

SAMPLE BYLAWS **FOR A WORKER COOPERATIVE**

Prepared by the Green Collar Communities Clinic (GC3) of the East Bay Community Law Center (EBCLC) and by the Sustainable Economies Law Center (SELC) based on Bylaws created by Tim Huet of Arizmendi Association of Cooperatives and adapted by Jenny Kassan of K2 Law Group.

A few things to note about these Sample Bylaws:

1. **About the Explanatory Notes:** These Bylaws are provided for teaching purposes. All Explanatory Notes, contained within brackets, are meant to explain the purpose, meaning, alternatives, or legal background of a Bylaws provision. The Explanatory Notes should be deleted if you use and adapt the Bylaws for your own purposes. They are not meant to be legally enforceable provisions of the Bylaws.
2. **Use These Bylaws With Caution:** Please note that you should not assume these Bylaws are sufficiently thorough or applicable to your cooperative. Please seek the advice of an attorney before adopting Bylaws, and be sure that any Bylaws you adopt are tailored to the specific needs of your cooperative and to the requirements of California law.
3. **These Bylaws Were Written to Adhere to California Law:** Unless otherwise specified, all references to a particular code section or to the “Statute” are to the California Consumer Cooperative Corporations Statute, which is found starting at section 12200 of the California Corporations Code. If you are uncertain about whether you can change provisions of these Bylaws, refer to the relevant section of the Statute, which often sets minimum requirements for meeting procedures, notice, and other matters.
4. **These Bylaws Were Designed for a Collective:** These Sample Bylaws assume that all Members are also on the Board of Directors, also known as a “collective board.” However, a larger cooperative may wish to have a smaller Board of Directors that does not include every Member.
5. **We Are Continually Improving on These Bylaws:** This draft was prepared in May of 2012. Please check our website for updates: <http://www.co-oplaw.org/cooperative-bylaws/>, and let us know if you have any suggestions or find any errors. Thank you!

TABLE OF CONTENTS:

ARTICLE 1 - MEMBERSHIP	3
1.1 CLASSES OF MEMBERS.....	3
1.2 BECOMING A MEMBER.....	3
1.3 ACCEPTANCE OF MEMBERS.....	4
1.4 MEMBERS MAY NOT TRANSFER THEIR MEMBERSHIPS.....	4
ARTICLE 2 - TERMINATION OF MEMBERSHIP	4
2.1 RESIGNATION OF A MEMBER.....	4
2.2 DEATH OF MEMBER.....	5
2.3 EXPULSION OF A MEMBER.....	5
ARTICLE 3 - MEMBER MEETINGS	6
3.1 DISTINCTION BETWEEN MEMBER MEETINGS AND DIRECTOR MEETINGS.....	6
3.2 MEMBER VOTING.....	6
3.3 ANNUAL MEMBERS MEETING.....	7
3.4 SPECIAL MEMBER MEETINGS.....	7
3.5 NOTICE.....	7
3.6 MEMBERS ENTITLED TO NOTICE.....	8
3.7 MEETINGS HELD WITHOUT PROPER NOTICE.....	8
3.8 USE OF WRITTEN BALLOTS AT MEETINGS.....	9
3.9 QUORUM.....	9
3.10 LOSS OF QUORUM AT A MEETING.....	9
3.11 ADJOURNMENT FOR LACK OF QUORUM.....	10
3.12 ADJOURNED MEETINGS.....	10
3.13 ACTION WITHOUT MEETINGS.....	10
ARTICLE 4 - DIRECTOR MEETINGS	10
4.1 DIRECTORS AND BOARD COMPOSITION.....	10
4.2 TERMS OF DIRECTORS.....	11
4.3 DIRECTOR VOTING.....	11
4.4 NOTICE OF BOARD MEETINGS.....	11
4.5 WAIVER OF NOTICE.....	12
4.6 QUORUM.....	12
4.7 LOSS OF QUORUM AT MEETING.....	12
4.8 ADJOURNMENT FOR LACK OF QUORUM.....	12
4.9 ADJOURNED MEETINGS.....	12
4.10 ACTION WITHOUT MEETING.....	12
4.11 RESIGNATION.....	12
4.12 REMOVAL.....	13
4.13 EMPOWERED COMMITTEES.....	13
ARTICLE 5 - DECISION-MAKING PROCESS	14
5.1 MODIFIED CONSENSUS DECISION-MAKING PROCESS.....	14
ARTICLE 6 - OFFICERS	14
6.1 TITLES OF OFFICERS.....	14
6.2 DUTIES OF OFFICERS.....	14
6.3 NOMINATION AND ELECTION OF OFFICERS.....	15
6.4 RESIGNATION OR REMOVAL OF OFFICERS.....	15

ARTICLE 7 – FINANCIAL PROVISIONS	15
7.1 FISCAL YEAR.....	15
7.2 DEFINITIONS.....	15
7.3 ALLOCATIONS.....	17
7.4 PATRONAGE DIVIDENDS.....	17
7.5 MEMBERS’ COVENANT TO DECLARE INCOME FOR TAX PURPOSES.....	17
7.6 DISTRIBUTIONS OF INTEREST ON MEMBER ACCOUNTS.....	18
7.7 PERIODIC REDEMPTION OF MEMBER ACCOUNTS.....	18
7.8 PAYMENT RIGHTS UPON MEMBERSHIP TERMINATION.....	18
7.9 PRIORITY OF PAYMENTS.....	19
7.10 DISSOLUTION DISTRIBUTIONS.....	19
7.11 UNCLAIMED EQUITY INTERESTS.....	19
ARTICLE 8 – CORPORATE RECORDS AND REPORTS	20
8.1 RECORDS REQUIRED TO BE KEPT.....	20
8.2 INSPECTION RIGHTS.....	20
8.3 ANNUAL REPORT.....	20
ARTICLE 9 - INDEMNIFICATION	21
9.1 INDEMNIFICATION.....	21
ARTICLE 10 – BYLAWS CHANGES	21
10.1 BYLAWS CHANGES.....	21
CERTIFICATE OF SECRETARY	21

ARTICLE 1 - Membership

1.1 **Classes of Members.** The Cooperative shall have one class of Members.

[Explanatory Note: A class of members is a group of people or organizations who all have the same specified rights and responsibilities according to the Bylaws. Some cooperatives may have more than one class of members depending on their needs. For example a cooperative may wish to create a class of worker-members and a class of consumer-members.]

- 1.2 **Becoming a Member.** To become a Member of this Cooperative, a person must:
- a. Be a resident of California;
 - b. Pay an Initial Capital Contribution; the amount of the Initial Capital Contribution will be determined by the Board of Directors;
 - c. Work for the Cooperative for 650 hours or six months, whichever period is longer; this period of time is called the “Candidacy Period;”
 - d. Be approved by the existing Members, by means of the process described in Section 1.3; and
 - e. Receive a copy of the Cooperative's Disclosure Statement, Bylaws, and a receipt for payment of the Initial Capital Contribution.

[Explanatory Note: Although the Statute does not require these qualifications for membership, most cooperatives list a set of membership qualifications. Limiting membership to California residents is helpful, because the cooperative might otherwise have to deal with federal securities law issues. Cooperatives are not required by statute to have an initial capital contribution or membership fee, but these kinds of payments are helpful to cover initial start-up and operating costs. If your cooperative does want to require an initial capital contribution or recurring membership fee, the bylaws should provide for it. (See 12400 and 12401).]

- 1.3 **Acceptance of Members.** The application review and approval process for a Prospective Member is as follows:
- a. The Board of Directors or an empowered hiring committee shall receive the membership application from a Prospective Member and shall submit it to the Members for approval.
 - b. The Members shall then decide by the decision-making process described in Section 5.1 whether to approve the application.
 - c. If the application is not approved, the applicant's employment shall be immediately terminated, unless the Members choose to specify a further Candidacy Period to be followed by a second decision of the Members on whether to approve the application.
 - d. Upon approval of the application, and meeting the qualifications listed in Section 1.2, the applicant shall immediately become a Member.
 - e. The Cooperative may waive the Candidacy Period and renew a former Member's Membership immediately by a 75% vote of all the Members.

[Explanatory Note: A cooperative may choose to design its membership application process and approval process in whatever way it chooses.]

- 1.4 **Members May Not Transfer Their Memberships.** No Member may transfer her or his Membership or any right arising from that Membership. Any attempted assignment or transfer of Membership shall be void, and will not confer rights on the intended assignee or transferee.

[Explanatory Note: The Statute generally prohibits transfer of memberships unless the cooperative's articles or bylaws allows for transfers. See 12410.]

ARTICLE 2 – Termination of Membership

2.1 Resignation of a Member.

1. Every Member has the right to resign from the Cooperative.
2. When a Member resigns from the Cooperative his or her Membership will be terminated.
3. To resign from the Cooperative, a Member must provide the Secretary of the Cooperative with a written notice of resignation. The resignation shall become effective immediately without any action on the part of the Cooperative. The individual who resigned from the Cooperative will not be allowed to work for the

Cooperative for one month following voluntary termination of Membership unless her or his Membership is renewed by the Cooperative.

4. If a Member resigns, he or she is still responsible for any charges, dues, or other obligations that the Member owes to the Cooperative. The Cooperative shall still have the right to enforce any such obligation or obtain damages for its breach.

[Explanatory Note: In general, the Statute provides that Members can resign at any time, but the Bylaws may require reasonable notice before the effective resignation date. See 12430.]

2.2 **Death of Member.** A Membership shall immediately terminate upon the death of a Member.

2.3 **Expulsion of a Member.** No Member may be expelled or suspended except according to procedures satisfying the requirements of this section:

- a. A Member may, for any lawful reason, be expelled from the Cooperative by a vote of 75% or greater of the Members at a duly called meeting at which a quorum is present.
- b. The Member must be given 15 days' prior notice of the expulsion, suspension, or termination, and the reasons for that expulsion, suspension, or termination.
- c. The Member shall have an opportunity to be heard, orally or in writing, not less than five days before the effective date of expulsion, suspension, or termination, by a person or body authorized to decide that the proposed expulsion, termination, or suspension not take place.
- d. Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the Member shown on the Cooperative's records.
- e. A Member who is expelled or suspended shall be liable for any charges, dues, or other obligations incurred before the expulsion, suspension, or termination.
- f. The Cooperative may direct a Member whose expulsion is being considered to refrain from conducting business as a Member until the expulsion decision is made, provided the Cooperative pays the Member her or his average weekly wage or compensation – calculated based on the three months preceding the date of the notice given pursuant to this section – until the expulsion decision is made. The Cooperative may also direct a Member whose expulsion is being considered to stay away from the Cooperative's places of business except as necessary to exercise her or his rights under law

[Explanatory Note: The Statute provides that expulsions, terminations, and suspensions must be done "in good faith and in a fair and reasonable manner." They are fair and reasonable if they meet the notice and hearing requirements described in 12431(c). These Sample Bylaws closely follow the language found in 12431(c). The cooperative may only expel a member for a lawful reason, i.e. it cannot be due to discrimination on

the basis of race, national origin, sex, sexual orientation, or another protected class. Furthermore, a cooperative may not expel a member if the expulsion violates other contractual rights.]

ARTICLE 3 – Member Meetings

3.1 *Distinction between Member Meetings and Director Meetings.* All Members are elected Directors of the Board when they become Members. Meetings of the Members in their capacity as Members shall be governed by this Article 3. Meetings of the Members in their capacity as Directors shall be governed by Article 4. Except as required by law or these Bylaws, votes are cast as Directors rather than as Members.

The following acts require voting as Members, rather than as Directors:

- a. Acceptance of Members;
- b. Expulsion of Members;
- c. Election of Directors, if applicable; and
- d. Bylaw changes that would:
 - i. Materially and adversely affect the rights or obligations of Members as to voting, dissolution, redemption, transfer, distributions, patronage distributions, allocations, patronage, dividends, property rights, or rights to repayment of contributed capital;
 - ii. Increase or decrease the number of Members authorized in total or for any class;
 - iii. Effect an exchange, reclassification or cancellation of all or part of the Memberships;
 - iv. Authorize a new class of Memberships;
 - v. Specify or change the maximum or minimum number of Directors or change from a variable number of Directors to a fixed number;
 - vi. Increase the terms of Directors; and
 - vii. Increase quorum for meetings.

[Explanatory Note: These sample Bylaws assume that all Members of the cooperative are also on the Board of Directors. Because the Statute requires that cooperative Members make certain decisions and that Directors make other decisions, it is necessary for a cooperative to clarify in meeting minutes when decisions are being made by Members and when they are being made by Directors.]

3.2 *Member Voting.*

1. Each Member will have one vote on each matter submitted for a vote.
2. If a vote requires that Members cast a written ballot, only Members that have been Members of the Cooperative for more than 10 days prior to the meeting date may be entitled to cast ballots.
3. Cumulative voting shall not be permitted for any purpose.
4. Proxy voting shall not be permitted for any purpose.
5. Unless otherwise specified, all votes shall be conducted using the modified consensus process in Article 5.

[Explanatory Note: See Code Sections 12480 through 12484 for membership voting requirements for cooperatives. Also, the Statute prohibits proxy voting (12405).]

3.3 Annual Members Meeting.

1. The Annual Members Meeting shall be held on the first Thursday in November at 7:00 pm at the Cooperative's main office.
2. At this meeting, the Members shall elect all of the Members to the Board (unless there are fewer than three Members in which case the Members shall elect the number of non-Member Directors required to bring the number of Directors to three). The Members shall also elect Officers and conduct any other proper business.
3. If the bylaws are amended to change from a variable to fixed number of Board Members (e.g., the Members vote to have seven Directors instead of having all Members serve as Directors), Board elections shall be held at the Annual Members Meeting, and these Bylaws shall be amended to provide for reasonable election procedures and procedures for the removal of Directors.
4. If the meeting falls on a holiday it should be held at the same time/place the following business day.

[Explanatory Note: An annual meeting is required. See Code Section 12460(b). While the annual meeting may be held at any time, it may be helpful to hold it close to the time that the annual report must be made available to members. Membership meetings may be held anywhere that is stated in or fixed in the Bylaws; if no place is fixed or stated, the meetings must take place at the main office. See Code Section 12460(a). The annual meeting may be conducted wholly or partly by electronic communication if there is a reasonable opportunity to participate and vote through this means and a record of electronic participation is maintained by the organization. See Code Section 12460(f).]

3.4 Special Member Meetings.

1. Special meetings of the Members for any lawful purpose may be called by the Board, President, Secretary, or by at least 5% of the Members.
2. The procedure for calling a special Members meeting shall be as follows:
 - a. The person(s) requesting the special meeting shall submit a written request to the Cooperative addressed to the attention of the President or Secretary;
 - b. Within 20 days after receipt, the President or Secretary shall cause notice to be given to the Members entitled to vote that a meeting will be held at a time fixed by the Board not less than 35 nor more than 90 days after the receipt of the request.
3. Special meetings shall be held at the principal office of the Cooperative.

[Explanatory Note: This section is governed, in part, by 12461(c).]

3.5 Notice.

1. Whenever the Members are required to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before

the date of the meeting to each Member who, on the record date for notice of the meeting, is entitled to vote.

2. The notice shall state the following:
 - a. Meeting place, date, and time of the meeting;
 - b. If applicable, the log-in or call-in information for telephone/video/web conference;
 - c. In the case of a special Members meeting, the general nature of the business to be transacted, and that no other business may be transacted, or
 - d. In the case of the regular Members meeting, those matters which the Board intends to present for action by the Members. The notice of any meeting at which Directors are to be elected shall include the names of the nominees.
3. Notwithstanding the above, any of the following decisions, other than by unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal was stated in the notice of meeting or in any written waiver of notice:
 - a. Removal of Directors;
 - b. Election of a Director to fill a vacancy;
 - c. Approval of a contract or other transaction between the Cooperative and one or more of its Directors, or between the Cooperative and any corporation, firm, or association in which one or more of its Directors has a material financial interest or is a Director;
 - d. Amendment of the articles of incorporation; and
 - e. Approval of a plan of distribution upon winding up of the Cooperative.
4. Notice of a Members' meeting or any report shall be given personally, by electronic transmission, or by mail or other means of written communication, addressed to a Member at the address of such Member appearing on the books of the Cooperative or given by the Member to the Cooperative for purpose of notice.

[Explanatory Note: The minimum/maximum days for when a written notice must be given before the meeting are fixed by statute.]

- 3.6 **Members Entitled to Notice.** A Member shall be entitled to notice of any meeting, so long as their Membership became official 30 days before the meeting date.

3.7 **Meetings Held Without Proper Notice.**

- **Members not present:** The transactions of a meeting, whether or not validly called and noticed, are valid if a quorum is present and each of the absent Members who is entitled to vote, either before or after the meeting, signs either: a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.
- **Members present:** A Member's attendance at a meeting shall constitute a waiver of notice of and presence at the meeting, unless the Member objects at

the beginning of the meeting. However, attendance at a meeting is not a waiver of any right to object to the consideration of matter required to be included in the notice but not included, if an objection is made at the meeting.

3.8 Use of Written Ballots at Meetings.

1. Written ballots will be used for the election of Officers and may be used for Directors, when applicable. Written ballots may also be distributed for other matters if the Board authorizes.
2. Ballots for Officer and Director elections must:
 - a. Be distributed at least 10 days before the annual meeting;
 - b. Include the names of all nominees; and
 - c. Include a space for write-in candidates.
3. Other written ballots must:
 - a. Describe the proposed action; and
 - b. Provide an opportunity to approve or disapprove of the proposed action.
4. All ballots shall specify:
 - a. The number of responses necessary to reach quorum; and
 - b. The deadline by which the ballot must be filled out and turned in, in order to be counted.
5. When ballots are distributed at a meeting, the number of Members voting shall be considered present for the purposes of determining quorum with respect to the specific actions in the ballot.

[Explanatory Note: See Code Section 12463. While a cooperative generally does not have to use written ballots, such ballots must be used for "referendums." Ballots can be used for actions other than election of Officers and Directors, in which case ballots must state the proposed action and provide space for Members to indicate approval or disapproval. For contents of written ballot used at a meeting see Code Section 12461(h).]

- 3.9 Quorum.** A majority of Members shall constitute a quorum at a meeting of Members. When a quorum is present, proposals shall be adopted using the modified consensus process as described in Section 5.1, unless otherwise required in the Articles or Bylaws.

[Explanatory Note: Section 12462 addresses quorum requirements. In absence of a specified quorum in the Bylaws, the Statute sets the quorum at 5% of Members. Note that if a regular meeting is attended by less than 1/3 of voting Members, only matters described in the notice may be voted on. See Code Section 12462(b).]

- 3.10 Loss of Quorum at a Meeting.** If there is a quorum present at the beginning of a meeting and then some Members leave so that less than a quorum remains, the remaining Members may continue to conduct business, as long as any actions they take (other than adjournment) reflect consensus of, or when voting is called for, at least three-fourths of the Members required to constitute a quorum.

[Explanatory Note: This section is governed by 12462(c).]

3.11 Adjournment for Lack of Quorum. In the absence of quorum, a majority of present Members can vote to adjourn the meeting, and no other business may be transacted, except as provided in Section 3.10 above.

[Explanatory Note: This section is governed by 12462(d).]

3.12 Adjourned Meetings.

1. If a meeting is adjourned to a new time/place, Members may conduct any business at the new meeting that could have been conducted at the original meeting.
2. If the new meeting is announced at the original meeting, no additional notice is required. However, if the new meeting is more than 45 days after the original meeting or if a new record date is fixed for the adjourned meeting, notice of the new meeting must be given to each Member entitled to vote at that meeting.

[Explanatory Note: This section is governed by 12461(d).]

3.13 Action Without Meetings.

1. Any action which may be taken at any regular or special Members meeting may be taken without a meeting if the Cooperative distributes a written ballot to every Member entitled to vote on that proposal.
2. The written ballot shall set forth the proposal, provide the opportunity to specify approval or disapproval of the proposal, indicate the number of responses needed to meet quorum, the percentage of approvals necessary to pass the proposal; and provide a reasonable time within which to return the ballot.
3. Approval under this section shall be valid only when:
 - a. The Cooperative receives within the specified timeframe a number of written ballots that is at least equal to the quorum required for a meeting; and
 - b. The number of approvals is at least equal to the number of approvals required at a meeting.
4. The Secretary shall cause a vote to be taken by written ballot upon any action or recommendation proposed in writing by 20 percent of the Members.

[Explanatory Note: This section is governed by 12463.]

ARTICLE 4 – Director Meetings

4.1 Directors and Board Composition.

1. All Members shall serve on the Board of Directors.
2. Only Members shall serve on the Board, except as provided in the next paragraph.
3. There shall be no more than 40 and no fewer than 3 Directors on the Board with the exact number of Directors to be fixed, within the limits specified, by a vote of

the Members. If there are fewer than 3 Members, the Member(s) shall elect non-Members to the Board, enough to bring the total number of Directors to 3.

[Explanatory Note: See Code Sections 12331 and 12360 for requirements for a cooperative Board of Directors. A cooperative must have at least 3 Directors, according to section 12331(a). The statute does not require that Directors be Members, although most cooperatives tend to require that Directors have to be Members. Section 12331(a) requires that the bylaws “set forth [...] the number of directors of the corporation, or the method of determining the number of directors of the corporation, or that the number of directors shall be not less than a stated minimum or more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Sections 12222 and 12224), in the manner provided in the bylaws, subject to {12331(e)}.” Note, also, that section 12360(d) permits all or some Directors to hold office other than by election of Members. For example, a coop’s incubator might appoint some Directors to the Board, so long as the Bylaws provide for it.]

4.2 **Terms of Directors.**

1. The term of office of the Directors shall be one year or until the next Annual Member Meeting.
2. At each Annual Member Meeting, the Secretary will propose that all Members be elected as Directors. If this proposal fails, the Directors will continue to serve until the Bylaws are amended to provide for a smaller Board and/ or a new election.
3. Notwithstanding the above, a person whose Membership is terminated shall immediately cease to be a Director.

[Explanatory Note: The maximum term is four years. See Code Section 12360 regarding Director terms.]

4.3 **Director Voting.** Directors shall vote using the modified consensus process described in Section 5.1.

4.4 **Notice of Board Meetings.**

1. Regular meetings of the Board will be held the first Monday of every month at 7:00 p.m. at the principal office of the Cooperative. If the day fixed for the regular meeting falls on a legal holiday, the meeting shall be held at the same time on the next day.
2. Special meetings of the Board shall be held upon four days’ notice by first-class mail or 48 hours’ notice delivered personally, by telephone, including a voice messaging system, or by electronic transmission by the Cooperative. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the Board.

4.5 **Waiver of Notice.** Notice of a meeting need not be given to any Director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes in writing, whether before or after the meeting, or who attends the meeting without protesting the lack of notice to that Director. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

4.6 **Quorum.**

- a. A majority of Directors shall constitute a quorum for a Board meeting.
- b. When a quorum is present, proposals shall be adopted using the modified consensus process as described in Section 5.1, unless otherwise required in the articles or bylaws.

[Explanatory Note: Code Section 12462(a) provides quorum requirements unless Bylaws provide otherwise.]

4.7 **Loss of Quorum at Meeting.** If there is a quorum present at the beginning of a meeting and then some Directors leave so that less than a quorum remains, the remaining Directors may continue to conduct business as long as any actions they take (other than adjournment) reflect consensus of, or when voting is called for, at least three-fourths of the Directors required to constitute a quorum.

[Explanatory Note: See Code Section 12462(c).]

4.8 **Adjournment for Lack of Quorum.** In the absence of quorum, a majority of present Directors can vote to adjourn the meeting. No other business may be transacted, except as provided in Section 4.7 above

[Explanatory Note: See Code Section 12462(d).]

4.9 **Adjourned Meetings.** A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

[Explanatory Note: See Code Section 12461(d).]

4.10 **Action Without Meeting.** The Board of Directors may take action without a meeting if all Directors individually or collectively consent in writing to the action. The written consents shall be filed with the minutes of the Board's meetings. Action by written consent has the same force and effect as a unanimous vote of the Directors.

[Explanatory Note: See Code Section 12463(a) and (f)]

4.11 **Resignation.**

1. The only way that a Director may resign is by ceasing to be a Member, unless:

- a. The provision of these Bylaws requiring that all Members serve on the Board is amended; or
 - b. There are fewer than three Members and there are non-Member Directors, in which case, such non-Member Directors may resign.
2. In a case where a Director may resign, the following procedure shall be followed:
 - a. A Director may resign effective upon giving written notice to the President, the Secretary of the Cooperative, unless the notice specifies a later time for the effectiveness of such resignation.
 - b. The Board shall then appoint a person to fill the vacancy and serve until the next Annual Members Meeting.

[Explanatory Note: See Code Section 12364(c)]

4.12 Removal.

1. So long as all Members are required by these Bylaws to serve on the Board, Directors may not be removed except if they cease to be Members.
2. Should the provision by which all Members constitute the Board be amended, the following shall apply:
 - a. The Board may declare vacant the office of a Director whose eligibility for election as a Director has ceased, or who has been declared of unsound mind by a final order of court, or convicted of a felony.
 - b. Directors may be removed without cause by the Members, if removal is approved by a vote of 75% or greater of all Members at a duly called meeting at which a quorum is present.
 - c. Vacancies caused by removal may only be filled by approval of a majority of all Members.
3. Any reduction of the authorized number of Directors does not remove any Director prior to the expiration of the Director's term of office.

[Explanatory Note: See Code Section 12362(a)(1)]

4.13 Empowered Committees. Portion

1. The Board may establish committees through the decision-making process in Section 5.1. Each committee shall consist of two or more Directors who serve at the pleasure of the Board.
2. An empowered committee shall have the same authority as the Board, except with respect to:
 - a. Approval of any action that by law requires approval by the majority of the Members;
 - b. Filling vacancies of the Board or any committee that has authority of the Board;
 - c. Fixing compensation of Directors for serving on the Board;
 - d. Amendment or repeal of the Bylaws or adoption of new Bylaws;
 - e. Amendment or repeal of any resolution that the Board has expressly deemed not amendable or repealable;

- f. Establishment of committees of the Board or appointing Members to such committees;
- g. Expenditure of corporate funds to support a nominee for Director (if there are more people nominated for Director than open slots available).

[Explanatory Note: Committees must have at least two directors. See Code Section 12352]

ARTICLE 5 – Decision-Making Process

5.1 Modified Consensus Decision-Making Process.

1. Matters will be discussed with the goal of reaching consensus.
2. If consensus cannot be reached, Members will vote on whether the issue must be decided at the current meeting or can be tabled for future discussion.
3. If at least three-fourths of the quorum believe that an immediate decision is needed, voting will be held on proposals regarding the issue.
4. The proposals can then be carried by a three-fourths vote, except as otherwise provided in these bylaws.

[Explanatory Note: Note that consensus-based decision-making is consistent with cooperative principles, however, there is no statutory requirement that cooperatives must use consensus-based decision-making. In some situations, it might make more sense to use a simple-majority or three-fourths vote. Cooperatives that use consensus-based decision-making may also wish to adopt a much more detailed set of processes and guidelines for how proposals will be made and considered. For a sample of a detailed consensus policy, see Tree Bressen’s Sample Consensus Process Policy at <http://treegroup.info/topics/consensus-in-sharing-law.pdf>]

ARTICLE 6 - Officers

6.1 Titles of Officers.

1. Officers of the Cooperative shall be:
 - a. A President,
 - b. A Secretary,
 - c. A Chief Financial Officer, and
 - d. Any other Officer with a title and duties determined by the Board
2. The President is the Chief Executive Officer of the Cooperative.
3. One person may hold any number of offices, except the President and Secretary shall not be the same person.

[Explanatory Note: Section 12353(a) requires that a cooperative corporation have a Chairman of Board or President, a Secretary, and a Chief Financial Officer. One person can hold all three titles. The President (or chairperson) must be a Director elected by the Members. A cooperative corporation may create any other officer position, in addition to the three required positions. Officers need not be members of the co-op, they can be non-member employees.]

6.2 Duties of Officers.

1. Officers' duties include those duties:
 - a. Prescribed by law,
 - b. Granted by these Bylaws, and/or
 - c. Granted by resolutions of the Board.
2. The Secretary must ensure that the Cooperatives' records and reports are properly kept and filed.
3. The President shall take on the duties of the Secretary if the Secretary is unable or unwilling to do so.

[Explanatory Note: These provisions are governed by Code Section 12353(a).]

6.3 Nomination and Election of Officers.

1. Any Member can nominate any Member, including himself/herself, for any office. Nominations shall take place at the Annual Member Meeting and at the preceding regular meeting.
2. Officers shall then be elected at the Annual Member Meeting by written ballot, to serve one-year terms. The candidate receiving the highest number of votes for an office shall be elected.

[Explanatory Note: The nomination and election of Officers is governed by Code Sections 12353(b).]

6.4 Resignation or Removal of Officers.

1. Officers can be removed by a vote of the Board.
2. Any Officer may resign at any time with written notice to the Cooperative.
3. Vacancies shall be filled at the next Board meeting.

[Explanatory note: See Code Sections 12364(c) (resignation) and 12362(a)(1) (removal). Vacancies are to be filled [at the next meeting of the Board]. See Code Section 12364(a).]

ARTICLE 7 – Financial Provisions

7.1 Fiscal Year. The fiscal year of the Cooperative is January 1st through December 31st.

[A fiscal year is the 12-month period that the cooperative uses to calculate its yearly earnings and to prepare its yearly financial statements. The cooperative also calculates the patronage dividends/patronage refunds owed to each member based on the patronage conducted during the fiscal year. In this example, the fiscal year is January 1st through December 31st.]

7.2 Definitions.

- a. "Surplus" shall be defined as the excess of revenues over Expenses for a fiscal year attributable to Member labor.

- b. "Profit" shall be defined as the excess of revenues over Expenses for a fiscal year attributable to non-Member labor.

[Explanatory Note: *These bylaws make a distinction between revenues that are attributable to member labor versus non-member labor because federal tax law says that only "patronage-sourced" income may be distributed as tax-deductible patronage refunds/patronage dividends. In the case of a worker cooperative, patronage is defined by the member's labor.]*

- c. "Loss" shall be defined as the excess of Expenses over revenues for a fiscal year.
- d. Surplus, Profit, and Loss shall be determined on a tax basis. Surplus and Profit shall not include cash contributions by Members to capital.
- e. "Expenses" shall include Distributions paid pursuant to Section 7.6, payments of any interest and principal on any debts of the Cooperative, and reasonable reserves as determined by the Board of Directors.
- f. The "Collective Account" shall be Surplus, Profit, and reserves that are retained in the Cooperative and not distributed to Members.
- g. "Patronage" shall be defined as hours worked by each Member for the Cooperative.

[Explanatory Note: *The statutory definition of "patronage" found in CA Corps. Code Section 12243 does not fit for worker cooperatives because the statute was designed for consumer and marketing cooperatives. Surplus earnings in a cooperative are divided among the members, in the form of patronage refunds (called Patronage Dividends in this sample), based on the members' relative patronage. Worker cooperatives typically calculate patronage based on the hours that each member works.]*

- h. "Patronage Dividends" shall have the definition contained in Internal Revenue Code Section 1388(a) (dividends paid to Members based on Patronage).

[Explanatory Note: *The CA statute (see Section 12244) refers to patronage dividends as "patronage refunds." However, some worker cooperatives choose to use the term "patronage dividend" to better clarify that such payments are owner distributions instead of additional employment compensation. This is because, in the past, the IRS has tried to establish that patronage refunds are subject to employment or self-employment tax.]*

- i. "Member Account" shall be defined as each Member's capital account in the Cooperative (initial capital contribution plus written notices of allocation minus Distributions minus Losses plus/minus any other item that affects the balance in the Member's capital account).

- j. "Distribution" means the distribution of interest on capital contributed, but does not include Patronage Dividends.

[Explanatory Note: *This is a paraphrase of the definition that is found in the Corporations Code Section 12235.]*

7.3 Allocations.

1. Any Profit shall be credited to the Collective Account.
2. Any Surplus shall be credited to the Collective Account as necessary to bring the year's contribution to the Collective Account up to 25% of the year's combined Profit/Surplus. All other Surplus shall be paid as Patronage Dividends in direct proportion to Patronage during the fiscal year.
3. Any Loss shall be allocated 75% to Member Accounts in direct proportion to Patronage during the fiscal year and 25% to the Collective Account, with the exception of Losses occurring and/or carried over from the Cooperative's first two fiscal years, which shall be allocated 100% to the Collective Account.
4. The percentages referred to in this section can be changed for a coming fiscal year by the Board.

[Explanatory Note: *See Corporations Code Section 12201 and 26 U.S.C. § 1388]*

7.4 Patronage Dividends.

1. Patronage Dividends shall be made 50% in cash and 50% to each individual Member Account as a written notice of allocation, unless different proportions are approved by the Board within eight-and-a-half months of the fiscal year's close – however, at least 20% must be distributed in cash.
2. Patronage Dividends may be by qualified or non-qualified written notices of allocation or a combination of the two.

[Explanatory Note: *See 26 U.S.C. §§ 1382, 1385, and 1388. A cooperative that meets the requirements of Subchapter T of the Internal Revenue Code does not pay corporate income tax on the earnings that are paid out as patronage dividends/refunds. Rather, they are tax deductible for the cooperative. For the patronage dividend/refund to be fully tax deductible, at least 20% must be distributed in cash and the remainder that is distributed in a written notice of allocation must be "qualified" as defined in 1388(c). (See <http://www.rurdev.usda.gov/rbs/pub/cir23/CIR23.html> for a general discussion of Subchapter T and qualified vs. nonqualified written notices of allocation). Sometimes, the written notice of allocation may not be qualified, in which case the cooperative would pay corporate income tax on the amount represented by the unqualified written notice of allocation.]*

- ### **7.5 Members' Covenant to Declare Income for Tax Purposes.**
- Each Member shall take into account on his or her income tax return any Patronage Dividends which are made in qualified written notices of allocation (as defined in 26 U.S.C. Section 1388) at their

stated dollar amounts in the manner provided in 26 U.S.C. Section 1385(a) in the taxable year in which the Member receives such written notices of allocation.

[Explanatory Note: See 26 U.S.C. § 1385(a)-(b) and § 1388(c). One of the requirements for qualifying a written notice of allocation, so that the entire patronage refund becomes tax deductible for the cooperative, is that the member consents to report the written notice of allocation on his or her income tax return in the year in which he or she receives the allocation. Some cooperatives include this section in their bylaws as a way to establish that consent.]

7.6 Distributions of Interest on Member Accounts. The Cooperative may, by a decision of the Board, pay interest to Members on the Members Accounts. The interest may be paid in cash or as an additional credit to the Member Accounts. The rate of interest shall be determined by the Board, but may not, in one year, exceed 15 percent of each Member's contributed capital, which includes capital contributions, membership fees, and capital credits.

[Explanatory Note: See Corporations Code Sections 12376, 12451-12455.]

7.7 Periodic Redemption of Member Accounts.

1. The Cooperative shall aim to pay out in cash to the Members all funds credited to their Member Accounts within three years of the date they were first credited.
2. As a general rule, written notices of allocation credited to Member Accounts (including notices now converted to debt) will be paid out in the order in which they are credited, with the oldest paid out first. However, the Board can decide to accelerate the repayment of debt owed to former Members on a case-by-case basis.
3. If the Cooperative does not have sufficient funds to pay out all funds credited to Member Accounts for a given fiscal year, then funds will be paid out in proportion to the balance in the Member Accounts.

[Explanatory Note: See Corporations Code Section 12445.]

7.8 Payment Rights Upon Membership Termination.

1. When a Membership is terminated for any reason, including a Member's death, the amount in the Member Account will automatically be converted to debt owed to the former Member, or, if necessary, to the Member's estate, or to another assignee designated by the Member.
2. The Cooperative shall repay the debt within five years of the Membership termination, with interest accruing at the discount rate – as set by the Federal Reserve Bank of San Francisco – plus two percent, on the amount outstanding at the end of each fiscal year.
3. The Cooperative, in settling a Member Account, shall have the right to set off any and all indebtedness of the former Member to the Cooperative.

[Explanatory Note: See Corporations Code Section 12445.]

- 7.9 Priority of Payments.** Notwithstanding anything else to the contrary in this Article, payments by the Cooperative shall be made in the following order of priority:
1. First, to make payments of any necessary expenses related to the operation of the cooperative, including wages, and payments of any interest and principal on any debts of the Cooperative,
 2. Second, to pay Patronage Dividends to all eligible Members,
 3. Third, to pay Distributions to all eligible Members, and
 4. Fourth, to make periodic redemptions pursuant to Section 7.7.

[Explanatory Note: See Corporations Code Section 12445.]

7.10 Dissolution Distributions.

1. Upon liquidation, dissolution, or sale of the assets of the Cooperative, any assets left after payment of all debts and Member Account balances shall be distributed to all persons who are current or living past Members in proportion to the number of hours each Member worked during the time he or she was a Member of the Cooperative.
2. No distribution need be made to any person who fails to acknowledge the receipt of notice of liquidation in a timely manner. Said notice shall be deemed sufficient if sent by certified mail, at least 30 days before distribution of any residual assets, to the person's last known business or residence address.

[Explanatory Note: See Corporations Code Sections 12653, 12655, 12656.]

- 7.11 Unclaimed Equity Interests.** Any proprietary interest in the Cooperative held by a Member that would otherwise escheat to the State of California as unclaimed personal property shall instead become the property of the Cooperative if the Cooperative gives at least 60 days prior notice of the proposed transfer to the affected Member by (1) first-class or second-class mail to the last address of the Member shown on the Cooperative's records, and (2) by publication in a newspaper of general circulation in the county in which the Cooperative has its principal office. No property or funds shall become the property of the Cooperative under this section if written notice objecting to the transfer is received by the Cooperative from the affected Member prior to the date of the proposed transfer.

[Explanatory Note: See Corporations Code Section 12446. As in most states, California has an Unclaimed Property Law that provides for unclaimed property or funds to "escheat" to California (i.e. becomes the property of the state), if the owner does not claim his/her property or funds after three years. This is because businesses are sometimes unable to locate their shareholders or other people to whom they owe money. However, Corporations Code Section 12446 allows a cooperative to keep a member's equity interest that would otherwise escheat to the state, if the cooperative includes such a provision in its bylaws and complies with the proper notice requirements that are set forth in Section 12446.]

ARTICLE 8 – Corporate Records and Reports

8.1 ***Records Required to Be Kept.*** The Cooperative shall keep at its principal office:

1. The original or a copy of its Articles and Bylaws as amended to date;
2. Adequate and correct books and records of account;
3. Minutes of the proceedings of its Members, Board, and committees of the Board;
and
4. A record of its Members, providing their names and addresses.

Minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing.

[Explanatory Note: See Code Section 12590 for record keeping requirements.]

8.2 ***Inspection Rights.***

1. The Cooperative's Bylaws and Articles shall be open to inspection by the Members at all reasonable times during office hours.
2. Any such inspection may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.
3. The accounting books and records and minutes of proceedings of the Members and the Board and committees of the Board shall be open to inspection upon the written demand on the Cooperative of any Member at any reasonable time, for a purpose reasonably related to such person's interests as a Member.
4. Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Cooperative.

8.3 ***Annual Report.***

1. The annual report shall be prepared no later than 120 days after the close of the Cooperative's fiscal year and shall be distributed to Members at or before their next meeting.
2. The annual report shall contain in appropriate detail:
 - a. A balance sheet as of the end of the fiscal year;
 - b. An income statement;
 - c. A cash flow statement of the fiscal year;
 - d. A statement of where the names and addresses of current Members are located; and
 - e. An annual statement of transactions and indemnifications to "interested persons" as defined by law.
3. For fiscal years in which the Cooperative has (at any given time) over 25 Members, the Cooperative shall notify each Member of his/her right to receive an annual financial report.
4. The annual report shall be accompanied by any pertinent report by independent accountants.

5. If there is no such report from an independent accountant, an authorized Officer of the Cooperative shall certify that the annual report was prepared from the books and records of the Cooperative, without audit.

[Explanatory Note: See Code Section 12591 for financial report requirements. Note that a Balance Sheet should show assets, liabilities, and balances in Members' capital accounts as of the last day of the period covered in the statement.]

ARTICLE 9 - Indemnification

- 9.1 **Indemnification.** The Cooperative shall have the power to indemnify its Officers, Directors, Members, employees, and agents to the fullest extent permitted by law.

ARTICLE 10 – Bylaws Changes

- 10.1 **Bylaws Changes.** The Bylaws can be changed only by a vote as Members in the circumstances defined in Section 3.1.d. All other Bylaws changes can be effected by a vote as Directors.

Certificate of Secretary

I certify that I am the duly elected and acting Secretary of _____ Cooperative, Inc. that these Bylaws, consisting of _____ pages, are the Bylaws of this cooperative as adopted by the Members on _____, 2012 and that these Bylaws have not been amended or modified since that date.

Executed on _____, 2012 at _____, California, by

_____.

ENTER NAME, Secretary