

**CITY AND COUNTY OF DENVER  
BOARD OF PUBLIC HEALTH AND ENVIRONMENT**

**April 2, 2020**

A AND A QUALITY APPLIANCE INC.,	)
dba APPLIANCE FACTORY,	)
	)
Petitioner,	)
	)
v.	)
	)
DENVER DEPARTMENT OF	)
PUBLIC HEATH & ENVIRONMENT,	)
	)
	)
Respondent.	)

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**PETITION FOR REVIEW OF A NOTICE AND ORDER**

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Petitioner, A and A Quality Appliance Inc., dba Appliance Factory (“Appliance Factory”), through its attorneys, appeals the issuance of the Notices and Orders issued by the Department of Public Health and Environment. Appliance Factory falls within the definition of an essential business as defined in the State of Colorado’s March 27 CDPHE Public Health Order 20-24 (the “PHO”), which was prospectively adopted by the Denver Department of Public Health & Environment by Order dated March 26, 2020.

**BACKGROUND**

1. On March 27, 2020, an Order was issued to Appliance Factory’s Zuni Street location under the authority of §24-16 of D.R.M.C. alleging a violation of the Stay-at-Home Order, Ex. 1.
2. On March 28, 2020, a General Violations Summons and Complaint citing a violation of D.R.M.C. § 24-24(a) was issued to Appliance Factory on March 29, 2020, alleging that Appliance Factory failed to comply with Denver’s Stay at Home Public Health Order issued on March 27, Ex. 2.
3. On March 29, 2020, an Order was issued to Appliance Factory’s Colorado Blvd location under the authority of §24-16 of D.R.M.C. alleging a violation of the Stay-at-Home Order, Ex. 3.
4. On March 30, 2020, an Order was issued to Appliance Factory’s Zuni Street location under the authority of §24-16 of D.R.M.C. alleging a violation of the Stay-at-Home Order, Ex. 4.

5. On March 31, 2020, a General Violations Summons and Complaint citing a violation of D.R.M.C. § 24-24(a) was issued to Appliance Factory on March 30, 2020, alleging that Appliance Factory failed to comply with Denver’s Stay at Home Public Health Order issued on March 27, Ex. 5.

6. On April 1, 2020, General Violations Summons and Complaint citing a violation of D.R.M.C. § 24-24(a) was issued to Appliance Factory on March 30, 2020, alleging that Appliance Factory failed to comply with Denver’s Stay at Home Public Health Order issued on March 29, Ex. 6.

7. Appliance Factory’s mailing address and telephone number are:

321 West 84<sup>th</sup> Avenue  
Thornton, CO 80260  
Telephone: (720) 772-3439

### **PUBLIC HEALTH ORDER**

8. On March 26, 2020, the Denver Department of Public Health & Environment issued an Order adopting the State of Colorado’s March 26 CDPHE Stay at Home Order, and further providing that “to the extent CDPHE issues subsequent Stay at Home orders, they shall be automatically adopted and shall amend [the March 26 DDPHE Stay at Home Order].” The March 26 DDPHE Stay at Home Order is in effect through April 11, 2020.

9. On March 27, 2020, Governor Polis issued the Second Updated Public Health Order 20-24 (“PHO”) implementing stay at home requirements.

10. PHO 20-24 provides that Critical Businesses are exempt from the stay-at-home order and encouraged to remain open. Critical Businesses must comply with social distancing requirements at all times and implement other strategies to create distance between workers.

11. “Critical Business” includes Critical Retail, which includes “establishments engaged in the retail sale of food and any other household consumer products.” PHO, Section III.C.(4).

12. Section III.A. provides that Individuals may leave their houses to perform certain necessary activities. Under subsection 2, necessary activities include obtaining necessary services or supplies for themselves and their family or household members, which includes household consumer products and products or equipment necessary to maintain the safety, sanitation, and essential operation of a Residence. PHO, Section III.A.(2).

13. Section III.C.(9). relates to critical Construction activities and provides that businesses providing services necessary to maintain the safety, sanitation, and critical operation of residences are themselves critical businesses.

### **APPLICATION TO APPLIANCE FACTORY**

14. First, Appliance Factory qualifies as a Critical Business under Section III.C.(4).

15. Appliance Factory is a retail seller of household consumer products. Appliance Factory is a locally-owned household consumer product retailer. Appliance Factory sells refrigerators, freezers, dishwashers, washers, dryers, ovens, etc. to the public.

16. Additionally, Appliance Factory provides necessary appliance parts, cleaners, and services to enable families to keep their appliances operational and clean.

17. Second, Appliance Factory qualifies as a provider of necessary activities under Section III.A.(2). If members of the public are permitted to leave their houses to obtain consumer products, then it follows that those businesses providing those consumer products are a necessary part of the supply chain.

18. Refrigerators and freezers allow families to store food and medicine safely; washers and dishwashers allow families to maintain sanitary households necessary to prevent the spread of COVID19 and other health concerns; stoves and ovens allow families to cook and survive during this pandemic. By buying in the store, customers are able to immediately drive home with their appliances; same day pick-up is difficult at big box retailers. If limited to online purchases, customers are forced to wait 3-7 days for delivery. Having access to immediate appliances is a necessary and critical activity during this stay-at-home order.

19. Other retail sellers of the same or similar household consumer products have not been forced to close their doors, and in fact, appear to not be regulating the number of customers entering their stores. Appliance Factory is a locally-owned business, and not a nation-wide chain. Forcing Appliance Factory to close their front doors creates a competitive advantage for their competitors.

20. Third, Appliance Factory qualifies as a provider of necessary activities under Section III.C.(9). Appliance Factory also sells appliances to builders of residential properties. As a result, Appliance Factory is providing products such as refrigerators and ovens that are critical to the safe operation of a residence.

## **LACK OF IMMINENT PERIL**

21. Under the PHO, Critical Businesses must comply with Social Distancing Requirements, and implement other strategies to create more distance between workers or customers unless doing so would make it impossible to carry out critical functions. Section II.A.

22. Since release of the PHO, Appliance Factory has complied with the instructions for Critical Businesses. Appliance Factory has limited the number of customers that can be in their stores at any particular time in order to be able to follow the social distancing guidelines. No more than 3 customers are permitted at any one time in the store sales floor along with 3 employees. *See* Ex. 7. Further, they must remain 6 feet apart. These limitations were witnessed by the Department's inspectors at the time the notices at the Zuni location was issued.

23. Additionally, 14 other cities within the State of Colorado have not attempted to shut-down other Appliance Factory stores.

24. While Appliance Factory is following the guidelines for Critical Businesses, there is no imminent peril to public health and safety. Denver Municipal Code, Section 24-4.

## **RELIEF REQUESTED**

25. WHEREFORE, Appliance Factory requests that the Denver Department of Public Health and Environment vacate or withdraw the Notices and Orders that have been issued to Appliance Factory, and also uphold the automatic stay as there is no imminent peril to public health and safety while Appliance Factory is following the Social Distancing Requirements being asked of other Critical Businesses.

A AND A QUALITY APPLIANCE INC. DBA  
APPLIANCE FACTORY,

By Counsel

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the **PETITION FOR REVIEW OF A NOTICE AND ORDER** has been served on this 2<sup>nd</sup> day of April 2020 on the following via electronic mail:

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*/s/ Kristin R.B. White*  
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