



**THE OAKLAND COUNTY HEALTH DEPT. MASK ORDER (2020 – 12) IS UNLAWFUL**

Since the Michigan Supreme Court decision on October 2, 2020, invalidating all of Governor Whitmer’s Executive Orders (EOs) issued since April 30, 2020, the Governor has made it clear that she intends to continue her COVID-19 restrictions through orders from her administrative agencies and local health departments. The first such order was issued on October 3, 2020, by the Oakland County Health Department (OCHD) (Order 2020-12). This local order requires the wearing of masks both indoors and outdoors with some exceptions. It requires all school children to wear a mask. The order claims it is authorized by MCL 333.2453.

**I. CONTROLLING STATUTES:**

MCL 333.2453 states:

(1) If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

MCL 333.2443 makes it a misdemeanor to violate a local health order, punishable by up to six months in jail and/or a fine of \$200.00.

**II. OCHD ORDER 2020-12 VIOLATES THE STATUTORY REQUIREMENTS:**

The **first issue** is whether there is a need to control an epidemic, i.e., the COVID-19 virus. Most courts will likely accept that we are still in the midst of an epidemic. Assuming OCHD satisfies this requirement, it is clear that the first power listed (authority to “prohibit the gathering of people for any purpose”) is not at issue in this order as it does not prohibit any such gatherings.

The **second issue** would be whether this order establishes “procedures to be followed by persons . . . during the epidemic to insure continuation of essential public health services.”

This order clearly has nothing to do with setting procedures to continue and make sure “essential public health services” are available to the public during an epidemic. There is no statutory definition of what is “essential public health services.” It arguably applies to making sure hospitals, medical supplies, medical services like vaccinations, health information, medical personnel, etc., are readily available to the public. “Essential” means something that is absolutely necessary. Requiring everyone to wear a mask has nothing to do with setting up procedures to continue to ensure public health services are in place, or that those procedures are essential. While providing masks to the public might be considered a public health service, mandating that everyone must wear a mask is not.

The **third issue** is whether this local order is an “enforcement of health laws.” The OCHD order does not claim to be enforcing an existing health law. There is no health law that requires everyone to wear a mask during a health event.

**III. CONCLUSION:**

Based on the above analysis, MCL 333.2453 does not authorize any local health department to issue a mandatory mask requirement. If the OCHD, or any other local health department, attempts to enforce such an unlawful order, seek legal assistance immediately and contest the illegal action. You should consider a countersuit against the local agency and director who issues the illegal order for “wanton and willful misconduct” pursuant to MCL 333.2465(2). It is important to note that while we believe such orders are illegal, this does not prevent the health official or police from arresting and pressing charges for a health order violation. It is after such a prosecution commences that a person can contest the legality of the health orders. Ultimately, the courts will decide if these local health orders are legal and enforceable.

**THE GREAT LAKES JUSTICE CENTER**

*The information provided does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only. Everyone should contact their own attorney to obtain advice with respect to their own circumstances.*

