

## Information Regarding Bylaws and Policies

### **Why do we need bylaws?**

The State of Oregon requires corporations to have bylaws; however, bylaws are not filed with the Secretary of State. They must exist and be on file at the corporation. The Marion Church is a non-profit, religious corporation registered in the State of Oregon.

“The bylaws of a corporation are the rules of law for its government. The term "bylaw" may be further defined according to its function, which is to prescribe the rights and duties of the members with reference to the internal government of the corporation, the management of its affairs, and the rights and duties existing among the members.” *Schraft v. Leis*, 686 P.2d 865 (Kan. 1984).

It is important for bylaws to be comprehensive. They should reflect the church’s theology and administrative practices. If a church’s bylaws are either silent on a matter (i.e. same-sex marriage), not comprehensive enough or are not followed by church members, courts can hold the church accountable to state laws, not scriptural standards.

Bylaws assist in protecting a church from lawsuits. They provide legal structure for the organization. If a dispute arises and a lawsuit occurs, the courts will look to the church’s bylaws to determine how to proceed: do they have jurisdiction or does the Ecclesiastical Abstention Doctrine\* come into play. If a court determines it has jurisdiction, the bylaws will be a critical document in their determination concerning which party will prevail. For this reason, it’s important a church’s bylaws are comprehensive, and its leaders and members actually follow them.

Oregon Revised Statute 65, Nonprofit Corporations, takes precedent in instances where the bylaws are silent on a topic. In certain areas of routine operation, the statutory requirements may be acceptable practice. Therefore, a church’s bylaws may be silent and defer to the statute. In other areas, the statute may be too restrictive or too lax and the church will want to address its operational needs in its bylaws so that the statute doesn’t control. The Marion Bylaws Committee took this into consideration when drafting bylaw revisions.

### **Where do policies fit with bylaws?**

Policies look and act much like bylaws because they also outline the operational requirements and affairs of the corporation. Good policies support and may further define good bylaws.

Policies adopted by formal resolution of the Joint Board of Directors usually have the same force and effect as bylaw provisions as long as they are not in violation of the bylaws. Bylaws trump policies if there is a conflict.

\* The ecclesiastical abstention doctrine, also known as the church autonomy doctrine, is a longstanding common law doctrine that guides courts when a case would require the court to decide a religious question. In its most distilled form, the doctrine counsels that if a case would require a civil court to decide a matter of religious doctrine, the court should either refuse to adjudicate or defer to the relevant religious hierarchy. *Source: Harvard Civil Rights – Civil Liberties Rights Law Review*