
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of:

COVID-19 Pandemic within Summit County
(Delta Variant)

**PUBLIC HEALTH ORDER
(Order of Constraint)**

Order No.: 2021-01

Date: August 21, 2021

Legal Authority: Utah Code §26A-1-114
Utah Code §26A-1-102

After giving legal notice to the *Summit County Manager* (the “**County Manager**”), the *Summit County Health Officer* (the “**Health Officer**”) declared a *Local Public Health Emergency* related to the COVID-19 Pandemic on August 21, 2021, for a period of thirty (30) days (*Utah Code* §26A-1-114(8)(a)).

The *Summit County Council* (the “**Council**”) may extend a Local Public Health Emergency longer than thirty (30) days (*Utah Code* §26A-1-114(8)(b)).

In Utah, local health departments are vested under *Utah Code* § 26A-1-114(1)(d) with authority to establish measures as may be necessary to promote and protect public health and control the spread of disease.

COVID-19 is a contagion that spreads from person to person. The Health Officer and County Manager recognize the need for Summit County and the public to continue to work cooperatively and proactively to slow the spread of COVID-19 and to address the myriad challenges COVID-19 has created.

The Health Officer and County Manager find that COVID-19 poses a continuing, increasing, and immediate threat to the public health of Summit County residents and visitors. The *Delta Variant* of the COVID-19 virus is the dominant strain actively circulating in Summit County and is more contagious than the original virus and other variants.

Orders of Constraint can only be issued during a declared Local Public Health Emergency (*Utah Code* §26A-1-102(9)(a)). A *Face-Covering* (defined below) mandate is a form of an Order of Constraint (*Utah Code* §26A-1-102(9)).

During a declared Local Public Health Emergency, the Health Officer and the County Manager can jointly issue an Order of Constraint (*Utah Code* §26A-1-114(9)(a)).

The Council can terminate an Order of Constraint at any time (*Utah Code* §26A-1-114(9)(a)).

The *Centers for Disease Control and Prevention* (the “**CDC**”) has provided a summary of the most up-to-date scientific data on COVID-19 in K-12 schools.¹ The CDC has recommended the “use of multiple strategies – also called layered prevention – [which] provides greater protection in breaking transmission chains than implementing a single strategy.” This is especially the case in “areas with moderate to high community transmission, low vaccination rates, and for people who are not fully vaccinated.”² According to a recent study from the United Kingdom, “for every five additional cases per 100,000 population in regional incidence, the risk of a school outbreak increased by 72%.”³ Other studies found that where community transmission rates were low, there was no association between in-person learning and community spread, but when the transmission rates increased to moderate or high levels, transmission rates simultaneously rose in schools.⁴ “A study of elementary schools in Utah who

¹ Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs (July 9, 2021) https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fmore%2Fscience-and-research%2Ftransmission_k_12_schools.html#schools-cov2-transmission

² *Id.* See Honein MA, Barrios LC, Brooks JT. Data and Policy to Guide Opening Schools Safely to Limit the Spread of SARS-CoV-2 Infection. *JAMA* 2021;325(9):823-824. doi:10.1001/jama.2021.0374; Honein MA, Christie A, Rose DA, et al. Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December 2020. *MMWR Morb Mortal Wkly Rep* 2020;69(49):1860-1867. doi:10.15585/mmwr.mm6949e2.

³ *Id.* See Ismail SA, Saliba V, Lopez Bernal J, et al. SARS-CoV-2 infection and transmission in educational settings: a prospective, cross-sectional analysis of infection clusters and outbreaks in England. *Lancet Infect Dis* 2021;21(3):344-353. doi:10.1016/s1473-3099(20)30882-3.

⁴ Russell FM, Ryan K, Snow K, et al. COVID-19 in Victorian Schools: An analysis of child-care and school outbreak data and evidence-based recommendations for opening schools and keeping them open. *Report from Murdoch Children’s Research Institute and the University of Melbourne*. 2020; Published 2020 September 25; Goldhaber D, Imberman SA, Strunk KO, et al. To What Extent Does In-Person Schooling Contribute to the Spread of COVID-19? Evidence from Michigan and Washington. 2020. CALDER Working Paper No. 247-1220-2.

implemented layered prevention strategies, such as mask wearing and cohorting, found very low transmission (secondary attack rate 0.7%) in December 2020 – January 2021.”⁵

According to the most recent guidance from the CDC, “consistent and correct use of face masks reduces the spread of SARS-CoV-2 and, with some exceptions, is recommended for use indoors among people aged 2 and older who are not fully vaccinated. In general, people do not need to wear masks when outdoors.”⁶ The CDC has further reported that “most studies that have shown success in limiting transmission in schools have required that staff only or staff and students wear masks as one of the school’s prevention strategies.”⁷

Further, “[e]vidence from 10 studies (across all three viruses, including 2,647 participants) found benefits for face masks in general (risk of infection or transmission when wearing a mask was 3% vs 17% when not wearing a mask).”⁸ In fact, a 2020 study found decreased mortality rates associated with Face-Coverings.⁹

⁵ Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs (July 9, 2021). See Hershow RB, Wu K, Lewis NM, et al. Low SARS-CoV-2 Transmission in Elementary Schools – Salt Lake County, Utah, December 3, 2020-January 31, 2021. *MMWR Morb Mortal Wkly Rep* 2021;70(12):442-448. doi:10.15585/mmwr.mm7012e3.

⁶ Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs (July 9, 2021).

⁷ *Id.* See Zimmerman KO, Akinboyo IC, Brookhart MA, et al. Incidence and Secondary Transmission of SARS-CoV-2 Infections in Schools. *Pediatrics* 2021;147(4). doi:10.1542/peds.2020-048090; Gandini S, Rainisio M, Iannuzzo ML, et al. A cross-sectional and prospective cohort study of the role of schools in the SARS-CoV-2 second wave in Italy. *Lancet Reg Health Eur* 2021;5:100092. doi:10.1016/j.lanep.2021.100092; Fricchione MJ, Seo JY, Arwady MA. Data-Driven Reopening of Urban Public Education Through Chicago’s Tracking of COVID-19 School Transmission. *J Public Health Manag Pract* 2021;27(3):229-232. doi:10.1097/phh.0000000000001334; Link-Gelles R, DellaGrotta AL, Molina C, et al. Limited Secondary Transmission of SARS-CoV-2 in Child Care Programs – Rhode Island, June 1-July 31, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69(34):1170-1172. doi:10.15585/mmwr.mm6934e2; Kim C, McGee S, Khuntia S, et al. Characteristics of COVID-19 Cases and Outbreaks at Child Care Facilities – District of Columbia, July-December 2020. *MMWR Morb Mortal Wkly Rep* 2021;70(20):744-748. doi:10.15585/mmwr.mm7020a3; Volpp KG, Kraut BH, Ghosh S, et al. Minimal SARS-CoV-2 Transmission After Implementation of a Comprehensive Mitigation Strategy at a School – New Jersey, August 20-November 27, 2020. *MMWR Morb Mortal Wkly Rep* 2021;70(11):377-381. doi:10.15585/mmwr.mm7011a2.

⁸ “Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and Covid 19: a systematic review and meta-analysis,” DK Chu, MD; EA Aki, MD; S Duda, MSc; K Solo, MSc, et. al. *The Lancet* (Open Access Published June 01, 2020).

⁹ Leffler, Christopher & Ing, Edsel & Lykins, Joseph & Hogan, Matthew & McKeown, Craig & Grzybowski, Andrzej. (2020). Association of country-wide coronavirus mortality with demographics, testing, lockdowns, and public wearing of masks (Update June 15, 2020). <https://www.researchgate.net/community/COVID-19>

According to a recent study documented in the Official Journal of the American Academy of Pediatrics, hospitalizations were more frequent in children/adolescents with COVID-19 than with influenza.¹⁰

As a general measure, COVID-19 health restrictions cannot be imposed where the 14-day case rate is less than 191 per 100,000 people (*former Utah Code §26A-1-130(2)*).

Summit County has a 14-day case rate of 249 per 100,000 people, placing the county within the Moderate Level of Transmission under criteria separately established by the State of Utah and the CDC.¹¹

Summit County has a 78% vaccination rate among its citizens who are eligible to receive the vaccine.¹² The incidents of hospitalizations for COVID-19 patients, as well as deaths, among vaccinated individuals is negligible. Further, reports are that break-through incidents of COVID-19 among vaccinated individuals are unusual, but where they have occurred, the individuals are either asymptomatic or report moderate symptoms.¹³

Although the Summit County Health Department continues its extensive efforts to vaccinate all eligible Summit County residents, no COVID-19 vaccine is yet approved by the FDA for children under the age of 12. With the spread of the COVID-19 Delta Variant and case rates rapidly increasing, Summit County is at a critical juncture in this pandemic, especially when considering the younger population that is ineligible for vaccination.

When considering actions to protect the children in the school setting, all available information is considered. On August 16, 2021 the American Academy of Pediatrics released a report of State-Level Data indicating children were 18% of weekly reported COVID-19 cases in the United States during the week of 8/5/2021 – 8/12/2021, a time period when many schools

¹⁰ Duarte-Salles, 30-Day Outcomes of Children and Adolescents With COVID-19: An International Experience (*Pediatrics* 2021) <https://pediatrics.aappublications.org/content/pediatrics/early/2021/05/28/peds.2020-042929.full.pdf>

¹¹ Summit County COVID-19 Dashboard, Summit County Health Department <https://summitcountyhealth.org/dashboard/>

¹² Id.

¹³ KSL, Utah Hospitals Filling Up with Unvaccinated COVID-19 Patients (July 26, 2021); Salt Lake Tribune, Utah hospitals are filling up, and more than 95% of the COVID patients weren't vaccinated (July 13, 2021); U.S News & World Report, In Utah, Hospitals Swell With Unvaccinated COVID-19 Patients (July 27, 2021); New York Times, What to Know About Breakthrough Infections and the Delta Variant (August 11, 2021).

were returning from summer break. This number is the highest it has been since the start of the pandemic.¹⁴

Recent studies acknowledge that children generally fare better than adults when infected with COVID-19.¹⁵ On August 20, 2021, the State of Utah reported 49,054 COVID-19 cases in individuals between the ages of 1-14, which accounts for 10.8% of the total COVID-19 cases in the State. Of the 49,054 cases (ages 1-14) reported in Utah on August 17, 2021, 345 (0.70%) have been hospitalized because of COVID-19. On the same day, the State also reported one COVID-19 death (0.002%) in a child between the ages of 1-14.

Considering the recent information regarding the outcomes of children infected with COVID-19 and the intent to keep children in school while minimizing risk, we must acknowledge the challenges and uncertainty presented by the Delta Variant for those who are ineligible for COVID-19 vaccination. Therefore, we must rely on the science and data, along with established frameworks, that support a layered approach to mitigating risk in the school setting. These resources include the outcomes associated with other school districts throughout the United States where the 2021-2022 school year started without formalized prevention strategies in place.¹⁶

The COVID-19 Delta Variant has been reported to be more infectious than the original COVID-19 virus,¹⁷ thus making public schools susceptible to being super spreaders of the

¹⁴ <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report>

¹⁵ CDC COVID-19 Response Team. Coronavirus Disease 2019 in Children – United States, February 12-April 2, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69(14):422-426. doi:10.15585/mmwr.mm6914e4; Davies NG, Klepac P, Liu Y, et al. Age-dependent effects in the transmission and control of COVID-19 epidemics. *Nat Med* 2020;26(8):1205-1211. doi:10.1038/s41591-020-0962-9; Laws RL, Chancey RJ, Rabold EM, et al. Symptoms and Transmission of SARS-CoV-2 Among Children – Utah and Wisconsin, March-May 2020. *Pediatrics* 2021;147(1). doi:10.1542/peds.2020-027268; Ludvigsson JF. Children are unlikely to be the main drivers of the COVID-19 pandemic – A systematic review. *Acta Paediatr* 2020;109(8):1525-1530. doi:10.1111/apa.15371; Munro APS, Faust SN. COVID-19 in children: current evidence and key questions. *Curr Opin Infect Dis* 2020;33(6):540-547. doi:10.1097/qco.0000000000000690.

¹⁶ Hogan, S. & Dixon, K. (2021, August 9). Metro Atlanta schools report more than 1,000 COVID cases in first days. *The Atlanta Journal-Constitution*. <https://www.ajc.com/education/metro-atlanta-schools-report-more-than-700-covid-cases-in-first-days/CZSKH2AIEZDMXMRJA6MJDA4U/>

News Staff. (2021, August 15). *Metro Atlanta school districts report over 4,000 cases of COVID-19 in first week*. <https://www.wsbtv.com/news/local/metro-atlanta-school-districts-report-over-3700-cases-covid-19-first-weeks/KO37EA3M5NDRFPGCGVEY6OIA4U/>

¹⁷ CDC, [Delta Variant: What We Know About the Science](https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html) (August 6, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>

COVID-19 Delta Variant. In order to narrowly target any Order of Constraint, it is the intent of the Health Officer and County Manager that a *Threshold Trigger* (defined below) be established for elementary private and public schools (the “**Elementary Schools**”) which would allow for a temporary Face-Covering order in specific instances where it is warranted and for a minimum amount of time.

The proposed Threshold Trigger uses the approach outlined in Utah Senate Bill 107 (SB 107) describing the threshold for implementing the Test-To-Stay program. In schools larger than 1,500 students, Test-To-Stay is activated when 2% of the population tests positive for COVID-19 during a 14-day timeframe. For schools with less than 1,500 students on a given campus, Test-To-Stay is activated when 30 positive COVID-19 cases are identified during a 14-day period. All of the schools in Summit County are subject to the 30-day threshold given they do not exceed 1,500 students on a given campus. However, this Order of Constraint uses the 2% caseload over a 14-day period, as described in SB107, to identify the threshold when masks are required in the school setting for an individual campus. Under these circumstances, where others are required to implement the Test-To-Stay program requirement as a stopgap measure for slowing COVID-19 transmission, this Order of Constraint uses the threshold to proactively address a potential outbreak and slow the spread of COVID-19 within the identified campus of concern. This approach will allow children to remain in school with minimal interruption to the learning environment. As such, individual campuses may be able to avoid activating the Test-To-Stay program given the effort to curb an outbreak at early onset.

Accordingly, the Threshold Trigger is met where 2% of the school population (inclusive of students, faculty, and administrative staff), in each Elementary School, as determined by the school district superintendent, test positive for COVID-19 over a 14-day period.

Based on the foregoing, the Health Officer and County Manager conclude that requiring students, faculty, and administrative staff to wear Face-Coverings when the *Threshold Trigger* is met for an in-person school setting under certain circumstances will help mitigate further widespread transmission of COVID-19 in the early stages of a potential outbreak while keeping the youngest students and their families safe and allowing in-person learning to continue.

THEREFORE, PURSUANT TO UTAH CODE §26A-1-114, BE IT HEREBY ORDERED BY PHILIP BONDURANT, Dr. PH, MPH, SUMMIT COUNTY HEALTH OFFICER, AND THOMAS C. FISHER, SUMMIT COUNTY MANAGER, AS FOLLOWS:

Section 1. **Purpose.** The intent of this Order of Constraint (the “**Order**”) is to establish a standing Threshold Trigger, which when met, requires all students, faculty, and administrative staff within an Elementary School in Summit County to wear a Face-Covering or Face-Shield

while on the school's campus. All provisions of this Order shall be interpreted to effectuate this intent.

Section 2. **Definitions.**

2.1 “Face-Covering” is a physical barrier that:

- i. covers the nose and mouth without openings that can be seen through;
- ii. is made of synthetic or natural fabrics;
- iii. secures under the chin;
- iv. fits snugly against the nose and sides of the face; and
- v. does not have an exhalation valve or vent.

2.2 “Face-Shield” means a face covering that:

- i. covers the entire face;
- ii. protects the eyes of the wearer;
- iii. is made of clear plastic or similar nonpermeable transparent material;
- iv. secures around the top of the head;
- v. does not secure under the chin;
- vi. does not fit snugly against the nose or sides of the face; and
- vii. can be used in conjunction with a mask for enhanced protection.

Section 3. **Face-Coverings and Face-Shields Mandatory.** In the event that 2% of the school population (inclusive of students, faculty, and administrative staff) on any Elementary School campus have tested positive for COVID-19 during any 14-day period (the “**Threshold Trigger**”), Face-Coverings or Face-Shields will be required for all students, faculty, and administrative staff during the school day, including after school extra-curricular activities, at that school's campus until the incidents are lower than the Threshold Trigger as determined by the Health Officer.

Section 4. **Exemptions.**

4.1 Notwithstanding any other provision of this Order, an individual required to wear a Face-Covering or Face-Shield may remove such in the following situations:

4.1.1 while outdoors;

- 4.1.2 while actively eating or drinking, provided the individual remains in place while eating or drinking;
 - 4.1.3 while alone or only with other members of the same household in a room, cubicle, school-provided transportation, or similar enclosure;
 - 4.1.4 individuals who are hearing impaired, or communicating with an individual who is hearing impaired, where the ability to see the mouth is essential for communication;
 - 4.1.5 while obtaining or providing a service that requires the temporary removal of the Face-Covering, such as speech therapy services;
 - 4.1.6 while actively performing as an athlete at a school-organized or -sponsored athletic event;
 - 4.1.7 while giving an educational, artistic, cultural, musical, or theatrical presentation or performance at a school for an audience;
 - 4.1.8 while exercising or engaging in athletic training while indoors and maintaining at least six feet of physical distance from any other individual;
 - 4.1.9 while performing a task which would create a risk to the individual related to their work, as determined by local, state or federal regulators or workplace safety guidelines;
 - 4.1.10 while a student is napping; and
 - 4.1.11 while swimming or on duty as a lifeguard.
- 4.2 Notwithstanding any other provision of this Order, the following individuals are exempt from the Face-Covering and Face-Shield requirements:
- 4.2.1 an individual who is unconscious, incapacitated, or otherwise unable to remove the Face-Covering or Face-Shield without assistance;
 - 4.2.2 an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a Face- Covering or Face Shield; and
 - 4.2.3 an individual who has an Individualized Education Program (“**IEP**”) under the Individuals with Disabilities Education Act, 20 U.S.C. § 1414, or an accommodation under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, that would necessitate exempting the individual from wearing a Face-Covering or Face-Shield.

Section 5. **Effective Date; Duration.** This Order shall become effective on August 25, 2021 at 12:01 a.m., and will continue to be in effect until the termination of the Local Public Health Emergency.


Section 6. **Publication.** This Order shall be on file for public inspection with the Summit County Clerk and the Summit County Health Department.

Section 7. **Enforcement.** The Health Officer, in consultation with the Superintendents of the North Summit School District, South Summit School District, and Park City School District, shall ensure compliance with and enforce this Order. This Order is intended to protect public health and not to hold individuals criminally liable. Discretion will be used in the citing and prosecution of violations of this Order.

Section 8. **Appeal.** This Order may be appealed to the Third District Court in and for Summit County, Utah.

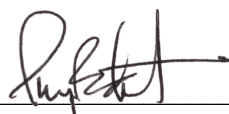
ORDERED and APPROVED, and published, this 21st day of August, 2021.

BY ORDER OF THE SUMMIT COUNTY MANAGER




Thomas C. Fisher
Summit County Manager

BY ORDER OF THE SUMMIT COUNTY HEALTH OFFICER



Philip Bondurant, Dr. PH, MPH
County Health Officer

APPROVED AS TO FORM:



Margaret H. Olson
Summit County Attorney