



Emerging Issue

Industrial Properties: Last-Mile Logistics

Not everything connected to e-commerce stays in cyberspace forever. Eventually, physical products purchased online need to find their way into the consumers' hands. A critical component in this direct to consumer process is the selection of an industrial property located closest to the consumer, which is a crucial component of "last-mile logistics." Now, more than ever, the placement and operation of these properties must be as efficient as possible to ensure that goods purchased online are delivered at the speed consumers have come to expect and demand. The real estate industry is adapting to these increasing demands and the novel challenges they pose to owners and tenants of industrial properties.

Below are **seven common issues** that businesses owning and/or operating industrial properties should consider as they begin or continue to navigate the last-mile logistics in delivering goods from the online experience to the consumers' doorstep.

Land Use

A fundamental concern is whether the intended use of the property as a warehouse, distribution or fulfillment center is permitted by the applicable zoning and/or codes. Most zoning ordinances have not been updated in years. Since there wasn't even a mature "last-mile" market five years ago, new questions are now arising, including whether last-mile is a distribution use, a parcel delivery, a retail that delivers to its customers, or whether it is something else entirely.

Last-mile facilities are typically located in denser infill urban areas that may or may not be situated in industrial zones that permit distribution as a primary use. For example, consider if the land owner/developer intends to convert a former big box retail site into a last-mile distribution facility. An initial consideration for the building or site is:

- Is last-mile use permitted under applicable zoning laws?
- If it's not (or it is not clear whether it is permitted), can a favorable zoning interpretation be obtained.

When filing a land use application, consult legal counsel to prepare an application that is best suited for the permitted and ancillary uses of the site.

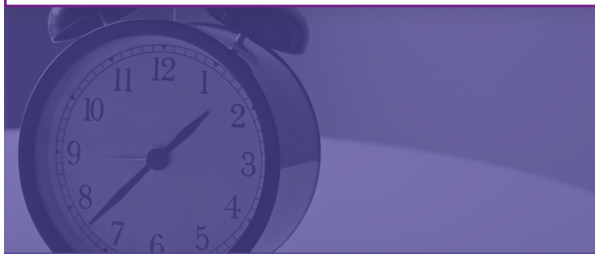


Parking

Last-mile properties require considerably larger parking areas that are able to accommodate delivery trucks and vans. If the property is multi-tenanted, it is critical to make sure that the last-mile tenant's parking rights are clearly defined so that they do not adversely impact those of other tenants.

It is also important to evaluate other parking related issues, such as:

- Multiple points of ingress and egress
- Local traffic patterns



Lease Expiration Dates

Most retail tenants will not agree to vacate their leased property at the expiration of their lease term during the prime holiday shopping season (typically considered to be November 1 through January 31). Landlords should be sensitive to those particular concerns, as they may not be able to obtain holdover rent at that time of the year as a result of tenants' unwillingness to vacate the premises. Often, tenants are able to negotiate favorable lease terms providing for an automatic extension of the lease term without holdover rent if the lease expires during a prime shopping season.



Structural Issues/Upgrades

Last-mile properties typically require multiple grade-level and dock-high doors, raised ceilings and expandable loading docks. Similarly, in order to maximize the properties' efficiency, some industrial properties now include the design of multi-story warehouse facilities that allow for "stacking and ramping" features that accommodate "vertical transportation" elements such as robotic rovers for picking and drones for delivery.

If a business owner is converting an existing building and looking to add structural elements, it is essential to consult legal counsel to review the lease in order to ensure which party is responsible for performing and paying for structural upgrades.



High Density

Proximity to densely populated areas that are situated near the consumer base often creates challenges by local residents who may be in opposition to the creation of industrial sites, as they can be known to increase noise pollution and traffic congestion. In addition, the political pressures generated by vocal resident groups in opposition to zoning changes to allow for these "last-mile" distribution facilities can cause costly delays and publicity headaches for the owner and tenant.

Emergency Repairs

Last-mile facilities are typically operational 24 hours a day, 7 days a week and 365 days a year. The ability for tenants to exercise self-help rights in the event that the landlord fails to make repairs on very short notice can be a significant issue for certain tenants since these tenants typically operate on a continuous basis. Landlords may need to accommodate these requests as they negotiate the lease agreement.

Last-Mile Grocery

Industrial properties in any way connected with food or food-related services are likely to require refrigeration. Aside from issues dealing with which party assumes the build-out, maintenance, repair and replacement costs associated with refrigeration, other important issues arise whenever the lease is terminated.

Consider the following upon surrender:

- Which party owns the refrigeration equipment?
- Is it considered furniture, fixtures or equipment that must be removed by the tenant?
- Should the landlord be able to force retention of the equipment at the end of the lease term?

The associated costs and related liabilities can be substantial.

Conclusion

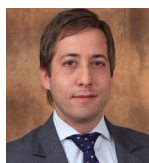
With the **explosive growth of e-commerce** and the **competitive need to streamline** the distribution process, there are many important issues to evaluate when considering the use of “last-mile” distribution facilities. The issues described above provide a practical guide for several of those economic and logistical factors.

For More Information

If you are considering the legal and business implications of your “last-mile” needs, or have any questions relating to “last-mile logistics”, please reach out to our real estate lawyers at Davis+Gilbert.



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