

INTRODUCED BY COUNCILMEMBER CARROLL FIFE


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING SECTION 8.62.100 OF THE OAKLAND MUNICIPAL CODE (O.M.C.) FOR THE PURPOSES OF: (1) REINSTATING THE PORTION OF THE FLEX STREETS PROGRAM FACILITATING PUBLIC STREET CLOSURES FOR RESTAURANT, RETAIL, CAFÉ, PARKLET, AND OTHER BUSINESSES TO CLOSE AND USE PUBLIC RIGHT-OF-WAYS TO ENCOURAGE PUBLIC SAFETY, BUSINESS DEVELOPMENT, AND HEALTHY OUTDOOR USE AND ENJOYMENT OF PUBLIC SPACES; AND (2) CREATING A NEW SUNSET DATE OF DECEMBER 31, 2025 FOR PUBLIC STREET CLOSURES AS PART OF THE FLEX STREETS PROGRAM; AND (3) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, on June 19, 2020, in response to the impacts of the COVID-19 pandemic on businesses throughout the City of Oakland, the City Administrator adopted Emergency Order No. 4 to implement a Flex Streets Program allowing businesses to quickly and safely expand their operation outdoors in line with public health regulations from Alameda County; and

WHEREAS, the City Administrator’s Program created a process for restaurants and retailers to operate without fees or costs on City sidewalks, parking spaces, and traffic lanes as well as on private parking lots and City-owned property; and

WHEREAS, the Flex Streets Program also eliminated previous caps on mobile vending permits to provide the public with affordable and safe outdoor dining options and to also provide an alternative source of safe outdoor vending for those Oakland residents who may have lost their jobs in the restaurant industry; and

WHEREAS, the Flex Streets Program has resulted in a surge of parklets, sidewalk cafes, and street closures, transforming the use of the public right-of-way from a space devoted exclusively to cars to more community-centered uses; and

WHEREAS, on June 15, 2021 the City Council adopted Ordinance No. 13653 to extend and expand the Flex Streets Program until March 31, 2022 to encourage healthy outdoor use and enjoyment of businesses; and

WHEREAS, on March 15, 2022, the City Council adopted Ordinance NO. 13682 C.M.S. to create the permanent Flex Streets Program for restaurant, retail, café, parklet, and mobile food vending uses of outdoor private spaces and public right-of-ways and approved the phase-in of application and permitting fees to cover the cost of staff processing and monitoring beginning July 1, 2023, with a fee exemption for businesses that meet equity criteria; and

WHEREAS, the Flex Streets Program in its various iterations has benefited hundreds of businesses in Oakland by helping them mitigate financial losses, maintain operations, and meet the needs of their customers in new and innovative ways but these entities continue to face many challenges; and

WHEREAS, beyond the losses associated with the COVID-19 Pandemic and the current economic downturn, residents and businesses in business corridors have been subject to break-ins, robberies, and other destructive activities, which has negatively impacted the safety, financial stability and overall vibrancy of these areas; and

WHEREAS, Ordinance No. 13682 C.M.S. made the Flex Streets Program permanent; however, key aspects of the legislation, including extended street closures under Section 8.62.100, had a sunset date, which makes it difficult for businesses and organizations to activate community spaces in an efficient way; and

WHEREAS, Section 8.62.100 of the Oakland Municipal Code on public street closures for retail and dining, and community/special event uses, as part of the Flex Streets Program, allowed streamlining approval by the City Administrator of the temporary closure of public streets for the purpose of permitting: (1) retail businesses to display and sell goods and merchandise and offer services; (2) community/special events; and (3) restaurants and/or cafes to place tables, chairs, and other dining elements to offer outdoor dining; and

WHEREAS, pre-COVID-19, the City regulations limited street closures to two per year without City Council approval and without the Flex Streets Program, closures lasting more than three days required City Council approval; and

WHEREAS, Section 8.62.100 of the O.M.C. suspends the limit on the number of public street closures issued per year throughout the City or by street and states that there shall be no limit on the number of days a street may be closed, but placed a sunset date of July 1, 2023 for this portion of the Flex Streets Program, unless extended by Council; and

WHEREAS, the City's Flex Streets program continues to be a critical framework to assist establishments, particularly small businesses that continue to struggle financially, in generating revenue and activating community spaces; and

WHEREAS, allowing businesses and community groups to more efficiently seek the necessary approvals for street closures for activities such as outdoor markets, events with live music, outdoor expansion of restaurants and other businesses with a variety of special events, is critical to improving the overall quality of life in our City; and

WHEREAS, this Ordinance reinstates Section 8.62.100 of the O.M.C., to remove the limits on street closures without the need for City Council approval and gives the City Administrator and relevant City Department(s) discretion to approve proposals for closures under O.M.C. Section 8.62.100 for a two-year period, to expire on December 31, 2025, unless extended by Council; and

WHEREAS, in reinstating and extending this Section of the Flex Streets Program, the City Council authorizes the City Administrator to develop reasonable permitting fees and all street closure permits shall continue to constitute revocable licenses; and

WHEREAS, the City Administrator shall have discretion to implement restrictions by days and hours of operation, accessibility requirements, including for Fire and Police, and other requirements related to public health, safety and welfare, as determined by the City Administrator; and

WHEREAS, this Ordinance also directs the City Administrator to return to Council by before September, 2025 with a report and recommendations detailing the impact of reinstating O.M.C. Section 8.62.100, including data on the number of street closure requests and approvals, the location of the street closures, and guidelines on ways to further improve the Flex Street Program overall; and

WHEREAS, a streamlined process allowing street closures for businesses, events, and activities can serve as a key crime reduction and prevention strategy, while bringing much needed patronage to merchants and businesses throughout Oakland, revitalizing the local economy and maintaining the vitality of our City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Amendments to Section 8.62.100 of the Oakland Municipal Code. Oakland Municipal Code (O.M.C.) Section 8.62.100 is hereby amended to read as follows (Additions to O.M.C. Section 8.62.100 are shown as double underline and deletions are shown as ~~strikethrough~~).

8.62.100 — Public Street Closures for Retail, and Dining, Business, and Community/Special Event Uses.

- A. This Section creates a program for streamlining the approval by the City Administrator of the closure of public streets for the purpose of permitting: (1) retail businesses to display and sell goods and merchandise and offer services; (2) community/special events; ~~and~~ (3) restaurants and/or cafes to place tables, chairs, and

other dining elements to offer outdoor dining; and (4) other businesses to close public streets at the discretion of the City Administrator, for business-related events and public safety reasons. Permits under this program shall be subject to the rules and regulations set forth below.

1. There shall be no limit on the number of public street closures issued per year throughout the City or by street. There shall also be no limit on the number of days a street may be closed for one ~~(1)~~ of the above uses. Applicants may apply for recurring special events or street closures.
 2. All street closure permits constitute revocable licenses that are revocable at any time at the discretion of the City Administrator. The City Administrator may develop administrative licensee requirements that: (a) restrict days and hours of operation, (b) ~~provide~~ facilitate Fire and Police access, (c) facilitate appropriate parklet/street closure design, (d) provide utility and franchisee access, and (e) and allow for other appropriate correlative uses of the ~~right of way~~ right-of-way.
 3. ~~This Section of the O.M.C. shall sunset on July 1, 2023 unless further extended by City Council.~~ This Section of the O.M.C. shall sunset December 31, 2025, unless further extended by the City Council.
 4. Any provision of the O.M.C. that would conflict with this program, including but not limited to O.M.C. Section 12.08.060 and any provision of the O.M.C. that would allow for a specific appeal process are suspended.
 5. This Section shall not authorize conduct that: (1) is prohibited by orders or directives of the Alameda County Health Officer or (2) violates federal or State law.
- B. The definition for short term encroachments set forth in O.M.C. Section 12.08.030 is hereby temporarily amended to also include the uses set forth in this Section, including retail, restaurant, ~~and~~ café, and other business uses as deemed appropriate by the City Administrator.
- C. The permit requirements for short term encroachments into the right-of-way shall be the same as set forth in O.M.C. Section 12.08.060, except that:
1. The duration of the short-term encroachment may extend for an unlimited duration, subject to the discretion of the City Administrator.
 2. The applicant need not be sponsored by or represent a local merchant association or community organization, nor shall semi-annual sponsorship be required.
 3. The limitation of one (1) short term encroachment application per year is suspended.

SECTION 3. City Council Direction to City Administrator to Return With A Report and Recommendations Regarding Results of Extending Street Closures and Facilitating the Flex Streets Program in General. The City Council directs the City Administrator to return to Council before September, 2025 with a report and recommendations detailing the impact of reinstating O.M.C. Section 8.62.100, including data on the number of street closure requests and approvals, the location of the street closures, and guidelines on ways to further improve the Flex Street Program overall.

SECTION 4. California Environmental Quality Act (CEQA). The City Council finds and determines that this action is exempt from the California Environmental Quality Act (“CEQA”) based on: (1) Public Resources Code Section 21080(b)(4) and CEQA Guidelines, 14 California Code of Regulations, Section 15269(b)(c) (Emergency Projects), because the code changes allow for safe physical distancing while dining, visiting cafes, or utilizing businesses in public outdoor spaces, and (2) CEQA Guidelines Section 15301 (Existing Facilities) because the code amendments are limited to the permitting, leasing, and minor alteration of existing facilities, including existing public streets and sidewalks, which would not result in the creation of additional automobile lanes; and (3) CEQA Guidelines Section 15303 (small structures exemption).

SECTION 5. Authority. This Ordinance is enacted to serve the public interest and is necessary to protect the health, safety, and/or welfare of the citizens of Oakland, and is enacted pursuant to Article XI, Sections 5 and 7 of the California Constitution, Section 106 of the Oakland City Charter, and the City’s home rule powers.

SECTION 6. Effective Date. This Ordinance shall become effective upon enactment, unless otherwise modified, amended, extended, or rescinded by a subsequent City Ordinance to protect the health, safety, and welfare of the City of Oakland.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Section. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 8. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 9. Notice of Exemption. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

Ordinance Amending Section 8.62.100 Of The Oakland Municipal Code (O.M.C.) For The Purposes Of: (1) Reinstating The Portion Of The Flex Streets Program Facilitating Public Street Closures For Restaurant, Retail, Café, Parklet, And Other Businesses To Close And Use Public Right-Of-Ways To Encourage Public Safety, Business Development, And Healthy Outdoor Use And Enjoyment Of Public Spaces; And (2) Creating A New Sunset Date Of December 31, 2025 For Public Street Closures As Part Of The Flex Streets Program; And (3) Adopting Appropriate California Environmental Quality Act (CEQA) Findings.

This Ordinance amends Section 8.62.100 of the Oakland Municipal Code (O.M.C.) to reinstate the portion of the Flex Streets Program facilitating public street closures for restaurant, retail, café, parklet, and other businesses to close and use public right-of-ways to encourage public safety, business development, and healthy outdoor use and enjoyment of public spaces. This Ordinance also creates a new sunset date of December 31, 2025 for public street closures as part of the Flex Streets Program. This Ordinance further finds that reinstating this portion of the Flex Streets Program is exempt from the California Environmental Quality Act (“CEQA”).

