

Report to Council



Date: April 20, 2020
To: Council
From: City Manager
Subject: Public Hearing Options
Department: Office of the City Clerk

Recommendation:

THAT Council receive, for information, the report from the Office of the City Clerk dated April 20, 2020 with respect to Public Hearing Options;

AND THAT Council direct staff to hold the Tuesday, May 12, 2020 Public Hearing and Regular Meeting in accordance with Option 1 described in the report from the Office of the City Clerk dated April 20, 2020.

Purpose:

To provide information and options on holding future public hearings during the pandemic and to hold the May 12, 2020 Public Hearing and Regular Meeting in a modified way to meet public health and procedural requirements.

Background:

Holding Public Hearings during the COVID-19 pandemic presents unique challenges due to physical distancing guidelines and orders regarding gathering of people. Along with meeting these obligations, local governments must continue to satisfy the rules of procedural fairness and legislative requirements under the *Local Government Act* that enable public participation and support transparent decision-making. As of April 15, the Province has not issued any temporary orders that change public hearing procedures.

For the Public Hearing and Regular Meeting held on March 17, several measures were introduced to mitigate some of the restrictions associated with the pandemic. These included accepting written correspondence up to 4 pm the day of the meeting, allowing attendees to submit written comments to staff during the meeting with staff reading them out if the individual didn't want to stay, blocking off alternating rows and seats in Council Chambers, posting signage, maintaining a running total of participants to limit to 50 people, and minimizing the number of staff in attendance.

Council has directed staff to recommend Public Hearings be waived for rezoning applications that are consistent with the Official Community Plan (OCP), have a staff recommendation of support, and are not expected to generate significant public input. With this now being applied, applications being considered at Public Hearings are likely to be more complex, including OCP amendments, more significant rezoning applications, and text amendments.

Discussion:

Staff have been considering options to hold the May 12, 2020 Public Hearing and Regular Meeting that meet pandemic-related requirements and allows for safe and meaningful public participation. Currently, a total of four applications were given first reading on March 23 and April 6 and are scheduled to go to a Public Hearing. Additional items will be considered by Council in the next couple of weeks and may be advanced to a Public Hearing. Seven development variance permit applications are also ready for Council consideration.

Two options to hold a Public Hearing on May 12 are described below.

Option 1: Back-to-Back Public Hearings Held in Council Chambers

This option would see back-to-back Public Hearings set for each application to be considered individually, allowing only those individuals interested in that item to attend at a defined time. The main benefit of this approach is it limits the number of people attending to those interested in one application, reducing the risk of reaching the maximum number of 50 people. This better supports procedural fairness since everyone who wants to participate in a Public Hearing must be given the opportunity to do so.

Physical distancing can be met with some Councillors participating electronically and continuing to block off alternating rows and seats in Council Chambers. It is expected that five staff would be in attendance. The technology in Council Chambers enables Councillors to participate electronically and allows for the public to watch the live audio and video broadcast.

The Office of the City Clerk would work with Development Planning to determine how much time to allocate to each item based on experience and knowledge of the application. Note, this may result in gaps between applications being considered if an item does not take as long as expected.

The follow is an example of how this would work in practice:

Meeting	Application	Time
Public Hearing #1	Application OCP19-XXXX / Z19-XXXX	6:00 pm
Public Hearing #2	Application TA20-XXXX	6:30 pm
Public Hearing #3	Application OCP19-XXXX / Z19-XXXX	7:00 pm
Public Hearing #4	Application TA19-XXXX	7:45 pm

Option 2: Grouped Public Hearings Held at the Kelowna Community Theatre

This option would see groupings of applications considered at Public Hearings held at the Kelowna Community Theatre. The main benefit of this approach is that it allows for more substantial physical distancing for attendees. Grouping applications, which is more in line with the City's normal practice of holding a single Public Hearing for all applications, increases the risk of reaching the maximum number of 50 people. Although members of the public may only be interested in one item, this could compromise procedural fairness as the City cannot prevent members of the public from attending a Public Hearing.

Holding a Public Hearing at the Theatre does present some logistical challenges with technology and staffing needs. While the technology (e.g., microphones, PowerPoint displays, camera system) would support a Public Hearing and allow Councillors to participate electronically, the setup is not purpose-built for Council or live broadcasting in the same way as Council Chambers. Further, more staff would be needed to run the meeting, limiting the number of public who can attend. There is no additional cost to using the Theatre for a Public Hearing.

The follow is an example of how this would work in practice:

Meeting	Application	Time
Public Hearing #1	Application OCP19-XXXX / Z19-XXXX Application TA20-XXXX Application OCP19-XXXX / Z19-XXXX	1:00 pm
Public Hearing #2	Application TA19-XXXX Application OCP20-XXXX / Z20-XXXX	6:00 pm

Bylaw Readings

Typically, Council would consider bylaw readings at a Regular Meeting immediately following the Public Hearing. Since Councillors participating electronically are unable to view presentations or materials submitted at the Public Hearing, applicants will be asked to submit presentation materials in advance of the meeting for circulation to Council. Any presentations and other materials presented or submitted during the Public Hearing will be circulated to Council following the Public Hearing and Council can watch the presentations online afterwards.

Depending on the circumstances, it may be possible to give the bylaws further readings at a Regular Meeting following the Public Hearing. This will be determined on a case by case basis immediately after the Public Hearing. Where this is not feasible, the bylaws will be on a subsequent Council meeting agenda to ensure all of Council has access to the same information prior to considering giving the bylaws further readings.

As with all Public Hearings, Council is unable to accept additional correspondence on an application after the Public Hearing is closed.

Recommendation

Staff recommend Council proceed with Option 1 as it offers the greatest opportunity to limit the number of attendees to 50 and ensure physical distancing with the least impacts on the integrity of the Public Hearing process. Additionally, the technology in Council Chambers better facilitates electronic participation by Councillors and live broadcasting. A similar approach is recommended for the Tuesday Regular Meeting for Council to consider development variance permits.

For either option, notices will state that written submissions will be accepted by email, mail, or in-person up to the time of the meeting and will be accepted in-person during the meeting. Written submissions will be encouraged, particularly for those who may not want or be able to attend in person.

Other options, such as delegating a Public Hearing to a subset of Council or holding a 'virtual' Public Hearing where the public participates electronically, were considered and are not being put forward at this time for procedural and logistical reasons.

Conclusion:

Holding Public Hearings during the COVID-19 pandemic requires a different approach than typical Public Hearings. Option 1, with individual Public Hearings for each application, is recommended as the best way to balance public health needs with procedural requirements. Promoting written correspondence and ensuring procedural fairness will continue to support public participation in the process. Staff will continue to monitor further updates from the Province for any changes in guidance or requirements for holding Public Hearings.

Internal Circulation:

Planning & Development Services

Considerations applicable to this report:

Legal/Statutory Authority:

Local Government Act s. 464

Legal/Statutory Procedural Requirements:

Local Government Act s. 465

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Submitted by:

Stephen Fleming, City Clerk

cc:

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