

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO (A) NEGOTIATE AND EXECUTE A LEASE AGREEMENT WITH UPTOWN FORWARD LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION, FOR THE GROUND FLOOR RESTAURANT SPACE LOCATED AT 1805 TELEGRAPH AVENUE (FOX THEATER) FOR A 3-YEAR TERM WITH THREE 5-YEAR OPTIONS AND RENT OF TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500) PER MONTH WITH A THREE PERCENT (3%) ANNUAL INCREASE FOR USE AS A COCKTAIL LOUNGE WITH FOOD SERVICE; AND (B) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the historic Fox Oakland Theater (Fox Theater) located at 1805 Telegraph Avenue is an approximately 140,000 square foot historic theater in the City of Oakland (City) Uptown neighborhood that was built in the 1920s and acquired and renovated by the Oakland Redevelopment Agency in the early 2000s; and

WHEREAS, since 2018, Emporium Oakland LLC (Emporium) has leased an approximately 4,503 square feet of interior space and 444 square feet of exterior patio space (Premises) in the Fox Theater for use as a restaurant, bar, and arcade; and

WHEREAS, on December 15, 2020, the Oakland Redevelopment Successor Agency (ORSA) authorized transfer of ownership of the Fox Theater by grant deed to the City of Oakland pursuant to Ordinance No. 13629 C.M.S.; and

WHEREAS, on December 15, 2020, the Fox Oakland Theater, Inc. (FOT) assigned its interests in subleases with Emporium, the Oakland School for the Arts, and GASS Entertainment, LLC, to the City pursuant to Ordinance No. 13630 C.M.S.; and

WHEREAS, on June 14, 2021, the lease with Emporium was amended to extend the term to August 31, 2026 pursuant to Emporium's option to exercise a five-year extension pursuant to the existing lease and, due to the economic impacts of the COVID-19 pandemic, to temporarily and retroactively reduce the base rent by fifty percent (50%) for the period of April 1, 2020 to March 31, 2023, pursuant to FOT Board Resolution No. 27 adopted on April 7, 2021; and

WHEREAS, on June 22, 2021, the City assumed fee ownership of the Fox Theater, including responsibility for operating and maintaining the Fox Theater and managing the three subleases with assistance of a third-party property management company; and

WHEREAS, Emporium exercised its right to terminate the lease effective April 1, 2023, and hired a broker to market the space at its expense and at no cost to the City and is willing to sell its assets, including a liquor license, to a mutually-agreeable successor tenant; and

WHEREAS, the proposed successor tenant, Uptown Forward LLC (Tenant), a California corporation, has experience in the bar and entertainment industries in Oakland and San Francisco and plans to invest approximately One Hundred Thirty Thousand Dollars (\$130,000) in tenant improvements to the Premises, including interior renovations to the bar, bathrooms, and flooring; and

WHEREAS, the Tenant proposes to use the Premises as an elevated cocktail lounge with food and wine and plans to include daytime food service through third-party partnerships to maximize activation of the Premises and contribute to the revitalization of the Downtown and Uptown neighborhoods to pre-pandemic levels; and

WHEREAS, the City desires to negotiate and execute a lease agreement with the Tenant for an initial 3-year term with a rent abatement period of five (5) months to permit the tenant to make improvements to the premises and three 5-year options to extend for a total of eighteen (18) years for a fair market rent of Ten Thousand Five Hundred Dollars (\$10,500) per month, subject to an annual escalation of Three Percent (3%); and

WHEREAS, all leases of City-owned real property by the City for longer than one year must be authorized by an ordinance enacted by the City Council pursuant to Section 219(6) of the Charter and Oakland Municipal Code Section (OMC) 2.42.100; and

WHEREAS, pursuant to OMC Section 2.42.110, real property must be leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market rental value; and

WHEREAS, the City desires to enter into a lease amendment with the Foundation in accordance with these terms; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Administrator is hereby authorized to negotiate and execute a lease with Uptown Forward LLC, a California limited liability corporation, for the leasing of an approximately 4,503 square foot interior space and 444 square foot exterior patio space located at 1805 Telegraph Avenue for an initial term of three (3) years with a rent abatement period of five (5) months to permit the tenant to make improvements to the premises, and three (3) five-year options and rent of Ten Thousand Five Hundred Dollars (\$10,500) per month subject to annual escalations of Three Percent (3%) throughout the term for use as a cocktail lounge with food service.

SECTION 2. That funds collected from the tenant will be placed in the Central District TA Bonds Series 2006T Fund (5614), Real Estate Organization (85231), Miscellaneous Rental Revenue Account (44419), Fox Theater Capital Project (1005784), Real Estate Program (PS32) and used to pay for costs associated with the Fox Theater.

SECTION 3. The City Council hereby authorizes the City Administrator, without returning to City Council, to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing document that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (b) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate and consummate the transactions in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 4. The lease agreement and any other documents necessary for the leasing of the property shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 5. The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines that this action complies with the California Environmental Quality Act (CEQA) because this action on the part of the City is exempt from CEQA pursuant to Section 15301 (existing facilities).

SECTION 6. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 7. 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 Chapter. 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 8. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, 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

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO (A) NEGOTIATE AND EXECUTE A LEASE AGREEMENT WITH UPTOWN FORWARD LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION, FOR THE GROUND FLOOR RESTAURANT SPACE LOCATED AT 1805 TELEGRAPH AVENUE (FOX THEATER) FOR A 3-YEAR TERM OF THREE YEARS WITH THREE 5-YEAR OPTIONS AND RENT OF TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500) PER MONTH WITH A THREE PERCENT (3%) ANNUAL INCREASE FOR USE AS A COCKTAIL LOUNGE WITH FOOD SERVICE; AND (B) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

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