



### 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 9 – Where Do We Go From Here? Some Suggestions For Policy Action

April 15, 2020 • [Brian Connolly](#)

For the last part of our Otten Johnson series, we take stock of our current public health and economic situation, and consider what public agencies might do to thoughtfully respond to the myriad challenges that we currently face and will continue to face as a result of the COVID-19 pandemic.

The eight alerts that preceded this one considered the historical and present ways that public health concerns impact our practice, and we also offered some thoughts on what the current pandemic might mean for housing and commercial real estate. There is no doubt that the impact of COVID-19 has been monumental. We anticipate that our society and economy will face long-term challenges and changes as a result of our current situation.

Already, federal, state, and local governments have taken unprecedented policy action in response to the pandemic. These efforts have, to date, been headlined at the federal level by the \$2 trillion CARES Act, which in addition to addressing health care supply shortages and other medical needs, provides for additional family leave, increases in unemployment benefits,

direct rebates to individuals, and various forms of business assistance. Locally, Denver has taken steps to assist small businesses and individuals harmed by the pandemic, offering tax relief, microloans, and housing assistance, among other programs. We suspect, however, that these efforts will not be the last ones that our government leaders undertake to rescue the economy.

We (unfortunately) cannot do much to assist front-line health care workers in performing their all-important jobs—lawyers make for bad health care professionals. But because we at Otten Johnson love all things real estate and land use, we can't help but think about ways that future public health and economic relief packages might impact our work and our communities on a day-to-day basis. To that end, we offer the following somewhat-informed suggestions, in no particular order, to our policymaking friends in federal, state, and local government:

- **Do everything possible to support health care professionals and to cure the world of COVID-19.** We know that a full recovery—in terms of both medical and economic health—necessitates devoting resources to our health care community. From ensuring that doctors and nurses have the right equipment to working toward a vaccine, ridding the world of this terrible disease should be our first priority.
- **Support the unemployed and vulnerable.** As we stay at home behind our computers and continue to assist our clients with their projects, we know that the pandemic has resulted in significant job losses elsewhere across the economy. Many families are concerned about paying their rent and putting food on their tables. Providing economic security to our vulnerable populations will be critical to ensuring that this pandemic does not result in a humanitarian crisis here in our backyard.
- **Infrastructure is (still) the backbone of a strong economy.** In responding to past economic crises and unemployment, the United States has often turned to infrastructure maintenance and expansion. Infrastructure—whether highways, rail, airports, bicycle and pedestrian, or utilities—is critical to a strong economy, both nationally and locally, including a strong real estate market. As vocal supporters of past infrastructure measures, we fully support efforts at all levels of government to expand and develop our capacity for economic growth with strong transportation and utility infrastructure.
- **Local governments need help, too.** Much of our work is local, and we value our partnerships with local government officials and staff members. The stay-at-home measures put into place in response to the pandemic have resulted in significant reductions in local governments' sales tax revenues, just as demands on services are increasing. We support future efforts—particularly at the federal level—to ensure that local governments can continue their work of providing critical services to our communities, and to position our local governments to be full participants in a post-pandemic economic rebound.
- **Don't stop building housing.** In the first months of 2020, before COVID-19 took hold, housing affordability was an inescapable problem along the Front Range, throughout the Mountain West, and even across the country. While economic slowdowns may drive down home prices, they also typically slow housing construction and put housing out of reach for households impacted by job loss. We cannot let a COVID-19-related slowdown exacerbate our affordability crisis. We support steps at all levels of government to

encourage the development of housing, even in the midst of economic challenges. The federal Yes In My Backyard Act is a good first step.

- **Reconsider retail (and office).** As our alert series observed, the habit changes wrought by the pandemic have us—and our society—rethinking brick-and-mortar retail, as well as our office environments. While we don't anticipate fully abandoning physical retail and office spaces in the post-COVID-19 era, we suspect that the pandemic will accelerate some of the trends toward online retail and remote work that we've observed over the past several years. Now is a good time to re-evaluate the future of these commercial land uses, from both urban planning and local government revenue perspectives. At the very least, we suspect that the pandemic will accelerate the trend away from big box retailers toward online sellers. At the same time, the economic fallout from the pandemic, combined with low energy prices, may create business conditions ripe for smaller, more locally-oriented retailers.
- **Density is good.** Government recommendations favoring social distancing might have us dreaming of living on large ranches, far away from others. But the practical reality is that modern zoning and building codes allow us personal space, while achieving efficiencies in the provision of government services and infrastructure—including health care. With still-high construction and materials costs, and continued concerns about the environmental impacts of sprawling development, the pressure toward greater density will continue, and local governments should continue to embrace it. At the same time, the COVID-19 pandemic has emphasized the importance of public amenities, such as public parks and recreational spaces, in our urban and suburban areas.
- **Avoid the unconstitutional.** The current public health crisis makes clear the important role of government in responding to significant emergencies. Yet as government officials issue daily recommendations and rules in response to the coronavirus, they must also remember their constitutional obligations. Ideas such as relieving renters of their payment obligations or restricting intrastate or interstate travel, while politically popular during these difficult times, may give rise to liability in the form of damages, injunctive relief, and attorneys' fees. Individuals' and businesses' constitutional rights and civil liberties are never more important than during emergency situations such as the current pandemic.

While it remains to be seen how our world, nation, and local communities respond to this enormous challenge, we at Otten Johnson look forward to working with our clients, friends, and communities on that response. In the meantime, stay healthy, safe, and sane.



#### **Brian's Tip**

I have used my extra "free time" to undertake a major bathroom renovation in my Victorian-era house, which has involved only moderately foul language. Tiling = stress relief.

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