

PROVINCE OF BRITISH COLUMBIA

**ORDER OF THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL**

Emergency Program Act

Ministerial Order No. M139

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020;

AND WHEREAS local governments, including the City of Vancouver, and related bodies must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of members and employees of local government and related bodies and members of the public;

AND WHEREAS it is recognized that public participation in local governance is an essential part of a free and democratic society and is important to local governments' purpose of providing good government to communities;

AND WHEREAS the threat of COVID-19 to the health and safety of people has resulted in the requirement that local governments and related bodies implement necessary limitations on this public participation;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that

- (a) the Local Government Meetings and Bylaw Process (COVID-19) Order made by MO 83/2020 is repealed, and
- (b) the attached Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 is made.

May 01, 2020

Date



Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; MO 83/2020; OIC 207/2020

LOCAL GOVERNMENT MEETINGS AND BYLAW PROCESS (COVID-19) ORDER NO. 2

Division 1 – General

Definitions

- 1 In this order:
- “**board**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**council**” has the same meaning as in the Schedule of the *Community Charter*;
 - “**improvement district**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**local trust committee**” has the same meaning as in section 1 of the *Islands Trust Act*;
 - “**municipality**” has the same meaning as in the Schedule of the *Community Charter*;
 - “**municipality procedure bylaw**” has the same meaning as “procedure bylaw” in the Schedule of the *Community Charter*;
 - “**regional district**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**regional district procedure bylaw**” means a procedure bylaw under section 225 of the *Local Government Act*;
 - “**trust body**” means
 - (a) the trust council,
 - (b) the executive committee,
 - (c) a local trust committee, or
 - (d) the Islands Trust Conservancy,as defined in the *Islands Trust Act*;
 - “**Vancouver council**” has the same meaning as “Council” in section 2 of the *Vancouver Charter*;
 - “**Vancouver procedure bylaw**” means a bylaw under section 165 [*by-laws respecting Council proceedings and other administrative matters*] of the *Vancouver Charter*.

Application

- 2 (1) This order only applies during the period that the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* and any extension of the duration of that declaration is in effect.
- (2) This order replaces the Local Government Meetings and Bylaw Process (COVID-19) Order made by MO 83/2020.

Division 2 – Open Meetings

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*, is not required to allow members of the public to attend an open meeting of the council or body.
- (2) For the purposes of Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter*, if a council or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) 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.

Open meetings – regional districts

- 4 (1) A board, a board committee established under section 218 [*appointment of select and standing committees*] of the *Local Government Act*, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter* as that section applies under section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, is not required to allow members of the public to attend an open meeting of the board, committee or body.
- (2) For the purposes of Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter* as that Division applies to a regional district under section 226 of the *Local Government Act*, if a board, a board committee or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite
 - (a) Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter*,
 - (b) section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Open meetings – Vancouver

- 5 (1) The Vancouver council, or a body referred to in section 165.7 [*application to other city bodies*] of the *Vancouver Charter*, is not required to allow members of the public to attend an open meeting of the council or body.
- (2) For the purposes of section 165.1 [*general rule that meetings must be open to the public*] of the *Vancouver Charter*, if the Vancouver council or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite

- (a) section 165.1 of the *Vancouver Charter*, and
- (b) any applicable provision in the Vancouver procedure bylaw.

Open meetings – trust bodies

- 6 (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, is not required to allow members of the public to attend an open meeting of the trust body or board of variance.
- (2) For the purposes of section 11 [*procedures to be followed by local trust committees*] of the *Islands Trust Act*, if a trust body or board of variance does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite
 - (a) section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90, and
 - (b) any applicable requirements in a procedure bylaw of a trust body.

Division 3 – Electronic Meetings

Electronic meetings – municipalities

- 7 (1) A council, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter*, may conduct all or part of a meeting of the council or body by means of electronic or other communication facilities.
- (2) A member of a council or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) Section 128 (2) (c) and (d) [*electronic meetings and participation by members*] of the *Community Charter* does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section.
- (4) This section applies despite
 - (a) section 128 of the *Community Charter*, and
 - (b) any applicable requirements in a municipality procedure bylaw of a council.

Electronic meetings – regional districts

- 8 (1) A board, a board committee established under section 218 [*appointment of select and standing committees*] of the *Local Government Act*, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter* as that section applies under section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, may conduct all or part of a meeting of the board or committee by means of electronic or other communication facilities.
- (2) A member of a board, board committee or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) Section 2 (2) (d) and (e) [*electronic meetings authorized*] of the *Regional District Electronic Meetings Regulation*, B.C. Reg. 271/2005, does not apply in respect

of a meeting conducted by means of electronic or other communication facilities under this section.

- (4) This section applies despite
 - (a) section 221 [*electronic meetings and participation by members*] of the *Local Government Act*,
 - (b) the Regional District Electronic Meetings Regulation, B.C. Reg. 271/2005, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Electronic meetings – Vancouver

- 9
 - (1) The Vancouver council, or a body referred to in section 165.7 [*application to other city bodies*] of the *Vancouver Charter*, may conduct all or part of a meeting of the council or body by means of electronic or other communication facilities.
 - (2) A member of the Vancouver council or other body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) Section 2 (2) (c) and (d) [*electronic meetings authorized*] of the City of Vancouver Council Electronic Meetings Regulation does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section.
 - (4) This section applies despite
 - (a) section 164.1 [*meeting procedures*] of the *Vancouver Charter*,
 - (b) the City of Vancouver Council Electronic Meetings Regulation, B.C. Reg. 42/2012, and
 - (c) any applicable provision in the Vancouver procedure bylaw.

Electronic meetings – improvement districts

- 10
 - (1) An improvement district board, or a committee of an improvement district board appointed or established under section 689 [*appointment of select and standing committees*] of the *Local Government Act*, may conduct all or part of a meeting of the improvement district board or committee, other than an annual general meeting, by means of electronic or other communication facilities.
 - (2) A member of an improvement district board or committee of an improvement district board who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) This section applies despite
 - (a) section 686 [*meeting procedure – improvement district board*] of the *Local Government Act*, and
 - (b) any applicable requirements in a procedure bylaw of an improvement district board.

Electronic meetings – trust bodies

- 11** (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, may conduct all or part of a meeting of trust body or board of variance by means of electronic or other communication facilities.
- (2) A member of a trust body or board of variance who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) This section applies despite
- (a) section 2 [*electronic meetings authorized*] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009, and
 - (b) any applicable requirements in a procedure bylaw of a trust body or applicable to a board of variance.

Division 4 – Timing Requirements

Timing requirement for bylaw passage – municipalities

- 12** Despite section 135 (3) [*requirements for passing bylaws*] of the *Community Charter*, a council may adopt a bylaw on the same day that a bylaw has been given third reading.

Timing requirement for bylaw passage – regional districts

- 13** Despite section 228 [*bylaw adoption at same meeting as third reading*] of the *Local Government Act*, a board may adopt a bylaw described in that section at the same meeting at which the bylaw passes third reading if the motion for adoption receives the majority of the votes cast.

Timing requirement for bylaw passage – trust bodies

- 14** Despite section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90, a trust body may adopt a bylaw on the same day that a bylaw has been given third reading.

Division 5 – Public Hearings

Public hearings – Local Government Act

- 15** (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 online 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*.

Public hearings – Vancouver Charter

- 16**
- (1) A public hearing under Division 2 [*Planning and Development*] of Part 27 [*Planning and Development*] of the *Vancouver Charter* 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 online 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 despite
 - (a) section 566 [*amendment or repeal of zoning by-law*] of the *Vancouver Charter*, and
 - (b) any applicable provision in the Vancouver procedure bylaw.

Division 6 – Deferral of Annual Requirements

Annual general meeting and requirements – improvement districts

- 17**
- (1) An improvement district may defer an annual general meeting that is required under section 690 [*annual general meeting – improvement districts*] of the *Local Government Act* to a date not later than December 31, 2020.
 - (2) An improvement district may defer the preparation of financial statements required under section 691 [*annual financial statements*] of the *Local Government Act* to a date not later than December 31, 2020.
 - (3) Despite the date referred to in section 691 (5) of the *Local Government Act*, an improvement district may submit to the inspector the audited financial statements of the improvement district for the preceding year and any other financial

information required by the inspector at the time of the annual general meeting of the improvement district.

- (4) If an annual general meeting of an improvement district is deferred under subsection (1) of this section and the term of an improvement district trustee would be expiring and the vacancy filled at that meeting, the term of the improvement district trustee is extended until the annual general meeting is held.
- (5) This section applies despite
 - (a) Division 3 [*Governance and Organization*] of Part 17 [*Improvement Districts*] of the *Local Government Act*, and
 - (b) any applicable provisions in a letters patent for an improvement district.



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