

BYLAWS (Third Amendment)
OF
NEW MEXICO ASSOCIATION OF FOOD BANKS

GENERAL

NAME: The name of the organization will be: the New Mexico Association of Food Banks (“Association”)

PURPOSE: The purpose of this Association is: to maximize the ability of New Mexico food banks to build a well nourished New Mexico.

OFFICES: The board of directors will fix the location of the principal executive office and any other branch or subordinate offices at any place or places where the Association is qualified to do business.

MEMBERSHIP

I. ASSOCIATION MEMBERSHIP

Section 1. Membership Classes - The Association will have three classes of members: food bank members, advisory members and at-large members.

a. Food bank members are non-profit corporations with incorporation accepted and approved by the State of New Mexico and with 501(c) (3) tax exempt status approved by the Internal Revenue service and which are associated with Feeding America and/or its designated Affiliate (or which are able to establish at their own expense that the minimum criteria established by food banking industry are met);

And: on a daily basis solicit, receive, warehouse and distribute donated food within a defined service area to a wide range of non-profit agencies that operate food assistance programs for low-income people, in New Mexico. Food bank members will have full voting rights and are eligible to serve on the board.

b. At-large members are 1). non-profit corporations with incorporation accepted and approved by the State of New Mexico and with 501 (c) (3) tax exempt status approved by the Internal Revenue Service, for-profit corporations with incorporation accepted and approved by the State of New Mexico or 2) representatives of the community with resource connected individuals and which exhibit an active role on a statewide, regional or local level regarding hunger and the well being of low income people, and which wish to join the Association. At-large members will have voting rights equivalent to the voting rights of food bank members and are eligible to serve on the board.

c. Advisory members are those organizations that exhibit an active role on a statewide level regarding hunger and the well being of low income people and which wish to join the Association.

Advisory members will not have voting rights.

Section 2. Admission of Members - Applicants for membership shall be admitted to membership upon approval by the board.

The Association shall keep a membership list containing the name and address of each member. Termination of the membership of any member shall be recorded in the list, together with the date of termination of such membership. Such list shall be kept at the Association's principal office and shall be available for inspection by any director or member of the Association during regular business hours.

The membership of a member shall terminate upon receipt of written notice from the member or upon determination by the board of directors that the member has engaged in conduct materially and seriously injurious to the interests or purposes of the Association.

Section 3. Number of Members - There is no limit on the number of members the Association may admit.

Section 4. Dues - Members of the Association will pay dues in accordance with policy set forth by the Board of Directors.

II. BOARD OF DIRECTORS

Section 1. Powers. Subject to the provisions of the New Mexico Nonprofit Corporation Act and any other applicable laws, the business and affairs of the Association will be managed and all corporate powers will be exercised by or under the direction of the board of directors.

Section 2. Number and Qualifications of Board of Directors. The board of directors will be comprised of not less than five nor more than nineteen directors with full voting privileges including:

- i. Maximum of two representatives each from member food banks*
- ii. Maximum of one representative of each the At-large members*
- iii. Representatives from Advisory members may be admitted to board but will not hold voting privileges*

Section 3. Election and Term of Office of Directors. Directors will be elected for three year terms at the annual meeting of the members with terms commencing with beginning of next Association fiscal year. Directors elected to fill a vacancy will hold office until the expiration of the term for the director they are replacing. There is no term limit for Directors from member food banks. At-large members and advisory members may be elected to serve two consecutive terms and subsequently may return to serve on the Board following a one-year break in continuous service.

Section 4. Board of Directors Duties and Responsibilities. The duties and responsibilities of the Members of the Board of Directors will be as outlined in the Major Responsibilities Policy as developed and approved and reviewed periodically by the Board of Directors and ratified by the Association at the next annual meeting. Each Member of the Board of Directors will have one vote, except advisory members, and will actively participate on Board Committees and/or Task Forces as described by the Board of Directors or the bylaws.

Section 5. Removal. A member of the Board of Directors may be removed from office for determination of lack of participation (75% unexcused absence at all scheduled meetings), breach of the *Code of Ethics*, lack of good faith in paying or raising their personal annual dues obligation, or other concerns as defined by the Board. Notice of removal will be provided to the next available Board meeting with notice to the non-productive member not less than five working days prior to the Board meeting. With the approval of a majority vote at the meeting, the member of the Board may be removed.

Section 6. Vacancies. Vacancies in the board of directors may be filled by the Nominating Committee, a majority of the remaining Food Bank member and at-large member directors, though less than a quorum, or by a sole remaining director, subject to board approval.

A vacancy or vacancies in the board of directors shall be deemed to exist in the event of the death, resignation, or removal of any director, or if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

Any director may resign effective on giving written notice to the President of the board, the president, the secretary, or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective. The board will vote on, and the meeting minutes will reflect, the acceptance of all member resignations.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

None of the persons serving on the board of directors at any time may be interested persons. An interested person is any person being compensated by the Association for services rendered to it within the previous twelve months, whether as a full time or part time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director. However, any violation of the provisions of this paragraph shall not affect the validity or enforce ability of any transaction entered into by the Association.

Section 7. Meetings.

- a. Regular meetings of the board of directors may be held at any place within or outside the State of New Mexico that has been designated from time to time by resolution of the board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the Association. Special meetings of the board shall be held at any place within or outside the State of New Mexico that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the Association. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at the meeting.
- b. Regular, or special, meetings of the board of directors shall be held without call at such

time as shall from time to time be fixed by the board of directors. Such regular meeting must be held with five (5) days notice. There will be at least two (2) regular meetings of the board of directors each fiscal year.

Section 8. Special Meetings. Special meetings of the board of directors for any purpose or purposes may be called at any time by any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone, facsimile or other electronic means to each director or sent by first-class mail, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. Notice shall be given in a manner that would reasonably permit the directors to have forty-eight (48) hours notice before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice will specify the purpose of the meeting and the location of the meeting if the meeting is to be held at any location other than the principal executive office of the Association.

Section 9. Action Without Meeting.

Any action, which may be authorized or taken at a meeting of the members, may be taken without a meeting with the affirmative vote or approval of, and in writing or writings signed by all of the voting members, even if taken by electronic means. For purposes of this section, a signed writing will include any original document bearing the signature of a voting member, a telecopy sent by and bearing the signature of a voting member, an electronic mail transmission created and sent by a voting member or other electronic means which sets forth his or her name in such a manner so as to logically evidence his or her intent to sign the transmission.

Any such writings will be filed with or entered upon the records of the Association.

Section 10. Quorum. A quorum of the Board of Directors will be established with fifty one percent of the active, seated food bank and at-large members present at any meeting. Action will be approved by a majority of the food bank and at-large members present at any meeting providing a quorum existed at the start of any meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the board of directors however called and noticed or wherever held, shall be as valid as though transacted at a meeting duly held after regular call and notice if a quorum is present. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement, the lack of notice to that director.

Section 12. Fees and Compensation of Directors. Directors and members of committees may receive such reimbursement of expenses as may be fixed or determined by resolution of the board of directors.

Section 13. Ethics. The Members of the Board of Directors will abide by the Code of Ethics approved by the Board of Directors and ratified by the Association.

Section 14. Whistleblower Policy. The Members of the Board of Directors will be given a copy of the Association Whistleblower Policy.

II. OFFICERS

Section 1. The officers of the corporation will be a President, a Vice-President, a Secretary and a Treasurer, each of whom will be elected by the Board of Directors from its membership and serve a term of no less than two years and no more than 3 consecutive terms.

Section 2. President. The President will preside at meetings of the board of directors and/or the Association and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the bylaws. The President will in addition be the chief executive officer of the Association and will have, subject to the control of the board of directors, have general supervision, direction and control of the business of the officers of the Association. The President will have the general powers and duties of management usually vested in the office of President of a board of directors and will have such other powers and duties as may be prescribed by the board of directors and/or the bylaws.

Section 3. Vice-President. The Vice-President will preside at meetings of the board of directors and/or the Association in the absence of the President and will exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or as prescribed by the bylaws. In the absence of the President, the Vice-President, subject to the control of the board of directors, have general supervision, direction and control of the business of the officers of the Association.

Section 4. Secretary. The Secretary will keep or cause to be kept, at the principal executive office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of the Association and the board of directors, with the time and place of holding, whether regular or special, and if special, how authorized, the notice given, the names of those present at director's meetings, the number of those present or represented at such meetings, and the proceedings. And similarly, the Secretary will keep any other notice required by the bylaws or by law and have the powers and duties as may be prescribed by the board of directors or by the bylaws.

Section 5. Treasurer. The Treasurer shall also keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and retained earnings. The books of account shall at all reasonable times be open to inspection by any director and the public. And similarly, the Treasurer will keep any other record required by the bylaws or by law and have the powers and duties as may be prescribed by the board of directors or by the bylaws.

Section 6. Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any other cause will be filled in the manner prescribed in these bylaws for regular appointments to that office.

Section 7. Removal and Resignation of Officers. Any officer may be removed, with cause, by the board of directors, at any regular or special meeting of the board.

Any officer may resign at any time by giving advance written notice to the Association. Any resignation will take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance will not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 8. Indemnification of Directors, Officers, Employees and Other Agents.

The Association will indemnify each director and officer of the Association, and their heirs, legal representatives and assigns, against expenses, costs and attorney's fees actually and reasonably incurred in connection with the defense of any action, suit or proceeding, civil or criminal, in which the director or officer is made a party by reason of being or having been an officer or director. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer will not be indemnified if he or she is adjudged to have been guilty of actual negligence or misconduct in the performance of duty to the Association. Advance indemnification may be allowed of a director or officer for expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the director or officer agrees to reimburse the Corporation if it is subsequently determined that the director or officer was not entitled to indemnification by reason of negligence or misconduct in the performance of duty to the Corporation.

Upon and in the event of a determination by the board of directors of this Association to purchase such insurance, this corporation shall purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not this Association would have the power to indemnify the agent against that liability under the provisions of this section.

III. COMMITTEES

Section 1. COMMITTEES OF DIRECTORS. The board of directors may by resolution designate one or more committees, each consisting of two or more directors and members of any *number (which may include association members and non-association members)*, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any committee will have the authority provided in the resolution of the board.

- a. Nominating Committee: The President of the Board will appoint, and the Board of Directors will approve, a standing Nominating Committee.

Section 2. MEETINGS AND ACTION OF COMMITTEES. Meetings and action of committees will be governed by, and held and taken in accordance with, the provisions of these bylaws, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members, except that the time of regular meetings of committees may be determined either by resolution of the committee; special meetings of committees may also be called by

resolution; and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

IV. EMPLOYEES. The Executive Director of the Association, if any, will be hired by, supervised by and fired by the Board of Directors. Major Duties and Responsibilities will be as determined by the Board of Directors and as described in the Personnel Policies. Compensation will be as determined annually by the Board of Directors. Other employees will be hired by the Executive Director subject to board approval.

V. MISCELLANEOUS

CONFLICT OF INTEREST Any member of the board who has a financial, personal, or official interest in, or conflict (or appearance of a conflict) with any matter pending before the Board, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner, will offer to the Board to voluntarily excuse him/herself and will vacate his/her seat and refrain from discussion and voting on said item.

RECORDS AND REPORTS

Section 1. MAINTENANCE AND INSPECTION OF BYLAWS. The Association shall keep at its principal executive office, at its principal business office in this state, the original or a copy of the bylaws as amended to date, which shall be open to inspection at all reasonable times during office hours.

Section 2. MAINTENANCE AND INSPECTION OF OTHER CORPORATE RECORDS. The accounting books and records and minutes of proceedings of the board of directors and any committee or committees of the board of directors shall be kept at such place or places designated by the board of directors, or, in the absence of such designation, at the principal executive office of the Association. The minutes shall be kept in written form and the accounting books and records shall be kept in written form.

Section 3. INSPECTION BY DIRECTORS AND MEMBERS. Every director and member shall have the absolute right at any reasonable time to inspect all minutes, books, records, and documents of every kind and the physical properties of the Association. This inspection by a director may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts of documents.

Section 4. ANNUAL REPORT TO DIRECTORS. The Association shall provide to directors, within 120 days of the close of its fiscal year, a report containing the following information in reasonable detail:(a) The assets and liabilities, including the trust funds, of the Association as of the end of the fiscal year;

- i. (b) the principal changes in assets and liabilities, including trust funds, during the fiscal year;
- ii. (c) the revenue or receipts of the Association, both unrestricted and restricted to

- particular purposes, for the fiscal year;
- iii. (d) the expenses or disbursements of the Association, for both general and restricted purposes, during the fiscal year; and
 - iv. (e) any information required by New Mexico Nonprofit Corporation Act.

GENERAL CORPORATE MATTERS

Section 1. CONSTRUCTION AND DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the New Mexico Nonprofit Corporation Act shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

Section 2. DEDICATION OF ASSETS. The properties and assets of this Association are irrevocably dedicated to charitable purposes. No part of the net earnings, properties or assets of this Association, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any director of this Association. On liquidation or dissolution, all properties and assets and obligations shall be distributed and paid over to an organization dedicated to charitable purposes, provided that the organization continues to be dedicated to the exempt purposes as specified in Internal Revenue Code Section 501(c)(3).

Section 3. FISCAL POLICIES. The fiscal year of the board will be July 1 to June 30th.

AMENDMENTS

Section 1. AMENDMENT BY MEMBERSHIP. These bylaws may be amended or repealed by a majority vote of approval by the Food Bank members and at-large members. Before these bylaws can be amended or repealed, all members must be given thirty (30) days prior written notice.

Section 2. If any provision of these bylaws requires the vote of a larger proportion of the membership than is otherwise required by law, that provision may not be altered, amended or repealed except by that great vote.

OFFICER'S CERTIFICATE

We certify the foregoing to be a true copy of the Third Amended Bylaws duly adopted by the New Mexico Association of Food Banks on _____, 200 .

Sherry Hooper
President

Secretary