



COVID-19 Update: Streamlining Approval Processes and Meeting/Hearing Procedures Updated as of April 20, 2020 in light of COVID-19



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IMPORTANT: Please note that this article was originally drafted on April 3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20. We recommend you do not rely on the April 3, 2020 version of this article. Should you have any questions, please do not hesitate to contact our office.

The COVID-19 situation is evolving rapidly, and changes to legislation are coming quickly. Please make sure to review any recent announcements from the Province.

(1) Background

On March 25, 2020, Ministerial Order 022/20 (“MO 022/20”) was issued by the Minister of Municipal Affairs pursuant to the Minister’s power to alter dates and time periods (*MGA*, s. 605). MO 022/20 extended a number of timelines in the *MGA*. MO 022/20 was re-issued on March 31, 2020 with the same impact on the *MGA* timelines.

On April 17, 2020, MO 022/20 was rescinded pursuant to Ministerial Order 036/20 (“MO 036/20”). MO 036/20 sets out transitional provisions which address the time period between the issuance of MO 022/20 (March 25, 2020) and MO 036/20 (April 17, 2020). Notably, there are no issues respecting the two MO 022/20 with different dates because MO 036/20 rescinds MO 022/20.

Also on March 25, 2020, the Lieutenant Governor in Council issued Order in Council 099/2020 which enacted the *Meeting Procedures (Covid-19 Suppression) Regulation* to allow for electronic meetings.

(2) What does MO 036/20 do?

MO 036/20 rescinds MO 022/20. This means that most *MGA* timelines that were previously extended to October 1, 2020 as a result of MO 022/20 have reverted back to the normal timelines as set out in the *MGA*.

MO 036/20 also provides guidance for how to address any matters that arose in the transition period between March 25, 2020, when MO 022/20 was issued, and April 17, 2020, when MO 036/20 was issued (the “Transition Period”). It provides that the timeline for matters listed in the appendix to MO 036/20 that **began or ended** in the Transition Period is to be calculated as **starting** on April 17, 2020.

For example, if a development authority received a development permit application on April 15, 2020, the twenty days in which the development authority must determine whether the application is complete pursuant to section 683.1(1) of the *MGA* begins on April 17, 2020 because the application was received in the Transition Period. Or, as another example, if a subdivision appeal period ended on April 1, 2020, the 14 days to appeal the decision pursuant to section 678(2) of the *MGA* starts on April 17, 2020 because the expiry date is in the Transition Period.



(3) Streamlining Approvals

Regardless of MO 022/20 being rescinded and MO 036/20 being enacted, municipalities may still want to consider ways to streamline subdivision and development decisions as a way to efficiently and effectively manage resources.

One way to streamline subdivision or development approvals is to review who has the authority to make subdivision and development approval decisions. For example, if the subdivision authority or development authority in your municipality is the Municipal Planning Commission (the “MPC”) or in the case of subdivision, Council, Council may want to consider delegating approval powers to a designated officer to facilitate more timely approvals (*MGA*, ss. 623 and 624). We suggest that if Council decides to delegate subdivision or development authority to a designated officer, the powers are best delegated to the CAO who can further subdelegate (*MGA*, s. 209). Practically speaking, delegating to the CAO will allow the CAO to further subdelegate on the basis of the CAO’s knowledge of administrative resources and availability.

If your subdivision authority or your development authority is established in the land use bylaw (the “LUB”), Council will need to have a public hearing to amend the LUB (*MGA*, s. 692); however the *Regulation* makes it possible for Council to conduct a public hearing electronically. If the subdivision authority or development authority is established in a separate bylaw, Council can simply amend the bylaw as required.

Another way to streamline approvals that are made by the MPC is to review your MPC’s procedures. Some MPCs have procedures akin to a hearing where the applicant and other members of the public are allowed to make submissions. However, there is no legislated right for the applicant or members of the public to make submissions to the MPC; therefore, it may be possible to limit submissions to only allow a report from the subdivision or development authority and these may be even further limited to email submissions.

Any changes Council makes to streamline approvals can be temporary or limited in response to the current pandemic. Ultimately, any changes will require a careful review of the MO, your municipality’s bylaws and your delegations in order to determine the best plan forward for your municipality. You may need to seek legal advice to ensure any proposed changes are consistent with the MO, the *MGA*, and the requirements of procedural fairness.

(4) Holding MPC Meeting, Public Hearing or SDAB Hearing

The *Meeting Procedures (Covid-19 Suppression) Regulation* (the “*Regulation*”) was enacted on March 25, 2020 to facilitate electronic meetings and hearings. Meetings are defined to include hearings. Some of the highlights of the *Regulation* are listed below:

- a. **Electronic Meeting** – Entire meetings and hearings may be held electronically, namely by teleconference or live streamed broadcast (*Regulation*, s. 3).
- b. **Submissions** – If members of the public were normally entitled to make a submissions, they should be able, before and during the meeting, to make submissions by email or any other method that Council or the board considers appropriate (*Regulation*, s. 3(1)(b)).
 - i. This means Council, the MPC and the SDAB may need to review their procedures and decide how and when they will accept submissions.
 - ii. There is no right for the public to participate in a Council meeting, a council committee meeting or an



MPC meeting; there is only a right to be present (*MGA*, s. 198). The *Regulation* echoes this provision and only provides that the public must be able to hear the meeting (*Regulation*, s. 3(1)(a)).

- iii. The right to participate in public hearings and SDAB hearings is unchanged so Council will have to facilitate participation as noted above.
 - iv. Again, changes made to accommodate electronic participation may require resolutions of Council or amendments to bylaws, depending on how things are established in your municipality, and these can be drafted so they are temporary.
- c. **Attendees** – For a meeting, the CAO or designated officer must attend electronically and for a hearing the chair or vice chair must attend electronically (*Regulation*, s. 3(1)(c)).
 - d. **Closed Meeting** – Electronic access to meetings or hearings can be restricted or suspended in order to close them to the public (*Regulation*, s. 3(3)(a)).
 - e. **Meeting Information** – If information has to be made available to the public or for public inspection, it can be made available electronically on the website where the information is likely to be easily found or if requested by a person, by sending it by email, mail or facsimile (*Regulation*, s. 4).
 - f. **Quorum** – Where quorum cannot be constituted due to members being in quarantine, quorum is constituted by the number of members not in quarantine, if that number is 2 or more (*Regulation*, s. 6). Quarantine includes any self-isolation and self-quarantine as a result of COVID-19 or recommendations of the Chief Medical Officer or the World Health Organization relating to COVID-19.
 - g. **Notice** – Notice of a meeting or hearing must still comply with notice requirements specified by Council (*MGA*, s. 196). If your Council has adopted an Electronic Advertising Bylaw (*MGA*, s. 606.1), you may have additional options for advertising. Notice must state the electronic means by which the meeting or hearing is to be held and give the information necessary for the public to access the meeting (*Regulation*, s. 3(2)).
 - h. **Public Hearing** – Council is deemed to have met its obligation to hear people (*MGA*, s. 230(4)) if the public hearing is held in accordance with the *Regulation* (s. 3(3)(d)). Council is also deemed to have met its obligation to consider representations (*MGA*, s. 230(5)) if Council allows submissions in accordance with the *Regulation* (s. 3(3)(e)).
 - i. **Public Hearing Notice** – The *Regulation* has made no change to the requirements to provide notice of a public hearing in accordance with *MGA* sections 606 and 230(2)(a).

With respect to electronic meetings or hearings, it is important to consider the limitations and challenges with technology (dropped call, inability to call in, data issues). If there are issues with technology that limit access or participation, it may be necessary to adjourn or postpone a meeting or a hearing in order to ensure procedural fairness and insulate your municipality from a challenge to the passage of a bylaw, resolution or decision on the grounds that the process was unfair.

(5) Appeals to SDAB and Court of Appeal – No changes to the MGA

As a result of MO 022/20 being rescinded, appeals of decisions of the development authority, subdivision authority and SDAB are no longer extended to October 1, 2020. Instead, all appeals have reverted back to timelines set out in the *MGA*, subject to the Transition Period outlined above.



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Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact Alifeyah at:



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