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## **SECTION BYLAWS TEMPLATE**

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This template provides the minimum required articles that must be included in Section Bylaws to align Section Bylaws with both the Chapter Bylaws and National APA requirements. The articles shall be included in Section Bylaws in the order listed below, to the extent feasible. Articles in addition to those listed below may be included in Section Bylaws, but Sections are advised to place detailed policies or processes in separate documents to avoid continual Bylaws updates. Sections are encouraged to be consistent with the specific wording provided in the template.

Each Section shall provide APA California’s Executive Director with an electronic copy of its adopted Bylaws. If the Bylaws are amended, an electronic copy of the amended Bylaws shall be sent to the Executive Director within 30 days of amendment.

The adopted Section Bylaws shall also be posted on the Section’s website. If the Bylaws are amended, the amended version of the Bylaws shall be posted on the Section’s website within 30 days of amendment.

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## **SECTION BYLAWS REQUIRED ARTICLES**

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Each Section Bylaws shall at a minimum include the following required articles:

- Article 1. SECTION NAME, AREA SERVED AND NON-PROFIT NATURE OF THE SECTION
- Article 2. PURPOSES OF THE SECTION
- Article 3. SECTION MEMBERSHIP
- Article 4. SECTION BOARD OF DIRECTORS
- Article 5. DUTIES OF SECTION DIRECTORS AND OFFICERS (MAY BE COMBINED WITH ARTICLE 4)
- Article 6. ELECTION OF SECTION DIRECTORS AND OFFICERS AND TERMS OF OFFICE
- Article 7. SECTION BOARD MEETINGS
- Article 8. FINANCIAL POLICIES OF THE SECTION
- Article 9. ADOPTION AND AMENDMENT OF SECTION BYLAWS, INITIATIVE AND REFERENDUM
- Article 10. BOARD MEMBER ETHICS, INDEMNIFICATION, CONFLICT OF INTEREST, AND BOARD DISSOLUTION

## **SECTION BYLAWS ELEMENTS AND REQUIRED LANGUAGE**

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### **ARTICLE I. SECTION NAME, AREA SERVED AND NON-PROFIT NATURE OF THE SECTION**

The name of this Section of the American Planning Association (APA), California Chapter shall be the \_\_\_\_\_ Section (hereafter referred to as “the Section”). The area served by the Section shall be \_\_\_\_\_ (County or Counties). The Section is established through the California Chapter Bylaws. The Section shall be a not-for-profit entity under the auspices of the American Planning Association, California Chapter (California Chapter), which is a 501 (c)(6) non-profit corporation. (Note: Counties allocated to specific Sections are listed in *Article 11.2 - Names of Sections of Areas Served of the Chapter Bylaws* in the Chapter Bylaws. Sections with official subsections may wish to include the subsections in Article 1.)

### **ARTICLE 2. PURPOSES OF THE SECTION**

#### **2.1 SECTION ESTABLISHED**

The Section is established through the California Chapter Bylaws as a tangible local expression of APA purposes and objectives and as a vehicle for maximum membership involvement in the activities of the California Chapter.

#### **2.2 CONSISTENT BYLAWS**

The Bylaws of the Section shall be consistent with the policies and procedures of the California Chapter Bylaws *Article 11 - Chapter Sections*, which directs provisions addressing: establishment of a Section Board, identification of duties of Section Board members, description of Section meetings, management and accounting of Section finances, and procedures and criteria for formation and maintenance of Subsections and functional departments.

#### **2.3 SECTION PURPOSE**

The purpose of the Section pursuant to *Section 11.1 – Purposes and Function of the Sections* of the Chapter Bylaws shall be to carry out the purposes and objectives of the California Chapter and the American Planning Association, as applicable within the established geographic boundary of the Section area, as well as serving the members of the Section. (Note: Sections may want to add additional purposes and objectives in this section.)

### **ARTICLE 3. SECTION MEMBERSHIP**

#### **3.1 MEMBERSHIP ELIGIBILITY**

California Chapter members whose address of record, as provided to the APA National [APA] or California Chapter office, are in \_\_\_\_\_ (county/counties), shall automatically be a member of this Section.

#### **3.2 MEMBERS OF APA RESIDING IN CALIFORNIA**

APA members whose addresses of record (as provided by the members to APA) are within the state of California and within the Section area boundary shall automatically be members of the Chapter and Section. (See *Section 3.2 – Members of APA Residing in California* of the California Chapter Bylaws for a further description of roles and restrictions.)

#### **3.3 MEMBERS OF APA NOT RESIDING IN CALIFORNIA**

A member of APA whose address of record is outside California may, upon payment of California Chapter dues, be a non-resident member of the California Chapter. Non-resident members shall have the same privileges as Chapter-Only members, except that they shall not hold any Chapter or Section office and shall not vote in Chapter or Section elections.

#### **3.4 MEMBERS OF CALIFORNIA CHAPTER-ONLY**

Persons who are not members of APA may choose to be California Chapter-Only members whose membership eligibility, roles and restrictions are addressed in the California Chapter Bylaws *Section 3.4 - Members of California Chapter-Only*. After demonstrating to the California Chapter an address of record that is within the Section area boundary, the person shall also be a member automatically of the Section. Per Chapter Bylaws Section 3.4, Chapter-Only members may vote in Section elections and may hold a position on the Section Board except for the positions of Section Director, Section Director-Elect, Past Section Director, Professional Development Officer, or Section Treasurer.

#### **ARTICLE 4. SECTION BOARD OF DIRECTORS**

##### **4.1 ELECTED MEMBERS**

##### **4.2 APPOINTED MEMBERS**

Pursuant to *Section 11.5 - Section Board* in the Chapter Bylaws, at a minimum, the elected members of a Section shall include a:

- a. Section Director
- b. Section Director Pro Tem
- c. Secretary/Treasurer

Sections shall also have an elected or appointed:

- a. Officer responsible for professional development, either a separate position or as part of the responsibilities of other elected or appointed Board positions - such professional development officer however shall be a member in good standing of AICP
- b. Student Representative
- c. Representative to serve on the Chapter Legislative Review Team who shall also serve as a member of the Section Board to update the Board on legislative activities of the Chapter

Sections may elect or appoint:

- a. A Commission and Board Representative or similar position for the purposes of advocacy, recruitment, and development of planning commission and zoning board-related programs, however such representative shall be a member of APA in good standing who is serving on a planning or zoning board for a local public agency at the time of their election or appointment
- b. An officer who meets the requirements to be a member of the Young & Emerging Planners Group
- c. An officer who is responsible for being an liaison to the State Chapter's Diversity and Equity Committee.

##### **4.3 SECTION CONTRACT REQUIREMENTS FOR INDEPENDENT CONTRACTORS, STUDENT INTERNS AND SPEAKERS**

The Sections may contract with other independent individuals or entities as deemed necessary by the Section Board to carry out the purpose and mission of the Section. It is recommended that Section contracts with independent contractors be reviewed by legal counsel and executed by the Section Director. In addition, contracts must also meet labor law requirements for independent contractors and student interns.

In light of recent changes required by AB 5 (2019) and AB 2257 (2020) related to when persons are considered employees or independent contractors, APA's attorney suggests the following general guidance for the Sections and Chapter when planning to hire an independent contractor to provide services, or use student interns for any tasks:

##### **INDEPENDENT CONTRACTORS:**

Include the following in any contract for consultants/sole proprietors so they will be able to qualify themselves under the general business-to-business exemption labor laws by:

1. Maintaining a business license.

2. Providing formal invoices.
3. Making themselves available to work for multiple client businesses.
4. Meeting other specified conditions in Section 2776.
5. Moving from a sole proprietor to an LLC or corporation.

#### STUDENT INTERNS:

Student researchers or interns are either unpaid student interns or they are employees under current employment laws and AB 5 since they are unlikely to hold themselves out to be a business meeting the above criteria as an independent contractor.

Under current labor laws, if structured correctly unpaid interns are not employees. However, the relationship should be specifically structured so that they are not considered employees. In general, both state and federal laws are looking for the following components:

1. Interns cannot displace regular employees.
2. Interns are not guaranteed a job at the end of the internship.
3. The employer and the intern(s) understand that the interns are not entitled to wages during the internship period.
4. Interns must receive training from the company, even if it somewhat impedes on the work of the organization.
5. Interns must get hands-on experience with equipment and processes used in the industry.
6. Interns' training must primarily benefit them, not the company.

“Wages” include any type of compensation including direct cash payments, gift cards, or free registration to a conference or workshop or other in-kind remuneration.

Unless all of the criteria above are met, the intern is legally an employee of the Chapter or Section, who must be paid the minimum wage, earn overtime, and receive all of the other protections guaranteed by state and federal employment laws. AB 5 also makes it clear that persons that are paid that cannot meet the requirements under Independent Contractors in the new law as described above would be considered employees.

While the Labor Code presumes that that any person rendering services for another is an employee, the Labor Code specifically excludes:

“Any person performing voluntary service for a public agency or a private, nonprofit organization, who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses,” from the definition of an employee. (Labor Code §§ 3357, 3352(i).) Further, the Fair Labor Standards Act ('FLSA') defines a volunteer as an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered" (29 C.F.R. § 553.101 (a).) Individuals are only considered volunteers where “their services are offered freely and without pressure or coercion, direct or implied, from an employer.” (29 C.F.R. § 553.101(c).) Similarly, to qualify as volunteers, the services by the individuals must be provided “with no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonably benefits, and nominal fees. (29 C.F.R. § 553.104(a).)

If the Chapter or Section decides to hire an unpaid intern, the unpaid intern must sign an agreement acknowledging that the student understands that the position will be unpaid. Please contact the Executive Director for the written waiver template before securing the student.

**SPEAKERS:**

It does not appear that a person receiving an honorarium would be considered an employee. CA Lab. C. section 2750.3(a)(1) asserts that one is an employee if they receive payment for services unless the person can control their own work performance, the work is outside the scope of the usual course of the hiring entity, and the person is typically working in some other occupation. Given the activities performed to receive an honorarium, the receiving person likely can control how they perform the requested functions. Furthermore, the action of speaking, writing, or attending a conference seems to be outside the typical scope of the APA. As long as the person who the honorarium is bestowed upon has a different occupation, it does not seem that CA Lab. C. section 2750.3(a)(1) would apply.

An honorarium is “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, social event, meal, or like gathering.” CA Gov’t C. section 89501. This does not include income for personal services unless the predominate activity of the business is making speeches.

This is just the general rule for employment. There are different standards specific to other professions such as insurance agents, doctors, lawyers and a few others. This is laid out in CA Lab C. section 2750.3(b) and CA Lab C. section 1750.3(c). There are limitations on government officials receiving an honorarium. It is impermissible for state and local elected officers, candidates for those offices, and all officials holding positions listed in Gov’t C. section 87200 to receive honoraria. Employees designated under the state or local government’s conflict of interest code are also prohibited from receiving honoraria. This is articulated in CA Gov’t C. section 89502.

**4.4 FORMATION AND STRUCTURE OF OFFICIAL SUBSECTIONS (IF APPLICABLE)**

**4.5 SECTION COMMITTEES (IF APPLICABLE)**

**ARTICLE 5. DUTIES OF SECTION DIRECTORS AND OFFICERS**

This article should include all of the specific duties assigned to the Section Director and officers, whether elected or appointed. The duties of the Section Director and other elected and appointed officers and contractors may be combined with Article 4 or remain as a separate article.

**ARTICLE 6. ELECTION OF SECTION DIRECTORS AND OFFICERS AND TERMS OF OFFICE**

**6.1 ELECTED OFFICERS AND BOARD TERMS**

Pursuant to *11.6 – Terms of Office for Section Directors & Officers*, the Chapter Bylaws requires the term of office of all Section Directors to be two years, as follows:

The Directors of Los Angeles, Orange, Sacramento Valley and Central Coast Sections shall take office on January 1 of even-numbered years.

The Directors of Northern, San Diego, Inland Empire and Central Sections shall take office on January 1 of odd-numbered years.

The term of office of all other elected and appointment members of the Section Board shall be specified in the Section Bylaws.

As required by the Chapter Financial Policies, the minimum qualifications and vacancy requirements of the Section Treasurer are mandated and shall include the following:

Any candidate for Section Treasurer shall be knowledgeable in accounting procedures, including posting debits and credits into accounting software, balancing accounts and reconciling statements.

It is also recommended that the existing and new Section Treasurer contact the Chapter/Section bookkeeper for an initial introduction and a list of actions expected of the Section Treasurer to allow for a smooth transition.

## 6.2 ELECTION COMMITTEE OR PROCESS, NOMINATION OF ELECTED OFFICERS AND VACANCIES

Pursuant to *Section 11.7- Election of Section Officers*, the Chapter Bylaws requires each Section to establish policies and procedures for the election of Section officers. Such election policies and procedures shall be consistent with the goals described in *Section 7.1 – Purpose and Goals* of the Chapter Bylaws and with the provisions of the Chapter's adopted *Election Policies and Procedures* relating to standards of election behavior, partisanship by the Section Board and advertising or articles in Section publications.

Policies and procedures for election of Section Offices shall include, at minimum, the use of secret ballots (via mailed ballot or online ballot), the formation of a nominating committee, and the ability to write in/add a candidate on the ballot. Eligible voters shall include all members in good standing of APA and/or the Chapter who reside or work within the Section area.

The Section Bylaws shall also include policies and procedures relating to election cycle schedule and dates, tallying the vote.

### 6.2.1 APPOINTMENTS FOR VACANCIES AND FOR INSTANCES WHERE NO CANDIDATES FOR ELECTED BOARD OFFICE ARE AVAILABLE TO RUN

The Section Board may appoint officers to fill vacancies that occur during a term through interim appointment by a 2/3 vote of the Section Board. Such appointed officers shall serve the unexpired term of their predecessor. If for any reason a Vice Director of Finance or Secretary is replaced mid-term, the Section Director will immediately contact the Chapter's Vice President of Administration and send or review all accounting information with the VP of Administration and Chapter bookkeeper before any accounting activities are assumed by the new Vice Director of Finance/Secretary.

The Section Board may also appoint a Section officer who is normally elected if no candidates are available to run for that elected office during a normal election process. Such appointment may only be made if at least two Section-wide announcements have been made recruiting a candidate or candidates for the position prior to the election deadline, in addition to other recruitment efforts by members of the Elections Committee. The appointment shall be approved by a 2/3 vote of voting Section Board members. Such appointed officers shall serve the normal term for the elected position.

In the event that the requirements for an appointment were not met, a special election may be conducted.

## 6.3 NON-PERFORMANCE OF ELECTED OFFICERS AND APPOINTED BOARD MEMBERS

Any Elected Officer may be removed from office for non-performance upon a motion adopted by a two-thirds vote of the Section Board. A motion will require the following:

1. The grounds for non-performance must be submitted to the Board and may include: non-attendance at Board meetings or committee meetings, failure to execute adopted programs, incurring legal liability for the Section or California Chapter based on dilatory performance of duties, misconduct or dereliction of duty, or other criteria that may be added to this subsection.
2. Due process for elected officers will require at least two consecutive Board meetings to conclude a motion, as follows: the first for the making of the motion and a submission of grounds; and the second to consider any response submitted by the officer charged and to allow the Board to then sustain or deny the motion.

Appointed Board Members not fulfilling responsibilities as assigned in the Section bylaws may be removed by action of the Board at a Board meeting by a minimum majority vote of the Board. An appointed Board member shall have the opportunity to correct inappropriate action or inaction before the scheduled Section Board action for removal.

## **ARTICLE 7. SECTION BOARD MEETINGS**

Sections are required to have regular meetings as set by the Section Board. The Bylaws shall describe the number and nature of Section Board meetings, quorum requirements, how meeting agendas will be determined, and minutes taken and when they will be distributed, and how business will be conducted at Section Board meetings, either in person and/or via conference call or online. A policy on calling non-scheduled, emergency meetings must also be included per below:

### **7.2 EMERGENCY MEETINGS**

An emergency meeting may be called by the Section Director only when an item under the Board's authority must be addressed before the next regular meeting due to restrictions on the time to act. If an emergency meeting is required, the Section Director shall convene an in-person meeting of a quorum of Section Board members. However, if an in-person meeting is not possible, a conference call or email vote may occur at the discretion of the Section Director in consultation with the other elected officers.

## **ARTICLE 8. FINANCIAL POLICIES OF THE SECTION**

### **8.1 MANAGEMENT OF SECTION FINANCES AND BUDGET**

The Section finances shall be managed consistent with the Chapter Bylaws and Chapter Financial Policies and shall comply with *section V - Section Financial Policies* of the Chapter Financial Policies. The Section shall spend its revenue obtained from all sources to achieve the purposes and objectives listed in the Section Bylaws in *Article 2 – Purposes of the Section*. The Section Board shall adopt an annual Section budget which shall be reviewed and approved by the Board by a majority vote with income and expense budget line items consistent in category and format with those included for the Sections in the Chapter Chart of Accounts. The Section shall contract with the Chapter/Section bookkeeper to provide at minimum preparation and review of the monthly statements, quarterly reports, annual report and 1099's. The Section Treasurer shall provide all information necessary required by the Chapter to file annual Chapter tax returns as outlined in the Chapter Financial Policies.

### **8.2 INTERNAL FINANCIAL OVERSIGHT OF SECTION FINANCES**

The Section shall include additional policies and procedures governing the Section finances which shall include requirements governing the internal financial oversight of the Section finances including:

- A list of primary revenue sources for the Section.
- Board member and bookkeeper access to the Section bank accounts and the Quickbooks Online portal.
- Board approval required to commit the resources of the Section.
- Reimbursement requirements including receipts.
- A reserves policy that shall include at least the equivalent of 6 months of operating expenses for the Section, and when funds should be deposited in reserves.
- How conference profits are to be handled and allocated.

## **ARTICLE 9. ADOPTION AND AMENDMENT OF SECTION BYLAWS, INITIATIVE AND REFERENDUM**

### **9.1 ADOPTION OF SECTION BYLAWS**

The Section shall adopt and maintain bylaws to govern Section affairs that are consistent with the California Chapter bylaws and at a minimum contain: establishment of the Section Board, duties of board members, Section meetings to carry out the purpose and objectives of the Section, and management and accounting of Section finances. The Section Bylaws shall be the primary governing document of the Section. Operating procedures for various activities shall be

developed and kept in an electronic location accessible to Section members. Adoption of the bylaws shall be by a two-thirds (2/3) affirmative vote of the filled seats of the Section Board.

### 9.2 AMENDMENT AND ADOPTION OF SECTION BYLAWS

The Section Director, with concurrence of the Board, may appoint a subcommittee to draft revisions to adopted Section bylaws. Depending on the complexity of the revisions, issues may be identified, or draft language may be presented to the Section Board by the subcommittee. The full text of drafted bylaws amendments shall be presented to the Section Board in writing and placed for member review on the Section website 30 days prior to a vote. A two-thirds (2/3) affirmative vote of the filled seats of the Board shall be required to approve amendments to these bylaws. The effective date of the amendment shall be the date of the affirmative vote unless otherwise specified prior to the vote.

### 9.3 INITIATIVE AND REFERENDUM

Upon the receipt of a petition signed by not less than 10% of the members of the Section who are eligible to vote in accordance with Article V, the Section Board shall cause any initiative or referendum measure to be placed on the ballot used for Elected Officers and be voted upon in accordance with the procedure set forth in these bylaws for the election of Section Board officers. A majority of those voting, regardless of number, will determine the issue.

## **ARTICLE 10. BOARD MEMBER ETHICS, INDEMNIFICATION, CONFLICT OF INTEREST, AND BOARD DISSOLUTION**

### 10.1 ETHICS

Section Board Members who are members of the American Institute of Certified Planners are subject to the AICP Code of Ethics in their behavior related to Board activities.

### 10.2 CONFLICT OF INTEREST

If any Section Board member has a financial or personal interest in any matter coming before the Board, that affected person shall fully disclose the nature of the interest and withdraw from discussion, lobbying, and voting on the matter.

### 10.3 INDEMNIFICATION

The California Chapter Board of Directors, on behalf of the Chapter, shall provide the Sections with Officers and Directors insurance and General Liability insurance, the Section's share to be paid by the Section, to indemnify any Section Board member fulfilling their duties for whom indemnification is permitted under California law, up to the fullest extent permissible under the law.

### 10.4 BOARD DISSOLUTION

Pursuant to the process described in *Article 16 – Dissolution* of the Chapter bylaws, if the Chapter is dissolved by a two-thirds vote of the Board of Directors, the \_\_\_\_\_ Section of the California Chapter of the American Planning Association is also dissolved.