
May 5, 2020

BULLETIN

ELECTRONIC PUBLIC HEARINGS, THE ISLANDS TRUST AND IMPROVEMENT DISTRICTS

On May 1, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order M139 (http://www.bclaws.ca/civix/document/id/mo/mo/2020_m139) under s.10 of the *Emergency Program Act*, the latest order aimed at assisting local governments to navigate the challenges arising from the COVID-19 pandemic. Ministerial Order M139 authorizes electronic public hearings, addressing a key pandemic related problem for local government by removing any requirement for in-person attendance at the hearing. The Ministerial Order also replaces the previous Ministerial Order M083, extending the 'relaxed' local government meeting rules so that they also apply to trust bodies under the *Islands Trust Act* and, in some respects, to improvement districts.

As a result of Ministerial Order M139:

Electronic Public Hearings

- Public hearings, including delegated public hearings, under Parts 14 and 15 of the *Local Government Act* (including under s.29(1)(b) of the *Islands Trust Act*) may be conducted using electronic or other communication facilities (such as, perhaps by way of teleconference).
- This applies to all public hearings under Parts 14 and 15 and includes public hearings for official community plan bylaws, zoning bylaws, phased development agreement bylaws, heritage designation bylaws, heritage revitalization agreement bylaws, land use contract amendments and bylaws to terminate land use contracts.
- The notice of such a public hearing must include instructions for how to participate in the hearing using the electronic or other communication facilities.
- Material that is to be made available to the public in relation to such a public hearing may be made available online or otherwise by means of electronic or other communication facilities. This will enable a local government to meet its obligations to provide the public with access to relevant information where the local government's offices are closed to the public.

- While the Order removes the requirement for an in-person public hearing, the Order does not relieve a local government from the key requirement under s.465(2) of the *Local Government Act* that “all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the bylaw”. In determining how to proceed without (or even with limited) in-person attendance and participation, local governments will still need to be mindful of this requirement.

No Public Attendance Required at Open Meetings

- Open meetings of the following bodies may be held without public attendance (and will still be considered to be ‘open’ meetings):
 - Municipal councils, and bodies under s.93 of the *Community Charter* (including council committees and boards of variance),
 - Regional boards, regional board select and standing committees under s.218 of the *Local Government Act* and other bodies referred to in s.93 of the Charter as applicable under s.226 of the *Local Government Act*,
 - Islands Trust Act bodies: the trust council, the executive committee, local trust committees, local trust committee boards of variance and the Islands Trust Conservancy.
- Meetings of the above bodies may be held electronically (or using other communication facilities). This means that the members of those bodies may all participate in a meeting electronically and there is no need for a physical meeting or meeting place.
- The Order does not include any live-streaming or other transparency requirements, leaving it to each local government to determine if and how it wishes to provide open meeting transparency.

Same-Day 3rd Reading and Adoption

- Municipal councils, regional boards and trust bodies under the *Islands Trust Act* may adopt a bylaw on the same day as 3rd reading. As a result, all three readings and adoption of a bylaw may take place at a single meeting, except where there is some statutory impediment requiring a ‘pause’ to the bylaw process, such as a requirement for a public hearing, or where elector approval or assent, or ministerial or inspector approval is required.

- For regional districts, this relaxation reduces the normal 2/3 adoption vote requirement for 'same day adoption' of a bylaw, as permitted under s.228 of the *Local Government Act*, to a simple majority of votes cast.

Improvement Districts

- Improvement district board and board committee meetings may be held electronically or using other communication facilities.
- This relaxation does not apply to improvement district annual general meetings. However, the Order permits an improvement district to defer its annual general meeting to no later than December 31, 2020 and provides for a corresponding extension to a trustee's term of office where the term expires on the annual general meeting date.
- An improvement district may defer the preparation of its annual financial statements to no later than December 31, 2020, and may wait, until it holds its annual general meeting, to submit its audited financial statements for the preceding year and other requested financial information to the Inspector of Municipalities (rather than complying with the normal May 15th requirement).

General

The above relaxations apply despite the normal rules under the *Community Charter* and *Local Government Act*, and applicable regulations under those Acts and the *Islands Trust Act*, and despite local government procedure bylaw requirements.

These special powers only apply during the period of the Province's declaration of the COVID-19 provincial emergency (including extensions).

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