Order M314 Compliance and Enforcement Support: Questions and Answers for Local Governments

Introduction
Effective August 21, 2020, under the Emergency Program Act (EPA), the Minister of Public Safety and Solicitor General (Minister) issued Order M314 “Gatherings and Events (COVID-19) Order” to address ongoing concerns where information and education is not deterring behaviours in violation of the Provincial Health Officer (PHO) Gatherings and Events Order (PHO Order) and persistent non-compliance is occurring. Information on the release of Order M314 along with a backgrounder can be found online: https://news.gov.bc.ca/releases/2020PSSG0046-001568.

Police and select special provincial constables (liquor, cannabis and gaming inspectors/investigators, community safety unit officers and conservation officers) are now empowered to issue violation tickets for infractions related specifically to contravention of the PHO Order and for abusive and belligerent behaviour by attendees at events and in any premises, as defined in the PHO order entitled “Restaurants, Coffee Shops, Cafes, Cafeterias and Licensed Premises, Including Pubs, Bars, Lounges, Nightclubs and Tasting Rooms”. Ticketing and penalties are not expected to be the first course of action to address violations. Ticketing is intended for repeated/persistent patterns of non-compliance and for egregious behaviour by attendees.

The Province would like to acknowledge and thank local governments for their continued support and contributions with respect to providing information and advice to the public and health officers regarding the PHO orders. The approach continues to require collaboration between local governments, health authorities and the Province.

Questions and Answers

What is the intent of Order M314?
Under Order M314, police, along with select special provincial constables (liquor, cannabis and gaming inspectors/investigators, community safety unit officers and conservation officers) are now empowered to enforce the PHO Order and issue violation tickets for infractions related specifically to events and gatherings, such as:

- hosting, organizing, or promoting a private party, event, or gathering with more than 50 people ($2,000 fine);
- for gatherings of 50 people or less, not following the conditions stated in the PHO Order (https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf) ($2,000 fine);
- refusing to disperse an event or gathering after being instructed to do so by an enforcement official ($200 fine); and,
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- being belligerent or abusive with the direction by an organizer, owner, operator to comply with the terms of the PHO Order or in premises defined in the “Restaurants, Coffee Shops, Cafes, Cafeterias and Licensed Premises, Including Pubs, Bars, Lounges, Nightclubs and Tasting Rooms” PHO order ($200 fine).

Where violation tickets may not be a deterrent, police can provide long form information to the BC Prosecution Service and recommend charges in relation to the offence provision of the EPA. On conviction, penalties of up to $10,000 may be levied by the courts, as per section 27 of the EPA.

An additional measure is the requirement for compliance and enforcement agencies such as police departments, as well as local authorities, to report on compliance and enforcement activities upon request of the Minister.

**Who will have ticketing authority?**

Order M314 provides police/RCMP and select special provincial constables (liquor, cannabis and gaming inspectors/investigators, community safety unit officers and conservation officers) authority to issue these violation tickets. The new ticketing authority has not been extended to bylaw enforcement officers or health officers at this time.

Others, such as WorkSafe BC investigators, will continue to rely on their existing authorities and tools.

**What is the role of bylaw officers and the PHO orders?**

Bylaw enforcement officers are asked to continue their work supporting efforts to slow the spread of COVID-19 within the community by providing information and assistance to the public and health officers on PHO orders. Up to date PHO orders can be found online: https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus

Local bylaw enforcement officials provide an important role using their existing tools and are often the “eyes and ears on the ground”, providing important intelligence. The assistance they can provide to support compliance with PHO orders includes:

- monitoring facilities and areas closed to the public by a PHO order;
- providing information and advice to businesses and members of the public in respect of PHO orders, including providing warnings to businesses and members of the public who may be acting in contravention of a PHO order;
- providing regional public health officers or WorkSafeBC with information in respect of potential contraventions of a PHO order; and,
- contacting police agencies for support if further enforcement action is needed (the same as they would on other matters where police support is warranted/required).

**Why is there a shift in approach?**

To date, B.C.’s approach to obtaining compliance with provincial orders has focused on education. B.C.’s local government bylaw enforcement officers, provincial compliance and enforcement officers, health officers and police have all played a key role in this effort to date.

B.C. continues to see increases in the daily numbers of positive COVID-19 cases and hospitalizations. In addition, there are growing concerns about non-compliance with PHO orders in relation to large
gatherings and events and the link between these events and gatherings and an increase in positive cases. Recent examples of non-compliance and concerns about increasing cases have resulted in a need to implement new tools through Order M314 to support stronger enforcement of the PHO Order.

Violation tickets are a timelier alternative to prosecution through the courts and increase the Province’s enforcement toolkit to support the COVID-19 response. Police and other provincial compliance and enforcement officers will independently exercise discretion to issue tickets for Order M314 violations under the Offence Act’s Violation Ticket Administration and Fines Regulation.

This is a continuum approach focusing on education and information as a first step with ticketing and penalties reserved for the most significant violations and repeated non-compliance, and when attendees are abusive or belligerent. In supporting compliance, bylaw officers are doing an exceptional job and can call on police when the situation warrants additional enforcement.

Where is support available for local governments/bylaw enforcement officers who have questions about Order M314, compliance or ticketing?

Effective Wednesday, August 26, 2020, the COVID-19 Provincial Orders Support Team (COVID-19 POST) and call centre is available once again to support local authorities and police. The call centre is staffed from Monday to Friday from 9:00am to 5:00pm. The call centre is not available to the public.

Further information on how to access the call centre has been communicated to senior bylaw officials and local government chief administrative officer designates directly.

When contacting the call centre, staff will be connected with a Provincial Compliance and Enforcement Officer who can provide:

- up-to-date information about current PHO and Ministry Orders;
- clarification of compliance and enforcement authorities;
- advice and guidance for obtaining compliance with Orders;
- information about how and when it is appropriate to report violations to a health officer and others for consideration of further enforcement; and,
- advice and guidance on pursuing enforcement through the issuance of violation tickets under Order M314.

What can we share with the public regarding their role concerning Order M314?

The public are encouraged to report concerns around Order M314 violations from event organizers, venues or individuals, to the local government’s bylaw office. Local bylaw officers can help follow-up on concerns, and engage with police departments, health officers and WorkSafe BC as necessary.

If unable to reach a local bylaw office, the public can contact the local police department’s non-emergency line.

Our community does not have a bylaw officer, or our local RCMP detachment is only available during certain hours. Can we call 911 to report infractions?
Availability of resources to receive and respond to complaints will vary from community to community. Calls to 911 should be reserved for emergency situations.
Our bylaw officer is part-time and not always available to deal with public complaints. How can local governments ensure the public know who to bring their complaints too?
Local governments are advised to make sure information is available to the public regarding who they can contact to report concerns if the local bylaw officer is unavailable.

How do local governments contribute information and data to the Minister about contraventions and trends?
An additional measure contained within the Order M314 is the requirement for compliance and enforcement agencies (e.g., police departments, local authorities) to report on enforcement activities when requested. The data and information will assist with understanding whether individuals and businesses are complying with PHO orders. This information is expected to allow the Province to identify trends and/or to focus on problem areas and target enforcement action appropriately.

The process for capturing and sharing information is under development and further information on that will be shared in the near future.

Our bylaw officers have capacity; why don’t they have ticketing authority?
The framework for violation tickets issued in response to PHO orders is under provincial authority. At this time, the authority to issue tickets will be with the police and select special provincial constables. The Province will continue to monitor whether further support is needed for issuing violation tickets.

Will there be Provincial funding for local governments to support hiring more bylaw enforcement officers and recover inspection costs from the Province?
Work is actively underway on options to support local governments’ economic recovery from the impacts of the COVID-19 pandemic. As those options are finalized, local governments will be advised.

How will bylaw officers communicate their concerns to police and special provincial constables?
Bylaw officers will continue to be the primary responders to complaints from the public. Bylaw officers will use existing processes/communications and the strong relationships that already exist between bylaw officers and police to manage circumstances where further enforcement may be warranted.

How does Order M314 affect homeless encampments?
Order M314 provides a framework for the police and provincial special constables to issue violation tickets to businesses and individuals who are persistently violating the PHO Order on Gatherings and Events.

The focus of the Order M314 is on events, which have a clear and defined start and end time, as illustrated by the examples in the order. An event is different than a homeless encampment, which is an ongoing assembly of people for the purposes of sheltering. It is not the intent of Order M314 to specifically target or consider homeless encampments generally as gatherings or events. As with other tickets, police and provincial special constables will exercise discretion in assessing whether issuing a violation ticket for an event, as defined in Order M314, happening at a homeless encampment would be effective as a deterrent.

Does Order M314 apply to sporting groups?
Order M314 applies to all events including sporting events, where return to play plans have been put in place. If an organization is not in compliance with the PHO orders with respect to a gathering that is
growing to more than 50 people in attendance, or they have less than 50 and are not in compliance with
the health and safety requirements of the PHO orders, further enforcement may be warranted. The focus
is on those who are explicitly violating Order M314 and ignoring the information provided by bylaw
enforcement officers, police or special provincial constables.

Do local governments have the authority to rescind a business licence for those businesses who are
refusing to or choosing not to comply with Order M314?
Order M314 does not itself provide the authority to rescind a business licence. A business that is refusing
to or choosing not to comply with Order M314 requirements may be issued a violation ticket.

A business license may be suspended or cancelled under the Community Charter for failure to comply with
a term or condition of a licence or permit. A local government would need to follow its business license
bylaw (including notice and opportunity to be heard).

A local government would want to consult with legal counsel about steps under its business licensing
bylaw and the legislation with respect to rescinding a business licence.

Will local government be liable as hosts for public gatherings in local government parks?
It is not the intent that local governments be liable for large unorganized gatherings in public parks or
beaches, and the ability to call in police with ticketing authority should assist with dispersing crowds. Local
governments may continue to issue park permits for events and require that hosts follow the PHO orders.
As the owners of public lands, local governments already need to carefully consider issues such as liability
in authorizing the use of their lands and facilities by specific groups. A local government would want to
consult with legal counsel on any new conditions it might need to place on permits.

What are the changes in authority for price gouging and secondary sales?
On April 19, 2020, Minister of Public Safety and Solicitor General Mike Farnworth issued orders under the
EPA allowing police and other enforcement officers to issue $2,000 violation tickets for price gouging and
the reselling of medical supplies and other essential goods during the ongoing COVID-19 pandemic.

An order-in-council was made effective on July 10, 2020, that ends the temporary empowerment allowing
Provincial compliance and enforcement officers, and local community enforcement officers, to issue
violation tickets for price gouging and secondary selling under the EPA. After July 10, 2020, only police
officers are authorized to issue violation tickets for violation of the secondary sale and price gouging
orders.