



## COVID-19 Update: Q & A for Municipal Planning Issues

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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3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20.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. What powers are granted to a municipality in regards to land use when a state of local emergency is called?**

Typically, other than in specific relation to the emergency and the response to it, a state of local emergency (“SOLE”) does not grant the municipality any broad powers to modify or suspend the planning regime or the requirements of the land use bylaw (“LUB”).

In the context of responding to the emergency, the Director of Emergency Management (“DEM”) can order that lands and structures be put to uses that are contrary to existing Development Permits, contrary to the LUB or which in other circumstances would require an application pursuant to sections 24(1)(b) and 19(1)(c), (d) and (g) of the *Emergency Management Act*.

### **2. Does a state of local emergency render local bylaws such as the land use bylaw null and void when a municipality makes decisions?**

The SOLE does not render local bylaws, including the LUB, null and void generally, but as described above, the DEM can issue orders that may be contrary to a bylaw, if done in good faith for the specific purpose of addressing the emergency and its impacts. More typically though, the DEM will seek an amendment of a bylaw by Council if required.

By way of example, the DEM can authorize the use of a structure for a purpose that may be contrary to the zoning or a development permit issued for that structure, if the use is connected to the emergency or the emergency response.

### **3. What latitude does a state of local emergency give a Development Officer when they are faced with issuing waivers or approving a use that is not allowed in a land use district?**

None. The Development Authority is not vested with any different authority with respect to waiving requirements (of the LUB or an Approval), or approving a use that is not allowed within a land use district. As noted above, the DEM can cause lands or structures to be put to uses that are not allowed in the district, but the DEM does not require development approval to do so.



**4. If a development permit or subdivision approval is granted now, does the municipality advise the developer that the appeal period is extended until October 1, 2020? Should the municipality be cautioning developers to not proceed under a development permit or subdivision approval, and they cannot commence construction or the use until that date (unless it is understood it would be done entirely at their own risk)?**

The extension to October 1, 2020 has been rescinded by Ministerial Order 036/20 (“MO 036/20”). This means that all the sections listed in the Appendix to Ministerial Order 022/20 (“MO 022/20”) have reverted from having an October 1, 2020 extension back to the normal timelines and deadlines outlined in the *MGA* unless specifically listed in the Appendix to MO 036/20. MO 036/20 provides a transition period from March 25, 2020 to April 17, 2020 (the “Transition Period”) for those sections specifically listed in the Appendix to MO 036/20 so that any timeline that **started or ended** within the Transition Period is to be calculated as **starting** on April 17, 2020.

For example, if a Development Permit was issued on March 30, 2020 then, as a result of the Transition Period, the appeal period is calculated to start on April 17, 2020 and run for 21 days.

If a Municipality issued a decision in the Transition Period, we would recommend contacting the recipient of the decision and any other notified parties to advise that the timeline of the decision begins on April 17, 2020 and is calculated in accordance with the *MGA*.

**5. Are you saying hold off on issuing Development Permits for Discretionary Uses or variances only? Not Permitted Uses though?**

In light of MO 022/20 being rescinded as discussed in the response above, development authorities (and subdivision authorities) are required to comply with the timelines in the *MGA*.

**6. Will a subdivision applicant be unable to finalize a recent or upcoming subdivision approval, and have the municipality/Subdivision Authority endorse it for registration at Land Titles prior to October 1, 2020, as the deadline to file a subdivision appeal would technically be open until October 1, 2020?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**7. Recognizing that the timelines in Section 686 have been extended to October 1, 2020 are there process options, or recommendations with respect to the issuance of development decisions that involve discretionary use(s), and/or a variance?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**8. Does the MO 022/20 extend the time for responding under s 653.1(1) (the section that says you have to determine if an application for subdivision approval is complete in 20 days)?**

As discussed above, since MO 022/20 has been rescinded, the time to determine whether an application is complete



has reverted back to the 20 days as set out in the *MGA*. Section 653.1(1) is included in the Appendix of MO 036/20. Therefore, if an application was received in the Transition Period (March 25, 2020 to April 17, 2020) the timeline to determine if the application is complete is 20 days but the timeline commences on April 17, 2020.

**9. The deadlines for filing appeals on development permits (s 686) was also extended to October 1. Doesn't that put any development permit issued from now until October 1 at risk of being appealed for months instead of the usual 21 days?**

As discussed above, since MO 022/20 has been rescinded, the appeal period has reverted back to the 21 days as stipulated in the *MGA*, subject to the Transition Period. Section 686 is included in the Appendix to MO 036/20. Therefore, if the appeal period **began or ended** within the Transition Period (March 25 and April 17) the 21 days would **begin** on April 17, 2020.

**10. Does anything in this Ministerial Order (or others) remove the responsibility for the municipality to advertise Public Hearings?**

No. Municipalities are still required to advertise public hearings but if the public hearing is going to be held pursuant to the *Meeting Procedures (Covid-19 Suppression) Regulation*, the notice must state the electronic means by which the meeting is to be held and give the information necessary for the public to access the meeting.

**11. Can a municipality choose a deadline (such as a deadline for appeals to the SDAB/MGB following issuance of a development permit or subdivision approval) that is different than the MGA?**

No. The Minister has the authority pursuant to section 605 of the *MGA* to issue an order altering dates and time periods; pursuant to that authority he has rescinded MO 022/20 so most timelines and deadlines revert back to the *MGA*, subject to the Transition Period.

That said, if a municipality is having difficulty meeting deadlines under the *MGA*, an option may be to request the Minister to pass a MO extending a deadline, even on a "one off" basis. But be cautious, here; it would be prudent to approach the Minister's office prior to the deadline expiring.

**12. During a public hearing will municipalities need to, as an example: make the call asking for members of the public to indicate if they are in favour of the bylaw, then allow time (15 minutes) for people to email comments; then make the call for those opposed, and allow time (15 minutes) for people to email comments; and then call for anyone else who would like to make comments, allow time for emails again. OR can we simply make the call for anyone who has comments in favour of, against, or otherwise affected to submit them at the start of the public hearing, provide them with 30 minutes, and then read them all in once the time is up?**

The *Meeting Procedures (Covid-19 Suppression) Regulation* does not mandate how Council conducts its public hearing. It allows Council to accept submissions by email or by any other method that the Council considers appropriate. Council may want to provide that any written submissions must be emailed to the municipality in advance of the public hearing so they can be posted and available for the public to view and limit the public hearing to telephone (oral) submissions. Additionally, Council may be able to ask participants to identify their desire to



participate and their position (for or against) in advance of the public hearing so Council can call upon participants in an orderly fashion. Council can determine the procedure and it may be impacted by the technology that is available.

**13. To ensure municipalities meet all legislative requirements, is it best to hold all SDAB appeals as close to October 1?**

As discussed above, since MO 022/20 has been rescinded, the normal process applies with respect to appeal periods subject to the Transition Period.

**14. Since s. 606(2) refers to notification for public hearings, does this mean that no public hearings may be held until after October 1?**

No, public hearings can be held in accordance with the *MGA* and may be held electronically in accordance with the *Meeting Procedures (Covid-19 Suppression) Regulation*. Notice requirements for public hearings are unchanged.

**15. Is there any direction on sending out adjacent letters?**

None of the Ministerial Orders issued to date have provided any direction in this regard, therefore the provisions of the *MGA* must be followed as normal.

**16. If an SDAB Hearing commenced before the amendments were passed, do these extended timelines apply or would the Board still be required to issue a written Decision within 15 days?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.

**17. What if an Appeal Hearing is held and then a month later another appeal is filed?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20 and, as always, the SDAB should not schedule a hearing until the appeal period has expired.

**18. Does this mean that the time for responding under s. 653.1(1) (the section that says you have to determine if an application is complete in 20 days) from the time specified in the section to October 1?**

As discussed above, all timelines and deadlines in the *MGA* must be complied with, subject to the application of the Transition Period for sections listed in the Appendix of MO 036/20.



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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 the following members of the Brownlee LLP Municipal Team:



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