

# **Hunger Mountain Co-op Bylaw Proposal**

*This draft proposal was developed 2018-2019 by a bylaws committee, with input from other Members, including the Co-op Council. It is being presented the Council in February 2020, after input from Members in January. It will likely be voted on at a special membership meeting in May 2020.*

## **WHO WE ARE**

### **ARTICLE 1. ORGANIZATION**

#### Section 1.1 – Name

The name of this corporation shall be Hunger Mountain Cooperative (the Co-op).

#### Section 1.2 – Mission

The Co-op exists to create and sustain a vibrant community of healthy individuals, sustainable local food systems, and thriving cooperative commerce.

#### Section 1.3 – Cooperative Principles

A cooperative is a business operated and democratically controlled by its membership of owners to meet their common needs and aspirations. The Co-op is guided by the seven cooperative principles, as articulated by the International Co-operative Alliance in 1995.

#### Section 1.4 – Business Office

The registered office of the Co-op shall be located at 623 Stone Cutters Way, Montpelier, Vermont 05602.

## **WHO THE MEMBERS ARE**

### **ARTICLE 2. MEMBERSHIP**

#### Section 2.1 – Eligibility and Admission for Individuals

Section 2.1 (a) - A person wishing to become a Member must complete a membership form and must make a financial investment to gain equity in the Co-op. The investment provides capital funds to the Co-op. The Council shall determine the amount of, and schedule for, the equity payments. Additional investments may be necessary over the course of an ongoing membership, as determined by the Council.

Section 2.1 (b) - Each person who is current with the required equity payments shall be considered a Member.

Section 2.1 (c) - A Member who becomes delinquent in equity payments shall, no sooner than thirty days after delivery of written notification, have their membership suspended. A suspended membership shall be reinstated when the equity payment is current.

#### Section 2.2 – Eligibility and Admission for Organizations

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

#### Section 2.3 – Privileges and Rights of Members

Members shall be eligible for privileges determined by the Council. Members shall have the right to:

- (a) Vote as a Member.
- (b) Seek nomination and election for service as a member of the Council.
- (c) Receive patronage refunds in accordance with Article 8 of these bylaws.

#### Section 2.4 – Termination of Membership by a Member

A Member may terminate membership voluntarily at any time by giving notice to the Co-op. [See also Section 8.4 (b)]

#### Section 2.5 – Member Access to Meetings and Information

##### Section 2.5 (a) - Open Meetings

All meetings of the Co-op's Members and of the Council shall be open to the Membership, except those portions of Council meetings conducted in executive session. [See also Section 7.3]

##### Section 2.5 (b) - Co-op Information

Staff designated by the general manager shall assist Members in obtaining information about the Co-op. The records of the Co-op shall be open to inspection by Members at reasonable times, subject to the limitations in 7.3 (a).

##### Section 2.5 (c) - Duty to Communicate

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 from and among the Members. A newsletter shall be published on a regular basis, and made available to the Members. The newsletter shall include information about the Co-op's operation, policies, and services.

## **WHAT THE COUNCIL IS**

### **ARTICLE 3. THE COUNCIL**

#### Section 3.1 – Council Powers and Duties

The Council shall be established to fulfill the duties of a board of directors as required by Vermont law. The Council shall represent the interests of the Co-op's Members. The Council shall hire and supervise a general manager to execute its policies.

## Section 3.2 – Council Composition

### Section 3.2 (a) - Number of Council Members

The Council shall be composed of nine Members of the Co-op, elected by the Members of the Co-op. The Council shall include no more than two employees of the Co-op, notwithstanding the provisions of 2.3 (b).

### Section 3.2 (b) Council Member Terms of Office

The terms of office of Council members shall be three years and shall be staggered so that no fewer than three Council members are elected each year. Terms shall commence and expire upon conclusion of the Council election. No person shall serve more than ten consecutive years.

### Section 3.2 (c) - Staff Representative

Non-management employees of the Co-op may elect a Staff Representative to the Council. The Staff Representative shall be entitled to participate in all Council meetings in a non-voting capacity. The Staff Representative's role includes facilitating communication between the employees and the Council, presenting concerns of employees at Council meetings, and keeping employees informed about the concerns of the Council and the Council's actions.

## Section 3.3 – Council Member Nomination, Election, and Appointment

### Section 3.3 (a) – Nominations

Co-op Members interested in running for the Council shall submit nominating petitions signed by at least nine Members of the Co-op to the Council Secretary or his or her designee by a date determined by the Council, at least six weeks before the Annual or Special Meeting at which they wish to appear on the ballot.

### Section Section 3.3 (b) – Council Elections

Ordinary elections to the Council are described in Article 6.

### Section 3.3 (c) – Council Vacancies, Appointments, and Special Elections

- (1) In the event of any vacancy on the Council, the Council may appoint a Member to serve until the next Council election. A Council member so appointed shall serve until the next Council election, at which time Members will elect a Member to fulfill the remainder of the term, if any.
- (2) If there is more than one Council vacancy, an election to fill those vacancies may be held at a special meeting of the Members. If the Council receives a petition to hold an election at a special meeting of the Members, and the petition is signed by a sufficient number of Members (see Section 6.2), the Council shall hold the election rather than appoint Members to the vacancies. The newly elected Council members will serve the remainder of the vacated terms.

## Section 3.4 – Council Member Conflicts of Interest

### Section 3.4 (a) – Disclosure and Definition

Participants in any meeting of the Council or on any Co-op committee shall have a duty to disclose their actual or potential conflicts of interest in any matter under consideration. A conflict of interest is defined as a direct or indirect personal or financial interest of the Member, the Member's spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or

sister-in-law, business associate, employer or employee, in the outcome of a matter pending before the Council.

#### Section 3.4 (b) – Recusal

A Member who discloses a conflict of interest may recuse him- or herself. Recusal consists of participating in the matter’s discussion, consistent with the rules for Members at Council meetings, as established by the Council, but not voting on the matter.

#### Section 3.4 (c) – Non-recusal and Ordered Recusal

A Member who discloses a conflict of interest, or who another person identifies as having a conflict of interest, but believes that he or she is able to act fairly, objectively and in the Co-op’s interest in spite of the conflict of interest shall, prior to participating in any Council or Co-op committee action on the matter, disclose to the Council or committee at a meeting on the matter under consideration, the nature of the potential conflict of interest, and why he or she believes that he or she is able to act in the matter fairly, objectively and in the Co-op’s interest. Nevertheless, the Council may order that Member to recuse him- or herself from the matter by majority vote. In a vote on whether to order recusal of a Council Member, said Council Member shall abstain from the vote.

#### Section 3.5 – Removal of Council Members

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. Any member of the Council may be removed, by a two-thirds vote, if the Council determines the member’s conduct to be contrary to Council policy.

### **ARTICLE 4. OFFICERS**

#### Section 4.1 – 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 Council election: president, vice president, secretary, and treasurer. The terms of office of the four officers shall be one year. Employees of the Co-op shall not be eligible to serve as officers. The officers may serve no more than four consecutive terms in the same capacity.

#### Section 4.2 – Officer Duties

In addition to the following, officers may have other duties defined by the Council.

##### Section 4.2 (a) - President

The President shall chair Annual and Special Meetings of the Members, chair the meetings of the Council, ensure the integrity of the Council's process, and, upon occasion, represent the Council to outside parties.

##### Section 4.2 (b) - Vice President

The Vice President shall assume the duties of the President in the President's absence.

#### Section 4.2 (c) - Secretary

The Secretary shall be responsible for recording and publishing the minutes of all Council meetings, including roll-calls for all votes; keeping an up-to-date list of Council members, officers and their terms of office; and ensuring that all meeting notification requirements in these Bylaws are met.

#### Section 4.2 (d) - Treasurer

The Treasurer shall ensure that the Co-op's accounts, books, and related important papers are properly kept, shall cosign all promissory notes with the President, and ensure that periodic and annual statements of the Co-op's income, expenses, and financial condition are prepared and published.

#### Section 4.3 – Officer Vacancy

In the event of a vacancy among the officers, the Council shall appoint a Council member to serve until the term of that office expires.

### **ARTICLE 5. COMMITTEES**

#### Section 5.1 – Power to Establish Committees

The Council shall have the power to establish committees. The President shall be an *ex officio* member of all committees.

#### Section 5.2 – Executive Committee

The President, Vice President, Secretary, and 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. The Executive Committee is required to seek ratification of such decisions at the next full Council meeting. Should a decision not be ratified, it shall be immediately reversed to the degree it is reversible.

## **HOW WE CONDUCT MEETINGS**

### **ARTICLE 6. MEMBER MEETINGS**

#### Section 6.1 – Annual Meeting

The Council shall convene an Annual Meeting of the Members of the Co-op, to consider only matters warned in the notice of that meeting, to be held within Washington County, at a time and place designated by the Council.

#### Section 6.2 – Special Meetings

The Council shall convene a Special Meeting of the Members of the Co-op following either a motion carried by a majority of Council members or a petition signed by five percent of the Membership or 150 Members, whichever is fewer. The Council shall review petitions for clarity and legality before

proceeding. The Special Meeting shall consider only matters warned in the notice of that meeting, to be held within Washington County, at a time and place designated by the Council. The Meeting shall be held within 45 days of the Council meeting at which the request is presented.

### Section 6.3 – Meeting Rules

Section 6.3 (a) - Notice of the time and place of the Meeting shall be given by written or electronic communication to all Members at least 14 days prior to the meeting. This information shall also be posted in a prominent public place in the Co-op's building or buildings, as well as on applicable electronic applications.

Section 6.3 (b) - Each Member of the Co-op shall be entitled to one vote.

### Section 6.3 (c) - Voting Method by Issue Type

- (1) To change the Articles of Incorporation, a motion shall pass if approved by 2/3 of the Members present and voting at an Annual or Special Meeting by floor vote.
- (2) To change the Bylaws, a motion shall pass if approved by a simple majority of the Members present and voting at an Annual or Special Meeting by floor vote.
- (3) [To dissolve the corporation](#), a motion shall pass if approved by 2/3 of the Members voting at an Annual or Special Meeting by floor vote.
- (4) [To merge or consolidate the Co-op with any other corporation or entity](#), a motion shall pass if approved by 2/3 of the Members present and voting at an Annual or Special Meeting by floor vote.
- (5) To conduct other business, a motion shall pass if approved by a simple majority of the Members present and voting at an Annual or Special Meeting.
- (6) To amend warned items voted on by floor vote at an Annual or Special Meeting, a motion shall pass if approved by 2/3 of those present and voting.
- (7) To exchange, pledge, mortgage, or sell all or substantially all of the assets of the Co-op, a motion shall pass if approved by 2/3 of the Members voting by paper or electronic ballot, starting at an Annual or Special Meeting, and proceeding for 14 days, or longer if determined by the Council.
- (8) To materially expand the Co-op's building structure, a motion shall pass if approved by 2/3 of the Members voting by paper or electronic ballot, starting at an Annual or Special Meeting and proceeding for 14 days, or longer if determined by the Council.
- (9) To elect Council members, by paper or electronic ballot at an annual or specially called meeting, starting at an Annual or Special Meeting and proceeding for 14 days, or longer if determined by the Council. In the event that terms of different lengths are to be filled, the candidates receiving the most votes shall be assigned the longest terms.

### Section 6.4 – Quorum

A quorum for annual and special meetings of the Members and for ballot votes shall be 100 Members or 5% of the Members, whichever is less.

### 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 the most recent edition of *Robert's Rules of Order* except where the Council has superseded them with written policy statements or prior votes to observe other procedures.

## **ARTICLE 7. COUNCIL MEETINGS**

### Section 7.1 – Convening the 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 warned in the notice of that meeting, shall be held upon the initiative of a majority of Council members or at the discretion of the President.

### Section 7.2 – Notice to Council Members and Co-op Members

#### Section 7.2 (a) - Regular Council Meetings

The Secretary or the Secretary's designee shall notify the Council members by written or electronic communication 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 Co-op's building or buildings, as well as on applicable electronic applications.

#### Section 7.2 (b) - Special Council Meetings

The Secretary or the Secretary's designee shall notify the Council members by written or electronic communication 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 Co-op's building or buildings, as well as on applicable electronic applications.

### Section 7.3 – Open Meetings

A "meeting" of the 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 Co-op. All meetings of the Council shall be open to the public. The Council may only hold an executive session (a portion of a meeting open only to Council and Council-invited guests) if it votes to do so to consider one or more of the topics in this Section. A motion to enter 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:

Section 7.3 (a) - After making a specific finding in the motion that knowledge by Co-op Members would cause substantial harm to the Co-op or a person involved:

- (1) labor relations or personnel issues involving a Co-op employee, Member, or vendor;
- (2) grievances or an action against a Co-op employee, Member, or vendor;
- (3) negotiation of a contract, the disclosure of which would put the Co-op or a vendor at a competitive disadvantage;
- (4) discussion of strategic goals or business plans, the disclosure of which would adversely

affect the Co-op's position in the marketplace;

(5) discussion of a matter that may, by law or contract, be considered confidential; or

(6) litigation or potential litigation to which the Co-op is or may be a party;

(7) that portion of the annual Council retreat that is devoted to the building of interpersonal relationships among members of the Council.

Section 7.3 (b) - The negotiating of real estate purchase or lease options;

Section 7.3 (c) - A clear and imminent peril to public safety.

Section 7.4 – Quorum and Voting at Council Meetings

Section 7.4 (a) - Quorum

A Council member may be present in person or electronically at a meeting. A quorum of the Council shall be five. If there are fewer than five Council members, every Council member must be present for a meeting to take place.

Section 7.4 (b) - Voting

Each member of the Council shall be entitled to one vote. If there are fewer than five Council members, every Council member must vote in the affirmative for a motion to carry.

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

The Staff Representative and Council members who are employees of the Co-op may, at the discretion of the Council, be excluded from executive sessions in which personnel matters are considered.

## **ADMINISTRATION**

### **ARTICLE 8. FISCAL MATTERS**

Section 8.1 – Operating Year

The Council shall establish the fiscal year of the Co-op.

Section 8.2 – Indemnification

The Co-op shall indemnify and reimburse each former and current 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 Co-op.

Section 8.3 – Patronage Refunds

Section 8.3 (a) - Allocations to Members

The Co-op shall allocate and distribute to members the net profit from business done with them in such a manner as to qualify them as patronage refunds consistent with cooperative principles, applicable state and federal laws and generally accepted accounting principles. The Council shall determine when and how such allocations and distributions will be made.

#### Section 8.3 (b) - Consent of Members

By obtaining or retaining membership in the Co-op, each member consents to take into account, in the manner and to the extent required by federal and state tax law, any patronage refund received from the Co-op. By obtaining and retaining membership in the Co-op, each member agrees that if their patronage refund is not redeemed within 90 days of the date on which it was issued by the Co-op, the Co-op shall have the right to make a contribution in the name of that member to support the local food system in a manner as may be directed by the Council from time to time.

#### Section 8.3 (c) - Retained Amounts

Patronage refunds not currently distributed by cash, check or credit shall be credited or charged to capital accounts in the names of recipient members. Retained patronage refund shall accrue no dividend or interest. Retained amounts that are no longer needed for capital purposes of the Cooperative may be redeemed in such amounts and at such times as may be determined by the Council. At that time they shall be redeemed only in the order of the oldest outstanding amounts and only on a pro-rata basis among such amounts for each fiscal year, except that redemptions may be made payable only to members who are then in good standing or become so within a period of time determined by the Council.

### Section 8.4 Equity Payments and Return of Equity Payments

#### Section 8.4 (a) - Equity Payments

The receipt of a Member's equity payment will be credited in the financial records of the Co-op to an equity account in the name of each Member. A Member's equity account is not entitled to a return on investment and is not transferable. Patronage refunds are not returns on investment. Members' equity accounts shall be subordinated to all other debt or equity obligations of the Co-op.

#### Section 8.4 (b) - Return of Equity Payments

Whenever a membership has been terminated for any reason, the Member's equity payment may be returned, at the discretion of the Council, upon request of the Member. Subject to the Co-op's right of setoff for amounts otherwise due and payable to it, a Member's equity 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 account to be returned to any Member may be subject to a reasonable processing fee to be determined by the Council at return and shall be subject to setoff of any sum, however arising, which may be due and payable to the Co-op by that Member.

If a Member allows their membership to be suspended and does not request a return of equity within the following three years, the membership is terminated and the Member's equity balance will revert to the Co-op as 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 re-admission to membership of that former Member shall be conditional upon the contribution by that Member of the entire amount of the equity account paid by the Co-op at his or her termination, or such other reasonable conditions as

may be imposed by the Co-op.

## **OTHER TOPICS FOR SEPARATE VOTES**

### **A) Removing language from the Articles of Incorporation that might be read to prohibit votes by paper or electronic ballot**

Shall the Co-op's [Articles of Incorporation](#) ("Articles of Restatement of Hunger Mountain Cooperative, Inc.") be amended as follows:

#### ARTICLE IV: Membership

Section 1. Each Member ~~holding a membership certificate~~ shall have one vote in all meetings of members and elections. ~~Such vote shall be exercised in person and no Member may vote by proxy; provided, that if a Member be is other than a natural person, such member may be represented by any individual, associate, officer, manager, or member thereof duly authorized to vote. No Member may vote by proxy. A Member that is an organization may be represented by an individual duly authorized by that organization.~~

### **B) Transparency of compensation**

Shall the following language be added to the bylaws (Article X of the 2012 bylaws or, if the 2020 bylaws have passed, Section 2.5 (c))?

The compensation (range of wages and list of available benefits) for all employee positions at the Co-op shall be provided in writing to any Member who requests it.

### **C) Council member freedom of expression**

Shall the following language be added to the bylaws (Article X of the 2012 bylaws or, if the 2020 bylaws have passed, as Section 3.5 Council Member Freedom to Speak Frankly to Members)?

When the Council asks for input or decisions from member-owners, Council members enjoy the same rights of debate as all other member-owners. For other Council decisions, Council members may respond frankly to inquiries about Council decisions or comment on their own opinions on the decision. Council members shall not work to undermine Council decisions, either publicly or privately.

### **D) Defining an annual Council retreat differently than other Council meetings**

Shall the following language replace section 7.3a (7) of the 2020 bylaw proposal?

Section 7.4 Notwithstanding open meeting and executive session rules, the Council may hold an annual retreat for the purposes of strategic planning and building of interpersonal relationships among members of the Council. The Council may make its retreat open to the membership, and it will provide a summary of topics discussed as part of the minutes from its next regular Council meeting. No formal

or binding action shall be taken at the retreat.

**E) Non-binding vote to develop a family Memberships option**

Shall the Council and staff develop a proposal or proposals to allow family memberships in the Co-op, to be presented to Members as a bylaw change?

**OTHER TOPICS FOR FUTURE BYLAW DISCUSSIONS**

(To be presented in the report to Members about the process of developing these revisions.)

- What is meant by “materially expand the Co-op’s building structure?” What about other types of expansion such as purchasing another building, building a new building, purchasing land, opening a satellite store, etc.?
- Shorter term limits for Council members (currently the limit is 10 consecutive years).
- Change the structure of Co-op ownership
- Change the Council composition to give more voice to staff.

**Overview of Section 6.3 (c) - Voting Method by Issue Type (not part of the bylaws, but used to explain the bylaws).**

<b>Topics</b>	<b>Decided by</b>	<b>Voter Participation</b>	<b>Voting Period</b>
(1) 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 an Annual Meeting or Special Meeting of the Members
(2) To change the Bylaws	Simple majority of the Members voting	Members attending an annual meeting or a specially-called meeting, by floor vote	At an Annual Meeting or Special Meeting of the Members
(3) To dissolve the Co-op	Two-thirds majority of the Members voting	Members attending an annual meeting or a specially-called meeting, by floor vote	At an Annual Meeting or Special Meeting of the Members
(4) To merge or consolidate the Co-op 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 an Annual Meeting or Special Meeting of the Members
(5) To conduct all other business at an	Simple majority of the Members voting	Members attending an annual meeting or a	At an Annual Meeting or Special Meeting of the

Annual Meeting or Special Meeting of the Members		specialty-called meeting, by floor vote	Members
(6) To amend items voted on by floor vote	Two-thirds majority of the Members voting	Members attending an annual meeting or a specialty-called meeting, by floor vote	At an Annual Meeting or Special Meeting of the Members
(7) To exchange, pledge, mortgage, or sell all or substantially all of the assets of the Co-op	Two-thirds majority of the Members voting	All Members, by paper or electronic ballot	Starting at an Annual Meeting or Special Meeting of the Members and proceeding for at least 14 days, and extended as determined by the Council
(8) To materially expand the Co-op's building structure	Two-thirds majority of the Members voting	All Members, by paper or electronic ballot	Starting at an Annual Meeting or Special Meeting of the Members and proceeding for at least 14 days, and extended as determined by the Council
(9) To elect Council members	The top vote-getters; if terms of different lengths are to be filled, the candidates receiving the most votes are assigned the longest terms.	All Members, by paper or electronic ballot	Starting at an Annual Meeting or Special Meeting of the Members and proceeding for at least 14 days, and extended as determined by the Council