

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

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

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**AN ORDINANCE AMENDING CHAPTER 8.62, SECTION 5.51.150, SECTION 12.08.250, AND SECTION 17.07.060(C) OF THE OAKLAND MUNICIPAL CODE (OMC) TO CREATE A PERMANENT PROGRAM FOR RESTAURANT, RETAIL, CAFÉ, PARKLET, AND MOBILE FOOD VENDING USES OF OUTDOOR PRIVATE SPACES AND PUBLIC RIGHT-OF-WAYS (OAKLAND FLEX STREETS PROGRAM) TO CONTINUE TO ENCOURAGE HEALTHY OUTDOOR USE AND ENJOYMENT OF BUSINESS; DIRECT CITY ADMINISTRATOR TO RETURN WITH ORDINANCE AMENDING THE MASTER FEE SCHEDULE WITH A FLEX STREETS APPLICATION AND ANNUAL PERMIT FEE TO TAKE EFFECT BY JULY 1, 2023 FOR EACH COMPONENT OF THE PROGRAM, INCLUDING AN EQUITY FEE WAIVER PROGRAM FOR FLEX STREETS PROGRAM APPLICANTS WHO MEET CERTAIN EQUITY CRITERIA; AND ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS**

**WHEREAS**, in December 2019, an outbreak of respiratory illness due to the novel coronavirus (COVID-19) spread across the world, including in the United States, Alameda County, and Oakland specifically; and,

**WHEREAS**, it is well recognized that COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and,

**WHEREAS**, on January 23, 2020 the Center for Disease Control activated its Emergency Response System to provide ongoing support for the response to COVID-19; and

**WHEREAS**, on March 9, 2020, the City Administrator acting as the Director of the Emergency Operations Center, issued a proclamation of local emergency due to the spread of COVID-19 in Oakland; and

**WHEREAS**, on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. confirming the existence of the local emergency proclaimed by the City Administrator pursuant to her power under Oakland Municipal Code section 8.50.050(C); and

**WHEREAS**, on March 16, 2020, the Alameda County Health Officer issued Health Order No. 20-03 directing Alameda County residents to “shelter in place,” or stay at home, except as necessary to take care of essential needs. That Order extended to April 7, 2020. On March 31, 2020, the Local Health Officer issued a replacement order, Health Order No. 20-04, which tightened the restrictions and extended the stay-at-home order through May 3. The Order was extended and revised by County Order No. 20-14, which is the Order that is currently in place. These Orders have forced the closure of many businesses not deemed essential. For several months, during two separate waves of outbreak in 2020 and 2021, restaurants, retail businesses, and cafes were prohibited from operating except for carry-out and delivery service or if constituting an “essential service.”

**WHEREAS**, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors”, and further acknowledged that the “supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care”; and

**WHEREAS**, Order N-33-20 provides that, to mitigate/control the spread of COVID-19, people should only leave their homes or places of residence to carry out specified essential functions or to facilitate necessary activities; and

**WHEREAS**, Oakland restaurants, retailers and other small businesses were severely impacted, and continue to recover from, the COVID-19 public health emergency that gave rise to the order restrictions; and

**WHEREAS**, in the spring of 2020 the City of Oakland Department of Economic and Workforce Development conducted a survey of more than 1,000 Oakland businesses about the impacts of COVID-19 and nearly 70 percent reported a decline of more than 40 percent in gross receipts year-over-year for March 2020; and

**WHEREAS**, more than 80% of survey responses were from small businesses with 10 or fewer employees, with 55 percent of business owners identifying as low- or very-low-income; and

**WHEREAS**, the surveyed businesses accounted for approximately 2,780 jobs lost, with the majority of the reported job losses in the restaurant and retail sectors, and more than half located in low-income areas of Oakland; and

**WHEREAS**, in June of 2020 the Alameda County amended its COVID-19 public health order to allow businesses to operate outdoors; and

**WHEREAS**, local, state, and federal public health officials have all encouraged activities to take place outdoors wherever possible to maximize air circulation and minimize the spread of COVID-19 infections; and

**WHEREAS**, on June 19, 2020, the City Administrator adopted Emergency Order No. 4, the Flex Streets Program, to help Oakland businesses quickly and safely take advantage of this updated Order permitting businesses to operate outdoors; and

**WHEREAS**, the City Administrator's Flex Streets Program currently allows 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 eliminates 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 citizens who may have lost their jobs in the restaurant industry; and

**WHEREAS**, the Flex Streets Program that has been in place under City Administrator's Order No. 4 since June 19, 2020 and has benefited over one-hundred and sixty (160) businesses in Oakland as they attempt to create business capacity and mitigate the loss operation and customers as a result of this pandemic; and

**WHEREAS**, in June 2021 the City Council passed an ordinance to extend the Flex Streets Program in its current form until March 31, 2022.

**WHEREAS**, Flex Streets 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 a space for people as well as vehicles. Specifically, Flex Streets has resulted in over one-hundred and forty sidewalk cafes and parklets; this represents a dramatic increase from the previous two fiscal years during which the City permitted one new sidewalk café and zero parklets. Flex Streets has also included thirteen street closures, fourteen permitted private spaces, and over sixty mobile food truck permits; and

**WHEREAS**, Following the City Council's June 2021 extension of Flex Streets through March 31, 2022, staff canvassed East Oakland neighborhoods to share information and hear from local businesses. Specifically, staff met with businesses along the MacArthur Boulevard and Bancroft Avenue corridors from Seminary to Durant as well as businesses in the Hegenberger area. Businesses in these areas expressed a strong desire to know more about the Flex Streets. Furthermore, businesses in these corridors indicated that the distance from the City center is a major challenge and that the City should bring the information to the community. In surveys, businesses in these areas identified lack of information, and the need for financial and technical assistance as the top obstacles discouraging businesses from participating in Flex Streets. Moreover, businesses identified street design and traffic as additional challenges.

**WHEREAS**, In addition to reaching out to businesses that have not utilized Flex Streets, in the fall of 2021 staff also followed up businesses who had received a flex streets permit issued by the DOT. All of these businesses indicated that the Flex Street Program is critical to their business and that the City should extend Flex Streets while they are recovering from the financial impact of the Covid-19 Pandemic. Specifically, businesses utilizing Flex Streets noted that Flex Streets provided space for businesses to remain in operation and rehire workers. Most businesses claim that using the parklets increased their space for operations by 30% - 40%. A few businesses had to move 100% of seating to the parklet area, in order to stay in operations, because the size of their indoor space could not comply with social distancing requirements. Of the businesses interviewed, 91 percent indicated that being able to retain employees was the most important benefit of the Flex Streets program and keeping their business afloat.

**WHEREAS**, the Flex Street Program continues to be a valuable program that enables businesses to safely operate in unenclosed environments to prevent the further spread of the virus while providing much needed income to businesses and safe social outlets for Oakland citizens; and

**WHEREAS**, Flex Streets has enabled businesses to increase their sales and re-employ staff, thus helping Oakland restaurants and retailers weather the economic storm of the COVID-19 pandemic.

**WHEREAS**, given the recent rapid rate of vaccinations of Oakland citizens over the past year, and the persistence of the virus and its variants, the City has determined to join neighboring jurisdictions in making the Flex Streets Program permanent so that will provide businesses with the needed certainty to operate with the benefits of the Flex Streets Program, which includes certainty they will receive a return on their investment Flex Streets business improvements into the future; 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 Chapter 8.62 of the Oakland Municipal Code.** Oakland Municipal Code (O.M.C.) Chapter 8.62 is hereby amended to read as follows (Additions to O.M.C. Chapter 8.62 are shown as double underline and deletions are shown as ~~strikethrough~~).

**Chapter 8.62 – Regulations Establishing ~~Temporary~~ Permit Requirements and Procedures To Expand Restaurant, Retail, Café, Parklet, And Mobile ~~Food Vending Temporary~~ Uses of Outdoor Private Spaces and Public Right-of-Ways (“Oakland Flex Streets Program”) ~~Until March 31, 2022~~ To Encourage Healthy Outdoor Use and Enjoyment of Businesses.**

**8.62.05 – Applicability.**

The regulations, requirements and provisions of this Chapter shall apply to Outdoor Dining, Retail, Cafes and Mobile ~~Food Vending~~ Uses throughout the City ~~until March 31, 2022, or until the City Council further amends this Chapter.~~ The City Administrator may return to City Council to extend the term of this Chapter beyond March 31, 2022 if the requirements and provisions in this Chapter are found to broadly serve the public health, safety and welfare ~~beyond March 31, 2022.~~

**8.62.010 – Definitions.**

“Outdoor Dining or Cafe Services” means services covered by a ~~Temporary~~ Outdoor Dining or Cafe approval and/or a ~~Temporary~~ Sidewalk Dining, Retail or Cafe Permit.

“Restaurant” shall mean restaurants permitted to operate pursuant to Planning Code Sections 17.10.272, 17.10.274, and 17.10.280.

“Café” shall have the meaning set forth in Planning Code Sections 17.10.750 and 17.103.090.

“Sidewalk Dining” means a portion of an immobile food establishment, bar, or cafe located on a designated public right-of-way immediately adjacent to the associated retail food establishment or located in a ~~Temporary~~ Parklet for dining or café use.

“Retail” shall mean any business that engages in the retail sale of goods, merchandise, or services.

“Sidewalk Dining Elements” means any and all tables, chairs, tents, moveable barriers, umbrellas, planters, heaters, and other objects associated with sidewalk dining.

“Sidewalk Retail Elements” means any and all tables, shelves, product spaces, and other objects associated with sidewalk retail.

“~~Temporary~~ Outdoor Dining, Retail or Café Approval” means a permit that authorizes an approved restaurant, retail, bar, or café use to temporarily utilize new or expanded outdoor areas on private property, subject to permit conditions.

“~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit” is a permit temporarily authorizing an approved restaurant, bar, retail, or café use to engage in Sidewalk Dining or retail within a designated area on a public right-of-way, subject to permit conditions.

“~~Temporary~~ Parklet Dining or Cafe Permit” is a permit temporarily authorizing the use of not more than two (2) parking spaces in front of the permittee’s restaurant or café, subject to permit conditions set forth in this Chapter.

**8.62.020 — ~~Temporary~~ Suspension of Regulations Governing Outdoor Dining or Cafe Areas, Sidewalk Dining or Cafes, and Mobile Food Vending Uses.**

The following regulations in this Chapter ~~temporarily~~ shall supersede and replace any conflicting provisions of the Oakland Municipal Code, including Titles 12 and 17, ~~or administrative regulations governing outdoor Dining, Retail, and Café services, and Mobile Food Vending.~~

**8.62.050 — ~~Temporary~~ Sidewalk Dining, Retail or Cafe Permit and ~~Temporary~~ Parklet Dining or Café Permits.**

The following rules and procedures shall apply to ~~Temporary~~ Sidewalk Dining, Retail or Cafe permits on sidewalks and parking lanes:

- A. Application. Any restaurant, retail or café use desiring a ~~Temporary~~ Sidewalk Dining, Retail or Café Permit shall first apply to the Department of Transportation and provide all information deemed necessary by the Transportation Director ~~or his designee~~. The Transportation Director ~~or his designee~~ is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose. Without limiting the foregoing, the Transportation Director ~~or his designee~~ may require a layout sketch or site plan and a minimum of two (2)

photographs showing all sidewalk dining, retail or cafe elements (“Improvements”), utilities, sidewalks, and appropriate measurements with the application. The applicant’s application submittal shall be consistent, as determined by the Transportation Director, with any technical bulletins, design review guidelines, and/or administrative regulations adopted pursuant to O.M.C. Section 8.62.060.

B. Effect. The following terms and conditions shall apply to any ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit issued by the City under this Order:

1. The permit is for a permitted revocable license use only that is personal to the permitted business only. ~~and the issuing~~ Approval of the permit shall not operate to create or vest any property rights in the permittee or property owner.
2. The City; or agent of the City, including franchisees and public utility companies, shall have free and complete access to the public right-of-way in which Sidewalk Dining, Retail, or Cafe has been permitted for maintenance and repair of the right-of-way, and the permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the right-of-way.
3. The permittee shall maintain the sidewalk area in a good and safe condition as long as the ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit remains in effect. Permittee understands and acknowledges that, should the permittee, its agents, employees, vendors, or patrons, damage and/or disturb the right-of-way and/or the Sidewalk Dining, Retail, or Cafe Area, the permittee shall be solely responsible for repairing the destroyed/disturbed right-of-way to the City’s satisfaction.
4. Permittee shall maintain a general liability insurance policy with combined single liability limits for personal injury or death and property damage in the amount of the liability limits set forth in the City’s application. The applicant shall name the City as an additional insured. The permittee agrees to provide proof of such policy to the City upon request.
5. If alcoholic beverages will be served within the Sidewalk Dining, Retail or Café Area, the permittee shall maintain liquor liability insurance for the area under the same terms and conditions as those applying to general liability insurance.
6. Permittee shall indemnify, defend, and hold harmless the City against any and all claims or suits for damages or injury arising from permittee’s or the permittee’s agents’, employees’, vendors’, and/or patrons’ use of the right-of-way or the Sidewalk Dining, Retail, or Cafe area or from any activity, work, or act done, permitted, or suffered by permittee in or about the Sidewalk Dining, Retail, or Cafe Area, and shall further indemnify, defend,

and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of permittee under this Section or the ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

7. Permittee shall not assign the ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit without the prior approval of the City.
  8. Any unlawful encroachments existing in the right-of-way shall be subject to removal and the permittee shall be responsible for labor and costs associated with such removal. Any encroachments existing in the public right-of-way shall be removed upon reasonable notice given by the Department of Transportation of public service when such removal is necessary to repair or improve the right-of-way. Reasonable notice shall be in the discretion of the Transportation Director with general guidance set forth in the Administrative Guidelines. If it is necessary to remove any encroachments, including but not limited to Sidewalk Dining Elements or Sidewalk Retail Elements, the permittee shall be responsible for labor and costs associated with removal and reinstallation.
  9. In the event that the City Police, Fire, Public Works, Planning and Building, or Transportation Departments determine that the location of an encroachment, including but not limited to Sidewalk Dining Elements or Sidewalk Retail Elements, constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the City removes an encroachment, a notice of removal shall be sent to the permittee as soon as practicable under the circumstances. Any abandoned encroachment shall be subject to removal. For purposes hereof, 'abandoned' shall mean the vacating of the premises by the permittee for a period of seven (7) consecutive days or more. Any costs incurred to the City in restoring the public right-of-way to the condition that existed prior to the use of the Sidewalk Dining, Retail, or Cafe Area shall be the responsibility of the permittee.
- C. Inspection. The Transportation Director ~~or his designee~~ may perform or cause to be performed a site inspection of the proposed Sidewalk Dining, Retail, or Café Area to verify compliance with the requirements set forth herein prior to issuing a ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permit. The City's Fire Department, Fire Marshal, Police Department, and Building Inspections Division shall be authorized to inspect and determine whether applicants and permittees comply with and continue to comply with the rules and regulations governing sidewalk dining set forth herein, as may be amended.
- D. Decision. The Transportation Director may issue, after any necessary consultation with other City departments, ~~Temporary~~ Sidewalk Dining, Retail, or Cafe Permits

upon finding that the application meets all relevant standards set forth in this Chapter.

- E. Posting. ~~The Temporary~~ Sidewalk Dining, Retail or Cafe Permit shall be posted on the premises so as to be visible from the public right-of-way during all times that the sidewalk dining, retail, or café use is being conducted within the public right-of-way.
- F. Design and Layout. The following standards shall govern the design and layout for Sidewalk Dining, Retail, or Cafes:
  - 1. The width of the Sidewalk Dining, Retail, or Café Area shall not exceed the width of the frontage of the restaurant's property.
  - 2. Permittees shall not obstruct a clear pedestrian path of at least six feet (6') at any time; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Transportation Director ~~or his designee~~ may require a clear pedestrian path greater than six feet (6'). Any such clearance area must be free of all obstructions such as trees, parking meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.
  - 3. The Improvements shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, manhole covers, utility covers, and/or benches within the sidewalk or within the public right-of-way.
  - 4. The Improvements shall not interfere with or obstruct any required clearance for maneuvering around any building, driveway, or other entrances or exits.
  - 5. The Improvements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.
  - 6. The Improvements shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.
  - 7. The Improvements may not violate the vision clearance requirements set forth elsewhere in the Oakland Municipal Code or by City design regulation.
  - 8. Vision clearance will also be required when the Improvements are located adjacent to an alley or driveway; provided, however, the Transportation



Director may modify such requirements when unusual circumstances exist or when public safety may be at issue.

9. No amplified music, whether live or recorded, shall be permitted within Sidewalk Dining, Retail, or Cafe Areas. No speakers, microphones, televisions or other audio or video devices shall be permitted within Sidewalk Dining, Retail, or Cafe areas if the Transportation Director finds, based on substantial evidence, that such improvements are resulting in exceedances of the Performance Standards set forth in O.M.C. Chapter 17.120.
10. No vending machines, carts, or objects for the sale of goods shall be permitted within Sidewalk Dining, Retail, or Café Areas.

#### **8.62.060 — Health & Safety Standards for Restaurants and Cafes.**

All restaurants, dining, retail or café approved uses receiving ~~temporary~~ permits under this Chapter shall comply with the following health and safety standards:

- A. Outdoor Dining or Cafe services, to include open air patios, balconies, rooftops, parking lots and Sidewalk Dining or Café Areas, must operate in accordance with any applicable occupancy standards approved by the Building Division and/or Fire Marshal.
- B. Any restaurant, retail or café approved use shall comply with all applicable occupancy, operation, and sanitation guidelines issued by federal, state, or local public health officials. The strictest guidelines shall apply.

#### **8.62.070 Outdoor Retail and Dining Use of City Property.**

- A. This ~~temporary~~ program authorizes the City Administrator or ~~designee~~ to allow for permitted businesses who have established they are not eligible for permits under any the other Sections of this Chapter, to use outdoor City property (i.e., City-owned parcels) for: (1) retail businesses to sell goods and merchandise and offer services, and (2) restaurants to place tables, chairs, and other dining elements for serving customers in an outdoor dining or café setting in a manner that complies with any current County Health Order and all applicable federal and State regulations.
  1. Any ~~temporary~~ license executed to use City property under this program may be offered at below fair market value, and the requirements set forth in O.M.C. Section 2.42.110 are temporarily suspended, for solely those licenses issued under this Chapter. Notwithstanding the foregoing, all licenses shall be entered into only if they meet the equity criteria set forth in subsection B below.
  2. All licenses issued under this ~~temporary~~ program shall comply with the

authority delegated to the City Administrator pursuant to O.M.C. Section 2.42.100, and any proposed license not meeting such requirements shall require the approval of the City Council by Ordinance. Additionally, all other contract terms required by O.M.C. Title 2 applicable to agreements entered into by City departments to implement this temporary program must be included unless the City Administrator ~~or designee~~ determines in writing that compliance with any term is not feasible and is not required under federal and/or State law. Nothing in the foregoing suspends the requirement for approval of contracts as to form and legality by the City Attorney.

3. This Section shall sunset on July 1, 2023 unless further extended by City Council.
4. 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. Equity Criteria for ~~Temporary~~ License of City Property. Outdoor Dining and Retail approved uses who meet the above application requirements shall also satisfy each of the below Equity Criteria to be eligible for the ~~temporary~~ program set forth in Subsection A above.

1. Applicant's business is in an area of the City that has been disproportionately impacted by ~~or is particularly disproportionately vulnerable to~~ the COVID-19 virus, as documented by data obtained by the City or provided by the applicant;
2. Applicant cannot otherwise feasibly use sidewalks, parking lanes, private outdoor areas, or rights-of-way as set forth in this Chapter enabling the ~~temporary~~ license; and
3. Applicant has demonstrated economic hardship related to the COVID-19 pandemic, and a business plan to address such hardship through ~~temporary~~ use of City Property.

#### **8.62.080 — Outdoor Dining, Retail or Cafe 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 July 1, 2023, ~~for the duration of this Chapter, which shall expire on March 31, 2022~~ 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.

- B. This ~~temporary~~ 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 subsections D and E and shall be revocable at any time at the discretion of the City Administrator ~~or designee~~.
1. To the extent any such use under the ~~temporary~~ 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 ~~Temporary~~ Outdoor Dining Areas on Private Property. Restaurants, retail, or cafés desiring ~~Temporary~~ Outdoor Dining, Retail or Cafe 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 ~~temporary~~ 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 ~~or his designee~~ may impose additional conditions or limitations relating to noise on the restaurant or cafe when the Planning Director ~~or designee~~ finds that such additional conditions or limitations are necessary or appropriate based on the location of the new or additional outdoor dining, retail, or cafe 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 Cafe 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 Cafe 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 Cafe Areas shall comply with all applicable provisions of the Building and Fire Codes.
9. All Outdoor Dining or Cafe Areas shall comply with the Alameda County Health Order.
10. The Planning Director ~~or designee~~ 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 ~~or designee~~ may impose additional conditions or limitations relating to noise on the COVID-19 Related Medical Facility when the Planning Director ~~or designee~~ 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 or designee may impose other reasonable conditions or limitations to protect against adverse impacts from noise, parking, fire, people with disabilities, and travel.

**8.62.090 — Expansion of Allowable Locations and Numbers of Individual ~~Food~~ Mobile Vending Facilities Through ~~Temporary~~ Suspension of Portions of the O.M.C.**

The permitted location of individual ~~Food~~ Mobile Vending facilities is hereby regulated by this Section during the effective term of this Section, which shall sunset on March 31, 2022 unless further extended by City Council. This Section temporarily suspends O.M.C. Section 5.51.040, “Conflicting Provisions,” and O.M.C. Section 5.51.50.A, .B and .C, “~~Food~~ Mobile Vending Program Permitted Area” for ~~Food~~ Mobile Vending facilities and replaces O.M.C. 5.51.50.A, .B and .C with the following location requirements:

- A. ~~Food~~ Mobile Vending may be located on publicly-owned property or in the public right-of-way in any commercial or industrial zoning district, subject to the requirements of Chapter 5.51 and its implementing Administrative Guidelines, with the exception of Section 5.51.50.A, .B, and .C. Additionally, individual ~~Food~~ Mobile Vending facilities are permitted on private property (such as a vacant lot) in the City wherever a Limited Service or Full Service restaurant is permitted under the Oakland Planning Code. Sidewalk Vendors (as defined in the Administrative Guidelines) may further operate as follows:

1. Roaming sidewalk vendors may operate in any zoning district in the City, provided that during a transaction, they comply with applicable buffer distances.
  2. Stationary sidewalk vendors may operate in any zoning district not exclusively zoned residential, subject to the applicable buffer distances.
- B. A location for an individual Food Vending facility shall be permitted if it complies with the distances specified below:
1. Mobile Food Vending facilities may be located in a parking lane and may vend from multiple locations, without limitation, as long there is a three hundred (300) foot buffer from another vendor or Limited or Full Service Restaurant, unless the vendor or Limited or Full Service Restaurant provides a written waiver, in which case the food vending facility may be permitted.
  2. Sidewalk Mobile Food Vendors (as defined in the Administrative Guidelines) operate on sidewalks and may vend from multiple locations, without limitation, provided they allow a one hundred (100)-foot buffer from another vendor or Limited Service or Full Service Restaurant unless the City Administrator ~~or designee~~ determines that the buffer is not necessary to protect public health and safety in a particular location, in which case the Sidewalk Vendor may be permitted.
  3. All Mobile Food Vending facilities must still maintain a three hundred (300) -foot buffer from a school serving children in kindergarten through high school between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, unless the Food Vending facility sells “healthy foods,” as defined in Administrative Guidelines authorized pursuant to O.M.C. Chapter 5.51, and receives written permission from supervising entity of the school.

C.

1. Mobile Retail Vending facilities may be located in a parking lane and may vend from multiple locations, without limitation, as long there is a three hundred (300) foot buffer from another vendor or Limited or Full Service Restaurant, unless the vendor or Limited or Full Service Restaurant provides a written waiver, in which case the Mobile Retail Vending facility may be permitted.
2. Sidewalk Mobile Retail Vendors (as defined in the Administrative Guidelines) operate on sidewalks and may vend from multiple locations, without limitation, provided they allow a one hundred (100)-foot buffer from another vendor or Limited Service or Full Service Restaurant unless the City Administrator ~~or designee~~ determines that the buffer is not

necessary to protect public health and safety in a particular location, in which case the Sidewalk Vendor may be permitted.

3. All Mobile Retail Vending facilities must still maintain a three hundred (300) -foot buffer from a school serving children in kindergarten through high school between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, unless the Retail Vending facility sells “healthy foods,” as defined in Administrative Guidelines authorized pursuant to O.M.C. Chapter 5.51, and receives written permission from supervising entity of the school.

DC. Individual Mobile Food or Retail Vending ~~food vending~~ facilities cannot block or impede access to:

1. Required parking or driveways;
2. Bicycle racks;
3. Signal crossings;
4. Pedestrian or bicycle routes;
5. Emergency vehicle routes;
6. Building entrances and exits;
7. Required accessibility routes and curb cuts;
8. Trash enclosure areas or access to trash bins/trash enclosures; or
9. Other City facilities, as determined by the City Administrator ~~or designee~~.

ED. All other location requirements set forth in O.M.C. Section 5.51.050.D through .F, (as further clarified in the Administrative Guidelines), shall still apply.

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

A. This Section creates a ~~temporary~~ program for streamlining the approval by the ~~Chief of Police~~ 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 ~~(2)~~ (3) restaurants and/or cafes to place tables, chairs, and other dining elements to offer outdoor dining. 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 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.

3. This Section of the O.M.C. shall sunset on July 1, 2023 unless further extended by City Council.
  - ~~4.4.~~ Any provision of the O.M.C. that would conflict with this ~~temporary~~ 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.
  - ~~2.5.~~ 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.
  - ~~3.~~ ~~Any permits or licenses issued under this Section shall expire on March 31, 2022, unless further extended by City Council.~~
- 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 uses.
- 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, ~~until March 31, 2022, unless further extended by City Council,~~ subject to the discretion of the City Administrator ~~or designee.~~
  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 short term encroachment application per year is suspended.

#### **8.62.110 — Administrative Suspension/Modification.**

Any ~~Temporary~~ Outdoor Dining, Retail, or Cafe Approval, ~~Temporary~~ Sidewalk Dining, Retail or Cafe Permit or ~~Temporary~~ Parklet Dining or Café Permit is subject to suspension, modification, or amendment at any time with or without notice based on a determination that additional conditions or limitations shall be required to protect against adverse impacts associated with the new or expanded area. The City Council may suspend, modify, or amend the provisions governing outdoor dining, retail, or cafe services at any time by emergency ordinance, in which case all businesses shall comply with any such modifications or amendments, whether or not they previously received an approval or permit hereunder. ~~All approvals and permits governed by this Chapter shall automatically expire thirty (30) days following the March 31, 2022 sunset date of this Chapter unless such approval or permit is otherwise suspended, modified, amended, or extended in accordance with this Chapter or a subsequent ordinance adopted by City Council.~~



### **8.62.120 — Appeal.**

Any decision of the City Administrator ~~or designees~~ are final and may not be appealed. Any decision by the Planning Director ~~or his designee~~ may be appealed to the Planning Commission pursuant to Planning Code Chapter 17.132.

### **8.62.140 — City Right of Revocation.**

Restaurant, retail, and cafe owners/operators are responsible for ensuring that the procedures and standards set forth in this Chapter are followed. The City may deny or revoke any license granted to conduct any such business activities set forth above when, in the judgment of the City, the business is not complying with any provision of this Chapter or the City deems it is in the public's interest to revoke the permit/license. Any permit granted pursuant to this Chapter does not serve to confer a vested right.

### **8.62.150 — City Administrator Enforcement.**

The City Administrator ~~or designee~~ is hereby authorized to inspect and determine whether businesses are in compliance with this Chapter. Any person who shall refuse to allow such inspection or who shall obstruct any City Administrator personnel whose duty it is to make such inspection shall be subject to immediate revocation of their permit to operate.

### **8.62.160 — Technical Bulletins, Parklet Design Guidelines, and Administrative Regulations.**

The City Administrator ~~or designee~~ is responsible for the administration of this Chapter, and is authorized to develop and require compliance with one or more technical bulletins, parklet design guidelines, and/or administrative regulations containing interpretations, clarifications, forms, design renderings, and commentary to facilitate implementation of any requirements set forth in this Chapter.

**SECTION 3. Addition of Oakland Municipal Code Section 12.08.250.** Oakland Municipal Code Section 12.08.250 is hereby added to O.M.C. Chapter 12.08 to read as follows (double underline represents an addition to an O.M.C. code section):

### **12.08.250 — ~~Temporary~~ Permit Requirements and Procedures For Sidewalk Dining, Retail, Cafes, Parklets, ~~Food~~ Vending Facilities, and Short Term Encroachments Into the Right-of-Way In Response to the COVID-19 Pandemic.**

Notwithstanding any contrary permit requirements and procedures set forth in this Chapter, the ~~temporary~~ permit requirements and procedures for Sidewalk Dining, Sidewalk Cafes, Retail, Parklets, ~~Food~~ Vending Facilities, and short term encroachments into the right-of-way are set forth in O.M.C. Chapter 8.62, ~~which sunsets on March 31, 2022, unless otherwise acted upon by City Council.~~ The purpose of these ~~temporary~~ permit requirements and procedures is to facilitate business and restaurant expansion into open air spaces to allow for adequate social distancing pursuant to federal, state and local health guidelines.

**SECTION 4. Amendment to Oakland Planning Code Section 17.07.060.C.** Oakland Planning Code Section 17.07.060 is amended and 17.07.060.C is hereby added to read as follows (double underline represents an addition and ~~striketrough~~ represents deletions to an O.M.C. code section):

- C. Notwithstanding any contrary provisions in the zoning regulations or the Land Use and Transportation Element of the General Plan, the permit requirements for Sidewalk Cafes as set forth in the individual Zoning Chapters and in Planning Code Section 17.103.090 and required off-street parking ratios for General Retail, Limited Service Restaurant and Full Service Restaurant Commercial Activities are suspended until July 1, 2023~~March 31, 2022~~ unless further extended by City Council, to facilitate the expansion of Sidewalk Cafes, General Retail Commercial Activities, and Limited and Full Service Restaurants into open air spaces that allow for adequate social distancing pursuant to federal, state and local health guidelines. The applicable permit requirements and procedures for Sidewalk Cafes that expand into the public right-of-way, and General Retail Commercial Activities and Limited and Full Service Restaurants that expand to open spaces on private property are set forth in O.M.C. Chapter 8.62. This Subsection shall terminate ~~along with O.M.C. Chapter 8.62 on March 31, 2022~~ on July 1, 2023 unless further extended by City Council.

**SECTION 5. Addition of Oakland Municipal Code Section 5.51.150.** Oakland Municipal Code Section 5.51.150 is hereby added to read as follows (double underline represents an addition and ~~striketrough~~ represents deletion to the O.M.C. code section):

Notwithstanding any contrary provisions in this Chapter, the permitted locations of individual ~~Food~~Mobile Vending facilities has been temporarily expanded as set forth in O.M.C. Section 8.62.070 ~~until March 31, 2022 unless further amended by City Council,~~ to facilitate the expansion of individual ~~Food~~Mobile Vending facilities into open air spaces and public rights-of-way, which allow for adequate social distancing pursuant to federal, state, and local health guidelines. ~~This section shall terminate along with O.M.C. Chapter 8.62 on March 31, 2022, unless further extended by City Council.~~

**SECTION 6. City Council Direction to City Administrator to Further Study and Return With Amendment to the Master Fee Schedule to Provide a Flex Streets Application Fee Effective July 1, 2023 for Businesses Applying for the Flex Streets Program.**

The City Council directs the City Administrator to further study and provide an amendment to the Master Fee Schedule to establish a Flex Streets Program application fee for each part of the Flex Streets Program. The City Council further directs the City Administrator to develop an equity application fee waiver program based on the following equity criteria:

Equity Criteria for Fee Waiver Application. Oakland Businesses may apply for a Flex Streets application fee waiver if the business satisfies the below Equity Criteria, as determined by the City Administrator:

1. The business is in an area of the City that has been disproportionately impacted by the COVID-19 virus, as documented by data obtained by the City or provided by the business; and
2. The business has demonstrated gross receipts of less than \$2 million during the current fiscal year.

The City Administrator shall return City Council with the application fees and equity application fee waiver program so that it is established by July 1, 2023.

**SECTION 7. City Council Direction To City Administrator To Further Study Programs and Alternatives That Can Facilitate Equitable Business Expansion Into Outdoor Areas to Allow for Adequate Social Distancing, Specifically For Our Most Vulnerable Populations.**

The City Council directs the City Administrator to further study programs, funding sources, and alternatives that can further facilitate equitable business expansion into our outdoor areas to allow for adequate social distancing and use of outdoor spaces, specifically for our most vulnerable populations, and to provide an informational report and/or options for further legislation and action to the City Council.

**SECTION 8. California Environmental Quality Act (CEQA).** The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, “EIRs”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

In addition, the City Council independently finds and determines that this action is exempt from 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 mobile food vending consistent with the States Resilience Roadmap, State Guidelines, the County plan for re-opening, as well as the existing County Health Order that permits restaurants to open while observing social distancing requirements; (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 streets, sidewalks, parking lots, and bicycle and pedestrian trails, which would not result in the creation of additional automobile lanes; and (3) CEQA Guidelines Section 15303 (small structures exemption).

**SECTION 9. 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 10. 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 11. 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 12. 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 13. 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, KALB, KAPLAN, REID, TAYLOR, THAO 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

**AN ORDINANCE AMENDING CHAPTER 8.62, SECTION 5.51.150, SECTION 12.08.250, AND SECTION 17.07.060(C) OF THE OAKLAND MUNICIPAL CODE (OMC) TO CREATE A PERMANENT PROGRAM FOR RESTAURANT, RETAIL, CAFÉ, PARKLET, AND MOBILE FOOD VENDING USES OF OUTDOOR PRIVATE SPACES AND PUBLIC RIGHT-OF-WAYS (OAKLAND FLEX STREETS PROGRAM) TO CONTINUE TO ENCOURAGE HEALTHY OUTDOOR USE AND ENJOYMENT OF BUSINESS; DIRECT CITY ADMINISTRATOR TO RETURN WITH ORDINANCE AMENDING THE MASTER FEE SCHEDULE WITH A FLEX STREETS APPLICATION AND ANNUAL PERMIT FEE TO TAKE EFFECT BY JULY 1, 2023 FOR EACH COMPONENT OF THE PROGRAM, INCLUDING AN EQUITY FEE WAIVER PROGRAM FOR FLEX STREETS PROGRAM APPLICANTS WHO MEET CERTAIN EQUITY CRITERIA; AND ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS**

This Ordinance amends Chapter 8.62, Section 5.51.150, Section 12.08.250, and Section 17.07.060(C) of the Oakland Municipal Code (OMC) to create a permanent program for restaurant, retail, café, parklet, and mobile vending uses of outdoor private spaces (until July 1, 2023 unless further extended), City Property (until July 1, 2023 unless further extended), and public rights-of-way (“Oakland Flex Streets Program”) to encourage healthy outdoor use and enjoyment of local Oakland businesses on a permanent basis. OMC Chapter 8.62 establishes the regulations and procedures for these permits, while also continuing to suspend or amend, where appropriate, the above-referenced sections of the OMC related to the Oakland Flex Streets Program. This Ordinance also directs the City Administrator to return with an ordinance amending the Master Fee Schedule with a Flex Streets Application Fee to take effect by July 1, 2023 and to develop an equity application fee waiver program for applicants who meet certain equity criteria.

