

COVID – 19: Can B.C. Local Governments Hold Meetings online?

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For the duration of the provincial state of emergency (which means it is retroactive), local governments are not required to have the public attend and do not need to comply with the *Community Charter* or *Local Government Act* requirements for electronic meetings or participation by Council or Board members by electronic means.

Also, Councils and Boards may adopt a bylaw on the same day that a bylaw has been given third reading

See ministerial order: http://www.bclaws.ca/civix/document/id/mo/mo/2020_m083

During this time of states of emergency and orders for social distancing, many local government staff members are wondering what their local governments are authorized to do to restrict or limit attendance at statutorily required public meetings to limit the risks.

The legislation does authorize some participation in meetings by way of electronic or other communication facilities. But it is important to take note of the statutory requirements and limitations.

1. Council/Board Meetings

While section 89 of the *Community Charter* and s. 226 of the *Local Government Act* require council and board meetings to be open to the public (subject to those that may be closed pursuant to section 90 of the *Community Charter*), section 128 of the *Community Charter* permits municipalities and section 221 of the *Local Government Act* permits regional districts to conduct some meetings by way of electronic or other communication facilities in certain circumstances and under certain conditions.

The first requirement is that the local government's procedure bylaw must allow for participation by way of electronic or other communication facilities. If your local government's procedure bylaw does not allow for alternative means, then the local government may amend (in the usual manner) the procedure bylaw to allow for alternative measures to be used.

It should be noted though that the legislation differentiates between 'regular' council or board meetings and 'special' council or board meetings, allowing local governments to conduct only 'special' council or board meetings by means of electronic or other communication facilities. For municipalities, pursuant to section 125(4) of the *Community Charter*, a 'special council meeting' is "a council meeting other than a regular meeting or an adjourned meeting". For regional districts, pursuant to section 219 (2) of the *Local Government Act*, a 'special board meeting' is a "board meeting other than a statutory, regular or adjourned meeting". Therefore, there is no legislative authority for local governments to conduct regular council or board meetings by means of electronic or other communication facilities, although, as discussed below, members of council or the board may be able to participate in such meetings by means of electronic or other communication facilities in certain circumstances.

For 'special' council or board meetings, if the procedure bylaw allows for the local government to conduct the meeting by means of electronic or other communication facilities, there are other requirements that must be met, including:

- a. the meeting must be conducted in accordance with the applicable procedure bylaw;

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- b. the facilities must enable the meeting's participants to hear, or watch and hear, each other;
- c. the notice of the special meeting must include notice of the way in which the meeting is to be conducted and the place where the public may attend to hear the proceedings that are open to the public; and [emphasis added]
- d. except for any part of the meeting that is closed to the public, the facilities must enable the public to hear, or watch and hear, the meeting at the specified place, and a designated municipal officer must be in attendance at the specified place.

The risk to the local government of failing to comply with statutory requirements for holding council or board meetings is that, if challenged, the decisions made during such meetings may be quashed.

It is very important to note that the statutory requirements of the *Community Charter* and *Local Government Act* discussed above are subject to the requirements of and orders made under the *Public Health Act* and the *Emergency Program Act*. If there is no conflict between the requirements of the *Community Charter* and *Local Government Act* on one hand, and the *Public Health Act*, the *Emergency Program Act* and orders made under these latter acts on the other, then the local government must comply with all requirements. However, if there is any conflict, then the requirements of the *Public Health Act*, the *Emergency Program Act* and orders made under these acts are paramount. Therefore, local governments are required to comply with the current orders for social distancing and maximum size of gatherings, regardless of any other requirements of the *Community Charter* and *Local Government Act*. Consequently, local governments must ensure that the facilities where council and board meetings are held have enough space to comply with the provincially ordered social distancing requirements, and that no more than the provincially mandated gathering size is in attendance, including all members of council or the board, staff and members of the public.

Pursuant to s. 133 of the *Community Charter* (which applies to regional districts pursuant to s. 226 of the *Local Government Act*), the person presiding at the meeting (presumably the Mayor or Chair) may expel a person from the meeting if acting improperly, which, could include failing to comply with the provincial orders under the *Public Health Act* or the *Emergency Program Act*. If a person is expelled and refuses to leave, a peace officer may enforce the Mayor's/Chair's expulsion order as if it were a court order.

While local governments are required to hold council and board meetings (outside of closed meetings) in a manner that is open to the public, this does not preclude local governments from, in addition to allowing members of the public to attend these meetings in some form (subject to the requirements of the provincial orders), also offering alternative ways for members of the public to voluntarily watch or participate in the meeting remotely, for their own safety, and notifying them in advance of that option as well as that the meeting place is required to comply with the provincial orders for social distancing and maximum number at mass gatherings.

2. Participation of Board Members

In addition, section 128 of the *Community Charter* and section 221 of the *Local Government Act* permit a member of council or board, or a member of a council or board committee who is unable to attend at a council or board meeting or a council or board committee meeting, as applicable, to participate in the meeting by way of electronic or other communication facilities in certain circumstances and under certain conditions. Of note, this authority does not differentiate between 'regular' and 'special' meetings, and applies to either.

The first requirement is that the local government's procedure bylaw must allow for participation by the members by way of electronic or other communication facilities. If your local government's procedure bylaw does not allow for alternative means, then the local government may amend the procedure bylaw (in the usual manner) to allow for alternative measures to be used.

If the procedure bylaw allows for members to participate in the meeting by means of electronic or other communication facilities, there are other requirements that must be met, including:

- a. the meeting must be conducted in accordance with the applicable procedure bylaw;
- b. the facilities must enable the meeting's participants to hear, or watch and hear, each other; and
- c. except for any part of the meeting that is closed to the public, the facilities must enable the public to hear, or watch and hear, the participation of the member.

3. Provincial Government Intervention?

The Provincial government recently issued a guidance document to local governments (which can be found here:

https://irp-cdn.multiscreensite.com/be9aba85/files/uploaded/252989_%20Guidance%20on%20the%20State%20of%20Provincial%20Emergency%20and%20implications%20for%20local%20authorities%20under%20the%20Emergency%20Program%20Act.pdf).

In relation to local government meetings, the latest word from the Province of B.C. is:

The Ministry of Municipal Affairs and the Ministry of Public Safety and Solicitor General are aware of procedural issues already flagged in the current situation, such as public attendance at council/board meetings and limitations on the ability of councils and boards to meet electronically. It is important that we move quickly but also thoughtfully on these matters, to ensure you can continue to deliver good government in your communities.

So, unless and until the provincial government takes steps to change the legislative requirements, local governments must continue to comply with the current statutory requirements for the holding of meetings.

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Adrienne brings 25 years of legal experience in litigation and dispute resolution representing local governments and other public entities, insurers and corporations, including in-house as Senior Staff Lawyer at Municipal Insurance Association of BC. Adrienne has represented and provided strategic and practical advice in relation to a variety of complex matters, including procurement, construction (including builders' lien, delay and defect claims), environmental, regulatory, expropriation, bylaw and FOIPPA disputes and processes, municipal jurisdiction, procedure, constitutional challenges, judicial reviews, remedial action orders, administrative hearing processes, contract claims, and privacy, insurance and risk management issues. Adrienne has extensive experience at all levels of Court in British Columbia, administrative tribunals, mediations and arbitrations. Adrienne regularly writes and presents on a variety of matters of interest to public entities and the construction industry.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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