

Insights

COVID-19 Testing and the Use of Vacant Surface Parking Lots

Lowndes Leasing Lawyers Blog
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Shopping centers across the United States have been closed for weeks as a result of the COVID-19 pandemic and stay-at-home orders. In an effort to help flatten the curve, some shopping center owners have permitted public health authorities to use vacant parking lots as COVID-19 testing centers. Before making such arrangements, shopping center owners should consider the health and safety of their tenants and customers and the impact to ongoing operations.

Testing Center Location

First, it is important to detail exactly what portion of the parking lot, including points of ingress and egress, the public health authority will use since some tenants may still be open for business (e.g., grocery stores, restaurants and home improvement stores). By explicitly defining that portion of the parking lot the testing center will occupy, the shopping center owner can (i) establish an appropriate buffer between the testing center and those portions of the shopping center still in use by the general public, and (ii) avoid adversely impacting those portions of the property which continue to operate as essential businesses.

In addition to agreeing on the exact location of the testing center, the lease or license agreement (the "Agreement") should contemplate a traffic flow plan so that the car line does not serve as an impediment to access ongoing businesses.

Operational Procedures

The Agreement with a local public health authority should also address how the public health authority will operate the testing center. Consideration include requirements that (i) all persons visiting the shopping center for testing remain in their automobiles at all times, and (ii) the public health authority provide adequate training and personal protective equipment to shopping center employees who may come into contact with medical professionals and/or those visiting the shopping center for testing.

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Proper disposal of medical waste is also a critical issue, and a provision addressing this issue should mandate that the public health authority, at its own expense, dispose of any waste generated at the testing center.

Cleanup & Maintenance and Repair

There should be provisions in the Agreement outlining the public health authority's responsibility to restore the site once it closes the testing center. For example, at a minimum, the public health authority should sanitize the testing center area in accordance with highest standards and should return such area to substantially the condition which existed prior to its use as a testing center.

Other Considerations

Finally, subject to state statutes relative to sovereign immunity, there are other contractual terms that should be included in any such Agreement, such as indemnity, insurance, and brand protection provisions.

Please contact a lawyer to discuss these and other provisions if you are considering entering into such an arrangement.