Consideration of variance requests

On April 26, 2020, the Director of the Colorado Department of Public Health and Environment ("CDPHE"), issued an Order (the “State Safer at Home Order”) implementing the Safer at Home requirements set forth in Executive Order D2020-044 issued by the Governor of the State of Colorado (the “Executive Order”). The State Safer at Home Order, as from time to time amended, establishes a process for the issuance of a variance to all or part of the Executive Order. Any such variance shall be requested by a County and shall meet each of the criteria set forth in Appendix G of the State Safer at Home Order, including the submission of an alternative COVID-19 suppression plan (the “Alternative Plan”).

In recent weeks, the City and County of Denver (“Denver”) has received numerous requests from the local business community for variances. Under Appendix G, the Mayor of Denver must affirmatively adopt the Alternative Plan in place of the State Safer-At-Home order as a prerequisite to the consideration of any variance request. Given the need for careful consideration of the public health ramifications of any variance, the Mayor has deemed it necessary to establish a process for reviewing each variance request received by Denver and determining whether such request should, in fact, be submitted to CDPHE for approval.

Accordingly, the following process for the consideration of variance requests is hereby established:

1. Any individual business engaged in a commercial, manufacturing, or service activity, whether for-profit or non-profit, regardless of its corporate structure, or any association or other organization acting on behalf of a group of similarly-situated businesses may submit a request for a county variance under the State Safer at Home Order to the Office of the Mayor. Such request shall be in writing and shall be accompanied by a detailed plan for reopening the business, which plan shall, at a minimum, specifically identify each restriction found in the State Safer at Home Order for which a variance is being requested, and what alternative restrictions are proposed (“Alternative Plan”).

2. Upon receipt, the Office of the Mayor shall immediately forward the request to the City Attorney and the Executive Director (“Executive Director”) of the Denver Department of Public Health and Environment (“DDPHE”). It shall be the responsibility of the City Attorney or her designee to coordinate any required review of the request and Alternative Plan. It shall be the responsibility of the Executive Director to review the Alternative Plan and to determine what, if any, public health concerns exist with the request.

3. Upon completing his initial review, the Executive Director may: (i) forward the request and Alternative Plan to the Mayor with his recommendation to move forward with the submission of a formal variance request to CDPHE; (ii) deny the request and notify both the Mayor and the requestor of the reasons for such denial in writing; or (iii) return the request and Alternative Plan, along with his written comments, to the requestor for further revision.
4. In the event that the Executive Director recommends that the request moves forward, the Mayor may: (i) forward the request and Alternative Plan to the City Attorney with his direction to prepare a formal variance request for submission to CDPHE; (ii) deny the request and notify the requestor of the reasons for such denial in writing; or (iii) return the request and Alternative Plan, along with his written comments, to the requestor for further revision.

5. In the event that the Mayor directs the City Attorney to prepare a formal variance request, it shall be the responsibility of the City Attorney or her designee to: (i) work with the Executive Director and the requestor to prepare a final alternative COVID-19 suppression plan; (ii) work with DDPHE to obtain all public health data as may be required by CDPHE to make an informed decision on the issuance of a variance; (iii) obtain the written endorsement of the Executive Director for the final alternative COVID-19 suppression plan; (iv) obtain written verification from select local hospitals that they have the capacity to serve all people needing their care; and (v) obtain evidence of the Mayor’s approval of the variance request and formal adoption of the final alternative COVID-19 suppression plan.

6. Upon the completion of the formal variance request, it shall be the responsibility of the City Attorney or her designee to file the request with CDPHE. The City Attorney or her designee shall serve as the single point of contact for all questions from CDPHE concerning the request and shall work with the Executive Director, other City agencies, and the requestor to provide a timely and accurate response to CDPHE.