

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 13734 C.M.S. TO:
(1) AUTHORIZE A LEASE AMENDMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND SCHOOL FOR THE ARTS (OSA) TO ADD THE 4,503 SQUARE FOOT GROUND FLOOR FORMER RESTAURANT SPACE AT 1805 TELEGRAPH AVENUE (FOX THEATER) FOR IMPROVEMENT AND USE AS A RETAIL STORE, ART GALLERY, AND RADIO STATION AT A RATE OF TWO THOUSAND SIX HUNDRED EIGHTY SEVEN DOLLARS AND FIFTY CENTS (\$2,687.50) PER MONTH UNTIL JUNE 30, 2025 AND THEN FOUR THOUSAND THREE HUNDRED SEVENTY SEVEN DOLLARS AND TWENTY FIVE CENTS (\$4,377.25) 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

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 was acquired and renovated by the Oakland Redevelopment Agency in the early 2000s; and

WHEREAS, the Oakland School for the Arts (OSA) executed a lease (OSA 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 to operate a public charter school; and

WHEREAS, OSA is a public charter school founded in 2002 serving over 800 students in grades 6-12 tuition-free. OSA serves students across the Bay Area and 72 percent of students are residents of the City; and

WHEREAS, in August 2018, Emporium Oakland LLC (Emporium) executed a lease with FOT to operate a restaurant, bar and arcade in an approximately 4,503-square foot ground floor restaurant space with 444 square feet of exterior patio space (Ground Floor Premises) in the Fox Theater’s southeast corner at the intersection of Telegraph Avenue and 18th Street. Emporium exercised its right to terminate this lease effective April 1, 2023, and has vacated the premises; and

WHEREAS, on June 22, 2021, the Oakland Redevelopment Successor Agency (ORSA) transferred fee ownership of the Fox Theater by grant deed to the City of Oakland pursuant to Ordinance No. 13629 C.M.S.; and

WHEREAS, the City acquired the Fox Theater subject to subleases with the existing tenants at the Fox Theater, including OSA and Emporium, pursuant to Ordinance No. 13630 C.M.S.; and

WHEREAS, on May 2, 2023, City Council authorized a lease of the Ground Floor Premises to Uptown Forward LLC (Uptown Forward) for use as a cocktail lounge with food service for Ten Thousand Five Hundred Dollars (\$10,500) per month pursuant to Ordinance No. 13735 C.M.S. Uptown Forward was subsequently unable to agree to lease terms with the City and no such lease was executed; and

WHEREAS, on May 2, 2023, City Council authorized an amendment to the OSA Lease to extend the then existing, below market rental rate of Forty-Seven Thousand Twenty-Five Dollars (\$47,025) per month through the end of the lease term on June 30, 2026, pursuant to Ordinance No. 13734 C.M.S.; and

WHEREAS, on July 1, 2023, pursuant to Ordinance No. 13736 C.M.S., OSA entered into a license agreement with the City to improve and utilize the City-owned vacant lot across the street from the Fox Theater at 1911 Telegraph as an outdoor recreation area for an initial three-year term with three one-year options to extend; and

WHEREAS, the Ground Floor Premises are currently vacant and the City desires to activate the property; and

WHEREAS, OSA proposes to utilize the Ground Floor Premises for a publicly accessible OSA retail merchandise store, art gallery featuring student artwork, youth-run radio station and student-run record label; and

WHEREAS, licenses or 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 Oakland Municipal Code Section (OMC) 2.42.100 and Section 219(6) of the City Charter; and

WHEREAS, the non-exclusive and temporary use of the Ground Floor Premises by OSA for community benefitting uses, does not authorize development, and thus is not a disposition of surplus property under Government Code section 54220 et seq.; and

WHEREAS, pursuant to OMC Section 2.42.110, City-owned real property must be licensed or leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market value, unless the City Council determines that the license or lease of the property for less than its fair market value is in the best interest of the City; and

WHEREAS, in the case of lessees who provide in-kind services in lieu of cash rent, the value of such in-kind services to the City or the community at large may be considered in making the required City Council finding and determination. In-kind services include benefits or values the provider renders to the City or the community at large as a result of the tenancy in lieu of payment of cash, including, but not be limited to, property security and maintenance, social and cultural benefits to the community, or other appropriate services; and

WHEREAS, the proposed temporary uses of the Ground Floor Premises as a retail store, art gallery, and radio station are not anticipated to have impacts on the Fox Theater as an historical resource and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities) and 15183 (projects consistent with General Plan and Zoning); and

WHEREAS, the City desires to enter into a lease amendment with OSA 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 third lease amendment with the Oakland School for the Arts (OSA) to add the 4,503 square foot ground floor former restaurant space and associated exterior patio space (Ground Floor Premises) at 1805 Telegraph Avenue (Fox Theater) for improvement and use as a radio station and retail store for a term through June 30, 2026, at a rate of Two Thousand Six Hundred Eight Seven Dollars and Fifty Cents (\$2,687.50) per month until June 30, 2025 and then Four Thousand Three Hundred Seventy Seven Dollars and Twenty Five Cents (\$4,377.25) per month through the end of the lease term ending June 30, 2026.

SECTION 2. That the funds collected from OSA shall be accepted and appropriated as part of the budget process in the Central District TA Bonds Series 2006T Fund (5614), Real Estate Organization (85231), Miscellaneous Rental Revenue Account (44419), Fox Theater Capital Project (1005784), Downtown Redevelopment Program (SC13) and used to pay for costs associated with the Fox Theater.

SECTION 3. The City Council finds and determines that the lease of the Ground Floor Premises to OSA for less than its fair market rental value is in the best interests of the City pursuant to OMC Section 2.42.110, because OSA is a long-term anchor tenant at the Fox Theater, stabilizing institution and source of vitality for the Uptown neighborhood, public charter school serving a majority of diverse Oakland students focused on the arts, and a critical contributor to Oakland's arts and culture sector.

SECTION 4. 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) pursuant to CEQA Guidelines sections 15301 (existing facilities) and 15183 (projects consistent with General Plan and Zoning). The City Administrator or designee is hereby directed to file a Notice of Exemption with the appropriate agencies.

SECTION 5. That the lease amendment and any other documents necessary for the leasing of the Ground Floor Premises 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 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

**AN ORDINANCE AMENDING ORDINANCE NO. 13734 C.M.S. TO:
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An Ordinance authorizing the City Administrator to negotiate and execute a lease amendment between the City of Oakland and the Oakland School for the Arts to add the 4,503 square foot ground floor former restaurant space at 1805 Telegraph Avenue known as the Fox Theater for improvement and use as a student run retail store, art gallery, and radio station at a rate of Two Thousand Six Hundred Eighty Seven Dollars and Fifty Cents (\$2,687.50) per month until June 30, 2025 and then Four Thousand Three Hundred Seventy Seven Dollars and Twenty Five Cents (\$4,377.25) per month through the end of the lease term ending June 30, 2026; and makes appropriate California Environmental Quality Act findings.