

# **BY-LAWS**

## **THE FOOD CO-OP**

### **ARTICLE I – NAME AND LOCATION AND PURPOSE.**

**Section 1.** The name of the cooperative is The Food Co-op.

**Section 2.** The location of the principal office of The Food Co-op is Port Townsend, Washington.

**Section 3.** The purpose of The Food Co-op is to serve the community by making available whole foods at a reasonable cost.

### **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.** Initial Membership may be obtained by paying a one-time non-refundable fee and receiving a membership number. Each Member shall be required to make at least one \$2 Capital Investment upon joining, then at least \$2 in Capital Investment each month the membership is used, up to a total of \$100 in Capital Investment. A Member who has made this total of Capital Investment shall be considered “paid in full.” Capital Investments do not bear interest.

A Membership shall be considered Active during any period for which the Capital Investment has been paid. After the total Capital Investment has been paid, the Member shall be considered Active if he or she has shopped at The Food Co-op within the previous 12 months. A Member who does not have Active status may become Active at any time by fulfilling the above requirements.

**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.

**Section 4.** Each Membership shall be entitled to one vote if that Membership is Active on the day prior to the commencement of a given voting period. Proxy voting shall not be permitted. If there is a Designated Member-Owner, only that person may vote. If a Membership is in more than one person’s name with no Designated Member-Owner, and more than one person votes, only the first ballot counted on that membership number shall be valid.

**Section 5.** Active Members shall have the right to participate in the governance of The Food Co-op as provided for in these Bylaws, and to participate in such membership pricing and/or ordering plans as may be in existence from time to time. Members of the household of an Active Member shall be entitled to the pricing and/or ordering plans as may be in existence from time to time, but shall not be entitled to governance rights. For this purpose “household” shall mean natural persons residing under the same roof as the Active Member.

**Section 6.** A member may withdraw from The Food Co-op by notifying the Treasurer of The Food Co-op in writing. Where there is a Designated Member-Owner, only the Designated Member-Owner may withdraw or otherwise control the membership interests. A withdrawing member may request return of accumulated Capital Investments as provided in Article VII, Section 3. Such request shall be in writing.

### **ARTICLE III – BOARD OF DIRECTORS – NUMBER, QUALIFICATION, APPOINTMENT, REMOVAL AND RESPONSIBILITY**

**Section 1.** The Food Co-op shall be managed under the direction of a Board of Directors (in the manner set forth in these By-laws) consisting of not less than five nor more than nine persons (such number to be determined by the Board of Directors prior to each election, but not so as to reduce the term of an elected member), each of whom shall have been an Active Member, or a member of the household of an Active Member, for at least six months prior to being seated on the Board. In order to qualify, such member of the household must become an Active Member on or before being seated on the Board. A Board Member may be a paid employee of The Food Co-op; however, no more than one Board Member may be a Food Co-op paid employee at any given time.

**Section 2.** So long as it is within the scope of the provisions of Article III, Section 1, the Board may appoint such additional members as they deem advisable. It shall require a unanimous vote of the full Board of Directors to appoint any new member of the Board. Appointees to the Board may serve only until the next election and may not be reappointed without first serving as an elected Board member.

**Section 3.** Any Board member may be removed by a 2/3 vote of the full Board at any regular meeting, provided that 10 days written notice has been provided to the full Board prior to the meeting.

**Section 4.** It shall be the responsibility of the Board to represent the membership in establishing governing policies and to monitor and ensure organizational performance.

- (A) The Board will produce and maintain a link between The Food Co-op and the Members.
- (B) The Board will produce written governing policies that, at the broadest levels, address categories of decisions.
  - 1) Ends - Organizational outcomes, recipients, and their relative worth.
  - 2) Executive Limitations - Constraints on the General Manager’s authority that establish the prudence and ethics boundaries within which all executive activity and decisions must take place.

- 3) Board-General Manager Relationship - How power is delegated and its proper use monitored; the General Manager's role, authority and accountability.
  - 4) Board Process - Specifications on how the Board conceives, carries out and monitors its own work.
- (C) The Board shall ensure performance by monitoring compliance with its policies.
- 1) The Board will assess the General Manager's performance by monitoring its policies on Ends and Executive Limitations.
  - 2) The Board will assess and improve its own performance by regular assessment of compliance with Board policies on Board Process and Board-General Manager Relationship.
- (D) Because one of the Board's major responsibilities is the careful crafting of written policies to guide its own efforts and the efforts of the General Manager, the Board will continually be developing new policies and modifying existing policies.

**Section 5.** Directors shall be responsible at all times for discharging their duties in good faith, in a manner that they reasonably believe to be in the best interests of The Food Co-op and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

**Section 6.** Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the Board. Directors having such an interest may not participate in the decision of the matter. Directors shall at all times maintain the confidentiality of sensitive matters.

#### **ARTICLE IV – ELECTION OF DIRECTORS**

**Section 1.** Annual elections shall be held for membership on the Board. It is desired that each Board, as much as possible, consist of two-thirds remaining from the prior Board and one-third being elected (or reelected). To this end, the Board shall determine prior to each election the term (one, two or three years) of each seat on the Board subject to election.

**Section 2.** Any eligible member (See Article III, Section 1), may run for election to the Board of Directors. All candidates shall have completed an orientation for potential candidates, making candidates aware of:

- (a) the history of the Co-op and the Board;
- (b) the processes utilized by the Board, including consensus decision-making and Policy Governance;
- (c) the expectations of Board Members, including time commitment; and
- (d) those Policies relating to Board Members, particularly the Board Member's Code of Conduct.

Candidates are urged to attend at least two (2) Board meetings prior to the election.

**Section 3.**

- (A) Election shall be by ballot, either paper or electronic, which shall contain the name of each candidate. Each name shall be followed by a single check box. Subject to such restrictions upon service on the Board as shall be contained in other provisions of these By-laws, candidates are elected to the Board in order of number of valid votes cast. Runoffs are required in the event of ties.
- (B) Balloting shall commence on a date chosen by the Board and shall terminate no sooner than 14 days thereafter. The ballot box and/or designated equipment for electronic voting shall be placed in a prominent position in the store(s).
- (C) The Board has the power to determine procedures for voting by electronic means or otherwise for the annual election of Directors.

**Section 4.** Those persons elected to the Board shall be installed at the first Board meeting following their election and shall hold office until their successors are installed.

**ARTICLE V - OFFICERS – ELECTION, APPOINTMENT AND DUTIES**

**Section 1.** At its first meeting following an election of directors, and following the installation of new directors, the Board, by the affirmative vote of at least 2/3 of the full Board, shall elect from among its members a president, a vice-president, and a secretary. The Board shall also elect a treasurer with expertise in financial matters, who need not be a member of the Board of Directors. The Board may appoint such additional officers, as it deems appropriate. Officers shall hold office until their successors are installed.

**Section 2.** The President shall preside at all meetings of the Board of Directors. S/he shall establish whatever committees may be required from time to time to accomplish the work of The Food Co-op, and shall appoint the chairperson of each such committee. S/he shall be an ex-officio member of all committees, and shall see to it that all committee chairpersons report to him/her and to the Board.

**Section 3.** The Vice-president shall perform the duties of the President in his/her absence or if a vacancy in the office occurs, and shall undertake such other responsibilities as the President may assign.

**Section 4.** The Secretary shall be custodian of the Corporate Seal and of the Corporate Binder. The Corporate Binder shall include copies of all important records, legal documents, financial statements, minutes of meetings of the Board of Directors and membership, and any other pertinent documents relating to The Food Co-op. The Corporate Seal and Corporate Binder shall be kept at The Food Co-op office unless they are needed by the Secretary to fulfill his/her duties.

**Section 5.** The Treasurer shall provide financial counsel to the board to ensure the integrity of financial accounts. The Treasurer may execute contracts and agreements approved by the Board of Directors, but may not be the sole signatory on behalf of The Food Co-op.

**Section 6.** At the expiration of the term of office, by termination or otherwise, of any officer or member of the Board, s/he shall turn over to his/her successor all money, keys, property, papers, records and books of The Food Co-op that may be in his/her possession.

## **ARTICLE VI – MEETINGS AND QUORUM – MEMBERSHIP AND BOARD OF DIRECTORS**

**Section 1.** There shall be an Annual Meeting of the membership. The Board of Directors may also call special meetings. A quorum of the membership at these meetings shall be 5% of Active Members, as determined on the first day of the month in which the meeting is held.

**Section 2.** The obligation to hold an Annual Meeting shall be fulfilled even though a quorum is not present if the Annual Meeting is held after (a) notice of the meeting and the agenda was posted in the store(s) at least 20 days before the meeting, and (b) prior notice of the meeting was advertised in *The Leader* or any other newspaper of general circulation.

**Section 3.** Regular meetings of the Board shall be held at least once monthly. Special meetings of the Board may be called by the President when deemed necessary, or by written request of a quorum of the Board. A quorum of the Board shall be a simple majority of the current number of Board members.

## **ARTICLE VII – CAPITAL**

**Section 1.** A new member's Capital Investment requirement in The Food Co-op is established in Article II, Section 2.

**Section 2.** The active membership shall determine the need for additional member investment by a secret ballot at the store for 25 business days following a general membership meeting at which the change is proposed.

**Section 3.** Capital Investments made by a Member shall be redeemed in the order of request, no sooner than ninety days after joining The Food Co-op, and no later than ninety days after he/she has requested redemption in writing in connection with a written withdrawal from membership. A member who withdraws his/her entire Capital Investment must pay a non-refundable fee as set forth in Article II, Section 2 to reactivate membership.

**Section 4.** A withdrawal of that portion of a Member's Capital Investment that exceeds the "paid-in-full" amount is permitted upon written request. Return of such excess Capital Investment shall be made no later than ninety days after written request. Otherwise no partial withdrawal of Capital Investment is permitted.

**Section 5.** Debts that a Member has incurred to The Food Co-op may be charged against the Member's Capital Investment if the debt is older than 90 days. All debts to The Food Co-op must be paid before a Capital Investment withdrawal may be made.

**Section 6.** No loans aggregating more than The Food Co-op's net worth may be taken by the Board of Directors unless authorized by a 2/3 majority of the active membership voting in a secret ballot at the store for a period of 25 business days following a general membership meeting explaining the loan proposal.

### **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).

**Section 2.** Alteration, repeal or amendment of Article VII, Section 2 or Section 6 may be by membership vote only. Voting method, specifications and percentage of active membership voting necessary for passage of change to these by-law sections shall be the same as provided in such sections with respect to the issues referred to therein.

### **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 on a pro-rated basis.

**Section 2.** Any surplus shall be given to such non-profit organization as the Board of Directors may determine.

### **ARTICLE X – INDEMNITY CLAUSE**

**Section 1.** The Food Co-op shall indemnify and hold harmless each person who serves or has served as a director, officer and/or manager from and against any and all claims and liabilities for action alleged to have been taken or omitted by him/her as such director, and for all legal and other expenses reasonably incurred by him/her in connection with any such claim or liability, to the fullest extent permitted by law.

**Section 2.** The Food Co-op, its directors, officers, employees and agents shall be fully protected in taking any action or making any payment under this article, or refusing to do so, in reliance on advice from counsel.

### **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.

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