

2020 Proposed Changes to Seward Community Co-op Articles and Bylaws Proposal 1

In order to keep the co-op's articles and bylaws up to date, the board of directors endorses the following articles and bylaws changes. We encourage voting affirmative on each of these proposed changes.

Proposal 1 corrects minor grammatical errors and misspellings, and makes the articles and bylaws easier to understand. For example, it will change section headers currently titled 'ARTICLE' to 'BYLAW' in the bylaws section.

Articles of Incorporation

Seward Community Cooperative, Minneapolis, MN

ARTICLE I. NAME.

The name of the association shall be Seward Community Co-op, Inc.

ARTICLE II. PURPOSES.

The purpose of the association shall be to engage, in a cooperative basis, in a mercantile and marketing business to supply and furnish to its owners and patrons such goods and services as the owners may require or engage in any lawful business as the owners shall authorize.

For these purposes it shall have power to:

- a) Borrow money from its owners and others upon adequate security; to issue bonds, debentures, notes and other obligations and to secure the same by pledge, mortgage, or trust deed on any property of the association; draw, make, accept, endorse, guarantee, execute and issue promissory notes, bills of exchange, drafts, warrants, warehouse receipts, certificates and other obligations and negotiable or transferable instruments for any purpose deemed necessary to further the objects for which the association is formed.
- b) Acquire, purchase, hold, lease, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require.
- c) Purchase, sell, transfer and own capital stock, bonds, and obligations of other corporations.
- d) Join with other cooperative corporations or associations to form district, state, national or international purchasing, marketing and service organizations; and to purchase, acquire, and hold capital stock, notes, bonds, and other obligations of such organizations.

~~e) Take all actions necessary and proper to conduct the business of the association for the purposes stated in this Article or permitted by the laws of Minnesota applicable to the association. Do and perform every act and thing necessary and proper to the conduct of its business for the accomplishment of the purposes set forth herein or permitted by the laws of Minnesota applicable to the association, and to have and exercise all of the powers conferred upon the association by the laws of Minnesota under which it was organized, and acts amendatory thereof and supplemental thereto.~~

~~f) Exercise all powers the laws of Minnesota grant to the association for the purpose of conducting the association's business.~~

ARTICLE III. PLACE OF BUSINESS.

The registered office of the association shall be

Commented [SCC1]: To separate Article II section e) into two more distinct purposes, and in doing so, make this section more readable.

2823 East Franklin Avenue, in Minneapolis, County of Hennepin, State of Minnesota.

ARTICLE IV. DURATION.

The period of the continuance of the association shall be perpetual.

ARTICLE V. CAPITAL.

Section 1. The amount of authorized capital stock of the association shall be twelve million (12,000,000) shares and shall be divided into three classes of stock. Class A stock shall consist of one million (1,000,000) shares of voting stock with a par value of three dollars (\$3.00) per share. Class B stock shall consist of ten million (10,000,000) shares of non-voting stock with a par value of one dollar (\$1.00) per share. Class C stock shall consist of one million (1,000,000) shares of non-voting stock with a par value of five hundred dollars (\$500) per share.

Section 2. Class A stock may be issued for cash to any natural person, household, cooperative, corporation or other entity to qualify him, her, or it as an owner if he, she, or it is eligible therefor. Only holders of Class A stock shall be deemed to be owners of the association. Class A owners shall have voting power, and shall be entitled to only one vote regardless of the numbers of shares owned. Voting by proxy shall not be allowed. No dividends shall be paid on Class A stock.

Section 3. Class B stock may be issued for cash, in payment of patronage refunds or in exchange for outstanding Class A stock. Class B stock shall have no voting power and no dividends shall be paid thereon.

Section 4. Class C stock may be issued to holders of Class A stock. Class C stock shall have no voting power. Dividends may be paid on Class C stock at the discretion of the Board of Directors, not to exceed eight percent (8%) per annum. Dividends, if declared, may (but need not) be cumulative, as determined by the Board of Directors at the time the dividend is declared. Dividends may be paid in cash or, at the request of an owner and subject to the approval of the Board, in fractional shares of Class C stock.

Section 5. No share or stock shall be issued for less than its par value, nor until the same has been paid for in cash or its equivalent, and each share of stock shall be paid for at such time and in such manner as the Board of Directors of the association shall require. The association shall have a prior lien on the outstanding stock for any indebtedness due it. Stock shall not be sold or transferred except back to the association with the consent and approval of the Board of Directors; provided, however, that the Board may, at its discretion, approve the transfer of the stock of a deceased owner to his or her heir, upon the written request of the heir. The capital stock of the association is not transferable in any other event. Capital stock shall be subject to redemption as provided by law and by the bylaws of the association. Capital stock of the association shall be non-assessable.

Section 6. When the Board of Directors determines that the association has sufficient working capital, ~~the association may repurchase Class B and Class C stock at par as provided in the bylaws. Class B and Class C stock may be called for payment at par. Stock shall be called for payment as provided in the bylaws. Any redemption of stock is subject to the requirement that at the time of redemption the total amount of stock remaining outstanding after deduction of the amount of stock redeemed, plus the permanent reserve of the association, shall at least equal the total liabilities of the association.~~

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ARTICLE VI. ALLOCATIONS TO OWNERS.

Section 1. All or any part of the patronage refund declared by the association at any time may be paid in Class B stock as permitted by law.

Section 2. All of the annual net income from patronage with owners available for distribution as determined by the bylaws shall belong to the owners of the association and shall be allocated to them on the basis of patronage as defined in the bylaws.

Section 3. Upon dissolution or liquidation of the association, the debts and liabilities of the association shall first be paid according to their respective priorities. Owners shall then be paid the par value of their shares, with preference given to holders of Class C, then Class A and finally Class B stock. Any additional

Commented [SCC2]: To update Article V section 6 to reflect current Seward Co-op business practices and language.

property remaining after owners have been paid shall be distributed to another association doing business on a cooperative basis or a nonprofit organization exempt from taxes under Section 501(c) of the Internal Revenue Code, as shall be determined by the Board of Directors.

ARTICLE VII. DIRECTORS, ANNUAL MEETINGS.

Section 1. The governance of the association and oversight of the management shall be vested in a Board of Directors, the members of which must be elected by ballot by the owners from their own number. The size of the Board of Directors and the terms of office of the directors shall be prescribed by the bylaws.

Section 2. The annual meeting of the owners shall be held in the territory served by the association within four (4) months after the date of the close of the fiscal year, on such date and time as the Board of Directors shall select in each year.

Section 3. Vacancies in the Board of Directors, except in case of removal by the owners, may be filled by the remaining directors. The person or persons so appointed shall hold office until the next annual meeting of the owners or until their successors have been elected and qualified.

Section 4. A director is not personally liable to the association or its owners for monetary damages for breach of fiduciary duty except in the following circumstances:

- a) for a breach of the director's duty of loyalty to the association or its owners;
- b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- c) for a transaction from which the director derived an improper personal benefit; or
- d) for an act or omission occurring prior to the date this provision became effective.

ARTICLE VIII. OFFICERS.

The officers of the association shall be a president, one or more vice presidents, a secretary and a treasurer, who shall be elected annually by and from the directors. The offices of secretary and treasurer may be combined, and when so combined, the person filling such office shall fulfill the duties of both offices and shall be termed "Secretary-Treasurer".

ARTICLE IX. DISSOLUTION, AMENDMENTS, SEVERABILITY.

Section 1. The association may be dissolved in the manner as provided by law.

Section 2. These Articles of Incorporation may be amended as provided by law.

Section 3. In the event that any provision of these Articles of Incorporation 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 Articles.

Bylaws of Seward Community Co-op, Inc.

Minneapolis, Minnesota

BYLAWARTICLE I. OWNERSHIP.

Section 1. Eligibility. Any natural person, household, cooperative, corporation or other entity may, on approval of his, her or its application by the Board of Directors, be accepted into ownership on terms established by the Board of Directors. The association shall not discriminate on social or political grounds, on the basis of race, creed, age, sex, handicap, sexual preference or marital status.

Section 2. Application and stock purchase requirement. Application for ownership shall be made in writing on a form provided by the association. Pending approval by the Board of Directors of the ownership application, the prospective owner shall sign a stock purchase agreement for twenty-five (25) shares of Class A stock with a par value of three dollars (\$3.00) and provide payment for a minimum of five (5) shares or fifteen dollars (\$15.00) with the application.

Section 3. Approval. Each application shall be acted on by the Board of Directors at the first meeting after it is received. The Board of Directors shall have full authority to approve or reject an ownership application based on policies established and approved by the Board.

Section 4. Information. Each new owner shall receive a copy of the Articles of Incorporation and Bylaws of the association.

Section 5. Ownership rights. Each owner shall have one vote in the affairs of the association. Each corporate, entity and household owner shall designate one person to vote on its behalf.

Section 6. Termination. ~~An owner may voluntarily terminate ownership~~ ~~Ownership may be terminated voluntarily by an owner~~ upon notice to the association. The Board may elect to terminate an ownership if an owner dies, ceases to exist, moves from the territory served by the association, fails to patronize the association for a period of one (1) year; or fails to comply with the requirements of these Bylaws. When an ownership is terminated, the association shall either: a) repurchase the Class A stock of the owner by tendering to the owner, or his, or her, or its heir or successors in the appropriate case, the par value or the book value, whichever is less, together with any cash portion of a patronage dividend due or unpaid, less any indebtedness due the association; or b) repurchase the Class A stock of the owner by tendering to the owner, or his, her or its heirs or successors in the appropriate case, Class B stock, together with any cash portion of a patronage dividend due or unpaid, less any indebtedness due the association. If the terminating owner also owns outstanding Class C stock, the association shall also repurchase the owner's Class C stock at its par value, together with any accrued but unpaid interest due thereon. The Board may, at its discretion, approve the transfer of the stock of a deceased owner to his or her heir, upon the written request of the heir as described in Section 7 below.

Regardless of the reasons for termination, repurchase of the association's stock by the association shall be subject to the same terms and limitations governing all stock repurchases, including availability of replacement capital and the discretion of the Board of Directors to determine terms of repurchase. In any case, the Class A stock of the owner shall be ~~cancelled~~ and he, she or it shall no longer have voting rights in the association.

Section 7. Restrictions upon withdrawal and transfers of ownership. Every owner upon uniting with the association agrees that in case the owner shall desire to terminate his, her or its ownership in the association, that the stock can only be transferred to the association and only upon approval by the Board of Directors. Notwithstanding the foregoing, the Board may, at its discretion, authorize the transfer of the stock of a deceased owner to his or her heir, upon the written request of the heir. The stock of the association is not transferable in any other event.

BYLAWARTICLE II. MEETINGS.

Section 1. Annual meeting. The annual meeting of the owners shall be held in the territory served by the association every year within four months after the date of the close of the fiscal year at such date and time as may be determined by the Board of Directors.

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Section 2. Notice of meeting. Notice shall be given by the secretary (or the secretary's designee) of all meetings of the owners by publication in a legal newspaper published in the county of the principal place of business of the association, or by publication in a house newsletter, regularly published by or on behalf of the association and circulated generally among its owners, or by mailing a notice thereof to each owner at his, her or its last known address, at least two weeks ~~previous to~~before the date of the meeting. The secretary shall document compliance ~~of~~with this provision by preparing a copy of the notice given to owners with proof of the mailing or publication attached. The failure of any owner to receive any such notice of the annual or special meeting of the owners shall not invalidate any action which may be taken by the owners at any such annual or special meeting.

Section 3. Special meetings. The president shall cause a special meeting of the owners to be called upon a written petition of at least twenty percent (20%) of the owners, or upon a majority vote of the Board of Directors. If the special meeting is called by owner petition, the notice of the time, place and purpose of the special meeting shall be issued within ten (10) days from the receipt of the petition by the president, and the special meeting shall be held within thirty (30) days from the receipt of the petition by the president. No business shall be considered at the special meeting except as has been mentioned in the call and included in the notice of the meeting.

Section 4. Voting. The Board of Directors may authorize a mail ballot or voting by electronic means for voting on all matters that owners are entitled to vote upon, including voting to elect directors. If authorized, mail ballots or ballots for voting by electronic means shall be sent to all owners with the notice of a meeting. If a ballot is received on or before the date of the meeting, it shall be accepted and counted. There shall be no proxy voting. Voting by electronic means requires that the association be able to authenticate that it is the cooperative owner who is casting the vote.

Section 5. Presiding officer. The president of the association (or the president's designee) shall preside at all meetings of the owners and of the Board of Directors.

Section 6. Quorum, owner meetings. At any regular or special meeting of the owners, a quorum necessary for the transaction of business shall be at least ten percent (10%) of the total number of owners of the association, except that when the number of owners shall exceed five hundred, fifty owners present shall constitute a quorum. Only owners in actual attendance at the meeting shall count towards a quorum, except for matters submitted to the ownership by mail, in which case mail ballots cast shall be counted towards fulfillment of the quorum requirement.

Section 7. Board of Directors' meetings and quorum. Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors shall from time to time determine. A majority of the directors shall constitute a quorum at all meetings of the Board, and a majority vote of the directors present shall decide all questions. Presence at a meeting shall constitute a waiver of notice of such meeting. Meetings of the Board of Directors may be held by telephone conference call, if so approved by all directors, providing all persons participating can hear each other at the same time.

Section 8. Special meetings. Special meetings of the Board of Directors may be called by the president or by a majority of the directors. Each director shall be duly notified of all such meetings.

Section 9. Action without a meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken by written action signed, or consented to in writing, by all directors. The written action is effective when signed or consented to by all directors, unless a different effective time is provided in the written action. The written action must be filed with the association's corporate minutes.

BYLAWARTICLE III. BOARD OF DIRECTORS.

Section 1. Number of directors, eligibility and terms. The number of directors of the association shall be no less than five (5) and no more than nine (9), each of whom shall be an owner of the association. Only one individual from a household or other group owner shall be eligible to be elected to the Board of Directors at a time. One-third of the directors shall be elected by ballot at each annual meeting for a term of three (3) years, and shall hold office until their successors shall be elected. The directors shall be elected to staggered terms. If any director shall cease to be an owner, his or her office shall be automatically vacated. No more than two (2) directors shall be paid employees of the association at any time. This includes the director elected pursuant to section 2 below.

Section 2. Designated Employee-Director. One director position shall be reserved for a full-time or part-time employee who is also an owner of the association. The election shall take place within one month of the annual meeting. The Designated Employee Director shall be elected every other year for a two-year term by the owners at their annual meeting.

Section 3. Organizing meeting. The Board of Directors shall meet not more than sixty (60) days after the annual meeting of the owners. At its organizing meeting, the Board of Directors shall establish its annual meeting schedule and elect officers.

Section 4. Compensation and Reimbursement. Compensation of the Board of Directors shall be determined by the members of the association at any regular or special meeting called for that purpose. Officers and directors shall also be entitled to reimbursement for actual expenses incurred in attending Board meetings or other business of the association. Such expense claims shall be approved by a majority of the Board. Compensation and/or reimbursement to directors shall not constitute payments to them as employees.

Section 5. Removal of directors.

(a) Removal by owners for cause. Any director of the association may, for cause related to the duties of the position of director, at any annual or special meeting of the owners, be removed from office by a majority vote of the owners present and entitled to vote. No director shall be removed from office by the owners unless he or she has been informed of the meeting at which the matter is to be considered at least ten (10) days before such meeting. Such notice shall be given by certified mail addressed to the director at his or her last known address, and the director shall be entitled to be heard at such meeting. In case of removal by action of the owners, the owners shall fill the vacancy for the unexpired term of such director by special election.

(b) Removal by board of directors for cause. Any director of the association may, for cause related to the duties of the position of director, at any regular or special meeting of the Board of Directors, be removed from office by a vote of a majority of all of the remaining directors. No director shall be removed from office under this subsection unless he or she has been informed of the meeting at which the matter is to be considered at least ten (10) days before such meeting. Such notice shall be given by certified mail addressed to the director at his or her last known address, and the director shall be entitled to be heard at such meeting. In case of removal of a director by action of the Board, the Board may fill the resulting vacancy until the next meeting of the owners.

(c) Cause. For purposes of this section 5, "cause" shall include but is not limited to failure of the director to regularly attend Board meetings or to comply with policies approved by the Board or the owners.

BYLAWARTICLE IV. DUTIES AND POWERS OF DIRECTORS.

Section 1. Management of business. The Board of Directors shall govern the business and the affairs of the association and make all necessary rules and regulations not inconsistent with law or with these bylaws. The Board of Directors shall have power to employ and dismiss a **General Mmanager** of the association and to determine his or her duties and compensation.

Section 2. Bonding of employees. The Board of Directors may require the manager and/or other officers, agents, and employees charged with the custody of any of the association's funds or property to provide a fidelity bond in such sum as the Board of Directors shall determine. Such bond shall be furnished by a responsible bonding company approved by the directors, and the cost of such bonding coverage shall be paid by the association.

Section 3: Accounting system and audit. The Board of Directors shall install and maintain an adequate system of accounts and records. The Board shall review financial statements at least quarterly. At least once each year, the books and accounts of the association shall be audited or reviewed in such manner as the Board deems advisable, and the report of such audit or review shall be made at the next annual meeting of the owners.

BYLAWARTICLE V. DUTIES AND POWERS OF OFFICERS

Section 1. President. The president shall:

a) preside over all meetings of the association and of the Board of Directors;

b) sign as president, with the secretary, all notes, deeds and other conveyances of real estate, as well as all certificates of stock of the association.

Section 2. Vice President. In the absence or disability of the president, the vice president shall perform the duties of the president. The vice president shall perform such other duties as may be required by the Board of Directors.

Section 3. Secretary. The secretary shall:

- a) ensure that a complete record of the meetings of the association and of the Board of Directors is kept;
- b) sign as secretary, with the president, all notes, deeds and other conveyances of real estate, as well as all certificates of stock of the association.
- c) cause to be prepared and submitted to the annual meeting of the owners a complete and detailed report of the current year's business. The annual report shall contain a statement of assets and liabilities, a statement of income and expenses, and such other statements and statistical memoranda as the Board of Directors shall require. The Board of Directors may delegate these duties to some employee or employees of the association.
- d) provide that all notices required by law be served;
- e) perform such other duties as may be required of him or her by the association or the Board of Directors.

Section 4. Treasurer. The treasurer shall:

- a) oversee the receipt and disbursement of all funds of the association;
- b) ensure that complete records of all financial transactions of the association are kept; and
- c) perform such other duties pertaining to his or her office as may be required by the Board of Directors.

Section 5. General Manager. The Board of Directors shall have power to employ and dismiss a general manager of the association. The general manager shall have general charge of the ordinary and usual business operations of the association subject to the direction and approval of the directors. The manager shall be required to maintain all business records and accounts in such a manner that the true and correct condition of the business may be determined whenever practical. He or she shall provide annual and periodic reports in a form and manner prescribed by the Board. The manager shall employ and discharge employees subject to direction and guidelines approved by the Board. The manager shall handle and account for all monies belonging to the association which come into his or her possession in the manner and form prescribed by the Board.

BYLAWARTICLE VI. CAPITAL STOCK.

Section 1. Certificates or proof of ownership. Membership cards shall be issued, in lieu of certificates for Class A stock, when the required Class A stock is fully paid for and the ownership application has been received. Class B stock received as patronage dividends shall be evidenced by written notice of allocation mailed to the owners. Certificates evidencing Class C shall contain the name of the person, household, firm, cooperative, corporation or other entity that owns the stock, the ownership number assigned to that owner, and shall bear the signature of the president and secretary. The association retains the right to terminate all ownerships as provided in the bylaws and to purchase or recall all stock. Redemption of capital stock by the association is subject to any indebtedness owing the association by the owner.

Section 2. Classes and issue. In order to further the cooperative character of the association and provide a means whereby its current and active owners will finance the association, the association is authorized to issue Class B and Class C stock. Funds arising from the issue of Class B or Class C stock may be used for creating a revolving fund for the purpose of building up an amount of working capital to meet the association's financing needs. Whenever the association determines that all of its funds are not necessary for the proper financing of the operations of the association, the Board of Directors may choose to retire Class B or Class C stock.

BYLAWARTICLE VII. DISTRIBUTION OF SURPLUS.

Section 1. Annual net sales.

- a) Annual sales. Annual sales shall be all proceeds from the sale of goods and services to owners and non-owners.
- b) Deductions from annual sales. The association shall deduct from annual sales all expenses incurred in generating these sales including, but not limited to, costs of goods, personnel, marketing, overhead, taxes, depreciation, and all other necessary expenses.
- c) Net operating income. The amount remaining after reducing the annual sales by these deductions shall constitute the net operating income of the association.
- d) Net income before taxes and patronage refund. The association shall add all other income, including the sales of services, patronage refunds received from other co-ops and other non-sales income (minus other expenses including interest or expenses not related to the sales of products) to net operating income to determine the net income before taxes and patronage refund.
- e) Net income. The association shall deduct the patronage refund issued and any income taxes paid to the state or federal governments to derive the association's net income.

Section 2. Patronage refund.

- a) The patronage refund is determined by determining the percentage of sales from owner purchases, and multiplying that percentage times the net income before taxes and patronage refund. The amount resulting is the annual net income from owner patronage.
- b) Subject to approval by the Board of Directors, the net income from owner patronage shall be distributed to the owners in proportion to the amount of business done by them with the association. Patronage refunds shall be distributed in cash or in equity (Class B stock) or by any combination thereof designated by the Board of Directors. Class B stock may be paid or redeemed in whole or in part at such time, in such manner and such order as shall be determined by the Board of Directors in its sole discretion. The Board of Directors may establish policies and programs for the payments of or redemption of Class B stock. No transfer or assignment of Class B stock shall be allowed without the approval of the association.

Section 3. Taxable income. The remaining non-owner net income after determination of the patronage refund will be the association's taxable income for the year. The after-tax non-owner net income may be placed in the capital reserves or used as working capital of the association, at the direction of the Board of Directors.

Section 4. Allocation of losses. If the association sustains an annual loss in net income from owner patronage, it shall have the power and authority to allocate such losses from owner patronage in any one or more of the following manners: 1) to the owners such year or years on a patronage basis and apply such losses against the owners' stock; 2) to apply the loss to the association's capital reserves; or 3) to carry forward or back such loss, as determined by the Board of Directors.

BYLAWARTICLE VIII. CONSENT BY OWNERS

Each owner of the association shall, by becoming a owner, consent that the amount of any distributions with respect to his, her or its patronage occurring in any fiscal year which are made by qualified written notices of allocation (as defined in 26 U.S.C. 1388) received by him, her or it from the association shall be included in his, her or its income in the manner provided in 26 U.S.C. 1385 during the taxable year in which the qualified written notices of allocation are received. It is the intent of this provision to provide a consent binding on all owners who retain or obtain ownership in the association and receive a written notification and copy of this bylaw, for the purpose of making such distributions "qualified" within the meaning of the Internal Revenue Code.

BYLAWARTICLE IX. INDEMNIFICATION.

The association shall indemnify each person who is or has been a director, officer or employee of the association, and each person who is serving or who has served at the request of the association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorney's fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her to the fullest extent of his or her right to indemnity under current Minnesota law.

BYLAWARTICLE X. MISCELLANEOUS PROVISIONS.

Section 1. Fiscal year. The fiscal year of the association shall begin on the first day of July and close on the last day of June of each year.

Section 2. Amendments. These bylaws may be amended, repealed, or altered in whole or in part by a majority vote of the owners, provided that all owners receive written notice of the proposed changes.