

# **HUNGER MOUNTAIN COOPERATIVE BYLAWS**

**as revised November 16, 2008**

## **ARTICLE I. Change of Bylaws**

The Bylaws may be changed only at an annual or specially called meeting of the Members of the Cooperative. Notice of the proposed changes to the Bylaws shall be given in writing to all members at least fourteen (14) days prior to the meeting. Amendments to the warned proposed Bylaws amendments considered at Annual Meeting may be made only with the approval of 90% of those present and voting. In order to take effect, the proposed change must be approved in accordance with the voting requirements described in a subsequent article of these Bylaws.

## **ARTICLE II. Fiscal Year**

The Council shall establish the fiscal year of the Cooperative.

## **ARTICLE III. Cooperative Council**

### **1. Purposes and Membership:**

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 by means of written policy governance directives and monitoring procedures. The Cooperative Council shall be composed of not less than five and not more than nine members, each a Member of the Cooperative who is "in good standing" as described in a subsequent article of these Bylaws. The Council shall include no more than two employees of the Cooperative. The employees of the Cooperative shall elect a non-voting representative, the Staff Representative, who shall be entitled to participate in Council meetings as described in subsequent articles of these Bylaws. The Staff Representative shall not be counted as one of the nine Council members. The Staff Representative shall facilitate communication between the employees and Council, shall present concerns of employees at Council meetings, and shall keep the employees informed about the concerns of the Council and the Council's actions.

**2. Nominations and Elections:**

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. The Members of the Cooperative shall elect members of the Council at or just prior to the annual meeting. The procedure for voting to elect members of the Council is described in a subsequent article of these Bylaws. The employees of the Cooperative shall elect a nonvoting representative at a staff meeting held at least one week before the annual meeting. The staff shall inform the Council of the election of their representative before or at the annual meeting.

**3. 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 meeting. No person shall serve more than ten consecutive years.

**4. Committees:**

The Council shall have the power to establish committees. The President shall be an ex-officio member of all committees. The Executive Committee is defined in a subsequent Article of these Bylaws.

**5. Failure to Attend and Removal:**

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. A vote of the Council, as described in a subsequent section of these Bylaws, is required to remove a member of the Council.

**6. Vacancy:**

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.

**7. Goods and Services Provided by the Cooperative:**

The decisions of the Cooperative Council concerning items to be sold, services to be rendered, and other business and educational practices shall be in accordance with the Mountain Cooperative Governance Policies on Ends.

## **ARTICLE IV. Meetings**

### **1. Annual Meeting of Members:**

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. Notice of the time and place of the Annual 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 place public place in the Cooperative's building or buildings, as well as on applicable electronic bulletin boards.

### **2. Special Meetings of the Members:**

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 time at any place designated by the Council, upon written request of five or more Council members or at least five percent (5%) of the Cooperative Members in good standing. The Secretary shall notify the Members in writing of the date, time location and purpose of the meeting at least fourteen (14) days prior to the meeting. This information shall also be posted in a prominent place public place in the Cooperative's building or buildings, as well as on applicable electronic bulletin boards. Decisions made by means of a vote at a special meeting of the Members shall be binding on the Council.

### **3. Regular Council Meetings:**

The Council shall meet at least six times per year at a place designated by the Council. 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.

### **4. Special Council Meetings:**

A special Council meeting, to consider only matters specified in the notice of that meeting, shall be held upon request of five Council members. The secretary shall notify the Council members in writing of the date, time, location, and the purpose of the special 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.

## **ARTICLE V. Deliberation and Voting**

### **1. Quorum:**

A quorum of the membership shall be one-hundred (100) or five percent (5%), whichever is lesser, of the Members in good standing, as described in a subsequent section of these Bylaws, present in person, or represented by mailed ballot. A quorum of the Council shall be greater than one-half of the Council members.

## **2. Voting to Elect the Council and at Meetings of the Members:**

Each Member of the Cooperative in good standing, as described in a subsequent article of these Bylaws, shall be entitled to one vote. The Council shall establish the time and the procedure for voting.

Voting to elect members of the Council, on proposals to substantially expand the Cooperative's building structure, or on proposals to mortgage or sell Cooperative assets shall be by mailed ballot. Voting on other issues shall not be by mailed ballot. When mailed ballot issues appear on the agenda for a meeting, ballots and a special envelope for return of the ballot shall be distributed to all members in good standing along with the notice of the annual or special meeting. No vote by mail shall be valid unless received in the Cooperative offices no later than the end of business two days prior to the special or Annual Meeting, or accepted in person by a designee of the Council at the meeting. A vote by mail ballot shall be returned in the envelope supplied by the Cooperative. The instructions accompanying the vote by mail ballot and written procedures established by the Council shall govern the validity of the ballots. With respect to the election of Council members, the persons who receive the greatest number of votes shall fill the vacancies on the Council, subject to the limitation on employees of the Cooperative serving on the Council noted in another section of the Bylaws. With respect to motions to be voted on at an Annual or a Special Meeting of the Members of the Cooperative, in order that a motion carries, the quorum requirement must be met and the Members in good standing must vote in the affirmative as follows:

- a. To change the Bylaws: a majority of the Members voting.
- b. To change the Articles of Association, to merge or consolidate the Cooperative with any other corporation or entity, or to sell all or substantially all of the assets of the Cooperative: two thirds of the Members voting.
- c. To exchange, pledge, or mortgage all or substantially all of the assets of the Cooperative, or to materially expand the Cooperative's building structure: a two-thirds majority of the Members voting.
- d. To dissolve the Cooperative: two-thirds of the Members voting.
- e. To conduct other business: a majority of the Members voting.

## **3. Deliberation and Voting at Meetings of the Council:**

Each member of the Council elected by the Cooperative's Members, or appointed to fill vacancies, shall be entitled to one vote, except that the Chair of the meeting shall vote only in the case of a tie. The Staff Representative is not a voting member of the Council shall not participate in deliberations concerning the General Manager's salary and performance evaluation, specific staff salaries, or any other staff or personnel matters that are considered in executive session. Council members who are employees of the Cooperative may, at the at the discretion of the Council, be excluded from participation in the consideration of the General manager's salary and performance evaluation, specific staff salaries, or other staff or personnel matters considered in executive session. Procedures governing an executive session are defined in the Council Meeting Policy section of the Cooperative's Governance Policies. In order that a motion carry at a

Regular or a Special Meeting of the Council, the quorum requirement must be met and the members of the Council that are eligible to vote must vote in the affirmative as follows:

a. To remove a member of the Council: two-thirds (2/3) of the members of the Council.

b. To conduct other business: a majority of the members of the Council present and voting.

#### **4. Rules of Order:**

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. Questions concerning procedure at any meeting of the Council shall be resolved in accordance with the Council Meeting Policy section of the Cooperative's Governance Policies.

### **ARTICLE VI. Officers and Executive Committee**

#### **1. Officers:**

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.

#### **2. 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.

#### **3. 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.

#### **4. 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.

### **5. 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.

### **6. 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.

### **7. 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, as described in the Council Committee Principles section of the Cooperative's Governance Policies.

## **ARTICLE VII. Membership**

### **1. Admission:**

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.

### **2. Participation Rights and "Members in Good Standing"**

Each member who has remitted the required equity payment, within the required time interval, as defined by the Council, shall be considered to be a "Member in Good Standing", and shall be eligible to:

- a. Receive patronage refunds in accordance with Art. IX of these bylaws.
- b. Receive discounts at businesses that participate in discount programs with the Cooperative.
- c. Attend workshops and events that are sponsored or presented by the Cooperative.
- d. Receive publications of the Cooperative that are offered to Members.
- e. Exercise voting rights as a Member.
- f. Seek nomination and election for service as a member of the Council or as an officer of the Council.

A member who becomes delinquent in meeting such obligations to an extent determined by the Council shall, no sooner than thirty days after delivery of written notification, be placed into inactive status. His or her participation rights shall then be suspended. A

member in inactive status may attain good standing only upon full payment of annual minimum payment. References in these bylaws to the rights and entitlements of members shall be understood to refer only to members in good standing.

### **3. Termination of Membership:**

A member may terminate his or her membership voluntarily at any time by giving notice to the Cooperative. The Cooperative Council may terminate membership for other causes only after offering a fair hearing.

### **4. Organizational Membership:**

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.

## **ARTICLE VIII. Equity Payments and Return of Equity Payments**

### **1. 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.

### **2. 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.

## **ARTICLE IX. Patronage Refunds**

### **1. Allocations to members:**

In order to assure that it will operate on a cost basis relative to its transactions with members, the Cooperative shall allocate and distribute to its members its net savings realized from business done with them in such a manner as to qualify as patronage dividends within the meaning of federal income tax law. Members shall retain the right to waive in whole or part, by action at a meeting of members, any patronage refunds to which members may be entitled.

### **2. Distributable net savings:**

Distributable net savings may be reduced by such reasonable reserves for necessary business purposes as may be determined by the Council. In determining and allocating distributable net savings, the Cooperative 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.

### **3. Basis of allocation:**

Distributable net savings shall be allocated to each member in the proportion which his or her patronage bears to the total of all member patronage during the fiscal year. Patronage shall be understood to mean goods and services purchased from the Cooperative and shall be measured in terms of its dollar amount.

### **4. Distribution and notice:**

a. Patronage refunds shall be evidenced by written notices of allocation delivered to recipient members within eight months and fifteen days following the close of the fiscal year. Written notices shall state the dollar amount of the allocation which constitutes a patronage dividend within the meaning of federal tax laws. All notices, except those subject to section 8 hereof, shall be accompanied by checks in an amount determined by the Council which must be at least twenty percent of the total allocation. Any allocations of such a nominal amount as not to justify the expenses of distribution may, as determined by the Council, be excluded from distribution provided that they are not then or later distributed to other members.

b. If the Cooperative takes reasonable measures to notify any member or former member of retired or refunded patronage checks and if the member or former member fails to claim the retired or refunded patronage checks or equity contributions within three (3) years, then the funds owed to the member or former member will be turned over to the state in compliance with state law.

**5. Consent of members:**

By obtaining or retaining membership in the Cooperative, each member shall thereby consent to take into account, in the manner and to the extent required by Section 1385 of the Internal Revenue Code, the stated dollar amount of any qualified written notice of allocation in the taxable year in which such notice is received.

**6. Retained amounts:**

Patronage refunds not currently distributed by check shall be credited or charged to revolving capital accounts in the names of recipient members. Retained patronage refunds shall accrue no dividend or interest, and shall not be transferable or assignable except with the express written consent of the Cooperative. The Cooperative shall have a first lien on retained patronage refunds for amounts otherwise due and payable to the Cooperative by the member.

**7. Redemption:**

Retained patronage refunds that are no longer needed for capital purposes of the Cooperative shall be redeemed in such amounts and at such times as is determined by the Council. At that time they shall be redeemed only in the order of the oldest outstanding amounts and only at a ratable 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 stated period of time. Retained patronage refunds shall be redeemed at their carrying value on the books of the Cooperative or their net book value, whichever is lesser.

**8. Allocation of net loss:**

In the event the Cooperative shall incur a net loss in any fiscal year, such loss may be charged against retained savings or other unallocated member equity account. If the net loss exceeds such amounts, or in any event if the Council so determines, the amount of such loss may either be carried forward to offset net savings of subsequent fiscal years or allocated to members in the same manner as for positive net savings except that such allocation shall not exceed the total of invested capital. Any such allocated net loss shall be charged first against retained patronage refunds of prior fiscal years and then against patronage refund allocations of subsequent fiscal years. Allocated net losses which are not so offset may be charged against the carrying value of shares only upon termination of membership. Allocated net losses shall not otherwise be assessed or collected from members.

## **ARTICLE X. Access to Meetings and Information**

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. Procedures governing an executive session are defined in the Council Meeting Policy section of the Cooperative's Governance Policies. 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, except in the case of information that must be kept confidential for moral, legal or business reasons. This information may include, for example, letters related to the past performance of prospective employees, and certain other personnel records. The Council and the staff shall inform the Members of the policy and operational decisions that have been made. A newsletter shall be published on a regular basis, and made available to the Members, to facilitate communication about the Cooperative's operation, policies and services.

## **ARTICLE XI. Indemnification and Conflicts of Interest**

### **1. 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.

### **2. 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.

## **ARTICLE XII. Change of the Articles of Incorporation**

The Articles of Incorporation may be altered, amended or repealed only at an annual or specially called meeting of the Members of the Cooperative. A proposed change to the Articles of Incorporation shall first be presented to the Council which shall vote on whether to adopt a resolution to warn the proposed change for consideration at an Annual or specially called meeting of the Members of the Cooperative. If the resolution is passed by the Council, the proposed change shall be given in writing to all Members at least fourteen (14) days prior to the meeting of the Members. If approved by the Members in accordance with the voting requirements in these Bylaws the Revised Articles of Incorporation will be filed with the Vermont Secretary of State .

### **Explanation of Patronage Refund Consent Provision**

The Internal Revenue Code generally requires each person receiving a patronage refund to include the amount of such distribution in his or her gross income in the taxable year in which it is received. Under bylaw Article IX, Section 5, mere acceptance or retention of membership in the Cooperative constitutes consent to such inclusion in taxable income, including the portion of the patronage refund that is retained by the Cooperative for its capital needs. The Cooperative has been advised by legal counsel, however, that the general rule for inclusion in income of patronage refunds is subject to an exception that is applicable to consumer cooperatives. Under that exception, a patronage refund is not required to be included in gross income if the member's purchases from the Cooperative are related to "personal, living or family items." The patronage refund would be taxable to a member only if his or her purchases related to the operation of a trade or business or other income-producing activities. In effect, the consent provision is of no significance to members of the Cooperative, except as to organizational members and except where the purchases of members who are natural persons are for business or income-producing purposes.