



Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works Department

Subject: Audit Status Report – Lease Audit: Conflicting Directives Hinder Contract Oversight

INTRODUCTION

The Office of the City Auditor presented a June 2009 Leases Audit: Conflicting Directives Hinder Contract Oversight. The City Auditor conducted the audit to determine whether facility leases were properly initiated, tracked, recorded, and renewed or terminated; whether monitoring of collection activities was effective and efficient; and whether payments and receipts were properly recorded. This report is the seventh and final update to the 2009 Lease Audit, which is slated for no further follow-up action as recommended by the City Auditor for all audits more than five years old.

CURRENT SITUATION AND ITS EFFECTS

This report is the seventh and final update to the 2009 Lease Audit. In recognition of its goal to implement Lease Audit recommendations, Public Works has committed to providing status updates of real property matters to City Council, thereby providing information on properties owned and leased by the City and progress updates on revisions to Administrative Regulation 6.6: *Negotiating and Preparing City Lease or License Agreements, Acquiring/or Disposing of Real Property* as recommended in the 2009 Lease Audit.

BACKGROUND

In June 2009, the City Auditor's Office issued its report Leases Audit: Conflicting Directives Hinder Contract Oversight. The objective of the audit was to determine the effectiveness of the City's facility lease oversight and resulted in recommendations aimed at improving lease oversight and management. The City Auditor requested the City Manager continue to report to Council on the status of those recommendations until all were fully implemented or otherwise addressed. The sixth and most recent status report was presented to City Council on May 29, 2018.

The original Audit Report included twenty-four recommendations, seventeen of which have been closed; fifteen were implemented as recommended; one was implemented with an alternative solution; and one was closed after management reconsidered it and reported it would not be implemented because it would neither be appropriate nor

realistic to do so. The May 2018 report stated that the seven remaining recommendations are partially implemented and that further implementation should be suspended.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

When resources become available, the City Manager and Public Works aim to develop an implementation plan to improve property management citywide. Alternatively, the City Auditor may choose to launch a new performance audit with updated recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Currently, Public Works' Property Management Unit has one (1) full-time employee. Any increase in these services would very likely require additional staffing and budget.

CONTACT PERSON

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Attachment:

1. Audit Findings and Recommendations Response Form

Audit Title: Leases Audit: Conflicting Directives Hinder Contract Oversight				
Finding	Recommendation		Lead Department	Status of Outstanding Audit Recommendations and Implementation Progress Summary
The City's 2002 plan to centralize property and facility lease management has not been implemented.	1.1	The City Manager should formalize and approve the division of responsibilities between the Public Works department and other departments regarding lease management.	City Manager	<p>Original Audit Response: City Manager and Public Works agreed with recommendation.</p> <p>10/28/13 Status: Partially Implemented</p> <p>1/31/17 Status Update: Partially Implemented/Further Implementation Needed.</p> <p>5/29/18 Status Update: Partially Implemented. Despite nearly nine years of attempting to decentralize property management within the City of Berkeley, particularly in regards to lease management, the effort has not been successful. The City's contract with Contra Costa County Real Estate Division does provide some real property services, but the Community Development Project Coordinator responsible for Public Works property management continues to have to play an active role in all Departments' real property decision-making and lease management. The City Manager's Office will work with the various departments that currently support property management to develop an alternative citywide approach by functional responsibility. For example, some portions of property management, such as facility maintenance and lease negotiations may be centralized, but doing so will require additional resources. Further status reports for this recommendation will be submitted until it is "alternatively implemented."</p> <p>11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>

<p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p>	<p>1.2</p>	<p>The Public Works department should determine and formally define the role of the real property administration staff given available resources.</p>	<p>City Manager</p>	<p>Original Audit Response: City Manager and Public Works agreed with recommendation. 10/28/13 Status: Partially Implemented/Further Implementation Suspended. 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented. The City continues to not have dedicated real property administration staff identified in every department. The Interdepartmental Real Property Working Group meetings have made it clear that each department has specific and varied real property needs. This resulted in the group disbanding, and each department is instead working with Public Works' Community Development Project Coordinator on an as-needed basis. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>
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<p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p>	<p>1.3</p>	<p>Develop and finalize a property management plan that documents the specific responsibilities of Public Works and of other departments for lease management.</p>	<p>Public Works</p>	<p>Original Audit Response: City Manager and Public Works agreed with recommendation. 10/28/13 Status: Partially Implemented/Further Implementation Suspended. 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>
<p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p>	<p>1.4</p>	<p>The property management plan should be coordinated with affected City departments, including the Contract Administrator in Finance/Purchasing, before finalizing.</p>	<p>Public Works</p>	<p>Original Audit Response: Public Works agreed with recommendation. 10/28/13 Status: Partially Implemented 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented. A new Contract Administrator/General Services Manager (GSM) was hired summer 2016. The GSM is an important partner in improving lease boilerplates, contract templates, and RFP guidance associated with property management. While significant improvements in coordination have occurred, as stated above, a property management plan structured around decentralization has not been completed. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>

<p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p>	<p>1.5</p>	<p>Formally communicate the plan with all affected City departments.</p>	<p>City Manager</p>	<p>Original Audit Response: Public Works agreed with recommendation. 10/28/13 Status: Partially Implemented 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented. The Interdepartmental Real Property Working Group meetings were terminated. A team folder on the City's shared drive continues to be used to share property management documents. No plan to continue decentralized management of property in the City of Berkeley is being developed. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>
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<p>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.</p>	<p>2.1</p>	<p>Administrative Regulation 6.6 and Contracts Online should be updated to give clear direction to City staff regarding administration and execution of lease agreements.</p>	<p>Public Works</p>	<p>Original Audit Response: Public Works and Finance agreed with recommendation. 11/9/10 Status: Contracts Online Updated 10/28/13 Status: Partially Implemented 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented. While updates to Contracts Online were completed, leases must be updated, usually with the assistance of outside counsel, to ensure all current requirements from local, states and federal levels are addressed. A generic template does not work for the majority of revenue or expenditure leases involving the City. Updating AR 6.6 will not sufficiently clarify administration and execution of City lease agreements. A suite of Administrative Regulations will be developed that cover the full spectrum of the City's real property needs to ensure staff and City Council follow a process that is fully transparent and adheres to accepted public outreach processes. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>
<p>There are no performance measures to document expectations of and performance by the Real Property Administrator or departmental lease managers.</p>	<p>3.3</p>	<p>Public Works should update the City's real property administration policies and procedures to align with management's expectations.</p>	<p>Public Works</p>	<p>Original Audit Response: Public Works agreed with recommendation. 10/28/13 Status: Partially Implemented 1/31/17 Status Update: Partially Implemented/Further Implementation Needed. 5/29/18 Status Update: Partially Implemented/Further Implementation. Public Works will update the City's real property administration policies and procedures once an alternative citywide approach to property management has been identified and implemented. 11/3/22 Status Update: Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>

