
TO: CITY MANAGER **DATE:** 2020 May 07

FROM: DIRECTOR PLANNING AND BUILDING &
CITY CLERK

**SUBJECT: NEW PROCEDURES FOR CONDUCTING PUBLIC HEARINGS
UNDER MINISTERIAL ORDER M139/2020**

PURPOSE: To propose new procedures that allow public hearings to be conducted electronically in accordance with the recently issued Ministerial Order M139/2020.

RECOMMENDATIONS:

1. **THAT** public hearings be held electronically as authorized under Ministerial Order M139/2020 and in accordance with Section 465(3) of *The Local Government Act*.
2. **THAT** the public hearing scheduled for 2020 May 26 be rescheduled to 2020 June 9 at 5:00 p.m.
3. **THAT** public hearings held electronically be broadcasted on the City's website for public viewing.
4. **THAT** staff be directed to write to the Provincial Government requesting that in the event that the State of Emergency is lifted local governments be authorized to continue holding electronic public hearings until such time as the health orders restricting mass gathering and physical distancing are lifted.

REPORT

1.0 INTRODUCTION

As stated by Hon. Selina Robinson, Minister Municipal Affairs and Housing, "construction and development activities are expected to be a key part of B.C.'s recovery efforts – and building housing, in particular, affordable housing, will contribute to our goal to provide affordable housing for all British Columbians". In the spirit of this statement, on 2020 May 1, Ministerial Order M083 was repealed and replaced by Ministerial Order M139 that authorizes local governments to hold public hearings by means of electronic or other communications facilities. This newly granted authority will allow the City to safely resume this integral process in support of construction and development activity. This report

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outlines the procedure for which the City will conduct public hearings electronically/virtually.

2.0 POLICY SECTION

This report aligns with the following goals and sub goals of the Corporate Strategic Plan.

Goal

- A Safe Community
 - Community amenity safety –
Maintain a high level of safety in City buildings and facilities for the public and City staff
- A Connected Community
 - Digital connection –
Provide online access to core City services and information
- A Healthy Community
 - Healthy life –
Encourages opportunities for healthy living and well-being
- A Thriving Organization
 - Communication –
Practice open and transparent communication among staff, Council and the community
 - Technology and innovation –
Support technology development and innovation to empower staff and to advance community objectives

3.0 BACKGROUND

On 2020 March 18 the Provincial Government declared a Provincial State of Emergency to support the province-wide response to the novel coronavirus (COVID-19) pandemic. The declaration was made based on a recommendation from B.C.'s health and emergency management officials, after Dr. Bonnie Henry, B.C.'s Provincial Health Officer, declared a Public Health Emergency on 2020 March 17. Under the Public Health Emergency, B.C.'s Provincial Health Officer issued *Class Order (mass gatherings) re: COVID-19*, the City is prohibited from permitting the gathering of people in excess of 50 people at a place owned, occupied or operated by the City. In addition to the limitations on mass gatherings set under the Class Order, the BC Centre for Disease Control released guidelines for "physical distancing" to reduce the spread of COVID-19. Physical distancing means limiting close contact with others by keeping two meters (six feet) away from one another.

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Upon the release of the Class Order (mass gatherings) and the physical distancing measures, the City cancelled the 2020 March 24 and 2020 April 27 public hearings as electronic participation in public hearings was not authorized under Ministerial Order M083. The decision to cancel the two public hearings was done out of an abundance of caution as staff were unable to anticipate accurately how many people may appear at a public hearing and were concerned about the City's ability to meet physical distancing requirements and manage attendance in compliance with mass gathering limitations.

4.0 AUTHORITY

On 2020 May 1, Ministerial Order M083 was repealed and replaced by Ministerial Order M139. Ministerial Order M139 includes new authorities in regard to the holding of public hearings, enabling Local Governments to conduct public hearings by means of electronic or other communication facilities. Based on Ministerial Order M139, and in accordance with section 465(3) (public hearing procedures) of the *Local Government Act*, the Chair of the public hearing is permitted to establish procedural rules for the conduct of the hearing. As the public hearing will take place electronically/virtually, there will be no designated physical location for the meeting.

5.0 PUBLIC PARTICIPATION

The City recognizes that public participation in local government is an essential part of a free and democratic society and is important to local governments' purpose of providing good government to communities. The threat of COVID-19 to the health and safety of people has resulted in the requirement that the City implement necessary limitations on public participation. As the City is unable to determine how many people may wish to appear at a public hearing with any certainty, staff are concerned about non-compliance with health orders and physical distancing guidelines. Additionally, holding an in-person public hearing may discourage or prevent participation by some members of the public who have public health concerns with in-person attendance. Reflecting on the integral role of public participation on balance with an obligation to safeguard the health of its community members, staff recommends that until such time as limitations on mass gathering and physical distancing are repealed that public hearings be held electronically.

With restrictions on physical attendance, it is important to diversify the means by which the public can participate in a public hearing to ensure that members of the public who may be affected by a proposed land use bylaw continue to be provided a reasonable opportunity to be heard. To provide options to participate, the City is proposing the following mechanisms in support of electronic/virtual public hearings:

Written Submissions: The public may provide written comments regarding any of the public hearing items via email, fax or Canada Post. This existing procedure will not change as a result of transitioning to electronic/virtual meetings.

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Electronic/Virtual Participation: The public may participate in the electronic/virtual meeting via ZOOM webinar. A meeting link and access instructions will be outlined in all advertising including: newspaper, social media, and the City’s webpage. Through the Zoom webinar platform, the public will be able to provide oral comments to Council live during the electronic/virtual public hearing.

Phone Participation: Recognizing that there may be a portion of the public that do not have access to the needed technology to join a virtual meeting, staff are pursuing options for adding phone-in capabilities for the 2020 June 23 public hearing. Phone-in capabilities are not possible to set up in time for the 2020 June 09 public hearing as integration with the Council Chamber audio visual system has not yet been realized.

Live Streaming: As the electronic/virtual meeting is conducted in the absence of a physical location, to ensure transparency of the public hearing procedure staff recommend the public hearing be live streamed on the City’s website. Live streaming the public hearing will reproduce as closely as possible a physical attendance experience.

6.0 RESCHDEULE 2020 MAY 26 PUBLIC HEARING

Staff are working diligently to set up and test the technology selected to facilitate electronic/virtual public hearings. Although we are confident the selected system will work, further testing and development is required. After testing has been completed, the information learned will be used to create access instructions for public participation. Under the Ministerial Order M139, instructions regarding public access to the electronic/virtual meeting must be included in the statutory advertisements. Staff recommend the 2020 May 26 public hearing be rescheduled to 2020 June 9 to allow for needed testing and the development of clear communication to ensure our ability to meet the public’s participation expectations and enhanced legislative advertising requirements.

7.0 FUTURE CONSIDERATIONS

The ability to conduct public hearings by means of electronic or other communications facilities is only authorized under the Ministerial Order M139 during the Provincial State of Emergency as the Order was issued under the *Emergency Programs Act*. In the event that the Provincial State of Emergency is lifted but physical distancing guidelines remain in place, staff recommend that Council request the Province consider an alternative mechanism that would authorize electronic/virtual public hearings as long as physical distancing guidelines are in place.

8.0 RECOMMENDATIONS

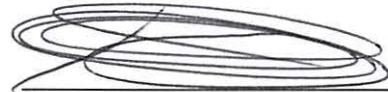
It is recommended that Council authorize public hearings to be held electronically/virtually under the authorities granted by Ministerial Order M139 and the *Local Government Act*.

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To enable staff to properly test and establish participation instructions and develop related statutory advertisements, staff recommend postponing the 2020 May 26 public hearing to 2020 June 9. Further, to ensure transparency of the public hearing procedures staff recommend streaming the public hearing on the City's website so the public can watch the proceedings from the safety of their homes. Lastly, in the event that the Provincial State of Emergency is lifted but physical distancing guidelines remain in effect, staff recommend the City request the Province consider a mechanism that would authorize the holding of public hearings electronically until such time as physical distancing guidelines are no longer required.



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