

DATE OF MEETING | MAY 25, 2020 |

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SUBJECT | PUBLIC HEARINGS FOLLOWING MINISTERIAL ORDER M139 |

OVERVIEW

Purpose of Report:

To present Council with information on adaptations to the public hearing process and engagement in response to the Provincial Ministerial Order M139 and authorization for local governments to hold public hearings electronically.

BACKGROUND

On 2020-MAR-18, the Province of BC issued an emergency declaration (M083) in response to the COVID-19 pandemic. This ministerial order limited gatherings of people to less than 50, and, as such, it became impractical to conduct in-person public hearings as normally conducted by the City to fulfill the statutory requirements of the *Local Government Act* (LGA). The City responded by cancelling the 2020-APR-04 public hearing and reviewing options for proceeding with amendment applications that require a public hearing.

Staff confirmed there was no legal mechanism for some instream development applications, in particular, Official Community Plan (OCP) amendment applications, to proceed without a public hearing without changes in Provincial legislation. Staff identified the opportunity for Council to waive the public hearing for multiple instream rezoning applications that were deemed to be in compliance with the OCP, per s.464 (2) of the LGA.

On 2020-MAY-01, the Province issued the Local Government Meetings and Bylaw Process (COVID-19) Ministerial Order M139 and companion guidelines specifically for conducting public hearings under this temporary state of emergency. This new legislation authorizes local governments to hold meetings of Council, including public hearings, electronically during the provincial state of emergency. The emergency declaration has been extended to 2020-MAY-26 and is anticipated to be extended for a longer period of time, so it is necessary to adapt the City's current process for conducting public hearings. |

DISCUSSION

The City receives a number of different applications that require public hearings, including OCP and Zoning Bylaw amendments. In addition, Council policy recommends certain covenant amendment applications proceed to public hearing to provide an opportunity for public comment. The LGA (s.464 [2]) authorizes Council to consider waiving public hearings for zoning amendments that are consistent with OCP policy. Council recently approved, for example, general mapping amendments to "City of Nanaimo Zoning Bylaw 2011 No. 4500" to

proceed without a public hearing. In this case, a notice of waiver of the public hearing was published in accordance with the LGA requirements.

Staff have reviewed Ministerial Order M139, Provincial companion guidelines, and legal advice on procedural considerations for proceeding with an adapted format for public hearings on amendment applications. The issuance of Ministerial Order M139 permits public hearings to be held “by means of electronic or other communication facilities” (s.15) to allow remote public and Council participation in public hearings. It is not recommended to limit public input on amendment applications to written submissions only, as this restricts public access to comment on applications in the fullness of hearing other comments from members of the public as intended in the legislation. Likewise, given the health orders to maintain physical distancing, in-person hearings could become unmanageable, particularly if there was significant public interest in an application. Some members of the public may also not be able to attend an in-person public hearing because of Provincial health orders or concerns. As a result, it is recommended the City continue to provide opportunity for both written submissions and for speakers to be heard.

Staff have reviewed practices by other municipalities (e.g., City of Vancouver), who are starting to utilize electronic formats to conduct public hearings. Staff explored the logistics of conducting a combined in-person and electronic hearing and determined this is the best option to maintain procedural fairness for public input.

The proposed solution is to facilitate public hearings in the VICC auditorium, with the opportunity for citizens to call in to speak, and livestreaming of the meeting, similar to regular Council meetings. Measures would be in place for any Staff or members of the public attending in person to ensure Provincial guidelines for safe physical distancing are met.

Advantages of Proposed Solution

- Accessible and simple for citizens to call in;
- Councillors attending remotely could still fully participate in the meeting via Zoom, on a separate phone line, as at Council meetings; and
- The cost is minimal as this uses existing telephone infrastructure.

Disadvantages of Proposed Solution

- Limited capability to manage the call-in queue; calls are answered in the order they received in;
- Inability to verify caller identity or pre-screen calls;
- Could not prevent people from calling multiple times;
- Councillors phoning into the meeting via Zoom and the citizens phoning into the meeting on a separate phone line could have issues hearing each other clearly.

While there are some limitations with this combined format, it would maintain the opportunity for citizens to be heard directly by Council and for the public to view the hearing via livestream in order to provide informed comments.

In addition to remote participation in public hearings, there are other existing opportunities for public engagement on amendment applications that will continue to be provided including:

- What's Building in My Neighbourhood website posting of application information;
- Referral to residents' association;
- Direct contact to Planning Section Staff by phone/email;
- Public notification by mail and newspaper advertisement;
- Onsite signage; and
- Applicant-led public information meeting, where recommended (adapted format to maintain physical distancing).

Public notices will provide instructions on how members of the public can participate remotely. A public hearing webpage has also been created where notices of upcoming public hearing items and supporting documents will be made available for public viewing.

CONCLUSION

Starting in June, the City will be holding public hearings that include in-person and electronic options for participation in line with Ministerial Order M139. |

SUMMARY POINTS

- The Provincial declaration of emergency on 2020-MAR-18 due to the COVID-19 pandemic restricted the ability to conduct in-person public hearings.
- Ministerial Order M139 enables local governments and the public to participate in electronic meetings, including public hearings, during the temporary state of emergency.
- A number of instream amendment applications, such as OCP amendments, require a public hearing.
- Public hearings may be waived by Council for rezoning applications where an amendment complies with the OCP.
- Staff are preparing to conduct an adapted format for public hearings in compliance with ministerial requirements for physical distancing to include in-person and electronic participation.

ATTACHMENTS

ATTACHMENT A: Ministerial Order M139 - Local Government Meetings and Bylaw Process
ATTACHMENT B: Provincial Guidelines for Conducting Public Hearings under M139 |

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