



TOWN COUNCIL

Special

MEETING PACKET

June 2, 2020



**Town Council
Agenda
Special Meeting
Tuesday, June 2, 2020
Remote Meeting
7:00 PM**



MISSION STATEMENT-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.

- 1) **CALL TO ORDER**
 - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 4) **PUBLIC COMMENT (three-minute limit per speaker)**
- 5) **NEW BUSINESS**
 - A) Consider Resolution 2020-17, A Resolution Supporting Business Establishments Located in the Weld County Portion of the Town
- 6) **COUNCIL REPORTS AND COMMENTS**
- 7) **MAYOR'S COMMENTS**
- 8) **EXECUTIVE SESSION**
- 9) **ADJOURN**

TOWN OF JOHNSTOWN, COLORADO

RESOLUTION NO. 2020-17

**RESOLUTION SUPPORTING BUSINESS ESTABLISHMENTS
LOCATED IN THE WELD COUNTY PORTION OF THE TOWN**

WHEREAS, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with the authority to administer the affairs of the Town; and

WHEREAS, on May 14, 2020, the Colorado Department of Public Health and Environment (“CDPHE”) issued the Third Amended Public Health Order 20-28 Safer at Home, setting out, among multiple other matters, a variance procedure to allow counties to apply for a variance from part or all of Governor Polis’ Executive Order D 2020 044 Safer at Home upon the satisfaction of certain criteria and the submission of an approved alternative COVID-19 suppression plan; and

WHEREAS, Larimer County applied for, and, on May 23, 2020, obtained such a variance, resulting in State approval for Larimer County businesses to re-open upon compliance with safety guidelines; and

WHEREAS, based on the variance, the businesses located in the Larimer County portion of the Town have re-opened; and

WHEREAS, because the Town Council supports all the Town’s businesses and very much desires that the businesses located in the Weld County portion of the Town also be able to open, on May 29, 2020, the Town submitted a letter to the Weld County Board of County Commissioners requesting that Weld County either apply for a county-wide variance or submit a limited variance for the Town of Johnstown and included therein a Town specific variance request, a copy of the letter and variance request is attached hereto as Exhibit A (collectively “Johnstown Variance Request”); and

WHEREAS, the Johnstown Variance Request establishes that, if given the opportunity, the Town would be able to satisfy the criteria contained in CDPHE’s Public Health Order 20-28 for the issuance of a variance, thus allowing the Town businesses located in Weld County to re-open with State approval; and

WHEREAS, in response to the Johnstown Variance Request, Weld County Commissioners Barbara Kirkmeyer, Scott James and Kevin Ross appeared at the Town Council meeting on June 1, 2020; and

WHEREAS, while the Commissioners expressed support for Weld County's businesses, the Commissioners indicated that they would not seek a county-wide variance or submit a Town-specific variance because, pursuant to the County's analysis, CDPHE's Public Health Order 20-28 is not valid and it would thus be illogical and counterproductive to seek a variance from an otherwise unlawful exercise of power; and

WHEREAS, in support of their analysis, the Commissioners distributed a Memorandum from the County Attorney concerning the "Legal Effect of PHO 20-28," a copy of which is attached hereto as Exhibit B ("Weld County Memorandum"); and

WHEREAS, while they declined to submit the Johnstown Variance Request to CDPHE on the Town's behalf, the Commissioners indicated that the Weld County businesses are entitled to open without State approval and that, if the businesses were challenged, the businesses would receive the support of Weld County; and

WHEREAS, although the Town does not have the statutory authority to mandate protocols and procedures during a pandemic and authorize the businesses to re-open because public health directives are delegated to the state and county health departments, the Town desires to provide support to the Town's businesses located in Weld County and desires that those business, upon an independent review and good faith risk assessment of CDPHE's Public Health Order 20-28 and implementation of appropriate safety measures, be able to re-open; and

WHEREAS, the Town Council finds, determines and declares that adoption of this Resolution is in the best interests of the citizens of the Town and advances and preserves the public peace, health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1. The Town Council unequivocally states and affirms its support of all the businesses located in the Town and its desire that the businesses located in the Weld County portion of the Town be able to re-open.

Section 2. The Town Council suggests that the Town's businesses located in Weld County consider the position of Weld County, as set forth in part in the Weld County Memorandum, and review the Fourth Amended Public Health Order 20-28 Safer at Home dated May 26, 2020, located at <https://covid19.colorado.gov/covid-19-in-colorado/public-health-executive-orders-resource>.

Section 3. If the Town's businesses located in Weld County decide to re-open after such review and agree to implement reasonable and recommended safety protocols to prevent the spread of COVID-19, the Town Council hereby fully endorses and supports such decision.

Section 4. This Resolution shall be effective upon the date of adoption.

PASSED, SIGNED, APPROVED, AND ADOPTED this ____ day of May, 2020.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

May 29, 2020

Mike Freeman, Chair
Scott K. James, Commissioner
Barbara Kirkmeyer, Commissioner
Steve Moreno, Commissioner
Kevin Ross, Commissioner

Re: COVID-19 Variance Request

Dear Chairman Freeman and Weld County Commissioners:

On behalf of the Town Council of Johnstown, we hope this informal method of delivery, but critically important letter finds you all well. As communities across the front range begin opening up, our businesses are still experiencing challenges. As you are aware, the Town is bisected by two counties, Weld and Larimer. Larimer County has received a variance from the Colorado Department of Public Health and Environment (CDPHE). The variance granted to Larimer County includes rules and requirements for businesses to follow based on their business type and permits them to officially open while following those guidelines. What this provides to the businesses in Town of Johnstown, Larimer County is a clear understanding of the rules and expectations to keep residents and visitors alike safe.

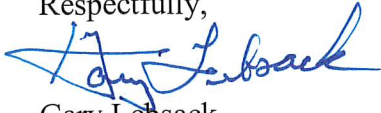
Recently, Johnstown Staff contacted the Weld County hotline for COVID-19. In the call, our Staff asked if businesses could reopen. The guidance provided was more or less; Weld County is not opening or closing business and businesses should follow state guidelines. Referring to the State guidelines, this leaves several of our businesses still in a closed position; most notably our gyms and churches. In a time when we need clear direction from our partners at the County Public Health Department, this guidance is nonexistent.

As the County Commissioners and in partnership with the County Public Health Department you as an elected body have the ability to make a request for a variance to the State. Receipt of a variance by the State enables our businesses to open without fear of retribution by the State regardless if they have the resources to enforce or not. What it also does, is provides the County with absolute autonomy without oversight by the State, something politically which should be attractive. Lastly and most importantly, it allows our businesses to move forward with the Commissioners as the Champions and removing our businesses from under a cloud of uncertainty. The Town of Johnstown urges you to complete the variance application process immediately with a focus on the needs of our communities, not political ideologies.

If the Commissioners of Weld County refuse to submit a variance, we would respectfully ask that you vote affirmatively to adopt the Town's plan and submit a variance prepared by the Town

of Johnstown to the State on our exclusive behalf with concurrence from the Weld County Health Department which has been requested in instances from other County Government.

Respectfully,



Gary Lebsack

Mayor

&

Town Councilmembers

Cc: Matt LeCerf, Town Manager

www.townofjohnstown.com

Enclosures – Town of Johnstown Variance Request

TOWN OF JOHNSTOWN VARIANCE REQUEST (WELD COUNTY – PARTIAL)

May 28, 2020

I. Purpose

The incorporated limits of the Town of Johnstown (the “Town” or “Johnstown”) are bisected by two counties – Larimer and Weld County. Within the Johnstown section of Larimer County, a variance has been issued by the Colorado Department of Public Health and Environment. In Weld County, to the best of the Town’s knowledge, a variance has not been submitted to the State for consideration. Because of that, Johnstown is taking a leadership role in seeking to apply rules and procedures for the Town’s businesses in Weld County that mimic those of Larimer County and is submitting a variance proposal requesting strong consideration for application of the same rules and procedures to the Town as a whole and not just portions of it. If this variance is granted, the Town is committed to adopting an ordinance outlining the rules and procedures that must be followed to open up all the Town’s businesses. For purposes of this variance request, any reference to Johnstown is intended to be specific to the incorporated limits of the Town of Johnstown in Weld County only.

II. Suppression Plan

Johnstown understands the importance of ensuring the health and safety of the community members. Much of this variance request provides provisions regarding how Johnstown intends to meet the intent of the Fourth Amended Public Health Order 20-28 Safer at Home (“Safer at Home Order”) by using innovation and flexibility and by working with the Town’s business community as a partner in this effort. Throughout this process, the Town has served as a primary contact for businesses seeking to reopen in compliance with the State’s Orders. The Town is committed to continuing to be this resource and guidance entity for a safe and effective reopening.

Municipal Variance Criteria

- a. **Johnstown COVID-19 Cases (Weld County)** – The portion of Johnstown, located in Weld County has remained stagnant recognizing 6 cases in the past 14 days with no single day above 1.
- b. **Hospital Authorization for Suppression Plan** – The Town of Johnstown portion of the community in Weld County has no hospitals in its incorporated area. The Town agrees to reach out to hospitals in Weld County, outside of the Town’s corporate limits, if requested.

III. Variance Requests

The following guidance outlines requirements and recommendations per sector. This guidance seeks to help provide relief to the local economy and business community, while still ensuring that the Town meets the intent of the Safer at Home Order. Johnstown encourages creative solutions developed by the local community and believes that innovative solutions create best practices and outcomes to suppress the spread of COVID-19. Any sector/business that is not identified below is subject to the guidelines and requirements of the Safer at Home Order.

Variance Request #1 - Public Gatherings

Allow public gatherings of no more than 10 people unless the square footage of the facility and/or space allows for 6 foot distancing of all participants. If the event organizer and/or facility can demonstrate compliance via a written plan with provisions below, gatherings may be approved not to exceed 50 people.

- In each confined indoor space, in order to achieve 6 feet social distancing, the limit is 50% of the posted occupancy code limit ensuring a minimum 28 square feet per person not to exceed more than 175 people at any given time.
- Detailed plans on the space or area used for the gathering or event and controls that will be implemented to maintain 6 feet distancing requirements.
- Face coverings must be required and plans should outline how the requirement will be communicated to participants and enforced during the event.
- The plan must include methods used to register attendees so that contact tracing may occur if necessary.
- Susceptible populations will be strongly recommended to refrain from participating in any public gathering during the Safer at Home phase.
- Gathering size will be re-evaluated on June 30, 2020, to determine when larger gatherings will be able to resume.

Variance #2 – Specific Variances by Sector: Recreation PHO 20-28 Section III.A.3.

General Recreation

Recreation programs and/or facilities that believe they can operate safely under the current guidance may submit a plan to the Town and the Weld County Department of Public Health and Environment (“WCDPHE”) that shows their ability to meet the following requirements:

- In each confined indoor space, in order to achieve 6 feet social distancing, the limit is 50% of the posted occupancy code limit ensuring a minimum 28 square feet per person not to exceed more than 175 people at any given time.
- Strict social distancing criteria of 6 feet or more.
- Operate at 50% capacity or less.
- Limit gathering size to the current local limitation.
- Increased cleaning and disinfecting of all high-touch surfaces and restrooms, and posting signs to ensure physical/social distancing in restrooms.
- Removal or blocking off of any areas that encourage group gatherings. Seating areas, playgrounds, etc., in common areas must be removed or blocked off to prevent gathering in these areas.
- Not allowing on-premise consumption of food and beverages.
- Symptom screening upon arrival to work, and face mask requirements for employees. Depending on the business sector all guidelines for that business type must be followed.
- Posting signs throughout describing the requirements for physical/social distancing.
- Employees who are symptomatic must be excluded from the workplace and required to isolate for 10 days. They should be encouraged to get tested for COVID-19 either through a local provider or Weld County’s community wide testing.

Variance #3 – Specific Variances by Sector: Education PHO 20-28

Johnstown would like to allow the school district to apply for a Graduation Waiver for review by the Town with a concurrent review by WCDPHE. The plans for graduation ceremonies must include at a minimum how the following precautions will be addressed:

- **Physical Distancing** - Strategies to maintain a minimum of 6 feet physical distancing must be used throughout the ceremony. Options include doing “drive-in” style ceremonies, streaming presentations and speakers, calling small groups of less than 10 graduates at a time to the presentation stage, etc.
- **Guests of Graduates** - Family and friends of graduates in attendance in person need to be limited in order to maintain physical distancing requirements and overall event size. Members of the same household as the graduate may attend as a group. Extended family members or other guests outside of the household must adhere to physical distancing requirements.
- **Delivery of Diplomas** - Deliver diplomas to graduates after the ceremony via mail, or have graduates collect diplomas from the stage individually rather than being handed out by administration.

Variance #4 – Specific Variances by Sector: Places of Worship PHO 20-28 Appendix F.5

Places of worship are encouraged to continue drive- up or online services as much as possible. For facilities wishing to resume in-person services the following requirements must be met;

- Places of worship in order to achieve 6 feet social distancing, the limit is 50% of the posted occupancy code limit ensuring a minimum 28 square feet per person not to exceed more than 175 people at any given time.
- Participants must be asked whether they have COVID-19 symptoms at the door and excluded from the place of worship if symptomatic.
- Participants will be required to wear a face covering both when entering and while present in the house of worship.
- Employees must be screened for symptoms each day before beginning work.
- Employees who are symptomatic must be excluded from the workplace and required to isolate for 10 days. They should be encouraged to get tested for COVID-19 either through a local provider or Weld County’s community wide testing.
- Clean and disinfect bathrooms regularly, particularly high-touch surfaces, and ensure they have hand washing supplies.
- Implement procedures to maintain social/physical distancing by placing markings on the floor to maintain at least 6 feet distance where lines form, creating one-way entry/exit and aisles.

Variance #5 – Specific Variances by Sector: Local and Personal Recreation PHO 20-28 Sections I.H, II.A.3.

To the greatest extent possible, Johnstown continues to urge community members to stay close to home when participating in recreation activities. The careful and cautious reopening of these facilities helps the community to cope with the stress of this global pandemic.

Johnstown requests a variance to the Safer at Home Order for recreation in the following areas within Weld County jurisdiction:

Section II.A.3 - Gyms

- In each confined indoor space, in order to achieve 6 feet social distancing, the limit is 50% of the posted occupancy code limit ensuring a minimum 28 square feet per person not to exceed more than 175 people at any given time.
- Clients must be instructed to wear face coverings when entering the establishment and at all times except when a face covering inhibits the participants ability to participate in a fitness activity.
- In use machines and equipment must be separated by 6 feet or more. Adjacent equipment closer than 6 feet must be blocked off to prevent use. Cleaning supplies for handles, benches, pins, seats and similar items must be available at each machine that will be used.
- Staff must be available to monitor the number of people in the facility, screen clients upon entry for COVID-19 symptoms, and assist with and monitor the cleaning and disinfection of equipment between users.
- Group classes in enclosed rooms must be limited to no more than 4 participants plus the instructor unless a written plan demonstrates the businesses ability to expand this capacity given the square footage of the rooms used for classes while maintaining required social distancing.
- Saunas and shared spaces must remain closed.
- Pools may open for training, team practices, or instructional classes provided 6 feet of distance can be provided between participants during instruction or training in the pool. Open swim and public use of the pool must remain closed.
- Employees who are symptomatic must be excluded from the workplace and required to isolate for 10 days. They should be encouraged to get tested for COVID-19 either through a local provider or Weld County's community wide testing.

Section I.H - Organized Outdoor Group Activities and Pools

- Organized practices for diamond sports (baseball and softball), swim teams, and other non-contact sports are permitted.
- Group competition, tournaments, games, meets, etc are not permitted at this time
- Pools may open for training, team practices, or instructional classes provided 6 feet of distance can be provided between participants during instruction or training in the pool. Open swim and public use of the pool must remain closed.
- A coach or staff member should ask athletes, as they come into practice, if they feel ill in any way, specifically listing certain symptoms, and send home those athletes reporting feeling ill or experiencing symptoms.
- Dugout or locker room use will not be allowed. Players should change and shower (for pool practice) prior to arriving at the facility. Players' items should be lined up at least 6 feet apart.
- Parents must remain in their cars, drop-off participants, or follow all social distancing requirements if observing practice.
- Players should use their own equipment; gloves, helmets, and bats. Shared equipment; kickboards, helmets, etc. should not be used.
- Coaches are responsible for ensuring social distancing is maintained between players as much as possible. Additional spacing must be provided between participants while playing catch, waiting to swim, no congregating of players while waiting to bat, etc.
- Players must bring their own water/beverage to consume during and after practice. No shared drinking fountains or coolers.
- Players must bring their own snacks to consume during and after practice. No shared/communal snacks.

- Coaches must record participants in attendance at each practice to aid in contact tracing if necessary.
- Team organized practices for contact sports including but not limited to basketball and football, remain suspended.

Variance Request #6

Appendix F.2 - Critical Infrastructure

Johnstown understands the need to limit travel during the safer-at-home phase of the Safer at Home Order. Given that hotels and lodging are open, Johnstown seeks to allow private, short-term vacation-style rentals to open up for operation with a plan to monitor and follow the new guidance.

- Private, short-term vacation-style rentals, such as those arranged through an online hosting platform, including but not limited to VRBO or Airbnb, homeowner rentals, and privately owned residences for rent that are rented for a period of 30 days or fewer are permitted to operate.
- Guests should be informed of local restrictions due to COVID-19 prior to arrival, including that restaurants may only be offering take-out or require reservations, face covering requirements and local closures of recreation facilities.
- Owners of short-term rental properties must provide visitors access to cleaning supplies, such as disposable wipes, to clean doorknobs, remote controls, and desks before and after each use.
- Groups larger than 10, except those all from the same household are not permitted.

Variance Request #7

Libraries

- In each confined indoor space, in order to achieve 6 feet social distancing, the limit is 50% of the posted occupancy code limit ensuring a minimum 28 square feet per person not to exceed more than 175 people at any given time.
- Face coverings must be worn by employees and customers at all times.
- Returned materials shall be quarantined separately for 72 hours prior to returning to normal circulation.
- Install protective plexiglass shields or barriers at checkout or information counters or other areas where customers and employees must be in close contact.
- Provide dedicated hours for people at higher risk of severe illness from COVID-19.
- Post signs at entrances notifying customers to STOP if they are sick and ask them not to enter the library.
- Tape must be applied to floors at areas where lines form to help provide proper physical /social protocol for patrons who are waiting in line.
- Use curbside pickup options as a primary way of distributing materials.
- Provide hand sanitizer at all entrances, and increase cleaning frequency of restrooms and high touch surfaces.
- Shared equipment (computers, chairs) must be sanitized between uses. Recommend implementing time slot reservations for computer access to allow employees to clean between users.
- Group areas must remain closed, no classes or programming is permitted.

- Employees who are symptomatic must be excluded from the workplace and required to isolate for 10 days. They should be encouraged to get tested for COVID-19 either through a local provider or Weld County's community wide testing.



MEMORANDUM

TO: Board of County Commissioners

DATE: June 1, 2020

FROM: Bruce T. Barker, Weld County Attorney

SUBJECT: Legal Effect of PHO 20-28

The Board of County Commissioners has been asked several times to submit to Governor Polis and Colorado Department of Public Health and Environment (“CDPHE”) Executive Director Jill Ryan a request for a variance from Fourth Amended Public Health Order 20-28 (“PHO 20-28”). That PHO includes a variance procedure whereby counties may ask for approval of an “alternative COVID-19 suppression plan endorsed by the local public health agency and adopted by the county commissioners or other county-level governing body, in addition to verification from local hospitals that they have the capacity to serve all people needing their care.” Presumably, the variance would allow restaurants, gyms and other businesses to open fully without having to comply with the COVID-19 restrictions set forth in PHO 20-28.

Prior to requesting a variance from an order of any kind, one must first determine if the order is valid. That determination is based upon a review of whether the person or entity making the order has the statutory authority to do so and, if so, whether the maker did so in a procedurally correct manner.

PHO 20-28 is not directed at any specific individual or owner of property. Instead, it is a series of generally applicable rules applying to every person physically in Colorado depending upon whether they fit into various defined categories.

C.R.S. § 24-4-102 (15) defines the term, “rule,” as follows:

(15) “Rule” means the whole or any part of every agency statement *of general applicability and future effect implementing, interpreting, or declaring law or policy* or setting forth the procedure or practice requirements of any agency. “Rule” includes “regulation”. (Emphasis added.)

C.R.S. § 24-4-102 (10) defines the term, “order,” as follows:

(10) “Order” means the whole or any part of *the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter other than rule-making*. (Emphasis added.)

PHO 20-28 is a series of “rules” couched as an “order.” Therefore, the analysis is whether Ms. Ryan had the legal authority to issue the rules set forth in PHO 20-28.

I conclude PHO 20-28 is without legal effect. My reasoning is as follows:

1. PHO 20-28 cites no authority in statute for its support. It appears Ms. Ryan based the PHO solely on the directive she received from Governor Polis set forth in Executive Order (“EO”) D 2020 044 (“Safer at Home”). The Governor’s Safer at Home EO states that its legal authority derives from the Colorado Disaster Emergency Act, C.R.S. §§ 24-33.5-701, *et seq.* However, the only statutes I find there that are applicable are C.R.S. §§ 24-33.5-704 and 24-33.5-704.5. Neither statute provides the Governor the legal authority to issue rules of general applicability to address the pandemic COVID-19. Perhaps that is why he directed Ms. Ryan to issue PHO 20-28, figuring that she must have legal authority as the Executive Director of the CDPHE. However, Ms. Ryan has no such authority to issue a PHO full of **rules** without going through the rulemaking procedures set forth in C.R.S. § 24-4-103.
2. Ms. Ryan or the State Board of Health could have enacted the rules through emergency rulemaking as allowed in C.R.S. § 24-4-103 (6)(a):

(6)(a) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days’ notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, ***only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule.*** A temporary or emergency rule may be adopted without compliance with subsections (2.5) and (2.7) of this section, but shall not become permanent without compliance with such subsections (2.5) and (2.7). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than one hundred twenty days after its adoption or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section. (Emphasis added.)

None of the rules in PHO 20-28 were published in the Colorado Register March 10 – May 25, 2020. Therefore, procedurally the issuance of PHO 20-28 did not comply with the requirements of C.R.S. § 24-4-103 (6)(a).

Additionally, if the CDPHE had wanted to deal with COVID 19 as an “epidemic disease” or “communicable disease” pursuant to C.R.S. § 25-1.5-102, they were required by C.R.S. § 25-1.5-102 (1)(a)(II) to go through rulemaking:

- (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a)(I) To investigate and control the causes of epidemic and communicable diseases affecting the public health.

(II) For the purposes of this paragraph (a), ***the board shall determine, by rule and regulation, those epidemic and communicable diseases and conditions that are dangerous to the public health.*** The board is authorized to require reports relating to such designated diseases in accordance with the provisions of section 25-1-122 and to have access to medical records relating to such designated diseases in accordance with the provisions of section 25-1-122. (Emphasis added.)

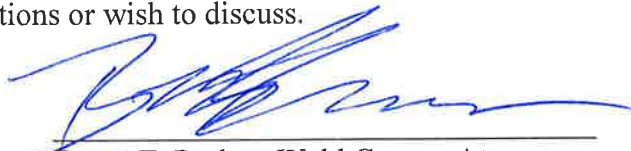
No such determination through rulemaking was noticed in the Colorado Register March 10 – May 25, 2020.

PHO 20-28 should have been issued as an emergency rule. Governor Polis could have directed such procedure in EO D 2020 044. For whatever reason the CDPHE chose not to go that route and as a result PHO 20-28 is without legal effect.

3. I always become suspicious of an order's validity when there is no enforcement by the entity that provides legal enforcement for the person or entity issuing the order. On Friday I did a search of the Colorado Courts On-line -filing system and found no cases brought by the Colorado Attorney General ("AG") to enforce PHO 20-28, or for that matter, any of the other COVID-19 related PHO's. I am unaware of any active enforcement of PHO 20-28 in Weld County.

I see no reason for there to be a request for a variance from PHO 20-28, because it is of no legal effect.

Please let me know if you have any questions or wish to discuss.



Bruce T. Barker, Weld County Attorney