



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Greg Minor  
Assistant to the City  
Administrator

**SUBJECT:** Extension of Flex Streets Program

**DATE:** May 20, 2021

City Administrator Approval 

Date: May 20, 2021

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 8.62, Section 5.51.150, Section 12.08.250, And Section 17.07.060(C) Of The Oakland Municipal Code 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; And Adopt Appropriate California Environmental Quality Act (CEQA) Findings**

## **EXECUTIVE SUMMARY**

To facilitate businesses' compliance with COVID-19 public health restrictions on indoor activities, on June 19, 2020 the City Administrator adopted Emergency Order No. 4, the Flex Streets Program (Flex Streets).<sup>1</sup> Flex Streets established free streamlined permitting processes for businesses' use of sidewalks, streets, private outdoor spaces, and City property during the COVID-19 Local Emergency. Under Emergency Order No. 4, these permitting processes sunset one month after the expiration of the Local Emergency.

Flex Streets has enabled retail and restaurants to retain employees, generate tax revenue, and activate City streets during a challenging economic period. At the same time, it is not clear whether Flex Streets should continue beyond the Local Emergency or into the indefinite future, at least in its current form, as Flex Streets gives private businesses control over public spaces, provides no fees to cover staff costs, and in some cases can result in excessive noise or unsatisfactory public access to public right-of-ways.

With the state of California easing COVID-19 restrictions on indoor activities and businesses unclear about next steps, staff recommends that the City Council approve the above referenced Ordinance providing for an extension of the Flex Streets Program to March 31, 2022, unless

<sup>1</sup> Emergency Order No. 4 in its entirety is available at: <https://cao-94612.s3.amazonaws.com/documents/CAO-Emergency-Order-COVID-No.-4-Flex-Streets-Program-FINAL-6-19-20-signed.pdf>

further extended by City Council. (See **Attachment A** for the Flex Streets Ordinance). This provides businesses with certainty and an opportunity to continue to recover through the use of Flex Streets. Furthermore, this legislative extension offers the City time to evaluate what aspects of Flex Streets the City should adopt beyond the COVID-19 pandemic.

## **BACKGROUND / LEGISLATIVE HISTORY**

### *COVID-19 Public Health Restrictions on Indoor Activities*

In response to the Covid-19 pandemic, local, state, and federal public health agencies have issued orders limiting indoor activities and gatherings to minimize the spread of infections. These restrictions, particularly early in the pandemic, hurt Oakland restaurants, personal care, cafe and retail businesses by requiring them to close or limit their business operations. This resulted in many businesses experiencing sharp declines in revenues and laying off workers. In turn, this decrease in economic activity decreased tax revenues used to support city services.

However, on June 19, 2020, Alameda County's Department of Public Health announced that outdoor dining and outdoor retail could resume. This change allowed businesses to re-open and increase the footprint of their businesses by using outdoor space, providing businesses an option to safely increase business activity and revenue.

### *What Is the Flex Streets Program and How Does It Compare to Permitting Pre-COVID-19?*

In anticipation of Alameda County's allowance of outdoor dining and retail, in the summer of 2020, the City Administration assembled an interdepartmental team to equitably and swiftly assist these businesses to operate safely in the public right-of-way. This work culminated in City Administrator Emergency Order No. 4, which established Flex Streets, free streamlined permitting processes for businesses to operate in the public right-of-way, private outdoor areas, and available City property with minimal expense. In short, Flex Streets provides a menu of options for retail and dining to occupy a variety of streetscapes and properties across the City.

While permitting processes for these spaces existed prior to Flex Streets, the processes included fees and processing timelines that were not agile enough to address the large demand from businesses who needed outdoor space to physically distance their customers during the pandemic. For example, businesses interested in featuring a sidewalk café or a parklet had to obtain an encroachment permit, which required a detailed site plan, review by multiple departments, submission of a grant deed and legal description, indenture agreement, recordation with Alameda County, and approval of the property owner. Altogether, this process involved multiple City departments like the Oakland Department of Transportation (OakDOT), Planning and Building Department (PBD), Oakland Fire Department (OFD), and Economic Workforce and Development Department (EWDD) and is time-consuming and costly for small businesses. Likewise, pre-Flex Streets commercial districts could apply for a short-term encroachment with the Oakland Police Department (OPD) to close a street for special events, but this was limited to no more than twice a year and for no longer than three days a year. While effective for occasional street festivals, these restrictions were too limiting in the context of COVID-19's restrictions on indoor activities. Finally, before Flex Streets, mobile food vending

permits were limited by number and vendors were limited to specific locations. **Figure-1** offers a summary comparison of the permitting process before and during Flex Streets.<sup>2</sup>

**Figure-1**

<b>Location/Use</b>	<b>Process Pre-Flex Streets</b>	<b>Flex Streets Process</b>
Sidewalk Cafe	Applicant applies for minor encroachment permit, requiring OakDOT and PBD approvals; fees approach \$3,000 and takes multiple weeks to process.	Applicant submits free application online and receives automatic approval.
Parklet	Applicant applies for major encroachment permit, requiring City Council, DOT and OFD approvals and recordation with Alameda County; bond required, fees approach \$3,000 and takes months to process. Parklets are public; No provision for businesses to make exclusive use of space in the parking lane.	Applicant submits free application online and receives automatic approval.
Closure of Traffic Lane	Applicant applies for short term encroachment permit with OPD; OPD and OFD fees required for events and no more than two street closures per year.	Project champion submits street closure interest form, then collaborates with EWDD staff to develop final drawings for OakDOT approval. No fee and no artificial limit on the duration/frequency of street closures.
City Property	Applicant required to pay market rent unless City Council makes a finding for each proposed use.	Below market rentals available for businesses in areas disproportionately impacted by COVID-19 and satisfying Program's Equity Criteria that cannot utilize other spaces via Flex Streets.
Outdoor Private Property	Zoning code either prohibited outdoor dining on private parking lots or required a discretionary Conditional Use Permit.	Applicant submits free application online and receives automatic approval.
Mobile Food	Overall limit on the number of permits available, limited time windows when applications accepted, vendors limited to one location and \$600 fee.	No limit on the number of permits available, applicants can apply at any time, no fee, and vending allowed at multiple locations as long as compliant with buffers from brick-and-mortar restaurants and other vendors.

<sup>2</sup> For a more detailed comparison of City encroachment permits to Flex Streets administration visit : <https://cao-94612.s3.amazonaws.com/documents/20-0619-Flex-Streets-Info-Memo-2.pdf>

### *Community Outreach*

To make the public aware of Flex Streets, staff and volunteers took a number of steps, both figuratively and literally. For example, EWDD staff emailed all businesses on the City's roster repeatedly, met with Business Improvement District (BID) representatives, and shared program details with news media who then released articles about the Flex Streets program. Staff from various departments and volunteers also went door to door in areas lacking BIDs distributing information about Flex Streets and public health requirements.

### *How Does Flex Streets Support Businesses in Priority Neighborhoods?*

Recognizing the disproportionate impacts COVID had on low-income businesses and People of Color (POC)-owned businesses, through federal CARES funds available in the fall of 2020, Flex Streets offered the following support systems to businesses located in Department of Transportation Priority<sup>3</sup> Neighborhoods:

- Additional technical support for parklet and street closure design including templates and traffic engineering support
- Neighborhood outreach support
- Funding to purchase traffic control devices such as barricades and signage for parklets and street closures

Additionally, the Flex Streets team conducted targeted outreach and education to businesses located in Priority Neighborhoods and trusted Community Based Organizations (CBOs) to share how Flex Streets may support their businesses during COVID-19's shelter-in-place restrictions.

### *Program Results to Date*

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 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 forty mobile food trucks permits.

To better understand the impact of these interventions on businesses, in November 2020 staff surveyed businesses that were utilizing Flex Streets. The majority of surveyed businesses indicated that they found the Flex Streets application process easy and that Flex Streets helped sustain their business, increased their sales, and allowed them to retain staff.<sup>4</sup> Several businesses shared confusion about the nature of "automatic" permits particularly given that the previous process involved significant administration. Additionally, some businesses expressed that staff responsiveness to businesses' questions needed improvement. These concerns were

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<sup>3</sup> Map identifying Priority Neighborhoods available at:

<https://www.oaklandca.gov/resources/oakdot-geographic-equity-toolbox>

<sup>4</sup> See **Attachment B** for the 2020 Survey of Flex Streets Applicants.

primarily expressed during the early months of the program and during times when the County's COVID-tier restrictions changed rapidly.

In terms of geography, the majority of Flex Streets parklets and street closures are located in Downtown, Uptown, and North Oakland.<sup>5</sup> However, Flex Streets license agreements of public land has facilitated outdoor markets outside of these areas, such as AKOMA market in East Oakland and vending pilots at Lake Merritt. In terms of demographics, the majority of the 2020 Flex Streets Applicant survey respondents identified as White, followed by Asian and then Latinx. Staff did not survey the demographics of businesses' employees impacted by the Flex Streets program.

Businesses located in Priority Neighborhoods shared a common concern that traffic safety along busy or dangerous streets as well as higher COVID-19 case rates discouraged businesses from participating in the program. Many Priority Neighborhood CBOs shared that their primary focus was to support health-based programs and to increase access and awareness about food distribution, testing and vaccination sites and that they lacked bandwidth to also provide business support. Incidentally, many of these CBOs partnered with the City to provide pop-up food distribution, testing and vaccination sites on City right-of-ways and properties using streamlined administrative tools identical to the Flex Streets program.

To better understand the impact of Flex Streets on the general public, staff also made surveys available via SMS-based text messaging and QR codes in areas near parklets and street closures. Survey respondents expressed a mixture of positive and negative feedback, with negative feedback focused on excessive noise, obstruction of bike lanes, and concerns regarding close proximity to vehicles and people not wearing face coverings.

## **ANALYSIS AND POLICY ALTERNATIVES**

### *Staff Recommends Extension of Flex Streets through March 31, 2022*

As described above, 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. Even if local and state public health orders ease restrictions on indoor activities this year, staff recommends extending Flex Streets through March 2022 to allow these businesses to continue to recover from the hardships of the past year by maintaining the larger footprint for serving customers available for businesses under Flex Streets. Furthermore, establishing the March 2022 sunset date for Flex Streets provides businesses and the public with clarity upon which to make investments and advocate for Flex Streets related policies.

Staff also recommends this extension to afford the City time to analyze the various impacts of Flex Streets, positive and negative alike, and identify what adjustments need to be made if Flex Streets were to continue beyond March 2022. While Flex Streets has streamlined permitting

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<sup>5</sup> For a map of parklets, sidewalk cafes and street closures visit:  
<https://oakgis.maps.arcgis.com/home/webmap/viewer.html?webmap=f8b30e3e36924ead83960173e556146f>

processes, transformed City streets, and supported economic development, Flex Streets has also introduced questions that require further analysis and discussion. Some of these questions are outlined below:

- What is the best use of curb space adjacent to restaurants and retailers?
- How can we ensure that all areas of Oakland have outdoor spaces available for local businesses without fear of traffic collisions?
- What are the tradeoffs of streamlining permitting processes?
- Are fees needed to ensure sufficient staff capacity to administer the program?
- Should fee exemptions or fee reductions exist and if so for whom?
- How should nuisance issues such as noise associated with late-night businesses be addressed?
- How can we ensure equal access to public space while providing additional space for private business operations on public right-of-ways?

An extension of Flex Streets through March 31, 2022 will both offer time to explore these questions and provide an end date to ensure that the policies developed during the local emergency only extend beyond the local emergency to the extent they are needed.

#### *Alternative Recommendations*

##### *A. Allow Flex Streets Program to Expire at End of Local Emergency*

If the City Council takes no action, Flex Streets will sunset one month after the expiration of the Local Emergency per City Administrator Emergency Order No. 4. This would revert all permitting processes at the end of the local emergency back to status quo before the pandemic. This would require all businesses to reapply for minor or major encroachment permits if they choose to continue their use of any public right-of-ways or remove their structures and other property entirely. The drawbacks to this approach are many: 1) it eliminates businesses' ability to generate additional revenue during the recovery period; 2) it fails to take advantage of any of the learnings and benefits of Flex Streets, such as streamlined permitting and supporting businesses as they recover from pandemic-related public health restrictions and 3) if a high number of businesses choose to reapply under the former encroachment programs, staff workloads could be overwhelmed and cause significant delay in review and approvals.

##### *B. Make Flex Streets Program Permanent*

On the other end of the spectrum, City Council could adopt legislation to make Flex Streets permanent. This approach would continue both the positive and negative aspects of Flex Streets indefinitely. One of the downsides of this approach includes the lack of funding to support staff costs involved in various permitting functions, which in turn limit staff's ability to effectively monitor the uses of sidewalks, parking lanes and streets. Alternatively, the permitting efficiencies established by Flex Streets would remain as would the public spaces people reclaimed from vehicles.

*C. Extend Flex Streets To An Alternative Date*

A third alternative City Council could explore is extending Flex Streets to a date other than March 31, 2022. In selecting an alternative date, staff recommends the City Council consider the following factors: the anticipated end of the local emergency, the time needed for restaurants and retailers to recover from the economic impact of COVID-19, the staff time needed to analyze Flex Streets' current program and propose adjustments such as fees and fee waiver/reduction policies, holiday interruptions, and the warm weather months in which outdoor spaces are most beneficial.

**FISCAL IMPACT**

As noted in the report, Flex Streets is a free permitting program and thus the City does not receive any fee revenue to cover the costs incurred by staff administering, monitoring, or enforcing Flex Streets. Furthermore, the parking spaces utilized by parklets and street closures are made inaccessible to vehicles, which results in lost parking revenue. On the other hand, Flex Streets increases business and sales tax revenues by expanding the footprint of local businesses and survey data has shown that Flex Streets has enabled businesses to employ staff. Also, repurposing a public parking space may not lead to revenue loss as a motorist may find an alternative available metered space in the commercial district.

To illustrate the costs and benefits playing out citywide, consider following scenario. A parking space roughly nets \$13 per day (six days per week) to the City, taking into consideration City operational costs and less than one-hundred percent occupancy. That parking space operating as restaurant space with eight seats that are used three times per day with \$20 spent on average for each use would generate \$480 per day. General taxes on that activity would be around \$100, specific sales taxes would be \$46.80 (9.75% x \$480). Around two percent of sales taxes (one percent local share and one percent for transportation) flow directly to the City. In addition, 0.12 percent of gross receipts from retail businesses are collected for the City.

Staff anticipates bringing a detailed policy proposal with a fiscal analysis at the end of the extension period. However, at this time, staff believes the benefits, particularly to our small business owners and their employees, have outweighed the costs to date.

**PUBLIC OUTREACH / INTEREST**

Staff has engaged in various forms of public outreach during Flex Streets. For example, at the inception of Flex Streets, staff went door to door visiting businesses in areas disproportionately impacted by COVID-19 making them aware of the program as well as public health requirements. Staff has also been in contact with BIDs, Chambers of Commerce, and community organizations. Furthermore, staff has made surveys available to Flex Streets applicants and members of the public to receive feedback on Flex Streets. Nearly 8,000 unique visitors have browsed the Flex Streets webpage.

Staff also presented this report to the Mayor's Commission on Persons With Disabilities (MCPD) on May 17, 2021 and the City's Planning Commission on May 19, 2021 to gather additional feedback on the proposed extension of Flex Streets. The MCPD expressed general support while noting accessibility concerns within parklets. The Planning Commission offered additional support for Flex Streets and voted to extend Flex Streets until December 31, 2022, expand the uses allowed under Flex Streets, and to study whether Flex Streets can be adopted by the City as a pilot program.

### **COORDINATION**

Flex Streets is the product of an interdepartmental team consisting of members of the City Administrator's Office, the Office of the Mayor, the Economic and Workforce Development Department, the Department of Race and Equity, the Department of Transportation, the Fire Prevention Bureau of the Oakland Fire Department, the Oakland Police Department, the Planning and Building Department, and the Office of the City Attorney.

This report and the ordinance have been reviewed for form and legality by the Office of the City Attorney, the Budget Bureau, the Department of Transportation and the Department of Economic and Workforce Development.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Establishing efficient and free permitting processes that allow businesses to expand their footprint until March 2022 will allow businesses to recover from the COVID-19 pandemic, increase sales and keep their staff employed.

***Environmental:*** Extending the Flex Streets program until March 2022, continues to encourage walking and discourage vehicle usage, thereby reducing greenhouse gas emissions.

***Race and Equity:*** One of the goals of the program is to ensure and advance racial equity by supporting local businesses and their employees as they emerge from the pandemic, and in so doing, improve economic security for all Oaklanders.



**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Adding Chapter 8.62, Section 5.51.150, Section 12.08.250, And Section 17.07.060(C) Of The Oakland Municipal Code 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; And Adopt Appropriate California Environmental Quality Act (CEQA) Findings

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



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GREG MINOR  
Assistant to the City Administrator

Attachments (2):

- Attachment A:** The Flex Streets Ordinance
- Attachment B:** 2020 Flex Streets Applicant Survey