

Summit County Board of Health Meeting Minutes
Emergency Public Hearing
 Conducted remotely through Zoom

Monday, March 30, 2020 - DRAFT

Topic	Discussion	Action or Summary
Attendance	Board Members Present: Ilyssa Golding - Chair, Chris Ure, Doug Evans, Marc Watterson, Kim Carson, Chris Cherniak, Dorothy Adams Staff Present: Dr. Richard Bullough – Director, Dr. Phil Bondurant, Nate Brooks, Dave Thomas	
Welcome	The meeting was called to order at 5:00 p.m. All Board Members approved the opening of the meeting.	Summary: <ul style="list-style-type: none"> • The meeting opened at 5pm.
Director’s Update	<ul style="list-style-type: none"> • Dr. Bullough shared that Summit County has been disproportionately affected by COVID-19. Ten new cases were identified today. There are currently 176 total cases in the county, with 806 cases in the state. Summit County currently has about 20% of the cases in the state, which is down from the 50% starting point. This could be interpreted that Summit County was hit first and hard, and COVID-19 is now growing throughout the state. It is encouraging that the county is not seeing rapid exponential growth. There have been 474 tests conducted in Summit County, with 34% being positive. The data should be more robust in another couple of weeks. It is estimated that the number of cases will peak of new cases on/about April 14th. There is demographic data, but it is taking time to input all the case data. Student nurses are receiving community credit for helping with the investigations. The state and the CDC (Center for Disease Control) are also providing additional resources. • Personal protective equipment (PPE) supplies are adequate for now, and more have been ordered. There will be ongoing ordering of PPE. There has been discussion of a statewide stay at home order, but there is currently a statewide stay at home directive. • There have been a lot of questions and requests for antibody testing. All of those requests are being referred to Intermountain. The most effective interventions are separation, social distancing, cleanliness, and isolation. Board Member Cherniak asked if there is any news about a test that can be analyzed in under an hour. Dr. Bullough affirmed there is a rapid test that has been FDA approved, and should be available soon. Current testing appears to be going smoothly. Recovery data will be shared at a future date. A percentage increase will also be shared. • The Board of Health joined with the County Council to discuss the stay at home order last week. It was very helpful to be able to expedite the order. There were several calls to the emergency operations center to complain and now to report violations. Nate Brooks and his team have been quick to respond to calls. Nate Brooks shared that all the restaurants have been good to comply. All the restaurants that declared they would provide curbside service have had an inspection. • Chair Golding clarified that people should not be spending time with any other person that they do not live with. Social distancing is key. Dr. Bullough stated that we do not want people locked up in their homes. There are exemptions written into the stay at home order for fundamental necessities, including obtaining food. Everyone should act under the assumption that the people around you have been exposed and that you have been exposed, with the potential to expose others. Exemptions for being physically active have also been built into the order. It is recommended to still maintain social distancing. The Sheriff and the 	Summary: <ul style="list-style-type: none"> • Dr. Bullough shared an update about COVID-19 data. • Testing for COVID-19 was discussed. • There has been a lot of support from the Environmental Health staff, the County Council, the Board of Health, and all the municipalities through the current health crisis.

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	<p>County Attorney will use discretion in how to apply the order. Use common sense. Board Member Carson quoted an attorney who said, "This is a time when you want to be scrubbing your own toilets."</p> <ul style="list-style-type: none"> • Park City municipal and Park City government have been supportive of and active with the directives coming from the Health Department. All the municipalities, Mayors, and City Councils have been supportive. 	
<p>The Prohibition of Third-Party Delivery Drivers in Public Health Order 2020-01</p>	<ul style="list-style-type: none"> • Dr. Bondurant stated that documents for the appeal were sent out on Friday. There have been many appeals in the last several days in regards to what is or is not an essential service, in regards to Public Health Order number 3. This appeal is in regards to public health order number 1, in regards of the use of third-party delivery drivers being able to deliver food from restaurants. The main focus of the public health orders is to protect public health. There was not a focus placed on any one type of business. Authority for appeals has been delegated to Dr. Bondurant. The Board can choose to uphold the decision for this case, make a different decision, or have a decision with conditions. Attorney Dave Thomas stated that the Board can deliberate in private or in public, but will need to issue Findings of Fact and Conclusions of Law for whatever decision is made, to be prepared by Dave Thomas and signed by the Board Chair. • Dr. Bondurant stated that on March 18, 2020, Mr. Rubin contacted Nate Brooks, with a proposal to allow third-party delivery services. This proposal has been shared with the Board. There are three points in public health order number 1 that Mr. Rubin feels should be reconsidered as part of this appeal. Summit County is being asked to consider on a case-by-case basis an approval to consider a few local restaurants that did not offer delivery service prior to the order to be allowed to do so. Another option is to allow restaurants to hire third-party delivery services as employees to provide delivery services from restaurants that did not provide those services before or to residents who cannot get out to pick up at a restaurant. The initial appeal came through on March 18, 2020, and the next day Dr. Bondurant had a discussion with Mr. Rubin asking if there was an opportunity for Mr. Rubin to coordinate with the Park City area Restaurant Association to provide a solution. Through that coordination, there could be a proposal submitted to the Health Department that would address the concerns surrounding third-party delivery drivers. The items that would need to be addressed are how to protect public health, how the food would be delivered, and how could the delivery drivers be monitored to make sure they are well, do not show any symptoms of COVID-19, and are not part of the transmission of COVID-19 in our area. On March 20th, Mr. Rubin and Park City municipal shared their concerns and asked that the appeal be expedited. At that time, the proposal from the Restaurant Association had not been submitted. On Monday, the 23rd, a decision was rendered. Four parameters were used to render this decision. The first parameter was to protect public health. Second was the ability to restrict third-party deliveries by a local health authority. Third, the number of COVID-19 cases in Summit County continues to increase. Fourth, service is not essential for the restaurant community. Summit County had the second-highest per capita rate of positive cases than any other area in the United States. The decision was made based on situations in the food industry where there could be transmission of COVID-19 without any oversight or regulation. Third-party delivery services do not have permits in Summit County like restaurants do, so are not regulated like restaurants are. Third-party delivery services are suspended until the Health Department feels like regulation could be successfully done. Based on the factors set forth, the appeal was denied by Dr. Bondurant. Letters of 	<p><i>Summary:</i></p> <ul style="list-style-type: none"> • A discussion was conducted presenting Dr. Bondurant's basis for denial of the original appeal from Four Seasons to allow third-party deliveries within Summit County as prohibited by Public Health Order 2020-01. • Mr. Rubin presented his argument that third-party deliveries should be allowed. • The Board of Health unanimously denied the appeal to protect the health, safety, and welfare of the community.

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	<p>support for the decision were given by Park City municipal and the Park City area Restaurant Association stating there was a risk to public health and the risk outweighed the need for such services. Additionally, in discussions with restaurant owners there was a concern over what type of liability restaurant owners would have if a delivery driver was found to have COVID-19 and was delivering food. Restaurant owners do not want to assume that liability and would not use a third-party delivery service if they did not already have delivery service in place.</p> <ul style="list-style-type: none"> • Mr. Sam Rubin stated that he had asked the decision to be expedited because he felt all conversations had been positive and there had not been any follow-up from Ginger with the Restaurant Association concerning a proposal. There are currently Uber drivers who are delivering food in the Park City area. Instacart from Smith's is still delivering, with nothing to stop them from touching groceries. Prior to the public order 1, there was no permitting process for Door Dash, who was allowed to deliver in the Park City area. Mr. Rubin is more than happy to work with Summit County to come up with a plan that would address all of the concerns that have been raised. There should not be a problem with having restaurant owners hire third-party drivers as employees so the drivers can meet the safety regulations the restaurant owners already have in place. The delivery driver can demonstrate to the restaurant owner or Summit County that they are meeting regulations and are delivering safely. Originally, COVID-19 cases were on the rise, but now the number of cases is linear, not exponential. New York Taxi and Limousine Association is actively hiring drivers to assist with delivery. Other examples throughout North America were shared. An article was shared that states that grocery shopping has a higher risk than delivery. There has been a rapid increase in the number of Park City restaurants that have basically ceased operations, with the majority in the Old Town Main street corridor, which is harder for most residents to get to. This proposal would offer those restaurants a lifeline. The restaurants in the Kimball Junction area are thriving because of this. Mr. Rubin has had to layoff 25 people and cancel 1,387 trips. This proposal would be a way to give back to the community and give a lifeline to restaurants. Mr. Rubin is asking for a condition of approval that would not allow any third-party delivery service to charge fees to any restaurant through February 2021 as an effort to show that this proposal would truly help the community. • Ginger, from the Park City area Restaurant Association stated she had several conversations with Mr. Rubin. The response from the Restaurant Association members did not indicate that a third-party delivery service was needed. Some members were concerned about virus transmission through delivery drivers. Mr. Rubin did have some ideas to negate those concerns. Park City municipal asked Ginger to stand down on the matter to give them time to work through the matter. The overall consensus from the Restaurant Association board was to support Park City municipal and Summit County. It is in the best interest of public safety to let the experts make this decision. • Seth, a restaurant owner and Restaurant Association board member stated he supports the decision of Dr. Bondurant, and wishes there was a need for delivery drivers. There could be an opportunity in the future (possibly in two weeks) to have a program for delivery. The restaurant employees make more money from unemployment than they would doing delivery. The health of our community and families is much more important. • Chair Golding asked if the primary concern is that there is not a need for third-party delivery service or if the service is not necessarily safe enough 	

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	<p>to warrant allowing it. it seems that the Board’s focus should be whether or not the service is perceived as dangerous and not an essential service. Dr. Bondurant stated that the original reason third-party delivery service was restricted was because there was no oversight of the service. The decision the Board needs to make is whether to uphold the initial appeal, which did not include some of the information that has been shared at this meeting. None of the reasons presented for the appeal do anything to protect public health or help stop the spread of coronavirus. In reference to Mr. Rubin’s examples of what New York allows, just because New York allows it does not mean it is right or is the best practice. Summit County believes that they are taking measures to protect public health. There have not been any proposals or recommendations to show how delivery drivers can stop the spread of COVID-19 and deliver food. Environmental Health is tapped out working to uphold what was laid out in the public health orders. It is not the Health Department’s job to create a procedure for an industry that is believed to already present a risk. Board Member Ure stated he would not have a delivery driver bring food to him. The Health Department and the Board of Health have an obligation to protect the community and uphold the Public Health Order. Board Member Carson stated that if the delivery drivers were made employees of the restaurant, there would be training required, and there are concerns about health, safety and welfare from that standpoint. The Governor has allowed third-party delivery services, but made it very clear that local jurisdictions can make their own decisions, which Summit County has done over concerns of safety. There are not any safety protocols in place to ensure that the delivery drivers are healthy, which the restaurants are required to do on a daily basis. Mr. Rubin stated that if the ideas that were presented in emails and phone calls between himself and Ginger had been presented during the original appeal then a plan would have been able to be presented that would satisfy everybody and could possibly have stopped some restaurants from closing and been able to move forward. Mr. Rubin was not able to come up with the plan because he never heard back from Ginger. Mr. Rubin is more than happy to come up with a plan to be presented at a later date. Dr, Bondurant stated that it sounds like Kimball Junction area residents would probably not utilize the third-party delivery services, and from the comments made by Ginger and Seth, there is not a need for third-party delivery service on Main Street, and is not essential. There has not been an argument made that shows the benefit to public health by redacting this part of Public Health Order 1. There are a number of individual components of the rule that are hard for a lot of people; and those involved in the decision-making process are aware that these decisions are affecting a lot of people’s lives. These orders are being put in place because there is a need to put in a gap in the rate of transmission. Nothing has been presented so far that would allow a redaction and continue on a track to protect public health. Mr. Rubin asked why other delivery services are being allowed. Dr. Bondurant answered that they are not allowed and in fact, Environmental Health is working to track down those delivery services. The next step is to deliver a cease and desist order to Instacart. Attorney Dave Thomas asked if the ability to have third-party delivery was dependent on having certified food safety managers, and what is the process and is there the ability to do that right now. Dr. Bondurant answered that if a restaurant does not have a food safety manager, then the restaurant would be penalized, with the potential of the restaurant being closed. All current food safety managers will maintain that status even if their certification lapses during the COVID-19 concerns, but there will not be any new food safety manager courses provided until</p>	

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	<p>the COVID-19 concerns have passed because the course requires in-person training. Nate Brooks stated that third-party delivery services have been an unregulated industry for eight to ten years, and the need for regulation has been highlighted by the coronavirus outbreak. Nate Brooks is open to ideas to make this proposal work, but it is ultimately the decision of the Board of Health. Dr. Bondurant stated that a proposal would need to be complete when submitted because the Health Department does not have time during this pandemic to come up with solutions for this proposal. The original appeal was denied because it was incomplete. Attorney Dave Thomas stated that the original order would have to be updated if these proposed allowances were made. Board Member Adams stated that because our community is experiencing higher than normal rates of COVID-19, stricter measures need to be taken. We need to abide by this public health order to flatten the curve and protect our community. Chair Golding clarified that at the time the order was created, it was not believed that there was a safe way to have third-party deliveries. Dr. Bondurant confirmed that there is probably not any safe way to have third-party deliveries in the current environment. This is not a time to be flexible. There are limited resources available. The health of our community is far more important than finding ways to allow third-party deliveries. Mr. Rubin asked what will happen to the elderly or those not able to get their own food and groceries who rely on third-party delivery services. Mr. Rubin also asked why delivery drivers could not be employees of a restaurant. Dr. Bondurant answered that if a restaurant owner wanted to hire delivery drivers as employees then those drivers would no longer be employed by the third-party delivery company and could not drive those company vehicles, so Mr. Rubin would no longer be the employer of those delivery drivers. Board Member Carson stated that local social services and Meals on Wheels are being utilized to help provide food for the elderly and those unable to get their own food. If there are gaps in those services, the County needs to be made aware of those gaps to determine how to best serve the community. These services have already been certified and have processes in place to protect the community being serviced. Dr. Bondurant stated that the main highlight of this discussion is that the County does not want uncertified people delivering food and groceries unsupervised and potentially spreading COVID-19 to our most vulnerable population. Board Member Cherniak clarified that any third-party delivery service currently operating is noncompliant right now. If this appeal was to be approved, then the Board would be giving tacit approval to all third-party delivery services. The customer, the restaurant, and the third-party delivery service would all be in violation of the public health order if a third-party delivery service was utilized. Board Member Evans stated that the focus needs to be on the health and safety of the community. Businesses are being hurt, but the Board's job is to look out for the safety of the community. Summit County Health Department responded quickly to this public health threat and hopefully by being vigilant, this pandemic will over more quickly.</p> <p>• Board Member Carson made a motion to deny the appeal from Four Seasons, as has been presented to the Board according to the Findings of Fact and Conclusions of Law evidenced by the discussion this evening and subject to the Chair's approval of the Findings of Fact and Conclusions of Law. Board Member Evans seconded the motion. The motion was approved 7-0 and the appeal is denied.</p>	
Adjourn	<ul style="list-style-type: none"> • The meeting adjourned at 6:38 p.m. • Board Members Watterson and Carson made a motion to adjourn. Motion passed 7-0. 	

