

RECUSALS BY ELECTED OFFICIALS AND “RULE 14” ABSTENTIONS: A BRIEF GUIDE



Sometimes members of legislative bodies or other elected officials are prohibited by law from voting or even participating in discussions on matters pending before the body. Other times, they believe it appropriate not to vote on or participate in particular matters, even if they're not prohibited by law from doing so. The technical term for refraining from voting or participating in a matter is "recusal" or "to recuse" from it, whether the recusal is required or voluntary.

The City of Chicago has enacted laws and rules addressing recusals by its City Council members and other elected officials--they require recusals under certain conditions, but also allow for voluntary recusals. This guide explains the procedures, including recent changes to the City's laws that take effect October 1, 2022.

As with all publications from the Board of Ethics, this guide is not a substitute for confidential legal advice. If circumstances arise in which City Council members may wish to recuse themselves from matters or believe they may be required to recuse, we recommend consulting with the Board of Ethics. All Board advice and guidance is confidential per the City's Governmental Ethics Ordinance (the "Ordinance").

REQUIRED RECUSALS

Some recusals are required by law, specifically by §§2-156-030 and -080 of the Ordinance. When City elected officials, including City Council members, are prohibited from participating in or voting on a matter pursuant to this law, they must file a written disclosure with the Board of Ethics and then: (i) *cannot* participate in *any* discussions on the matter with their colleagues or other City officials or employees in any Committee meeting or at any time; (ii) *cannot* chair the portion of a Council Committee meeting when that matter is considered or voted upon; and (iii) *must* recuse from any discussion or votes on the matter before the full Council or Committee. Note: the Board has no prescribed form for such recusals; please contact us for assistance. We post all recusals on our website at <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/alderrecusals.html>.

So, just when are City Council members or other elected City officials required by law to disclose to the Board of Ethics and recuse? There are **two** situations where the law requires written disclosure followed by formal recusal:

(i) The first is rare: if an elected official or City Council member, or their spouse or domestic partner has a financial interest¹ in a matter pending before a Council Committee or the full City Council that is distinguishable

1. Note: ownership interests representing less than .5% of the outstanding common stock of a publicly-traded company, such as United Airlines, Ford or Oracle, do not count toward or trigger this requirement. "Financial interest" is defined in §2-156-010(l) as "an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000.00 in any consecutive twelve-month period, provided that such interest shall not include: (1) the authorized compensation paid to an official or employee for any office or employment; or (2) a time or demand deposit in a financial institution; or (3) an endowment or insurance policy or annuity 7 contract purchased from an insurance company; or (4) any ownership through purchase at fair market value or inheritance of the shares of a mutual fund corporation, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; or (5) any ownership through purchase at fair market value or inheritance of not more than one-half of one percent of the outstanding common stock of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended."

from that of the general public or all other Council members, or the Council member or any relative² of the member has received any income or compensation from the matter in the preceding 12 months, or reasonably expects to in the following 12 months, or the matter involves a person or company that employs or is owned by a relative of the elected official or City Council member. It would happen if, say, Ald. Mary Doe's son John owns all or part of a private business that is applying for a zoning change for its place of business. The Ordinance requires that, within 96 hours (4 days) of learning that such a matter will be presented before the full Council or any Council Committee, Ald. Doe must disclose to the Board of Ethics in writing "in detail the nature of such business relationship or compensation." (An email to the address below, or a fax, is fine.) The Board posts these on our website immediately upon receiving them, here:

<https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/alderrecusals.html>.

(ii) The second is more common: disclosure and recusal are required if a Council member, or their spouse, or a private business in which either of them has a "financial interest," received income or compensation from the person, firm, or organization with the matter pending within the preceding 12 months, or reasonably expects to receive it within the following 12 months, or has an ownership interest in the person with the matter. This provision applies, for example, when a client of a law firm in which Ald. Doe or her spouse is a partner/owner has a matter pending before the Council or a Council Committee. As in the first situation, Ald. Doe must file a written disclosure with the Board, by email or fax, (they're posted immediately upon receipt at the URL above) within 96 hours (4 days) of learning of the matter's pendency.

In both situations (i) and (ii), Ald. Doe may not participate in any informal or formal discussions on the matter, nor chair the portion of a Committee meeting where it is brought up, and must recuse from any votes on it.

Note: required recusals described above pertain to a 2019 amendment to the Ordinance: if Ald. Doe chairs a Council Committee, she gets three (3) "free" such recusals in a 12-month period, but if a *fourth* recusal is required during the same period, she must eliminate the potential conflict of interest (perhaps by having her spouse drop the client) or give up her chair.

VOLUNTARY, NON-REQUIRED RECUSALS

There are *other* times when Council Members or elected officials feel they *should* recuse from matters, but are *not* required by law to do so. These are "Rule 14" disclosures or recusals handled by the Office of the City Clerk, and are named for City Council Rule of Order 14. Examples include:

- ◆Ald. Jones recuses from a matter pending before the Council's Zoning Committee (and full Council) because his nephew's law firm represents the applicant;
- ◆Ald. Doe's good friend's business has a matter pending before a Council Committee;
- ◆Ald. Jones's spouse works for Northwestern University, which has a grant matter up for vote.

In these instances, recusals are not required by law. They are voluntary. As of October 1, 2022, the Office of the City Clerk shall send these to the Board and the Board will post them on our website. The City Clerk also ensures they are published in the Journal of Council Proceedings, which is on-line here:

<http://www.chicityclerk.com/legislation-records/journals-and-reports/journals-proceedings>

A note on terminology: all of these recusals (those required by the Governmental Ethics Ordinance *and* those submitted voluntarily under Rule 14), have become known informally as "Rule 14 recusals." But, more precisely, *only* those that are *not* required by law but are voluntary are true "Rule 14" disclosures.

In sum, if a City Council or other elected official member *must* recuse by law from a matter, because they, their spouse, or a business in which either they or their spouse have a financial interest, have a financial interest in the matter, or the member has received or expects to receive income or compensation from the matter or from the person with the matter), or the matter involves the employer or a person owned by any

2. "Relative is defined in §2-156-010(w) as "a person who is related to an official, candidate for city office, or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister."

relative, then the disclosure must, by law, be made to the Board of Ethics, which posts them online immediately. All *other* disclosures or notices of recusal are made per Rule 14 to the City Clerk's Office (and sometimes also to the Board of Ethics), but these are not required by law. The City Clerk ensures they are published in the Journal of Council Proceedings, and the Board posts them when the Board receives them from the City Clerk or directly from the recusing official.

www.cityofchicago.org/Ethics

For confidential advice, please contact:

**Chicago Board of Ethics
740 North Sedgwick, Suite 500
Chicago, Illinois 60654
(312) 744-9660
Fax: (312) 744-2793**

**Lori E. Lightfoot, Mayor
William F. Conlon, Chair**

**Steven I. Berlin, Executive Director
steve.berlin@cityofchicago.org**

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