



Office of the City Manager

INFORMATION CALENDAR  
January 22, 2013

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Andrew Clough, Director, Public Works  
Subject: Status Report: Leases Audit: Conflicting Directives Hinder Contract Oversight

SUMMARY

On June 2, 2009 the City Auditor issued its [Leases Audit: Conflicting Directives Hinder Contract Oversight](#)<sup>1</sup>. The objective of this audit was to “determine the effectiveness of the City’s facility lease oversight.” This audit was phase one of a series on contract oversight improvements, and recommendations were directed to Public Works, as well as to the City Manager’s Office, and the Health Services, Information Technology, and Finance Departments.

The Audit Report included 24 recommendations, 17 of which are now closed: 15 implemented as recommended; 1 implemented with an alternative solution; and 1 closed after management reported they will not implement the recommendation, because after reconsideration it was determined to be neither appropriate nor realistic to implement. The status of those recommendations was reported to Council in previous information reports: the first status report on implementation of the recommendations was provided to Council in [November 2010](#)<sup>2</sup>, and the last in [July 2012](#)<sup>3</sup>. Another status report will be submitted to Council in July 2013.

CURRENT SITUATION AND ITS EFFECTS

The 7 recommendations that were outstanding in July 2012 are still underway. Public Works is reporting here on the status of these recommendations, which are all related to Administrative Regulation (AR) 6.6, and the proposed new AR 6.8 (see below for details). As previously reported, most of the implementation process has involved engagement with several departments for review, discussion, comments, content

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<sup>1</sup> Leases Audit: Conflicting Directives Hinder Contract Oversight: [www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/2009-06-02\\_Item\\_16\\_Leases\\_Audit\\_Conflicting\\_Directives\\_Hinder\\_Contract\\_Oversight.pdf](http://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/2009-06-02_Item_16_Leases_Audit_Conflicting_Directives_Hinder_Contract_Oversight.pdf)  
<sup>2</sup> November 2010 Status Report: [www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2010/11Nov/2010-11-09\\_Item\\_20\\_Status\\_Report\\_Leases\\_Audit\\_Conflicting\\_Directives\\_Hinder\\_Contract\\_Oversight.pdf](http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2010/11Nov/2010-11-09_Item_20_Status_Report_Leases_Audit_Conflicting_Directives_Hinder_Contract_Oversight.pdf)  
<sup>3</sup> July 2012 Status Report: [http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/07Jul/2012-07-10%20Item%2032%20Status%20Report%20Leases%20Audit.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2012/07Jul/2012-07-10%20Item%2032%20Status%20Report%20Leases%20Audit.pdf)

revisions and updates, and then another review cycle. Both ARs are in a final round of revisions, and the Property Management Manual has been updated to correspond to the outline of procedures. All materials are expected to be finalized and published by spring 2013.

### **Finding 1: The City's 2002 plan to centralize property and facility lease management has not been implemented**

#### **Recommendations for the City Manager and Public Works**

Recommendation 1.1: The City Manager should formalize and approve the division of responsibilities between the Public Works department and other departments regarding lease management.

**Status:** Partially Implemented. The City Manager, Public Works, City Attorney, Finance, and Parks Recreation & Waterfront (a major City renter/landlord) staff have discussed lease management and administration responsibilities, including review and revision of AR 6.6 for Real Property Transactions: Procedures for City Revenue and Expenditure Leases and License Agreements<sup>4</sup>. While AR 6.6 was expected to be finalized and published before now, along with AR 6.8, this process has taken longer than anticipated and other demands on staff time have also delayed the process. The current version of AR 6.6 is being finalized, and AR 6.8 will be completed, including review and comments, in the coming months; both ARs are anticipated to be in place by spring 2013.

Recommendation 1.2: The Public Works department should determine and formally define the role of the Real Property Administration staff given available resources.

**Status:** Partially Implemented. Roles of the Real Property Administrator, Property Management Services staff, and Project Managers are reflected in the revised AR 6.6 and new AR 6.8. Both ARs are expected to be approved and published by spring 2013.

#### **Recommendations for Public Works**

Recommendation 1.3: Develop and finalize a property management plan that documents the specific responsibilities of Public Works and of other departments for lease management.

**Status:** Partially Implemented. The Property Management Manual [plan] is updated based on revised AR 6.6 and new AR 6.8, and documents responsibilities and procedures for both Property Management Services staff and Project Managers in other departments. The Manual is pending adoption of the ARs by spring 2013.

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<sup>4</sup> Acquisition or disposal of real property will be in new AR 6.8 Real Property Transactions: Procedures for Acquisition and Disposal of Property.

Recommendation 1.4: The property management plan should be coordinated with affected City departments, including the Contract Administrator in Finance/Purchasing, before finalizing.

**Status:** Partially Implemented. The Property Management Manual is updated, based on current versions of ARs 6.6 and 6.8 for Real Property Transactions, which were developed in coordination with all affected City departments. The Manual is pending adoption of the ARs by spring 2013.

### **Recommendations for the City Manager**

Recommendation 1.5: Formally communicate the plan with all affected City departments.

**Status:** Partially Implemented. As already noted, both Public Works and other affected departments participated in the development and review of the ARs for Real Property Transactions, which are the framework of the Property Management Manual [plan]. The Manual and ARs are expected to be in place by spring 2013.

**Finding 2: City staff did not comply with City rules and regulations because the City lacks clear guidelines and simple tools for effective lease negotiations, review, approval, and oversight.**

### **Recommendations for Public Works and Finance:**

Recommendation 2.1: Administrative Regulation 6.6 and Contracts Online should be updated to give clear direction to City staff regarding administration and execution of lease agreements.

**Status:** Partially Implemented. Contracts Online lease information was previously updated, and provides direction to City staff regarding execution of lease agreements. This part of the recommendation has been implemented.

AR 6.6 Real Property Transactions: Procedures for City Revenue and Expenditure Leases and License Agreements, and new AR 6.8 Real Property Transactions: Procedures for Acquisition and Disposal of Property were expected to be finalized and published in late 2012. The ARs are now anticipated to be in place by spring 2013.

**Finding 3: There are no performance measures to document expectations of, and performance by the Real Property Administrator or departmental lease managers.**

Recommendation 3.3: Public Works should update the City's real property administration policies and procedures to align with management's expectations.

**Status:** Partially Implemented. Management's expectations are met by the updated Real Property Administration and Management policies and procedures, which are reflected in revised ARs 6.6 and 6.8, as well as in the Property Management Manual based on these ARs. The updated ARs are anticipated to be in place by spring 2013.

### BACKGROUND

Public Works is responsible for ensuring that all City real estate transactions, including expenditure and revenue lease agreements and amendments, and any real property acquisition or disposal, are conducted according to authorized regulations. In addition, Property Management Services manages City-owned property, including facilities at Aquatic Park and the Marina, and 14 retail shops in the Telegraph-Channing garage.

There have been attempts to restructure the lease management system, principally changing it from a decentralized to a centralized system, with a single consolidated database since FY 2002. The Real Property Administrator (RPA) was hired in 2002, and AR 6.6 was last reviewed in 2005. However, the plan for centralization was not fully staffed or implemented; existing guidelines and regulations were not reliably followed, and clearly need to be improved; and some project managers continued to process leases without coordinating with the RPA, resulting in some problematic transactions, and critical property data left out of the City's inventory.

Property Management Services now tracks and captures lease information using Records Online and the Council Annotated Agenda. The group process of revising AR 6.6 and AR 6.8 helped improve communication with staff in other departments, and the Contract Administrator and Auditor's Office have assisted with dissemination of information and improved the lease data inventory.

### POSSIBLE FUTURE ACTION

There is no action other than adoption of revised AR 6.6 and new AR 6.8, along with the Property Management Manual. The Real Property Administrator and Property Management Services staff already manage the City's leases (for both revenue and expenditure agreements), as well as conduct other real property business.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

### CONTACT PERSON

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