

Draft Hunger Mountain Co-op bylaw proposal, May 31, 2019

This is a working document, reflecting proposals agreed on so far by the Bylaws Committee and those still being discussed. It is structured around the format of the Brattleboro co-op bylaws and adds changes the committee as a whole has discussed. Comments in *[brackets and italicized]* are explanatory, not intended to be part of the revised bylaws, and Roman numerals are references to articles in the current bylaws.

The committee will make a final recommendation to the Council on proposed bylaw language after receiving input from stakeholders.

ARTICLE 1. ORGANIZATION

Section 1.1 – Name

Hunger Mountain Cooperative

Section 1.2 – Purpose and Mission

Hunger Mountain Cooperative exists to create and sustain a vibrant community of healthy individuals, sustainable local food systems and thriving cooperative commerce. *[from Co-op's Ends Policies]*

Section 1.3 – Cooperative Principles and Values *[There is no committee consensus on whether to have this in bylaws or only in external document, e.g., an introduction to the bylaws. This language is from the HMC website; it could be shortened or modified to be consistent with the International Co-operative Alliance's [statement of principles](#).]*

A cooperative (co-op) is a business operated and democratically controlled by its membership of owners to meet their common needs and aspirations. Co-ops are guided by the following seven principles:

- • *Voluntary, Open Ownership* Open to all without gender, social, racial, political, or religious discrimination. You may shop, you may join, and you may leave the co-op at any time.
- • *Democratic Owner Control* One Owner, one vote. Your voice will be heard.
- • *Owner Economic Participation* Owners contribute equitably to, and democratically control, the capital of the cooperative. The economic benefits of a cooperative operation are returned to the owners, reinvested in the co-op, or used to provide owner services.
- • *Autonomy and Independence* Cooperatives are autonomous, self-help organizations controlled by their owners. Together, you are autonomous.
- • *Education, Training, and Information* Cooperatives provide education and training for owners so they can contribute effectively to the development of their cooperatives. They inform the general public about the nature and benefits of cooperation.
- • *Cooperation Among Cooperatives* Cooperatives serve their owners most effectively and strengthen the cooperative movement by working together through local, regional, national and international structures.
- • *Concern for the Community* While focusing on owner needs, cooperatives work for the sustainable development of their communities through policies accepted by their owners.

Section 1.4 – Business Office

623 Stone Cutters Way Montpelier, VT 05602

WHO THE MEMBERS ARE

ARTICLE 2. MEMBER STATUS

Section 2.1 – Eligibility and Admission for Individuals

(a) Membership in the Cooperative is voluntary and open. An individual wishing to become a member must complete a membership form, and must make a financial investment in the Cooperative. The investment, or equity payment, provides capital funds to the Cooperative. The Council shall determine the amount of the equity payment and the schedule for partial or progress payments, if applicable. More than one investment may be necessary over the course of an ongoing membership, as determined by the Council. *[ARTICLE VII. Membership, 1. Admission]*

(b) Each person who has remitted the required equity payment, within the required time interval, as defined by the Council, shall be considered to be a member .

(c) A member who becomes delinquent in meeting shall, no sooner than thirty days after delivery of written notification, have their membership suspended. A suspended membership shall be reinstated upon full payment of annual minimum payment.

Section 2.2 Eligibility and Admission for Organizations. The Council shall determine the rights, fees, and benefits of membership for organizations, if any; but in no event shall an organization have more than one vote. Organizational memberships may only be offered to associations, incorporated or unincorporated groups organized on a cooperative basis or any nonprofit groups.

Section 2.3 – Rights of Members

Members shall be eligible for privileges determined by the Council and the rights to:

- a. Receive patronage refunds in accordance with Art. IX of these bylaws.
- b. Exercise voting rights as a Member.
- c. Seek nomination and election for service as a member of the Council or as an officer of the Council.

Section 2.4 – Terminating Membership

A member may terminate membership voluntarily at any time by giving notice to the Cooperative.

Section 2.5 – Member Access to Meetings and Information

Section 2.5 (a). Meetings

All meetings of the Cooperative's Members and of the Council shall be open to the Membership, except for those portions of Council meetings that are conducted as executive sessions.

Section 2.5 (b). Information.

The financial records of the Cooperative shall be open to inspection by Members at reasonable times. The Cooperative Council and the staff shall assist Members in obtaining information about the Cooperative. An exception is information that must be kept confidential because such disclosure would put the Coop or a vendor at a competitive disadvantage. *[From ARTICLE X. The committee has discussed including language that would affirm transparency about compensation for management or*

all employees.]

Section 2.5 (c). Duty to Communicate. *[From ARTICLE X.]*

The Council and the staff shall inform the Members of the policy and operational decisions that have been made and shall also facilitate ongoing communication among the members. A newsletter shall be published on a regular basis, and made available to the Members. The newsletter shall inform members about the Cooperative's operation, policies, and services. *[The committee is divided as to whether the last two sentences are necessary.]*

WHO IS ON THE COOPERATIVE COUNCIL

ARTICLE 3. THE COOPERATIVE COUNCIL

Section 3.1 – Powers and Duties of Cooperative Council

The Cooperative Council is established to fulfill the duties of a board of directors as required by Vermont law, and the Council shall be the link between the Members and the General Manager of the Cooperative. The Council shall represent the interests of the Cooperative's Members. *[From ARTICLE III. Cooperative Council, 1. Purposes and Membership (Sec. A)]*

[From ARTICLE III. Cooperative Council, 7. Goods and Services Provided by the Cooperative]

Section 3.2 – Composition of Cooperative Council

Section 3.2 (a) Number of Council Members

The Cooperative Council shall be composed of nine members of the Cooperative. The Council shall include no more than two employees of the Cooperative.

Section 3.2 (b) Staff Representative

A non-voting Staff Representative shall be entitled to participate in Council meetings. The Staff Representative shall not be counted as one of the nine Council members. The Staff Representative's role includes facilitating communication between the employees and Council, presenting concerns of employees at Council meetings, and keeping the employees informed about the concerns of the Council and the Council's actions. *[From ARTICLE III. Cooperative Council, 1. Purposes and Membership (Sec. A)]*

Section 3.3 – Nomination and Election

Co-operative Members interested in running for the Council shall submit nominating petitions signed by at least nine Members of the Co-operative to the Council Secretary or his or her designee at least six weeks before the annual meeting at which they wish to appear on the ballot. In the event that terms of different lengths are voted on, the highest vote-getters shall be assigned to the longest terms.

The employees of the Cooperative may elect a non-voting representative. The staff shall inform the Council of the election of their representative before or at the annual meeting.

[From ARTICLE III. Cooperative Council, 2. Nominations and Elections]

Section 3.4 Council Member Terms of Office

The terms of office of Council members shall be three years. No less than one-third of the total Council membership shall expire each year. Terms shall commence and expire upon adjournment of the annual

election. No person shall serve more than ten consecutive years. *[From ARTICLE III. Cooperative Council, 3. Terms of Office]*

Section 3.5. Council Conflicts of Interest.

Participants in any meeting of the Members, or of the Council, or of any Cooperative Committee shall have a duty to disclose their actual or potential conflicts of interest in any matter under consideration in which they have a direct or indirect financial interest other than as patrons of the Cooperative. After disclosure, such persons may state their position on the matter at issue, and shall not participate in any further discussion or decision of the matter except as requested by the attending Members, the attending Council members, or the members of the committee. *[From ARTICLE XI, 2. Conflicts of Interest]*

Section 3.6 – Termination for Non-attendance

Any member of the Council who fails to attend four duly noticed Council meetings within one year without notice to the President and just cause, as determined by the Council, shall be deemed to have resigned. Members of the Council may be removed from the Council if their conduct is contrary to Council policy, by a two-thirds (2/3) vote of the Council. *[From ARTICLE III. Cooperative Council, 5. Failure to Attend and Removal]*

Section 3.7 – Council Vacancies

Upon removal or resignation of any Council member, or in the event of any other vacancies on the Council, the Council may appoint another person or persons, to serve until the next annual meeting. *[From ARTICLE III. Cooperative Council, 6. Vacancy. The committee is looking at possible language to address what happens if the number of Council members falls below five.]*

ARTICLE 4. COMMITTEES

Section 4.1 Power to Establish Committees.

The Council shall have the power to establish committees. The President shall be an ex-officio member of all committees. *[From ARTICLE III. Cooperative Council, 4. Committees. Last sentence not necessary since Exec. Committee now defined immediately hereafter.]*

Section 4.2 – Executive Committee

The President, Vice President, Secretary, and the Treasurer shall be the voting members of the Executive Committee. The General Manager shall be a non-voting ex officio member of the Executive Committee. The Executive Committee shall assist the President as needed, and shall make decisions on behalf of the entire Council in extraordinary circumstances. *[From ARTICLE VI. Officers and Executive Committee, 7. Executive Committee]*

ARTICLE 5. OFFICERS

Section 5.1 – Election of Officers and Term of Office

The Council shall elect four officers, from among the Council members, at the first Council meeting following the Annual meeting of Members. The four officers shall be: a president, a vice president, a secretary, and a treasurer. The terms of office of the four officers shall be one year. Employees of the Cooperative shall not be eligible to serve as officers. The officers may serve no more than four

consecutive terms in the same capacity. *[From ARTICLE VI. Officers and Executive Committee, 1. Officers]*

Section 5.2 – Officer Duties

5.2 (a). President

The President shall chair Annual and Special Meetings of the Members, shall chair the meetings of the Council, shall assure the integrity of the Council's process, and shall upon occasion represent the Council to outside parties. The President's responsibilities, powers, and limitations on the President's powers are further defined in the Cooperative's Governance Policies.

Section 5.2 (b) Vice President

The Vice President shall chair Annual and Special Meetings of the Members and meetings of the Council in the absence of the President, and shall have other responsibilities as assigned by the Council.

Section 5.2 (c) Secretary

The Secretary shall record and publish the minutes of all Council meetings, shall keep an up-to-date list of Council members, officers and their terms of office, and shall see that all notifications of meetings required by these Bylaws are accomplished.

Section 5.2 (d) Treasurer

The Treasurer shall ensure that the Cooperative's accounts, books and related important papers are properly kept, shall cosign all promissory notes with the President, and see that periodic and annual statements of the Cooperative's income, expenses and financial condition are prepared and published. *[Prior 4 sections from ARTICLE VI sections 2-5]*

Section 5.3 Officer Vacancy

In the event of a vacancy among the officers, the Council shall appoint a person to serve until the term of that office expires. *[From ARTICLE VI. Officers and Executive Committee, 6. Vacancy]*

HOW WE CONDUCT MEETINGS

ARTICLE 6. MEMBER MEETINGS

Section 6.1 – Annual Meeting

The annual meeting of the members of the Cooperative shall be held within the geographic area of the Cooperative in Central Vermont, at a time and place designated by the Council.

Section 6.2 Special Meetings.

A special meeting of the Members of the Cooperative, to consider only matters specified in the notice of that meeting, shall be held at any place designated by the Council, upon written request of a majority of Council members or through a petition with 150 signatures or five percent (5%) of membership, whichever is lesser. The meeting shall be held within 45 days of the Council meeting at which the request is presented. *[From ARTICLE IV. Meetings, 2. Special Meetings of the Members (Sec. A); some of that section moved to 6.3, below]*

Section 6.3– Guidelines for All Meetings

(a) Notice of the time and place of the meeting shall be given in writing to all members at least fourteen (14) days prior to the meeting. This information shall also be posted in a prominent public place in the Cooperative's building or buildings, as well as on applicable electronic bulletin boards.

(b). One Person, One Vote. Each Member of the Cooperative shall be entitled to one vote. *[From ARTICLE V(2)]*

(c). Voting Method by Issue Type

Amendments to agenda items voted on at member meetings may be made only with the approval of two thirds (2/3) of those present and voting.

The requirements for voting by topic are described in the following Table (1). *[Replaces the following from ARTICLE V(2) and ARTICLE XII:]*

Section 6.4 – Quorum

A quorum for annual member meetings and for ballot votes shall be one-hundred (100) or five percent (5%), whichever is lesser, of the Members. *[From ARTICLE V. Deliberation and Voting, 1. Quorum (Sec. A)]*

Section 6.5 – Meeting Leadership and Procedures

Annual and Special Meetings of the Members shall be chaired by the President or, in the case of the President's absence, by the Vice President or another member of the Council chosen for this purpose by the Council. Questions concerning procedure at Annual and Special Meetings of the Members shall be resolved by means of reference to Roberts Rules of Order except where the Council has superseded them with written policy statements or prior votes to observe other procedures. *[From ARTICLE V(4)]*

Table 1. Voting topics and their voting requirements

Topics	Decided by	Voter Participation	Voting Period
To change the Articles of Incorporation	two-thirds majority of the members voting	members attending an annual meeting or a specially-called meeting, by floor vote	at the annual meeting or specially-called meeting
To merge or consolidate the Cooperative with any other corporation or entity	two-thirds majority of the members voting	members attending an annual meeting or a specially-called meeting, by floor vote	at the annual meeting or specially-called meeting
To dissolve the Cooperative	two-thirds majority of the members voting	members attending an annual meeting or a specially-called meeting, by floor vote	at the annual meeting or specially-called meeting
To change the Bylaws of the Cooperative	simple majority of the members voting	members attending an annual meeting or a specially-called meeting, by floor vote	at the annual meeting or specially-called meeting
To exchange, pledge, mortgage, or sell all or substantially all of the assets of the Cooperative	two-thirds majority of the members voting	All members, by paper or electronic ballot	Starting at an annual meeting or specially called meeting and proceeding for at least 14 days, and extended as determined by the council.
To materially expand the Cooperative's building structure	two-thirds majority of the members voting	All members, by paper or electronic ballot	Starting at an annual meeting or specially called meeting and proceeding for at least 14 days, and extended as determined by the council.
To elect Council members		All members, by paper or electronic ballot	Starting at an annual meeting or specially called meeting and proceeding for at least 14 days, and extended as determined by the council.
To conduct all other business	simple majority of the members voting	members attending an annual meeting or a specially-called meeting, by floor vote	at the annual meeting or specially-called meeting

[Substantive change from confusing and ambiguous language]
[Substantive change]

ARTICLE 7. MEETINGS OF THE COUNCIL

Section 7.1 – Convening Council

The Council shall meet at least six times per year at a public place designated by the Council. A special Council meeting, to consider only matters specified in the notice of that meeting, shall be held upon request of a majority of Council members or at the discretion of the President. *[From ARTICLE IV. 3 and 4]*

Section 7.2 – Open Meetings

A “meeting” of the Cooperative Council means a gathering of a quorum of the members of the Council for the purpose of discussing or taking action on any matters concerning the Cooperative.

The Council may only hold an executive session (close a portion of a meeting to members) if it votes to do so to consider one or more of the topics below. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in executive session. No formal or binding action shall be taken in executive session, and all votes shall be taken in open session. Only the following topics may be considered in executive session:

- a) After making a specific finding in the motion that knowledge by Coop members would cause substantial harm to the Coop or a person involved:
 - i) labor relations or personnel issues (except compensation) involving a Coop employee, member, or vendor;
 - ii) grievances or an action against a Coop employee, member, or vendor;
 - iii) negotiation of a contract, the disclosure of which would put the Coop or a vendor at a competitive disadvantage;
 - iv) discussion of strategic goals or business plans, the disclosure of which would adversely affect the Co-op’s position in the marketplace;
 - v) discussion of a matter that may, by law or contract, be considered confidential.
- b) The negotiating of real estate purchase or lease options;
- c) A clear and imminent peril to the public safety;
- d) That portion of the annual Council retreat that is devoted to the building of interpersonal relationships among members of the Council.

Section 7.3 – Notice to Council Members and Cooperative Members.

Section 7.3 (a). Regular Council Meetings

The secretary shall notify the Council members in writing of the date, time, location, and the agenda for the regular Council meeting at least seven days prior to the meeting, and this information shall also be posted in a prominent public place in the Cooperative's building or buildings, as well as on applicable electronic bulletin boards. *[From ARTICLE IV. Meetings, 3. Regular Council Meetings (Sec B.)]*

Section 7.3 (b). Special Council Meetings

The secretary shall notify the Council members in writing of the date, time, location, and the purpose of the special Council meeting at least 48 hours prior to the meeting, and this information shall also be

posted in a prominent public place in the Cooperative's building or buildings, as well as on applicable electronic bulletin boards. *[From ARTICLE IV. Meetings, 4. Special Council Meetings (Sec. B.)]*

Section 7.4 – Quorum and Voting at Council Meetings.

Section 7.4 (a) Quorum

A quorum of the Council shall be greater than one-half of the Council members. [From ARTICLE V. Deliberation and Voting, 1. Quorum (Sec. B)] *[Eliminated because redundant; from ARTICLE V(3)]*

Section 7.4 (b). Voting

Each member of the Council *[redundant]* shall be entitled to one vote*[not necessary]*.

Section 7.4 (c). Staff Representative and Employee Council Members

The Staff Representative is not a voting member of the Council and shall not participate in deliberations concerning personnel matters that are considered in executive session. Council members who are employees of the Cooperative may, at the discretion of the Council, be excluded from participation in the consideration of personnel matters considered in executive session.

ADMINISTRATION

ARTICLE 8. FISCAL MATTERS

Section 8.1 – Operating Year

The Council shall establish the fiscal year of the Cooperative. *[from ARTICLE II. Fiscal Year]*

Section 8.2 Indemnification

The Cooperative shall indemnify and reimburse each former, current, and future Council member and officer for any claim or liability (including expenses and attorneys fees actually and reasonably incurred) to which such person may become subject by reason of being a Council member or officer, or by reason of his or her acts or omissions as a Council member or officer. Such indemnification shall be made only if it is determined by the Council that the Council member or officer acted in good faith in the reasonable belief that his or her action was in the best interests of the Cooperative. The foregoing shall not be exclusive of any other rights to which Council representatives and officers may be lawfully entitled. *[ARTICLE XI, 1. Indemnification]*

Section 8.3 Patronage Dividends *[from ARTICLE IX; changes from River Valley Cooperative in Northampton, Mass, recommended by Wegner and Associates, CPA. Not yet reviewed by the committee.]*

Section 8.3 (a) Adjusted Net Savings

The Board may, after the close of the fiscal year, determine whether to distribute to the owners the net savings of the Cooperative in the form of patronage dividends. Such patronage dividends may be distributed partially in cash or voucher and partially in allocated retained patronage credited to the account of each such member, but in no event shall the cash/voucher portion be less than the percentage required by the federal tax code. In determining amounts distributable to owners, the net savings of the Co-op derived from the excess or deficit of revenues over costs and expenses shall first be determined in accordance with generally accepted accounting principles. Such net savings shall then be reduced by amounts not attributable to business done with owners, by amounts attributable to sales

of beer and wine in accordance with state law, and by other amounts which are not allowable under federal or state tax laws, and by such reasonable reserves for necessary business purposes as may be determined by the Board. In determining and allocating such adjusted net savings, the Co-op shall use a single allocation unit except to the extent that it shall, subsequent to the adoption of these bylaws, engage in any new and distinct line of business. Net savings attributable to business done with non-owners shall be credited to unallocated owners' equity.

Section 8.3 (b) Consent of Owners

By obtaining or retaining membership in the Cooperative, each owner consents to take into account, in the manner and to the extent required by federal and state tax law, any patronage dividend received from the Cooperative. In addition, by obtaining or retaining membership in the Cooperative, each owner is required to accept all patronage dividends received from the Cooperative.

Section 8.3 (b) Consent of Owners

Failure to Claim or Redeem: The cash/voucher, portion of any patronage dividend distributed to an owner may be used for the purchase of goods at the Cooperative, redeemed for cash, or donated to the Cooperative. The cash portion of a patronage dividend distributed to any owner that is not claimed, used, redeemed or donated within 90 days from issuance shall revert to the Cooperative as a donation without further notice to the owner. Such cash portions of patronage dividends that are donated or that revert to the Cooperative as provided in this subsection shall be distributed and allocated as the Board may determine.

Section 8.4 Equity Payments and Return of Equity Payments [*ARTICLE VIII. The committee is seeking legal advice about possibly changing this section after recent changes in Vermont statute. The changes would be designed to protect unclaimed equity from going to the state.*]

Section 8.4 (a) Equity Payments In order to help meet the capital needs of the Cooperative, a Member is required to remit an equity payment. The Cooperative Council shall annually determine the amount of each equity payment and when, if at all, a Member's obligation to contribute equity payments shall cease. The receipt of a Member's equity payment will be credited in the financial records of the Cooperative to an equity or capitalization share account in the name of each Member. A Member's equity account is not entitled to a dividend or other return on investment, and is not transferable. Patronage refunds, described subsequently, are not dividends or returns on investment. The Members equity payment receipts are to be segregated in one or more special accounts and designated for acquisition of capital assets or for payment of liabilities incurred for such purpose. Member's equity accounts shall be subordinated to all other debt or equity obligations of the Cooperative.

Section 8.4 (b) Return of Equity Payments: A Member's equity or capitalization share payments may be returned at the discretion of the Cooperative Council upon request of the Member whenever membership has been terminated for any reason. Subject to the Cooperative's right of setoff for amounts otherwise due and payable to it, a Member's capitalization share account shall be returned upon filing of a bankruptcy petition by or against a member, or as ordered by the U.S. bankruptcy Court. The equity or capitalization share account to be returned to any member may be subject to a reasonable processing fee to be determined by the Cooperative Council at return and shall be subject to setoff of any sum, however arising, which may be due and payable to the Cooperative by that member. If the member allows their membership to revert to "not in good standing" and does not request a return of equity within the following three years, the amounts in the member's account will revert to the

Cooperative as permanent non-allocated capital. For a period not to exceed one year following termination of membership and the return of that member's equity payment account, the readmission to membership of that former member shall be conditional upon the contribution by that member of the entire amount of the capitalization share account theretofore paid by the Cooperative at his or her termination, or such other reasonable conditions as may be imposed by the Cooperative Council.