

1 [Reform of California State Law Regarding Franchise Perpetuities]

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3 **Resolution requesting the California State Legislature reform current law to permit**
4 **local jurisdictions to re-negotiate franchise agreements previously executed in**
5 **perpetuity by declaring such contracts as contrary to the public interest, setting an**
6 **expiration date for such contracts, and statutorily limiting the duration of future**
7 **agreements.**

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9 WHEREAS, California Public Utilities Code Division 3, Chapter 2.5; Bill No. 325,
10 Ordinance No. 413 (1939) authorizes cities and counties to enter into franchise agreement for
11 the transportation of natural gas that utilize the public rights-of-way; and,

12 WHEREAS, California Public Utilities Code Division 3, Chapter 2.5; Bill No. 325,
13 Ordinance No. 414 (1939) authorizes cities and counties to enter into franchise agreement for
14 the transmission and delivery of electricity that utilize the public rights-of-way ; and,

15 WHEREAS, In 1939, the City and County of San Francisco entered into and the Board
16 of Supervisors approved a franchise agreement (1939 Agreement) with Pacific Gas and
17 Electric (PG&E) for the provisioning of the city with natural gas and electric services; and,

18 WHEREAS, The 1939 Agreement was entered into in perpetuity thereby precluding
19 any re-negotiation or other free-market assessment of the 1939 Agreement and thus bound
20 any and all future Boards of Supervisors from exercising their fiduciary duty with such
21 constraint being contrary to the public interest; and,

22 WHEREAS, The 1939 Agreement giving PG&E a low franchise fee in perpetuity was
23 signed just one year before the U.S. Supreme Court found San Francisco in violation of the
24 Raker Act and ordered the city to establish a public power system, and

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1 WHEREAS, PG&E, since being granted a franchise monopoly, has spent millions of
2 dollars to prevent the city from instituting public power in the city in accordance with the
3 Supreme Court’s decision; and,

4 WHEREAS, PG&E continues to leverage its unaccountable monopoly to exact some of
5 the highest rates in the nation while delivering its customers with inferior service including one
6 of the highest outage rates in the state and unilaterally installing untested hardware such as
7 smart meters that create expensive billing errors; and

8 WHEREAS, The 1939 Agreement sets the franchise rate for electricity at 0.5% and gas
9 at 1.0% yielding only \$3.5 million and \$3.1 million in general fund revenue respectively; and

10 WHEREAS, The City of Berkeley’s agreement with PG&E sets a 5.0% franchise rate
11 which, if the same rate was applied in San Francisco, would yield approximately \$50 million in
12 general fund revenue which currently represents 10% of the City’s Current Budget Deficit and
13 could have eliminated the need for the City’s 2009-2010 mid-year cuts; and

14 WHEREAS, PG&E spent, at last count, at least \$46 million dollars of shareholder funds
15 for the political purposes thus demonstrating that \$50 million would in no way burden PG&E’s
16 financial stability; and,

17 WHEREAS, San Francisco Administrative Code Chapter 11, upon a change in a
18 statutory limit of a franchise fee, grants the City “the option to renegotiate the amount of the
19 Franchise Fee upon a change in Applicable Law” (Sec. 11.21(a)); and,

20 WHEREAS, Current California Case law holds that ordinances granting franchise
21 agreements in perpetuity are binding, finding specifically “the ordinances granted franchises
22 within the purview of the legislative delegation given to the board of supervisors under
23 Government Code section 26001 and that the indeterminate length of the franchises did not
24 render the ordinances void.” (County of Kern v. Pacific Gas & Electric Co. (1980) 108
25 Cal.App.3d 418, 166 Cal.Rptr. 506); and

1 WHEREAS, County of Kern v. Pacific Gas & Electric Co. limits PG&E's franchise fee to
2 the amount defined in the 1939 Agreement which can thus not be altered without a change in
3 California State Law thereby preventing the triggering the provisions of San Francisco
4 Administrative Code Chapter 11; now, therefore, be it

5 RESOLVED, That the City and County of San Francisco, by and through its Board of
6 Supervisors, urgently requests that the California State Legislature reform the current state of
7 California Law by statutorily overturning County of Kern v. Pacific Gas & Electric Co. (1980)
8 108 Cal.App.3d 418, 166 Cal.Rptr. 506 or otherwise amend Government Code section 26001
9 to specifically bar perpetuities; and, be it further

10 RESOLVED, That the Board of Supervisors requests that the California Legislature set
11 a date certain for the expiration of any and all Franchise Agreements that were executed more
12 than ten (10) years ago as well as set the date for the expiration of any and all franchise
13 agreements that were executed more than twenty-five (25) years ago on January 1, 2011 or
14 as soon thereafter as is legislatively practicable; and, be it further

15 RESOLVED, That the Board of Supervisors requests the California Legislature to, as
16 part of this reform effort, specifically find that contractual perpetuities are not in the public
17 interest and set an upper limit on the duration of such future agreements at not more than ten
18 (10) years and otherwise amend Government Code section 26001 to specifically bar
19 perpetuities in franchise agreements; and, be it further

20 RESOLVED, That the Board of Supervisors requests the California Legislature to
21 repeal any limitation on the amount of a franchise fee and be made subject to negotiation
22 between the parties to a franchise agreement; and, be it further

23 RESOLVED, That the Board of Supervisors requests the California Legislature to
24 impose a requirement that any Investor Owned Utility (IOU) holding a franchise agreement
25 with a City, County, or City and County have on its Board of Directors a representative of each

1 jurisdiction with which it holds an agreement to assure that the public interest is represented in
2 its corporate governance; and, be it further

3 RESOLVED, That the Board of Supervisors hereby directs the Clerk of the Board to
4 forward a fully conformed copy of this resolution to the California legislative delegation
5 representing San Francisco, the President pro Tem of the California Senate, the Speaker of
6 the California Assembly and to the executive directors of the League of California Cities and
7 the California Association of Counties.

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