Resolution urging the California Public Utilities Commission to adopt regulations of Transportation Network Companies that comply with San Francisco's 2014 Fair Chance Ordinance, recognizing the importance of a level regulatory playing field between Transportation Network Companies and traditional taxi cab companies, and supporting the California Public Utilities Commission's solicitation for comment regarding the current method of criminal background checks for Transportation Network Companies.

WHEREAS, On June 22, 2016, the California Public Utilities Commission (CPUC) opened solicitation for comments regarding whether the current method of conducting criminal background checks for Transportation Network Company (TNC) drivers is as effective as fingerprint-based criminal background checks; and

WHEREAS, The CPUC's current inquiry is in furtherance of an its Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, which was issued in December 2012; and

WHEREAS, The CPUC has stated that among its goals is “to assess public safety risks, and to ensure that the safety of the public is not compromised” in the operation of so-called “Transportation Network Companies,” which include for-hire service providers Uber, Lyft, and other such companies, and to ensure that the services of a regulated utility are provided in a safe manner; and

WHEREAS, The CPUC does not have jurisdiction over and cannot regulate traditional taxi cab companies, but has nevertheless asserted jurisdiction over the regulation of TNCs,
thereby preempting and preventing the City and County of San Francisco from regulating those TNCs; and

WHEREAS, By preempting the City and County of San Francisco from regulating TNCs, the CPUC has facilitated the development of a two-tiered and anti-competitive playing field for traditional taxi cab services and TNCs, respectively; and

WHEREAS, The City and County of San Francisco recognizes that traditional taxi companies are subject to stricter regulation than TNCs – including limits on the number of taxis on the road, regulation of the prices that taxis can charge passengers, requirements that taxi cab drivers complete a certified driver training course to operate vehicles that have commercial license plates and 24/7 commercial insurance, mandatory participation in the SFMTA’s Paratransit Program, and for the provision of basic benefits like workers’ compensation for all employee taxi drivers on the road – which regulations do not apply to TNCs; and

WHEREAS, The City and County of San Francisco further recognizes the merit in the aforementioned regulations and other non-mentioned regulations of traditional taxi cab service providers, and also recognizes the importance of creating a level regulatory playing field for traditional taxi cab companies and TNCs that incorporates existing responsible regulations of the traditional taxi cab industry; and

WHEREAS, Taxi regulators in the most populous parts of California, including San Francisco, currently require drivers to undergo fingerprint-based criminal background checks processed by the California Department of Justice (CALDOJ), utilizing fingerprint images to automatically search government criminal record databases maintained by the CALDOJ and the FBI; and

WHEREAS, Unlike the regulations governing taxi cabs, there is no current requirement for prospective TNC drivers to undergo fingerprint-based criminal background checks; and
WHEREAS, Irrespective of the relative accuracy of various criminal background check procedures, the City and County of San Francisco in 2014 recognized that individuals in San Francisco and across the country are often unnecessarily plagued by old or minor arrest or conviction records that discourage them from applying for jobs that would automatically exclude them from consideration upon disclosure of their criminal history; and

WHEREAS, In recognition of the health and safety benefits to increasing access to employment for people with arrest or conviction records, in order for them to reintegrate into their communities, in 2014 the City and County of San Francisco adopted the “Fair Chance Ordinance,” which limits an employer’s use of any criminal history information in the hiring process and specifically prohibits any consideration of arrests not leading to conviction, participation in diversion or deferral of judgment programs, expunged convictions, juvenile convictions, convictions more than 7 years old, and criminal offenses other than felonies or misdemeanors; and

WHEREAS, The 2014 Fair Chance Ordinance also restricts consideration of prior conviction histories to those convictions that directly relate to the job in question and which have a specific negative bearing on the person’s ability to perform the duties of the job in question; and

WHEREAS, Recognizing that fingerprint-based background checks, without sufficient and enforceable controls on the use of information, and without reliable means of ensuring that information contained in law enforcement databases is complete and accurate, can have a discriminatory impact on communities of color; and

WHEREAS, The City and County of San Francisco nevertheless recognizes that the disparity between background checks for traditional taxi cab drivers and TNC drivers contributes to a grossly unequal regulatory framework; and
WHEREAS, The CPUC’s current solicitation for comment presents an opportunity for advancing a criminal background check process that advances the safety of TNC passengers as well as the public health and safety of prospective drivers, including those with unrelated prior conviction histories seeking to reintegrate into society while eliminating the two-tiered regulatory system for traditional taxi cab services and TNCs; now, therefore, be it

RESOLVED, That the City and County of San Francisco appreciates and hereby responds to the California Public Utilities Commission’s solicitation for comment regarding whether the current method of conducting criminal background checks for TNC drivers is as effective as fingerprint-based criminal background checks; and, be it

FURTHER RESOLVED, Irrespective of the relative accuracy of various means of conducting criminal background checks, that the City and County of San Francisco urges the California Public Utilities Commission to adopt regulations that would require TNC drivers to submit to the same criminal background checks that are required of traditional taxi cab drivers and to seek other means of creating a level regulatory playing field between traditional taxi cab companies and TNCs; and, be it

FURTHER RESOLVED, That the use of any information obtained through a criminal background check, regardless of form, should be restricted in accordance with the 2014 Fair Chance Ordinance, which, among other restrictions, prohibits consideration of arrests not leading to a conviction, participation in or completion of diversion or deferral of judgment programs, expunged or inoperative convictions, juvenile convictions, convictions over 7 years old, criminal offenses other than felonies or misdemeanors, and convictions not directly-related to the employment in question.
Resolution urging the California Public Utilities Commission to adopt regulations of Transportation Network Companies that comply with San Francisco’s 2014 Fair Chance Ordinance, recognizing the importance of a level regulatory playing field between Transportation Network Companies and traditional taxi cab companies, and supporting the California Public Utilities Commission’s solicitation for comment regarding the current method of criminal background checks for Transportation Network Companies.

July 12, 2016 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
   Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

July 12, 2016 Board of Supervisors - CONTINUED AS AMENDED
   Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

July 19, 2016 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
   Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

July 19, 2016 Board of Supervisors - CONTINUED AS AMENDED
   Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

July 26, 2016 Board of Supervisors - CONTINUED
   Ayes: 8 - Breed, Campos, Cohen, Kim, Peskin, Tang, Wiener and Yee
   Excused: 1 - Farrell
   Absent: 2 - Avalos and Mar

August 02, 2016 Board of Supervisors - ADOPTED
   Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee
I hereby certify that the foregoing Resolution was ADOPTED on 8/2/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board