

Case File Number PLN20153

May 19, 2021

<b>Location:</b>	Citywide
<b>Proposal:</b>	<b>Proposal to add Oakland Municipal Code (O.M.C.) Section 17.07.060(B). to the Oakland Planning Code to expand restaurant, retail, and café temporary uses in outdoor private spaces as part of Oakland’s “Flex Streets” Program, with a sunset date of March 31, 2022, to encourage healthy outdoor use of restaurant, retail, and café businesses in Oakland.</b>
<b>Applicant:</b>	City of Oakland
<b>Case File Number:</b>	ZA21012
<b>General Plan:</b>	Citywide
<b>Zoning:</b>	Citywide
<b>Environmental Determination:</b>	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).
<b>City Council District:</b>	Citywide
<b>Historic Status:</b>	Citywide
<b>Actions to be Taken:</b>	Recommendation to the City Council; Final decision by City Council
<b>Staff Recommendation:</b>	That the Planning Commission recommend approval to the City Council
<b>Finality of Decision:</b>	Final decision by City Council
<b>For Further Information:</b>	Contact Deputy Director Ed Manasse at 510-238-7733 or <a href="mailto:emanasse@oaklandca.gov">emanasse@oaklandca.gov</a>

**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). 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 approved retail uses and restaurants to retain employees, generate tax revenue, and activate City streets during a challenging economic period.

With the state of California easing COVID-19 restrictions on indoor activities and businesses unclear about next steps, staff requests that the Planning Commission recommend to the City Council the adoption of Planning Code amendments that authorize an extension of the Flex Streets Program, which includes facilitating the use of outdoor private spaces, to March 31, 2022, unless further extended by City Council. This will provide businesses with certainty and an opportunity to continue to recover through the use of Flex Streets. Furthermore, this extension offers the City time to evaluate what aspects of the Flex Streets Program 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, 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 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 the summer of 2020, in anticipation of Alameda County’s allowance of outdoor dining and retail, the City Administration assembled an interdepartmental team to equitably and swiftly assist these dining and retail businesses to operate safely in the public right-of-way. This work culminated in City Administrator Emergency Order No. 4, which established the Flex Streets Program that provided 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 businesses to operate within a variety of outdoor spaces 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 operating a sidewalk café or installing 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, including the Oakland Dept. of Transportation (OakDOT), Planning and Building Dept. (PBD), Oakland Fire Dept. (OFD), and Economic Workforce and Development Dept. (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 Dept. (OPD) to close a street for special events, but this was limited to no more than twice per year and for no longer than three days per year. While effective for occasional street festivals, these restrictions were too limiting in the context of COVID-19’s restrictions on indoor activities and resulting need for businesses to operate safely outdoors. Finally, before Flex Streets,

mobile 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.

**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 subject to limited conditions.
Parklet	Applicant applies for major encroachment permit, requiring DOT, OFD, and ultimately City Council approval 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 subject to limited conditions.
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 who meet certain Equity Criteria.
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 with limited conditions.
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.

*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 100 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 13 street closures, 14 permitted private spaces, and over 40 mobile food truck permits.

**KEY ISSUES AND IMPACTS**

In order to extend the Flex Street program beyond its current Emergency Order authorization, the following amendments are proposed to both the Planning Code and Oakland Municipal Code (OMC) that will allow the Flex Street program to continue until March 31, 2022. The City Administrator may return to City Council to extend the term of these legislative amendments beyond March 31, 2022 if the requirements and provisions in these regulations are found to broadly serve the public health, safety and welfare beyond March 31, 2022.

**I. Proposed Addition of Chapter 8.62 of the Oakland Municipal Code.**

The proposed new Oakland Municipal Code (OMC) Chapter 8.62 would establish the regulations and procedures for Temporary Permits to expand Restaurant, Retail, Café, Parklet, and Mobile Food Vending temporary uses of outdoor private spaces and public rights-of-way until March 31, 2022. The Planning Commission is not being asked to make a recommendation on this portion of the Flex Streets proposal as these elements of the program are outside of the purview of Title 17 (Oakland Planning Code), but they are described below and in the above chart to provide background information.

As is relevant here, provisions in OMC Chapter 8.62 would temporarily supersede and replace any conflicting provisions of the Oakland Planning Code (Title 17).

In addition, provisions in OMC Chapter 8.62 would permit 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. 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 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.

**II. Proposed Addition of Oakland Planning Code Section 17.07.060.B.**

In order to clarify the superseding authority of the proposed new OMC Chapter 8.62 over any conflicting provisions in the Oakland Planning Code (Title 17), Section 17.07.060.B is proposed to be added to the Planning Code and would read as follows:

B. 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 March 31, 2022, unless further extended by City Council, to facilitate the expansion of Sidewalk Cafes 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 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, unless further extended by City Council.

This proposed amendment to the Planning Code would only be in effect as long as the Flex Street program is also authorized. The superseding authority it provides to OMC Chapter 8.62 in relation to the permitting of sidewalk cafes and the temporary suspension of parking requirements for retail and restaurant activities will allow the city to continue to quickly and efficiently approve the temporary use of private parking lots for outdoor dining and retail sales until March 31, 2022, as it has already been doing since June 19, 2020 under the City Administrator’s Order authorizing the Flex Streets program.

*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 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 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 rights-of-way?

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.

**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 and community organizations. Furthermore, staff has made surveys available to Flex Streets applicants and members of the public to receive feedback on Flex Streets.

**COORDINATION**

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

**ENVIRONMENTAL DETERMINATION**

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); 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).

**RECOMMENDATIONS**

Based on the analysis contained in this report, staff believes that the proposed Planning Code amendment that is included as part of the Oakland Flex Streets Program is an appropriate regulatory change that will further the overall objectives of the Oakland General Plan. Thus, staff requests that the Commission:

1. Recommend that the City Council affirm staff's CEQA determination; and
2. Recommend to the City Council that they adopt an ordinance adding Section 17.07.060(B) to the Oakland Planning Code to expand Restaurant, Retail and Café temporary uses of outdoor private spaces (Oakland Flex Streets Program) until March 31, 2022 to encourage healthy outdoor use and enjoyment of businesses

Prepared by:



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GREG MINOR  
Assistant to the City Administrator

Reviewed by:



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EDWARD MANASSE  
Deputy Director, Bureau of Planning

**ATTACHMENTS:**

- A. Planning Code Amendments

**ATTACHMENT A:**

**PLANNING CODE AMENDMENTS**

**Proposed Addition of Oakland Planning Code Section 17.07.060.B.**

Oakland Planning Code Section 17.07.060.B is proposed to be added to read as follows: (Additions to the Oakland Planning Code are shown as underline and omissions are shown as ~~strikethrough~~)

**17.07.060 Conformity with zoning regulations required.**

Except as otherwise allowed by Subsection A. below, Section 17.114.030 and by the Nonconforming Use regulations in Chapter 17.114, or as authorized under Section 17.138.015, the Development Agreement procedure in Chapter 17.138, or the Variance procedure in Chapter 17.148, no activities or facilities shall be established, substituted, expanded, constructed, altered, moved, maintained, or otherwise changed, and no lot lines shall be created or changed, except in conformity to the zoning regulations.

- A. Notwithstanding any contrary provisions in the zoning regulations or the Land Use and Transportation Element of the General Plan, for the duration of a state of emergency or local emergency (defined in California Government Code § 8558) or a shelter crisis (defined in Government Code §§ 8698.1 et seq.) declared by the City Council, Emergency Shelter Residential Activities, as defined in Section 17.10.118 of the Oakland Planning Code, and Emergency Housing and Emergency Housing Facilities, as defined in Section 15.04.3.2400 of the Oakland Building Code, shall be permitted by right with no discretionary approvals, including design review, on all properties owned or leased by the City that are designated by the City Administrator for use as temporary emergency housing sites. Facilities under this Subsection must meet the standards codified in Section 15.04.3.2400 of the Oakland Building Code, as may be amended. An informational report will be submitted to Planning Commission and City Council within ninety (90) days of the commencement of operation of each temporary emergency housing site authorized under this section. After the expiration of a declaration of a state of emergency, local emergency, or shelter crisis, all temporary uses permitted by this Section must be removed within ninety (90) days unless approved for continued use in conformity to the zoning regulations.
- B. 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 March 31, 2022, unless further extended by City Council, to facilitate the expansion of Sidewalk Cafes 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 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, unless further extended by City Council.