



AGENDA REPORT

TO: Honorable Mayor & City Council
FROM: Councilmember Carroll Fife
Council District 3

SUBJECT: Flex Streets Program Public Street
Closures
DATE: October 5, 2023

RECOMMENDATION

Councilmember Fife Recommends That The City Council Adopt An 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

EXECUTIVE SUMMARY

On March 15, 2022, the City Council adopted Ordinance No. 13682 C.M.S. to create a permanent Flex Streets Program for restaurant, retail, café, parklet, and mobile food vending uses of outdoor private spaces and public right-of-ways. However, the section in the Ordinance allowing Street Closures terminated on July 1, 2023, now making Council approval a requirement for on-going street closures for special events and other outdoor activities on public right-of-ways.

Multiple businesses and organizations have reached out to the District 3 Office expressing their desire to activate community spaces, host events, and expand their businesses outdoors. To this end, this Ordinance would 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 throughout the City. This section would have a new sunset date of December 31, 2025. Creating spaces for community events and activities has a multitude of benefits, including generating revenue for struggling businesses, improving public safety, and elevating the cultural vibrancy of our City.

BACKGROUND / LEGISLATIVE HISTORY

The Flex Streets Program was instituted via City Administrator Executive Order No. 4 on June 19, 2020 to help mitigate the economic impact of public health regulations, including closures and limits on capacity, put in place to slow the spread of COVID-19. 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. 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 provided an alternative source of safe outdoor vending for those Oakland residents who may have lost their jobs in the restaurant industry. Through a streamlined permitting process, businesses were able to quickly and safely expand their operation outdoors. 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.

On March 15, 2022, the City Council adopted Ordinance No. 13682 C.M.S. to make the Flex Streets program permanent to facilitate 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, with a fee exemption for businesses that meet equity criteria. However, this Ordinance placed a sunset date of July 1, 2023 for on-going street closures as part of the Flex Street Program. It is now once again a requirement for entities that wish to initiate or maintain on-going events and activities on public right-of-ways to come to Council for approval. In addition, without the reinstatement of this section, street closures are restricted to only two per year and have several other requirements that make it difficult on businesses and organizations. Without the Flex Streets Program, street closures are more cumbersome for those who wish to create community spaces that benefit Oakland residents.

POLICY ANALYSIS

Section 8.62.100 of the Oakland Municipal Code (O.M.C.) permitted public street closures for retail and dining, businesses, and community/special event uses, as part of the Permanent Flex Streets Program, but had a sunset date of July 1, 2023. Specifically, section 8.62.100 allowed the streamlining of 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. 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 require City Council approval. Section 8.62.100 of the OMC suspended the limit on the number of public street closures issued per year throughout the City or by street and stated 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 on this Section, unless extended by Council.

This Ordinance reinstates Section 8.62.100 of the OMC, to remove the limits on street closures throughout the City and gives the City Administrator and relevant Department(s) discretion to approve proposals for street closures for a two-year period, to expire on December 31, 2025, unless further extended by Council. Applications under this provision would be reviewed by the appropriate City staff to ensure certain safety and accessibility requirements are met and the required fees, as developed by the City Administration, are applied. This Ordinance also directs the City Administrator to return to Council before September, 2025 with a report and recommendations detailing the impact of reinstating Section 8.62.100 of the OMC, including data on the number of closure requests and approvals, the location of closures, and guidelines on ways to further improve the Flex Street Program overall. After receiving this report and recommendations, Council can decide to extend the December 31, 2025 sunset date and/or make any necessary changes to improve the Program.

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. However, businesses continue to face many challenges. 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. A streamlined process on the approval of street closures for events and activities can serve as a key crime reduction and prevention strategy, while bringing much needed patronage to merchants and businesses throughout the City, helping to revitalize the local economy. Street closures would help facilitate various community events and activities, including outdoor markets, festivals, live music performances, local arts sales, outdoor expansion of restaurants, and much more.

FISCAL IMPACT

Street closures will result in loss of revenue from parking fees. However, allowing more outdoor activities and events to take place on public right-of-ways will help garner exposure and foot traffic for the businesses and merchants surrounding the closures, expanding their customer base. Having processes in place to assist in revenue generation can help businesses stay open and individuals employed, which in turn brings more tax revenue to the City. Furthermore, this Ordinance does not eliminate any permitting fees, so administrative costs could be covered through the fees collected.

PUBLIC OUTREACH / INTEREST

There was no specific public outreach conducted beyond the posting and noticing of this agenda

item. However, the District 3 Office has been in communication with several businesses and organizations that have plans to activate public right-of-ways.

COORDINATION

This legislation was drafted in collaboration with the Office of the City Attorney. Additionally, staff from the Economic and Workforce Development Department have been consulted.

SUSTAINABLE OPPORTUNITIES

Economic: As mentioned above, since 2020, the Flex Streets Program has benefited hundreds of businesses in Oakland. A streamlined process for approval of street closures continues to be critical to the success of this Program. The activities and events these closures would facilitate can help generate revenue for businesses, retailers, artists, and more, that are still working to recover from the Pandemic.

Environmental: Street closures for community-centered activities throughout the City can make our streets more walkable and can help reduce pollution that results from the use of vehicles.

Race & Equity: Closures will create safe and enjoyable community spaces for our residents, while allowing businesses, particularly small and minority-owned businesses, retailers, and artists to increase their patronage.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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).

ACTION REQUESTED OF THE CITY COUNCIL

Councilmember Fife recommends that the City Council adopt an 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.

For questions regarding this report, please contact Rediat Bayeh, Policy Director for Councilmember Fife, at RBayeh@oaklandca.gov.

Respectfully submitted,



Councilmember Carroll Fife
District 3

Attachment A: Ordinance No. 13682 C.M.S., Permanent Flex Streets Program