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Proposition C Impacts Nonprofit Organizations Lobbying in San Francisco

The City and County of San Francisco's **lobbying ordinance** (Campaign and Governmental Conduct Code §§2.100-155) currently requires any person influencing local legislative or administrative actions through contacts with city officials or their staff to register with the Ethics Commission, but the ordinance provides an exemption for certain nonprofits (all 501(c)(3)s and some smaller 501(c)(4)s). The Ethics Commission of San Francisco has placed **Proposition C** ("Prop. C") on the November 2015 ballot, which would expand the definition of lobbyist and covered lobbying activities without similarly expanding the exemption for nonprofits.

If passed, Prop. C would create a new category of lobbyist, the "expenditure lobbyist." An entity or individual would become an expenditure lobbyist if it directly or indirectly made payments totaling \$2,500 or more in a calendar month to solicit, request, or urge other people to communicate with a city or county official in order to influence local legislative or administrative action. Unless an exception applies, each expenditure lobbyist would be required to pay a \$500 registration fee and file monthly reports with the Commission. Failure to pay an annual fee terminates registration under the current ordinance. The proposed measure does not change the registration termination provisions or clarify whether these registration and reporting obligations continue even after the lobbying activities have ceased.

Because the definition of "expenditure lobbyist" has a low dollar threshold, and because there is no exemption for nonprofit organizations, Prop. C could affect many nonprofit organizations that are active in the City and County of San Francisco. The proposed ordinance expressly identifies as covered an expenditure for any of the following: public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, and studies to the extent those activities are used to further efforts to solicit, request, or urge other persons to communicate directly with an officer of the City and County of San Francisco.

For public charities, Prop. C would cover grassroots lobbying efforts urging others to contact city and county officials. The measure's inclusion of administrative lobbying could also cause private foundations to be characterized as expenditure lobbyists if they spend more than the threshold amount urging others to contact officials regarding administrative actions. Although prohibited from engaging in legislative lobbying, private foundations are generally permitted under federal tax law to influence administrative actions. However, under Prop. C such private foundations may nonetheless be deemed expenditure lobbyists, and their registration and public reports

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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could generate audit flags for the IRS.

The Alliance For Justice has **taken a stance against this measure**. Organizations interested in taking a similar position on this measure may wish to seek counsel to determine if their activities qualify under the self-defense exception to the federal lobbying rules.