



### Special Otten Johnson Alert: Coping with Crisis and Thinking About the Future (From Our Home Offices)

*As our communities, nation, and world reel from the impact of the COVID-19 public health crisis, Otten Johnson extends our sincere gratitude to all of the health care providers, first responders, public health leaders, and others who are serving those who are sick and at risk. Since we are business lawyers without the skills or expertise to provide medical care, our contributions to resolving this crisis are largely relegated to working from home to avoid spreading disease and offering financial contributions to worthy organizations supporting our community. But because we cannot help but think of this crisis through the lens of our land use, real estate, and business practices, we are bringing our clients and friends this series of alerts, exploring how the current pandemic affects our work, what we're learning from it, and what the future holds.*

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## Part 1 – Does Zoning Really Protect Us From Disease?

March 24, 2020 • [Chelsea Marx](#)

We kick off our series of alerts on the COVID-19 crisis and our work, by looking at zoning and public health. The short answer to the question of “does zoning protect us from disease?” is “it can, if done properly!”

From their earliest days, zoning and other land use regulations have been rooted in public health concerns, including infectious disease. Land use regulations play an important role in how resilient U.S. cities are to community health threats, including pandemics. Below, we discuss the struggle with infectious disease that led to the development of the first zoning ordinance in America, and how zoning influences public health today.

### Industrial Revolution, Public Health Crisis

Beginning in the 19th Century, the Industrial Revolution led to explosive urban growth that transformed American life in nearly every way. With a surge of new jobs in cities, Americans moved from farms to urban areas in droves. The population in New York City alone grew from

60,515 people in 1800 to 3,437,202 by 1900. At the same time, cities lacked the housing and infrastructure to manage the booming population. Without any land use regulation, coal, steel and manufacturing factories located adjacent to crowded residential areas. These conditions resulted in overcrowding, poor sanitation, and heavy pollution, all prime ingredients for the spread of disease. During this period, infectious diseases such as cholera, tuberculosis and typhoid were the leading cause of death in America, causing roughly one-third of all deaths.

By the turn of the 20th century, local and state governments sought out regulatory measures to improve public health. In New York City, tenements housed roughly two-thirds of the city's population—generally in overcrowded units without exterior windows—and were linked to high rates of disease. Beginning with the New York State Tenement House Act of 1901, legislatures set standards for residential building, including requirements for construction and maintenance of housing units to increase light and air to improve living conditions.

At the same time, developing medical and social science concluded that public health benefits would result from separating perceived noxious activities, such as commerce and industry, from residential life. In 1916, New York City developed the first zoning ordinance in America to regulate uses and building design, in part in the name of public health. The zoning ordinance took the earlier tenement regulations a step further, segregating industrial and residential uses and establishing standards for the design of structures to ensure natural light and air could reach the sidewalk to alleviate adverse public health and safety conditions. During the Spanish Flu outbreak in 1918, New York City experienced relatively low death rates compared to other major cities such as Boston and Philadelphia, which historians attribute in part to the city's strong public health infrastructure.

In the 1920s, administrative and judicial action at the federal level paved the way for local governments across the country to adopt zoning ordinances. The U.S. Department of Commerce promulgated the Standard State Zoning Enabling Act, a model law for U.S. states to enable local governments to adopt their own zoning regulations. First printed in 1924, the act included model procedural and substantive provisions that became the foundation of modern planning and zoning laws. In 1926 the U.S. Supreme Court found in *Village of Euclid v. Ambler Realty Co.* that zoning laws were a reasonable exercise of the states' powers to protect public welfare and did not violate constitutional due process protections. In *Euclid*, the Court concluded zoning would aid "the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion, and disorder."

## **The Modern Impact of Zoning on Public Health**

Over the course of the 20th century, deaths from infectious disease in America rapidly declined due to advancements in medicine and an assortment of public health improvements, including improved sanitation infrastructure aided by land use and building regulations. Post-*Euclid*, a variety of government policies, including zoning, promoted the rise of the suburbs and the continued segregation of metropolitan areas into distinct areas for residential, retail, office, and industrial uses.

Nonetheless, the sprawling land use patterns furthered by zoning may have some adverse

effects, too. According to Centers for Disease Control statistics, over 100 years after the first zoning ordinance was passed, chronic heart and respiratory diseases are now among the primary causes of death in America. Today, individuals with underlying chronic cardiac and respiratory disease are at a much greater risk from COVID-19. In 2006, the CDC and National Association of Local Boards of Health published a guide on the importance of public health considerations in community design and development. The guide highlighted several public health consequences attributable to the behavioral changes that resulted from segregating land uses. These include increased rates of obesity and asthma because of physical inactivity and an increased reliance on cars in metropolitan areas. The guide concluded that public health officials must be involved with planning decisions in their communities because of the connection between our built environment and our health.

The recent movement in planning toward Smart Growth principles and sustainable development has placed a renewed emphasis on public health in ways that may help communities become more resilient to sudden threats, like COVID-19. Smart Growth principles include mixed land uses, walkable neighborhoods, transit-oriented development, and development that fosters communities with a strong sense of place. Although denser, transit-oriented development may seem like a hindrance to social distancing, this type of development contributes to the general health and welfare of our communities, increasing our ability to fend off infectious disease. Moreover, in times of crisis, the sense of community encouraged by Smart Growth principles in a compact neighborhood may make community services, like grocery delivery, and others easier to facilitate.

COVID-19 will pass, but the long-term impact to American communities remains to be seen. However, one thing is certain, zoning and land use regulation will continue to play a key role in America's ability to manage disease and weather a public health crisis.



### Chelsea's Tip

I am trying to end each day by watching something comedic while teaching myself how to make a scarf. Knitting = Stress Relief.

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