The Pandemic and the Future of Land Use Policy, Planning and Law

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Chapter Eight

Pandemic Postscript

**Chapter Summary:** Here, the book changes course. It moves from heavily footnoted chapters with abundant case studies to an undocumented look ahead as land use law confronts the recent pandemic. Some regions in the country are witnessing the flight of middle- and higher-income residents to the suburbs, a trend that could cripple cities’ ability to mitigate climate change. The chapter’s strength is that it builds on what we know from earlier chapters about the breadth of local land use power and how municipalities leverage that power by creating partnerships with state and federal governments. This system can create safe buildings and safe density and win this newest battle with suburban and exurban communities. Its weakness is that this problem is just occurring; there is very little evidence of what exactly is happening or of what can be done in response. The chapter, nonetheless, draws from techniques that cities have used to confront other serious problems and creates a menu of strategies for local officials, stakeholders, and land use professionals to consider.

The chapter includes a discussion of systemic racism and how zoning and other governmental actions are complicit in causing environmental injustice. Noting that these public health and welfare threats have been with us for decades, it suggests several actions that cities can take to deal fairly with low-income neighborhoods in rethinking how to protect public health comprehensively. The chapter ends by examining whether and to what extent the U.S. Constitution limits the scope of state and local emergency orders that protect the public health. Efforts to respond to climate change and pandemics will inevitably limit what property and business owners can do with what they own. How far can this power be stretched?

I. Yet Another Beginning for Land Use Law: The Pandemic

The chapters of this book chart the journey of local land use law from its inception in 1916 through the end of its first century. It is a story of new beginnings: first to shed its Euclidean straight jacket, then to protect natural resources, further on to embrace smart growth, eventually to mature into sustainable development, and then recently to manage climate change. Its story, fully explored in Chapter Two, is replete with new beginnings. The book ends with this chapter’s exploration of the critical challenge to urban places caused by the pandemic.

As this book goes to press, the evolving land use system in the United States is confronting the pandemic and the fear of crowding that it begot. This is an essay supported by only a few footnotes and fewer case studies because it is too early to write knowingly about this challenge to land use law. It may be a momentary phenomenon, a lingering annoyance, or a permanent tear in the fabric of urban settlements. Chapter Eight can only squint ahead, looking into a cloudy crystal ball and ruminating about what will happen. It can only speculate about what denser cities will do to stop the contagious fear that they are unsafe places. They will soon teach us what they can do to stem and reverse the incipient flight of largely affluent households, attempting to avert a repeat of the white flight that occurred in the middle of the 20th century.

This book’s chapters have demonstrated that land use regulations can create livable neighborhoods for the nation’s emerging households: young millennials; immigrants...
needed for urban jobs; and seniors who are leaving single-family neighborhoods. Until the pandemic, most of these households preferred urban living in neighborhoods with a dynamic mix of services, entertainment, restaurants, and transportation alternatives. Density makes mass transportation cheaper and affordable housing possible, supports large public hospitals, and affords a broad safety net. It is also associated with greater environmental preservation, economic productivity, innovation, traffic safety, air quality, social capital, and opportunities for upward mobility, as well as less likelihood of some chronic diseases and increased overall life expectancy. In short, it makes neighborhoods lively, walkable, and efficient.

In the wake of COVID-19, it may also reduce disease contagion and mortality rates. In a recent study, researchers analyzed the COVID-19 infection and mortality rates in 913 U.S. metropolitan counties. When they took factors such as race, education, and metropolitan size into account, the researchers found that “county density is not significantly related to the infection rate.” Further, “counties with higher densities have significantly lower virus-related mortality rates than do counties with lower densities.”

One possible reason for such a lower mortality rate in higher-density areas is the availability and quality of health care. In one survey, almost all low-income respondents who live in suburban and rural areas cited transportation as “a significant barrier to obtaining health care services.” Not only do suburban and rural residents travel farther to medical facilities, but many people in these car-dependent areas do not own cars. Since public transportation seldom serves these areas, many are left without a reliable means of obtaining medical care. To make matters worse, “a substantial portion of the US population residing in [these areas] lack[] health insurance,” and their medical providers are “less likely to receive public funds” to support care for the uninsured.

In contrast, dense urban areas provide more medical care options (including free or low-cost alternatives). Also, the options provided in denser communities are often more accessible. Since high-density areas can support public transportation, many people living in these areas need not rely on cars to obtain medical care. These factors can reduce disease mortality. Regarding disease contagion, research indicates that connectivity between areas “matters more than density in the spread of the COVID-19 pandemic.” By itself, density may even work to reduce infection rates since high-density areas have the infrastructure to more effectively implement measures that promote social distancing. In addition, high-density makes it easier to provide services to people most in need while social distancing orders are in place.

These findings suggest that density can play a critical role in promoting public health and building a more sustainable future. The many solid land use planning, regulatory, and financial innovations already in place are an accepted and beneficial part of the urban

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1 Shima Hamidi et al., Does Density Aggravate the COVID-19 Pandemic?, 86 J. AM. PLAN. ASS’N 495, 496 (2020).
3 Alina S. Schnake-Mahl & Benjamin D. Sommers, Health Care In The Suburbs: An Analysis Of Suburban Poverty And Health Care Access, 36 HEALTH AFFS. 1777, 1777; Felland, supra note 3, at 5.
4 Shima Hamidi et al., Longitudinal analyses of the relationship between development density and the COVID-19 morbidity and mortality rates: Early evidence from 1,165 metropolitan counties in the United States, 64 HEALTH & PLACE 1, 1 (2020).
5 Id. at 2.
agenda, guiding the shape of human settlements. These high-density places are where society has invested in infrastructure and where per capita carbon emissions are less than half the national average, mitigating climate change: a public health problem that dwarfs COVID-19. Chapter Three contains a detailed description of these tools and how they are being used to create low-carbon human settlements. Low-carbon urban places are being challenged by the pandemic. There is a fear of sharing doors, elevators, crowded subways, busy playgrounds, and traditional sidewalks. The command to socially distance and permission to work from home compound the situation. This reaction to COVID-19 risks recreating the flight from and disinvestment in urban places that originally caused sprawl and its crippling effects on the cities and their tax base, revenues, and physical environment. To this, add the per capita increase of carbon emissions caused by the urban residents’ resettlement to car-dependent suburbs.

To illustrate, anecdotally, Yorktown, a car-dependent suburb north of New York City, has branded itself Destination Y. The news coverage on August 1, 2020, read: “Town markets itself as a place to build, live after the pandemic is over.” The next day, the same newspaper featured a headline regarding development in cities just south of Yorktown that read: “Developers take a step back, economic slowdown cools fervor for big downtown projects.”

Policymakers and scholars will have to wait for real data to determine the extent and duration of this trend. In the New York metropolitan area, the available evidence abounds in media headlines. Here are a few of the many that appeared in various news sources between March and August 2020:

- Foreign buyers take a step back from New York real estate;
- Residential vacancies double;
- Subway ridership down 75%;
- Metropolitan Transit Authority faces fiscal tsunami without federal aid;
- City leaders fear urban flight gaining momentum;
- New Yorkers ditching city for elbow room fuel housing boom upstate;
- Goodbye city life: Litchfield housing booming due to city flight;
- City dwellers are looking to move to suburbs as more work from home;
- Real estate prices fall sharply in New York;
- Retail chains abandon Manhattan: “It’s Unsustainable”; and
- Residential contracts and closings surged last month in Fairfield and Westchester counties.

Testimonials in the press from real estate brokers confirm this exodus: “[T]he unprecedented sales growth [which was also seen throughout Connecticut and in the Berkshires] is driven by a continuation of New York City buyers relocating to the suburbs amidst the ongoing pandemic.” Paul Breunich, president and CEO of William Pitt-Julia B. Fee Sotheby’s International Realty, stated that

buyer demand will remain unparalleled in the months to come . . . . The level of buyer interest in our markets is unmatched in recent memory, and it serves as an
enormous incentive for potential sellers to list their properties. In my 30 years in the real estate industry, I have never seen a market like the one we’re in now.  

A broker in Madison, Connecticut, confirmed this sentiment:

I’ve been selling largely second and third homes . . . for 30 years. What is happening now is different . . . . Buyers who have no connection to this area are discovering it for the first time . . . . Most quietly share that they no longer want to have New York as their base, they are done with that life.  

Outside the New York metropolitan area, the evidence is equally anecdotal. Moving companies reported that several large cities had more people leave than move in during the six months following the outbreak of the pandemic: San Francisco—80%; Los Angeles—70%; Washington, D.C.—58%; Miami—53%; Alexandria, Va.—63%; and Arlington, Va.—78%. Idaho saw 194% more people moving into the state than out, while Illinois, Washington, D.C., New Jersey, and Connecticut were among states where departures outnumbered arrivals by 50% or more. In mid-summer 2020, Prof. Richard Florida wrote in the Bloomberg press about the pull of the suburbs:

There is no doubt that the current crises have impelled some, particularly families with young children and also the old and the vulnerable, to decamp to the suburbs or even rural communities. For families, fear of Covid-19 has put a premium on private amenities like backyards and home offices, while reducing the appeal of more public amenities like parks or even restaurants, theaters, galleries and museums found in urban centers . . . . Working out of a spare bedroom is much safer than heading to a downtown office building or co-working space. All of these desires can be far more easily satisfied in the suburbs, and almost always for a lot less money than in urban neighborhoods like Tribeca, Park Slope, Nob Hill, Georgetown or Beacon Hill. There is likely to be an uptick in rural gentrification as well, especially to smaller cities like Hudson, New York, that have lots of natural amenities and lovely main streets, but are still within a few hours of driving from a major urban center.  

Jerry Seinfeld, an unlikely match for Professor Florida as an observer of urbanism, pushed back as a valued representative of his cohort in an August opinion piece in the New York Times:

But one thing I know for sure: The last thing we need in the thick of so many challenges is some putz on LinkedIn wailing and whimpering, “Everyone’s gone! I want 2019 back!” He says he knows people who have left New York for Maine, Vermont, Tennessee, Indiana. I have been to all of these places many, many, many times over many decades. And with all

due respect and affection. Are . . . You . . . Kidding . . . Me?! . . . There’s some other stupid thing in the article about “bandwidth” and how New York is over because everybody will “remote everything.” Guess what: Everyone hates to do this. Everyone. Hates. You know why? There’s no energy. Energy, attitude and personality cannot be “remoted” through even the best fiber optic lines. That’s the whole reason many of us moved to New York in the first place.9

There are studies that back Seinfeld’s view. Crain’s New York Business newsletter reports that

the pandemic has shown us just how essential the office is to our personal and professional lives. Working remotely has serious drawbacks, starting with the fact that it isolates employees. According to Buffer’s 2020 State of Remote Work Survey, before the outbreak, 20% of remote workers said they struggled most with collaboration and communication, while another 20% said loneliness. Today those feelings of isolation have been amplified. What 74% of workers miss most about the office, according to Gensler’s new U.S. Work From Home Survey, is other people.10

Other headlines note the threat to small businesses—in some areas of the country, more than one-third have closed permanently. They are the delis, caterers, coffee shops, barbers, bookstores, nail and hair salons, bars, service establishments, cafes, and restaurants that make urban life vibrant, walkable, and entertaining. Executive orders closed them and prevented landlords from evicting commercial tenants for non-payment of rent, at least for a time. As the curve levels and they are allowed to reopen, how many will return, will they be profitable, can landlords hang on, and how many vacancies will remain? In retail shops, everything is connected to demand, so reversing the exodus of residents to the suburbs is a retail recovery strategy. Cities have been helping small businesses become profitable for many years. Can they redouble those efforts, find resources, and help businesses adjust to a new business environment before street-level properties stop paying their taxes? Moody’s Investors Service reported in August 2020 that commercial mortgage debt in distress surged 320%, attributing much of the delinquency to the pandemic, including distress in large-scale retail, office buildings, and hotels.

So, who knows? Does Professor Florida or Seinfeld win the debate? So much is not known. How long will this pandemic last? Will there be others? How long will the fear of them last? How long will the new allure of suburbs last? Will the appeal of city life return? Will cities become more affordable and suburbs less so? Or will the loss of the affluent and small businesses cause cities to further disinvest in low-income neighborhoods and become even further segregated? Will suburbs become more segregated, compounding the nation’s failure to provide fair housing?

The future of our post-pandemic world is uncertain. However, one thing is clear: cities must continue striving to become healthier. While recovery from COVID-19 poses many challenges and questions, it also presents an opportunity—one that involves not just

10 Coronavirus May Be the Best Thing for the Office Life, CRAIN’S N.Y. BUS., Aug. 21, 2020.
returning to “normal” but developing into a more resilient, equitable, and sustainable society.\textsuperscript{11}

II. What Can Be Done?

The simple answer is much. If you want to know how, read this book. What is certain is that cities will need to become safer for a variety of reasons, including this stubborn pandemic, future pandemics that are equally fearsome, and the certain consequences of climate change. Cities must continue to make density palatable. Their planners and lawyers have known this for years as their populations increased and developers responded by building mixed-use, transit-oriented developments and other buildings that need to feel and be safe. There now needs to be an acceleration of these efforts, with a clear focus on public health.

What follows is a beginning menu of what cities can do with their plans, codes, regulations, capital, and operating budgets.

**Comprehensive Plan:** Public health must become a driving concern in urban planning and design. Comprehensive plans are road maps for the future. They involve stakeholders in their formulation and, in the process, build support for their strategies. They direct land use regulations, infrastructure, and city budgets. Public health components need to be drafted by experts and stakeholders and approved by legislative bodies. These health components must specify how safe buildings and densities are to be achieved. What are the goals, objectives, strategies, and implementation techniques to create safe homes, businesses, parks, and neighborhoods?

The DNA has been there for more than a century. The Standard City Planning Enabling Act (1928) provided that plans will, “in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development . . . .” The purposes of planning were broad. Zoning had to conform. The stage was set for the adoption of flexible zoning and land use strategies that moved beyond the rigid contours of Euclidean zoning. This system is rising to the challenge of climate change. Now, the health of the people needs to move center stage as this current new beginning unfolds.

**Building Codes:** Codes can be amended so that all new and substantially rehabilitated buildings have better internal ventilation, ultraviolet light to disinfect indoor air, high-efficiency particulate air (HEPA) filters (like those used in hospitals and airplanes), health screening technology in buildings, wider corridors, work-at-home spaces, more elevators, voice-activated elevators, automatic doors, spatial distance metrics for indoor service, and redesigned interior amenity spaces.

\textsuperscript{11} The Global Mayors Covid-19 Recovery Task Force have united to do just this. One of their guiding principles for recovery is to not “return to ‘business as usual’ – because that is a world on track for 3° C or more of over-heating.” Another is that we “must be guided by an adherence to public health and scientific expertise,” and further that “[t]he recovery must address issues of equity that have been laid bare by the impact of the crisis . . . .” Global Mayors Covid-19 Recovery Task Force, C40 CITIES, \url{https://www.c40.org/other/covid-task-force} (last visited Nov. 8, 2020).
**Capital Investments in Infrastructure:** City budgets can provide for “creative place-making,” spatial distancing in urban parks and open space, tree canopies, broader sidewalks, expanded capacity for outdoor service for retailers, streets with more bicycle lanes, “slow” and “dining” streets, and curbside management to facilitate retail pick-ups.

**Zoning and Land Use Regulations:** Short-term permits can be given for new uses and expansion, particularly for small businesses. Temporary use permits can be offered quickly to commercial tenants adjusting to the changing economy. Emergency variances from setback requirements can be awarded, parking lots and spaces used for commerce, and required parking reduced. Office zone standards can be amended to allow creative interior arrangements and flexible residential uses. Where retail is not feasible, requirements for on-street retail use can be eliminated. Permits for all small business applications can be expedited by bringing together regulatory agencies, authorities, and government departments to review projects simultaneously. Pre-application meetings with developers can include health professionals as well as architects and engineers to assure the health of future occupants.

**Existing Buildings:** Techniques used to encourage owners of existing buildings to retrofit their properties to reduce potential contagion can be adapted from the green building and carbon emission reduction experiences of cities. Green buildings with low-carbon footprints are more marketable than their competitors. Safe buildings will be too. Property owners can follow prescriptions for safe buildings and safe sites; cities can work with public health experts to create the standards for them and offer incentives for compliance. Emerging ratings such as the WELL Health Safety Rating and Fitwell Viral Response Module Financial incentives can be recommended and become prerequisites for qualifying for incentives such as tax abatements. Some of these standards can be added to property maintenance codes, which apply to existing buildings.

**Small Business Recovery:** City staff and their consultants are following the rapid transitions for small businesses from traditional models, to transitional approaches, to post-pandemic strategies. While streets become dining streets and parking lots host outdoor dining and pop-up retail, businesses will need to learn digital strategies and accommodate their customers’ changing service needs. This transition will require modernization of software and digital equipment and adequate internet capacity to attract and hold customers. All this requires grants and affordable loans that governments provide. Small business development corporations will be challenged to bring recovery strategies and resources to vulnerable commercial districts. The U.S. Conference of Mayors Partner America Program and Small Business Assistance Program will be in high demand. Tutorials for volunteer lawyers, landlords, and tenants on how to mediate nonpayment evictions and enter into economically feasible recovery leases are needed. Courts can refer eviction proceedings to city-supported mediation clinics to search for win-win solutions where the bottom lines of both commercial tenants and landlords are considered.
III. Who Is in Charge? Emergency Powers and Property Rights

Most of the chapters in this book have vaunted the role of local governments, but always in the context of the nation’s federal system of laws. During the first six months of response to the pandemic, it was difficult to understand who was in charge. The post-pandemic response in this chapter has again focused on what cities, as municipal corporations, can do through their land use laws. With this effort, they clearly need help. With small business recovery, they need grants and loans for their small businesses, and with transportation, they need state and federal dollars; with all the recovery strategies, they need technical assistance.

Chapters Five and Six devoted considerable space to this topic. In Chapter Five, we saw how the national program of hazard mitigation planning reaches down and respectfully includes local comprehensive planning. In Chapter Six, we saw local planning and regulation fill in gaps in federal and state water law and witnessed the natural tendencies of municipalities to reach up and partner with state and federal agencies. In the process, we discussed cooperative federalism, reflexive law, framework laws, complex adaptive systems, and the diffusion of innovation—leading to a new principle of collaborative subsidiary. These are all theories that stitch together the separate powers within our federal governmental system.

As we embrace public health as a central focus of land use planning, regulation, building codes, and open space management, it is essential to pay attention to aligning federal and state efforts with local initiatives. State public health agencies and councils, and federal health agencies need to provide help in integrating health planning and action into the municipal land use planning and regulatory system. How else can we ensure safe buildings and safe densities?

Our response to COVID-19 has been anything but coordinated. National cohesion can only be accomplished through the federal government. Its powers and resources must be used in a collaborative process with the states and local governments. The states possess the police power to protect public health and, consequently, have broad powers to declare emergencies and enforce compliance with mask orders, business closings, and eviction moratoria. On the ground, localities have broad powers to regulate building uses and construction through their state delegated land use control. They can also legislate to abate public nuisances and other public health emergencies. Lawsuits by the governor of Alabama against the mayor and the city council of Atlanta are ill-advised. Intergovernmental powers must be linked; collaboration is essential; resources must be leveraged; strategies must be consistent.

Collaboration has been emphasized throughout this book. A clear understanding of federal, state, and local powers, prerogatives, and limitations is required. Some consensus about how the actions of each level of government can be integrated into a cohesive response to pandemics and other emergencies is essential.

This is a book on climate change and land use law. Missing are two important topics. The first is systemic racism, and the second is property rights. With trepidation and apologies for addressing them only in closing, this essay offers a brief exploration of these climate change issues. They are both ideologically charged and much disputed, but essential climate change-related topics. Formerly redlined, racially segregated neighborhoods experience elevated temperatures and heat-related deaths than white neighborhoods in the
same city. Aggressive regulations designed to create safe buildings and safe densities limit property rights, which are defended by equally aggressive litigation.

IV. Racial Justice and Public Health

The public health concerns of urban residents who can afford to move is a new challenge caused by the recent pandemic. The public health threats to lower income neighborhoods where households of color predominate have existed for decades. Those fleeing COVID-19 are largely on the top rungs of the economic ladder, so statistically more are white than minority households. If they move to mostly white suburbs, they increase segregation there as well as the cities they leave behind. If they move to small cities with affordable housing, they can increase housing prices, causing displacement and homelessness. Disproportionately, those displaced will be households of color.

In cities, climate change is causing deadly conditions, the most obvious of which is the heat island effect. Temperatures in lower income neighborhoods are higher, as is the percentage of residents who die from heat exposure. These neighborhoods, with exceptions, have limited tree canopies and extensive impervious surfaces such as sidewalks, streets, parking lots, and even treeless city parks, all of which absorb and reflect the heat.

Zoning is complicit. Multi-family housing is allowed in these zoning districts, and developers can cover most of the lot with buildings and asphalt. Policies that apply to buildings in other areas such as green roofs and on-site landscaping don’t apply. Comprehensive plans, to which zoning must conform, only recently have been amended to comply with climate action plans. Largely, these plans have not targeted low-income neighborhoods for relief from heat or the other obvious consequences of climate change. Zoning and site plan regulations, as a result, have been similarly mute on the topic. Trees and bushes absorb water and sequester carbon. They reduce soil erosion and cool nearby buildings. Racial equity is emerging as an element of climate action planning, and that concern—as well as the strategies that address it—must find their way into comprehensive land use planning and zoning. This imperative clearly marks another new beginning for land use law.

Redlining—federal mapping designating neighborhoods safe or unsafe for investment—labeled many of today’s low-income neighborhoods “hazardous,” effectively denying residents access to mortgages and other financial resources. Summer temperatures in such hazardous neighborhoods are from 5 to 10 degrees higher than other residential neighborhoods in the same communities. Predictably, life expectancies are lower—from 10 to 20 years. In Portland, Oregon, neighborhoods rated “best” on federal investment maps today are 8 degrees cooler than the city-wide average, while those rated “hazardous” are nearly 5 degrees hotter. This disparity is similar in many metropolitan areas across the country.

As with the pandemic and city attempts to stem residents’ movement to the suburbs, planning and zoning can set the stage by properly regulating land use. Similarly, city budgets and aid from higher levels of government are critical complements. Targeting poorer neighborhoods to receive a fair share of city expenditures dedicated to tree planting, greener parks, flood reduction, green roofs, and green infrastructure is a necessary component of broader economic policies. Many of the essential workers during the pandemic—and many of those who work in the shops that city dwellers count on—live in
these formerly redlined areas. Keeping them healthy is not only a humanitarian mandate; it is a necessary part of local, state, and federal economic recovery policies.

V. The Police Power and Property Rights

Dealing with the pandemic and its effect on business and property owners requires an understanding of property rights and the power of government to limit those rights. At a recent webinar on “emergency and police power: property claims in times of crisis,” a panel deliberated on this topic. The program description read as follows:

On the eve of the centennial of Pennsylvania Coal Co. v. Mahon (U.S. 1922), this panel will revisit the question: How far can the police power be stretched to protect the public against dangers? The panel will evaluate the scope of state and local authority to respond to emergencies and the implications for private property rights—asking, how far is too far? What is the scope of implied limitations on private property rights in times of crisis? When does the diminution of existing property rights require compensation? Can local governments respond to a crisis without delegated authority or in defiance of state mandates? What rights do property owners/landlords/tenants have to privately respond in times of crisis?12

As a member of this panel, I gave the following overview of property rights and the case law regarding due process and regulatory takings. It is fitting to end this chapter and the book with this exploration of the U.S. Supreme Court’s clear and consistent view that property is held subject to reasonable laws and limitations. In view of pandemics and climate change, what is reasonable to protect the public health is clearly a central issue.

After reviewing property rights under English common law, I will mention the contributions to today’s topic of several U.S. Supreme Court opinions ranging from 1906 to 2002: a century’s worth of balancing property rights and the public interest. This will set the stage for a discussion of state law and executive orders that require the public to stay at home, wear masks, close or limit their businesses, suspend the right to evict tenants, and other mandates imposed to respond to the pandemic.

The legal power to protect the public in a time of emergencies is called the police power. The concept of the police power—that is, of the government’s power to regulate behavior and property, is derived from the Greek word polis for city or polity, and from the Latin word polita, meaning citizenship, and from the French police, which means government.

William Blackstone’s Commentaries on the Common Law of England demonstrate that personal liberties were limitable by government regulation. In 1769, he reported that the state’s police power gave the enforcement authorities of the Crown the right to exercise the means by which “the individuals of the state, like members of a well-governed family,

12 West Legal Ed Ctr. & American Bar Ass’n, Emergency and Police Power: Property Claims in Times of Crisis (July 22, 2020) (webinar), https://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=100288767 (Pennsylvania Coal Co. v. Mahon was the first decision of the U.S. Supreme Court to hold that the regulation of private property could go “too far” and become a regulatory taking, the equivalent of an actual governmental taking of property. Justice Oliver Wendell Holmes wrote the majority opinion)
are bound to conform their general behavior to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious, and inoffensive in their respective stations.” This offers some historical perspective on the notions of some, during this pandemic period, who object to governors, in lieu of kings, exercising the police power to direct the public to shelter in place, wear masks, and forgo trips to the movies and bars in modern neighborhoods. Kevin Stitt, the governor of Oklahoma, said that he is opposed to ordering masks because “you can’t pick and choose what freedoms you are going to give people.”

More to the point of Penn Coal and the regulation of property, Blackstone commented that property “consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only the laws of the land.”

1922 Pennsylvania Coal Co. v. Mahon\textsuperscript{13}: This nearly century-old case involved coal mining regulation by the laws of the land—that is, the state of Pennsylvania. The case was initiated, not by the coal industry against a state statute that regulated mining, but by a bill in equity brought by a property owner asking the court to enjoin coal mining under his house.

One hundred-fifty years after Blackstone’s definition of property rights, Penn Coal dealt with Pennsylvania’s laws, adopted by its legislature. Pennsylvania’s constitution granted its legislature the police power to adopt legislation to protect the health, safety, welfare, and morals of the people of the state. The legislature was concerned about the subsidence of streets, homes, and businesses caused by the extraction of coal from the support estate, a separate estate from the surface and subsurface estates as defined by Pennsylvania common law. The Kohler Act restricted mining companies from extracting coal from the support estate, thus preventing subsidence to protect public safety.

We did not know in 1922 when the case was decided that a police power regulation could be a regulatory taking. Challenges to property regulations prior to that time were based on the deprivation of due process—that is, the claim that the law did not achieve a valid public objective. We do not hold our land, from Blackstone forward, subject to irrational and arbitrary laws—only laws that protect the public health, safety, welfare, or morals. The Fifth Amendment, applied to the states by the Fourteenth Amendment, prevented the deprivation of property without due process. By showing that a law did not reasonably protect the public, one could win a due process claim. The remedy was invalidation of the law by the court, freeing the property owner from its constraints.

The taking of property is an altogether different thing. As Justice Holmes declared in the Penn Coal case, when a regulation goes too far, it can be the equivalent of a physical taking, which is also prevented by the Fifth and Fourteenth Amendments, unless it is for a public purpose and accompanied by just compensation.

The Court held that the Kohler Act cannot be sustained as an exercise of the police power. “The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” It noted that the Act cannot be justified as a protection of public safety, which is secured by notice requirements to affected owners prior to the commencement of mining.

Holmes understood that the plaintiff, Mahon, had either sold the support estate to the defendant coal company or had bought only the surface estate from it. “As applied to

\textsuperscript{13} 260 U.S. 393 (1922).
this case,” he noted: “The statute is admitted to destroy previously existing rights of property and contract. The question is whether the police power can be stretched so far.” He wrote that the Act

purports to abolish what is recognized in Pennsylvania as an estate in land—a very valuable estate—and what is declared by the Court below to be a contract hitherto binding the plaintiffs. If we were called upon to deal with the plaintiffs’ position alone we should think it clear that the statute does not disclose a public interest sufficient to warrant so extensive a destruction of the defendant’s constitutionally protected rights.

Holmes further noted:

This is the case of a single private house . . . . A source of damage to such a house is not a public nuisance even if similar damage is inflicted on others in different places. The damage is not common or public . . . . So far as private persons or communities have seen fit to take the risk of acquiring only surface rights, we cannot see that the fact that their risk has become a danger warrants the giving to them greater rights than they bought.

So the Court denied the bill of equity, asking the court below to enjoin the mining of the support estate. The holding was not that it was a taking, but rather that the Mahon should not be awarded an injunction as a remedy; to do so might have constituted a taking. The Court held that the police power could not be stretched this far. The effect of the holding was to invalidate the Kohler Act as it applied to the plaintiff’s property. It was not a valid exercise of the police power. It does reflect on takings by noting: “To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it. This we think that we are warranted in assuming that the statute does.” The remedy was invalidation of the law as applied to Mahon and, by extension, others who might challenge it; this is a due process remedy.

1906 Strickley v. Highland Boy Gold Mining Co.\textsuperscript{14}: Justice Holmes wrote the opinion in Strickley 16 years before Mahon. In this case, the rights of a private owner to enjoin a police power law in Utah were similarly limited. In Strickley, an easement over the plaintiff’s property was condemned by the state and conveyed to his neighbor, a private mining company. The complaint was that this was done solely for private benefit and was not, therefore, a public use under the Fifth and Fourteenth Amendments. The condemnation was done under a Utah statute that asserted that the state’s public welfare demanded that mining operations in the mountains have access to rail lines in its valleys. Justice Holmes wrote:

In the opinion of the legislature and the supreme court of Utah the public welfare of that state demands that aerial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The Constitution of the United States does not require us to say that they are wrong.

\textsuperscript{14} 200 U.S. 527 (1906).
Thus, the taking of private property and conveyance of it to another private party is not unconstitutional.

1915 Hadacheck v. Sebastian\textsuperscript{15} and Reinman v. City of Little Rock\textsuperscript{16}: These cases considered the legitimacy of using the police power to prevent property use that constitutes a nuisance or that simply might cause injury to others. In 1915, seven years before Penn Coal, the Court decided two cases that bear on this point: Hadacheck v. Sebastian and Reinman v. City of Little Rock. In Penn Coal, by declaring that the mining of Mahon’s support estate did not prove a public nuisance, the Court could not sustain the regulation as a valid exercise of the police power.

However, in these two 1915 cases, the court validated property restrictions of land uses that it found injurious to the public. In Hadacheck, the city prohibited the operation of a brick kiln in a three-square-mile area and in Reinman, a livery stable in certain parts of the city. The owners attacked the laws on numerous grounds, including that they were arbitrary and unreasonable. Justice [Joseph] McKenna wrote for the majority in Hadacheck:

> It is to be remembered that we are dealing with one of the most essential powers of government,—one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. A vested interest cannot be asserted against it because of conditions once obtaining.

The Hadacheck Court commented on its earlier ruling that year in Reinman:

> The circumstances of the case were very much like those of the case at bar, and give reply to the contentions of petitioner, especially that which asserts that a necessary and lawful occupation that is not a nuisance per se cannot be made so by legislative declaration. There was a like investment in property, encouraged by the then conditions; a like reduction of value and deprivation of property was asserted against the validity of the ordinance there considered; a like assertion of an arbitrary exercise of the power of prohibition. Against all of these contentions, and causing the rejection of them all, was adduced the police power. There was a prohibition of a business, lawful in itself, there as here. It was a livery stable there; a brickyard here. They differ in particulars, but they are alike in that which cause and justify prohibition in defined localities,—that is, the effect upon the health and comfort of the community.

In Reinman, the Court wrote:

> Granting that [the business] is not a nuisance per se, it is clearly within the police power of the state to regulate the business, and to that end to declare that in particular circumstances and in particular localities a livery stable shall be deemed a nuisance in fact and in law.

The only stated limitation upon the power was that it could not be exerted arbitrarily or with unjust discrimination. Blackstone had a commentary on this matter as well:

> And by consequence it follows, that if one does any other act, in itself lawful, which yet being done in that place necessarily to the damage of another’s property, it is a

\textsuperscript{15} 239 U.S. 394 (1915).
\textsuperscript{16} 237 U.S. 171 (1915).
nuisance: for it is incumbent on him to find some other place to do that act, where it will be less offensive.

**1928 Miller v. Schoene**\(^17\): Six years after *Penn Coal*, the Supreme Court took up this issue of limiting the use of property because of its damaging effect on one’s neighbor. In *Miller v. Schoene*, the Court held that the Takings Clause did not require the state of Virginia to compensate the owner of cedar trees for the value of the trees that the state had ordered destroyed under the Cedar Rust Act. The trees needed to be destroyed to prevent a disease from spreading to nearby apple orchards, which represented a far more valuable resource. In upholding the state action, the Court held:

> We need not weigh with nicety the question whether the infected cedars constitute a nuisance according to the common law; or whether they may be so declared by statute. (Citing *Hadacheck.* For where, as here, the choice is unavoidable, we cannot say that its exercise, controlled by considerations of social policy which are not unreasonable, involves any denial of due process. The injury to property here is no more serious, nor the public interest less, than in *Hadacheck* . . .

The *Miller v. Schoene* Court continued: “Here the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property.” (Citing *Mugler v. Kansas, Hadacheck v. Los Angeles; Village of Euclid v. Ambler Realty Co.; and Reinman v. Little Rock.*)

**1926 Village of Euclid v. Ambler Realty Co.**\(^18\): These cases make it easier to understand the famous 1926 case of *Village of Euclid v. Ambler Realty Co.*, which sustained the constitutional validity of zoning. The Court noted:

> The matter of zoning has received much attention at the hands of commissions and experts, and the results of their investigations have been set forth in comprehensive reports. These reports which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders, preserve a more favorable environment in which to rear children, etc.

In *Euclid*, another due process claim was defeated. “[I]t is enough for us to determine, as we do, that the ordinance in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority.”

The case articulated the Court’s presumption of validity of police power enactments and the heavy burden of proof on challengers: “The reasons [offered by the village] are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can

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\(^{17}\) 276 U.S. 272 (1928).

\(^{18}\) 272 U.S. 365 (1926).
be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”

_Euclid_ also demonstrates that the scope of constitutional principles expands and contracts in a changing world:

[W]hile the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.

“Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.”

1988 _Pennell v. San Jose_19: The city of San Jose enacted a rent-control ordinance to alleviate skyrocketing rent prices due to the growing shortage of housing. The issue was whether the ordinance violated the Fourteenth Amendment’s Due Process Clause. The Court held that the ordinance was rationally crafted to protect landlords’ financial investments while simultaneously preventing tenants from becoming victims of burdensome rent increases. The ordinance’s purpose of preventing unreasonable rent increases caused by the city’s housing shortage is a legitimate exercise of appellees’ police powers. The Takings Claim was deemed to be premature.

2002 _Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency_20: In _Tahoe-Sierra Preservation Council_, the Court held that a 32-month moratorium on all development was not a regulatory taking. The moratorium’s purpose was to give the Agency time to deal with the threat posed by land development to the clarity of Lake Tahoe, which had begun to cloud as early as the late 1950s. This case bears on the issue of whether pandemic-related moratoria on evictions, for example, or even on temporary closings constitute a regulatory taking.

VI. Conclusion

Recall that San Jose adopted a rent control ordinance. Little Rock and Los Angeles, in _Reinman_ and _Hadacheck_, adopted nuisance prevention ordinances. The village of Euclid adopted a comprehensive zoning ordinance that mandated the separation of land uses. In most states, local governments have the authority to govern local property and affairs and to regulate and prevent nuisance-like activity. In all states, they have been delegated the power to adopt zoning and other land use ordinances. A recent study demonstrates that at least 40 states have repealed Dillon’s Rule, which required that the power delegated to municipalities to control land use is to be narrowly construed.

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In its journey, land use law has shed many of the shackles that would have reduced its ability to adjust as times change. As climate change worsens, pandemics come and go, and systemic racism is better understood and confronted, it is important to recall that the law changes, in application if not principle, to meet society’s needs. To repeat what the Court noted in *Village of Euclid v. Ambler Realty Co.*: “[W]hile the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise.”
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PRACTICE POST-COVID ZONING
Zoning for a Post-COVID World

By Donald L. Elliott, FAICP

The COVID-19 pandemic of 2020 has dramatically disrupted American life in ways that would have seemed unthinkable just last year, and its impacts will remain with us for a long time. As city and county governments scramble to protect their citizens and to adjust services and budgets based on plummeting revenues, they are also asking how local governance should change as a result of these shocks. And those involved in land use and development are asking how zoning should change. Despite what journalists get paid to write, it is too soon to know with much confidence how the fallout from COVID-19 will change the U.S. economy, lifestyles, and communities in the long run. We will know more next year, and even more five years from now. Discussions about zoning in the post-pandemic future would be less confused if we distinguish between short-term and long-term impacts, and if we distinguish between zoning regulations and the enforcement of those regulations. We also need to keep in mind that zoning lends itself to excluding things we do not like, and that the impacts of exclusion often fall more heavily on lower income populations and persons of color. This important fact has been too often ignored in the past, and it is one of the keys to post-COVID zoning: Think twice about using zoning to exclude building unpopular forms and uses unless those exclusions are clearly necessary to protect public health and safety, because unnecessarily rigid zoning often complicates Americans’ abilities to house their families and earn a living. This article will discuss likely trends in post-COVID zoning while keeping these distinctions in mind, and without pretending to know things we do not yet know.

SHORT-TERM ZONING ADJUSTMENTS

When the impacts of the pandemic began to appear and stay-at-home orders started to be issued, local governments were rightly focused on what needed to be done right then. They focused on protecting health and safety in public buildings, parks, and facilities, and they focused on the freefall in public revenues that accompanied dramatic reductions in in-person retail, eating, drinking, and service activities. They needed to quickly adjust to changing social and spending behaviors, and realized they were not equipped to make those changes quickly because those adjustments often required the approval of an elected or appointed body that was not authorized to make decisions without meeting in person. They asked how zoning could be designed to allow for faster responses to these types of disruptions.

The answer is flexibility—to design zoning regulations so that the uses of property are more flexible and so that more of those adjustments can happen administratively when emergencies arise. Rules that seemed reasonable at the time can seem unreasonable when circumstances change suddenly, and short-term relaxations of zoning rules seldom impact the long-term future of the city. That applies to rules about the use of a building, its parking lot, its open space, and the public realm along its street frontages. It also applies to regulations about the control of existing public streets and sidewalks in the public rights-of-way, but since those are generally subject to public works regulations, rather than zoning regulations, we will not address them here.

General and Specific Authority to Make Adjustments

In its broadest form, rapid adjustment to economic shocks requires an ordinance permitting an appointed city official (for example, the community development director or the deputy city manager) to temporarily allow different uses of private property for 30 or 60 days during emergencies if the official determines there is no material risk to public health or safety. The official’s decision needs to be subject to appeal and will need to be reviewed and ratified (or not) by an elected or appointed body within 60 or 90 days with due process and public comment. The ordinance could also include the ability to waive any related permit requirements or simply require documentation that the property was being used in a new way within six months or a year. Some local governments already have such an ordinance, and in others, city or county attorneys have quickly drafted resolutions covering those emergency powers. But our ability to respond quickly would be enhanced if they were in place ahead of time.

When it comes to zoning, the ability to administratively allow the following activities would have made our response to COVID-19 smoother and would have helped citizens and businesses continue their economic activities in new ways:

- Authorizing the use of (suddenly underused) parking lots and outdoor open spaces for outdoor eating and drinking, or for outdoor display of merchandise
- Increasing the amount of space in a home that can be used for a home occupation or home-based business activities (think of all the households that suddenly went from one working at home to two or three people working at home)
- Allowing the use of legal accessory structures for home occupations or home-based businesses
- Allowing a larger number of unrelated persons to occupy a single-family dwelling unit
- Allowing a change of use of commercial or industrial property to another permitted use without the need to obtain a prior permit or complete an adequate parking analysis
- Allowing a larger number of temporary signs
- Allowing commercial vehicles to park in residential zone districts (think of all the delivery and contractor trucks that are usually parked on a commercial property before the business was suddenly forced to operate remotely)
Obviously, this list could be much longer. The key question is not whether these types of change could have impacts on traffic, or parking, or neighboring properties, because they might. The question is whether those potential impacts are important enough to offset the need for local residents and businesses to act in new ways when old jobs and old customers disappear.

**Three Key Points About Short-Term Adjustments**

Three points about this type of emergency adjustment ordinance are worth noting:

First, those cities and counties that have broader and more flexible land-use and home-based business regulations already have a substantial advantage. Almost all new zoning ordinances are moving in that direction, and the COVID pandemic provides one more good reason to do so. Minor differences between land uses are not as important as many people think.

Second, short-term adjustments to social and economic shocks provide good opportunities to experiment and try new things. Over time, zoning regulations get rigid, and citizens sometimes become defensive about even minor changes even when no one can remember exactly why the restriction was adopted. If allowing parking lots to be used for eating and drinking does not create parking congestion problems, and if allowing home occupations to occupy more of the property does not result in many complaints from neighbors, maybe the regulation was too rigid to start with.

Third, sometimes what is needed to adjust quickly is not a change in the zoning law itself but a change in the enforcement of zoning law. Almost all zoning enforcement is complaint based, and some of those complaints create more serious threats to public health and safety than others. Because of those differences, and because of budget limits, zoning enforcement officials are seldom obligated to investigate or enforce every complaint they receive. Zoning regulations are adopted to protect the public health, safety, and welfare—not to engage the local government in disputes between neighbors that have very little to do with those public goods. During times of emergency or uncertainty, one possible city or county response is to focus on complaints related to rubbish, waste, obstructions of required corner visibility triangles, or other factors that could create risks to public health and safety, and to deemphasize complaints about changes in the use of property that do not create those risks.

**LONG-TERM ZONING CHANGES**

As America’s local governments have struggled with short-term responses to COVID-19, zoning, land-use, and development professionals have also focused on what the pandemic may mean for zoning in the long run. There has been an overabundance of media speculation about whether it will permanently change the ways that Americans choose to live, move around, shop, play, recreate, or educate their children. It is simply too soon to know the answers to many of those questions, in part because it is unclear if and when an effective vaccine will be developed, and if so, how long it will take the use of the vaccine to be so widespread that citizens feel safe acting as they used to act. Behavior changes habits, and the longer citizens act in a certain way (for example, working from home), the less likely they will be to fully revert to their prior behaviors. In addition, it is difficult to distinguish between the impacts of economic cycles (including a likely upcoming economic slowdown) from structural changes in the economy or permanent changes in public preferences. Lots of behavior changes during recessions are at least partially reversed when the economy recovers.

In light of that uncertainty, one helpful way to think about the future of zoning is to focus on significant market, lifestyle, and investment trends that were already occurring prior to the pandemic and to identify whether COVID-based changes appear to be pushing back against those documented trends. The question is whether the pandemic will accelerate those trends, slow them down, reverse them, or (potentially) have no long-term impact at all.

The significant long-term trends in zoning include the following, each of which is discussed in turn below:

- Increasing housing diversity
- Increasing flexibility in the use of housing
- Increasing flexibility in the use of commercial space
- Increased focus on compact, mixed-use, and transit-oriented development
- Increasing focus on walkability, open space, and the “public realm”

**Housing Diversity**

For several reasons, most newer zoning ordinances are moving toward allowing smaller residential lots, “missing middle” housing, tiny houses, microunits, accessory dwelling units, and other exceptions to our historic reliance on single-family detached homes on relatively large lots. Although discussion of this trend sometimes focuses on changing lifestyles, the pressures behind it are much
stronger than personal choice. The trend is grounded in global economics and the simple fact that a steadily increasing number of Americans cannot afford to rent or buy the types of single-family detached housing that we built so much of in the past. So the trend toward a more diverse housing stock helps respond to both the recent popularity of urbanism and walkability in younger and older demographics and to the declining affordability of housing in general. It also creates more acceptable alternatives to the larger apartment buildings lower density neighborhoods often do not want nearby.

The COVID-19 pandemic will not reverse these trends, and will probably strengthen the drive toward more diverse housing, for two reasons. The most basic is that nothing related to the pandemic points toward a narrowing of the gap between wages and housing costs. Even if all of the lower- and moderate-income jobs lost since March 2020 were to return (which is very unlikely), those jobs are unlikely to pay more than they did before or to increase the percentage of households that can afford market-rate single-family detached homes. The second reason is that more choice makes for interesting cities and counties. In retrospect, the postwar paradigm that housing was either a single-family home, a duplex, or an apartment/condominium unit was an artificial construct created or reinforced by zoning. Nothing arising out of the pandemic points to a return to that narrow menu of options.

More Flexible Use of Housing
Prior to the pandemic, many American communities were revising their zoning ordinances to allow more flexible use of new and existing housing. Almost all newer zoning codes include a broader approach to home-based businesses; instead of trying to name what you can do by naming specific home occupations, they focus on what you cannot do based on the impacts of those activities. More specifically, newer ordinances often prohibit a few named uses (such as auto repair and retail uses) and allow all other uses while limiting the number of employees, parking spaces, signs, or deliveries. Limits on the areas that could be devoted to home occupations and prohibitions on the use of accessory buildings were already eroding. In addition, definitions of the “family,” “functional family,” or “household” that can occupy a dwelling unit were also becoming more flexible. Definitions based on ties of “blood or marriage” were being replaced by those including civil unions and committed relationships, and were sometimes being expanded to include those whose right to live as a household is protected by the federal Fair Housing Amendments Act. The number of unrelated persons was also creeping up because the economic pressures discussed above have led to a steady rise in the number of households “doubling up” and living together in order to afford housing. While it is tempting to think of this as having elderly parents or underemployed children move in with mom and dad, the trend is also rising among unrelated households, simply because they need more household income to pay the rent or mortgage. The exception to zoning allowances for higher occupancy is sometimes college towns, where unrelated students have always shared housing at higher rates and fears of overcrowding by college students have long acted as a brake on this trend.

Again, the outfall of COVID-19 is not likely to reverse this trend and is very likely to accelerate it. In many communities, stay-at-home orders acted as a shock to the single-family detached zoning paradigm, but one that created very little shock. One week relatively few people were working from home, and the next week a large share of the U.S. economy was being conducted from home, but stories of negative impacts on America’s neighborhoods were few and far between. It turns out that much of America can work from home without a permit and without a review of specific impacts, so it is unlikely that we will return to stricter home occupation regulations in the future. In addition, an increasing number of Americans have more than one job, and that second (or third) job is often conducted from home. That was true before the pandemic, and COVID-19 is unlikely to change it.

The discussion of housing occupancy is more complex, because the economic forces leading lower- and moderate-income families to “double up” are in tension with the realization that overcrowded housing is one of the significant ways in which the COVID-19 virus spreads. It is unclear whether this tension will be resolved with stronger limits on dwelling unit occupancy, but it is important to unpack this issue a little more.

Some limits on occupancy are based on protecting health and safety by avoiding overcrowding, such as the no-more-than-two-per-bedroom limits in some cities or the minimum living space requirements in some versions of the International Residential Code. Other occupancy limits are attempts to protect community character, such as no “more than four unrelated adults” rules in many zoning codes. These character-based occupancy limits are not related to overcrowding, health, or safety. As an example, there is no health and safety logic behind limiting a five-bedroom home to four unrelated adults. As the short-term impacts of COVID-19 decline over the next months and years, it is likely that there will be more studies on levels of overcrowding that significantly increased the spread of the virus, and those studies may lead to more health- and safety-based occupancy limits in zoning ordinances. But those studies may not slow the erosion of character-based occupancy limits until they bump up against occupancy limits based on true health and safety concerns.
Flexibility in Commercial Space

The types of commercial space needed, and the ways in which we use that space, were in flux long before the stay-at-home orders began appearing in March 2020. Numerous studies have predicted the impending demise of single-purpose office parks as workers demand more interesting mixed-use working environments. Other studies document the decline of indoor shopping malls as consumer preferences changed toward outdoor lifestyle centers, or mixed-use centers, or online shopping. And, as always, the economic pressures of the global economy were pushing office businesses to reduce the amount of space allocated to each worker and then to institute coworking spaces and “hot desks.” To top it off, it seemed that each storefront space vacated by an office, retail, or service use was then occupied by an eating, drinking, or entertainment use built on the ambience of an in-person experience.

For all of these reasons, zoning ordinances have long been moving toward broader, more flexible definitions of commercial uses that allow for quicker market adjustments and shorter vacancy periods, without the need for change-of-use permits or parking adequacy studies with each change in tenancy. More broadly, an increasing number of ordinances were already promoting mixed-use development by allowing residential uses to occupy former commercial spaces without the need for discretionary zoning approvals.

This is a third example of where economic responses to the pandemic are likely to reinforce rather than reverse these trends. The answer to changing economics before COVID-19 was flexibility, and the answer after COVID-19 is likely to be more flexibility. There are several powerful forces behind this acceleration. One is the newly discovered ability of many American worker to work from home, the acceptance by many employers that their employees are happier working from home, and the likely demand for less office space to run the U.S. economy in the future. A second is a likely significant reduction in business travel and related demand for new hotel, lodging, and restaurant space aimed at business travelers. A third is the rise in online shopping and home delivery of everything from clothes to groceries to prepared meals (sometimes prepared in “cloud kitchens” without a storefront presence).

In short, even if Americans resume some of their former working, traveling, shopping, and dining behaviors, the new options created in response to the pandemic make it unlikely that demand will return to former levels for a long time.

So how should cities and counties respond to all that underused office, retail, service, restaurant, and bar space? The answer is to allow a wide range of other commercial, civic, and institutional uses, including adaptive reuse for residential and noncommercial uses, without time-consuming administrative reviews or public hearings. As plans are revised and updated, planners should also take a very hard look at projections of future demand for all of these types of space, because the reality may be much lower than previously thought. This is a good opportunity to help bring the over-retailing and under-housing of America into better balance.

Compact, Mixed-Use, and Transit-Oriented Development

Prior to the economic shock of COVID-19, many American cities and counties were focused on incentivizing compact, mixed-use development. Those with existing, growing, or aspirational bus or rail transit systems often extended this focus to transit-oriented development—compact, mixed-use development specifically focused on increasing ridership on transit systems. The forces behind these trends were perhaps not as strong as those behind housing economics, but they were still fairly powerful. Chief among the reasons was rising and continued concern over climate change and broad public support for creating alternatives to long home-to-work motor vehicle trips and the vehicle emissions they generate. Citizen concern with climate change has been remarkably consistent throughout the past 20 years and remained relatively strong even during the Great Recession of 2008–2011, so there is reason to believe it will remain strong in the post-COVID world. If we need...
a reminder, more extreme weather conditions and events will provide it. A second important reason was the increasing realization of citizens and elected officials that low-density, car-oriented development often results in frustrating traffic congestion while generating very heavy costs to taxpayers. In the pre-COVID world, elected officials did not need to fully embrace urbanism; they just needed to support lower government costs and taxes. And that led to more compact, mixed-use development patterns.

While these pressures are powerful and incentives promoting compact, mixed-use development have now been embedded in a generation of zoning ordinances, they will now face competing pulls in the opposite direction. Months of social distancing and growing awareness that we may face other airborne virus risks in the future will lead some buyers, renters, and businesses to look for locations with more open space and perhaps less reliance on elevator access requiring spacing of arrivals and departures. While COVID-based concerns about adequate space for social distancing may weaken when and if a vaccine is widely available, they will not go away entirely. Zoning can respond in at least two different ways. The first is to allow more low-density outward growth of our cities—sprawl. The second is to incorporate more open space into and around relatively compact forms of development. The choice of response is not either/or because market demand for each solution will be based on consumer preferences. So the market will probably call for space that allows for more personal distancing in both central and outlying locations. However, the COVID-19 pandemic has not made low-density sprawl more cost-efficient than it was before, and the well-documented higher costs of building and servicing longer streets, pipes, and wires to serve relatively few users will lead many cities to choose mixed-use zoning with more interspersed public and private open space as the preferred response.

The future of transit-oriented development (TOD) is more uncertain because the fate of many urban transit systems is precarious. All urban transit systems require subsidies, and the collapse of ridership during the pandemic has turned acceptable operating losses into skyrocketing losses that threaten the survival of many transit systems. And the concerns about spacing and avoidance of airborne viruses in contained spaces may not go away soon. Zoning for TODs makes sense if proximity to transit stations will lead to increased ridership and reduced vehicle miles travelled and related emissions. But it makes less sense if even those who live or work close to transit avoid using it, or if financial pressures on ridership lead to downward spirals of service levels and ridership. These threats to transit are compounded by the rise of services like Uber and Lyft (and in the future, autonomous vehicles) which, although they involve closed vehicles, are likely to have fewer unknown strangers in the vehicle than a bus or train. All this might point to a bleak picture for the future of TOD zoning if it were not for the fact that Uber and Lyft vehicles take up the same amount of street space as private cars, create traffic congestion just like private cars, and require the same high costs of building and maintaining streets as private cars. The high costs and traffic congestion that have led cities to focus on mobility management and transit rather than ever-widening streets still apply. So, while explicit zoning for transit-supportive land uses and densities may slow down—at least until the financial futures of transit systems come into better focus—it is likely that zoning for compact, mixed-use development (with increased requirements for private and public open space) will continue.

Walkability, Open Space, and the Public Realm
As mentioned in the paragraphs above, the COVID-19 pandemic has increased public interest in walkability and open space. Worries about transmission of the virus in enclosed spaces have made Americans want to spend more time walking, dining, drinking, shopping, and gathering outside. Those desires have already led to an increase in use of sidewalks and parking lots to accommodate new outdoor activities, and it may also lead to demands for wider sidewalks and more park space. Whether those trends reflect long-term changes in personal preferences depends in part on how long it takes to develop and distribute a vaccine and whether those who want more of these public goods are willing to support the tax revenues to pay for them.

While some of the discussion about open space and social distancing has predicted the return of sprawl development, and other discussions have focused on the documented need for more parks in urban areas, few articles have pointed to the importance of public streets as primary sources of urban open space. The truth is that between 20 and 35 percent of many urban areas is already publicly owned—in the form of public streets. While some of that right-of-way is needed for the movement of cars and buses, and a variable amount is dedicated to parking, some of it is devoted to sidewalks and tree lawns that already serve as an interconnected network of public open space. Post-COVID planning is likely to see continued discussion of how much of this valuable public land should be devoted to cars rather than people, and memories of sheltering in place and working from home may bend the discussion toward a better public realm as an open space amenity. The outcome will depend in part on whether reductions in traffic from working at home continue over the long run, which would make it easier.
to institute road redesigns in favor of more space for people.

Interestingly, the same pressures for social distancing may lead to rethinking recent efforts to limit drive-through uses, because drive-throughs turn out to be a good way to obtain goods without going inside a potentially crowded enclosed space to complete the purchase. Some chain restaurants have reported that use of drive-throughs has increased during the pandemic, and some of that behavior change may outlast the pandemic. Fortunately, a growing number of zoning ordinances include compromise approaches that allow drive-through windows while prohibiting access to them from pedestrian-oriented streets and barring drive-through aisles between storefronts and sidewalks. The drive-through is probably not going away, and the use of those design compromises is likely to increase.

EQUITY, RACE, AND THE LONG VIEW

As local governments think through what zoning changes to are needed to adjust to a post-COVID world, it is important to remember that the pandemic has affected persons of color most heavily and that neighborhoods with higher percentages of minority residents and low-income households are those most in need of more flexibility and more open space. It is also important to remember that zoning was originally designed to exclude—not include. It is much more effective at keeping unwanted buildings and land uses out of neighborhoods than forcing desired land uses into neighborhoods. Unless zoning is drafted and applied thoughtfully, one unanticipated outcome is that the unwanted land uses and buildings that are kept out of wealthier neighborhoods often wind up in poorer neighborhoods. In addition, the impact of overly rigid zoning categories and rules—like the exclusion of missing-middle housing, accessory dwelling units, live/work spaces, low-impact fabrication uses, or artisan manufacturing—often fall most heavily on neighborhoods with higher percentages of minority residents and low-income households. So as cities and counties move toward the more flexible zoning required in the post-COVID world, they should be particularly aware of the different types of flexibility needed to allow citizens of all races, ethnicities, sexual orientations, and income strata to use their homes and properties to house their families, earn a living, and recreate safely. The needed adjustments will differ by neighborhood, and the most successful zoning ordinances will be those that respond to the economic, social, and cultural realities in each neighborhood.

Finally, planners should remember that communities evolve over long periods of time. What seem like dramatic changes in the short run often appear more modest when viewed over the decades in which we live our lives. The “back to the city” headlines since 2000 actually involved only a (privileged) minority of U.S. households whose changing preferences bent the real estate markets toward traditional downtowns. The vast majority of Americans did not move downtown and had no intention of moving downtown; they continued to live in surrounding areas of the cities and suburbs where the vast majority of U.S. housing is located. The same is probably true of responses to the COVID pandemic. Headlines will be made by a minority of U.S. consumers who decide to move outward to avoid the perceived risks of more crowded urban areas, but it is unlikely that a significant share of Americans will make that decision for the reasons outlined above. Housing, employment, and transportation choices are influenced by several constantly changing forces, including the availability of work, stage of life, quality of schools, commuting time, personal preferences, affordability, and discrimination. America’s cities and counties are what they are as a result of decades of individual households balancing these tensions. The fallout of the COVID-19 pandemic will change some of these factors for some households, but not all, and not all in the same way. The most successful post-COVID zoning ordinances will be those that acknowledge the trends discussed above, allow more flexible uses of land and buildings, take climate change, housing affordability, and equity seriously, and do not pretend to know more about future than we really know.

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IS YOUR ZONING READY FOR A POST-COVID WORLD?
History tells us that New York will recover from its current crises — but how? Here’s what the evidence tells us so far.
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even months after the first case of COVID-19 in New York was confirmed, it’s clear that the city and its surrounding region are enduring one of the biggest crises we have faced in nearly a century. The 1918 flu pandemic and the Great Depression are the only modern precedents that match the depth of the health crisis and economic downturn that we are in, and both occurred when the region and the world were very different places.

COVID-19 challenges the very function of cities — to facilitate interactions of large numbers of diverse people and activities.
While the crisis is global, the fact that New York was the early U.S. epicenter of the pandemic, and the ways in which COVID-19 challenges the very function of cities — to facilitate interactions of large numbers of diverse people and activities — understandably creates fear that New York is spiraling into a decline from which it might never fully recover. The widespread protests that erupted after the killing of George Floyd, further instances of police misconduct and brutality, and an increase in gun crime have added fuel to the intense debate over where New York is headed. Scarcely a day goes by without news articles or commentary raising the specter of people and businesses fleeing the city in droves, or pushing back that the fears are exaggerated and ignore New York’s enduring appeal.

There is no way to minimize the human suffering and economic damage of the pandemic, or the enormous task of healing and renewal that lies ahead. COVID-19 has already resulted in 47,486 deaths and 622,187 confirmed cases in the tri-state metropolitan area, 23% and 8.6%, respectively, of national totals.¹ 1,890,000 jobs were
lost between February and May 2020, 17% of all jobs in the region. Through August, only 640,000 of these jobs have been restored since stay-at-home orders were gradually lifted starting in June. Unemployment is officially 12.4% for the region as a whole, and 16.3% for New York City. But the real level of unemployment is likely much higher. Based on the number of workers receiving unemployment claims, the Center for New York City Affairs estimated that 33% of city residents were unemployed in July, and as many as 41% in the Bronx. The burden has fallen hardest on low-wage workers and immigrants, many of whom don’t have citizen status or access to any federal relief or assistance.
These interlocking crises of public health, economic disruption, and racial injustice have seeded a fourth crisis, a crisis of confidence. With so many hurting and with so much uncertainty, it can be hard to see the light at the end of the tunnel. Political polarization and mixed messages from different branches of government add to the sense that events are spiraling out of control.

Restoring confidence and fixing the structural problems that made the region susceptible to these crises will require the same leadership, commitment, and collaboration that changed New York from the epicenter of the pandemic to a model of how to flatten the curve. It will require clear strategy and decisive action from elected leaders, and it will require institutional reform and shared sacrifice from business, labor, government, and civic sectors. To aid that effort, this paper attempts to differentiate the real threats to recovery from unsubstantiated fears that can feed on themselves.

In spite of the immense suffering and fear, there are reasons to be hopeful. Aggressive public health measures and cooperation from residents and businesses have dramatically reduced rates of death and infection throughout the Northeast, and maintained a low rate of infection for New York City and the region even when cases were spiking in most other parts of the nation.\(^5\) Progress is being made on effective treatments and vaccines. Technology companies such as Facebook and Amazon have expanded their footprint in Manhattan even after the pandemic closed down much of the city. And there are now signs that many are returning to the city after leaving in the spring and summer.\(^6\)

Whether we are entering an era of decline or come back stronger, fairer, and more resilient than ever will depend on the choices we make now.
Key Findings

Section I of this report outlines five common mistakes that can lead to bad policy choices:

- Mistaking short-term disruptions for new paradigms
- Thinking of the city and suburbs as a zero-sum game
- Confusing national and global trends with what is unique to New York
- Assuming a rising tide will lift all boats
- Recreating the past instead of envisioning the future

Section II summarizes what the evidence tells us thus far:

- Urban density does not spread the coronavirus, and brings a range of health benefits
- There is no evidence to date that public transit spreads the coronavirus
- The pandemic has demonstrated the health and climate benefits of reduced auto congestion and the reuse of streets and public spaces
- The long-term impacts of increased working and learning from home are still unclear, and could both challenge and benefit the region
- Gun crimes have increased but remain historically low, and other crimes continue to decline
- The recent surge of people moving out of New York City is driven by a combination of temporary and potentially longer-term forces that are different from past periods of urban flight
- Plunging tax revenue will force difficult budget decisions at both the city and state level.

Section III outlines the biggest threats that could lead to a deeper downturn and widening disparities:
Section IV offers five reasons to bet on the New York region’s future if we take the actions needed to address these threats:

- The biggest threat is that the fiscal crisis will lead to extensive deterioration of public services and infrastructure, particularly the region’s transit system.
- Widespread evictions and business failures would have ripple effects that would fall heaviest on the poor and make it much harder for the economy to recover.
- An erosion of confidence in public safety could lead to further outmigration and widen racial and social divisions.

Section IV offers five reasons to bet on the New York region’s future if we take the actions needed to address these threats:

- Urban density is still an advantage in the global economy.
- Diversity and talent still drive economic success.
- The New York region’s unique agglomeration of assets is impossible to replicate.
- New businesses and households will take advantage of vacant space and lower rents.
- The crisis has been a wake up call to address our structural problems.

The final section draws from RPA’s Fourth Regional Plan to align actions that address the immediate crisis with a longer-term strategy to make the city and region more livable, just and resilient.

From providing affordable internet service for all to reforming government agencies to reduce costs and address racial inequities, actions that we take today can minimize the threats we face while positioning us to rebuild better. The formula for success must be a partnership that includes federal funding, good local governance, and collaboration from business, labor, civic institutions and communities across the region.
Charting New York’s Next Comeback

A History of Comebacks
What we know is that New York has a history of coming back after many had given it up for dead, whether it was during the Great Depression when as much as one-third of the population was out of work, in 1975 when the city was nearly bankrupt, in the late 1980s when Wall Street was crashing and crime was peaking, or after the city was attacked on September 11, 2001. Each of these crises also brought immense pain and changed the city and region in ways that were hard to predict at the time.

New York’s history should give us confidence that the city will emerge as a dynamic, thriving metropolis once again, but the unprecedented scope of the current crisis still leaves essential questions unanswered — how long will the downturn last and how long will it take to recover, who will benefit and who will be left behind, and what type of place will the region become?

To sort out what’s likely from what’s speculative, and which actions are most urgent from those that can wait, it’s important to avoid falling into a few common traps:

- **Mistaking short-term disruptions for new paradigms**
  Just as it was wrong to assume that firms would leave Lower Manhattan after 9/11 or that Hurricane Sandy would weaken demand to live on the waterfront, it would be a mistake to assume that behavioral responses to COVID-19, from avoiding public
transit to buying homes in the suburbs, will continue after effective vaccines and treatments have the virus under control. The most likely changes will be those that demonstrate better ways of doing things or reinforce existing trends, such as telemedicine or working more from home.

Thinking of the city and suburbs as a zero-sum game
If the COVID-19 epidemic has proven anything, it’s that the fates of New York City and the cities, towns, and villages in northern New Jersey, Long Island, the Mid-Hudson Valley, and Connecticut are intertwined. Other parts of the region quickly joined New York City and Westchester as the epicenter of the pandemic, and coordinated regional efforts were essential to flattening the infection curve and reopening the economy. While there are real fiscal implications when people or businesses leave the city for the suburbs, in the long run their economies are interdependent. 22% of the income of non-New York City residents is earned within the five boroughs, and 27% of the city’s college-educated workforce resides outside its boundaries. These generate spending, jobs, and business opportunities throughout the region, and help attract global companies with one of the largest and most diverse and talented workforces in the world.

Confusing national and global trends with what is unique to New York
The global reach of the pandemic and the shifting geography of hot spots can make it difficult to differentiate between effects that can strike anywhere and those that can be attributed to New York’s unique characteristics. Many of the initial assumptions about COVID-19’s link to density and transit use are proving false, and much of the higher economic pain felt in the region may be attributable to its early devastation in the pandemic’s first wave when less was known about how to track, mitigate, and treat the illness.

Assuming a rising tide will lift all boats
Due to structural inequalities, people of color, low-wage workers, and less educated households are usually the first to suffer and the last to recover from economic downturns. This is especially true for this pandemic-induced recession that has been much worse for Blacks, Latinx, low-wage essential workers, and those without health insurance or savings. Incomes and employment will remain depressed far longer for these residents than for others without intentional policies to restore their incomes and improve access to emerging job and business opportunities.
Recreating the past instead of envisioning the future

While we can’t fully know what behavioral changes will be permanent, what new industries might emerge, or how the nature of work will evolve, we know that the next economy will be different. It’s critical to help as many businesses survive as possible, but it’s also important to create an environment that supports innovation and the growth of new businesses. Investments in infrastructure and the public realm should likewise have the flexibility to adapt to new patterns of living, working, and traveling.

**Employment income loss by race**

Percent of people in the NY metro region in households that have lost employment income since March 13, 2020

- Hispanic: 66.7%
- Asian: 67.1%
- Other: 62.9%
- Black: 51.9%
- White: 50.7%

US Census Household Pulse Survey, July 16-21, 2020
Sorting Fact from Fiction: What the Evidence Tells Us So Far

COVID-19 has compressed dramatic changes in behavior into a very short period of time. These changes, along with the stark differences in health and economic outcomes for different populations, have pulled the curtain back from inequities and inefficiencies that have long existed. Many improvisations born of necessity have demonstrated better ways of working, learning, and living that will continue long after the pandemic is over.

Which changes endure, and how they will affect the New York metropolitan region’s future health, prosperity, equity, and sustainability, will depend to a large extent on how long it takes to end the threat of infection with effective vaccines. The longer the pandemic and depressed economic conditions continue, the more likely it is that new behaviors will become hard-wired and damage to households, businesses, and public assets will be harder to reverse. Policy choices at all levels of government will either mitigate or reinforce these changes, and either improve or damage the region’s long-term prospects.
The biggest dangers to New York are not intrinsic to its dense urban form, its mix of industries, or its unique place in the global economy. Rather, the greatest risk is that deterioration in human potential, fiscal conditions, and infrastructure will cause long-lasting damage.

The jury is still out on many questions, but a growing body of evidence and some historical perspective shed light on which fears are misplaced or exaggerated, and which require either immediate attention or continued vigilance.

**Density vs. Crowding**

Urban density does not spread the coronavirus, and brings a range of health benefits.

Numerous studies have found that early assumptions that the density of New York and other large cities caused high rates of COVID-19 were incorrect. A May 2020 report by the Citizens Housing and Planning Council demonstrated that the most common
definition of density — number of people per square mile — had no relationship to coronavirus hotspots. Many dense cities had much lower rates of COVID-19 than New York City, and the city’s densest neighborhoods had some of the lowest rates in the region. ⁹

A more comprehensive national study found that large metropolitan areas had higher rates of both infection and mortality, but county density was not significantly related to infection rates and in fact predicted lower mortality rates, possibly due to better health care systems. The more likely cause of the higher rates in large metros is the high connectivity that these areas provide, creating more opportunities to come in close contact with others. ¹⁰ Since these studies were completed, COVID-19 has been reduced to low levels in New York while spreading to other parts of the United States, which would likely result in even stronger findings.

Where COVID-19 does spread are places where there is close indoor contact with large numbers of people, unmitigated by mask wearing and social distancing. These conditions can exist in bars, restaurants, churches, factories, sporting events, and other activities that can be in urban or non-urban settings.

And COVID-19 mortality is clearly related to factors associated with poverty and pre-existing health disparities. The high prevalence of COVID-19 deaths among Blacks,
Latinx, and Native Americans is well documented. Living in overcrowded housing shows a strong relationship in both national and regional data.  

An analysis of New York City’s five boroughs identified strong relationships between housing precarity (defined as eviction rates, rent burden, and crowding) and vulnerability to COVID-19. This research adds evidence that urban density is not necessarily a vector for COVID-19. Instead, housing conditions drive many health outcomes, with poor and insecure housing causing many of the underlying conditions that increase vulnerability to the virus.

While overall COVID-19 cases and deaths have decreased since early April, the correlations between deaths, race/ethnicity, and crowded living quarters increased in proportion over time, reaching their peak in June. As the virus has continued to spread and impact communities that are not especially socially vulnerable, these correlations decreased slightly but still remain higher than other social factors.

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**Cumulative COVID-19 Deaths and Overcrowding by County**

![Graph showing the correlation between overcrowding and COVID-19 deaths by county.](image)

Based on cumulative COVID-19 deaths as of September 16, 2020, from state and local health agencies via USA FACTS, and U.S. Census American Communities Survey, 2014-2018.

**Cumulative COVID-19 Deaths and Percent Persons of Color by County**

![Graph showing the correlation between percent persons of color and COVID-19 deaths by county.](image)

Based on cumulative COVID-19 deaths as of September 16, 2020, from state and local health agencies via USA FACTS, and U.S. Census American Communities Survey, 2014-2018.
Any assessment of the impact of residential density on health must also consider the health benefits of cities and transit-oriented settlement patterns: less pollution and greenhouse gas emissions from cars, fewer car crashes, more walking, and better access to health care services, as well as jobs and education that can improve incomes and health outcomes. 14

PUBLIC HEALTH AND PUBLIC TRANSIT

There is no evidence to date that public transit spreads the coronavirus.

As with residential density, early assumptions that the disease is spread by riding subways, buses, and commuter trains have proved unfounded. In cities around the world, many with much higher levels of transit ridership than New York, no outbreaks of COVID-19 have been traced to transit use. 15, 16 Transit agencies, including the Metropolitan Transportation Authority in New York, have implemented comprehensive health and safety measures, including improved cleaning using new UV light methods, disinfecting and ventilation, mask requirements, and other practices that have greatly reduced risks of transmission. 17
From June 1 to September 12, more than 212 million rides were taken on subways and buses in New York City. Average case counts dropped from 623 per day to 273 per day. Positivity rates dropped from 3.3% to 1.5%.

In New York City, ridership on the subway and buses has begun to rebound from initial ridership drops of 93% and 83% respectively. Since June 1, the number of transit riders nearly doubled. Yet, rather than rising with increased transit ridership, rising positive test rates for COVID-19 have dropped by more than half.

This trend has likewise held in transit-dependent cities around the world, such as Hong Kong, Paris, Tokyo, Seoul, and Vienna, where infection rates have remained low or fallen, even as transit ridership has rebounded dramatically. And in some American cities, including San Francisco, Austin, Columbus, and Salt Lake City, transit ridership has remained steady while COVID-19 infection rates have significantly increased.
Safe Public Transit

There are a number of reasons why we could expect public transit to be safer than other modes of transportation. The relatively short duration of the average transit trip in comparison with air travel or intercity travel reduces the risk of transmission, as does the lack of talking between riders and how well-ventilated trains and buses are, which compares favorably to riskier activities such as indoor dining. Most importantly though, the strict implementation of mask mandates, both for transit and other activities, has consistently shown clear benefits in battling COVID-19 in cities around the world.

Transit ridership can be expected to rebound once the pandemic is over. A survey by Tri-State Transportation Campaign found that 2% of regular transit users who are not taking transit now will return once COVID-19 has passed. There are still open questions as to whether transmission rates will increase when trains and buses become crowded, and whether heightened health and safety concerns will continue to dampen transit use indefinitely. These risks can be minimized with continued safety measures and good communication with the public.
The disparate health, economic, and education impacts of the pandemic on the poor and people of color are becoming starker as the crisis continues.

Before the crisis, the region was seeing the compounding impacts of economic and health inequality in low-income communities of color. In 2016, RPA’s State of the Region’s Health report found that immigrant communities identified the cost burdens of healthcare as rivaling those of housing. The United Way has been reporting on ALICE (Asset Limited, Income Constrained, Employed) households and found that a third of households in the region were struggling to meet a minimum healthcare budget necessary for economic survival before COVID-19 hit, with communities of color facing even greater hardships.

Early on, the Economic Policy Institute found that less than one in five Black workers and less than one in six Latinx workers have been able to work remotely. Also, less than 10% of low-wage workers have this flexibility, compared with over 60% of high-wage workers. The inability to socially distance at many public-facing jobs along with prevalent comorbidities was a major factor that led to high mortality rates for people of color. This also highlights that as we start to open up the economy, the same vulnerable groups may bear the brunt of new COVID-19 spikes.

In New York City, 40% or 3.4 million residents lack adequate broadband access, and competing needs at home due to school closures continue to exacerbate inequalities and raise fears of a generation that may permanently lag in educational attainment, potentially cementing further intergenerational inequities. Nationally, 14% more Blacks and 21% more Latinx have canceled education plans compared to whites and Asians.
Low-income communities of color also have less access to parks and open space. Parks in low-income communities are four times smaller and more crowded than parks in high-income communities, and parks for communities of color are half the size and five times as crowded as parks that are located in majority white communities.27

Low-income communities of color face more exposure to environmental hazards as well. Nationally, the New York metropolitan area has the widest disparity between low-income communities of color and high-income white communities in terms of average exposure to nitrogen dioxide, an air pollutant emitted by cars and industries.28 These factors not only contribute to high rates of respiratory disease and other pre-existing conditions that increase the risk to COVID-19, they also deny the many health benefits of parks and open space, from clean air to reduced stress, to residents of these communities when so many activities are restricted during the pandemic.29,30,31

These effects have accumulated and exacerbated pre-existing inequities. A national survey and report by the Commonwealth Fund shows how pervasive the impacts are six months into the crisis:32

7 million more adults are suffering from food insecurity compared with before the pandemic.
More than half of Latinx respondents and nearly half of Black respondents reported facing economic hardship due to the pandemic, compared to 21% of white respondents.

40% of Latinx respondents, 39% of Black respondents, and 44% of people with below average incomes experienced mental health concerns related to the pandemic, much more than whites or those with above average incomes.

The national scope of these and other findings show that these impacts are not unique to the New York region.

PUBLIC SPACE

The pandemic has demonstrated the health and climate benefits of reduced auto congestion and the reuse of streets and public space.

As a result of the March stay-at-home orders, personal, public, and professional vehicle use dramatically declined to 50% of its usual level. Some of the most dramatic images from the height of the quarantine were of empty streets and thoroughfares of a city once teeming with cars, taxi cabs, trucks, and buses.

With fewer cars and trucks on the road and airplanes in the sky, levels of health-damaging air pollutants decreased by as much as 46% for nitrogen dioxide, 50% for carbon monoxide, and 20% for PM2.5 (fine particulate matter). The most traditionally congested areas of the city, such as midtown Manhattan, saw greater decreases in levels of PM2.5 and nitrogen dioxide when compared to less congested areas in the outer boroughs.
Rhododendrites

**Whose Streets? Our Streets!**

With approximately 6,000 miles of street space in the city, this suddenly empty space did not stay vacant for long. Cycling and other micro-mobility usage surged, walking was no longer confined to narrow sidewalks, safe access to parks opened up, and gatherings, and later protests, brought new spirit to the chant, “Whose streets? Our streets!” More recently, streets have become an essential lifeline to the city’s struggling restaurants and now public schools, providing new and necessary space to safely accommodate people. With reduced car usage, city residents discovered that there was considerably more public space than they had realized.

Air quality improvements are especially pertinent as these pollutants are responsible for causing or worsening respiratory illnesses such as asthma and lung disease, pre-existing conditions that have been linked to higher death rates from COVID-19 and which are more prevalent in low-income communities and communities of color. 38 A working paper published by the National Bureau of Economic Research estimates that pollution reductions as a result of the quarantine have resulted in a 25% drop in deaths nationally each month from respiratory illnesses like asthma and heart disease. 39

Greenhouse gas emissions also declined as a result of quarantine directives. Globally daily greenhouse gas emissions were found to have dropped by 17% compared to last year during peak COVID-19 lockdowns in April, with nearly half attributed to changes in surface transportation. 40 Researchers from Columbia University’s Earth Institute
found 10% drops in carbon dioxide and methane locally at a monitoring site in Harlem.

The improved air quality and decline in greenhouse gas emissions only came about because of a dramatic pause to economic and daily life activities that was necessary to prevent even more suffering, illness, and death. As economic activity continues to ramp up, and trepidation about using public transit lingers, auto use is on the rise — returning to just about where it left off pre-quarantine — along with higher levels of pollutants and greenhouse gas emissions. Already by early June, global greenhouse gas emissions had risen back to within 5% of 2019 levels while overall greenhouse gas concentrations in the atmosphere continue to increase to new records. Nitrogen dioxide levels measured by the New York City Department of Health have already returned to 2019 levels.

While quarantine actions were temporary and came at great cost, the pause in activity has given New York City a glimpse of what could be possible with more public space for community activities, more space on city streets dedicated to non-auto uses, greater management of congestion and auto usage, and a speedy transition to cleaner vehicles.

VIRTUAL WORK AND EDUCATION

The long-term impacts from increased working and learning from home are still unclear, and could both challenge and benefit the region’s economic competitiveness.

One of the most far-reaching and disruptive changes brought about by the pandemic is the acceleration of pre-existing trends for virtual work, education, and services. Remote interactions for office work, school, and many forms of medical care, commerce, and entertainment have demonstrated efficiencies and quality of life improvements that will continue past the pandemic.
The immediate impacts are greatest for small businesses that depend on a flow of commuters and foot traffic, and families trying to navigate disruptions to school and home life. Until schools are open full time or families have more government support, households lacking economic, social, and technological resources will continue to struggle. This has the potential to lead to longer term implications and inequality, especially for young people.

**Workers in higher-paid industries are more likely to be able to work from home.**

There will be no return to pre-COVID work and commutation patterns, but how much people will continue to undertake work and other activities from home is hotly debated. Some sectors are clearly more amenable to working from home than others, with as many as 75% of finance workers able to work remotely, but only 13% of retail workers.

**Ability to telework and average annual earnings, by industry**

Surveys show some seemingly contradictory results on how much people would like to continue working remotely. A May 2020 online survey by The Harris Poll for Zillow found that 75% of Americans working from home would prefer to continue working at least half their hours from home after workplaces reopen. By contrast, an online survey by Gensler around the same time found that only 30% would want to work more than two days per week from home, and that only 12% wanted to work from home full-time. Different samples, questions, and methodologies account for some of the difference, but details from the Gensler survey, which focused more on the work experience, paint a nuanced picture of worker preferences. While 44% of respondents said they wanted to work no days from home, 26% wanted to work one to two days from home, 18% three to four days, and 12% five days. Younger workers were more likely
to find it difficult to work from home, and most workers wanted changes that would improve the health environment of the workplace and provide greater flexibility in work hours.

Challenges for Caregivers

COVID-19 has illuminated inequalities in education and lack of societal support for families and caregivers. Many caregivers have lost employment or housing. Some have had to work outside the home while their children remain at home without supervision. For those who are employed and are able to work from home, managing remote school, meals, and children’s mental and physical well-being has created a whole new set of challenges.

There is no question that people will work, learn, and purchase goods in different ways than they did prior to the pandemic, with more activities undertaken from home. Countervailing forces also exist and will limit the extent of this trend. Many activities simply require in-person contact, from getting a haircut, to repairing a kitchen sink, to attending an after-school soccer league, and there is a wealth of research showing the importance of social interactions and physical space to productivity, creativity, and mental health.

Many workers, particularly younger ones, find remote work isolating and fear the loss of promotion, mentoring, and networking opportunities. Ultimately, employers will make decisions based on productivity and cost as well as worker satisfaction. The most
common response may be a hybrid model that combines work from home and the workplace, a trend that was already underway before the pandemic. ⁴⁵

For the New York region, this presents both major challenges and potential benefits. Most obvious is the impact of fewer daily office workers in Manhattan and other downtowns and the ripple effects that this has on commercial real estate, tax revenues, and the thousands of restaurant, retail and service workers, and small business owners who earn a living from the army of office workers. ⁴⁶

Paradoxically, a reduced flow of commuters could also make New York a more desirable place to live and work by relieving the city of one of its long-standing liabilities — the long, crushing rush hour commute that stresses workers and visitors and overtaxes streets, sidewalks, and other transportation infrastructure. The challenge will be to maintain the quality and frequency of service that are needed to make the region more livable, fair, and efficient with different and possibly lower levels of ridership.

**CRIME**

Gun crimes have increased but remain historically low, and other crimes continue to decline.

A summer surge in gun crimes has triggered fears that New York and other cities could be headed into a period of rising crime not seen since the 1980s. From May to August 2020, there were 791 shootings in New York City, a 140% increase over the same period in 2019. ⁴⁷, ⁴⁸, ⁴⁹ Murders in the same period increased by 51% to 180. Multiple possible explanations have been cited for the increase, including the sudden economic downturn, multiple stresses stemming from the pandemic and lockdowns, protests against police brutality, budget cuts to both police and social programs, and accusations of a work slowdown by police. ⁵⁰

Determining what causes spikes and declines in certain types of crime is complicated in the best of circumstances, and criminologists and other experts agree that it is too soon to pinpoint what’s behind the current surge and whether it will continue. Even if it
proves temporary, the numbers are worrisome and reinforce the narrative of a city in decline.

The increase in gun crime needs to be taken seriously and brought to a halt, but it’s important to keep it in perspective. Crime rates overall remain at historic lows and have not increased from 2019. In June, July, and August, crimes for the seven major felony categories were down 3.6% overall from the previous summer.51, 52, 53 This is not just driven by nonviolent crime: rape, robbery, and felony assault were all down from the summer of 2019. In addition, the percentage increases in gun crimes are so large because the baseline numbers are so low. Murders and other violent crime have declined drastically from their peak in 1990.

The 305 murders committed so far in 2020 are a fraction of the 2,262 murders committed in 1990. New York remains an incredibly safe city by any and all standards.
It is also important to recognize that a troubled economy does not always correlate with rising crime, as evidenced by at or declining crime during the Great Recession, the post-9/11 recession, and the early 1990s recession. New York’s era of rising crime began during the relatively prosperous times of the late 1960s, and experienced a sharp increase during the economic boom of the mid-to-late 1980s.

The causes for the sharp run-up in crime in the 1970s, and corresponding decline in the 1990s, have been hotly debated. But public safety improvements put in place over the last 30 years, particularly the CompStat program begun in 1994 and that some credit as the most effective reform, should provide more effective methods for countering any uptick. Heightened attention around police reform and a healthy debate on how to reduce racial disparities and all forms of violence could make the city even safer in years to come.\(^{58}\)

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**Outmigration**

The recent surge in people moving out of New York City is driven by a combination of temporary and potentially longer-term forces that are different from past periods of urban flight.
Few responses to the pandemic stir as much passion as stories of New York City families packing up and moving to the suburbs or beyond. Stories of Manhattan and Brooklyn neighborhoods emptying out and of surging demand for suburban homes have many thinking that we are facing an era of decentralization similar to the decades following World War II. While the risk of long-term population decline in New York City is real, the recent surge overstates the risk. Much of the current relocation is temporary, a lot is driven by cost differences that are likely to narrow, and the ability and desire to work from anywhere is limited. Nor would an exodus from New York City necessarily benefit the suburbs and smaller cities within the metropolitan area.

Immigration policies could have an even greater impact on the population growth than these factors in the long run. Without new immigrants, population in New York City would have declined over the last 50 years, and the region’s economic resurgence would not have occurred. More restrictive national immigration policies would make it far more difficult for New York to come back and adapt to the post-COVID economy.

For perspective, it’s useful to review who has moved in and out of New York City since 1950. The chart below shows net migration — the number of people moving into New York City minus the number moving out. When natural increase from births and deaths are included, the city’s population grew or remained stable in every decade except the 1970s.
Throughout this history, young adults have migrated to New York City, while in older age groups more people moved out than in. To reach the level of the 1970s, net outmigration would need to more than double what it was in either the 2000s or 2010s. It’s worth noting that the outmigration that many feared in the 1990s as a result of technology and crime never materialized. In fact, the city was about to enter a period of urban revival, recentralization, and growth.

Leaving the City?

The current wave of people leaving New York City essentially boils down to three causes: the disruptions caused by the pandemic, the high costs of living in the city, and employers’ willingness to let people work from home. The first is likely temporary, while the other two are rooted in pre-existing conditions and have limits to how many people they are likely to affect in the long term. All must be weighed against the reasons that New York and other cities have always attracted people seeking opportunity, particularly over the last two decades.

COVID-19 fears, whether of the disease itself or the difficulty of living in a city under lockdown, certainly fueled the 5% decline in the number of New York City residents between March 1 and May 1. Most of this was concentrated in the wealthiest parts of the city, where many had second homes and jobs that allowed them to work remotely. July home sales were 44% higher in the counties surrounding New York City than they were in 2019, while sales in Manhattan declined by 56%. Besides the fear of the virus and the disruptions of the lockdown among city dwellers, the increase in suburban
housing prices appears to be driven by pent up demand following the spring lockdowns, a lack of inventory, and the result of a huge price differential between New York City and other areas following a decade of skyrocketing housing costs in the city.  

Much of this is likely temporary, and trends have to be inferred from real estate listings, vacancy rates, home prices, and survey data that make it difficult to differentiate short-term from long-term moves or how intentions will translate into actions. Early data showed only a modest increase in people in the New York region looking to move, and most of the increase was due to people looking for homes in other parts of the U.S. rather than in the suburbs or rural areas. In fact, there are now indications that people are already returning to the city.

Once effective vaccines or treatments allow schools, medical offices, restaurants, museums, stores, and entertainment venues to return to normal operations, many of the current motivations will be gone. If history is any guide, it’s unlikely that fears of new pandemics will keep people from living in the city. Any long-term increase in outmigration would more likely come from high costs relative to other places or a deterioration in quality of life driven by fiscal austerity.

In fact, the pendulum had already started to shift before COVID-19. After adding 1.4 million people between 1980 and 2016, New York City’s population began to decline in
Much if not most of the pivot is due to the escalating cost of housing relative to other places. From 2010 to 2020, the typical home value increased by 64% in Brooklyn, 60% in the Bronx, 57% in Queens, and 44% Manhattan. By contrast, prices only increased by 27% in Nassau, 13% in Bergen, and 7% in Westchester, and actually declined in some outer counties. Some rebalancing was inevitable, and COVID-19 likely accelerated those trends.

If home prices and rents continue to rise outside of New York City, and if they decline within the five boroughs, then a narrowing difference in housing costs should reduce some of the incentive to move out. Unlike the 1970s or 1980s, there is far less housing being built in the suburbs to accommodate demand. And the housing that is being built is not the single-family homes that are the focus of most news reports and bidding wars.

The experience of remote work and learning during the pandemic is likely to leave a lasting imprint and give more people flexibility in where to live. As described above, this may be less of a revolution than it appears now, and most workers will still need or want to be in the office at least part of the work week. They will also still want to be close to urban amenities and walkable downtowns. This argues for greater demand for housing in smaller cities and transit-oriented towns and villages that are still within a reasonable distance from Manhattan. In the long run, this could benefit both New York City and the region as a whole, keeping jobs and economic activity within the region, relieving pressure on the city’s housing market (as long as homes in Manhattan are put back on the market and not kept as pied-a-terres), and putting less strain on the transportation network.

This prospect for a beneficial rebalancing of population and jobs within the region, however, depends on investments and policies that are not currently in place. Unless enough housing is created in places where people want to live at prices that they can afford, and unless the transportation system supports new patterns of commutation, both people and jobs could leave the region altogether. And with the region as a whole and New York City in particular grappling with plunging tax revenues and fiscal austerity, the immediate challenge is to maintain existing services and infrastructure.
Plunging tax revenue will force difficult budget decisions at both the city and state levels.

Well before COVID-19, New York City and all three states in the region had shown signs of strain on their public services and infrastructure, from a subway system that have struggled to maintain and expand, to the failure to follow other cities in modernizing things like waste pickup, alternative transportation infrastructure, and energy systems. COVID-19 has now both exposed and exacerbated this strain. This analysis focuses on New York City, where the compound effects of COVID-19 related health costs, transit shortfalls, and the impact of the shutdown on office industries and small businesses are most severe.

It is important to note that there have also been recent successes, and this shows that it is possible for New York City to provide new and robust public services and infrastructure. Universal Pre-K, a huge new public service provision, was put in place smoothly and successfully. The city’s most needed infrastructure project, the third water tunnel, is now largely complete. For almost 20 years, New York City has consistently hit its goals for creating or preserving affordable housing, averaging more than 20,000 units a year. Bus riders are enjoying quicker rides along new busways free of vehicle traffic, the MTA successfully rehabilitated and installed wi-fi within the L Train tunnel, and the ongoing installation of a contactless fare payment system for the subways, One Metro New York, is proceeding on schedule.

The key to preventing the recession from being a tipping point is maintaining an adequate operations and capital budget through this crisis. The Independent Budget Office currently estimates a $4.5 billion budget gap for Fiscal Year 2022. Municipal layoffs are a distinct possibility, with agencies already directed to prepare significant budget cutting plans. The possibility of federal aid is uncertain. It is clear we will have to do more with less for a period of time. The question is if this period of time will be short enough that we can avoid a spiral of decline.

Once infrastructure and public services have started to decline, the effect grows exponentially, both in terms of cost and effect on the city. Most famously, deferred maintenance on the East River bridges during the 1970s led to emergency shutdowns in the 1980s and decades of costly repair plans, which were largely possible only because the...
federal government agreed to fund bridge maintenance in 1996. Beyond added costs, a deteriorated city is not one that is easily able to attract the jobs and people necessary to expand the economy and tax base needed to repair itself. Badly maintained infrastructure also has a spiraling effect on the overall economy. For instance, in 2017, the Independent Budget Office estimated that transit delays accounted for a loss of $307 million each year in lost work time. 72

The responsibility for maintaining a working and livable New York goes far beyond the state of the municipal budget. Many agencies responsible for huge parts of how the region operates, most notably the MTA, are not under city control. In addition, many sources of revenue ultimately come from the federal or state governments, leaving all sectors of the government responsible.
New York City FY2021 Revenue Budget

Misc Revenue (8%)
Other Taxes (5%)
Business Revenue Taxes (6%)
Personal Income Tax (13%)
Sales Tax (8%)
Property Tax (35%)

Source: The City of New York Adopted Budget Fiscal Year 2021, Expense Revenue Contract

Change in New York City Revenue, FY2020 - FY2021

Source: The City of New York Adopted Budget Fiscal Year 2021, Expense Revenue Contract
Much more than other cities, New York City’s municipal budget is reliant on taxes which reflect the state of the local economy, namely local income, sales, and business revenue taxes, which account for over 25% of the revenue budget. Together, these revenue sources are projected to decline over 12% in FY 2021, and account for much of the decline in tax revenues. While New York State income tax is effectively collected from anyone with a job or residence in New York State, New York City income tax is reliant on individuals being “domiciled” in the city. While some might worry about high earners simply avoiding New York City income tax by spending much of 2020 out of the city, leaving New York City for tax purposes is much more difficult than choosing to simply spend the majority of the year elsewhere, and essentially requires demonstrating a complete severance of ties. However, if the city does not remain stable and well-run in the long-term, it risks population decline across all segments of the population, with resulting declines in revenues and economic activity. In addition to income tax losses, sales taxes and a variety of other needed revenue sources will decline as well, leaving it impossible to maintain adequate public services and risking a downward spiral of economic and physical decline.

Property taxes are the only major tax revenue source that New York City has discretion over and can raise without approval from Albany, and are an option that can and have been used to make up other revenue gaps. However, the property tax levy in New York City is dependent on the overall market value of real estate, with the city constitutionally unable to levy more than 2.5% of its five-year average value for operations. For four of the last five years, the city has levied more than 98% of what is constitutionally allowed. Leaving alone the merits of increasing property taxes to fill the budget gap, a prolonged stagnation or decline in overall property value will leave the city unable to even consider that possibility.
The most informative template for countering our current economic crisis lies in the New Deal-era recovery, when a combination of shovel-ready projects (many of which had been proposed by RPA’s First Regional Plan), good local governance, and federal funding combined to not only help lift the region out of the Great Depression, but also shaped much of the infrastructure we still see in New York today, from consolidating our subway from three systems into one, to constructing our first public housing developments, to building the Triboro Bridge, Flushing-Meadows Park, and New York City’s two airports. Outside of New York City, New Deal projects included Newark Liberty International Airport, boardwalk construction, and park improvements, such as Great Swamp National Wildlife Refuge and Palisades Interstate Park in New Jersey, as well as Merritt Parkway, one of the largest public works projects in Connecticut.

This recovery and the resulting economic expansion were also noteworthy for reducing income inequality and expanding opportunity across the economic spectrum, not just for current residents but also for hundreds of thousands of new arrivals from Puerto Rico, postwar Europe, and the American South. These three factors — robust federal infrastructure funding, shovel-ready projects, and good local governance — can be a template for our current crisis.
Threats to a Robust and Equitable Recovery

Recovery, like the downturn itself, will be shaped first and foremost by the vagaries of the virus and the response to the health crisis. Any worsening of infections will lead to more closures and restrictions, while progress on vaccines and treatments will hasten a return to more normal activities. How well our national, state, and city leaders manage the evolving crisis will either alleviate or exacerbate the damage.

Beside the pandemic itself, the biggest threats that could result in a spiral of decline and widening inequality have little to do with New York’s urban character or any inherent susceptibility to this or future pandemics. Rather, they stem from how the damage already inflicted on people, businesses, government, and institutions could become a self-reinforcing cycle without the right policy choices and effective leadership.

The biggest threat is that the fiscal crisis will lead to extensive deterioration of public services and infrastructure, particularly the region’s transit system.

We are currently at a critical point. Things such as the inability to adequately plan for restarting public school or put in place an efficient COVID-19 contact tracing infrastructure are symptoms of this overall declining standard of public services. A normalization of things like rolling blackouts, overflowing trash cans, and uncertain school schedules not only greatly degrades life for everyday New Yorkers, but puts us one more step behind contemporary world cities. If we cannot adequately maintain public services and repair and expand our infrastructure, New York risks losing its place as a preeminent global city.
With the city and all three states in dire fiscal straits, federal assistance will be essential to keeping services and infrastructure from falling into a steep decline. It will also be critical to reduce the costs of delivering and maintaining these over both the short and long-term. The region has some of the highest costs in the world for building new rail infrastructure, for example. Some progress was underway before the pandemic, but much more can be done. Other opportunities include giving small businesses more flexibility, in terms of permitting, utilizing street space, and other non-monetary help, in order to innovate and grow the economy.

Even more than other services, public transit faces a financial crisis that could impede the region’s recovery and have a disproportionate impact on lower wage workers and low-income individuals who depend on transit to get to essential jobs and services. Continuing sharp revenue losses from declines in ridership and tax-supported revenue could lead to service cuts and deferred maintenance that would lead to a continuous cycle of decline. The MTA in particular is in dire financial shape, predicting a budget shortfall of $14 billion through the end of 2021 that could force service cuts of 40% on subways and buses, 50% on commuter rail lines, and fare increases of at least a dollar. New Jersey Transit, PATH, and other transit services face similar shortfalls.

Beyond service cuts and fare increases, if there is no federal intervention or ridership fails to rebound fairly quickly, the MTA will be forced to make other difficult decisions, including adding to their already heavy debt load, laying off workers, or canceling planned capital projects. If the capital projects are cut, that not only puts off badly-needed improvements to the system that had been planned for years, but has compounding economic impacts including lost jobs for workers in the region and manufacturers from across the nation who were set to supply the parts and materials needed to complete the projects.

Widespread evictions and business failures would have ripple effects that would fall heaviest on the poor and make it much harder for the economy to recover.
The longer the pandemic and economic slowdown goes on, the harder it will be for both businesses and residents to recover economically. Preventing evictions and business failures in the short term will have outsized benefits to our long term recovery.

Every eviction action affects not just the tenant, but all of us. Sheltering people experiencing homelessness is one of the most costly components of the city budget, costing an average of $91,000 for a family and $51,000 for a single person. Effects also ripple well beyond the housing market and municipal budget. Eviction is one of the single most stressful events a family can endure, and has demonstrated negative long-term health effects. The disruption eviction brings also makes it exponentially harder for a person to land a job, start a business, and help with children’s education.

Business failures also have a huge effect on the region. Starting a successful business is much more difficult than maintaining one, meaning each business that fails delays our recovery. This means less jobs, which also means increased spending on unemployment benefits and other social services, less economic activity, and less tax revenue. This in turn means less people spending money and more business failures, as well as a deteriorating city less attractive for people and businesses overall. A snowballing cycle of business failures is a significant risk without proper short-term relief during the pandemic.

An erosion of confidence in public safety could lead to further outmigration and wider racial and social divisions.

Both the spike in gun crimes and the visibility of police violence since the spring have raised fears that New York and many other cities are increasingly unsafe. Even though crime remains low historically and in comparison to other cities, the increase is a real and troubling phenomena. And while the numbers do not show an increase in other categories of crime, anecdotal reports reinforce an image of disorder. The disruptions caused by the pandemic and shutdowns only add to a general fear of eroding health and safety.

Likewise, a trusting relationship between New Yorkers and law enforcement is essential to a sense of public safety and the city’s recovery. Black and brown New Yorkers have
long not been able to enjoy this same level of trust and public safety as their neighbors, and the protests over the summer have shown us that it is more necessary than ever to move forward on ending police violence and racial inequities in public safety enforcement. Consistent small-scale rulebreaking and abuses of power by police — failure to wear masks, illegal parking, and placard abuse — contribute to this mistrust.

Unless both issues are addressed, the city’s hard earned reputation as a safe place to live, work, and visit will erode, likely leading to an increase in outmigration and making it harder to retain and attract jobs and business.
Five Reasons to Bet on the New York Region’s Future

Restoring the region’s health and economy will require fixing our fundamental shortcomings as well as addressing the enormous challenge of a deep recession fueled by continued uncertainty. It will also require smart policy choices and deft leadership to adapt to the permanent changes that will affect every city and region in the nation, if not the world. While New York has its unique challenges — its complexity, its high costs, the damage inflicted by being the early epicenter of the pandemic — it also has a number of advantages compared to other places.

1. Urban density is still an advantage in the global economy

Throughout history, cities have driven economic growth and reinvented themselves when the times demanded it. Change is often wrenching, and some metropolitan regions adapt better than others, but the agglomeration of people, economic activities, and infrastructure spurs innovation and attracts new residents and businesses. For at least 70 years, global cities have taken in an increasing share of the world’s population. And over the last 30 years, large metro areas like the New York region have benefited from their concentration of job opportunities, culture and amenities, and the walkable neighborhoods and robust transit networks that they have to cover. Within these regions, the postwar suburbanization trend has been muted or even reversed.

None of these advantages have been erased by the pandemic. To be sure, there are pre-existing problems that were already curtailing New York’s remarkable run of economic and population growth: a severe and growing shortage of affordable housing, transportation and other infrastructure systems that are badly in need of investment and modernization, growing inequality that wastes human potential and increases social costs and divisions, and the accelerating pace of climate change that threatens to overwhelm communities and essential infrastructure. COVID-19 exposed underrecognized vulnerabilities, but not ones that are linked to urban density. In fact, the availability of health care, medical facilities, and research capabilities may prove to be an advantage in the long run.

What will change are the ways in which urban density confers its benefits, and the types of activities it favors. Retail and goods delivery were already undergoing a technology-
driven transformation, and the acceleration of remote work during the pandemic will alter the amount, type, and location of office space. The region will need to adapt, but the multiple venues that it can provide for social interactions, collaboration, and access to career opportunities, culture, nature, education, entertainment and different ways of life provide it with the resources to succeed.

2. Diversity and talent still drive economic success

Even as technology has made it easier to locate production and office activities anywhere, jobs and businesses have increasingly congregated where the talent lives. New York’s large, diverse, and educated workforce has allowed it to thrive even as its physical assets became less important. Even with more ability to work remotely, most employers will still want to be where they can physically convene employees, customers, and collaborators.

In many ways, it’s the experience of the city that has been it’s most important asset — the energy, the mix of people and neighborhoods, history, inspiring buildings, and attractive public spaces. This should continue to attract people from all walks of life, but makes it even more critical to make New York more livable and affordable for everyone. A range of skills and talent is important to a functioning economy, but even more important is the diversity of cultures and lifestyles that give the city its character.

The city and region have been particularly successful in attracting immigrants, who have been vital to enriching this diversity and maintaining the New York experience. On a more fundamental level, without immigration, the city’s population would have declined, neighborhoods would have been abandoned, and small business growth would have been anemic. Maintaining this ability to welcome newcomers will be essential to the region’s continued success.

3. The New York region’s unique agglomeration of assets is impossible to replicate

A big part of the reason why New York has come back from previous crises better than many previously industrial cities, and why it has been consistently ranked a leading global city, is that it has a combination of assets that others can’t match or replicate. An employer in Manhattan, Brooklyn, or Newark can draw on a much bigger pool of diverse and talented workers than in any other U.S. region. No other North American metropolis comes close to matching the size and reach of its transit network. Its employment base is not only large, but is much more diversified than many regions, with finance, technology, culture and tourism, education, and medicine as sources of growth and career and business opportunities.
The variety of places within the region is also a source of strength. From Manhattan’s office and residential towers to thriving urban neighborhoods in the outer boroughs, smaller cities like Stamford, Yonkers, or New Brunswick, and a growing number of transit-oriented downtowns on Long Island and in the Hudson Valley, New Jersey, and Connecticut, the region offers more types of places to live and work than any other region. This not only helps it to retain and attract people and jobs, it also lets it adapt to changes in business and life preferences and support the diversity of people that have always been New York’s calling card.

4. New businesses and households will take advantage of vacant space and lower rents

No one wants to see more vacant offices, apartments, or store fronts. These will hurt small businesses, reduce tax revenues, and dampen New York’s vibrant street life. But one family or firm moving out can be another’s opportunity. Landlords will need to lower rents, and in a city this expensive, there are many people and entrepreneurs who will take advantage of lower costs.

In many ways, this is the story of New York. No city has proven as flexible or adaptable. Obsolete factories and warehouses built in the early 20th century became loft districts and new commercial and residential centers in the latter half of the 20th century. Neighborhoods that were abandoned in the 1970s were stabilized with tenant organizing and city and state investment, and became the homes of a new wave of immigrants. Office space in lower Manhattan and the Flatiron district in the early 1990s gave rise to Silicon Alley and a new generation of technology-oriented entrepreneurs. As vital as it is to help businesses and households make it through this difficult time, the city itself will survive and reinvent itself.

5. The crisis has been a wake up call to address structural problems

The turbulence of the last six months has exposed the deep divisions and structural weaknesses embedded in our economy and institutions. The disparities in who suffered and died from COVID-19 demonstrated not only how people of color have been left vulnerable by generations of denied economic opportunity and health care, but also how these disparities were compounded by widely different experiences in the quality of care they received. Nearly every other aspect of the pandemic and recession, from who was able to work from home and who had access to better education resources, broadband, and support systems, showed how much segregation and other forms of institutionalized racism have failed so many. The explosion of anger following the police
killings of George Floyd, Breonna Taylor and others cast a spotlight on failures of the police and criminal justice systems, including the failures here in New York City and the rest of the region.

The region’s physical environment and governance systems were similarly tested. Streets that were built for cars struggled to provide the room that pedestrians, cyclists, and small businesses needed. Quality parks were often too crowded or unavailable for those who needed them most. Services from unemployment insurance to food banks were overwhelmed, and collaboration between federal, state, and municipal governments often faltered. The high cost of housing, infrastructure, and services contributed to the fiscal crisis.

With the exposure has come an outpouring of civic action, reflection, and debate, from widespread and largely peaceful protests to mobilization for reforms. It is far too early to tell, but there is a greater chance that the process of recovery will usher in a period of reforms that will make the region a healthier, fairer, and more just place to live.
Planning for an Equitable and Sustainable Future

In 2017, Regional Plan Association issued its Fourth Regional Plan: Making the Region Work For All of Us, a roadmap for inclusive, sustainable growth over the next generation. As with any long-range plan, it strived to combine enduring goals with robust strategies that could adapt to changing circumstances. The magnitude of the current crisis is a stress test for the Plan’s relevance and durability.

The Fourth Plan seeks to address issues including housing affordability, overburdened transportation infrastructure, and vulnerability to climate change — by addressing the underlying shortcomings in the region’s governance structures.

At this critical moment, the Fourth Plan can provide a framework for ensuring that actions to speed recovery also lead to a region that is more livable, just, and resilient. It won’t speak to every issue that needs urgent attention, and the timing and priority of its recommendations will need to be re-evaluated. The central components of the Plan, however, are even more relevant in light of the immediate challenge:

- **Make health and equity central to recovery and rebuilding**

  Health and equity were core values guiding the Fourth Plan, and informed recommendations ranging from incorporating health performance measures into the standard operating procedures of transportation agencies to insuring all housing is
healthy as well as affordable. The pandemic has demonstrated that promoting health and equity is not only just, it is essential to restoring confidence in the region’s economy, transportation, and education systems, and as a place of opportunity.

- **Save and modernize our transit system**
  After near failure three years ago, our subway, bus, and commuter rail system were starting to benefit from more aggressive public investment and improved management. Several of the recommendations in the Fourth Plan, including congestion pricing and accelerated implementation of communication-based train control, were approved and moving toward implementation. The COVID-19 recession has not only put a halt to many of these improvements, it threatens the financial foundations for continued investment. The first priority must be to restore lost revenue to stave off service cuts that would strangle economic recovery, and restart the reforms that were starting to show progress.

- **Design streets for people**
  Cities across the globe have seen an increase in car use due to fears of public transit post-COVID, but these trends are avoidable with smart planning. Proactive plans can accelerate Fourth Plan priorities, such as the creation of bus and bike lanes and streets designed for people to assist in a just recovery. Businesses are increasingly relying on these spaces for outdoor dining, pick up, and deliveries, as are schools for education and play.

- **Expand affordable internet access across the region**
  The Fourth Plan called for a series of investments and approaches to expand access to high-speed internet across the region for all. This recommendation has taken on a new urgency in the pandemic with a dramatic and sudden increase in demand for fast, reliable, and affordable internet to serve remote learning, work from home, and telemedicine. Addressing the technical and political challenges of deploying the infrastructure necessary for universal connectivity is imperative for equitable economic recovery and renewal.

- **Strengthen our resilience to climate change and all environmental and health hazards, including future pandemics**
  Public health is intrinsically bound to climate and the environment. In fact, one of the probable outcomes of climate change is more frequent pandemics in addition to storms, flooding, and heat waves. Actions recommended in the Fourth Plan from greening...
neighborhoods, to reducing extreme heat, to addressing environmental justice issues, to scaling up renewable energy, would make us more resilient and help slow the impacts of climate change. They would also make us healthier and more resilient to outbreaks of disease. In healing and rebuilding our economy, we should embrace an ethos that makes both our natural and built environments more resilient to threats of all types.

- **Make the region affordable for everyone**

Prior to the pandemic, rapid but uneven economic growth had put the cost of decent housing out of reach for far too many. The Fourth Plan’s recommendations, from protecting low income residents from displacement to removing barriers to building mixed-income housing near transit in both city and suburbs, targeted both the shortage of affordable housing and inequities stemming from structural racism and segregation. The pandemic has added a precipitous loss of income for vulnerable families and individuals, as well as abrupt disruptions to both city and suburban housing markets. Income support is essential to prevent a massive increase in homelessness and deterioration in the housing stock.

- **Fix our institutions to reduce costs, increase efficiency, and address longstanding inequities**

Our governing institutions, from regional transportation authorities to local property tax systems, were badly in need of reform before COVID-19. The Fourth Plan made specific recommendations, such as reforms to reduce the costs of transit projects and make the planning and development process more inclusive, predictable, and efficient. The last six months have highlighted other institutional failures, from an overwhelmed unemployment insurance system to the inequities embedded in K-12 education. With the region facing enormous costs with dwindling public resources, it will be essential to fix these structural problems to make every dollar count and restore public trust.

- **Transcend city and state boundaries to implement a regional recovery and rebuilding process**

The Fourth Plan was a call for regional cooperation to address common problems. The pandemic and deep recession will cause some relocation of people and business within the region, but this does not have to be detrimental to the people of any state or municipality. The crisis has started to bring the region together out of necessity, such as the Regional Coronavirus Reopening Council convened by the region’s governors. Building the region’s economy, institutions, and infrastructure better than they were before will need a long-term commitment for sustained collaboration and shared sacrifice among elected officials, agencies, businesses, labor, philanthropy, and civic institutions across the region.
1. Data as of September 29, 2020. Based on state- and local-level public health agencies via John Hopkins University & Medicine Resource Center and USA FACTS.


4. Data as of September 16, 2020. Based on state- and local-level public health agencies via John Hopkins University & Medicine Resource Center and USA FACTS.

5. While the region has seen a slight increase in cases through the second half of September, the weekly trends of positive rates are still significantly below the 5% threshold. During the last few weeks, New York City, New York State, and Connecticut have reported a rate of daily positive tests ranging between 1.1% and 1.3%, while New Jersey has seen a rate 2.4%. Based on Johns Hopkins University of Medicine, Coronavirus Resource Center. Track Trends in COVID-19 Cases and Tests. New York City Department of Health. Virus (Diagnostic) tests (Accessed September 28, 2020).


66. Zillow Home Value Index (ZHVI), June 2010 — June 2020. Seasonally adjusted measure of the typical home value and market changes across the region. It reflects the typical value for homes in the 35th to 65th national percentile range, including single family residences, condos, and co-ops.
78. Metropolitan Transportation Authority, Capital Program Oversight Committee Meeting. (January 21, 2020).
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