

RESOLUTION NO. 2003-

RESOLUTION TO PROTECT CIVIL LIBERTIES

Note: The resolution presented to the council by Paul Copeland on January 30, 2003, is presented below with modifications drafted by the city attorney's office. Deletions to the resolution presented are ~~lined through~~ and additions are underlined.

Recitals:

A. WHEREAS, ~~†~~The City of Ashland is proud of its commitment to protecting the civil rights and liberties of its residents and believes that the preservation of civil rights and liberties is essential to the well-being of a democratic society; and

B. WHEREAS, ~~†~~The City of Ashland believes that there is no inherent conflict between national security and the preservation of liberty and that government can protect public safety without impairing civil rights and liberties; and

C. WHEREAS, ~~†~~The new federal anti-terrorism policies may pose a threat to the civil rights and liberties of all persons within the City of Ashland, and a particular threat to those who are immigrants, Muslims, or people of Arab or South Asian descent; and

D. WHEREAS, ~~†~~The First Amendment of the United States Constitution specifies that no law be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances"; and

E. WHEREAS, ~~†~~The Fourth Amendment declares that "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

F. WHEREAS, ~~†~~The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law"; and

G. WHEREAS, ~~†~~The Sixth Amendment guarantees defendants "the right to a speedy and public trial, by an impartial jury..., and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense"; and

H. WHEREAS, ~~†~~The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"; and

~~I. WHEREAS,~~†The Fourteenth Amendment prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws"; and

~~J. WHEREAS,~~†Federal policies adopted since September 11, 2001, including provisions in the USA PATRIOT Act (Public Law 107-56) and related executive orders, regulations and actions may threaten fundamental civil rights and liberties by being interpreted to:

———~~(a)1.~~ Authorizing the indefinite incarceration or deportation of non-citizens even if they have not committed a crime (USA PATRIOT Act, Sections 411 and 412);

———~~(b)2.~~ Limiting judicial supervision and civil liberties protections in the application of telephone and internet surveillance (USA PATRIOT Act, Section 216);

———~~(c)3.~~ Expanding the authority of federal agents to conduct secret searches so that the subject of a search warrant is unaware that the property has been searched (USA PATRIOT Act, Section 213);

———~~(d)4.~~ Granting law enforcement and intelligence agencies broad access to sensitive medical, mental health, library, business, financial, educational, and other records about individuals without first showing probable cause or evidence of a crime (USA PATRIOT Act, Sections 215, 218, 219, 358, 507, and 508);

———~~(e)5.~~ Limiting constitutionally protected speech through unchecked authority of the Attorney General and the Secretary of State to designate domestic groups as "terrorist organizations" using overbroad definitions of "terrorism" (USA PATRIOT Act, Section 411);

———~~(f)6.~~ Authorizing the indefinite incarceration of citizens designated by the President as "enemy combatants" without access to counsel or meaningful recourse to the federal courts (see *Hamdi* and *Padilla* cases);

———~~(g)7.~~ Authorizing the FBI to conduct surveillance of religious services, internet chatrooms, political demonstrations, and other public meetings without evidence that a crime has been or may be committed (Attorney General's guidelines and procedures relating to criminal investigations and national security, issued May 30, 2002);

———~~(h)8.~~ Limiting the disclosure of public documents and records under the Freedom of Information Act ("Memorandum for Heads of all Federal Departments and Agencies," Attorney General John Ashcroft, Oct. 12, 2001);

———~~(i)~~9. Permitting wiretapping of conversations between federal prisoners and their lawyers (28 CFR 501.3); and

———~~(j)~~10. Establishing secret military tribunals for terrorism suspects (Military Order, Nov. 13, 2001);

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

Section 1. The City of Ashland affirms its commitment to preserve the constitutional rights of all persons within the City of Ashland, including equal protection of the laws, freedom of speech, religion, and assembly, freedom from unreasonable search and seizure, and privacy, without regard to race, ethnicity, national origin, religion, age, sexual orientation, gender, economic status, marital status, citizenship status, or disability.

Section 2. The City of Ashland directs the Ashland Police Department:

A. To request written assurance from the applicable federal authority, when an individual in the custody of the City of Ashland who is not a member of the U.S. military forces is to be placed in federal custody under the authority of the USA PATRIOT Act, that the individual will not be subjected to military detention, secret detention, secret immigration proceedings, or detention without access to counsel, and to refrain from assisting the federal authority in obtaining custody of that individual absent such assurance;

B. To continue to determine particularized suspicion of criminal activity before engaging in surveillance of individuals or groups, and to refrain, whether acting alone or with other law enforcement agencies, from collecting or maintaining information about the political, religious or social views, associations or activities of any individual or group unless such information directly relates to a criminal investigation (in accordance with ORS 181.575);

C. To continue to carry out investigations without regard to race, religion, ethnicity or national origin, age, sexual orientation, gender, economic status, marital status, citizenship status or disability, except when such factors are part of the description of a particular suspect, or an element of a state crime, and to refrain from participating in enforcement of federal immigration laws, which are the responsibility of the Immigration and Naturalization Service (in accordance with ORS 181.850);

D. Except as provided in ORS 133.724, 133.726 and 133.619, ~~To~~ continue to provide prior or simultaneous notice of the execution of a search warrant within the City of Ashland to the person whose property is the subject of such a warrant, and to refrain from participating in a joint search with any law enforcement agency ~~absent assurance that such notice will be provided where prior notice has not been given to the subject pursuant to section 213 of the USA PATRIOT Act~~; and

E. To refrain from undertaking or participating in any federal clandestine program such as the Terrorism Information and Prevention System (TIPS), which encourages members of the general public to spy on their neighbors, colleagues or customers, while continuing to participate in programs such as Amber Alert which depend on widespread dissemination to the public of information relevant to specific criminal activity.

~~Section 3. The City of Ashland requests that public schools and institutions of higher learning within the City of Ashland provide notice to individuals whose education records have been obtained by law enforcement agents pursuant to section 507 of the USA PATRIOT Act.~~

~~Section 4. The City of Ashland requests that libraries within the City of Ashland prominently notify all library patrons that their personal library records may be obtained secretly by the federal government pursuant to section 215 of the USA PATRIOT Act.~~

~~Section 53. The City of Ashland directs the City Administrator to periodically seek information from federal authorities and transmit annually to the City Council an assessment of the impact within the City of Ashland regarding requests that the U.S. Attorney's Office, the Office of the Federal Bureau of Investigation, the Oregon State Police, and any other Federal, State law enforcement officials and local law enforcement with any such information report annually to the Ashland City Council the extent and manner in which they have acted within the City of Ashland under the USA PATRIOT Act and new Executive Orders, including but not limited to disclosing:~~

A. The names of all residents of the City of Ashland who have been arrested or otherwise detained by federal authorities as a result of terrorism investigations since September 11, 2001; the location of each detainee; the circumstances that led to each detention; the charges, if any, lodged against each detainee; and the name of counsel, if any, representing each detainee;

B. The number of search warrants that have been executed in the City of Ashland without prior notice to the subject of the warrant pursuant to section 213 of the USA PATRIOT Act;

C. The extent of electronic surveillance carried out in the City of Ashland under the Foreign Intelligence Surveillance Act or powers granted in the USA PATRIOT Act;

D. The extent to which federal authorities are monitoring political meetings, religious gatherings, or other activities protected by the First Amendment within the City of Ashland;

E. The number of times education records have been obtained from public schools and institutions of higher learning in the City of Ashland under section 507 of the USA PATRIOT Act;

F. The number of times library records have been obtained from libraries within the City of Ashland under section 215 of the USA PATRIOT Act; and

G. The number of times that records of book purchases have been obtained from bookstores within the City of Ashland under section 215 of the USA PATRIOT Act. Section ~~6~~4. The City of Ashland directs the City Administrator to transmit a copy of this resolution:

A. To Oregon's United States Senators and Congresspersons, accompanied by a letter urging them to monitor federal anti-terrorism tactics and work to repeal provisions of the USA PATRIOT Act and other laws and regulations that infringe on civil rights and liberties;

B. To Governor Kulongoski, State Legislators representing Ashland, and leaders of the State Legislature, accompanied by a letter urging them to ensure that state anti-terrorism laws and policies be implemented in a manner that does not infringe on civil liberties as set forth in this resolution; ~~and~~

C. To President Bush and Attorney General Ashcroft; and

D. To Jackson County, the Jackson County Library, Southern Oregon University and Ashland School District #5.

Section 5. This resolution takes effect upon signing by the Mayor.

This resolution was read by title only in accordance with Ashland Municipal Code §2.04.090 duly PASSED and ADOPTED this _____ day of _____, 2003.

Barbara Christensen, City Recorder

SIGNED and APPROVED this _____ day of _____, 2003.

Alan W. DeBoer, Mayor

Reviewed as to form:

Paul Nolte, City Attorney