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

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

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

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

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

WHEREAS, The 1939 Agreement giving PG&E a low franchise fee in perpetuity was signed just one year before the U.S. Supreme Court found San Francisco in violation of the Raker Act and ordered the city to establish a public power system, and
WHEREAS, PG&E, since being granted a franchise monopoly, has spent millions of dollars to prevent the city from instituting public power in the city in accordance with the Supreme Court’s decision; and,

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

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

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

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

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

WHEREAS, Current California Case law holds that ordinances granting franchise agreements in perpetuity are binding, finding specifically “the ordinances granted franchises within the purview of the legislative delegation given to the board of supervisors under Government Code section 26001 and that the indeterminate length of the franchises did not render the ordinances void.” (County of Kern v. Pacific Gas & Electric Co. (1980) 108 Cal.App.3d 418, 166 Cal.Rptr. 506); and
WHEREAS, County of Kern v. Pacific Gas & Electric Co. limits PG&E’s franchise fee to the amount defined in the 1939 Agreement which can thus not be altered without a change in California State Law thereby preventing the triggering the provisions of San Francisco Administrative Code Chapter 11; now, therefore, be it

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

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

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

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

RESOLVED, That the Board of Supervisors requests the California Legislature to impose a requirement that any Investor Owned Utility (IOU) holding a franchise agreement with a City, County, or City and County have on its Board of Directors a representative of each
jurisdiction with which it holds an agreement to assure that the public interest is represented in
its corporate governance; and, be it further

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

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

June 29, 2010 Board of Supervisors - ADOPTED
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Maxwell and Mirkarimi

I hereby certify that the foregoing Resolution was ADOPTED on 6/29/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date: July 9, 2010

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Angela Calvillo
Clerk of the Board