

TO: Prince of Peace Church Council
FROM: Executive Sessions Bylaw Committee – Marilyn Schmidlin (chair), Jack Ranby,
Peter Westby, and ex officio member Steve Crofton
DATE: March 9, 2017

**EXPLANATORY MEMO ACCOMPANYING
PROPOSED AMENDMENTS TO BYLAWS
GOVERNING EXECUTIVE SESSIONS**

The Executive Sessions Bylaw Committee (Committee) has submitted to you proposed amendments to the Prince of Peace Bylaws. The amendments address executive sessions by the Church Council and the Executive Committee of the Council and are numbered as new bylaws C.12.11.02, C.12.11.03, and C13.01.01.e.

This Explanatory Memo discusses the Committee’s rationale for the proposed amendments, the intent of certain provisions in the proposed amendments, and several other issues relating to executive sessions. We hope this memo will be helpful to the Council and the congregation in considering the proposed amendments and, if the amendments are adopted, in operating under the new bylaws.

I. COMMITTEE’S RATIONALE

A. Validity and Value of Executive Sessions

At first blush, it may seem counterintuitive to allow a church council to meet in secret without allowing congregation members to attend, and perhaps to even exclude a council member from a council meeting. However, just as executive sessions are an important tool for governments, private associations and other entities, there are circumstances in which a church council should be allowed to meet in executive session. We would be strongly opposed to a blanket prohibition on executive sessions by the Prince of Peace Church Council.

B. Presumption of Transparency and Openness

1. Bylaw C12.11.02 states a presumption of transparency and openness in the way the Council operates. An executive session should not be conducted unless the need for secrecy is compelling.

2. Churches are different from city councils, school boards and other governmental entities in important respects.

a. As citizens, when we don’t like actions by the county or town in which we live, our options are quite limited. We could move, but usually other factors will be far more important in deciding whether to stay or go. If we don’t move, we still have to pay taxes to the jurisdiction that is upsetting us. Also, we may be in the minority, or fighting powerful interests. We could try to recall one or more of the elected officials, but pulling it off can be very difficult.

b. In churches, by contrast, membership and giving are strictly voluntary. When members are upset because they feel disrespected, ignored, taken for granted, or out of step with the direction the church is going, often they vote with their feet and/or checkbooks, or at least their level

of enthusiasm and participation are negatively affected.

c. Church members often feel a greater sense of ownership and a more emotional connection to the organization. That can be very good and important, but also makes major backlash more likely when they disagree with Council decisions, particularly if the decision comes as an unpleasant surprise without input in advance from the congregation.

d. Church members usually have a much closer connection to individual staff than citizens do to government employees. If a city fires a well-known employee, the reaction of most citizens is likely to be relatively mild, even indifferent. If a church terminates a well-regarded visitation pastor or other staff member, the reaction may be more severe – viewed as taking away a friend and an important person in their life.

e. In the church, we are taught to love and support each other, to be fair and just, to be understanding and quick to forgive, to engage in open dialogue, to live the Golden Rule, etc. We talk a lot about family and community. Part of fostering healthy relationships in the church is to treat one another with mutual respect and trust, as family members, everyone in the same boat so to speak. Usually, it is easier to talk negatively about someone in their absence, but talking with them directly, even when it is difficult, may be more consistent with Christian principles and lead to a better outcome.

Due in part to these considerations, Prince of Peace should have greater transparency and openness on various issues than governmental entities do, and certain discussions that a public body would hold in an executive session could and should be held by churches out in the open. Council should not meet in executive session unless there is a compelling justification for it and it is the best option under the circumstances. Therefore, the proposed bylaws establish a clear presumption and general rule against executive sessions, and list specific categories of exceptions in which an executive session may be appropriate.

C. Need for New Bylaws Governing Executive Sessions

1. The Prince of Peace Constitution and Bylaws do not mention executive sessions. Bylaw C12.11.01 states in part that “Council meetings shall be open to any member of the congregation.” Perhaps that provision, viewed by itself, could be interpreted as prohibiting executive sessions. However, over the years the Constitution and Bylaws have typically been interpreted as allowing executive sessions, but providing no rules or guidelines for their use.

2. The Constitution and Bylaws include provisions for meetings by the Executive Committee, but the term Executive Committee refers to the officers and the pastor (Bylaw C13.01.01). The term Executive Committee is not synonymous with executive session. The Bylaws do not require that Executive Committee meetings be open to members of the congregation. However, Bylaw C13.01.01.d requires that minutes of all Executive Committee meetings be recorded, submitted to the Council for review and approval, and then made available to the congregation.

3. The bylaws do not address confidentiality, or the requisite degree of detail required in minutes of meetings by the Council and Executive Committee.

D. The “Substantial Deleterious Effects” Test in the Proposed Amendments

1. Under proposed Bylaw C12.11.02, there is a single test for deciding whether the Council may conduct an executive session. The Council cannot meet in executive session unless it determines that the values of openness and transparency are outweighed, in the particular circumstances, by a risk that discussing the issue in an open meeting “would cause substantial deleterious effects on the well-being (financial or otherwise) of the church or an individual”.

2. In our view, a belief that one or more Council members would feel more “comfortable” or willing to be candid in an executive session, or if a particular Council member is excluded from the discussion, would not satisfy the “deleterious effects” standard. It is important for the Council to cultivate a climate of healthy dialogue. When that climate is lacking, the Council should seek to restore it. The solution would not be to resort to executive sessions, which may exacerbate the problem rather than solving it. Facilitating discussion is not, by itself, a justification for going into executive session.

3. No rule of thumb can be offered for the appropriate frequency of executive sessions. Sometimes the Council may go years without conducting one. During other periods, holding numerous executive sessions close together may be justified.

II. COMMENTS ON SPECIFIC PROVISIONS IN PROPOSED BYLAW C12.11.03

A. Section a (Definition)

Depending on the circumstances, examples of outsiders who could be invited to an executive session include an attorney providing legal advice on a specific matter, an insurance adjuster handling a claim against the church, a pastor being considered for a call to Prince of Peace, the bishop of the Grand Canyon Synod, and a realtor advising the church on a potential purchase or sale. Importantly, however, in order for the discussion to proceed in an executive session, the other prerequisites of the bylaws must be satisfied, namely, the purpose of the discussion must fall within Bylaw C12.11.01.d and the substantial deleterious effects standard must be met.

B. Section b (Notice)

1. An executive session need not be held in conjunction with a regular Council meeting. An executive session may be held on a different date, with no other business.

2. If a Council member anticipates, when the agenda for a regular Council meeting is issued or amended, that an executive session will be proposed, notice of the call for an executive session should be included in or with that agenda.

3. We offer the following additional examples of how we believe the notice provision should be applied. In each one, a regular Council meeting is scheduled for January 14.

- (i) *On January 7, the president proposes an executive session on January 21. That proposal should be included in the agenda for January 14 or in a standalone agenda for the potential executive session.*
- (ii) *During the January 14 regular meeting, the Council votes in favor of the January 7 proposal to hold an executive session on January 21. Shortly after the January 14 meeting, the president should post an agenda for the executive session.*
- (iii) *Instead of (i) and (ii), on Friday January 17, in response to new circumstances, the president decides to call an executive session for January 22 to deal with an urgent issue. The church office is closed on January 17 and 20. An executive session agenda should be posted on Tuesday January 21.*

4. Section b does not authorize a standard practice of including, in every agenda for a regular Council meeting, a statement that an executive session may be held for any of the purposes listed in Bylaw C12.11.03.d. A notice of an executive session should not be given unless and until an executive session is anticipated and should list only the purposes actually anticipated.

C. Section c (Approval)

1. Because a vote to go into executive session must be taken in an open meeting, during the associated discussion preceding the vote Council members must be careful not to disclose confidential information. As a practical matter, therefore, members who have little or no familiarity with the matter will not have sufficient information to form an independent judgment about whether the deleterious effects standard has been met. Instead, they will have to rely upon the judgment and good faith of the person bringing the motion that an executive session is warranted.

2. During an executive session, Council members are free to engage in a more detailed discussion, with the benefit of additional information, about whether the executive session should proceed. Also, at any time during an executive session, any member may move that the executive session be terminated. If that motion is seconded, it should be discussed and voted upon before proceeding with other business.

D. Section d (Purpose of Executive Session)

1. Falling within § C12.11.03 (d) is only one of the prerequisites for holding an executive session. In order to conduct an executive session, not only must the purpose fall within § C12.11.03 (d), but the deleterious effects test must be met.

2. Many matters falling within § C12.11.03 (d) (1), (2), (5) and (6) should be discussed in an open meeting. Conversely, matters falling within (3), and most if not all matters falling within (4), would qualify for an executive session.

3. Proprietary matters typically involve the church in its capacity as a landowner, purchaser, or employer.

E. Section e (Official action)

If the action to be taken would disclose information that needs to be kept confidential, at least temporarily, then the action should be taken in executive session. For example, suppose that the proposed action is to authorize and direct the president to attempt to settle a pending claim against the church for no more than \$1000. That action should be taken in executive session because disclosure of the president's maximum settlement authority would place the church at an unfair disadvantage during the settlement negotiations. Conversely, if the Council decision is limited to authorizing and directing the president to reject the claimant's offer and make a counteroffer of \$250, the vote should be taken in an open meeting.

F. Section f (Attendance)

1. As used in this section, a conflict of interest may involve a variety of circumstances, such as a business relationship, direct pecuniary interest, or a close family member.

2. When, in the judgment of the Council, an impermissible conflict of interest exists, the Council has the power to exclude the Council member, over that member's objection, from the proposed executive session.

G. Section g (Executive session minutes and confidentiality)

No comment.

H. Section h (Public reporting)

In accordance with standard practice for minutes of regular Council meetings, a description of the motion to adjourn would identify the persons who made the motion, seconded it, and voted against it.

I. Section i (Exemption)

Two hypothetical examples illustrate the need for this provision:

1. A call committee decides to recommend Pastor A to be called to Prince of Peace. Pastor A agrees to attend a joint executive session with the Council and call committee, but only on a confidential basis because she has not informed her own congregation, Agave Lutheran, that she is a candidate at Prince of Peace. She expects that she would accept a call to Prince of Peace, but if she is not called to Prince of Peace she intends to continue to serve Agave. She is concerned that if word gets out that she may go to Prince of Peace, it would be damaging to her ministry at Agave. Also, if the Prince of Peace Council decides to recommend her to the Prince of Peace congregation, she wants an opportunity to inform her own Council before they hear about it from others. During the executive session with Pastor A, the Prince of Peace Council votes to recommend her to our congregation and

to delay disclosure of her identity. Pursuant to this bylaw and Pastor A's request, the Council waits three days, until after Pastor A has informed the Agave Council, before revealing her identity to Prince of Peace. In this hypothetical, if the Prince of Peace Council decided, in executive session, to not pursue issuing a call to Pastor A, it could, and perhaps must, not disclose her identity.

2. Law enforcement officers inform the Council, in executive session, that apparently a person affiliated with Prince of Peace is conducting an ongoing illegal enterprise and therefore they want to place an undercover officer on our campus in an effort to identify and apprehend the suspects. The Council could decide to delay disclosure to the congregation of the officers' names and titles, the nature of their request, and the Council's response, because such disclosure could jeopardize the law enforcement efforts.

III. PROPOSED BYLAW C.13.01.01.d

This provision clarifies that the Executive Committee can convene in executive session by a majority vote for the same reasons as the Congregation Council. When the Executive Committee has conducted an executive session, it will provide the Congregation Council with the materials, discussions, and minutes in an executive session of the Congregation Council. This practice insures the Congregation Council is informed about an executive session conducted by the Executive Committee. It further provides that executive sessions of the Executive Committee are ultimately subject to the same safeguards for transparency and confidentiality that govern the Congregation Council.