

1 [Resolution expressing opposition to the indefinite detention provisions of the National
2 Defense Authorization Act]

3 **Resolution expressing opposition to the indefinite detention provisions of the National**
4 **Defense Authorization Act, instructing public agencies to decline requests by federal**
5 **agencies acting under detention powers, urging law enforcement officials to allow**
6 **detainees to due process and requesting members of Congress to repeal the detention**
7 **provisions of the Act.**

8
9 WHEREAS, The Constitution of the United States and the California Constitution are
10 the basis of our representative democracy and reflect protections that no person will be
11 deprived of life, liberty, or property without due process of the law; and

12 WHEREAS, These founding documents reflect the essential nature of presumed
13 innocence, the right to a speedy public trial before an impartial jury, and other elements of
14 effective due process, and a commitment that no person will be exposed to cruel and unusual
15 punishment; and

16 WHEREAS, The language of Sections 1021 and 1022 of the National Defense
17 Authorization Act (NDAA) on its face permits indefinite military detention without public trial of
18 any person, including US citizens on US soil; and

19 WHEREAS, The NDAA could authorize the indefinite military detention of activists,
20 journalists, lawyers, and other Americans for nothing other than exercising their First
21 Amendment rights of free speech, assembly, and association, thus chilling speech and
22 depriving liberty; and

23 WHEREAS, The indefinite military detention of any person without trial violates the
24 Fifth and Sixth Amendments of the Constitution of the United States, Article III of the
25 Constitution of the United States; and

1 WHEREAS, The NDAA threatens to eliminate the promise of presumed innocence and
2 the right to a fair trial; and

3 WHEREAS, The NDAA's detention provisions could allow the recurrence of torture in
4 military detention in violation of the Eighth Amendment; and

5 WHEREAS, The detention provisions could force US military service members to serve
6 as domestic jailers, in violation of the Posse Comitatus Act, a role for which they are not
7 trained nor is ever appropriate; and

8 WHEREAS, The FBI Director, the Defense Secretary, the Director of National
9 Intelligence, the Department of Defense, and many of our nation's generals, admirals, and
10 servicemen and women have opposed the NDAA's detentions provisions; and

11 WHEREAS, The City and County of San Francisco is committed to avoid repeating the
12 tragedies and mistakes of history, including the incarceration of Japanese Americans during
13 the World War II; and

14 WHEREAS, The families of Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi,
15 Japanese Americans incarcerated in World War II, filed an *amicus* brief with the U.S. Court of
16 Appeals for the Second Circuit in *Hedges v. Obama*, a lawsuit that challenges the
17 constitutionality of the NDAA's detentions provisions, citing that, under the pretense of
18 national security, the NDAA essentially repeats the decisions in the discredited World War II
19 legal cases of Korematsu, Yasui, and Hirabayashi, and allows the government to imprison
20 people without any due process rights for an indefinite time; now therefore, be it

21 RESOLVED, That the City of San Francisco strongly affirms our commitment to the
22 rights and liberties enshrined within the Constitution of the United State, including the Fifth
23 Amendment right to due process, the Sixth Amendment right to trial, and the Eighth
24 Amendment prohibition on cruel and unusual punishment; and, be it,

1 FURTHER RESOLVED, That San Francisco public agencies are instructed to decline
2 requests by federal agencies acting under detention powers granted by the NDAA or any
3 authorization of force, that could infringe upon constitutional freedom of speech, religion,
4 assembly, privacy, or rights to counsel; and, be it,

5 FURTHER RESOLVED, That we ask federal and state law enforcement officials acting
6 within the City and County of San Francisco to work in accordance with local law, and in
7 cooperation with the San Francisco Sheriff’s Department and San Francisco Police
8 Department, by allowing any detainees among San Francisco’s residents or visitors access to
9 a trial, counsel, and due process, as provided by Article III of the Constitution of the United
10 States, the Bill of Rights, and Article I of the California Constitution; and, be it,

11 FURTHER RESOLVED, That the Board of Supervisors asks our U.S. senators and
12 members of the Congress monitor the implementation of the NDAA and actively work for the
13 repeal of the NDAA’s detentions provisions, to restore fundamental rights and liberties
14 embodied in the California Constitution and the Constitution of the United States. To that end,
15 the City and County of San Francisco shall immediately send copies of this resolution to each
16 of our senators and members of Congress, the US Senate Committee on the Judiciary, the
17 US Senate Select Committee on Intelligence, the US House of Representatives Permanent
18 Select Committee on Intelligence, the US Attorney General, and the President of the United
19 States.