Committee of the Whole Report
For the Meeting of May 14, 2020

To:	Committee of the Whole	**Date:**	May 14, 2020
From:	Karen Hoese, Director of Sustainable Planning and Community Development Chris Coates, City Clerk		
Subject:	**Public Hearings and Opportunities for Public Comment during the COVID-19 Pandemic**		

RECOMMENDATION

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.

EXECUTIVE SUMMARY

Since the COVID-19 pandemic declaration in March, Council has considered and approved several processes for meetings of council that typically involve in person participation.

The purpose of this report is to present Council with information and recommendations on alternate means of receiving public feedback during Public Hearings and Opportunities for Public Comment, and other public participation opportunities at Council meetings. This is in response to the direction that Council provided at the April 2, 2020 Committee of the Whole Meeting related to examining modifications to development application processes in order to continue to process applications through the COVID-19 pandemic while complying with public health orders and maintaining transparency and accountability of land use processes.

It is recommended for Council's consideration that the practice of allowing the public to phone in and provide an oral submission during a Public Hearing or Opportunity for Public Comment, as a substitute for the standard practice of receiving these oral submissions in person, be initiated for development applications. The public would also have the option of providing a pre-recorded video in advance of the meeting, to be played at the hearing. The existing practices around receiving

written submissions, mailing notices to adjacent neighbours (and the Community Association Land Use Committee), posting signs on site and placing notices in the newspaper and on the City website would be maintained.

This will enable development applications to advance through the review process and be considered by Council with the benefit of receiving comments from the public while maintaining physical distancing and compliance with the Provincial Health Officer's Order prohibiting mass gatherings. No additional considerations around waiving OPC or public hearings are included in this report, as the recommendations would allow for public hearings to resume, thereby addressing the concerns around potential delay in moving development applications forward.

Reinstating public hearings could also help with increasing the supply of affordable and rental housing, maintaining a healthy economy, and enhancing the ability of the development and trades industries to both weather and recover from the COVID-19 pandemic.

This report further includes a review of the interim COVID-19 Council meeting measures that have already been put in place. Staff are recommending that these electronic participation alternatives can also be applied to the public's request to address Council and question period, enabling those to be restored to the unrestricted levels that existed before the pandemic caused temporary changes.

PURPOSE

The purpose of this report is to present Council with information and recommendations on alternate means of receiving public comments as a substitute for the standard practice of inviting physical attendance at Public Hearings and Opportunities for Public Comment (OPC) within City Hall and to report back on interim Council processes resulting from the COVID-19 pandemic.

BACKGROUND

On March 16, 2020, the British Columbia Medical Health Officer passed an order (Attachment A) 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 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.

At the March 26, 2020 Council meeting, further process changes occurred with respect to the suspension of evening Council meetings through the following motion:

That Council:

1. *Direct staff to amend the 2020 Council and Committee of the Whole meeting Schedule until further notice to provide for:*
   a. *the suspension of evening Council meetings effective immediately;*
   b. *conducting Council meetings during the day following Committee of the Whole;*
   c. *conducting both Council and Committee of the Whole on the second and fourth Thursday of each month beginning April 9, 2020.*
2. *Direct staff to give public notice of the revised Meeting Schedule in accordance with Section 127 (1)(b) of the Community Charter.*
3. *Forward the March 26th Council meeting agenda items to the daytime Council meeting April 2, 2020.*

On March 26, 2020, Ministerial Order No. M083 (Attachment B) gave municipalities the ability to hold electronic City Council meetings and committee meetings without the public being physically present. The order will be in place for the duration of the state of emergency but applied only to open meetings and not to public hearings.

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. The staff report and motion are attached as Attachment D.

On May 1, 2020, Ministerial Order M083 was repealed and replaced by Ministerial Order M139 along with the associated guidance (Attachment C) 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.

ISSUES AND ANALYSIS

1. Provincial Orders

The direction from the province has been strongly worded to:

- avoid in-person meetings altogether and hold virtual meetings instead;
- stay close to home as much as possible; and
- work from home if possible, and if that is not possible, maintain physical distancing and stay home when sick.

To date, staff have been focused on moving forward under these conditions to satisfy all the requirements and most importantly to ensure the health and safety of the public, and of City staff and Council members.

The Ministerial Order is in effect only during the state of provincial emergency, after which the ability to conduct electronic public hearings is uncertain. Staff will be closely monitoring this situation and will continue to examine ways to consider safe and effective ways to re-establish in person participation and will report back to Council as the circumstances evolve in that regard. Based on the current provincial directives however, it is not considered safe or appropriate to institute in-person participation.

2. Local Government Act and Land Use Procedures Bylaw

The following section outlines the Public Hearing and Opportunity for Public Comment (OPC) requirements, including those regarding signs and notices, as stipulated in the *Local Government Act* (LGA) and *Land Use Procedures Bylaw* (LUPB).

Public Hearing Requirements

The *Local Government Act* legislates the specific provisions and requirements for Public Hearings to provide citizens with a reasonable opportunity to be heard before the adoption of *Official Community Plan* bylaw amendments, zoning bylaw amendments, phased development agreement bylaws and bylaws for the early termination of land use contracts.

Public Hearings may be waived if a proposed amendment to a zoning bylaw is aligned with the *Official Community Plan*, however, in practice Council has consistently held Public Hearings in all of these circumstances. Staff have reviewed the timelines associated with holding or waiving public hearings, and note that there are little or no time savings achieved from waiving public hearing requirements as all the steps related to notification, advertising and signage, in accordance with the requisite timeframes, must still be maintained.

Opportunity for Public Comment Requirements

In contrast to Public Hearings, under the *Local Government Act* (LGA), an Opportunity for Public Comment is <u>not</u> a legislative requirement for temporary use permits (TUP), development permits with variances (DPV), development variance permits (DVP) or heritage alteration permits with variances (HAV). Each municipality in British Columbia has the authority to determine if there should be a public forum associated with the approval of these permits. The City's Land *Use Procedures Bylaw* (LUPB), states the following with respect to the City's requirements for an Opportunity for Public Comment:

31. Council <u>may</u> provide an opportunity for public comment before passing a resolution to issue:
- *a. a development variance permit, other than a permit that varies a bylaw under Section 528 of the Local Government Act;*
- *b. a development permit with variances;*
- *c. a heritage alteration permit with variances;*
- *d. a temporary use permit.*

In practice, Council has consistently held in-person OPC before considering approval of these types of applications, unless there is a concurrent Public Hearing held for the same proposal (i.e. if a rezoning is also required). Similarly to the public hearing process, all the steps related to notification, advertising and signage, in accordance with the requisite timeframes, must still be maintained; therefore, there are little or no time savings achieved from waiving OPC requirements.

Sign and Notification Requirements

The table below summarizes the LGA and LUPB requirements related to notification and sign posting for Public Hearings and Opportunities for Public Comment. To continue to engage the community and nearby residents, the practice of mailing notices and posting signs on site would be maintained. However, instead of providing notification of an in-person Public Hearing or OPC, the notice would provide information on how comments can be shared through other communication channels such as mail, email, phone or pre-recorded video (see below). The notice would also indicate that any material that is to be made available for public inspection for the purposes of the Public Hearing or OPC would be available online. The sign requirements would remain the same except applicants would be emailed the sign for printing to avoid them having to come to City Hall to pick it up.

Table: Summary of Notice and Sign Requirements

Application Type	Local Government Act (LGA) Requirements		City Land Use Procedures Bylaw (LUPB) Requirements	
	Advertisement in two consecutive issues of a newspaper	**Notification of Public Hearing or Council Meeting to consider Variances Mailed to Owners and Occupiers of Subject Property**	**Sign Posted on Site**	**Notification of Public Hearing or Opportunity for Public Comment Mailed to Owners and Occupiers**
Official Community Plan (OCP) Amendment	✓	✓	✓ 10 days prior to first Committee of the Whole review	✓ Subject Site and Properties within 100m Notified
Rezoning	✓	✓	✓ 10 days prior to first Committee of the Whole review	✓ Subject Site and Properties within 100m Notified
Temporary Use Permit	✓	✓	✓ 10 days prior to Opportunity for Public Comment	✓ Subject Site and Adjacent Properties Notified
Development Variance Permit	-	✓	✓ 10 days prior to Opportunity for Public Comment	✓ Subject Site and Adjacent Properties Notified
Development Permit with Variance(s)	-	-	✓ 10 days prior to Opportunity for Public Comment	✓ Subject Site and Adjacent Properties Notified
Development Permit	-	-	-	-
Heritage Alteration Permit with Variance(s)	-	-	✓ 10 days prior to Opportunity for Public Comment	✓ Subject Site and Adjacent Properties Notified
Heritage Alteration Permit	-	-	-	-

3. Alternate Means of Receiving Public Feedback

The *Land Use Procedures Bylaw* and the *Council Procedures Bylaw* do not prescribe the format for receiving oral submissions during Opportunities for Public Comment or Public Hearings, so the City maintains some flexibility as to how these oral submissions are received. In addition, Ministerial Order M139 supersedes council procedure bylaws in terms of the format for Public Hearings and electronic council meetings. Having said that, staff recommend that Council provide policy direction to amending the format for receiving in-person submissions during the pandemic.

Phone In and Pre-Recorded Video Submissions

It is recommended that the public be permitted to phone into a Council meeting at the point in the meeting where an in-person Public Hearing or OPC would normally occur. The option for the public to provide a pre-recorded video in advance, which would then be played during the meeting, would also be offered. The City has the technology to receive live phone calls and pre-recorded videos while hosting an electronic Council meeting and staff can prepare guidance to assist the public with understanding how to call in. Other means of providing comments to Council in advance of a Council meeting will remain in place, including submission of emails and physical letters.

Sharing Comments through Live Video

At this time, it is not recommended that the public be permitted to phone in with live video as it involves more complicated operational details that have yet to be worked out, such as privacy, technology, and staffing, which would delay restoring Public Hearings and Opportunities for Public Comment. However, staff will continue to work to implement this over the longer term.

Sharing Comments In-Person

Due to the public health orders that are currently in place it is not recommended that any form of in-person Public Hearings be reinstated at this time. Staff will continue to monitor the situation and explore opportunities to expand in-person attendance at hearings as restrictions are lessened.

4. Waiving Public Hearings or Opportunity for Public Comment

In accordance with Council's direction of April 2, 2020, staff examined the option of waiving Public Hearings and Opportunities for Public Comment. The option for the public to phone into a Council meeting as a substitute for providing oral in-person submissions at the Public Hearing or Opportunity for Public Comment addresses concerns around potential delay in moving development applications forward. Further, there would be minimal or no time savings associated with doing so because legislation and the LUP Bylaw requires that standard signage and notification with the requisite timeframes be maintained. Also, waiving hearing requirements on an ad hoc basis may increase the chance of legal challenge.

5. Current Applications

At the time of writing this report, there are currently eight applications that are ready for a Public Hearing and consideration for approval by Council. In addition to these, 11 more proposals have been forwarded by Committee of the Whole to a Public Hearing but are still in the process of

completing the necessary conditions, such as legal agreements, before being ready to proceed to a Council meeting. For Opportunity for Public Comment, two are ready and four are still satisfying the necessary conditions. Appendix E contains a list of these applications.

Any changes to help facilitate the development application process moving forward could help with increasing the supply of affordable and rental housing as well as maintaining a healthy economy, but it is important to ensure that appropriate opportunities for comment occur in keeping with the legislative requirements.

6. COVID-19 Pandemic Interim Council Processes Review

Since the initial suspension of Public Hearings and evening Council meetings in March, the COVID-19 pandemic has resulted in a significant resource commitment by staff in most departments throughout the City. As that transitions back toward a more conventional focus and looking ahead to recovery, a review of the interim measures is prudent and, as noted above, was directed by Council. Valuable technological experience has been gained over the last few weeks that enable the City to move processes forward, and ultimately respond to Strategic Plan items around electronic participation, which can be established for the long term should Council wish to. This will be reported on separately in the coming weeks.

Request to Address Council and Question Period

It is important to keep in mind that the Provincial State of Emergency is still in effect along with Public Health Orders limiting the gathering of people and requirements for social distancing as noted above.

To this point, there has been little public uptake of opportunities for requests to address Council during Council meetings and Public Hearings have been suspended. The Provincial Order permitting electronic participation at Public Hearings opens the door to review the suite of interim measures. Rationale around the interim measures was outlined in the earlier reports on Council processes attached as Appendices F and G. In short, the rationale was two-fold: to both respond to the closing of City Hall to the public to maintain compliance with the Health Orders, as well as to maintain the integrity of the processes of the City.

Staff recommend that both these practices can now be restored using electronic participation methods or by written submissions, while the state of emergency and Health Orders remain in place.

Evening Council Meetings

When Council considered the initial suspension of evening council meetings it was the result of the Health Orders that necessitated the suspension of public hearings and in person public participation due to the limits on gatherings in excess of 50 people, social distancing requirements and encouraging people to stay at home as much as possible. The experience gained with electronic participation, and more importantly, the Ministerial Order now permitting electronic public hearings, enables the restoration of public participation by electronic means. Council may consider that is more appropriate to occur in the evening as has traditionally been the City's practice.

Staff are recommending resumption of evening meetings and piloting the Strategic Plan Action of holding public hearing and public participation only sections during these evening meetings, to enable the broadest degree of public participation while complying with the Health Orders that remain in effect.

Alternatively, in view of the large number of persons working remotely along with the electronic participation options, Council could consider continuing with the suspension of evening meetings until circumstances around the Health Orders change as outline in Option 2 in this report.

OPTIONS AND IMPACTS

Option 1

Proceed with Electronic Public Hearings and Opportunities for Public Comment, Restore Request to Address Council and Question Period electronically and in writing, and resume Evening Council meetings for public hearing and public participation sections of the agenda. ***(Recommended)***

That Council:

1. authorize an amended process and move forward with public hearings in accordance with the Ministerial Order M139 for receiving oral submissions during Public Hearings and Opportunities for Public Comment by allowing the public to participate via live phone and pre-recorded video as a substitute to in-person attendance at City Hall while authorized by the provincial government
2. restore 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 Public Hearings and Opportunities for Public Comment, Request to Address Council and Question Period.

This option would enable development applications to advance through the review process and be considered by Council with the benefit of public input. Accessibility of meetings for those with access to phones or the ability to make video recordings is enhanced. This will assist with the City's ability to weather the economic impacts and ultimately recover from the pandemic and move toward a more conventional process.

Option 2

Proceed with Electronic Public Hearings and Opportunities for Public Comment, Restore Request to Address Council and Question Period electronically and in writing

That Council:

1. authorize an amended process and move forward with public hearings in accordance with the Ministerial Order M139 for receiving oral submissions during Public Hearings and Opportunities for Public Comment by allowing the public to participate via live phone and pre-recorded video as a substitute to in-person attendance at City Hall
2. restore request to address Council and question period to regular council meetings by electronic participation or written submissions during the COVID-19 pandemic.

This option would achieve the same outcomes as noted in Option 1, except for the restoration of evening meetings.

Option 3

That Council decline the staff recommendations. This option is not recommended. Declining the staff recommendation would put development applications that require a Public Hearing or Opportunity for Public Comment on indefinite hold, which would have negative consequences with regard to the provision of housing, the overall economy and positioning the City for recovery after COVID-19.

Accessibility Impact Statement

Under normal circumstances, Public Hearings and Opportunities for Public Comment are held at City Hall, requiring the public to physically travel to observe and or participate. Providing the opportunity to phone in or pre-record videos would be more physically accessible to the public, although this would require 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 (see Appendix H *Interim Public Hearing Speaking Accommodation Policy,* 2019).

2019 – 2022 Strategic Plan

The Strategic Plan contains a number of objectives which depend on viable and timely development activity. Therefore, although the proposed recommendation does not have direct Strategic Plan implications, any measures that promote continuation of processing of land use applications are likely to help achieve numerous Strategic Plan objectives, including increased supply of affordable and rental housing as well as maintaining a healthy economy.

Impacts to Financial Plan

The City of Victoria has a license to operate a web-based meeting program called Microsoft Teams, which has worked well for a range of internal and external meetings. It is unlikely that the City will have to purchase any additional software licenses, so there are no anticipated impacts to the City's financial plan as a result of holding Public Hearings and Opportunities for Public Comment electronically; however, in terms of staff resources, this approach is more labour intensive.

CONCLUSIONS

This report recommends that Council direct staff to initiate the practice of allowing the public to phone into a Council meeting or provide pre-recorded videos as a substitute for the standard practice of receiving in-person oral submissions during Public Hearings and Opportunities for Public Comment. All other established practices related to mailing notices, posting signs and placing notification in newspapers and on the City's website would be maintained. These steps will allow applications to continue to move forward through the process and receive Council consideration while still inviting input from the public. The recommendations outlined in this report will enhance the ability of the development and trades industries to both weather and recover from the COVID-19 pandemic. This report also includes a review of the interim COVID-19 Council meeting measures that have already been put in place and recommends that Council restore the request to address Council and question period to regular Council meetings.

Respectfully submitted,

Rob Bateman
Senior Process Planner
Development Services

Karen Hoese, Director
Sustainable Planning Community Development Department

Chris Coates, City Clerk
Legislative Services Department

Report accepted and recommended by the City Manager:

Date: May 12, 2020

List of Attachments

- Attachment A: March 16, 2020 Order of the Provincial Health Officer on Mass Gatherings
- Attachment B: March 26, 2020, Ministerial Order No. M083
- Attachment C: May 1, 2020, Ministerial Order M139 along with the associated guidance
- Attachment D: COTW report on Development Application Processes
- Attachment E: List of current applications
- Attachment F: Legislative COTW report on Council Processes
- Attachment G: Legislative COTW report on Council Processes
- Attachment H: *Interim Public Hearing Speaking Accommodation Policy,* 2019