

**LEWIS AND CLARK CITY-COUNTY  
BOARD OF HEALTH – MINUTES  
1930 9<sup>th</sup> AVE, HELENA, MONTANA 59601  
Zoom Meeting, 1:00 p.m.  
November 19, 2020**

Members Present by Zoom

Justin Murgel, chair  
Commissioner Andy Hunthausen, vice chair  
Mayor Wilmot Collins  
Brie McLaurin  
Kammy Johnson  
Dr. Mikael Bedell  
Jenny Eck  
Raymond Berg  
Tyler Ream

Staff Present by Zoom

Drenda Niemann  
Eric Merchant  
Damian Boudreau

Guests Present by Zoom

Charles Lane, Deputy County Attorney

Members Absent

Justin Murgel, chair, called the meeting to order at 1:00 p.m. A quorum was established. Introductions of board members were made.

**REVIEW OF AGENDA**

No changes were made. No public comment was given.

**HEALTH OFFICER’S REPORT**

Drenda Niemann, Health Officer, highlighted the COVID-19 Dashboard and the State of Montana COVID-19 map of current numbers of confirmed, active, and recovered cases, age groups, and the number of hospitalizations and deaths. Discussion was had regarding long-term care assisted living, transition of care between the hospital and the assisted living facility, reducing mortality rates, and managing outbreak within the facility. Ms. Niemann also discussed impact that the virus is having on the workforce. In a letter submitted by Dr. Harkin at St. Peter’s Health (SPH), Ms. Harkin noted that the number of employees at SPH who are impacted by either isolation or quarantine is not from exposure at work but from exposure outside of work or daycare or school closures. Dr. Mikael Bedell noted his concerns regarding logistics of patient care within the hospital and the transition from inpatient to outpatient.

Ms. Niemann announced that the Health Department has adopted the governor’s November 20, 2020, directive and has updated our local order limiting groups and gatherings from 50 to 25 as per the new directive. We are encouraging the public not to submit event plans over 25 at this time as we likely will not approve them. We are working with a couple of vendors whose event plans were submitted prior to the new directive. Eric Merchant, Disease Control and Prevention Division Administrator, clarified that the new directive did not include changes to kid sport activities.

Ms. Niemann announced that she has submitted the letter from the Board of Health to the Legislative Leadership encouraging the legislative leadership to plan carefully and to hold their session virtually. Representative Running Wolf reached out to Ms. Niemann and asked for a phone call to discuss further planning efforts.

In answer to a question from Jenny Eck, Ms. Niemann said that what is being reported about a vaccine approval and distribution is what the Health Department understands. SPH has reported that they do have the necessary freezers in place and ready to receive the vaccine. The first wave of vaccinations that come into the state will be directed to our healthcare community with mass public vaccination happening this summer. Mr. Merchant said that the Health Department has submitted their application as a PFC provider to the state to be a provider of the COVID vaccine. The Health Department is not prepared to store the vaccine at this time. We are not the primary provider of immunizations in our community. We rely on our partners to do that. We do have emergency medical counter measures and points of distribution plans in place along with a mobile clinic van.

Charles Lane, Deputy County Attorney, discussed recent events that are happening in Flathead County where the governor's office attempted to step in and file for some injunctions against some businesses that were not cooperating and had no intention of complying with directives. A judge rejected the preliminary injunction. The judge's concerns were about the governor's authority to issue a directive, such as the mask mandate. The Department of Health and Human Services (DPHHS) legal basis to seek an injunction on a governor issued mandate. The appropriateness of creating a mandate for mask wearing, and required business owners to be the arbiters of who is in compliance and requiring businesses to be enforcers against individuals was also stated as reason to deny the injunction. Issue with state directives remain. For instance, what does compliance mean? What are reasonable measures? And has the state really met its burden to prove that the business is not in compliance with a reasonable measure? At a state level, it is unclear whether the governor's mandates can be enforced. Mr. Lane is working on rules that the local boards of health can adopt which would give some more teeth to our enforcement here at the local level. Local rules will tie us more closely to some of the statutory language where enforcement are based on board rules. Most county attorneys in the state are not comfortable enforcing the governor's directive or even a local order. That is one of the reasons we haven't seen this around the state. Mr. Lane will draft some approaches can be adopted by the Board which would allow the county attorney office more tie into statutory language when we need to move forward with injections or criminal action.

Ms. Niemann announced that that on December 3, 2020, the Board of Health will meet to discuss and vote to adopt an emergency board rule.

In answer to a question from Raymond Berg, Mr. Lane said smoking regulations were based on statutes and administrative rules that were adopted by the state. Therefore, the framework for enforcing that exists statutorily and through the administrative rules adopted by Department of Health and Human Services. We can use what we learned and the framework and structure of the smoking regulations to adopt board regulations and have it mirror that sort of enforcement, but the smoking regulations aren't directly applicable. Mr. Berg said that he doesn't see why respiratory disease from secondhand smoke is so significantly different from the Corona Virus. Mr. Lane said the regulations for selling alcohol and selling cigarettes to kids and the indoor clean act are statutory and administrative rules are in place to enforce. County attorneys across the state do not feel comfortable trying to enforce against a business.

Jenny Eck expressed her concerns regarding the legislators not waiting until transmittal to change the rules governing the health officer's statutory authority. Mr. Lane said that he would like to see these board rules written to give local boards of health and local enforcement some insulation from the

executive branch. In answer to a question from Mr. Merchant, Mr. Lane compared the reluctance under the statutes to the smoking statutes. The smoking statutes are very specific. They address a very specific concern and they clearly give guidance to DPHHS to adopt the rules which they did and we enforce at the local level. It is the statutes for public health that have never contemplated a worldwide pandemic such as a small outbreak of tuberculosis in a school where we quarantine the school. Perhaps we quarantine 20 people and that is what they contemplated. A countywide or statewide clothing requirements as in a mask mandate is not really something that they contemplate. Because they did not contemplate this, there is no case law. There is no vetting for this application to a pandemic in our community. The governor's directives, as opposed to DPHHS adopting rules, one could speculate was done for expediency. However, if they had adopted some administrative rules under the DPHHS that would give us something to tie into legally and would make county attorneys more comfortable with enforcement.

Ms. Niemann reminded the Board that the adopted Onsite Wastewater Regulations, East Helena Soil Displacement Regulations, and the Rabies Control Regulations are Board rules adopted by the Board of Health. The rules that will be discussed at the December 3 board meeting are the same but they are in response to an emergency. It is the day-to-day public health work that we identify a need in our community to have a regulation in place. Title 50 allows the Board of Health to adopt these rules. We go through a lengthy process of developing the rules and allowing for public comment which is what you all are familiar with. Under is an emergency, the rule making process must happen but more quickly than usual. Emergency rules adopted by the board will get us on a little firmer ground in order to enforce.

In answer to a comment from Mr. Merchant, Mr. Lane said that under 30.714 Communicable Disease section of the Montana Codes Annotated (MCA) are specific diseases that are outlined with specific responses for those diseases. One of those used to be a flu like outbreak and they got rid of that. Mr. Berg asked Mr. Lane if it would be feasible to have somebody sponsor a bill to go and add in that section for a pandemic. Mr. Lane said this is why it's appropriate to address this at a local board level. We do have authority blankly under the statutes and DPHHS administrative rules to adopt the rules to address communicable diseases that are not currently named in the MCA. It is under that authority that we would adopt these more specific rules. With the current representatives in place, Mr. Lane believes using our current authority would be best. Ms. Eck noted that we do have jurisdiction over the county and the legislative body is coming into our county and putting our citizens at risk with a super spreader event of four months. The county attorney's office will have to help determine if holding the legislative body to local rules is an option based on capacity. Mr. Murgel agreed with Ms. Eck and Mr. Berg. Ms. Niemann is working with the legislative leadership regarding the letter that was sent on behalf of the Board of Health. Ms. Eck requested an update regarding the legislative leadership and a link to the statute in preparation for the upcoming meeting.

#### PUBLIC COMMENT

Representative Mary Ann Dunwell stated that as a state representative she has participated in a two-day caucus and orientation remotely and while there have been bugs it has worked out fine. The letter that was sent by the Board was wonderful. A few members of her caucus were on the fence whether to come in person. That letter helped them decide and feel okay with their decision to engage remotely. In this pandemic, I believe that's what we need to do. If I had my druthers, and I know if you did too, we would totally engage in the legislature remotely this session. It's not the last legislature in the world. There will be other legislative sessions. Sadly, there were some of my legislative colleagues, not in my caucus, who chose to ignore your guidance and your recommendation and they behaved thoughtlessly, recklessly, and lacking personal responsibility. We were not able to keep our numbers down as far as a body to 25 or any manageable number.

As far as enhancing Title 50, I would love to include the word pandemic or infectious respiratory disease. The problem is there's already a bill draft in that aims to remove local Board of Health Authority and give the authority to elected officials. I think policy wise changing the statute to include pandemics is sound. Sadly, this may not be the last one we see in our lifetimes. I think that makes all kinds of sense. However, given that detractors want to open up that Title and to do away with boards of health, that's going to be a fight. That's where we're going to need your voices.

Mary Vandebosch, a citizen of Lewis and Clark County, stated that I did send a letter to be distributed to the Board and Public Health Officer. I'm not going to talk a lot about that. I'm sure you can read it if you like. A lot of things have changed since I sent that letter. It's been discussed that the legislators have been in town and a number of them did not follow the advice of Public Health Officer Niemann. Like many people in our society deny the rules that we all know need to be followed. Unfortunately, I think that the Lewis and Clark Public Health is really going to be the only entity in a position to address that. They haven't decided yet how they will meet in January. When they do, it's really going to fall on your shoulders to deal with that and make us safe. I am thrilled that you are looking at rules because you do have statutory authority and that is going to put you in a good position. I just wanted to mention that as far as the legislators are concerned, your attorney can advise you on this. It may be the best bet to look at regulating bars and restaurants rather than fighting over the event at the Capitol. Most legislators don't bring a sack lunch, and so they're in bars and restaurants all the time. That is how they are going to spread the virus to our community. I just want to encourage you to get away from the mindset that it's restrictions that hurt the economy. It's a pandemic that hurts the economy and you can protect us. Others, such as State Legislators, members of Congress and the President can help us with our jobs and providing safety nets, but you are the only ones who can protect our public health. Please consider criteria restrictions and values for these restrictions.

There being no public comment, the meeting adjourned at 2.00 p.m.

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Justin Murgel, Chair

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Drenda Niemann, Secretary