



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: December 14, 2020

Item Description: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order

Submitted by: Councilmember Harrison and Councilmember Hahn

- Added Councilmembers Bartlett, Hahn, and Taplin as cosponsors.
- Clarified and condensed Whereas clauses.
- Clarified Resolved clauses regarding dispatch and 311 procedures.

RESOLUTION NO. ##,###-N.S.

ESTABLISHING LOCAL LAW ENFORCEMENT POLICY PURSUANT TO THE NOVEMBER 19, 2020 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH LIMITED STAY AT HOME ORDER AND THE DECEMBER 3, 2020 REGIONAL STAY AT HOME ORDER

WHEREAS, in response to increasing infections and in anticipation of possible shortages in hospital capacity during the 2020-2021 winter season, on November 19, 2020 Acting State Public Health Officer Erica S. Pan issued a "Limited Stay At Home Order"¹ effective in counties under Tier One (Purple) of California's Blueprint for a Safer Economy; and

WHEREAS, the Order requires that in Tier One Counties "all gatherings with members of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households cease between 10:00pm PST and 5:00am PST, except for those activities associated with the operation, maintenance, or usage of critical infrastructure or required by law"; and

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WHEREAS, the Order "does not apply to persons experiencing homelessness"; and

WHEREAS, the Order, which resembles a curfew, lacks clarity as to explicit enforcement mechanisms, and includes terms subject to varied interpretations, which may generate confusion for California and Bay Area residents seeking in good faith to comply; and

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WHEREAS, on December 3, 2020, Dr. Pan issued a follow-up Regional Stay at Home Order² stating that "All individuals living in the Region [for which adult ICU capacity is less than 15%] shall stay home or at their place of residence" with specified limited exceptions; and

WHEREAS, reasonably crafted and tailored health and safety restrictions and orders are necessary in these times, but they must be implemented and enforced without bias and with due consideration of systemic disparities in law enforcement; and

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WHEREAS, curfews and emergency health and safety orders inherently pose sweeping restrictions on the public assembly, free expression, movement, commerce, and disproportionately affect marginalized, vulnerable, and working communities; and

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WHEREAS, ongoing analyses of City of Berkeley police stop data from multiple organizations suggest that Black and Latinx people are significantly more likely to be

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¹ California Department of Public Health Limited Stay At Home Order, November 19, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/limited-stay-at-home-order.aspx>.

² California Department of Public Health Regional Stay At Home Order, December 3, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Regional-Stay-at-Home-Order.aspx>.

stopped by police or subject to police use of force; and

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WHEREAS, the June 2020 First Amendment curfew imposed by the Alameda County Sheriff and the Berkeley City Manager, and ratified by the Berkeley City Council, in response to an overwhelmingly peaceful Black Lives Matter protest movement and concerns about alleged criminal activity, correlated with significant increases law enforcement racial disparities within Berkeley; and

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WHEREAS, on June 3, 2020 the American Civil Liberties Union of Northern California submitted a letter to the Alameda County Sheriff and Board of Supervisors, stating that the Order was "neither authorized by state statutory law nor consistent with the freedoms guaranteed by the United States and California Constitutions" and disparately impacted working people and other groups; and¶

WHEREAS, the above-referenced State Orders, if enforced inappropriately, could disproportionately impact low-income people and people of color, and have the potential to increase the frequency of interactions between law enforcement and members of these groups; and

¶
WHEREAS, following the June curfew and anticipation of the possibility of prospective curfews, the Berkeley City Council passed legislation directing the City Manager and City Attorney to provide Council with possible amendments to the Berkeley Municipal Code and/or policies to clarify and codify policies, procedures, scope etc. with respect to declaring Local Emergencies, including pandemics, to protect civil

WHEREAS, across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to stop individuals circulating in the community during the nighttime curfew period based solely on suspicion of violating the curfew, with Santa Rosa Police Chief Ray Navarro stating, "We're not going to use the curfew as probable cause to stop anybody;"³ and

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WHEREAS, the Berkeley City Manager and Police Chief have expressed their intention to implement State and local orders through education and outreach, relying on voluntary compliance to the greatest extent possible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City of Berkeley police will not stop individuals driving, or biking, walking or otherwise circulating outside of their homes during curfew hours solely on suspicion of violating curfew terms of the State's November 19, 2020 Limited Stay At Home Order, or the State's December 3, 2020 Regional Stay at Home Order, and the Department will not dispatch or stop or question for these purposes unless there is reasonable suspicion of criminal behavior separate and apart from a curfew violation.

BE IT FURTHER RESOLVED that members of the public reporting alleged violations of the State's November 19, 2020 Limited Stay At Home Order or the State's December 3, 2020 Regional Stay at Home Order to the City of Berkeley will be advised to call or email 3-1-1 to report their observations and concerns, and such reports shall be routed to the City Manager's office for consideration of appropriate enforcement.

³ Will Schmitt, "Sonoma County law enforcement not patrolling for COVID-19 curfew breakers," The Press Democrat, November 20, 2020, <https://www.pressdemocrat.com/article/news/sonoma-county-law-enforcement-not-patrolling-for-covid-19-curfew-breakers/>.