

June 11, 2020

Mayor Robin Christiansen
City of Dover
P.O. Box 475
Dover, DE 19903-0475

Sent via U.S. mail and electronic mail to rchristiansen@dover.de.us

RE: City of Dover Curfew

Dear Mayor Christiansen,

Over the past week-and-a-half, municipalities across the country followed one after the other – in a domino effect – imposing curfews on their residents. In almost all cases, public officials justified curfew restrictions as a necessary tool to protect public safety and prevent looting and property damage that followed peaceful daytime protests against rampant police brutality and the murder of George Floyd. In practice, the policies have been used to silence political speech, physically assault journalists, violently attack peaceful protestors, and otherwise curtail the rights of law-abiding citizens.

While nearly every major city in America has since lifted their nighttime curfew orders, a curfew order remains in place in Dover. Dover's municipal code allows for the declaration of a state of emergency and implementation of a curfew when "the city, or any part thereof, is in imminent danger of suffering civil disturbance, disorder, riot, or other occurrence which shall endanger the lives, safety, health or property of the public." Sec. 38-81. For ten days since the implementation of curfew order, the citizens of Dover, Kent County, and the State of Delaware have peacefully protested. There has been no civil disturbance. There has been no disorder. There has been no riot. The only risk to the lives, safety, or health of the public is the continuation of unnecessary law and order tactics that tend only to escalate tensions between the police and the public. It is simply unfathomable that the City of Dover faces a unique threat that warrants stripping citizens of fundamental rights while cities and towns across the country lift curfew restrictions after a series of isolated criminal acts. Given the largely peaceful nature of protests in the area and course of events since the implementation of the city's curfew, it is increasingly concerning that the curfew is being extended, not as a limited, judicious, and

measured public safety tool, but as a means to thwart civil liberties. Furthermore, your public representations and comments regarding the curfew have been misleading, or blatant misrepresentations of the plain language of the declaration – creating further risks of violations of individuals’ civil liberties and reasonable expectation of privacy when out and about or traveling through the city.

While you have defended the curfew as “liberal” and “voluntary,” the plain language of the declaration is inconsistent with your public representations. The executive declaration issued on May 31 implements a curfew which “prohibit[s] any person from being on the public streets, in public places or in any other public place during the hours declared by the mayor to be a period of curfew, provided this shall not include those persons who are caused to be in public places by reason of their employment or a private emergency involving health, safety or protection of property” between 9:00 p.m. and 6:00 a.m. The declaration further “[h]alt[s] or restrict[s] access or egress, on foot or by vehicles, upon public streets to or from the city or any part thereof, and to halt[s] or restrict[s] the movement of trains, automobiles, buses, trucks or other vehicles into, within or from the city” between 9:00 p.m. and 6:00 a.m. Violation of the declaration carries a fine of \$25 to \$1,000. Sec. 38-84. On Tuesday, June 9, 2020, you were quoted in the Delaware State News, characterizing the curfew as follows:

“I appreciate you giving me the opportunity to answer that question because if you go to the city website there are questions and answers about the scope of the curfew. It is a rather liberal curfew. It doesn’t inhibit business. It doesn’t suggest that any businesses are closed. It doesn’t curtail liquor stores from being open, or any other businesses...”

“I have to say that unlike the (COVID-19) pandemic quarantine, (the curfew is) not mandatory. It’s really on a voluntary basis,” he said. “It’s put in place not to curtail the God-given right of our citizens (to protest), but to provide for their public safety...”

“No one is restricted from their movement. Businesses can use their discretion. People who are going about their business are not going to be bothered by the curfew.”

This is not a liberal curfew and it is not voluntary. There is nothing in the plain language of the declaration to suggest it is not mandatory. Individuals who are on public streets, in public places, driving in their cars, or anywhere in the city after 9 o’clock are subject to a Fourth

Amendment stop and detention by law enforcement. Mere presence in public during nighttime hours is reasonable suspicion. By suggesting otherwise, you are placing thousands of unwitting Dover residents and guests of the city at risk of unnecessary police contact and invasions of their personal liberty. All citizens should be bothered that “going about their business” could subject them to a suspicionless stop.

The declaration does inhibit local businesses. Businesses are closing early because people are prohibited from being on the roadways and public places after 9 o’clock.

This declaration creates broad discretion for law enforcement to selectively enforce its provisions, violate civil liberties and freedom of movement, and will likely disproportionately impact people of color living in highly policed areas of the city.

Historically, broad curfews have been a tool to suppress the physical movement and political expression of people of color. The first colonial codes and statutes enacted in the 1690s included curfew provisions that applied exclusively to Africans and Native Americans. Throughout the early 18th century, several colonies passed “acts to prevent disorders in the night.”¹ New Hampshire’s 1726 curfew statute prohibited “Indian[s], negro[es], or Molotto Servant[s]” from being outside of their homes after 9 o’clock, unless it was to perform an “errand for their respective masters or owners.”² The city of Boston established a special patrol to apprehend “all Negro and Molatto Servants” who were out past 10 o’clock. As northern colonies enacted curfews, southern colonies followed. Exclusively white politicians in North Carolina, South Carolina, Mississippi, and Virginia implemented curfews intended to restrict the freedom of movement of people of black people³. These racially discriminatory practices

¹In 1703, the Rhode Island General Assembly passed an Act against people of color implementing an 9 o’clock curfew – “If any negroes or Indians either freemen, servants, or slaves, do walk in the street of the town of Newport, or any other town in this Colony, after nine of the clock of night, without certificate from their masters, or some English person of said family with, or some lawful excuse for the same, that it shall be lawful for any person to take them up and deliver them to a Constable.” Williams, George Washington, *History of the Negro Race in America From 1619 to 1880*. Vol. 1: Negroes as Slaves, as Soldiers, and as Citizens, New York City, Firework Press, 1891.

²Green, B., *Acts and Laws, Passed by the General Court of Assembly of His Majesties Province of New-Hampshire in New-England, Portsmouth, New Hampshire, Dec. 31, 1726*

³Petrella, Christopher, *How curfews have historically been used to restrict the physical and political movements of black people in the U.S.*, Washington Post, June 3, 2020.

persisted throughout the 20th century, with increasing use aimed at stripping people of color of freedom of personal and political movement. Alabama passed a 10 o'clock curfew in 1909 that applied only to black people. Cities across the country implemented overnight curfews in 1919 in response to African American efforts to politically organize. Japanese Americans were subjected to a curfew on the West Coast during World War II. Curfews were implemented across the country in the 1950s and 1960s in response to the American Civil Rights Movement – to silence the movement and criminalize blackness.

Cities across the country have increasingly used curfews as a law and order tool over the past seven decades, and they have disproportionately been used to oppress people of color and limit black freedom. Outside of the United States, with the exception of authoritarian regimes, nearly all free, democratic nations have been unwilling to implement curfews and curtail the rights of all citizens to protect against discrete criminal acts committed by a few. Law and order curfews are truly an American phenomenon. Given the history of curfews, steeped in racism and aimed at suppressing political expression, it should be no surprise that of the over 10,000 people arrested across the country for curfew violations in recent weeks, the vast majority have been peaceful protestors rallying against police brutality and discriminatory law enforcement practices. District Attorneys in many cities have expressed an unwillingness to prosecute curfew violations, and it is likely that the vast majority of these cases will be dismissed. But citizens will carry the impact of these unnecessary interactions with law enforcement for perhaps the rest of their lives. In the short term, many will bear the physical scars of assaults by law enforcement officers, unnecessarily escalating confrontations with peaceful citizens to enforce curfew provisions. The emotional and psychological impact of being taken into custody, placed in handcuffs, and arrested may last a lifetime.

Broad curfews are an aggressive, undemocratic, and un-American strategy with highly detrimental impacts and should be implemented only in the most serious situations when there is a truly imminent threat to public safety. There are reasons why the majority of cities and towns across the county have lifted their curfew orders – they are ineffective. They are rooted in a history of racism, oppression, and efforts to curtail peaceful assembly and speech. They are disproportionately used to detain, arrest, and search peaceful actors. They unnecessarily escalate

police interactions with the public. Most importantly – a political movement is not a threat to public safety. Speech and assembly are not a threat to public safety. There is no imminent threat to public safety at this time.

Please do not equate the continued exercise of peaceful assembly, speech, and protest, with the isolated incidents of property destruction and theft on May 31. Ongoing protests should rightfully continue until significant public policy changes have been implemented, until police practices are modified, until fellow officers and prosecutors speak up when they see misconduct, until law enforcement officers are held accountable for misconduct, and until all citizens are treated equally in our criminal justice system, regardless of the color of their skin. There may be marches in the streets in Dover for years to come. They will be peaceful, as they have proven to be for eleven days.

At a time when the nation is standing up in peaceful demonstration, not just against police brutality and misconduct but also in opposition to the breadth of police power and discriminatory exercise of police discretion, it is an affront to citizens of this community to strip the people of their rights to freedom of movement, speech, assembly, and liberty while providing law enforcement with unlimited discretion to stop, detain, search, and charge citizens with a violation of the law. It is an affront to the intelligence of the residents of this city to suggest that there is an “imminent” (meaning “about to happen”) threat to public safety that could last long into the future, but has not manifested in nearly two weeks. It is an affront to the intelligence of the residents of this city, as we watch city after city lift their curfews, to suggest that the city of Dover is subject to a unique threat to public safety that threatens no other city or town in the state, and no major American city. It is an affront to sensible public policy to be moving closer toward a police state in this moment. As a Dover business owner and resident, I urge you to lift the citywide curfew issued on May 31, 2020.

Kind Regards,



Adam Windett