



Kate Harrison
Councilmember District 4

LATE AGENDA MATERIAL

Pursuant to Government Code Section 54954.2(b)

Meeting Date: December 8, 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

Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Harrison submits the attached item to the City Council for placement on the December 8, 2020 special meeting agenda. Gov. Code Section 54954.2(b) (2) states that "Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a)."

This item meets the criteria for "immediate action" as follows:

The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19.

State Health officials have recently issued two vaguely worded Stay At Home Orders that closely resemble curfews. The State's Orders lack critical specificity regarding enforcement procedures and mechanisms. The Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities.

The December 3, 2020 order was issued after the deadline for Council items and has the potential to immediately impact community members. In addition, the November 19, 2020 Order is currently in effect and warrants immediate Council action.

Data analyses suggest that the June 2020 curfew correlated with significant increases law enforcement racial disparities within Berkeley. Across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered

away from home merely on suspicion of violating the State's curfew orders. It is in the public interest for the Council and City to adopt a similar policy.

Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))

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 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

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 has reportedly generated considerable confusion amongst California and Bay Area residents; and

WHEREAS, on December 3, 2020, Dr. Pan issued a follow-up Regional Stay at Home Order² requiring 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 and sensitivity to systemic disparities resulting from law enforcement; and

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

WHEREAS, ongoing analyses of Berkeley policing stop data from multiple organizations suggest that Black and Latinx people were significantly more likely to be stopped by

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>.

police or be subject to police use of force within Berkeley before the pandemic; and

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

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, 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 liberties, protect vulnerable populations and to provide adequate civilian oversight; and

WHEREAS, the State’s Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities; and

WHEREAS, across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered away from home merely on suspicion of violating curfew orders, with Santa Rosa Police Chief Ray Navarro stating, “We’re not going to use the curfew as probable cause to stop anybody. We’re busy enough as it is;”³ and

WHEREAS, the Berkeley City Manager and Police Chief have expressed their intention during past orders and curfew to implement the orders on a voluntary basis to the greatest extent possible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City law enforcement personnel will not pull over drivers, or bicyclists, or stop pedestrians solely for suspicion of violating curfew under 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 City will not dispatch officers for these purposes unless there is suspected criminal behavior or impact to public safety.

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/>.

BE IT FURTHER RESOLVED callers observing 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 will be advised to call 3-1-1 and be routed to the Public Health Division.

