STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112 Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

TIMOTHY FAIRLEY
115 SEATTLE BLVD. SOUTH
ALGONA WA 98001

In Re the Matter of Timothy Fairley Respondent.	)))))	PDC Case No. 12-035 Findings of Fact, Conclusions of Law and **Order Imposing Fine**

A brief enforcement hearing (brief adjudicative proceeding) was held August 10, 2011, in Room 206, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington to consider whether the Respondent violated RCW 42.17.240 by failing to timely file the Personal Financial Affairs Statement (PDC Form F-1), which was due within two weeks of declaring his candidacy in 2011, or no later than June 25, 2011.

The hearing was held in accordance with Chapters 34.05 and 42.17 RCW and Chapter 390-37 WAC. Commission Chair Barry Sehlin was the Presiding Officer. The Commission staff was represented by Kurt Young, Compliance Officer. The Respondent participated by telephone and presented testimony to the Presiding Officer.

Brief enforcement hearing notice was sent to Timothy Fairley on July 29, 2011. Having considered the evidence, the Presiding Officer finds as follows:

FINDINGS OF FACT

1. The Respondent is a candidate seeking election to the office of City Councilmember for the City of Algona in 2011. The Respondent is an incumbent Algona City Councilmember since being appointed to that position in December of 2006.

2. As an incumbent City Councilmember, the Respondent was required to file a Personal Financial Affairs Statement (PDC Form F-1) by April 16, 2011, disclosing his financial activities for the previous calendar year.

3. As a candidate, the Respondent was required to file an F-1 report by June 25, 2011.

4. The Respondent did not file the missing F-1 report by April 16, 2011.

5. The Respondent filed the missing F-1 report on August 3, 2011, one week prior to the date of the hearing.

6. The Respondent stated he was aware of the F-1 filing requirement and that he made a mistake. He said he had attempted to electronically file the F-1 report on more than one occasion, but his computer crashed and he lost all of the information that had been entered from his previous F-1 filings. He said he now has saved his passwords and filer information on paper so he will not have this problem again.

CONCLUSIONS OF LAW

Based on the above facts, as a matter of law, the Presiding Officer concluded as follows:

1. This matter was duly and properly convened and all jurisdictional, substantive and procedural requirements have been satisfied.

2. The Respondent violated RCW 42.17.240 by failing to timely file the Personal Financial Affairs Statement which was due within two weeks of declaring his candidacy or no later than June 25, 2011.

ORDER

ON the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Respondent is assessed a civil penalty of $100 [1].

This is an **Initial Order** of the Public Disclosure Commission. There are two ways the Respondent may appeal this order to the Commission. Once the order becomes a final order, it may also be appealed to Superior Court.

REVIEW OF INITIAL ORDER - COMMISSION

a. The Respondent may request a review of this Initial Order by the entire Commission.
b. The request may be made orally or in writing, and must be received at the Public Disclosure Commission office within **21 business days** after the postmark date of this Initial Order. The Respondent must state the reason for the review, and identify what alleged errors are contained in the initial order.
c. If the Respondent requests a review, no penalty need be paid until after the Commission rules on the request.

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[1] The assessed penalty is based on a penalty schedule previously adopted by the Commission that takes into consideration prior violations and whether the missing report was filed before the date of the hearing. In assessing the penalty, the Presiding Officer considered that the Respondent had no prior violations and that the missing F-1 report was filed before the date of the hearing.

d. By law, a request for review of the initial order is deemed to have been denied if the Commission does not make a disposition of the matter within 20 business days after the request is submitted.
e. If the Commission is unable to schedule a meeting to consider the Respondent's request for review within 20 business days, the Initial Order becomes a Final Order and the matter will automatically be treated as a request for reconsideration of a final order unless the Respondent advises the Commission otherwise. The matter will be scheduled before the full Commission as soon as practicable.
f. A request for reconsideration must be in writing. Therefore, if the request for review of the Initial Order was made orally and deemed to have been denied because it could not be scheduled for consideration within 20 business days, the request must now be put in writing. (See Reconsideration of Final Order below.)
g. If no request for review is received within 21 business days, this order will automatically become a **Final Order** of the Commission, and the Respondent will be legally obligated to pay the penalty unless reconsideration has been sought or the matter has been timely appealed to Superior Court. (RCW 42.17.395, RCW 34.05.470 and RCW 34.05.570).

RECONSIDERATION OF FINAL ORDER - COMMISSION

a. Any party may ask the Commission to reconsider a final order. The request must be in writing and must include the specific grounds or reasons for the request. Grounds for reconsideration shall be limited to:
   i) A request for review was deemed denied in accordance with WAC 390-37-144(4);
   ii) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or
   iii) Significant typographical or ministerial errors in the order.
b. The request must be delivered to the Public Disclosure Commission office within **21 business days** after the postmark date of this order.
c. The Public Disclosure Commission is deemed to have denied the request for reconsideration if, within 20 business days from the date the request is filed, the Commission does not either dispose of the petition <u>or</u> serve the parties with written notice specifying the date by which it will act on the petition. (RCW 34.05.470).
d. The Respondent is not required to ask the Public Disclosure Commission to reconsider the final order before seeking judicial review by a superior court. (RCW 34.05.470).

FURTHER APPEAL RIGHTS – SUPERIOR COURT

a. A **final order** issued by the Public Disclosure Commission is subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. (RCW 42.17.395(5)). The procedures are provided in RCW 34.05.510 - .598.

b. The petition for judicial review must be filed with the superior court and served on the Public Disclosure Commission and any other parties within **30 days** of the date that the Public Disclosure Commission serves this Final Order on the parties. (RCW 34.05.542(2)).
c. Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.

ENFORCEMENT OF FINAL ORDERS

a. If there is no timely request for review or reconsideration, this Initial Order becomes a Final Order. The Respondent is legally obligated to pay any penalty assessed.
b. The Commission may seek to enforce a final order in superior court under RCW 42.17.395 - .397, and recover legal costs and attorney's fees, if the penalty remains unpaid and no petition for judicial review has been timely filed under chapter 34.05 RCW. This action will be taken without further order by the Commission.

Entered this 23rd day of August, 2011.

Public Disclosure Commission

Doug Ellis
Interim Executive Director

STATE OF WASHINGTON

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F-1 Hearing Notice

July 29, 2011

TIMOTHY FAIRLEY
115 SEATTLE BLVD. SOUTH
ALGONA WA 98001

Hearing Notice: PDC Case No: 12-035

According to our records, you are a candidate in the 2011 election. RCW 42.17.240 requires candidates to file the Personal Financial Affairs Statement (PDC Form F-1) within two weeks of becoming a candidate. As of today, we have not received the F-1 form from you. A hearing[1] has been scheduled to determine if you have violated the public disclosure law.

INFORMATION ON YOUR HEARING

Date and time:	Wednesday August 10, 2011 at 1:00 p.m. (*all times approximate*)
Place:	Evergreen Plaza Building, Room 206 711 Capitol Way, Olympia, WA, 98504
Presiding Officer:	Barry Sehlin, Chair, Public Disclosure Commission

Under the hearing rules, the Presiding Officer has the authority to assess civil penalties in accordance with the enclosed penalty schedule. You may attend the hearing in person, submit a written or electronic response, or participate by telephone conference. If you wish to participate by telephone, please contact PDC compliance staff by August 26, 2009, at (360) 753-1111 or toll-free at (877) 601-2828. To submit an electronic response, send an e-mail to kyoung@pdc.wa.gov.

HOW TO AVOID THE HEARING

The following items must be received in our office **by 5:00 p.m. on Tuesday, August 9, 2011** in order to avoid the hearing:

[1] Pursuant to RCW 42.17.370, 42.17.395, WAC 390-37-142 and RCW 34.05.482 et seq.

- **The completed F-1 form (enclosed);**
- **A signed Statement of Understanding (enclosed);**
- **$100 penalty payment (make check payable to "Washington State Treasurer").**

IF YOU BELIEVE YOU HAVE ALREADY FILED

If you already mailed your F-1 report and it is received in our office with a postmark of July 27 2011, or earlier, your hearing will be canceled. You will be notified in writing or by e-mail if your hearing is canceled.

IF YOU NEED AN INTERPRETER

If an interpreter is required for the hearing, a qualified interpreter will be appointed at no cost. If further correspondence regarding this hearing should include instructions in a language other than English, please contact us.

If you have questions, please contact PDC staff member Randy Unruh at (360) 753-1981 or by e-mail at randy.unruh@pdc.wa.gov.

Sincerely,

Kurt Young
Compliance Officer

Enclosures: F-1 and F-1 Supplement Forms
Statement of Understanding
Brief Enforcement Hearing Brochure
Penalty Schedule