

**RESTATED BYLAWS OF
THE EPISCOPAL CHURCH
IN THE DIOCESE OF CALIFORNIA
A Nonprofit Religious Corporation**

showing amendments through December 31, 2013
with comments

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THE EPISCOPAL CHURCH
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ARTICLE I
MEMBERS

This corporation shall have no members.

Bylaws Committee Comment: Section 9310 of the Corporations Code provides that a nonprofit religious corporation may provide in its bylaws that it has no members. If it has no members (which are similar to shareholders in the secular setting), all rights which would otherwise vest under the law in the members instead vest in the directors. Under these bylaws, there are no Section 9310 members, and the powers accordingly vest in the corporate directors. The members of Executive Council are the corporate directors.

ARTICLE II
EXECUTIVE COUNCIL

Section 1. General Powers. Subject to the provisions of the Nonprofit Religious Corporation Law (the "Law"), and any substantial and material limitation in the articles and bylaws of this corporation or the Constitution and Canons of the Episcopal Diocese of California or of The Episcopal Church, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of Executive Council, which is and shall act as the board of directors of this corporation in accordance with Canon VIII of the Canons of the Episcopal Diocese of California and the Corporations Code of the State of California. Executive Council may delegate the management of the activities of this corporation to any person or persons, management company, or committee however composed, to the extent allowed by law. Executive Council shall also act as a council of advice to the Bishop.

Bylaws Committee Comment: As amended, Section 1 designates Executive Council as the board of directors of the diocesan corporation, with all powers normally pertaining to a board of directors under California law, but it expressly also retains its function as a council of advice to the Bishop. The delegation language of the current bylaw (requiring all corporate powers to be exercised under the "ultimate direction" of the board) is stricken as superfluous under existing law, which explicitly grants the authority to delegate subject to retaining the ultimate direction of any delegee. See Corp. C. § 9210(b). With respect to the "substantial and material" language, see Article X and the comment thereto.

Section 2. Number of Directors and Selection, etc. The members of Executive Council are the directors of this corporation. The number, tenure, election, selection, designation, voting rights, removal, and resignation of such members is and shall be governed by Canon 8.01 of the Canons of the Episcopal Diocese of California, which canon is hereby incorporated by reference into these

bylaws. To the extent required by law, Executive Council shall by resolution fix and approve the number of members following their election and appointment pursuant to Canon 8.01.

Bylaws Committee Comment: Corporations Code Section 9220(a) provides that if the tenure, election, selection, designation, removal, and resignation of directors are not specified in the articles or bylaws, certain default provisions apply. By contrast, our provisions are set forth in the Canons. While all the Canons are likely deemed a part of the corporate bylaws under Section 9150(a) of the Corporations Code, this section incorporates the provisions of the relevant Canon by reference for clarity's sake and out of caution.

Canon 8.02 currently effectively requires that there be not less than 23 or more than 29 members of Executive Council, including non voting members, depending on the number of actual appointments by the Bishop (including the appointment of any Bishop Coadjutor to Executive Council). Section 9150 of the Corporations Code provides that the bylaws may provide "that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board . . . , in the manner provided in the bylaws." The last sentence of this Section 2 allows Executive Council to perform this task.

Section 3. Regular Meetings. Regular meetings of Executive Council shall be held at such times and places as Executive Council may from time to time establish by resolution; *provided, however,* that in the event no such resolution is adopted or is no longer in force, such regular meetings shall be held at 1055 Taylor Street, San Francisco, in any area of the Diocese of California/Grace Cathedral complex, at 4:00 pm on the third Tuesday of each month; *and provided further,* that the chair and the president may move a regular meeting to another time and date on notice to Executive Council. Notice of any change in the time or place of regular meetings shall be given to all members of Executive Council.

Bylaws Committee Comment: The revised provision contemplates that the date of regular meetings will be established by resolution, rather than remain a fixed item of the bylaws. However, a default time and place is established if for any reason a resolution is not adopted or is ineffective. Article 1, Section 5 governs the timing and form of notice.

Section 4. Special Meetings. Special meetings of Executive Council for any purpose or purposes may be called by the president or the chair of Executive Council, or, if both the president and the chair are absent or refuse to act, by any vice chair (if Executive Council shall have created such office or offices), or by any two voting members of Executive Council.

Section 5. Notice.

(a) **General Rule.** Except as otherwise required by law, any notice required or permitted to be made by this corporation to members of Executive Council under these bylaws may be made in accordance with this Section 5. Any notice permitted or required to be made by any member of Executive Council to this corporation may be made under the procedures set forth in this Section 5. Notwithstanding the foregoing, this Section 5 shall not apply to service of process.

(b) Form of Notice.

(i) **By this Corporation to Members of Executive Council.** A notice may be given by this corporation to members of Executive Council by first-class mail, personally or by telephone,

including a voice messaging system to each director member at his or her address, or at his or her phone number in the case of telephone and voicemail notice, as shown on the records of this corporation or, if it is not shown on the records and is not readily ascertainable, at the place at which the meetings of Executive Council are regularly held. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. Notice may also be given by electronic transmission, and such notice shall be deemed to be delivered when the electronic transmission is actually transmitted by the person giving notice by electronic means. Any notice given personally or by telephone may be communicated either to the member or to a person at the office of the member whom the person giving the notice has reason to believe will promptly communicate it to the member, or, in the case of telephonic notice, to a voice messaging system provided or designated by the member to receive messages from the public for transmission to or access by the member.

A notice given by electronic transmission means a communication

(A) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication,

(B) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and

(C) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(ii) By Members of Executive Council to this Corporation. Notice by members of Executive Council to this corporation may be given in the same fashion that notice may be given by this corporation to members of Executive Council, except that the addresses (including the email addresses, facsimile numbers, and Internet URLs for message boards and other groups or networks) which shall be used to contact this corporation shall be the most recent of those provided and designated by this corporation to the members of Executive Council for such communications. With respect to electronic transmissions, this corporation shall place and maintain in effect reasonable measures to verify that the sender is the member of Executive Council purporting to send the transmission, and create and maintain a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(c) Special Meetings of Executive Council. Special meetings of Executive Council shall be held upon four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, or by electronic means pursuant to paragraph (b)(i). Notice of a meeting need not be given to any member who signed a waiver of notice or a written consent to holding the meeting or

an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such member. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these bylaws.

Bylaws Committee Comment: This language carries forward the previous provisions allowing notice by personal delivery and mail, but incorporates the new, rather cumbersome, provisions of the Corporations Code concerning notice by fax, email, Yahoo (and other) Groups, and whatever future methods of electronic communications may be devised. Note that Executive Council members will have to provide a qualifying "unrevoked consent" to receive legal notice by email, fax, and Yahoo Groups. See Corp. C. § 20. Notice by telegraph has been deleted as archaic, though it might qualify as notice by personal service upon delivery of the complete text of the notice.

Section 6. Quorum and Adjournment. A majority of the voting members authorized by these bylaws shall constitute a quorum for the transaction of business at any meeting of Executive Council. A majority of the voting members present, whether or not a quorum is present, may adjourn any regular or special meeting to resume within twenty-four hours without further notice. If an adjourned meeting is scheduled to resume more than twenty-four hours after the adjournment of the meeting it continues, notice of the time and place of the adjourned meeting shall be given prior to that time to the members who were not present at the time of the adjournment.

Bylaws Committee Comment: This language carries forward the previous rules on quorum, but makes it clear that voting members are required for a quorum and other actions.

Section 7. Manner of Acting. The act of a majority of the voting members present at a meeting duly held at which a quorum is present shall be the act of Executive Council, unless the act of a greater number is required by law, the articles of incorporation or these bylaws. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of members, if any action taken is approved by at least as many voting members as is required to act on behalf of Executive Council.

Members of Executive Council may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation. Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting, if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before Executive Council, including, without limitation, the capacity to propose, or to interpose an objection

to, a specific action to be taken by this corporation.

Bylaws Committee Comment: The new language, which encompasses electronic video screen communication and electronic transmission by and to the corporation, is drawn from Corporations Code § 9211(a)(6), which expanded the older rule allowing attendance by conference telephone. "Electronic transmission by and to the corporation" is a term of art, see Corp. C. § 20, and would include email, fax, Yahoo Groups, instant messaging, and so on, but would also require a member's written consent. "Electronic video screen communication" is not defined, but would presumably include traditional video teleconferencing, web conferencing, Skype video, and similar systems where the member calling in (or otherwise connecting with) the other members can be seen by the other members, but may him or herself not be able to see all of the other members. This is suggested by the statutory language requiring that all members may be heard by one another, but imposing no similar requirement of being seen by all others.

Section 8. Parliamentary Authority. The rules contained in the current edition of *Robert's Rules of Order, Newly Revised* shall govern the Executive Council in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order Executive Council may adopt.

Drafting Committee Comment: The 2006 bylaws do not adopt any specific rules of order. The committee believed that it was better practice to so provide. By its terms, Robert's Rules will also apply to Executive Council's committees, where applicable.

It is the intent of the committee that Robert's Rules will be applied in a thoughtful and considered fashion to further the decision making of Executive Council, while avoiding needless technicalities. In this as in other areas, Executive Council may adopt policies to accomplish this goal.

Section 9. Action Without a Meeting of the Board. Any action required or permitted to be taken by Executive Council may be taken without a meeting if all members thereof shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as a unanimous vote of such members.

Section 10. Compensation. Members shall not receive any compensation for their services, but by resolution of Executive Council may be reimbursed for reasonable expenses actually incurred in connection with the performance of their duties as members of Executive Council. Nothing contained in this section shall be construed to preclude any such member from serving this corporation in any other capacity and receiving just and reasonable compensation therefor.

[Note: Section 10 of the 2006 bylaws, Removal and Filling Vacancies, appears already to have been deleted from the bylaws. The Orrick draft called for its deletion. It was also inconsistent with the new canonical provisions on removals and vacancies. See Canon 8.01]

Section 11. No Interest in Assets. No member shall possess any property right in or to the property of this corporation. In the event this corporation owns or holds any property upon its dissolution and winding up, after paying or adequately providing for its debts and obligations, Executive Council shall dispose of the remaining property in accordance with the articles of incorporation.

Section 12. Resignation, Removal, and Replacement of Members. The resignation, removal, and replacement of members of Executive Council is and shall be governed by Canon 8.01 of the Canons of the Episcopal Diocese of California.

Bylaws Committee Comment: Canon 8.01 is expressly incorporated into these bylaws. See Article II, Section 2.

ARTICLE III OFFICERS

Section 1. Officers. The officers of this corporation shall be a president, a chair of Executive Council (chairman of the board), one or more vice chairs, a secretary, a treasurer and such other officers with such titles and duties as shall be determined by Executive Council. Any number of offices may be held by the same person, except that neither the secretary nor the treasurer may serve concurrently as the chair.

Bylaws Committee Comment: The chair of Executive Council is the statutory officer denominated "chairman of the board" by Section 9313 of the Corporations Code.

Section 2. Selection and Term of Office. Except for the president and the treasurer, the officers of this corporation shall be chosen by Executive Council at its regular meeting each October; *provided, however,* that the vote thereon may be continued for one month when good cause therefor exists. Such officers shall serve a term of one year, commencing January 1 of the year next following, and may be re-elected. The president of this corporation shall be the Bishop of California, who, along with the treasurer, shall be selected by a diocesan convention in accordance with the Canons. No Bishop's appointee to Executive Council shall, while serving as such, be eligible to serve as the chair of Executive Council or as an officer of this corporation.

Amended September 17, 2013

Compiler's Comment to 2013 Amendment: Before this amended bylaw was adopted, Section 2 provided that the officers other than the president and treasurer would "be chosen by Executive Council at the meeting following the annual diocesan convention at which new members are seated." It also did not explicitly specify the date upon which their terms would commence.

*Original Bylaws Committee Comment: The committee adopted a one year term for the officers it selects, rather than letting them serve "at the pleasure of Executive Committee," to encourage turnover among officers. Even though these positions now have terms, Executive Committee retains the right to remove them with or without cause under Section 3, *infra*.*

Section 3. Removal. Any officer selected by Executive Council may be removed by it whenever in its judgment the best interests of this corporation would be served thereby.

Section 4. Resignation. Any officer other than the president may resign at any time upon written notice to this corporation. Any such resignation shall be without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Bylaws Committee Comment: The president is excluded from this general resignation provision since the bishop is the president by virtue of his office, and episcopal resignation is governed by TEC Canons. See Canons of the General Convention, Art. II, § 6 (House of Bishops must consent to resignation of diocesan bishop).

Section 5. Vacancies. A vacancy in any office other than president and treasurer, because of death, resignation, removal, disqualification or otherwise may be filled by Executive Council. A vacancy in the office of treasurer shall be filled by a person nominated by the Bishop and approved by Executive Council. A vacancy in the office of president shall be filled in accordance with the canons of the Diocese of California and The Episcopal Church governing the selection of the Bishop of California.

Section 6. President. The Bishop of California shall be the president. The president shall be the general manager and chief executive officer of this corporation and shall have general supervision, direction and control of the business and affairs of this corporation. The president shall have all of the powers and shall perform all of the duties which are ordinarily inherent in such office and shall have such further powers and shall perform such further duties as may be prescribed by Executive Council or by the Constitution or Canons of the Diocese of California.

Bylaws Committee Comment: The canons make the Bishop of California the president of the diocesan corporation, not the chairman of the board. Canon 8.03(b). This conforms the bylaws to the canons.

Section 7. Chair of Executive Council. The chair of Executive Council shall, if present, preside at all its meetings and exercise and perform such powers and duties as from time to time may be assigned by it or prescribed by these bylaws.

Bylaws Committee Comments: Under California law, the chair would become CEO if the presidency became vacant. Under canon law, the Standing Committee becomes the Ecclesiastical Authority in the event of a vacancy. Canon law would control, and all powers specifically vested in the Ecclesiastical Authority, even if under these bylaws or statute they would be vested in the chair, would be vested in the Standing Committee. The remaining powers would be vested in the chair and the Executive Council, as appropriate.

Section 8. Vice Chairs. In the absence or disability or refusal to act of the chair, the vice chairs in order of their rank as fixed by Executive Council or, if not ranked, the vice chair designated by the chair or Executive Council, shall perform all of the duties of the chair and when so acting shall have all the powers of and be subject to all the restrictions upon the chair. The vice chairs shall have such other powers and perform such other duties as from time to time may be prescribed for them by Executive Council or these bylaws.

Bylaws Committee Comments: Although the titles of the involved officers have changed, this provision continues the prior rule. See also Bylaws Art. II, § 4 (calling of special meetings of Executive Council when designated officers refuse to act.)

Section 9. Treasurer.

(a) The Treasurer shall be annually selected by the diocesan convention in accordance with Canon 5.04(a).

(b) The Treasurer shall be the chief financial officer of this corporation. Without limiting the generality of the forgoing, the Treasurer shall:

(i) Serve as a financial advisor to the Bishop in all matters relating to the financial affairs of the Diocese;

(ii) Assist the Bishop and Executive Council as appropriate to ensure that this corporation—

(A) Hires and retains a competent Controller responsible for all of the day to day financial affairs of the Diocese, and such additional employees of the corporation as may be necessary and appropriate for the safekeeping of all assets of the Diocese;

(B) Provides oversight of all assets and liabilities of the Diocese;

(C) Provides oversight for the authorized disbursement of funds of the Diocese;

(D) Causes accurate financial books and records for the Diocese to be kept and maintained;

(E) Provides appropriate governance and oversight of the assets and liabilities of the Episcopal Bishop of California, a California Corporation Sole (“Corporation Sole”).

(iii) Be familiar with the overall financial position of the Diocese and Corporation Sole, and advise the Bishop, the Controller and the Department of Finance regarding areas which may require attention.

(iv) Present interim unaudited financial reports on a regular basis to Executive Council.

(v) The treasurer shall have such further powers and shall perform such further duties as may be prescribed by Executive Council.

(c) The Treasurer shall be responsible for the financial reports specified in Canon 5.04 (c) to the extent set forth in said Canon.

Amended December 15, 2009.

Bylaws Committee Comments: When this amended bylaw was adopted, Canons 5.04(a) and (c) read as follows:

(a) At each Annual Convention a Treasurer shall be elected, who shall be a communicant in good standing of The Episcopal Church registered in a congregation of the Diocese. The term of office of the Treasurer shall continue until the close of the next Annual Convention or until a successor is elected. When not a Delegate to the Convention, the Treasurer shall, ex officio, be entitled to a seat and a voice in the Convention, but not to a vote.

(c) The Treasurer shall present at each Annual Convention an audited financial report of the operations of the Diocese for the preceding fiscal year and of its financial condition at the close of such year, and an interim unaudited financial report for the current fiscal year through the end of the most recent quarter. The Treasurer shall present interim unaudited financial reports to the Department of Finance for approval and subsequently to the Executive Council. The fiscal year of the Diocese shall be the calendar year.

Section 10. Secretary. The secretary shall keep or cause to be kept at the principal executive office of this corporation or such other place as Executive Council may order a book of minutes of all proceedings of Executive Council, with the time and place of each meeting, whether regular or special, and, if special, how authorized, the notice thereof given, and the names of those present. The secretary or, if the secretary is absent or unable or refuses to act, any other officer of this corporation shall give or cause to be given notice of all the meetings of Executive Council required by these bylaws or by statute to be given and shall keep the seal of this corporation, if any, in safe custody. The secretary shall have all of the powers and perform all of the duties incident to the office of secretary and shall have such further powers and shall perform such further duties as may be prescribed by Executive Council.

Section 11. Additional Personnel. Executive Council may hire or appoint such staff and personnel, with or without compensation, as it deems appropriate to carry out its duties.

Amendment (clerical correction) adopted September 15, 2009.

Drafting Committee Comment: The Executive Council, by virtue of being a board of directors, has the inherent power (and, as a body composed of fiduciaries, sometimes the inherent duty) to staff itself adequately to meet its obligations. This Section 11 merely makes the power explicit. If Executive Council chooses to engage any independent staff, it should, of course, typically follow the usual program and budget process.

ARTICLE IV COMMITTEES

Section 1. Canonically Required Committees of Executive Council. The canons of the Episcopal Diocese of California require that Executive Council organize and supervise

a Department of Finance (Canon 8.04) a Committee on Program and Budget (Canon 8.05), a Department of Congregational Development (Canon 8.06) and an Investment Committee. (Canon 8.07).

Drafting Committee Comment: In due course, the committee expects to offer a revised canon and bylaw concerning the Investment Committee under which the latter's function will be limited to overseeing market investments, while assets that are not readily marketable, such as equity shares in clergy trust deeds, shall be overseen by the Executive Committee's Department of Finance.

Section 2. Audit Committee. Executive Council shall appoint an Audit Committee of at least three members, at least one of whom shall be a member of Executive Council. The members of the committee shall be knowledgeable in basic finance and accounting practices, and at least one member of the committee shall have accounting or related financial management expertise. The Audit Committee shall review the finances of the Diocese, including its investments, select and review the performance of the outside independent auditor of the Diocese, review and approve the annual audit, and undertake such other tasks as are necessary to insure the integrity of the books and records of this corporation. The chair of the Audit Committee shall not be a member of the Finance Committee, and members of the Finance Committee can not comprise a majority of the members of the Audit Committee.

Amended September 15, 2009.

Section 3. Executive Compensation Committee. Executive Council shall appoint an Executive Compensation Committee of not less than five members, and the chair thereof, to serve at its pleasure. At least one of its members shall be a present member of Executive Council, and another shall be a present member of Standing Committee. Neither the Bishop nor any member of Executive Council appointed by the Bishop shall be eligible to serve on the committee. The members of the committee shall, to the extent reasonably feasible, collectively be knowledgeable in the area of human resources matters, including employment law, employee benefits, church pensions, equity replacement, retirement funding, and housing and parsonage issues. The committee shall advise Executive Council on best practices concerning executive compensation and the funding of retirement benefits, and shall review management's recommendations regarding the overall compensation budget for all employees and other matters of compensation policy. It shall also from time to time review the compensation of the Bishop and the Chief Financial Officer, and determine whether their compensation is just and reasonable, or whether modifications to such compensation should be made to render it just and reasonable. It shall report its conclusions and recommendations to Executive Council in sufficient time to allow any necessary modifications to be considered in the normal Program and Budget procedure.

The committee may retain and pay experts, facilitators, and other consultants to aid and advise it as it deems necessary, and shall establish a budget for such purposes subject to the approval of Executive Council.

In developing its recommendations, the committee shall consider compensation prevailing in comparable dioceses of The Episcopal Church, the financial condition of the diocese, any applicable

reviews, the comments and any special circumstances of the executives whose compensation is under consideration, and such other matters as good human resources practice would dictate. All Diocesan documents and other information pertinent to any inquiry of the Executive Compensation Committee shall be given to it at its request.

Added August 20, 2013.

Compiler's Comment: The California Nonprofit Integrity Act (Gov. C. § 12586 (g)) requires that the boards of directors of certain nonprofit corporations "review and approve" the compensation of their Chief Executive Officers and Chief Financial Officers. Prior to 2013, the diocesan canons placed the Bishop's compensation as CEO under the jurisdiction of the Standing Committee, and had no provision expressly dealing with the compensation of the CFO. Since this was apparently inconsistent with the Act, Executive Council adopted this Article IV, Section 3 in order to comply with it, while the 2013 Convention passed amendments to the canons confirming Executive Council's authority in this area. See, e.g., Day of Convention Booklet, Saturday, October 26, 2013, at 15-21 (canonical changes to comply with Nonprofit Integrity Act, and to change the title of Controller to "Chief Financial Officer"); Canon VIII, Section 8.02 (c)(xii) (2013) (Executive Council Authority; Executive Compensation Committee).

When this Section 3 was adopted, the former Sections 3, 4 and 5 were renumbered as Sections 4, 5 and 6.

Section 4. Committees.

(a) Committees Exercising the Powers of Executive Council. Executive Council may, by resolution adopted by a majority of the number of voting members then in office, provided that a quorum is present, create one or more committees, each consisting of two (2) or more members, to serve at its pleasure. Any officer who is also a member of Executive Council may also be appointed to be a member of any such committee or committees. Appointments to such committees shall be by a majority vote of the voting members of Executive Council then in office. Executive Council may appoint one or more members as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of Executive Committee, shall have all the authority of Executive Committee, except with respect to:

- (1) The approval of any action for which the law also requires approval of Executive Council;
- (2) The filling of vacancies on the board Executive Council or on any committee which has the authority of Executive Council;
- (3) The fixing of compensation of the members of Executive Council for serving thereon or on any committee;
- (4) The amendment or repeal of bylaws or the adoption of new bylaws;
- (5) The amendment or repeal of any resolution of Executive Council;
- (6) The appointment of committees of Executive Council or the members thereof; or

(7) The expenditure of corporate funds to support a nominee for membership on Executive Council.

(b) Committees Not Exercising the Powers of Executive Council. Executive Council may, by resolution, create one or more committees, each consisting of any number of its members and such additional persons, if any, as it may direct, to serve at its pleasure. Appointments to such committees shall be made by Executive Council. Executive Council may appoint one or more of its members or any other persons as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Any such committee shall lack the authority of Executive Council, but shall have such powers and duties as the enabling resolution of Executive Council, shall direct. Any corporate powers exercised by any such committee shall be exercised under the direction of Executive Council.

Renumbered Section 4, August 20, 2013.

Bylaws Committee Comment: Subsection (a) is substantially the same as the 2006 bylaw, except for the addition of a new paragraph (3), and the strengthening of the prohibitions in paragraphs (5) and (7). The language, except for paragraph 7 (which originates in the 2006 bylaws), is derived from Section 9212(a) of the Corporations Code, which places the indicated limitations on the methods of creating committees with the powers of the board of directors, and further limitations on those powers themselves. However, unlike the statute and the 2006 bylaws, these bylaws absolutely prohibit a committee from amending or repealing bylaws. Likewise, unlike the 2006 bylaws, they completely prohibit the expenditure of corporate funds to support a nominee to Executive Council, not only when there are more candidates than open positions.

Section 9212(a) does not apply to committees not exercising the powers of boards of directors, see Corp. C. § 9212(b), and subsection (b) of this bylaw deals with this type of committee. The Bylaws Committee believed that a simple majority of those present was sufficient to appoint and staff such committees, and believed that committees that included "outside" members would often be preferable to those staffed solely by Executive Council members.

Section 5. Rules. Committees shall establish the rules for their own governance, except as otherwise provided in their authorizing resolutions or by Executive Council. Such rules will become effective upon their filing with Executive Council.

Renumbered Section 5, August 20, 2013.

Bylaws Committee Comment: The committee believed that internal procedures were better developed by the committees themselves, or by tailored rules and limitations appearing in the authorizing resolution, than by a general bylaws provision. So that Executive Council may exercise oversight, the rules must be filed with Executive Council to be effective.

Section 6. Joint Committees. Executive Council shall appoint three persons to the Committee on Governance (Canon 16.01(g)), and one person to the Committee on Nominations. (Canon 6.09(b)). The persons appointed to the Nominations and Governance Committees may, but need not, be members of Executive Council.

Amended and renumbered as Section 6 on August 20, 2013.

Compiler's comment: The 2013 amendment deleted reference to the Bishop's compensation and clergy housing committee, which was eliminated by Convention in 2013 in connection with the adoption of provisions to comply with the Nonprofit Integrity Act. See Day of Convention Booklet, Saturday, October 26, 2013, at 15-21 (canonical changes to comply with Nonprofit Integrity Act, and to change the title of Controller to "Chief Financial Officer"); see also Article IV, § 3, supra.

Original Bylaws Committee Comment: This section 5 [now Section 6] has no counterpart in the 2006 bylaws, and came from the Orrick Draft. It has been revised to provide, consistent with the cited Canons, that appointees to the Governance and Nomination Committees need not be members.

ARTICLE V MISCELLANEOUS

Section 1. Contracts. Executive Council may authorize any officer or officers of the Diocese of California to be agent or agents of this corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of this corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of this corporation shall be signed by such officer or officers, agent or agents, of this corporation or of the Diocese of California and in such manner as shall from time to time be determined by resolution of Executive Council. In the absence of such determination by Executive Council, such instruments shall be signed by the treasurer and countersigned by the president.

Bylaws Committee Comment: Under Article III, Section 6, and Canon 8.03(b), the Bishop is president and chief executive officer of the diocesan corporation. For the sake of simplicity and consistency, these revised bylaws simply refer to him as "president" following III.6.

Section 3. Deposits. All funds of this corporation shall be deposited from time to time to the credit of this corporation in such banks, trust companies or other depositories as Executive Council may select.

Section 4. Donations. The president or his or her designee is authorized to accept donations which support the purposes of this corporation as set forth in the articles of incorporation of this corporation whether such donation is for a specific project or projects or is for the general support of this corporation's programs.

Bylaws Committee Comment: The revision makes it clear that the bishop designates those entitled to accept donations.

Article II (B) of the current Articles of Incorporation states as follows concerning the corporation's purposes:

The specific purpose of this corporation is [to] take, receive, acquire, hold, manage, and administer

property, funds, and money of and for the use and benefit of the Episcopal Church in the area known as the Diocese of California, and of and for its constituent and related churches, ministries, and organizations, including without limitation parishes, schools, colleges, missions, congregations, and other Diocesan institutions wherever located, whether such property, money, or funds be acquired, held, managed, or used by or for churches, personages, hospitals, schools, colleges, orphan asylums, homes, cemeteries, other Diocesan institutions, or for other religious, benevolent, or educational purposes related to the purposes expressed above.

Section 5. Representation of Corporate Shares. Any officer of this corporation is authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority hereby granted to said officers to vote or represent on behalf of this corporation any and all shares held by this corporation in any other corporation or corporations maybe exercised either by such officers in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officers.

Bylaws Committee Comment: The committee saw no reason to restrict the officers who could act to vote shares, and accordingly extended the power to all officers.

ARTICLE VI BOOKS AND RECORDS

This corporation shall keep at its principal office in this state, if any, the original or a copy of its articles of incorporation and bylaws as amended to date. Furthermore, this corporation shall keep adequate and correct books and records of account and shall also keep minutes of the proceedings of its Executive Council and of the committees of Executive Council. Minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form. Every member of Executive Council shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of this corporation.

ARTICLE VII INDEMNIFICATION OF DIRECTORS AND OFFICERS

This corporation shall, to the maximum extent permitted by law, indemnify each of its present or former directors, Executive Council members, and officers against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding or any threatened proceeding (hereinafter "proceeding" includes any threatened proceeding) arising by reason of the fact that any such person is or was a director, Executive Council member, or officer of this corporation; provided that Executive Council determines that such director, Executive Council member, or officer was acting in good faith and in a manner such person reasonably believed to be in the best interests of this corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. Payments authorized hereunder include amounts paid and expenses incurred in settling any such proceeding. The foregoing does not apply to any proceeding specifically excluded by law, which includes actions brought by or in the right of this

corporation and certain actions alleging self-dealing or a breach of any duty relating to assets held in charitable trust.

If, because of the nature of the proceeding, this corporation is prohibited by the law from indemnifying its directors, Executive Council members, or officers against judgments, fines, settlements and other amounts, this corporation shall nevertheless indemnify each of its directors, Executive Council members, and officers against expenses actually and reasonably incurred in connection with the defense or settlement of such proceeding arising by reason of the fact that any such person is or was a director, Executive Council member, or officer of the corporation; provided that Executive Council determines that such director, Executive Council member, or officer was acting in good faith and in a manner such person believed to be in the best interests of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances; and further provided that, to the extent required by law, the authority specified by law shall also approve the indemnification provided for by this paragraph.

Expenses incurred in defending any proceeding may be advanced by this corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the director, Executive Council member, or officer to repay the amount of the advance unless it is determined ultimately that the director, Executive Council member, or officer is entitled to be indemnified as authorized in this article or by law.

Executive Council may authorize this corporation to purchase and maintain insurance on behalf of any director, Executive Council member, or officer against any liability asserted against or incurred by such person in such capacity or arising out of the person's status as such, whether or not this corporation would have the power to indemnify such person against such liability.

This article does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be a director, Executive Council member, or officer of this corporation. Nothing contained in this article shall limit any right to indemnification to which such a trustee, investment manager or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

Bylaws Committee Comment: Revisions to this section are intended to make it clear that both former corporate directors, called "directors," "members of the board of directors," or similar terms, and current and future corporate directors, called "members" or "Executive Council members" or the like, are all entitled to the fullest indemnification from the corporation allowed by law. See Corp. C. § 9246.

ARTICLE VIII LIMITATION OF LIABILITY OF CERTAIN DIRECTORS AND OFFICERS

Section 1. Limitation of Liability of Volunteer Directors and Volunteer Executive Officers to Third Parties. There shall be no personal liability to a third party on the part of a volunteer director or volunteer executive officer caused by the director's or officer's negligent act or omission in the

performance of that person's duties as a director or officer, if all of the following conditions are met:

- (a) The act or omission was within the scope of the director's or executive officer's duties;
- (b) The act or omission was performed in good faith;
- (c) The act or omission was not reckless, wanton, intentional, or grossly negligent; and

(d) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's and officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if this board of directors and the person had made all reasonable efforts in good faith to obtain available liability insurance.

"Volunteer" means the rendering of services without compensation.

"Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this Section 1.

"Executive officer" means the president, vice chair, secretary, or treasurer of a corporation, or such other person who serves in like capacity, including the chair of Executive Council, who assists in establishing the policy of the corporation.

"Director" includes any and all members of Executive Council.

Nothing in this Section 1 shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

Nothing in this Section 1 creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

(e) This section 1 does not eliminate or limit the liability of a director or officer for any of the following:

- (1) As provided in Sections 9243 or 9245 of the Corporations Code;
- (2) In any action or proceeding brought by the Attorney General.

Bylaws Committee Comment: Subsections (a) through (d) of this section are virtually identical to the language of Section 9247(a)-(d) of the Corporations Code, except for additions covering members of the Executive Council and its chair. These positions would be covered by the statutory language in any event, and the revisions simply make the intent

clear. Section 9247(e) contains exceptions to the principle of volunteer non-liability, and these have been added in paragraph (e) of this Section 1. (Corporations Code Section 9243 deals with self-dealing by interested directors, and provides certain exceptions to the rule against self-dealing. Section 9245 prohibits the making of distributions.)

Section 2. Limitation of Liability of Certain Directors. There is no monetary liability on the part of, and no cause of action for damages shall arise against, any director or Executive Council member, including any Executive Council member who is also an officer of this corporation based upon any alleged failure to discharge the person's duties as director, Executive Council member, or officer if such person is serving without compensation in such position and if the duties are performed in a manner that meets all of the following criteria:

(a) The duties are performed in good faith;

(b) The duties are performed in a manner such person believes to be in the best interests of the corporation; and

(c) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Bylaws Committee Comment: This language is based on Section 5047.5 of the Corporations Code, which refers to "person[s] serving without compensation as a director or officer" rather than "nonpaid" officers and directors. The statutory phrase has been substituted, since it would be controlling. It should also be noted that Section 5047.5 contains significant exceptions allowing liability for acts involving self-dealing, wilfulness or recklessness, fraud and other problematic conduct, and, where applicable, these exceptions would override the general exculpatory language of this Section 2.

ARTICLE IX AMENDMENTS TO BYLAWS; POLICIES AND PROCEDURES

Section 1. Amendments. New bylaws may be adopted or these bylaws may be amended or repealed by Executive Council; provided however, that no bylaw shall be so adopted, amended or repealed in whole or in part, at any regular or special meeting of Executive Council, except upon not less than 48 hours notice to the members of Executive Council, which notice shall specify with particularity the terms of the proposed new bylaw, amendment, or repeal, along with any new matter proposed to be adopted in connection with the proposed repeal.

Bylaws Committee Comment: As revised, this section requires at least 48 hours detailed notice of any proposed bylaw adoption, amendment, or repeal, even if the proposal is brought up at a regular meeting of Executive Council. The committee felt that bylaw changes were of sufficient importance to require detailed notice.

Section 2. Policies and Procedures. Executive Council may adopt such general written policies and procedures as it deems appropriate, and exercise such powers as it has been granted, to implement the Constitution and Canons of this diocese and of The Episcopal Church, the policies, programs, and budgets approved and adopted by the diocesan annual convention, this corporation's

articles of incorporation and bylaws, and that certain agreement between this corporation and the Episcopal Bishop of California, a California Corporation Sole, dated April 24, 2006. Such general written policies and procedures shall be public, unless adopted by Executive Council in executive session. Ad hoc policies or procedures of limited applicability, and other policies and procedures that are not of general interest, shall be reported only in the minutes of Executive Council.

Bylaws Committee Comment: Section 2 is new. The principle of transparency dictates that the general policies developed by Executive Council to govern this corporation and the finances of the corporation sole should be in writing and promptly made both publicly available and easily searchable, typically by posting on an appropriate website with good search tools. Nonetheless, Executive Council may also adopt ad hoc policies and procedures that are not of sufficient generality (or interest) to justify a full writeup or posting on the web. These limited policies would, of course, be available on request.

ARTICLE X CONSTRUCTION

These bylaws shall be liberally construed to accomplish their purposes. They shall be construed in accordance with the Constitution and Canons of the Diocese of California, and in the event of any material and substantial inconsistency between these bylaws and the Constitution and Canons, the Constitution and Canons shall prevail.

Bylaws Committee Comment: The Canons expressly provide that Executive Council may adopt and amend bylaws governing the diocesan corporation, and such power is also given it by California law as a board of directors. (Canon 8.03(b); Corp. C. § 9140(a)). By adopting the principle of liberal construction, the committee hopes to avoid technical disputes in the construction of these bylaws. The new “material and substantial” language seeks to do likewise in construing these bylaws in relation to the Constitution and Canons; the goal, whenever an apparent conflict arises, is to harmonize the Constitution and Canons with these bylaws whenever possible.