

[As approved by the board 11/06/14, amended 12/15/15]

## **BYLAWS OF THE GARDINER FOOD CO-OP**

### Article I

#### Organization

Section 1.1 - **Status.** Gardiner Food Co-op (referred to in these bylaws as "the Co-op") is a cooperative association incorporated under the Consumer Cooperative law of the State of Maine.

Section 1.2 - **Purpose and mission.** The Co-op is organized to operate a retail grocery store for the primary and mutual benefit of its member-owners as patrons of its services. The Co-op is organized and shall be operated exclusively on a cooperative and nonprofit basis. The mission of the Co-op is to strengthen the edible economy in the greater Gardiner area by supporting a food system that values the well-being of people, the planet, and the local economy and to provide a vibrant community space in which to meet, share and learn.

Section 1.3 - **Cooperative principles.** The Co-op shall be operated in accordance with the cooperative principles adopted by the 1995 General Assembly of the International Co-operative Alliance, including: (i) voluntary and open membership; (ii) democratic member control; (iii) member economic participation; (iv) autonomy and independence of the Co-op; (v) providing education, training and information; (vi) cooperation with other cooperatives; and (vii) concern for community.

Section 1.4 - **Nondiscrimination.** The Co-op shall not arbitrarily discriminate on the basis of race, nationality, religion, age, gender, gender identity or expression, sexual orientation, physical or mental abilities, or political affiliation.

### Article II

#### Member-ownership

**Section 2.1 - Eligibility and admission.** Member-ownership in the Co-op shall be voluntary and open to any individual eighteen years of age or older or organization operated on a cooperative or nonprofit basis whose purpose is to make purchases from the Co-op for the use or consumption of the applicant and to accept the responsibilities of member-ownership. Applicants will be admitted to member-ownership upon submitting required information and complying with the share purchase requirement. On or before admission to member-ownership each member-owner shall be provided a copy of these bylaws. If within six months after the date of application any doubts arise concerning eligibility, including doubts as to the apparent intent of the applicant, the application for member-ownership shall be subject to approval by the Board.

**Section 2.2 - Share purchase requirement.** Member-owners shall be required to purchase upon application for member-ownership one share, or three-tenths share in the case of low-income persons on public assistance, and fifteen-hundredths share each year thereafter. Member-owners who are able and willing to provide further financial support may purchase further shares. All purchases of shares shall be at their par value of one hundred dollars per share. In the case of low-income applicants and others who express a need to do so, the share purchase requirement may be paid in installments as determined by the board of directors.

**Section 2.3 - Rights.** Except as otherwise provided in these bylaws, an individual member-owner or any member of his or her household and an organizational member-owner through any of its agents shall be entitled to make purchases from the Co-op on terms generally available to member-owners. An individual member-owner and the authorized agent of an organizational member-owner shall be entitled to participate in the governance of the Co-op as set forth in these bylaws. Except as otherwise required by these bylaws, persons who have subscribed for but not fully paid the share purchase requirement shall be considered member-owners.

**Section 2.4 - Responsibilities.** Each member-owner shall keep reasonably current in payment of the share purchase requirement, shall make purchases from the Co-op on at least an occasional basis, and shall notify the Co-op of any change to the name or address of the member-owner.

Section 2.5 - **Inactive status.** A member-owner who becomes delinquent by one month in meeting the share purchase requirement, or who fails to patronize the Co-op for a period of one year, shall be placed into inactive status. His or her participation rights shall then be suspended. A member-owner in inactive status may attain good standing upon recommencing payment of financial obligations or reestablishing a patronage relationship with the Co-op. Except as otherwise provided herein, references in these bylaws to the rights and entitlements of member-owners shall be understood to refer to member-owners in good standing.

Section 2.6 - **Access to information.** Member-owners shall be provided reasonably adequate and timely information as to the organizational, operational and financial affairs of the Co-op.

Section 2.7 - **Settlement of disputes.** In any dispute between the Co-op and any of its member-owners or former member-owners which cannot be resolved through informal negotiation, it shall be the policy of the Co-op to prefer the use of mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement. Neither party with a grievance against the other shall have recourse to litigation until the matter is submitted to mediation and attempted to be resolved in good faith.

Section 2.8 - **Limited transferability.** Upon termination of member-ownership, or at any time as to shares held in excess of the minimum amount, the Co-op will upon request of the member-owner transfer the carrying value of ownership rights and interests, including shares and deferred patronage dividends, net of any authorized offsets, to the credit of another person designated by the requesting member-owner or a person legitimately acting for the member-owner, provided that the transfer involves no element of profit and that the person so designated is or becomes a member-owner of the Co-op. Member-ownership rights and interests may not otherwise be sold, assigned, or transferred. Any attempted transfer contrary to this section shall be wholly void and shall confer no rights on the intended transferee.

Section 2.9 - **Withdrawal and expulsion.** A member-owner may withdraw at any time upon notice to the Co-op. A member-owner may be expelled by vote of member-

owners for cause after being provided at least ten days notice of the charges and an opportunity to respond in person or in writing or by counsel. Upon termination of member-ownership, all rights and interests in the Co-op shall cease except for rights to redemption of capital pursuant to Article VII of these bylaws.

### Article III

#### Meetings of Member-owners

Section 3.1 - **Annual meeting.** An annual meeting of member-owners shall be held within four months after the close of each fiscal year to receive reports on operations and finances of the Co-op, to elect directors, and to conduct such other business as may properly come before the meeting.

Section 3.2 - **Special meetings.** Special meetings of member-owners may be called by the Board and shall be called by the Secretary as soon as practicable after the receipt of petitions signed by not less than ten percent of all member-owners, such petitions stating any proper business to be brought before the meeting.

Section 3.3 - **Notice.** Written notice of the time, place, and purpose or purposes of the meeting shall be provided to each member-owner not less than twenty nor more than fifty days before the date of the meeting. Any business conducted at a meeting other than that specified in the notice of the meeting shall be of an advisory nature only.

Section 3.4 - **Record dates.** Unless otherwise determined by the Board, only persons who are member-owners at the close of business on the day immediately preceding the date of distribution of notices shall be entitled to notice and to vote with respect to the subject of such notice.

Section 3.5 - **Quorum.** As to election of directors, member-owners present by ballot or in person shall constitute a quorum for the transaction of business on this issue. As to all other issues presented to a vote of member-owners, the presence by ballot or in person of fifty member-owners or five percent of all member-owners, whichever is

lessor, shall be necessary and sufficient to constitute a quorum for the transaction of business at a meeting of member-owners.

Section 3.6 - **Voting.** Each member-owner shall have one and only one vote on each matter submitted to a vote of member-owners irrespective of the number of shares owned or subscribed for. Voting by proxy shall not be permitted. Unless otherwise required by law or by these bylaws, issues shall be decided by a simple majority of votes cast except where one or more choices are to be made from several alternatives, in which case the alternative(s) receiving the most votes shall be considered approved. In-person meetings of member-owners shall be conducted generally in accordance with reasonable and accepted rules of parliamentary procedure.

Section 3.7 - **Voting by written ballot.** Member-owners may vote by written ballot delivered to the Co-op unless otherwise determined by the Board. Ballots, together with the exact text of an issue for decision shall be included in the notice of the meeting to which they relate. Ballots shall be submitted in a manner that reasonably secures the privacy of member-owners and the integrity of the voting process. Casting of a written ballot shall be equivalent to presence in person at a meeting with respect to the subject of the written ballot and voting by ballot shall for all purposes be considered a meeting of member-owners.

Section 3.8 - **Issues submitted by member-owners.** Notices of a meeting of member-owners shall include any proper issue submitted by petition of not less than five percent of all member-owners. Petitions must be received by the Co-op not less than fifteen days before the issuance of notice of the meeting at which they are to be presented to a vote of member-owners.

## Article IV

### Board of Directors

Section 4.1 - **Powers and duties.** Except as to matters reserved to member-owners by law or by these bylaws, the business and affairs of the Co-op shall be managed under the direction and supervision of the Board of Directors (sometimes referred to

in these bylaws as "the Board"). The duties of the Board shall include, but not be limited to, overseeing the operations and finances of the Co-op, establishing policies to govern operational decisions, engaging a general manager and monitoring and evaluating his or her performance, and assuring that the purpose and mission of the Co-op are properly carried out.

**Section 4.2 - Number and qualifications.** The Board shall consist of not less than five nor more than eleven individuals, as determined by the Board or at a meeting of member-owners. To be qualified as a director a person shall be a member-owner and shall not have any apparent personal agenda with respect to the Co-op, antagonism against the Co-op, disinclination to act in the best interests of the Co-op, or overriding conflict of interest with the Co-op. No more than three employees, or 30% of the board of the Co-op shall serve as a director at any one time. The General Manager will automatically be a member of the board of directors, but he/she will be non voting.

**Section 4.3 - Nominations, election and terms.** Candidates for director positions may be nominated by the Board, by a nominating committee, or by petitions signed by at least twenty-five member-owners and submitted to the Co-op at least seventy-five days before the date of the annual meeting. All directors shall be elected by member-owners. Unopposed candidates must receive the votes of a majority of those voting to be considered elected. Periodically as may be necessary directors shall be elected for specific one-, two-, or three-year terms in order to assure that as nearly as may be possible one-third of the terms expire in each year. At other times directors shall be elected for terms of three years. Directors shall hold office until their successors are elected or until their offices are sooner terminated in accordance with these bylaws.

**Section 4.4 - Compensation.** Directors may be compensated only as approved at a meeting of member-owners. Directors may be reimbursed for reasonable expenses incurred in connection with the performance of authorized business of the Co-op.

**Section 4.5 - Standards of conduct.** Directors shall be responsible at all times for discharging their duties in good faith, in a manner that they reasonably believe to be

in the best interests of the Co-op and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

Section 4.6 - **Conflicts of interest.** Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest, either direct or indirect, in any matter under consideration by the Board or by a committee exercising any authority of the Board, and such interest shall be made a matter of record in the minutes of the meeting. A director or member of a committee having such an interest shall be permitted to make a statement with regard to the matter but shall not be permitted to participate in the discussion or decision of the matter.

Section 4.7 - **Indemnification.** The Co-op shall indemnify its directors and officers as required by, and may indemnify its directors and officers as permitted by, state law. Indemnification payments shall be made on a priority basis but only in such increments and at such times as will not jeopardize the ability of the Co-op to pay its other obligations as they become due. Any indemnification payments or advances shall be reported to member-owners not later than the next-scheduled meeting of member-owners.

Section 4.8 - **Committees.** The Board may appoint special or standing committees to advise the Board or to exercise such authority as the Board shall designate. Such committees shall include at least one director. The appointment of any committee shall not relieve the Board of its responsibilities in the oversight of the Co-op.

Section 4.9 - **Termination.** The term of office of a director may be terminated prior to its expiration in any of the following ways: (i) voluntarily by a director upon notice to the Secretary; (ii) automatically upon failure to meet qualifications being recognized by the Board after fair notice to the accused director and an opportunity to respond in person or in writing; and (iii) with or without cause by action of member-owners. A director shall be presumed to have resigned if she or he is absent from two consecutive Board meetings or three meetings in any one-year period, or has repeatedly failed to meaningfully participate in Board meetings, or has flagrantly violated confidences or brought the Co-op into disrepute.

Section 4.10 - **Vacancies.** Any vacancy among directors occurring between annual meetings may be filled by the Board until the next annual meeting of member-owners, at which time member-owners shall elect a director to fill the unexpired term.

## Article V

### Meetings of the Board

Section 5.1 - **Convening.** As far as may be practicable meetings of the Board shall be held no less frequently than once in each month. Meetings not called by the Board may be called by the Chair and shall be called by the Secretary upon request of any three directors.

Section 5.2 - **Notice.** Meetings called by the Board shall require no notice, it being the responsibility of absent directors to inquire as to the time of further scheduled meetings. Other meetings shall require written notice to be sent to all directors at least three days before the date of the meeting, including transmission by a telecommunications device. Notices of meetings of the Board shall also be posted in a timely manner and in a conspicuous place in the Co-op's store, but the inadvertent failure to do so shall not affect the validity of the meeting.

Section 5.3 - **Waiver of notice.** Any notice of a meeting required under these bylaws may be waived in writing at any time before or after the meeting for which notice is required. A person who attends a meeting other than for the sole purpose of objecting to the adequacy of the notice shall be deemed to have waived any objection to the notice.

Section 5.4 - **Quorum.** The presence in person, including by any means of communication whereby all directors participating may simultaneously hear each other during the meeting, of a majority of directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board.

Section 5.5 - **Decision making.** Decisions at meetings of the Board shall be made by consensus. A decision by consensus shall be considered the affirmative vote of all directors present except those who express an objection or concern but stand aside. If consensus cannot be reached on a particular matter after diligent effort to do so, such issue shall be decided by a two-thirds majority vote.

Section 5.6 - **Action without a meeting.** Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting only if a written consent to the action is signed by all directors and filed with the minutes of meetings.

Section 5.7 - **Open meetings.** Meetings of the Board and all committees shall be open to member-owners, except that sessions of a meeting may be closed as to matters of a confidential or sensitive nature. A portion of each meeting of the Board shall be set aside for member-owners who are present to express their concerns on any matter relevant to the Co-op.

## Article VI

### Officers

Section 6.1 - **Designation and qualifications.** The principal officers of the Co-op shall consist of Chair, Vice Chair, Secretary and Treasurer. Principal officers shall be directors. The Board may designate other officers or assistant officers.

Section 6.2 - **Election, terms and removal.** Officers shall be elected by the Board at its first meeting following the annual meeting of member-owners. Officers shall serve for terms of one year or until election of their successors. Officers may be removed and replaced by the Board at any time whenever the best interests of the Co-op would thereby be served.

Section 6.3 - **Duties.** In addition to signing or attesting to formal documents on behalf of the Co-op as authorized by the Board, officers shall have the following duties and such additional duties as are determined by the Board:

(a) The Chair shall be responsible for coordinating the activities of the Board, assuring the orderly conduct of all meetings, maintaining effective communication with the general manager, and shall present a report of operations at the annual meeting of member-owners.

(b) The Vice Chair shall be responsible for performing the duties of the Chair in his or her absence or disability and assisting the Chair in the performance of his or her duties, and shall assure that the Co-op at all times has a properly registered clerk.

(c) The Secretary shall be responsible for the recording and keeping of adequate minutes of all meetings of the Board and of member-owners, overseeing the issuance of notices required under these bylaws, authenticating records of the Co-op, and attending to Board correspondence.

(d) The Treasurer shall be responsible for monitoring the maintenance of financial records, the compilation of financial reports, and the filing of required reports and returns, and shall present a financial report at the annual meeting of member-owners.

## Article VII

### Shares

Section 7.1 - **Issuance and terms.** The Co-op shall issue shares to evidence capital funds provided by member-owners. Shares may be issued only to persons eligible for, and admitted to member-ownership in, the Co-op. Shares shall be issued only at their par value of one hundred dollars per share. Shares shall be entitled to no dividend or other monetary return on capital. The minimum share purchase requirement shall be subject to increase for the reasonable capital needs of the Co-op, provided that such increase applies equally to both existing and newly-admitted member-owners.

Section 7.2 - **Certificates.** The Co-op shall issue certificates to evidence fully-paid shares. Each certificate shall have printed upon it information as to voting rights

being on a one-member-one-vote basis, proxies being prohibited, and transferability being limited. All certificates shall be signed personally or by facsimile by the Chair and the Secretary and shall be numbered and registered by the Co-op. The Co-op may issue a replacement certificate for any share alleged to have been lost, stolen or destroyed without requiring the giving of a bond or other security against related losses.

Section 7.3 - **Redemption.** Upon request following termination of member-ownership, or at any time with respect to shares held in excess of the minimum amount, shares shall be redeemed when replacement capital is provided by other member-owners. Shares shall be redeemable at the lesser of their par value or their net book value less a reasonable processing fee, if any, as determined by the Board. Redemption proceeds shall be subject to offset by amounts due and payable to the Co-op by the member-owner. No redemption shall be made when payment would impair the ability of the Co-op to meet its other obligations as they become due. Reapplications for member-ownership after full or partial redemption of common shares shall be subject to full repayment of redemption proceeds.

## Article VIII

### Patronage dividends

Section 8.1 - **Distribution obligation.** After the end of each fiscal year the realized net savings of the Co-op attributable to the patronage of member-owners shall be allocated among member-owners in proportion to their patronage, in accordance with this article, and in such a manner and at such a time as to constitute patronage dividends within the meaning of federal income tax law. Twenty percent of such allocation shall be distributed by a check accompanying a written notice of allocation to each recipient. Unless otherwise required under federal tax law all of the operations of the Co-op shall comprise a single allocation unit.

Section 8.2 - **Allocations and reductions.** A portion of the realized net savings of the Co-op not attributable to the patronage of member-owners shall be allocated to an educational fund used for teaching cooperation, and a portion may be allocated to

funds for the general welfare of member-owners, both portions being as determined by the Board. Any distributable net savings of such a nominal amount as not to justify the expenses of distribution may, as determined by the Board, be excluded from allocation and distribution. A patronage dividend to which member-owners are entitled may be waived in whole or in part by vote of member-owners.

**Section 8.3 - Consent of member-owners.** By obtaining or retaining member-ownership in the Co-op, each 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 in the taxable year in which such notice is received.

**Section 8.4 - Deferred amounts.** The portion of each allocation not currently paid by check shall be credited to revolving capital accounts in the names of recipient member-owners and shall constitute a reserve fund for the general conduct of the business of the Co-op. Such deferred amounts shall accrue no dividend or other monetary return on capital and may be redeemed when determined by the Board to be no longer needed for their intended purpose. At that time they shall be redeemed in the order of the oldest outstanding amounts and on a pro rata basis among such amounts, except that redemptions shall be payable only to member-owners who are then in good standing or become so within a six-month period of time. Deferred patronage dividends may also be redeemed under compelling circumstances as determined by the Board. They shall be subject to being offset by amounts otherwise due and payable to the Co-op and by assessments resulting from tax audit adjustments.

**Section 8.5 - Net losses.** No portion of a net operating loss realized by the Cooperative shall be allocated to member-owners. The patronage portion of such losses shall be carried forward to offset patronage-sourced income of subsequent years. The nonpatronage portion of such losses shall be carried back and forward to offset nonpatronage-sourced income of prior and subsequent years as required or permitted under federal income tax law.

## Miscellaneous matters

Section 9.1 - **Fiscal year.** The fiscal year of the Co-op shall end on March 31st of each year.

Section 9.2 - **Communication by electronic means.** Unless otherwise required by these bylaws, any notice, consent, ballot, petition, or other document required or permitted by these bylaws may be delivered by electronic means, provided that, in the case where such communication expressly or impliedly requires the signature of the person submitting the communication, means are in place to reasonably assure the authenticity of the signature.

## Article X

### Interpretation and Amendment of Bylaws

Section 10.1 - **Interpretation.** The Board of Directors shall have the power 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.

Section 10.2 - **Sever-ability.** 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.

Section 10.3 - **Amendment.** These bylaws may be amended or repealed only at a meeting of member-owners, provided that the proposed amendments are stated or fully described in the notice of the meeting at which the amendments are to be adopted.

Appendix:

## **EXPLANATION OF PATRONAGE**

### **DIVIDEND CONSENT PROVISION**

Section 8.3 of the Co-op's bylaws relates to when and how patronage dividends are required to be included in the taxable incomes of recipient member-owners. Section 1385(b) of the Internal Revenue Code provides that a patronage dividend shall not be included in the taxable income of a recipient to the extent that such amount "is attributable to personal, living, or family items." This exclusion from taxable income would apply to member-owners whose purchases from the Co-op were for such personal use. To such persons section 8.3 is therefore of no effect. To all other member-owners section 8.3 represents their consent to include the amount of their patronage dividend in their taxable incomes for the year in which they receive their patronage dividend notice and check. This consent would apply to member-owners who are organizations and others whose purchases from the Co-op were for business or income-producing purposes.