

BEFORE THE  
PUBLIC ETHICS COMMISSION  
CITY OF OAKLAND

In the Matter of:	)	<b>ADMINISTRATIVE</b>
	)	<b>ENFORCEMENT ORDER</b>
	)	
LYNETTE GIBSON McELHANEY,	)	PEC Case No.: 15-07
	)	
Respondent.	)	<b>Date:</b> September 11, 2018
	)	<b>Time:</b> 6:30 p.m.
	)	<b>Place:</b> 1 Ogawa Plaza, Hearing Rm. 1
	)	Oakland, CA 94612

Pursuant to its Complaint Procedures, the Public Ethics Commission (PEC) appointed an Administrative Law Judge to serve as a hearing officer in PEC Case No. 15-07. The Administrative Hearing took place on May 7 and 8, 2018, during which time Administrative Law Judge Melissa G. Crowell (the “ALJ”) heard testimony and reviewed evidence relating to the allegations in the Final Administrative Complaint (“Administrative Complaint”) brought by Petitioner against Respondent. At all relevant times, Respondent was represented by counsel and petitioner was represented by the PEC’s Chief of Enforcement. In accordance with the PEC’s Complaint Procedures, the ALJ issued a Proposed Administrative Enforcement Order (“Proposed Order”) dated July 20, 2018. The Proposed Order was received by the PEC’s Executive Director on July 23, 2018, and sent to Respondent on July 24, 2018, along with written notification that Respondent had the right to request a rehearing of all or portions of the Administrative Complaint by submitting a request by August 1, 2018. To date, Respondent has not submitted a request for a rehearing of the Administrative Complaint.

On July 24, 2018, the PEC’s Executive Director also notified Respondent in writing that, absent the Commission Chair granting a request for a rehearing, the Proposed Order would be considered by the PEC at its September 11, 2018, meeting. On September 11, 2018, the PEC deliberated the Proposed Decision in open session.

The Administrative Complaint alleges that Respondent Lynette Gibson McElhaney (“Respondent”) violated the Oakland Government Ethics Act in connection with gifts she

1 received and failed to report, and decisions she made as an Oakland Councilmember. The  
2 Commission adopted the findings of fact contained in the Proposed Order. After deliberating  
3 with regard to each violation alleged by Petitioner in the Administrative Complaint, and based  
4 on findings of fact, conclusions of law, testimony received at the hearing and the entire record  
5 of the proceedings, the PEC found unanimously that Respondent violated the Oakland  
6 Government Ethics Act as set forth below.

7 Further, for each finding of a violation of the Oakland Government Ethics Act, the PEC  
8 voted on the penalty to be imposed in consideration of all the relevant circumstances. In a  
9 unanimous vote, the PEC imposed on Respondent the penalties set forth below for her  
10 violations of the Oakland Government Ethics Act.

11 **Count 1: Receiving Gifts from a Restricted Source in Excess of the Annual Gift Limit**

12 The Oakland Ethics Act places restrictions on gifts that can be accepted by a public  
13 servant. A public servant may not solicit or accept gifts with a cumulative value of more than  
14 \$250 in a single calendar year from any single source. (Oak. Mun. Code, § 2.25.060, subd.  
15 (C)(2).) A public servant may not solicit or accept any gift valued at more than \$50 from a  
16 person who the public servant knows, or has reason to know, is a restricted source. (Oak. Mun.  
17 Code, § 2.25.060, subd. (C)(3).)

18 A "gift" is defined as "any payment that confers a personal benefit on the recipient, to  
19 the extent that consideration of equal or greater value is not received and includes a rebate or a  
20 discount in the price of anything of value unless the rebate or discount is made in the regular  
21 course of business to members of the public without regard to official status." (Gov. Code, §  
22 82028, subd. (a); Oak. Mun. Code, § 2.25.060, subd (c)(2) [incorporating the gift requirements  
23 and restrictions of the Political Reform Act<sup>1</sup>].) Payment is defined as "a payment, distribution,  
24 transfer, loan, advance, deposit, gift, or rendering of money, property, services or anything else  
25 of value, whether tangible or intangible." (Gov. Code, § 82004.) The basic gift rule is: "A gift is  
26 a payment made by any person of any thing of value, whether tangible or intangible, real or

27 <sup>1</sup> The Political Reform Act of 1974 is set forth in Government Code section 81000 et seq.  
28 {Client Files/01063/2/PL/S0470297.RTF} 2

1 personal property, a good or service that provides a personal benefit to an official when the  
2 official does not provide full consideration for the value of the benefit received." (Cal. Code  
3 Regs., tit. 2, § 18940, subd. (a).)

4 Respondent solicited and accepted gifts from JRDV Urban International ("JRDV") in  
5 the form of professional services. These services took the form of a site visit to the parcel,  
6 testifying against the project at the December 2014 appeal hearing, sketching an alternative  
7 design, creating a digital redesign, talking with the developer's architect, offering to have  
8 further conversations with the developer's architect, investigating the municipal code for  
9 objections that could be lodged against project approval, talking with city planners, being  
10 available to Respondent and responding to Respondent's questions about the project and  
11 process, and drafting a letter for respondent's signature containing objections based on their  
12 research. These services provided a personal benefit to Respondent, as by her own admission,  
13 she was the property owner most adversely impacted by the project. The estimated value of  
14 these services is \$800. Respondent did not provide any consideration for these services. These  
15 services meet the definition of a gift. While there are "payments" that otherwise meet the  
16 definition of a gift that are specifically exempted by the gift statute or the gift regulations (see  
17 e.g., Gov. Code, § 82028, subd. (b); Cal. Code Regs., tit. 2, §§ 18940-18946.6), no valid  
18 exception has been cited or established.

19 In sum, Respondent solicited and accepted free professional services from JRDV that  
20 benefitted her personal interests. Because JRDV was a restricted source, she was prohibited  
21 from accepting a gift in excess of \$50. The estimated value of the gifts accepted by Respondent  
22 was \$800, far in excess of the \$50 limitation. In accepting gifts in excess of \$50 from a  
23 restricted source, respondent violated section 2.25.060, subdivision (C)(3), of the Oakland  
24 Municipal Code. In addition, the gifts Respondent accepted exceeded the \$250 limitation on  
25 gifts from a single source in a single calendar year, in violation of section 2.25.060, subdivision  
26 (C)(2), of the Oakland Municipal Code.

1 **Count 2: Making a Governmental Decision in Which the Public Servant has a Financial**  
2 **Interest**

3 The GEA incorporates by reference the State of California's financial conflict of interest  
4 definitions, requirements and exceptions set forth in the Political Reform Act. (Oak. Mun.  
5 Code, § 2.25.040, subd. (A).)

6 The GEA prohibits a public servant from making, participating in, or seeking to  
7 influence a decision of the City in which the public servant knows, or has reason to know, he or  
8 she has a financial interest. (Oak. Mun. Code, § 2.25.040, subd. (A); Gov. Code, § 87100.) A  
9 public servant has a financial interest in a decision if it is reasonably foreseeable that the  
10 decision will have a material financial effect on an economic interest of the public servant.  
11 (Gov. Code, § 87103; Cal. Code Regs, tit. 2, § 18704, subd. (a).) A public servant has an  
12 economic interest in any source of gifts from whom the public servant has received gifts in  
13 excess of the annual gift limit in the immediate 12 months before the time that the decision is  
14 made. (Gov. Code, § 87103, subd. (e).) It is presumed to be reasonably foreseeable that a  
15 decision will have a material financial effect on the economic interest of the public servant if  
16 the source of the gifts is a named party in, or the subject of, a decision before the public agency.  
17 (Cal. Code Regs., tit. 2, § 18701, subd. (a).) "A financial interest is the subject of a proceeding  
18 if the decision involves the issuance, renewal, approval, denial, of any ... contract with, the  
19 financial interest ...." (*Ibid.*)

20 Respondent received gifts from a restricted source in excess of the gift limit in  
21 December 2014. As such, she was prohibited from making, participating in, or seeking to  
22 influence any decision of the City that involved a contract with JRDV within 12 months after  
23 she exceeded the gift limit. As a city councilmember, Respondent voted to extend and increase  
24 the amount of the Façade and Tenant Improvement Plan on January 6, 2015. By making a  
25 governmental decision in which she had a disqualifying interest, Respondent violated section  
26 2.25.040, subdivision (A), of the Oakland Municipal Code.

1 **Count 3: Nondisclosure of Gifts on the Statement of Economic Interests (Form 700)**

2 The GEA required Respondent to disclose the gifts she received between January 1 and  
3 December 31, 2014, which equaled \$50 or more from a single source. (Oak. Mun. Code,  
4 2.25.040, subdivision (B); Gov. Code, §§ 87202-87203.) Respondent received \$800 in gifts  
5 from JRDV during that period, and that she did not disclose any of those gifts on the Statement  
6 of Economic Interests Form 700 she filed for that reporting period. By failing to make the gift  
7 disclosure on the Statement of Economic Interests Form 700 she filed, Respondent violated  
8 section 2.25.040, subdivision (B), of the GEA.

9 Based on the findings set forth above and pursuant to Oakland Municipal Code section  
10 2.25.080(C)(3), the PEC orders that Respondent pay a monetary penalty in the amount of  
11 \$2,550 (\$2,550 for Count 1, \$0 for Count 2, and \$0 for Count 3) to the General Fund of the  
12 City of Oakland upon issuance of this order.

13 **IT IS SO ORDERED.**

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_   
Jonathan Stein, Chair  
City of Oakland Public Ethics Commission