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Heather L. Adams
District Attorney

TO: Lancaster County Chiefs of Police Association
FROM: Heather L. Adams, District Attorney Lancaster County
DATE: May 9, 2020
RE: Updated Enforcement of Governor's Orders

Beginning on March 19, 2020, and through May 8, 2020, Governor Wolf in combination with the Department of Health has issued numerous orders taking broad and far reaching actions regarding operations of, among other things, "non-life sustaining" businesses.

The Governor's original and subsequent orders provided for local officials to enforce the orders to the full extent of the law. Recognizing the extraordinary powers granted upon the Governor during a disaster emergency and the separate powers given to the Secretary of the Department of Health to employ measures necessary for the prevention and suppression of disease, we issued appropriate guidance to local law enforcement regarding the mechanism by which the Governor's Non-Essential Businesses Order could be enforced. We advised law enforcement agencies that the Disease Prevention and Control Act of 1955 grants the Secretary of the Department of Health the authority to issue such orders. We further advised that a violation of the Disease Prevention and Control Law is a summary offense and violators may be fined \$25 - \$300. We stressed, however, that "given the extraordinary circumstances in which we find ourselves" a progressive approach consisting of a warning, followed by notification to the Department of Health, and lastly a summary citation was practical given that the goal was voluntary compliance.

After our initial directive to law enforcement, subsequent orders were issued by the Governor and Secretary of Health which continually changed the key points of the prior orders. On March 23, 2020, the Governor issued a "Stay at Home Order." Again, we issued guidance that citations, if *necessary*, would reference the Disease Prevention and Control Law and that criminal charges should only be filed in the most severe of circumstances and should be approved by the District Attorney's Office prior to filing. Next, on April 15, 2020, the Governor issued an Order Providing Worker Safety Measures to Combat COVID-19. We again stressed to law enforcement that "our goal should be to gain compliance through education, example and warnings" and that enforcement of the measure should be progressive in nature.

Changes have been fluid as evidenced by additional orders that have been recently issued extending the prior orders until June 4, 2020, and additional announcements addressing businesses in

certain counties that could begin to open while denying the same consideration to businesses in other counties. Criminal enforcement of the Governor's order proved to be difficult due to the number of changes in a short period of time. Additionally, although the stated goal of the above measures was to "ensure continuity across all life-sustaining businesses," in reality the directive put law enforcement in uncharted waters and a lack of access to information from the Governor's administration proved to make consistent enforcement difficult, if not impossible. By example, waivers were granted to certain businesses who then began operations, however, law enforcement did not have access to the applications for waivers which stated the businesses' permitted operations and therefore, could not effectively investigate complaints of non-compliance.

As my learned colleague from York County, District Attorney Dave Sunday, stated in a memo to law enforcement issued May 9, 2020:

In order to properly enforce [the Governor's Orders] citizens must clearly be aware of the differentiation between criminal and non-criminal conduct. The language of such penal regulations can neither be vague nor overbroad.

Additionally, citizens cannot be subjected at risk of criminal penalty to restrictions whose terms continuously change. Rapid changes in the definition of what constitutes criminal conduct renders the application of criminal law arbitrary and impossible to follow or defend against.

Violations of the Governor's Order / Updated Enforcement Guidance, May 9, 2020.

I join with my colleague from York in concluding that the fluid changes to the scope and application of the Governor's orders combined with the lack of access to waiver information renders criminal enforcement impossible as prosecutors and law enforcement officials must be able to consistently enforce the law. Therefore, this office will not prosecute any citations for alleged criminal violations of the above-mentioned orders and directives of the Governor's administration regarding the operation of non-life sustaining businesses.

It should be made clear to businesses, especially those who are licensed by the state of Pennsylvania, that this office only can address the criminal penalties associated with the Governor's orders and regulations and we offer no opinion and take no position on the weighty civil or administrative penalties that may be imposed on any business found to be non-compliant according to the Department of Health.

Moving forward, law enforcement is encouraged to address potential violations of the orders and regulations by continuing the sound path already taken and continue to educate and lead by example as we ultimately strive to ensure public safety. Certainly, criminal charges may still be filed under the Crimes Code, Vehicle Code, or The Drug Act for any violations found at call outs for non-compliance of the above orders.

Finally, I commend you on the job thus far given unprecedented challenges. Throughout the above changes our guidance and your enforcement remained thoughtful and measured. It is my hope that this approach will best serve the interest of the public as we begin to move forward to rebuild our community.