

Section 3

**THE BYLAWS OF
LA MONTANITA FOOD CO-OPERATIVE**

Revised December 2013

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LA MONTANITY FOOD CO-
OPERATIVE**

The Co-operative Association is organized to provide high quality, natural and organic products at the lowest prices possible, as well as education and information about co-operatives, to, and for the social and economic benefit of, the community at large and the membership in particular. The management of our Co-operative, under direction of the representative Board of Directors, shall try in every way to:

1. Provide food and other commodities and services at the lowest prices possible by forming the most direct link between producer and consumer.
2. Educate ourselves about and take responsibility for our environment.
3. Actively support individual participation and group cooperation.

**ARTICLE I.
MEMBERSHIP**

Section 1.1. ELIGIBILITY

Any household shall be eligible for membership.

Section 1.2. APPLICATION FOR MEMBERSHIP.

In order to be admitted to membership, the household or person shall file with the Cooperative a completed membership certificate. Membership certificates shall be filed under the name of the “primary member” of the household, who shall be the owner of the certificate. The “primary member” of the household shall be responsible for paying the annual membership fees and updating a change of address, phone number and for adding or deleting secondary member names. The “primary member” of the household is also the only member of the household who will have the right to vote in elections for the Board of Directors, cast mail ballots, and vote at membership meetings. The annual rebate check (if any) will be issued in the name of the “primary member.” Two additional members of a household may be listed on the certificate. The certificate shall contain the name, signature, and address of the owner (primary member); date of issue and date(s) of renewal. The application form shall include a statement that the applicant agrees that:

1. No dividends or interest shall be payable on the certificate.
2. Each membership shall have the right to but one vote. Voting by proxy and cumulative voting shall not be permitted.
3. A membership is not transferable.
4. The applicant will comply with and be bound by the terms and conditions relating to membership contained in the Articles of Incorporation and these Bylaws.
5. Each applicant will acquire a membership in the Cooperative by paying annual membership fees of \$15 or by paying a lifetime membership fee of \$200. The lifetime membership fee paid before November 19, 2013 shall be refundable after a period of two years after payment of the fee. If the lifetime membership is refunded, the household’s membership will no longer be considered current.

Lifetime membership fees paid after November 19, 2013 may be refundable in the discretion of management after consultation with the President of the Board of Directors, with a deduction of \$15 per year from the year of payment of the lifetime fee to the Cooperative, including the year of return to the member. For those lifetime memberships which are refunded, the membership will end with the fiscal year in which the refund to that member occurs.

Section 1.3. MEMBERS.

The members shall consist of households who have filled out membership applications and whose membership fees are current.

Section 1.4.a.

The Board of Directors is authorized to approve appropriate discounts to members who provide administrative, executive including committee, professional, or independent contractor services to the Co-operative.

Section 1.4.b

The Board of Directors shall set up benefits for members that reflect their valuable contribution to the Co-op.

Section 1.5.

The ultimate control of the Association shall be vested in the membership specifically to:

1. Support the Association economically by making capital contributions and patronizing its services.
2. Elect a representative Board of Directors to manage the affairs of the Co-operative, and remove them from office if they are derelict in their duties.
3. Develop, in concert with the Directors, long-range goals and objectives for the Co-operative.
4. Delegate appropriate powers to the Board of Directors and its committees and managers in conjunction with overall guidelines for their performance.
5. Hear and act on reports of officer, managers, and committees of the Association.

ARTICLE II. BOARD OF DIRECTORS

Section 2.1.

The affairs of the Co-operative shall be managed by its Board of Directors, composed of nine (9) members. Open board positions shall be filled by the candidates receiving the greatest number of votes cast in the annual membership ballot in the month of November. If one or more of the vacancies is to fill an unexpired term of less than three (3) years, the candidate receiving the greatest number of votes will fill the vacancy with the longest term. Members will have a two (2) week period of voting. Ballots and ballot boxes will be available at the principal offices of the Co-operative. The Board may institute a mail-in ballot procedure, which may include voting by e-mail or other electronic media. Election results shall be reported at the next meeting and in the newsletter.

Section 2.2

The term of each Director shall be three (3) years. The terms of three (3) of the nine (9) Board positions shall begin each year.

Section 2.3. All candidates for Director shall be honest and caring people and shall have been members in good standing of the Co-operative for the four (4) months prior to Board elections. Candidates shall declare their candidacy by submitting a statement of qualifications to the Co-op's Information Desk at least four (4) weeks before the elections begin. Candidates shall meet the requirements of the Alcohol and Gaming Division of the NM Regulation and Licensing Department for Board members of a business holding a license to sell alcohol. A Director shall: be a member of the Association, but need not be the primary member; find sufficient time to devote to duties as a Director; and be committed to cooperation as a viable economic relationship. Up to two (2) of the nine (9) Board positions may be filled by part-time or full-time staff members. In the event that the number of staff member candidates is greater than the number of staff positions open on the Board, the staff members receiving the greater number of votes shall fill the Board staff position. There shall be only one Board member per household. The following are not eligible to serve on the Board: 1. The General Manager; 2. Anyone directly supervised by the General Manager; 3. Anyone supervised by the Board.

Section 2.4.a.

Board members may be temporarily suspended for cause, which shall include but not be limited to failure to attend three (3) consecutive meetings of the Board of **Directors**, by a simple majority of Board members present and voting at a regularly scheduled meeting of the Board of Directors. Impeachment of a suspended Director will be voted upon at the next general membership meeting.

Section 2.4.b.

Board members may be impeached by a two-thirds (2/3) majority of members voting either in person at a scheduled membership meeting or by mail ballot after thirty (30) day's written notice has been given to the membership. The Board member shall have an opportunity to be heard at the meeting.

Section 2.5.

If membership on the Board should fall below nine (9) members for any reason (e.g., resignation or disability of a Director), the Board may select as many members as may be required to have nine (9) Board members. Board members selected in this manner shall serve only until the next member meeting or election, at which time the membership shall elect Board members to fill the unexpired terms of any Board positions filled by the Board. Candidates considered for this selection shall meet the same requirements as candidates during regular elections.

Section 2.6.

Each of the official acts of the Board of Directors shall be by a majority vote of a quorum of the Directors present in person and/or by teleconference, and shall be recorded with the yeas and nays of each Director or the unanimous approval of the Board in the Minute Book of the Co-operative. If a quorum is not present to vote on a motion raised at the meeting, the non-present Directors' votes may be obtained by e-mail or other designated electronic media, in which case the official acts of the Board of Directors shall be by a majority of the voting Directors. The e-mail or online votes shall be included with the meeting minutes in the Minute Book of the Co-operative.

Section 2.7

The Directors are vested with the legal responsibility to carry out the provisions of state statutes, the Articles of Incorporation, and these Bylaws, specifically to:

1. Convene membership meetings.
2. Oversee implementation of decisions of the membership.
3. Oversee the management of the business, property, funds, operations, and affairs of the Association, and enter into legal contracts on behalf of the membership.
4. Hire and fire managers and establish committees, make policies for their guidance, and approve their job descriptions.
5. Oversee an active publicity and education program for the membership on co-operative principles.
6. Develop long-range goals and objectives for the association, based on membership input.
7. Maintain records of the total number of members, number of members admitted or withdrawn during each year, and the amount of membership fees and/or capital contributions collected, and the rate of any interest dividends paid.
8. Have the books of the Association reviewed at the end of each fiscal year by a CPA selected by the Board.
9. Prepare a written financial report annually to a membership meeting, including a statement of the amount of business transacted with nonmembers and with members, a balance sheet, and income/expense statement.
10. Make an annual report to the State Corporation Commission within sixty (60) days of the end of the Association's fiscal year and keep a copy on file at the principal office of the Association.
11. Require adequate bonding, at the expense of the Association, for all officers and employees handling more than \$1,000 in one year.
12. Delegate preceding duties when appropriate.

Section 2.8.

The Board may appoint or remove up to two Advisory Board members. Advisory Board members shall be members in good standing with the Co-operative and shall meet the same requirements as candidates during regular elections. Advisory Board Members shall have no voting power at Board meetings and shall not attend executive session meetings. As the Board deems appropriate, Advisory Board Members may participate in Board discussions and may receive and review information regarding governance of the Co-operative.

ARTICLE III. OFFICERS

Section 3.1.

The officers of the Co-operative shall be a President, a Vice-President, a Secretary, a Treasurer, and such other officers as may be determined from time to time by the Board of Directors. The offices of the Secretary and Treasurer may be filled by the same person. The Board of Directors shall elect the officers at a Board meeting immediately preceding the general election.

Section 3.2.

The officers, who must be Directors of the Co-operative, shall serve one-year terms or until their successors are elected.

Section 3.3.

A vacancy in any office for any reason will be filled by the Board of Directors for the unexpired portion of the term.

Section 3.4.a.

The President shall designate the chair and/or facilitator of meetings of the Board of Directors and general membership. In the President's absence, the Vice-President shall designate the chair and/or facilitator. The President shall sign, with the Secretary or any other person of the Co-operative authorized by the Board of Directors, any deeds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by the Statute to some other officer or agent of the Co-operative, and, in general, she/he shall perform all duties incident to the office of President.

Section 3.4.b.

The Vice-President shall: (1) in the absence or disability of the President, perform the duties of the President; (2) carry out any other duties that the Directors may require.

Section 3.4.c.

The Secretary shall: (1) keep a complete and accurate record of meetings and prepare such records for approval within twenty (20) days after the meeting or delegate this task to other competent persons; (2) act as a legal signer for the Association; (3) see that notices are duly given in accordance with the Statutes, Articles and Bylaws; and (4) carry out any other duties that the Directors may require.

Section 3.4.d.

The Treasurer shall: (1) receive and disburse of all funds of the Association; (2) keep a complete and accurate record of all financial transactions of the Association, and make adequate and timely financial reports to the Directors and the membership; (3) carry out any other duties that the Directors may require; and (4) delegate her/his duties to other competent persons.

ARTICLE IV. COMMITTEES

Each Director may supervise one or more committees of the Co-operative. Committees shall report to the Board at least quarterly and to the general membership at least once a year.

ARTICLE V. MEETINGS

Section 5.1.a. GENERAL MEETINGS

There will be at least one general meeting of the member-owners each year to discuss major issues. The proposed agenda for each meeting shall be provided by mail, e-mail, or other designated online method to each member as notification at least two weeks in advance of the general meeting. The agenda shall also be posted in the store. A quorum of members from forty (40) households shall be required for conducting business and making decisions.

Section 5.1.b.

Members who know they cannot attend the meeting may request an absentee ballot prior to the meeting. The Secretary shall send to each of these members an exact copy of the proposal acted upon at the meeting. Those ballots that are returned within fifteen (15) days of being mailed, will count toward the vote. The Directors may vote to permit voting by e-mail or other electronic medium on an issue-by-issue basis.

Section 5.2 BALLOT VOTING

The Board can order a ballot vote without calling a meeting (referred to as a "ballot vote"), and the results of the ballot vote will be valid. A ballot will be provided by mail, e-mail, or other designated electronic medium, to the address on record at the Co-op for each member. The ballots will also be available on the Co-op's website. The wording for measures placed on ballots shall be the same as the wording for that measure voted upon at a meeting. The deadline for returning ballots will be provided for all ballot votes.

Section 5.3. BOARD MEETINGS.

Board meetings will be held monthly and any member of the Co-operative may attend. Decisions may be made only if approved by a majority of a quorum of Board members. Board members may attend meetings in person or by teleconference, or other electronic meeting attendance. Six (6) Board members shall constitute a quorum. Board meetings will be held to discuss business, policy, and proposed Bylaws. Decisions will be made by the Board of Directors upon recommendation of the staff and membership. The time and place for such meetings shall be posted in the store. Following each Board election a meeting shall be scheduled with mandatory attendance of all Directors to review and discuss together the provisions of State Statutes, the Articles of Incorporation and these Bylaws.

Notice of any meeting of the Board of Directors shall be given not less than three (3) days previous thereto by posting a written notice in the store. In addition, each Director shall receive three (3) day's advance notice of any meeting of the Board of Directors, either in person, by telephone, by e-mail or other designated electronic medium, or by mail at her or his address as shown on the Co-operative's records. In an emergency, a majority of the Directors may agree to waive the notice requirement, but decisions taken at such an emergency meeting must be ratified at the next regularly scheduled meeting, or by a ballot vote, e-mail or other designated electronic media.

Section 5.4. SPECIAL MEETING OF THE MEMBERSHIP.

The President shall call a special meeting of the membership within thirty (30) days of receipt of written request to consider one or more specific agenda items signed by one-tenth (1/10) of member households, or when called by a vote of the Board of Directors. If one or more of the agenda items is a change in the Bylaws, then the special meeting shall be called within forty-five (45) days of receipt of written request. The notification of the meeting shall include the purpose and all agenda items. The notification will be provided by mail, e-mail, or other designated electronic medium to the address on record at the Co-op for each member.

**ARTICLE VI.
CONTRACTS, CHECKS, DEPOSITS, AND FUNDS**

Section 6.1.

The Board of Directors may authorize an officer or officers, agent or agents of the Co-operative, in addition to the officers authorized by these Bylaws, to enter into any contract or execute and deliver any instruments in the name of, and on behalf of, the Co-operative, and such authority may be general or confined to specific instances.

Section 6.2.

All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Co-operative shall be signed by such an officer or officers, agent or agents of the Co-operative, and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instrument shall be signed by the Secretary and countersigned by the President of the Co-operative.

Section 6.3. All funds of the Co-operative shall be deposited from time to time to the credit of the Co-operative in such banks or other depositories as the Board of Directors may select.

Section 6.4. The Board of Directors may accept on behalf of the Co-operative any contribution, gift, bequest, or devise for the general purpose or for any special purpose of the Co-operative.

**ARTICLE VII.
WAIVER OF NOTICE**

Section 7.1. TRANSACTION OF A MEETING WITH A QUORUM.

The transaction 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 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.

Section 7.2. MEMBER'S ATTENDANCE CONSTITUTES A WAIVER.

A member's attendance at a meeting shall constitute a waiver of notice of the meeting, unless the member objects that the meeting was not lawfully convened. Attendance at a meeting, however, is not a waiver of any right to object to the consideration of matters required to be included in the notice but not included, if the objection is made at the meeting.

ARTICLE VIII. AMENDMENTS

These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the membership present at any general membership meeting at which a quorum is present. Thirty (30) days written notice shall be given of intention to alter, amend, repeal, or to adopt new Bylaws. Amendments shall be ratified by a majority of the members voting whether in person at a scheduled membership meeting or by ballot vote.

ARTICLE IX. CAPITALIZATION

Section 9.1. COOPERATIVE OPERATION.

The Cooperative shall be operated for the mutual benefit of its members, who shall patronize the Cooperative. The participation rights of the members shall be equal and no member shall have more than one vote. The property rights and interest of the members shall be unequal and shall be determined by their capital investments resulting from retained patronage dividends and the purchase of member investment certificates.

Section 9.2. CAPITAL.

The Cooperative may establish any or all of the following vehicles for capitalization:

1. Earnings retained from each year's operations.
2. Portion of a patronage dividend retained in members' capital investment ledger accounts.
3. Sale of Member Investment Certificates. As equity, the above capital vehicles are subordinate to all debt of the Cooperative. Annual membership fees are not considered as member investment or capital certificates, they are a requirement for membership.

Section 9.3. PATRONAGE DIVIDENDS. Patronage dividends may be issued annually from the excess receipts of the Cooperative as follows:

1. Patronage dividends shall be allocated at the same uniform rate to all members in proportion to each member's total purchases from the Cooperative during the previous fiscal year. The decision to make a patronage dividend, the rate, and the portion to be paid in cash shall be determined by the Board of Directors after the end of each fiscal year.
2. Portions of each patronage dividend shall be retained by the Cooperative as equity. The retained portion of each member's patronage dividend shall be recorded on the books of the Cooperative as a credit to that member's capital ledger account. The Check stub for the cash portion of the patronage dividend shall be considered a Patronage Dividend Retain Certificate when it also shows the retained portion of that member's patronage dividend.
3. In the case of non-member patrons, their proportionate amount of the patronage dividend shall be set aside in a general fund for such patrons and shall be allocated to individual non-member patrons only upon request and presentation of evidence of the amount of their purchases. Any such patronage dividend shall be reduced by the annual membership fee, in effect admitting the non-member patron to membership retroactively for the previous year. All other provisions of this section then apply to

such a patron the same as to any member. The Board of Directors shall specify a period of time in which non-member patrons may request a patronage dividend, after which time the remainder of the general fund for such patrons shall go to an educational fund, as required by law.

4. Not less than 20 percent (20%) of any patronage dividend, as determined by the Board of Directors, shall be paid in cash, and the remainder of such patronage dividend shall be shown on patronage retains certificates and as a credit to each member's capital ledger account on the books of the Cooperative.
5. The members of this Cooperative have agreed to take the entire amount of any patronage dividend received into account in computing income in the taxable year that the refund is received, to the extent that this is required by law. All patronage dividends made in the form of Patronage Dividend Retain Certificates and shown by credits to each member's capital ledger accounts of the Cooperative shall have the same status as if they had been paid in full to the member in cash in pursuance of a legal obligation to do so and the member had then furnished corresponding amounts as capital for the Cooperative. The retained portion of each patronage dividend recorded on a member's capital ledger account shall be considered as a contribution to capital of the Cooperative by the member.

Section 9.4. MEMBER INVESTMENT CERTIFICATES.

1. Member Investment Certificates may be issued in a total amount not to exceed \$1,500,000.
2. Up to 75,000 Member Investment Certificates, with par values of \$20 per certificate, may be issued.
3. Only individuals who are listed as belonging to member households of the Cooperative are eligible to purchase Member Investment Certificates. Each Member Investment Certificate shall be issued in the name of an individual person, rather than being issued to a household.
4. No person may own more than one percent (1%) of the Member Investment Certificates authorized by this article, that is, no more than \$15,000 total par value.
5. At the discretion of the Board of Directors, Member Investment Certificates may earn dividends not to exceed fifteen percent (15%) per year, and shall be non-cumulative.
6. The total of all dividends on Member Investment Certificates for any single fiscal year shall not exceed fifty percent (50%) of the Cooperative's excess receipts for that year.

Section 9.5. MEMBER EQUITY RETURNS. The Member Equity received by the Cooperative as Patronage Dividend Retains and Member Investment Certificates shall both be recorded on the books of the Cooperative in a capital ledger account for each member. Those accounts shall be administered as follows:

1. Member equity may be redeemed in full or on a pro-rated basis by the Cooperative, as determined by the Board of Directors. Redemption of member equity shown in capital ledger accounts rests in the sole discretion of the Board of Directors, who may redeem that equity when to do so is deemed prudent for the Cooperative.
2. Member equity accounts, shall be redeemed in order of the time of the original investments, with the oldest investments being redeemed first. Exceptions may be made to this rule, at the sole discretion of the Board of Directors, in the event that

redemption of a particular member's equity will allow the settling of a dispute or the settling of an estate, or in response to the request of a member withdrawing from membership of the cooperative.

3. Applicants for redemption of a specific member's equity account shall be notified of any decisions by the Board of Directors relating to that request.

Section 9.6. When any membership ends, that member's equity remains on the books of Cooperative until and unless the Board decides otherwise.

ARTICLE X. DISPOSITION OF RECEIPTS

Section 10.1. ASCERTAINMENT OF EXCESS RECEIPTS.

The receipts of the Co-operative during each year shall be first employed for the payment of all its operating expenses, including without limitation, employee compensation and benefits, taxes, maintenance, repairs, upkeep, replacement, insurance, interest and payment of any other obligations of the Co-operative as they become due. The balance shall be considered as the excess receipts of the Co-operative.

Section 10.2. APPLICATION OF EXCESS RECEIPTS.

At the end of each fiscal year, the Co-operative shall set aside a portion of the excess receipts as retained earnings in amounts determined by the Board of Directors to be prudent for the continuing operations of the Co-operative. In addition, up to five percent (5%) of the total excess receipts may be set aside by the Board of Directors for educational purposes. Any remaining excess receipts shall be distributed to the members or patrons in the form of patronage refunds and/or dividends on certificates as specified above in Section IX Capitalization. Receipts shall not be used for any other purpose without the prior consent of the members.

ARTICLE XI. INDEMNIFICATION

Section 11.1. INDEMNIFICATION OF BOARD DIRECTORS.

The Co-operative Association shall indemnify and hold harmless any Director or officer or former Director or officer of the Co-operative against all liability and loss, including but not limited to attorneys fees, judgments, fines, taxes, expenses, costs or amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense of any threatened or pending action, suit or proceeding, civil, criminal, or administrative in which he or she is made a party by reason of being or having been a Director or officer. The indemnification includes any amounts paid to satisfy a judgment or to compromise or settle a claim.

Section 11.2. EXCEPTION TO INDEMNIFICATION.

The Director or officer shall not be indemnified if he or she is adjudged to be liable on the basis that he or she has breached or failed to perform the duties of this office and the breach or failure to perform constitutes willful misconduct or recklessness.

Section 11.3. ADVANCE INDEMNIFICATION.

Advance indemnification may be allowed of a Director or officer for reasonable expenses to be incurred in connection with the defense of the threatened or pending action, suit or proceeding, provided that the Director or officer shall reimburse the Co-operative if it is subsequently determined that the Director or officer was not entitled to indemnification.

Section 11.4. INTENTIONAL MISCONDUCT OR KNOWING VIOLATION.

No person serving as a Director or officer shall be indemnified by the Co-operative in any instance in which he or she shall have been adjudged by final judicial decision to have engaged in intentional misconduct or a knowing violation of law or from or on account of any transaction with respect to which it was determined that such Director or officer personally received a benefit in money, property or services to which the Director or officer was not legally entitled.

**ARTICLE XII.
MISCELLANEOUS**

Section 11. FISCAL YEAR. The fiscal year of the Co-operative shall begin on the first day of September and close on the last day of August.

**ARTICLE XIII. DISPOSITION
OF PROPERTY**

The Co-operative may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two thirds of all the members of the Co-operative and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained or any other provisions of law, the Board of Directors without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging, assignment for security purposes or encumbering of any or all of the property, assets, right, privileges, licenses, franchises and permits of the Co-operative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of the Co-operative.