

# **Bylaws of Mushroom Observer, Inc.**

## **Article 1 Offices**

### **Section 1. Principal Office**

The principal office of the corporation is located in the State of Massachusetts at a location as shall have been approved by a resolution of the Board (as defined herein).

### **Section 2. Other Offices**

The Corporation shall not maintain offices or own property located in any other state than Massachusetts except as shall have been approved by a resolution of the Board.

## **Article 2 Nonprofit Purposes**

### **Section 1. IRS Section 501(c)(3) Purposes**

This corporation shall be operated exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code.

### **Section 2. Specific Objectives and Purposes**

The corporation's general educational purposes shall be for the purposes of advancing the science of mycology by supporting the accumulation and dissemination of information regarding mycology through activities that systematically collect information provided by volunteer citizen scientists related to mycological information and to provide public access to mycological-related information through one or more free, non-commercial, on-line digital resources.

The corporation will offer these resources through websites or applications similar to the existing Mushroom Observer website (<http://mushroomobserver.org>) that provide information that has been irrevocably committed to the corporation and the public for non-commercial purposes unless approved by the Board. The commitment must be by grant or transfer that will permit free access and use of data provided through the corporation's resources.

## **Article 3 Directors**

### **Section 1. Number**

The corporation shall have not less than 3 and not more than 7 directors and collectively they shall be known as the board of directors (the “Board”).

## **Section 2. Qualifications**

Directors shall be of the age of majority in this state. Other qualifications for directors of this corporation shall be as follows: at least one member of the Board of the directors shall have demonstrated technical ability to maintain source code similar to that being used by the Mushroom Observer website. In addition, a majority of the Board shall have contributed images to a digital resource owned by the corporation.

## **Section 3. Powers**

The activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. While there are no members of the corporation, the directors shall be treated as is members for purposes of any applicable state law requiring action by members of the corporation. The chairperson of the Board shall be appointed by the Board at each annual meeting after the election of the directors.

## **Section 4. Duties**

It shall be the duty of the directors to:

- a. Perform any and all duties imposed on them collectively or individually by law, by the articles of incorporation, or by these bylaws;
- b. Appoint and remove, employ and discharge, and, except as otherwise provided in these bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the corporation;
- c. Supervise all officers, agents, and employees of the corporation to assure that their duties are performed properly;
- d. Meet at such times and places as determined under these bylaws;
- e. Advise the secretary of the corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

## **Section 5. Election of Directors**

At the annual meeting of the Board, directors shall be elected by the Board in accordance with this section. Each existing director that is willing to serve another term shall be voted on by the other directors and must receive a majority of votes of the other directors to be re-elected. Once the existing directors that are willing to serve another term have been voted on, additional individuals may be nominated by any current or newly elected director. A given individual may only be nominated once in a given meeting. Nominations are considered one at a time until there are no more nominations or the

maximum number of directors permitted in Article 3, Section 1 is reached.

### **Section 6. Term of Office**

Each director shall hold office until the earlier of (a) two years from the date of appointment, (b) written notice of resignation is given by the director to the Board, or (c) removal and replacement of such director replacement by a vote of the directors.

### **Section 7. Compensation**

Directors shall serve without compensation except that a reimbursement of reasonable expenses may be paid to directors for attending regular and special meetings of the Board. In addition, with approval of the Board, directors may be allowed reasonable advancement or reimbursement of other actual expenses incurred in the performance of their duties. Any payments to directors shall be approved in advance in accordance with this corporation's conflict of interest policy, as set forth in Article 9 of these bylaws.

### **Section 8. Place of Meetings**

Meetings shall be held at pre-designated locations and times within or outside the State of Massachusetts, which have been designated from time to time by resolution of the Board. Any meeting, regular or special, may be held by conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone, video screen communication, or reasonable equivalent means constitutes presence in person at that meeting if all the following apply:

- a) Each director participating in the meeting can communicate with all of the other directors concurrently;
- b) Each director is provided the means of participating in all matters before the Board including, without limitation, the capacity to propose or to object to a specific action to be taken by the corporation; and
- c) The corporation adopts and implements some means of verifying 1) that all persons participating in the meeting are directors of the corporation or are otherwise entitled to participate in the meeting, and 2) that all actions of, or votes by, the Board are taken and case only by directors and not by persons who are not directors.

### **Section 9. Regular Meetings**

Regular meetings of directors shall be held as specified from time to time by the Board, which shall not be more than one year after the most recent preceding meeting.

### **Section 10. Special Meetings**

Special meetings of the Board may be called by the chairperson of the Board, the president, the vice president, the secretary, by any two directors, or, if different, by the

persons specifically authorized under the laws of this state to call special meetings of the Board. Such meetings shall be held at the place within or outside the State of Massachusetts or otherwise in a manner permitted by Section 8 that is designated by the person or persons calling the special meeting.

### **Section 11. Notice of Meetings**

Unless otherwise provided by the articles of incorporation, these bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board:

- a. Regular and Special Meetings.** At least forty-eight (48) hours' notice delivered personally or by telephone, email or reasonable equivalent means or four (4) days' notice by first-class mail shall be given by the secretary of the corporation to each director of each meeting. If sent by first-class mail, the notice shall be deemed to be delivered on its deposit in the mails. Such notice shall state the place, date, and time of the meeting and the matters proposed to be acted upon at the meeting. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.
- c. Waiver of Notice.** Whenever any notice of a meeting is required to be given to any director of this corporation under provisions of the articles of incorporation, these bylaws, or the law of this state, a waiver of notice in writing signed by the director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

### **Section 12. Quorum for Meetings**

A quorum shall consist of a majority of the members of the Board.

### **Section 13. Majority Action as Board Action**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board.

### **Section 14. Conduct of Meetings**

Meetings of the Board shall be presided over by the chairperson of the Board, or, if no such person has been so designated, or in his or her absence, by a chairperson chosen by a majority of the directors present at the meeting. The secretary of the corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall ensure that actions taken in the meeting shall be recorded and

made available to all of the directors.

Meetings shall be conducted as the chairperson of the Board sees fit unless any director objects in which case a meeting or particular decision will be conducted using Robert's Rule of Order.

### **Section 15 Action by Unanimous Written Consent Without Meeting**

Any action required or permitted to be taken by the Board under any provision of law may be taken without a meeting, if all members of the Board entitled to vote on a matter shall individually or collectively consent in writing to such action. For this purpose, consent provided by e-mail communication to the secretary shall constitute written consent, subject to such verification as may be subsequently be required by the Board within 10 days after communication of the Board's action to the directors by the Secretary. For the purposes of this Section only "all members of the Board" shall not include any director who is an "Interested Person" as defined in Article 9, Section 2a of this document with respect to the action being taken. Such written consent or consents shall be filed with the minutes of the proceedings of the Board, and the action taken thereby communicated promptly after such consent to all members of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of the directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board without a meeting and that the bylaws of this corporation authorize the directors to so act, and such statement shall be prima facie evidence of satisfaction of the requirements for validity of such action.

### **Section 16. Vacancies**

Vacancies on the Board shall exist (1) on the death, resignation, or removal of any director, and (2) whenever the number of authorized directors is increased.

Any director may resign effective upon giving written notice to the Board, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the office of the attorney general or other appropriate agency of this state.

Directors may be removed from office, with or without cause, upon a majority vote of all of other directors.

Unless otherwise prohibited by the articles of incorporation, these bylaws, or provisions of law, any vacancy on the Board may be filled by appointment by the Board of a replacement director. If the number of directors then in office is less than a quorum, a vacancy on the Board may be filled by approval of a majority of the directors then in office. A person elected to fill a vacancy on the Board shall hold office until the next election of the Board or until his or her death, resignation, or removal from office.

### **Section 17. Non-liability of Directors**

The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation without the written consent of the director to be liable.

### **Section 18. Indemnification by Corporation of Directors and Officers**

The directors and officers of the corporation shall be indemnified by the corporation to the fullest extent permissible under applicable law.

### **Section 19. Insurance for Corporate Agents**

Except as may be otherwise provided under provisions of law, the Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the corporation (including a director, officer, employee, or other agent of the corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the articles of incorporation, these bylaws, or provisions of law.

## **Article 4 Officers**

### **Section 1. Designation of Officers**

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The corporation may also have a chairperson of the Board, one or more vice presidents, assistant secretaries, assistant treasurers, and other such officers with such titles as may be determined from time to time by the Board.

### **Section 2. Qualifications**

Any person may serve as officer of this corporation.

### **Section 3. Election and Term of Office**

Officers shall be elected by the Board, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

### **Section 4. Removal and Resignation**

Any officer may be removed, either with or without cause, by the Board, at any time. Any officer may resign at any time by giving written notice to the Board or to the president or secretary of the corporation. Any such resignation shall take effect at the date

of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board relating to the employment of any officer of the corporation.

### **Section 5. Vacancies**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board. In the event of a vacancy in any office other than that of president, such vacancy may be filled temporarily by appointment by the president until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine.

### **Section 6. Duties of President**

The president shall be the chief executive officer of the corporation and shall, subject to the control of the Board, supervise and control the affairs of the corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be prescribed from time to time by the Board. Unless another person is specifically appointed as chairperson of the Board, the president shall preside at all meetings of the Board and, if this corporation has members, at all meetings of the members. Except as otherwise expressly provided by law, by the articles of incorporation, or by these bylaws, he or she shall, in the name of the corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board.

### **Section 7. Duties of Vice President**

In the absence of the president, or in the event of his or her inability or refusal to act, the vice president shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president. The vice president shall have other powers and perform such other duties as may be prescribed by law, by the articles of incorporation, or by these bylaws, or as may be prescribed by the Board.

### **Section 8. Duties of Secretary**

The secretary shall:

Certify and keep the original, or a copy, of these bylaws as amended or otherwise altered to date.

Keep written or electronic, minutes of all meetings of the directors, and, if applicable,

meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

See that all notices are duly given in accordance with the provisions of these bylaws or as required by law.

Provide a copy at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefor, the bylaws, and the minutes of the proceedings of the directors of the corporation.

The secretary may comply with any requirement of this Section to keep, record, provide or the like any document, including articles, bylaw, minutes, proceedings, records, and/or notices, via electronic record-keeping, transmission, and/or posting, including via a link to an electronic copy.

In general, perform all duties incident to the office of secretary and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be assigned to him or her from time to time by the Board.

## **Section 9. Duties of Treasurer**

The treasurer shall:

Have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all such funds in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board.

Receive, and give receipt for, monies due and payable to the corporation from any source whatsoever.

Disburse, or cause to be disbursed, the funds of the corporation as may be directed by the Board, taking proper vouchers for such disbursements.

Keep and maintain adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses.

Exhibit at all reasonable times the books of account and financial records to any director of the corporation, or to his or her agent or attorney, on request therefor.

Render to the president and directors, whenever requested, an account of any or all of his or her transactions as treasurer and of the financial condition of the corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of treasurer and such other duties as may be required by law, by the articles of incorporation of the corporation, or by these bylaws, or which may be assigned to him or her from time to time by the Board.

## **Section 10. Compensation**



The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board. In all cases, any salaries received by officers of this corporation shall be reasonable and given in return for services actually rendered to or for the corporation. All officer salaries shall be approved in advance in accordance with any currently affective conflict of interest policy adopted by the Board.

## **Article 5 Committees**

### **Section 1. Executive Committee**

The Board may, by a majority vote of its members, designate an Executive Committee consisting of two (2) or more directors and may delegate to such committee the powers and authority of the Board in the management of the business and affairs of the corporation, to the extent permitted, and, except as may otherwise be provided, by provisions of law.

By a majority vote of the directors, the Board may at any time revoke or modify any or all of the executive committee authority so delegated, increase or decrease but not below two (2) the number of the members of the executive committee, and fill vacancies on the Executive Committee by appointment of other directors. The executive committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.

### **Section 2. Other Committees**

The corporation shall have such other committees as may from time to time be designated by resolution of the Board. The Board may delegate the management of the activities of the Corporation to any person or persons, management company or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors. These committees may consist of persons who are not directors and shall act in an advisory capacity to the Board.

### **Section 3. Meetings and Action of Committees**

Meetings and action of committees shall be governed by, noticed, held, and taken in accordance with the provisions of these bylaws concerning meetings of the Board, with such changes in the context of such bylaw provisions as are necessary to substitute the committee and its members for the Board and its members, except that the time for regular and special meetings of committees may be fixed by resolution of the Board or by the committee. The Board may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these bylaws.

## **Article 6 Execution of Instruments, Deposits, and Funds**

### **Section 1. Execution of Instruments**

The Board, except as otherwise provided in these bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **Section 2. Checks and Notes**

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by either the treasurer or the president of the corporation.

### **Section 3. Deposits**

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board may select.

### **Section 4. Gifts**

The Board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the nonprofit purposes of this corporation.

## **Article 7 Corporate Records, and Reports**

### **Section 1. Maintenance of Corporate Records**

The corporation shall keep at its principal office in either printed or electronic form:

- a. Minutes of all meetings of directors, committees of the Board indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- b. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses;
- c. A copy of the corporation's articles of incorporation and bylaws as amended to date, which shall be open to inspection by anyone at all reasonable times.

### **Section 2. Directors' Inspection Rights**

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation, and shall have such other rights to inspect the books, records, and properties of this corporation as may be required under the articles of incorporation, other provisions of these bylaws, and provisions of law.

### **Section 3. Right to Copy and Make Extracts**

Any inspection under the provisions of this article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

### **Section 4. Periodic Report**

The Board shall cause any annual or periodic report required under applicable law to be prepared and delivered a governmental authority to be so prepared and delivered within the time limits set by law.

## **Article 8 Amendment of Bylaws**

### **Section 1. Amendment**

Except as may be specified under provisions of law, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted by approval of the Board.

## **Article 9 Construction and Terms**

If there is any conflict between the provisions of these bylaws and the Articles of Organization of this corporation, the provisions of the Articles of Organization shall govern.

Should any of the provisions or portions of these bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these bylaws shall be unaffected by such holding.

All references in these bylaws to the Articles of Organization shall be to the articles of incorporation, articles of organization, certificate of incorporation, organizational charter, corporate charter, or other founding document of this corporation that establishes the legal existence of this corporation.

All references in these bylaws to a section or sections of the Code shall be to such sections of the Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

### **ADOPTION OF BYLAWS**

We, the undersigned, are all of the initial directors or incorporators of this corporation, and we consent to, and hereby do, adopt the foregoing bylaws, consisting of \_\_\_\_\_ preceding pages, as the bylaws of this corporation.

Dated: \_\_\_\_\_

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