

BYLAWS OF THE BETHLEHEM FOOD CO-OP

A Non-profit Cooperative Corporation Organized under the
Cooperative Corporation Law of 1988¹

Rev. 2018.10.17

¹General Association Act of 1988, Pub. L. No. 1988-177, pt. II, subpt. D, §§ 7101-7125, 1988 Pa. Laws 1680-85 (codified as amended 15 Pa.C.S. §§ 7101-7125).

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1. Mission Statement

The Bethlehem Food Co-Op is a diverse community encouraging physical, social, and economic health by providing healthful, affordable food; emphasizing local, sustainable, humane, and natural food systems; and offering unique educational opportunities to the entire community.

2. Offices

(a) Principal Offices

The principal office of the co-op shall be at such as place the board of director from time to time determines.

(b) Ancillary Offices

The co-op may have offices at such other places as the board of directors, from time to time, may determine.

3. Membership

(a) Definition of co-op Membership

A membership is held by the adult members of a single household. Adult means any person aged eighteen-years or older and / or an emancipated minor. Household means a group of persons residing at the same address who live together as a unit.

(b) Definition of Member

The members shall consist only of those households that have met the following requirements:

- i. payment in full of the minimum membership capital contribution established by the co-op; provided that, members who have begun a payment plan and are in good standing in relation to that plan are considered members and may vote; provided further, that a member's year of joining relates to when it made its first payment under the payment plan;
- ii. completion of, or ongoing completion of, any work requirement established by the co-op; and
- iii. satisfaction of any other requirements that may from time-to-time be established by the members or the board.

(c) Orientation

Applicant members may be required to attend orientation programs under such rules, procedures, and policies as the board of directors may, from time to time, determine.

(d) Records

The co-op shall maintain records showing the names, addresses, e-mail, phone numbers, and date of membership for each member, including all persons in a household. The co-op shall also require members to indicate a beneficiary. See § 3(i).

(e) **Work Requirement**

The co-op, by vote of the members present and voting at a regular or special meeting of members, or by vote of the Board of directors, may impose an annual work requirement.

(f) **Voluntary Termination of Membership**

A member may, at any time, terminate membership in the co-op by submitting to the board of directors (or an agent that they may empower) a written statement stating that the member wishes to terminate its membership. Such statement shall be signed by all adult and / or emancipated person(s) in the household of the member. Voluntary termination shall not affect the terminating member's existing liabilities to the co-op. The member's regular capital shall, upon written request, be returned to any person in the household of the member in cash subject to deductions for debts owed by the member to the co-op within ninety days if such funds are reasonably available.

(g) **Leaves of Absence** Leaves of absence may be granted to members for periods not to exceed one-year. During the leave of absence, the member shall be relieved from any annual work requirement, but shall not be relieved of any requirements related to payment of capital. The member shall retain its right to vote during the leave.

Exceptions for leave greater than one-year may be granted, after individual petition to the board, and for extraordinary cause.

(h) **Transfer of Membership**

Membership is not transferable. The bylaws cannot be amended to change this provision.

(i) **Death of a Member**

Upon the death of the last or only person included in a membership, the membership shall immediately terminate. Upon written request, the co-op shall return the terminated member's regular capital to the person designated as "beneficiary" on the co-op's records. See § 3(d). If no such request is made within one-year after the death of the last person in the household, all of the member's capital shall be forfeited and transferred to the reserve capital account.

(j) **Suspension of Expulsion**

The board of directors may suspend or expel any member for cause. A member proposed for suspension or expulsion shall be given reasonable notice of the pending action. The board shall be authorized to prescribe procedures under which the proposed suspension or expulsion

shall be managed administratively. The member shall have the right to appeal the suspension or expulsion to the membership at the next regularly scheduled membership meeting (the suspension or expulsion shall not be held in abeyance until the membership meeting). Suspension or expulsion of a member shall not affect that member's existing liabilities to the co-op. If a member is expelled, the member's regular capital shall be returned to the member, subject to deductions for debts owed by the member to the co-op.

(k) Limits on Membership

The board of directors may, from time to time, decide to limit the number of members of the co-op, and may decide to limit new applications for membership.

4. Meeting of Members

(a) Regular Meetings

A regular meeting of the members shall be held annually, in the month of October, at a time and place to be determined by the board of directors.

(b) Notice of Meetings

The notice of regular and special meetings of the members shall state the date, time, place and purpose of the meeting. Notice of all regular and special meetings of the members shall be given by the secretary as follows:

i. by posting notice in a prominent place:

- A. on the co-op's website;
- B. in the co-op store; and

ii. A. by sending an electronic mail, not less than thirty-days before the date of the meeting, to the member's last-provided electronic mail address, irrespective if the message is returned as undeliverable; or

- B. by mailing or hand-delivering the notice, not less than thirty-days before the date of the meeting, to each member at the member's last known address.

iii. **Service of Notice**

For purposes of § 4(b)(ii)(B), notice shall be deemed to be mailed to a member if deposited in the United States mail with at least third-class postage affixed.

iv. **Procedural and Notice Defects**

A non-material derivation from any procedural or notice provision required by any part of these bylaws shall not render an act of the cooperative ultra vires, ab initio, or otherwise invalid.

If any member of the co-op contests that an action made in derogation of proper procedural or notice

rules (i) materially and (ii) adversely impacts its co-operative interests, then, the board shall timely grant that member the opportunity to be heard at a hearing in front of the board. The board shall have authority to determine all matters of procedure related to this hearing. A majority vote of the directors present shall be sufficient to establish that derogation of the procedural or notice requirement was material and adverse and such a vote shall invalidate the action taken in derogation of the procedural or notice requirements. The ultimate action, decision, and procedure established under this paragraph (§ 4(b)(iv)) is reviewable by a court of competent jurisdiction.

Annotation

Res. No. 2014-01 was adopted on May 22, 2014, it added paragraph 4(b)(iv).

(c) Agenda

The agenda for the membership meeting shall be set forth in the notice of meeting, and no business other than that generally set forth in the notice shall be transacted at the meeting. The agenda of regular membership meetings shall be developed by the board. See § 4(f). Any member may request that an item be placed on the agenda of a membership meeting by submitting to the board a petition of at least ten-percent of the members, which shall be delivered to the board within sufficient time for the issue to be publicized in the notice of the membership meeting sent to members. See § 4(b); see also § 8(f).

Annotation

Any change to the percentage of members required to successfully petition the Board (10%) likely must be made by the members. See 15 Pa. Cons. Stat. § 5504(d).

(d) Quorum

A number of members (i.e., households) equivalent to either five percent of the members or fifty members, whichever is less, shall constitute a quorum at any meeting of members. The members present at a properly organized meeting may continue to do business, despite the withdrawal from the meeting of enough members to leave less than a quorum. If a meeting of members cannot be organized because a quorum has not attended, those present may adjourn the meeting to such date, time, and place as they may determine. Notice of such adjourned meeting shall be posted in a conspicuous place at the principal place of business of the co-op for a period of not less than ten-days prior to the date of the adjourned

meeting. Notice shall also be given pursuant to § 4(b) (the thirty-day requirement in that section is waived).

(e) **Voting**

i. **Eligibility to Vote**

The board shall direct the general manager to review or cause to have reviewed the membership records prior to each meeting of the members and shall determine that they contain the names of members in good standing and entitled to vote. A list of such members or other similar records shall be produced and kept open at the time and place of such meeting. Listing in the membership records shall be prima facie evidence of a member's eligibility to vote.

ii. **Voting Rights**

Pursuant to 15 Pa.C.S. § 7111, each member (i.e. household) shall have one and only one vote upon any single matter. Voting must be in person, except as specifically authorized by the board of directors. Proxies shall not be permitted. Membership may be required as a condition of attendance at the meeting subject to exception in § 3(g).

iii. **Voting Power**

All questions brought before the meeting shall be determined by the votes of a majority of the members present in person and entitled to vote, except as otherwise provided by statute, the articles, or these bylaws.

iv. **Voting by Ballot**

All voting for directors shall be by ballot in accordance with § 5 of these bylaws. In addition, the board may authorize voting by ballot on any other issue that properly may be brought to the members for a vote, including but not limited to any proposal to amend these bylaws. See § 8(f). Whenever voting is conducted by ballot, the following rules shall apply, unless another more specific provision of these Bylaws shall provide otherwise:

- A. All votes shall be submitted by ballot and no voice votes will be counted on the question at hand;
- B. the form of the ballot shall be prescribed by the board;
- C. a copy of the proposal or ballot to be voted upon and the date and time by which the ballot must be received by the co-op in order to be counted (the "Ballot Due Date") shall be advertised to members in accordance with § 4(b) within thirty-days of the Ballot Due Date;

- D. the Ballot Due Date shall not be later than the adjournment of the meeting at which the issue described in the ballot is being considered (typically the regular membership meeting in October); and
- E. the ballot shall set forth the instructions for returning the ballots, which shall include as one option depositing the ballot in a ballot box located in any co-op store. Each member household shall be limited to submitting one ballot on each voting occasion. To be counted, ballots must be received by the Ballot Due Date, must be returned in accordance with the instructions on the ballot, and must meet certification standards set by the board to ensure confidentiality, authenticity, and validity. Three persons designated by the board shall count the ballots in a manner designed to preserve the confidentiality of the member's vote. The vote shall not be considered an act of the members unless at least ten percent of eligible members shall vote by ballot (see however § 8(f)(i) requiring a twenty-percent return for the amendment of the bylaws).

Annotation

Any change to the percentage of members required to vote (10%) likely must be made by the members. See 15 Pa. Cons. Stat. § 5504(d).

(f) Conduct of Meetings

Meetings of members shall be governed by Robert's Rules of Order. The presiding officer at such meeting shall appoint a parliamentarian (typically the co-op's solicitor) to advise the presiding officer with regard to procedural matters. The regular meetings of members shall include the following matters:

- i. recording the names of members present;
- ii. reading and action on minutes of previous meeting of members;
- iii. elections;
- iv. reports of officers, board of directors, committees, and manager;
- v. report of financial condition; and
- vi. other business.

(g) Notice of Nomination and Election of Directors

In compliance with § 4(b), the secretary shall advertise to members a notice that shall state the date of the elections, the positions for which elections are to be held and the procedure for nomination of candidates for

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the positions. Nominations of candidates for positions on the board of directors and for committee chairpersons may be made by any person in a member household by submitting the name of the nominee(s) to the secretary within sufficient time to permit notice of the nomination to be disseminated to the membership in accordance with this section. The secretary or his/her agent shall contact each nominee and determine the nominee's willingness to serve.

(h) **Referendum on Acts of Directors**

Any action taken by the board of directors shall be referred to the members for approval or disapproval if demanded by petition of at least ten percent of the members delivered to the board within thirty-days after the date that the action is authorized by the board. Such matters shall be approved or disapproved by the members at the next regular meeting. Upon receipt of a petition demanding a referendum, the board shall place the item on the agenda for the next membership meeting and, if practicable (as determined by the "business judgment rule") shall stay execution of the action until the referendum has been held. Rights of third parties which vest between the time that the action is authorized by the board of directors and the time that the petition is received or the referendum is held shall not be impaired by a vote of the members.

5. Directors

(a) **Election of Directors**

The ultimate election of directors shall take place at the regular membership meeting. All voting for directors shall be submitted by ballot in accordance with § 4(e)(iv). There shall be an opportunity for the publication of a brief statement by candidates for the position of director on the co-op website.

(b) **Number of Directors**

The administration of the co-op shall be vested in a board of directors comprised of nine persons (of whom eight are elected) who shall act for the co-op in all matters, except those required by statute, the articles of incorporation, or reserved by these bylaws for the members.

(c) **Board Positions**

The board of directors shall consist of the following persons, all of whom shall be natural persons who comprise a member of the co-op: the general manager and eight members elected at large, no more than two of whom may be employees of the co-op. Except for vacancies filled in

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accordance with § 5(f) of these bylaws and the position of general manager, all directors shall be elected by the membership according to § 5(a).

i. Chair of Board

When the position of chair of the board becomes vacant, the board, by a majority of all directors, shall elect a chair of the board. The chair shall serve until his/her tenure as a director ends (if the current chair is consecutively re-elected to the board, he or she must still be re-elected to the position of chair). The chair shall control the conduct of board meetings, but in all other ways shall be equal to the other members of the board, except as may be enumerated in the bylaws or by statute. The chair shall be entitled to one vote, the same as any director; however, if the vote of the board is tied, than the chair shall be entitled to two votes. The chair shall also serve as the presiding officer of membership meetings. See § 4(f).

ii. Interim Secretary of the Board

In the absence of an officer who shall perform the function of secretary, the board may elect from their number an interim secretary of the board who shall have all the powers and responsibilities as the secretary-officer. See § 6(b)(iii). When an officer-secretary is selected, the position of interim secretary of the board shall automatically end.

iii. Vice-Chair of the Board

In addition to the responsibilities outlined in the Board Member Obligations document, the person holding this position:

- A. Assists the chair in performing the chair's duties and responsibilities;
- B. Fulfills the responsibilities of the chair during the chair's absence; and
- C. Performs other responsibilities as assigned by the board.

It is permissible to hold an executive position and also hold the office of vice-chair. As the vice-chair will, at times, act in place of the chair, the vice-chair should be held by a director who the board entrusts with that responsibility.

Annotation

On Oct. 15, 2018, the board amended the bylaws to provide for the position of vice-chair.

(d) Terms of Office

i. Term of Office of Directors

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Each director who is a member-at-large shall be elected for a term of three-years, except as provided in §§5(d)(iii), 5(e), and shall serve until that director's successor is elected and assumes office.

ii. Term Limits

A director who has served more than five consecutive years on the board shall not be eligible to be a candidate for election to the board until he or she retires from the board for at least one-year.

iii. Staggered Terms of Office

The election of directors shall be such that terms are staggered so that under normal circumstances approximately one-third of the directors comprised of at-large members shall be elected every year. During the first election, the three candidates with the most votes will serve a three-year term. The candidates with the fourth, fifth, and sixth most votes will serve a two-year term. The candidates with the seventh and eight most votes will serve a one-year term.

(e) Vacancies on the Board

Vacancies on the board of directors occurring between regular meetings at which board elections are held shall be filled by a majority vote of the remaining directors. The successor director shall only serve the period of time that the original director would have served had the vacancy not occurred.

If the size of the board falls below a quorum because of permanent vacancies, the board shall have authority to appoint any qualified person so that a quorum can be established for the purpose of voting in directors. After a quorum has been reestablished, the appointed person(s) shall no longer have any powers.

(f) Removal of Directors

i. Removal by Members

A director may be removed with or without cause by a vote of a majority of all members of the co-op. Any member or members may request removal by bringing formal charges against a director and by following the statutory procedures for the calling of a special membership meeting. See 15 Pa.C.S. § 5755(b). The director whose removal is proposed shall be given the opportunity to be heard at the membership meeting. A vacancy caused by removal at a membership meeting shall be filled at the same membership meeting by the vote of the members present at the meeting.

ii. Removal by Other Directors

The directors may remove another director with or without cause by unanimous decision of all those directors who are not subject to the removal vote. A removal vote also requires the consent of at least a majority of all directors to take the vote.

Annotation

On Apr. 8, 2015, pursuant to subsection 5(k), the Board agreed upon an interpretation of paragraph 5(f)(ii). The Board's interpretation of this paragraph is that, during a removal vote, an abstention shall not prevent the removal of a director. Thus, as an example, if seven directors vote for removal and there is one abstention, the director subject to the removal vote shall be removed. In addition, it was agreed that after a majority of all directors decides to take the removal vote, the director subject to removal shall be excused from the meeting so that the remaining director may deliberate prior to the formal removal vote.

iii. Automatic Removal

- A. Directors who incur three consecutive unexcused absences from board meetings shall be automatically removed. An unexcused absence shall be determined by the chair.
- B. If a board member falls more than thirty days behind in his/her membership equity payments, then that board member shall be automatically removed unless good cause be shown why removal shall not automatically occur.
- C. If a member of the board proposed for automatic removal, under this paragraph (§ 5(f)(iii)), wishes to contest his/her removal by showing good cause why s/he should not be removed, then s/he may have a hearing at the first board meeting (either regular or special) subsequent to the director's automatic removal. The board shall have final authority to determine all matters of procedure related to this hearing and the decision of the board as to reinstatement shall be final and non-reviewable by any court. A majority vote of the directors present (excluding the director who has been automatically removed) shall be sufficient to establish good cause and to reinstate the director.

Annotation

Res. No. 2014-02 was adopted on May 22, 2014, it added subparagraphs (B) and (C) of § 5(f)(iii)-related to automatic removal for non-payment of membership equity and due process procedures. Although 15 Pa Cons.

Stat. § 5736(b) requires the members to approve the conditions under which a director is removed, since the members already authorized the board to remove a director for any reason (see § 5(f)(ii); see also 15 Pa. Cons. Stat. § 5310(a) (relating to initial deemed approval of the bylaws by the members)) this paragraph if merely a clarification of the board's internal policy deriving from its unlimited authority to remove previously granted by the members.

(g) Compensation of Directors

Elected directors shall receive no monetary compensation from the co-op for their services as directors. This provision may only be amended by a vote of the members.

(h) Meetings

The board of directors may hold meetings, both regular and special, at such time and place as they may, from time to time, determine. The date, time, and place of each meeting of the board of directors shall be posted by the secretary in a conspicuous place on the co-op's website, and in the store, at least ten-days prior to a special meeting. The secretary shall also e-mail each director regarding the prospective meeting pursuant to the above-stated deadlines. All meetings for the transaction of business of the board of directors shall be open to the membership of the co-op except as provided in § 5(j).

i. Prescribed Regular Meeting

Immediately following the regular membership meeting, the board shall hold a regular meeting open to all co-op members, except as provided in § 5(j), where they shall elect the officers for the forthcoming year. See § 6(a). If necessary, the board shall also elect a chair at this meeting. See § 5(c)(i). No special notice is required for this meeting—the bylaws and custom provide sufficient notice. In addition, the board may set the schedule of special meetings for the upcoming year; if the schedule is adopted at the regular meeting and posted on the co-op's website, no additional notice of these special meetings need be given.

ii. Special Meetings

Special meetings of the board of directors may be called by the chair or by any three directors. Notice of a special meeting shall be given to each director (and posted on the website) at least ten-days prior to the meeting. See § 5(h).

(i) Quorum

At all meetings of the board of directors, a majority of those who are presently serving on the board shall be

necessary to constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of directors, the directors present may adjourn the meeting and determine a time and place for an adjourned meeting. Notice of the adjourned meeting shall be given to each director by e-mail, and shall be posted on the co-op's website, and in the store, at least three-days prior to the adjourned meeting.

(j) Executive Session

The board may go into executive session, during which everyone is excluded except those currently serving as directors, for the purpose of discussing any matters of business which the board may consider confidential or sensitive.

i. Procedure for Executive Session

Before meeting in executive session, the board must approve, by majority vote of the directors present at a meeting at which a quorum is established, a motion to go into executive session. The motion must include specific reference to the substance of the matters to be discussed. The board may invite relevant individuals, as required, for consultation. No vote may be taken in executive session except to approve or evaluate the general manager's performance and compensation, to recess or adjourn out of executive session, or to address any other issue, which in the discretion of the board requires confidentiality.

ii. Recordation of Executive Session

The decision to call an executive session and a general description of the matters discussed must be recorded in the minutes of the board meeting at which the motion to go into executive session was approved.

iii. Procedure Specific to the General Manager's Compensation

Directors who are employees of the co-op shall not be present during any discussions of and shall not participate in any vote on the general manager's performance or compensation.

(k) Interpretation of Bylaws

The board of directors, or an agent that they may empower, shall have the sole authority to interpret and determine the meaning of these bylaws provided that such interpretation does not infringe upon the statutory power of the members prescribed in 15 Pa.C.S. § 5504(b).

(l) Delegation of Authority

Unless prohibited by the articles, bylaws, or statute, any action or function of the board may be delegated to

an officer of the co-op or to an external agent, provided that oversight by the board is provided.

6. Officers

(a) Election of Officers

The officers of the co-op shall be a general manager, a vice-general manager, a secretary, and a treasurer. Any number of offices may be held by the same person, except the position of treasurer which must be held singularly. All officers shall be elected to their offices by the board at the first board meeting following the regular membership meeting. See § 5(h)(i). The officers shall be elected by a majority vote of those present and voting. Officers shall be elected for at will, though, typically until the next regular membership meeting.

(b) Description of Officers

i. General Manager

The general manager shall oversee and supervise all operations of the co-op and shall see that all orders and resolutions of the board of directors and of the members are carried into effect. Except as otherwise provided by these bylaws or resolution of the board of directors, the general manager shall sign all contractual notes, bonds and other evidences of indebtedness issued by the co-op, and other official instruments or documents of the co-op. Notwithstanding the previous provision, all checks issued by the co-op must be countersigned as described in section 8(c). The general manager shall be a member ex-officio of all committees of the co-op. The general manager (or his/her agent) shall deliver the report of the board of directors at the membership meetings.

ii. Vice-General Manager

The vice-general manager shall, in the absence or disability of the general manager, perform the duties and exercise the power of the general manager. In the event of the death, resignation or mid-term withdrawal from office by the general manager, the vice-general manager may complete the unexpired term of the general manager at the discretion of the board. The vice-general manager shall be a liaison between the committee chairpersons and the board. The vice-general manager shall perform such other duties and have such other powers as the board of directors may, from time to time, prescribe.

iii. Secretary

The secretary shall attend all meetings of the membership and board of directors and shall record or

cause to be recorded the minutes of the meeting. The secretary shall post a copy of the minutes of the meetings of the board of directors and general membership meetings in a conspicuous place on the co-op website. Minutes of the board of directors meetings shall be posted within ten-days after approval by the board. Draft minutes of the general membership meetings shall be posted no later than thirty-days prior to the general membership meeting at which they are scheduled to be approved. See §§ 4(b)(ii), 4(c). The secretary shall give all notice of meetings required by these bylaws. The secretary shall keep custody of the official documents of the co-op. The secretary shall keep custody of the seal of the co-op, and, when authorized by the board of directors, affix it to any instrument and attest to its authenticity by signature.

iv. **Treasurer**

The treasurer shall monitor the operations accounts on a monthly basis and report to the board as appropriate. The treasurer shall chair the finance committee, assist in the preparation of the budget, and advise and assist on making financial information available to both co-op members and the board. In addition, the treasurer shall serve as the liaison between the board and its auditor. A non-natural person may serve as treasurer.

(c) **Delegation of Duties**

An officer may delegate any of his or her duties to an agent so long as the officer provides direct oversight of those duties or creates a reasonable system for providing oversight.

7. Committees

(a) **Purpose of Committees**

Committees are formed to provide members with a way to participate actively and meaningfully in the life and mission of the co-op, and are vital to the co-op and its community.

(b) **Existence and Creation of Committees**

Committees at the co-op may include existing committees and any other committees formed in the future. Committees can be formed by the board, officers, or interested members with board approval. Committees may be created and/or dissolved at any time by the board, without a change of these bylaws.

(c) **Clarity of Committee Purpose**

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All committees shall have a clearly articulated mandate or charter, which shall indicate whether the committee reports to the board or the officers. The goals and activities of each committee shall be evaluated on a regular basis.

(d) **Board Responsibilities**

The board and officers will develop clear policies defining lines of authority, accountability, and communication for committees.

8. Miscellaneous Provisions

(a) **Bonding**

All persons authorized to sign checks or withdraw funds of the co-op, bookkeepers performing services for the co-op, and any other persons handling funds of the co-op amounting to \$1,000 or more in any one-year shall be covered by an adequate bond in an amount to be determined by the board of directors. This bonding coverage shall be maintained at the co-op's expense.

(b) **Auditing**

The books of the co-op shall be audited at least once every three-years with no less than a review in the intervening years by a certified public accountant who shall be independent of the co-op. Additionally, the board will ensure that an annual review of the financial controls of the co-op is conducted.

(c) **Checks**

Checks issued by the co-op may be signed in one of four methods, where possible, method (a) is preferred:

- i. The general manager shall be the principal signer and a principal officer (i.e. vice-general manager, secretary, or treasurer) shall countersign;
- ii. The general manager shall be the principal signer and another natural person of full age, as designated by the board, shall countersign;
- iii. The general manager shall be the principal signer and the chair shall countersign; or
- iv. Any principal officer shall be the principal signer and the chair shall countersign.

No person who is a family relation of the principal signer may countersign a check.

(d) **Calendar Year**

The co-op shall be run on a fiscal year ending on June 30.

Annotation

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Res. No. 2015-Voice was adopted on Nov. 16, 2015, it provided that the cooperative shall henceforward run on a fiscal year ending June 30, rather than calendar year.

(e) **Seal**

The board may authorize the purchase of a corporate seal. The seal of the co-op shall have inscribed upon it the name of the co-op, the year 2013, and the Commonwealth of Pennsylvania.

(f) **Amendment of Bylaws**

i. **Amendment by Members**

- A. Pursuant to subsection 4(c), any member may request, via petition, that a proposed amendment to the bylaws be placed on the agenda of the regular membership meeting, provided that such a petition is supported by ten-percent of the membership (or such percentage as section 4(c) may be amended, from time-to-time, to provide). Pursuant to section 4(e)(iv);
- B. The board shall then determine if voting shall be via ballot or via in-person vote at the membership meeting. If the vote is by ballot, then, the Ballot Due Date shall not be later than the adjournment of the next regular membership meeting where the result of the ballot vote shall be disclosed to the membership;
- C. Regardless of whether the vote on the proposed amendment to the bylaws is by ballot, or in person, at least twenty percent of the total number of cooperative members must vote (or cast a ballot) for or against the proposed change, provided that if the vote is in-person and the twenty-percent voting requirement is not met, then, the item shall be voted upon by ballot (with a reasonable Ballot Due Date as determined by the Board); and
- D. If, after not receiving twenty percent of an in person vote, the measure fails to receive twenty percent return of ballots, then the measure shall fail.

Annotation

Res. No. 2015-02 was adopted on Apr. 16, 2015, it provided a procedural framework for the amendment of the bylaws by the Members. This amendment merely organized and made explicit the procedure for amendment that was previously scattered across several sections of the bylaws, and which had originally been deemed adopted by the members pursuant to 15 Pa. Cons. Stat. § 5310(a). The amendment did not

change any substantive voting rights of the members. Importantly, any change to the percentage of members required to successfully petition the board pursuant to subsection 4(c) of these bylaws likely must be made by the members. See 15 Pa. Cons. Stat. § 5504(d). In addition, the twenty-percent voting requirement likely can only be changed by action of the members. See 15 Pa. Cons. Stat. § 5504(d).

ii. Amendment by Board

The board of directors may amend the bylaws by a two-third vote of all board members. If the bylaws are so amended, notice of the change shall be placed in a conspicuous location on the co-op's website within ten-days.

iii. Other Amendments

Certain sections of these bylaws (where specifically stated) are deemed to be automatically amended based on changes in law. In addition, the cooperative's solicitor may amend any provision that is found to suffer from typographical, clerical, organizational, or orthographic error.

iv. non-Amendability by Membership

Pursuant to section 10.2 of the Articles of Incorporation, this sub-section (§ 8(f)) of the bylaws may not be amended by the membership.

(g) Fiduciary Duty and Indemnification

i. Fiduciary Relationship of Directors

A director of the co-op shall stand in a fiduciary relation to the co-op and shall perform his or her duties as a director, including his or her duties as a member of any committee of the board upon which he or she may serve, in good faith, in a matter he or she reasonably believes to be in the best interest of the co-op, and with such care, including reasonable inquiry, zeal and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his or her duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared by any of the following:

- A. one or more officers or employees of the co-op whom the director reasonably believes to be reliable and competent in the matters presented;
- B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person; and

C. a committee of the co-op as to matters within its designated authority, which the director reasonably believes to merit confidence.

ii. Fiduciary Factors

In discharging the duties of their respective positions, the board of directors may, in considering the best interests of the co-op, consider the effects of any action upon employees, suppliers, members of the co-op and the community in which the co-op is located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of this section. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a director or any failure to take any action shall be presumed to be in the best interest of the co-op.

iii. Personal Liability of Directors

The provisions of this subsection (8(g)) (and any subordinate divisions) shall not apply to:

- A. the responsibility or liability of the director pursuant to any criminal statute; or
- B. the liability of a director for the payment of taxes pursuant to local, state or federal law.

iv. Personal Liability of Directors

A director of the co-op shall not be personally liable for monetary damages for any action taken or for any failure to take any action, unless:

- A. the director has breached or failed to perform the duties of his or her office; and
- B. the breach or failure to perform constitutes self-dealing, willful misconduct, or recklessness.

v. Indemnification of Authorized Representative

The co-op shall indemnify each of its directors, officers, committee chairs and employees who was or is an authorized representative of the co-op and who was or is "party" (which shall include for purposes of this provision the giving of testimony or similar involvement) or is threatened to be made a party to any "proceeding" (which shall mean for purposes of this provision any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil administrative or investigative, whether formal or informal, and whether brought by or in the right of the co-op or otherwise) by reason of fact that such person was or is an authorized representative of the co-op, to the fullest extent permitted by law, including without limitation, indemnification against expenses (which shall include for purposes of this provision attorney's fees

and disbursements), damages, punitive damages, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such proceeding, unless the act or failure to act giving rise to the claim is finally determined by a court to have constituted self-dealing, willful misconduct, or recklessness. If an authorized representative is not entitled to indemnification in respect of a portion of any liabilities to which such person may be subject, the co-op shall nonetheless indemnify such person to the maximum extent for the remaining portion of the liabilities.

vi. Payment of Defense Fees

Subject to subparagraphs (A) and (B) of this paragraph, the co-op shall pay the expenses (including attorney's fees and disbursements) actually and reasonably incurred in defending a proceeding on behalf of any person entitled to indemnification in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the co-op and may pay such expenses in advance on behalf of any employee or agent on receipt of a similar undertaking. The financial ability of such authorized representative to make such repayment shall not be a prerequisite to the making of an advance.

A. The board, by majority vote, may decide not to indemnify any person in advance of the final disposition of a proceeding, where the board, in its sole discretion, shall determine such person (I) breached or failed to perform the duties of his or her office, and (II) the breach or failure to perform constitutes self-dealing, willful misconduct, or recklessness.

B. So long as it does not create a conflict of interest, the board may require individually named parties to join under the representation provided by the cooperative's lawyer to minimize defense costs; provided that, an individual party may decline to join this group representation so long as that party disclaims any right to indemnification for attorney's fees.

vii. Presumption of Indemnification

Each person who shall act as an authorized representative of the co-op shall be deemed to be doing so in reliance upon the rights of indemnification provided by this provision.

viii. **Contractual Nature of Indemnification**

All rights of indemnification under this provision shall be deemed a contract between the co-op and the person entitled to indemnification pursuant to which the co-op and each person intend to be legally bound. Any repeal, amendment, or modification hereof shall be prospective only and shall not limit, but may expand any rights or obligations in respect of any proceeding, whether commenced prior or after such change, to the extent such proceeding pertains to actions or failures to act, prior to such change.

ix. **Maintenance of Ancillary Rights**

The indemnification, as authorized by this subsection, shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of disinterested directors, or otherwise; provided that, if these bylaws provide (or disclaim) a certain right, no other statute, agreement, vote of disinterested directors, or otherwise may abrogate (or enlarge) these bylaws or the intent of these bylaws. The indemnification and advancement of expense provided by, or granted pursuant to, this subsection shall continue as to a person who has ceased to be an officer or director in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, and administrators of such person.

x. **Indemnification Rights and Conflicts of Interest**

Notwithstanding any other provision stated in this subsection:

- A. Should the board determine that an interested party is in violation of the Conflict of Interest Policy, their violation shall be presumed to be a breach of duty and willful and / or reckless;
- B. It shall be the burden of the interested party to disprove any determination of the board in relation to a violation of the Conflict of Interest Policy (including, but not limited to, a determination of whether a violation occurred and the amount of damages stemming from that violation) in the Court of Common Pleas of Northampton County by clear and convincing evidence that the board manifestly abused its discretion in making its determination;
- C. The interested party shall not be entitled to indemnification as provided by these Bylaws (subject to clauses (D)(I) and (D)(II) infra); and
- D. The Co-op shall be under no duty whatsoever to extend indemnification for any reason (including

attorney's fees) prior to the final determination of a claim by the Court, provided that if: (I) the Court finally determines that there was no violation of the Conflict of Interest Policy, then the Co-op shall indemnify the interested party as provided in the bylaws; and (II) the amount of indemnification for attorney's fees shall not exceed \$150.00 (U.S.D.) / hr, consumer price indexed to 2015.

Annotation

Res. No. 2015-Voice was adopted on Nov. 16, 2015. It added sub-paragraph 8(g)(10) part and parcel with a vote adopting the Cooperative's first Conflict of Interest Policy.

(h) Conflicts of Interest

Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the board, and such interest shall be made a matter of record in the minutes of the meeting. Directors having such an interest may not participate in the decision of the matter. The Board shall have the authority to create a Conflict of Interest Policy that shall amplify this subsection and shall operate as if deriving its authority from the bylaws.

(i) Website

A website shall be developed and maintained in accordance with the mission of the co-op. The board shall establish editorial and advertising policy, but may delegate development and maintenance responsibilities to the general manager. Notice of membership meetings, see § 4(b); nomination of directors, see § 4(g); election of directors by ballot, see §§ 5(a), 4(e)(iv); meetings of the board, see § 5(h); minutes of meeting of the board and the membership meeting, see § 6(b)(iii); and amendment of the bylaws, see § 8(f), must be conspicuously posted on the website.

(j) Subventions and Debt

Pursuant to 15 Pa.C.S. §§ 5542-43, the board of directors is authorized to accept subventions from members or nonmembers on terms and conditions not inconsistent with law. The board is expressly authorized to accept subventions where the holders of subvention certificates may receive fixed or contingent periodic payments from the corporate assets equal to a percentage of the original amount or value of the subvention. Where the co-op issues a subvention certificate that reasonably resembles a debt instrument, e.g. a bond or preferred stock, the co-op shall comply with the applicable securities registration regulations in the following subordinate divisions.

i. Securities Regulations

The Federal Securities Act of 1933 provides that certain securities issued only to residents of a single state need not be registered with the Securities and Exchange Commission (SEC). See 15 U.S.C. § 77c(a)(11) (as may be amended). The SEC has also promulgated rules related to this statutory exception, known as the "Intrastate Offering Exemption." See 17 C.F.R. § 230.147 (as may be amended). To qualify for this exemption, the co-op must:

- A. be incorporated in the state where it is offering the securities;
- B. carry out a significant amount of its business in that state; and
- C. make offers and sales only to residents of that state.

Because, the SEC does not provide oversight of intrastate offerings, the Commonwealth of Pennsylvania has additional regulatory rules. To comply with Commonwealth securities regulations, pursuant to the Pennsylvania Securities Act of 1972, Pub. L. No. 1972-284, 1972 Pa. Laws 1280-1325 (codified as amended 70 Pa. Stat. Ann. §§ 1-101-1-703 (West)), the co-op:²

- A. must not sell to more than thirty-five persons in the Commonwealth during a period of twelve consecutive months, see 10 Pa. Code § 204.010;
- B. must obtain the written agreement of each buyer not to sell the security within twelve months after the date of purchase;
- C. cannot solicit through public media advertising, mass mailing, Internet or other means;
- D. cannot give or pay, directly or indirectly, any promoter in connection with the sale;
- E. must pay the filing fee specified in 70 Pa. Stat. Ann. § 1-602(b.1)(viii) (West 2012);
- F. must provide written notice to each buyer of the right to withdraw an acceptance as provided by section 70 Pa. Stat. Ann. § 1-207(m)(2) (West 2012); and
- G. must provide a timely notice in the form prescribed by the commission, signed by an officer of the co-op and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish the exemption under 70 Pa. Stat. Ann. § 1-203(d) (West 2012).

²See specifically 70 Pa. Stat. Ann. § 1-203(d) (West 2012).

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This paragraph of the bylaws will be deemed to be automatically amended if there is any change in the law related to securities registration exemption under Federal or Commonwealth law.

ii. **Co-op Securities Policies**

In light of the Federal and Commonwealth securities registration exemption guidelines, the board may not issue any security (including a debt-like subvention certificate) without complying with the following guidelines:

- A. Offers may only be made to persons or entities resident in the Commonwealth of Pennsylvania;
- B. The co-op may only sell securities to thirty-five or fewer persons during a twelve-month period;
- C. All securities are nontransferable and indivisible for a period of at least twelve months?written confirmation of the same shall be obtained from the buyer;
- D. No promoter may be involved in the offering or sale of the securities;
- E. All regulatory forms must be filed by the proper deadline, including but not limited to: (I) the filing of Commonwealth securities forms, and (II) payment of the Pennsylvania exemption fee;
- F. A written notice, pursuant to 70 Pa. Stat. Ann. § 1-207(m)(2) (West 2012), must be timely sent to each buyer;
- G. Before issuance of any security, the co-op's solicitor will consult with a competent accountant to discuss the tax consequences of the action if the solicitor is not already competent in cooperative and securities tax law; and
- H. No action may be taken that contravenes the registration exemption requirements set forth in § 8(j)(i).

This paragraph (except subparagraph (H)) may be amended at-will by the co-op's solicitor.

(k) **Rules & Regulations**

The general manager shall have the administrative power to draft prospective rules and regulations concerning the normal operation of the co-op. Such prospective rules and regulations shall be submitted to the board of directors for approval subject to normal voting procedures. See § 5(h). These rules and regulations may not be in contravention or derogation of any statute, the articles, or bylaws. Members may submit proposed rules and regulations to the general manager or his / her agent.

Annotation

Res. No. 2013-08 was adopted on Mar. 4, 2013, it provides that the board hereby vests check signing authority in the interim treasurer. Any check signed by the interim treasurer must be counter signed by either the interim board chair or Catherine M. Frankenberg. The powers established by this resolution shall terminate upon the election of a general manager, at which time, check writing policy shall be exclusively described by subsection 8(c) of the bylaws.

Res. No. 2014-01 was adopted on Feb. 20, 2014, it adopted a non-discrimination policy, which states:

Bethlehem Food Co-op welcomes everyone to our cooperative community, regardless of race, color, religion or creed, national origin, age, sex, sexuality, gender identity, pregnancy, citizenship, familial status, lifestyle, economic situation, disability, veteran status, genetic predisposition, size, political affiliation, ancestry, or for any other reason.

9. Disposition of Net Savings

(a) Definitions

Net savings means the total income of the co-op minus its costs of operation for the fiscal year. Patronage means the total amount spent by a member-household for purchases of goods from the co-op. Total patronage means the total of all the members' patronage.

(b) Patronage Rebate of Net Savings

The net savings of the co-op attributable to the patronage of its members for each fiscal year shall be allocated and distributed among members in proportion to their patronage and in such a manner as to constitute patronage rebates within the meaning of federal income tax law. See 26 U.S.C. §§ 1381-88. Such net savings may be reduced by such reasonable reserves for necessary business purposes as may be determined by the board of directors. If the cash payment portion of a member's patronage rebate would equal less than one dollar, such cash payment shall be allocated to the member's regular capital account.

(c) Allocation of Patronage Rebate

Amounts assigned to members' equity accounts from a patronage dividend shall be designated by the board at its discretion as either regular equity, see § 10(a), or reserve equity, see § 10(b).

(d) Written Notice to Members

An allocation of patronage rebates shall be evidenced by a written notice within eight months and fifteen-days after the end of the calendar year stating:

- i. The amount of net savings assigned to that member's reserve capital account as part of the patronage rebate;
- ii. The amount of net savings assigned to that member's regular capital account as part of the patronage rebate;
- iii. The amount of net savings being paid to the member in cash as part of the patronage rebate;
- iv. The total of (i), (ii), and (iii) designated as "total patronage rebate";
- v. The member's total reserve capital account;
- vi. The member's total regular capital account;
- vii. That the cash portion will be assigned to the member's regular capital account if not redeemed within three months of the date of the notice.

(e) Consent by members to Accept Patronage Rebate

Each household who hereafter applies for and is accepted to membership in this cooperative and each member of this cooperative on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to its patronage occurring after April 16, 2015, which are made in written notices of allocation (as defined in 26 U.S.C. § 1388) and which are received by it from the cooperative, will be taken into account by it at their stated dollar amounts in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in which such written notices of allocation are received by it.

Annotation

Res. No. 2013-Voice was adopted on Apr. 16, 2015, it provided the solicitor the authority to amend § 10.9 to use the standard consent language contained in I.R.S. regulations. The bylaws have contained a similar notice provision from initial adoption.

10. Membership Capital

(a) Co-op's Reserve and Regular Capital Accounts

The co-op's reserve capital shall consist of the total of all of the members' reserve capital accounts, and the co-op's regular capital shall consist of the total of all of the members' regular capital accounts.

(b) Definition of Reserve Capital Accounts

Reserve capital accounts shall consist of amounts assigned to the members and specifically designated as reserve capital at the time they are assigned. Reserve capital shall not be returned to members until such time

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as the co-op is dissolved. Reserve capital may be used in the general conduct of the co-op's business.

(c) Definition of Regular Capital Accounts

Regular capital accounts shall consist of all payments to and investments in membership capital, including patronage rebates assigned to a member's capital, that are not reserve capital. Regular capital shall be returned to the member as provided in these bylaws. Regular capital may be used in the general conduct of the co-op's business.

(d) Minimum Capital Contribution

The minimum amount of membership capital that must be paid to qualify for continuing membership shall be voted upon annually by the members, which amount shall be assigned to the member's regular capital account.

i. Additional Member Contributions

The co-op, by vote of the members present and voting at a regular or special meeting of the members, may require additional investments of capital for the continued privilege of using the facilities of the co-op. No member shall be requested to make additional capital investments after the member's regular capital account matches a limit which shall be determined by vote of the membership; except that assignments of patronage rebates to regular capital accounts shall continue after the limit has been reached.

ii. Determination of Initial Minimum Capital Contribution

The interim board of directors shall have the power, by a majority vote, to determine what the initial minimum capital contribution shall be to join the co-op; additionally, the interim board of directors may, by majority vote, set such other initial qualifications for membership as they deem necessary and proper.

Annotation

Res. No. 2013-10 was adopted on May 16, 2013, it added paragraph 10(d)(ii).

(e) Purchase of Additional Membership Capital

Members may invest additional amounts in their regular capital account at any time. However, no member shall own or control more than five percent of the co-op's total membership capital.

(f) Reduction of Membership Capital by Vote

The co-op may, by vote of the directors, reduce any member's regular capital in excess of the maximum capital by repaying the member a part of that capital.

(g) Method of Repayment

Whenever the co-op is required to return a member's regular capital under these bylaws, the co-op may repay the capital in a lump sum or in such installments as the board of directors in its discretion sees fit.

(h) Priority of Liens on Member's Capital Accounts

The co-op shall have a first lien on a member's capital accounts for unpaid debts owed by the member to the co-op. Whenever the co-op is required to return the member's regular capital, it may deduct the debts owed by that member to the co-op from the capital to be returned to the member.

(i) Forfeiture of member Capital Accounts

Whenever the co-op is required to repay any of the member's regular capital account to the member, and no persons included in that membership can be found for a period of one-years after the payment first becomes due, the member's regular and reserve capital shall be forfeited and transferred to the co-op's reserves.