



Legislation Text

File #: 2021-0618, Version: 1

AN ORDINANCE TO REQUIRE PERSONS TO WEAR FACE MASKS IN PUBLIC SERVICE AREAS IN CITY OWNED BUILDINGS AND PLACES OF PUBLIC ACCOMMODATION SUBJECT TO REASONABLE EXEMPTIONS AND TO DECLARE AN EMERGENCY

WHEREAS, infections, hospitalizations and deaths of Fayetteville’s unvaccinated residents are again surging because of the Delta Variant of the Covid-19 virus; and

WHEREAS, Governor Hutchinson has proclaimed a new declaration of disaster emergency because of the new pandemic of unvaccinated Arkansans; and

WHEREAS, the Pulaski County Circuit Court has issued an Order to temporarily enjoin enforcement of Act 1002 which had limited the State, counties, and cities from enforcing broad mask mandates for private places of public accommodation and school districts from protecting their students even during this increasing pandemic; and

WHEREAS, the most important duty of the City of Fayetteville is to protect the safety and preserve the health of its citizens, residents and visitors; and

WHEREAS, now that Act 1002 has been preliminarily enjoined by the Pulaski Circuit Court, Arkansas school boards and cities may again act to protect their citizens by enforcing face mask requirements now being recommended by the Center for Disease Control and Prevention and the Fayetteville Board of Health.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that a renewed pandemic of the unvaccinated caused by the Delta Variant of Covid-19 is surging in Fayetteville, threatening to overwhelm hospital resources and staff, and causing grievous infections, hospitalizations and deaths of even young and previously healthy unvaccinated persons.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents require that all persons within public service areas in all places of public accommodation including City buildings are required to constantly wear face masks covering the nostrils and mouth of such persons, subject to the following exceptions:

- A. Masks may be removed while consuming food or drinking a beverage if social distancing and disinfection best practices are also followed.
- B. Settings with ten (10) or fewer persons present, such as small business offices which do not serve the public in person, and areas without normal public access, such as semi-private offices and workshops,

- do not require masks, unless persons cannot follow social distancing best practices.
- C. Reasonable accommodations may be made for individuals with a disabling condition that prevents wearing a face mask.
 - D. Masks may be removed in outdoor settings generally while best practices to maintain social distance are followed. Masks shall be worn at managed events when attendance and format prevent social distancing.
 - E. Children of less than two years of age shall not be required to wear face masks.

Section 3: Sunset Clause. Upon the dissolution of the preliminary injunction or any succeeding permanent injunction against Act 1002, the termination of the Governor's current Proclamation of pandemic emergency, or the reduction of the hospitalizations and deaths of Fayetteville residents now being caused by the Delta Variant of Covid-19 drops below levels which the City Board of Health has determined should require masks of even vaccinated persons, this ordinance shall automatically terminate within 14 days unless the City Council passes an Ordinance to extend this Ordinance's effect.

Section 4: Penalty. Persons violating this ordinance's requirement to properly wear face masks pursuant to this ordinance's terms shall be subject to the penalties allowed in §10.99 **General Penalty** of the *Fayetteville Code*.

Section 5: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because widespread use of a face mask is necessary to prevent the more rapid spread of the Delta Variant of the Covid-19 virus, especially when unvaccinated persons gather in indoor areas. Therefore, for the public peace as well as the health and safety of Fayetteville residents, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

Legistar ID No.: _____

AGENDA REQUEST FORM

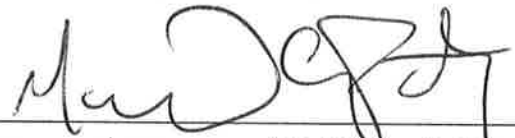
FOR: Special City Council Meeting of August 6, 2021

FROM: Council Member Matthew Petty

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO REQUIRE PERSONS TO WEAR FACE MASKS IN PUBLIC SERVICE AREAS IN CITY OWNED BUILDINGS AND PLACES OF PUBLIC ACCOMMODATION SUBJECT TO REASONABLE EXEMPTIONS AND TO DECLARE AN EMERGENCY

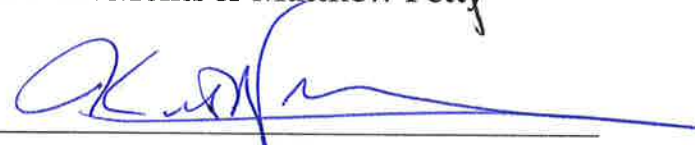
APPROVED FOR AGENDA:



Council Member Matthew Petty



Date



City Attorney Kit Williams
Approved

August 6, 2021
Date



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council

CC: Susan Norton, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: August 6, 2021

RE: New Mask Mandate Ordinance

Council Member Petty requested that I draft a new mask mandate ordinance for a Special City Council Meeting to be held at ~~5:30~~ P.M. this afternoon. Attached is my proposed ordinance.

5:40

The new ordinance uses much of the terms including exemptions of the two previous ordinances. It can only be effective as long as the State is enjoined from using Act 1002 to prevent cities from enforcing mask mandates. See you at ~~5:30~~ P.M.

5:40

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION**

VERONICA MCCLANE, ET AL

PLAINTIFFS

v.

60CV-21-4692✓

STATE OF ARKANSAS, ET AL

DEFENDANTS

LITTLE ROCK SCHOOL DISTRICT, ET AL

PLAINTIFFS

v.

60CV-21-4763

**HONORABLE ASA HUTCHINSON,
in his Official Capacity as Governor of
the State of Arkansas, ET AL**

DEFENDANTS

**ORDER FOR DECLARATORY RELIEF
AND PRELIMINARY INJUNCTION**

On the 6th day of August 2021, came on for hearing all pending motions by the parties in the captioned cases, and from the pleadings filed herein and the argument of counsel, the court doth find as follows:

1. Plaintiffs' *Motion for Consolidation Pursuant to Rule 42(a) of the Arkansas Rules of Civil Procedure*, filed on August 5, 2021, in *Little Rock School District and Marion School District v. Honorable Asa Hutchinson*, 60CV21-4763 is granted. Both cases shall hereafter be styled as 60CV-21-4692, which is the earlier case number of the two previously separate cases.

2. The *Motion to Intervene* of Barry Hyde, in his Official Capacity as the County Judge for Pulaski County and Eric Higgins, in his Official Capacity as Pulaski County Sheriff, filed on August 5, 2021, is granted.

3. All of the moving parties allege that Act 1002 of 2021 is unconstitutional in one or more respects and have requested relief pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

4. The parties requested that the court issue a *Temporary Restraining Order*. TROs are customarily issued without notice to any of the defendants and are viable only for a short period of time until a hearing can be arranged. Given the parties, the constitutional issues involved, and the fact that the court was able to expedite the matter on its calendar, the court chose not to issue a TRO. As a hearing was held, the procedural posture shifted to being one of a request for issuance of a preliminary and/or permanent injunction.

5. There are no allegations that the language of Act 1002 is ambiguous or reasonably susceptible to more than one interpretation. In cases challenging the constitutionality of “plain language” legislative enactments, it is the obligation of the courts to give the wording of such enactments their “usual and customary meaning.”

6. In cases challenging the constitutionality of legislative enactments, if there is offending language or punctuation that can be stricken and leave a constitutional remainder, it is the obligation of the courts to strike through the offending language or punctuation and salvage the remainder of the legislative enactment. The courts are, however, prohibited from rewriting or adding language to legislative enactments to make such legislative enactments constitutional.

7. Article 4, §2 of the Arkansas Constitution provides for the constitutional separation of powers doctrine on state-related causes of action.

8. Each of the state’s seventy-five counties is a “political subdivision of the state,” which are included within the language of Act 1002 of 2021.

9. Amendment 55, §3 to the Arkansas Constitution, states:

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; **have custody of county property**; hire county employees, except those persons employed by other elected officials of the county. (emphasis added)

10. Amendment 80, §4 to the Arkansas Constitution, states, in part, “The Supreme Court shall exercise **general superintending control** over all courts of the state...” (emphasis added)

11. A.C.A. §12-75-107, as amended by Act 403 of 2021, legislatively delegates emergency declaration and emergency action authority to the Governor, as the chief executive officer of the state.

12. Act 1002 of 2021, as enacted, facially violates the separation of powers clause in that it attempts to usurp the constitutional authority granted to county judges over county buildings and property.

13. Act 1002 of 2021, as enacted, facially violates the separation of powers doctrine in that it attempts to usurp the exclusive superintending authority concerning the procedure and conduct in the courts of the state that is granted to the Arkansas Supreme Court.

14. Act 1002 of 2021, facially violates the separation of powers doctrine as it usurps the authority specifically granted to the Governor with respect to declarations of emergency as set forth in A.C.A. §12-75-107 (as modified by Act 403 of 2021.)

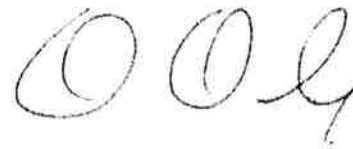
15. Act 1002 of 2021, as enacted, facially violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in public schools and minors in private schools.

16. All other causes of action alleging Act 1002 to be unconstitutional, by any party, for any reason, not specifically addressed herein, are denied without prejudice. The court has determined that resolution of such additional causes of action will require the introduction of testimony and evidence and/or stipulation of facts by and between the parties.

17. Because there is no method by which the court can cure the unconstitutionality of Act 1002 of 2021 without substantially rewriting such legislative enactment, it is the obligation of the court to preliminarily declare that Act 1002 of 2021, in its entirety, is unconstitutional under both the separation of powers clause and the equal protection clause of the Arkansas Constitution.

18. Pending further order of this court, or of a court of superintending jurisdiction, Act 1002 of 2021 is declared unconstitutional and its application, in any manner, is hereby preliminarily enjoined.

IT IS SO ORDERED AND ADJUDGED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE

8/6/21
DATE

ORDINANCE NO. _____

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PASSED and APPROVED this 6th day of August , 2021.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer