



AGENDA

Eau Claire City-County Communicable Disease Taskforce

Thursday, June 3, 2021 at 4:00 p.m.

Virtual Meeting

Dial In: 1-415-655-0001 Access Code: 145 273 4167

A public listening session will be held separate of this meeting, Dates and times are to be determined and will be posted as a notice to the meeting and on the County and City websites.

1. Call to Order and confirmation of meeting notice.
2. Roll Call
3. Approval of Minutes – **Discussion/Action**
 - a. April 21, 2021
4. Proposed Ordinance Review – **Discussion/Action**
 - a. [Link to Proposed Ordinance](#)
 - b. Questions/Issues Document Included
5. Determine next meeting date and time– **Discussion/Action**
6. Adjourn

Next Meeting – to be determined.



Minutes

Eau Claire County Communicable Disease
Taskforce Wednesday, April 21, 2021 at
5:00 p.m. *Virtual Meeting*

1. Call to Order and confirmation of meeting notice. – Terry Weld
2. Roll Call
 - a. Members Present: Anna Ziebell, Bruce Barker, Crispin Pierce, David Klinkhammer, Emily Smith Nyguen, Grace Crickette, Joe Sanfelippo, Kimberly Cronk, Lori Whitis, Marisa Stanley, Michael Johnson, Scott Rogers, Beryle Middleton
 - b. Other Present: Dave Solberg, Terry Weld, Nick Smiar, Kathryn Schauf, Merey Price, Lieske Giese, Dan Stier, Jenessa Stromberger, Samantha Kraegenbrink, Tim Sullivan
 - c. Public Present: Ryan Patterson-Leader Telegram, other public present
3. Approval of Minutes – **Discussion/Action**
 - a. March 31, 2021: Motion for Approval David Klinkhammer, Second: Kimberly Cronk
4. Communication: Dan Stier, Facilitator – **Information**
 - a. It was discussed that communication is still extremely challenging and that in terms of gathering opinions and discussion and insight that in addition to noticing and publicizing the public listening sessions that it is also the intent to reach out to community leaders and organizations to obtain their thoughts and feedback regarding the topics at hand. Also discussed, that it should be conveyed to the community that the prior proposed ordinance and the language of that proposed ordinance has not been discussed or delved into at any of the meetings thus far.
5. Values, customs and practices in the Eau Claire Community; promotion of the common good: Dan Stier, Facilitator – **Information**
 - a. Value that was suggested was that of collaboration and staying at the table and working across different interests along with balancing various interests, that the elected bodies have the accountability on specific issues. Also, to have critical conversations regarding the enforcement and what that means and will look like as it is different to different people.
6. Plan for Public Listening Session: Dan Stier, Facilitator – **Information/Discussion**
 - a. Goals, ground rules, and potential dates
 - i. Public listening session date and time will be determined by a doodlepoll being sent out to task force members. It was determined that the public listening session would be held virtually, likely via WebEx platform for the first listening session and other platforms will be researched for additional public listening sessions in the future. Task Force members were asked to create some open-ended questions to propose for the public listening session as well as to be posted for written comments to be received prior to the date of the first listening

session.

7. Determine next meeting date and time after public listening session – **Discussion/Action**
 - a. The next task force meeting will be scheduled for two weeks after the determined date for the first public listening session.
8. Adjourn – Terry Weld adjourned the meeting

Next Meeting – will be held two weeks after the first public listening session.

Respectfully submitted, Rebecca Draeger

OUTLINE OF ISSUES FOR TASK FORCE ORDINANCE DISCUSSION/ANALYSIS

*Document created by Task Force Facilitator; responses to questions (in red) provided by Eau Claire County Corporation Counsel.

Current Statute/Ordinance concerning “Oversight”

State Statute

252.03 Duties of local health officers.

(1) Every local health officer, **upon the appearance of any communicable disease** in his or her territory, shall immediately investigate all the circumstances and **make a full report to the appropriate governing body** and also to the department. The local health officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and **shall report to the appropriate governing body** the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the secretary may direct. The local health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.

(2) Local health officers **may do what is reasonable and necessary for the prevention and suppression of disease;** may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken.

Eau Claire County and City Ordinance

2.52.030 Board of health.

- A. The health department shall be managed by a board of health. **The board of health shall have complete and exclusive control over the management and operations of the health department.** The board of health shall consist of 8 members. The members shall reflect the diversity of the community. At least 3 of the members who are not elected officials or employees of the city or county shall have a demonstrated interest or competence in the field of public health or community health. The members shall be qualified and appointed as follows:
1. One member of the city council, appointed by the city council.
 2. One member of the county board, appointed by the chair of the county board with the approval of the county board.
 3. Two physicians practicing in the county. Such physicians shall be selected from a list provided by the Eau Claire County Medical Society, where practical and desirable. One physician shall be appointed by the chair of the county board with the approval of the board. The other physician shall be appointed by the city council.
 4. One dentist practicing in the county. Such dentist shall be selected from a list provided by the Eau Claire County Dental Society, where practical and desirable. Such dentist shall be appointed by the chair of the county board with the approval of the board.
 5. One registered nurse with experience in community health practice. Such nurse shall be jointly appointed by the city and the county.
 6. Two members of ability and known to have a board social viewpoint and a serious interest in the protection of health of the community. One member shall be appointed by the chair of the

county board with the approval of the board. The other member shall be appointed by the city council.

B. The term of office of the members shall be 5 years.

C. Public notice shall be given of the annual vacancies occurring on the board of health.

D. Members of the board of health shall be residents of the city or county.

E. If any member of the board of health no longer meets the qualifications for appointment as set forth in 2.52.030, the position held by such member shall be vacated.

F. Any vacancy occurring on the board of health shall be filled in the same manner as the original appointment.

G. The board of health shall elect one member as president and one member as vice-president. An accurate record shall be kept of all board of health meetings. (Ord. 137-104, 1994).

2.52.040 Powers and duties. The board of health shall: A. Govern the health department and assure the enforcement of state public health statutes and public health rules of the state.

Proposed Ordinance (failed to pass in October 2020)

The Task Force was created to receive stakeholder input. The role of the Task Force is to receive stakeholder input and make suggested changes to the ordinance.

Drafted in response to Legislature v. Palm

Authorizes oversight by city council and county board

Attorneys have clearly stated that **policy** choice are to be determined by the task force

1. Based on what we have heard so far, who do we think wants Eau Claire to enact a communicable disease ordinance requiring oversight of public health general orders by the city council and county board? For what reasons? The ordinance was drafted in response to the Palm decision for consideration by the City Council and the County Board. The need for a change in policy was created by the Supreme Court and their discussion of the lack of legislative oversight of secretary designee Palm in her issuing general orders of application.

2. If you want an ordinance, should policy alternatives to the proposed ordinance be considered? To be determined by the Task Force, the City Council and County Board that will make recommendations for change based on stakeholder input.

Proposed Ordinance Provisions

Purpose

3. Is it accurate to state that a purpose of the ordinance is to “establish the authority of the Local Health Officer”? **Yes. The relevant language of this paragraph “This chapter neither restricts the local health officer’s statutorily granted authority to issue orders to specific individuals or entities related to communicable disease, nor the local health officer’s ability to issue advisory directives, rather it delegates limited legislative authority compatible with constitutional structure and with necessarily retained oversight to promptly issue enforceable orders of general application consistent with Ch 252 and this chapter.” (emphasis added). It is about the authority of the LHO to issue orders of general application with legislative oversight.**
4. What is intended by the statement that “the responsibility of the health officer to act in a manner that is reasonable and necessary cannot encompass everything and anything but shall be focused”? **It shall be focused on the actions necessary to investigate suppress and control the communicable disease. “Focused” most likely means that which is reasonable and necessary, but not more.**
5. Is it accurate to state that the ordinance “delegates limited legislative authority compatible with constitutional structure and with necessarily retained oversight”? **This is the language used in the ordinance, section 8.30.010 (County).**

Local Health Officer Duties and Authority

D.1. restricts local health officer authority to orders affecting specific individuals or businesses. **Subsection D. allows the LHO to do what is reasonable and necessary for the prevention and suppression of disease including prohibiting or limiting public gatherings. D.1 provides limitations concerning orders directed at individuals or specific businesses. The LHO can do what is reasonable and necessary but only for so long as is necessary to stop or suppress the spread of the disease, and once the individual or business has done what is necessary to prevent future spread of the disease or completed the quarantine. .**

6. Is the ordinance intended to create these new legal standards?:

“Best available scientific understanding as informed by the local conditions in Eau Claire County that an individual or business is either infected or the source of community based infection”? **It is consistent with 8.30.060 and 8.30.070 (County) procedural and substantive safeguards. It will vary depending on the facts and science available at the time of the outbreak of the communicable disease.**

Order “shall only be in effect until such time as the business has taken the appropriate actions to appropriately sanitize the business and take the appropriate precautions to prevent future spread of the disease”? **If the communicable disease has been removed by the appropriate sanitation and appropriate precautions have been taken by the business that are sufficient to prevent future spread of the disease, then the communicable disease threat has been removed and the authority**

to quarantine the individual or close the business would no longer exist. Similar to what happens to person who has spent the required amount of time in isolation or quarantine (they are released), or the business that is closed due to food borne illness (they can reopen).

Orders Authorized by the County Board/City Council

7. Is “best available scientific understanding as informed by the local conditions in Eau Claire County” intended as a new legal standard? **See #6**

8. What is the rationale for the 30-day term and other timeframes prescribed by the ordinance? **The orders if issued would likely constitute an emergency. This requires ongoing review by the LHO and the legislative bodies.**

9. Is the general order of the local health officer in effect while under consideration by the county board/city council? **Yes. See Section 8.30.040 A. “. . . If the order is not considered by the county board within the duration of the order, the order shall be deemed approved.”**

Order Authorized by Direct Legislation

10. While this section purports to authorize the county board/city council “to consider adoption by ordinance of a local health officer order”, doesn’t the board/council already possess that inherent authority? Wasn’t that authority used to enact the mask ordinance? **Yes and Yes.**

Procedural Safeguards

11. Are the procedural safeguards involving repeated public health investigation/publication/reporting requirements applied to the local health officer intended to address legal issues ostensibly raised in the Legislature v. Palm decision? **Yes. Legislative oversight.**

12. Are those “safeguards” advisable in view of the ordinance establishing the board of health as having “complete and exclusive control over the management and operations of the health department”? **Section 8.30.060 D is consistent with the requirement to publish Health Department Regulations as a class 1 notice. §2.52.050 (County).**

Substantive Safeguards

13. Are these detailed substantive safeguards intended to address legal issues ostensibly raised in the Legislature v. Palm decision? **Yes. Oversight by a legislative body. These safeguards require the LHO to make known the factual and scientific basis for the order.**

14. Are those “safeguards” advisable in view of the ordinance establishing the board of health as having “complete and exclusive control over the management and operations of the health department”? **Whether they are “advisable” is ultimately a decision for the county board and city council. The argument in response would be that the Safeguards proposed by the ordinance are not issues of operation or management of the Health Department as described in §2.52.030 (County). The powers and duties of the board of health are specifically enumerated in 2.52.040 (County). The “safeguards” of this ordinance are requirements specifically for the LHO in how**

s/he issues orders related to communicable disease, and they do not direct the board of health in the operation or management of the department. The Director of the Health Department (operation and management) and LHO can be separate positions under the law (Wis. Stats §251.06).

Advisory Directives

15. Given the detailed and burdensome nature of the foregoing provisions, might it be safely assumed that any future general order of the local health officer will necessarily be advisory?

One could assume that all future general orders could all be advisory. One could also assume and argue that the safeguards are necessary to make sure that the orders are issued in an open, fully disclosed manner, with explanation to the public as to why the order is necessary. This ordinance provides legislative oversight. Information of this nature can aid the Board of Health, the City Council and County Board in performing that function.

The purpose of the Task Force is to make recommendations about potential changes to the ordinance. It may be that the Task Force recommends something less detailed and burdensome, but it will be their function, and then ultimately the function of the City Council and County Board to determine what it is appropriate.

Exclusive Application

Enforcement