

Joseph Fernandez

From: Deputy Minister, MAH:EX <MAH.deputyminister@gov.bc.ca>
Sent: March 30, 2020 9:42 AM
Cc: Halls, Lori D EMBC:EX
Subject: Guidelines for Local Governments Operating under Emergency Program Act Ref: (# 253096)
Attachments: LG_order guidelines_final.pdf

Mayors, Regional Chairs and Chief Administrative Officers:

As you know, on March 18, 2020, following the public health emergency declared by Dr. Bonnie Henry, the Province of British Columbia declared a [provincial state of emergency](#) to support COVID-19 response. Last Thursday March 26, 2020, the Minister of Public Safety and Solicitor General, the Honourable Mike Farnworth, issued a series of additional orders to further support the government-wide approach to COVID-19 response and recovery, which included securing critical supply chains, making sure critical infrastructure and materials are readily available, ensuring people have access to essential goods and services to keep society running, and ensuring public safety order are enforced.

In addition, orders were issued that address local governments' immediate procedural concerns about their ability to meet electronically and needing to hold council or board meetings where the public can attend. Local governments need to be able to function and make necessary decisions to ensure their community is working for people. The orders were made recognizing that the current COVID-19 pandemic means that local governments needed more flexibility in some procedures so that they could make those necessary decisions—such as passing budgets. At the same time, important principles of transparency and accountability still need to guide local government actions.

Attached are guidelines to provide practical advice to local governments about enhancing transparency and public participation while operating under this order.

We will continue to provide guidelines and other supports to help you implement directives from the Public Health Official and the Minister of Public Safety and Solicitor General. Please continue to stay apprised of daily updates being provided by the government and updated on the COVID-19 website (listed below). We have created various channels for you and your teams to raise issues and ideas to government, including weekly calls hosted by the Honourable Minister Robinson, but please do not hesitate to reach out directly to me if you have questions or require assistance addressing an issue and are unsure where to connect.

Thank you for your continued efforts and partnership in this challenging time.

Sincerely,

Kaye Krishna
Deputy Minister
Ministry of Municipal Affairs
and Housing

Provincial COVID-19 Resources

- BC Government [COVID 19 Provincial Support and Information](#) website provides a hub through which you can access critical information as it is updated, including the provincial health officer's [Pandemic Preparedness Page](#) and the [BC Centre for Disease Control COVID](#) site.

Guidelines for Local Governments Operating under Emergency Program Act, Ministerial Order M083

On March 26, 2020 an [order](#) was issued under the *Emergency Program Act* that addresses local governments' immediate procedural concerns about their ability to meet electronically and needing to hold council or board meetings where the public can attend. The purpose of this guidance is to provide practical advice to local governments about enhancing transparency and public participation while operating under this order.

For information about orders related provincial and local states of emergencies, bylaw enforcement and mutual aid agreements please see: <https://news.gov.bc.ca/>

Local governments need to be able to function and make necessary decisions to ensure their community is working for people. The order was made recognizing that the current COVID-19 pandemic means that local governments needed more flexibility in some procedures so that they could make those necessary decisions – decisions such as passing budgets. At the same time, important principles of transparency and accountability still need to guide local government actions.

A local government's purpose includes providing for good government to its community, providing stewardship of public assets in the community, providing for necessary services and fostering the social, environmental and economic well-being of its community. It is recognized that public participation is essential to these purposes.

Local governments will need to continue to fulfill these purposes and their accountability to their communities, taking reasonable measures to ensure that the effects of the order's necessary limitations on public participation are mitigated. As well, they will need to continue to comply with procedural and other rules not affected by this order.

What does this order allow local governments to do?

- Under this order, local governments will be able to hold council and board meetings to make necessary essential decisions for their community in this state of emergency, without the public present, with the expectation that decisions made on the order will focus on emergency and time restricted decisions related to finances.
- It will also make it easier for elected officials to meet through electronic mediums while allowing local governments to conduct their day-to-day business as they follow physical distancing guidelines
- Local governments will also be able to do three readings and the adoption of a bylaw in the same day.

Why is this order needed?

- We are currently in an unprecedented situation. Local governments' ability to make decisions to protect their community is a critical piece of their ability to provide good government to their communities.
- During emergency situations like this, it's important that all governments work together to protect the health and safety of people and encourage a positive, calm approach in communities.
- The ability of local governments to make decisions to ensure their community is working for the safety, security and best interests of its people is a fundamental part of our governing system.
- If municipal councils and regional district boards are not able to function because they can't convene a legal meeting, then they will not be in a position to do their part during this pandemic or support the ongoing services and functions of the local government.
- This order will allow local governments to make necessary decisions to protect their communities while following the physical distancing guidelines.
- Regional Districts are also facing the unique pressure of needing to pass their annual budgets by the end of this month.

How do local governments balance community involvement in decision making and complying with public health orders?

- Locally elected officials are charged with making decisions that affect the daily lives of residents, families, the business community and many others. Public participation in local decision-making continues to be a foundational principle of the local government system.
- Local governments need to ensure that they are meeting the public health orders and necessary physical distancing – yet they also need to keep functioning so that they can continue to make needed decisions about public services, assets and finance.
- Where local governments can still operate “in person” while complying with the public health orders and necessary physical distancing, that can be done. The [BC Centre for Disease Control COVID](#) website includes the latest information on public gatherings and event planning as well as physical distancing.

What are some practical approaches local governments can implement to provide for community involvement in decision making?

- While local governments will not be required to allow community members to attend their meetings while this order is in effect, there are other ways they can maintain transparency (e.g. through web sites and social media) and there are many ways to allow the community to participate.
- For example:
 - To the greatest extent possible, local governments consider digital platforms to encourage communication and support engagement of the public (that may include creating moderated digital spaces for discussions);
 - Provide on-line streaming of council and board meetings that include opportunities for “real time” question and answer;
 - Provide an enhanced web presence that provides critical information about discussion, debate, and decisions and includes timely posting of draft minutes;
 - Where possible, allow for remote presentations from delegations, or provide clear opportunities for written submissions.

Do other rules under the *Community Charter, Local Government Act* and *Vancouver Charter* still apply?

- Public participation in local government decisions typically occurs in a number of ways: election of representatives to a council or board; notification of upcoming meetings and agenda topics; observing debate and decision-making on most topics; addressing decision-makers on matters of interest; reviewing minutes of proceedings; and reviewing annual reports and financial statements
- The effect of this order is only to temporarily modify requirements that relate to in-person observation of council and board debate and decision making, and potentially addressing decision-makers.
- Local governments understand the importance of being transparent and inclusive and will need to continue to do what they can to be open to the public in these extraordinary times.
- Local governments will need to continue to comply with all other legislative rules such as electoral approval processes. Other transparency provisions such as annual reporting, and conflict of interest and ethical standards rules also continue to apply. Decision making will continue to require a majority of council or board members in agreement to move an action forward.

- Local governments will want to carefully consider how they are complying with the rules and principles set out in the local government legislation and if there are ways to go beyond meeting those current minimum standards in the legislation.
- For example, as a best practice, most local governments already provide for advance publication of agendas and have rules for how presentations and delegations are received at meetings.
- Local governments will want to consider how to modify and enhance those practices to address the current required physical distancing (e.g. where possible, allow for remote presentations, or provide opportunities for enhanced written submissions).

What guidance do you have for local governments to ensure they are acting in the best interest of their community if residents can't participate in meetings?

- Elected officials always have a responsibility to consider the best interests of their communities and they are accountable to people living in those communities. That is key to the purpose of local governments.
- During this unprecedented time, it is critical that local government elected officials consider what it means to provide for the good governance of their communities. Good governance includes providing for the stewardship of a community's public assets and acting in way that is accountable, transparent, ethical, collaborative and respectful of the rules of law.
- Elected officials will want to carefully consider the types of decisions that they are making and how they as elected officials are representing their communities in that decision-making process.
- Understandably, as most local government resources will be directed towards this emergency, local governments will want to focus their decision making on the necessary essentials. That includes considering suspending or postponing decisions and moving very cautiously if they are considering new or controversial initiatives that aren't directly related to addressing this emergency.
- Local government administrators can provide needed guidance and can check in with the local government's legal and other advisors to understand which decisions are the most essential and which can be deferred. And local governments would want to seek legal advice about adjusting or delaying any public processes currently already underway.

How can a local government safely provide for public hearings?

- Local governments are required to hold public hearings prior to the adoption of several different kinds of bylaws including official community plans and some zoning bylaws.
- Local governments will need to think carefully about whether in some cases, delay of statutory processes requiring public hearings is the most appropriate and practical approach.
- Local governments may also want to consider whether it is appropriate to waive public hearings where they are not legally required, such as on proposed zoning bylaws that are consistent with the official community plan.
- Where a public hearing is required, members of the public who believe their property may be affected by a proposed bylaw must continue to be provided a reasonable opportunity to be heard, which can include **written submissions**.
- The Ministry understands the potential challenge of public hearing requirements and will be providing additional guidance in the near term.

Will these changes last forever?

- No, these changes will expire once we are no longer in under an emergency situation.
- Once the state of emergency is over, local governments will again have to follow all of the open meeting rules and procedural requirements set by local government legislation

Who asked for these changes to be made?

- The ministry continues to hear from local governments concerned about their inability to conduct meetings to make important decisions for their community while also following the public health orders and the safe physical distancing recommendations set out by our Provincial Health Officer.
- Without this order any decision made at a council meeting without the public present could be at risk of a legal challenge

Where do local governments get more information about COVID 19 response?

- 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 advice on these orders?

- For a list of orders and notices, the [PHO Site](#).
- For best practice advice on how local governments support transparency please email lggovernance@gov.bc.ca