

FOX OAKLAND THEATER, INC.

a California nonprofit public benefit corporation controlled by the City of Oakland

BOARD OF DIRECTORS MEETING

July 15, 2020

10:00 a.m.

MINUTES

1. Roll call

Meeting called to order at 10:02 a.m.

Board Members present: Adam Benson (Chief Financial Officer) Betsy Lake (Director), Kelly Kahn (Director), Hui-Chang Li (Secretary), Alexa Jeffress (President).

Quorum was achieved.

Others present: Eric Simundza (staff), Brendan Moriarty (staff) and Anthony Reese (staff), Jens Hillmer (staff), and Naree Chan (legal counsel).

2. Public Comment

No speakers provided public comment.

3. Waiver of notice and consent – **Action Item**

Adam Benson made a motion for the board to waive both the 72-hour public noticing requirement of Fox Oakland Theater (FOT) board meetings and 30-day public noticing requirement for FOT bylaw amendments, and consent to the actions and transactions that occur during today's meeting. Motion was seconded by Hui-Chang Li and approved by consensus.

4. Approval of Minutes for December 2, 2019 – **Action Item**

Moved by Hui-Chang Li, seconded by Adam Benson.

5. Board appointments – **Action Item**

Hui-Chang Li moved to confirm Brendan Moriarty and Anthony Reese as members of the FOT Board of Directors; motion seconded by Betsy Lake, and approved by consensus.

6. FOT Bylaw Amendment – **Action Item**

- a. To clarify that FOT is a City-controlled entity subject to City policies and programs and further consistency with the Brown Act (Gov. Code 54950 et. seq.), the California Public Records Act (Gov. Code 6250-6270), and Chapter 2.20 of the Oakland Municipal Code.

Moved by Betsy Lake, seconded by-Hui Chang, and approved by consensus.

7. FOT Financial Status – *Update*

a. **Update on FY 18-19 Audit and taxes completed.**

Cash reserves increased between end of FY17-18 and FY18-19 from \$3.5 million to \$4.5 million, respectively. Reserves have since increased to \$5.2 million between end of FY18-19 and FY19-20. Staff noted this increase was below projections due to unreceived rent payments beginning in March 2020. After deducting payment obligations related to the ORSA asset transfer, reserves remaining for Capital Improvements for FY20-21 is anticipated to drop down to \$587,800. 77% or \$3.4 million of the one-time reserve payment is subject to the City's bond expenditure agreement and should come back to fund FOT operations.

Revenue saw a slight decrease of close to \$150,000 due to accounting clean-up regarding additional ORNMTC entities created to facilitate NMTC financing of FOT. Expenses remained stable with majority of incurrences related to interest and depreciation. FOT assets are now less than the liabilities.

b. **Fiscal Impact of COVID-19.**

Staff projected income to drop from typical yearly income to \$795,659 as a result of deferred rent payments from tenants. Annual expenses are projected to remain stable at \$582,000, which is consistent with past years. As a result, staff estimated a roughly 80% drop in NOI in comparison to normal operating years.

8. Lease Updates

a. APE Lease

i. APE Request for Rent Reduction – **Action Item**

In early June 2020, APE submitted a letter to the City/FOT requesting a waiver of CAM charges from March 2020 onward and for forgiveness of approximately \$450,000 in funds obligated to the FOT prior to COVID-related shutdown and shelter-in-place orders. Staff recommended the FOT board deny the request and to authorize staff to renegotiate lease terms and payment plan with APE. Anthony Reese moved to authorize Brendan Moriarty and himself to renegotiate a repayment plan and possible increase of terms for the APE lease; motion seconded by Alexa Jeffress and approved by consensus.

- ii. Default Notice. Staff worked with Agency Counsel to ORSA to prepare a letter to inform APE that they are in default of their lease obligation to provide OSA with use of the Fox Theater for up to 10 events per year free of charge. Sending this letter was placed on hold due to COVID-19
- iii. FOOF Loan. Staff is working with Agency Counsel to ORSA on calling a default action on the \$1.3 million Friends of Oakland Fox (FOOF) loan owed to ORSA, for which APE is guarantor.
- iv. Den Activation. In response to FOT Board direction, APE sent email in December 2019 saying they have incentivized their Sales VP to push for Den rentals/events, and she has brought in 3 since September (Cushman and Wakefield, TMC Party, Cookie's Grand Opening Party).

b. Emporium Lease

i. Request for Rent Deferral– **Action Item**

Alexa Jeffress moved to authorize Brendan Moriarty and Anthony Reese to renegotiate a repayment plan and potential extension of lease terms with Emporium; motion seconded by Hui-Chang Li and approved by consensus.

- ii. Rudy's Back Rent Loan Payment – last payment March 1, 2020. BMZ Enterprises (aka Rudy's or RCFC) pays \$2,902.96 monthly

in back rent pursuant to termination agreement – \$98,696.89 in total, amortized over 36 months at 3.75% annual interest, starting 8/1/18 and extending to 7/1/21.

1. Authorize staff to negotiate and execute a Promissory Note or similar document with BMZ Enterprises to require payment of outstanding rent starting no later than December 31, 2020, subject to an interest to be determined by staff - **Action Item**

Alexa Jeffress moved to authorize staff to negotiate and execute a promissory note or similar document with BMZ Enterprises to address repayment of outstanding rent, subject to terms to be determined by staff in negotiations; motion seconded by Hui-Chang Li and approved by consensus.

- c. OSA Lease Amendment to extend existing rent of \$940,500 per year through the end of the billboard license agreement in April 2026. OSA had its Charter renewed through June 30, 2025 but did not extend the Billboard Pledge past 2026.
 - i. Billboard Revenue (Pre-paid rent balance)

Staff provided an update that negotiations on current rent terms are still ongoing; however, staff did not receive a written request from OSA. Staff received a request from OSA staff asking for a reduction to the rent amount on the new lease that was previously authorized and directed by the FOT board.

9. Fox Theater Asset Transfer from ORSA to City/FOT – Update

- a. California Department of Finance (“DOF”) has granted “pre-approval” for staff’s proposed asset transfer and lease-leaseback transaction for the Fox Theater that results in ORSA conveying the land to the City of Oakland and terminating \$47 million in associated Redevelopment Agency loans in exchange for a one-time payment of \$4.4 million and a pledge of future payments of \$247,500 per year for 16 years. Staff is scheduling for the September 15, 2020 City Council meeting and then Oversight Board ASAP after that.

Staff provided an update to FOT board and clarified that the specifics of the transfer process will be included in the forthcoming authorizing resolution. Additionally, staff confirmed that a streamlined explanation will be included in a presentation before the Countywide Oversight

Board. Naree Chan confirmed that Sue Bloch is serving as outside counsel and manage drafting of documents related to asset transfer.

- b. Authorize execution of the following – **Action Items**
- i. Second Amendment to the Amended and Restated Development and Disposition Agreement (“DDA”) to allow the DDA between ORSA and FOT to terminate, effectively concurrently, on
 - 1. Assignment and amendment of existing Ground Lease from ORSA to the City as Landlord and FOT as Tenant for a term of 16 years and in the amount of \$1 per year subject to approval by ORSA and the City Council;
 - 2. Termination of existing Redevelopment Agency loan documents in the amount of \$47 million owed by FOT to ORSA;
 - 3. Execution of the Pledge Agreement by FOT to pay ORSA \$3.96 million or \$247,500 annually for 16 years; subject to approval by ORSA and the Oversight Board (“OSB”); and
 - 4. Transfer of \$4.4 million from FOT operating and replacement reserve to ORSA.
 - ii. Assignment of FOT Subleases with Another Planet Entertainment LLC (“APE”)-GASS Entertainment LLC, Oakland School of the Arts (“OSA”), and Emporium to the City subject to approval by the City Council
 - iii. Assignment of FOT third party contract with CCIG for property management services to the City subject to approval by the City Council
 - iv. Approval of a Leaseback Agreement for the Fox Theater Improvements by and between FOT as building owner and Lessor, and the City as Lessee for a term of 16 years and in the amount of \$247,500 per year with an option to purchase upon satisfaction of the Pledge Agreement between FOT and ORSA subject to approval by the City Council

Staff provided the FOT Board a written resolution to approve the actions required to document the proposed FOT transfer from ORSA to the City. Hui-Chang Li moved to approve the actions required to document the proposed FOT transfer from ORSA to the City, per the written resolution. Seconded by Adam Benson and approved by consensus.

10. Property Management

- a. Authorize California Capital and Investment Group (“CCIG”) Professional Services Agreement (“PSA”) Amendment No. 12 for property management and accounting services for an additional 5 months until December 31, 2020 – **Action Item**

Adam Benson moved to approve extension of the CCIG agreement. Seconded by Betsy Lake and approved by consensus.

- b. RFP for Property Management Services to replace CCIG – *Update*

Staff provide update that RFP process is still on track, and do not expect responses to the RFP until August 14, 2020.

- c. Capital Improvement Needs – Update on Waterproofing and Roof Repair

Staff received complaints from OSA and APE of water leakage from the roof. Staff stated that they are working with Public Works to provide interim fixes, but a full replacement will be ultimately necessary. Staff identified this improvement as a large expense of capital reserve funds; however, an exact figure cannot be provided at this time.

11. Next Meeting: September 14, 2020 @ 3p.m.

Alexa Jeffress clarified that the next FOT Board meeting has been rescheduled to September 15, 2020; however, this could be rescheduled again depending on when the ORSA Asset Transfer item is scheduled for City Council.

12. Other

13. Adjournment

Meeting adjourned at 11:43 a.m.


Hui-Chang Li, Secretary

Hui-Chang Li

E-signed 2020-10-15 08:43AM PDT
hli@oaklandca.gov



FOT Inc meeting minutes 07-15-20

Final Audit Report

2020-10-15

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