



Ypsilanti Food Cooperative

Bylaw Revision Proposal 2021

OVERVIEW

After a thorough review by our General Manager, the bylaws subcommittee, a member-volunteer, and the full Board of Directors, the Board has voted unanimously to propose a number of changes to the Ypsilanti Food Cooperative bylaws. We have also worked with a Co-op consultant and a group of lawyers who are familiar with the state of Michigan laws we are incorporated under. We are proposing these changes to:

- Provide for broader investments in the Co-op, by establishing how the Co-op may allocate patronage profits to member-owners and retain them for investment in the Co-op, and to allow the Co-op to offer nonvoting investment certificates
- Clarify the status and rights of member-owners who have not recently patronized the Co-op
- Ensure our bylaws conform to state and federal law, and continue to serve our organization.

DETAILED DESCRIPTION OF PROPOSED BYLAWS CHANGES

This section provides a description of proposed bylaw changes, by listing the most significant changes, the reasons for the changes, and the text of the corresponding sections in the current and proposed bylaws. It is not an exhaustive account of every single edit in the proposed bylaws, but meant to be a guide which gives an overall understanding of the proposed changes and where to find the modified sections. If there is any disagreement between the bylaw quotations here and the separate full text of the proposed bylaws, the error is in this summary.

1: ORGANIZATION AND DEFINITIONS

- Incorporation:
 - Currently (1.1):

- of the co-op, irrespective of race, color, creed, gender, gender expression, sexual orientation, age, marital status, military status, disability handicap, national origin or social or political beliefs."
 - Reason for change:
 - The inclusivity language is updated to be completely inclusive of all people.
- On being a member "in good standing":
 - Currently (3.3):
 - "The term member and member owner are used interchangeably in this document. A member owner must be in good standing to enjoy the benefits of membership in the co-op."
 - Proposed (3.4):
 - "A Member-owner must be in good standing to enjoy the benefits of Member-ownership in the co-op. In order to be considered to be in good standing, a Member-owner must maintain their Member-owner Capital Account (fairshare), inform the co-op of any change in their status that would impact their Member-ownership, and patronize the co-op on a regular basis. By applying for Membership, each Member-owner agrees to abide by these Bylaws and by regulations and policies established by the Board of Directors from time to time."
 - Reason for change:
 - In the current bylaws, there is no clear definition of being a member-owner "in good standing". The proposed changes clarify the meaning of "in good standing", which the Board felt was important because there are now a larger number of co-op members who have moved away or no longer patronize the co-op on a regular basis.
- On discounts for volunteering:
 - Currently (3.2):
 - "Member owners of the co-op who do volunteer work for the co-op may earn an extra discount on purchases at the co-op. The amount of the discount shall be determined by the Board and will be explained further in the co-op's Policies."
 - Proposed (3.6):
 - "Member-owners of the co-op who are in good standing may participate in various activities and committee work as volunteers."
 - Reason for change:
 - The Board believes the best way to remove any ambiguity as to our adherence with labor laws, such as the minimum wage, is to remove the inclusion of "an extra discount on purchases" for volunteering from the bylaws. Member-owner participation in activities and committee work is valued and explicitly included.

- Termination of membership:
 - Currently (3.13):
 - "Any member owner who has not patronized the co-op for a period of two years may have his or her membership terminated. Patronizing consists of shopping at the co-op or contributing to said member owner's Member Capital Account. The member owner will be sent written notice of the terminating membership, and the status of his or her Member Capital Account. If the member owner fails to respond to the notice before the next general membership meeting, his or her membership will be terminated. If the member owner fails to respond to the notice and claim his or her Member Capital refund within five years from the date of the notice, that member owner shall have no further rights to his or her Member Capital Account. Any of the forfeited Member's Capital may be added to the general funds of the co-op."
 - Proposed (3.10):
 - "Member-ownership may be terminated voluntarily by a Member-owner at any time upon notice to the co-op. A Member-owner will be deemed to have resigned from the co-op if mailings by the co-op to such Member-owner are returned as "undeliverable," "addressee unknown," "not forwardable," or with a similar designation. The Board may terminate the membership of a Member-owner if the Member: (i) fails to patronize the co-op to an extent and within a specific period of time as determined by the Board, or (ii) is delinquent in maintaining their Member Capital Account."
 - Reason for change:
 - The current bylaws spell out quite specifically, using the language "will", a process for termination of status for member-owners who have not been patronizing the co-op for a period of two years. The Board believes the process used should be set by board policy, rather than spelled out explicitly in the bylaws in order to provide flexibility considering the larger number of co-op members who have moved away or no longer patronize the co-op on a regular basis. The details about refund of the Member Capital Account are redundant based on the newly proposed section 8.
- In case of death:
 - Currently (none)
 - Proposed (3.14):
 - "In the case of a member-owner's death, the estate or designated shopper may request a refund or a transfer of the member-owner's Member Capital Account. They must show documentation that the member-owner is deceased, and fill out a form requesting the refund, transfer or donation of the account to the co-op."
 - Reason for change:

- To clarify the process for return of member capital in the case of a member-owner's death.

4: MEETINGS OF MEMBER-OWNERS

- Notification of Annual and General Membership meetings:
 - Currently (4.3):
 - "Written notice of the annual and regular general membership meetings shall include date, time, place, and purposes and shall be posted on the co-op premises at least 15 days prior to the meeting and mailed or emailed to each member owner at least 10 days prior to the meeting."
 - Proposed (4.3):
 - "Written notice of the annual and other general Member-ownership meetings shall include date, time, place, and purposes and shall be posted on the co-op premises at least 15 days prior to the meeting and mailed, emailed, or personally delivered to each Member-owner and associate Member-owner at least 10 days prior to the meeting but not more than 60 days prior to the meeting. Attendance of a Member-owner at a meeting constitutes a waiver of notice of the meeting, except where the Member-owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened."
 - Reason for change:
 - The proposed changes make rules for meeting notices the same for annual and general membership meetings as they are for special membership meetings - at least 10 days prior, but no more than 60 days prior.
- Requesting Special Membership meetings:
 - Currently (4.4):
 - "A special general membership meeting may be called by either (a) a petition signed by 10% of the membership or 50 member owners, whichever is smaller, or (b) four or more members of the Board. The purpose of the meeting shall be clearly stated in the petition. The completed petition shall be presented to the Board, who shall certify the validity of the signatures on the petition and arrange a date, time, and place for the meeting. Only the business issues stated in the purpose of the meeting on the petition may be considered at the special meeting."
 - Proposed (4.4):
 - "A special general Member-ownership meeting may be called by a petition signed by 10% of the Member-owners, or by two-thirds of the Board. The purpose of the special general Member-ownership meeting shall be clearly stated in the petition. The completed petition shall be presented to the Board, who shall certify the validity of the signatures on the petition and arrange a date, time, and place for the meeting. Only the

business issues stated in the petition may be considered at a special general Member-ownership meeting."

- Reason for change:
 - The Board proposes raising the threshold required for a petition for a special general membership meeting by removing the minimum of 50 member-owners. Michigan law requires such a petition be granted when requested by 10% of the members, but a smaller number may be specified in the bylaws. The Board also proposes raising the number of board members required to request a special general membership meeting from 4 to two-thirds, which means five out of the seven board members are required to request the meeting.
- Quorum at general membership meetings:
 - Currently (4.6):
 - "A quorum at any general membership meeting shall be 25% of the eligible voting membership or 25 members, whichever is smaller."
 - Proposed (4.4):
 - "A quorum at any general Member-ownership meeting or for any vote of the Member-owners shall be 10% of the eligible voting Member-ownership or 50 voting Member-owner, whichever is smaller."
 - Reason for change:
 - Michigan law requires that "unless the articles or bylaws provide a greater percentage or number, a quorum shall be 10% of the members or 50 members, whichever is less." The proposed changes bring our bylaws into agreement with the law.
- Actions without meeting:
 - Currently (none)
 - Proposed (4.10):
 - "Any action required or permitted by law to be taken at any meeting of the Member-owners may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken, is signed by the minimum number of voting Member-owners that would be necessary to authorize or take action at a meeting at which all voting Member-owners were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those Member-owners who have not consented in writing. "
 - Reason for change:
 - Michigan law allows for actions to be taken without meeting if consent in writing is signed by the minimum number of voting Member-owners that would be necessary to authorize or take action at a meeting at which all voting Member-owners were present and voted. This would most likely only be necessary in some emergency situation.

5: AMENDMENTS AND OTHER CORPORATE ACTIONS

- Approving amendments:
 - Currently (5.2):
 - "An amendment of the articles of incorporation; an amendment of these bylaws that alters member voting rights or member capital (such as Bylaws 3.3, 3.6, 3.7, and 3.9–3.13); or any corporate action resulting in merger or consolidation, in disposition of all or substantially all of the assets of the co-op, or in dissolution of the co-op:
 - a) shall be proposed by a two-thirds majority vote of the Board members currently serving or by 10% or more of the eligible member owners; and
 - b) shall be voted on at a special general membership meeting (if the proposal meets the requirements of Bylaw 4.4) or at any general membership meeting. Written notice of either type of meeting must meet the requirements of Bylaw 4.5; and
 - c) shall be adopted by a majority of the eligible voting member owners in attendance at the meeting."
 - Proposed (5.2):
 - "An amendment of the articles of incorporation, an amendment of these bylaws that alters Member-owner voting rights or Member-owner capital, or any corporate action resulting in merger or consolidation, in disposition of all or substantially all of the assets of the co-op, or in dissolution of the co-op:
 - a) shall be proposed by a two-thirds majority vote of the members of the Board or by 25% or more of the eligible Member-owner-owners; and
 - b) shall be voted on at a duly called Member-ownership meeting; and
 - c) shall be adopted by a majority of the eligible voting Member-owners in attendance at the meeting."
 - Reason for change:
 - Raises the threshold number of members from 10% to 25% that must petition for amendments that "alters Member-owner voting rights or Member-owner capital, or any corporate action resulting in merger or consolidation, in disposition of all or substantially all of the assets of the co-op, or in dissolution of the co-op:" The number of members of the Board which may propose such changes is unchanged.

6: BOARD OF DIRECTORS

- Requirements for directors:
 - Currently (6.4):
 - "To qualify, each nominee to the Board shall:
 - a) Be a member owner of the co-op in good standing according to Article 3 of these By-laws.
 - b) ..."
 - Proposed (6.3):
 - "To qualify, each nominee to the Board shall:
 - a) Be a voting Member-owner of the co-op in good standing according to Article 3 of these bylaws;
 - b) ..."
 - Reason for change:
 - Clarify that board members must be voting member-owners. This explicitly excludes non-voting members, such organizational members.

7: MEETINGS OF THE BOARD OF DIRECTORS

- No proposed changes

8: FISCAL POLICIES

- Currently (3.4):
 - "Member owners of the co-op are entitled to a discount on purchases at the co-op or receive a patronage rebate. The amount of this discount or rebate shall be determined by the Board. "
- Proposed (All of section 8)
 - See the proposed bylaws for the full text.
- Reason for change:
 - This entire section of the bylaws is newly added. The most closely related current bylaw is 3.4 on (which is still included as 3.5), stating that member-owners are entitled to discounts and patronage dividends.
 - These bylaws are added to establish the ways in which the co-op may provide members with a patronage dividend and raise capital.
 - Patronage dividends are envisioned in the current bylaws (called a "patronage rebate") but it is not explicit how the co-op should handle them. To establish the patronage dividend program and allow the Board to make policies regarding it in the future, the Board believes it is to the benefit of the co-op that such bylaws are developed and approved.
 - These bylaws explicitly give the Board the role of determining how to distribute patronage dividends to Members, and to retain allocated capital in Member-owners' Capital Accounts, and to allocate losses to Member-owners' Capital Accounts, depending on the annual Net Operating Profits and the best interests of the co-op.

- The co-op is also explicitly given the ability to offer "nonvoting investment certificates" that pay "interest or dividends" in order to raise capital, according to terms and requirements established by the Board.
- Significant details:
 - (8.2) "Net Operating Profits may be distributed annually to Member-owners as patronage dividends, in proportion to their patronage-source business..."
 - (8.3) "Patronage dividends may be distributed in cash, qualified or non-qualified written notices of allocation, non-voting certificates of equity, merchandise credits, other property, or any combination of the above. The Board will annually determine the manner of making patronage dividends and any related matters."
 - (8.8, 8.9): "The co-op may redeem capital allocated to Member-owner's accounts in whole or in part, if the Board determines that the financial condition of the co-op would not be impaired by doing so. ..."
 - (8.10): "An operating loss may be apportioned among the Member-owners during the year of loss so that the loss will, to the extent practicable, be borne by those Member-owners with respect to the loss year on an equitable basis..."
 - (8.15): "Subject to compliance with applicable state and federal securities laws, in addition to Member-owner capital described in this Article and Member-owner loans, the co-op may offer to Member-owners or to non-Member-owners any form of nonvoting investment certificate or bond that bear interest or dividends, at such times, on such terms and subject to such requirements as established by the Board."

9: INDEMNIFICATION

- Currently (none):
- Proposed (9.1):
 - "The co-op shall indemnify, to the extent and in the manner permitted by Act 162, Public Acts of 1982 (the "Act") any person who is or was a Director, Member-owner, or Officer of the co-op for expenses (including attorney's fees), judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding, if such arose by reason of the person being a Director, Member-owner, or Officer. The co-op may purchase and maintain insurance on behalf of all Directors, Member-owners, and Officers which insures against any such liability to the extent available and to the extent permitted by the Act."
- Reason for change:
 - It is typical that an organization, to extent allowed by law, provides insurance to board members for executing the role, but the current bylaws do not explicitly establish this for the co-op. The Board proposes adding this language.

10: DISSOLUTION

- Currently (8.1):
 - "Upon dissolution, the assets of the co-op shall be distributed in the following manner and order:
 - a) By paying or providing for payment of its debts and expenses. b) By redeeming member capital by paying to each member in cash or other property the lesser of the member's Member Capital Account or the member's pro-rata share of total member capital of the co-op determined according to the ratio each member's Member Capital Account bears to total member capital. c) The membership shall name a non-profit organization or organizations to receive any surplus left after all obligations have been paid.
- Proposed (10.1):
 - "Upon dissolution, the assets of the co-op shall be distributed in the manner prescribed in Section 1183 of the Act."
- Reason for change:
 - To conform to Michigan law, the Board proposes simplifying the language to state that dissolution would proceed as prescribed by law.