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**SUBJECT:** Amendments to the City of Markham's Council Procedural By-law to Permit Electronic Meeting Participation during a State of Emergency

**PREPARED BY:** Kimberley Kitteringham, City Clerk, ext. 4729  
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Scott Chapman, Election & Committee Coordinator, ext. 2097

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**RECOMMENDATION:**

1. That the report entitled "Amendments to the City of Markham's Council Procedural By-law to Permit Electronic Meeting Participation during a State of Emergency", be received; and,
2. That the proposed amendments to the City of Markham's Council Procedural By-law 2017-5 to permit electronic meeting participation during a state of emergency as outlined in Appendix 'A' of this report be approved; and further,
3. That staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to seek Council's approval for amendments to the City of Markham's Council Procedural By-law 2017-5 to permit electronic meeting participation during a state of emergency declared under the *Emergency Management and Civil Protection Act* ("EMCPA").

**BACKGROUND:**

Under Section 238 (2) of the *Municipal Act, 2001*, every municipality in Ontario is required to adopt a procedural by-law to govern the calling, place, and proceedings of its council and local board meetings. In the City of Markham, meetings of Council, local boards, and committees are governed by the City's Council Procedural By-law 2017-5.

On March 11, 2020, Premier Doug Ford declared a province-wide emergency under the *Emergency Management and Civil Protection Act* ("EMCPA") in response to the declaration of the 2019 Novel Coronavirus (COVID-19) as a global pandemic by the World Health Organization. The state of emergency has mandated the closure of all recreation facilities, public libraries, childcare centres, and bars and restaurants providing public accommodations in all municipalities across Ontario. In an effort to contain the spread of the virus, governments and public health authorities at the international, federal, provincial, and regional levels are recommending that individuals practice physical distancing and that public and professional gatherings be limited until further notice.

As a follow-up, the Legislative Assembly of Ontario passed the *Municipal Emergency Act, 2020* (or Bill 187) on March 19, 2020. Bill 187 amends the *Municipal Act, 2001* (and the *City of Toronto Act, 2006*) to permit members of a municipal council, local board, or committee to participate electronically in open and closed session meetings and be counted

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towards quorum where such meetings are held during a declared state of emergency under the *EMCPA*, provided that the municipality's procedural by-law so allows.

Municipalities wishing to exercise these new emergency protocols under the *Municipal Act, 2001* are required to amend their procedural by-laws accordingly. At present, the City of Markham's Council Procedural By-law does not permit electronic meeting participation by Members of Council, local boards, or committees, and requires an amendment in order to address these changes in provincial legislation.

### **OPTIONS/ DISCUSSION:**

Bill 187 provides that where a municipality's procedural by-law so allows, Members of Council are permitted to participate electronically in open and closed meetings and count towards quorum during a period where an emergency has been declared to exist in all or part of the municipality by the Head of Council under Section 4 *EMCPA* or by the Lieutenant Governor in Council or Premier under Section 7.0.1 of the *EMCPA*. This would permit Members of Council to convene legally-constituted sessions and perform necessary emergency management decision-making from separate physical locations.

In the context of the current state of emergency surrounding COVID-19, electronic meeting participation will provide Council with the flexibility to quickly respond to the emergency and ensure the continuity of municipal operations while allowing Members to observe the physical distancing and self-isolation measures recommended by government and public health authorities. This will allow for the provision of essential municipal services and business continuity in a manner that protects the health and safety of the public, Members of Council, and municipal staff.

It is important to note that the provisions of Bill 187 only apply to meetings held during an ongoing state of emergency, declared to exist in all or part of the municipality under Section 4 or Section 7.0.1 of the *EMCPA*. Once the emergency has ended, the standard meeting rules of the *Municipal Act, 2001* will apply. This means that Council may, through amendment to the City's Procedural By-law, permit electronic participation for Council, local board, and committee meetings, but a quorum of the elected or appointed Members will need to be physically present in order for a meeting to proceed. The purpose of this rule is to ensure that meetings that may materially advance the business of the municipality remain open and accessible to the public.

The Association of Municipalities Ontario (AMO) has released a series of guidelines regarding the use of meetings conducted through electronic communications (see Appendix 'D'). The amendments proposed by staff to the City's Council Procedural By-law are consistent with these guidelines.

### **Proposed Amendments to the City's Council Procedural By-law**

In accordance with the principles of transparency and accountability underpinning the open meeting principles of the *Municipal Act, 2001*, staff are proposing amendments to the City's Council Procedural By-law that will permit electronic meeting participation during a state of emergency subject to the following conditions:

- **Items of Discussion**

The emergency electronic participation provisions will be utilized only to deal with business that is necessary to ensure the continued administration of the City and/or the provision of essential municipal services.

- **Council, Standing Committee, Local Board and Advisory Committee Meetings**

Electronic participation will primarily be reserved for Council and Standing Committee meetings. However, additional City Committees and Local Boards may be permitted to meet electronically during a state of emergency at the discretion of the City Clerk and based on need.

- **Open and Closed Session Meetings**

Meeting participants will be permitted to participate electronically in meetings that are open and closed to the public. For closed session meetings, it is the expectation that Members will physically sequester themselves in secure rooms for the duration of the meeting. As always, Members will be subject to the confidentiality provisions of the *Council Code of Conduct* and/or the *Municipal Act* (as applicable) are required to keep information discussed during closed session meetings confidential.

- **Chair and Clerk**

Where feasible, the Chair and Clerk of the meeting will be physically present at the location determined by the City Clerk to ensure order and effective control over a meeting in which Members are participating electronically.

- **Equal Participation**

All Members will be able to participate equally whether they are attending a meeting in-person or remotely. This means that all Members will have an equal right to be recognized during discussion, to ask questions, and to vote on all matters requiring direction. It must also be evident to members of the public who are observing the meeting that all Members can properly hear and participate in the meeting discussion.

- **Public Participation**

Meetings held in accordance with these emergency protocols will comply with existing open meeting principles of the *Municipal Act, 2001*. This includes providing members of the public with reasonable notice of meetings as well as a means to participate in the meetings.

### Considerations

The decision to include provisions for electronic meeting participation in the City's Council Procedural By-law requires consideration of a number of factors, including potential costs and requirements associated with required technical infrastructure and security for closed session meetings. As such, staff are recommending that the amendments of Bill 187 be incorporated into the City's Procedural By-law on a limited basis as outlined above. Technology used to support electronic communications will be phased in gradually as required to ensure reliability, ease of use, and effective participation by Members of Council and members of the public. This gradual approach to the use of technology for remote meetings is consistent with the guidelines recommended by AMO.

As previously directed at the March 9, 2020 Development Services Committee meeting, staff will report back on options and considerations for a more general application of electronic participation for Council, local board, and committee meetings during emergency and non-emergency situations using lessons learned from this trial period once the current public health pandemic has stabilized.

**FINANCIAL CONSIDERATIONS**

Immediate costs associated with implementing the technology required for limited electronic meeting participation fall within existing approved budget allocations.

**HUMAN RESOURCES CONSIDERATIONS**

Not applicable.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

This report recommends changes to the City's Council Procedural By-law to ensure that Council and Standing Committees of Council continue to operate efficiently in a state of public emergency in a manner that supports the City's Strategic Plan "Building Markham's Future Together."

**BUSINESS UNITS CONSULTED AND AFFECTED:**

The recommendations reflected in this report were developed in consultation with staff in the City's Legal and Information Technology Services Departments.

**RECOMMENDED BY:**

Kimberley Kitteringham  
City Clerk / Director of Legislative Services  
& Corporate Communications

Trinela Cane  
Commissioner of Corporate Services

**ATTACHMENTS:**

- Appendix 'A' – Proposed Amendments to Council Procedural By-law 2017-5
- Appendix 'B' – Council Procedural By-law (By-law 2017-5)
- Appendix 'C' – *Municipal Emergency Act, 2020* (Bill 187)
- Appendix 'D' – Meetings Guidance for Heads of Council: COVID-19 (Association of Municipalities Ontario)