

STREET-SAVVY STREET LEASING

By

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Whether in a turn-of-the-century building in a central business district or a "new downtown" in the suburbs, downtown retail leasing provides unique challenges, from both the landlord's and the tenant's perspective.

In most downtown settings, each building is a "mixed used" development, having different uses on different levels – usually retail on the first or street level and office/hotel/residential (or any combination thereof) above the street level. This happens intentionally (in the case of “new downtowns” in the suburbs) or evolves over a period of time as circumstances change (in the case of traditional downtowns). The key question in each type of development is whether the tenant is an amenity that is key to selling the rest of the building to its primary tenants, or whether it is just a lease that fills space. For instance, in many office buildings, an office supply, copy company or business services tenant is important to the primary office tenants. While in a predominantly residential building, a neighborhood gathering place such as a bar or restaurant is a big selling point (think "Cheers"). Whether the use of the lease is an amenity use or otherwise will dictate many of the aspects of the lease relationship, including hours of operation, covenants to operate and the like.

Specific issues to be considered in any street retail leasing include:

1. The "store front". Where does it start and stop? Older buildings don't have the nice metal or glass mullions that you see in a neighborhood strip center defining the store front. If the tenant is to be responsible for repair and maintenance of the store

front (and have the right to use it for display purposes), be sure the parties agree on what constitutes the store front.

2. Access. Does the tenant have access off the building's lobby? How about delivery access – are there service corridors and loading docks, or must deliveries be made through the front door? What about utilities? Where are utility closets? Fresh air intakes? Can customers use the building lobby as a waiting area?

3. Parking. Forget about negotiating parking ratio requirements for the parking field in front of the business like you would in a neighborhood strip center. Think instead about landlord-sponsored validation agreements at related/affiliated garages. What about valet parking arrangements? Many cities (including Houston) have ordinances regulating the use of public streets for valet parking services – if that is going to be part of your service plan, check it out. In the "new downtowns" in the suburbs, parking is still generally provided by the developer (and is especially critical)...but **beware**. Do not expect the landlord to provide parking ratios like you are used to seeing in neighborhood strip centers or power centers. There will be shared parking due to the mixed use nature of the project, with critical parking needs maxing out at different times of the day, depending on the mix of uses. The Urban Land Institute prepared a highly regarded study on shared parking and there are numerous parking consultants to advise landlords (and tenants) of the nuances of shared parking.

4. Operations. A friendly neighborhood tavern on the street level of the apartment building is nice so long as it is "Cheers"-like, but what about raucous crowds late at night? Noise levels in leases are often negotiated in terms of number of decibels emanating from the premises based on the time of day (actually, many cities have "noise"

ordinances based on similar distinctions). The smell of fresh coffee and frying bacon in a downtown street level coffee shop may be great when you are sitting at the counter, but not so great when it is wafting through your \$250,000 condominium three levels up. Proper venting and requirements in the lease regarding same are a must. As might be expected for landlords and tenants just getting started in this environment, there are noise and odor abatement consultants as well.

5. "Common Area" Costs. Although there are not a lot of what are traditionally considered "common areas" in connection with street leasing (there aren't acres of parking lots outside the door, etc.), there are some issues to consider. For instance, does the street retail tenant pay a part of the cost of cleaning and maintaining the lobby of the building? This may depend on whether the tenant has access to its space off the building lobby. How about paying part of the cost of elevator maintenance for the elevators that take their customers up and down to the level of their store?

Mixed use development, be it in a traditional downtown setting or in new downtowns springing up in the suburbs, provides some of the most exciting opportunities in retail leasing today. When you are out there on the street, however, be street-savvy and don't think that the leasing issues are the same old strip center problems you dealt with before.

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