

# Indiana–Kentucky Synod

## Guidelines for Adopting or Amending Congregational Constitutions

Effective September 2019<sup>1</sup>

When a congregation starts the process of adopting or amending its constitution, there are a few documents it should consult. The first and most important is the latest edition of the *Model Constitution for Congregations of the Evangelical Lutheran Church in America*.<sup>2</sup> The *Model Constitution* is updated at each Churchwide Assembly, currently held every three years.<sup>3</sup> Second is the latest edition of *Guide for Use of the Model Constitution for Congregations*,<sup>4</sup> typically updated a few months after a Churchwide Assembly finalizes amendments to the *Model Constitution for Congregations*.<sup>5</sup>

As those documents explain, the governing documents of the ELCA, Indiana–Kentucky Synod, and their member congregations call for Synod review of any changes to a congregation’s constitution.<sup>6</sup> The Synod Council has adopted a procedure for the review. The Council adopted these guidelines and must approve any revisions to them. It has delegated review of congregation constitutions to a committee made up of volunteers, including the synod Secretary, other members of the Synod Council, and the Synod Attorney. When a congregation amends its constitution or needs advice in doing so, it should e-mail the constitution in Word format to [constitutions@iksynod.org](mailto:constitutions@iksynod.org).

The Synod Council’s role in reviewing congregations’ constitutions helps ensure congregations include language required by the applicable governing documents, foster responsible life in Christian community, support the role of rostered leaders, and provide for collective discernment of the Holy Spirit in deliberation and making decisions. The Synod Council seeks to provide for basic best practices from legal, communal, and missional perspectives. Specific principles include protecting minority voices within congregations, providing transparency and accountability in congregational governing structures, and complying with Indiana or Kentucky law and the church’s governing documents. Still, the Synod Council affirms that congregations may organize themselves in a manner that they deem most appropriate to their mission. See ELCA 9.53.03.

The Synod Council has developed the following guidelines for congregations to use when amending their constitutions and bylaws. These guidelines are not all-inclusive; a provision could be submitted that does not meet with Synod Council approval for reasons not addressed by these guidelines.

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<sup>1</sup> Adopted by the Indiana–Kentucky Synod Council on September 14, 2019.

<sup>2</sup> Available at the ELCA’s website:

[https://download.elca.org/ELCA%20Resource%20Repository/Model\\_Constitution\\_for\\_Congregations\\_2019.docx](https://download.elca.org/ELCA%20Resource%20Repository/Model_Constitution_for_Congregations_2019.docx)

<sup>3</sup> The model may only be revised by the Churchwide Assembly in the same way as bylaws. ELCA bylaw 9.53.02. Continuing Resolution 9.52.A93. requires the Church Council to update the model continually.

<sup>4</sup> Available at the ELCA’s website:

[http://download.elca.org/ELCA%20Resource%20Repository/Guide\\_for\\_Use\\_of\\_the\\_Model.pdf](http://download.elca.org/ELCA%20Resource%20Repository/Guide_for_Use_of_the_Model.pdf).

<sup>5</sup> These and other helpful documents can be found at the ELCA Secretary’s website:

<http://www.elca.org/Resources/Office-of-the-Secretary>.

<sup>6</sup> See \*C16.03.–04. in the *Model Constitution for Congregations of the Evangelical Lutheran Church in America*.

## General guidelines

1. **Congregation constitutions, bylaws, and continuing resolutions must not conflict with the faith and life of the church or the constitutions, bylaws, or continuing resolutions of the ELCA or the Indiana–Kentucky Synod.** See ELCA 9.53.
2. **Constitutions will be compared to the version of the *Model Constitution for Congregations of the Evangelical Lutheran Church in America* in effect at the time the congregation holds its first vote on the revisions.** The Synod Council may require a congregation to comply with a more recent version if the Synod Council’s action on the constitution requires a Congregation Meeting before the constitution may be resubmitted.
3. **There must be no inconsistencies within the submitted documents. See \*C17.01.** Please remember that *all* bylaws and continuing resolutions adopted by the congregation must be sent to the synod, whether or not a congregation’s constitution is also revised. \*C17.04 and \*C18.03.<sup>7</sup>
4. **Constitutions must be consistent with applicable laws.** The most important of these are Indiana’s and Kentucky’s statutes governing nonprofit corporations, which are found at Ind. Code §§ 23-17-1-.2 to -30-4 and Ky. Rev. Stat. §§273.070 to 273.991.
5. **Constitutions must use the correct name of the synod.** It is the *Indiana–Kentucky Synod*, using a hyphen or an en dash to connect the two states’ names.
6. **Constitutions that provide for more than one Congregation Meeting a year must designate one as the “annual meeting.”** See C10.01. The *Model Constitution for Congregations* and the applicable Indiana and Kentucky statutes include provisions that refer to an “annual meeting.” (See C11.02, C12.02, C12.03, C12.09, C13.02.) A provision that the bylaws must designate which meeting is the annual meeting, as C10.01. does, also meets this requirement.

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<sup>7</sup> All references to sections of a congregational constitution (e.g., C10.02) are to the *Model Constitution for Congregations*.

7. **The Synod Council strongly recommends using the numerical codification system outlined by *Guide for Use of the Model Constitution for Congregations*, p. 6 (May 2017), in which bylaws and continuing resolutions are integrated with congregation constitutions.** The ELCA's and Synod's constitutions, bylaws, and continuing resolutions are organized in this way.
  
8. **The Synod Council strongly recommends including the date the most recent changes became effective.** In \*C16.02.c., the *Model Constitution for Congregations* requires noting the effective date for one type of amendment. This guideline recommends that a constitution include an updated effective date after the adoption of any amendment. The effective date is either the date of the congregation's vote approving changes that brings any section into conformity with the *Model Constitution for Congregations* (\*C16.04.) or the date the synod notifies the congregation of synod approval (\*C16.03.). It is helpful to include the most recent effective date prominently on the first page of the constitution and in the footer of the constitution, i.e., "(04-2015)". See the cover page and footers of the *Constitution, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*.
  
9. **The Synod Council has approved granting seasonal membership to voting members of other ELCA congregations who wish to retain such membership but desire to participate in the life and mission of another congregation, including exercising limited voting rights in the second congregation.** As a result, congregations of the Indiana-Kentucky Synod may grant seasonal membership to eligible individuals. The voting rights of seasonal members are governed by \*C8.02.e.

## Required sections and model language requiring editing

- 10. Constitutions must duplicate required provisions exactly as they appear in the latest model constitution (currently the *Model Constitution for Congregations of the Evangelical Lutheran Church in America 2019*).** The Introduction to the *Model Constitution for Congregations* states, “These sections must be used without alteration or amendment of the text in any manner (i.e., neither additions nor deletions are permissible).” This includes provisions like \*C6.05.g., which set out extra requirements for terminating a congregation’s relationship with the ELCA based on whether the congregation was a member of the Lutheran Church in America (h.) or was established by the ELCA (i.). Even when a congregation does not fall under one of those categories, these provisions are still required.
- 11. Constitutions must include C9.15. exactly as it appears in the *Model Constitution for Congregations*.** This requirement is based on ELCA policies implementing full-communion agreements with other churches.
- 12. Constitutions must follow the organizational structure of the latest *Model Constitution for Congregations*.** This means the order of chapters 10–14 should follow the *Model Constitution for Congregations*. It is helpful but not required if sections roughly follow the same order as those in the *Model Constitution for Congregations*. Any additional chapters should appear after the last required chapter and begin with Chapter 21 even if the congregation is not part of a parish and Chapter 20 is not included.
- 13. Congregations must select one alternative where choices are presented and shown with brackets. The brackets must be removed.** See \*C4.04, \*C5.03, C5.05, \*C8.02., \*C9.01., \*C9.21., C10.02., C10.03., C11.01., C11.02., C12.01., C12.02., C12.05., C12.06., C12.12., C13.04., C13.05., C13.07., C13.08., C14.02.
- 14. Congregations must replace all blanks with the appropriate information.** See C1.01., C1.02., C1.11, \*C5.04., \*C6.01., \*C6.04., \*C7.01., \*C7.03., \*C7.05., \*C9.03., C10.01., C10.02., C10.04., C11.02., C12.01., C12.02., C12.05., \*C16.01.

- 15. Constitutions must include at least basic provisions in Chapter 10 through Chapter 14.** Except as provided in these guidelines, these may be constitutional provisions referring to the bylaws. (For example, C14.01. might say, “Organizations within this congregation will be provided for in the bylaws.”) Guidelines 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 all refer to requirements within these chapters.
- 16. In optional sections, constitutions must use the same terminology as required sections or include an explanation that different terms are the equivalent of those used in required sections.** For example, a congregation may call its congregation council, referred to in \*C4.04. and other required sections by that term, a *board*, but it must state something like “The Congregation Council is also referred to as the Congregation Board.” Using the terms in the *Model Constitution for Congregations* is recommended.
- 17. Constitutions must state that the Congregation Council is the congregation’s Board of Directors in C12. See C12.05.a. Constitutions should not refer to the Congregation Council as Board of Trustees.** See Ind. Code § 23-17-2-4 or Ky. Rev. Stat. § 273.161.

### Protections of pastoral role, minority groups, and the deliberative process

- 18. Constitutions must contain quorum requirements for Congregation Meetings and Congregation Council meetings.** See C10.04., C12.12.
- 19. Constitutions must have a percentage of voting members required for quorums (“those present” is insufficient). The Synod recommends the required percentage be no lower than 15 percent.** The percentage should be large enough to protect the minority but small enough to allow business to be conducted. Using a percentage avoids the need to adjust for changes to the congregation’s size. The recommended range for Congregation Meetings is between 15 and 25 percent of voting members, but this might vary based on context.

**20. As part of meeting a quorum for congregation council meetings, constitutions must require (1) the pastor's presence, (2) in the pastor's absence, the pastor's prior approval of the agenda limiting business to be conducted, or (3) consultation with the bishop after chronic or repeated absence of the pastor.** See C12.12.

**21. Constitutions must have reasonable notice provisions for all meetings.** See model C10.03., C12.11., C12.13., C10.03., \*C16.01., \*C16.04., and \*C17.03. of the *Model Constitution* allow notice by electronic means "as permitted by state law." Ind. Code § 23-17-10-5(c)(4) allows congregations to provide notice of meetings by "electronic means capable of verification." Ky. Rev. Stat. § 273.162(2) allows notice by "other electronic means."

**22. Constitutions must prohibit proxy and absentee voting.** See model C10.05.

**23. Constitutions must require live meetings of council and congregation.**

Congregation and Congregation Council meetings may be electronic, but a live discussion must be provided for, e.g., teleconference. See C10.08. and C12.13. The absence of provision for an electronic meeting should be read as requiring in-person meetings. Neither model C10.08. nor C12.13. should be read as permitting decision-making by e-mail or other remote communication that does not allow for live deliberation during which all members participating may simultaneously speak to and hear each other.

C10.08. and C12.13 allow electronic and telephone conferences to the extent they are permitted by state law. Ind. Code §§ 23-17-10-1, -10-2, and -15-1(c) allow congregation and congregation council meetings through "any means of communication by which all members participating may simultaneously hear each other during the meeting." Ky. Rev. Stat. § 273.195(2) allows remote meetings of the congregation council as long as each member has an opportunity to participate in the meeting, the congregation (1) "implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxy holder," (2) "implements reasonable measures to provide" participants "a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings," and (3) "records any vote or other action taken at the meeting by a" council member "by means of

remote communication” and “maintain[s] as a record the recorded vote or other action taken.

24. **Constitutions must limit the Congregation Council’s ability to buy, sell, or encumber real property without a meeting of the congregation.** See model C12.05.b.
25. **Constitutions must limit the Congregation Council’s ability to enter into contracts and incur obligations in excess of budgeted amounts approved by the Congregation Meeting or anticipated receipts.** See model C12.05.c. and d.
26. **Constitutions must include at least a basic committee structure. Constitutions must provide for at least a call committee, nominating committee, and audit committee in their constitutions.** See model Chapter 13. Constitutions may allow providing for other committees in bylaws.
27. **Constitutions must not allow members of the Congregation Council to serve on nominating committees, except that outgoing Council members may be members of nominating committees.** See model C13.02., which provides that up to two outgoing Council members may serve on a six-member nominating committee. C13.02. should not be read as allowing any other Council members to serve on nominating committees.
28. **The synod strongly recommends that constitutions prohibit members of the Congregation Council from serving on the Audit Committee.** One of the Audit Committee’s purposes is to inquire into the business of the Congregation Council. A Congregation Council member serving on the Audit Committee likely would raise a conflict of interest related to that inquiry. See C13.03. See also ELCA’s Congregational Audit Guide as a resource for conducting audits, currently available at [http://download.elca.org/ELCA%20Resource%20Repository/Congregational\\_Audit\\_Guide.pdf](http://download.elca.org/ELCA%20Resource%20Repository/Congregational_Audit_Guide.pdf).

## Special provisions

- 29. Congregations with endowments or plans to have endowments should include limiting language for the purpose of the endowments.** The model's C5.05. contains excellent language for this basic purpose: "The purpose of the mission endowment fund is to provide for mission work beyond the operational budget of this congregation." This language prohibits using endowment funds for day-to-day operations of the congregation.
- 30. Chapter 20: If the congregation is a part of a parish, this chapter is required. If not a parish, the congregation may decide whether to include it.** (It may be prudent to have this chapter to ensure formation of a parish is allowed.)

## Help is available

- 31. Congregations may submit or make inquiries for an advisory opinion to the Synod's Constitution Task Force.** E-mail draft constitutions or questions to [constitutions@iksynod.org](mailto:constitutions@iksynod.org).
- 32. Congregations should consult the *Guide for Use of the Model Constitution for Congregations* (May 2017) and the *Introduction to the Model Constitution for Congregations* before beginning the amendment process.** The guide is available at the ELCA's website at <https://www.elca.org/About/Churchwide/Office-of-the-Secretary/Constitutions>.