

# **Arcata City Council passes binding local Ordinance refusing compliance with USA Patriot Act**

**Adopted 2 April 2003**

1. Arcata to defy Patriot Act, *Arcata Eye*, 3/10/03
2. Arcata City Council passes "Anti-Patriot Act" ordinance, *Arcata Eye*, 4/7/03
3. Arcata the defiant, *San Francisco Chronicle*, 4/13/03
4. Local Officials Rise Up to Defy The Patriot Act, *Washington Post*, 4/21/03
5. City criminalizes Patriot Act - Antiterrorism law is unconstitutional, city officials say, *AP*, 5/18/03

## **Arcata the defiant**

**Town ordinance penalizes officials who cooperate with Patriot Act, but law may not stand up in court**

by Kevin Fagan  
13 April 2003

*San Francisco Chronicle*

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2003/04/13/BA283270.DTL>

Arcata, that tiny North Coast bastion of the robustly liberal, has quietly made itself the first city in the nation to outlaw voluntary compliance with the USA Patriot Act.

Town leaders know their new law outlawing the bigger law is probably illegal. And they don't know anyone local who's had troubles because of the Patriot Act.

But the very existence of the sweeping federal policy -- passed by Congress swiftly after Sept. 11, 2001, to expand powers to search, conduct surveillance and throw people in jail during terrorism probes -- so rubbed them the wrong way that they felt they had to make a stand.

So about a week ago, the Arcata City Council approved an ordinance telling its management workers they cannot "officially assist or voluntarily cooperate" with any investigators trying to carry out what the city considers provisions of the Patriot Act that violate the Bill of Rights and the Constitution.

Which, city leaders said, is pretty much all of the act except the heading on the governmental letterhead.

"We already had a resolution condemning the Patriot Act, and that was all well and good, but we needed something with some bite in it," said David Meserve, the councilman who introduced the ordinance. "A resolution makes a recommendation, but this now actually takes on the force of law.

"Call it a pre-emptive attack. Only not a violent one."

The fine for breaking the new law is \$57. The ordinance officially kicks in May 2. It applies only to the top nine managers of the city, telling them they have to refer any Patriot Act request to the City Council.

Brian Willson, the national peace protester who lost his legs trying to block a Concord munitions train in 1987, lives in Arcata and helped draft the law.

"I think a lot of people are freaking out," he said. "You can see the developing police state, and we have to start opposing it."

### **Liberal Bastion**

Arcata has about 16,000 residents, about 5,000 of whom are students at Humboldt State University. Its biggest claims are the university, an annual race to determine the best or weirdest human-powered sculpture, and its liberal resolutions or legal actions to oppose seemingly everything from the war in Iraq to global warming.

So even though few outside the city limits have so far noticed the new law, it is right in line with the city's tendency for "never a dull moment," said City Attorney Nancy Diamond.

The law also seems to be right in line with most townsfolk.

"I don't blame them (the council) for saying 'no,' " Susan Mattson said as she rang up customers at her Garden Gate gift shop overlooking the rustic little town square. "I don't know anyone in town who likes the Patriot Act."

She said she's never seen any FBI agents probing around Arcata. "But they're certainly welcome -- if they want to buy something," she said with a chuckle.

The vote on April 2 for the law in Arcata was 4 to 1, but even the lone "no" voter said his quibble was more with the tactic than the concept.

"I find the act very troubling and very scary in many areas, but this is not the right venue to challenge it," said Councilman Michael Machi. "You take it through the court system."

### **Considerable Public Input**

Several council meetings leading up to the vote drew dozens of public speakers, and city officials recalled a stray few who thought the Arcata measure wasn't a good idea. Machi said he still feels "disappointed" the whole issue wasn't discussed more before passage.

"Just remember that this is the only city in the whole United States that has done this, so I am not in the minority," he said.

Resolutions condemning the Patriot Act already have passed in 83 cities from San Francisco, Oakland and Berkeley to Baltimore and Detroit, and Mill Valley joined the list just Monday.

But no city had gone all the way to an ordinance, said Nancy Talanian, co-director of the Bill of Rights Defense Committee of Florence, Mass.

Talanian, whose organization has been urging cities to pass anti-Patriot Act resolutions since 2001, was "delighted" that Arcata pushed the envelope.

Among the main objections to the act are that it gives investigators greater authority to jail suspects, plant wiretaps, sift through e-mails and scrutinize what library books people check out.

So far, there seem to be no opportunities to use Arcata's soon-to-be-enacted law, because no federal or state agents have ever tried to use the Patriot Act in Arcata. But that's not for a lack of wanting. City leaders are actually itching for a fight.

"We're not going to go looking for it, but we'd welcome it," said City Manager Dan Hauser. "Maybe then this act could actually be tested in court."

### **Law Probably Illegal**

He admitted that the law is "probably illegal, if you accept the Patriot Act as legal" -- and that viewpoint was shared by veteran San Francisco trial attorney John Kecker, who compared Arcata's ordinance to local medical marijuana laws, which have been squashed in federal court challenges.

"I applaud Arcata, but the law is completely illegal," Kecker said. "We used to have something called the U.S. Constitution, and supposedly we still do -- and the Constitution says the federal law is supreme in the land. So it's a nonstarter."

If City Manager Hauser or anyone else is hoping to stare down some agent holding a Patriot Act subpoena, he shouldn't hold his breath, cautioned LaRae Quy, spokeswoman for the San Francisco FBI office, whose jurisdiction includes Arcata. She said there are no plans to go dashing the 279 miles up to Arcata anytime soon. And even if there were, she doubted there would be trouble.

"I really don't understand what the concerns are with the act," Quy said. "What it did was primarily streamline existing laws on the books. I know some people feel their privacy rights are being violated, but I think there's some hysteria out there . . . some misunderstanding.

"We still have to show probable cause for any actions we take," she said. "It's not just an agent descending and saying, 'Hey, I want to go in and see what this person is doing.' "

## Local Officials Rise Up to Defy The Patriot Act

by Evelyn Nieves

21 April 2003

*Washington Post*

<http://www.washingtonpost.com/ac2/wp-dyn/A64173-2003Apr20?language=printer>

ARCATA, Calif. -- This North Coast city may look sweet -- old, low-to-the-ground buildings, town square with a bronze statue of William McKinley, ambling pickup trucks -- but it acts like a radical.

Arcata was one of the first cities to pass resolutions against global warming and a unilateral war in Iraq. Last month, it joined the rising chorus of municipalities to pass a resolution urging local law enforcement officials and others contacted by federal officials to refuse requests under the Patriot Act that they believe violate an individual's civil rights under the Constitution. Then, the city went a step further.

This little city (pop.: 16,000) has become the first in the nation to pass an ordinance that outlaws voluntary compliance with the Patriot Act.

"I call this a nonviolent, preemptive attack," said David Meserve, the freshman City Council member who drafted the ordinance with the help of the Arcata city attorney, city manager and police chief.

The Arcata ordinance may be the first, but it may not be the last. Across the country, citizens have been forming Bill of Rights defense committees to fight what they consider the most egregious curbs on liberties contained in the Patriot Act. The 342-page act, passed by Congress one month after the Sept. 11, 2001, terrorist attacks, with little input from a public still in shock, has been most publicly criticized by librarians and bookstore owners for the provisions that force them to secretly hand over information about a patron's reading and Internet habits. But citizens groups are becoming increasingly organized and forceful in rebuking the Patriot Act and the Homeland Security Act for giving the federal government too much power, especially since a draft of the Justice Department's proposed sequel to the Patriot Act (dubbed Patriot II) was publicly leaked in January.

Both the Patriot Act and the Homeland Security Act, which created the Cabinet-level department, follow the Constitution, says Justice Department spokesman Mark Corallo. Federal law trumps local law in any case, which would mean Arcata would be in for a fight -- a fight it wants -- if the feds did make a Patriot Act request. LaRae Quy, a spokeswoman for the San Francisco FBI office, whose jurisdiction includes Arcata, said that the agency has no plans to use the Patriot Act in Arcata any time soon, but added that people misunderstood it. Although some people feel their privacy rights are being infringed upon, she said, the agency still has to show "probable cause for any actions we take."

But to date, 89 cities have passed resolutions condemning the Patriot Act, with at least a dozen more in the works and a statewide resolution against the act close to being passed in Hawaii.

"We want the local police to do what they were meant to do -- protect their citizens," said

Nancy Talanian, co-director of the Bill of Rights Defense Committee in Florence, Mass., which gives advice to citizens groups on how to draft their own resolution.

Although cities across the country passed antiwar resolutions before the attack on Iraq with little notice from the administration, Talanian said that the anti-Patriot Act resolutions are "not quite as symbolic" as those that passed against the war.

"Normally, the president and Congress don't pay that much attention when it comes to waging war," she said. "But in the case of the Patriot Act, the federal government can't really tell municipalities that you have to do the work that the INS or the FBI wants you to do. The city can say, 'No, I'm sorry. We hire our police to protect our citizens and we don't want our citizens pulled aside and thrown in jail without probable cause.'"

In Hawaii, home to many Japanese Americans who vividly recall the Japanese internments during World War II, Democratic state Rep. Roy Takumi introduced a resolution on the Patriot Act as a way to raise debate, he said. Although the resolution may be seen as symbolic, he said, "states have every right to consider the concerns of the federal government and voice our opinions. If a number of states begin to pass similar resolutions, then it raises the bar for Congress, making them realize our concerns. I hope to see what we've done here plays a role in mobilizing people to take action."

Lawmakers and lobbyists on both ends of the political spectrum are beginning to sound more alarms about the antiterrorism act, which gave the government unprecedented powers to spy on citizens. Rep. Bernard Sanders (I-Vt.) has introduced a bill, the "Freedom to Read Protection Act" (H.R. 1157), that would restore the privacy protections for library book borrowers and bookstore purchases. The bill has 73 co-sponsors.

Earlier this month, Rep. F. James Sensenbrenner Jr. (R-Wis.), the chairman of the House Judiciary Committee, and Rep. John Conyers Jr. (Mich.), the ranking Democrat, asked the Justice Department for more information on the government's use of the Patriot Act to track terrorists, questioning what "tangible things" the government can subpoena in investigations of U.S. citizens.

Sensenbrenner and Conyers sent an 18-page letter to Attorney General John D. Ashcroft, challenging the department's increased use of "national security letters" requiring businesses to hand over electronic records on finances, telephone calls, e-mails and other personal data.

They questioned the guidelines under which investigators can subpoena private books, records, papers, documents and other items; asked whether the investigations targeted only people identified as agents of a foreign power; and asked the attorney general to "identify the specific authority relied on for issuing these letters."

The Justice Department said it is working on the request.

But citizens groups, worried about a timid Congress, are not waiting for their elected officials to act before launching a campaign against the proposed sequel to the Patriot Act, the "Domestic Security Enhancement Act." The Idaho Green Party has begun the Paul Revere Project to stop Patriot Act II before it can be passed.

The proposed addendum to the Patriot Act, which the Justice Department has insisted is only a draft of ideas, would enlarge many of the controversial provisions in the first Patriot Act. It would give the government authority to wiretap an individual and collect a person's DNA without court orders, detain people in secret and revoke citizenship, among other powers.

The proposed sequel to the act has galvanized communities in a bottom-up, grass-roots way, Talanian said. "Before a community votes on resolutions, they engage in forums and petitioning to show the town council they want this. After, communities band together and do things like visit the offices of their entire congressional delegations and say our communities have these concerns and now we are asking you to help."

In Arcata, where forums drew little debate, the new law is an unqualified hit. It passed by a vote of 4 to 1, but has what looks like near-unanimous approval from residents.

Meserve, a weather-worn builder and contractor in his fifties who wears a ponytail and flannel shirts, hasn't felt so popular since he won his council seat running on the platform, "The Federal Government Has Gone Stark, Raving Mad."

"The ordinance went through so easily that we were surprised," he said. "We started going up to people asking what they thought. They thought, 'great.' It's our citywide form of nonviolent disobedience."

The fine for breaking the new law, which goes into effect May 2, is \$57. It applies only to the top nine managers of the city, telling them they have to refer any Patriot Act request to the City Council.

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