



*Diocese of Gaylord*

# Presentation on Parish Incorporation

Fall 2020

**bodman**



# Overview of Parish Incorporation Project

- Incorporation of every parish as a Michigan nonprofit corporation
- Transfer of real and personal property to parish corporations
- Notification of United States Conference of Catholic Bishops (for purposes of updating Official Catholic [Kenedy] Directory and IRS records) and local governmental entities, as necessary



# Questions & Answers

## **Why are parishes in the Diocese of Gaylord being separately incorporated?**

According to church law and theology, each parish and diocese has its own unique set of rights and responsibilities, including the obligation to administer church property. The separate incorporation of parishes is the civil law structure that most accurately reflects our ecclesiastical law and theology. Creating nonprofit parish corporations is the simplest and most effective way of ensuring that the rights of parishes regarding church property are respected not only in church law, but in civil law.

## **What is the present legal structure of parishes in the Diocese?**

Under the laws of the State of Michigan, the Diocese of Gaylord exists as a “corporation sole.” This model is several centuries old and developed out of various historical contexts. This structure civilly recognizes church property as held by the bishop as a form of trust, for the benefit of the Church. There has been a growing concern that this civil legal structure does not fully reflect the theological and canonical vision of the Church.



# Questions & Answers

## **Is parish incorporation something new or have other dioceses already separately incorporated parishes?**

Many dioceses around the country have separately incorporated their parishes for many years. In fact, as far back as 1911, the Holy See stated that dioceses in the United States should pursue parish incorporation. Since that time, many dioceses have adopted this legal structure as a normal part of parish and diocesan life.

## **Why is this being done at this time?**

The idea has been under consideration for many years. Incorporation has become widely accepted as a method of organizing parishes. In some instances, civil courts in other states have directed dioceses to incorporate their parishes to reinforce in civil law that parish assets belong to the parish, not the diocese. The project of incorporation was put on hold a few years ago when the State of Michigan Department of Licensing & Regulatory Affairs opposed parish incorporation under the MI Nonprofit Corporation Act; that opposition has been lifted.



# Questions & Answers

## **Are there theological reasons for parish incorporations?**

Through Baptism, all the faithful – clergy and laity – are called to exercise the mission which God has entrusted to the Church to fulfill in the world. We are stewards of all that has been entrusted to us. Parish incorporation allows for direct involvement of the laity and a proper ordering of the rights and responsibilities of parishes and the diocese. By exercising proper stewardship and acknowledging the unique rights and responsibilities of all in our local church, we hope to be better able to give witness to Christ and advance the Kingdom of God.



# Questions & Answers

## **How will this affect the day-to-day life of the parish?**

There should be no substantial change in the normal operation and administration of any parish. The Pastor/Pastoral Administrator will continue to administer the parish as previously, consulting with the parish pastoral and finance councils as currently required.

The parish will remain in communication with and accountable to the Bishop. Permission of the Bishop will still be needed when administration of parish goods is an act of major importance, exceeding what is considered ordinary administration. The fact of civil incorporation will not change the basic pattern of parish and diocesan life.



# Questions & Answers

## **How will parishes be incorporated?**

Incorporation in Michigan is a simple process. Articles of incorporation are filed with the State of Michigan. Corporations also adopt bylaws regulating governance of the corporation. The articles of incorporation and bylaws were drafted by diocesan legal counsel, and will be the same for all parishes. The initial articles of incorporations will be filed by the Diocese. (*Excerpts from the Parish Articles of Incorporation and Bylaws can be located later in this presentation for reference.*)

The real and personal property of the parish will be transferred to the parish corporation.



# Questions & Answers

**Will there be a corporate board of directors? Will laity be involved?  
What is the role of the Pastor/Pastoral Administrator and the Bishop?**

The plan is to create a **Board of Directors** for each parish consisting of four persons:

1. Vicar General of the Diocese
2. Chancellor of the Diocese
3. Pastor/Pastoral Administrator of the Parish
4. Chairperson of the Parish Finance Council

**Officers** of the corporation will be: president, treasurer, and secretary.

- The Pastor/Pastoral Administrator will be the **president and treasurer** of the corporation, with the same powers and duties that he/she has currently.
- The Chancellor will serve as **secretary**.

The Bishop will have certain reserved powers over matters identical to our current practice and in accord with canon law.



# Questions & Answers

## Is there an overview of the governance structure?

<b>Incorporation</b>	Michigan nonprofit corporation
<b>Organization</b>	Membership
<b>Purpose</b>	To operate and manage the temporal affairs of the corporation, a parish of the Roman Catholic Church of the Diocese of Gaylord, in strict conformity with and subject to Universal and Particular Law
<b>Sole Member</b>	Bishop
<b>Board of Directors</b>	Consists of four individuals: (1) Vicar General (2) Chancellor (3) Pastor/Pastoral Administrator of the parish (4) Chairperson of the parish's finance council (or if this chairperson is not willing and able to serve, then another parishioner in a leadership position in the parish)
<b>Officers</b>	Pastor/Pastoral Administrator is the President and Treasurer; and the Chancellor is the Secretary, unless otherwise determined by the member
<b>Dissolution</b>	To one or more 501(c)(3) organizations that are organized and operated for religious, charitable and/or educational purposes of the Roman Catholic Church and that are located within the diocese
<b>Reserved Powers</b>	<p>The following powers are reserved exclusively to the sole member:</p> <ul style="list-style-type: none"><li>• Amendment of Articles and Bylaws;</li><li>• Appoint and remove directors and officers; and</li><li>• Veto any and all Board resolutions that the member deems inconsistent with Universal and Particular Law or the purposes or philosophy of the corporation or the Catholic Faith.</li></ul>



# Questions & Answers

## **What new responsibilities will result from parish incorporation?**

Following incorporation, the parish will need to file a simple annual report with the State of Michigan. The parish corporation's Board of Directors will meet at least once a year to review the parish's activities and to take other necessary corporate action. It will not take the place of the parish pastoral or finance council.

The Office of the Chancellor of the Diocese of Gaylord will assist each parish in conducting the annual meeting, maintaining minutes of the meetings, and filing the annual report. Except for holding annual meetings and filing the annual report, there should be no difference in the day-to-day operations of the parish. All documents will be shared with the parish.



# Questions & Answers

## **How will the board meeting be arranged and conducted?**

The Chancellor will schedule the annual meetings and these meetings will likely be held by teleconference.

## **How will the minutes of the annual meeting be prepared? Where will they be filed?**

The Chancellor (or delegate) will draft the meeting minutes, based on a template that will be used by the Diocese. The minutes are not filed with the State of Michigan. The parish will receive a copy of the minutes and will maintain the minutes with parish records.



# Questions & Answers

## **What matters will the corporation board consider? Will there be a standard agenda?**

The board will review some of the major areas concerning the temporal affairs of the parish. The board is not intended to replace the main consultative groups required presently for parishes, such as the pastoral and the finance councils.

Therefore, the meetings should be relatively brief. A standard agenda will be sent out in advance and will likely include the following:

- i. Approval of minutes of the prior annual meeting and confirmation that the minutes have been properly filed at the parish and with the Diocese.
- ii. Confirmation that the parish has filed the annual financial report with the Diocese of Gaylord.
- iii. Confirmation that the parish corporation has filed the required State of Michigan Annual Report.
- iv. Confirmation that the parish has an established parish pastoral council and finance council and that the councils are meeting.
- v. Discussion of any major changes since the last meeting or major future plans relating to the temporal goods of the parish.



# Questions & Answers

## **Will parish incorporation result in greater accountability to civil authorities?**

The Michigan Attorney General has the legal authority and obligation to oversee charitable organizations. If there is an allegation that the business affairs of a corporation are not being managed properly, it is possible that the Attorney General could investigate and, if warranted, take action. To the extent permitted by Michigan law, members of the board of directors will be indemnified from personal liability.

## **How will parish incorporation affect the parish tax status, employee benefits and insurance?**

Incorporation will not require parishes to obtain IRS approval of the parish's 501(c)(3) status. Such tax-exempt status has already been granted by virtue of the parish listing in the Official Catholic (Kenedy) Directory. Incorporation will not affect any employee health or benefit programs, participation in insurance or any other services provided by the Michigan Catholic Conference or the Diocese of Gaylord.



# Questions & Answers

## **Will incorporation result in any change in the support and other programs that the Diocese currently offers to parishes?**

Incorporation will not alter or affect any of the support programs currently available to assist parishes. Each parish's assets will remain with the parish. Incorporation will not affect the priest pension plan, the lay employee pension plan, current employee insurance programs and/or parish insurance coverage.

## **Will schools be separately incorporated?**

Under church law, a parish school belongs to the parish; there are no plans to incorporate all parish schools separately from the parish.

However, at the present time, the plan is to separately incorporate *regional* schools.



# Questions & Answers

## Are there other considerations in this process?

- The [Canonical Consent Resolution](#), which describes the relationship between the Bishop and a Pastor/Pastoral Administrator in language that is compatible with parish incorporation, will be needed.
- Parish names will be standardized to add the [city](#) of the parish church, in order to distinguish each parish from others with the same name.
  - The USCCB will be notified (and the USCCB will, in turn, notify the IRS), with the goal of having each parish's legal name reflected in the IRS records.
  - The Official Catholic (Kenedy) Directory will be notified.
- Each parish will receive deed information. The deeds will be filed with each county's Register of Deeds office.



# Excerpts from Parish Articles of Incorporation and Bylaws

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# Purpose of the Corporation Subject to Universal and Particular Law

The purposes for which the corporation is organized are:

*To receive and administer funds and property and to operate exclusively for religious and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and, in particular, to operate and manage the temporal affairs of the corporation, a parish of the Roman Catholic Church of the Diocese of Gaylord.*

The corporation must operate in strict conformity with, and subject to, the teachings of the Roman Catholic Church, the 1983 Code of Canon Law, as amended from time to time, and all other pertinent universal and particular laws and provisions of the Roman Catholic Church (collectively, "Universal and Particular Law").



# Corporation Subject to Canon Law and Diocese of Gaylord Policies

- The parish is a public juridic person under the Canon Law of the Roman Catholic Church, and incorporation will not affect its validity or status under Canon Law.
- The corporation is subject to Universal and Particular Law. In particular, the corporation is subject to:
  - all pertinent canons on juridic persons, namely canons 113-123;
  - all pertinent canons on parishes and pastors, namely canons 515-552; and
  - all pertinent canons on administration of goods, namely canons 1273-1289.
- Additionally, the corporation is subject to all pertinent policies and guidelines established for parishes by the Bishop.



# Limitation of Liability of Directors and Volunteer Officers

The liability of directors, volunteer officers and other volunteers to the corporation is limited to the fullest extent permitted by Michigan law:

- Directors and volunteer officers are not liable to the corporation or the Member for money damages for any action taken as a director or volunteer officer. However, this does not limit the liability of a director or officer for certain bad acts (such as fraud).
- The corporation assumes all liability to any person other than the corporation or its Member for all acts or omissions of a volunteer director incurred in the good faith performance of his/her duties.
- The corporation also assumes all liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer if: (1) the volunteer was acting within the scope of his/her authority, (2) the volunteer was acting in good faith, (3) the volunteer's conduct did not amount to gross negligence or willful and wanton misconduct, (4) the volunteer's conduct was not an intentional tort, and (5) the volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle.



# Indemnification of Directors and Officers

- Directors, officers and committee members will be indemnified by the corporation to the fullest extent permitted by the laws of the State of Michigan if such person is, was, or is threatened to be made a party to any legal proceeding by reason of such person's service to the corporation.
- The corporation may also, on a case-by-case basis, grant such rights to indemnification to any employee, non-director volunteer, or agent of the corporation.



# Powers Reserved to the Bishop

The Bishop has certain powers under the governing documents, including:

- Approval of any amendments to the corporation's articles of incorporation and bylaws.
- Remove and replace directors and officers of the corporation.
- Veto any resolutions of the board of directors that the Bishop deems to be inconsistent with Universal and Particular Law or the purposes or philosophy of the corporation or the Catholic Faith.



# Next Steps

## **Initial steps (current)**

The Diocese of Gaylord Finance Council and College of Consultors have reviewed, approved and given consent for the incorporation process. Parish incorporation details are being provided to Pastors/Pastoral Administrators and parish lay representatives to address the next steps.

## **Mid-September**

Each Pastor/Pastoral Administrator should confirm the Board membership, corporation names and EINs.

## **Early October**

Bishop Hurley will sign and file each parish's Articles of Incorporation.

## **October – December**

Initial meetings of each Board of Directors will be held. Deeds and assignments to transfer other assets to the parish corporations will be completed over time. Copies of all documents will be provided to each parish.



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