

DATE OF MEETING JULY 13, 2020

AUTHORED BY Karen Robertson, Deputy City Clerk

SUBJECT Ministerial Order M192 – Open Meetings During State of Emergency

OVERVIEW

Purpose of Report

To apprise Council of Ministerial Order M192 as it relates to the conduct of public meetings.

Recommendation

That effective July 20, 2020, the following rules will apply for public participation in all open Council and Committee meetings;

- Delegation requests by members of the public for related or unrelated Council or Committee matters, as outlined in Council's Procedure Bylaw, will be permitted;
- All Council and Council related Committee meetings will be livestreamed, recorded and made available on the City's website;
- Members of the public who are not registered delegations will not be permitted to attend meetings in person (other than Public Hearings), as physical distancing requirements cannot be assured.

BACKGROUND

On March 26, 2020, the Minister of Public Safety and Solicitor General signed Ministerial Order No. M083 that declared a state of emergency throughout the Province of British Columbia. This order gave local governments authority to conduct its meetings electronically and limit in person attendance at its meetings in order to ensure the health and safety of its citizens. It also gave local governments the authority to adopt bylaws on the same day a bylaw was given third reading.

In response to this Order Council implemented the following guidelines and issued a press release on April 3, 2020 advising of the following:

- Members of the public were required to observe meetings virtually and not attend in person;
- Question period was suspended for the duration of the Order being in effect;
- Delegation requests for unrelated Council matters were not permitted but delegation requests related to agenda matters (such as a developer wanting to speak to their development application or a member of the public to speak to an item on the agenda at the Shaw Auditorium) were allowed as physical distancing requirements could be maintained;
- Council members, if attending a Council meeting at the Shaw Auditorium, in person, were required to maintain physical distancing at all times; and
- Staff partaking in meetings would be required to spread throughout the Auditorium.

On May 1, 2020, Ministerial Order M139 came into effect, which repealed M083. This Order outlined the continued threat of COVID-19 on the health and safety of its citizens and retained the authority for local governments to limit in-person public participation at Council meetings. However, the Order did give authority for local governments to pursue the option of conducting public hearings by means of electronic or other communication means. In response, staff explored options for how public hearings could be held electronically and presented Council with a plan that could safely facilitate in-person attendance (for smaller scale public hearings) coupled with an option for citizens to call in; that meeting was held on June 18, 2020.

On June 17, 2020, Ministerial Order M192 came into effect, which repealed M139. The intent behind this order is to assist local governments with transitioning local governments towards more normal operations while moving through the restart process. It continues to provide local governments flexibility with how meeting procedures are conducted while moving towards increased public presence for both “in-person” and electronic meetings.

DISCUSSION

Guidance for Open Meetings

Order M192 requires local governments to undertake “best efforts” to meet the legislative requirements to allow members of the public to participate and understand local government decision-making in a way that is meaningful for them, while abiding by any of the public health requirements or recommendations made under the *Public Health Act*, such as the Mass Gatherings and Event Order. Best efforts include:

- Providing information to staff, elected officials and the public on how local governments are meeting the Public Health Orders such as:
 - How many members of the public can safely be accommodated at the meeting location while maintaining physical distancing guidelines;
 - Whether another meeting location has been considered to provide better space for public attendance; and
 - How public attendance at meetings will be managed if there is limited space (i.e. restricting the number of attendees to ensure there are no crowds);
- Offering alternative means by which the public can provide input on agenda topics (e.g. via email, on-line submissions form, phone or written letter);
- Considering technology for enabling the public to present by electronic means if in-person presence is not physically possible;
- Adjusting the agenda and meeting schedules so that matters that are likely to be controversial or attract high public interest are the subject of a separate meeting held in a larger facility;
- Providing draft agendas, minutes and archived video of meetings (if available) to the public to facilitate public understanding of local government decision making; and
- Providing information to the public about what efforts have been made and considered if the local government needs to continue to meet without the public physically present.

Electronic Meetings

Order M192 requires that local governments undertake best efforts for the public to watch and hear a meeting that is held electronically. Best efforts in this regard include:

- Electronic meetings should attempt to resemble the in-person public meeting as much as possible, adhering to rules of procedural fairness;
- Exploring available technology that will enable the public to hear, or watch and hear, the meeting (e.g. livestream, record and provide an archived copy on the local government website); and
- Anticipate technology issues and consider allowing additional time on the agenda to resolve technical issues, including the possible lag when live streaming.

Same Day Bylaw Adoption Restricted

Under the Order, municipalities may only adopt financial and tax bylaws on the same day that a bylaw has been given third reading. For bylaws unrelated to these areas, there must be at least one day between third reading and adoption of the bylaw.

Operational Considerations for Local Government Open Meetings

As local governments transition back towards more normal operations, new policies and procedures are needed to support elected officials, local government staff and the public. In doing so, the following must be considered:

- Identifying areas of risk for holding open meetings;
- Considering changes to occupancy limits and meeting room flow/setup; and
- Revisiting open meeting procedures every few weeks to ensure best efforts are continuing to be met and to review questions/concerns from the public.

Next Steps:

With Council conducting its first “in-person” and telephone participation public hearing on June 18, 2020, much of what is outlined in the Order as it relates to public participation in a meeting has already been considered. Risks were identified, occupancy limits were considered, and meeting room flow was established. Council also has, and continues to, receive input from the public on agenda topics via email and by mail, and presenters are given the opportunity to use zoom if they are unable to attend in person. Livestreaming of Council meetings has continued throughout the Orders and moving forward, this process would be extended to Committee meetings.

The decision left for Council at this point is to determine what option it wishes to pursue in accommodating the added level of public participation, as the financial implications vary depending on the option selected.

OPTIONS

1. That effective July 20, 2020, the following rules will apply for public participation in all open Council and Committee meetings;
 - Delegation requests by members of the public for related or unrelated Council or Committee matters, as outlined in Council’s Procedure Bylaw, will be permitted;
 - All Council and Council related Committee meetings will be livestreamed, recorded and made available on the City’s website;

- Members of the public who are not registered delegations will not be permitted to attend meetings in person (other than Public Hearings), as physical distancing requirements cannot be assured.

The advantages of this option are that members of the public who wish to be a delegation at a Council or Committee meeting, regardless of whether their matter pertains to an agenda item or not, will now be allowed to attend those meetings (previously delegations were only allowed for agenda related items). Physical distancing could be maintained, as staff would be aware of how many members of the public would be attending (based on the registration process associated with delegation requests) and could plan the space accordingly based on those numbers. Although members of the public who are not registered delegations would be unable to attend the meetings under this option, livestreaming for all open Council, Special Council, and Council related Committee meetings would be implemented so members of the public would be able to view all open proceedings from home.

The disadvantage to this option is that the City would be unable to accommodate members of the public who may wish to attend in person if they are not a registered delegation. Should Council wish to open up meetings to the public generally, additional set up (outside of the Chambers) and hiring extra staff would be required for every meeting to ensure the Public Health Orders associated with Mass Gatherings and Physical Distancing are adhered to given the unknown numbers (see option 2).

Option 1 has no financial implications.

2. That effective July 20, 2020, the following rules will apply for public participation in open Council and Committee meetings:
 - Delegation requests by members of the public for related or unrelated Council or Committee matters, as outlined in Council's Procedure Bylaw, will be permitted;
 - All Council and Council related Committee meetings will be livestreamed, recorded and made available on the City's website;
 - Members of the public will be permitted to attend Council meetings held at the Vancouver Island Conference Centre (VICC);

The advantages to this option (outside of what is outlined in option 1) is that members of the public would be able to attend in person regardless of whether or not they are a registered delegation.

The disadvantages of this option is that legally the City is required to ensure that the Public Health Order for Mass Gatherings is adhered to as well providing assurances that physical distancing measures are in place can be followed. This would be challenging given that public attendance would be unknown at any given meeting. As such, staff would need to prepare for those unknown numbers by ensuring that the area outside of the Council Chambers is set up, as well as options for potentially setting up additional rooms. Temporary directional signage would also need to be set up and two additional staff would be required to be in attendance for every meeting in order to monitor the front door and area outside of the Chambers in case a number of people showed up. This is the process that was followed for the June 18,

2020 Public Hearing, and would continue for future public hearings; however, as noted in the financial implications section under this option, it would be costly to implement this process for every meeting held at the VICC.

General public attendance (other than registered delegations) for Committee meetings held in the SARC Boardroom is not being put forward as an option given the size of the room. As attendance at Committee meetings was low or non-existent prior to the pandemic, this should not create a hardship and as livestreaming would be implemented for all Committee meetings, members of the public would be able to see and hear those proceedings. It should also be noted that recommendations made by any Committee must be approved by Council so members of the public always have the opportunity to appear as a delegation at the Council meeting to speak to any recommendation that is being considered.

The financial implications associated with this option would be the staff time for additional set up and for two additional staff to attend every meeting to monitor the front door and area outside of the Council Chambers throughout the meeting. |

Public Notice

Once Council has selected its preferred option for moving forward, the information would be shared with the public, in conjunction with the information regarding the City of Nanaimo's general restart plan through posting on the website, public notice boards and social media, as well as advertised in the local newspaper. A comprehensive outline for public attendance at meetings will also be created explaining how physical distancing requirements will be met, an outline of cleaning and sanitizing protocols, and how in-person attendance at meetings will be managed.

SUMMARY POINTS

- This report focuses on the primary changes set out in Order M192 as local governments are given more flexibility in their meeting procedures while moving towards increased public presence at local government meetings where appropriate for both "in person" and electronic meetings.

ATTACHMENTS:

Ministerial Order M192 |

Submitted by:

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Concurrence by:

Sheila Gurrie
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