



REPORT TO COUNCIL

To: **Mayor and Councillors**

Subject: Holding of Council Meetings, Committee/Task Group Meetings and Public Hearings during COVID-19 Pandemic

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From: Kelly Kenney
Corporate Officer

Date: September 18, 2020

RECOMMENDATION:

1. THAT the following resolution passed by Council at the April 27, 2020 Regular Council Meeting be repealed:

“THAT as permitted under Ministerial Order No. M083, open meetings of Council be held in the absence of the public until such time as the provincial declaration of state of emergency has been lifted.”

2. THAT the following resolution passed at the May 25, 2020 Regular Council Meeting be amended to replace “M139” with “M192”:

“THAT public hearings be held electronically as required as authorized under Ministerial Order M139 and in accordance with Section 465(3) of *The Local Government Act*.”

3. THAT staff be directed to action the recommendations outlined in the report of the Corporate Officer dated September 18, 2020 with respect to the holding of Council Meetings, Committee/Task Group Meetings and Public Hearings by electronic means during the COVID-19 Pandemic to comply with Ministerial Order M192.
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PURPOSE:

The purpose of this report is to propose continuing to conduct Council Meetings/ Committee/Task Group Meetings and Public Hearings by electronic means until such time as the City has implemented the technology to allow for combined in-person/electronic participation by both Council and the public.

This report also outlines steps to comply with Ministerial Order M192 (Attachment 1) to provide public access to open meetings while complying with Public Health Officer's Order on Gatherings and Events.

POLICY:

Regulations pertaining to the holding of Council Meetings, Committee/Task Group Meetings, and Public Hearings are prescribed in provincial legislation. During the COVID-19 Pandemic, Provincial Health Officer Orders and Ministerial Orders have superseded certain regulations in the provincial legislation relative to the holding of open meetings and Public Hearings.

COMMENTS/ANALYSIS:

On March 18, 2020 a provincial State of Emergency was declared due to the COVID-19 Pandemic.

On March 19, 2020, to prevent the spread of COVID-19, public access to City Hall was restricted.

On March 26, 2020 the province issued Ministerial Order M083 permitting open meetings of Council (which includes Committee/Task Group meetings) to be held in the absence of the public and to be conducted entirely by electronic means.

Accordingly, Council passed the following motion at its April 27, 2020 Regular Council Meeting:

THAT as permitted under Ministerial Order No. M083, open meetings of Council be held in the absence of the public until such time as the provincial declaration of state of emergency has been lifted.

On May 1, 2020, the province issued Ministerial Order M139 which repealed and replaced Order M083 by permitting Public Hearings to also be conducted by electronic means.

Subsequently, Council passed the following resolution at the May 25, 2020 Regular Council Meeting:

THAT public hearings be held electronically as required as authorized under Ministerial Order M139 and in accordance with Section 465(3) of *The Local Government Act*.

On June 17, 2020 the province issued Ministerial Order M192 which repeals and replaces Order M139. The provisions for electronic Public Hearings remain as stated in Order M139. The purpose of Order M192 is to “transition local governments back to operating under the normal legislative rules and requirements, while balancing the health and safety recommendations of the PHO and WorkSafeBC.” (Excerpt taken from Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020, Attachment 2 to this report)

The issuance of this Order dovetailed with the province entering Phase 3 of its BC Restart Plan in June, which saw the re-opening of various types of businesses and public amenities.

The section of the Order pertaining to open meetings is provided below for reference:

“Open meetings - municipalities

- 3** (1) A council, or a body referred to in section 93 [application of rule to other bodies] of the Community Charter, must use best efforts to allow members of the public to attend an open meeting of the council or body in a manner that is consistent with any applicable requirements or recommendations made under the Public Health Act.
- (2) A council or body is not required to allow members of the public to attend a meeting if, despite the best efforts of the council or body, the attendance of members of the public cannot be accommodated at a meeting that would otherwise be held in accordance with the applicable requirements or recommendations under the Public Health Act.
- (3) If a council or body does not allow members of the public to attend a meeting, as contemplated in subsection (2) of this section,
- (a) the council or body must state the following, by resolution:
 - (i) the basis for holding the meeting without members of the public in attendance;
 - (ii) the means by which the council or body is ensuring openness, transparency, accessibility and accountability in respect of the meeting, and
 - (b) for the purposes of Division 3 [Open Meetings] of Part 4 [Public

Participation and Council Accountability] of the Community Charter, the meeting is not to be considered closed to the public.

(4) The council or body may pass a resolution under subsection (3) (a) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.

(5) This section applies despite

(a) Division 3 [Open Meetings] of Part 4 [Public Participation and Council Accountability] of the Community Charter, and

(b) any applicable requirements in a municipality procedure bylaw of a council.”

Order M192 requires that local governments use best efforts to allow members of the public to attend both in-person and electronic open council meetings, select and standing committee meetings; board of variance meetings and other meetings that are referenced in Section 93 – “Application of rules to other bodies” of the Community Charter, while complying with the requirements under the PHO Orders. The Ministry encourages local governments “to consider what steps they can take to accommodate in-person attendance at open meetings or provide a space where the public can hear the meeting to understand the local government decision-making process.” (Excerpt taken from Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020, Attachment 2 to this report)

“If, after developing a plan for meetings, a local government is unable to accommodate in-person public attendance, Order M192 requires the local government to pass a resolution to provide a rationale for the continued need to meet without the public present. The local government must also describe what measures are being taken to meet the principles of openness, transparency, and accessibility. The resolution may apply to one meeting or to multiple meetings if the same circumstances apply.” (Excerpt taken from Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020, Attachment 1 to this report)

As an additional requirement when conducting on-site meetings, on August 7, 2020, Order of the Provincial Health Officer on Gatherings and Events was issued which requires the collection of contact information for contact tracing purposes from anyone attending an event. This includes on-site Council Meetings, Committee/Task Group Meetings and Public Hearings or any meetings staff may have with non-staff persons on-site. Under the PHO Order, no more than 50 people may be in attendance at an event; however, occupancy limits for facilities must be determined based on allowing 5 square metres of unencumbered floor space for each person in the facility. Accordingly, the maximum occupancy limit for the Council Chamber has been determined to be 19. The maximum occupancy for the CKF Room is 8.

In seeking to comply with Order M192, the September 14, 2020 Regular Council Meeting was held on site with attendance by the public. As public access to City Hall is still restricted to prevent the spread of COVID-19, considerable planning and preparation went into implementing protocols to ensure the safety of the public, Council members and staff members participating in the on-site meeting and ensure compliance with the PHO Order on Gatherings and Events. Two additional staff were required to facilitate members of the public attending City Hall to view the Regular Council Meeting proceedings in Council Chambers and the front counter clerk and security guard were required to work a longer shift as the City Hall was open for members of the public to attend the Council Meeting.

Plexiglass barriers were placed between each desk which some participants found made it difficult to hear others at times, particularly during the Closed meeting when microphones were not used in order to protect the confidentiality of the meeting which had to be held in Council Chambers rather than the usual meeting room as the maximum occupancy of the meeting room cannot accommodate all Council and staff. It was also noted that the barriers are not conducive to effective working session discussions.

Other considerations:

- Given the limited number of people that can be in Council Chambers at one time (maximum 19 – which allows for 7 Council members, 6 staff, 1 non-staff presenter and 5 members of the public), to accommodate delegations, presentations from developers and other non-staff participants in meetings, only one presenter at a time can be present in Council Chambers if all audience seats were filled; or alternatively, some staff members would need to leave the Council Chambers to allow more than one presenter into the Council Chamber.
- The limited public seating capacity would also make participation by the public at Public Hearings problematic. It is likely that members of the public would not be able to sit in the audience in the Council Chamber and watch the Public Hearing as that would mean only one person at a time could enter the Council Chambers to speak and they would have to leave after speaking. A Livestream of the meeting could be broadcast into another room where members of the public could view it while maintaining appropriate physical distancing. Maximum occupancy limits would have to be followed and extra staff would be required to direct members of the public to and from the Council Chamber and viewing area.

Public Hearings are governed by different legislation than Council and committee meetings. Accordingly, Order M192 addresses Public Hearings separately. The applicable section of the Order is provided below for reference:

Public hearings - *Local Government Act*

13 (1) A public hearing under Part 14 [*Planning and Land Use Management*] or 15 [*Heritage Conservation*] of the *Local Government Act*, including a public hearing under section 29 (1) (b) [*land use and subdivision regulation*] of the *Islands Trust Act*, may be conducted by means of electronic or other communication facilities.

(2) For the purposes of providing notice of a public hearing to be conducted under subsection (1),

(a) any notice of the public hearing must include instructions for how to participate in the public hearing by means of electronic or other communication facilities,

(b) any material that is to be made available for public inspection for the purposes of the public hearing may be made available on line or otherwise by means of electronic or other communication facilities, and

(c) a reference to the place of a public hearing includes a public hearing that is conducted by means of electronic or other communication facilities.

(3) This section applies to delegated public hearings.

(4) This section applies despite the following provisions:

(a) section 124 [*procedure bylaws*] of the *Community Charter*;

(b) section 225 [*procedure bylaws*] of the *Local Government Act*;

(c) section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90;

(d) section 2 [*electronic meetings authorized*] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009;

(e) any applicable requirements in a procedure bylaw made under the *Community Charter*, the *local Government Act* or the *Islands Trust Act*.

Following issuance of Order M192, the Ministry has advised that “It is up to each local government to decide which format of public hearing is best suited to its

circumstances, whether it be electronic, in-person or a combination of both. Many of the considerations apply to in-person open meetings would also be applicable to public hearings held in-person. In-person public hearings are subject to both Order M192 and the PHO Order limiting the number of people in attendance and collecting (and retaining for 30 days) the contact information of those present.”

(Excerpt taken from Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020, Attachment 2 to this report)

In July, the City commenced holding Public Hearings electronically as permitted under Order M192, with the public providing input either through written submissions or attendance via Zoom virtual meeting software. Given the limited capacity in the Council Chambers for the public to attend on-site Public Hearings and other logistical issues, staff propose that Public Hearings continue to be conducted electronically. As Order M139 has been repealed and replaced by Order M192, staff are proposing the motion that was previously adopted by Council to hold Public Hearings electronically under Order M139 be amended, as permitted under Robert's Rules of Order, by way of motion to amend something previously adopted to reflect the current Ministerial Order which authorizes Public Hearings to be held by electronic means.

The City currently doesn't have the capability of combining in-person participation with electronic participation at Council and Committee meetings or Public hearings. Staff have identified a potential solution to provide for this option and hope to be able to implement the solution in the near future after the components have been purchased, installed and tested.

The Ministry has stated that under Order M192 “local governments may decide when they are ready to safely provide in-person public attendance at open meetings. We encourage local governments to consider a phased approach to making “best efforts” to provide public access to open meetings if needed.

A phased approach may include providing limited public access initially to open meetings, exploring other meeting venues and working toward providing added options (e.g. teleconferences or live streaming) for the public to participate in meetings if in-person attendance can't be accommodated under the PHO requirement that no more than 50 people be present.” (Excerpt taken from Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020, Attachment 1 to this report).

Recommendations

It is recommended that the following actions be taken for the holding of Council Meetings, Committee/Task Group Meetings and Public Hearings to comply with Order M192 to make best efforts to provide for attendance by the public at open meetings conducted in-person or by electronic means.

Council Meetings

- Hold Regular Council Meetings electronically at 3:00 pm until such time as the City has implemented technology to permit combined in-person/electronic participation by Council members and members of the public.
- Provide Notice of Regular Council Meetings on the City's website and by posting a notice outside the entry to City Hall.
- Continue to record Regular Council Meetings and post video recording on-line following the meeting.
- Allow Delegations and Community Spotlight presentations at Regular Council Meetings via Zoom.
- Explore options for Livestreaming Regular Council meetings to allow the public to view the proceedings in real time.
- Explore options for providing for public attendance at electronic Regular Council meetings.
- Explore the feasibility of allowing members of the public on-site to view electronic Regular Council meetings in a room in City Hall.

Committee / Task Group/Board of Variance Meetings

- Hold Committee/Task Group/Board of Variance Meetings electronically until such time as the City has implemented technology to permit combined in-person/electronic participation by Committee/Task Group members and members of the public.
- Develop webpage to post agendas of Committee/Task Group/Board of Variance Meetings on the City's website.
- Explore options for providing for public attendance at electronic Committee/Task Group/Board of Variance meetings.

- Explore the feasibility of allowing members of the public on-site to view electronic Committee/Task Group/ Board of Variance meetings in a room in City Hall.

Public Hearings

- Continue to hold Public Hearings electronically at 7:00pm until such time as the City has implemented technology to permit combined in-person/electronic participation by Council members and members of the public.
- In addition to Statutory Notice requirements, continue to provide Notice of Public Hearings on the City's website with information as to how to provide input either in writing or by attending the electronic Zoom meeting.
- Continue to livestream Public Hearings and provide video recording of the hearing on-line following the meeting.
- Explore the feasibility of allowing members of the public on-site to view/participate in electronic Public Hearings in a room in City Hall.

Notifying Public of Changes in Meeting Processes

- Provide notice in local newspaper, on City website and social media of change to the start time for Regular Council Meetings and manner in which Regular Council Meetings/Committee/Task Group Meetings and Public Hearings will be conducted for the time being.

BUDGET IMPLICATIONS:

There are additional costs to facilitate in-person or electronic meetings as well as potential costs to enable combined in-person /electronic participation at meetings in order to comply with PHO Orders and Ministerial Order M192:

- Overtime costs for two extra staff to facilitate attendance by members of the public at on-site Council meetings/ Committee/Task Group Meetings/Public Hearings outside of regular office hours - Approx. \$600 per meeting.

Additional staff would likely also be required in order to facilitate attendance on site by members of the public to view electronic Council meetings/Committee/Task Group Meetings/ Public Hearings in a room in City Hall if the meetings were held outside of regular office hours.

- Additional staff hours for front counter clerk and security for on-site meetings held outside of regular office hours: \$230 per meeting.

Additional staffing for front counter and security would likely also be required to facilitate attendance on-site by members of the public to view electronic Council meetings/Committee/Task Group Meetings/ Public Hearings in a room in City Hall if the meetings were held outside of regular office hours.

- Cost of technology to permit combined in-person/electronic participation by Council members and the public – \$10,000-\$20,000 depending on solution chosen (not spent yet).

ALTERNATIVES:

Currently we do not have the capability of combining in-person/electronic participation at open meetings and Public Hearings.

An alternative to having all meetings conducted by electronic means would be to hold some types of meetings electronically while holding other types on-site.

For example:

Hold Closed meetings/Working sessions electronically during the day and hold Regular Council Meetings on-site at 7:00 pm with public in attendance.

At this time, staff are not recommending this approach given the issues with holding on-site meetings as identified in this report.

Respectfully Submitted,



Kelly Kenney
Corporate Officer

Attachments:

1. Ministerial Order M192

To: Mayor and Councillors

Date: September 18, 2020

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2. Circular from Ministry of Municipal Affairs and Housing dated August 13, 2020 – Update about Order of the Provincial Health Officer on Gatherings and Events and Ministerial Order M192

CHIEF ADMINISTRATIVE OFFICER'S COMMENTS:

I support the recommendation.



Francis Cheung, P. Eng.
Chief Administrative Officer