

CITY AND COUNTY OF SAN FRANCISCO



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August 8, 2023

**VIA ECF**

Molly C. Dwyer  
Clerk of Court  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

Re: *No on E, et al. v. David Chiu, et al.*  
U.S. Court of Appeals, 9th Circuit, Case No. 22-15824

Dear Ms. Dwyer:

Appellees David Chiu, San Francisco Ethics Commission, Brooke Jenkins, and the City and County of San Francisco submit this letter pursuant to Federal Rule of Appellate Procedure 28(j) to alert the Court of new legislation relevant to this appeal.

The San Francisco Board of Supervisors enacted Ordinance No. 186-23, File No. 221161, entitled *Campaign and Governmental Conduct Code - Campaign Advertisement Disclaimer Requirements* ("Ordinance"), on July 25, 2023 and Mayor London Breed signed the Ordinance on July 28, 2023. The Ordinance amends Campaign and Governmental Conduct Code § 1.161 and modifies the disclaimer requirements for campaign advertisements challenged in this litigation. The Ordinance is attached hereto as Exhibit A.

Very truly yours,

DAVID CHIU  
City Attorney

s/Tara M. Steeley

TARA M. STEELEY  
Deputy City Attorney

Attachment:  
Exhibit A, Ordinance No. 186-23

# **EXHIBIT A**

[Campaign and Governmental Conduct Code - Campaign Advertisement Disclaimer Requirements]

**Ordinance amending the Campaign and Governmental Conduct Code to modify disclaimer requirements for campaign advertisements, to conform to a court order.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~*italics Times New Roman font*~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) Proposition F, adopted by the voters at the November 5, 2019 election, included several amendments to the Campaign and Governmental Conduct Code: prohibiting campaign contributions from limited liability companies and limited liability partnerships; prohibiting campaign contributions to certain City elected officials, candidates, and committees from persons with pending or recent land use matters before the City; and expanding disclaimer requirements for independent expenditure committee advertisements. The legislative file for Proposition F is available in Board File No. 190723.

(b) Proposition F’s new disclaimer requirements on campaign advertisements included a requirement that a committee disclose “secondary contributors” – that is, for primarily formed independent expenditure committees and ballot measures, if any of the top three major contributors of \$5,000 or more is a committee, the disclaimer must also disclose the top two major contributors to that committee as well.

1 (c) In January 2020, a group of plaintiffs challenged the constitutionality of these  
2 disclaimer requirements, specifically with respect to the required disclosure of secondary  
3 contributors. In February 2020, the Honorable Charles R. Breyer, District Court Judge for the  
4 Northern District of California, granted in part and denied in part, the plaintiffs' request for a  
5 preliminary injunction. The court granted the preliminary injunction with respect to disclaimers  
6 of secondary contributors as applied to print advertisements that are 5 inches by 5 inches or  
7 smaller, other smaller print advertisements sometimes referred to as "ear" advertisements,  
8 and spoken disclaimers in audio or video advertisements that are 30 seconds or less. But  
9 citing the vital governmental interest in providing the public with information about the funding  
10 of campaign advertisements, the court otherwise upheld the Proposition F disclaimer  
11 requirements. A copy of Judge Breyer's order on the motion for preliminary injunction is  
12 available in Board File No. 221161.

13 (d) The sole purpose of this ordinance is to bring the Proposition F disclaimer  
14 requirements, codified in Campaign and Governmental Conduct Code Section 1.161, in line  
15 with Judge Breyer's order.

16  
17 Section 2. Article I, Chapter 1 of the Campaign and Governmental Conduct Code is  
18 hereby amended by revising Section 1.161, to read as follows:

19 **SEC. 1.161. CAMPAIGN ADVERTISEMENTS.**

20 (a) DISCLAIMERS. In addition to complying with the disclaimer requirements set forth  
21 in Chapter 4 of the California Political Reform Act, California Government Code sections  
22 84100 et seq., and its enabling regulations, all committees making expenditures which  
23 support or oppose any candidate for City elective office or any City measure shall also comply  
24 with the following additional requirements:  
25

1 (1) TOP THREE CONTRIBUTORS. The disclaimer requirements for primarily  
2 formed independent expenditure committees and primarily formed ballot measure committees  
3 set forth in the Political Reform Act with respect to a committee's top three major contributors  
4 shall apply to contributors of \$5,000 or more. Such disclaimers shall include both the name of  
5 and the dollar amount contributed by each of the top three major contributors of \$5,000 or  
6 more to such committees. If any of the top three major contributors is a committee, the  
7 disclaimer must also disclose both the name of and the dollar amount contributed by each of  
8 the top two major contributors of \$5,000 or more to that committee, except as set forth in  
9 subsections (a)(1)(A)-(B) below. The Ethics Commission may adjust this monetary threshold to  
10 reflect any increases or decreases in the Consumer Price Index. Such adjustments shall be  
11 rounded off to the nearest five thousand dollars.

12 (A) Exception – small print advertisements. The requirement in subsection  
13 (a)(1) to disclose the top two major contributors of \$5,000 or more to committees that are major  
14 contributors shall not apply to a print advertisement that is 25 square inches or smaller.

15 (B) Exception – short audio and video advertisements. The requirement in  
16 subsection (a)(1) to disclose the top two major contributors of \$5,000 or more to committees that are  
17 major contributors shall not apply to a spoken disclaimer in an audio or video advertisement that is 30  
18 seconds or less.

19 (2) WEBSITE REFERRAL. Each disclaimer required by the Political Reform  
20 Act or its enabling regulations and by this Section 1.161 shall be followed in the same  
21 required format, size, and speed by the following phrase: "Financial disclosures are available  
22 at sfethics.org." A substantially similar statement that specifies the web site may be used as  
23 an alternative in audio communications.

24 (3) MASS MAILINGS AND SMALLER WRITTEN ADVERTISEMENTS. Any  
25 disclaimer required by the Political Reform Act and by this section on a mass mailing, door

1 hanger, flyer, poster, oversized campaign button or bumper sticker, or print advertisement  
2 shall be printed in at least 14-point, bold font.

3 (4) CANDIDATE ADVERTISEMENTS. Advertisements by candidate  
4 committees shall include the following disclaimer statements: "Paid for by \_\_\_\_\_ (insert  
5 the name of the candidate committee)." and "Financial disclosures are available at  
6 sfethics.org." Except as provided in subsections (a)(3) and (a)(5), the statements' format,  
7 size, and speed shall comply with the disclaimer requirements for independent expenditures  
8 for or against a candidate set forth in the Political Reform Act and its enabling regulations.

9 (5) AUDIO AND VIDEO ADVERTISEMENTS. For audio advertisements, the  
10 disclaimers required by this Section 1.161 shall be spoken at the beginning of such  
11 advertisements, except that such disclaimers do not need to disclose the dollar amounts of  
12 contributions as required by subsection (a)(1). For video advertisements, the disclaimers  
13 required by this Section 1.161 shall be spoken at the beginning of such advertisements,  
14 except that such disclaimers do not need to disclose the dollar amounts of contributions as  
15 required by subsection (a)(1).

16 (b) FILING REQUIREMENTS.

17 (1) INDEPENDENT EXPENDITURE ADVERTISEMENTS. Committees required  
18 by state law to file late independent expenditure reports disclosing expenditures that support  
19 or oppose a candidate for City elective office shall also file with the Ethics Commission on the  
20 same date a copy of the associated advertisement(s), an itemized disclosure statement with  
21 the Ethics Commission for that advertisement(s), and

22 (A) if the advertisement is a telephone call, a copy of the script and, if the  
23 communication is recorded, the recording shall also be provided;

24 (B) if the advertisement is audio or video, a copy of the script and an  
25 audio or video file shall be provided;

1 (C) if the advertisement is an electronic or digital advertisement, a copy  
2 of the advertisement as distributed shall be provided; or

3 (D) if the advertisement is a door hanger, flyer, pamphlet, poster, or print  
4 advertisement, a copy of the advertisement as distributed shall be provided.

5 (2) INDEPENDENT EXPENDITURE MASS MAILINGS.

6 (A) Each committee making independent expenditures that pays for a  
7 mass mailing shall, within five working days after the date of the mailing, file a copy of the  
8 mailing and an itemized disclosure statement with the Ethics Commission for that mailing.

9 (B) Each committee making independent expenditures that pays for a  
10 mass mailing shall file a copy of the mailing and the itemized disclosure statement required by  
11 subsection (b)(2) within 48 hours of the date of the mailing if the date of the mailing occurs  
12 within the final 16 days before the election.

13 (C) Exception. Committees making independent expenditures to support  
14 or oppose a candidate for City elective office are not subject to the filing requirements  
15 imposed by this subsection (b)(2) during the time period that they are required by state law to  
16 file late independent expenditure reports and if they also file the itemized disclosure statement  
17 required by subsection (b)(1).

18 (3) CANDIDATE MASS MAILINGS.

19 (A) Each candidate committee that pays for a mass mailing shall, within  
20 five working days after the date of the mailing, file a copy of the mailing and an itemized  
21 disclosure statement with the Ethics Commission for that mailing.

22 (B) Each candidate committee that pays for a mass mailing shall file a  
23 copy of the mailing and the itemized disclosure statement required by subsection (b)(3) within  
24 48 hours of the date of the mailing if the date of the mailing occurs within the final 16 days  
25 before the election.

1           ~~(3)~~ (4) The Ethics Commission shall specify the method for filing copies of  
2 advertisements and mass mailings.

3           Section 3. Requirements for Amendment by the Board of Supervisors.

4           (a) As set forth in Proposition F, approved by the voters at the November 5, 2019  
5 election, an amendment to Section 1.161 of the Campaign and Governmental Conduct Code  
6 may be made if:

7           (1) the amendment furthers the purposes of Chapter 1, Article I of the  
8 Campaign and Governmental Conduct Code;

9           (2) the Ethics Commission approves the amendment in advance of Board of  
10 Supervisors approval by at least a four-fifths vote of all its members;

11           (3) the amendment is available for public review at least 30 days before the  
12 amendment is considered by the Board of Supervisors or any committee of the Board of  
13 Supervisors; and

14           (4) the Board of Supervisors approves the amendment by at least a two-thirds  
15 vote of all its members.

16           (b) At its meeting of December 9, 2022, the Ethics Commission approved this  
17 ordinance by a vote of 4-0.

18           (c) This ordinance has been available for public review for at least 30 days before  
19 consideration by a committee of the Board of Supervisors.

20  
21           Section 4. Effective Date. This ordinance shall become effective 30 days after  
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
24 of Supervisors overrides the Mayor's veto of the ordinance.  
25



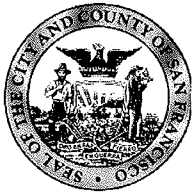
1           Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8           Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word  
9 of this ordinance, or any application thereof to any person or circumstance, is held to be  
10 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
11 shall not affect the validity of the remaining portions or applications of the ordinance. The  
12 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
13 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
14 unconstitutional without regard to whether any other portion of this ordinance or application  
15 thereof would be subsequently declared invalid or unconstitutional.

16  
17 APPROVED AS TO FORM:  
18 DAVID CHIU, City Attorney

19 By: /s/ Bradley A. Russi  
20 BRADLEY A. RUSSI  
21 Deputy City Attorney

22 n:\legana\as2022\2300140\01639607.docx



## City and County of San Francisco

### Tails Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 221161

**Date Passed:** July 25, 2023

Ordinance amending the Campaign and Governmental Conduct Code to modify disclaimer requirements for campaign advertisements, to conform to a court order.

July 17, 2023 Rules Committee - RECOMMENDED AS COMMITTEE REPORT

July 18, 2023 Board of Supervisors - PASSED ON FIRST READING

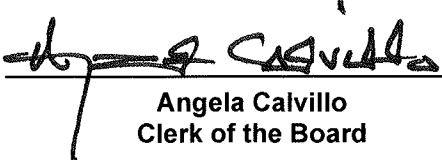
Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton


July 25, 2023 Board of Supervisors - FINALLY PASSED

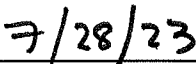
Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 221161

**I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/25/2023 by the Board of Supervisors of the City and County of San Francisco.**

  
Angela Calvillo  
Clerk of the Board

  
London N. Breed  
Mayor

  
Date Approved

**CERTIFICATE OF SERVICE**

I, Pamela Cheeseborough, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 8, 2023.

**APPELLEES' F.R.A.P. 28(j) LETTER**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed August 8, 2023, at San Francisco, California.

s/Pamela Cheeseborough  
Pamela Cheeseborough