

RESOLUTION NO. 69,680-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" 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 Order 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 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;" 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 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, 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. Nothing in this resolution shall preclude City enforcement of unpermitted gatherings of groups of individuals of multiple households, or any other provisions of any local Health Order or State Health Order.

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 or Police Non-Emergency number after business hours to report their observations

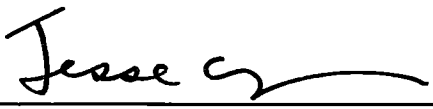
and concerns, and such reports shall be routed to the City Manager's office or appropriate city personnel for consideration of appropriate enforcement.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk