

BUTLER COUNTY BOARD OF COMMISSIONERS
Thursday, July 2, 2020

CALL TO ORDER

Commission Chairman Marc Murphy called the Butler County Board of Commissioners to order at 6:00 p.m. Present were Commissioner Jeff Masterson, Commissioner Ed Myers, Commissioner Mike Wheeler, County Administrator Will Johnson, and Executive Assistant Anna Wealand. Commissioner Dan Woydziak was absent.

INVOCATION

Commissioner Masterson presented the invocation.

(00:58:58)

ITEM #1 – REPEAL OF GOVERNOR’S EXECUTIVE ORDER ON MANDATORY MASKING

The Kansas Governor announced Monday, June 29th, that she would be implementing an Executive Order requiring all individuals to wear a face mask in public when maintaining a six foot "social distance" is not possible between individuals. The Governor stated information about the order, including the text of the order itself, would not be available until 4 PM on Thursday, July 2nd.

At the Board of County Commission meeting on June 30th the County Commission directed staff to develop an order to repeal the executive order of the Governor to be presented at special meeting of the Board on July 2, 2020 at 6:00 PM. Administrator Johnson said the State released the executive order, EO 20-52, much earlier than previously anticipated. The original timing from the State indicated the order would not be released until 6 PM and the order was adopted and released by 9 AM.

The State Legislature passed HB 2016 during the special session of the Legislature in 2020. This bill allows for County Commissioners of any County to issue an order of the County relating to public health that are less stringent than the provisions of a statewide executive order. HB 2016 allows for the Board of County Commissions to adopt orders that are less stringent than any executive orders of the Governor related to Public Health. The Board is required to make the following findings and include them in the order:

1. The board has consulted with the local health officer or other local health officials regarding the governor's executive order.
2. Following such consultation, implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public's health and safety of the county; and
3. all other relevant findings to support the Board's decision.

Jamie Downs, Butler County Health Director, approached the Board. She stated she has spent three days researching reports & studies pertaining to masking and the spread of diseases, most notably, COVID-19. Mrs. Downs said all reports agree wearing masks help prevent the spread of SARS COVID disease. Masks work even better when coupled with good hand hygiene, etcetera, and stated saliva can be teeming with germs that transmit diseases. Masks assist with reducing

the spread of saliva droplets, and therefore diseases. Mrs. Downs showed a video demonstrating how wearing a mask can reduce particle spread. Mrs. Downs also highlighted some instances of studies involving positive individuals. Mrs. Downs stated staff recommends not repealing the masking order and maintaining only half of the listed number of individuals permitted in a room as per the room's fire code. Staff also recommends the use of social distancing, and at least maintain item number eight (8) in EO 20-52 as some laboratories are only reporting the positive results and not the negatives, which can cause the percentage of infection calculation results to be skewed.

Commission Chairman Murphy asked if there are any testing facilities in Butler County. Mrs. Downs replied there are still two COVID-19 testing facilities in Butler County. Commissioner Wheeler asked if Butler County's COVID-19 count is currently still at fifty-nine (59.) Mrs. Downs stated no, after Tuesday's Commission meeting the Butler County count went up to sixty-four (64.)

Commissioner Masterson stated he believes the wrong numbers are being reviewed in regards to the COVID-19 situation. He inquired if all of the hospitalized Butler County COVID-19 patients have recovered. Mrs. Downs replied that all yes, all hospitalized Butler County COVID-19 patients have recovered. Commission Chairman Murphy inquired how many individuals of the sixty-four positive cases are currently in the hospital. Mrs. Downs stated no Butler County patients are currently in the hospital due to COVID-19 but there are currently eleven individuals in isolation with forty in quarantine. These quarantine counts are not associated with travel but are largely due to a positive COVID-19 case that occurred at a place of business last week. Commission Chairman Murphy inquired how many active cases are currently in Butler County; Mrs. Downs stated there are eleven active cases.

Commissioner Masterson inquired about the reason it is important to have both the negative and positive COVID-19 test results. Mrs. Downs said the need has to do with the positivity rate the State is trying to track. The more negative results help balance out the positives to help gain an improved understanding of the disease. Currently only positive results are mandated to be submitted to the State but Governor Kelly included item number eight (8) in EO 20-52 to make the reporting of negative results mandatory as well.

Keri Korthals, Butler County Emergency Management Director, addressed the Board. She stated masks have long been a recommendation. The current concern of many authorities are the aspects of carrying out enforcement of a masking mandate. Up until the current time the Kansas Governor has stated enforcement is up to local jurisdictions. The Kansas Attorney General did address the enforcement aspect of EO 20-52 and its affects on local agencies across the state. The Attorney General did acknowledge that with the passing of HB-2016 the matter of enforcing the wearing of face masks changed from a criminal matter to a civil matter. Law enforcement is not permitted to become involved with civil matters. Civil matters include the involvement of the local County Attorney & District Court. Administrator Johnson stated a concern of staff is being able to correctly inform the public as to the difference between a civil versus criminal situation and the probable inundation of mask violation calls to local law enforcement and dispatch centers. Under EO 20-52 the local jurisdiction (County Attorney) would be responsible for creating a reporting system for such violations.

Jamie Downs, Butler County Health Department Director, approached the Board again and notified the Board of an impromptu unofficial poll the Health department conducted on their Facebook page to gauge how the public feels about the masking situation. The poll included three questions about masking. The questions were:

1. Do you wear a mask when you are out in public? 44% - No, 40% - Yes, 15% - Sometimes
2. What is your opinion on the mandate about wearing masks in public? Against - 31.4%, 45.7% - For, 11.1% - Should be optional

Out of 3,375 responses 44% replied No, 40% replied Yes, and 15% replied Sometimes to wearing a mask in public. 31.4% were against a masking mandate, 45.7% were for a mandate, and 11.1% stated masking should be optional.

Commissioner Myers noted he continues to be impressed with the divergence between well credentialed health care experts in regards to mask wearing. Commissioner Myers referred to an article by a well credentialed health professional and read a section of the article. Commissioner Myers commented cloth mask effectiveness is similar to trying to keep mosquitoes out of your yard by utilizing a chain link fence. Surgical masks were designed as a version of source control and the efficiency of surgical masks varies widely depending on a variety of variables. N95 respirators are designed to fit tightly and remove 95% of contaminants to protect the wearer. Without proper training and handling of masks wearers can inadvertently increase the spread of diseases. The wearing of masks can also create further health concerns and issues. Commissioner Myers also referred to a different article by several health professionals.

Commission Chairman Murphy opened up the meeting to public comment.

Amy Seeber, 119 S. Topeka St., El Dorado, Kansas, is a physician at Susan B Allen Memorial Hospital with a specialty in internal medicine and has personally treated several COVID-19 patients. When it comes to a pandemic the population needs to be proactive to prevent cases instead of reacting to current cases. In order to prevent cases need to address the biology of the disease. The masks do allow the virus to travel through but the virus does not have the ability to travel free of a carrier (IE: spittle) and masks can be assisting in reducing the spread. Another quarantine and spread of the disease is not feasible for economic and other reasons. Sedgwick County has had 170 new cases of COVID-19 in the last day. Dr. Seeber stated constituents trust public leaders to make decisions that are in the best interest of all people and leaders sometimes need to make an unpopular decision to do what is right for the public as a whole. Dr. Seeber asked the Board to be brave and vote for masking.

Leroy Burton, 412 Country Hills Ct, Augusta, Kansas, spoke of his experience with a nursing facility and the measures they are taking to protect their residents. Mr. Burton encountered a situation in which a facility worker tested positive and he contacted the Butler County Health Department and the Kansas Department of Health and Environment; Mr. Burton noted he appreciated Mrs. Downs' help with the situation. Mr. Burton spoke of relevant job experience and accreditations relating to safety and epidemiology and respiratory protection training. Mr. Burton wears his mask as he is a compromised individual and presented examples of masks and respirators to the Board. Mr. Burton stated the only good protection from COVID-19 is a vaccine

but a viable vaccine is about a year out from now. Mr. Burton also cited an experiment in New York regarding hotels and hotel cleanliness. He stated Butler County needs to make sure people know the concern is about health and not politics.

Commission Chairman Murphy asked for members of the public wishing to speak to be brief in their comments so as to assist in reducing the length of the meeting.

Camille Austin, 519 Ohio Street, El Dorado, Kansas, approached the Board and stated she has an immune compromised child and asks for people to wear masks to help protect her daughter.

Suzanne Scribner, 406 Frazier, El Dorado, Kansas, chair of the Butler County Democratic party in El Dorado, stated cloth masks were an alternative to personal protective equipment (PPE) in the early stages of the COVID-19 pandemic situation. Ms. Scribner stated Butler County has a chance to protect our county and citizens by wearing masks and asked the Board to please vote for wearing masks.

Will Carpenter, 6965 SW 18th, El Dorado, Kansas, stated his issue is with the Governor's mandate, not the masking itself. He is concerned about the Governor removing the population's personal choices to keep themselves safe and urged the Board to vote in favor of the repeal of EO 20-52.

Marci Laffen, 301 S Sunflower Ln, Andover, Kansas, stated people have a personal responsibility for their health and it is not the government's responsibility to manage the health of individuals. Sedgwick County voted 4-1 against enforcing the masking mandate and asked the Board to vote against the mandate.

Laurie Bruce, 12551 SW Purity Springs Rd., Augusta, Kansas, approached the board stating she is a math teacher and looks at numbers. Ms. Bruce believes if people were not as plugged in to media people might not be so scared and the percentages of actual infection in Kansas and the Butler County community is very low. Ms. Bruce said she is not in favor of the masking mandate.

Brittany Warner, 2053 Dragonfly, El Dorado, Kansas, is not in favor of a masking mandate. She stated it is an individual's personal responsibility to maintain their health. Ms. Warner said she is concerned about the precedence these measures may be setting and is concerned about what may happen in the future regarding restrictions.

Anna Busenitz, 15457 NW 140th St, Newton, Kansas, approached the Board and expressed her concern about HIPPA situations regarding COVID-19 testing and the possibility of the State requiring quarantines instead of quarantines being voluntary.

Julie Winslow, PO Box 32, Rose Hill, Kansas, said her main concern is about children and what they are going to remember about this time frame. Ms. Winslow believes the masking mandate situation infringes individual rights.

Administrator Johnson noted he made a couple minor modifications to the drafted resolution. Administrator Johnson changed the number of COVID-19 cases from fifty-nine (59) to sixty-four (64) in the preamble and excepted section eight (8) of EO 20-52 so as to help maintain a better understanding of the viral case load. Even with the change in numbers Butler County's case load is still less than one percent. The drafted resolution is Resolution 20-17. Administrator Johnson stated he highly recommends the board repeals the Governor's mandate mainly due to the enforceability factor and the ensuing burden on dispatch and law enforcement. Commissioner Myers asked a question of the draft of Resolution 20-17 in regards to the criminal versus civil situations of misdemeanors.

Commissioner Myers motioned to approve Resolution #20-17, as an Order relating to public health that includes provisions less stringent than the provision set forth in Executive Order 20-52 effective statewide and issued by the Governor of Kansas. Commissioner Masterson seconded the motion. Motion passed 3-1. Commissioner Wheeler opposed.

Commission Chairman Murphy stated he spoke to Commissioner Woydziak over the phone this morning and Commissioner Woydziak stated he is in favor of repealing the masking mandate in Butler County. Commissioner Woydziak asked Commission Chairman Murphy to share this information with the Board.

(01:15:03)

OTHER ITEMS OF BUSINESS TO COME BEFORE THE BOARD OF BUTLER COUNTY COMMISSIONERS

No other items of business were presented during the meeting.

(01:15:18)

ADJOURNMENT

Commissioner Masterson motioned to adjourn the meeting of the Board at 7:15 p.m. Commissioner Wheeler seconded the motion. Motion carried 4-0.