[Urging President Bush to stop the warrantless surveillance of Americans and to follow the Foreign Intelligence Surveillance Act.]

Resolution urging President Bush to stop the warrantless surveillance of Americans and to follow the Foreign Intelligence Surveillance Act.

WHEREAS, The safety and security of San Franciscans depends upon the maintenance of a vigorous democracy under law, in which the branches of government work effectively and cooperatively together; and

WHEREAS, The Fourth Amendment of the United States Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"; and,

WHEREAS, The Foreign Intelligence Surveillance Act of 1989 (FISA) comprehensively regulates electronic surveillance within the United States, with the goal of striking a proper constitutional balance between protection of civil liberties and safeguarding national security; and,

WHEREAS, FISA provides a legal mechanism for the United States government to engage in surveillance of a foreign power or of an agent of a foreign power in instances when it is likely that the surveillance will acquire the contents of a communication with a United States-based person; and,

WHEREAS, FISA and specified provisions of the federal criminal code are the exclusive means by which electronic surveillance may be conducted, and federal law makes criminal any electronic surveillance not authorized by statute; and,
WHEREAS, FISA provides specific exceptions that allow the President to authorize
warrantless electronic surveillance for foreign intelligence purposes in emergency situations,
provided an application for judicial approval from a FISA court is made within 72 hours and
within 15 calendar days following a declaration of war by Congress; and,

WHEREAS, President Bush has directed the National Security Agency (NSA) to
conduct secret and warrantless electronic surveillance of persons within the United States
without any plausible legal authority for such surveillance, and is in direct violation of FISA
and the Fourth Amendment to the United States Constitution; and,

WHEREAS, The actions diminish the rule of law and do not enhance national security;
now, therefore, be it

RESOLVED, That the San Francisco Board of Supervisors supports the vigorous
pursuit and prosecution of persons and organizations that plan terrorist acts anywhere in the
world; and, be it

RESOLVED, That the San Francisco Board of Supervisors calls upon the President to
abide by the limitations which the Constitution imposes on the executive branch under our
system of checks and balances and respect the essential roles of the legislative branch and
the judicial branch in ensuring that our national security is protected in a manner consistent
with constitutional guarantees; and, be it

RESOLVED, That the San Francisco Board of Supervisors expresses deep concern
over President Bush's order to the National Security Agency to intercept telephone and e-mail
exchanges between the United States and overseas without court authorization, as required
under FISA; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to affirm
that the Authorization for Use of Military Force of September 18, 2001, Pub. L. No 107-40,
115 Stat. 224§ 2(a) (2001) (AUMF), did not provide a statutory exception to the FISA
requirements, and that any such exception can be authorized only through affirmative explicit congressional action; and, be it

RESOLVED, That the San Francisco Board of Supervisors requests the President to immediately direct the NSA to observe FISA's requirements, and urges the President, if he believes that FISA is inadequate to safeguard national security, to seek appropriate amendments or new legislation rather than acting without explicit statutory authorization; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to reaffirm that their vote for the Authorization to Use Military Force (AUMF) in Afghanistan which President Bush relies on to justify the warrantless surveillance of U.S. residents was not a vote to authorize such warrantless surveillance; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges all City and County of San Francisco government agencies and each person and business entity that receives a request to cooperate in the electronic surveillance of a person within the United States to obtain assurance from the state or federal government agency making the request that it is lawful under FISA or applicable provisions of the federal criminal code; and, be it

RESOLVED, That the San Francisco Board of Supervisors requests that the State Attorney General assist, and if needed, intervene on behalf of, any San Francisco resident who is asked to cooperate in the electronic surveillance of a person within the United States when such person did not receive an assurance that the request is lawful under FISA or applicable provisions of the federal criminal code law; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to conduct a comprehensive investigation to determine: (a) the nature and extent of electronic surveillance of U.S. persons conducted by any U.S. government agency for foreign intelligence purposes that does not comply with FISA; (b) what basis or bases were advanced
for the legality of such surveillance; (c) whether Congress was properly informed of and
consulted as to the surveillance; (d) the nature of the information obtained as a result of the
surveillance; (e) whether the surveillance information collected was retained or shared with
other agencies; and (e) whether this information was used in legal proceedings against any
U.S. citizen or resident; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to ensure
that such proceedings are open to the public, conducted in a fashion that will provide a clear
and credible account to the people of the United States, except to the extent the Congress
determines that any portions of such proceedings must be closed to prevent the disclosure of
classified or other protected information; and, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to
thoroughly review and make recommendations concerning the intelligence oversight process,
and urges the President to ensure that the House and Senate are fully and currently informed
of all intelligence operations as required by the National Security Act of 1947; and, be it

FURTHER RESOLVED, That the Board of Supervisors directs the Clerk of the Board
to send a copy of this resolution to President George Bush, U.S. Attorney General Alberto
Gonzales, U.S. Senate Majority Leader Bill Frist, Senator Barbara Boxer, Senator Dianne
Feinstein, Congresswoman Nancy Pelosi, members of the California Congressional
Delegation, and to State Attorney General Bill Lockyer.
Resolution urging President Bush to stop the warrantless surveillance of Americans and to follow the Foreign Intelligence Surveillance Act.

April 4, 2006  Board of Supervisors — ADOPTED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

I hereby certify that the foregoing Resolution was ADOPTED on April 4, 2006 by the Board of Supervisors of the City and County of San Francisco.

Mayor Gavin Newsom

Date Approved

APR 06 2006