



Office of the City Manager

INFORMATION CALENDAR

November 12, 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

In 2009, the City Auditor issued “Leases Audit: Conflicting Directives Hinder Contract Oversight.” The audit report included 24 recommendations, of which 17 are now closed: 15 implemented as recommended; 1 implemented with an alternative solution; and 1 closed after management reported that it was determined to be neither appropriate nor realistic to implement. Public Works is reporting on the status of the 7 recommendations that remain outstanding, which are all related to Administrative Regulation (AR) 6.6, and the proposed AR 6.8. Staffing changes that occurred last spring have resulted in significant impacts on the Real Property Unit, and implementation of the remaining recommendations are suspended, as they cannot be completed until more is known about the distribution of property management responsibilities among City personnel, and any management and consultant contracts. These organizational questions will be resolved in calendar year 2014, at which time the remainder of the recommendations will be completed. Another status report will be submitted to Council on December 16, 2014.

CURRENT SITUATION AND ITS EFFECTS

On June 2, 2009 the City Auditor issued a report entitled [Leases Audit: Conflicting Directives Hinder Contract Oversight](#)<sup>1</sup> to “determine the effectiveness of the City’s facility lease oversight.” The Audit Report included 24 recommendations. Currently, 17 of those recommendations are now closed: 15 were implemented as recommended; 1 implemented with an alternative solution; and 1 closed after management reconsidered it and reported it would not be implemented because it would neither be appropriate nor realistic to do so. The status of those recommendations was reported to Council in previous information reports in [November 2010](#)<sup>2</sup>, [July 2012](#)<sup>3</sup>, and [January 2013](#)<sup>4</sup>.

<sup>1</sup> Leases Audit: [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: [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)

In response to the Audit Report, the City Manager, City Attorney, Public Works, Finance, and Parks Recreation & Waterfront (PRW) staff discussed lease management and administration responsibilities, and began the process of reviewing, revising and creating Administrative Regulations (AR) to address the issues raised in the audit. This included the revision of AR 6.6 for Real Property Transactions: Procedures for City Revenue and Expenditure Leases and License Agreements, and the creation of a new AR 6.8 Real Property Transactions: Procedures for Acquisition and Disposal of Property. The process for revising these ARs was delayed for several reasons, including the departure of the Real Property Administrator, and the extended leave of a key staff member in the Real Property Unit who is not expected to return until May 2014. Duties have been redistributed among existing staff, however, this creates a capacity issue that is not sustainable.

Currently, property management responsibilities have been placed under the purview of a Public Works Senior Management Analyst who is coordinating an interdepartmental team of staff from Public Works, the City Attorney, the City Manager and Economic Development.

Recently, Council received a report regarding issues related to management and operational issues at the Telegraph Channing Mall<sup>5</sup>. Staff informed Council that a request for proposals (RFP) for the professional management of the Mall had been released and that staff will return to Council prior to entering into any contract related to the RFP. The implementation of this contract will affect the final reconfiguration of property management responsibilities, as well as the completion of AR 6.6 for Real Property Transactions: Procedures for City Revenue and Expenditure Leases and License Agreements, and the proposed AR 6.8 for Real Property Transactions: Procedures for Acquisition and Disposal of Property. Staff will be returning to Council in December with an update on these property management issues.

### **Audit Recommendations**

Public Works is reporting on the status of the 7 recommendations that remain outstanding, which are all related to AR 6.6, and the proposed new AR 6.8. Implementation of the following recommendations is suspended until more is known about the outcome of property management responsibilities among City personnel, and any management and consultant contracts, which will be resolved in calendar year 2014.

The Property Management Manual had been updated to correspond to the outline of procedures in the ARs as last revised, and will be revised again to correspond with the approved versions of AR 6.6 and AR 6.8.

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<sup>4</sup> January 2013 Status Report: [www.cityofberkeley.info/Clerk/City\\_Council/2013/01Jan/Documents/2013-01-22\\_Item\\_22\\_Status\\_Report\\_Leases\\_Audit.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2013/01Jan/Documents/2013-01-22_Item_22_Status_Report_Leases_Audit.aspx)

<sup>5</sup> September 17, 2013: [www.cityofberkeley.info/Clerk/City\\_Council/2013/09Sep/Documents/2013-09-17\\_Item\\_E\\_City-owned\\_Retail\\_Space\\_at\\_Telegraph.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2013/09Sep/Documents/2013-09-17_Item_E_City-owned_Retail_Space_at_Telegraph.aspx)

## **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/Further Implementation Suspended. As previously reported, the City Manager, Public Works, City Attorney, Finance, and PRW staff discussed lease management and administration responsibilities, including review and revision of AR 6.6 and new AR 6.8. Responsibilities for lease management have changed since early 2013, and will continue to change in the coming months. At this time the outcome is unknown.

In response to the spring 2013 departure of the Real Property Administrator and the extended leave of absence of the Real Property Agent, as reported to Council in September, "... a Public Works Senior Management Analyst was assigned to provide temporary oversight of the unit, in addition to managing other continuing responsibilities, and is assisted by the remaining Property Management staff person, who also handles other tasks in the Department. They are complemented by staff from other departments, including the City Manager's Office, the Office of Economic Development, the City Attorney's Office, and the Public Works Department. Together this team is coordinating efforts to manage daily operations."

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/Further Implementation Suspended. While roles of the Real Property Administrator, Property Management Services staff, and Project Managers were reflected in the revised AR 6.6 and draft of new AR 6.8, subsequent staff changes have not been incorporated and will not be resolved before early calendar year 2014.

### **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/Further Implementation Suspended. The Property Management Manual [plan] was updated based on revised AR 6.6 and new AR 6.8, and it documents responsibilities and procedures for both Property Management Services staff and Project Managers in other departments. Subsequent staff changes have not been incorporated and will not be resolved before early calendar year 2014.

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/Further Implementation Suspended. The Property Management Manual was updated, based on ARs 6.6 and 6.8 for Real Property Transactions, which were developed in coordination with all affected City departments. Subsequent staff changes, and the complete transfer of some lease management to other departments, have not been incorporated and the overall plan will not be resolved before early calendar year 2014.

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

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

**Status:** Partially Implemented/Further Implementation Suspended. 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]. Subsequent staff changes have not been incorporated and will not be resolved before early calendar year 2014.

**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/Further Implementation Suspended. 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 and AR 6.8 were expected to be published in spring 2013. Subsequent staff changes have not been incorporated and will not be resolved before early calendar year 2014, and further decisions and review of the ARs are pending until that time.

**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/Further Implementation Suspended. Management's expectations based on the former staff configuration were 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. Subsequent staff changes have not been incorporated, and outcomes for property management responsibilities are uncertain. These issues will not be resolved before early calendar year 2014, and further decisions and review of the ARs are pending until that time.

#### BACKGROUND

During the years Public Works had a Property Management Services unit, it was responsible for ensuring that all City real estate transactions, including lease agreements and amendments, and real property acquisition or disposal, were conducted according to authorized regulations. Staff also managed City-owned property, including facilities at Aquatic Park and the Marina, and 14 retail shops in the Telegraph Channing Mall.

The City's lease management system has undergone restructuring since FY 2002, when a Real Property Administrator (RPA) was hired. During this time attempts were made to change it from a decentralized to a centralized system. However, the plan for centralization was not fully staffed or implemented. The existing AR 6.6 Real Estate Transactions: Negotiating and Preparing City Lease or License Agreements, Acquiring or Disposing of Real Property, was last reviewed in 2005, and an interdepartmental process was underway to update it for Real Property Transactions: Procedures for City Revenue and Expenditure Leases and License Agreements, along with creation of a new AR 6.8 for Real Property Transactions: Procedures for Acquisition and Disposal of Property. In early spring, the Real Property Manager resigned and another key staff member took an extended leave of absence and is not expected to return until May 2014. Implementation of the audit recommendations are suspended until more is known about the outcome of property management responsibilities among City personnel, and any management and consultant contracts, which will be resolved in calendar year 2014.

#### POSSIBLE FUTURE ACTION

This is pending determination of staff changes, any contracts, and outcomes for property management responsibilities, and further decisions and review of the ARs, along with the Property Management Manual.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

#### CONTACT PERSON

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