

1 [Urging Enforcement Action and Injunctive Relief for the Misclassification of San Francisco
2 Workers]

3 **Resolution urging local enforcement of State Assembly Bill No. 5; pursuit of immediate**
4 **injunctive relief; additional public health directives; and further state action to address**
5 **the misclassification of San Francisco workers and ensure employee access to**
6 **benefits.**

7
8 WHEREAS, On April 30, 2018, the California Supreme Court issued a landmark,
9 unanimous decision in the matter of Dynamex Operations West, Inc. v. Superior Court of Los
10 Angeles (2018) (“Dynamex”), which embraced a standard for worker classification that
11 presumes that all workers are employees instead of independent contractors and placed the
12 burden of making that determination on the employer; and

13 WHEREAS, On September 18, 2019, Governor Gavin Newsom signed State Assembly
14 Bill No. 5 (“A.B. 5”), authored by Assembly Member Lorena Gonzalez, to codify and expand
15 the California Supreme Court’s decision in Dynamex; and

16 WHEREAS, On July 16, 2019, the San Francisco Board of Supervisors adopted a
17 Resolution supporting A.B.5, authored by Supervisor Rafael Mandelman, on file with the Clerk
18 of the Board of Supervisors in File No. 190771, which is hereby declared to be a part of this
19 Resolution as if set forth fully herein; and

20 WHEREAS, A.B. 5 went into effect on January 1, 2020, establishing a presumption that
21 a worker is an employee for purposes of wages and benefits included in the California Labor
22 Code, Unemployment Insurance Code, and Industrial Welfare Commission wage orders; and

23 WHEREAS, California law grants City Attorneys in cities with more than 750,000
24 residents the authority to seek injunctive relief on behalf of workers who have been
25 misclassified, see Cal. Lab. Code § 2750.3(j); and

1 WHEREAS, The City of San Diego recently engaged in a successful enforcement
2 action and obtained a court order preventing an app-based company from claiming that their
3 workers are independent contractors, see The People of the State of California v. Maplebear,
4 Inc., Case No. 37-2019-00048731-CU-MC-CTL (Feb. 13, 2020); and

5 WHEREAS, These public actions may be necessary to ensure that workers have
6 access to the benefits they need, which are blocked by misclassification; and

7 WHEREAS, While the impact from COVID-19 continues to grow in San Francisco and
8 across California, misclassified employees are losing work and their livelihoods; and

9 WHEREAS, Without assistance, these workers face many uncertainties, including
10 housing and food insecurity, no access to health care, exposure to COVID-19 without safety
11 training, sanitation and protective equipment, and more; and

12 WHEREAS, App-based employers including Uber, Lyft, Doordash, Instacart,
13 Postmates, and others continue to flout our state and city laws, leaving their misclassified
14 employees without access to unemployment insurance, paid sick leave, medical benefits,
15 workers' compensation, and other crucial benefits, even amidst an unprecedented public
16 health and economic crisis; and

17 WHEREAS, Public servants have a moral obligation to fight on behalf of the most
18 vulnerable when companies like Uber, Lyft, Doordash, Instacart, Postmates abandon the very
19 people who make their business possible; and

20 WHEREAS, On March 16, 2020, the San Francisco Health Officer issued Order No.
21 C19-07, directing all individuals living in the City and County of San Francisco to shelter in
22 place at their place of residence with limited exceptions; and

23 WHEREAS, On March 24, 2020, the San Francisco Board of Supervisors adopted a
24 Resolution urging the creation of a multilingual workers rights hotline and committing to
25 provide additional local support for workers impacted by Order No. C19-07, on file with the

1 Clerk of the Board of Supervisors in File No. 200304, which is hereby declared to be a part of
2 this Resolution as if set forth fully herein; and

3 WHEREAS, Because they are denied benefits, drivers living paycheck to paycheck will
4 be forced to continue working to afford food, rent, healthcare, and more, putting passengers
5 and the public at risk; now, therefore, be it

6 RESOLVED, That the San Francisco Board of Supervisors urges the Office of Labor
7 Standards Enforcement to establish rapid enforcement procedures to address
8 misclassification of San Francisco employees and ensure local compliance with Assembly Bill
9 5, and to proactively communicate to all employers their obligations under local law to provide
10 benefits such as paid sick leave to their employees; and, be it

11 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges the Office
12 of Labor Standards Enforcement to base each app-based employee's eligibility to receive paid
13 sick leave under San Francisco's Administrative Code, Chapter 12W and required healthcare
14 expenditures under Administrative Code, Chapter 12Q on the total hours the employee is
15 logged in to the employer's platform along with the amount of such benefits; and, be it

16 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges the
17 Department of Public Health to (i) establish minimum health and safety guidelines for TNC
18 and food delivery drivers who continue to operate during this pandemic, and (ii) direct
19 employers still in operation to provide sanitary supplies for their workers as needed, and (iii)
20 direct companies who employ gig workers to comply with all Workers Compensation benefits
21 in the event their employee should come into contact with a customer who has been infected;
22 and, be it

23 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges City
24 Attorney Dennis Herrera and District Attorney Chesa Boudin to seek immediate injunctive
25 relief to prevent the misclassification of San Francisco workers as they seek to access basic

1 workplace rights like paid sick leave, unemployment insurance, and benefits provided under
2 the San Francisco Health Care Security Ordinance; and, be it

3 FURTHER RESOLVED, That the City and County of San Francisco urges California
4 Attorney General Xavier Becerra to (i) seek immediate injunctive relief to prevent the
5 misclassification of California workers as they seek to access basic workplace rights like paid
6 sick leave and unemployment insurance, and (ii) issue guidance to all District Attorneys, City
7 Attorneys, and County Counsels regarding their authority to seek rapid injunctive relief to
8 ensure workers can access workplace benefits under current state law; and, be it

9 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges Labor
10 Secretary Julie Su to provide guidance for accessing benefits like disability insurance, paid
11 family leave, and unemployment insurance for misclassified workers; and, be it

12 FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall transmit
13 copies of this Resolution to the Office of Labor Standards, Department of Public Health, City
14 Attorney Dennis Herrera, District Attorney Chesa Boudin, California Attorney General Xavier
15 Becerra, and California Labor Secretary Julie Su with a request to take all action necessary to
16 achieve the objectives of this Resolution.

17
18
19
20
21
22
23
24
25