

Notice of Proposed By-Laws Amendment to be Adopted 12/2/2014

The Food Co-op Board of Directors will hold its regular meeting on **Tuesday, December 2, 2014** from 5:30-8:00 pm at the Co-op Annex, located at 2482 Washington (across from PT Yacht Club). On the agenda for the meeting is the adoption of an amendment to The Food Co-op's By-Laws. Member comments are encouraged. The amendment includes changes to Article II: Membership, Article IX: Dissolution, and the addition of Article XI: Patronage Dividends. These changes are in **red text** in the proposed amended By-Laws below.

Reason:

The board wishes to pursue establishing a Patronage Dividend system at The Food Co-op due to its benefits for the co-op and for our member-owners. We have also been informed by our attorney that we should update our Bylaws to comply with current Federal and State law.

Bylaws Amendment Procedure:

ARTICLE VIII – AMENDMENTS

***Section 1.** Except for the provisions of Article VII, Sections 2 and 6, these by-laws may be altered, amended or repealed by the affirmative vote of 2/3 of the full Board of Directors at any regular or special meeting thereof, provided written notice of the proposed amendment is given at least ten (10) days in advance of the meeting to each Director and posted at that place where minutes and related matters are ordinarily posted in the store(s).*

Summary:

The Board shall post these bylaws changes at least 10 days in advance of the next Board meeting and add them to the agenda of that meeting for a vote of the board requiring 2/3 approval of the board for passage.

THE FOOD CO-OP AMENDED BY-LAWS PROPOSED FOR BOARD VOTE 12/2/2014

ARTICLE I – NO CHANGE

ARTICLE II – MEMBERSHIP

Section 1. Membership in The Food Co-op is open to all natural persons fourteen (14) years of age or older who are residents of the State of Washington or a foreign country at the time of application for membership.

Section 2. *No Change*

Section 3. Membership may be transferred in accordance with the process set forth by the Board of Directors from time to time. Membership may only be transferred to another resident of the State of Washington or a foreign country who is in accord with the purposes of the Corporation, wishes to patronize it and is willing to abide by this Corporation's Articles of Incorporation and Bylaws. Unless membership is transferred within six months after the death of a Member, membership shall terminate and the deceased Member's Capital Investment shall revert to The Food Co-op.

Sections 4 - 6. *No Change*

ARTICLES III through VIII – NO CHANGE

ARTICLE IX – DISSOLUTION

Section 1. In the event of dissolution, obligations of The Food Co-op shall be discharged in the following order:

- 1) Debts
- 2) Retained patronage dividends to members.
- 3) Capital Investments of members properly requested at least 90 days prior to the date of dissolution.
- 4) All other Capital Investments ~~in the order received by The Food Co-op~~ on a pro-rated basis.

Section 2. *No Change*

ARTILCE X - NO CHANGE

ARTICLE XI - PATRONAGE DIVIDENDS

Section 1. No dividends on Capital. No dividends shall be declared or paid with respect to member capital contributions.

Section 2. Patronage Dividends. The Co-op shall return the Co-op's net distributable surplus to its members annually as a patronage dividend, subject to the provisions of this Article XI. As used in the Co-op's Articles of Incorporation and these bylaws, the term "net distributable surplus" means (a) the annual earnings from the Co-

op's sales attributable to the patronage of its members minus (b) any reserves the Board of Directors decides to retain for necessary or appropriate business purposes or contingencies. The Co-op shall calculate members' patronage dividends in proportion to their purchases from the Co-op during the year, subject to the provisions of this Article XI. The Co-op shall be entitled to take into account losses for prior years when calculating its net distributable surplus.

Section 3. Annual Determination. The Board of Directors shall decide after the close of the Co-op's fiscal year whether a net distributable surplus exists for that year, how and when to distribute patronage dividends, and any other related matters, based on the Board's policies. The Board of Directors may elect not to declare or distribute a patronage dividend if it is in the best interest of the Co-op.

Section 4. Payment and Compliance. The Co-op shall pay patronage dividends within the time frames provided in, and according to the Internal Revenue Service Code and Treasury Department regulations to qualify for income tax deductions for the Co-op. The Co-op may distribute patronage dividends in cash, merchandise credits, a qualified written notice of allocation or a non-qualified written notice of allocation as defined in 26 U.S.C. Section 1388, other property, or any combination of these methods as the Board of Directors may determine from time to time. The Board of Directors may in its discretion establish the terms and conditions governing the issue and use of merchandise credits, including any period within which merchandise credits must be used or forfeited. The Board of Directors may further in its discretion establish a system by which members may donate part or all of their patronage dividend back to the Co-op or to a designated charity. Any patronage dividend distributed as a qualified written notice of allocation or a non-qualified written notice of allocation shall be designated as such by the Board of Directors in accordance with the provisions of 26 U.S.C. Section 1388. Any part of a patronage dividend that the Board of Directors elects not to pay in cash, merchandise credits or other property is called the retained patronage dividend.

Section 5. Application of Retained Patronage Dividend. The Board of Directors may apply any part of a member's retained patronage dividend to cover that member's unpaid membership dues or capital contributions for that year and future years.

The Co-op shall hold the retained patronage dividends in revolving patronage dividend accounts in the names of the receiving members, and may apply the retained patronage dividends toward the Co-op's operating capital needs. Members will not accrue interest or other monetary return on investment, and the accounts are non-transferable and in whole dollars only. The Coop shall be entitled to offset against retained patronage dividend accounts the amount of any losses subsequently sustained by the Coop, in such manner as the Board of Directors may reasonably determine.

Section 6. Repayment of Retained Patronage Dividends. At any time, the Co-op may pay some or all of the retained patronage dividends to qualifying members if the Board of Directors decides the funds are no longer required for operating capital. Members will receive retained patronage dividends in the order of the oldest outstanding amounts on a pro rata basis from these amounts. If the Co-op dissolves as a corporation, it shall pay retained patronage dividends to members after payment of all other liabilities. If the remaining funds are insufficient to repay all retained patronage dividends, members will receive retained patronage dividends in proportion to their revolving account balances at the time of dissolution. The Board of Directors may also repay an individual member's retained patronage dividends under compelling circumstances in the Board's discretion. Retained patronage dividends are available at all times to pay amounts otherwise due and payable to the Co-op.

The Board of Directors may in its discretion pay retained patronage dividends to qualifying members in cash, as merchandise credits, or any combination of cash and merchandise credits. The Board of Directors may in its discretion establish the terms and conditions governing the issue and use of merchandise credits, including any period within which merchandise credits must be used or forfeited. The Board of Directors may further in its

discretion establish a system by which members may donate part or all of their patronage dividend back to the Co-op or to a designated charity.

Section 7. Unused Dividends. If any member receives payment of a patronage dividend or redemption of a qualified or non-qualified written notice of allocation by check or in merchandise credits, but fails to deposit the check or use the merchandise credits before midnight on December 31 of the year following the year in which the underlying patronage dividend was declared by the Board of Directors, the member's right to cash the check or use the merchandise credits shall, at the discretion of the Board of Directors (by either special action or adoption of a general policy), expire and such member shall be deemed to have contributed such payment entitlement to the Co-op as of such date.

Section 8. Payment. A member shall be deemed to have been paid a patronage dividend or had a qualified or non-qualified written notice of allocation redeemed in merchandise credits if the Co-op provides notice of such payment or redemption to a member via email, a single mailing through US mail at such members last known address on file with the Co-op, or other written notice.

Section 9. Treatment of Nominal Amounts. The Board of Directors may exclude from distribution any patronage dividend that is so small that it does not justify the cost of distribution. These nominal amounts may not be distributed at any time to other members.

Section 10. Tax Provision. If the Co-op distributes part of its annual earnings or income as a patronage dividend, and then discovers it cannot deduct some part of its annual earnings or income as a patronage dividend under the Internal Revenue Code and applicable regulations, then the Co-op and its Board of Directors deem that all of the patronage dividend declared shall come from earnings or income that does qualify for a deduction under the revenue laws. This designation shall occur regardless of whether the Board adopted a resolution or act that makes specific reference to the source of revenues for the dividend.

Section 11. Consent of Member to Tax Treatment. By joining the Co-op, all members consent to having their patronage dividends, whether paid or retained, taken into account for the taxable year. Any patronage distribution the Co-op makes with a qualified written notice of allocation under 26 U.S.C. § 1388 will be taken into account by the receiving member at the stated dollar amount of the distribution as provided in 26 U.S.C. § 1385(a) in the taxable year the member receives the written notice of allocation.
