

On behalf of the Santa Cruz County Chapter of the American Civil Liberties Union, with more than 2,000 members, the Board appreciates this opportunity to express its views on the pending trespass ordinance, which would prohibit lingering for more than fifteen minutes while parking or retrieving a car or bicycle in any of the city's four public parking garages or on any of the city's 15 downtown surface parking lots.

As citizens who use these parking garages and lots, we join the many other citizens, local businesses, public employees and council members who have expressed increasing concern about parking in public places where criminal and other threatening behavior poses a serious public safety issue. We also understand that because the city's limited resources are insufficient to increase police patrols and to hire more garage attendants, the council would look to any other available means of addressing these safety concerns, including the expansion of its criminal laws.

Accordingly, we would support a new ordinance that effectively and fairly addresses the downtown parking safety concerns. That ordinance, however, just as with any new criminal law, must be based upon a reasonable exercise of the city's police powers. The public, and this council, must be assured that any civil liberties that would be curtailed by a new ordinance are outweighed by an objective, demonstrated need to protect public safety. The ACLU recognizes that it is the government's duty to strike a proper balance, and that public safety sometimes outweighs the exercise of First Amendment rights. We all know that freedom of speech never justifies yelling "fire" in a crowded theater.

The threshold question, then, is whether the pending ordinance constitutes a reasonable balance between the loss of civil liberties on the one hand, and, on the other, the objective evidence in the record before the council of serious threats to public safety. Regrettably, we find that it does not. From a civil liberties standpoint, either the record must be bolstered with more substantial public safety evidence, or the ordinance itself must be scaled back. We want to see a parking facility ordinance that effectively deals with clearly defined threats to public safety and that can withstand any legal challenge. Just as the City Council has recently invited ACLU participation in crafting the Police Department's surveillance policy, we also stand ready to play a constructive role with respect to the trespass ordinance.

To be clear, our principle concern is about the fifteen downtown surface parking lots. Because the enclosed public parking garages, with confined spaces and limited avenues of escape, pose an inherently greater public safety threat, enforcing the trespass ordinance there constitutes a far more reasonable and appropriate balancing of that threat as against the curtailment of civil liberties.

As to the public surface parking lots, however, the public safety case contained in the current record before the council is woefully insufficient. We urge the council to reconsider the sweeping scope of this ordinance as it should be understood that, stripped of its "parking lots are only for parking" shell, it is tantamount to criminalizing the exercise of any First Amendment rights on any public surface parking lot at any time.

The civil liberties affront is compounded by knowing that most people who would be in violation of the ordinance are likely to be innocent citizens. Consider, for example, drivers reading or listening to the radio in their cars, sorting papers, attending to children, changing diapers, coping