Toledo Edison Co. v. City of Bryan
   v. Bagford v. Ephraim City

Wed., Nov. 18
Discussion of Topical Reports

Mon. Nov. 23
TBA