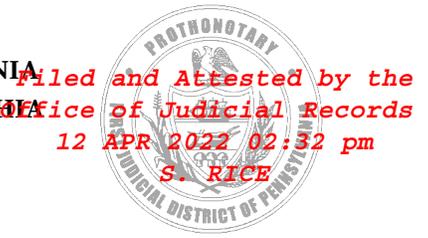


FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA



James Doster
PLAINTIFF,

v.

City of Philadelphia
DEFENDANT

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, PA 19107
(215) 238-6333
TTY (215) 451-6197

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el di nero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentr a escrita abajo para averiguar donde se puede conseguir asistencia legal.

Asociacion De Licenciado De Filadelfia
Servicio De Referencia E Informacion Legal
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Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION-LAW

James Doster :
 :
 :
 vs. : April Term, 2021
 : No. _____
 :
 City of Philadelphia :

COMPLAINT

The Board of Health’s mask mandate is illegal. The City’s Code does not permit mask mandates except perhaps in the initial phase of an infectious-disease emergency. Within the meaning of the Code, the initial phase of the COVID-19 emergency is long since over. Any emergency authority is too.

It’s been more than two years since COVID-19 restrictions began. Even still, the City purports to rule by the whim of bureaucrats. They have no power to do that. Only our elected representatives in City Council may decide. If a mask mandate remains a wise policy, Council can enact it. But the Code does not permit the unelected Board of Health to subject us to a mask mandate without our representatives’ consent.

PARTIES

1. Plaintiff James Doster resides in the County of Philadelphia.

2. Defendant City of Philadelphia is a political subdivision located solely within Philadelphia County.

3. The City maintains the office of its Law Department at 1515 Arch Street, 14th Floor, Philadelphia, PA 19102.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the City because it is a political subdivision of the Commonwealth of Pennsylvania.

5. Under Pa.R.C.P. 2103(b), A Philadelphia County is the proper venue for this action because this action is brought against a political subdivision located in Philadelphia County.

FACTUAL BACKGROUND

6. The City has imposed mask mandates through various means during the outbreak of SARS-CoV-2.

7. Currently, the mask mandate exists through the City of Philadelphia Board of Health's Third Consolidated and Restated Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (the "Regulation"), as amended.

8. The Board initially adopted the Regulation on February 25, 2022.

9. On March 10, 2022, the Board amended the Regulation.

10. The Regulation is attached as Exhibit A.

11. The amendment to the regulation is attached as Exhibit B.

12. The Regulation requires masking in certain indoor locations unless

the City is in “all clear” COVID-19 conditions (the “Mask Mandate”).

13. “All clear” conditions exist only if certain metrics relating to the number of SARS-CoV-2 infections, hospitalizations, and case count are met.

14. If “all clear” conditions do not exist, the Regulation requires masking in certain indoor locations (the “Mask Mandate”).

15. Yesterday, on April 11, 2022, the Health Department announced via its Twitter account that the City was no longer in “all clear” conditions but instead “Level 2: Mask Precautions” conditions.

16. The tweet is attached as Exhibit C.

17. The tweet declared that masks would be required starting April 18, 2022.

18. To our knowledge, no more formal documentation of the new mask requirement yet exists.

19. To the extent that the City has adopted or adopts some other rule that purports to require masking, we also challenge it as part of the “Mask Mandate.”

20. Plaintiff does not wish to comply with the Mask Mandate.

21. At prior times when the City imposed a mask mandate, Plaintiff has violated its requirements.

22. Plaintiff could be subject to sanctions if he violated the Mask Mandate.

LEGAL BACKGROUND

23. The City has promulgated many orders and regulations addressing

SARS-CoV-2 and COVID-19.

24. These documents have a standard recitation of the alleged authority for these actions.

25. Consistently, the City claims that Section 6-601 to 6-606 and 6-610 of the Code authorize its actions.

26. The City is not more specific.

27. However, the City's actions make clear what authority it believes supports its orders.

28. The Code provides authority for "Emergency Epidemic Control[s]" under § 6-205.

29. In imposing restrictions, the City consistently describes its actions as "Emergency" measures.

30. Accordingly, the City appears to be relying on § 6-205 for its masking rules.

31. We are aware of no other authority that could plausibly authorize mask mandates.

32. Section 6-205's grammar and punctuation is not a model of clarity, providing in full that:

Where a communicable disease which constitutes a serious danger to health is spreading either in the City or in the communities surrounding the City, and threatens to reach epidemic proportions unless immediately controlled; where the danger thereof is such that the Board does not have time to list the said disease as quarantinable and issue regulations for its effective control; and where the Mayor of the City has suspended the requirements of Section 8-407 of the Charter,

the Department shall have the authority to issue orders, which shall be effective until the Board may meet and promulgate regulations, listing said disease as a quarantinable disease and providing for quarantine or isolation of persons who have, or are reasonably suspected of having, or have been exposed to such disease, providing for the control of animals, the control of environmental sanitation, and for such other measures as are necessary to prevent the spread of said disease.

33. The “Department” refers to the Department of Health.

34. The “Board” refers to the Board of Health.

35. Adding numbering, spacing, and punctuation of our own,

highlighted in red, we believe that § 6-205 should be interpreted as follows:

[1] Where a communicable disease which constitutes a serious danger to health is spreading either in the City or in the communities surrounding the City, and threatens to reach epidemic proportions unless immediately controlled; ¶

[2] where the danger thereof is such that the Board does not have time to list the said disease as quarantinable and issue regulations for its effective control; and ¶

[3] where the Mayor of the City has suspended the requirements of Section 8-407 of the Charter, ¶

the Department shall have the authority to issue orders;—
which shall be effective until the Board may meet and promulgate regulations—[a] listing said disease as a quarantinable disease and providing for quarantine or isolation of persons who have, or are reasonably suspected of having, or have been exposed to such disease, [and] [b] providing[:] ¶

[i] for the control of animals[,] ¶

[ii] [for] the control of environmental sanitation, and ¶

[iii] for such other measures as are necessary to prevent the spread of said disease.

36. Our understanding of § 6-205 is as follows:

a. Only the Department of Health has authority under § 6-205.

b. Section 6-205 provides the Department with the authority to issue emergency “orders” to take any of the lettered actions.

c. The Department’s authority under § 6-205 exists only when all three numbered conditions are satisfied.

d. The Department has no authority to act under § 6-205 if any of the following are true: (i) the Board has had time to meet and issue regulations; (ii) there is no active and valid suspension of § 8-407 of the Home Rule Charter; or (iii) a disease has already reached “epidemic proportions.”

37. Once the Department loses its emergency authority under § 6-205, the Board and Department may exercise only those powers that Council granted to it in the rest of Chapter 6-200.

38. Council did not provide the power to mandate masks except arguably as an emergency order under § 6-205.

39. Without an additional grant of authority from Council, the Board may not impose a mask mandate.

40. While the Department may have had authority under Code § 6-205 to issue a mask mandate in the initial phase of the SARS-CoV-2 outbreak, it no longer has that authority.

41. City Council must enact an ordinance to permit the City to impose a

mask mandate.

CAUSES OF ACTION

42. Plaintiff brings three causes of action seeking a declaration that the Mask Mandate is invalid.

43. Each of these counts is brought under the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531–7541.

44. An actual dispute between the parties exists regarding the legality of the Mask Mandate.

COUNT I: DECLARATORY JUDGMENT

45. Neither the Board nor any other component or officer of the City has may impose the Mask Mandate.

46. The Board has met and promulgated regulations relating to SARS-CoV-2 and COVID-19.

47. Because it has done so, there is no longer any emergency authority under § 6-205.

48. No other provision of the Code permits the Mask Mandate.

WHEREFORE, Plaintiff ask this Court to declare that the Mask Mandate is illegal, permanently enjoin enforcement of the Mask Mandate, and to enter any other relief that this Court deems just and proper.

COUNT II: DECLARATORY JUDGMENT

49. There is a SARS-CoV-2 and COVID-19 epidemic.

50. The epidemic is global.
51. The World Health Organization and others have declared SARS-CoV-2 and COVID-19 a worldwide pandemic.
52. Millions of people in the United States have been infected with SARS-CoV-2.
53. Millions of people in the United States have suffered the symptoms of COVID-19.
54. As of April 2022, the City’s own statistics indicate that at least 278,000 people in Philadelphia have tested positive for SARS-CoV-2.
55. Many more Philadelphians than that were infected with SARS-CoV-2 even though they never received a reported, positive COVID-19 test; they may not have been tested or they may have self-tested using an “at home” test without reporting their positive result.
56. Under § 6-205, the Department of Health has emergency authority only if a disease “threatens to reach epidemic proportions unless immediately controlled.”
57. There is no longer any emergency authority under § 6-205 because SARS-CoV-2 is not “threaten[ing]” to “reach epidemic proportions” but already has done so.
58. No other provision of the Code permits the Mask Mandate.

COUNT III: DECLARATORY JUDGMENT

59. Authority exists under § 6-205 only if the Mayor has suspended the requirements of § 8-407 of the Charter.

60. On March 11, 2020, the Mayor suspended § 8-407.

61. On information and belief stemming from correspondence between the undersigned and a senior Law Department attorney, the City purports to claim that the March 2020 suspension remains in effect.

62. The suspension of § 8-407 is invalid.

63. Annotation 11 to § 8-407 indicates that the Mayor's authority to suspend § 8-407 is limited to "emergencies" where "disaster may be courted" without following the "regular procedure of" § 8-407.

64. There is no emergency and so any suspension of § 8-407 is illegal.

65. In the United States, federal, state, and local governments began to impose restrictions to address the SARS-CoV-2 and COVID-19 pandemic in March 2020.

66. Given the length of time since the COVID-19 epidemic began, there is no "emergenc[y]."

67. There is no such thing as a 25-month emergency justifying a government in refusing to follow ordinary procedural requirements.

68. The Mayor may no longer suspend § 8-407.

69. Because the suspension of § 8-407 is invalid, the City lacks any authority under Code § 6-205.

70. No other provision of the Code permits the Mask Mandate.

WHEREFORE, Plaintiff ask this Court to declare that the Mask Mandate is illegal, permanently enjoin enforcement of the Mask Mandate, and to enter any other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Daniel J. Auerbach

Daniel J. Auerbach (I.D. No. 316856)

Dated: April 12, 2022

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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James Doster :
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CERTIFICATE OF SERVICE

I hereby certify that I served this paper on every attorney for the City of Philadelphia of which I am aware who is or may be responsible for this matter:

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/s/ Daniel J. Auerbach
Daniel J. Auerbach (I.D. No. 316856)

Dated: April 12, 2022

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CERTIFICATE OF PUBLIC ACCESS POLICY COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel J. Auerbach
Daniel J. Auerbach (I.D. No. 316856)

Dated: April 12, 2022