



Office of the City Attorney

ACTION CALENDAR

June 2, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Police Chief

Subject: Resolution Ratifying And Extending Emergency Curfew Order

RECOMMENDATION

Adopt a Resolution (a) ratifying the Emergency Proclamation issued on June 1, 2020, and (b) extending the curfew to 5:00 a.m. on June 5 to align with other cities in the County to protect the lives and property of residents and businesses in Berkeley.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88, on June 1, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to (a) escalating nightly looting in the City of Berkeley and cities around the Bay Area on May 29, 30, and 31, 2020, and (b) the imminent danger that the Berkeley Police Department could not continue to respond to the level of looting that is increasing on a nightly basis.

Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section 2.88.040.A.1, staff recommends the City Council ratify the Proclamation of Local Emergency on June 1, 2020, and extend the Order Imposing a Citywide Curfew through and until June 5, 2020, when the curfew expires in other Alameda County cities.

If at any time the Council determines that the need for continuing the local emergency proclamation has ended before June 5, 2020 at 5:00 a.m., state law directs the Council to terminate the local emergency at the earliest possible date that conditions warrant. (Cal. Gov. Code section 8630(d).)

BACKGROUND

Peaceful protesters have gathered throughout this country and region in response to the death of George Floyd as a result of the use of force by police officers in Minneapolis, Minnesota. Some people have alternatively chosen to use these peaceful protests as cover to commit coordinated, criminal acts resulting in injuries to persons and/or destruction of property during nightly rioting and/or widespread looting over the last several days in cities throughout the region, including in Oakland, San Francisco, Vallejo, Walnut Creek, Pleasant Hill, Emeryville, and here in Berkeley.

In Oakland, during the May 29, 2020 protests, civil unrest occurred, with some people blocking streets, shutting down the Bay Bridge, throwing Molotov cocktails, bottles, and rocks at police officers, and setting fire to and looting various businesses. Also on May 29, 2020, unknown persons committed an unprovoked shooting in which two uniformed federal security officers in Oakland were ambushed, one of whom has died.

In Oakland, during the May 30, 2020 protests, dangerous civil unrest incidents again occurred, with some people throwing bricks, bottles, and rocks at police officers, setting vehicles on fire, throwing Molotov cocktails and M-80 fireworks, and looting various businesses in Oakland and adjacent City of Emeryville. As police attempted to arrest people for criminal violations in the immediate vicinity of the looting, shots were fired at police officers. Police arrested a shooting suspect and recovered a firearm. During the unrest in Oakland, an unidentified driver hit two pedestrians with a car and fled the scene, seriously injuring one of the victims.

In Oakland, San Leandro, Hayward, and elsewhere in the county and region, during the May 31, 2020 protests, looting and violence intensified. In Oakland, armed assailants shot at the Oakland Police Department building. The suspects were pursued and three suspects were arrested, and a firearm recovered.

Police officers in the City of Berkeley (and in other cities in Alameda County) have seen caravans of cars travel into cities and loot retail businesses in coordinated events over four consecutive nights, May 29, 30, 31, and June 1, 2020. We anticipate this to continue. The vast majority of these incidents in Berkeley have taken place after 8:00 p.m. and before 5:00 a.m., including on the night of May 31, 2020, five consecutive hours of commercial burglary attempts and looting between 10:00 p.m. May 31 and 3:00 a.m. June 1. These incidents included 13 cases of completed or attempted looting, including four cannabis dispensaries and the Target store on University twice. Officers recovered two firearms. Although the Berkeley Police Department deployed its full police resources from May 29 to June 1, 2020 to respond to these events and has made numerous arrests, the police were still unable to prevent some instances of looting. Further, the mutual aid system allowing police agencies from other jurisdictions to support each other is under tremendous strain and individual department requests cannot all be met. This is a regional dynamic, requiring regional coordination. As looters are chased out of one city, they are moving on to neighboring cities. If one city doesn't have a curfew, it imperils that city's safety.

Due to these events, a proclamation of a state of local emergency imposing a 2-day curfew was made on June 1, 2020 to address the imminent and extreme peril to the safety of persons and property in Berkeley being caused by nightly looting in Berkeley, and nightly rioting and looting in the surrounding areas, which rioting and looting was likely to continue.

On the night of June 1, 2020, Berkeley officers reported numerous caravans entering Berkeley, and numerous attempts were made to stop these vehicles, which typically fled at high speed, further endangering our community. There were two looting incidents. Looting efforts may have been deterred by the many businesses which boarded up their sites across our city business districts.

In Berkeley, addressing these events, which are likely to continue, will require the combined forces of other agencies to abate, but for which other subdivisions will probably not be able to assist because of riots and looting in their own jurisdictions. This imminent danger to life and property is greatest during the hours of darkness, and it is especially difficult to preserve public safety during such hours. Due to this extreme peril to the safety of persons and property in Berkeley caused by said nightly looting, and the need to restore public order and safety, there is an immediate need to extend the curfew through and until 5:00 a.m. on June 5, 2020.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the Police Department to most effectively address the imminent threat to public safety caused by escalating nightly looting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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Attachment:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION RATIFYING THE
PROCLAMATION OF LOCAL EMERGENCY AND EXTENDING THE EMERGENCY
CURFEW ORDER THROUGH AND UNTIL JUNE 5, 2020

WHEREAS, the Emergency Services Act, Government Code sections 8558(c) and 8630 authorize the proclamation of a local emergency when conditions of extreme peril to the safety of persons and property within the territorial limits of a city exist; and

WHEREAS, pursuant to Government Code section 8630 such an emergency may be proclaimed by the governing body or by an official designated by ordinance adopted by the governing body; and

WHEREAS, Berkeley Municipal Code section 2.88.040 provides that the City Manager, serving as the Director of Emergency Services, may request that the City Council proclaim the existence of a local emergency; and

WHEREAS, under provision of local law, if the City Council cannot be convened and, in the judgment of the Director of Emergency Services, the circumstances warrant it, a proclamation of local emergency may be issued which must be ratified or nullified by the City Council within seven days of issuance; and

WHEREAS, in accordance with authority granted under the above provisions of state and local law, the Director of Emergency Services beginning on June 1, 2020 proclaimed the existence of a local emergency caused by three consecutive nights of looting in Berkeley, and nightly rioting and looting in the surrounding areas, which rioting and looting was likely to continue; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril existed on June 1, 2020, thereby warranting the proclamation of a local emergency.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the Director of Emergency Services' Proclamation of Local Emergency and accompanying Order instituting a curfew from 8:00 p.m. to 5:00 a.m. from June 1, 2020 at 8:00 a.m. to June 2, 2020 at 5:00 a.m., is hereby ratified by the City Council; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the Proclamation of Local Emergency and accompanying Order instituting the curfew is hereby extended through and until 5:00 a.m. on June 5, 2020, unless the Director of Emergency Services in consultation with the Police Chief decides the emergency has abated and the curfew can be lifted before that date and time.