

1 [Initiative Constitutional Amendment – Opposing Proposition 16, the “New Two-Thirds Vote
2 Requirement for Local Public Electricity Providers”]
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4 **Resolution opposing Proposition 16, Initiative Constitutional Amendment, the “New
5 Two-Thirds Vote Requirement for Local Public Electricity Providers.”**
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8 **A. Overview of Proposition 16**

9 WHEREAS, Proposition 16 is an initiative constitutional amendment that has qualified
10 to appear on the June 8, 2010 statewide ballot; and

11 WHEREAS, Proposition 16 would require a local government to obtain approval by a
12 two-thirds vote in order to spend public funds to (i) establish or expand electric delivery
13 service to a new territory or new customers, or (ii) implement a plan to become an aggregate
14 electricity provider; and

15 WHEREAS, Proposition 16 defines “local government” broadly to include all local
16 public entities and also defines “public funds” very broadly to include any taxes, funds, cash,
17 income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by
18 ratepayers; and

19 WHEREAS, The official proponent of Proposition 16 is Robert Lee Pence; and

20 WHEREAS, Pacific Gas & Electric Company (PG&E) has been the sole donor to the
21 campaign committee organized to support the measure; and

22 WHEREAS, PG&E has contributed \$15.5 million as of February 26, 2010 ([http://cal-
23 access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1318623&session=2009&view=late](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1318623&session=2009&view=late)
24 [1](#)) and has said it will spend up to \$35 million to get Proposition 16 approved by voters (SF
25 Chronicle, 2/20/2010); and

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WHEREAS, the proponents called Proposition 16 the “Taxpayers Right to Vote Act,” but the Attorney General renamed it to the “New Two-Thirds Vote Requirement for Local Public Electricity Providers;” and

WHEREAS, The Board of Supervisors opposed this measure in Resolution 278-09, dated July 10, 2009, before it qualified for the ballot; and

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) urged the Board of Supervisors to consider the impacts on SFPUC operations and projects and adopt a City position on Proposition 16 in Resolution 10-0021, adopted on February 9, 2010, which resolution is on file with the Clerk of the Board of Supervisors in File No. 100282, and hereby declared to be a part of this motion as if set forth fully herein; and

B. Background

1. Legal Framework

WHEREAS, Both state and federal laws give public entities the right to provide electric service. This initiative would make those laws ineffective by creating unnecessary barriers to stop public entities from providing electric service; and

WHEREAS, Article XI, Section 9 of the California Constitution establishes the sovereign authority of local municipalities to provide electric services to their inhabitants. It also allows private corporations to provide such services, subject to requirements established by the municipality. Similar provisions have been part of the Constitution for more than 100 years. In addition, numerous state laws already establish requirements for specific electric services or for particular types of public entities; and

1 WHEREAS, The Federal Power Act requires investor-owned utilities to allow public
2 entities that meet certain requirements to connect to the electric grid in order to provide
3 electric service to customers; and

4 **2. Electric Service by Public and Private Entities**

5 WHEREAS, For decades, public entities have provided electric services to their
6 citizens; and

7 WHEREAS, Electric service by public entities provides substantial benefits to
8 customers and taxpayers. Providing electric services can assist local entities in achieving a
9 variety of policy objectives, including revenue enhancement, economic development, job
10 creation, local accountability, lower rates, clean energy, and conservation. In 2007, 47 public
11 entities provided power to more than 3 million customers in California (APPA Report 2009-
12 10); and

13 WHEREAS, In addition to full-service publicly owned electric utilities, many other public
14 entities provide electric service on a more limited scale. In recent years, many public entities
15 have turned to the incremental, targeted provision of electric service as an attractive and
16 feasible means of achieving various local objectives; and

17 WHEREAS, The rates charged by publicly owned electric utilities are usually
18 significantly lower than the rates charged by private corporations for the same service. In
19 California, public power rates are 30% less on average than the rates of investor-owned
20 utilities (<http://www.appanet.org/files/PDFs/utilityratecompstate2006.pdf>); and

21 WHEREAS, The revenues obtained by public entities from providing electricity are
22 used to fund local services and programs that otherwise would be funded by taxpayers; and

23 WHEREAS, Public entities provide electric service subject to open meeting and public
24 records laws that provide customers the opportunity to be informed and involved in decision
25 making; and

1 WHEREAS, Voters have broad control over local government decisions including
2 decisions about providing electric service. State law requires voter approval to issue general
3 obligation bonds and, in many cases, to initiate or expand electric service; and

4 WHEREAS, Private utilities like PG&E provide electric service to most Californians
5 without any vote from taxpayers or ratepayers about whether they want that company to
6 provide their services. These companies establish priorities, raise rates and make
7 investments that might be risky without any vote of their ratepayers. These companies
8 conduct their business and make decisions in private, and are not subject to public meeting
9 and public records laws; and

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11 **C. Potential Impacts of Proposition 16**

12 **1. Undermines ability of local governments to provide electric services**

13 WHEREAS, While Proposition 16 does not take away the right of local governments to
14 provide electric service, it imposes a barrier that will unnecessarily increase the cost of such
15 service and create delays and may dissuade public entities from attempting to provide such
16 service at all; and

17 WHEREAS, Under Proposition 16, a public entity that already services all customers
18 within its jurisdiction may be able to continue to do so without complying with the two-thirds
19 vote requirement, unless it wants to expand its service to customers outside its current
20 territory; and

21 WHEREAS, A public entity that currently serves no customers or only some of the
22 customers within its jurisdiction could be subject to the two-thirds vote requirement to serve
23 even one new customers. There is no minimum threshold that triggers the vote requirement.
24 In this way, Proposition 16 targets the incremental, limited provision of electric service which
25 many public entities have undertaken over the last decade as an attractive and feasibly

1 means of achieving various local objectives, including revenue enhancement, economic
2 development, job creation, and the expansion of clean sustainable energy resources; and

3 WHEREAS, Proposition 16 contains various exemptions and exclusions that further
4 complicate any understanding of the likely impacts of the measure, including:

5 (i) Service to existing customers or for the local government’s own end use.

6 The practical effect of these exclusions is hard to determine since PG&E already routinely
7 challenges electric service by local entities. In San Francisco, PG&E is currently challenging
8 the City’s electric service to existing customers including service to the Municipal
9 Transportation Agency, City-owned buildings, and maritime services provided by the Port.
10 PG&E makes such challenges even where service has been provided by the City over many
11 years.

12 (ii) Funds used solely for the purpose of purchasing or providing renewable
13 energy. An exemption for renewable resources alone may not be practical since renewable
14 energy must be paired with other resources in order to ensure reliable power supply. Further,
15 if local entities are precluded from service customers, it may not be economic for local
16 governments to invest in these resources. Public power entities have been leaders in
17 developing renewable energy resources, but investments by public entities in renewable
18 energy facilities will decline if public entities cannot provide the clean energy they generate to
19 their customers.

20 (iii) “Federal funds” excluded from the definition of “public funds.” Federal
21 funds, including stimulus funds, often require local matching funds. The federal funds
22 exemption in Proposition 16 may have no practical benefit to local entities if they are unable to
23 comply with the two-thirds vote requirement in time to qualify for federal funds. In this way,
24 Proposition 16 may limit the ability of public entities to receive stimulus funds, a large portion
25 of which is directed to energy projects; and

1 **2. Types of Projects Potentially Affected by Proposition 16**

2 WHEREAS, It is impossible at this time to identify all of the potential impacts of
3 Proposition 16 or to determine in advance which specific projects would be subject to the new
4 two-thirds vote requirement. The following is a list of types of projects that might be subject to
5 the two-thirds vote requirement:

- 6 (i) Electric service projects associated with reuse of former military bases
7 under the base realignment and closure process.
- 8 (ii) Electric service to new developments, including retail and commercial
9 centers, industrial facilities, and residential developments.
- 10 (iii) Electric service associated with redevelopment projects, including low
11 income and affordable housing projects.
- 12 (iv) Routine extensions of existing service to a new customers or a new
13 facility for an existing customer.
- 14 (v) Community Choice Aggregation programs; and

15 **3. Impacts on San Francisco Projects**

16 WHEREAS, The broad language in Proposition 16 could inhibit the SFPUC’s ability to
17 conduct routine business, such as building enhancements and upgrades to existing service
18 and service to new City facilities; and

19 WHEREAS, Proposition 16 could affect the City’s plans to initiate or expand energy
20 services to redevelopment projects and other City developments. The City currently provides
21 electric service to City facilities, Treasure Island and Hunters Point Shipyard. It intends to
22 continue service in those areas as well as initiate service to customers in other City
23 developments and through the CCA program, CleanPowerSF. It could also affect the
24 developers building the projects; and

1 WHEREAS, Proposition 16 could increase project costs and delay project development
2 due to the cost of elections and the time required to seek voter approval. Additional costs
3 may be incurred by the City and developers if the construction schedule for projects is
4 delayed due to election schedules; and

5 **Lost Revenues**

6 WHEREAS, Proposition 16 could cost the City revenue opportunities if voters do not
7 approve new energy service projects that are subject to a two-thirds vote requirement. The
8 City currently generates revenues from the sale of energy services to its customers and
9 anticipates expanding that revenue by adding new customers and service areas; and

10 WHEREAS, The City currently serves or has agreements in place to service nearly 6
11 megawatts (MW) of energy to customers at Treasure Island and Hunters Point. It proposes to
12 serve an additional 64 MW at Treasure Island, Hunters Point and other redevelopment
13 projects; and

14 WHEREAS, The City may also seek to provide energy to new homes that are built as
15 part of its SF HOPE program, the City initiative to revitalize distressed public housing and
16 create mixed-income communities; and

17 WHEREAS, The projected total electric demand for Treasure Island, Hunters Point and
18 other redevelopment projects is more than 400,000 MW hours per year by 2022. The City's
19 projected systems average cost of delivering power for 2010 is approximately \$0.10 per KWh.
20 Applying this rate, the City could see estimated revenue of \$40 million per year by 2022; and

21 **Increased Electric Service Costs**

22 WHEREAS, Energy services provided by the City are typically less costly than the
23 same services provided by PG&E. If a project does not have the option to receive service
24 from the City due to the requirements of Proposition 16, the electric service costs for the
25 project will be higher; and

1 WHEREAS, One reason is the cost of PG&E’s income taxes. Developers building a
2 new project that will be served by PG&E are required to build the energy infrastructure, and
3 then deed the system to PG&E before energy service can begin. The developer is required to
4 pay PG&E the income taxes that PG&E will owe for acquiring the new asset. The tax rate
5 varies each year, but typically ranges from 22% to 34% of the value of the infrastructure. The
6 City does not pay income tax, and thus none is owed when developers transfer assets to the
7 City; and

8 WHEREAS, While the costs of building the required infrastructure depends on the
9 specifics of each project, the SFPUC estimates, by way of example, that the distribution
10 system created for Phase 1 of the Hunters Point project cost approximately \$10 million. The
11 tax rate in place at the time of completion was 34%, resulting in savings for the developer of
12 \$3.4 million. Similarly, when the City provides the electric service to City projects, the project
13 costs less than it would if electric service was provided by PG&E; and

14 **4. Diminishes local control**

15 WHEREAS, Local voters elect local officials, establish local priorities, and mandate
16 requirements for local decision-making. Local voters in various jurisdictions have established
17 additional requirements for voter approval. In San Francisco, the Charter generally requires
18 voter approval before issuing revenue bonds and ensures voters additional control through
19 the right to referendum and initiative; and

20 WHEREAS, Proposition 16 harms local taxpayers by making it more difficult for the
21 City to comply with local laws and priorities established by the voters. Such provisions include
22 the following:

- 23 (i) Charter Section 9.107(8) authorizes the Board of Supervisors to authorize
24 bonds “to finance or refinance the acquisition, construction, installation, equipping,

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1 improvement or rehabilitation of equipment or facilities for renewable energy and energy
2 conservation.”

3 (ii) Charter Section 16.101, which states “It is the declared purpose and
4 intention of the people of the City and County, when public interest and necessity demand,
5 that public utilities shall be gradually acquired and ultimately owned by the City and County.”

6 (iii) Administrative Code Chapter 99, which requires the City to “examine the
7 feasibility of supplying electricity to all new City developments, including, without limitation,
8 military base reuse projects, redevelopment projects and other City projects;” and

9 WHEREAS, The two-thirds vote requirement of Proposition 16 diminishes the rights of
10 the majority of voters by allowing a minority to control the outcome of the vote; and

11 WHEREAS, Adoption of Proposition 16 would further impair the power of local
12 governments to provide the services their constituents expect; now, therefore, be it

13 RESOLVED, That the Board of Supervisors opposes Proposition 16 for the following
14 reasons:

15 1. Proposition 16 is misleading in that it does not protect taxpayers or customers.
16 It only protects utility monopolies by handicapping a lower cost competitor;

17 2. Proposition 16 takes away local control in an area where local jurisdictions have
18 traditionally had pervasive authority. This should concern all public entities, even those that
19 do not intend to provide electric services of any kind;

20 3. Proposition 16 will impair the City’s ability to achieve priorities established by
21 local laws;

22 4. Proposition 16 will harm electric consumers by limiting choices and increasing
23 the ability of monopoly providers to raise rates;

24 5. Proposition 16 may adversely impact the development of renewable energy
25 resources;

1 6. Proposition 16 may result in increased costs and reduced revenues to the City
2 and to developers of new projects;

3 7. Proposition 16 may cause delays in redevelopment projects;

4 8. Proposition 16 may limit the ability of local entities to develop community choice
5 aggregation programs and other programs that promote customer choice and local control;
6 and

7 9. Proposition 16 may limit the ability of public entities in California to receive or
8 use federal funds, including federal stimulus funds.

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