

**CITY OF PITTSBURGH
ETHICS HEARING BOARD**

IN RE:

DARLENE HARRIS,

Respondent.

No.: 19-C-005

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

FILED ON BEHALF OF:

City of Pittsburgh Ethics Hearing Board

APPEARANCES:

COMPLAINANT:

City of Pittsburgh Ethics Hearing Board
328 City-County Building
414 Grant Street
Pittsburgh, PA 15219

COUNSEL FOR COMPLAINANT:

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HEARING OFFICER:

Hon. William F. Ward
Rothman Gordon, P.C.
310 Grant Street
Pittsburgh, PA 15219

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AND NOW, the Public Hearing Subcommittee (“the Hearing Panel”) of the City of Pittsburgh Ethics Hearing Board (“the Board”), having considered the complaint, stipulations, exhibits and oral argument presented at a Public Hearing held on May 23, 2019 (“the Hearing”), conducted pursuant to Pittsburgh City Code Ordinance, Title I, Article XI, Chapter 197 *et seq.* (“the Ethics Code,” “Code” or “Ordinance”), the Board issues the following Findings of Fact, Conclusions of Law, and Final Order:

I. FINDINGS OF FACT

1. The Complainant herein is the City of Pittsburgh Ethics Hearing Board (“the Board”), which is located at 328 City-County Building, 414 Grant Street, Pittsburgh, PA, 15219. Leanne Davis (“Davis”) is the Executive Manager of the Board. *See* DH Exhibit 8A.
2. The Honorable Darlene Harris (“Harris”), the Respondent, is an adult individual residing in Pittsburgh, PA, 15212, and is City Councilwoman for District 1 of the City of Pittsburgh.

3. On or about February 11, 2019, Harris, an incumbent City Councilwoman, was a candidate to retain her City elected office. DH Exhibits 1A, 4.

4. By letter dated February 11, 2019, Davis, on behalf of the Board, gave notice to Harris of the Ordinance, and her obligations thereunder, prior to the occurrence of any violation for any failure to act. DH Exhibit 4. With that letter, Davis also provided Harris a copy of Chapter 198 of the Pittsburgh City Code regarding Campaign Finance Regulations. Davis reminded Harris of, among other things, the obligation for Harris and her candidate committee to file Campaign Finance Reports with the Board, pursuant to Pittsburgh Ordinance 38-2015, in addition to continuing to file reports with the County. The letter from Davis also set forth the deadlines for the campaign finance reports to be filed with the Board before the primary election: March 1, 2019; April 1, 2019; and May 1, 2019. DH Exhibit 4.

5. By email dated February 21, 2019, Harris, through her counsel, informed Davis that Harris “will not be filing campaign finance reports with the City of Pittsburgh” because “we firmly believe that the City Ordinance in question conflicts with already existing campaign finance laws at the state level, in violation of the doctrine of preemption.” DH Exhibit 5.

6. By email dated February 28, 2019, Davis reminded Harris and her counsel that “your campaign finance reports to be filed with the City’s Ethics Hearing Board are due tomorrow, Friday, March 1, 2019.” DH Exhibit 6.

7. By letter dated March 1, 2019 (DH Exhibit 6), Harris, through her counsel, acknowledged receipt of the Board’s letter, dated February 11, 2019, together with a copy of Chapter 198 of the Pittsburgh City Code regarding the City’s Campaign Finance Regulations.

Counsel for Harris also stated that “when Ms. Harris ran for mayor in 2017, she was faced with this same issue.”¹

8. Accordingly, as admitted by her counsel at the Hearing, Harris did not file any Statement, Report or Schedule with the Board on March 1, 2019. *See* the Transcript of Councilwoman Darlene Harris Hearing of May 23, 2019 (“Transcript”), at pages 22, 24.

9. On or about March 7, 2019, Davis, on behalf of the Board, sent a letter to counsel for Harris, notifying Harris that she is being assessed a late filing fee, pursuant to Section 198.06(4), which fee would continue to accrue until the required report was filed. DH Exhibit 7.

10. On March 12, 2019, the Board filed a self-initiated complaint against Harris for her alleged failure to file the required Campaign Finance Reports with the Ethics Hearing Board, pursuant to Section 198.05 of the Pittsburgh Code. DH Exhibit 8A; Transcript at page 5.

11. On March 18, 2019, Davis hand-delivered a letter, together with a copy of the Complaint, to Harris. DH Exhibit 8. The letter states, among other things, that if Harris filed the required campaign finance reports with the Board on or before Monday, March 25, 2019, “this matter will be closed.” DH Exhibit 8.

12. By letter dated April 5, 2019, Davis advised Harris, through her counsel, that a Public Hearing had been scheduled for April 29, 2019. DH Exhibit 9.

¹ In May 2017, following an investigation by the Board, it was determined that Harris failed to file her required Campaign Finance Reports. On October 11, 2017, following the issuance of a complaint by this Board, Harris filed her Motion to Dismiss the Board’s tentative fine as unenforceable. On November 17, 2017, the Hearing Officer denied Harris’s Motion to Dismiss. DH Exhibit 1. On December 19, 2017, a hearing was held by this Board during which Harris, through her counsel, admitted that she did not file any Campaign Finance Reports. DH Exhibit 2. On February 1, 2018, the Board found unanimously, based upon clear and convincing evidence, that Harris failed to comply with the requirements of the Ordinance, and imposed a \$1,000 fine. DH Exhibit 2; Transcript at pages 10, 12, 14 and 16. Harris refused to pay the fine that was imposed by the Board. *See* Transcript at pages 12, 14.

13. At the request of counsel for Harris, the Public Hearing was re-scheduled for May 23, 2019. DH Exhibit 1A at ¶13.

14. On April 12, 2019, during email discussions with counsel, the Hearing Officer asked counsel for Harris to submit any pre-hearing motion(s) and supporting brief in writing by May 3, 2019. The Complainant's counsel was given until May 10, 2019, to submit a responsive brief. DH Exhibit 1A at ¶14.

15. On April 22, 2019, the Pittsburgh Tribune-Review published an article (DH Exhibit 10) about candidates for Pittsburgh City Council who missed the deadline for filing their campaign finance reports. A candidate for the District 9 City Council seat was reported in the article to have stated:

“As long as Darlene Harris doesn't file, I'm not going to file,” said Kierran Young, 26, of Stanton Heights, who is running for a District 9 seat held by Councilman Ricky Burgess. “If a sitting member of council doesn't have to abide by the rules, why should I?” DH Exhibit 10.

16. As a sitting City Councilwoman, Harris's defiance of the Ordinance and refusal to file her Campaign Finance Reports has a significant and negative impact upon the community and their trust and confidence in city government. DH Exhibit 10.

17. On May 3, 2019, Harris, through her counsel, timely filed her motions and brief. On May 10, 2019, the Complainant's counsel timely filed its *Brief in Opposition* to Harris's motions. DH Exhibit 1A at ¶3.

18. On May 15, 2019, the Board issued a subpoena to Harris ordering her appearance at the Hearing on May 23, 2019, at 4:00 p.m. in the City-County Building. DH Exhibit 3.

19. Notwithstanding the issuance and service of the Board's hearing subpoena, Harris defiantly refused to comply with the subpoena and failed to attend the hearing. Transcript at page 4.

20. On May 22, 2019, the Hearing Officer denied Harris's Pre-Hearing Motion to Dismiss the Complaint as Unenforceable.² DH Exhibit 1A; Transcript at pages 8, 10 and 17.

21. On May 23, 2019, the Board held a Public Hearing on this case. The parties stipulated to the authenticity and admissibility of the exhibits identified as DH Exhibits 1 - 11, inclusive, which were admitted by the Hearing Officer. Transcript at pages 6-7. As noted in Paragraph 13 above, Respondent did not attend the hearing, and her counsel did not submit any evidence in defense of the Complaint.

22. As of the date of these Findings of Fact, Respondent has not filed any of the Campaign Finance Reports required by the Pittsburgh City Code. Accordingly, the Hearing Panel finds unanimously, by clear and convincing evidence, that Harris knowingly and willfully violated the Pittsburgh City Code as charged.

23. In determining the penalty to be imposed, the Board has taken into consideration certain factors, including but not limited to:

- a. Respondent's knowledge of the existence of the Ordinance and the obligations set forth thereunder;
- b. The notices provided to Harris by the Executive Manager in 2019;
- c. Respondent's continuing refusal to file any Campaign Finance Report, namely, between March 1, 2019, and May 23, 2019, for a total of 83 days (DH Exhibit 11);

² The Hearing Officer also denied Harris's Pre-Hearing Motion for the Recusal of the Board's Executive Manager. DH Exhibit 1A; Transcript at pages 10-11.

- d. Respondent's continuing refusal to pay the \$1,000 fine that was imposed by the Board on February 1, 2018 (DH Exhibit 2);
- e. The significant, negative impact on the public and the erosion of public trust and confidence, which were caused by Respondent's refusal to file the Campaign Finance Reports while serving as a Member of the Pittsburgh City Council;
- f. Respondent's defiance of the Board's subpoena by willfully failing to attend the Hearing; and
- g. Respondent's current position, as stated by her counsel "in no uncertain terms," that Harris has no intention of paying either her past fine or another fine, if one were imposed by the Board. Transcript at pages 12, 14.

II. CONCLUSIONS OF LAW

1. Pursuant to Section 197.12(c)(5) of the Ordinance, the Hearing Panel has the authority to issue final orders on behalf the Board.
2. In 2019, Respondent was a candidate for City elected office, as defined by the Section 198.01(a) of the Ordinance.
3. Respondent was obligated under Section 198.05(1) of the Ordinance to provide Campaign Finance Reports in the form mandated by the Allegheny County Board of Elections pre-primary reporting forms and the Board's procedures on the first business day of each of the three months prior to the Primary Election Day during which she was a candidate for City elected office. Thus, her first deadline for the filing of Campaign Finance Reports was March 1, 2019.
4. Notwithstanding Respondent's legal argument regarding the law requiring her to file Campaign Finance Reports, Harris nonetheless was required to file the mandated reports.

5. Following consideration of the evidence and after careful deliberation, the Hearing Panel concludes unanimously that Harris knowingly and willfully violated the Pittsburgh City Code as charged, in violation of Section 198.05(1) of the Ordinance.

6. Under Section 198.06(4) of the Ordinance, the Board may levy a fine of up to \$50.00 per day for the late filing of reports required under Section 198.05(1). The Board may levy a fine of up to \$4,150.00 for the 83 days that Harris refused, or otherwise failed, to file the required Campaign Finance Reports.

III. FINAL ORDER

Following consideration of the Complaint, the stipulations, and documentary evidence admitted during the Hearing held on May 23, 2019, as well as the oral arguments of counsel, the Hearing Panel deliberated, found and concluded that the Respondent, Darlene Harris, violated Chapter 198 of the Ethics Code. Accordingly, in the exercise of its discretion, the following penalty is hereby imposed:

The Respondent, Darlene Harris, shall pay a fine of \$4,150.00.

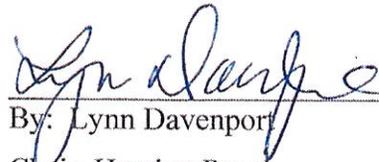
The fine imposed hereunder shall be paid by the Respondent within 30 days of the date of this Order and sent to the offices of the City of Pittsburgh Ethics Hearing Board.

Respectfully submitted,

CITY OF PITTSBURGH
ETHICS HEARING BOARD
HEARING PANEL

9/27/19

Dated



By: Lynn Davenport
Chair, Hearing Panel