The Yates County Legislature met in special session Tuesday, September 7, 2021 in the Legislative Chambers with Chairman Paddock presiding and Legislators Bronson, Multer and Holgate absent.

Chairman Paddock explained the purpose of the meeting this morning is to discuss whether we will require masks to be worn within county buildings. Chairman Paddock asked that anyone wishing to speak to keep their comments to the issue of wearing masks. It is not a discussion of the effectiveness of various types of treatments. It is not a discussion about the various types of vaccines that are available.

Chairman Paddock explained that Public Health Director Annmarie Flanagan will be giving a presentation and then make a recommendation. There will be discussion among members of the Legislature, then public comment will be allow by those present, then those that are on zoom. Public comment is to be kept within 3 minutes. If there are further comments that an individual would like to make that person will be given another chance to speak after everyone else has made their comments.

Chairman Paddock stated that if the meeting goes longer than 12:15, the Legislature will recess at 12:15 as there is another special session scheduled at 12:30 and this meeting will resume after that session.

Public Health Director Annmarie Flanagan gave the following presentation:

**MASKING IN COUNTY BUILDINGS DUE TO COVID-19**

September 7, 2021
Yates County, New York
Rationale for Masking in County Buildings

COVID-19 is spread through airborne droplets. Less than 50% of new variants are vaccinated.

2019 to present
Research 1996-2021

Masking has been shown to stop the spread of infection.
As reported in Research from 1996-2021

OSHA ACT & COVID 19

- The Roles of Employers and Workers in Responding to COVID-19
- Under the OSH Act, employers are responsible for providing a safe and healthy workplace free from recognized hazards likely to cause death or serious physical harm.
- CDC’s Interim Public Health Recommendations for Fully Vaccinated People explains that under some circumstances, fully vaccinated people need not take all the precautions that unvaccinated people should take, except where required by federal, state, local, tribal, or territorial laws, rules and regulations, including local business and workplace guidance.
OSHA Updated Guidance due to the Delta Variant

- Due to the preponderance of evidence related to the Delta variant of the SARS-CoV-2 virus, the CDC updated its guidance to recommend that even people who are fully vaccinated wear a mask in public indoor settings in areas of substantial or high transmission.

- If they have had a known exposure to someone with COVID-19 and have not had a subsequent negative test 3-5 days after the last date of that exposure.

Yates County Community Transmission Rates of COVID 19

- Today:
  - 19 new cases
  - 3 cases were too young to be vaccinated
  - 6 were fully vaccinated (1 Pfizer, 3 Moderna, 2 J&J)
  - 14 are close contacts of previous positive cases
  - 19 are symptomatic
  - 3 are related to the daycare cluster
  - 4 are related to a wedding cluster
COVID TRACKER

<table>
<thead>
<tr>
<th>7-day Metrics</th>
<th>7-day Percent Change</th>
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</thead>
<tbody>
<tr>
<td>Community Transmission</td>
<td>Substantial</td>
</tr>
<tr>
<td>Cases</td>
<td>23</td>
</tr>
<tr>
<td>% Positivity</td>
<td>6.7%</td>
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<tr>
<td>Deaths</td>
<td>0</td>
</tr>
<tr>
<td>% Eligible Population Fully Vaccinated</td>
<td>53.1%</td>
</tr>
<tr>
<td>New Hospital Admissions</td>
<td>2</td>
</tr>
<tr>
<td>Community Transmission</td>
<td>Substantial</td>
</tr>
<tr>
<td>Cases</td>
<td>53.33%</td>
</tr>
<tr>
<td>% Positivity</td>
<td>3.54%</td>
</tr>
<tr>
<td>Deaths</td>
<td>N/A</td>
</tr>
<tr>
<td>% Eligible Population Fully Vaccinated</td>
<td>N/A</td>
</tr>
<tr>
<td>New Hospital Admissions</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Table 1. CDC Indicators and Thresholds for Community Transmission of COVID-19

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Low Transmission Blue</th>
<th>Moderate Transmission Yellow</th>
<th>Substantial Transmission Orange</th>
<th>High Transmission Red</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total new cases per 100,000 persons in the past 7 days²</td>
<td>0-9</td>
<td>10-49</td>
<td>50-99</td>
<td>≥100</td>
</tr>
<tr>
<td>Percentage of NAATs that are positive during the past 7 days²</td>
<td>&lt;5.0%</td>
<td>5.0%-7.9%</td>
<td>8.0%-9.9%</td>
<td>≥10.0%</td>
</tr>
</tbody>
</table>
Masks protect others from your germs

- Masking protects others from your germs.
- When we talk, cough, sneeze or sing, we expel droplets into the air.
- If we are not symptomatic, we may not know we are infected yet.

Mask vs No Mask

- Although a properly fitted N95 mask is proven to keep all droplets out.
- A surgical or nonsurgical mask allows an employee some level of protection, that would not be there if the individual was not masked.
Mrs. Church questioned Dr. Flanagan with regard to her recommendation that staff wear masks in the county buildings; is it just as important to require the public to wear masks when entering the buildings?

Dr. Flanagan explained that the people that are unvaccinated are the biggest spreaders of the disease at this point in time. We actually want the people that are not vaccinated to wear masks because those are the people that are pushing the pandemic forward even more. They acquire the germs, they are giving it to other people. Anyone coming into the county building should be wearing a mask. There is a specific population in the county that is not vaccinated; they are a substantial concern. Everyone in this county needs to enter these buildings at some point in time during their lifetime. People who are working here in the departments, as long as they can socially distance, should be able to not have to wear a mask at their desk.
Mr. Cutler questioned with the rise in cases, is information available on how many are unvaccinated? Dr. Flanagan stated that it would be approximately 50%. The others are vaccinated, and some are children that are ineligible for the vaccine at this time. Mr. Cutler stated that the point behind the mask is to stop the spread; it doesn’t protect the wearer of the mask. It protects individuals around the wearer of the mask.

Chairman Paddock questioned County Administrator Flynn on a poll that was taken when there was someone at the front desk, as to the percentage of people coming in that were wearing masks. At that time the county was at approximately 45% fully vaccinated and approximately 55% of the people that came in were not wearing masks.

Administrator Flynn stated that at the very beginning over the course of the week a very low percentage were wearing masks and that did increase as the number of COVID cases increased.

Ms. Chilson questioned whether any research has been done on people that have had COVID-19 and have a natural immunity to this. Dr. Flanagan explained that it may be being done at the CDC level but at this point in time we are just trying to make sure that everything is in place to get schools back open and running appropriately according to the state guidance. That has been the main focus this past two weeks. Dr. Flanagan stated that she does not have that scientific data at this point in time.

Mr. Banach referred the chart with the blue, yellow, orange and red. If all of a sudden we should go back to yellow for 2 days, 1 day, 20 days whatever the standard is that’s set, is that when we take off masks, or do we have to go back to the blue to take off masks? People want to know what the criteria is, if we are going to mandate masks, which he hopes is not done, we have the criteria set to take the masks off. Dr. Flanagan stated that she could certainly set that benchmark for the legislature or the legislature could identify where they would like it benchmarked.

Chairman Paddock stated that if you look in the Human Services Committee agenda, there is a chart in there similar to the one in the presentation that puts a line between yellow and orange. One that could be considered is, that masks are required when the county is in orange or red, and masks for unvaccinated personnel could be considered for yellow, no mask being required if the county is in the blue range. Dr. Flanagan agreed that this would be an acceptable approach.

Mr. Banach recommended that a number of days should be included. Chairman Paddock stated that it could be monitored on a daily basis.

Ms. Chilson questioned, out of the 38 active cases we have 9 that are fully vaccinated that have COVID-19. Dr. Flanagan stated that is the original number, the extra 15 that came in today are still being investigated.

Ms. Chilson asked if the original intent of the pandemic shutdown was to flatten the curve and not over stress the hospital. Dr. Flanagan explained that when the pandemic started there were serious questions about the whole process and people were scared. All the systems were significantly put into place and lockdowns occurred. When in actuality, because we hadn’t seen a pandemic of this magnitude in so many years, all of those lockdowns should be now. Dr. Flanagan expressed that she is not saying “lockdown”, as we should never do that again; we need to carry on business as usual. We just need to have the systems in place, masking, barriers, washing our hands, all of the pieces and if you’re sick you stay home. We should never shut down businesses because it doesn’t make sense. It doesn’t make sense for anyone, for their mental health, their physical health, for their financial health, for the overall health of everyone involved. All Dr. Flanagan is saying is we should wear masks in a county building so that we
can protect each other. We have a moral obligation to protect the workers that are here. Dr. Flanagan stated that she cannot speak for any of the businesses in the county but she can say in this county building we need to protect the people that are here. Every employer needs to make that decision on its own.

Mr. Cutler stated we should set the benchmark once a decision is made on the masks. We can go to several levels to set the benchmark, but not complicate the discussion right now. Mr. Cutler agrees with having a benchmark.

Mr. Banach stated if we are so worried about protecting employees and citizens why don’t we have thermometer tests at the door. It would make sense that if you stop it at the door and turn it around it’s not going to come into the building. Everyone is saying that it is against an individual’s right, then don’t come in. If you want to come in and do business you should have to have your temperature taken. That not only protects from COVID but it also protects against a lot of other diseases that could be spread as well.

Mr. Willson disagrees with Mr. Cutler in that the benchmark should be set now. It would make everyone feel comfortable in how they vote with regard to the mask mandate. Mr. Willson stated that although he has been outspoken about not having a mask mandate, he has also spent 50 years living in fear of OSHA. If OSHA is bringing up this kind of thing, where liability is such, we really don’t have a choice.

Mr. Button clarified that the figures that have been presented are strictly Yates County. Dr. Flanagan confirmed they are. Mr. Button questioned Dr. Flanagan that depending on the outcome of this decision, how can she help the legislature enforce the mandate? Dr. Flanagan suggested that signage that says masking is mandatory in the building would be needed.

Mrs. Church reported that on August 3rd, Wegmans required that all their employees have to wear masks at work. Customers were strongly encouraged to wear masks.

Ms. Chilson stated she appreciates the comments on ensuring public safety that have been presented. Ms. Chilson stated that an article written by Mr. Deming states that the cases are not occurring in public places. They are occurring at parties, BBQ’s, picnics, and camping events. We are not going to stop that. Ms. Chilson held up a newsletter and showed that none of the officials pictured together were wearing masks. The state fair was just held and no one wore masks outside although it has been stated that there were a lot of people wearing them in the buildings. So we are going to put everyone under this mandate, instead of having the right of an American citizen, when we don’t really have proof of it being spread in this building or buildings.

Mrs. Percy stated OSHA is a federal law. If a representative comes here and we are not wearing masks there could be a big liability for this county. You better think about this as there is never an announcement of them coming. Mrs. Percy feels that OSHA is pushing this and that the legislature should follow them so there is no large liability.

Mr. Button stated he wonders whether we are going to be safe enough. We sit here rebreathing air though this whole building. Somehow we are going to have to overcome the liability issue that we are creating with recycled air. How much money are we going to put into this building for how long to make it completely safe?
Chairman Paddock stated this came out several months ago. The filters in the air distribution system in the newer buildings are all equal to or better than the level set. The filtering within these buildings is within the recommendation.

Ms. Chilson asked Dr. Flanagan to read the OSHA mandate again as she cannot find it. Anmarrlie stated employers are responsible for providing a safe and healthy workplace free of recognized hazards likely to cause harm, death or serious physical harm. According to the CDC interim public health recommendations for fully vaccinated people, under some circumstances fully vaccinated people need not take all precautions but unvaccinated people, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations including local businesses, and workplace guidance due to the preponderance of evidence related to the Delta variant, SARS – CoV-2 (the virus that causes COVID-19), recommends masking. The CDC recently updated its guidance directing that even people who are fully vaccinated should wear a mask in public indoor settings, in areas of substantial or high transmission. Ms. Chilson clarified that we are under a recommendation, we are not under a mandate.

Mr. Killen stated he has spoken to a number of people, he is not certain that the masks are highly effective but they do provide some protection and from what he has been able to tell, he does see there is an increase in transmission. To err on the side of caution for fellow citizens it’s the proper thing to do to provide some element of protection for others around us. Mr. Killen feels it is a wise thing to follow Dr. Flanagan’s advice and request people coming into the building or working, if they are not socially distant to wear masks. It is not an unreasonable burden. They don’t have to be here for an extended time or they can chose to do things remotely.

Chairman Paddock stated there are multiple facets to reducing the spread of disease, this disease in particular. One is distancing, one is washing one’s hands, one is hand sanitizers if you can’t wash your hands, one is barriers such as sneeze shields between desks and counters and staying away if not feeling well. A mask is merely another tool in that tool box. Not one of these items will prevent the spread, but all of them help to reduce the spread.

**PUBLIC COMMENT**

Joy Schank, Marsha DeVine, Elaine Lewis, John Prendergast and Jim Smith addressed the Legislature and urged them not to require masks in county buildings.

Valerie Brechko, Brenda Reynolds, Elizabeth Boesen, Tim Groth, Arlene Wilson, Jim Wilson, Alex Androsik, Barbara Schiesser, Robert Schiesser, Hannah Martens and a speaker at the Penn Yan Public Library all addressed the Legislature with their support of requiring masks in county buildings.

Mr. Willson stated he has to leave for another meeting but as far as he is concerned, the legislature needs to have legal advice as to the OSHA piece of this before any decisions are made. Mr. Willson would like to know what the liability aspects are. He also believes a benchmark is needed when masks can come off. Mr. Willson left at 1:30 p.m.

Mrs. Church moved the following, seconded by Mr. Cutler:

Require that masks be worn in Yates County Buildings by visitors and employees in common areas (hallways, waiting areas, etc.) as follows:

- By all if county’s transmission is substantial or high (orange or red) and
- By unvaccinated persons if transmission is moderate (yellow)

If county transmission is low (blue), no masks are required.
DISCUSSION:
Mr. Button stated he would like to add to have this approved by the County Attorney. Mr. Paddock stated that he did speak with the County Attorney and the decision is the Legislature’s.

Ms. Chilson stated this is a recommendation from the CDC. A recommendation is not a mandate. Ms. Chilson agrees that we need to provide provisions for people who are at risk. But she also believes that we need to have the right of personal choice as the CSEA representative today brought before us her numbers, there are 13 individual saying yes and 50 people saying no to wearing masks. That is extremely high. We also have a good majority of the community that Ms. Chilson has knocked on their doors and talked about this, that do not support this. They want to make their own personal choices in this matter. Ms. Chilson recommends that the legislature think about the people they are representing and your employees that have stated this.

Mr. Killen clarified that this is in public areas and where people will be in close proximity. In an area where they are socially distant they would not be mandated to wear a mask all day.

Chairman Paddock clarified that if Mr. Killen is talking about individual offices that is correct. If he is talking about waiting rooms it would be considered an open [public] area.

Mr. Cutler stated this is not a personal liberty issue, it’s a public health issue. It is not a personal decision because it affects other people. We have an excellent Public Health Director and an excellent Public Health Department who have all worked very hard over the last year and half. We know from what Dr. Flanagan is telling us this morning that this virus is spreading, it’s spreading in Yates County. We care about our employees and we care about our constituents and we have a responsibility to do everything we can to try to slow the spread.

Chairman Paddock stated that he did count the comments from the public, those present here as well as those on zoom. There were 11 individuals in favor of requiring masks and there were 5 who suggested that we should not.

Mr. Killen stated that to Mr. Banach’s concern in removing the mask mandate and the time to do that, to be reasonable, if we were going to have to think about the timing of that Mr. Killen suggested weekly would be sufficient. As we see the numbers fade the following week we could change it.

Mr. Killen moved to amend the motion to add that this be monitored on a weekly basis by Public Health. Both Mrs. Church and Mr. Cutler were fine with the amendment.

Mr. Button moved to also add that the motion be reviewed by the County Attorney, seconded by Ms. Chilson. Both Mrs. Church and Mr. Cutler were fine with the amendment.

Chairman Paddock read the motion as amended.

Require that masks be worn in Yates County by visitors and employees in common areas (hallways, waiting areas, etc.) as follows:
- By all if county’s transmission is substantial or high (orange or red) and
- By unvaccinated persons if transmission is moderate (yellow)

If the county transmission rate is low (blue), no masks are required, this is to be monitored and a determination made on a weekly basis by Public Health, and is subject to review by the County Attorney.
VOTE: Roll Call – Killen, Cutler, Gleason, Church, Percy, Harper, Button, Paddock voting “Yes”; Chilson, Banch voting “No”. Motion carried.

Meeting was recessed at 12:10 p.m. to reconvene at 12:30 p.m. for a meeting with County Attorney Scott Falvey.

At 12:30 p.m., an insufficient number of legislators was present to constitute a quorum. While waiting for more Legislators to arrive, County Attorney Falvey reviewed the motion adopted earlier in the meeting and had no issues with the motion.

At 12:53 p.m., Ms. Chilson arrived (constituting a quorum) and Mr. Harper moved to enter executive session to discuss matters regarding proposed, pending or current litigation with Legislators, County Attorney and the County Administrator present. Seconded by Mr. Killen. VOTE: Unanimous, with Legislators Bronson, Church, Gleason, Holgate, Multer and Willson absent.

At 1:02 p.m. the Legislature came back into open session and the following action was taken.

**RESOLUTION NO. 312-21**

Mr. Harper offered the following resolution and moved its adoption, seconded by Ms. Chilson.

**AUTHORIZED AND APPROVE AN OPIOID SETTLEMENT AGREEMENT (J & J)**

WHEREAS, the County of Yates (hereinafter referred to as “County”) is a named plaintiff in a civil action regarding the opioid addiction crisis, against several defendants, including manufacturers of opioids, distributors of opioids and chain pharmacies (said civil action hereinafter referred to as the “Action”); and

WHEREAS, the County’s attorney in the Action is the law firm of Napoli Shkolnik, PLLC (hereinafter referred to as “Napoli Shkolnik”); and

WHEREAS, the Action alleges several causes of action against defendants Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc. (hereinafter collectively referred to as “J & J”) based on claims that J & J contributed to the opioid epidemic by falsely promoting prescription opioids it manufactured and sold and by falsely promoting the increased use of opioids directly and generally through various “front groups” and failing to implement measures to prevent diversion of prescription opioids in connection with distribution of its products, all of which contributed to a public health crisis in the County; and

WHEREAS, J & J has offered to settle the County’s claims against it by paying the sum of between approximately $61,776.44 and $144,172.34 over ten (10) years to be used for restitution and abatement, and agreeing to not manufacture, sell or promote opioids; and

WHEREAS, the County wishes to resolve this matter with respect to J & J without further litigation and enter into such settlement with J & J, wherein it will settle all allegations against J & J and avoid protracted litigation; and

WHEREAS, in order to effectuate the County’s settlement with J & J, the County would need to execute two proposed documents, namely: a) New York Opioid Settlement Sharing Agreement and b) New York Subdivision Election and Release Form (hereinafter collectively
referred to as the “Settlement Agreement”), and said Settlement Agreement having been submitted to members of the Yates County Legislature prior to its meeting held this 7th day of September, 2021, for its consideration;

NOW, THEREFORE, BE IT RESOLVED, that the form and substance of the aforementioned Settlement Agreement is hereby approved, and the County is authorized to enter into said Settlement Agreement; and be it further

RESOLVED, that in light of the foregoing, the Chairman of the Legislature is hereby authorized on behalf of the County, to execute and deliver the Settlement Agreement, in a form substantially similar thereto, and execute and deliver such other documents as may be necessary and appropriate to effectuate the settlement with J & J; and be it further

RESOLVED, that moreover, and in light of the foregoing, Napoli Shkolnik is also hereby authorized on behalf of the County, to execute and deliver the Settlement Agreement, in a form substantially similar thereto, and execute and deliver such other documents as may be necessary and appropriate to effectuate the settlement with J & J; and be it further

RESOLVED, that copies of this resolution be given to the County Administrator, County Attorney, Napoli Shkolnik PLLC and any other person/entity deemed necessary. VOTE: Unanimous, with Legislators Bronson, Gleason, Multer and Willson absent.

Meeting adjourned at 1:03 p.m.