

## **Considerations for Amendments to the Bylaws of Westtown Presbyterian Church in America Inc.**

### **Article I: Section 1. Annual Meeting**

**Currently reads:** *“The annual meeting of members shall be held at the principal office of the Corporation, at 8639 Chadwick Drive, Tampa, Florida 33635, or at such other places as the officers or Board of Directors may from time to time determine, either within or without the State of Florida on a date to be determined by the officers or directors. The Secretary shall give notice by announcing orally or in writing not less than fourteen (14) nor more than sixty (60) days previous to such meeting.”*

**Recommend it reads:** *“The annual meeting of members shall be held at the location at which the members regularly meet for Christian worship (currently at **13521 Race Track Road, Tampa, Florida 33626**), or at such other places as the officers or Board of Directors may from time to time determine, on a date to be determined by the officers or directors. The Secretary shall give notice of the annual meeting of the members by announcing orally at Sunday worship services on at least two consecutive Sundays (the last of which may be the date of the annual meeting of the members) or in writing not less than fourteen (14) nor more than sixty (60) days prior to such meeting.”*

**Rationale:** Original bylaws approved prior to church having a permanent address. The revision indicates that the annual meeting shall be at the location of regular worship, unless another location is set. The revision also sets oral notice requirements for the annual meeting of the members.

### **Article II (Directors): Section 1: Number**

**Currently reads:** *“The affairs and business of this Corporation shall be managed and its corporate powers exercised by a Board of Directors composed of not more than six (6) persons. All of the Directors shall be of full age and at least one of such Directors shall be a citizen of the United States.”*

**Recommend it reads:** *“The affairs and business of this Corporation shall be managed and its corporate powers exercised by a Board of Directors composed of **not less than three (3) persons** nor more than six (6) persons. The number of members of the Board of Directors shall be set by resolution of the members, but shall not be decreased in a manner which reduces the term of any elected Director. All of the Directors shall be 18 years of age or older, male or female members of the Congregation, and citizens or permanent residents of the United States. The term “Trustee” may be equally used for designating the Directors of the Corporation. The Board of Directors shall consist of two *ex officio* voting members (consisting of (i) the Chair of the Westtown Finance Committee and (ii) the Clerk of the Session) and between 1 and 4 Directors elected “at large” to staggered three (3) year terms, as specified in Article I, Section 3.*

**Rationale:** The Articles of Corporation stipulates 3-6 directors, with the number set by vote of the members. The State of Florida uses the term of Director for Corporations, while the BCO calls them Trustees. This amendment ensures that one Deacon and one Elder serve as *ex officio* voting directors to provide continuity to the Board of Westtown Church and serve as liaisons to their respective offices. The remaining directors are “at large” and serve for staggered 3-year terms.

**Article II (Directors): Section 2: How Elected:**

**Currently reads:** *“At the annual meeting of the members, the persons nominated receiving a plurality of the votes cast shall be elected as directors for the term of office specified in Article III, Section 3.”*

**Recommend it reads:** *“At the annual meeting of the members, the members shall elect from the persons nominated by the members, the number of “at large” directors necessary to fill any vacancies and to succeed the directors whose terms have expired. In the member vote for “at large” directors, members shall be entitled to vote for as many nominees as there are “at large” director positions to be filled, and the nominees having the highest number of votes shall be elected as “at large” directors.*

**Rationale:** The amendment specifies that nominations for “at large” directors are made by the members and that the member vote is for those “at large” directors necessary to fill and vacancies and to succeed those “at large” directors whose terms have expired.

**Article II (Directors): Section 3: Term of Office:**

**Currently reads:** *“The term of office of each of the Directors shall be three (3) years, except that one-third of the directors constituting the first board shall be elected for one (1) year; one third (1/3) elected for two (2) years and one-third (1/3) elected for three (3) years. Therefore, each director shall be elected for a three (3) year term, and thereafter until his successor has been elected and qualified, until his or her successor shall have been elected and qualified.”*

**Recommend it reads:** *“The term of office of the *ex officio* voting Directors shall correspond with the term of their offices as Chair of the Westtown Finance Committee or the Clerk of the Session, respectively. Each of the Directors elected at large shall have staggered terms of three (3) years, with as close to an equal number of at large directors being elected each year. In the initial election of at large directors, one-third of the directors shall be elected for one (1) year; one third (1/3) elected for two (2) years and one-third (1/3) elected for three (3) years. If the number of "at large" directors cannot be evenly divided by three, the remaining director(s) shall be elected to a three (3) year term and, if necessary, a two (2) year term. Thereafter, each director shall be elected for a three (3) year term, and thereafter until his successor has been elected and qualified. “At large” directors elected to fill a vacancy arising during the incumbent’s 3-year term shall be elected for a term equal to the unexpired term of the incumbent director whose departure created the vacancy ”*

**Rationale:** This revisions is made to specify that the voting *ex officio* directors serve as long as they serve in the specified church officer role, and that the "at large" directors are elected for staggered 3 year terms. The revision also specifies how the staggered terms will work if the number of at large directors are not divisible by 3, and if a director is being elected to fill a vacancy created by the departure of am “at large” director before the expiration of his or her 3-year term.

**Article II (Directors): Section 8: Vacancies:**

**Currently reads:** *“Vacancies in the Board occurring between annual meetings shall be filled for the unexpired portion of the term by majority vote of the remaining Directors.”*

**Recommend it reads:** *“Vacancies in the Board occurring between annual meetings shall be filled for the unexpired portion of the term ending at the next annual meeting by majority vote of the remaining*

Directors. At the next annual meeting, the members shall elect an "at large" director to fill the remaining portion of the three (3) year term that was vacated.

**Rationale:** If a director elected to a 3 year term vacates his position in the first year, the board should fill the vacancy only until the next annual meeting of the members. The members should elect the director to fill the remaining portion of the 3 year term.

**Article II (Directors) Section 1: Officers:**

**Currently reads:** *"The Corporation shall have a President, a Vice President, Secretary and a Treasurer, and such other officers as shall be elected, from time to time, by the Board. Any person may hold two or more offices."*

**Recommend it reads:** "The Corporation shall have a President, a Vice President, Secretary and a Treasurer, and such other officers as shall be elected, from time to time, by the Board. Any person may hold two or more offices. The Chair of the Westtown Finance Committee shall serve as the President of the Corporation. The Clerk of Session shall serve as the Secretary of the Corporation. Other officers shall be elected by the Board, to serve for terms of one (1) year and until their successors shall have been elected and qualified.

**Rationale:** Revised to be consistent with the officer stations for the two *ex officio* voting directors.

**Article V: Certificates of Membership**

Recommend current article be deleted and replaced with a new **Article V: Purpose** with the following sections:

**Article V: Purposes**

**Section 1: Permitted Activities:** The purposes for which the Corporation is organized are to function as a *particularized* church within the PCA and to engage in such activities as are authorized for a PCA church pursuant to the Constitution and the Book of Church Order of the PCA; subject to the restrictions and limitations herein set forth in the Articles of Incorporation and these bylaws. The Corporation has been organized exclusively for religious purposes as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), and in connection shall use and apply the whole or any part of the income therefrom and the principal thereof exclusively for religious, charitable, benevolent, eleemosynary, and educational purposes either directly or by contributions to other organizations that qualify as exempt organizations under Section 501(c)(3) of the Code and regulations issued pursuant thereto as they may now exist or as they may hereafter be amended. The Corporation shall have any and all lawful powers of a nonprofit corporation provided in Florida Statutes, particularly the Florida Nonprofit Corporations Act (Chapter 617, Florida Statutes) that are not in conflict with these Articles. This Corporation shall further be empowered to purchase, improve, rent, lease, own, mortgage, hold, enjoy, maintain and sell real estate; to borrow money and contract debts, and to issue bonds, promissory notes or other obligations and evidences of indebtedness; and to do all and everything necessary and proper for the accomplishment of the objects enumerated herein or necessary or incidental to the specific powers and privileges which are, can be, and may be granted to nonprofit corporations under the laws of the State of Florida.

**Section 2: Prohibited Activities:** The Corporation is not organized for a pecuniary profit. There shall be no power to issue certificates of stock or declare dividends and no part of the Corporation's earnings, assets or accumulations shall inure to the benefit of any member, director or individual. Notwithstanding any other provision of the Articles of Incorporation, this Corporation will not carry on any other activities not permitted to be carried on by

- a. a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code or the corresponding provision of any future United States Internal Revenue Law, or
- b. a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or any other corresponding provision of any future United States Internal Revenue Law. In particular, the Board of Directors shall not, nor shall it allow members, subscribers, officers or employees of the Corporation to, on behalf of the Corporation:
  - a. Allow any part of the net earnings to inure to the benefit of a private individual including any member, director, officer or subscriber of this Corporation.
  - b. To carry on propaganda or to attempt to lobby or influence legislation.
  - c. To intervene in any political campaign or to endorse any candidate for public office.
  - d. To do any of the following:
    - i. Lend any part of the Corporation's income or corpus without adequate security and a reasonable rate of interest to;
    - ii. To pay excessive salaries or other compensation over a reasonable allowance to;
    - iii. To make any part of the Corporation's services available on a preferential basis to;
    - iv. To make substantial purchases of securities or other property for less than adequate consideration from;
    - v. Sell any substantial part of the property of the Corporation for less than adequate consideration; or
    - vi. To engage in any other transaction which results in substantial diversion of the Corporation's income, assets or corpus to:

The subscribers, officers or directors of the corporation or to any person who has made a substantial contribution to the corporation, or to any brother or sister, (whether by the half or whole blood), spouse, ancestor or lineal descendant of the foregoing or to any corporation controlled by any of the foregoing either directly or indirectly of fifty-one percent (51%) of the total combined voting power of such corporation.

**Rationale:** This language, mostly from the 2005 Articles of Incorporation, is included in the bylaws to state the purpose of this Corporation. The word "particularized" has been added.

**Add Article V: Section 3: Responsibilities:**

The Board of Directors and its officers will manage the business affairs of the Corporation as specified in Section 1 above. Responsibility for the ecclesiastical affairs of the Church is given to the officers of the Church, consisting of the Elders (which constitute the Session) and Deacons. The powers and duties of the

Directors and officers of the Corporation are limited to the business affairs of the Corporation, and must not infringe upon the powers and duties of the Session or the Board of Deacons.

The general oversight and spiritual guidance for the Church shall be the Session, with Ruling Elders elected by the Communing Members of the Congregation as stated in Article IV. The function of Elders and the Session are defined by the Book of Church Order (Chapters 8 and 12) of the PCA. Each elected Ruling Elder will serve one three (3) year term and may continue on the Session for one (1) additional three (3) year term, after which he must take a minimum one (1) year sabbatical leave. After which, the man may be re-nominated and elected to serve again on the Session for the same duration. The number of Ruling Elders will be recommended by the Session and approved by the members of the Corporation.

The members of the Corporation shall elect a Board of Deacons, which shall see to the management of the property and the physical needs of the congregation under the direction of the Session. The function of Elders is defined the Book of Church Order (Chapter 9) of the PCA. The Board of Deacons will elect one Deacon or Elder to chair the Finance Committee of the Corporation and serve as an *ex officio* voting member of the Board of Directors and as President of Corporation.

**Rationale:** Define the specific relationships and roles of the Board, the Session and the Board of Deacons. Was not needed prior to the church be particularized.

#### **Article VII: Amendments**

**Currently reads:** *“These By-Laws may be altered, amended, repealed or added to by the vote of the Board of Directors of the Corporation at any regular meeting of said Board, or at a special meeting of Directors called for that purpose provided a quorum of Directors are present at such regular or special meeting. These By-Laws, and any amendments thereto, and new By-Laws added by the Directors, may be amended or replaced by the members at any annual or special meeting of the members.”*

**Recommend it reads:** *“These By-Laws may be altered, amended, repealed or added to by majority vote of the members at any regular meeting of the Corporation or at a special meeting called for that purpose provided a quorum is present. Such changes must be distributed to the members at least 30 days in advance of the meeting by distribution in person, by mail or email to the members.”*

**Rationale:** Amendments, replacements or alterations should ultimately be ratified by the members of the Corporation (i.e. the Communing members or the Congregation) rather than by the Board alone.

#### **Add Article VIII: Dissolution**

**The Articles of Incorporation Article IV currently reads:** *“In the event of dissolution, the residual assets of the organization will be turned over to: first the Presbytery of Southwest Florida (PCA) or the presbytery which bounds the church then resides; second, one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future law; or third, to the Federal, State, or local government for exclusive public purposes.”*

**Recommend adding Article VIII: Dissolution:** *“In the event of dissolution, the residual assets of the Corporation will distributed (a) to one or more religious, charitable and benevolent organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Code or corresponding sections of any prior or future revenue law; or (b) to the Federal, State, or local government*

for exclusive public purposes. The Board of Directors shall by resolution determine the recipients of the residual assets of the Corporation upon dissolution. None of the residual assets of the Corporation may be distributed to any member, officer or director if this Corporation.”

**Rationale:** Once a church is particularized, the Presbytery (under BCO 25-9) *“All particular churches shall be entitled to hold, own and enjoy their own local properties, without any right of reversion whatsoever to any Presbytery, General Assembly or any other courts hereafter created, trustees or other officers of such courts. “*