

## Considerations for Remote Council and Congregation Meetings during the COVID-19 Pandemic

Below is from the ELCA Office of the Secretary

With notes and additions from the Sierra Pacific Synod Office of the Bishop

**Quick Summary** – *but please do read the information below for much more detail.*

- in both CA and NV remote council and member meetings are acceptable as long as they are not prohibited by the organization's governing documents
  - check your constitution, bylaws, and continuing resolutions, as you will need to comply with those documents in announcing the meeting, establishing a quorum, and voting.
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During this time of social distancing because of the COVID-19 pandemic, many congregation leaders are asking how they can take advantage of technology to continue to hold necessary meetings to conduct the business of the congregation. Please bear in mind that some matters may best be postponed until the restrictions on gatherings have been lifted. Others, though, are pressing, or are mandatory by your constitution and bylaws, and need to be dealt with. Your bishop or synod staff can help you determine what matters might better be left for another time.

If after consultation it is determined that you need to hold a meeting to make necessary decisions, there are some important factors to take into consideration before proceeding to call a meeting. Below is an FAQ of the questions being asked most often. **In every case, however, it is vital that you consult with your bishop or synod staff before proceeding to schedule a meeting.** Even in the current crisis, the rules have not all gone out the window, and state law, as well as your constitution, bylaws, and continuing resolutions, must still be respected.

### Q1: Where do we look to determine if we can have remote meetings?

A: You should look to the law of the state in which your congregation is incorporated (which in almost all cases is the state in which the congregation is located). Most states authorize remote meetings for members (i.e., the congregation meeting) and/or directors (i.e., the congregation council). These provisions are typically located in the state's non-profit corporation act. Note that the provisions for members' meetings (congregation) and directors' meetings (council) are typically separate and should be considered separately.

### Q2: What do these state laws say?

A: Each state is different, but there are three common "flavors" that are used:

- **State law authorizes it outright.** In this case, you need look no further
- **State law authorizes it unless the corporation's bylaws say otherwise.** In this case, you can have a remote meeting unless your constitution and bylaws prohibit remote meetings. This is unlikely, as we do not have Model provisions prohibiting remote meetings.
- **State law allows it if the corporation's bylaws authorize it.** In this case, you have to look to see if your congregation's constitution authorizes remote meetings.

**Consult your bishop or synod staff to seek the advice of your synod's attorney, who will know the statutes for your state.**

In both NV and CA, remote director and member meetings are allowed by state laws governing the operation of non-profit boards of directors and member meetings. In order for these to occur, simultaneous communication must be available, either orally or visually – people need to be able to hear or read and be heard, or able to speak either orally or electronically concurrently with the activity.

**In California**, electronic transmission to the corporation or electronic video screen communication is required. Hence, a meeting conducted solely by telephone is not permitted by state law. However, conference phone calls together with electronic transmission (an emailed agenda for example, where people can reply to one central email address) or an electronic video screen communication, or videoconference meetings are acceptable. *Key takeaway: make sure you send the agenda to all members ahead of time, via email, from an email that will be monitored during the meeting so people have a way to participate and respond visually.*

**For both states**, YouTube or Facebook Live Stream are not acceptable. (see more below at Q5)

**Q3: If needed, where do we look in our congregation constitution to see if remote meetings are authorized?**

A: For *congregational meetings*, look to see if your congregation has included this provision from the *Model Constitution for Congregations* (or a similar one):

**C10.08.** This congregation may hold meetings by remote communication, including electronically and by telephone conference, as long as there is an opportunity for simultaneous aural communication. To the extent permitted by state law, notice of all meetings may be provided electronically.

For *council meetings*, look to see if your congregation has included this provision from the *Model Constitution for Congregations* (or a similar one):

**C12.13.** The Congregation Council and its committees may hold meetings by remote communication, including electronically and by telephone conference, as long as there is an opportunity for simultaneous aural communication. To the extent permitted by state law, notice of all meetings may be provided electronically.

**Q4: We never updated our constitution to include these provisions. Does this mean we can't hold a remote meeting?**

A: Not necessarily. As discussed above, the place to start is with your state law. If the statute expressly allows for remote meetings or permits them unless your constitution or bylaws expressly forbid such meetings, you can have remote meetings even if your documents are silent on the subject. Only if you are in a state that requires authorization in the bylaws could you be barred from holding a remote meeting if your governing documents do not authorize it.

If your state requires a provision for remote meetings to be in the bylaws, and the congregation doesn't have such a provision, one solution might be to have the congregation council meet remotely or in person and adopt a continuing resolution authorizing remote meetings in compliance with state law. It might be challenged, but the best guess is that the courts would be lenient, given current circumstances.

**Because both CA and NV state laws provide for remote meetings without special provision, if your constitution is silent on this issue, you are fine to go ahead**

**Q5: We have confirmed that we are legally authorized to hold remote meetings. Now what?**

**A:** Next you must determine how your meeting will be carried out. Typically, provisions for remote meetings require that there be **simultaneous aural communication**: that is, every participant must be able to hear and to speak, with two-way communication possible. A platform that only allows people to listen, for example, would not be appropriate.

You must also consider those members who do not have online access. In choosing a technological platform, you should select one that allows for both online and dial-in participation so that as many members can participate as reasonably possible.

***In California*, there appears to be no authority under the Corporations Code to hold a remote meeting *only* by telephone. If you are meeting via telephone, you also need *either* electronic transmission by and to the corporation (email) *or* by electronic video screen communication. Printed or visual material should be available in real time on a computer so that the members have an opportunity to participate visually.**

**Q6: What notification do we have to give for a remote meeting?**

**A:** You must give the same notification normally required by your constitution and bylaws for that type of meeting. For example, if your constitution requires that notice be given by mail or electronically a certain number of days before a meeting, and that it be announced at two consecutive Sunday worship services, you would still need to comply with those requirements. If you are streaming worship services, you would need to announce the meeting in those services, just as you would normally do.

**Q7: How do we establish quorum?**

**A:** The same quorum requirements that your constitution establishes for face-to-face meetings apply to remote ones. The most effective means of assessing whether you have quorum might be by taking an oral roll call of voting members who are participating in the meeting. Some electronic platforms will list all the participants in a meeting. You may be able to take a screenshot or print out the list of participants and save it for your records. One challenge would be to verify the identity of persons who are dialing in and are not visible, but in many congregations it should be possible to verify by voice if members are known to one another. You also need to allow for situations where more than one person is participating from a single post (e.g., couples or families with teens who are voting members).

## **Q8: How do we take a vote?**

A: Some congregations are having members drive in written ballots to drop off at a designated location between a set number of hours. If you choose that option, you need to draw up a list of those participating in the meeting so that only those who have been in the meeting are allowed to drop off ballots.

**The above option seems to be the least desirable, as it puts multiple people at greater risk, health-wise; and you have the problem of making sure only those eligible to vote actually casted their own votes.**

Others are going by spoken yeas or nays or polling each individual voting member participating in the meeting in a voice vote. Some are choosing to take votes using the poll feature of their electronic platform, though a challenge with that option is allowing for votes of members who do not have online access, as well as dealing with the problem of multiple voting members participating from one location.

**The above option is certainly the most simple and straight forward. A 'regular' verbal vote can be taken, and if there is call for a division of the house or the chair is unable to discern the results, then you could move to a roll-call vote.**

**Another option is a hand-raise vote, combined with roll call for those not on video.**

**Note that the poll feature only allows for one vote per sign in, so multiple voters in the same household would each need to be on the meeting from their own device.**

If any member calls for a secret ballot or for division of the house, or if your constitution and bylaws require a written ballot for certain kinds of votes (such as calling a pastor), you might have a sign-in list of those present at the meeting, then allow a certain period of time for people to come to the church to drop off their ballot.

***Do check your governing documents, as secret or written ballots may not be required.***

If you are in an area where travel is being restricted, or if there are voting members who are on lockdown, you may have to look at other options, however.

**Again, the option for a drive up voting may pose health risks and you should check with your local health department before using this option.**

**Online voting may be an option. One such platform is Election Runner (<https://electionrunner.com/>). There is a small fee for each election, but provides for anonymous, secure voting.**

**None of these options are perfect, and any option will mean that some section of people in your congregation will not be able to participate.**

Whatever you choose to do, you must comply with state laws, and you must allow for all voting members to be able to cast their vote.

**Please make the informed decisions that will work best for your community. We know that every congregation and community are different, so please contact the Office of the Bishop with any questions so we can be in this conversation with you and provide assistance as needed.**