

## **San Francisco's Grassroots Lobbying Disclosure Law for Expenditure Lobbyists**

Does your nonprofit organization advocate in the City and County of San Francisco? If you spend \$2,500 or more in one month on certain grassroots lobbying expenses in San Francisco, you may need to report your activities.

In 2015, the San Francisco Ethics Commission (the Commission) proposed a ballot measure to increase the disclosure requirements for anyone that engages in certain kinds of grassroots mobilization efforts within the City or County of San Francisco. The voters approved "Prop C" on the November 2015 ballot, and the ordinance went into effect in February 2016.<sup>1</sup> This measure does not prohibit grassroots lobbying in San Francisco. However, it does require that organizations paying for certain grassroots lobbying expenses register and report to the Commission as lobbyists.

### **Background**

In response to for-profit companies using faux-grassroots or "AstroTurf" tactics to promote their agendas, Prop C and its regulations added reporting requirements for any person or organization that spends over a certain amount of money on grassroots lobbying efforts. Before this change, the Commission only required someone to register as a lobbyist if they were a "contact lobbyist" — if they directly communicated with San Francisco officials in order to influence decision-making.<sup>2</sup> Prop C and its regulations broadened the definition of "lobbyist" to include "expenditure lobbyists." An expenditure lobbyist is anyone who spends \$2,500 or more per month on grassroots lobbying (urging the general public to communicate with San Francisco officials to influence legislative or administrative action). Unfortunately, Prop C did not include an exception for nonprofits, so nonprofit organizations must now track, register, and report some of their grassroots mobilization.

### **What is Grassroots Lobbying under Prop C?**

Under the Prop C definition, grassroots lobbying is attempting to influence legislative or administrative action by encouraging the public to contact applicable San Francisco officials. Expenses that count toward a monthly \$2,500 grassroots lobbying threshold (see "What Expenses Count Toward the Monthly \$2,500 Grassroots Lobbying Threshold?" below for more details about which types of expenses must be tracked and reported) are any expenses that are made:

- To communicate with the general public,
- To urge them to communicate,

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<sup>1</sup> [San Francisco Campaign and Government Code, Art. II](#) and [Regulation 2.105-1](#).

<sup>2</sup> After a certain number of direct communications with officials, some organizations and individuals need to register as "contact lobbyists." 501(c)(3)s and small 501(c)(4)s are exempted from having to register as "contact lobbyists." Those 501(c)(4)s that are required to register under this designation are exempted from the filing fee. Other nonprofits should contact an attorney or Alliance for Justice if they have questions about whether they are eligible for this exemption or fee waiver.

- With a City official<sup>3</sup>, and
- Influences the official to take legislative or administrative action.

Examples of grassroots lobbying include:

- Asking a community member to sign a letter to a City or County officer asking them to support a new regulation;
- Sending out an email blast urging recipients to contact the Mayor on a proposed ordinance; or
- Encouraging people at a community meeting to call City Commissioners about pending legislation.

**What is Considered Legislative or Administrative Action?**

Generally, under Prop C, legislation or administrative action refers to any City or County matter that is pending or proposed. This includes (but is not limited to) decisions such as ordinances, resolutions, motions, petitions, permits, licenses, appeals, or applications that require a City or County official to exercise their discretion over their drafting, outcome, or course of action.<sup>4</sup> If an action does not at any stage require the involvement of an official, then it is neither legislative nor administrative action.

## **New Reporting Requirement**

**Prop C does not apply to expenses for in-house staff time spent urging the public to communicate with an official.** However, anyone who spends **\$2,500** or more in a calendar month (not counting staff time) to urge members of the public to lobby officials must:

- Register with the San Francisco Ethics Commission;
- Pay a \$500 registration fee (unless your organization qualifies for a fee waiver<sup>5</sup>); and
- File monthly reports explaining which City or County decision(s) the organization was trying to influence, the amount spent trying to influence the decision, and any campaign contributions.<sup>6</sup> These reports will be made publically available. Reports must include information about:

<sup>3</sup> “Officials” or “Officers” is a broad term that includes elected City or County officials, appointed commission members, heads of departments, and others. However, not all City or County officials are covered under this new ordinance. For a complete list of qualifying “Officers of the City and County” please see San Francisco Campaign and Governmental Conduct Code Art. 11, Secs. 2.105 and 3.203.

<sup>4</sup> Certain quasi-judicial actions also fall under “legislative or administrative action.” For instance, certain actions in front of the Human Rights Commission or Residential Rent Stabilization and Arbitration Board would fall under this definition. Please contact the San Francisco Ethics Commission if you are unsure whether your actions qualify as legislative or administrative ([ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) or 415-252-3100).

<sup>5</sup> 501(c)(3) or 501(c)(4) nonprofits that can show that their annual budget is \$500,000 or less are exempt from having to pay these fees. Larger 501(c)(3) and 501(c)(4) and nonprofit organizations that are not 501(c)(3)s or (c)(4)s (like unions and professional associations), must pay a \$500 fee to register and continue paying the \$500 annual fee to keep their registration active. 501(c)(3) and 501(c)(4) organizations are still exempt from registration and reporting for direct lobbying with San Francisco officials.

<sup>6</sup> Campaign contributions include any payments made to committees formed to support or oppose ballot measures that are only voted on in San Francisco. Payments made to city or county officials, candidates for office, or committees

- Each payment of \$1,000 or more that an organization made to a single outside organization or vendor for grassroots communication during a reporting period, certain details about who received the payment and
- Any campaign contribution of \$100 or more.

Additionally, if an organization or individual is considered a lobbyist, they must follow the gift limitation rule,<sup>7</sup> which prohibits providing gifts worth more than \$25 to any official (with limited exceptions).

## What Expenses Count Toward the Monthly \$2,500 Grassroots Lobbying Threshold?

It is important to understand that not all expenses related to urging the public to contact San Francisco officials will count toward the new monthly \$2,500 reporting threshold.

- Staff compensation (both hourly wages and salaries) does **not** count toward the \$2,500 threshold.
- Outside expenses that are used in grassroots lobbying count. This means that all grassroots lobbying expenses paid to vendors or other organizations (like paying a printer for fliers or paying another organization to do door-to-door canvassing) count toward the threshold. This includes expenses such as paying an outside company for outreach, advertising, public and media relations, research, and reports, if they are used to encourage **others** to communicate directly with city officials.
- In-house expenses that are not staff compensation, like the ink and paper used to photocopy hundreds of fliers, also count toward the monthly grassroots lobbying threshold.
- Payments to a registered contact lobbyist or expenses for direct communication with an organization's members<sup>8</sup> do **not** count toward this threshold.
- In-house expenses, such as staff salaries, do not count toward the threshold.

### Examples of expenditures that count toward the threshold:

- Cost of renting a van to transport community members to a Board of Supervisors meeting, so community members can voice support for a new gun control regulation.
- Expenses incurred in hiring an outside graphic designer to work on a social media campaign asking the general public to call members of the San Francisco Housing Authority Commission and request an increase in housing assistance voucher payments.
- Costs associated with producing a research report on race and traffic stops if, three months after publishing the report, the organization uses the report to convince community members to contact the Mayor to ask him to support increased funding for police implicit bias training.

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controlled by a candidate or officials are also included. 501(c)(3) public charities are allowed to support or oppose ballot measure campaigns. However, 501(c)(3) organizations may not support or oppose candidates.

<sup>7</sup> [San Francisco Campaign and Governmental Conduct Code Art. 11, Sec 2.115\(a\)](#).

<sup>8</sup> "Member" means an organization's employees, anyone who pays dues or fees, or anyone who requests an organization's communications.

**Examples of expenditures that *don't* count toward the threshold:**

- The cost of staff time spent calling community members and asking them to attend a Police Commission meeting and comment in favor of a stricter police officer use-of-force policy.
- Payments made to employees of your organization who communicate with city officials about increasing the number of local health clinics.
- Membership dues to a coalition that pays for grassroots efforts to influence the Immigrant Rights Commission to increase spending on DACA outreach.
- The expense of printing informational pamphlets for community members about a recently-enacted ordinance which decreases pollution in their neighborhood.

**When Does an Organization Need to File?**

Once an organization has spent \$2,500 or more per month on grassroots lobbying (not counting employee compensation), it must [register](#) as a lobbyist with the San Francisco Ethics Commission no later than five business days from the date it qualifies as an expenditure lobbyist. This registration must occur before the organization pays any more expenses to urge the general public to influence legislative or administrative action. Once registered as a lobbyist, the organization must submit monthly reports about its lobbying expenses.

**Use of Research and Other Materials in Grassroots Lobbying Efforts**

Organizations should track expenses (not counting staff time) they incur when they produce reports, studies, analyses, and other materials that they then use when they ask others to lobby officials in San Francisco.

If these types of materials are later used when the organization urges others to contact an official, then the whole cost of research, writing, and publishing those materials will be counted toward the group's monthly grassroots lobbying threshold. However, if a report or other information is six months or older when it is quoted, incorporated, or otherwise used in grassroots lobbying efforts, then those costs will not count toward the organization's monthly grassroots lobbying total. For example: an organization carries out a survey of people suffering from tuberculosis. Four months later, that organization cites the survey in fliers distributed to community members encouraging the public to contact city officials and request increased funding for tuberculosis treatment. In this scenario, the cost of that report would be included in the organization's monthly grassroots lobbying total.

**Penalties for Not Registering or Reporting**

Organizations should report all applicable payments made after Prop C's February 1, 2016 effective date. Failure to register and report can result in late fees and fines up to \$5,000 per violation, along with potential civil penalties.

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