

Referendum Rules and Work Plan – Vote on Revised Bylaws February-March 2020

Approved by Renee A Penalosa (NES), in consultation with General Counsel Arthur Schwartz

Please find below a timeline of rules and procedure tasks and fee for the administration of a membership vote to amend the bylaws per the court ruling issued on Jan 23rd, 2020. The date of record for the vote is January 2nd, 2020.

The vote must be conducted in accordance with California's Corporation Code, the Bylaws of Pacifica, and the direction of Judge Frank Roesch of Superior Court Alameda County, on January 23, 2020

California Corporation Code

The California Corporations Code gives very little guidance about the rules to conduct membership referenda, although it gives some guidance to votes to diminish voting rights of some class or classes of members, which is the situation here. The applicable statute reads, in relevant part as follows:

Section 5341

“(a) No member may be expelled or suspended, and no membership or membership rights may be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.

“(b) Any expulsion, suspension or termination must be done in good faith and in a fair and reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination, or expulsion are considered.

“(c) A procedure is fair and reasonable when:

“(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all the members as required by the articles or bylaws.

“(2) It provides the giving of 15 days prior notice of the expulsion, suspension or termination and the reasons therefor: and

“(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

“(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the member shown on the corporation's records.

“(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after

the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

“(f) This section governs only the procedures for expulsion, suspension or termination and not the substantive grounds therefor. An expulsion, suspension or termination based upon substantive grounds which violate contractual or other rights of the member or are otherwise unlawful, is not made valid by compliance with this section.

Section 5342 provides:

“(a) An amendment of the articles or bylaws which would terminate all memberships or any class of memberships shall meet the requirements of this part and this section.

“(b) Before such an amendment is adopted the corporation shall give written notice to members not less than 45 nor more than 90 days prior to any vote by the members on the amendment. The written notice shall describe the effect of the amendment on the corporation and the members.”

In the leading decision on procedures to be followed, the California Court of Appeals held as follows:

“Plaintiffs argue section 5341 applies in requiring a good faith, fair and reasonable termination of membership rights, even though the specific due process requirements of subsection (c) are not applicable to a large-scale elimination of rights as we have here. We agree. The statute clearly by its terms applies to the removal of a membership right, and the franchise is obviously a membership right.”

Ferry v. San Diego Museum of Art, 225 Cal.Rptr. 258, 264, 180 Cal.App.3d 35, 44 (Cal.App. 4 Dist.,1986)

In other words, the process must be fair and reasonable. Also, while we follow the processes outlined in the Bylaw provisions addressed to LSB elections (See Article 17 Section B(4) this is not an election for Delegates, and the Delegate election procedures, other than those set forth in Article 8 of the Bylaws, other issues will arise.

The Bylaws

Two important Bylaw provisions come into play:

Section 17(B)(4) states: To be approved, a proposed amendment must receive the approval of the Members by a majority vote, provided that a quorum must be established by written ballot. If the proposed amendment would impact one class of Members differently from another class, the Members shall vote in classes and the majority vote of the Members of each class shall be required to approve the amendment, provided that a quorum of each class must be established by written ballot.

The proposed changes have a different impact on Staff Members than on Listener Members, so approval requires a majority vote of that group, along with Listener Members.

Article 3 Section 1(A) defines Listener members as follows: "Listener-Sponsor Members" shall be any natural persons who within the preceding 12-month period: (1) have contributed a minimum of \$25 to any Foundation radio station, or such minimum amount as the Board of Directors may from time to time decide; or (2) have volunteered a minimum of three (3) hours of service to any Foundation radio station.

Article 3 Section 1(B) defines Staff members like this: "Staff Members" shall be: (1) any non-management full-time or part-time paid employee of a Foundation radio station; or (2) any member of a Foundation radio station "Unpaid Staff Organization" or "Unpaid Staff Collective Bargaining Unit" which has been recognized by station management, or, if the station has neither such organization or bargaining unit, then any volunteer or unpaid staff member of a Foundation radio station who has worked for said radio station at least 30 hours in the preceding 3 months, exclusive of fund-raising marathon telephone room volunteer time."

These Bylaw rules must be applied uniformly, unlike LSB elections, where Local Stations have, at times, expanded the definition. KPFA must adhere to the same definition as all other stations.

The Court Order

Although a final order is not in place, the Court verbally instructed that the Record Date would be January 2, 2020, and that the vote should proceed following Bylaws Article 17 Section (1)(B)(4), which itself refers to bylaws Article 3 Section (8) Parts A-D. Therefore, we shall follow a process compliant with Article 3, Section (8) Parts A-D.

Timeline

Jan. 24th to Jan. 31st, 2020

- 1) Request updated membership lists for listener and staff members from station management to issue new membership lists for the election date of record.
 - a) Listener membership list corresponding to members who paid 25\$ minimum between 01/03/2019 and 01/02/2020 and fund room volunteers that volunteered a minimum of 3 hours over the same timeframe
 - b) Staff membership list corresponds to paid and unpaid staff lists. Paid staff on this list corresponds to staff on payroll as of the record date. Unpaid staff corresponds to station staff who volunteered a minimum of 30 hours at the station in the 3 months preceding the record date (date) at KPFK, KPFT, WBAI, KPFA and WPFW. Staff work excludes volunteering during fund-drives.

- 2) Combine all lists into a Master list for cleaning and deduping to ensure 1 vote per member, valid email addresses and postal addresses. Two cleaned mutually exclusive lists (staff and listener) will be submitted to vendors (Simply Voting/Honest Ballot) by Feb 3rd. Quorum numbers will be determined at this point based on the required 10% amongst listeners and 25% amongst staff.
- 3) Create 3 CARTs to raise awareness about the election. CARTs will be delivered to all station staff by Jan 31st and alternates will be created as needed throughout the election. CARTs will be 60 seconds in length and focusing on key election announcements.
 - a) "opting in" to the paper ballot option (to be aired from Feb 1-Feb 17.
 - b) "looking out" for ballots (eballots, postcards or paper ballots) to be aired Feb 18-March 1st)
 - c) "Cast their vote" before March 18th (March 2nd - March 18th)
- 4) The elections website will be updated with the timeline and voting information for the bylaws.
- 5) Fair campaign provisions for the election will be updated, posted online and sent to all station management.

Feb. 1st to Feb. 17th, 2020

- 6) Finalized member lists, postcard design, online ballot and paper ballot contents will be submitted to vendors by Feb. 3rd for mailing by Feb. 18th. Non-disclosure agreements and final membership lists will be sent to member designated membership houses for member-generated campaign material.
- 7) Ballot design & contents:
 - a) Due to the constraints of sending old and new bylaws through the mail, which would be prohibitively expensive, voters will be required to view the proposal details on-line. Members who request a printout of the changes will be accommodated on an individual basis by the NES. These printing and mailing costs will be paid by the NES and invoiced separately for reimbursement by Pacifica.
 - b) Pin codes will be generated for each voter, as required by the Pacifica bylaws. Pacifica's Article 3 requires that voters be given the opportunity to return ballots by mail. On-air CARTs and an e-mail campaign will be sent at the beginning of the election cycle allowing members to request a paper ballot using an online form or leaving a voicemail for the NES.
- 8) Ballot Mailing
 - a) On February 18 electronic ballots will be sent to all members with a valid email on file, postcards (with voter IDs and PINs beneath a scratch off) will be sent to members without a valid email on file. Paper ballots will be sent to members who requested a paper ballot in the previous election or who request a paper ballot for this election or.
 - b) All postcards and paper ballots will be sent out via first class mail.
- 9) NES will create a series of one-minute CARTs presenting each the principal proposed changes. NES will request arguments for and against to be submitted

prior to the creation of these CARTs. As soon as these are created, they will be given to each station to be played at least two times per day. (There may be as many as 6; playing them 2x per day will be a significant intrusion on programming.)

Feb. 18th to Mar. 18th, 2020

- 1) Ballot request system using an online ballot request form and voicemail will issue new and replacement e-ballots for the duration of the voting period until the close of business East Coast on the final day of balloting (March 18th). Paper ballot requests will be accepted through March 10th, 2020.
- 2) Voting will close at 11:59pm Eastern Time on March 18th, 2020.
 - a) If quorum is reached in both elections, then the ballots will be counted, and the results will be announced within 7 days of the close of voting or by March 29th, 2020.
 - b) If quorum is not reached in both the all-staff and all-member elections, then the ballots will be disposed of and the bylaws amendment proposal declared moot.

A Fair Campaign Plan

Article 4 Section 4 of the Bylaws, the Fair Campaign section, is not referenced in Article 17 Section B (4) and is not applicable to the Bylaws vote.

However, the NES, working with Counsel, has developed Fair Campaign Provisions addressed to this type of vote (which is unique in Pacifica history) which station staff must abide by. These will be sent to management and all station staff. Management will be requested to post a copy of the FCP in the control rooms.

Communications on Air

- a) As stated above, the NES will create a series of one-minute CARTs presenting each the basic proposed changes. The NES will request arguments for and against to be submitted prior to the creation of these CARTs. As soon as these are created, they will be given to each station to be played at least two times per day
- b) Individual producers of shows on Pacifica stations may have programs where the Bylaw proposal is discussed. Such discussion will be allowed so long as the host does not urge a vote one way or another (like the rules concerning endorsement of a public election candidate.) General Managers are urged to have some programming reflecting those who support the proposals but will not be forced to do so.

Pacifica Web Site

c) The Pacifica web site shall include a 1000-word statement from a proponent of voting yes, and proponents of voting no. That statement shall not provide a link to another web site. The comparison document already on the web site may remain.

Emails

Proponents and opponents of the Bylaw proposals shall be allowed to deliver messages via a third party approved vendor in order to email or send paper mailings to members. No "side" will be allowed to send a member an email more than once per week, except on the weeks beginning February 18, when two emails may be sent. We do not want the members deluged with emails.

Vendors

The NES shall do the following:

- List preparation
- Ballot design
- Website management
- Coordination with secure election vendors
- Ballot replacement
- CART production
- Coordination with station management (for lists and CART airing),
- E-mail campaigns for voter reminders
- Election report (if desired)
- Fee to hire an assistant for additional help during ballot replacement phase (as needed)
- Election phone line and voicemail

Ballot Houses

Simply Voting shall manage all data and tabulates the election results.

Honest Ballot will manage the postcard/paper printing and mailing.