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7 Petitioner

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BEFORE THE CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

In re the Matter of:

) Case No.: 15-01

LYNETTE GIBSON MCELHANEY and
COMMITTEE TO ELECT LYNETTE GIBSON
MCELHANEY FOR CITY COUNCIL 2012

) **STIPULATION, DECISION AND ORDER**

STIPULATION

Petitioner Whitney Barazoto, Executive Director of the City of Oakland Public Ethics Commission (Commission), and Respondent Lynette Gibson McElhaney and the *Committee to Elect Lynette Gibson McElhaney for City Council 2012* agree as follows:

1. Respondent violated the City of Oakland Campaign Reform Act as summarized in the attached and incorporated exhibit.
2. The violation consisted of the Respondent failing to file the Fair Political Practices Commission (FPPC) Form 460 electronically by the state-mandated deadline of July 31, 2014, as required by the Oakland Campaign Reform Act. This resulted in a six month time period (from August 2014 to January 2015) during which the public could not electronically access the committee's contribution and expenditure data for the January to June 2014 filing period. This violation shall be resolved in the following manner:
 - a. Respondent will pay \$1,600 in the form of a cashier's check payable to the "City of Oakland." The payment will be held by the Commission staff until the Commission members issue the decision and order in this matter.

3. This stipulation will be submitted to the Commission members for consideration and will be subject to approval by the Commission at the Commission's next meeting.
4. If approved by the Commission members, this stipulation and the accompanying decision and order will resolve all factual and legal issues raised in this matter and will be the final disposition of this matter by the Commission.
5. If the Commission refuses to approve the proposed stipulation, it shall become null and void, and Commission staff will return all payments tendered by the Respondent in this matter within ten days of the Commission's rejection of the stipulation.
6. If the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission or its staff shall be disqualified because of prior consideration of the stipulation.
7. Respondent understands and knowingly and voluntarily waives all procedural rights under the law, Oakland City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures which include but are not limited to receiving a finding of probable cause, having the Commission or independent hearing examiner hear the matter, personally appearing at an administrative hearing, confronting and cross-examining witnesses, and subpoenaing witnesses to testify at a hearing.
8. Respondent understands and acknowledges that this stipulation and decision is not binding on any other law enforcement agency and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it.

DATED: _____

 WHITNEY BARAZOTO, Petitioner

DATED: _____

 LYNETTE GIBSON MCELHANEY, Respondent

DATED: _____

*COMMITTEE TO ELECT LYNETTE GIBSON-
 MCELHANEY FOR CITY COUNCIL 2012,*
 Respondent

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DECISION AND ORDER

The Public Ethics Commission considered the above STIPULATION at its meeting on _____ . The Commission hereby approves the STIPULATION and orders that, in accordance with the STIPULATION, Respondent pays a fine in the amount of \$1,600.

DATED: _____
JENNA WHITMAN, Chairman
CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

EXHIBIT
PEC Case # 15-01

I. SUMMARY OF COMPLAINT

On January 2, 2015, the Public Ethics Commission (Commission) initiated a case regarding the failure to file campaign statements by the *Committee to Elect Lynette Gibson McElhaney for Council 2012* (*Committee*) for the reporting period of January 1, 2014, to June 30, 2014, as required by the California Fair Political Practices Commission and the Oakland Campaign Reform Act. The campaign statements for this reporting period were due on July 31, 2014, but were not submitted until January 20, 2015.

II. FACTUAL SUMMARY

In preparation for her 2012 campaign for City Council, Lynette McElhaney filed a statement of intention (FPPC Form 501) and an initial statement of organization (FPPC Form 410) creating the *Committee to Elect Lynette Gibson McElhaney for Council 2012* on October 7, 2011 as required by state law (California Political Reform Act) and governed by the Fair Political Practices Commission. The *Committee* filed campaign statements in 2011, 2012 and 2013 in paper form as required by state law. After the Oakland Campaign Reform Act was amended in March 2013 to require candidates to file campaign statements electronically, the *Committee to Elect Lynette Gibson McElhaney for Council 2012* filed its campaign statements electronically for the first time on August 1, 2013. The *Committee* has been filing campaign statements electronically since then for the reporting periods outlined in the chart below.

**History of Electronic Filings by the
*Committee to Elect Lynette Gibson McElhaney for Council 2012***

FPPC Form	Reporting Period	Date Due	Date Submitted	Timeliness
460	1/1/13 – 6/30/13	7/31/13	8/1/13	1 day late
460	7/1/13 – 12/31/13	1/31/14	1/31/14	On time
460	1/1/14 – 6/30/14	7/31/14	1/20/15	6 months late
460	7/1/14 – 12/31/14	2/2/15	1/30/15	On time

Following the July 31, 2014 deadline for the 1/1/14 – 6/30/14 reporting period, the City Clerk’s office, which serves as the “filing officer” for City of Oakland campaign statements under state law, mailed two letters to the *Committee to Elect Lynette Gibson McElhaney for Council 2012* notifying the committee of the missed deadline. These letters were mailed on August 5, 2014, and August 19, 2014.

On January 20, 2015, the *Committee to Elect Lynette Gibson McElhaney for Council 2012* electronically filed its Form 460 roughly six months past the deadline for the reporting period January 1, 2014 to June 30, 2014.

III. LEGAL SUMMARY

The California Political Reform Act (PRA) requires political committees to file campaign finance disclosure statements according to specific deadlines. One type of non-election year disclosure statement is called a “Semi-Annual Statement,” which committees must file via the FPPC Form 460 each year “no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31” (Government Code § 84200 (a)).

The PRA defines a political “Committee” according to its contribution and expenditure activity:

“Committee” means any person or combination of persons who directly or indirectly does any of the following: (a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees. A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214 (Government Code § 82013(a)-(c)).

Once a committee qualifies under the above criteria, it is then required to file campaign finance disclosure statements according to PRA standards and deadlines.

Each committee at the local level must file state-required campaign statements with the local jurisdiction’s “filing officer” under the PRA. The filing officer for campaign statements for the City of Oakland is the Office of the City Clerk (Government Code § 82027).

Once an elected city officeholder or candidate for Oakland City office meets the state-mandated criteria to qualify as a “Committee” and thus, is required by state law to file campaign statements, the Oakland Campaign Reform Act (OCRA) imposes its own local provision mandating the electronic filing of such campaign statements:

Whenever any local candidate or local committee is required by state or local law to file a campaign statement with the City Clerk, that candidate or committee shall file the statement or report in an electronic format with the City Clerk’s office provided that the City Clerk has prescribed the format at least 60 days before the statement or report is due to be filed (O.M.C. 3.12.340(A)).

A violation of the electronic filing requirement for campaign statements is subject to “penalties and fines not to exceed three times the amount the person failed to report properly or \$2,000.00, whichever is greater” (O.M.C. 3.12.280(E)(1)).

The Public Ethics Commission is the sole body for civil enforcement of OCRA (O.M.C. 3.12.260). A person who intentionally or negligently violates the provisions of OCRA is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Commission’s Complaint Procedures.

IV. ANALYSIS

In 2012, the *Committee to Elect Lynette Gibson McElhaney for Council 2012* qualified as a “committee” pursuant to the Political Reform Act based on receiving more than \$1,000 in contributions, and it began filing campaign reports electronically on August 1, 2013, as required by the Oakland Campaign Reform Act. Once a committee is subject to the electronic filing requirement imposed by OCRA, the committee shall remain subject to the electronic filing requirements until the committee is terminated.

The PRA requires each Committee to file a semi-annual campaign statement for the reporting period January 1 to June 30 “each year no later than July 31” (Government Code § 84200 (a)). The *Committee to Elect Lynette Gibson McElhaney for Council 2012* failed to file the Form 460 for the January to June 2014 filing period as required on July 31, 2014, and did not file the required information until January 20, 2015. During the reporting period, the *Committee to Elect Lynette Gibson McElhaney for Council 2012* received \$16,168.86 in contributions and made expenditures of \$8,274.55.

For electronic filing violations, the Commission has the authority to impose a fine of \$2,000 or up to three times the amount the person failed to report properly (O.M.C. 3.12.280(E)(1)). In determining the appropriate fine, Commission staff considers the penalty available for the violation, past Commission fines for comparable violations, as well as the history of compliance by the candidate herself.

The *Committee to Elect Lynette Gibson McElhaney for Council 2012* is the only committee that Lynette Gibson McElhaney currently maintains. The purpose of filing this information is to make all campaign and/or officeholder contribution and expenditure activity transparent for the public. It should be noted that Ms. McElhaney was not running for an office that was the subject of the November 2014 election and that the campaign report reflects information about committee activities as she was serving as an officeholder. There was no looming election whereby the voters were unable to view her campaign finance data before going to the polls. However, there is increased public harm in that the public had no knowledge of contributions received or expenditures made during this period for a sitting Council member who engaged in voting on and conducting City business during this time.

Ms. McElhaney is a sitting officeholder, and this filing deadline was not the first time that the *Committee to Elect Lynette Gibson McElhaney for Council 2012* filed campaign statements. The committee had filed campaign forms multiple times, including in electronic form, before the lapse in filing occurred. This demonstrates that the violations are at best negligent, and at worst intentional.

The *Committee to Elect Lynette Gibson McElhaney for Council 2012* has no prior violations issued by the Public Ethics Commission and is therefore a first-time violator. However, review of the committee’s past filings revealed that the committee has had a few instances of late filings of campaign finance forms in past years: the committee was late by one day in the summer of 2013 (also a non-election year), late by about one month earlier that same year, and late by two

and a half months in early 2012. For the latter violation, the City Clerk assessed a late fee, pursuant to the late filing fee provision under OCRA (O.M.C. 3.12.340(C)) on the *Committee to Elect Lynette Gibson McElhaney for Council 2012* in the amount of \$350.

For the violation at issue in this case, the City Clerk recently levied a \$1,730 late fee on the committee.

The Commission's prior fines or other committees for violations of the electronic filing requirement include a \$500 fine in 2014 for each of five delinquent non-filers who violated the electronic reporting requirement by failing to file campaign statements for a six-month reporting period. In those cases, no campaign statement was ever filed, but those committees also have not submitted any subsequent filings and are presumably inactive with no activities to report; in most cases, they merely failed to file termination papers. These committees also appear on the Commission's delinquent filer webpage.

Here, the *Committee to Elect Lynette Gibson McElhaney for Council 2012*, controlled by a sitting officeholder, electronically filed the state-required campaign statement roughly six months late in violation of OCRA's electronic filing provision. The committee has no prior violations issued by the Commission; however, the committee has had multiple statements filed late and has paid late fees to the City Clerk in recent years. Ms. McElhaney acknowledged that she has had difficulties filing the information in the past but that she now will be utilizing the services of a professional treasurer to ensure she will meet all future filing deadlines.

Nevertheless, the January to June 2014 report was submitted six months late, and, given the factors described above, a fine is appropriate.

V. RECOMENDATION

Given the aggravating factors, such as the fact that Respondent is a sitting Council Member, has experience with campaign filing, and has prior violations where late fees were assessed, Commission staff recommends the *Committee to Elect Lynette Gibson McElhaney for Council 2012* pay a fine of \$1,600 to resolve this matter.