

CREATING OR UPDATING YOUR ORGANIZATIONAL BYLAWS

A GUIDE



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I. Planning Ahead for Success

Forming or improving the bylaws of your organization is an important first step when planning for the success of your radio project. Ideally, there is an existing non-profit ready and willing to revisit its bylaws and partner with your organization. If you are forming a new group, you will have to create bylaws that reflect the mission and vision of your organization. Even if you are part of an existing non-profit, however, you need to pay particular attention to your bylaws as compliance with your own bylaws is critical by law. The FCC, IRS and FEC all have the regulatory power to create liability for the organization and its Board of Directors in the case you do not follow your bylaws.

Many organizations hire a lawyer. The lawyer typically uses a sample template of how to impose governance standards on the organization. Be aware that this use of a sample template can sometimes cause a fundamental disconnect between an organization and its bylaws. For this reason, it is essential that your organization and your lawyer to work together in order to create the best bylaws. Non-profits often do not know how they want to set up their system of governance and the attorney does not necessarily know what is best for the non-profit. Communication and collaboration between your lawyer and your organization is key in ensuring the success of your station.

Putting strong bylaws in place is absolutely critical for planning how the station will operate. Your organization will have to determine if the station is going to be traditionally hierarchical or if you favor a consensus-based approach. There are requirements and precedents that come with each model. How will your Board of Directors manage your Station Manager or Executive Director? Who will manage staff and volunteers? Creating an open environment where individuals feel free to ask questions and express their thoughts will allow you to establish station policies that best reflect the intentions of your organization.

II. Starting With A Strong Mission Statement

Once a name has been chosen for your organization, the next thing you need is a statement of purpose. The definition of educational purpose is intentionally broad. You must show how your programming will further an educational objective and demonstrate that you will be prepared to offer at least eight hours per day of local programming by the time you go on the air.

Prometheus strongly encourages all applicants to make a long-term commitment to diversity in the management of the organization as well as in the programming. These licenses provide a truly unique opportunity for community expression, but you should also beware of broad terms (terms in the mission that are not specific, hard to understand, and meet) that cannot be met. The mission statement should clearly show your values and principles and your plans for the future. Use the mission statement as a guide to help make decisions about programming and community partnerships.

Example Mission Statement:

This corporation shall be organized and operated exclusively for charitable, scientific, literary, and educational purposes. Subject to the limitations stated in the Articles of Incorporation, the purposes of this corporation shall be to engage in any lawful activities, none of which are for profit, for which corporations may be organized under Chapter 65 of the Oregon Revised Statutes (or its corresponding future provisions) and Section 501c(3) of the Internal Revenue Code of 1954 (or its corresponding future provisions). The primary purpose of this corporation shall be to educate, entertain and involve our community through community radio.

III. Establishing An Official Board of Directors

As a non-profit broadcast licensee, you are responsible for the appropriate use of bylaws to govern your station. If the leaders of your organization violate the bylaws, they can be held personally liable to members of the public, employees, volunteers, funding sources, and other stakeholders. Each board member should make a time commitment, which often means scheduling meetings well in advance in order to ensure participation.

Frequent meetings, fundraising, and station-building are all important in the early stages of the application process. For example, once you are operational, meetings can occur monthly rather than quarterly. Nowadays, votes can happen simply by conference call or email without a physical quorum in one room. A quorum simply means that there is a sufficient number of board members present to make a vote.

How many people should make up your Board of Directors? Typically there are between five and nine members, but the amount is up to you. One easy way to set this up in your bylaws is by using phrases like "not fewer than" or "no more than." You should also be clear that serving on the board does not necessarily include financial compensation.

The method of selection of new board members varies widely, but diversity is essential in composing a Board of Directors that is representative of the community. Think not only about ethnic and age diversity, but diversity in viewpoints and values as well. The FCC requires your organization to meet one of the two following options in regards to board member eligibility and locality. For stations that are located within the top fifty urban radio markets, your organization either needs to be physically headquartered within ten miles of the proposed antenna site or 75% of your Board of Directors must reside within ten miles of the proposed antenna site. For stations located outside the top fifty urban radio markets, your organization either needs to be physically headquartered within twenty miles of the proposed antenna site or 75% of your Board of Directors must reside within twenty miles of the proposed antenna site.

The FCC has a number of requirements that your Board of Director's must meet. None of your board members are permitted to own another broadcast license, a daily newspaper, or a cable television system. A minimum of 80% of the Board of Directors should be US citizens. No board member can have immediate family (parents, children, siblings or spouses) who control other broadcast stations or daily newspapers in the area (see FCC Form 318 Worksheet 1A for details and exceptions). Each board member must be clear of any character issues which were unresolved or resolved adversely in other broadcast application proceedings. The Board of Directors must be free of individuals who have been found guilty of felony, mass-media related anti-trust or unfair competition, fraudulent statements to other governmental units, or discrimination. No board member can be convicted of drug convictions that cause the denial of federal benefits. Any individual ever engaged in the unlicensed operation of a radio station (pirate radio) is disqualified from the Board of Directors.

However, there are three exceptions to these requirements:

1. Some members of the board have a controlling interest in other media, but will remove themselves from all decisions related to the LPFM station. This applies when the organization has a multifaceted mission (e.g. a university), and the duties of the board member are unrelated to the LPFM.
2. The organization is a chapter of a national organization that may not meet all the criteria and requirements previously listed. However, your chapter is separately incorporated in your state, and you have a local presence and mission that is distinct from the national organization.
3. Your organization does hold another broadcast license, but you will give up this license if your LPFM license is awarded by the FCC.

The terms served by board members are usually between one to three years. Removal, resignation, and vacancies ought to be addressed in your bylaws. How will new candidates be nominated and how will the election process work? Establish a structure for transition in order for institutional memory to be maintained. Healthy station culture is partly fostered through bylaws that facilitate stakeholders getting what they want out of station relationships.

It would be wise to build a framework to for board member accountability. Clearly define the role of each officer and come up with plans for committee work. Determine when and where your board meetings will take place. Your bylaws should articulate the duties and expectations of each board member. It is important to stress to board members how great of an impact they have on fellow staff and volunteers. Hopefully if you demonstrate your appreciation for their time and effort, your Board of Directors will stay motivated.

Board of Directors Articles Examples:

Section 1. Qualifications for Station Board Membership

1. Only members of WSLR may sit on the Station Board.
2. Each person who wishes to run for a Station Board seat shall complete a written questionnaire and be interviewed by the Board Executive Committee. This information must be submitted at least 45 days before the date of the annual meeting. Candidates become eligible for a seat on the Board in one of two ways: By receiving the recommendation of the current Board or by collecting signed petitions from at least 20 WSLR members.

Section 2. Number of Station Board Members

WSLR's Station Board shall consist of a minimum of 7 and a maximum of 11 voting members, with additional "ex-officio" (non-voting) seats reserved for the Station Manager and other positions (see Article VI, Section 1, Item 4).

Section 3. Composition of the WSLR Station Board

1. The Station Manager of WSLR shall have an "ex-officio", non-voting seat, on the Station Board. Management personnel approved by the Board shall have additional ex-officio seats.
2. The remaining seats available on the board shall be voted in by WSLR voting members during annual elections held for that purpose (See Article V, Section 4).
3. One seat on the WSLR Board will be reserved for a New College Student Representative who qualifies under Florida law. This seat will be appointed by the board based on the recommendation of the New College Student Alliance.
4. If an appropriate student participating in the STAR Leadership Training program is available, one seat on the WSLR Board will be reserved for a STAR high school student. This seat will be appointed by the board based on the recommendation of the Community Youth Development Staff.
5. The WSLR Board will be composed of a minimum of 5 community members. If someone elected as a community member becomes a programmer during their term on the Board, it will not change their standing on the Board.

Section 4. Election of WSLR Station Board Members & Term of Office

1. The terms of one half of the total number of Station Board members shall expire each year.
2. A Station Board member may be reelected without limitation on the number of terms the board member may serve.

Section 5. Compensation

Station Board members shall not receive any salaries for their services as board members.

Section 6. Resignation

A Station Board member may resign at any time by delivering written notice to the chair of the board. A resignation shall be effective when given unless the notice specifies a later effective date.

Section 7. Vacancies

Any vacancy on the Board of Directors and any newly created Board positions may be filled by a majority vote of the members of the Board of Directors. The Nominating Committee will be charged with the responsibility of recommending to the next meeting of the Board a replacement Board member for the remainder of the term.

Section 8. Required Attendance

1. A Station Board member will be considered absent if he/she is present at the board meeting for less than two-thirds of the scheduled time of the meeting.
2. When a Station Board member has failed to attend two regular meetings of the board during a calendar year it shall be the duty of the Secretary to cause a written notice of that fact to be mailed to such board member, and such notice shall also state that such board member's absence from three regular meetings of the board could result in her/his termination as a member of the Station Board (see Section 9, Item 2).
3. In a case where such board member has missed a third regular meeting of the Station Board, it shall be the duty of the Secretary to cause a second written notice of that fact to be mailed to such board member, and to also state that termination of such member's status as a member of the Station Board will be undertaken as set forth below unless the Secretary hears from such board member in writing within 10 days as to why such action should not occur.
4. At each regular meeting of the Station Board it shall be the duty of the Secretary to report the name of any board member to whom notices of meetings and notices of absences have been mailed, together with any written response received, as required by these bylaws. Thereupon at the recommendation of the Station Board, such board member may be removed, if the absences are deemed to be unexcused, from his/her position as a member of the Station Board and a vacancy of the board shall be declared.

Section 9. Removal of a Station Board Member

1. A Station Board member may be removed with cause, by a two-thirds vote of the Station Board at any board meeting. A Board member may not be removed for substantive disagreements. All WSLR members will be given prior notice of the date, time and purpose of said meeting (Refer to Article V, Sections 17 – 21).
2. Any Station Board member who misses three or more board meetings per year may be removed at a regular meeting by a majority vote of the board members then in office.

IV. Deciding Whether To Become A Membership Organization

An organization is only as good as the people who make it work – something sometimes referred to as a “do-acracy.” All community radio stations depend on volunteer labor. However, not all stations are membership-based. Some stations do not even do direct on-air fundraising. Without benefits or responsibilities, why become a member?

Most membership organizations hold an annual membership meeting and encourage members to vote in annual elections. How much say do you want the membership to have in the Board of Directors and in the programming and the direction of the station? WSLR, for example, decided to remove the power of voting members to select station board members during station elections.

Define what it takes to be considered a member in good standing. Typically, this is as simple as signing on to the station's mission and paying annual dues (or donating during pledge drive). But what can you do if members violate the mission? This is when you need to contemplate whether or not to include discipline and removal in your bylaws (see above section for example bylaws about disciplining and removing board members).

Membership Bylaw Examples:

Section 1. Classes of membership

There shall be one class of membership. All members of WSLR shall act in accordance with the station's mission statement in Article I.

Section 2. Composition of membership

Membership shall consist of:

1. Paying members: those who have contributed annual membership dues as defined and determined by the Station Board.

Section 3. Member Bill of Rights

1. The right to apply for open positions, including Station Board and DJ positions, except as subsequently noted.

2. The right to attend meetings of the WSLR Station Board and the right to be heard at the meetings (see Article V, Sections 19, 20).

3. The right to have access to WSLR financial reports (see Article V, Section 15).

4. The right to propose items for the agenda of any WSLR membership meeting or board meeting (see Article IV, Section 3, Item 2; Article V, Section 23, Item 4).

V. Implementing Protection for Monetary Accountability

Record keeping is vital. Set guidelines for fiscal responsibility - this means including access to and review of bank statements, contracts, paychecks and any other accounting. Also keep in mind that almost all grant applications require the submission of a financial audit.

Your organization exists for charitable purposes, not for financial gain. You should outline a basic conflict of interest policy so compensation arrangements are clearly understood. However, a financial interest is not necessarily a conflict of interest. Non-profit radio stations employ a wide range of articles, sections, and definitions on these matters.

Operational Procedures Examples:

Annual Audit

The accounts of the Corporation may be audited annually in accordance with generally accepted auditing standards by independent certified public accountants. Selection of the auditor shall be by the Board, upon recommendation of the Treasurer, and overall supervision and review of the audit shall be, in the first instance, by the Treasurer unless the Board determines otherwise by majority vote. Copies of the report of such audit shall be furnished by the Budget Committee to all Directors.

Conflict of Interest

SECTION 1. PURPOSE OF CONFLICT OF INTEREST POLICY

The purpose of this conflict of interest policy is to protect this tax-exempt corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the corporation or any "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Internal Revenue Code and as amplified by Section 53.4958 of the IRS Regulations. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

SECTION 2. DEFINITIONS

(a) Interested Person.

Any director, principal officer, member of a committee with governing board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) Financial Interest.

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (1) an ownership or investment interest in any entity with which the corporation has a transaction or arrangement,
- (2) a compensation arrangement with the corporation or with any entity or individual with which the corporation has a transaction or arrangement, or
- (3) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 3, paragraph B, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

SECTION 3. CONFLICT OF INTEREST AVOIDANCE PROCEDURES

(a) Duty to Disclose.

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

(b) Determining Whether a Conflict of Interest Exists.

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

(c) Procedures for Addressing the Conflict of Interest.

An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. After exercising due diligence, the governing board or committee shall determine whether the corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the corporation's best interest and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

(d) **Violations of the Conflicts of Interest Policy.**

If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Books and Records, Depositories

The organization shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board of Directors. It shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its directors, giving the names and addresses of all directors.

The organization's money shall be deposited in the name of the Organization in such banks or trust companies as the Board of Directors shall designate, and shall be drawn from such accounts only by check or other order for payment signed by such persons, and in such manner, as determined by the Board of Directors.

Designated Financial Agents

Section 1. Designated Financial Agents

All funds of the Corporation will be deposited in the name of the Corporation in such banks or other financial institutions as the Board of Directors may from time to time designate and will be drawn out on checks, drafts or other order signed on behalf of the Corporation by such person or persons as the Board of Directors may from time to time designate.

Section 2. Other Agreements

Except as otherwise specifically provided by these Bylaws, all contracts, agreements, deeds, bonds, mortgages and other obligations and instruments must be signed on behalf of the Corporation by the Chair or by such other officers or agents as the Board of Directors may designate.

VI. Protecting Your Board Members With Indemnification

Your Board of Directors should be secured against future financial loss or liability. What exactly is indemnity? Indemnity is a sum paid by one party to another as compensation for a loss. Indemnification means the assumption of risk by the organization for personal liability or financial loss of directors or officers. This allows your organization to attract qualified board members but also creates a substantial financial obligation.

A station might limit its indemnification on the basis of criminal acts, insurance, or bad faith subject to adjudication by a court. There are many lawsuits by third parties against non-profits on the grounds of harassment. Beyond your bylaws, pay attention to contracts or leases in which you may have to cover the construction crew or landlord.

The indemnification clause is one aspect of your bylaws that must comply with state law. Prometheus strongly recommends seeking local legal assistance with this section. The organization has to assume the personal liability for the directors and officers, which is why most organizations buy insurance. Many stations also extend this beyond the board to employees and volunteers.

Indemnification Agreement Examples:

To the extent that a person who is, or was, a director, officer, employee, or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative, or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, a director, officer, employee or other agent of the corporation, or has been successful in defense of any claim, issue, or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements, and other amounts reasonably incurred in connection with such proceedings shall be provided by this corporation but only to the extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

VII. Preparing for the Worst Through A Corporate Dissolution Plan

Dissolution forces the organization's holdings to be transferred to another nonprofit. Typically, boards are only able to dissolve themselves with a two-thirds vote. The key aspect of this process is the disposal of assets. After paying or making provisions to settle all liabilities, the disposal of what remains should occur in a manner appropriate to the charitable or educational purpose of the organization.

Dissolution Articles Examples:

13.1 Dissolution.

Dissolution of the Corporation shall be by adoption of resolution to dissolve by the unanimous vote of the members of the Board of Directors.

13.2 Disposal of Assets.

Upon dissolution, all assets shall be distributed in accordance with the Articles of Incorporation and be subject to all state and federal laws that apply. Upon dissolution of the Corporation, the Board shall, after paying or making provisions for the payment of all liabilities of the Corporation, dispose of all of the remaining assets of the Corporation exclusively for the purposes of the Corporation in such manner or to such 501c(3) organizations as the Board of Directors shall determine. Any such assets not disposed of in this manner shall be disposed of by the District Court for Ada County in the State of Idaho, exclusively for such purposes and to such organizations as said Court shall determine, which are operated exclusively for such charitable, educational, or scientific purposes.

VII. Building in A System for Making Bylaw Amendments

Bylaws can usually be altered, amended, or repealed and new bylaws may be adopted by a quorum of the Board of Directors. Use this amendment of your bylaws to lay out the specifics of your process. Identify required steps such as publishing notice of the meeting, distributing the proposed changes with sufficient advance notice, and achieving a majority vote at any meeting where bylaws amendments are up for consideration. It is common practice to set aside annual review of bylaws and other station policies.

Amendment Examples:

SECTION 1. AMENDMENT

Subject to any provision of law applicable to the amendment of bylaws of public benefit nonprofit corporations, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted as follows:

- (a) Subject to the power of members, if any, to change or repeal these bylaws under Section 5150 of the Corporations Code, by approval of the board of directors unless the bylaw amendment would materially and adversely affect the rights of members. Provided, however, that this corporation has admitted any members, then a bylaw specifying or changing the fixed number of directors of the corporation, the maximum or minimum number of directors, or changing from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (b) of this Section; or
- (b) By approval of the members of this corporation.