



## The Board's Rationale for the Proposed Changes to the TPSS Co-op By-laws

**Y**our Co-op's Board of Representatives has given much thought to this package of proposed by-laws changes. The changes presented here range from the mundane (correcting spelling errors) to the complex (what to do with unclaimed member equity) to the controversial (changes to how the Board will be structured). This article is our attempt to explain to you both the effects of each change and our rationale for proposing them.

You have seen many of these changes before. The Board asked you to approve a new version of the by-laws incorporating a large number of these changes in the summer of 2002. That package of changes was not approved, but we feel that the main reason for that was because the changes were poorly presented, not because they were not acceptable. The document we presented did not adequately indicate what was being changed, and did not fully explain why we were recommending the changes. Additionally, by asking you to approve all changes in a single up-or-down vote, we made it difficult to get the noncontroversial, but needed, parts passed. We hope to correct all these shortcomings with this package.

We have split the changes into five separate pieces of related changes that include only the sections that have been revised and we are including below a detailed description of all proposed changes in each piece. Because the changes are presented in five pieces, you will be able to vote for or against each separately.

The five pieces we are presenting for your approval are: **Chunk 1**—changes related to having two stores and housekeeping (typographical errors, etc.), **Chunk 2**—changes related to the Board of Representatives, **Chunk 3**—changes related to membership, **Chunk 4**—a new section related to the

legality of the by-laws, and **Chunk 5**—staff representation on the Board. What follows is an explanation of the changes included in each "Chunk."

### – CHUNK 1 – CHANGES RELATED TO HAVING TWO STORES AND HOUSEKEEPING (CORRECTING TYPOGRAPHICAL ERRORS, ETC.)

The changes presented in this Chunk are very non-controversial. Besides correcting typographical errors (yes, members have to approve spelling corrections), the changes presented here change references to "the TPSS Co-op" to "all TPSS Co-op locations" and other similar wording.

### – CHUNK 2 – CHANGES RELATED TO THE BOARD OF REPRESENTATIVES

There are several changes presented in this Chunk. The first few relate to what we perceive as a need to retain experienced and dedicated Board members. The main changes are to increase the length of each Board member's term from two to three years and to increase the number of terms that someone can stay on the Board from two to three.

We feel that these changes are extremely important for several reasons. First, we feel that a two-year term is too short for a person to be an effective Board member. Learning the basics of the Co-op, what the issues are, and how the Board works takes several months at a minimum, and most of us on the Board have felt that we have only begun to become effective Board members about a year after joining the Board. Further, having Board members with experience serving contributes greatly to getting new Board members up to speed on issues and procedures. Also, the Board has lost several very experienced, dedicated, and talented members recently due to the fact that they have reached their term limits as specified by the by-laws as they stand. Increasing the length and number of terms each member can remain on the Board will greatly increase the Board's ability to be effective representatives and to serve as knowledgeable overseers of our business.

We are proposing a broadening of the circumstances that might invoke a Board member to claim a conflict of interest. In addition to an actual conflict of interest, the proposed change would require Board members to remove themselves for either a perceived or potential conflict.

We are proposing two changes to the conditions under which a Board member can be removed from the Board. The first change would change the current requirement for automatic removal of a Board member for absence to the discretion of the Board. The second is to include a violation of Board policy as a potential reason for removal for due cause.

We are also proposing to change the section of the by-laws dealing with Board member compensation. We are proposing to change the Board's compensation from the "highest prevailing discount" to add "or a

20% discount, whichever is higher." To be clear: This change will **not** change the current Board discount. We are proposing this change because developments in the law is making the Co-op reconsider the idea of members working in the store in exchange for discounts. If the Co-op eliminates this option, the "highest prevailing discount" would drop to 0%. Many Board members currently volunteer 10 or more hours a month serving the Co-op, and we feel that the Board members should receive something for their services.

We are proposing minor changes in the duties of Board members. They are largely mundane and self-explanatory. The changes to the Treasurer's duties are a little more detailed, but basically they reflect the fact the Co-op's management are required to file tax returns and related documents, rather than the Treasurer.

We are proposing that the Board or one of its committees can close portions of committee meetings when something of a sensitive nature (like finances or a personnel matter) is to be discussed. The Board already has this power for its meetings; this just extends it to Board committees.

We are proposing a clarification of the procedure the Board should follow to suspend consensus and to vote outside of Board meetings. The current section of the by-laws refers to Article 5.6(B), which does not exist in the current version of the by-laws (a product of previous revisions). This change also allows the Board to vote by mail and e-mail(!).

Finally, this Chunk includes a change allowing the Board to close parts of its meetings when issues relating to real estate or the Co-op's financial integrity are discussed.

### – CHUNK 3 – CHANGES RELATED TO MEMBERSHIP

This Chunk includes several changes that concern members' relationship to the Co-op. The first few are simply a reflection of the fact that the Co-op does not now charge an annual membership fee as it used to. There is also a new section (3.1H) that gives the Board the discretion to reinstate a yearly membership fee and sets limits to the amount that can be charged each year.

The next proposed change gives the Co-op the discretion to pay refunds of members' paid-in capital (the \$100 refundable buying deposit you paid when you joined the Co-op) over time if the Board determines that the Co-op is in a cash-crunch.

The proposed added section (3.1G) on unclaimed capital is being added to comply with Maryland state law. It describes the steps the Co-op must take to locate inactive members and requires that the paid-in capital of any members who can't be found go to educational or charitable purposes.

The next proposed change deals with patronage refunds (how the Co-op's profits are distributed). The current by-laws require the Board to recommend to the membership a distribution of profits, beyond reserves, and for the membership to vote, by ballot, on this rec-

ommendation. We feel this is too cumbersome and could result in an interminable series of votes with no resolution. In its place, we are asking you to allow the Board to determine, rather than recommend, how this distribution will be done.

Finally, this Chunk proposes to relax the requirement that the Co-op hold semi-annual membership meetings in June and October. The by-laws will still require that the Co-op have two meetings a year, but does not specify the exact months they will be held.

### – CHUNK 4 – A NEW SECTION RELATED TO THE LEGALITY OF THE BY-LAWS

This Chunk is basically boilerplate—it says that if any part of the by-laws is improperly written or in some way violates any applicable law, the rest of the by-laws is still a working document. It's not required by law to have it, but it's very common in Co-op (and other business) by-laws, and it gives us additional legal protection.

### – CHUNK 5 – STAFF REPRESENTATION ON THE BOARD OF REPRESENTATIVES

The Board feels that this last Chunk is the most controversial proposed change, so we have made it its own separate proposed amendment. The current by-laws require that at least one Board member be a staff member. The proposed change eliminates the requirement. The current Board does not have a problem with staff members serving on the Board. However, we feel that having a requirement of staff participation on the Board may be unrealistic. We recognize that there may be times when there is no staff member who wants to be on the Board and it is unfair that the Board may be in violation of the by-laws just because no staff member wants to serve. As this is being written, the Board has no staff representative because the last-elected staff Board representative had to leave due to changes in commitment.

Removing this requirement does not affect the ability of any staff member who wishes to run for the Board to do so, but it does allow the Board to continue to operate without being in violation of the by-laws when there is no staff member who wants to serve.

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There you have them—the proposed changes to the by-laws. Please give each of the "Chunks" careful consideration. We on the Board have spent much time discussing all of them and we feel that they should be approved, but we encourage you to read them and make up your mind. Whatever your decision, we would like you to vote so that your voice can be counted. After all, this is your Co-op!

If you have any questions about these changes, please e-mail them to the Board at [board@tpss.coop](mailto:board@tpss.coop), or leave any written questions for Larry Haller at either Co-op location and he will get an answer to you. Don't forget to leave your contact information.

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Proposed deletions are shown with overstrikes. Proposed additions are in underlined italic.

## Chunk 1—Changes related to having two stores and housekeeping (correcting typographical errors, etc.)

### ARTICLE 5: Meetings of Members

#### 5.4 MEMBERS SUBMISSION OF ISSUES

Members who have items to be brought up at a meeting should submit them to the Secretary ~~of~~ of the Board in advance of the posting of the agenda. The Board will make all reasonable efforts to accommodate members request. Items submitted after the posting of the agenda will be discussed at the discretion of the Board.

#### 5.5 NOTICE OF MEETINGS

Notice and agenda of all meetings must be posted in ~~the~~ all TPSS Co-op locations and sent by mail to all members at least 2 weeks in advance. Such notice may be included in a regularly mailed newsletter.

### ARTICLE 6: Board of Representatives

#### 6.1 RESPONSIBILITIES AND POWERS

**C. FINANCIAL OVERSIGHT:** The Board is specifically responsible for overseeing the financial stability of the TPSS Co-op. It must carry out or provide for regular

evaluation of the financial performance of the business through budget and sales reports, as well as an annual review of the TPSS Co-op books, by a CPA who is not a member of the Board, an employee of the TPSS Co-op, a member of the TPSS Co-op, or a relative of a Board member or employee.

#### F. OPERATIONS:

1. The daily operations of the TPSS Co-op are entrusted to, and are the responsibility of, the General Manager. The Board will hold the General Manager accountable for the successful operation of the business and implementation of TPSS Co-op policy.

### ARTICLE 7: Officers and Committees of the Board

#### 7.2 COMMITTEES

**A. STANDING BOARD COMMITTEES:** The Board shall ensure the maintenance of a number of standing committees. Committees will be composed of members in good standing and each committee will have at least

one (1) Board member. The standing committees and their responsibilities are as follows:

**3. NOMINATING COMMITTEE:** responsible for soliciting nominations for Board vacancies and overseeing elections. This committee will reach out to the diverse community represented in the TPSS Co-op by advertising, within the stores, to our diverse customer base.

**D. MEETINGS:** All committee meetings are open to members, except for those concerned with personnel or contractual issues. Standing committees will hold regular meetings and timely notices of meetings will be posted in each location.

### ARTICLE 8: Meetings of the Board

#### 8.1 REGULAR MEETINGS

The Board of Representatives will hold regularly scheduled meetings as often as it determines is necessary. The date, time, place and agenda will be posted in advance at ~~the~~ all TPSS Co-op locations.

## Chunk 2—Changes related to the Board of Representatives

### ARTICLE 6: Board of Representatives

#### 6.2 QUALIFICATIONS AND ELECTIONS

##### F. NUMBER AND TERMS:

1. The Board shall have ~~8~~ 9 members.

3. Representatives will serve for a period of ~~two~~ three (3) years (one term). Board members who have served ~~4~~ 2.5 terms or more may not run for election to the Board, or be appointed in the case of a vacancy on the Board, for a period of two years from the date of their departure from the Board.

##### G. VACANCIES AND ADDITIONS TO THE BOARD:

##### 2. ADDITIONS:

~~g d.~~ The increase is effective until the next regularly scheduled election unless the Board determines that there is a need for the continuation of the additional positions. This determination must be made on a yearly basis.

1. If the positions are continued, the positions shall be filled in accordance with Article 6.2 (A-F).

##### H. CONFLICT OF INTEREST:

1. All Board members have the responsibility to inform other Board members of an actual conflict of interest, a perceived conflict of interest, or a potential conflict of interest and to ~~refuse~~ remove themselves from any decisions ~~effected~~ affected by this conflict.

a. If a Board member or Board members fail to refuse remove themselves with respect to a conflict of interest they can be refused barred from participating in decision-making on the item in question by a vote of the majority of the remaining Board.

##### I. Removal:

1. If a representative misses 1/3 or more of the Board meetings in any consecutive twelve-month period, or three consecutive meetings without prior written notice and/or reasonable cause, as determined by a vote of the Board, he or she ~~will~~ may be removed by a vote of the majority of the Board.

2. A representative may also be removed for "due cause", which includes the following:

a. A violation of the by-laws or a policy, as determined by the Board.

J. Compensation: Members of the Board receive the highest prevailing discount available or a 20% discount, whichever is higher.

### ARTICLE 7: Officers and Committees of the Board

#### 7.1 OFFICERS

A. After the annual elections, members of the Board shall choose four officers: president, vice president, secretary and treasurer

**1. PRESIDENT:** The president is responsible for assuring: regular Board and Membership meetings; the timely preparation and availability of agendas, the selection of a meeting facilitator; the presentation of all Board decisions to the Membership; ~~the timely filing of all required reports to federal, state and local governments.~~ In addition, the president will be the contact person between Membership and the board, will serve as an "ex-officio" member of all Board committees and sign official documents when necessary and carry out all duties and responsibilities delegated to the president that are outlined in the Policy Manual.

**2. VICE PRESIDENT:** The vice president will assist the president in all of the above, will act for the president when he/she is not available and sign official documents when necessary. The vice president will become acting president when that office becomes empty and carry out all duties and responsibilities delegated to the vice president that are outlined in the Policy Manual.

**3. SECRETARY:** The secretary is responsible for assuring: the maintenance of all board-related records other than financial records in the offices; that minutes of all Membership and Board meetings are recorded, maintained in an orderly manner, distributed to board members and made available to the Membership; the timely reporting of all major business and policy decisions to the Membership; the organization and maintenance of a manual recording policy decisions made by the Board and the general Membership; that the by-laws are updated according to board and Membership decision. The secretary will sign official

documents when necessary and carry out all duties and responsibilities delegated to the secretary that are outlined in the Policy Manual.

**4. TREASURER:** The treasurer will be a member with financial and business experience. The treasurer is responsible for assuring: the timely compilations and submission of regular financial reports to the board ~~and all required financial reports to the federal, state and local governments; the payment of all legal debts, taxes and fees;~~ the conduct of annual financial review, as designated in ARTICLE 6.2 (C). ~~The treasurer will oversee management of financial records.~~ The treasurer will act as "ex-officio" member of the finance committee and sign official documents when necessary and carry out all duties and responsibilities delegated to the treasurer that are outlined in the Policy Manual.

#### 7.2 COMMITTEES

**D. MEETINGS:** All committee meetings are open to members, except for those ~~concerned with personnel or contractual issues~~ meetings or portions of meetings designated as board only by the board or the committee. Standing committees will hold regular meetings and timely notices of meetings will be posted in the ~~TPSS Co-op~~ stores.

### ARTICLE 8: Meetings of the Board

#### 8.3 VOTING

A quorum consisting of at least half of the Board is required for decision making. Decisions will be made by consensus, with the option of suspending consensus ~~as stated in Article 5.6(B) unless otherwise stated in these by-laws~~ with the approval of 3/4 of the Board voting. If consensus is suspended, a simple majority is needed for the issue being voted on to pass. If a decision needs to be made between meetings, Board members may vote by mail, telephone or ~~other~~ electronic media.

#### 8.4 OPENNESS OF MEETINGS

All Board meetings shall be open to TPSS Co-op members, except when the Board determines that it requires confidential discussion of personnel, contract negotiations, or other specified matters involving real estate or the legal or financial integrity of the TPSS Co-op.

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## Chunk 3—Changes related to membership

### Article 2: Membership

#### 2.1 ELIGIBILITY

B. Each member is required to pay ~~a one-time~~ the capitalization contribution and a yearly Membership fee if required, in accordance with Article 3.

#### 2.2 RIGHTS

A. All members who have capitalized (or are making payments pursuant to an authorized plan) and are current on their ~~yearly~~ yearly Membership fee, if one is being charged, are eligible to:

1. Run for, and serve on, the Board of Representatives.
2. Cast one vote on any issue brought to the Membership for a vote.
3. Receive all discounts and patronage refunds made available to members pursuant to these by-laws and the policy handbook of the TPSS Co-op.
4. Participate in all approved volunteer activities.

### Article 3: Capital Contributions

#### 3.1 OBLIGATIONS AND PROCEDURES

##### F. REFUND OF CAPITALIZATION:

1. When a member declares that he/she no longer wishes to remain a member of the TPSS Co-op, or is terminated involuntarily, the TPSS Co-op, if requested in writing, will refund the member's capital contribution. However the TPSS Co-op reserves the right to pay back the capital contribution ~~no faster than it was paid~~ in installments, subject to the Board's determination of the TPSS Co-op's ability to pay. All refunds on capital contributions must be requested within 5 years of relinquishing membership in the TPSS Co-op, or of being involuntarily terminated. Failure to request a refund within 5 years releases the TPSS Co-op of its obligation to repay the former member their capital contribution. No interest will accrue to the Member on any funds given to the TPSS Co-op as a capital contribution.

##### G. Unclaimed Capital:

1. Any unclaimed amounts of investment capital entitled to redemption, including common stock and patronage refunds, may be forfeited to the TPSS Co-op, if all of the following conditions are met:

a. No earlier than three (3) years after the funds are first made available to their owners, the Board declares the funds forfeited to the TPSS Co-op unless claimed by the date specified in paragraph (b).

b. After the declaration under paragraph (a), the TPSS Co-op gives notice that states that the funds shall be forfeited if not claimed by a specific date.

c. The date specified in the notice under paragraph (b) is a business day at least sixty (60) days after the date of mailing of the notice.

d. The notice under paragraph (b) is mailed to the last-known address of each owner and is published as a notice complying to Maryland Statutes on or before the date of mailing in a newspaper published in the municipality containing the service area(s) of the TPSS Co-op.

2. Any funds remaining unclaimed after the date specified in paragraph (1) (b) must be dedicated to educational purposes, limited to providing scholarships or loans to students, or to charitable purposes, as the Board determines, within one year after the date the funds are declared forfeited under paragraph (1)(a).

H. The Board or its designee may elect to establish a yearly membership fee and to set an amount of such fee.

1. The yearly membership fee is not to exceed 10% of the capitalization amount.

### Article 4: Distribution of Net Income

#### 4.1 OBLIGATIONS AND PROCEDURES

The TPSS Co-op is obligated to allocate and distribute net income at the discretion of the Board.

~~A.~~ The Board shall determine, prior to the distribution of any net income, how much of the net income shall be set

aside for capital reinvestment, reserves for the physical plant, or any other capital reserves. It is the sole discretion of the Board ~~of representatives~~ how much of net income will be applied to this category.

~~B. The Board will make a recommendation to the Membership on how to divide those funds not allocated to capital reserves between the following categories:~~

1. Patronage refunds;
2. Other categories as determined by the board.

~~C. The Board will send its recommendation, along with other possible scenarios, to the Membership for a vote by ballot. The Membership vote will only determine the percentage allocations of the funds and not the actual dollar amounts. The Board will allocate the actual net savings in accordance with the percentage allocations approved by the Membership.~~

### ARTICLE 5: Meetings of Members

#### 5.1 SCHEDULED MEETINGS

The regularly scheduled meetings of the TPSS Co-op Membership shall be held semi-annually ~~each June and October as set by the Board.~~ At the June one meeting, the Board will report on the budget for the coming fiscal year and the distribution of net income. The ~~October other~~ meeting is ~~for the election of the new members of the Board of Representatives to conduct any other business the Board deems necessary.~~ Any other TPSS Co-op business may be conducted at these meetings. The Board will set the time and place of the meetings.

#### 5.7 VOTING PROCEDURES

##### A. WRITTEN BALLOT

1. Decisions requiring written ballot are:
  - ~~a.~~ a. Election of the Board of Representatives;
  - ~~b.~~ b. Amendment of the by-laws;
  - ~~c.~~ c. Dissolution of TPSS Co-op; and,
  - ~~d.~~ d. Other decisions as determined by the Board.

## Chunk 4—A new section related to the legality of the by-laws

### ARTICLE 9: Amendments and Severability

#### 9.2 SEVERABILITY

*In the event that any provision of these by-laws 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 by-laws.*

## Chunk 5—Staff representation on the Board of Representatives

### ARTICLE 6: Board of Representatives

#### 6.2 QUALIFICATIONS AND ELECTIONS

##### F. NUMBER AND TERMS:

~~2. No less than one (1) and a~~ No more than three (3) of the Board members will come from the paid staff.

Proposed deletions are shown with overstrikes. Proposed additions are in underlined italic.

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TPSS Co-op, Inc., is a not-for-profit cooperative natural food store. Submissions to the newsletter and letters-to-the-editor are welcome. Please provide your name and contact information, and note that submissions may be copyedited or reduced for space purposes. Classified ads (up to 50 words) are free for TPSS owners and \$10 for non-owners. Email all copy and ads to Paul Lagasse at editor@tpss.coop (for hard copy delivery of copy and ads, please email the editor for mailing information).

# BY-LAWS BALLOT

*Please take a few moments to read the five “Chunks” of proposed by-laws changes and vote either for or against each one. Any set of changes that receives approval (at least 2/3 of all votes cast) will be incorporated in our by-laws. Any set that is not approved does not become part of our bylaws.*

For	Against	
<input type="checkbox"/>	<input type="checkbox"/>	CHUNK 1—Changes related to having two stores and housekeeping (correcting typographical errors, etc.)
<input type="checkbox"/>	<input type="checkbox"/>	CHUNK 2—Changes related to the Board of Representatives
<input type="checkbox"/>	<input type="checkbox"/>	CHUNK 3—Changes related to membership
<input type="checkbox"/>	<input type="checkbox"/>	CHUNK 4—A new section related to the legality of the by-laws
<input type="checkbox"/>	<input type="checkbox"/>	CHUNK 5—Staff representation on the Board of Representatives
Member name		_____
Member #		_____
		Date _____

*Balloting for the proposed by-laws revisions has begun and will continue **until 6 p.m., Friday October 24.** There are ballot boxes at both stores. Ballots are also available at the stores.*