

# Hearing on Artificial Intelligence in Local Elections

Ethics Commission Presentation – May 13, 2024

# Introduction & Overview

The Ethics Commission is responsible for the independent and impartial administration and enforcement of laws related to campaign finance, public financing of candidates, governmental ethics, conflicts of interests, and registration and reporting by lobbyists, campaign consultants, permit consultants, and major developers.

This presentation provides an overview of several topics, including:

- Complaint / Enforcement Process
- Staffing on Enforcement Division and Audit Division
- Political Advertisement Disclaimers
- Artificial Intelligence in Local Elections
- Recommendations

# Enforcement Process

Detailed overview of the process can be found in the Commission's Enforcement Regulations, which are available on the Commission's website.

1. Complaint received.\*
2. Investigation opened.
3. Confidential investigation conducted, which can involve issuing subpoenas and conducting interviews with the respondent and witnesses.
4. Probable cause determined by Executive Director, ratified by Commission.
5. Hearing on the merits held during a public meeting of the Ethics Commission to determine if violations have occurred.
6. If violations have occurred, penalty amounts are determined by the Commission.

# Complaint / Enforcement Process Cont.

## Stipulated Agreements

- Most common resolution to investigations.
- Negotiations may be entered at any point in the process outlined.
- Involves entering into an agreement with the Commission, and typically paying an administrative fine or taking other remedial action.
- Streamlined Administrative Resolution Program (SARP)

## Penalty Amounts

- The maximum penalty amounts the Commission may order are set by the City's Charter.
- The maximum amount is *“up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.”*

# Staffing on Enforcement Division and Audit Division

## Enforcement

Total positions for FY24: **8**

Filled Positions: **5**

- All 1823 Senior Investigators

Vacant Positions: **3**

- Director of Enforcement – Under Recruitment
- 1822 Investigator – Left Open for Budget Reasons
- 1823 Senior Investigator – Funding Will Expire at end of current FY

## Audits

Total positions for FY24: **4**

Filled Positions: **3**

- 1824 Audit Manager
- Two 1822 Auditors

Vacant Positions: **1**

- 1822 Auditor

**Note:** Current budget request includes requests to reclassify several positions in the Enforcement and Audit divisions to higher classifications for future fiscal years.

# Current Disclaimer Requirements

Current disclaimer requirements for political advertisements come from both local and State law and vary depending on the type of committee producing the advertisement and the type of advertisement. These various disclaimer requirements are detailed in charts on the Commission's website.

The following slides summarize some of the requirements for some common committee types.

# Current Disclaimer Requirements Cont.

## Communications by City Candidate Committees for their own Election

In general, communications (print, radio, telephone calls, television, and video) must include:

- “Paid for by [name of committee]” and
- “Financial disclosures are available at [sfethics.org](https://sfethics.org).”

# Current Disclaimer Requirements Cont.

## Independent Expenditure Ads Referring to City Candidates

In general, communications (print, radio, telephone calls, television, and video) must include:

- “Ad paid for by [committee’s name]”
- “Committee major funding from [name(s) and dollar amount contributed of top three (3) donors of \$5,000 or more]” additionally, if any of the top contributors are committees, [list the committees top two (2) contributors of \$5,000 or more].
- “Financial disclosures are available at [sfethics.org](https://sfethics.org).”
- “This advertisement was not authorized by a candidate or a committee controlled by a candidate”



# Current Disclaimer Requirements Cont.

## Independent Expenditure Ads on Ballot Measures:

In general, communications (print, radio, telephone calls, television, and video) must include:

- “Ad paid for by [committee’s name]”
- “Committee major funding from [name(s) and dollar amount contributed of top three (3) donors of \$5,000 or more]” additionally, if any of the top contributors are committees, [list the committees top two (2) contributors of \$5,000 or more].
- “Financial disclosures are available at [sfethics.org](https://sfethics.org).”

# Current Disclaimer Requirements Cont.

## Disclaimer Chart Example (1 of 8 charts)

### Independent Expenditure Ads Referring to City Candidates

Last Updated April 21, 2021

#### 2. Independent Expenditure Ads Referring to City Candidates (except ads by candidates and political party committees)

Communication	Disclosure and Manner of Display
Print ads designed to be individually distributed including mailings, door hangers, flyers, faxes, posters, newspaper and magazine ads and oversized campaign buttons and bumper stickers (buttons 10 inches in diameter or larger and stickers 60 square inches or larger)	<ul style="list-style-type: none"> <li>"Ad paid for by (committee's name)" (on file with Form 410 or 461) (Note: a printed letter ad may use "Paid for by" instead of "Ad paid for by") followed by: <ul style="list-style-type: none"> <li>"Committee major funding from (name(s)) and dollar amount contributed of top three (3) donors of \$5,000 or more" additionally, if any of the top contributors are committees, list the committees top two (2) contributors of \$5,000 or more (see <a href="#">example disclaimer</a>) - each listed on a separate horizontal line, centered horizontally, in descending order, beginning with the largest contributor (not applicable to non recipient committees)</li> </ul> </li> <li>Below the top contributor information (if any), a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate</li> <li>"Financial disclosures are available at <a href="#">ethics.org</a>."</li> <li>This advertisement was not authorized by a candidate or a committee controlled by a candidate</li> </ul> <p><b>Disclosure Format:</b> All text must be in Arial equivalent font, in at least 14 point size, in a contrasting color, centered horizontally and, except for the names of top contributors, underlined. The names of top contributors may not be underlined and the text may not be condensed. If there are no top contributors, the "Ad paid for by" need not be underlined. All text must appear in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter</p> <ul style="list-style-type: none"> <li>"Committee major funding from" and "Not authorized by" disclosures may not appear in all capital letters</li> </ul>
Print ads larger than those designed to be individually distributed, such as billboards and signs (including yard signs)	<ul style="list-style-type: none"> <li>"Ad paid for by (committee's name)" (on file with Form 410 or 461) followed by: <ul style="list-style-type: none"> <li>"Committee major funding from (name(s)) and dollar amount contributed of top three (3) donors of \$5,000 or more" additionally, if any of the top contributors are committees, list the committees top two (2) contributors of \$5,000 or more (see <a href="#">example disclaimer</a>) - each listed on a separate horizontal line, centered horizontally, or on lines separated by commas, in descending order, beginning with the largest contributor (not applicable to non recipient committees)</li> </ul> </li> <li>Below the top contributor information (if any), a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate</li> <li>"Financial disclosures are available at <a href="#">ethics.org</a>."</li> </ul> <p><b>Disclosure Format:</b> All text must be in contrasting color and in Arial equivalent font. The font must be a height of at least five percent (5%) of the advertisement, meaning that each line must be at least five percent (5%) of the advertisement, in a printed or drawn box with a solid white background on the bottom of the advertisement that is set apart from any other printed matter and shall not be condensed to be narrower than a normal non condensed Arial equivalent type</p> <ul style="list-style-type: none"> <li>"Committee major funding from" and "Not authorized by" disclosures may not appear in all capital letters</li> </ul>
Radio ads, telephone calls and audio only electronic media ads	<ul style="list-style-type: none"> <li>"Ad paid for by (committee's name)" (on file with Form 410 or 461)</li> <li>"Committee major funding from (name(s)) and dollar amount contributed of top three (3) donors of \$5,000 or more" additionally, if any of the top contributors are committees, list the committees top two (2) contributors of \$5,000 or more (see <a href="#">example disclaimer</a>) - in descending order, beginning with the largest contributor (not applicable to non recipient committees)</li> <li>A statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate</li> <li>"Financial disclosures are available at <a href="#">ethics.org</a>."</li> </ul> <p><b>Disclosure Format:</b> Must be spoken clearly for at least three (3) seconds at the beginning of the ad or call, in a pitch and tone substantially similar to the rest of the advertisement</p> <ul style="list-style-type: none"> <li>Exception: This disclosure does not need to speak the dollar amount of contributions</li> </ul>

Television and video ads (including those disseminated over the internet)	<ul style="list-style-type: none"> <li>"Ad paid for by (committee's name)" (on file with Form 410 or 461)</li> <li>"Committee major funding from (name(s)) and dollar amount contributed of top three (3) donors of \$5,000 or more" additionally, if any of the top contributors are committees, list the committees top two (2) contributors of \$5,000 or more (see <a href="#">example disclaimer</a>) - in descending order, beginning with the largest contributor (not applicable to non recipient committees)</li> <li>"Financial disclosures are available at <a href="#">ethics.org</a>."</li> <li>A statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate</li> </ul> <p><b>The disclosure must be spoken at the beginning of the ad (the spoken disclosure is not required to disclose the dollar amount of contributions)</b></p> <p><b>Disclosure Format:</b> All text must be centered horizontally in the disclosure area, in a contrasting color, in Arial equivalent type and, if there are top contributors, must be underlined except as specified below. The size for the smallest letters must be four percent of the height of the display screen and must be displayed at the beginning of the ad for at least five (5) seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast longer than 30 seconds. If a video is distributed as an electronic media advertisement and is longer than 30 seconds, the disclosures must be displayed at the beginning of the advertisement. If the television or video ad is shorter than the required disclosure display time, the disclosure may be displayed for the length of the advertisement</p> <ul style="list-style-type: none"> <li>Disclosures must appear on a solid black background on the entire bottom one third of the display screen, or between one fourth (1/4) if no top contributor</li> <li>Each top contributor must be disclosed on a separate horizontal line separate from other text, may not be underlined and may not be condensed or have the spacing between characters reduced to be narrower than a normal non condensed Arial equivalent type, unless doing so is necessary to keep the name of a contributor from exceeding the width of the screen</li> <li>The "Not authorized by" disclosure must appear below all other text no less than 2.5 percent of the height of the display screen. If this causes the disclosure to exceed one third (1/3) of the display screen then it may be printed immediately above the background with sufficient contrast that is easily readable and is not required to be underlined.</li> <li>"Committee major funding from" and "Not authorized by" disclosures may not appear in all capital letters</li> </ul>
Electronic media ads that are a graphic, image, animated graphic, or animated image that is online (platform hosting the ad allows to link to an internet website not covered below (except video ads, see above))	<ul style="list-style-type: none"> <li>"Who funded this ad?" or "Paid for by" or "Ad paid for by" text included or displayed as a hyperlink, icon, button or tab in a contrasting color and font size that is easily readable by the average viewer for the duration of the advertisement</li> <li>Must link to a website containing the "Ad paid for by," "Committee major funding from," "Financial disclosures are available at <a href="#">ethics.org</a>," and "Not authorized by" disclosure in a contrasting color and no less than 14 point font</li> <li>"Committee major funding from" and "Not authorized by" disclosures may not appear in all capital letters</li> <li>An internet website that is hyperlinked to the ad shall remain online and available to the public until 30 days after the date of the election</li> </ul> <p>"This text is not required if including it in a point font would take up more than one third of the graphic or image. In such circumstances the ad need only include a hyperlink to a website containing the website disclosures</p>
Social media ads	<ul style="list-style-type: none"> <li>"Ad paid for by," "Committee major funding from," and "Not authorized by" disclosures in a contrasting color that is easily readable by the average viewer and in no less than 10 point font on the cover or header photo of the committee's profile, landing page, or similar location; disclosures are not required on each individual post or comment</li> <li>The disclosures must be visible on the cover or header photo when the profile, landing page, or similar location is viewed from any electronic device that is commonly used to view this form of electronic media - including, but not limited to, a computer screen, laptop, tablet or smart phone. If this is impracticable only a hyperlink, icon, button, or tab to an internet website containing the required "Ad paid for by," "Committee major funding from," and "Not authorized by" disclosures is permissible</li> <li>"Committee major funding from" and "Not authorized by" disclosures may not appear in all capital letters</li> <li>Not required when the only expense or cost of the communication is compensated staff time unless the account was created only for the purpose of ads under the Act</li> </ul>

Website and email	<ul style="list-style-type: none"> <li>"Paid for by," "Committee major funding from," "Financial disclosures are available at <a href="#">ethics.org</a>," and "Not authorized by" disclosures printed clearly and legibly in a contrasting color and in no less than 8 point font at the top or bottom of the email and every publicly accessible page of the website</li> <li>"Committee major funding from" and "Not authorized by" disclosure may not appear in all capital letters</li> <li>Note: The "Committee major funding from" disclosure requirement is not applicable to non-recipient committees</li> </ul>
Electronic media ads that are audio only	<ul style="list-style-type: none"> <li>See disclosure requirements for radio ads above</li> </ul>
Text messages sent using mass distribution technology	<ul style="list-style-type: none"> <li>"Paid for by" or "with", followed by the name of the committee, or a hyperlink or URL, for an internet website containing the following disclosures: <ul style="list-style-type: none"> <li>"Committee major funding from (name(s)) and dollar amount contributed of top three (3) donors of \$5,000 or more" additionally, if any of the top contributors are committees, list the committees top two (2) contributors of \$5,000 or more (see <a href="#">example disclaimer</a>) (not applicable to non recipient committees)</li> <li>A statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate</li> <li>"Financial disclosures are available at <a href="#">ethics.org</a>."</li> <li>The text of the disclosures on the internet website shall be in a color that reasonably contrasts with the background on which it appears and no less than 14 point font</li> </ul> </li> <li>If "with" is used: <ul style="list-style-type: none"> <li>The individual sending the text shall identify themselves by including (name of the individual) with (name of committee or hyperlink or URL)</li> </ul> </li> <li>A disclosure using "with" may appear anywhere in the text message, including conversational content, and need not appear as a separate statement apart from the content of the message</li> <li>Top Contributors: A committee that has top contributors must comply with the following: <ul style="list-style-type: none"> <li>Immediately following the name of the committee or the hyperlink or URL, the text message shall also include the text "Top Funders:" followed by the names of the top two contributors of \$5,000 or more to the committee paying for the advertisement, separated by "or" and "and."</li> <li>The names of the top two contributors may be spelled using acronyms, abbreviations, or other shorthand in common usage or parlance. If the contributor is an individual their first and last name shall both be used</li> <li>If the disclosure would exceed 35 characters, the text should disclose only the single top contributor of \$5,000 or more to the committee paying for the advertisement</li> <li>The text message is not required to include the name of a top contributor after the text "Top Funders;" if the text message includes the name of the committee paying for the advertisement and the committee's name includes the name of that top contributor</li> <li>The text shall be in a color that reasonably contrasts with the background on which it appears and in a font size that is readable by the average viewer</li> <li>For a committee that has top contributors and uses individuals who are unpaid volunteers to send text messages with the assistance of mass distribution technology, the text message sent by these individuals are not required to disclose the top two contributors, but the text message shall include a disclosure stating that the text message is being sent by a volunteer</li> </ul> </li> <li>An internet website that is hyperlinked shall remain online and available to the public until 30 days after the election</li> <li>For text message exchanges consisting of a sequence of multiple text messages sent on the same day the disclosure is only required on the first text message in the sequence that supports or opposes a candidate or measure</li> </ul> <p>Text required to be included in a text message must be in a color that reasonably contrasts with the background on which it appears and in a font size that is readable by the average viewer</p>

# Current Disclaimer Requirements Cont.

## Enforcement of Current Disclaimer Rules

- The City's additional disclaimer rules have been the subject of litigation, with plaintiffs arguing the City's rules violate the First Amendment. Particularly the secondary contributor requirements approved via Prop. F in 2019.
- Since 2019, the Commission has issued penalties in 16 enforcement cases involving failures to comply with the City's disclaimer requirements.

# Artificial Intelligence in Local Elections

- The Ethics Commission is generally aware of concerns regarding the potentially harmful use of AI in local elections and agrees it is an important issue to monitor, better understand, and safeguard against.
- Many of the concerns seem focused around AI being used to create materials that could be used to deceive voters, potentially by including such materials in political advertisements.
- The Commission does not administer laws regulating the content of political advertisements or penalizing campaigns that publish false statements in advertisements (regardless of if the source is AI).
  - *Aside from enforcing the State and local disclaimer requirements.*

# Artificial Intelligence in Local Elections Cont.

The Ethics Commission is aware of the State's current rule regarding deceptive audio or visual media, in Section 20010 of the California Elections Code, which was adopted in 2019 via AB-730.

- This rule requires an additional disclaimer that indicates when material has been manipulated and distributed within 60 days of an election, “with actual malice, materially deceptive audio or visual media...with the intent to injure the candidate’s reputation or to deceive a voter into voting for or against the candidate.” The law also allows the candidate featured in the manipulated ad to take legal action (injunctive relief / damages).

# Artificial Intelligence in Local Elections (cont.)

- The State's rule in Section 20010 does apply to San Francisco elections.
- The Ethics Commission (per C&GCC Section 1.106) currently enforces violations of the State's Political Reform Act, which is part of the California Government Code. Section 20010 is part of the California Elections Code, as such, violations of this State law are not something the Ethics Commission currently investigates or enforces.
- The Ethics Commission's Engagement and Compliance Division, is however, currently working to update its compliance materials for candidates and committees prior to the November 2024 election, so that candidates and committees are aware of this rule and what they need to do to be compliant.

# Recommendations

If the Board is considering creating new disclaimer rules regarding the use of artificial intelligence in political advertisements, we recommend:

- That any new disclaimer requirements consider the existing disclaimer requirements and past legal challenges.
  - Usefulness
  - Compliance/Administration
  - Legality
- That any new disclaimer requirements consider the various legislative initiatives regarding artificial intelligence that are currently being considered at the State level.

# Recommendations (cont.)

If the Board is considering creating new disclaimer rules regarding the use of artificial intelligence in political advertisements, we recommend:

- Sufficient funds be allocated to the Department of Technology to secure and train departments on any tools that may be necessary to enforce any new, AI-specific rules.
- Additional funding be appropriated to the Ethics Commission to administer and enforce new laws.



***Thank  
You.***

**Questions?**