

by Becky Johnson

“What if,” Santa Cruz City Councilmember Cynthia Mathews mused, “a musician decided to play the same song again and again outside of someone’s store?” Her offhand comment occurred during a council discussion of a vast new array of downtown ordinances all addressing “behaviors” on Pacific Avenue. These repressive laws were not deliberately aimed at criminalizing the “status” of being homeless, the City Council claimed, but somehow it’s always the poor and homeless whose behavior earns a citation.

No one had testified that the repetitive-singing-song syndrome had ever happened. Even the voluminous chronology of Pacific Trading Company’s complaints compiled by merchant Anandi Heinrich by arrangement with Redevelopment Agency analyst Julie Hendee made no mention of someone playing the same song over and over.

But in January of 2003, the council passed the “Move-Along” law, championed by City Councilmembers Porter, Mathews, and Rotkin. [See *Street Spirit*, March 2003, “Santa Cruz Liberals Back Police Against the Homeless.”]

Under the new law, MC 5.43.020(2), a musician with an open guitar case, a homeless person with a handkerchief on the sidewalk seeking spare change, or an activist at a table registering voters — all had to move along after no more than one hour. After an hour, they must move at least 100 feet and not return for 24 hours with the same “display device.”

Other provisions of the Downtown Ordinances (directed against the homeless, but sweeping up street performers and political tablers as well, in their need to be “content-neutral”) made 80 percent of even the broadest sidewalks on Pacific Avenue illegal for traditional street performers, needy panhandlers, or political tablers.

In cities across the country, laws against

the courts have ruled that these laws are so vague as to be unconstitutional, and that you can’t be arrested for doing nothing. What loitering laws still exist have to be coupled with a real crime, such as casing a bank prior to a robbery or Berkeley’s 1994 “loitering with intent to sell drugs” ordinance. Still, cities can’t help but think, plot,

plan and hope for new laws that can remove the people they want to remove and yet feel free and user-friendly for the right kind of people.

In late June 2003, Santa Cruz police officers attempted to cite activist Steve Argue when he refused to move his “display device” — a table with political literature — from in front of Heinrich’s business after only one hour’s time. He was arrested briefly as a result. Later, on July 6, he again set up his display table in front of Heinrich’s business; and while distributing literature urging passers-by to boycott her business, he was again arrested by the SCPD for refusing to move his table after one hour. Since his card table had

**“This is a victory in defense of free speech rights. Limiting political tabling to one hour is an overbroad restriction on free speech that brings police scrutiny, intimidation, and enforcement against a constitutionally protected activity.”**

— Santa Cruz activist Steve Argue

been confiscated by the police, his display device was an ironing board with a huge “Repeal the Downtown Ordinances” sign on it. Heinrich was one of the most vocal supporters of the ordinances.

As the police were driving Argue away for the second time, Matthew Hartough, an activist with HUFF (Homeless United for Friendship and Freedom), set up a tiny wooden table with a few flyers on it. An hour later, he too was taken off to jail in handcuffs. But Hartough went limp and it took four cops to drag him to the back of a waiting police car only 12 feet away.

**JUDGE BARTON DECLARES MOVE-ALONG LAW UNCONSTITUTIONAL**

In court, Hartough’s four charges of failing to move along after one hour, resisting arrest, giving a false name (he gave no name at all), and lying down on the sidewalk (yes, that’s illegal too) were never filed and the charges disappeared.

Argue’s charges should have resulted in a misdemeanor prosecution, since his two infraction charges occurred within six months of each other. The City Attorney used a new provision of the Municipal Code to lower the charges to infractions, without Argue’s permission as required by the state penal code. This denied Argue the option of a trial by jury and the

right to a public defender.

If charged as a misdemeanor, convictions can result in a jail sentence of up to six months and a fine of up to \$1000. District Attorney Bob Lee opted to not prosecute. Hence, the prosecution fell back on Deputy City Attorney Wendy Morgan.

Attorney Tony Bole put on a pro bono defense of Steve Argue, and in a pre-trial motion, moved to have the charges struck by arguing the law is unconstitutional because it discriminates against non-commercial speech. Apparently, Bole found that merchants can easily acquire permits to place commercial display devices in front of their stores all day long; but an activist could not get such a permit for a

permit. That means we have no free speech rights at all.” Since True opted to settle, the law he was arrested under is still on the books and could conceivably be used against a less-informed musician.

But the City of Santa Cruz, despite its desperate cries of shrinking revenues and a recent rise in the sales tax to meet those costs, has continued with dozens of arrests and prosecutions for behaviors that strain the imagination to be considered criminal acts.

For example, street flutist Mu was cited twice for playing within ten feet of a building with an open flute case (open to solicit donations). Jason Paschal was cited for tarot card reading without a permit; and the author of this article was cited twice and arrested once for using sidewalk chalk on a public sidewalk. HUFF activist and *Street Spirit* writer Robert Norse has twice been convicted of crossing the street, and faces trial for amplified music without a \$33 amplified sound permit when he played a police harassment video on the public sidewalk downtown. Norse goes to trial next month.

What will they arrest people for next month? Well, last year they outlawed bubble-blowing, frisbee tossing, playing hacky-sack, bouncing any kind of ball, and even outlawed tossing your car keys to your wife. The City of Santa Cruz is shameless in what they will charge people with and very serious about prosecuting them. And it’s all done with our money.

But while the City and Redevelopment Agency continue to work overtime to find new ways to harass and drive away the poor and homeless from downtown stores, street musicians and activists formed a new organization: SAFE (Society for Arts and Free Expression). For the past eight Wednesday nights, the street musicians have been meeting at the corner of Lincoln and Pacific Avenue to play music, set up a political table, and serve free food to anyone who wants it. Though spending more than one