

UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2020

LAW 374.001
Municipal Law

Sukhbir Manhas

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

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Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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ONLY ANSWER 2 OF THE 3 QUESTIONS. IF A STUDENT ANSWERS ALL 3 QUESTIONS, ONLY THE ANSWERS TO QUESTIONS 1 AND 2 WILL BE MARKED.

- (50) 1. With the COVID-19 pandemic, we are living in extraordinary times where the global economy has been paused by requirements for social distancing and other measures to slow the spread of the virus.

In response to the pandemic, the provincial government declared a public health emergency under the *Health Act* and a provincial state of emergency under the *Emergency Program Act*, has made orders (the “Provincial Orders”) restricting mass gatherings to no more than 50 people, closing bars and nightclubs, and restricting the operation of food establishments to only take out or delivery services, and has recommended (the “Provincial Recommendations”) that measures for physical distancing of at least 2 metres be implemented by all businesses and residents in the province.

Throughout the handling of the pandemic by the provincial government, many members of the public have questioned whether they have gone too far and others have criticized them for not going far enough.

Mayor John Stewart strongly believes that the provincial government hasn’t gone far enough and believes that the City of Ford should take steps to better protect the health of the people who work in the City’s essential service businesses and their customers.

On Mayor Stewart’s direction, staff prepared a bylaw (the “Bylaw”) under the authority of sections 8(3)(i) and 8(6) of the *Community Charter* that requires all businesses within the City’s territorial jurisdictions to:

1. Limit the number of customers in the business premises to no more than 1 customer per 16 m² of business space;
2. Install signage at business entrances indicating 2 metres of separation for customers waiting in line to enter the business premises, and requiring customers waiting in line to maintain 2 metres of separation;
3. Install signage in aisles indicating the direction of travel and requiring customers to travel down aisles in the indicated direction;
4. Install signage at checkouts indicating 2 metres of separation for customers waiting in line at checkouts, and requiring customers waiting in line to maintain 2 metres of separation;
5. Install plexiglass or other transparent barriers at all checkouts to provide an effective physical separation between cashiers and customers; and
6. Ensure that there is a minimum of 2 metres of separation between the cashier at one checkout and the customer at the next checkout.

At its meeting on March 23rd, the City Council gave three readings to the Bylaw and directed that staff give notice to the public of Council's intention to consider adoption of the Bylaw at its meeting on April 7th and inviting written submissions, to be received by noon on the 7th, in relation to the Bylaw.

The City did not receive any written submissions by noon on the 7th, but did receive a written submission from the Retail Council of Canada at 1:00 p.m. and received a request from Ms. Petra Kramer, a local business owner, to speak at the meeting.

At its meeting on the 7th, City Council adopted the Bylaw. In doing so, Council declined to review the written submission from the Retail Council of Canada, and refused to hear from Ms. Kramer.

On April 10th, the City's Business Licence Inspector received a complaint that Ms. Kramer was operating her business in non-compliance with the Bylaw and the Provincial Recommendations. The Licence Inspector went to Ms. Kramer's business premises and observed a number of violations of the Bylaw, and observed that employees and customers of the business were often well within 2 metres of each other. In fact, the Licence Inspector observed Ms. Kramer greeting customers at the entrance to the business, often shaking their hands or patting them on the back.

The City's Business Licence Inspector left Ms. Kramer's business premises and returned shortly thereafter and delivered to her (in a manner that met physical distancing recommendations) a letter addressed to Ms. Kramer. In the letter, the Licence Inspector advised Ms. Kramer that, based on the Licence Inspector's observations of the manner in which Ms. Kramer was operating her business, the Licence Inspector would, on October 14th, be considering whether to cancel Ms. Kramer's business licence (which authority is properly delegated to the Licence Inspector by the City's Business Regulation Bylaw). In the letter, the Licence Inspector also advised Ms. Kramer that, if she wished to make written submissions to the Licence Inspector in relation to the cancellation of Ms. Kramer's business licence, the submissions should be received by noon on October 14th.

Ms. Kramer emailed submissions to the City's Business Licence Inspector at 10:00 a.m. on October 14th. In her submissions, Ms. Kramer asserted that the Bylaw is invalid, that the manner in which she is operating her business does not give the Licence Inspector sufficient grounds to cancel Ms. Kramer's business licence, and that the Licence Inspector had not met the duty of procedural fairness owed to Ms. Kramer.

The City's Chief Business Licence Inspector has contacted you, as the City's legal counsel for advice. The Licence Inspector wants to know:

1. The bases on which Ms. Kramer may challenge the validity of the Bylaw, and the likelihood of success of each basis of challenge;
2. The bases, other than the invalidity of the Bylaw, on which Ms. Kramer may assert that the Licence Inspector does not have sufficient grounds to cancel Ms. Kramer's business licence, and the likelihood of success of each basis of asserting insufficient grounds for cancellation;

3. Whether, on balance, the Licence Inspector has sufficient grounds to cancel Ms. Kramer's business licence; and,

4. In the event that the Licence Inspector cancels Ms. Kramer's business licence, what general processes are available to Ms. Kramer to challenge the cancellation.

(50) 2. While Mayor Stewart is critical of the provincial government and strongly believes that the provincial government hasn't gone far enough in enforcing social distancing and other measures to slow the spread of COVID-19, Mayor Stewart is very concerned about the impact of the pandemic on the world economy.

To ensure that the City of Ford does its part to support a quick economic recovery after the pandemic, Mayor Stewart wants to ensure that the City continues to process development applications so that projects are "shovel ready" for when the province returns to business as usual.

Mayor Stewart has told the City's Chief Administrative Officer (CAO) to keep an eye out for development applications that the City can move forward with while still meeting all of the social distancing and other measures imposed by the provincial government to combat COVID-19.

After speaking with Mayor Stewart, the City's CAO identified lands owned by Mr. Bill Johnson, a local developer, as being prime for development if consolidated with adjacent lands owned by the City, and told Mayor Stewart about the potential development.

As the owner of an excavation company that employs over 50 residents of the City, and after years of doing excavation work for developers who do work in the City, Mayor Stewart has made connections within the development community. Since talking to the City's CAO, Mayor Stewart has been reaching out to his contacts to encourage them to move forward with development applications. Mayor Stewart hadn't yet spoken with Mr. Johnson, but after speaking with the City's CAO, moved Mr. Johnson to the front of the list of developers to speak with. Mayor Stewart knew Mr. Johnson well, having done excavation jobs, big and small, for him on at least 10 occasions in the last few years.

Mayor Stewart met with Mr. Johnson the next day and encouraged him to make an application to develop his lands and the adjacent City owned lands. Mayor Stewart told Mr. Johnson that the City would sell him the City owned lands for market value.

Mr. Johnson was ecstatic about the opportunity and went to the City's offices on March 16, 2020, and presented to the City's CAO an offer to purchase the City owned lands at market value. Mr. Johnson told the City's CAO that, if he could purchase the City owned lands, he would immediately move forward with developing his lands and the City owned lands. The City's CAO, who had delegated authority to sell City owned lands, accepted the offer immediately.

The next day, Mr. Johnson met with the City's Director of Planning (DP) to enquire about what applications would be necessary for him to develop his lands and the former City owned lands (now referred to collectively as the "Lands") for a 200-unit townhouse

development. The City's DP advised Mr. Johnson that his lands would have to be rezoned from the Single-Family Dwelling One (SFD1) Zone to the Townhouse Two (TH2) Zone, and that the former City owned lands would have to be rezoned from the Public Purpose (PP) Zone to the TH2 Zone. For the latter rezoning, the City's DP advised Mr. Johnson that an Official Community Plan (the "OCP") amendment would be necessary as the former City owned lands were designated "Public Purpose" under the OCP, which only supported "affordable residential use". The City's DP was of the view that Mr. Johnson's proposed townhouse development did not qualify as "affordable residential use".

On Monday, March 23rd, the City Council considered an application made by Mr. Johnson to rezone the Lands to the TH2 Zone. He had not made an application to amend the OCP.

At that meeting, City Council unanimously gave two readings to a bylaw (the "Bylaw") to rezone the Lands to the TH2 Zone, and directed the City's DP to schedule a public hearing for the following week. Mayor Stewart spoke strongly in support of the Bylaw. The meeting was open to the public. Thankfully, no members of the public attended the meeting, allowing City Council, the City's CAO and the City's DP to be able to maintain appropriate physical distancing.

The City's DP published notice of the public hearing in the next two issues of the City's local newspaper, which is published on Wednesdays and Saturdays. The notice included all the required information. The notice also specified the following:

Hearing Process:

For this public hearing, given social distancing and other measures imposed by the province to prevent the spread of COVID-19, City Council will only consider submissions received in writing by noon on the day of the public hearing or received orally during the public hearing through Zoom video and/or audio conferencing (which can be accessed from the link located on the homepage of the City's website). Members of the public are not permitted to attend the public hearing in person.

On Monday, March 30th, City Council, the City's CAO and the City's DP gathered at the City's offices for the public hearing, locking the entrance to the offices once they had all arrived. At the beginning of the public hearing, the City's DP read out all of the written submissions that the City had received in relation to the Bylaw. Mayor Stewart then opened the public hearing to oral submissions via Zoom. After three hours, Mayor Stewart closed the public hearing. Unbeknownst to City Council, the City's CAO and the City's DP, Ms. Petra Kramer, a local developer who owned developable lands next to Mr. Johnson's lands, had been waiting outside the City's offices for the entire public hearing. The power at Ms. Kramer's house had gone out just before the public hearing and she could not attend the public hearing through Zoom.

After the close of the public hearing, City Council unanimously agreed to hold a special meeting right then. City Council then held the special meeting, gave third reading to the Bylaw, and adopted it.

The City's CAO was the first to leave the City's offices after the special meeting. When the City's CAO exited out of the City offices' entrance doors, he ran into Ms. Kramer. Ms. Kramer was irate after she heard that the Bylaw had been adopted, and told the City's CAO that she would see the City in court.

You have been retained by Ms. Kramer to advise her whether she can successfully challenge the validity of the Bylaw in the courts. In providing your advice, you are to provide a detailed legal opinion on the grounds on which Ms. Kramer can challenge the validity of the Bylaw and the likelihood of success of each of those grounds.

- (50) **3.** As part of the City of Ford's efforts to assist its residents with the impact of the COVID-19 pandemic, Mayor Stewart is looking for any opportunities the City can get involved in or create to support the health and prosperity of City residents. At Mayor Stewart's urging, the City Council has adopted a general direction to do everything it can to assist the City's residents.

Mayor Stewart has pushed forward with a number of initiatives under this general direction.

The first initiative relates to a COVID-19 hotline. The City Council heard that a local business operator, Ms. Tracey Cowan, was investigating the possibility of establishing a COVID-19 hotline for City residents to contact should they have difficulty contacting the provincial 811 service. The City's Chief Administrative Officer (CAO) contacted Ms. Cowan and enquired about the proposed hotline. Ms. Cowan told the City's CAO that Ms. Cowan was trying to avoid having to lay off the staff at her cannabis retail stores, and was going to establish the hotline using donations raised through GoFundMe. The City's CAO asked what, if anything, the City could do to assist, and Ms. Cowan suggested that the City could be a partner in the hotline.

The City's CAO thinks that partnering with Ms. Cowan in the COVID-19 hotline is a great idea. In fact, the City's CAO thinks that the hotline would be a great place to second non-essential City employees in order to avoid having to lay them off.

The City's CAO reported to the City Council on the opportunity to partner with Ms. Cowan on the COVID-19 hotline at City Council's next meeting, which was held on the front lawn outside the City's offices to ensure sufficient physical distancing. The City Council liked the idea of a "Made in Ford" solution for getting the most up to date information on the pandemic to City residents and passed a resolution directing the City's CAO to enter into an agreement with Ms. Cowan for the provision of the hotline as a City service. The City Council directed the City's CAO to negotiate with Ms. Cowan the scope of the services to be provided by Ms. Cowan, the period for which the services would be provided, and the payment terms. The City Council directed that, in entering into the agreement, the City's CAO should ensure that the City's financial responsibility would, in no circumstances, exceed \$400,000.00.

The City's CAO has asked you, as the City's solicitor, to provide your legal opinion as to:

1. The potential liability to the City associated with the City partnering with Ms. Cowan; and,

2. Whether the City's CAO has the legal authority to enter into the agreement with Ms. Cowan.

The second initiative relates to the acquisition of personal protective equipment ("PPE"). Mayor Stewart heard that it has become increasingly difficult for City residents to acquire PPE and wanted to ensure an adequate supply was sourced for and available to City residents.

Mayor Stewart spoke with his son, who recently graduated from the pharmacy program at UBC and is living at home again while he establishes a pharmacy business in the City. Mayor Stewart asked that his son acquire sufficient PPE for City residents on behalf of the City. Mayor Stewart told his son that the City would pay for the PPE, but would like his son to distribute it through his new business. Mayor Stewart's son placed an order for 1,000,000 non-surgical face masks, 100,000 face shields, and 100,000 pairs of surgical gloves.

At the next meeting of City Council, Mayor Stewart advised the City Council of the direction that he gave his son. Several members of the City Council were appalled that Mayor Stewart would have made such a financial commitment on behalf of the City, and vowed to walk away from the commitment. Mayor Stewart was shocked by their reaction, and reminded the City Council that, pursuant to the *Community Charter*, he is the Head and Chief Executive Officer of the City. Concerned about the cost to his son of all the PPE he had ordered, Mayor Stewart pleaded with the City Council to accept the commitment he had made. This led some of the members of City Council to openly question whether Mayor Stewart had a conflict of interest.

The members of the City Council who are upset by Mayor Stewart's actions have asked the City's CAO, who in turn has asked you, to advise them on:

1. Whether the City is contractually bound to pay for the PPE;
2. Whether Mayor Stewart has a conflict of interest; and,
3. What the repercussions would be if Mayor Stewart had a conflict of interest.

The last initiative relates to the installation of barriers at all road entrances to the City. The City has a written contract, entered into by resolution of the City Council, with ABC Roads Co. to operate and maintain all City road infrastructure. Pursuant to the City's contract with ABC Roads Co., the City's Director of Engineering (DE) is designated by the City as its representative to direct ABC Roads Co. in all road operation and maintenance matters.

Mayor Stewart instructed the City's DE to direct ABC Roads Co. to purchase sufficient barriers to install at every road entrance to the City so that people entering the City could be screened for COVID-19 symptoms, and turned away if they had symptoms.

After the City's DE directed ABC Roads Co. to purchase 100 barriers, at a cost of \$245,000.00, the City's DE told the City's CAO of Mayor Stewart's instructions and the cost.

The City's CAO became apoplectic. He was irate that Mayor Stewart and the City's DE thought that installing barriers at all road entrances to the City was a good idea.

The City's CAO has asked you whether the City is bound by the City's DE's direction to ABC Roads Co. to purchase the barriers and to pay the \$245,000.00 purchase price.

END OF EXAMINATION