



Restaurant Owners Sue NYC and Mayor de Blasio Over COVID-19 Vax Mandate

A group of restaurants and other business owners are suing New York Mayor Bill de Blasio and the city over the executive order mandating that all customers and employees must show proof of COVID-19 vaccination to enter their establishments.

De Blasio signed Emergency [Executive Order 225](#) on Monday, requiring that all indoor entertainment and recreation, dining, and fitness establishments “not permit a patron, full- or part-time employee, intern, volunteer, or contractor to enter covered premises without displaying proof of vaccination and identification bearing the same identifying information as the proof of vaccination.” The businesses are ordered to develop and keep a written record describing their protocols for implementing and enforcing the mandate and also post a sign to alert customers on the new rule. The violators of the order would face a fine, penalty, and forfeiture of not less than \$1,000. The second strike would cost offenders \$2,000, and \$5,000 for all subsequent instances of disobedience. The enforcement of the order is set to begin on September 13.



AP Images
Bill de Blasio

The mandate was met with outrage among many restaurant owners. Among them is the Independent Restaurant Owners Association Rescue (IROAR), a group representing about 50 businesses in Staten Island and the Bay Ridge area of Brooklyn. IROAR is taking New York City and its mayor to court in a bid to block the mayor’s order over its “arbitrary, irrational, unscientific, and unlawful” nature.

[A lawsuit](#) submitted to the New York State Supreme Court says the COVID-19 restrictions have already “severely and irreparably damaged small businesses all over the City,” and argues the further restrictions would devastate the businesses, life savings, and livelihoods even more.

The suit goes on to decry the irrationality of the requirement that applies to the establishments that are no more “dangerous” in terms of facilitating spread of COVID-19 than any other public places. The city’s own data shows the infections associated with the interactions in bars account for about 1.7 percent of total cases, whereas almost three quarters of them occur as a result of private social gatherings such as those at home, as cited in the lawsuit. In addition to that, besides restaurants, fitness clubs, and entertainment sites affected by the order, there are numerous other venues that



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involve groups of unassociated people that interact with each other, such as offices, churches, grocery stores, schools, etc., that do not require all their patrons and staff to be vaccinated.

The plaintiffs also imply New York is very close to reaching herd immunity against COVID-19 as they quote the discrepancies in city's vaccination data. They state the number of vaccinated people is actually much higher than officially reported, and may be as high as 77 percent.

Moreover, illustrating the arbitrariness of the order, the lawsuit notes that it is an "uncontested fact" that both vaccinated and unvaccinated people can contract COVID-19. "Despite this massive disparity and minimal number of infections being caused, Mayor de Blasio is still mandating people be vaccinated and show proof of such to participate in everyday society," the restaurateurs note.

The suit continues, "While government is fully empowered to take emergency action against life-threatening dangers, it is bedrock law in this country that constitutional rights and prohibitions do not change in an emergency.... Thus 'even in a pandemic, the Constitution cannot be put away and forgotten.'"

While the restaurateurs feel that early restrictions imposed as a response to the novel disease were justified, their rationale "has expired," and the Supreme Court has required local governments to "more narrowly tailor those [emergency] orders as more data concerning the pandemic emerges." Yet, New York City has gone in the opposite direction and "implemented even more arbitrary on constitutional rights," the suit claims.

Finally, the lawsuit argues the order violates the Equal Protection Clause, which is "essentially a direction that all persons similarly situated should be treated alike." The mandate is also presumably impinging on people's fundamental rights "to pursue a lawful calling" and "to pursue an economic livelihood."

The plaintiffs point out the order provides no exceptions for the people who have recovered from COVID-19 and have natural immunity against the disease, people who can not be vaccinated due to pre-existing medical conditions, and people whose religious views prevent them from injecting themselves with "relatively unknown foreign substance." "By mandating such a thing, the Mayor is essentially violating people freedom of religion," the suit states.

As [reported](#) by the *Gothamist*, the lawsuit has garnered the support of a handful of local Republicans, including Representative Nicole Malliotakis and City Councilmember Joe Borelli, both of whom pledged to sue the city over the mandate should it be finalized. Prospective gubernatorial candidate Andrew Giuliani has also [signaled](#) his opposition to the measure: "I applaud the Independent Restaurant Owners Association lawsuit against de Blasio's vaccine mandates! Every private business and their customers should choose the terms of their patronage, NOT government and certainly not the incompetent de Blasio!"

Mayor de Blasio [said](#) he had "tremendous confidence" in the city's legal position on the mandate when commenting on the lawsuit. Citing the ongoing dangers of the "global pandemic," he said "the decisions that have been taken have been taken with the leadership of our health officials, who have been fighting this battle from the beginning."

De Blasio insisted the city "must get more people vaccinated," with particular focus on young people, saying his approach is "a smart way, a fair way, based on the data and the science."

New York is the first major U.S. city to introduce such a mandate, although a number of others,



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including New Orleans and San Francisco, have announced similar policies.



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