



Committee of the Whole Report

For the Meeting of June 25, 2020

To: Committee of the Whole

Date: June 22, 2020

From: Chris Coates, City Clerk

Subject: Ministerial Order M192 – Open Meetings Public Attendance

RECOMMENDATION

That Council, pursuant to Ministerial Order M192 of the Minister of Public Safety and Solicitor General, passed June 17, 2020, authorize that until there are changes to the restrictions on gatherings and social distancing requirements, all open meetings of Council, including Committee of the Whole shall be conducted without members of the public present in council chambers. That openness, transparency, accessibility and accountability of these meetings are ensured subject to the provision of:

1. Full live-stream webcasting and archived meetings on the City's website, including closed captioning services for all open meetings.
2. Public participation by electronic means for request to address council and question period for regular meetings of council.
3. Remote participation for opportunities for public comment and public hearings through:
 - a) Written submissions
 - b) Pre-recorded video submissions
 - c) Pre-registered speakers list (remote participation)
 - d) Real-time call-in during the hearing

EXECUTIVE SUMMARY

Since the COVID-19 pandemic declaration in March, Council has considered and approved several process changes for meetings of council that typically involve in person participation in accordance with directives of the Provincial Health Officer. Initially public participation components of the meeting agendas were suspended covering off the items of:

- Question Period,
- Request to Address Council
- Opportunities for Public Comment
- Public Hearings

Since then the previous Ministerial Order enabling electronic participation has allowed a graduated re-instatement of the processes albeit through electronic participation means. The City has for many years maintained a full live stream webcast of open meetings including an archived record of these webcasts. In 2019 closed captioning was added to the webcasts.

The purpose of this report is to present Council with information and recommendations in connection with Ministerial Order M192 of the Minister of Public Safety and Solicitor General passed on June 17, 2020 and conveyed to municipalities June 19, 2020. The new Order (No. 3), attached as Appendix A, replaces the previous Order M139 (No. 2) attached as Appendix B covering local government meetings and bylaw adoptions.

The new Order places an onus on local governments to consider and where practical, implement a return of in-person public attendance at meetings of council, or where that is not practical, pass a resolution outlining the ways in which the municipality complies with open meeting requirements. In addition, and of less impact, the expedited Bylaw adoption process is significantly reduced to only very specific Bylaws that can be adopted in the same meeting they are introduced.

When public health officials established the prohibition on gatherings of more than 50 people, most local governments reacted promptly to eliminate in-person attendance by the public in meetings of council and moved toward electronic participation. As public hearings and public participation were restored earlier this month through electronic participation and due to the City's webcasting practices, the City is fully compliant with all open meeting protocols involving requirements for public participation. It was public participation that initially, and for a short time had been suspended while arrangements to establish alternate methods for the public were tested.

While the new Order seeks to bring back in person attendance at Council meetings where possible, doing that would pose significant challenges to effectively manage the expected attendees along with the staff and Council while maintaining the required social distancing measures. The maximum number of public attendees would therefore have to be capped at 10 people to meet these requirements.

If a municipality does not allow in-person attendance, the Order requires the local government to pass a resolution:

- stating the basis for holding the meeting without public attendance
- the means by which council is ensuring openness, transparency, accessibility and accountability,
- and that the meeting is not to be considered closed to the public.

Because of the high degree of remote participation and meeting viewing opportunities that are offered now, and that only opportunities for public comment and public hearings require live time decisions by the public and are accommodated in the City's processes, staff are recommending Council pass a resolution that continues meetings without in-person participation until such time as there is the opportunity for much greater public attendance in city hall through public health directives.

PURPOSE

The purpose of this report is to present council with information and recommendations in relation to the new Ministerial Order covering public attendance at meetings of Council and a reduction in the expedited adoption of Bylaws.

BACKGROUND

On March 16, 2020, the British Columbia Medical Health Officer passed an Order that prohibits gatherings in excess of 50 people. Shortly after this order and based on further provincial guidance requiring physical distancing during the pandemic, the City of Victoria suspended public participation opportunities meetings until further notice. This was part of the following motion which was passed at the March 19, 2020 Council meeting:

Council Processes

1. *That Council give first second and third reading to Council Procedures Amendment (No. 1) Bylaw No. 20-053.*
2. *That staff undertake required advertising of the proposed Bylaw in accordance with section 124(3) of the Community Charter.*
3. *That Council suspend the holding of Public Hearings in accordance with the Class Order on COVID-19 from the Office of the Provincial Health Officer until further notice.*
4. *That Council suspend the Question Period section of Council meeting agendas for in person participation until further notice.*
5. *That Council authorize adjustments to the Request to Address Council process including:*
 - a. *Limiting speakers up to 6 delegations at a Council meeting through either:*
 1. *Telephone participation where possible*
 2. *The reading out of written submissions and/or the broadcasting of recorded submissions, if necessary.*

That this temporary measures in 3, 4 and 5 be reviewed no later than April 16th.

These measures were reviewed at the April 16, 2020 Committee of the Whole meeting where staff were directed to report back pending information from the Ministry of Municipal Affairs and Housing relative to Public Hearings, by May 14, 2020.

On April 2, 2020 Council directed staff to report back on modifications to development application processes to enable the continued processing of development applications through the COVID-19 pandemic. This included examining alternate means of gathering public input for public hearings and Opportunities for Public Comment (OPC) as well as exploring opportunities to waive these requirements in certain circumstances. Two opportunities for public comment took place using written submissions for public input.

On May 1, 2020, Ministerial Order M083 (No. 1) was repealed and replaced by Ministerial Order M139 (No. 2) attached as Appendix B, along with the associated guidance to enable local governments to hold meetings and Public Hearings via electronic or other communication facilities while complying with prohibitions on mass gatherings and recommendations on physical distancing.

On May 28, 2020 Council approved proceeding with full electronic participation for public hearings, opportunities for public comment, request to address council and question period with the following motion:

That Council:

1. *Authorize an amended process and move forward with public hearings and opportunities for public comment in accordance with the Ministerial Order M139 for receiving oral submissions during public hearings by allowing the public to participate via live phone and pre-recorded video as a substitute to in-person attendance while authorized by the provincial government.*

2. *Restore the public request to address Council and question period to regular Council meetings by electronic participation or written submissions during the COVID-19 pandemic.*
3. *Restore the holding of twice monthly evening council meetings with remote participation in Public Hearings and Opportunities for Public Comment, Request to Address Council and Question Period.*
4. *That staff proactively communicate opportunities for public participation in the City of Victoria public processes and information regarding all public hearings be sent to all CALUCs.*
5. *That staff provide a verbal progress report on public participation at the June 18 COTW meeting.*

On June 17, 2020, Ministerial Order M192 attached as Appendix A, was passed by the provincial government and conveyed to municipalities June 19th. This new Order replaces M139, which is attached as Appendix B, and requires local governments to consider restoring in person participation at meetings of council where practical, and reduces the ability to introduce and adopt all bylaws at the same meeting, leaving the authority to do that to a small number of financially oriented bylaws.

ISSUES AND ANALYSIS

In Person Attendance

The new Order places an onus on municipalities to examine and where practical, provide an opportunity for the public to attend meetings in person. Social distancing requirements are still in place, along with the prohibition on gatherings of more than 50 people. A typical meeting of Council has 22 people in Council chambers between the (reduced) staff compliment and members of council.

The maximum capacity of council chambers while maintaining social distancing requirements is with et current seating arrangements is 32. This leaves room for approximately 10 members of the general public.

Staff have previously noted process concerns around limiting the number of public who may attend a meeting. This is especially relevant to public hearings where the highest degree of public attendance is to be expected and the processes are the most rigid and technically significant. Public hearings are, and the City's modified process for them ensures that they remain, an interactive process and that the public may choose to speak in real time, rather than pre-registered or pre-submitted presentations. This is a cornerstone of a public hearing. Staff do not recommend allowing only a select number of the public participants to attend, or cycling members of the public in and out of the building after they speak as it tends to be counter to the intent of hearing in the first place.

Despite the Ministry guidance document noting that limiting in-person attendance is considered to be acceptable from their perspective, it creates an uneven playing field for any public hearing participants whose first choice may be to attend in person, but because of the number of people permitted inside cannot attend in person. Staff continue to have procedural concerns in these situations. Equality amongst participants is not achieved with a hard cap, and the free flow of information is interrupted if participants are ushered in and out. Council may consider that providing the same opportunity to each participant is an important process consideration.

There would also be additional staff required to manage the public attendance that would further reduce the number of public able to attend. Management of in person attendees would involve such

things as marshalling people and monitoring social distancing, cleaning of microphone and podium between speakers, and cleaning of seating areas.

Order M192 requires a municipality that chooses not to have the public attend in person must pass a resolution that the meeting or meetings to which it applies identifying:

- *The basis for holding the meeting without members of the public is attendance;*
- *The means by which the council is ensuring openness, transparency, accessibility and accountability;*
- *And that the meeting is not considered to be closed to the public.*

OPTIONS AND IMPACTS

Option 1 – Continue without in person public participation until gathering restrictions limits are lessened and pass a resolution in accordance with the Ministerial Order M192. (Recommended)

This option contemplates a single council resolution covering meetings for the foreseeable future to meet the intent of the Ministerial Order and enable meetings to continue to occur with the full suite of open meeting protocols and remote public participation options which are in place now.

Option 2 – Invite a select number of in-person participants to Council chambers, limited by the social distancing requirements of 2 metre physical distancing.

This option contemplates a limited number of participants allowed in each meeting. Policy should be established before exercising such an option to ensure fairness to members of the public and that only a limited number of attendees would be permitted to each meeting. As well procedures to manage participants safety through social distancing management and facility cleaning would be important to detail with this option. Further information would have to be pulled together to better inform a decision to move in this direction.

Accessibility Impact Statement

Under normal circumstances the public physically travels to observe and or participate at City Hall. Providing remote participation is more physically accessible to the public, although requires individuals having access to a phone or computer. Therefore, accessibility may increase for some but decrease for others. Requests for additional accommodation will be considered on a case-by-case basis.

Impacts to Financial Plan

The recommended approach does not impact the 2020 Financial Plan.

CONCLUSIONS

The new Ministerial Order has prompted an earlier review of the City's processes. As noted in the June 18, 2020 verbal report back to Committee of the Whole on public participation opportunities, staff are continuing to explore appropriate alternatives for in person participation. The limit on gatherings to less than 50 people and the social distancing requirements are significant impediments to in person attendance at this time. Council may consider that the suite of options for the public to participate and to do so in real time make meetings of council highly transparent and

open and the processes covered by these meetings to be fair to all participants.

Respectfully submitted,



Chris Coates
City Clerk



Susanne Thompson
Deputy City Manager/CFO

Report accepted and recommended by the City Manager:



Date: June 22, 2020

List of Appendices

- Appendix A: Ministerial Order M192 along with the associated guidance
- Appendix B: Ministerial Order M139