

with a disabled car emergency, waiting for a tow truck, etc., plus those disabled drivers and passengers for whom 15 minutes would be an unreasonable if not impossible deadline.

The Downtown Commission, which held several meetings to consider the trespass ordinance at the city council's request, invited ACLU participation. We first raised there our concern about the absence of any safety data, or even anecdotal evidence, presented by either the Public Works or Police Departments of public safety threats concerning *any* of the city's 15 downtown surface parking lots. We explained then, and emphasize now, that even under the most minimal constitutional "reasonableness" test, the burden of persuasion is on the government. By that, we mean nothing more than simply having cogent evidence in the record of a serious threat to public safety as establishing a reasonable basis for adopting the trespass ordinance. We applaud the Downtown Commission for adopting recommendations to the council clearly embracing that cautionary view, and particularly for cautioning the council about applying the ordinance to surface parking lots in the absence of persuasive safety information.

It appears that in response to the Downtown Commission's views, new public safety evidence pertaining to surface parking lots is now included in the Agenda Report to the council. We note that the evidence relies entirely on "incident call" data, which, as the report itself acknowledges, "is not always clear" as to the actual location of the incident. Further, it cites no safety data whatsoever for three-fourths of the downtown surface parking lots. Only four of the 15 downtown surface parking lots are covered, which are cited as generating 508 calls, which represents about one percent of the 56,000 calls for service received by the Police Department. Moreover, only 67 of those 508 calls are explained, leaving more than 85 percent of those calls unaccounted for. Those 67 calls are broken down in the report into eight categories described as crimes. But more than half of those calls (37) are for categories not actually found in the penal code.

It is even more lamentable that the record is devoid of any actual arrest data. We are *not* suggesting that there is no crime problem, but only that the record requires persuasive evidence of it. For example, the Police Department reports that last year there were 249 cases of auto theft throughout the city. It seems likely that some of those car thefts were from parking lots. We are also *not* suggesting that the absence of arrest data is through any fault of the Police Department. Arrest location data are regularly maintained only by geographic beat. We presume that it would require sorting the Downtown arrest records in order to identify arrests made for actions taking place on the surface parking lots. In our view, that is exactly the kind of information that the Council should consider important enough to have prepared before acting on the trespass ordinance.

Therefore, we think it is critically important that the ordinance in its current form be amended in several respects:

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