



AGENDA REPORT

TO: Steven Falk,
Interim City Administrator

FROM: Sofia Navarro
Interim Director of
Economic & Workforce
Development

SUBJECT: Extended rent reduction for Oakland
School for the Arts at the Fox Theater

DATE: March 22, 2023

City Administrator Approval

Date:

Mar 29, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance (1) Authorizing a Lease Amendment Between The City Of Oakland And The Oakland School For The Arts (OSA) For Approximately 62,910 Square Foot Located On The 2nd And 3rd Floors At 1805 Telegraph Avenue (Fox Theater) To Extend the Reduced Rental Rate Of Forty-Seven Thousand Twenty-Five Dollars (\$47,025) Per Month Through June 30, 2026; (2) Making Findings That The Lease Amendment For Below Fair Market Value Is In The Best Interest Of The City; And (3) Making Appropriate California Environmental Quality Act Findings

EXECUTIVE SUMMARY

The Oakland School for the Arts (OSA) is a public charter school housed in the historic, City-owned Fox Oakland Theater (Fox Theater) on Telegraph Avenue in the Uptown neighborhood in the City of Oakland (City). It serves over 800 students in grades 6-12 through an immersive arts program and is a critical contributor to both Oakland's arts and culture sector and the vitality and economic health of the Uptown neighborhood. The proposed ordinance would authorize an amendment to OSA's lease to extend an existing rent reduction through the end of OSA's existing lease term, which ends on June 30, 2026.

BACKGROUND / LEGISLATIVE HISTORY

The Fox Theater is an approximately 140,000 square foot historic theater in Oakland's Uptown neighborhood that was built in the 1920s and acquired and renovated by the Oakland Redevelopment Agency in the early 2000s. It houses three tenants: GASS, Inc., an affiliate of Another Planet Entertainment, which operates the performing arts venue; Oakland School for the Arts, a grade 6-12 public charter school serving over 800 students through an immersive arts program; and the Emporium Arcade Bar (Emporium). The Fox Theater and its tenants,

particularly OSA, are critical components of Oakland's arts and culture sector and are significant contributors to the vitality and economic health of the Uptown neighborhood.

In 2006, OSA executed a lease (Lease) with the City-affiliated non-profit Fox Oakland Theater, Inc. (FOT) as the then master tenant of the Fox Theater and landlord for approximately 62,910 square feet of the Fox Theater (Premises) for a public charter school. Base rent under the Lease was \$71,250 per month until June 30, 2016 and \$78,375 thereafter through the Lease term ending June 30, 2021.

On June 22, 2021, the Oakland Redevelopment Successor Agency (ORSA) transferred fee ownership of the Fox Theater by grant deed to the City pursuant to [Ordinance No. 13629 C.M.S.](#) This acquisition is subject to the existing subleases with the three tenants pursuant to [Ordinance No. 13630 C.M.S.](#)

OSA's base rent under the Lease has been paid in its entirety by revenue generated from a double-sided digital billboard (Billboard Revenue) on the Port of Oakland property at the eastern approach of the San Francisco – Oakland Bay Bridge pursuant to an agreement (Pledge Agreement) executed in 2006 between OSA, CBS Outdoor, Inc. (CBS), and Oakland Renaissance NMTTC, Inc. (Renaissance), an entity created by the Oakland Redevelopment Agency for the redevelopment of the Fox Theater. Under the Lease, OSA is obligated to make up any difference if the Billboard Revenue falls short of OSA's base rent obligations under the Lease or if the Pledge Agreement is terminated. The City is the successor to Renaissance and Outfront Media is the successor to CBS under the Pledge Agreement.

The amount of Billboard Revenue has declined over time as additional billboards have been developed in the vicinity such that since 2013 the Billboard Revenue has been insufficient to cover all of OSA's base rent obligations under the Lease. A prepaid rent balance from excess Billboard Revenue made up the difference of that shortfall until June 2021 when the prepaid balance was exhausted. At that point OSA would have had to come out of pocket by up \$47,750 per month to make up the Billboard Revenue shortfall.

On June 7, 2021 FOT amended the Lease (First Lease Amendment) to do two things: (a) extend the lease term by two (2) years to June 30, 2023 with one 3-year option to renew to June 30, 2026; and (b) temporarily reduce the base rent of \$78,375 per month by 40 percent to \$47,025 per month for the period of July 1, 2021 to June 30, 2023. This rent reduction allowed the Billboard Revenue to resume fully covering OSA's base rent obligations so that OSA's limited funds could be focused on school operations, which costs are higher than comparable public charter schools because of OSA's unique immersive arts curriculum.

It is expected that the Billboard Revenue will continue to be insufficient to meet all of OSA's base rent obligations when the base rent reverts back to \$78,375 per month on July 1, 2023 pursuant to the First Amendment. OSA's obligation to then begin supplementing the Billboard Revenue will make it difficult for OSA to sustain its tenancy at the Fox Theater.

The City relies on the rent collected from the tenants of the Fox Theater to sustain the Fox Theater, including capital improvements. Financial modeling indicates that the City can sustain continuation of OSA's temporary rent reduction through the amended Lease term ending June 30, 2026.

Both OSA's Lease and the Pledge Agreement expire in 2026. To continue OSA's tenancy thereafter, the Lease will need to be further extended and a source of revenue will be needed to meet OSA's base rent obligations and support the Fox Theater.

ANALYSIS AND POLICY ALTERNATIVES

The proposed ordinance would allow OSA to continue its tenancy at the Fox Theater through the end of the Lease term on June 30, 2026 by continuing an existing rent reduction.

Because of the Pledge Agreement and the rent reduction under the First Lease Amendment, OSA has not had to pay out-of-pocket to cover its base rent obligations as tenant at the Fox Theater (although OSA does pay for common area maintenance fees of approximately \$5,000 per month to support the facility). This arrangement has become essential to OSA's financial and operating model and its ability to remain in the Fox Theater. The proposed ordinance would continue the rent reduction through the end of OSA's Lease term in June 2026.

The fair market rental value of the Premises is estimated at approximately \$141,548 or \$2.25 per square foot per month. Absent the temporary rent reduction, the base rent under the Lease of \$78,375 or \$1.25 per square foot per month is approximately 45 percent below the fair market rental value for the Premises. The temporary rent reduction to \$47,025 or \$0.75 per square foot per month is approximately 67 percent less than the fair market rental value.

The below-market rent is offset by the contributions and value of OSA to the Fox Theater and Oakland more broadly. As a long-term anchor tenant at the Fox Theater, OSA has helped stabilize the building and brought consistent activity and vitality to Downtown Oakland, particularly as Downtown has continued to recover from the pandemic. In addition, OSA serves a diverse student body, with nearly 65 percent of its students identifying as people of color. To further increase its diversity and ensure it serves low-income youth, OSA recently implemented a lottery system and launched its [Step It Up program](#), which helps prepare Black, Indigenous and People of Color (BIPOC) youth from Title 1 schools for OSA, providing free artistic preparation. Finally, OSA has long been a critical contributor to Oakland's arts and culture community, collaborating with arts organizations and arts and culture events throughout the City.

While the City relies on the rent paid by tenants of the Fox Theater to sustain this real property asset, staff within the City's Economic and Workforce Development Department (EWDD) completed a detailed analysis of financial projections for the Fox Theater and concluded that the City can sustain a continuation of OSA's temporary rent reduction through the Lease term ending June 30, 2026. The analysis showed that even with the reduction, the City should be able to continue to cover expenses related to the Fox Theater, including contributing modestly to the Fox Theater capital reserve.

The proposed ordinance would allow OSA to continue operations without a major disruption and would preserve OSA as an anchor tenant at the Fox Theater. It would also make it financially feasible for OSA to improve and use the City-owned vacant lot adjacent to the Fox Theater at 1911 Telegraph as outdoor space for the school until the site is otherwise ready for

development, which staff is concurrently bringing to City Council for consideration. This would be beneficial to OSA, the City and the neighborhood.

The proposed action would not solve the larger fiscal cliff facing OSA and the City at the end of lease term in June 2026. The Pledge Agreement which commits Billboard Revenue toward OSA's rent also expires at that time and continuing OSA's tenancy at the Fox Theater will require a successor financial plan to provide rent that is critical to sustaining the Fox Theater. For the remainder of the Lease term, staff will continue to work with OSA and potentially other partners to identify solutions to this challenge.

Alternatively, the City could choose not to continue the temporary rent reduction at all or at the full 40 percent level. This would increase revenues to the City to cover Fox Theater expenses by up to \$31,350 per month or \$376,200 per year. However, the City does not need this additional revenue at this time to sustain Fox Theater operations. Not continuing the rent reduction would stress OSA finances, compromise its ability to remain in the Fox Theater, and force OSA to consider alternative locations for the school, perhaps outside of Downtown. Staff does not recommend this alternative.

Approval of the recommended action would advance the Citywide priority of **housing, economic, and cultural security** by allowing the Oakland School for the Arts to remain in Downtown Oakland, contributing to the economic health of the area, as well as supporting the City's arts and culture sector.

FISCAL IMPACT

The proposed ordinance would continue the fiscal status quo for the Fox Theater. The cost to the City of the proposed ordinance could be up to (but would not exceed) \$1.13 million in foregone rent revenues from July 2023 through June 2026, although the amount foregone will depend on the actual amount of Billboard Revenue received under the Pledge Agreement. However, staff's analysis shows that even with the reduction, the City should be able to continue to cover Fox Theater operating expenses and still contribute to the Fox Theater capital reserve. OSA's base rent would continue to be deposited in 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.

PUBLIC OUTREACH / INTEREST

The proposed ordinance will be heard at public meetings of the City Council's Community and Economic Development Committee and the full City Council and will be publicly noticed consistent with standard City Council public noticing provisions.

COORDINATION

This report was prepared by the EWDD's Real Estate Division and reviewed by the Office of the City Attorney and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed lease would ensure that OSA is able to remain a tenant at the Fox Theater. The schools over 800 students and additional staff are a visible, stabilizing presence in the Uptown neighborhood and serve as customers for area businesses, particularly during the lunch hour.

Environmental: The proposed lease would continue an existing use and is not expected to have negative environmental impacts. To the contrary, it would help to sustain a walkable, transit-rich neighborhood.

Race & Equity: The proposed lease would preserve a visible, stabilizing presence in a neighborhood identified as "High Priority" according to the Oakland Department of Transportation Geographic Equity Toolbox, where 72 percent of residents are people of color and 52 percent are low income. Nearly 65 percent of OSA's student body identifies as Black, Indigenous or Person of Color.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of this legislation will not result in any major changes to the space and therefore this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (existing facilities).

ACTION REQUESTED OF THE CITY COUNCIL

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For questions regarding this report, please contact Brendan Moriarty, Real Property Asset Manager, at (510) 238-6354.

Respectfully submitted,



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