

6/4/20

Item # 1

Julie Minot

From: Dolphin <stardolphin@gmail.com>
Sent: Thursday, June 4, 2020 8:54 AM
To: Mayor and Council
Subject: Santa Clara Curfew Comments

My name is Benjamin Cooley and I'm writing with some concerns about the curfew established in response to the potential looting during the recent unrest.

I am unable to attend the 9:30 council meeting on the state of emergency, due to a preexisting doctors appointment, so I am sending my comments in advance.

I am concerned about the curfew because of how broad it is. While it is incredibly important to provide police with the tools needed to maintain the peace, you generally want such restrictions to be as narrowly tailored as possible, requiring restrictions to be targeted and designed to be the least restrictive on protected activity (protest) as possible. As a quick emergency measure on a Sunday, I can understand the need to do things quickly. However the deceleration of emergency seemed to imply the curfew would last until the issue had died down. Ideally, it would have been replaced with a more narrow set of restrictions quickly, certainly the city should require that before allowing the emergency declaration to be extended beyond a week. This is mostly moot because the curfew only lasted two days, but I would urge the council not to consider such a broad-based measure acceptable in the future. With a little bit of planning, a more narrowly tailored anti-looting measure could be ready for use when this situation comes up again.

Even if a curfew is constitutional (note that ACLU seems to be suing LA over their curfew) a broad based policy is simply not what we want in Santa Clara.

Compare the following statements:

Due to possible looting, curfew between 9pm-5am, anyone outside may be arrested.

Due to possible looting, no groups over 10 may gather outside between the hours 9am-5pm without first informing the police and receiving information on how to avoid getting coopted.

Due to possible looting, the chief of police with probable cause that looting is likely to occur in a particular area, may close sections of streets. When declaring a street closed, signs will be posted at the entrance and announced by megaphone. All residents in the closed zone must immediately return to their place of residence within 15 minutes.

A narrower set of restrictions can still give the police what they need.

A blanket curfew is problematic if it is used to proactively shut down activities (like protests) because "they might get violent". We generally do not proactively block protected activity, only when we see good reason to believe that a particular instance is descending into a problem. That is, we don't pre-judge protests as 'going to become violent' simply because other protests have become violent or based on their rhetoric. Instead, we need evidence (cause) to believe a particular activity is going wrong.

When someone tries to coopt a peaceful protest as cover for violence and looting, the peaceful protesters victims in the situation too, and you cannot protect them by simply saying they cannot have their protest.

Having such a broad policy also concerns me because it does not seem like it was truly intended to be a strictly-enforced curfew. Since the real intent is targeted toward the protests and looting, but the curfew covers the entire city, a large time window, and all types of groups and sizes, we seem to be relying on police for "Only using it correctly". The problem with such selective enforcement is that even if the policy is, on the face of it, content neutral, if it is being deployed in a selective way you have to worry if the enforcement is also neutral.

Since it is entirely possible that this event is not over and we have to deal with this again in the future, I urge the council to think about how they could have anti-riot emergency provisions that are safe and effective, but more narrowly tailored to reduce the impact on protected activities and the community at large.

PS: Announcing a curfew a little bit before it goes into effect is a good way for it to be viewed as 'an excuse to arrest people' rather than an attempt to manage public safety.

- Ben