

# OAKLAND CITY COUNCIL

## ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE AMENDING SECTION 8.62.080 OF THE OAKLAND MUNICIPAL CODE (O.M.C.) FOR THE PURPOSES OF: (1) REINSTATING THE PORTION OF THE FLEX STREETS PROGRAM FACILITATING USE OF PRIVATE OUTDOOR SPACE FOR: (A) RETAIL BUSINESSES TO SELL GOODS AND MERCHANDISE AND OFFER SERVICES, AND (B) LIMITED OR FULL SERVICE RESTAURANTS TO PLACE TABLES, CHAIRS, AND OTHER DINING ELEMENTS FOR SERVING CUSTOMERS IN PRIVATELY OWNED OUTDOOR AREAS, WITH A NEW SUNSET DATE OF DECEMBER 31, 2025; AND (2) 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 use of private outdoor spaces under Oakland Municipal Code (“O.M.C.”) Section 8.62.080, had a sunset date, making it difficult for businesses to utilize their private spaces in an efficient and effective way; and

**WHEREAS**, O.M.C. Section 8.62.080 streamlined approval for the use of private outdoor space (e.g., private parking lots) for: (1) retail businesses to sell goods and merchandise and offer services, and (2) limited or full service restaurants to place tables, chairs, and other dining elements for serving customers in privately owned outdoor areas and the privately-owned outdoor areas must be located on the retail, restaurant, or café premises; or on property adjacent to the retail, restaurant, or café premises to which the applicant demonstrates, in writing, it has legal rights to such proposed uses; and

**WHEREAS**, on November 11, 2023 Council approved Ordinance No. 13765, which reinstated a portion of the Flex Streets program, at O.M.C. Section 8.62.100, to remove the limits on public street closures and gave the City Administrator discretion to approve proposals for street closures for a two-year period, to expire on December 31, 2025, unless further extended by Council; and

**WHEREAS**, this Ordinance would similarly reinstate O.M.C. Section 8.62.080, which sunset on December 31, 2023, to allow businesses to use private outdoor space for expansion of activities and services and gives the City Administrator discretion to approve proposals for use of outdoor private space under O.M.C. Section 8.62.080 until December 31, 2025, unless further 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; and

**WHEREAS**, allowing entities to more efficiently secure approvals for use of their public and private outdoor spaces for expanded activities and events, is critical to ensuring small business are able to adapt to business and economic fluctuation and to serve more people; and

**WHEREAS**, in reinstating this Section of the Flex Streets Program, the City Council authorizes the City Administrator to develop a streamlined process to facilitate said activities on private outdoor spaces; and

**WHEREAS**, use of private outdoor spaces shall not interfere with the public right-of-way and accessibility requirements, as determined by the City Administrator; and

**WHEREAS**, allowing outdoor use of private property for business operations, events, and activities can serve to bring much needed patronage to businesses throughout Oakland, helping to revitalize 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 8.62.080 of the Oakland Municipal Code.** O.M.C. Section 8.62.080 is hereby amended to read as follows (Additions to O.M.C. Section 8.62.080 are shown in double underline and deletions are shown in ~~striketrough~~).

**8.62.080 - Outdoor dining, retail or café approval on private property.**

- A. This Section permits the use of private outdoor space (e.g., private parking lots) for: (1) retail businesses to sell goods and merchandise and offer services, and (2) limited or full service restaurants to place tables, chairs, and other dining elements for serving customers in privately owned outdoor areas until December 31, 2025, unless further extended by the City Council. ~~until December 31, 2023, unless further extended by City Council.~~ The privately-owned outdoor areas must be located on the retail, restaurant, or café premises; or on property adjacent to the retail, restaurant, or café premises to which the applicant demonstrates, in writing, it has legal rights to such proposed uses. This Section of the O.M.C. shall sunset December 31, 2025, unless further extended by the City Council.
- B. This program may also allow drive-through, drive-in, or other open non-residential facilities for COVID-19 testing, vaccination, and related COVID-19 medical activities on privately owned land as an accessory facility and accessory activity to an existing medical activity for the duration of this program.
- C. Such permits are subject to the rules and regulations set forth below in Subsection D. and E. and shall be revocable at any time at the discretion of the City Administrator.

1. To the extent any such use under the program is not permitted by Title 17 (the Oakland Planning Code) or conditions of approval imposed by the Bureau of Planning or Planning Commission, such laws, regulations, or conditions shall be suspended for the discretion of this program at the discretion of the Planning Director in order to issue temporary permits under this program. Any provision of the Oakland Planning Code authorizing an appeal concerning this program are also suspended.

2. The user of any space authorized under this Section shall comply with all laws requiring accessibility for people with disabilities, and shall ensure the space and services do not interfere with the accessibility of the public open space to people with disabilities.

3. 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.

D. Standards for Outdoor Dining Areas on Private Property. Restaurants, retail, or cafés desiring outdoor dining, retail or café approval on private property shall comply with the following standards:

1. The restaurant, retail, or café use shall be properly licensed by appropriate state and local agencies to perform any activities, sales, and services, and the use must be located on, or adjacent to, the business premises.

2. The restaurant, retail, or café shall comply with all applicable laws relating to litter, noise, and other livability matters. The Planning Director may impose additional conditions or limitations relating to noise on the restaurant or café when the Planning Director finds that such additional conditions or limitations are necessary or appropriate based on the location of the new or additional outdoor dining, retail, or café area and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially-zoned properties.

3. Unless authorized as part of a sidewalk dining, retail or café permit, outdoor dining, retail or café areas on private property shall not encroach within any public rights-of-way.

4. Outdoor dining, retail or café areas shall not encroach into or interfere with required handicapped parking spaces.

5. Outdoor dining, retail or café areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act (ADA).

6. Outdoor dining, retail or café areas shall not encroach within or interfere with fire or other emergency access.

7. Any sales and/or consumption of food and/or alcoholic beverages shall be in compliance with the provisions of any federal, state, and/or local laws and regulations governing the sale and consumption of alcohol.

8. Outdoor dining, retail or café areas shall comply with all applicable provisions of the Building and Fire Codes.

9. All outdoor dining or café areas shall comply with the Alameda County Health Order.

10. The Planning Director may impose other reasonable conditions or limitations to protect against adverse impacts from noise, parking, fire, people with disabilities, and travel.

E. Standards for COVID-19 Testing, Vaccination, and Related COVID-19 Medical Activities on Private Property. COVID-19 testing, vaccination, and related COVID-19 medical activity and facility uses on private property shall comply with the following standards:

1. The COVID-19 testing vaccination, and related COVID-19 medical activities shall be properly licensed by appropriate state and local agencies to perform any testing, vaccination, and related COVID-19 medical activities.

2. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility must comply with all applicable laws relating to litter, noise, and other livability matters. The Planning Director may impose additional conditions or limitations relating to noise on the COVID-19 related medical facility when the Planning Director finds that such additional conditions or limitations are necessary or appropriate based on the location of the COVID-19 related medical facility and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially-zoned properties.

3. Unless authorized as part of the permit, the COVID-19 testing, vaccination, and related COVID-19 medical activity and facility on private property shall not encroach within any public rights-of-way.

4. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility shall not encroach into or interfere with required handicapped parking spaces.

5. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act (ADA).

6. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility shall not encroach within or interfere with fire or other emergency access.

7. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility shall comply with all applicable provisions of the Building and Fire Codes.
8. The COVID-19 testing, vaccination, and related COVID-19 medical activity and facility shall comply with the Alameda County Health Order.
9. The Planning Director may impose other reasonable conditions or limitations to protect against adverse impacts from noise, parking, fire, people with disabilities, and travel.

**SECTION 3. 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 CEQA Guidelines Section 15301 (existing facilities exemption) 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 an intensification of the use of said facilities given the use of private outdoor spaces was previously allowed by the City and subject to prior environmental review. In addition, this action is exempt from CEQA pursuant to CEQA Guidelines Section 15303 (small structures exemption) since the use of said outdoor private spaces may result in the use of small structures, although this authorized use of small structures has been previously allowed through the Flex Streets Program in the past as well. This action is simply an extension of a pre-existing Flex Streets Program with respect to the use of private outdoor spaces, so there is no proposed change to the baseline environmental condition in the City, but is merely an extension of the sunset date.

**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 8.62.080 OF THE OAKLAND MUNICIPAL CODE (O.M.C.) FOR THE PURPOSES OF: (1) REINSTATING THE PORTION OF THE FLEX STREETS PROGRAM FACILITATING USE OF PRIVATE OUTDOOR SPACE FOR: (A) RETAIL BUSINESSES TO SELL GOODS AND MERCHANDISE AND OFFER SERVICES, AND (B) LIMITED OR FULL SERVICE RESTAURANTS TO PLACE TABLES, CHAIRS, AND OTHER DINING ELEMENTS FOR SERVING CUSTOMERS IN PRIVATELY OWNED OUTDOOR AREAS, WITH A NEW SUNSET DATE OF DECEMBER 31, 2025; AND (2) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS**

This Ordinance amends Section 8.62.080 of the Oakland Municipal Code (O.M.C.) to reinstate the portion of the Flex Streets Program facilitating use of private outdoor space for retail businesses to sell goods and merchandise and offer services and limited or full service restaurants to place tables, chairs, and other dining elements for serving customers in privately owned outdoor areas, while creating a new sunset date of December 31, 2025. This Ordinance further finds that reinstating this portion of the Flex Streets Program is exempt from the California Environmental Quality Act (“CEQA”) because it is simply an extension of a pre-existing portion of the Flex Streets Program and is limited to impacting existing facilities pursuant to CEQA Guidelines Section 15301 and would result in only the erection of small structures pursuant to CEQA Guidelines Section 15303.



