



# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall  
1229 Esquimalt Road  
Esquimalt, B.C. V9A 3P1

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## REQUEST FOR DIRECTION

**DATE:** August 21, 2023

Report No. ADM-23-025

**TO:** Dan Horan, Chief Administrative Officer

**FROM:** Deb Hopkins, Director of Corporate Services

**SUBJECT:**

Consideration of Public Hearing Scheduling and Decision Making Timelines

**ESSENTIAL QUESTION:**

In order to improve meeting efficiencies and support good governance and organizational excellence:

1. Does Council wish to change its current practice of scheduling Public Hearings to regular Council meeting agendas?
2. Would Council like to consider alternative options for decision making timelines on applications after receiving input at Public Hearings?

**RECOMMENDATION:**

That it be recommended to Council that staff be directed to prepare amendments to Council Procedure Bylaw, 2022, No. 3081 to change the scheduling of Public Hearings to a separate meeting night including direction regarding the regular scheduling of these meetings; and that Council provide direction on timelines for decision making after the close of a Public Hearing.

**BACKGROUND:**

Public Hearings are legislatively required as part of certain land use application procedures. The purpose of the Public Hearing is to balance the broad powers of elected officials with respect to land use decisions so that residents and other interested parties have an opportunity to share their views about certain types of planning and land use bylaws. The length of Public Hearings can be prolonged due to the number of interested parties wishing to provide input to Council on the proposed bylaws and the amount of related Council discussion.

Legislative changes introduced in 2022 provided an exception to the requirement for holding Public Hearings for applications that are consistent with the current Official Community Plan. This exception authorizes Council to choose to not hold a Public Hearing for those specific applications as outlined in the *Local Government Act*. With the recent announcements from the Province respecting housing, and the forthcoming establishment of housing targets, it is anticipated that additional legislative changes are to be introduced that will expedite approvals for new development as a means to addressing the provincial housing crisis. This is expected to reduce the number of required Public Hearings for the Township.

Currently the Township includes Public Hearings as part of regular Council meeting agenda business. As part of the ongoing staff commitment to identify and introduce efficiencies to Council's meetings and procedures, this report proposes several options for scheduling Public Hearings and for timelines for Council's subsequent decision making for consideration by the Committee of the Whole.

## **ISSUES:**

Public Hearings are a statutory requirement for certain land use applications affording all interested parties an opportunity to provide input on proposed development within the community. While much of the procedures are contained within legislation, Council does have the authority to determine when Public Hearings may be scheduled and timelines for decision making after a Public Hearing is closed.

Currently Public Hearings are held as part of regular Council meetings. These agenda items can require a significant amount of meeting time depending on the number of public comments received, complexity of the application, and the number of questions and length of discussion held by Council. The current scheduling practice can contribute to long meeting nights for staff who are scheduled to present on later agenda items. Applicants with proposals included in the agenda are also delayed presenting to Council and may experience financial impacts if they have other technical representatives with them to present or respond to questions from Council. Consideration should also be given to members of the public that wish to observe Council's deliberations and decision making on later business items or provide input on agenda items after the close of any scheduled Public Hearings.

The practice of holding Public Hearings as part of regular Council meetings and the resulting extended length of meetings may unintentionally create a barrier to public input and participation on items that occur later in the Council agenda as there is increased uncertainty about when public input will commence and when the item will be discussed by Council. This uncertainty may be discouraging to those interested in providing comments or observing Council's discussion and debate about a particular business item not related to the Public Hearing causing decreased citizen engagement in other municipal business.

In addition, there can also be a significant amount of material included in the Public Hearing package

to review prior to the Hearing resulting in complex and lengthy combined meeting agenda packages. This poses several difficulties including the time required to review all meeting materials prior to the start of the meeting for the public, Council, staff, and the applicant. Changing the way that Hearings are scheduled could help to reduce the size of the agenda packages and the time required for interested parties to read the meeting materials.

Other variables to consider are closed meetings and staff time. Staff who are scheduled to present agenda items can be delayed until later in the evening resulting in accrued overtime because of the unknown length of each Public Hearing. Further, if direction was provided to proceed with scheduling Public Hearings at 6:00 p.m. prior to regular Council meetings, closed meetings would have to be scheduled after adjournment of the regular meeting. This timing can be difficult for Council to discuss complex or challenging matters at the end of a long evening of meetings and could have financial impacts should third parties be required to attend.

The way that Public Hearings are scheduled for local governments within the Capital Regional District is split with six municipalities scheduling Hearings as part of regular Council meetings and six scheduling them prior to regular Council meetings or as separate meetings with varying frequency depending upon the respective community's need. Larger municipalities such as the District of Saanich schedule Public Hearings every other Tuesday evening which is reflected in their annual schedule of meetings. Smaller communities such as the District of Oak Bay schedule them monthly as needed, usually identifying a consistent day and time, such as the third Thursday of the month at 6:00 p.m.

Another aspect to keep in mind is when the item subject to the Public Hearing would come back to Council for consideration of approval. Along with the options for scheduling Public Hearings there are also several options and variables to consider around Council's timelines for decision making.

### Public Hearing Scheduling Options

#### 1. Same Night in Advance of Regular Council Meetings

Council could schedule Public Hearings in advance of the regular Council meeting at 6:00 p.m. with the Council meeting starting immediately following the close or adjournment of the Hearing.

The Council meeting would begin immediately following the close or adjournment of the Public Hearing. This approach is used by several local municipalities, usually those requiring few, less complex Public Hearings. This approach can still negatively impact those parties interested in regular Council business should the Hearing continue past 7:00 p.m. therefore delaying the start of the Council meeting. Additionally, if Public Hearings were closed or adjourned early, such as 6:30 p.m., the Council meeting scheduled immediately following would not begin until 7:00 p.m. resulting in some underutilized time between the meetings. This practice can also cause some confusion and potential frustration for members of the public as it makes the start time for Council meetings inconsistent.

As a reminder, this approach would also mean that In Camera meetings would generally be scheduled after the adjournment of the regular Council meeting and have impacts discussed earlier in this report.

Scheduling the Public Hearings in advance of the regular Council meeting would allow the

consideration of the application for third and final readings, as appropriate, at that Council meeting. There would be no change to the procedural timelines currently implemented.

## 2. Separate Meeting Night

Council could establish a standalone date once per month to hold Public Hearings, such as the third Thursday of the month. This would facilitate the scheduling of several Hearings in one night, as necessary, and the meeting could be cancelled if there were no applications ready to proceed to Public Hearing in any given month. No Hearings would be scheduled during the Council summer recess or in December. This approach would provide some consistency for the public and for applicants around when Public Hearings would be held and would allow Council to focus only on the applications included in the Hearing(s). After discussion with Development Services, the number of required Hearings is anticipated to decrease this year and into the future, so a shift to this approach will likely only result in a minor number of additional meetings per year.

If Council was to select this option, the day and time that a regular Public Hearing should be scheduled each month, with the exceptions previously noted, would need to be determined.

Since Public Hearings would be scheduled as Special Council meetings, once the Hearing was closed, Council could move to give third reading to the bylaw(s) under consideration and there would be no impact to Council's current decision making timelines.

### Council Decision Timeline Options After the Close of a Public Hearing

As part of this discussion, the Committee may also wish to consider timelines for making decisions on third reading, and adoption, if appropriate, depending on whether all the application requirements are satisfied at that time. Delaying the decision making process builds in more flexibility for Council to consider the input of interested parties participating at the Hearing and the comments of their colleagues before making a collective decision on the application. The decision could be scheduled to the next Council meeting. In general, Council meets on the first and third Monday of the month, dependent upon statutory holidays and the scheduling of annual conventions for the Association of Vancouver Island and Coastal Communities (AVICC), Union of British Columbia Municipalities (UBCM), and Federation of Canadian Municipalities (FCM), as well as the Council summer recess.

For both options of scheduling Public Hearings in advance of regular Council meetings and establishing a standalone meeting night, the following represent the different options for how Council wishes to make decisions after Public Hearings.

#### 1. No decision at close of Hearing

##### a. Delay Decision Making Until Next Council Meeting

Council could close the Hearing and delay consideration of third reading and adoption to the next Council meeting. This approach would add a slight delay to the current approval process to the next Council meeting, requiring one additional meeting.

##### b. Delay Decision on Third Reading to Next Meeting and Adoption to Subsequent Meeting

Council could give third reading and adoption at different meetings. Third reading could

be delayed to the next Council meeting after the Hearing and then adoption considered at the next meeting after that. This approach is not recommended as it would cause delays to the approval process counter to the Province's direction and may not be palatable to applicants, Council, or other interested parties. This method would mean that it would take two additional meetings after the close of the Hearing to get approvals for the proposal.

2. Give Third Reading after the Hearing and Delay Adoption to Next Meeting

Council could give third reading to the bylaw(s) and then delay consideration of adoption until the next regular Council meeting. This would delay providing approvals to applicants by at least one additional meeting in comparison to Esquimalt's current practice.

3. Maintain Current Decision Making Process Immediately after the Hearing

Council could give third reading and proceed to adopt the bylaw(s) at the same Special Council meeting if there were no outstanding requirements, as outlined in the staff report recommendation. This reflects the Township's current decision making timeline.

The first set of options allow Council time to consider all information provided at the Hearing and additional time for reflection before voting on the application. The second and third options require Council to make a decision regarding third reading of the applicable bylaw(s) immediately after the close of the Hearing, consistent with Council's current approach.

There is some risk in implementing a delayed decision making approach as Council must ensure that they do not receive additional information in the time period that spans after the close of the Hearing and when Council considers approval of the application, as per legislated requirements. This can be difficult for Council to control when considering the public's ability to communicate with elected officials, including by email and informal discussions out in the community. If a delayed decision making approach was selected, it would be the responsibility of each Council member to individually manage and mitigate this risk. Council would need to be diligent not to receive any further information after the close of the Public Hearing in accordance with the *Local Government Act*.

If a change in practice is desired, it should be noted that the option to hold a Public Hearing as part of a regular Council meeting for a time sensitive application could be retained within the Council Procedure Bylaw. This would afford some flexibility when necessary and practicable to allow the Township to remain responsive and progress municipal business efficiently.

Should the Committee of the Whole opt to change the way that the Township schedules Public Hearings, an amendment to Council Procedure Bylaw, 2022, No. 3081 would be required. Prior to the adoption of any amendment to the Council Procedure Bylaw, public notice must be given in accordance with the provisions of the *Community Charter*.

**ALTERNATIVES:**

There are two separate matters for consideration that require different staff actions. The first is for Council to determine whether changes to the current practice of scheduling Public Hearings are necessary. The second is whether changes to the current decision making timelines for applications subject to a Public Hearing are desired. As such, there are multiple options for consideration outlined below.

## 1. Status Quo

- a) There is no requirement to make any changes to the current practice for scheduling Public Hearings as part of the regular Council meeting agenda. Should the Committee of the Whole wish to maintain the current practice for Scheduling Public Hearings and decision making, the following resolution would be appropriate:

**That it be recommended to Council that Staff Report ADM-23-025 be received for information.**

- b) If the Committee of the Whole opt to maintain the current practice for scheduling Public Hearings, but modify the timelines for making decisions on the subject application, this would be an appropriate resolution:

**That it be recommended to Council that staff be directed to revise the Public Hearing process so that [third reading is provided directly after the close of the Hearing with adoption to be considered at a future Council meeting / that applicable bylaw readings be considered at the next regular meeting of Council].**

## 2. Schedule a Separate Monthly Meeting [Recommended]

- a) Establish a regular monthly separate meeting time for Public Hearings. This would facilitate the scheduling of multiple Hearings as appropriate to a dedicated meeting each month for conducting this statutory requirement. It would provide some consistency for the public and for applicants to have a regular Public Hearing night and would not result in confusion over the start times for regular Council meetings. Should this option be selected, an appropriate resolution would be:

**That it be recommended to Council that staff be directed to prepare amendments to Council Procedure Bylaw, 2022, No. 3081 to change the scheduling of Public Hearings to [insert day and time as directed by Council].**

- b) If the Committee of the Whole prefers to establish a separate regular meeting night for holding Public Hearings and also amend the timelines for Council's decision making, the resolution should include the following additional details:

**That it be recommended to Council that staff be directed to prepare amendments to Council Procedure Bylaw, 2022, No. 3081 to change the scheduling of Public Hearings to [insert day and time as directed by Council];**

**And further that it be recommended to Council that staff be directed to revise the Public Hearing process so that [third reading is provided directly after the close of the Hearing with adoption to be considered at a future Council meeting / that applicable bylaw readings be considered at the next regular meeting of Council].**

## 3. Schedule Public Hearings in Advance of Regular Council Meetings at 6:00 p.m.

- a) Schedule Public Hearings prior to the regular meeting of Council. Public Hearings could be scheduled to start at 6:00 p.m. on regular Council meeting nights. Should the Committee of the Whole wish to implement this option, the following resolution would be appropriate:

**That it be recommended to Council that staff be directed to prepare amendments to**

**Council Procedure Bylaw, 2022, No. 3081 to change the scheduling of Public Hearings to start at 6:00 p.m. in advance of any regularly scheduled Council meetings as required.**

- b) If the Committee of the Whole would like schedule Public Hearings in advance of regular Council meetings and make amendments to the timelines for Council's decision making, the resolution should include the following:

**That it be recommended to Council that staff be directed to prepare amendments to Council Procedure Bylaw, 2022, No. 3081 to change the scheduling of Public Hearings to start at 6:00 p.m. in advance of any regularly scheduled Council meetings as required;**

**And further that it be recommended to Council that staff be directed to revise the Public Hearing process so that [third reading is provided directly after the close of the Hearing with adoption to be considered at a future Council meeting / that applicable bylaw readings be considered at the next regular meeting of Council].**