



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.

Part 2 – Local Emergency Powers: Where do They Come From and How do They Work?

March 26, 2020 • [Andy Peters](#)

Our second alert in this series looks at local governments' emergency powers—how they work, and what they mean for us, our clients, and our community.

At 2:00 p.m. on Monday, March 23, Denver Mayor Michael Hancock joined a number of mayors and governors nationwide in announcing the shutdown of all but “essential” businesses and activities to contain the spread of the novel coronavirus outbreak. Governor Jared Polis followed suit two days later. The virus needs no introduction. Neither does the effort to “flatten the curve,” which underpins these “shelter-in-place” orders. But, as lawyers, we take an interest in a different concern: what is the legal authority allowing for these shutdowns? The specifics, of course, vary from state to state and city and to city, but if at some point you found yourself wondering, “Can they do that” the short answer is “Yes.”

The longer answer begins with a three-sentence summary of our federal system. The U.S. Constitution grants the federal government a list of specific powers, and if a power isn't on the list, the federal government doesn't have it. The opposite is true for states (and, by extension,

local governments): states and localities have any power not specifically assigned to the federal government or otherwise prohibited by the Constitution. As a check on the misuse and abuse of these powers, the Constitution supplies people with rights, like the freedom of speech. (On that note, check out our Rocky Mountain Sign Law blog post on [COVID-19 and the First Amendment.](#))

Why does this backdrop matter? Two reasons. First, it in part explains the piecemeal approach to shelter-in-place measures nationwide. Those actions are a response to local conditions, but they are also the product of state and local laws. The Constitution doesn't require that Illinois and New York, for instance, or Denver and Aurora, permit an official to order a shutdown under the same circumstances. What a mayor or governor can and can't do is very much a local issue. Second, because the Constitution leaves so much authority to states and localities, the federal government has almost no say in their decisions regarding shutdowns. We think it is unlikely that Congress or the President could compel state and local governments to adopt, extend, or shorten shelter-in-place orders.

Despite all of this variability in disaster preparedness laws, they often share certain elements, and the Colorado Municipal League provides some best practices and model ordinances from around the state. Disaster ordinances typically include a trigger allowing for the mayor or another executive branch official to exercise additional authority. In Colorado Springs, for instance, the mayor may proclaim an emergency in the event a public danger exists or is imminent. (Denver by contrast permits its manager of public health and environment to take disease-fighting measures at any time.)

The powers these ordinances confer vary, but they are generally broad and allow executive officials to make new rules without following typical legislative procedures. In Estes Park, which just shut down hotels, motels, and vacation rentals, the town's disaster ordinance allows the town administrator to adopt any rules "reasonably necessary for the protection of life and property" and to publicize them via news release. Many ordinances then provide that the emergency declaration and powers will continue until terminated by the official who declared the emergency, a vote of city council, or automatically unless extended by a council vote. Altogether, these ordinances offer officials nearly unlimited authority during a time of crisis—authority that almost certainly allows for shutdown orders—but include limits and checks on the duration of that authority.

While the sweeping authority available under these ordinances may come as a shock when put into action, there is precedent for the shutdown orders rippling across the country. In response to the 1918-19 influenza pandemic, many cities instituted precisely the measures we are seeing now, and a significant fraction of the country lived under shutdown orders. Here in Colorado, beginning in the fall of 1918, Denver closed schools, banned public gatherings, and instituted isolation and quarantine measures. All told, these measures lasted 151 days—a long time to be sure, but the evidence suggests that they helped turn the tide. We hope the emergency orders in place today will prove similarly effective.



Andy's Tip

I am taking Denver's shelter-in-place order that includes "biking" as an essential activity, to heart. Assuming the weather cooperates, I will be social distancing from the saddle of a road bike on Colorado's eastern plains. Cycling = Stress Relief.

More Great Reads

Rocky Mountain Real Estate Blog

The latest real estate and land use news and updates. [Read More](#)

Rocky Mountain Sign Law Blog

Regulatory, best practices, and other First Amendment news. [Read More](#)

Our lawyers are pleased to present timely, topical issue alerts on the latest legal developments, trends and other subjects of interest to our clients and colleagues. Otten Johnson publishes Otten Johnson Alerts on a monthly basis. If you do not wish to receive future Otten Johnson Alerts, you may unsubscribe by clicking the "opt out" link below. This Otten Johnson Alert has been prepared for informational purposes only and does not constitute legal advice or the opinion of Otten Johnson. Receipt of this summary does not create an attorney-client relationship between you and Otten Johnson. You should not act or rely on any information in this article without seeking the advice of an attorney. Otten Johnson provides legal advice only after being engaged to do so by a client with respect to particular facts and circumstances.

Read our full disclaimer

950 Seventeenth Street, Suite 1600, Denver, CO 80202
Phone 303.825.8400 | Fax 303.825.6525 | ottenjohnson.com

Share this email:



[Manage](#) your preferences | [Opt out](#) using TrueRemove™

Got this as a forward? [Sign up](#) to receive our future emails.

View this email [online](#).

info@ottenjohnson.com OttenJohnsonAlert@ottenjohnson.com
Denver, CO | 80202 US

This email was sent to jorunna@juiceboxint.com.
To continue receiving our emails, add us to your address book.

emma