

# Silver City Food Cooperative Bylaws

Amended by member owners' vote 8/28/19

## Article I. Organization

**1.1 Name.** The Silver City Food Cooperative (hereafter referred to as “the Co-op”) is organized with shares under Sections 53-4-1 through 53-4-45 of the New Mexico State Statutes 1978 (1999), Article 4, Cooperative Associations (hereafter referred to as NMSA).

**1.2 Ownership and Purpose.** The Co-op shall be owned by its members and shall operate for the mutual benefit of its members.

The nature of the business and purposes to be conducted by the Co-op are:

- A. To educate the members of the community in the principles of sound nutrition.
- B. To engage in the production, packaging, distribution, preparation, advertisement, and purchase and sale, wholesale and retail, of food products and other commodities and any similar or incidental ventures and businesses on behalf of the members of the Co-op and the community at large.
- C. To engage in, carry on, and conduct any other lawful activity for which cooperatives may be organized under NMSA 53-4-1 through 53-4-45.

## Article II. Membership

**2.1 Eligibility.** Membership in the Co-op is voluntary and open to all persons or households whose purpose is to purchase goods and services from the Co-op for their household use and who are willing to accept the responsibilities of membership. A household may consist of one or more adults and any number of minor children who live, buy, and eat jointly in one dwelling. A single dwelling may consist of more than one such household. A household may not consist of individuals from more than one dwelling.

**2.2 Nondiscrimination.** The Co-op shall not discriminate on the basis of race, nationality, religion, age, gender, sexual orientation, disability, political affiliation, or otherwise.

**2.3 Admission.** Initial membership may be obtained by completing a membership application and purchasing a share. The individual who signs the application must be 18 years of age or older and shall be considered the “member-owner.” Membership shall be reflected by assignment of a member number and a share certificate shall be issued in the member-owner’s name.

**2.4 Active Status.** Membership shall be maintained and deemed active during each 12-month period after the member-owner purchases a share. References in these bylaws to the rights and entitlements of member-owners shall be understood to refer only to active member-owners, except where specified otherwise.

**2.5 Inactive Status.** A member-owner who becomes delinquent in purchasing an annual share shall be placed into inactive status. A member-owner in inactive status may attain active status by purchasing a new share.

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- 2.6 Rights.** Each active member-owner shall have the right to participate in the governance of the Co-op as provided for in Articles III and IV of these bylaws. The annual patronage refund, if any, will be issued to both active and inactive member patrons in the name of the member-owner.
- 2.7 Responsibilities.**
- A. Active member-owners have the responsibilities to: (1) purchase a share annually, (2) purchase goods from the Co-op for their household use, (3) promote the Co-op to others, (4) keep informed about Co-op issues, (5) attend Co-op member meetings, and (6) vote and participate in the decision-making process.
  - B. Active and inactive member-owners have the responsibility to inform the Co-op of any changes to their address, phone number, or household members. Failure to provide current address to the Co-op may result in said member-owner being removed from the Co-op's mailing list and transfer of that member's equity to the Co-op.
- 2.8 Agreements by Member-Owner.**
- A. Each member-owner agrees that each share purchase is a contribution of capital.
  - B. In the event that a member-owner fails to provide current address and contact information as required by 2.7.B and for a period of five years the Co-op is unable to reach the member-owner by U.S. mail at the most recent address provided by the member-owner, the member-owner hereby agrees that the amount in his or her equity account (see 8.2) shall be considered a gift to the Co-op.
- 2.9 Transferability.** Membership and membership rights are non-transferable, except under the following conditions, as required by NMSA 53-4-26:
- A. If a member-owner desires to withdraw from the association or dispose of any or all of his or her member equity account therein, the directors shall have the power to purchase his or her equity in the Co-op by paying him or her out of surplus funds the value of any or all of his or her equity account offered. The directors shall then reissue or cancel the same. A vote of the majority of the member-owners voting at a regular or special meeting may order the directors to exercise this power to purchase.
  - B. If the Co-op fails, within 60 days of the original offer, to purchase all or any part of the member-owner's equity account offered, the member-owner may dispose of the unpurchased interest elsewhere, subject to the approval of the person willing to buy that equity account ("transferee") by a majority vote of the directors. Any would-be purchaser not approved by the directors may appeal to the member-owners at their first regular or special meeting thereafter, and the decision of the meeting shall be final. If the transferee is not approved, the directors are under a duty to exercise their power to purchase, if and when there are sufficient surplus funds.
- 2.10 Termination of Membership.**
- A. Membership may be terminated voluntarily by an active or inactive member-owner.

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- B. Membership may be terminated involuntarily by a vote of the majority of members voting at a regular or special meeting, provided the active or inactive member-owner is first accorded an adequate opportunity to respond to the charges in person or in writing.
  - C. Upon termination of membership per 2.10.A or 2.10.B, 100% of the value of the shares and retained patronage refunds in said member-owner's equity account shall be returned to said member-owner per 8.3.A. and 9.6.
  - D. When the event described in 2.8.B occurs, this shall constitute good cause for termination of membership, and the board of directors is authorized to transfer the equity in that member-owner's equity account to the Co-op and terminate the membership.
- 2.11 Access to Information.** The Co-op will report at least annually to all active and inactive member-owners on the financial condition of the Co-op. An active member-owner may, upon request that is reasonable and made in good faith, be provided timely and adequate information concerning the operations and basic finances of the Co-op, that is necessitated by and directly related to a proper purpose as an active member-owner, and that describes in reasonable particularity, the information sought, subject to such reasonable restrictions and/or conditions as determined by the board of directors in consultation with management, to be necessary to protect confidential or sensitive information. Any proper request necessitating information from the Co-op's record of active and/or inactive member-owners may be accommodated only by means other than direct access to such records.
- 2.12 Lifetime Memberships.** Founding members have been issued lifetime memberships with all the rights and responsibilities of active member-owners described in 2.6 and 2.7, except that they are exempt from the responsibility to purchase a share annually as required in 2.7.A(1) and therefore own no shares. A founding member may choose to become a shareholding member-owner by terminating his or her lifetime membership and by applying for membership per 2.3.
- 2.13 Settlement of Disputes.** In any dispute between the Co-op and any of its active, inactive, or former members, which relates to normal membership transactions and which cannot be resolved through informal negotiations, the policy of the Co-op shall be to prefer the use of mediation whereby an impartial mediator or mediators may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement. No party with a grievance against the other shall have recourse to litigation without first attempting to resolve the dispute in good faith by submitting to mediation.

## Article III. Membership Meetings

- 3.1 General Membership Meetings.** A general membership meeting shall be held annually on a date and at place and time specified by the board of directors. The purpose of such meetings shall be to hear reports on operations and finances, to review issues that vitally

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affect the Co-op, and to transact such other business as may properly come before the membership. Proposals from individual active member-owners requiring action or decision by the membership must be submitted to the board 60 days before the meeting and may be included in the official agenda with board approval.

- 3.2 Special Membership Meetings.** Special meetings of the active member-owners shall be called by either a majority vote of the directors or by written petition of at 10% of the active member-owners, in which case it will be the duty of the board secretary to call such a meeting to take place within 30 days after such demand.
- 3.3 Notice of Meetings.** Notice of the time, place, and purpose of general and special membership meetings shall be sent to all active member-owners at their last known physical or email address at least 14 days before the meeting. Inadvertent failure of active member-owners to receive such notice shall not affect the validity of the meeting. Notice shall also be posted at the Co-op. Any business conducted at a meeting other than that specified in the notice of the meeting shall be of an advisory nature only.
- 3.4 Quorum.** At any meeting of the member-owners, or for any vote of the member-owners, a quorum necessary for decision-making shall be 5% of the active member-owners or 100 voting active member-owners, whichever is less. Votes cast by mail as well as those hand-delivered to the ballot box will be counted in computing a quorum.
- 3.5 Voting.** Each active member-owner is entitled to one vote on each open board seat and/or issue on the ballot. Voting shall be accomplished through methods and means established by the board.
- A. A "valid ballot" is a ballot that is completed by an active member-owner.
  - B. To be elected, board candidates must receive votes on a simple majority of valid ballots cast.
  - C. Except where NMSA imposes other requirements for approval, issues on the ballot must receive affirmative votes on a simple majority of valid ballots cast.
- 3.6 Proxy Voting.** No active member-owner shall be permitted to vote by proxy.
- 3.7 Elections.** The board and management shall work jointly to ensure confidentiality of voting as well as legitimate, transparent, and accurate elections.

## Article IV. Board of Directors

- 4.1 Powers and Duties.** The business and affairs of the Co-op shall be managed under the direction and supervision of the board of directors. Such powers shall reside exclusively in the board as a deliberative body; they may reside in individual directors only to the extent explicitly so delegated by the board.

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- 4.2 Board Responsibilities.** In guiding the business and affairs of the Co-op, directors are accountable to the active member-owners. Except for matters for which member voting is required, the board shall have full power to govern the Co-op, including, but not limited to:
- A. Articulating the long-term vision for the Co-op as well as assuring that the purpose of the Co-op is actively pursued.
  - B. Ensuring compliance with all laws, regulations, and reporting requirements of federal, state, and local agencies.
  - C. Fiduciary oversight of the Co-op, including, but not limited to:
    - 1. Arranging for an annual audit or review by an experienced bookkeeper or accountant who shall not be an officer, director, or staff member.
    - 2. Deciding whether to allocate patronage refunds, and if so, then what percentages to distribute and retain.
    - 3. Setting equity share price and making equity return decisions.
  - D. Ensuring presentation of an annual written financial report to the membership at the general membership meeting.
  - E. Creating the general manager's job description, hiring the general manager, evaluating the general manager, setting the general manager's job compensation, and releasing the general manager from duty.
  - F. Authorizing terms and benefits for the general membership.
  - G. Enacting written policies, procedures, and/or processes to implement these bylaws and board decisions.
- 4.3 Composition.** The board of directors shall consist of a minimum of five and a maximum of nine members. One director may be an employee of the Co-op provided the board of directors did not directly hire said employee.
- 4.4 Requirements for Directors.** All candidates for the board of directors shall have been active member-owners for the 90 days prior to the closing deadline for casting ballots in the election. Board members must maintain their active membership as stated in 2.4 throughout their respective terms. The board of directors may specify additional requirements for all candidates.
- 4.5 Terms for Directors.**
- A. Except in situations where shorter terms are expressly permitted under 4.5.B, all elected directors shall serve a term of three years and shall serve staggered terms so that approximately one-third of the board is elected each year.
  - B. The board of directors shall have the authority to designate terms of less than three years for particular elected directors to the extent it considers such shortened terms to be reasonably necessary to achieve or maintain the balance of staggered terms among the elected directors; however, no such action by the board of directors shall have the

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effect of shortening the term of any previously elected director without his or her consent.

- C. Notwithstanding section B, the board of directors shall have the authority to extend a term of less than three years.
- D. Directors may run for re-election as often as they desire.

## 4.6 Election of Directors.

- A. Elections shall occur annually, in a manner prescribed by the board.
- B. Elected directors shall be the candidates with the most votes and who, per 3.5.B, have received votes on a simple majority of valid ballots cast.

## 4.7 Vacancies.

The board of directors may fill vacant board positions by appointment to a term that expires at the conclusion of the board year.

## 4.8 Removal of Directors.

A director may be removed with or without cause by two-thirds of the active member-owners voting at a general or special membership meeting as defined in Article III. The director shall have an opportunity to be heard at the meeting prior to the vote being taken.

## 4.9 Quorum.

A quorum shall consist of a majority of directors.

## 4.10 Meetings.

Board meetings may be of three types:

- A. Regular meetings of the board shall be held monthly and shall be open to all active member-owners.
- B. Special meetings of the board may be requested by any director and shall occur if at least three directors believe a special meeting is necessary. Special meetings shall be open to all active member-owners.
- C. Executive sessions are closed meetings in which board members meet to discuss confidential matters.

## 4.11 Decision Making.

Decisions shall be made via a democratic process with a quorum present.

## 4.12 Conflict of Interest.

Directors shall be under an ethical code of conduct to disclose their actual or potential conflicts of interest in any matter under consideration by the board. Directors having a conflict of interest may, if permitted by the board, participate in the discussion but not in the decision of the matter.

## Article V. Officers of the Co-op

### 5.1 Designations.

The officers of the Co-op shall consist of president, vice president, secretary, and treasurer, or a secretary-treasurer. The board may designate other officers.

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- 5.2 Election, Term, and Removal of Officers.** The officers of the Co-op shall be elected by the board of directors at its first meeting following the election of board members.
- A. The officers must be directors.
  - B. Employee directors may not serve as officers.
  - C. Officers shall serve one-year terms or until their successors are elected.
  - D. Officers may be removed and replaced by the board at any time whenever the best interest of the Co-op would thereby be served.
- 5.3 Vacancies.** A vacancy in any office, for any reason, will be filled by the board of directors for the unexpired portion of the term.
- 5.4 Responsibilities and Duties.** Any of the officers may be authorized by the board to sign deeds, contracts, or other formal documents and fulfill other obligations required by law.

## Article VI. Indemnification

- 6.1 Indemnification of Directors.** The Co-op shall indemnify its current and former directors and officers against all liabilities and expenses, including reasonable attorney's fees, to which they may become subject by reason of their positions with the Co-op or their service in its behalf. Such indemnification shall include direct payment of liabilities and expenses and shall apply whenever such person was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or proceeding, whether civil, administrative, or investigative. Payment of expenses in advance of a final disposition of the action or proceeding may be made only upon receipt by the Co-op of a contractual undertaking by or on behalf of such person to repay such amounts unless he or she shall be determined to be entitled to indemnification under this Article.
- 6.2 Limitations.** No indemnification shall be provided unless the person to be indemnified is successful on the merits in defense of the action or proceeding or unless, irrespective of the outcome of any related legal proceeding, such person is specifically determined to have acted in good faith and in the reasonable belief that his or her actions were in the best interests of the Co-op. If such determinations are not made in a legal proceeding related to the claim, they may be made by a quorum of directors who were not parties to the action or proceeding or by independent legal counsel selected by such quorum. If not made or able to be made by either, such determinations shall be made by independent legal counsel selected by active member-owners. In any action or proceeding, by or in the right of the Co-op, or in which such person is charged with receiving an improper personal benefit, indemnification shall be provided only as to reasonable expenses and only if the person is not adjudged liable to the Co-op.
- 6.3 Payments and Insurance.** Indemnification payments and advances of expenses shall be made only in such increments and at such times as will not jeopardize the ability of the Co-

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op to pay its other obligations as they become due. All such payments made shall be reported in writing to active member-owners with, or before, the notice of the next meeting of active member-owners. The Co-op may purchase and maintain insurance on behalf of its directors and officers against any liabilities and expenses related to their position with, or service on behalf of, the Co-op irrespective of whether the Co-op could have indemnified them under this Article against such liabilities and expenses.

## Article VII. Capitalization

**7.1 Cooperative Operation.** The Co-op shall be operated for the mutual benefit of its active member-owners, who shall patronize the Co-op. No active member-owner or lifetime member shall have more than one vote regardless of how many shares he or she owns. The property rights and interest of the active and inactive member-owners shall be unequal and shall be determined by their capital investments resulting from the purchase of shares (see Article II and 8.2) and from retained patronage refunds (see 9.5).

**7.2 Capital.** The Co-op may establish any, or all, of the following vehicles for capitalization:

- A. Earnings retained from each year's operations.
- B. Sale of shares (see Article II and 8.2).
- C. Annual patronage refunds retained in active and inactive member-owners' equity accounts (see 9.5).

As equity, the above capital vehicles are subordinate to all debt of the Co-op.

**7.3 Disposition of Property.** In accordance with New Mexico State Statute 53.4-21.1 and the Articles of Incorporation of the Silver City Food Cooperative Article V, item B; a substantial portion of Silver City Food Cooperative property shall be defined as greater than 75% of total fixed assets, including current land or buildings at appraised value, and capital equipment at current book value.

## Article VIII. Member Equity

**8.1 Fiduciary Responsibility.** The board of directors shall oversee the Co-op's member equity in a way that preserves and builds upon the Co-op's financial position while also allowing for returns of member equity as, and when, the Co-op has the financial strength to return equity.



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- 8.2 Equity Accounts.** To meet the capital needs of the Co-op, an active member-owner is required to purchase at least one share annually. The board of directors shall set the amount of the annual share price as it deems appropriate. The active member-owner's equity payment for purchase of any shares shall be credited in the financial records of the Co-op to an equity account in the name of the active member-owner and a certificate shall be issued in the active member-owner's name. Active and inactive member-owners' equity accounts shall not be entitled to a dividend or other return on investment.
- 8.3 Return of Equity Investments.** The board, in its sole discretion, may return equity investments on an individual or a group basis.
- A. An individual's cumulative share investments may be returned upon request of said individual and approval by the board. The amount returned, if any, shall be determined by the board and shall be subject to the setoff of any sum, however arising, which may be due and payable to the Co-op by said individual; the amount returned may also be subject to a processing fee.
- B. The board may return equity investments on a group basis, starting with the oldest investments, treating investments made each year as a group, and returning investments to each group in the same proportion for each active and inactive member-owner in that group.

## Article IX. Patronage Refunds

- 9.1 Ascertainment of Net Savings.** The receipts of the Co-op during each year shall be used first for the payment of all its operating expenses, including without limitation, employee compensation and benefits, taxes, maintenance, repairs, upkeep, replacement, insurance, interest, and payment of any other obligations of the Co-op as they become due. The balance shall be considered as the net savings of the Co-op.
- 9.2 Application of Net Savings.** At the end of each fiscal year, the Co-op shall comply with NMSA 53-4-31 and the board of directors shall: (a) place not less than 10% of the total net savings in a surplus fund until such time as the fund shall equal 50% of the paid-up capital, (b) set aside a portion of total net savings for capital investments, and (c) set aside up to 5% of the total net savings for educational purposes. Any remaining net savings shall be allocated in the form of patronage refunds at the same uniform rate to active member-owners, inactive member-owners, and a general fund for nonmember patrons. Net savings shall not be used for any other purpose without the prior consent of the active member-owners.
- 9.3 Distribution Obligation.**
- A. The net savings of the Co-op attributable to the patronage of active and inactive members may be allocated among those member-owners as patronage refunds and shall be allocated at the same uniform rate in proportion to their patronage and in such a manner

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and at such a time as to constitute patronage refunds within the meaning of federal income tax law.

- B. Once allocated, at least 20% of each annual patronage refund shall be paid in cash or merchandise credits or a combination of both, as determined by the board of directors and the balance shall be recorded on the books of the Co-op as patronage retains, all of which shall be described in the patronage refund notices sent to active and inactive member-owners. The board of directors shall determine the exact proportion of cash and retains.

- 9.4 **Consent of Active and Inactive Member-Owners.** By obtaining or retaining membership in the Co-op, each active or inactive member-owner 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 of net savings in the taxable year in which such notice is received.
- 9.5 **Retention.** The board shall assess the reasonable capital needs of the Co-op and may retain a portion of patronage refunds for these purposes. Retained patronage refunds shall:
  - A. Be credited to active and inactive member-owner equity accounts in the names of recipient active or inactive member-owners.
  - B. Be offset by amounts otherwise due and payable to the Co-op by said member-owner.
  - C. Accrue no monetary return on investment.
  - D. Not be transferable, except to the Co-op as provided in 2.9 and 2.10.D.
- 9.6 **Redemption.** The board, in its sole discretion, may redeem retained patronage refunds when the retained refunds are no longer needed for capital purposes or under compelling circumstances. Such retained patronage refunds shall be redeemed on a group basis, starting with the oldest retained patronage refunds, treating retained patronage refunds made each year as a group, and returning retained patronage refunds to each group in the same proportion for each active and inactive member-owner in that group.
- 9.7 **Net Losses.** In the event the Co-op shall incur a net operating loss in any fiscal year, the portion of such loss attributable to the patronage of active and inactive member-owners may be carried back and forward to offset income of the same character in prior and subsequent years as required or permitted under federal income tax law.
- 9.8 **Nonmember Patronage.** In the case of nonmember patrons, a proportionate amount of patronage refunds shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon an individual's request within 90 days of the Co-op's declaration of patronage refunds. Said individual must present evidence of the amount of his or her patronage for the past fiscal year at the time of his or her request. The amount of patronage refunds so allocated shall be credited to said individual as payment towards the purchase of a share required for membership. If said individual chooses to become a member-owner and complies with the provisions for admission to membership in 2.3, any extra patronage refund allocation over the cost of a share shall then be

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distributed to said individual in the same proportion as it was to other active and inactive member-owners. If said individual does not choose to become a member-owner, then all patronage refunds available to said individual become part of the Co-op's general fund.

- 9.9 Disposition of Unclaimed Patronage Refunds.** If any active or inactive member-owner has not claimed the cash portion of his or her patronage refund within 90 days of its issue, then the entire amount of the refund (cash and retained portions) allocated to said member-owner becomes part of the Co-op's general fund.

## Article X. Rules and Procedures for Ceasing Operations

The Co-op is organized as a cooperative owned by its active and inactive member-owners. In the event the Co-op goes out of business, all debts shall be paid, and all assets liquidated. Any surplus shall be distributed in conformity with the Articles of Incorporation, these bylaws, and requirements of Section 53-4-36, New Mexico Statutes Annotated, 1978 Compilation, or the corresponding provision of any future New Mexico Statute.

## Article XI. Interpretation and Amendment of Bylaws

- 11.1 Interpretation.** The board of directors shall have the responsibility to interpret these bylaws, apply them to particular circumstances, and adopt policies in furtherance of them, provided that all such actions are reasonable and consistent with these bylaws.
- 11.2 Severability.** In the event that any provision of these bylaws is determined to be invalid or unenforceable under any statute or rule of law, then such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or rule of law without affecting the validity or enforceability of any other provision of these bylaws.
- 11.3 Amendment.** These bylaws shall be adopted, amended, or repealed by a majority vote of members voting.

### Certification

These bylaws were amended by a majority vote of the member owners of the Silver City Food Cooperative on this 28<sup>th</sup> day of August, 2019.

  
Laurinda Anderson, President

Attest:

  
Shanti Ceane, Secretary