

ATTACHMENT B



Guidance for the conduct of public hearings under Ministerial Order M139

On May 1, 2020 Ministerial Order M083 under the *Emergency Program Act* was repealed and replaced by Ministerial Order M139 to enable local governments to address the challenges of holding public hearings while complying with prohibitions on mass gatherings and recommendations on physical distancing. This guidance provides general advice to local governments about conducting public hearings by electronic or other communications facilities, as permitted under the order. More detailed information on important considerations and best practices for enhancing access and transparency when conducting public hearings electronically is forthcoming.

For information about orders related to provincial and local states of emergencies, bylaw enforcement and mutual aid agreements please see: <https://news.gov.bc.ca/>

A public hearing is a statutory requirement prior to adopting certain land use bylaws, such as official community plans (OCPs) and zoning bylaw amendments. Amendments to these bylaws are needed for many development application decisions to proceed, including for much needed housing. Additionally, decisions on land use bylaws made now by local governments will have a clear effect on BC's economic recovery efforts, both during and after the provincial state of emergency.

At a public hearing, persons who believe that their interest in a property is affected by a proposed land use bylaw must be afforded a reasonable opportunity to be heard or to present written submissions. Implicit in both the *Local Government Act* and the *Vancouver Charter* are that hearings will be in person, which local governments have identified as being problematic during the provincial state of emergency while physical distancing guidelines are in place and public health orders restrict the size of gatherings to less than 50 people. Electronic hearings provide an opportunity to meet ongoing business needs while achieving public health measures, however, without express authority local governments could risk challenges on jurisdictional and administrative fairness grounds if they were to conduct hearings by those means.

To enable local governments to proceed safely with public hearings, this order authorizes local governments and the Islands Trust to conduct public hearings using electronic or other communication facilities, such as teleconference.

Local governments are expected to continue adhering to principles of procedural fairness when conducting public hearings electronically, including enabling the public to see that local governments acknowledge and respect their right to participate in the local decision-making process. Furthermore, appropriate procedural rules are needed to ensure that councils and boards obtain sufficient information to make appropriate decisions about proposed bylaws.

The purpose of this guidance is to provide local governments an overview of the order and general advice on public hearings during the COVID-19 pandemic.

What does the updated order allow local governments to do?

- Ministerial Order M139 authorizes local governments and the Islands Trust to hold public hearings by means of electronic or other communication facilities, such as teleconference.

Why is this order needed?

- The ministry continues to hear from local governments concerned about their inability to conduct public hearings to make important land use decisions for their community, which will help B.C.'s recovery efforts, while also complying with the public health order on mass gatherings and the recommendations on safe physical distancing.
- Local governments are required under the *Local Government Act* and *Vancouver Charter* to hold public hearings before making some land use decisions, like amending official community plans and certain zoning bylaws.
- This order enables local governments to safely hold public hearings to make important land use planning decisions, like approving much needed affordable housing projects, while following the Provincial Health Officer's order prohibiting mass gatherings and the advice to maintain physical distancing of two meters.

Wasn't this power already granted by Ministerial Order M083?

- Ministerial Order No. M083, made on March 26, 2020 under the *Emergency Program Act*, creates an exception to open meeting requirements and any relevant procedure bylaws by permitting local governments to limit required public participation and to conduct all or part of a meeting 'by means of electronic or other communication facilities.'
- However, M083 did not extend to public hearings, which are distinct from council and board meetings, with their own legislative requirements, and rules and procedures.

Do the provisions in procedure bylaws still apply to public hearings conducted electronically?

- Under the order, a public hearing may be conducted using electronic or other communication facilities despite any applicable requirements in a procedure bylaw.
- However, prior to conducting an electronic public hearing, local governments will want to work with the chair to revise procedural rules to maximize clarity, transparency and access for the public, and to ensure that due process is maintained.
- While the authority to make procedural rules rests with the chair of the hearing, it is the local government that bears the risk of a challenge to the bylaw that is subject to the hearing, so it is in local governments' best interest to ensure that public hearings are conducted appropriately.

- Distinct from procedural rules, local governments may want to prepare an internal guide that describes how an electronic public hearing will be implemented, including considerations such as who will be responsible for the technology during the hearing, how the hearing will be moderated, and the back-up options to allow people to participate in the event of unexpected technical difficulties.

What changes are there to notice requirements for public hearings held electronically?

- Regardless of the format of a public hearing, local governments are still required to provide notice in accordance with the *Local Government Act*.
- Under the order, the place of a hearing specified in a notice may include a hearing conducted using electronic or other communication facilities.
- The notice for a hearing conducted electronically will need to include instructions for participating in the hearing or information on how and where to get the instructions.

If a local government office is closed, how can the public inspect the bylaw that is the subject of the public hearing?

- Local governments must still make available for inspection the bylaw that is subject to a public hearing, and the information on where and when it is available must be included in the notice.
- Under the order, the place where a bylaw can be inspected may include online.

Can a public hearing be held in-person and electronically?

- Local governments are best positioned to determine the most appropriate format for a public hearing in their communities during the pandemic.
- Although there is no outright ban on in-person public hearings, local governments will need to consider whether they can conduct an in-person public hearing safely while complying with the public health order on mass gatherings and the guidelines on physical distancing.
- The order enables a public hearing to be conducted electronically, either wholly or in combination with some in-person attendance.
- Regardless of the format of the hearing, local governments can encourage the public to provide written submissions, as is currently required in the legislation.

What guidance do you have for local governments regarding access and transparency of electronic public hearings?

- Electronic hearings are one way by which local governments can ensure that they are complying with the public health orders and necessary physical distancing while continuing to make important planning and land use decisions for their communities, including amendments to bylaws.
- Local governments are accountable to their citizens and have a responsibility to ensure that opportunities for public input are accessible and transparent.
- Maintaining procedural fairness, transparency and accountability should be of paramount concern in designing a process for electronic or phone participation in a public hearing.

Some community members do not have a computer or are not comfortable using technology. What other options are there to receive their opinions at a public hearing?

- Local governments will need to carefully consider issues of access and transparency when holding public hearings that rely on electronic rather than in-person attendance.
- In addition to online meetings, the order enables local governments to hold public hearings by phone or teleconference.
- Local governments can also encourage the public to provide written submissions, as has always been allowed, as an alternative to attending an electronic public hearing.

Are there any options for moving forward with land use decisions other than holding in-person or electronic public hearings?

- This order provides local governments the authority they need during the COVID-19 pandemic to be able to hold public hearings safely and legally prior to making important land use decisions.
- The input obtained during a public hearing is a critical part of land use decision making and many local governments choose to hold public hearings even when they are not legally required.
- However, during the current provincial state of emergency, local governments may want to consider waiving public hearings where permitted, such as a proposed amendment to a zoning bylaw that is aligned with the official community plan.
- Should a local government choose to waive the public hearing, it would still be required to comply with the statutory notice requirements for waiving public hearings.

- For hearings that are waived, local governments may wish to obtain legal advice on how to best provide the public with different opportunities for input, while being clear that such feedback is not considered formal public hearing input.

Are there any restrictions on collecting personal data during public hearings held electronically?

- The *Freedom of Information and Protection of Privacy Act* prohibits the storage or disclosure of personal information outside of Canada.
- Ministerial Order M085, issued on March 26, 2020, provides a temporary exception to this prohibition. Under several conditions, local governments may use third-party electronic tools, such as video-conferencing for public hearings, while sharing or disclosing information outside of Canada. The conditions are:
 - third-party tools or applications are being used to support and maintain the operation of programs or activities of the local government,
 - the third-party tools or applications support public health recommendations or requirements related to minimizing transmission of COVID-19, and
 - any disclosure of personal information is limited to the minimum amount reasonably necessary
- For more information, please refer to [Ministerial Order M085](#).

Are boards of variance also authorized to hold their meetings using electronic or other communication facilities? What about advisory planning commissions?

- Under the open meeting and electronic meeting provisions of this order, boards of variance and advisory planning commissions established by municipalities, regional districts and the Islands Trust can meet using electronic or other communication facilities.
- Local governments may need to review and possibly amend the procedure requirements in their board of variance and advisory planning commission establishing bylaws to ensure that meetings can be held in accordance with the bylaws.

Who asked for these changes to be made?

- The ministry continues to hear from local governments concerned about their inability to conduct public hearings and meetings to make important land use decisions for their community while also following the public health order on mass gatherings and the safe physical distancing recommendations.
- Concerns about potential delays in development application processes have also been raised by housing providers, homeowners, and the wider development sector.

Where can local governments get more information about B.C.'s response to COVID 19?

- BC Government's COVID 19 Provincial Support and Information website provides a hub through which you can access critical non-health information as it is updated, including provincial health officer orders, as well as get access to the BC Centre for Disease Control COVID site, which provides authoritative health-related information visit: bccdc.ca
- As well, there is a toll-free phone line open at 1-888-268-4319 (1-888-COVID19) between 7:30 a.m. and 8 p.m. seven days a week for non-medical information about the virus (including latest information on social distancing, as well as access to support and services from the provincial and federal governments.
- For more information about Provincial support and health information, visit gov.bc.ca/COVID-19.

Where can local governments get more information?

- For other local government resources and guidance on orders, please visit the COVID-19 Updates for Local Governments & Improvement Districts [webpage](#).
- For more information regarding electronic public hearings, contact PLUM@gov.bc.ca