



# AGENDA REPORT

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**TO:** Honorable Mayor & City Council  
**FROM:** Councilmember Carroll Fife  
Council District 3  
**SUBJECT:** Flex Streets Program Outdoor Private  
Property Use  
**DATE:** September 5, 2024

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## RECOMMENDATION

**Councilmember Fife Recommends That The City Council Adopts An 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**

## EXECUTIVE SUMMARY

O.M.C. Section 8.62.080 streamlined approval for the use of private outdoor space (e.g., private parking lots) for retail businesses to sell goods and merchandise and offer services, and for limited or full-service restaurants to place tables, chairs, and other dining elements for serving customers in privately owned outdoor areas. This section of the Flex Street program sunset on December 31, 2023.

Approval of Ordinance would reinstate the outdoor private property portion of the Flex Street program, with a new sunset date of December 31, 2025, to allow restaurants and other businesses to expand services to their private outdoor property to meet the needs of their customers and generate additional revenue. This proposal would only restore the stated section of the O.M.C with a new sunset date and does not entail any substantive changes to the program.

## BACKGROUND / LEGISLATIVE HISTORY

The Flex Streets Program was put in place via City Administrator Executive Order No. 4 on June 19, 2020 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

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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 provide 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 on various parts of the program, including on-going street closures and private outdoor property use.

On November 11, 2023 Council approved Ordinance No. 13765, which reinstated O.M.C. Section 8.62.100 for on-going public street closures under the Flex Streets program, and gave the City Administrator discretion to approve proposals for street closures for a two-year period, to expire on December 31, 2025. Similarly, this proposal seeks to reinstate use of private outdoor property, which would also sunset on December 31, 2025, unless further extended by Council.

## **POLICY ANALYSIS**

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. The losses associated with the COVID-19 Pandemic and the current economic downturn has negatively impacted the financial stability of businesses and overall vibrancy of the City.

As mentioned above, O.M.C. Section 8.62.080, which sunset on December 31, 2023, allowed streamlined approval for the use of private outdoor space 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. Additionally, under O.M.C. Section 8.62.080 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 proposed Ordinance would simply reinstate this section of the O.M.C, adding a new sunset date of December 31, 2025, unless further extended by Council. Allowing outdoor

private property use under the Flex Streets program as proposed offers a more efficient process for restaurants and retail businesses throughout the City to expand their services and operations, which in turn can help to revitalize the local economy.

### **FISCAL IMPACT**

This Ordinance does not entail any General Purpose Fund expenditures. 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.

### **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 businesses that have been unable to get the necessary approvals to use their private outdoor property.

### **COORDINATION**

This legislation was circulated to various departments, including Office of the City Attorney and the Economic and Workforce Development Department.

### **SUSTAINABLE OPPORTUNITIES**

*Economic:* As mentioned above, since 2020, the Flex Streets program has benefited hundreds of businesses in Oakland. The services, activities, and events that the activation of private space would facilitate can help generate revenue for businesses and retailers.

*Environmental:* There are no direct environmental impacts associated with this proposal.

*Race & Equity:* Flex Streets program offers a less burdensome and more efficient process for small and minority-owned businesses, many of which are struggling to keep their doors open, to expand their operations outdoors in ways that attract more patrons.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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.

**ACTION REQUESTED OF THE CITY COUNCIL**

Councilmember Fife recommends that the City Council adopt an 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.

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

Respectfully submitted,



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Councilmember Carroll Fife  
District 3