

December 15, 2023

The Honorable City Council
c/o Holly Wolcott, City Clerk
200 North Spring Street
City Hall—3rd Floor
Los Angeles, CA 90012

Re: Recusal Notification for Elected Officials
FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On November 8, 2023, the Ethics Commission voted unanimously to recommend updates to the Governmental Ethics Ordinance (GEO), to extend to elected City officials the existing recusal notification requirement for board and commission members. The Ethics Commission also voted unanimously to revise its recusal notification form (Form 51).

A copy of the revised Form 51 is attached for your reference. Language to effectuate the recommended GEO updates is provided below in section C, and the members of the Ethics Commission urge you to adopt them.

A. Background

Under the state's Political Reform Act and the common law doctrine against conflicts of interests, public officials are prohibited from making, participating in making, or in any way attempting to use their official positions to influence governmental decisions in which they know or should know they have a financial interest. California Government Code (Cal. Gov't Code) § 87100. Other state, federal, and City laws may also prohibit public officials from taking official action, such as California Government Code section 1090 and Los Angeles City Charter section 222. A "public official" includes both elected and appointed officials. Cal. Gov't Code § 82048.

The state requires specified public officials to publicly disclose certain personal financial interests, such as income, gifts, investments, and real property, by filing Form 700. In addition to Form 700, the City requires its high-level officials, including elected officials and board and commission members, to file Form 60 to disclose personal interests related to restricted sources (essentially, persons with business before the City). Los Angeles Municipal Code (LAMC) § 49.5.9(B). These statements of economic interests (SEIs) provide transparency to the public and help City officials make unbiased governmental decisions by identifying the potential for conflicts between their personal interests and their responsibilities to the City.

In addition to the SEI filing requirements, members of City boards and commissions who are required to file Form 700 are required to file a City recusal notification (Form 51) with the Ethics Commission each time they recuse themselves from participating in a matter due to an actual or apparent conflict of interests. LAMC § 49.5.6(D). Form 51 requires the filer to disclose information about the recusal, including a description of the interest giving rise to the conflict, the date of the meeting at which the recusal occurred, the agenda number of the item affected by the conflicting interest, and whether the item involved the making of a contract.

Like City board and commission members, elected City officials are required to file SEIs upon assuming office and annually thereafter for the duration of their term. Unlike board and commission members, they are not currently required to file Form 51 or otherwise provide written documentation of their state-mandated recusals.

B. Recommendations

Under both state and City laws, elected City officials are required to disclose their economic interests through their SEIs in an effort to, among other things, help them identify when they must recuse themselves from official City action. To further promote transparency and equitable governmental decision making, the Ethics Commission recommends that they also be required to disclose their recusals by filing Form 51.

Because elected City officials are responsible for high-level policymaking that includes ultimate decision-making authority over recommendations from City boards and commissions, there is a heightened public interest in the disclosure of their activity related to City decisions. Requiring elected City officials to file Form 51 will create parity between them and City board and commission members. It will also provide the public with more effective and efficient transparency, in that they will not have to listen to or review minutes for every meeting in order to be assured that their elected officials are avoiding conflicts by complying with the law.

The language below in Section C extends the recusal notification requirement to elected City officials. It also makes the following additional changes that are recommended by the Ethics Commission.

1. Electronic Filing

While the vast majority of the Ethics Commission's filings are done electronically, Form 51 is currently a paper filing. In addition, filers are currently required to provide a copy of the agenda for the meeting at which the recusal occurred (or would have occurred if the filer had been present) with each Form 51 filing. To modernize the process and promote faster, more convenient filing, the Ethics Commission plans to convert Form 51 into an easily accessible online filing.

2. Timing

Currently, board and commission members must file a copy of Form 51 with their board secretaries as soon as possible after the posting of an agenda that involves a conflict of interests

for them. The filing of the original form must be made within 15 calendar days after the date of the meeting.

With a move to electronic filing, the original will be filed with the Ethics Commission before a copy can be generated for filing with the board secretary. In recognition of that fact and to promote more timely public notice, the Ethics Commission recommends that the original filing with the Ethics Commission and the filing of the copy with the board secretary both be required within seven calendar days after the date of the meeting. For elected officials, the Ethics Commission recommends that the copy be filed with the City Clerk.

3. Transparency

The recusal notification requirement is designed to help foster public confidence in City decision making and to help public officials understand and document their compliance with state law. To promote transparency regarding City decisions, the Ethics Commission recommends that filers be required to identify City reference numbers (council file numbers, contract numbers, ordinance numbers, etc.) that are affected by their recusals. In addition, the Ethics Commission recommends that a Form 51 be added to the council file index whenever it relates to an item that has a council file number at the time it was filed.

4. Privileged Information

Elected City officials and board and commission members are sometimes required to recuse themselves from privileged matters. Common examples include participating in a closed session discussion regarding pending litigation or a confidential personnel matter. In these instances, state law requires only that an official declare on the public record prior to the closed session that the recusal is a result of California Code of Regulations, Title 2, Division 6 (2 Cal. Code Regs) § 18707(a)(4).

Although the disclosure of the recusal, itself, is required, the disclosure of the confidences of a closed session or other privileged information is not. 2 Cal. Code Regs. § 18707(c). To align with state law, the Ethics Commission recommends exempting confidential or privileged information from disclosure in a Form 51.

C. **Proposed Language**

Draft language to effectuate the recommended changes is provided below.

LAMC § 49.5.6. CONFLICTS OF INTERESTS.

...

D. Recusal Notification.

1. A member of a City board or commission who is required to file a statement of economic interests pursuant to the Political Reform

Act shall file a recusal notification form each time the member recuses himself or herself in relation to an actual or apparent conflict of interests.

~~a. The member shall file a copy of the completed form with the executive secretary for the commission or board (or the person acting in that capacity) as soon as possible after the posting of the agenda containing the item involving the member's conflict of interests.~~

~~ba. Within seven calendar days after the date of a public meeting at which the recusal occurred or would have occurred, the member shall file the original form, along with a copy of the meeting agenda containing the item involving the conflict of interests, with the Ethics Commission; within 15 calendar days after the date of the meeting at which the recusal occurred shall file a copy of the completed form with the executive secretary for the board or commission; and shall ensure that staff in the member's department, board, or commission add the completed form to the City Clerk's council file management system when the recusal relates to a council file that exists at the time the form is filed.~~

~~eb. The member shall file the form even if the member is not present at the meeting.~~

2. An elected City official shall file a recusal notification form each time the official is required to recuse himself or herself in relation to an actual or apparent conflict of interests.

a. Within seven calendar days after the date of the recusal or the date of a public meeting at which the recusal occurred or would have occurred, the official shall file the form with the Ethics Commission; shall file a completed copy with the City Clerk when the recusal arises from a public meeting; and shall ensure that the official's staff add the completed form to the City Clerk's council file management system when the recusal relates to a council file that exists at the time the form is filed.

b. If the recusal results or should result from a public meeting, the official shall file the form even if the official is not present at the meeting.

23. A recusal notification form shall be filed under penalty of perjury in a method prescribed by the Ethics Commission and shall include, at a minimum, the following:

- a. The ~~member's~~ filer's name and title;
- b. The name of the ~~member's~~ filer's board or commission, if applicable;
- c. The date of the public meeting at which the recusal occurred or would have occurred or, if a public meeting is not involved, the date the recusal occurred;
- d. ~~The agenda item number, a~~ brief description of the matter, ~~and~~ a statement of whether the matter concerns the making of a contract, and all applicable City reference numbers, including but not limited to the agenda item number, contract number, and council file number; and
- e. The specific interest causing the recusal and a statement of whether the interest is financial.

4. A City official is not required to disclose confidential information, the confidences of a closed session, or information that is privileged by law in a recusal notification form.

D. Conclusion

To promote transparency and impartial governmental decision making, the Ethics Commission recommends updating the GEO as indicated above in section C. The members of the Ethics Commission urge you to approve the recommended updates.

We would be happy to discuss the recommendations with you at any time. If you have questions, please do not hesitate to contact me or Policy Director Tyler Joseph.

Sincerely,



David Tristan
Executive Director

Attachment:

Form 51 (revised 11/8/2023)

Recusal Notification

☐ Original Filing ☐ Amendment: Date of Signed Original _____ Date of Last Amendment _____

Filer's Name		
Filer's City Title	Name of board or commission, if applicable	
Date of recusal or date of public meeting	Agenda item number, if applicable	City reference numbers (council file, contract, etc.)
Brief description of matter or agenda item causing the recusal		

1. Check all interests that warrant this recusal:

- | | | |
|--|--|--|
| <input type="checkbox"/> Investment | <input type="checkbox"/> Personal finances | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Real property | <input type="checkbox"/> Business position | _____ |
| <input type="checkbox"/> Source of income or gifts | <input type="checkbox"/> Membership on an organization's board | <input type="checkbox"/> Appearance of conflict (<i>if no</i> |
| <input type="checkbox"/> Client of mine or my employer's | <input type="checkbox"/> Campaign contribution | <i>other interest applies</i>) |

2. Is each interest checked above disclosed on your statement of economic interests (CA Form 700 and, if required, City Form 60)?

- ☐ Yes
- ☐ No. The following interests are not disclosed:

3. Provide further detail about your relationship to the matter or item from which you recused yourself. Be as specific as possible:

4. Does this matter or item concern the making of a contract?

- ☐ Yes ☐ No

5. Have you been disqualified from participating in this or another matter or item in the last 365 days?

- ☐ Yes, _____ times in the past 365 days ☐ No

Signature

Date