

DISTRIBUTION DATE: June 19, 2020



## *MEMORANDUM*

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**TO:** HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Alexa Jeffress  
Director, Department of  
Economic and Workforce  
Development

And

Ryan Russo  
Director, Department of  
Transportation

And

William Gilchrist  
Director, Department of  
Planning and Building

And

Greg Minor  
Assistant to the City  
Administrator

**SUBJECT:** Flex Streets Program  
Streamlining Business' Use of Outdoor  
Spaces and the Public Right of Way  
During the Covid-19 Local Emergency

**DATE:** June 19, 2020

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City Administrator  
Approval

A handwritten signature in black ink, appearing to be "Greg Minor".

Date  
June 19, 2020

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### INFORMATION

#### EXECUTIVE SUMMARY

The Covid-19 pandemic and resulting Alameda County Health Shelter In Place Orders that limit physical interactions and restrict many activities have hurt Oakland restaurants, cafe and retail

businesses by requiring them to close or limit their business operations. These restrictions have had a significant negative economic impact on Oakland's small businesses, with many seeing sharp declines in revenues and layoffs of workers. The Health Orders have also decreased tax revenues used to support city services.

Alameda County's Department of Public Health recently announced that outdoor dining and outdoor retail may begin on June 19th. This change will allow businesses to increase the footprint of their businesses by using outdoor space, providing businesses an option to safely increase business activity and revenue.

To ensure businesses can take advantage of this change to Alameda County's Health Order, the City Administrator has issued Emergency Order No. 4 to facilitate businesses' use of City sidewalks, streets, private outdoor spaces, and City property during the Covid-19 Local Emergency ("Flex Streets Program"). Emergency Order No. 4 is attached hereto as **Attachment A**. Specifically, the Flex Streets Program streamlines the permitting processes for the use of these spaces, while providing a free permit program that will allow businesses to quickly and safely operate in the public right-of-way, private outdoor areas, and available City property with minimal expense.

The City Administrator, under the powers conferred to him by Oakland Municipal Code (OMC) Chapter 8.50 and Article 14 of the Emergency Services Act, may establish by order the City's program for facilitating outdoor dining and retail so that it is consistent with the new Shelter In Place Order to encourage physical distancing, business protection and ease of permitting, and clearly communicated design standards for the opening of restaurants, cafes, and retail on our sidewalks and streets. Such interests serve to protect life and property and preserve peace and order in the City.

## **BACKGROUND / LEGISLATIVE HISTORY**

### *Economic Impacts of COVID-19 on Businesses*

The economic impacts of COVID-19 are being felt throughout Oakland, and Oakland's small businesses have been particularly hard hit. The Department of Economic and Workforce Development recently conducted a survey of more than 1,000 Oakland businesses about the impacts of COVID-19. Over 80% of responses were from small businesses with 10 or fewer employees, with 55 percent of business owners identifying as low- or very-low-income. Almost 70 percent reported a decline of more than 40 percent in gross receipts year-over-year for March 2020.

The surveyed businesses also accounted for 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. Unemployment insurance data for Oakland confirms the extent of job loss in Oakland. The number of weekly unemployment claims has skyrocketed in the wake of the COVID-19 crisis. The average weekly number of unemployment claims in Oakland prior to the COVID-19 crisis was 300, compared to 12,633 claims the last week of March.

Lastly, according to a recent statewide poll by the Small Business Majority, 44 percent of small businesses in California have already closed or are planning to do so in the next two months because of the impacts of the COVID-19 pandemic.

Against this backdrop, local legislative changes are needed to help businesses quickly and safely take advantage of the changes to the County's Shelter-In-Place order to allow for increased outdoor business activity and physical distancing.

### *Public Health Guidelines for Safe Business Operations During Covid-19*

In response to the Covid-19 pandemic, local, state, and federal public health agencies have issued orders and guidance to minimize the spread of infections. Although the specific orders and guidance may differ, they all encourage physical distancing and discourage indoor activities. For example, California's Department of Public Health recommends that dine-in restaurants:

- Prioritize outdoor seating and curbside pickup to minimize the cross flow of customers.
- Implement measures to ensure physical distancing of at least six feet between workers and customers.
- Discontinue seating of customers where customers cannot maintain six feet of distance from employee work and food and drink preparation areas.
- Implement peak period queuing procedures.<sup>1</sup>

In parallel with state guidance, Alameda County's Department of Public Health has issued successive Health Orders since March of this year and on June 5, 2020 Alameda County unveiled a Reopening Plan in which it provided a timeline for adjustments to its Health Orders based on local Covid-19 indicators.<sup>2</sup> On June 18, 2020, Alameda County announced that it will allow indoor and outdoor retail and outdoor dining but at reduced capacity to ensure physical distancing and with safety plans in place. Under the new Order, businesses must implement risk assessment and individual control measures, physical distancing, disinfecting and cleaning protocols, and employee training to prevent the spread of COVID-19.<sup>3</sup>

### *Current Processes for Using Private Outdoor Spaces, City Sidewalks, and Streets Not Agile*

While processes exist for businesses to utilize private outdoor spaces and City sidewalks and streets, these processes include fees and processing timelines that are not agile enough to address the large and immediate anticipated demand from businesses who will need outdoor space to physically distance their customers during the Covid-19 Local Emergency.

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<sup>1</sup> California Department of Public Health, Covid-19 Industry Guidance: Dine-In Restaurants, <https://covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf>

<sup>2</sup> Alameda County Department of Public Health Reopening Plan (6.5.20) <http://www.acphd.org/media/584319/alameda-county-covid-19-reopening-plan-english.pdf>

<sup>3</sup> <http://www.acphd.org/media/585907/press-release-2020.06.12.pdf>

For example, businesses interested in displaying merchandise on the sidewalk or featuring a sidewalk café must obtain both Planning approval and a minor encroachment permit (ENMI), which can take multiple weeks and even months to process. The encroachment permit process can be onerous for a business, and requires 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. Similarly, using the parking lane to create a parklet or other use to support outdoor business activity also requires an encroachment permit. While well-intentioned, each component of the city permit requirements can take time and delay approval of the use of the public right-of-way. In addition, the fees for ENMI permits approach \$2,000 which can be out of reach for many small businesses already hard hit by the economic impacts of the COVID-19 pandemic.

Likewise, commercial districts can apply for a short-term encroachment to close a street for special events, but this is limited to no more than twice a year and for no longer than three days a year per Oakland Municipal Code (OMC) Section 12.08.060. This works fine for occasional street festivals, but these restrictions will likely prove too limiting under the current circumstances.

#### *Current Rules for Mobile Food Vending Limit Vending Opportunities*

In 2017, the City Council adopted OMC Chapter 5.51, which outlines the time, place, and manner that mobile food vending can take place in Oakland. Since 2017, mobile food vendors and City staff have identified several challenges with OMC Chapter 5.51. For instance, OMC Chapter 5.51 limited the number of mobile food vending permits and restricted vendors to operating out of one location, which in turn required staff to evaluate applications against complicated prioritization criteria and only receive applications during limited application windows.

To improve the City's current mobile food vending program, staff personally surveyed over 100 mobile food vendors in 2019. This survey revealed that the majority of vendors are Latinx, Spanish is their preferred language, they have not attended college, and they make less than \$2,000 a month. Furthermore, most surveyed vendors recommend one City permit that enables vending from multiple locations, reduced fees, and the ability to have tables and seats at their vending location.

The State of California has already taken steps to simplify regulations for pushcart vendors through the passage of Senate Bill (SB) 946 in the fall of 2018. SB 946 limited how cities and counties can regulate and enforce regulations for vendors that operate from non-motorized conveyances on public sidewalks. Since the City can only enforce those provisions of OMC Chapter 5.51 that are not in conflict with SB 946, since the fall of 2019 the Special Activity Permits Division in the City Administrator's Office has been accepting applications and issuing permits for sidewalk mobile food vendors that allow vendors to vend from multiple locations and with no restrictions on the overall number of permits.

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**ANALYSIS AND POLICY ALTERNATIVES**

To address the economic impact of Covid-19 on public-facing businesses while slowing the spread of Covid-19 infections through physical distancing, staff have created the Flex Streets Program to streamline the processes for businesses' use of private outdoor spaces and the public right-of-way for the duration of the Covid-19 Emergency.

*Simplified Process for Using Private Outdoor Spaces, the Sidewalk and Parking Lanes*

Rather than require businesses' interested in displaying merchandise or outdoor dining on private outdoor spaces or the sidewalk and parking lanes to undergo the multi-departmental, complicated, and duplicative Planning review and ENMI process, the Flex Streets Program will allow a simpler process. This streamlined process is similar to the standard zoning worksheet process for businesses' use of private outdoor spaces and the obstruction permit process for business use of sidewalks, parking lanes and streets during the Covid-19 Emergency. These processes will still require businesses to demonstrate how they will use private outdoor spaces and the public right-of-way as well as indemnify the City for their use of public spaces, but it will minimize the time needed for the City's review. Furthermore, will provide standard designs for businesses to reference and utilize to expedite the application process for the display of merchandise or outdoor dining on the sidewalk and parking lanes. Finally, the Flex Streets Program includes no fees to ensure that it is financially accessible to as many businesses as possible.

*Updated Procedures for Full and Partial Street Closures*

The Flex Streets Program also allows businesses to physically distance their customers in street traffic lanes, provided the proposed use of a street satisfies traffic and public safety criteria. Traffic lanes offer businesses valuable real estate to extend their business operations, particularly in light of public health physical distancing requirements. That said, the use of traffic lanes for non-vehicle traffic can significantly impact neighboring businesses and traffic flow in the area. Accordingly, an interdepartmental team will review proposed street closures to ensure that emergency egress is still available, the majority of adjacent and proximate businesses support the street closure, and that alternative routes support the proposed closure.

Similar to the use of private outdoor spaces, sidewalks and parking lanes, the permitting process will be free for street closures during the Covid-19 Emergency to make this an affordable option for as many businesses as possible. The Order has also temporarily amended OMC Section 12.08.060 to provide more flexibility for businesses wishing to take advantage of street closures for physical distancing. Such amendments include extending the permitted time period for closure, removing the requirement of receiving approval of a merchant association, and removing the limit on the number of street closures in any given year.

*Streamlining the Permitting Process for Mobile Food Vending*

The Flex Streets Program also includes an expedited permitting process for mobile food vendors to help some of Oakland's smallest micro-businesses that are often owned by low-income people of color to help them operate safely during the COVID-19 Local Emergency. In turn, this will provide the public additional affordable opportunities to consume food while physically distancing from other customers. Specifically, Flex Streets removes the limit on the number of mobile food vending permits available, allows vending from multiple locations, and eliminates the mobile food vending permitting fee. Mobile food vendors must still demonstrate compliance with Alameda County Health, Fire Prevention Bureau, and Revenue Management Bureau requirements to ensure safe operations and tax compliance.

Recognizing concerns about operational conflicts with brick and mortar businesses, vendors must still maintain buffers from brick and mortar restaurants as well as other vendors, unless the restaurant provides a written waiver. This will also ensure physical distancing between customers to protect health and safety, as well as comply with American Disability Act requirements to ensure disabled persons can safely travel nearby.

*Allowing for the Use of Other City Properties*

Lastly, the Flex Streets Program authorizes businesses disproportionately impacted by Covid-19 and who cannot feasibly use streets or sidewalks near their businesses to use available City properties, such as vacant parcels, for the physical distancing of their customers. Unused City properties may serve as a good fit for businesses that lack sidewalks or adjacent streets that allow for the extension of their business operations. Given the limited supply of available City properties, only businesses located in areas identified by the Departments of Race and Equity and Economic and Workforce Development as experiencing a disparate impact of COVID -19 will be eligible for the use of City property.

**FISCAL IMPACT**

The Flex Streets Program outlines strategies to maximize economic activity under Covid-19 public health orders. While the legislation provides a free permit program that would preclude recovery of staff costs, the ability of businesses to extend their business operations onto private outdoor spaces and into the public right-of-way will increase their sales and in turn local tax revenue.

Ultimately, the Flex Streets Program will sunset at the expiration of the Covid-19 Local Emergency, unless otherwise desired by the City Council.

## **PUBLIC OUTREACH / INTEREST**

### *Public Input*

Staff has been collecting public input on these proposals in a variety of ways, and there has been widespread support for changing the permitting process and fees to allow businesses to use private outdoor spaces and the public right-of-ways to reopen and generate income, while meeting physical distance guidelines.

Staff released a survey to seek input from the business community on how streets and sidewalks could be used by impacted businesses to recover from the COVID-19 crisis. The results to date show that 79 percent of survey respondents are “very interested” in using the outdoor public right-of-way (i.e., sidewalk, curb, street, etc.) to expand their business' capacity. More than 60 percent indicated they would use the additional space for outdoor seating, about 22 percent indicated they would use this space to support physical distancing during customer pickup. Altogether, staff reached 8,600 business via phone calls, emails and social media posts with an special effort to inform diverse Chambers of Commerce and businesses located in zip codes highly impacted by COVID-19 and other racial disparities.

In addition, the recently launched Economic Advisory Recovery Council has identified the need for additional space to help businesses meet the safety requirements of reopening, and the need to streamline the permitting process and cost for outdoor use of the public right-of-way, key issues also highlighted by the survey. Similarly, staff has been in ongoing discussions with representatives from the chambers of commerce, business improvement districts and merchant groups throughout Oakland, and the need for fast and affordable permitting of café seating, outdoor dining, and parklets has been consistently voiced.

Since some commercial corridors are mixed use or adjacent to residences, City staff will also seek input from the general community in these areas about the proposed use of the public right of way.

### *Public Website and Application*

In anticipation of the County announcement that outdoor dining and outdoor retail may begin on June 19<sup>th</sup>, the City launched a comprehensive website about the Flex Streets Program, <https://www.oaklandca.gov/resources/submit-an-application-for-flex-streets>. The website includes an overview of the steps a business needs to take to use the public right of way to support their operations, as well as the new application forms to receive expedited permits.

## **COORDINATION**

This report is the result of an interdepartmental working group that included the Office of the Mayor, the City Administrator’s Office, the Department of Transportation, the Department of Economic and Workforce Development, the Department of Race and Equity, the Oakland Police

Department, the Oakland Fire Department, the Planning and Building Department, ADA Programs, and the Office of the City Attorney.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Streamlining the permitting processes for businesses' use of private outdoor spaces and the public right of way will increase local business activity and tax revenue.

***Environmental:*** Encouraging businesses' use of sidewalks and streets will reduce greenhouse gas emissions through reduced vehicle traffic.

***Race and Equity:*** Eliminating fees and minimizing City permitting barriers will enable historically marginalized communities to expand their business operations during the Covid-19 pandemic. The service industry in Oakland, in particular the food and beverage sector, employs many Oakland residents already impacted by racial disparities, which COVID-19 has exacerbated. The City's support for these small businesses might extend a needed lifeline to Oaklanders employed in this industry in a way that allows them to work, stay healthy and stay well by following the measures mandated by the County and State.



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

Respectfully submitted,



ALEXA JEFFRESS

Director, Department of Economic and Workforce Development



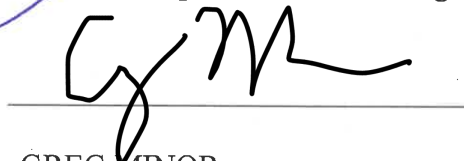
RYAN RUSSO

Director, Department of Transportation



WILLIAM GILCHRIST

Director, Department of Planning and Building



GREG MINOR

Assistant to the City Administrator

Prepared By:

Greg Minor, Kelley Kahn, and Ed Manasse