

Public Hearings for Municipalities

Manitoba Ombudsman

A public hearing is a forum in which the public can express their views and opinions on matters that affect them. See below for the circumstances in which formal public hearings must be held. In addition to the requirements set out in law, a municipality may also hold a public hearing for any other matter it chooses.

A closer look at public hearings

Public hearings generally fall into two types.

Some public hearings occur when council is seeking input from citizens on financial plans, budget matters, local improvements, development plans, and so on. Public hearings of this type tend to be for matters that affect a wider number of citizens, possibly the entire municipality. At these types of public hearings, council might state its position on a certain matter, or present its plans, for the purpose of obtaining public input. After obtaining public input, council will be in a better position to make an informed decision.

A different kind of public hearing occurs when council is sitting in an administrative tribunal-like capacity to hear opposing positions of parties related to a specific matter, for example, an application to vary zoning or for a conditional use application. These situations involve the legal rights of specific parties. In situations such as these, council will be making an impartial decision based on the information presented by parties and witnesses at the hearing, and will not state a position but rather render a decision at the end of a hearing process.

Understanding the context of the public hearing is important to ensure that each type of public hearing is conducted fairly.

Tips for conducting fair public hearings

Before the hearing

Give notice. Both *The Municipal Act* and *The Planning Act* specify when and how notice about a public hearing must be given, in certain situations. *The Municipal Act* specifies, for example, that notice for a public hearing regarding a local improvement plan must be sent to each potential taxpayer 21 days in advance of the hearing. *The Planning Act* requires that notice to the applicant and any affected parties be given 14 days in advance of a hearing related to a variance, conditional use, application for subdivision, and other situations.

Generally, council members conducting a public hearing will hear presentations from individuals and delegations and ask questions about information presented at the hearing, as necessary. Public hearing procedures should guide the process to ensure that a hearing is conducted fairly. Public hearing procedures are typically established in a municipality's procedures by-law.

Public hearings must be held under *The Municipal Act* for:

- Presentation of the annual financial plan of the municipality (subsection 162(2))
- Revisions to the operating budget that increases transfers from surplus and reserves, increases tax revenue, or increases estimates in the capital budget (subsection 162(3))
- Intention to spend from a special purpose reserve for a different purpose (subsection 168(2))
- Proposal to close a municipal road (section 290)
- Proposal for local improvements/special services (section 318)

Public hearings are required under *The Planning Act* for:

- A proposal to adopt or amend a development plan (section 46)
- A proposal to adopt or amend a zoning by-law (subsection 74(1))
- An application to subdivide property which results in the creation of a new public road (subsection 125(2))
- An application to vary requirements of a zoning by-law (section 96)
- An application for conditional use (section 105)

Tell people about the purpose of a hearing. Sometimes specific requirements must be followed with respect to content of the notice. For example, section 318 of *The Municipal Act* addresses both the time required for notice of a local improvement plan, and also the content of the notice. Subsection 315(1) of the act sets out a detailed list of what must be included in a local improvement plan, and it is that information that must be summarized in the notice. Citizens need to fully understand the proposal being considered by council before they can be in a position to ask meaningful questions and provide informed comments.

Understand council's jurisdiction. Understanding council's jurisdiction goes beyond the question of whether or not council has the authority to act or make a decision. The provincial law or municipal by-law giving council the authority to act or make a decision may also provide detailed information that must be considered and criteria that must be applied when making a decision. For example, subsection 97(1) of *The Planning Act* sets out the criteria to be applied when deciding to vary the provisions of a zoning by-law. It's important to have these criteria available when making such a decision, otherwise council runs the risk of making a decision based on the wrong criteria.

Pointers

Listen to those people who will be affected by the decision. Council may have gathered information ahead of time about the costs or benefits of a proposal or received information as part of an application package. A public hearing, however, is time to hear from those citizens who will be affected by a decision. That means listening, and sometimes asking questions for clarification.

Separate fact from feeling. Understand that two kinds of information are being presented – the actual impact on the person (fact) and how a person feels about the issue (feeling). Separating factual information from feelings can help to move forward. Although how people feel about a decision is important, feelings cannot always be the basis for a decision. If the facts support a decision different from the majority view, council must be able to make and defend its decision. To be able to articulate the difference between fact and feeling is critical to making a decision that will stand the test of scrutiny.

At the hearing

Set the tone:

- Introduce the panel
- Set out the jurisdiction to conduct the hearing (statute or by-law)
- State the purpose of the hearing, with reference to the decision that will be made..."We are here this evening to consider an application for..."
- State the criteria that council will consider when making the decision..."In making this decision, *The Planning Act* requires that we consider..." Stating the criteria can help to focus applicants and presenters. It can also help to inform applicants of the test they must meet.

Outline the rules of conduct. This allows council to inform applicants, objectors and other presenters about how the hearing will unfold, and it can help to maintain control over the hearing process. Rules of conduct could include:

- Order of speakers
- Whether council will answer questions
- Whether questions can be directed at presenters
- If there are time limits for presentations
- Time frame for making the decision

After the hearing

Explain council's decision. Obtaining information during a public hearing is an important part of the fair decision making process. Use that information to explain a decision. Providing reasons for council's decision can help to address concerns that have been raised or to let people know that they have been heard.

Put it in writing. Written decisions provides council with an opportunity to:

- Communicate with the public
- Explain the reasons for a decisions, and
- Prevent unnecessary complaints

Pointer

If council has already conducted a public hearing and then concluded that it needs additional information, the additional information should be shared with the affected parties before making a decision. If there is information adverse to one party's interest, they should have a chance to respond. If the information changes things in a material way, council is really considering a different issue. People should have the chance to speak to that issue.