

# ARTICLES OF INCORPORATION FOR BIG ISLAND TECHNOLOGY SOLUTIONS

Prepared by members of the California Worker Cooperative Policy Coalition, including: the East Bay Community Law Center (EBCLC), the Sustainable Economies Law Center (SELC), Tuttle Law Group, the Arizmendi Association of Cooperatives, and Cutting Edge Counsel, adapted from bylaws prepared by Tim Huet and Jenny Kassan.

## **A few things to note about these Sample Articles:**

1. **About the Explanatory Footnotes:** These Articles are provided for teaching purposes. All Explanatory Footnotes are meant to explain the purpose, meaning, alternatives, or legal background of a provision. It is important to consider the explanations in the footnotes, as particular drafting choices will better serve one's business entity, depending on the entity's activities and the concerns of its membership. The footnotes should be deleted if you use and adapt the Articles for your own purposes. They are not meant to be legally enforceable provisions of the Articles.
2. **Use These Articles With Caution :** Please note that you should not assume these Articles are sufficiently thorough or applicable to your cooperative. *This form should not be construed as legal advice.* Please seek the advice of an attorney before adopting Articles, and be sure that any Articles you adopt are tailored to the specific needs of your cooperative and to the requirements of California law. Some corporations may need to include additional provisions not discussed in this document to effectuate particular business objectives.
3. **These Articles Were Written to Adhere to California Law:** Unless otherwise specified, all references to a particular code section or to the "Statute" are to the California Cooperative Corporations Statute, which is found starting at section 12200 of the California Corporations Code. If you are uncertain about whether you can change provisions of these Articles, refer to the relevant section of the Statute, which often sets minimum requirements for meeting procedures, notice, and other matters.
4. **We Are Continually Improving on These Articles:** This draft was last revised in May 2016 in response to newly enacted statutory provisions per Assembly Bill 816 (Bonta, passed in 2015, effective January 1, 2016). Please check our website for updates: <http://www.co-oplaw.org/cooperative-bylaws/>, and let us know if you have any suggestions or find any errors. Thank you!



*For informational purposes only; not to be relied upon as legal advice.*



**ARTICLES OF INCORPORATION OF  
BIG ISLAND TECHNOLOGY SOLUTIONS COOPERATIVE**

**Article 1.** The name of this corporation is **Big Island Technology Solutions Cooperative, Inc.** (the “Corporation”).<sup>1</sup>

**Article 2.** This Corporation is a cooperative corporation organized under the Cooperative Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the law.<sup>2</sup>

**Article 3.** This corporation is a worker cooperative corporation organized under the Cooperative Corporation Law.<sup>3</sup>

**Article 4.** The name and street address in the state of California of this Corporation’s initial agent for service of process is: **Mikola Lysenko, 585 9th Street Unit 558. Oakland, CA.**<sup>4</sup>

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<sup>1</sup> **Law:** The name of the Corporation must be recited in the Articles of Incorporation. [Cal. Corp. Code § 12310(a).] The names of all California Consumer Cooperative Corporations must include the word “cooperative” and some word or abbreviation indicating that the co-op is a corporation. Acceptable abbreviations include: “inc.” and “corp.” [Cal. Corp. Code § 12311(a).]

**Law:** The State of California will not approve the Articles of Incorporation of a company with a name that is identical or overly similar to that of a Corporation authorized to operate in California. [Cal. Corp. Code § 12302(b).] As a result, one should consider: 1) checking the California Secretary of State’s website to ensure that their desired name has not already been taken; or 2) filing a Name Availability Inquiry Letter with the Secretary of State’s office.

<sup>2</sup> **Law:** All California Cooperative Corporations’ Articles of Incorporation *must* contain this statement. [Cal. Corp. Code § 12310.]

<sup>3</sup> **Law:** § 12310.5(a) requires that a worker coop make an additional statement that the corporation is organized as a worker cooperative under the Cooperative Corporation Law.

**Note:** Currently the law is unclear if a worker cooperative needs to make separate statements regarding its status as a cooperative corporation and as a worker cooperative corporation. Until we clarify this with the Secretary of State’s Office, these Model Articles essentially repeat the same statement twice, in order to conform exactly to the text of AB 816.

<sup>4</sup> **Law:** The Corporation’s Agent for Service of Process is the individual designated to be served potential lawsuits and legal paperwork on behalf of the corporation. The Articles of



**Article 5.** The Corporation's initial street address is 585 9th Street, Unit 558 Oakland CA. The Corporation's initial mailing address is 585 9th Street, Unit 558 Oakland CA.<sup>5</sup>

**Article 6. Voting Rights and Proprietary Interests.** The voting rights of each member of the Corporation are equal. The proprietary interests of each member of the Corporation are unequal<sup>6</sup> and the rules by which the proprietary interests are determined shall be prescribed in the bylaws of the Corporation.

**Article 7. Worker-members.**

The Corporation shall have a single class of worker-members. Only persons described in California Corporations Code §12238(e) are eligible for worker-membership.

**7.1 Voting Power.** Each worker-member shall have one vote on all matters to be voted on by the worker-members in accordance with applicable law, these Articles, and the Corporation's bylaws.

**7.2 Restrictions on Transfer.** All worker-memberships shall be non-assessable and may not be transferred, voluntarily or involuntarily, by operation of law or otherwise, except

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Incorporation *must* contain a name and street address for the corporation's initial Agent for service of process. The legal requirements for this designee are that: their address, if required, is within the State of California; they are either a person or corporate entity; that an address be provided for them only if they are a natural person; that no address be provided if they are a corporate entity. [See Cal. Corp. Code 12310(c) and 12570(b).]

<sup>5</sup> **Law:** The Articles of Incorporation *must* contain the initial street address of the corporation and the initial mailing address of the corporation, *only if* different from the initial street address. [Cal. Corp. Code § 12310(d)-(e).]

<sup>6</sup> **Note:** California Cooperative Corporations may elect to make member voting power or member proprietary interests unequal. Equal voting power means voting power apportioned on the basis of one vote for each member. It is generally impermissible for cooperatives to make voting power unequal, unless you are a federated cooperative. Many cooperatives place a provision in their Articles of Incorporation that allows for unequal proprietary interests. Such a provision gives cooperatives greater flexibility in financing their operations, and allows them to garner additional (and unequal) investments from members interested in investing greater amounts than other members.



for a transfer to the Corporation under the redemption provisions set forth in these articles of incorporation or in the Corporation's bylaws.

**7.3 Patronage.** A portion of the Corporation's net earnings or losses shall be allocated to worker-members on the basis of each worker-member's patronage of the Corporation ("Patronage Dividend") on an annual basis. Patronage may be measured by work performed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures, as determined by the board of directors of the Corporation.<sup>7</sup>

**7.4 Distribution Preference.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or (as defined in Article 7.5), the current and prior<sup>8</sup> worker-members shall be entitled to receive all remaining assets available for distribution to the Corporation's equity holders on the basis of each such worker-member's total patronage<sup>9</sup> of the Corporation during the time when he or she was a worker-member of the Corporation, as determined by the board of directors of the Corporation. No distribution need be made to any person who fails to acknowledge the receipt of notice of liquidation in a timely manner. Said notice shall be deemed sufficient if sent by certified mail, at least 30 days before distribution of any residual assets, to the person's last known business or residence address. Assets available for distribution to equity holders shall not include amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall be allocated to [designate cooperative development organization here].<sup>10</sup>

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<sup>7</sup> **Law:** "(1) If the corporation is organized as a worker cooperative, the corporation's "patrons" are its worker-members. (2) If the corporation is organized as a worker cooperative, "patronage" may be measured by work performed, including, but not limited to, wages earned, number of hours worked, number of jobs created, or some combination of these measures. [Cal Corp Code § 12243 (b)]

<sup>8</sup> **Law:** California law authorizes, but does not require, a worker cooperative to include patronage of prior members in its distribution of assets. Cal Corp Code § 12656.5(b)

<sup>9</sup> **Law:** Worker cooperatives must distribute the majority of its unallocated capital account to members on the basis of (1) patronage, (2) capital contributions, or (3) a combination of patronage and capital contributions. Cal Corp Code §12656.5(a)

<sup>10</sup> **Law:** Worker cooperative corporations may choose, but are not required, to have an indivisible account of unallocated surplus that is not distributed to members. If the coop has an indivisible account, the following applies: "Any amount in the indivisible reserve account shall, upon



**Article 8. Collective Board Worker Cooperative.** This corporation is a Collective Board Worker Cooperative. There shall be only one class of members consisting of worker-members, all of whom are members of the board.<sup>11</sup>

**Article 10. Liability and Indemnification.** Subject to any provisions in the Corporation's bylaws related to indemnification of directors or officers of the Corporation, the Corporation shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Corporation who was or is a party or is threatened to be made a party to any pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation.

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Mikola Lysenko, Incorporator<sup>12</sup>

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dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws." Cal Corp Code § 12656.5(c).

<sup>11</sup> **Law:** "Collective board worker cooperative' means a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board." [Cal Corp Code § 12230.5] It is unclear based on this language whether a collective board cooperative may have community investors, which would constitute a second class of members. Additionally, a collective board cooperative in that scenario would not be able to take advantage of the benefits of that status because the community investors would constitute a second class of members not serving on the board. Thus, the cooperative would need to follow notice and meeting requirements in the same manner as a representative board cooperative.

<sup>12</sup> **Law:** The Articles of Incorporation must either be signed by either: each of the company's "Incorporator(s)," meaning the individual(s) undertaking the cooperative's business until its initial Board of Directors is appointed; or by each member of the cooperative's Board of Directors, but not both Incorporators and Directors. If the Directors are filing and signing the Articles, they need to be named within them. [Cal. Corp. Code § 12300(a)-(b).]

If the company's Articles of Incorporation is being filed and signed by its initial Board of Directors, in addition to signing the Articles, they must also attach a signed, written "Declaration." This Declaration must state that they are the individuals who are named in the Articles of



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Incorporation and have executed them. It must also state that the Articles are their “act and deed”.  
[Cal. Corp. Code § 12221(b).]

**Note:** The board of directors must have at least three directors. [Cal. Corp. Code. § 12331(a)].

