



Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** January 21, 2014

**Item Number:** 24

**Item Description:** Telegraph Channing Mall: Follow-up on Tenants Issues and Management

**From:**  Christine Daniel, City Manager

**Submitted by:** William Rogers, Deputy City Manager

### ADDITION TO DECEMBER 17, 2013 REPORT

The Telegraph Channing Mall: Updates is supplemental summary information on communication and activities by City staff with tenants of the Mall since the December 17, 2013 and previous September 17, 2013 Council reports.

### Attachments to this Supplemental Cover Sheet:

1. Telegraph Channing Mall: Updates
2. Telegraph Channing Mall: Tenants/Leases Table
3. Telegraph Channing Mall: Follow-up on Tenants Issues and Management (continued from December 17, 2013)
4. Rents in the Telegraph-Channing Mall (December 5, 2013 memo)
5. City-owned Retail Space at Telegraph Channing Mall (September 17, 2013)




Office of the City Manager

SUPPLEMENTAL INFORMATION

January 21, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: William Rogers, Deputy City Manager

Subject: Telegraph Channing Mall: Updates

REVIEW AND UPDATE

As discussed in the December 17 item (Attachment 2: Telegraph Channing Mall: Follow-up on Tenants Issues and Management) regarding the Mall, Council received an initial report from staff on September 17 (Attachment 4: City-owned Retail Space at Telegraph Channing Mall). During public comment at the September meeting, tenants of the Telegraph Channing Mall (TCM) raised their issues, including: the general condition of the Mall; recent first-time billings for possessory interest assessments; comparable retail rents in the area; existing lease rate adjustments based on CPI or a fixed percentage; and the merits of a contract for professional services.

At the conclusion of the September 17 meeting, Council requested that the City Manager meet with tenants of the Mall to “review the leases, look at comparable rents in the area, review the rent increase amounts, and postpone the execution of a contract with a management company until after staff reports back to Council.” Since then, the City Manager’s Office and Public Works staff convened a meeting with tenants; conducted further analysis of comparative rates for comparable retail space in the area; compiled estimates for improvements and repairs in the Mall; and received an acceptable proposal in response to the RFP that was issued for management services.

At the December meeting, Council also requested a copy of the memo that had been distributed to, and was mentioned by tenants during public comment that night. This memo outlines an analysis conducted by Economic Development on comparable rental rates in the TCM area. This memo is attached (Attachment 3: Rents in the Telegraph-Channing Mall).

The Telegraph Channing Mall is a City-owned property on the ground floor of the Telegraph Channing Parking Garage. There are 15 retail spaces in the Mall: 12 are currently occupied; 2 are vacant and available for lease (1 since December and the other for a longer term); and a new tenant is prepared to move into a 3<sup>rd</sup> unit when the lease process is complete. Several tenants have operated at TCM for many years, and the most recent addition (Framer’s Outlet, related to a longer-term tenant) has a lease that started in February 2013. Of the current tenant leases, 5 started in 2000 and the

other 7 between 2008 and 2013; and all have exercised eligible options to extend an existing lease, with expiration dates in 2015 to 2019. As a consequence of recent circumstances, some tenants have now indicated they would rather negotiate a new lease than continue with the terms already in place.

### **Current Lease Terms**

Each of the current leases was negotiated and signed by tenants and includes agreed upon lease rates, negotiated annual rate adjustments (which vary, see Attachment 1: Tenant/Leases Table), and a clause for payment of Taxes and Assessments.

The lease clauses on Taxes and assessments state the following:

- a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.
- b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased premises and any other assessment that may be lawfully levied.

As reported to Council in September, tenants had not been billed for the “possessory interest” assessments until this past summer due to an oversight by Finance staff. Subsequently, staff met with tenants and offered 1-year payment plans without penalties or interest.

Since August 2013, City staff from Public Works, Finance, and the City Manager’s Office have met twice with tenants as a group. At each of these meetings, some TCM merchants have expressed dissatisfaction with “possessory interest” assessments, annual rate adjustments, and base rates in their existing leases. At the last meeting convened by the Deputy City Manager, tenants were offered a package of financial concessions (see below). The Deputy City Manager has already met separately with Revolution Books for lease negotiations; and has scheduled meetings for further discussion with several other individual tenants in January 2014.

### **Financial Concessions Offered to Tenants**

As reported to Council on December 17, the City offered current tenants the following:

- **Annual Rate Adjustments:** The Deputy City Manager agreed to work with the 6 tenants who have a 4% escalator in their lease agreements and to reduce that escalator to CPI or 3%, whichever is less. Amendments to these leases are being drafted.
- **Possessory Interest Assessments:** The City Manager offered an allocation of General Fund monies to cover the TCM tenants’ possessory interest assessments billed in August 2013, and extended this offer for the current term of each lease, for an estimated expense of \$32,000.

### Comparative Rents and Rate Reduction

Economic Development staff conducted an analysis of comparative rates for comparable retail space in the area, and found that TCM rates are substantially lower than those for the closet comparable retail cluster, which is Sather Lane Shops across Durant. On average, rents at Sather Lane Shops were found to be more than twice as much as those for TCM tenants. For a summary of this analysis, see Attachment 3: December 5, 2013 Memo: Rents in the Telegraph-Channing Mall. This memo was referred to during public comment at the December Council meeting.

### Interim and Long-term TCM Management

As previously reported to Council, staffing in the City's Real Property Management unit has decreased due to a resignation and a long term leave of absence. Working with other Public Works staff, personnel from the City Attorney's and City Manager's Offices have helped ensure continuation of basic oversight for issues in the Mall, however this coverage is transitional and inadequate for the long-term. After looking at many options, staff concluded that a professional agent with real estate and other relevant expertise is needed to effectively manage the Telegraph Channing Mall, retail leases and associated functions. An RFP for a leasing and management agent with overall responsibility for the Telegraph Channing Mall was issued in August 2013. A satisfactory proposal was received in response to the RFP, and the submitters know that negotiations regarding their proposal are pending discussion with Council. Meanwhile, Public Works is preparing to make improvements in the Mall, as indicated in the December report.

### Vacancies

A new tenant was approved for a formerly vacant space, lease terms are being finalized, and the tenant is preparing for improvements in the unit. A report for Council approval of this lease is scheduled for February. There are two other vacancies in the Mall, one of which is space that the Library vacated in December 2013 once branch reconstructions were complete. The City's website for available leasing information is [City of Berkeley Property Available for Lease or Sale](#).<sup>1</sup>

### CONTACT PERSON

ARobin Orden, Senior Management Analyst, Public Works, 981-6304  
William Rogers, Deputy City Manager, City Manager's Office, 981-7005

### ATTACHMENTS

- 1: Telegraph Channing Mall: Tenants/Leases Table
- 2: Telegraph Channing Mall: Follow-up on Tenants Issues and Management (continued from December 17, 2013)
- 3: Rents in the Telegraph-Channing Mall (December 5, 2013 memo)
- 4: City-owned Retail Space at Telegraph Channing Mall (September 17, 2013)

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<sup>1</sup> City of Berkeley Property Available for Lease or Sale:  
[www.cityofberkeley.info/Public\\_Works/Facilities\\_Management/City\\_Property\\_Available\\_for\\_Lease\\_or\\_Sale.aspx](http://www.cityofberkeley.info/Public_Works/Facilities_Management/City_Property_Available_for_Lease_or_Sale.aspx)

Attachment 1: Tenants/Leases Table

	Tenant Name	Location/Address	# SF	Lease Start	Lease End	ADJ: CPI or 3-4%
1	Michelle's Yogurt	2430 Durant Avenue	420	04/01/10	03/31/15	Greater: 4% or CPI
2	Durant Shoe Repair	2432 Durant Avenue	651	08/07/00	08/31/16	Greater: 4% or CPI
3	Vacant	2434 Durant Avenue	1,500			
4	In Process: Sodoi	2438 Durant Avenue	1,650			
5	Joy's Clothing	2440 Durant Avenue	620	08/15/08	08/31/13	Greater: 4% or CPI
6	Cheese N' Stuff	2442 Durant Avenue	680	08/17/00	06/30/15	Lesser: 3% or CPI
7	Vacant	2444 Durant Avenue	975			
8	Moe's Flower Store	2446 Durant Avenue	496	06/07/10	01/31/15	Greater: 4% or CPI
9	Moe's Flower Stand & Storage	in front 2446 Durant	344	06/07/10	12/31/14	Greater: 4% or CPI
10	Friends of the Library	2431-33 Channing Way	2,023	12/01/12	11/30/18	Monthly rent stipulated in lease
11	University Copy	2425 Channing Way, Suite A	1,400	08/12/00	08/31/15	Lesser: 3% or CPI
12	Postal Annex	2425 Channing Way, Suite B	1,140	08/17/00	08/31/15	Lesser: 3% or CPI
13	Revolution Books	2425 Channing Way, Suite C	1,080	04/22/08	05/30/13	Greater: 4% or CPI
14	Framer's Outlet	2435 Channing Way	1,418	02/01/13	01/31/18	Monthly rent stipulated in lease
15	Framer's Workshop	2439 Channing Way	1,790	08/17/00	08/31/15	Lesser: 3% or CPI

Mall. This is likely due, in part, to a different tenant mix; however it remains a substantial spread between commercial rates in such proximity.

Tenants were advised that across the board rent reductions would not be undertaken; however, they were informed that if both parties agree, tenants who wish to renegotiate their leases may request to do so, and were advised to contact Public Works staff to request a meeting for this purpose. The lease that is currently up for exercising an option to extend has been prioritized before other discussions.

- Annual Rate Adjustments: Not all existing leases include a 4% escalator provision. The Deputy City Manager will work with tenants who have a 4% escalator in their lease agreements, to reduce the escalator to CPI or 3%, whichever is less. This mirrors the escalator clause in some existing TCM leases.
- Possessory Interest Assessments: Given the circumstances, the City Manager will allocate General Fund to cover the TCM tenants' possessory interest assessments billed in August 2013 (for Street Lighting, Landscape & Parks, Library, School District (2), Paramedics, Disabled Services, Mello Roos Fire, and Fire Protection Emergency Response) for an estimated total amount of \$11,000. The General Fund will also cover the costs for the current term of each lease, for an estimated total of \$32,000. When tenants exercise an option to extend an existing lease, or any new lease is being negotiated, the possessory interest assessments will be addressed and affirmed as they apply to the lease terms.

**General Conditions and Improvements at Telegraph Channing Mall**

Staff obtained estimates (see below) and will commit to aesthetic improvements to the Mall for issues including lighting and signage. Tenants were asked to send an email with their concerns, suggestions, and priorities to Public Works staff. There may be an on-site meeting at the Mall to further discuss and prioritize improvements tenants would like to see made. The ADA lift has been assessed by staff and the elevator repair company under contract with the City. Public Works is considering whether to make repairs to the lift, while obtaining estimates for a long term solution, such as construction of a ramp.

Estimates for improvement work in the Mall

ITEM	Preferred Option	Short-Term Option
Repair the lift		\$2,800
Install a ramp (\$8 - 15K)	\$10,000	
Interior spot painting		\$2,000
Full interior painting (\$6 - 8K)	\$7,000	
Power wash outside of Mall	\$1,000	
Upgrade lighting (restrooms & exterior passage ways)	\$6,000	
Replace old faded signage & fix neon light over garage ( <i>cost unknown at this time</i> )	\$TBD	
	<b>\$24,000</b>	\$4,800

### **Interim and Long-Term Management**

At the October meeting with tenants, staff reported on the plan to hire professional management services for TCM. Some tenants were concerned this would put one more layer between themselves and the City, and staff responded that the purpose of the professional management agent was to increase the level of service to tenants. Tenants agreed that the service level has been low for the past few years.

As previously reported to Council, staffing in the City's Real Property Management Office has decreased due to a resignation and a long term leave of absence. City Attorney and City Manager staff have helped ensure continuation of basic oversight for issues in the Mall, however this coverage is transitional and inadequate for the long-term. After looking at many options, staff concluded that a professional agent with real estate and other relevant expertise is needed to effectively manage the Telegraph Channing Mall, retail leases and associated functions.

An RFP was issued in August 2013 to find a leasing and management agent who, under the direction of City staff, will have overall responsibility for the management of the mall. A proposal was received in response to the RFP, and was found to include all required materials and responses. The submitters were informed that staff was asked to suspend further action on their proposal until Council received an update on Mall activities.

The amount of time for management of the Mall does not require additional dedicated full-time career staff, and the recommended contract for these management services is seen as both cost-efficient and an effective use of personnel and consultant resources. Principal responsibilities for management are expected to include marketing vacancies; evaluating prospective tenants and making written recommendations to the City on tenant selection; monitoring and updating leases; collecting rents; paying expenses within an approved agreement; maintaining on-going tenant relations and addressing tenant needs; and handling unpredictable issues that arise; and coordinating routine maintenance with the City's Facilities Management unit. (The Telegraph Channing Garage is managed under a separate contract with LAZ Parking California.)

### **Other Actions**

Staff recently approved an applicant for one of the currently vacant spaces, and a report will be submitted to Council for approval of this lease. The City's website includes a page with information on [City of Berkeley Property Available for Lease or Sale](#).<sup>1</sup>

<sup>1</sup> City of Berkeley Property Available for Lease or Sale:  
[www.cityofberkeley.info/Public\\_Works/Facilities\\_Management/City\\_Property\\_Available\\_for\\_Lease\\_or\\_Sale.aspx](http://www.cityofberkeley.info/Public_Works/Facilities_Management/City_Property_Available_for_Lease_or_Sale.aspx)

## BACKGROUND

At its July 16, 2013 meeting, Council requested the City Manager to “report back on the possible solutions to rent space in city-owned vacant storefronts at Telegraph Channing Parking Garage.” Real Property Management staff have continued to market these spaces in order to secure reliable tenants, and avoid a repeat of defaults that had triggered prolonged and costly eviction proceedings in the past. The overall aesthetics of the Mall have been a serious deterrent to attracting new tenants. While the new contract with LAZ for management of the Telegraph Channing Garage resulted in improvements in the garage itself, LAZ is not responsible for management of the retail spaces.

In a separate action that occurred after the July Council meeting, tenants in the Mall received bills from the City for “possessory interest” assessments. Their leases state their liability for these assessments and payments, however, invoices had not previously been issued to them. Public Works staff convened a routine periodic meeting with the tenants on August 30, 2013 and the agenda included discussion of these invoices, as well as other issues on the condition and management of the Mall. The next discussion of this issue then occurred at the September 17 City Council meeting, at which time Council received additional comments from the tenants, along with updates and responses from the City Manager.

The Telegraph Channing Mall was part of the Sather Gate Garage built in the late 1960s by the City of Berkeley Sather Gate Garage Company, a non-profit corporation. The Mall has almost 16,000 square feet of retail space at street level, with the Garage’s current 436 parking spaces above. Since its construction, the structure underwent seismic improvements that were completed in 1996, and another project in 2004 included installation of a ventilation system, automatic fire sprinklers, fire alarm, and other fire protection improvements. The Garage and Mall were renamed the Telegraph Channing Parking Garage in 2006, which was seen as “more reflective of the shopping district,” and a summary of its history can be found in the Council report from March 21, 2006.<sup>2</sup>

<sup>2</sup> Council adopted Resolution No. 63,246 on March 21, 2006 Renaming Sather Gate Garage “Telegraph Channing Garage”: [www.cityofberkeley.info/citycouncil/2006citycouncil/packet/030706/2006-03-07%20Item%2019%20Rename%20Sather%20Gate%20Garage.pdf](http://www.cityofberkeley.info/citycouncil/2006citycouncil/packet/030706/2006-03-07%20Item%2019%20Rename%20Sather%20Gate%20Garage.pdf)



### POSSIBLE FUTURE ACTION

As indicated, above, staff is prepared to contract with a management agent for overall responsibility for the Mall, including marketing vacancies, evaluating prospective tenants, collecting rents, paying expenses, addressing tenant needs, and routine maintenance.

The City Manager plans to allocate funding to cover the possessory interest assessments for all TCM tenants (Street Lighting, Landscape & Parks, Library, School District (2), Paramedics, Disabled Services, Mello Roos Fire, and Fire Protection Emergency Response). This would extend for the current term of each lease.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Total annual revenue from rents and related payments in FY 2013 was almost \$233,000. Staff has approved an applicant for one of the two currently vacant spaces, and a report will be submitted to Council for approval of the lease. When both of these spaces are leased, staff projects an increase in annual revenue of \$30,000 – \$50,000.

General Fund payment of Special Assessments: The amount of this year's assessments for all tenants is estimated at about \$11,000 and the allocation would extend for the current term of each lease, for an estimated total of \$32,000. The City would assume liability for these assessments, which would be paid from the General Fund.

Management contract expenditures would be paid from tenant rent receipts, and for other services, such as marketing vacancies that result in new leases, as agreed to in the contract. The City Manager will retain approval authority for expenditures to implement improvements and overall maintenance in the Mall. An estimate for many of the identified improvements begins at \$25,000 – \$30,000.

### CONTACT PERSON

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Stacey Johnson, Acting Senior Management Analyst, Public Works, 981-6334  
William Rogers, Deputy City Manager, City Manager's Office, 981-7005

Both the Mall and the SLS contain spaces that are visible from the public street and spaces that are visible only from the interior walkway. For the Mall, Framer's Workshop, Framer's Outlet and University Copy are visible from Channing Way while Michelle's Yogurt and Moe's Flowers are visible from Durant. The street visible space comprises 5,868 or 36% of the total 16,187 rentable square feet in the Mall. For the Shops, Dot Island Grill, Yogurt Park and Cupcakin Cake's are visible from Durant for 2007 or 24% of 8,495 square feet of space.

### The Real Estate Economics of the Two Properties

Factors that affect commercial rental rates include the overall economic condition of the Telegraph area; the relative location of commercial buildings within it; and the particular visibility, foot traffic, and amenities associated with individual spaces.

As is well-known, the retail strength of the Telegraph area has declined due to the loss of business at bookstores and CD/music stores and competitive pressure from other districts. In addition, other retail sectors that have traditionally been strong on Telegraph, such as copy shops, are now challenged by changes in technology. The restaurant sector, however, has held steady or increased, although turnover in the restaurant sector is very high. Under current conditions in the Telegraph area, this means that restaurant spaces often command higher rents than ordinary retail space.

### Average Rent per Square Foot Comparison

The average rent per square foot of occupied space in SLS is \$3.72 as compared to \$1.77 for TCM and SLS. The table below provides break-down of type of tenancies and rent levels at TCM. Note that in the table for TCM, the rentals to the Library and Friends of the Library have been characterized as "other-determined" rather than "market rate" because these rentals to a City agency and a Library-related nonprofit (Friends of the Library) were made at a below-market rate of slightly less than 50 cents per square foot.<sup>1</sup> The rental that is in process to Sodoi Coffee is included in the table at the proposed base rent of \$1.50 per square foot. Sodoi is characterized as "Retail" not "Food Services" because the sale of brewed coffee is only an ancillary part of its main business, sale of coffee beans.

TELEGRAPH-CHANNING MALL: RENTABLE SPACE						
Type of Business	Food (sandwiches, ice cream )	Services (postal, copy, shoe repair)	Retail (clothing, books, coffee, flowers, frames)	Other-Determined (Library & Friends)	Vacant	TOTAL
Square Feet	1,100 sf	3,191 sf	7,398 sf	3,523 sf	975 sf	16,187 sf
% of Total Rentable Space	6.8%	19.7%	45.7%	21.8%	6.0%	100%
Average rent per s f rentable <sup>2</sup>	\$2.57	\$2.04	\$1.54	\$0.47	0.00	\$1.38
Average rent per sf of occupied space = \$1.47						
Average rent per square foot of occupied space rented at a market rate = \$1.77						

<sup>1</sup> The Friends of the Library operate a used book store. If we characterize the 2,023 square feet of the Friends of the Library space as bookstore/retail, it increases the retail square footage to 9,421 square feet or 58.2% of the total.

<sup>2</sup> Includes 940 sf of vacant space for which the City does not receive any rent.

SATER GATE SHOPS: RENTABLE SPACE					
Type of Business	Food (restaurants (3), yogurt & cupcakes)	Services (copy & 3 hair salons)	Retail (flowers)	Vacant	TOTAL
Square Feet	4,352 sf	2,937 sf	266 sf	940 sf	8,495 sf
% of Total Rentable Space	51.2%	34.6%	3.1%	11.1%	100%
Average rent per s f rentable	confidential	confidential	confidential	0.00	\$3.31
Average rent per sf of occupied space = \$3.72					

The Sather Lane Shops at \$3.72 has a much higher average rent per square foot of occupied space. One of the factors may be the advantage of a location closer to campus ordinarily brings a high level of foot traffic plus building improvements or "amenities" that permit a high proportion of space (51.2%) to be devoted to restaurants or "food Uses" that command higher rents than Services or Retail. Over the years, prospective restaurant owners have considered the feasibility of building restaurants in the TCM and concluded that it would be prohibitively expensive because of the need to vent grills by running ductwork to the exterior as well as the lack of plumbing to add kitchens and bathrooms. However, the fact that the average "market" rent for occupied space in TCM is only 47% of the rate for occupied space in SLS (i.e., \$1.77 vs. \$3.72) strongly suggests that the "across-the-board" rent reduction requested by some Mall merchants is not justified.

In addition, several businesses located in the TCM have a declining market for their products. Under those circumstances, the City should meet with individual tenants and assess whether the owners have a plan to reverse the decline of their businesses. If they do have a desire to continue in business and a plan to reverse their decline, the city can work with the tenant as appropriate -- particularly if they commit to investments that will help them stay in business. The City should also be willing to make investments in the mall to improve conditions, particularly in the context of marketing plans and new investment by the businesses themselves. There would be little value for the Telegraph area market or the City to renegotiate rents with businesses that are likely to fail because the market for their product is declining and they have no plan to reverse their situation.

and business projections, or were found to be unqualified based on evaluation of all the information they submitted. However, there has recently been renewed interest in both of the vacant spaces. City staff is careful to exercise a consistent, rigorous and fair process reflecting standard industry practices for review, when assessing applications from all interested parties. Approving an unqualified applicant could unfortunately result in the need to evict a tenant who is unable to fulfill the obligations for business operations and/or rent payments, which is costly to the City.

Given all the conditions described above, staff has been considering how to ensure the continued professional management of the Telegraph Channing Mall in the long term. Accordingly, an RFP was issued on August 30, 2013 to find a leasing and management agent who, under the direction of City staff will have overall responsibility for the Mall, which includes marketing vacancies, evaluating prospective tenants and making written recommendations to the City on tenant selection, collecting rents, paying expenses, addressing tenant needs, and coordinating routine maintenance with Facilities Management. (The Telegraph Channing Garage is managed under a separate contract with LAZ Parking California.) It is anticipated that responses to the RFP will be received this fall, and a decision about whom to retain made before the end of the year. In addition, the City's website for [Property Management – City Property Available for Lease or Sale](#)<sup>1</sup> has been updated with new content, including Proposal Letter Guidelines, and the City's Business Rental Application.

## BACKGROUND

The Sather Gate Garage was built in the late 1960s by the City of Berkeley Sather Gate Garage Company, a non-profit corporation. It now has 436 parking spaces above almost 16,000 square feet of retail use. The structure underwent seismic improvements that were completed in 1996, and another project in 2004 included installation of a ventilation system, automatic fire sprinklers, fire alarm, and other fire protection improvements. The Garage and Mall were renamed the Telegraph Channing Parking Garage in 2006, seen as “more reflective of the shopping district,” and a summary of its history can be found in the Council report from March 21, 2006.<sup>2</sup>

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POSSIBLE FUTURE ACTION

As indicated, above, the City is preparing to contract with a management agent for overall responsibility for the Mall, including marketing vacancies, evaluating prospective tenants, collecting rents, paying expenses, addressing tenant needs, and routine maintenance.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Total annual revenue from rents and related payments in FY 2013 was almost \$233,000. The Library has been using a 1,500 square foot vacant space for storage at a reduced rental rate, and is expected to release this unit by the end of the year. When the 2 currently vacant spaces are leased, staff projects an increase in annual revenue of \$30,000 – \$50,000. Staff anticipates expenses will be covered by a percentage of the rental receipts.


CONTACT PERSON

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Office of the City Manager

INFORMATION CALENDAR  
January 21, 2014  
(Continued from December 17, 2013)

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: William Rogers, Deputy City Manager  
Subject: Telegraph Channing Mall: Follow-up on Tenants Issues and Management

SUMMARY

On September 17, 2013 Council received a report on the City-owned retail space at the Telegraph Channing Mall. Issues raised during public comment and the discussion of the item were: the general condition of the Mall; recent 1st-time billings for possessory interest assessments; comparable retail rents in the area; existing lease rate adjustments based on CPI or a fixed percentage; and the merits of a contract for professional services.

At the conclusion of the September item, Council requested that the City Manager meet with tenants of the Telegraph Channing Mall to “review leases, look at comparable rents in the area, review the rent increase amounts and postpone the execution of a contract with a management company until after staff reports back to Council.”

Since September, the City Manager’s Office and Public Works staff convened a meeting with tenants; conducted further analysis of comparative rates for comparable retail space in the area; compiled estimates for improvements and repairs in the Mall; and received an acceptable proposal in response to the RFP that was issued for management services.

CURRENT SITUATION AND ITS EFFECTS

**Meeting with Telegraph Channing Mall (TCM) Tenants**

City Manager’s Office and Public Works staff met with tenants on October 8, 2013 to identify and discuss concerns held by current lease holders. The following is a summary of the issues and outcomes from the meeting.

- Comparative Rents and Rent Reduction: The data on comparable rates in the Telegraph area indicate that the TCM rates are consistent or below rates in the area. The most relevant rate comparison is between the Sather Gate Shops on the north side of Durant, and the Telegraph Channing Mall on the south side of Durant. Economic Development staff conducted a comparative analysis of rates in these locations, and found that the average rent per square foot of occupied space at the Sather Gate Shops is more than twice the average rate at the Telegraph Channing

Mall. This is likely due, in part, to a different tenant mix; however it remains a substantial spread between commercial rates in such proximity.

Tenants were advised that across the board rent reductions would not be undertaken; however, they were informed that if both parties agree, tenants who wish to renegotiate their leases may request to do so, and were advised to contact Public Works staff to request a meeting for this purpose. The lease that is currently up for exercising an option to extend has been prioritized before other discussions.

- Annual Rate Adjustments: Not all existing leases include a 4% escalator provision. The Deputy City Manager will work with tenants who have a 4% escalator in their lease agreements, to reduce the escalator to CPI or 3%, whichever is less. This mirrors the escalator clause in some existing TCM leases.
- Possessory Interest Assessments: Given the circumstances, the City Manager will allocate General Fund to cover the TCM tenants' possessory interest assessments billed in August 2013 (for Street Lighting, Landscape & Parks, Library, School District (2), Paramedics, Disabled Services, Mello Roos Fire, and Fire Protection Emergency Response) for an estimated total amount of \$11,000. The General Fund will also cover the costs for the current term of each lease, for an estimated total of \$32,000. When tenants exercise an option to extend an existing lease, or any new lease is being negotiated, the possessory interest assessments will be addressed and affirmed as they apply to the lease terms.

### General Conditions and Improvements at Telegraph Channing Mall

Staff obtained estimates (see below) and will commit to aesthetic improvements to the Mall for issues including lighting and signage. Tenants were asked to send an email with their concerns, suggestions, and priorities to Public Works staff. There may be an on-site meeting at the Mall to further discuss and prioritize improvements tenants would like to see made. The ADA lift has been assessed by staff and the elevator repair company under contract with the City. Public Works is considering whether to make repairs to the lift, while obtaining estimates for a long term solution, such as construction of a ramp.

#### Estimates for improvement work in the Mall

ITEM	Preferred Option	Short-Term Option
Repair the lift		\$2,800
Install a ramp (\$8 - 15K)	\$10,000	
Interior spot painting		\$2,000
Full interior painting (\$6 - 8K)	\$7,000	
Power wash outside of Mall	\$1,000	
Upgrade lighting (restrooms & exterior passage ways)	\$6,000	
Replace old faded signage & fix neon light over garage ( <i>cost unknown at this time</i> )	\$TBD	
	<b>\$24,000</b>	\$4,800

### **Interim and Long-Term Management**

At the October meeting with tenants, staff reported on the plan to hire professional management services for TCM. Some tenants were concerned this would put one more layer between themselves and the City, and staff responded that the purpose of the professional management agent was to increase the level of service to tenants. Tenants agreed that the service level has been low for the past few years.

As previously reported to Council, staffing in the City's Real Property Management Office has decreased due to a resignation and a long term leave of absence. City Attorney and City Manager staff have helped ensure continuation of basic oversight for issues in the Mall, however this coverage is transitional and inadequate for the long-term. After looking at many options, staff concluded that a professional agent with real estate and other relevant expertise is needed to effectively manage the Telegraph Channing Mall, retail leases and associated functions.

An RFP was issued in August 2013 to find a leasing and management agent who, under the direction of City staff, will have overall responsibility for the management of the mall. A proposal was received in response to the RFP, and was found to include all required materials and responses. The submitters were informed that staff was asked to suspend further action on their proposal until Council received an update on Mall activities.

The amount of time for management of the Mall does not require additional dedicated full-time career staff, and the recommended contract for these management services is seen as both cost-efficient and an effective use of personnel and consultant resources. Principal responsibilities for management are expected to include marketing vacancies; evaluating prospective tenants and making written recommendations to the City on tenant selection; monitoring and updating leases; collecting rents; paying expenses within an approved agreement; maintaining on-going tenant relations and addressing tenant needs; and handling unpredictable issues that arise; and coordinating routine maintenance with the City's Facilities Management unit. (The Telegraph Channing Garage is managed under a separate contract with LAZ Parking California.)

### **Other Actions**

Staff recently approved an applicant for one of the currently vacant spaces, and a report will be submitted to Council for approval of this lease. The City's website includes a page with information on [City of Berkeley Property Available for Lease or Sale](#).<sup>1</sup>

### **BACKGROUND**

At its July 16, 2013 meeting, Council requested the City Manager to "report back on the possible solutions to rent space in city-owned vacant storefronts at Telegraph Channing Parking Garage." Real Property Management staff have continued to market these spaces in order to secure reliable tenants, and avoid a repeat of defaults that had triggered prolonged and costly eviction proceedings in the past. The overall aesthetics of the Mall have been a serious deterrent to attracting new tenants. While the new

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<sup>1</sup> City of Berkeley Property Available for Lease or Sale:  
[www.cityofberkeley.info/Public\\_Works/Facilities\\_Management/City\\_Property\\_Available\\_for\\_Lease\\_or\\_Sale.aspx](http://www.cityofberkeley.info/Public_Works/Facilities_Management/City_Property_Available_for_Lease_or_Sale.aspx)



contract with LAZ for management of the Telegraph Channing Garage resulted in improvements in the garage itself, LAZ is not responsible for management of the retail spaces.

In a separate action that occurred after the July Council meeting, tenants in the Mall received bills from the City for “possessory interest” assessments. Their leases state their liability for these assessments and payments, however, invoices had not previously been issued to them. Public Works staff convened a routine periodic meeting with the tenants on August 30, 2013 and the agenda included discussion of these invoices, as well as other issues on the condition and management of the Mall. The next discussion of this issue then occurred at the September 17 City Council meeting, at which time Council received additional comments from the tenants, along with updates and responses from the City Manager.

The Telegraph Channing Mall was part of the Sather Gate Garage built in the late 1960s by the City of Berkeley Sather Gate Garage Company, a non-profit corporation. The Mall has almost 16,000 square feet of retail space at street level, with the Garage’s current 436 parking spaces above. Since its construction, the structure underwent seismic improvements that were completed in 1996, and another project in 2004 included installation of a ventilation system, automatic fire sprinklers, fire alarm, and other fire protection improvements. The Garage and Mall were renamed the Telegraph Channing Parking Garage in 2006, which was seen as “more reflective of the shopping district,” and a summary of its history can be found in the Council report from March 21, 2006.<sup>2</sup>

#### POSSIBLE FUTURE ACTION

As indicated, above, staff is prepared to contract with a management agent for overall responsibility for the Mall, including marketing vacancies, evaluating prospective tenants, collecting rents, paying expenses, addressing tenant needs, and routine maintenance.

The City Manager plans to allocate funding to cover the possessory interest assessments for all TCM tenants (Street Lighting, Landscape & Parks, Library, School District (2), Paramedics, Disabled Services, Mello Roos Fire, and Fire Protection Emergency Response). This would extend for the current term of each lease.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Total annual revenue from rents and related payments in FY 2013 was almost \$233,000. Staff has approved an applicant for one of the two currently vacant spaces, and a report will be submitted to Council for approval of the lease. When both of these spaces are leased, staff projects an increase in annual revenue of \$30,000 – \$50,000.

General Fund payment of Special Assessments: The amount of this year’s assessments for all tenants is estimated at about \$11,000 and the allocation would extend for the current term of each lease, for an estimated total of \$32,000. The City would assume liability for these assessments, which would be paid from the General Fund.

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<sup>2</sup> Council adopted Resolution No. 63,246 on March 21, 2006 Renaming Sather Gate Garage “Telegraph Channing Garage”: [www.cityofberkeley.info/citycouncil/2006citycouncil/packet/030706/2006-03-07%20Item%2019%20Rename%20Sather%20Gate%20Garage.pdf](http://www.cityofberkeley.info/citycouncil/2006citycouncil/packet/030706/2006-03-07%20Item%2019%20Rename%20Sather%20Gate%20Garage.pdf)

Management contract expenditures would be paid from tenant rent receipts, and for other services, such as marketing vacancies that result in new leases, as agreed to in the contract. The City Manager will retain approval authority for expenditures to implement improvements and overall maintenance in the Mall. An estimate for many of the identified improvements begins at \$25,000 – \$30,000.

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