

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA –
CIVIL DIVISION

LAURENCE JOSEPH ANDERSON, SCOTT
MILLER, ROBERT REINHOLD OPDYKE, and
MICHAEL A. WHITEHOUSE,

Plaintiffs,

v.

CITY OF PITTSBURGH, WILLIAM PEDUTO, in
his official capacity as Mayor of the City of
Pittsburgh, and PITTSBURGH CITY COUNCIL,

Defendants.

CASE NO. GD-19-005308

**DEFENDANTS' CROSS-
MOTION FOR SUMMARY
JUDGMENT**

Filed on behalf of all Defendants

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Defendants' Cross-Motion for Summary Judgment

Defendants respectfully cross-move for summary judgment under Pennsylvania Rule of Civil Procedure 1035.2 and request that the Court dismiss Plaintiffs' case and lift the stay of enforcement of Ordinance 2018-1219. In support of this motion, Defendants state as follows:

1. On April 9, 2019, Mayor Peduto signed Ordinance 2018-1219, which is narrowly limited to regulating only the "use" of "any large capacity magazine" ("LCM") "in any public place within the City of Pittsburgh." *Id.* § 1104.03.
2. Plaintiffs rushed into court, filing this lawsuit on the day the Ordinance was signed by the Mayor. In their haste to file, they challenge an ordinance unwritten: Plaintiffs claim that the LCM Ordinance "ban[s] the public possession and transportation of loaded standard-capacity firearm magazines." Anderson Compl. ¶ 1. This is wrong. Properly read, the Ordinance does not prohibit the conduct Plaintiffs claim it does—and in fact does not prohibit any conduct that Plaintiffs intend to engage in in the future or have engaged in in the past.

3. As a result, Plaintiffs suffer no injury from this ordinance. Because there is no genuine dispute, this case should be dismissed in its entirety for lack of standing.

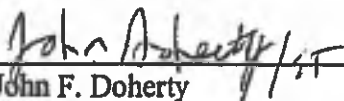
4. But even if the case is not dismissed on the dispositive threshold issue of standing, it is the City—not Plaintiffs—who should be granted summary judgment on the merits. The City validly enacted the Ordinance pursuant to express powers granted by the General Assembly to “regulate,” “prohibit,” and “prevent” unnecessary discharges of firearms in public places. 53 Pa. C.S. § 23131; 53 Pa. C.S. § 3703.

5. The Ordinance, moreover, only prohibits the “use” of LCMs in “public places.” LCM Ordinance § 1104.03. It is carefully crafted to comply with Pennsylvania’s preemption laws, which by their plain text only prohibit municipalities from regulating four specific things: the *ownership, possession, transfer, or transportation* of firearms, ammunition and ammunition components. A regulation on “use” is distinct from any of these four categories of preempted regulation, and is defined in the Ordinance expressly to make clear that it “does not include possession, ownership, transportation or transfer.” *Id.*

For the foregoing reasons, as well as the additional reasons given in the brief that accompanies this motion, the Court should dismiss Plaintiffs’ case and lift the stay of enforcement of Ordinance 2018-1219.

Dated: July 15, 2019

Respectfully submitted,



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[Proposed] Order

AND NOW, to wit, on this ____ day of ____ 2019, it is hereby ORDERED,
ADJUDGED and DECREED that Plaintiffs' Motion for Summary Judgement is DENIED and
Defendants' Motion for Summary Judgment is GRANTED. It is further ORDERED that

1. Plaintiffs Case is DISMISSED with prejudice;
2. JUDGMENT is entered for the Defendants; and
3. The stay of enforcement of Ordinance 2018-1219 is hereby lifted.

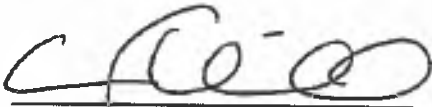
Hon. Joseph M. James

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Defendants' Cross-Motion for Summary Judgment and Brief in Support as served upon the following on this 5th day of July via electronic mail.

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