



# Staff Report to Council

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**DATE: Monday, March 4, 2024**  
**DEPARTMENT: Planning**  
**SUBJECT: Public Hearing Policy**

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## EXECUTIVE SUMMARY:

This report sets out, for information, recent changes to the *Local Government Act* with respect to land use applications and Public Hearings. A summary of notification procedures with respect to land use applications is also provided and as well as options that Council may wish to consider at this time with respect to Public Hearings.

## BACKGROUND:

In November of 2023, the Province of British Columbia enacted the *Housing Statutes (Residential Development) Amendment Act, 2023* which introduced a suite of amendments to the *Local Government Act* including amendments pertaining to Public Hearings. With this change to the legislation, the City **must not** convene a Public Hearing with respect to a zoning bylaw amendment application that is consistent with the Official Community Plan (OCP) and would result in development that would be predominantly residential.

Prior to these changes, a municipality was required to hold a Public Hearing for all zoning bylaw amendments, unless the municipality waived the hearing in accordance with the *Local Government Act*. Historically, the City of Langford did not waive Public Hearings, except for during the early days of the Covid 19 pandemic.

## COMMENTARY:

### LEGISLATIVE CHANGES WITH RESPECT TO PUBLIC HEARINGS

Public Hearings are a requirement of the Provincial Government as set out in S. 464 of the *Local Government Act*. Relevant excerpts of all sections noted in the report are attached as an appendix.

As noted, Section 464 (3) now prohibits Public Hearings for any zoning bylaw amendment application that is consistent with the OCP and which would result in development that is predominantly residential. This would include developments such as townhouses, apartments, mixed use buildings or residential

subdivisions. This Section is already in effect, and as such, any rezoning application that was not in stream with at least one bylaw reading in place prior to December 7, 2023, is not permitted to be the subject of a Public Hearing.

Council may wish to note that Sec. 464(3) does not pertain to the kind of omnibus zoning bylaw amendments that the City makes, from time to time, to amend regulations of the zoning bylaw. These omnibus changes may lead to more residential development, but do not specifically permit more residential development.

In addition to the prohibition under Sec. 464(3), Section 464 (4) prohibits Public Hearings for any zoning bylaw amendments necessary to enact other provisions of the *Residential Development Amendment Act*, those being the changes that are proposed with respect to transportation-oriented areas (TOA) and the small-scale multi-unit housing (SSMUH). More information on these specific changes will be forthcoming in a future report.

Unrelated to recent changes to the *Local Government Act*, Section 464(2) of the *Act* allows Council the discretion to waive a Public Hearing for any zoning amendment that is consistent with the OCP, and this may include omnibus housekeeping amendments. While this is a longstanding provision in the *Act*, it is seldom used as the requirements for public notification and discussion are similar to what is required for a Public Hearing.

With the noted changes to the legislation in Sec. 464(3), the only circumstances where a Public Hearing **must** be held is for an application to amend the OCP or to amend zoning concurrent with an amendment to the OCP (zoning not being consistent with the OCP without the amendment).

PUBLIC NOTIFICATION

Although the changes to the *Local Government Act* with respect to Public Hearings will diminish the number of Public Hearings that the City will conduct, provisions in the *Act* with respect to public notification remain in place. For the sake of clarity, the Table 1 below explains the public notification that is now required by the *Local Government Act* or Council Policy.

**Table 1– Application Notification**

<b>Application Type</b>	<b>Public Hearing</b>	<b>Written Notice Mailed*</b>	<b>Newspaper Ad</b>	<b>Posted Sign</b>	<b>Written Notice mailed Prior to SDAC*</b>
Rezoning for a predominantly residential use	Not permitted	Prior to 1 <sup>st</sup> reading	Prior to 1 <sup>st</sup> Reading	Prior to 1 <sup>st</sup> Reading	Yes
Any rezoning application that is consistent with OCP	When <b>not waived</b> by Council resolution	Prior to Public Hearing	Prior to Public Hearing	Prior to Public Hearing	Yes
Any rezoning application that is consistent with OCP	When <b>waived</b> by Council resolution	Prior to 1 <sup>st</sup> Reading	Prior to 1 <sup>st</sup> Reading	Not Required	Yes
OCP Amendment, or Rezoning concurrent with OCP Amendment	Required. May not be waived	Prior to Public Hearing	Prior to Public Hearing	Prior to Public Hearing	Yes

*\*all owners and occupiers within 100m of the boundaries of the subject property.*

With respect to written (mailout) notices, Council may wish to continue with these in accordance with current practice, with the exception that written notice of a rezoning application for a predominantly residential use, or notice of a Public Hearing being waived, be provided prior to 1<sup>st</sup> reading of the bylaw. This will mean that residents within 100m of a property that is the subject of a rezoning application will receive written notice prior to the Sustainable Development Advisory Committee (SDAC) meeting AND prior to 1<sup>st</sup> reading, whereas prior to the changes to the legislation, notices would be sent prior to Committee and prior to Public Hearing.

Written notices for applications that proceed to Public Hearing will continue to follow the current practice and be mailed out two weeks in advance of the Public Hearing with the specific information about the date and place of the public hearing.

Newspaper advertising can continue in accordance with the *Act* and current practice. When a public hearing is not held (either by way of being waived or prohibited), the ads will run prior to first reading, and when a public hearing is held, the ads will run prior to the public hearing.

With respect to a posted sign on the subject property, the *Local Government Act* provides discretion to local governments to set out their own requirements regarding if and when posted signage is required. The City's notification bylaw only speaks to posting a sign to advertise a public hearing and does not trigger the posting of a sign when a public hearing is waived. This bylaw should be updated to reflect the new legislation. In the meantime, staff are interpreting this bylaw to require the posting of a sign prior to first reading when a public hearing is not permitted under the new legislation.

Council may wish to consider expanding the timeline for public notification signage by requiring the developer to erect a sign on the property that is the subject of a development application prior to the application being considered by SDAC. This signage could provide information about the application and/or a QR code linking to the various agendas where the application would be considered. Such signage could remain in place through to the completion of the application (bylaw adoption). As this signage does not have to conform to any Provincial statute, it could be written in a simpler, or plainer language than what is currently used for Public Hearing sign. As such, the signage should come across as an invitation to the public to connect with City Hall or Council, rather than merely providing a notice of a specific meeting.

If considered appropriate, Council could continue requiring signage on properties where a Public Hearing will be held that are specific to the Public Hearing (e.g.; date, time, etc.). This signage could easily co-exist with signage described above, although may necessitate a review of the rezoning application fees as this could increase the City's costs.

The *Local Government Act* allows municipalities to recover costs associated with applications through fees. Regardless of which level of public notification Council chooses, the costs associated with mailouts, signage and advertising may be recouped through application fees.

#### ADDITIONAL CONSIDERATIONS

In the past three years (calendar years 2021-2023) the City of Langford has held 73 public hearings. Of these, 54 (73.9%) would have fallen within the section of the legislation that now prohibits a public hearing.

Of the remaining nineteen (19) applications, eleven (11) were applications for non-residential uses (two of these were specifically for daycares). Seven (7) applications were omnibus text amendments initiated by the City. Council could have elected to waive the Public Hearing requirement for all of these applications under Sec. 464(2) of the *Local Government Act*.

Only one application in this time period was required to have a Public Hearing and that was the concurrent application for an OCP amendment and rezoning of 2207 Millstream Road (aka: Trudie Terrace). Council concluded a Public Hearing for this application on Tuesday, February 20<sup>th</sup>, 2024.

To date, the City has not typically waived public hearings as there is no tangible financial benefits in doing so, and the time to process applications is not significantly reduced. The City is still required to provide notice, and the zoning bylaw amendment must still proceed through the same number of steps (Committee, Council review, and bylaw readings).

Despite all of the Province's changes, if a Public Hearing is prohibited, the opportunity available to the public to address an application may actually increase. Previously, the public could speak to an application:

- At the Sustainable Development Advisory Committee (SDAC);
- During Public Participation prior to Council's consideration of the Committee recommendation;
- During Public Participation at first reading (which often occurred at the same meeting as consideration of the Committee recommendation); and
- During the public hearing.

Going forward, the public will be permitted to speak to an application:

- At the Sustainable Development Advisory Committee (SDAC) meeting;
- During the Public Participation at any Council meeting where Council's consideration of the application is on the agenda, which would include: Council's consideration of the SDAC recommendation, Council's consideration of the first three (3) readings, and at Council's consideration of Bylaw Adoption.

The opportunity for the public to speak at a Public Hearing presently has no time limit, whereas there is a 3-minute time limit during Public Participation (and there is a prescribed overall time limit for Public Participation). For both cases, the public may also submit their concerns, support, or objections in writing.

When no Public Hearing has been required, Council can receive written submissions prior to bylaw adoption. Council can also discuss any application with the public at any time during the process. Although the public can address Council on any matter that is on their agenda during public participation, Council may wish to consider, and it would be staff's recommendation, that public comment on any land use bylaw only be permitted prior to the meeting at which the bylaw is scheduled to be adopted. It should be noted that this will require an amendment to the Council Procedure Bylaw. Opening Public Participation up to comment on a bylaw that is scheduled for adoption would only prolong and potentially confuse the process, by subjecting an application to a final round of either critique or compliment by the public. Further, allowing additional opportunities for public participation is counter-intuitive to the spirit of the legislation. The Province's goal with the legislative changes with respect to removing public hearings is to reduce the potential for development applications to be side-tracked by public input. As well, it is unlikely that any material new information with respect to the application would be brought forward at the time of adoption. Any material information should be considered prior to this to ensure that Council can fully deliberate on it.

Now that most rezoning applications will be prohibited from being the subject of a Public Hearing (due to their residential nature), Council may wish to consider whether holding Public Hearings that could otherwise be waived (those that are consistent with the OCP) should be waived to avoid any unintended confusion. Although waiving public hearings has traditionally been avoided as it could send the wrong message that Council is trying to limit public participation in the rezoning process, now that most applications cannot have a Public Hearing it may be preferable to continue to put applications on an equal footing with respect to public input.

With that in mind, some of the pros and cons of waiving Public Hearings per Sec. 464(2) of the *Local Government Act*, as opposed to maintaining the status quo and having what would otherwise be a two-track system with respect to Public Hearings on account of Sec. 464(3) of the *Act*, are outlined below.

Pros of waiving all Public Hearings that can be waived:

- Almost every application will follow the same procedure with respect to public notification (the exception being OCP amendments in concert with rezoning that must have a Public Hearing);
- Notification procedures can be tailored to suit what Council deems to be fair, rather than strictly limited to what is required in the *Act* (Council can determine the type of notices and, in the case of signage, the duration which they are displayed. E.g.: Signage for a development application can be erected prior to SDAC and remain in place until the application is complete, rather than being particular to the Public Hearing; and
- A consistent approach to rezoning applications may improve the perception of procedural fairness.

Cons of waiving all Public Hearings that can be waived:

- The Public who attends Council meetings will have less time to address Council with respect to a rezoning application (although there will be more opportunities overall, and may even encourage people to express concerns earlier in the process when meaningful changes could be applied to the proposal); and
- The Public may be left with the general perception that the City is not interested in hearing from the public, as the formal Public Hearings will have a greatly diminished role. Council can address this through continued and ongoing public education around how the public may address Council and its Committee, and that these changes to prohibit public hearings in certain circumstances was legislated by the provincial government and apply to every municipality in BC.

The concerns about waiving Public Hearings may be mitigated in a number of ways, and staff recommend that Council establish a policy that employs Sec. 464(2) of the *Local Government Act* to waive public hearings for zoning amendment bylaws that are compliant with the OCP, unless there are extenuating circumstances that would make it undesirable to do so. In each instance Council will do this by resolution, as required by the *Act*.

In order to help mitigate this choice, Council could amend its Public Notification Procedures bylaw to establish that signage be placed by the municipality on property that is the subject of a rezoning application no later than 2 weeks prior to the application being considered by the Sustainable Development Advisory Committee and that this signage be of a relatively generic nature, but provide opportunities for the public to connect through means such as a QR code to reports and agenda available on the City's website. In addition to this, Council could also require that written notification is provided for all applications prior to SDAC meetings and prior to 1<sup>st</sup> reading (whether required by statute or not) and that advertisements be placed in the newspaper prior to first reading with respect to all applications, whether a Public Hearing is waived or prohibited.

Additionally, when a zoning amendment bylaw is not the subject of a Public Hearing (either due to it being prohibited or waived), Council is not prohibited from receiving new information following third reading. There is no "blackout" period where Council must remain cautious about who they talk to and about what.

#### COMMUNICATION TOWERS

Although not a requirement of the *Local Government Act*, it is Council's policy to hold a Public Hearing with respect to the siting of telecommunications towers. This is not required by legislation, but Industry Canada has asked for this kind of consideration in conjunction with their deliberations over new telecom installations. Council may wish to continue with this practice but establishing a new process for this form of public consultation (other than Public Hearing) may be helpful. Conversely, the public

consultation for these types of applications could occur at Committee, with a recommendation ratified by Council.

**FINANCIAL IMPLICATIONS:**

Application fees are based on cost recovery and currently a portion of application fees account for the direct cost of Public Hearing notification (mailout, signage and newspaper advertising). Notification will be similar where a Public Hearing is not required and there will likely not be any cost savings to the City as a result. Staff review the costs associated with rezoning applications on a regular basis and can suggest adjustments to the City's fee schedule as necessary.

**LEGAL IMPLICATIONS:**

Council must abide by the provisions of the *Local Government Act* with respect to Public Hearings.

**STRATEGIC PLAN INITIATIVES:**

On the face of it, reducing the requirement for Public Hearings may seem to run counter to initiative 5c of the Strategic Plan (below):

*5c | EXPAND OPPORTUNITIES FOR PUBLIC ENGAGEMENT Improved public engagement will better connect the residents with City Hall by promoting inclusivity, collective progress, and active democracy. Council has already implemented the hiring of additional staff and the City has launched its Facebook page and Let's Chat Langford to support this objective.*

However, the confusion that may occur by holding residential and non-residential rezoning applications to different standards may serve to diminish public engagement through a perception of partiality. The City's Sustainable Development Advisory Committee does provide a great opportunity for public input and feedback, and the value of the committee's advisory role should not be overlooked.

*5f | IMPLEMENT THE USE OF A DEVELOPMENT TRACKER To increase transparency and provide ease of access to this information, the City will explore the creation of a Development Tracker that would highlight developments in stream, under construction and those recently completed.*

Once the City implements a Development Tracker online, there should be greater information available to the public, earlier in the process, about rezoning applications. This should elicit greater public participation at the Committee level.

*5g | MAINTAIN THE CITY'S LONG-STANDING CORPORATE EFFICIENCIES The City has a strong reputation of being lean, making decisions and minimizing bureaucracy. This approach streamlines approvals, empowers staff and keeps costs down. While many elements of this strategic plan may require additional*

*processes for successful implementation, the City will work to only add these processes when appropriate.*

As the Province's objective in removing the requirement for Public Hearing on applications relating to housing is about creating efficiencies, Council can serve its policy 5g by improving efficiency in most rezoning applications.

#### **OPTIONS:**

##### **Option 1**

THAT Council:

1. Direct staff to prepare bylaw and/or policy amendments to implement the following:
  - a) That Council makes it their practice to employ Sec. 464(2) of the *Local Government Act*, unless there are extenuating circumstances that would make it undesirable to do so;
  - b) That the notification procedure for applications where a Public Hearing is not being held (whether prohibited or waived) include: the placement of signage on the subject property at the beginning of the process through the conclusion of the application;
  - c) That the notification procedure for applications where a Public Hearing is not being held (whether prohibited or waived) include, as required, advertisement in a local newspaper prior to 1<sup>st</sup> reading;
  - d) That the notification procedure for applications where a Public Hearing is not being held (whether prohibited or waived) include written notice to owners and occupiers of land within 100m of the subject property prior to consideration of the application by Committee and again prior to 1<sup>st</sup> reading;
  - e) That the Council Procedure Bylaw be amended to exclude any land use bylaw that is being considered for adoption from items that may be discussed during the Public Participation portion of Council's meeting; AND
  - f) That telecommunications applications be referred to Committee for public input, with a recommendation to be approved by Council and forwarded to Industry Canada and that the term "Public Hearing" be dropped from this process.

##### **OR Option 2**

THAT Council take no action at this time with respect to bylaw and/or policy amendments to change procedures with respect to public hearings.

#### **SUBMITTED BY: Matthew Baldwin, MCIP RPP, Director of Planning and Subdivision**

**Concurrence:** Leah Stohmann, MCIP RPP, Deputy Director of Planning and Subdivision

**Concurrence:** Donna Petrie, Senior Manager of Communications & Economic Development

**Concurrence:** Yari Nielsen, Director of Parks, Recreation and Facilities

**Concurrence:** Katelyn Balzer, P.Eng., Director of Engineering and Public Works

**Concurrence:** Michael Dillabaugh, CPA, CA, Director of Finance  
**Concurrence:** Marie Watmough, Deputy Director of Corporate Services  
**Concurrence:** Braden Hutchins, Director of Corporate Services  
**Concurrence:** Darren Kiedyk, Chief Administrative Officer

Attachment(s): Appendix A: Local Government Act excerpts

Appendix A: Excerpts from the *Local Government Act*

***Requirement for public hearing before adopting bylaw***

*464 (1) Subject to subsection (2), a local government must not adopt*

*(a) an official community plan bylaw,*

*(b) a zoning bylaw, or*

*(c) a bylaw under section 548 [early termination of land use contracts] without holding a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw.*

*464(2) A local government is not required to hold a public hearing on a proposed zoning bylaw if*

*(a) an official community plan is in effect for the area that is the subject of the zoning bylaw, and*

*(b) the bylaw is consistent with the official community plan.*

*464(3) A local government must not hold a public hearing on a proposed zoning bylaw if:*

*(a) an official community plan is in effect for the area that is the subject of the zoning bylaw,*

*(b) the bylaw is consistent with the official community plan,*

*(c) the sole purpose of the bylaw is to permit a development that is, in whole or in part, a residential development, and*

*(d) the residential component of the development accounts for at least half of the gross floor area of all buildings and other structures proposed as part of the development.*

And:

*464 (4) A local government must not hold a public hearing on a zoning bylaw proposed for the sole purpose of complying with section 481.3 [zoning bylaws and small-scale multi-family housing].*

*467(1) If a local government decides not to hold, or is prohibited from holding, a public hearing referred to in section 464 (2) [public hearing not required for certain zoning bylaws] on a proposed zoning bylaw, it must give notice in accordance with this section.*

*467(2) The notice must state the following:*

- (a) in general terms, the purpose of the zoning bylaw;*
- (b) the land or lands that are the subject of the bylaw;*
- (c) the date of the first reading of the bylaw;*
- (d) the place where and the times and dates when copies of the bylaw may be inspected.*

*467(3) Section 466 (3) to (4) and (6) to (8) applies to a notice under this section, except that*

- (a) a reference in that section to a public hearing is to be read as a reference to the first reading of the bylaw, and*
- (b) the reference in subsection (4) (b) (i) of that section to the date of the first reading of the bylaw is to be read as a reference to the date of the mailing or delivery of the notice.*