



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Nora Frimann  
City Attorney

**SUBJECT: PLANNING COMMISSION BYLAWS  
AMENDMENT**

**DATE:** September 13, 2021

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**BACKGROUND:**

This purpose of this amendment to the Planning Commission Rules of Conduct (Resolution No. 64-1, hereinafter "Bylaws") is to update the Bylaws to be consistent with the City Charter change in Planning Commission membership from seven to 11 Commissioners and to replace the parliamentary rules of the Planning Commission from Robert's Rules of Order to Rosenberg's Rules of Order for ease of use and to be consistent with other Boards and Commissions pursuant to Council Policy 0-4, and to correct minor clerical errors. Attached to this memorandum are two exhibits. Exhibit A is the current Bylaws with proposed changes to Article III, Sections 7 and 10, and Article IV, Section 2, in redline. Exhibit B is the clean version of the amended Resolution No. 64-1 in the form intended for adoption by the Commission.

**ANALYSIS:**

As indicated in the attached exhibits, the following sections of the Bylaws are proposed to be changed for the following reasons:

1. ARTICLE III, SECTION 6 and ARTICLE VII, SECTION 1

Article III, Section 6 and Article VII, Section 1 currently require that in order for the Planning Commission and the Commission's Committee of the Whole to take any action, there must be a quorum of Commissioners present at the meeting, with some enumerated exceptions. Because Section 1000 of the City Charter was amended by San Jose voters last year to increase the number of Planning Commissioners from seven to 11, both these sections of the Bylaws need to change because the number of Commissioners required to achieve a quorum has changed from a majority of four Commissioners to a majority of six.

2. ARTICLE III, SECTIONS 9 and 14

Council Policy 0-4 was amended by the City Council recently to require that City board and commission meetings be conducted in accordance with Rosenberg's Rules of Order (see San Jose Council Policy 0-4, Section III.E.3). Sections 9 and 14 of Article III of the proposed Planning Commission Bylaws have been changed accordingly. One of the reasons that this change has been made is that Rosenberg's Rules of Order are simpler to understand and administer than Robert's Rules of Order. A summary of Rosenberg's Rules of Order was

previously provided to all Planning Commissioners at the new Commissioner orientation sessions.

### 3. CLERICAL ERRORS

The amended resolution also contains several minor, non-substantive changes to correct clerical and punctuation items and also to omit needless words. All such changes are highlighted in the redlined version of the amended Bylaws (Exhibit A).

### CONCLUSION

It is recommended that the Planning Commission approve the proposed changes to its Bylaws by adopting the attached amendment to Resolution No. 64-1. Normally, the Commission Secretary is required to forward the Bylaws amendments to the City Council Rules and Open Government Committee for approval as required by San Jose Municipal Code section 2.08.080.A.1. However, the Commission is advised that these Bylaws changes do not require approval of the Council Committee because they are required by adopted changes to the City Charter and Council Policy.

The Planning Commission was provided with this memorandum and the resolution proposing to amend the Bylaws at least two weeks in advance of the meeting at which the resolution will be considered by the Commission in accordance with Bylaws Article VIII, Section 1(b). The memorandum and resolution were also posted for public review at the time of distribution to the Commissioners. Article VIII, Section 1(a) of the Bylaws requires a two-thirds (2/3) vote of the Commission at a regularly scheduled meeting to approve the amendments.

NORA FRIMANN  
City Attorney

    /s/      
VERA TODOROV  
Senior Deputy City Attorney

#### Attachments:

- Exhibit A – Resolution No. 64-1 w/ redlined changes
- Exhibit B – Resolution No. 64-1 w/ changes accepted

**PLANNING COMMISSION OF THE CITY OF SAN JOSE**  
**RESOLUTION NO. 64-1**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF SAN JOSE ADOPTING RULES FOR  
THE CONDUCT OF BUSINESS OF SAID COMMISSION**

AMENDMENT DATES:

February 16, 1967  
August 8, 1967  
January 9, 1968  
December 3, 1968  
February 17, 1971  
March 7, 1972  
March 22, 1972  
October 13, 1972  
March 6, 1973  
November 14, 1973  
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May 7, 1975  
December 3, 2008  
June 23, 2010  
September 26, 2012  
March 27, 2013  
June 22, 2016  
March 13, 2019  
\_\_\_\_\_ , 2021

**LAST AMENDED:** \_\_\_\_\_, **2019-2021**

**ARTICLE I**

**OFFICERS**

**Section 1. Officers, Enumeration of**

The officers of the Commission shall be a Chairperson and a Vice Chairperson.

Section 2. Officers, Election of

A Chairperson and a Vice Chairperson of the Commission shall be elected by the Commission.

Section 3. Chairperson and Vice Chairperson, Term of Office of

- (a) The Chairperson and Vice Chairperson, shall be elected for terms of one (1) calendar year commencing on July 1<sup>st</sup> and continuing to June 30<sup>th</sup> of the following year.
- (b) Election of the Officer(s) for each calendar year shall be held no earlier than May 1<sup>st</sup> nor later than June 30<sup>th</sup> preceding that term.
- (c) If any Officer(s) should cease to be member(s) of the Commission prior to the expiration of their term of office, a vacancy shall be deemed to have occurred in the specific office. The Commission shall elect a successor from the existing Commissioners to fill the unexpired portion of that Officer's term. This election shall occur at the next scheduled Commission meeting, or as is reasonable given the amount of public notice required.

Section 4. Chairperson, Qualifications of

The Chairperson shall be one of the members of the Commission.

Section 5. Chairperson, Powers and Duties

The Chairperson shall have the following powers and duties:

- (a) The Chairperson shall preside at all meetings of the Commission and at all hearings conducted by the Commission.
- (b) The Chairperson shall sign all written resolutions of the Commission, and all minutes of all meetings or hearings of the Commission which shall have been approved by the Commission.
- (c) The Chairperson shall perform such other duties as may be necessary and/or required of the Chairperson either by ordinance of the City of San Jose or by resolution or order of the Commission not inconsistent with the Charter or ordinance of the City of San Jose.

Section 6. Vice Chairperson, Qualifications of

The Vice Chairperson shall be one of the members of the Commission.

Section 7. Vice Chairperson, Election of

The Vice Chairperson shall be elected by the members of the Commission.

Section 8. Vice Chairperson, Powers and Duties

The Vice Chairperson shall have the following powers and duties:

- (a) The Vice Chairperson shall have and perform all powers and duties of the Chairperson in the event of and during the absence or disability of the Chairperson.
- (b) The Vice Chairperson shall preside as Chairperson at all meetings and hearings of the Commission in the event of and during the absence or disability of the Chairperson.
- (c) The Vice Chairperson shall perform such other duties as may be required of the Vice Chairperson either by ordinance of the City of San Jose or by resolution or order of the Commission not inconsistent with the Charter or ordinances of the City of San Jose and such other duties as may be necessary to perform the required duties of the Vice Chairperson.

Section 9. Chairperson Pro Tempore, Appointment

In the event of the absence, legally required abstention, or disability of the Chairperson and Vice Chairperson at any meeting or hearing of the Commission, the Commission shall appoint, by majority vote one of its members as Chairperson pro tempore to preside over such meeting or hearing.

Section 10. Chairperson Pro Tempore, Powers and Duties

The Chairperson Pro Tempore shall have and perform all powers and duties of the Chairperson in the event of, and only during the absence, legally required abstention, or disability of the Chairperson or Vice Chairperson.

**ARTICLE II**

**SECRETARY**

Section 1. Secretary, Appointment of

The Director of Planning, Building and Code Enforcement of the City of San Jose, hereinafter referred to as "Director," is hereby designated and appointed as the Secretary of the Commission. So long as said Director is Secretary, the powers and duties of the Secretary may be performed by any duly appointed deputy of the Director.

Section 2. Secretary, Powers and Duties of

The Secretary shall have the following powers and duties:

- (a) The Secretary shall attend all meetings and hearings of the Commission, and keep a record of minutes of all that transpires at such meetings or hearings.
- (b) The Secretary shall attest all written resolutions of the Commission and all minutes of all meetings or hearings of the Commission which shall have been approved by the Commission, and the Secretary shall have custody of the same.
- (c) The Secretary shall keep and have custody of all books, records and papers of the Commission, and certify true copies thereof whenever necessary.
- (d) The Secretary shall perform such other duties as may be required of the Secretary either by ordinance of the City of San Jose or resolution or order of the Commission not inconsistent with the Charter or ordinance of the City of San Jose and such duties as may be necessary to perform the required duties of the Secretary.

## ARTICLE III

### MEETINGS

#### Section 1. Regular Meeting Place

The regular meeting place of the Commission shall be the City Council Chambers in the City Hall of the City of San Jose.

#### Section 2. Regular Meetings

The regular meetings of the Commission shall be those meetings set forth by resolution adopted by the Commission.

#### Section 3. Adjourned Meetings: Special Meetings

Adjourned meetings and special meetings may be held by the Commission pursuant to and in accordance with the provisions of the Ralph M. Brown Act and any applicable law, resolution, or policy of the City Council or the Commission.

#### Section 4. Study Sessions, Workshops and Retreats

The Commission may meet in a study session, informational workshop, or retreat at such time(s) and place(s) as the Commission may deem appropriate or advisable and in accordance with the provisions of the Ralph M. Brown Act and any other applicable law, resolution, or policy of the City or Commission. These meetings are to allow the Commission to engage in informational or educational discussions on topic areas to be determined by the Commission. No decisions, actions or votes may be taken by the Commission at such meetings of the Commission. These study sessions, workshops and retreats may be conducted with less than a quorum of the Commission present and do not constitute doing business under the provisions of Article III, Section 6 hereinbelow.

#### Section 5. Agenda: Closing Date of: Provision of

Any and all matters which are to be placed upon the agenda for consideration by the Commission at a regular meeting shall be filed with the Secretary not later than 5:00 ~~o'clock~~ p.m. on the 13th calendar day immediately preceding the regular meeting at which the matters on such agenda shall be considered by the Commission, provided that with respect to matters which the City Council, City boards or commissions, the

Director of Planning, or other officers or departments of the City may wish to present for consideration by the Commission it shall be sufficient if notice of such matters are filed with the Secretary within such time; and the Secretary shall on the day following said final filing date make up such agenda and shall on the same day cause a copy of such agenda to be mailed to each member of the Commission.

The Commission shall not consider any matter which does not appear on the agenda except that matters referred by the City Council may be considered upon consent of a majority of the Commissioners present and other matters may be considered upon the unanimous consent of the Commissioners present.

Section 6. Quorum

~~Four~~Six (64) or more members of the Commission shall constitute a quorum to do business; but a lesser number may conduct a study session, informational workshop or retreat pursuant to Article III, Section 4 above, adjourn a meeting, or adjourn a meeting to a stated time and place, or continue a hearing to a stated time and place.

Section 7. Vote Required

No action shall be taken by the Commission unless the action receives the affirmative vote of at least a majority of those voting, as long as there is a quorum present,<sup>1</sup> except as follows:

- (a) No action shall be taken by the Commission recommending the adoption or amendment of the General Plan unless the action receives the affirmative vote of not less than a majority of the total membership of the Commission;<sup>2</sup> or
- (b) When less than a quorum is present, a majority of those present may adjourn the meeting, or adjourn the meeting to a specified time and place; or
- (c) When less than a quorum is present for the hearing of an item before the Commission, a majority of those present may continue the hearing to a specified time and place; or

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<sup>1</sup> See San Jose Municipal Code section 2.08.095.

<sup>2</sup> See Government Code section 65354.



- (d) When a quorum is present for the hearing of an appeal of a Director's decision before the Commission and the last Commission action on the appeal results in a tie vote, the Commission shall continue the item when a member or members of the Commission are absent at the hearing and may participate at a continued hearing of the Commission on the item in order to break the tie vote. In the event that the Commission is unable to take action on an appeal to the Commission as the result of a tie vote or votes, the permit shall be deemed denied.

Section 8. Discussion through Chairperson Only; Limitation of Discussion; Disqualification of Commissioners

- (a) Discourse shall not be had directly among members of the Commission nor between persons in attendance and members of the Commission. Persons in attendance may address the Commission or members thereof only through the Chairperson.
- (b) Except as otherwise provided in the procedures governing the conduct of public hearings set forth in Article IV hereof, discussion on any particular matter either by Commissioners or by any person in attendance may be limited, in the discretion of the Chairperson, to such time as the Chairperson may find to be reasonable under the circumstances, provided that any decision of the Chairperson to limit discussion may be overruled by the Commission.
- (c) Any Commissioner who has received more than Fifty Dollars (\$50) in campaign contributions within the last twelve (12) months from any applicant or appellant on a matter before the Commission shall disclose that information as soon as that matter is reached on the Commission agenda.
- (d) Any Commissioner who is recused or otherwise legally disqualified from participating in Commission action on any particular matter shall take no part in the discussion, debate, or vote on such matter; and as soon as such matter is reached on the agenda such member shall disclose the member's recusal and the reason therefor, or if recusal is not known to the member at the time such matter is reached on the agenda the member shall make such disclosure as soon as the disqualification is known to that member. Recused Commissioners shall remove themselves from the hearing chambers for the duration of the discussion and vote on the item in question.

Section 9. Motions, Debate Thereof, Debate Limited to Members of Commission

No debate of a motion shall be permitted prior to a second of the motion. When a motion is made and seconded, it shall be stated by the Chairperson before being debated; and such debate shall be limited to members of the Commission only. Members of the Commission may speak in debate of a motion only upon addressing the Chairperson and being recognized by the Chairperson. After the Chairperson has started to take the vote on the motion there shall be no further debate except that members of the Commission may be allowed to explain their vote, or present appropriate motions as governed by [Roberts-Rosenberg's Rules of Order](#).

Section 10. Voting; Ayes and Noes

- (a) Every member of the Commission who is present at a meeting when a motion comes up for vote shall vote for or against the motion unless the Commissioner has been recused from voting for any legal reason and abstains from voting because of such declared recusal.
- (b) All voting by Commission members shall be by roll call vote, or electronic vote, and the vote or abstention on that action of each member present for the action shall be entered by the Secretary in the public record of the Commission proceedings.<sup>3</sup>

Section 11. Petitions and Communications; Filing, Report, and Inspection Thereof

All written petitions and communications on the agenda of a meeting shall be filed with the Commission at such meeting and shall be so marked by the Secretary. The substance of such petitions and communications shall be orally reported to the Commission by the Secretary; provided that upon the request of any member of the Commission present at the meeting, any such petition or communication shall be read aloud in its entirety by the Secretary. Such petitions and communications may be inspected at any time by any member of the Commission.

Section 12. Documents and Objects Presented to Commission; Filing and Inspection Thereof

All documents and all physical objects presented to the Commission at any meeting by any person (including, but not limited to, those presented by the City Council or by boards, commissions, officers, or departments of

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<sup>3</sup> See Government Code section 54953(c)(2).

the City) shall be filed with the Commission at such meeting and shall be so marked by the Secretary. Any such document or object filed with the Commission may be inspected at any time by any member of the Commission. At the discretion of the Chairperson, true copies or photographs of such documents and objects may be filed in lieu of the originals thereof.

Section 13. Order of Business

The order of business of the Commission shall be set by the Secretary. The Commission may at any time alter the above order of business at any meeting; and said order of business shall be altered to the extent necessary to comply with the provisions of Article IV hereof relating to public hearings.

Section 14. Application of ~~Robert's~~ [Robert's-Rosenberg's](#) Rules of Order

Except as otherwise expressly set forth in this Resolution, and where they are not in conflict with these Bylaws or other rules governing the Planning Commission, the general procedures to be followed by the Commission at its meetings shall be those described in [Council Policy 0-4, which adopts Rosenberg's](#)~~Roberts~~ Rules of Order, as those rules may be amended, updated or replaced from time to time; provided, however, that a failure to follow [Robert's-Rosenberg's](#) Rules of Order by itself shall not invalidate any proceeding or action of the Commission.

**ARTICLE IV**

**PUBLIC HEARINGS**

Section 1. Procedure for Conduct of Hearings

(a) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, and provided also that the Commission may at any time during any hearing deviate from or change the procedures hereinafter set forth in this Article whenever the Commission deems it necessary or appropriate to do so for the purpose of providing a fair and orderly hearing, the procedures hereinafter set forth in the following sections of this article shall govern the conduct of all hearings before the Commission on matters which the Commission is required by law to conduct a public hearing, provided further that such procedures are for the convenience of the

Commission and are merely directory and not binding on the Commission and no action of the Commission shall be affected or vitiated by any failure of the Commission, the Chairperson, or other members of the Commission to follow such procedures.

- (b) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, the technical rules of evidence shall not apply; and as used hereinafter in this Article, the word "evidence" is not used in the limited sense of legally admissible evidence. Any relevant evidence shall be admissible to the Commission.

Section 2. Time of Public Hearings, Continuances

Unless otherwise specifically required by law or order of the Commission, hearings before the Commission on matters which the Commission is required by law to conduct a public hearing include without limitation hearings on:

- (a) Variances and Exceptions under Part 11 of Chapter 20.100 of Title 20 of the San Jose Municipal Code;
- (b) Conditional Use Permits under Part 6 of said Chapter 20.100; and
- (c) Appeal Hearings for site development permits, certain single-family house permits, planned development permits, special use permits, and tree removal permits. All such hearings shall be conducted in the manner described in and pursuant to the provisions of said Chapter 20.100, in which the Commission exercises original or appellate jurisdiction, as provided for under said Chapter 20.100. These hearing matters shall be set for hearing before the Commission the regular meeting place and time of the Commission.

Starting at the respective times set for hearing, the matters on each of said hearing calendars will be called and heard in the order in which they appear on such calendars until proper disposition has been made of such matters in accordance with law. Subject to the requirements of law, any hearing before the Commission may be continued by the Commission from time to time. In continuing any such hearing, the Commission shall specify the time and place at which the hearing will be continued.

Hearings shall not be interrupted for any other item on the agenda, and all other items on the agenda shall be delayed until proper disposition has been made in accordance with law of all matters on said hearing calendars.

Section 3. Documents and Objects Not to be Submitted Prior to Time of Hearing

Except as otherwise specifically required by law (e.g. petitions for rezoning) no documents or physical objects shall be submitted prior to the time of hearing and any documents or physical objects so submitted shall not be accepted for filing nor considered by the Commission.

Section 4. Allowable Time for Presentation

All persons desiring to speak or make a presentation will be given a reasonable time to do so. As a guideline, applicants and appellants generally may be afforded five (5) minutes to make a presentation and an additional five (5) minutes to present a rebuttal and all other public speakers may be afforded two (2) minutes to present relevant testimony; provided, however, the Chairperson may at any time impose such other reasonable time limits with respect to any presentation, testimony or hearing if the Chairperson finds such action necessary to prevent abuse or to provide all interested persons a fair and reasonable opportunity to be heard. It is urged that all presentations be as brief and concise as reasonably possible, without unnecessary delay or repetition.

Section 5. Evidence, Testimony, Statements and Arguments Submitted, Presented or Made at Hearing

- (a) Subject to subsection (b) below, any person (including, but not limited to officers or employees of the City), may submit, present, or make at said hearing, any evidence, testimony, statements, or arguments in favor of or against the matter which is being heard. Each person who submits, presents, or makes any such evidence, testimony, or statement may be requested, but shall not be required, to answer questions respecting such evidence, testimony or statements. Responses to questions from a Commissioner will not reduce the time allowed for a speaker's presentation pursuant to Section 4 above.
- (b) In connection with administrative or quasi-judicial hearings conducted by the Planning Commission, the decision of the Planning Commission is to be based upon testimony, evidence and other information received from any person at or in connection with a public hearing or contained in the public record for a public hearing before the Commission. A site visit by an individual Planning Commissioner to generally familiarize that Commissioner with the real property that is the subject of the matter to be

considered by the Planning Commission is allowed. If a Planning Commissioner becomes aware of information relevant to a matter coming before the Commission that was not made a part of the public record for that matter before the Commission, the Commissioner shall have a duty to and shall disclose that information to the Planning Commission in the manner described in City Council Policy 0-32: Disclosure of Material Facts and Communications Received During Council Meetings, as the same may be amended from time to time.

Section 6. Exhibits: Marking and Filing Thereof: Examination Thereof by Members

- (a) All documentary or real evidence which is presented to the Commission at a hearing shall be identified by the person presenting the same and shall be filed by that person with the Commission as an exhibit by submitting the same at such hearing to the Secretary. The Secretary shall mark all such documentary and real evidence submitted to the Secretary as having been filed with the Commission at such hearing and shall designate the same by an appropriate exhibit number or letter. Documentary or real evidence shall not be considered by the Commission unless it is filed with the Commission as above provided.
- (b) All documentary or real evidence filed with the Commission at a hearing may be examined by any member of the Commission at any time; provided that members shall not comment on or ask questions about the same except during the hearing, nor discuss the same except during the discussion thereof among the members after the hearing has been closed and the matter stands submitted.

Section 7. Questioning Through Chairperson: By Whom Such Questioning May be Done

- (a) Questioning of persons who appear and make a presentation may, with the consent of such persons, but not otherwise, be permitted at the discretion of the Chairperson. Such questioning as may be permitted by the Chairperson, whether by members of the Commission or persons in attendance (including, but not limited to, officers or employees of the City), shall be done only through the Chairperson.
- (b) After being requested to complete a speaker card, gaining recognition from the Chairperson and stating one's name, any person in attendance at the hearing may request permission from the Chairperson to ask questions of any person who has appeared and made a presentation and who has consented to such questioning, and

if the Chairperson, at his or her sole discretion, grants that request such person may then ask questions in accordance with and subject to the procedures set forth in this Article.

- (c) The Chairperson's decision on: (a) whether a person may be questioned at all, (b) who may ask questions of that person, (c) the number of questions which may be asked of that person, and (d) whether a particular question may be asked of that person, shall be final; provided that the person being questioned may refuse to answer all or any of the questions asked of him or her.

Section 8. Discussion and Deliberation by Members on Submitted Matters

After the public hearing has been closed and the matter is submitted for decision, the members of the Commission may discuss the matter among themselves. Unless directed by the Commission, no other persons may speak and no further exhibits may be filed. Members of the Commission shall address one another only through the Chairperson. Subject to the requirements of law, the Commission may take under submission for a reasonable period of time any matter which has been heard before it and may for this purpose, vote to continue its deliberation on such matter from time to time. In continuing such deliberations, the Commission shall specify the time and place at which such deliberations will be continued.

Section 9. Order of Proceedings

Hearings shall proceed in the following order:

- (a) Presentation and recommendation by the Director of Planning or staff of the City, with questioning, if any, of each person who makes an appearance upon conclusion of that person's presentation, pursuant to Sections 5 and 7 above.
- (b) Presentation by all persons of evidence, testimony, statements, and arguments related to the matter which is being heard, with questioning, if any, of each person who makes an appearance upon conclusion of the presentation, pursuant to Sections 5 and 7; provided that if the matter which is being heard by the Commission is before the Commission on the petition of any person, such as an applicant or an appellant, then in such event, such petitioner shall have the right at their option to either begin or conclude the presentation, or both, in favor of his or her petition.

- (c) If the matter which is being heard by the Commission is before the Commission on the petition of any person, then in such event such petitioner may, at the discretion of the Chairperson, be permitted to present rebuttal evidence, testimony and statements in response to testimony presented to the Commission at a hearing.
- (d) Close of public hearing and submission of matter for decision.

## **ARTICLE V**

### **OFFICE OF THE COMMISSION**

#### Section 1. **Office of the Commission and Commission Secretary**

The Office of the Secretary, which shall be the Director's Office located in the Planning, Building and Code Enforcement Department of the City of San Jose at the City Hall of the City of San Jose, shall be the office of the Commission.

## **ARTICLE VI**

### **MAILING ADDRESS OF MEMBERS**

#### Section 1. **Mailing Address of Members**

Members of the Commission shall file with the Secretary the address to which all notices and other papers which may be mailed to them shall be sent. In addition, members of the Commission shall file with the Secretary the electronic address (i.e., an e-mail address) to which notices and other communications which may be sent to them shall be sent.

## **ARTICLE VII**

### **COMMITTEE OF THE WHOLE**

#### Section 1. **Procedure for Committee of the Whole**

The Commission may meet as a committee of the whole at such times and at such places as may from time to time be ordered by the Commission. The committee of the whole shall study and consider only such matters as are referred to it by the Commission. All actions of the



committee of the whole shall be reported to the Commission. ~~Four~~ Six (64) or more members of the Commission shall constitute a quorum to do business, but a lesser number may adjourn. The Chairperson shall preside at all meetings of the committee of the whole, and in the Chairperson's absence the Vice Chairperson shall preside. The provisions of Article III relating to meetings of the Commission shall, insofar as they are applicable, and except as otherwise provided in this Article, govern the conduct of meetings of the committee of the whole.

Section 2. Persons in Attendance. When May Speak

Persons in attendance shall not speak unless and until expressly invited to do so by the Chairperson.

Section 3. Agenda: Provision Thereof

Only those items referred to the committee of the whole by the Commission shall appear on the agenda of the committee. The Secretary shall provide a copy of the agenda to each member of the committee within twenty-four (24) hours after the Commission meeting at which the Commission orders a meeting of the committee of the whole.

**ARTICLE VIII**

**AMENDING COMMISSION BYLAWS**

Section 1. Provision for Amending Bylaws

- (a) These Bylaws may be amended by a two-thirds (2/3) affirmative vote of the Commission, at a regularly scheduled Planning Commission meeting.
- (b) At least two (2) weeks prior notice of the intent to amend these Bylaws shall be provided to the Commission.

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09/13/2021

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- (c) Notice of the intended changes to these Bylaws shall be provided to all active members of the Commission, and to the public as required by law and/or City policy, but such notices shall be provided no later than the notice of intent to amend these Bylaws.

**ADOPTED** and made effective by the Planning Commission of the City of San José this \_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

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ROLANDO BONILLA  
Chairperson

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CHRISTOPHER BURTON  
Secretary

**PLANNING COMMISSION OF THE CITY OF SAN JOSE**

**RESOLUTION NO. 64-1**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF SAN JOSE ADOPTING RULES FOR  
THE CONDUCT OF BUSINESS OF SAID COMMISSION**

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**ARTICLE I**

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Section 3. Chairperson and Vice Chairperson, Term of Office of

- (a) The Chairperson and Vice Chairperson shall be elected for terms of one (1) calendar year commencing on July 1 and continuing to June 30 of the following year.
- (b) Election of the Officer(s) for each calendar year shall be held no earlier than May 1 nor later than June 30 preceding that term.
- (c) If any Officer(s) should cease to be member(s) of the Commission prior to the expiration of their term of office, a vacancy shall be deemed to have occurred in the specific office. The Commission shall elect a successor from the existing Commissioners to fill the unexpired portion of that Officer's term. This election shall occur at the next scheduled Commission meeting, or as is reasonable given the amount of public notice required.

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The Vice Chairperson shall be elected by the members of the Commission.

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The Vice Chairperson shall have the following powers and duties:

- (a) The Vice Chairperson shall have and perform all powers and duties of the Chairperson in the event of and during the absence or disability of the Chairperson.
- (b) The Vice Chairperson shall preside as Chairperson at all meetings and hearings of the Commission in the event of and during the absence or disability of the Chairperson.
- (c) The Vice Chairperson shall perform such other duties as may be required of the Vice Chairperson either by ordinance of the City of San Jose or by resolution or order of the Commission not inconsistent with the Charter or ordinances of the City of San Jose and such other duties as may be necessary to perform the required duties of the Vice Chairperson.

Section 9. Chairperson Pro Tempore, Appointment

In the event of the absence, legally required abstention, or disability of the Chairperson and Vice Chairperson at any meeting or hearing of the Commission, the Commission shall appoint, by majority vote one of its members as Chairperson pro tempore to preside over such meeting or hearing.

Section 10. Chairperson Pro Tempore, Powers and Duties

The Chairperson Pro Tempore shall have and perform all powers and duties of the Chairperson in the event of, and only during the absence, legally required abstention, or disability of the Chairperson or Vice Chairperson.

**ARTICLE II**

**SECRETARY**

Section 1. Secretary, Appointment of

The Director of Planning, Building and Code Enforcement of the City of San Jose, hereinafter referred to as "Director," is hereby designated and appointed as the Secretary of the Commission. So long as said Director is Secretary, the powers and duties of the Secretary may be performed by any duly appointed deputy of the Director.

Section 2. Secretary, Powers and Duties of

The Secretary shall have the following powers and duties:

- (a) The Secretary shall attend all meetings and hearings of the Commission, and keep a record of minutes of all that transpires at such meetings or hearings.
- (b) The Secretary shall attest all written resolutions of the Commission and all minutes of all meetings or hearings of the Commission which shall have been approved by the Commission, and the Secretary shall have custody of the same.
- (c) The Secretary shall keep and have custody of all books, records and papers of the Commission, and certify true copies thereof whenever necessary.
- (d) The Secretary shall perform such other duties as may be required of the Secretary either by ordinance of the City of San Jose or resolution or order of the Commission not inconsistent with the Charter or ordinance of the City of San Jose and such duties as may be necessary to perform the required duties of the Secretary.

## ARTICLE III

### MEETINGS

Section 1. Regular Meeting Place

The regular meeting place of the Commission shall be the City Council Chambers in the City Hall of the City of San Jose.

Section 2. Regular Meetings

The regular meetings of the Commission shall be those meetings set forth by resolution adopted by the Commission.

Section 3. Adjourned Meetings: Special Meetings

Adjourned meetings and special meetings may be held by the Commission pursuant to and in accordance with the provisions of the Ralph M. Brown Act and any applicable law, resolution, or policy of the City Council or the Commission.

Section 4. Study Sessions, Workshops and Retreats

The Commission may meet in a study session, informational workshop, or retreat at such time(s) and place(s) as the Commission may deem appropriate or advisable and in accordance with the provisions of the Ralph M. Brown Act and any other applicable law, resolution, or policy of the City or Commission. These meetings are to allow the Commission to engage in informational or educational discussions on topic areas to be determined by the Commission. No decisions, actions or votes may be taken by the Commission at such meetings of the Commission. These study sessions, workshops and retreats may be conducted with less than a quorum of the Commission present and do not constitute doing business under the provisions of Article III, Section 6 hereinbelow.

Section 5. Agenda: Closing Date of: Provision of

Any and all matters which are to be placed upon the agenda for consideration by the Commission at a regular meeting shall be filed with the Secretary not later than 5:00 p.m. on the 13th calendar day immediately preceding the regular meeting at which the matters on such agenda shall be considered by the Commission, provided that with respect to matters which the City Council, City boards or commissions, the



Director of Planning, or other officers or departments of the City may wish to present for consideration by the Commission it shall be sufficient if notice of such matters are filed with the Secretary within such time; and the Secretary shall on the day following said final filing date make up such agenda and shall on the same day cause a copy of such agenda to be mailed to each member of the Commission.

The Commission shall not consider any matter which does not appear on the agenda except that matters referred by the City Council may be considered upon consent of a majority of the Commissioners present and other matters may be considered upon the unanimous consent of the Commissioners present.

Section 6. Quorum

Six (6) or more members of the Commission shall constitute a quorum to do business; but a lesser number may conduct a study session, informational workshop or retreat pursuant to Article III, Section 4 above, adjourn a meeting, or adjourn a meeting to a stated time and place, or continue a hearing to a stated time and place.

Section 7. Vote Required

No action shall be taken by the Commission unless the action receives the affirmative vote of at least a majority of those voting, as long as there is a quorum present,<sup>1</sup> except as follows:

- (a) No action shall be taken by the Commission recommending the adoption or amendment of the General Plan unless the action receives the affirmative vote of not less than a majority of the total membership of the Commission;<sup>2</sup> or
- (b) When less than a quorum is present, a majority of those present may adjourn the meeting, or adjourn the meeting to a specified time and place; or
- (c) When less than a quorum is present for the hearing of an item before the Commission, a majority of those present may continue the hearing to a specified time and place; or

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<sup>1</sup> See San Jose Municipal Code section 2.08.095.

<sup>2</sup> See Government Code section 65354.

- (d) When a quorum is present for the hearing of an appeal of a Director's decision before the Commission and the last Commission action on the appeal results in a tie vote, the Commission shall continue the item when a member or members of the Commission are absent at the hearing and may participate at a continued hearing of the Commission on the item in order to break the tie vote. In the event that the Commission is unable to take action on an appeal to the Commission as the result of a tie vote or votes, the permit shall be deemed denied.

Section 8. Discussion through Chairperson Only; Limitation of Discussion; Disqualification of Commissioners

- (a) Discourse shall not be had directly among members of the Commission nor between persons in attendance and members of the Commission. Persons in attendance may address the Commission or members thereof only through the Chairperson.
- (b) Except as otherwise provided in the procedures governing the conduct of public hearings set forth in Article IV hereof, discussion on any particular matter either by Commissioners or by any person in attendance may be limited, in the discretion of the Chairperson, to such time as the Chairperson may find to be reasonable under the circumstances, provided that any decision of the Chairperson to limit discussion may be overruled by the Commission.
- (c) Any Commissioner who has received more than Fifty Dollars (\$50) in campaign contributions within the last twelve (12) months from any applicant or appellant on a matter before the Commission shall disclose that information as soon as that matter is reached on the Commission agenda.
- (d) Any Commissioner who is recused or otherwise legally disqualified from participating in Commission action on any particular matter shall take no part in the discussion, debate, or vote on such matter; and as soon as such matter is reached on the agenda such member shall disclose the member's recusal and the reason therefor, or if recusal is not known to the member at the time such matter is reached on the agenda the member shall make such disclosure as soon as the disqualification is known to that member. Recused Commissioners shall remove themselves from the hearing chambers for the duration of the discussion and vote on the item in question.

Section 9. Motions, Debate Thereof, Debate Limited to Members of Commission

No debate of a motion shall be permitted prior to a second of the motion. When a motion is made and seconded, it shall be stated by the Chairperson before being debated; and such debate shall be limited to members of the Commission only. Members of the Commission may speak in debate of a motion only upon addressing the Chairperson and being recognized by the Chairperson. After the Chairperson has started to take the vote on the motion there shall be no further debate except that members of the Commission may be allowed to explain their vote, or present appropriate motions as governed by Rosenberg's Rules of Order.

Section 10. Voting; Ayes and Noes

- (a) Every member of the Commission who is present at a meeting when a motion comes up for vote shall vote for or against the motion unless the Commissioner has been recused from voting for any legal reason and abstains from voting because of such declared recusal.
- (b) All voting by Commission members shall be by roll call vote, or electronic vote, and the vote or abstention on that action of each member present for the action shall be entered by the Secretary in the public record of the Commission proceedings.<sup>3</sup>

Section 11. Petitions and Communications; Filing, Report, and Inspection Thereof

All written petitions and communications on the agenda of a meeting shall be filed with the Commission at such meeting and shall be so marked by the Secretary. The substance of such petitions and communications shall be orally reported to the Commission by the Secretary; provided that upon the request of any member of the Commission present at the meeting, any such petition or communication shall be read aloud in its entirety by the Secretary. Such petitions and communications may be inspected at any time by any member of the Commission.

Section 12. Documents and Objects Presented to Commission; Filing and Inspection Thereof

All documents and all physical objects presented to the Commission at any meeting by any person (including, but not limited to, those presented by the City Council or by boards, commissions, officers, or departments of the City) shall be filed with the Commission at such meeting and shall be

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<sup>3</sup> See Government Code section 54953(c)(2).

so marked by the Secretary. Any such document or object filed with the Commission may be inspected at any time by any member of the Commission. At the discretion of the Chairperson, true copies or photographs of such documents and objects may be filed in lieu of the originals thereof.

Section 13. Order of Business

The order of business of the Commission shall be set by the Secretary. The Commission may at any time alter the above order of business at any meeting; and said order of business shall be altered to the extent necessary to comply with the provisions of Article IV hereof relating to public hearings.

Section 14. Application of Rosenberg's Rules of Order

Except as otherwise expressly set forth in this Resolution, and where they are not in conflict with these Bylaws or other rules governing the Planning Commission, the general procedures to be followed by the Commission at its meetings shall be those described in Council Policy 0-4, which adopts Rosenberg's Rules of Order, as those rules may be amended, updated or replaced from time to time; provided, however, that a failure to follow Rosenberg's Rules of Order by itself shall not invalidate any proceeding or action of the Commission.

**ARTICLE IV**

**PUBLIC HEARINGS**

Section 1. Procedure for Conduct of Hearings

- (a) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, and provided also that the Commission may at any time during any hearing deviate from or change the procedures hereinafter set forth in this Article whenever the Commission deems it necessary or appropriate to do so for the purpose of providing a fair and orderly hearing, the procedures hereinafter set forth in the following sections of this article shall govern the conduct of all hearings before the Commission on matters which the Commission is required by law to conduct a public hearing, provided further that such procedures are for the convenience of the Commission and are merely directory and not binding on the

Commission and no action of the Commission shall be affected or vitiated by any failure of the Commission, the Chairperson, or other members of the Commission to follow such procedures.

- (b) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, the technical rules of evidence shall not apply; and as used hereinafter in this Article, the word "evidence" is not used in the limited sense of legally admissible evidence. Any relevant evidence shall be admissible to the Commission.

## Section 2. Time of Public Hearings, Continuances

Unless otherwise specifically required by law or order of the Commission, hearings before the Commission on matters which the Commission is required by law to conduct a public hearing include without limitation hearings on:

- (a) Variances and Exceptions under Part 11 of Chapter 20.100 of Title 20 of the San Jose Municipal Code;
- (b) Conditional Use Permits under Part 6 of said Chapter 20.100; and
- (c) Appeal Hearings for site development permits, certain single-family house permits, planned development permits, special use permits, and tree removal permits. All such hearings shall be conducted in the manner described in and pursuant to the provisions of said Chapter 20.100, in which the Commission exercises original or appellate jurisdiction, as provided for under said Chapter 20.100. These hearing matters shall be set for hearing before the Commission the regular meeting place and time of the Commission.

Starting at the respective times set for hearing, the matters on each of said hearing calendars will be called and heard in the order in which they appear on such calendars until proper disposition has been made of such matters in accordance with law. Subject to the requirements of law, any hearing before the Commission may be continued by the Commission from time to time. In continuing any such hearing, the Commission shall specify the time and place at which the hearing will be continued.

Hearings shall not be interrupted for any other item on the agenda, and all other items on the agenda shall be delayed until proper disposition has been made in accordance with law of all matters on said hearing calendars.

Section 3. Documents and Objects Not to be Submitted Prior to Time of Hearing

Except as otherwise specifically required by law (e.g. petitions for rezoning) no documents or physical objects shall be submitted prior to the time of hearing and any documents or physical objects so submitted shall not be accepted for filing nor considered by the Commission.

Section 4. Allowable Time for Presentation

All persons desiring to speak or make a presentation will be given a reasonable time to do so. As a guideline, applicants and appellants generally may be afforded five (5) minutes to make a presentation and an additional five (5) minutes to present a rebuttal and all other public speakers may be afforded two (2) minutes to present relevant testimony; provided, however, the Chairperson may at any time impose such other reasonable time limits with respect to any presentation, testimony or hearing if the Chairperson finds such action necessary to prevent abuse or to provide all interested persons a fair and reasonable opportunity to be heard. It is urged that all presentations be as brief and concise as reasonably possible, without unnecessary delay or repetition.

Section 5. Evidence, Testimony, Statements and Arguments Submitted, Presented or Made at Hearing

- (a) Subject to subsection (b) below, any person (including, but not limited to officers or employees of the City), may submit, present, or make at said hearing, any evidence, testimony, statements, or arguments in favor of or against the matter which is being heard. Each person who submits, presents, or makes any such evidence, testimony, or statement may be requested, but shall not be required, to answer questions respecting such evidence, testimony or statements. Responses to questions from a Commissioner will not reduce the time allowed for a speaker's presentation pursuant to Section 4 above.
- (b) In connection with administrative or quasi-judicial hearings conducted by the Planning Commission, the decision of the Planning Commission is to be based upon testimony, evidence and other information received from any person at or in connection with a public hearing or contained in the public record for a public hearing before the Commission. A site visit by an individual Planning Commissioner to generally familiarize that Commissioner with the real property that is the subject of the matter to be considered by the Planning Commission is allowed. If a Planning Commissioner becomes aware

of information relevant to a matter coming before the Commission that was not made a part of the public record for that matter before the Commission, the Commissioner shall have a duty to and shall disclose that information to the Planning Commission in the manner described in City Council Policy 0-32: Disclosure of Material Facts and Communications Received During Council Meetings, as the same may be amended from time to time.

Section 6. Exhibits: Marking and Filing Thereof: Examination Thereof by Members

- (a) All documentary or real evidence which is presented to the Commission at a hearing shall be identified by the person presenting the same and shall be filed by that person with the Commission as an exhibit by submitting the same at such hearing to the Secretary. The Secretary shall mark all such documentary and real evidence submitted to the Secretary as having been filed with the Commission at such hearing and shall designate the same by an appropriate exhibit number or letter. Documentary or real evidence shall not be considered by the Commission unless it is filed with the Commission as above provided.
- (b) All documentary or real evidence filed with the Commission at a hearing may be examined by any member of the Commission at any time; provided that members shall not comment on or ask questions about the same except during the hearing, nor discuss the same except during the discussion thereof among the members after the hearing has been closed and the matter stands submitted.

Section 7. Questioning Through Chairperson: By Whom Such Questioning May be Done

- (a) Questioning of persons who appear and make a presentation may, with the consent of such persons, but not otherwise, be permitted at the discretion of the Chairperson. Such questioning as may be permitted by the Chairperson, whether by members of the Commission or persons in attendance (including, but not limited to, officers or employees of the City), shall be done only through the Chairperson.
- (b) After being requested to complete a speaker card, gaining recognition from the Chairperson and stating one's name, any person in attendance at the hearing may request permission from the Chairperson to ask questions of any person who has appeared and made a presentation and who has consented to such questioning, and if the Chairperson, at his or her sole discretion, grants that

request such person may then ask questions in accordance with and subject to the procedures set forth in this Article.

- (c) The Chairperson's decision on: (a) whether a person may be questioned at all, (b) who may ask questions of that person, (c) the number of questions which may be asked of that person, and (d) whether a particular question may be asked of that person, shall be final; provided that the person being questioned may refuse to answer all or any of the questions asked of him or her.

Section 8. Discussion and Deliberation by Members on Submitted Matters

After the public hearing has been closed and the matter is submitted for decision, the members of the Commission may discuss the matter among themselves. Unless directed by the Commission, no other persons may speak and no further exhibits may be filed. Members of the Commission shall address one another only through the Chairperson. Subject to the requirements of law, the Commission may take under submission for a reasonable period of time any matter which has been heard before it and may for this purpose, vote to continue its deliberation on such matter from time to time. In continuing such deliberations, the Commission shall specify the time and place at which such deliberations will be continued.

Section 9. Order of Proceedings

Hearings shall proceed in the following order:

- (a) Presentation and recommendation by the Director of Planning or staff of the City, with questioning, if any, of each person who makes an appearance upon conclusion of that person's presentation, pursuant to Sections 5 and 7 above.
- (b) Presentation by all persons of evidence, testimony, statements, and arguments related to the matter which is being heard, with questioning, if any, of each person who makes an appearance upon conclusion of the presentation, pursuant to Sections 5 and 7; provided that if the matter which is being heard by the Commission is before the Commission on the petition of any person, such as an applicant or an appellant, then in such event, such petitioner shall have the right at their option to either begin or conclude the presentation, or both, in favor of his or her petition.
- (c) If the matter which is being heard by the Commission is before the Commission on the petition of any person, then in such event such



petitioner may, at the discretion of the Chairperson, be permitted to present rebuttal evidence, testimony and statements in response to testimony presented to the Commission at a hearing.

- (d) Close of public hearing and submission of matter for decision.

## **ARTICLE V**

### **OFFICE OF THE COMMISSION**

#### Section 1. **Office of the Commission and Commission Secretary**

The Office of the Secretary, which shall be the Director's Office located in the Planning, Building and Code Enforcement Department of the City of San Jose at the City Hall of the City of San Jose, shall be the office of the Commission.

## **ARTICLE VI**

### **MAILING ADDRESS OF MEMBERS**

#### Section 1. **Mailing Address of Members**

Members of the Commission shall file with the Secretary the address to which all notices and other papers which may be mailed to them shall be sent. In addition, members of the Commission shall file with the Secretary the electronic address (i.e., an e-mail address) to which notices and other communications which may be sent to them shall be sent.

## **ARTICLE VII**

### **COMMITTEE OF THE WHOLE**

#### Section 1. **Procedure for Committee of the Whole**

The Commission may meet as a committee of the whole at such times and at such places as may from time to time be ordered by the Commission. The committee of the whole shall study and consider only such matters as are referred to it by the Commission. All actions of the committee of the whole shall be reported to the Commission. Six (6) or

more members of the Commission shall constitute a quorum to do business, but a lesser number may adjourn. The Chairperson shall preside at all meetings of the committee of the whole, and in the Chairperson's absence the Vice Chairperson shall preside. The provisions of Article III relating to meetings of the Commission shall, insofar as they are applicable, and except as otherwise provided in this Article, govern the conduct of meetings of the committee of the whole.

Section 2. Persons in Attendance. When May Speak

Persons in attendance shall not speak unless and until expressly invited to do so by the Chairperson.

Section 3. Agenda: Provision Thereof

Only those items referred to the committee of the whole by the Commission shall appear on the agenda of the committee. The Secretary shall provide a copy of the agenda to each member of the committee within twenty-four (24) hours after the Commission meeting at which the Commission orders a meeting of the committee of the whole.

**ARTICLE VIII**

**AMENDING COMMISSION BYLAWS**

Section 1. Provision for Amending Bylaws

- (a) These Bylaws may be amended by a two-thirds (2/3) affirmative vote of the Commission, at a regularly scheduled Planning Commission meeting.
- (b) At least two (2) weeks prior notice of the intent to amend these Bylaws shall be provided to the Commission.

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- (c) Notice of the intended changes to these Bylaws shall be provided to all active members of the Commission, and to the public as required by law and/or City policy, but such notices shall be provided no later than the notice of intent to amend these Bylaws.

**ADOPTED** and made effective by the Planning Commission of the City of San José this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

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ROLANDO BONILLA  
Chairperson

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CHRISTOPHER BURTON  
Secretary