

ACTION CALENDAR

February 11, 2025

To: Honorable Mayor and Members of the City Council**From:** Jenny Wong, City Auditor *zw***Subject:** 2009 Leases Audit Follow-Up: Berkeley Faces the Same Risks 16 Years LaterRECOMMENDATION

Our recommendations include clarifying roles and responsibilities for lease oversight, updating the lease policy, and developing a complete central list of leases and licenses. We recommend City Council request that the City Manager report back during the next follow-up period in fall 2025, and every year thereafter, regarding the status of the 8 re-opened recommendations until reported fully implemented by the Public Works Department and City Manager's Office. They have agreed to our findings, re-opened recommendations, and guidance for implementing the recommendations. Please see our report for their complete response.

FISCAL IMPACTS OF RECOMMENDATION

Implementing the recommendations outlined in the follow-up report may have fiscal implications for the City. Some improvements to lease management will depend on additional resources for staffing and software to track leases and licenses. However, improved monitoring of lease and license agreements could result in cost savings, for example if lease agreements are renegotiated in a timely manner, or if responsibility for utilities and maintenance costs are applied more consistently.

CURRENT SITUATION AND ITS EFFECTS

Our report highlights a number of potential risks associated with the City's current lease management practices. The City Auditor's 2009 Leases Audit found that the City's lease oversight was largely decentralized despite a previous plan to centralize this function. The 2009 audit also found that City staff did not always comply with rules and regulations for leases, and a complete central inventory of leases was not available. Our follow-up report found that these issues are still relevant today.

There is still no central oversight of leasing activities citywide. Limited staff capacity and lack of clear direction from City Management impact the City's ability to stay on top of its leases and licenses. At the time the original audit was released, the City had a Real Property Administrator dedicated to citywide lease management, but this position was eliminated in FY 2014.

The City still does not have a relevant policy for how lease and license agreements should be established and managed. We found differences in terms for leases with below market rate rent, including whether utilities and maintenance were covered by the City. We found that there is no

standard process for determining when to offer rent below market rate. Differences in agreements could lead to actual or perceived unfairness between current or prospective tenants.

Finally, the City still has no complete central list of lease and license agreements. This limits the City's ability to holistically assess the costs and benefits of leasing and licensing decisions, and could expose the City to potential risks like losing track of real estate assets – which according to Public Works happened with a building at 1890 Alcatraz Avenue – or financial loss if lease agreements are not renewed in a timely fashion.

BACKGROUND

The City rents out City-owned properties for specified periods of time to tenants including commercial businesses, non-profit organizations, and other governments through lease and license agreements. The City currently has at least 49 lease agreements and 8 license agreements for outside entities to rent City-owned property. The City also rents space owned by other entities. Departments involved in lease management include Public Works; Parks, Recreation and Waterfront; and Health, Housing and Community Services.

We were unable to confirm the exact number of leases and licenses in the City's inventory due to limited information maintained by the City.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will improve the City's oversight of leases and licenses.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Report – 2009 Leases Audit Follow-Up: Berkeley Faces the Same Risks 16 Years Later

Follow-Up Report
January 24, 2025

2009 Leases Audit Follow-Up: Berkeley Faces the Same Risks 16 Years Later



BERKELEY CITY AUDITOR

Jenny Wong, City Auditor
Caitlin Palmer, Audit Manager
Pauline Miller, Auditor II



Table of Contents

Page 1	Executive Summary and Objective
Page 2	Methodology and Background
Page 3	Overview of the 2009 Leases Audit
Page 4	Finding 1: The City did not follow through on efforts to centralize lease management and lacks a clear approach.
Page 6	Finding 2: The City's lease policy does not align with its actual practices, leading to variances in agreements.
Page 8	Finding 3: The City lacks a complete central list of leases and licenses needed for effective management.
Page 11	Recommendations and Management Response

Executive Summary

We assessed the implementation of the recommendations from the 2009 audit of City leases and found that the City still faces some of the same issues identified in the original audit, 16 years later. The City lacks a clear approach to lease management, a relevant policy to guide leasing and licensing decisions, and a complete central inventory of leases and licenses. These factors compromise the City's ability to strategically manage City-owned property. To address these challenges, we re-opened 8 recommendations, which include prioritizing lease management oversight, updating the leasing policy, and developing a complete central inventory of leases and licenses. Implementing these recommendations will require collaboration and depends on additional resources, but the recommendations are critical to ensure sound management of City-owned and occupied properties.

Objective

The objective of this special report was to assess the implementation status of the recommendations from the 2009 audit of City leases and identify any remaining risks to the City associated with lease management.

We initiated this work because according to the Public Works Department's last update to City Council, the City never implemented 7 out of 24 recommendations from the 2009 report.¹ Additionally, the City did not follow through with the 2002 plan to centralize lease management, raising concerns that the status of some previously implemented recommendations may have changed. Without a clearly defined citywide approach to lease management, the City still faces many of the risks the 2009 audit recommendations aimed to address.

¹ November 3, 2022 Status Update to City Council: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-11-03%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf#page=871>

Methodology

We assessed the relevance and potential risk of the original audit recommendations and selected 8 recommendations to follow up on. Our follow up work targeted some recommendations that were not implemented, and some recommendations that were once implemented, but may have become unimplemented. To verify the status of these recommendations, we reviewed lease and license documentation and policies, and interviewed City staff responsible for lease management.

Background on City Leases and Licenses

The City rents out City-owned properties for specified periods of time to tenants including commercial businesses, non-profit organizations, and other governments through lease and license agreements. The City also leases space owned by other entities. In this report, “lease management” refers to lease and license agreements.

Table 1. The City of Berkeley uses these two types of agreements for renting space.

	Description
 Lease Agreement	• Tenant is allowed to occupy the property. • Transfers leasehold interest in the property. • May require eviction proceedings to end the agreement and remove the lessee. • Typically exclusive use. • Longer terms.
 License Agreement	• Tenant is allowed use of space for a specific purpose. • Does not transfer interest in the property. • Simpler process for ending the agreement and removing the licensee. • Non-exclusive use. • Shorter terms.

Sources: Department of Public Works, City Attorney’s Office, University of California Santa Cruz Website

Departments involved in lease management include Public Works; Parks, Recreation and Waterfront; and Health, Housing and Community Services. The City currently has at least 49 lease agreements and 8 license agreements for outside entities to rent City-owned property. The City also rents space from outside entities. We were unable to confirm the exact number of leases and licenses today because the City does not currently have a complete list.

Examples of buildings the City rents out to other entities include Old City Hall (image 1), the Veteran’s Building, and the Telegraph-Channing Mall (image 2). The City also rents property to hotels, restaurants, and shops at the Berkeley Marina. An example of a building the City leases from another entity is the Adult Mental Health Clinic on University Avenue.

Images 1 and 2. Examples of City-owned buildings leased or licensed to outside entities.

Old City Hall



Source: City of Berkeley

Telegraph Channing Mall



Source: City of Berkeley

Overview of the 2009 Leases Audit

In June 2009, the City Auditor issued an audit examining the effectiveness of the City's lease oversight. The audit findings included:

- Lease oversight remained largely decentralized despite steps taken to centralize this function;
- City staff did not always comply with City rules and regulations for leases; and
- A complete inventory of City facility leases with key information was not available.

The 2009 audit compared the City's lease management practices to its 2002 goal to centralize lease management. In our follow up work, we did not assess whether or not lease management should be centralized, but we did identify some risks associated with the City's current approach, which continues to lack clear, formalized expectations regarding lease management.

Some issues identified in the 2009 audit are still relevant 16 years later in 2025.

Our assessment of the current status of the recommendations found that the City still faces some of the issues identified in the original audit. The following issues compromise the City's ability to strategically manage City-owned property:



The City lacks a clear approach to lease management;



The City's lease policy does not accurately reflect its actual practices; and



There is no complete central inventory of lease and license agreements.

The City did not follow through on efforts to centralize lease management and lacks a clear approach.

We found that there is still no central oversight for citywide leasing activities. The staffing model for lease management has changed since the original audit was issued. In 2009, the City had a Real Property Administrator (RPA) formally in charge of citywide lease management as part of their plan to centralize this function. A primary responsibility of the RPA was to create a property management plan that outlines a process to centralize lease management by transferring lease responsibilities from other departments to the RPA. This plan was never adopted and the RPA position was eliminated in fiscal year 2014.

Public Works staff conduct many of the duties assigned to the RPA, but there is currently no staff person in the City responsible for central oversight of leases and licenses. While determining the best approach to lease management was outside of the scope of this follow-up report, based on interviews with several departments, we found that limited staff capacity and lack of clear direction from City Management impact the City's ability to stay on top of its leases and licenses.

To address these lease management issues and implement the original audit recommendations, we provide the following guidance:

Original Recommendation	Explanation of Current Status	Guidance for Implementation
1.1: The City Manager should formalize and approve the division of responsibilities between the Public Works department and other departments regarding lease management.	Not started. According to the City Manager's Office, Berkeley's current lease management system is decentralized and requires interdepartmental coordination. They have not provided formal direction on the City's approach to lease management since the 2002 plan to centralize and have not yet formalized roles for lease management despite changes in the City's approach.	In order to implement this recommendation, the City Manager's Office should define roles and responsibilities for lease management and oversight of leases and licenses. This should include written direction on any aspects of lease management that should be centralized or delegated to a single staff member or staff members, for example, maintaining the inventory of leases and licenses (see recommendations 4.1, 4.3 and 4.4).
1.2: The Public Works department should determine and formally define the role of the real property administration staff given available resources.	Started. According to Public Works, the Department hired a Community Development Specialist responsible for many of the RPA's former lease management duties. This position is currently undergoing a desk audit, which will help assess if any additional resources are needed to support real property management. According to Parks, Recreation and Waterfront, the department had a position partially assigned to lease work, but the position is currently vacant.	In order to implement this recommendation, once responsibilities for lease management are defined (see recommendation 1.1), the City Manager's Office should work with all departments managing leases and licenses to identify where additional staffing resources are needed. This process should be documented.
1.5: The City Manager should formally communicate a property management plan with all affected City Departments.	Not started. The Real Property Administrator did not establish a plan to centralize lease management, and the position was eliminated. According to the City Manager's Office, developing such a plan will be difficult given staffing constraints, and additional funding would be needed to implement it.	In order to implement this recommendation, the City Manager's Office should request resources in the budget to develop a property management plan detailing the City's approach to lease management. This plan should be shared with all affected departments.

The City's lease policy does not align with its actual practices, leading to variances in agreements.

We found that City staff still do not follow the lease policy. The City's lease policy, Administrative Regulation (AR) 6.6, assigns oversight of the lease process to Public Works. This includes reviewing lease requests, negotiating leases, and preparing lease agreements for City Council approval. According to Public Works and City Attorney's Office staff, departments do not always consult Public Works during the process of establishing leases and licenses as required by AR 6.6. As a result, Public Works may not know about leasing decisions until the City Council approval stage, when it is too late to provide direction on the lease terms.

Without clear policies and procedures for developing rental agreements, lease and license terms vary significantly and the City's process for offering below market rate rent lacks transparency. According to staff, responsibilities for paying utilities and other fees is not always consistent across leases. We reviewed several agreements in which the City rents out its own property at significantly below market rate, but still pays for some or all utilities and other services, including refuse services or maintenance. We found that some non-profits pay market rate to rent City-owned properties while others do not. While the City may establish below market rate rent to subsidize organizations that provide services to the community or make improvements to City-owned properties, we found that there is no standard process for determining when to offer rent below market rate. Without a standard policy for establishing lease terms, there is a lack of transparency about the justification for these decisions. Differences in lease agreements could lead to actual or perceived unfairness between current or prospective tenants that do not receive the same opportunities.

We also found no clear guidance for determining when to lease versus when to license City-owned space. Public Works is moving toward optimizing use of City property by establishing more license agreements, which are non-exclusive and allow tenants to co-occupy space. However, this is not an adopted citywide approach.

To address these lease management issues and implement the original audit recommendations, we provide the following guidance:

Original Recommendation	Explanation of Current Status	Guidance for Implementation
2.1: Public Works and Finance should update Administrative Regulation 6.6 and Contracts Online to give clear direction to City staff regarding administration and execution of lease agreements.	Not started. AR 6.6 has not been updated. Some departments managing leases and licenses have developed their own internal procedures, but several departments told us they do not follow AR 6.6.	In order to implement this recommendation, the City Manager's Office should revise AR 6.6 with support from the City Attorney's Office to reflect an agreed upon process for administration and execution of lease and license agreements. This should include reference to established roles and responsibilities for lease management (see recommendation 1.1). It should also include guidance for ensuring lease and license terms follow consistent practices, including but not limited to: • Guidance for when to lease versus license city-owned property. • Guidance for establishing below market rate rent agreements. • Guidance for establishing responsibility for utility and maintenance costs. The City Attorney's Office and the City Manager's Office should determine if additional administrative regulations are needed. Once this is complete, the Finance Department should link to AR 6.6 in Contracts Online.

The City lacks a complete central list of leases and licenses needed for effective management.

We found that there is still no central inventory containing all leases and licenses, but several departments manage their own lists. When we examined the master list of citywide leases and licenses kept by Public Works, we found that it was missing some agreements, including many leases managed by the Health, Housing and Community Services Department. The list was also missing detailed lease and license information such as property location, contract numbers, start and end dates, rent amounts, and details on utility and maintenance agreements. Without complete and detailed central lease inventory, the City faces the following types of risks.

The City's ability to assess the costs and benefits of leasing and licensing decisions is limited.

The City does not keep complete data on rent charged to tenants or keep track of the market rate for its properties. Based on the limited data available, we identified instances where the City charges rents as low as \$1 per year. However, we could not tell how many total properties the City leases or licenses out below the market rate. Additionally, there seem to be inconsistencies in what the City spends and receives on rent. According to a lease agreement established in 1958 and renewed in 2007, the City offers discounted rent of less than \$1 per year to the Judicial Court of California for use of the City-owned Berkeley Courthouse. At the same time, the City currently pays \$1,200 per meeting day for use of the Berkeley Unified School District building to host City Council meetings. Without keeping some detailed financial information in one central location, the City cannot assess the costs and benefits of renting to or from other entities.

The City could lose track of its property.

The City's current lists of leases and licenses had incomplete data on property location and were missing some City-owned properties. In the past, this issue has caused the City to lose track of properties it owns and could use for services. According to Public Works, this occurred with a building at 1890 Alcatraz Avenue which the City was at one point unaware that it owned. A complete inventory of leases and licenses could also assist the City in conducting analysis of space utilization, which Public Works is planning to initiate in 2025.

The City could face financial loss or service disruption.

The City's current lists of leases and licenses had incomplete data on lease start and end dates. Based on the latest information provided by Public Works and Parks, Recreation and Waterfront, the City has over 20 leases in holdover, and some of these agreements ended over 10 years ago. According to the City Attorney's Office, when leases extend beyond the end date without renewal, they go into holdover and the terms continue on a month to month basis until they are updated. With so many leases in holdover, the City may miss out on opportunities to adjust rent amounts to better cover its costs, or match the market rate. This could result in

financial loss if lease agreements end and terms including rental amount are not renegotiated.² For leases in holdover in which the City is the tenant, this places the City at risk of being asked to leave, which could interrupt services to the community.

To address these lease management issues and implement the original audit recommendations, we provide the following guidance:

Original Recommendation	Explanation of Current Status	Guidance for Implementation
4.1: Public Works should determine what information is needed in a centralized repository of lease information. Staff in the operating departments responsible for leases should be consulted to identify information that they need for monitoring leases. This information should be included in the centralized repository of lease information.	Not started. There is no complete central inventory of leases and licenses.	In order to implement this recommendation, the Public Works Department should meet with staff in other departments managing leases and licenses to determine what information is needed in a central repository of lease and license information.
4.3: Public Works should ensure that relevant detailed information such as contract numbers, annual cost of living adjustments, and other lease terms, fees, covenants, and locations are included in the complete lease inventory detail.	Not started. There is no complete central inventory of leases and licenses.	In order to implement this recommendation, once recommendation 4.1 is addressed, the Public Works Department should ensure that basic information on lease and license agreements, including contract numbers, annual cost of living adjustments, expiration dates and locations, is kept in a central inventory of leases and licenses. The Public Works Department should also meet with staff in other departments managing leases and licenses to develop a schedule for updating this information (for example, quarterly, every 6 months, or annually) and work with the City Manager's Office to confirm responsibility for updating the inventory (see recommendation 1.1). We identified the following fields that would be useful to include in a central inventory, but may require additional resources to include. The City should consider including the following information in a new lease management system or tool, pending available resources (see recommendation 8.2). • Market rate rent value for each property, in order to properly track below market rate leases and licenses. • Details on utilities and maintenance agreements.

² According to Public Works, lease terms include small annual increases that apply even when a lease is in holdover.

4.4: Public Works should make the lease inventory detail available to City staff so they can utilize the information to make informed decisions. If possible, this information should be available online in a format that allows controlled updates of information.	Not started. According to Public Works, department staff maintain a folder with lease and license information that is shared with other departments. However, this folder is not utilized by city staff outside of Public Works to make informed decisions about leasing and licensing space.	In order to implement this recommendation, the Public Works Department should work with departments managing leases and licenses to determine a central location where the lease and license inventory and related documents can be stored, and document the outcome of this meeting. This may involve consideration of a lease management system or tool, and could require additional resources (see recommendation 8.2).
8.2: Public Works and Finance should determine if the existing systems can be used to finalize a comprehensive list of City leases.	Not started. According to City staff, the complexity of the City's lease and license agreements may necessitate a new lease management system or tool other than Excel for tracking leases and licenses.	In order to implement this recommendation, the City Manager's Office should work with departments managing leases and licenses to determine whether additional resources for a new lease management system are needed to maintain a central inventory of leases and licenses.

Recommendations and Management Response

We provided a draft of this report to city management and the Public Works Department (Department) for review and comment. The Department agreed with our findings, re-opened recommendations, and guidance for implementation. We generally expect the City to implement audit recommendations within two years of report issuance. However, some recommendations depend on additional resources. The Department provided the implementation dates and corrective action plan below. We will be conducting our standard recommendation follow up process after the report is issued. We have not yet confirmed to what extent the recommendations have been implemented prior to the audit release date.

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

Guidance for Implementation: In order to implement this recommendation, the City Manager's Office should define roles and responsibilities for lease management and oversight of leases and licenses. This should include written direction on any aspects of lease management that should be centralized or delegated to a single staff member or staff members, for example, maintaining the inventory of leases and licenses (see recommendations 4.1, 4.3 and 4.4).

Management Response: Agree

Implementation Date: June 2025

Corrective Action Plan: Will develop written direction on division lease related responsibilities delineating which aspects of lease management will be centralized vs decentralized with clear guidance for departments on responsibilities.

1.2 The Public Works department should determine and formally define the role of the real property administration staff given available resources.

Guidance for Implementation: In order to implement this recommendation, once responsibilities for lease management are defined (see recommendation 1.1), the City Manager's Office should work with all departments managing leases and licenses to identify where additional staffing resources are needed. This process should be documented.

Management Response: Agree

Implementation Date: June 2025

Corrective Action Plan: The Public Works Department currently has an existing 1 FTE position in the Community Development Project Coordinator classification that has dedicated responsibility for real property management functions, which includes leases. Given the evolution of this workload, a Human Resources Department desk audit of the position has been initiated by the Public Works Department to assess the job duties and workload of the position. The desk audit will also help to identify capacity constraints of the position and determine if additional resources are recommended to meet the existing workload associated with lease and real property management.

1.5 The City Manager should formally communicate a property management plan with all affected City Departments.

Guidance for Implementation: In order to implement this recommendation, the City Manager's Office should request resources in the budget to develop a property management plan detailing the City's approach to lease management. This plan should be shared with all affected departments.

Management Response: Agree

Implementation Date: June 2025

Corrective Action Plan: The feasibility of implementing this recommendation with the current resources will be evaluated as part of recommendations 1.1 and 1.2. If additional resources are needed they will be contemplated as part of the budget process in the context of all financial requests.

2.1 Public Works and Finance should update Administrative Regulation 6.6 and Contracts Online to give clear direction to City staff regarding administration and execution of lease agreements.

Guidance for Implementation: In order to implement this recommendation, the City Manager's Office should revise AR 6.6 with support from the City Attorney's Office to reflect an agreed upon process for administration and execution of lease and license agreements. This should include reference to established roles and responsibilities for lease management (see recommendation 1.1). It should also include guidance for ensuring lease and license terms follow consistent practices, including but not limited to: guidance for when to lease versus license city-owned property; guidance for establishing below market rate agreements; and guidance for utility and maintenance costs. The City Attorney's Office and the City Manager's Office should determine if additional administrative regulations are needed. Once this is complete, the Finance Department should link to AR 6.6 in Contracts Online.

Management Response: Agree

Implementation Date: December 2025

Corrective Action Plan: Given current resources this work will be undertaken in 2025.

4.1 Public Works should determine what information is needed in a centralized repository of lease information. Staff in the operating departments responsible for leases should be consulted to identify information that they need for monitoring leases. This information should be included in the centralized repository of lease information.

Guidance for Implementation: In order to implement this recommendation, the Public Works Department should meet with staff in other departments managing leases and licenses to determine what information is needed in a central repository of lease and license information.

Management Response: Agree

Implementation Date: March 2025

Corrective Action Plan: Public Works will lead an interdepartmental team through the process of defining all relevant information that should be collected to ensure a complete and accurate list of revenue and expenditure leases and license agreements as well as programmatic property agreements is created and maintained. Public Works will ensure that every City department is represented on the team to ensure the content of the central inventory meets the needs of all departments. Once this framework is complete, Public Works will oversee implementation of this tracking tool and periodically work with the team to review and update inputs to improve consistency and standardization of fields.

4.3 Public Works should ensure that relevant detailed information such as contract numbers, annual cost of living adjustments, and other lease terms, fees, covenants, and locations are included in the complete lease inventory detail.

Guidance for Implementation: In order to implement this recommendation, once recommendation 4.1 is addressed, the Public Works Department should ensure that basic information on lease and license agreements, including contract numbers, annual cost of living adjustments, expiration dates and locations, is kept in a central inventory of leases and licenses. The Public Works Department should also meet with staff in other departments managing leases and licenses to develop a schedule for updating this information (for example, quarterly, every 6 months, or annually) and work with the City Manager's Office to confirm responsibility for updating the inventory (see recommendation 1.1).

We identified the following fields that would be useful to include in a central inventory, but may require additional resources to include. The City should consider including the following information in a new lease management system or tool, pending available resources (see recommendation 8.2).

- Market rate rent value for each property, in order to properly track below market rate leases and licenses.
- Details on utilities and maintenance agreements.

Management Response: Agree

Implementation Date: March 2025

Corrective Action Plan: To ensure all information identified in recommendation 4.1 is collected, Public Works will work with the City Attorney's Office to create a Letter of Intent/Lease Summary template that will become a mandatory part of all future leases and license agreements. This template will include all data needed for the inventory. This document can also be used to review and assess current leases and licenses agreements. The language used in Lease and/or Licensing Agreements for real property has been under iterative revision during the past 12-18 months in an effort to standardize formatting, term structure (when feasible), and legal language. As legacy Agreements reach expiration or are amended (exercising an option to extend the lease for example), the Letter of Intent/Lease Summary can be added to an existing agreement or used part of a new agreement.

4.4 Public Works should make the lease inventory detail available to City staff so they can utilize the information to make informed decisions. If possible, this information should be available online in a format that allows controlled updates of information.

Guidance for Implementation: In order to implement this recommendation, the Public Works Department should work with departments managing leases and licenses to determine a central location where the lease and license inventory and related documents can be stored, and document the outcome of this meeting.

This may involve consideration of a lease management system or tool, and could require additional resources (see recommendation 8.2).

Management Response: Agree

Implementation Date: July 2025

Corrective Action Plan: Concurrent with the Corrective Action Plan for 4.1, Public Works will also lead interdepartmental discussions about the location and access to the centralized lease and

license agreement list and determine need and advocacy for a property management system or tool that includes leases, license, and tenant management. The team will also determine the need for public access to the list and establish a calendar for annual and/or quarterly updates to that public list.

8.2 Public Works and Finance should determine if the existing systems can be used to finalize a comprehensive list of City leases.

Guidance for Implementation: In order to implement this recommendation, the City Manager's Office should work with departments managing leases and licenses to determine whether additional resources for a new lease management system are needed to maintain a central inventory of leases and licenses.

Management Response: Agree

Implementation Date: July 2025

Corrective Action Plan: A central inventory of city exists but needs to be refined, improved and clearly communicated to all department staff involved in lease management. Assessment will continue and if existing systems are insufficient new systems will be reviewed for adoption.

Mission Statement

Promoting transparency and accountability in Berkeley government.

Project Team

Caitlin Palmer, Audit Manager
Pauline Miller, Auditor II

City Auditor

Jenny Wong

Office of the City Auditor

Phone: (510) 981-6750

Email: CityAuditor@berkeleyca.gov

Website: <https://berkeleyca.gov/your-government/city-audits>

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BERKELEY CITY AUDITOR