

VIRTUAL MEETINGS FOR CONGREGATIONS OF THE SOUTHWESTERN TEXAS SYNOD OF THE ELCA

A number of congregations have requested guidance on holding meetings remotely using teleconferencing or virtual technology during the current pandemic. This document attempts to address some of the issues that need to be addressed in preparing for and conducting meetings in this way.¹ A good resource on virtual meetings for nonprofits available from BoardSource at <https://boardsource.org/product/virtual-meetings-untangled/> (currently available free during the pandemic).

Statutory Authority

Texas law generally allows nonprofit corporations to conduct meetings using remote technology in section 22.002 of the Texas Business Organizations Code (“TBOC”—see attachment). This includes meetings of the board of directors (congregation council) and committees, as well as those of the members of the corporations (congregation meetings).

In order to make use of this option, a congregation must satisfy these requirements [TBOC § 6.002]:

1. The technology utilized must permit each person participating in the meeting to communicate with all other persons participating in the meeting;
2. It must implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and
3. A record must be kept any vote or other action taken.

Constitutional Provisions

The ELCA’s Model Constitution for Congregations has been revised in recent years to specifically authorize virtual meetings of congregation councils and committees:

C12.13. The Congregation Council and its committees may hold meetings by remote communication, including electronically and by telephone conference, and, to the extent permitted by state law, notice of all meetings may be provided electronically. (2013)

and congregation meetings:

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

¹ This discussion is intended to address general principles and is not intended as specific recommendations for any particular group or situation. Congregations should consult with an attorney or other advisor of their choosing for advice on specific issues and circumstances.

the extent permitted by state law, notice of all meetings may be provided electronically. (2019)

Since these provisions are relatively new and are “recommended” rather than “required” provisions of the *Model Constitution*, many congregations have not yet incorporated them into their own documents to authorize meeting by remote technology. However, based on the state law provisions noted above, it appears that this technology can be used as long as it is not specifically prohibited by the congregation’s governing documents (constitution, bylaws and continuing resolutions) even if it is not explicitly authorized in them.

Notice of Meeting

A congregation must follow its own requirements for giving notice of a virtual meeting the same as for an in-person meeting (see *Model Constitution* **C10.03.**, **C10.08.**, **C12.11.** and **C12.13.**). In addition, Texas law requires that the notice for a meeting to be conducted using remote technology must also include:

1. the form of communications system to be used for the meeting, and
2. the means of accessing the communications system.

TBOC § 6.051(a)(2)(B).

The question also arises whether the notice of the meeting can be sent electronically, usually by email. The *Model Constitution* generally permits this “to the extent permitted by state law” [**C10.08.** and **C12.13.**]. However, Texas law authorizes email notice only if it is transmitted “to an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice” [TBOC § 6.051(b)(2)]. Before relying on electronic notice of a meeting a congregation should consider whether it has records to confirm that the email addresses to be used were provided or authorized for notice by the person to be notified.

PRACTICAL CONSIDERATIONS

Experience indicates that virtual meetings work well for smaller groups that operate relatively informally on routine matters but become more difficult as the number of participants and the complexity of the issues to be addressed becomes more complex. It may be helpful to propose a set of rules for how the meeting will be conducted in advance (see, for example, <https://robertsrules.com/pdfs/electronic-meeting-sample-rules.pdf>). Since congregation meetings generally involve more participants and more formality, the considerations below are directed primarily to that context.

Eligibility and Access

As noted above, Texas law requires implementing “reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently

identified” [TBOC § 6.002(b)(1)]. Many of the technology platform utilized to conduct a virtual meeting have password and authentication requirements to ensure only persons entitled to participate can access a meeting. However, complications will result if multiple eligible members of a single household access a meeting through a single internet or telephone connection. Procedures need to be put in place to identify all participants, verify each is eligible to vote, and compile a list of all members participating in the meeting. Allowing sufficient time to validate identity and eligibility is essential.

Quorum

The requirements to constitute a quorum as set by the congregation’s governing documents (see *Model Constitution* **C10.04.** and **C12.12.**) must be met the same for a virtual meeting as for an in-person meeting. The list of participants compiled under the section above can be used to document that the requirement has been met.

Obtaining the Floor and Debate

As the number of participants increases, it becomes more difficult (or impossible) for the chairperson to determine when or who someone is attempting to speak. The chair may need specific person(s) assigned to assist in monitoring the meeting for this.

Participants should be instructed in advance (and reminded during the meeting) to:

1. remain on “mute” when not speaking to avoid extraneous noise in the meeting;
2. use the “raise your hand” or similar feature of the platform to be recognized to speak (note this may not be available for those accessing the meeting by telephone, and other provisions may need to be made for them);
3. refrain from speaking until recognized by the chairperson; and
4. identify themselves when beginning to speak.

Motions

Except for routine motions (like approval of minutes) substantive motions should be submitted in writing in a format that can be displayed on the meeting platform.

Voting

Voting on routine and non-controversial matters can handled by voice vote as is normally the case in in-person meetings. Matters become more complicated when a voice vote is closely divided or the outcome is questioned. If only a single voter is accessing the meeting through each internet or telephone connection, the meeting platform may provide a means for recording and counting votes. However, if more than one eligible voter is accessing through a single connection, it may be necessary to conduct a “roll call” vote utilizing the list of members in attendance.

Special attention needs to be given to situations where a written ballot is required, for example election of officers under *Model Constitution* **C11.02.** State law (TBOC§ 22.160) authorizes voting by mail, fax, or “electronic message” only when it is authorized by the

corporation's certificate of organization or bylaws. It is unclear whether a meeting platform's voting features would satisfy a written ballot requirement; it may be possible to address this situation by a continuing resolution or meeting rule in advance, but an attorney should be consulted on this, particularly for significant decisions. If electronic voting cannot be used, the best option is probably to use a process establishing a time and place for members participating in the meeting to obtain and submit a written ballot (following appropriate social distancing protocols).

VIRTUAL MEETING SYSTEMS:

- Zoom Website: www.zoom.us
- GoToMeeting Website: www.gotomeeting.com
- Join.me Website: www.join.me
- EzTalks Website: www.eztalks.com
- Google Hangouts Website: <https://hangouts.google.com/>
- CISCO Webex Meetings Website: <https://www.webex.com/>
- Skype Website: <https://www.skype.com/en/>
- Free Conference Call Website: <https://www.freeconference.com/>

CHECKLIST²:

Before the Meeting

1. Identify an accessible platform for meeting and provide information about it to all members in advance of the meeting.
2. Give members the option to dial-in if they do not have the technology that permits access to a video conference.
3. Confirm the names of members and those entitled to vote.
4. Prepare and disseminate, before the meeting, notice of the date and time of the meeting, the electronic form of the meeting, instructions on how to log on/call-in and, when required, the agenda, including the issues upon which a vote will take place. Organizations should consider providing members with the agenda even if such distribution is not required.
 - Include how participants can test the system prior to the meeting.
 - Include who and how they should contact if they are having an issue connecting to the system.
5. Test the system being used for the virtual meeting to make sure it is in working order.

During the Meeting

1. Confirm membership and record of attendance.
2. Determine if quorum requirements are met.

1. ² Adapted from "Guidance for Conducting Virtual Meetings of Members of New York Not-for-Profit Corporations" issued by the New York State Attorney General Charities Bureau (April 2020).

3. Ensure that participants can hear (and, if applicable, see) the proceedings and communicate to the full group in real-time, via a text-based “comment” function or otherwise.
4. Set time limits for presentations and discussions
5. Give members the opportunity to bring motions or nominations from the floor, consistent with the organization’s bylaws.
7. Count votes.
8. Contemporaneously maintain a record of votes.
9. Contemporaneously record minutes.