



Policy and Services Committee

TRANSCRIPT

Special Meeting
May 10, 2016

Chairperson DuBois called the meeting to order at 5:03 P.M. in the Council Chambers, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, DuBois (Chair), Kniss, Scharff

Absent:

Oral Communications

Chair DuBois: The first Item on the Agenda is Oral Communications, to speak about something not on the Agenda. We don't have any speakers for Oral Communications.

Action Items

2. Cable Franchise and Public, Education, and Government (PEG) Fee Audit.

Chair DuBois: We are also changing the order of the Agenda. We're going to be taking the Cable Franchise and Public, Education and Government (PEG) Fee Audit first. I guess I'd like to have the Auditor present her findings, and then we'll take comments from the public, and then we'll have a discussion among the Policy and Services Committee (Committee). Harriet, are you ready? Do I have a Motion to change the Agenda order?

Council Member Berman: So moved.

Vice Mayor Scharff: Second.

Chair DuBois: All in favor. Are you ready?

MOTION: Council Member Berman moved, seconded by Vice Mayor Scharff to change the Agenda order and discuss Item 2 before Item 1.

MOTION PASSED: 4-0

Harriet Richardson, City Auditor: Yes. Good evening, Mr. Chair and members of the Committee. Harriet Richardson, City Auditor, here to present the Cable Franchise and PEG Fee Audit. With me is Houman Boussina, Senior Performance Auditor, who was the Lead Auditor on the project. Somewhere in the audience out there is Lisa Wehara who also worked on the audit with us. The objectives of the audit were to determine whether and to what degree from July 1st, 2010 through June 30th, 2014 the City of Palo Alto accurately accounted for its receipt of franchise and Public, Education and Government, also known as PEG, fees and met its oversight responsibilities regarding the Media Center's use of the PEG Access Fees. The second objective was to determine if Comcast and AT&T collected and promptly remitted the appropriate amount of franchise and PEG Fees to the City. The third objective was to determine whether the City had established and sufficiently defined the roles and responsibilities to administer its Cable Communications Program and State Franchises awarded to Comcast and AT&T. I'd like to provide a little background.

Vice Mayor Scharff: Excuse me. Do you have those as handouts?

Chair DuBois: You should (inaudible).

Vice Mayor Scharff: Are they in front of me somewhere?

Ms. Richardson: They should be. Did they get moved?

Council Member Kniss: They were in the other room.

Ms. Richardson: Did those get moved?

Vice Mayor Scharff: I guess we could (crosstalk) and get them.

Ms. Richardson: You should also have an At-places Memo, if you don't have that.

Vice Mayor Scharff: I have nothing up here. I guess it was in the other room.

Ms. Richardson: They're in the other room. I can give you my copy for now. Do you want me to wait to continue until Council Member Berman comes back? I wanted to provide a little background to help you understand the Audit Findings. First is that there are two laws that govern cable communications that are relevant to this audit. The first is the Cable Communications Act of 1984, commonly referred to as the Cable Act, which established a national policy for cable communications. It was enacted by Congress in October 1984 and became effective 60 days later for all new Franchise Agreements. The law allowed certain State Laws already in effect

to remain in effect for not longer than the current remaining term of existing franchises. The second law is California's Digital Infrastructure and Video Cable Act (DIVCA) of 2006, commonly referred to as DIVCA, which was enacted to increase competition for video broadband services statewide, create a fair and level playing field for all market competitors, and establish the California Public Utilities Commission as the sole franchising authority for video service. Once DIVCA was implemented, cable operators had the option of switching to a State-issued Franchise Agreement or continuing to operate under the Franchise Agreement that had been issued by the local jurisdictions until that Local Franchise Agreement expired. Comcast and AT&T currently hold State Franchise Agreements that serve our residents and some surrounding areas. There are two fees that the cable operators pay and pass on to their subscribers. The first is the Franchise Fee which is considered to be rent or a toll for using the public rights-of-way. The Federal Cable Act limits this fee to 5 percent, and DIVCA establishes the fee at 5 percent unless the local entity adopts an Ordinance setting the fee at less than 5 percent. Palo Alto does have an Ordinance that establishes the fee at 5 percent. The second fee supports public, educational and government access channel facilities and is commonly referred to as the PEG Fee. DIVCA generally limits the fee to one percent of the cable operator's gross revenues, and the Federal Cable Act limits the use of that fee to Capital Expenses that support PEG access facilities. The City of Palo Alto has administrative and oversight responsibility for cable operations in Palo Alto, Menlo Park, East Palo Alto, Atherton and the unincorporated areas of San Mateo and Santa Clara Counties through the Cable Joint Powers Authority. I'm now going to pass the presentation on to Houman who will discuss the findings and recommendations.

Houman Boussina, Senior Performance Auditor: Housman Boussina, Senior Performance Auditor. The Audit Report has three findings. I'd like to provide a summary of the three in the next few slides. Finding 1, the Media Center inappropriately used an average of \$340,000 annually of public, education and government or PEG Fees, or \$1.4 million during the audit period for operating expenses such as salaries and benefits, utilities, janitorial service, noncapital equipment and insurance; although, the Federal Cable Act requires that PEG Fees be used only for Capital Expenses to the extent that they exceed a 5 percent Franchise Fee. This occurred because the City didn't fulfill its oversight responsibility to ensure that the PEG Fees were used in compliance with the Federal Law, and the Media Center did not ensure its own compliance with the law despite our agreement with them stating that the fees could only be used in a manner consistent with DIVCA and the Cable Act. Given that the PEG Fee is a discretionary fee that the City and other Cable Joint Power members have the option to impose on the cable service providers and that the cable service providers pass the fee on

to their subscribers, the audit raises concerns about the lack of customer usage and satisfaction data for PEG channels and about ongoing usefulness of PEG channels as a result of significant changes in technology since the Cable Act and DIVCA were enacted. While PEG channels do offer benefits including broadcasts of local government meetings, PEG channels do not necessarily offer unique choices with the advent of the internet and websites such as YouTube, where much of the same programming and information may be available. A timeline is helpful for giving context to this Audit Finding. The 1984 Federal Cable Act requires that PEG Fees be used only for Capital Costs related to PEG access facilities and related equipment such as manned studios and cameras for new Franchise Agreements granted 60 days after the law's enactment. In 2000, the City awarded a new Local Franchise Agreement to TCI Cablevision (TCI). The agreement required TCI to pay the City \$0.88 per month per residential subscriber to fund PEG equipment and facilities and specified that the City would use the funds for any lawful PEG access purposes. In 2002, the City contracted with the Media Center to support PEG channels. The agreement said that TCI would provide the payments for PEG facilities and required the Media Center to operate and administer the PEG facilities and channels in compliance with applicable laws and the Franchise Agreement between the City and the cable operator. The City's 2011 contract with the Media Center reaffirmed that requirement and said that the PEG Fees shall be used consistent with Federal Law. DIVCA affirmed the applicability of Federal Cable Act restrictions on the use of PEG Fees by allowing local entities to establish a fee to support PEG channel facilities consistent with Federal Law. DIVCA didn't impact Finding 1 or the Federal Law provisions that were the basis for Finding 1. In Finding 2, we contracted with the Buske Group to obtain and review Comcast and AT&T records on our behalf to determine if they collected and promptly remitted the appropriate amount of Franchise and PEG Fees to the City. Comcast and AT&T underpaid Franchise and PEG Fees because they did not always comply with provisions of DIVCA and the Cable Joint Powers Municipal Codes that require payment of a 5 percent Franchise Fee based on gross revenues and payment of an \$0.88 PEG Fee per subscriber. Comcast and AT&T did not always calculate the fees due in accordance with DIVCA and the Municipal Codes of the Cable Joint Powers. Underpayments mainly resulted because Comcast and AT&T did not pay a Franchise Fee on all advertising revenue. Comcast did not pay Franchise Fees on all flat fees charged to subscribers, and AT&T excluded customer refunds and credits from gross revenues. Comcast's and AT&T's customer address databases also had inaccuracies and omissions that can cause payment errors, including misallocation of Franchise and PEG Fee payments to the Cable Joint Power members. Comcast and AT&T will owe interest calculated at the highest prime lending rate during the delinquency period plus 1 percent on underpaid fees as required by DIVCA. DIVCA also requires that AT&T pay the City for its

portion of the audit costs because AT&T's underpayment exceeds 5 percent of the amount that it should have paid. Finding 3 looks at roles and responsibilities. The City has not clearly assigned or defined roles and responsibilities for its Cable Communications Program or effectively managed the Program to ensure that funds are used appropriately and that Program outcomes are consistent with the City's and residents' cable communications needs. The Information Technology (IT) Department administers the contract and approves payments for the City's Cable Coordinator but does not otherwise actively manage or provide oversight of the Cable Communications Program. Administrative Services Department (ASD) administered the Cable Coordinator Contract prior to IT becoming a separate department. When the Municipal Code was updated to assign responsibilities to the Cable Coordinator, the provision in Chapter 2.08 that assigns responsibility to the Office of the City Clerk was not updated to reflect changes in how cable activities were to be administered in the City. The Audit Report includes nine recommendations to the City Manager's Office including assessing the need to continue collecting PEG Fees, adjust the PEG Fees or discontinue the fee based on a demonstrated need for future PEG Capital Expenses; if it is retained, to establish criteria for how PEG Fees may be used and monitor expenditures to ensure compliance with the Federal Cable Act and determine whether to allocate a portion of the unrestricted Franchise Fees or other funds to subsidize the Media Center's operations. We also recommend sending letters to AT&T and Comcast demanding payment of the underpaid Franchise and PEG Fees, interest due and for AT&T its portion of the audit costs. We recommend that the City work with AT&T and Comcast to develop methods to ensure accuracy of their address databases and the basis for determining the revenues on which Franchise and PEG Fees should be calculated, review the accuracy of future payments and promptly follow up on discrepancies. We recommend assigning responsibility for the City's Cable Communications Program and that we require the assigned department to provide appropriate program oversight, and finally submitting a Draft Ordinance to the Palo Alto City Council recommending revisions to the Palo Alto Municipal Code based on revised assignment of roles and responsibilities.

Ms. Richardson: That concludes our presentation. We're ready for questions whenever you're ready to ask them. I think that's going to be after the public comment.

Chair DuBois: Yes. Unless we have any really short technical questions, I suggest we go out to the public. I think most of the people here would like us to get to this Item, so we have 30 speakers. We're going to have two minutes per speaker. I'd suggest that if you're making a point that's already been made, it'd be appreciated if you could just say, "I agree with that speaker," and maybe keep it short. We're going to proceed. The first

speaker is Laura Kinley, and the next speaker will be Judy Gittelsohn, if you could move to the front. Thank you.

Laura Kinley: Hello. My name is Laura Kinley. As an educator and former director of the Silicon Valley Instructional Television Network and the Integrated Learning Technologies Department at the Santa Clara County Office of Education, it has been my job and privilege to integrate the use of technology in television and internet, video and computer in the 33 public school districts of Santa Clara County. We responded to this challenge with the creation of TV shows and series, which you may remember some of them—*Math Mentor* was one, *Math Squares Tournament*, *Writers Workshop*, *History Hunters* and *Silicon Valley High*—and also pages on our website that included the teacher lessons and interactive links to play along, CD ROMs with practice questions as well as YouTube sites for past episodes. What we learned was that the use of all multimedia platforms is necessary and essential to reach students in this day and age. In fact, I wish we had been able to do what the Midpen (MidPen) Media Center has done. They went one better by providing training and how to create your own media and find your own voice. They are educating students of elementary school, middle and high school, college-age as well as lifetime learners to not just consume media but to produce it. They are learning skills they can use for life or for a job, not just for grades. Volunteers of all ages learn how to produce a TV show. In case you're wondering about the relevance of television in the age of mobile phones and the internet, a research article in today's THE journal entitled "How Kids Use Technology: TV is Still the Most Popular Video Platform" reported that television is still king among the video platforms. Please don't take this vital educational resource away from the community. I've left a copy of the article for you to see.

Chair DuBois: Thank you.

Ms. Kinley: Where do I leave this?

Chair DuBois: You can hand it to the Clerk. Judy Gittelsohn followed by Fred Bockmann.

Judy Gittelsohn: Good afternoon. My name is Judy Gittelsohn. I'm a Palo Alto resident, and I was a producer of a television show for a year and a half at the MidPen Media Center. I'm an artist and I serve people with special needs. My show highlighted people with special needs, and it was a really great venue because it was live; I brought in the community. The people with special needs, in particular with developmental disabilities, found their way to being in the public. It brought back resources to their community and it gave them a voice, which is a very rare opportunity for this population. In my experience with the Media Center, I'm not the only one of

this kind of ilk that they're supporting. I think the Media Center is a fabulous resource and deserves to be supported by the community. I know Palo Alto had a MidPen Media Center Day that they proclaimed. It's high quality; it's bringing the community together, and it really was an opportunity for me. I really appreciate the venue. Thank you.

Chair DuBois: Thank you. Fred Bockmann followed by Lessa Bouchard.

Fred Bockmann: Hello. I'm Fred Bockmann. I live on Charleston Road and have been a volunteer producing shows at the Media Center for about 10 years now. I have met amazing people from Palo Alto. I've discovered a unique and wonderful way to learn about our community and to communicate with the citizens throughout the country. As I've worked on all these various shows, I've never really produced one from scratch myself up until this past year. Stanford University has created along with 31 other leading university research centers an Alzheimer's Disease Research Center. Its funded by the National Institute of Health (NIH), and they are doing some amazing things there. The statistics that they've shown me show that about 1 in 9 adults over the age of 65 have Alzheimer's or a related dementia, 1 in 3 over 85 have this problem. All of our lives are touched by it. The research grant that they have has identified the need for community outreach and education. I worked with them to put together a series that we started shooting this past winter. The first episode was so well received at Stanford that they've submitted it to the American Psychological Association as an example of community outreach and how they would like to continue working with this. There are many other things that I could say about this wonderful location, the Media Center. It's a group of caring, loving people that really are doing a wonderful job. That's what I'm here to speak in support. Thank you.

Chair DuBois: Thank you. Lessa Bouchard followed by Karen Aclams I'm sorry if I'm mispronouncing your last name.

Lessa Bouchard: Thank you. My name is Lessa Bouchard, and I am a community documentary producer and arts educator. I hope that in any consideration of value of the Mid Pen Media Center you will consider the downsizing that journalism in general has endured nationally, that local newspapers have reduced the number of jobs in the industry by the thousands in the past decade. Financial pressures have increasingly put papers in the position of sensationalizing issues right and left in an effort to stay alive and to maintain relationships with advertisers. These conditions make access to nonpartisan video recordings of government process more important than ever before and, in fact, create an argument for increased funding and support of the Media Center and its insurance needs and its under ten-person fulltime staff, not less. Social media such as YouTube,

these are delivery platforms, not tools of content creation. Not everyone has access to the time and the means to record. Not everyone has a smart phone or a computer. Libraries are not the place to edit and post this citizen journalism. Not everyone has the time and education to represent an balanced account of an event. Local journalists and concerned citizens rely heavily on the archiving of these meetings. The recording and uploading of which is done by Media Center employees with barely enough support and compensation for their work as it is. These people, a skeleton crew, work long hours for little pay because they believe in the mission of the Media Center. They believe in a free press and access to the tools of media for diverse and underrepresented voices in the community. Thank you.

Chair DuBois: Thank you. Karen Adams followed by Tom Upton.

Karen Adams: Hi. My name is Karen Adams, and I've been working with the Media Center for over 20 years. I now run our studio. Every year I'm astonished at the number of organizations that make use of our facility. I have a list here of over 900 unique organizations that have come through the Media Center between 2010 and 2015. This is probably a minimum number. These are primarily nonprofit, educational and government groups. Many of them have been to our station multiple times over the years. They use the space and equipment in our center to record their messages, and they take those shows, and they run them on our cable channels, upload them to YouTube, post segments on their websites and social media. Now, with the service that's been in place for many years called PEG Media, they can upload their shows to a national server that's accessed by 3,000 community stations throughout the nation. Our producers can have a national audience. Audiences have never been bigger for access television. In fact, one of our music shows has over 250,000 hits. *Future Talk*, which was sponsored by the Tech Museum of San Jose, is seen in 300 stations throughout the U.S., also in Great Britain and New Zealand. What these amazing numbers might not reflect are the stories that rarely are told in commercial television. We are hyper-local programming that has a ripple effect throughout our community. For instance, we partnered with the East Palo Alto Police Department to help solve cold case murders. Friends and families of murder victims came to the station to put a human face on the crime. We're so much more than a TV station. We provide community. This community represents the entire diverse cross-section of the Mid-Peninsula. That is young and old, rich and poor, families, all flavors of races and ethnicities. I've been privileged to chronicle the stories of our community for the past 25 years. I appreciate your support over those years.

Chair DuBois: Thank you. Tom Upton followed by Ken Allen.

Tom Upton: I'm Tom Upton, a local creative person, a photographer in fact. I willingly give my time to the Media Center programs that need my skills and help, and I'll be doing so when I walk out of this building tonight and drive down to the Media Center. I challenge you to find a more dedicated, open, welcoming and skilled focused group of people. The leadership at the Media Center is among the best I have seen and inspire dozens of people like me who have real lives to volunteer joyfully. I've photographed a lot of bigwigs in my 30 years as a Silicon Valley photographer. Your being picky-picky chapter and verse regarding operational versus Capital Expenditures at this point in time after so many years of already publicly scrutinized operation is puzzling indeed to me, but I'm just an artist. Calling into question the Media Center's usefulness in the community appears to be more than specious projection, but a rather deft twist of the knife, taking on the distinct flavor of muckraking with a tablespoon of Trumpian hyperbole, well neo-Trumpian hyperbole. Good job, you got our attention. I won't take offense that all the audit people have their backs to me. I want you to understand there are more volunteers at the Media Center than there are staff. We are creatives; we're doers, artists, idea people, activists, techies and makers. You need us, but you don't see us. Please make an effort not to pick the road most traveled by politicians, bean counters, bureaucrats. That is the road of failed imagination. Please open your eyes, examine the books, go over the costs, find the pain points and fix them. Work together, be kind and dig in for a bit of understanding the wide-angle view, the establishing shot. That's a good place to start. Godspeed to you.

Chair DuBois: Thank you. Ken Allen followed by Nancy Wheeler.

Ken Allen: First of all, I'm Ken Allen, Grove Avenue. I believe I speak from a useful perspective because I was the corporate secretary of Cable Co-Op when it funded the Media Center back in 2000. I was responsible for distribution of the funds. I was not involved in the contract negotiations, but they're relevant here despite what the Auditor may have said. From what I've read in the Auditor's Report, it seems as though the primary issue is whether PEG Funds are allowed to be used for Capital Expenditures. I believe the Auditor erred in Finding 1, that the Audit Report is fundamentally flawed. The Report of the Auditor seems to ignore the realities and make it appear that there is an evil intent on behalf of the Media Center and the money grab by the City to the detriment of the Media Center, its contributors, its users and its viewers. I read the Cable Act. I read the State Franchise Law that superseded the Local Franchise Agreement, and I even found an opinion of the California Attorney General that PEG funds were to support PEG operations. I tried to find the case law the Auditor relied on, and I think I found it. It has no statement that limits the use of PEG funds to Capital Expenditures only. All of the discussions were on what is a Franchise Fee. PEG funds were definitely separately defined. There is

no such limitation in the Cable Act on the use of PEG funds for Capital Expenditures. The law merely says that Franchise Fees are not to be used on Capital Expenditures, and that PEG funds could be used for Capital Expenditures. The Auditor evidently has no memory of the history of the Media Center. When Cable Co-Op offered to give the entire cable system and operations to the City in the late 1990s, the City refused, agreeing to subsidize operations instead. If you want now to rewrite that understanding and limit the use of PEG funds, then consider the PEG funds as borrowed from the capital of the Legacy Fund and allow the Media Center from this point forward to begin to reimburse that Legacy Fund. It will take nearly two decades to do so. Otherwise, the City and the Joint Powers may be obligated to find other means to support PEG operations as expected by the Cable Act.

Chair DuBois: Thank you, Ken. Nancy Wheeler to be followed by Stephanie Reuder.

Nancy Wheeler: Hello. I'm an artist and also a volunteer for Silicon Valley Open Studios, a local nonprofit for artists. I produce a show called *Talk Art* at the MidPeninsula Media Center. On *Talk Art* we feature many Palo Alto artists and other artists from the surrounding communities. We aim to connect the community to their local artists and the local artists to their community. We also hope to educate people on the techniques and styles of art that are available and to make this more accessible. This is particularly for people who haven't received an arts education either because they're very young and have not yet received one or because for whatever reason they didn't have the opportunity to get one. I think one of the important things about the Media Center is the combination of broadcast and digital delivery. Broadcast enables people who don't yet know what they're looking for or what it might be called to find this. Once they've found it, then the digital delivery gives them more direct, interactive access. I think the synergy is much more effective than just the one or the other. Many of the artists I work with would not be able to reach out to the community in this way without the Media Center. Both because of the expense of the equipment needed to produce a high quality video, which is really needed for the arts, and also because of the knowledge gap as it's very complex and most artists have concentrated on the arts and may not have the technical understanding to approach it. People need the Media Center to cross these barriers. Thank you.

Chair DuBois: Thank you. Stephanie Reuder to be followed by Paul George.

Stephanie Reuder: Hello. My name is Stephanie Reuder; I am the President of the Board of the Peninsula Peace and Justice Center. I'm going to point out some problems with the Study from the Mackinac Center for Public

Policy. In questioning the funding for our MidPen Media Center, the Auditor cites this so-called study from Mackinac. I have read the Study, and I have some post-graduate training in reading and evaluating social science research. This Study may not be the most fraudulent piece of social science research that Mackinac has produced, because they're a notorious source of far-right opinion lightly disguised as social science. Like other Mackinac classics, this Study does not collect and test relevant data and then reach a conclusion. Instead it speculates that community media centers are obsolete, that they lack viewers, that they don't serve their community, etcetera. It concludes that cable companies should no longer be required to pay PEG fees. That is not social science research; that's an opinion. It's not a Study; it's just disguised as one and has no relevance to our Media Center's role and value which so many people have already spoke eloquently about, and more will. I'll just say finally that I did get training as a camera operator for the Peace Center in 1988, then we had to go to De Anza to do that. After our Media Center was created, it was certainly easier to do it up here. I've remained involved in a lot of different ways since, and I look forward to hearing the comments of other people who have been involved with the Media Center. I think it's been a great value to our community. Thank you.

Chair DuBois: Thank you. Paul George to be followed Audrey Daniel. Paul, it looks like you want to speak for five others.

Paul George: Yeah. Can we get a little volume discount here, maybe four minutes total?

Chair DuBois: Sure. Paul's going to speak for Richard Duda [phonetic], Henry Morgan, Glenda Jones and Richard Clark.

Paul George: Thank you. As noted, my name is Paul George. I'm Director of Peninsula Peace and Justice Center. In that capacity, I've been producing and hosting an award-winning monthly program at the Media Center for nearly 20 years now. Just so we're clear, could everybody who's here in support of the Media Center just hold your hand up? I thought as much. Just didn't want you to miss that. You know by now that the Mackinac Center for Public Policy—it was just talked about—and whose Study is cited in this audit as a reason for undermining PEG Access Fees, that Center is largely funded by the Koch brothers, the Dubose family and other radical, right-wing billionaires. This is why the Kochs pour millions of dollars into such think tanks each year. You take a radical, right-wing ideology, you dress it up as social science and fling it into the public policy arena. Voila, the Koch brothers are influencing policy here in the MidPeninsula. I'd like to address that Study and the points brought up in the audit about the worthiness and value of PEG access and the Media Center. Suppose I

propose that Palo Alto City Council should be dissolved because nobody watches your meetings on TV; that on its face would be absurd and so are the comments in the audit regarding PEG access. Our monthly program is a community forum with an audience in the studio that participates in the discussion. Usually between 50 to 100 people attend each program. Over 20 years, that comes to about 12,000 people who have used the physical spaces of the Media Center as a kind of community commons. I can honestly say that today the Media Center is an even more valuable community resource than it was 20 years ago when we started our program. That's because of the very technologies that the audit cites as a reason to get rid of PEG access. Let me give you just a couple of quick, recent examples. Our program in December was on the Syrian refugee crisis and featured award-winning foreign correspondent Reese Erlich who reports for National Public Radio (NPR) among other outlets. I have no idea how many watched on TV, and I really don't care. I do know that over 300 people watched on YouTube, another 250 on Facebook. When I posted a short clip from the program to Facebook, yet another 500 people watched that. That's over 1,000 people who saw that program. That's enormous outreach for a small organization like ours. A program on Silicon Valley's housing crisis last October packed the studio, and housing advocates from Mountain View participated on the program live from a Mountain View City Council that was taking place right then on the issue of the housing crisis. They were able to do so because the Media Center has now provided us with Skype, which brings me even more people. A program in January on anti-muslim hatred featured the director of the Council on American-Islamic Relations (CAIR). In addition to the hundreds of views on there, CAIR now uses that video for their own outreach, and many other organizations have just done the same thing. The audit says "the idea that PEG channels offer unique choices to viewers is outdated. Much of the programming and local information is available on the internet." That is just so wrong. The Auditor forgot to think about where that programming comes from. It doesn't just show up out of thin air on YouTube; somebody makes it. It's produced at the MidPen Media Center, using the latest technologies and equipment that simply wouldn't be available to an organization like us otherwise, millions of dollars' worth of the latest equipment. It is produced by the people in this community; that's the real value of the PEG access. Please do not accept this audit in its current state. Please get rid of the Koch brothers and acknowledge the astounding, creative, unique contributions of the people in this community. Thank you.

Chair DuBois: Thank you. Audrey Daniel followed by Phillip Pflager.

Audrey Daniel: I've been a volunteer at the Media Center for five years and producer for two. My show is called *Culture Connect*. It's really to help each other understand our different cultures. On the show, we share messages

that are important not only to the local community, but to the national community and international. The Media Center offers a place for anyone of any income level, as the previous speaker said, color, gender, political party, religion, educational background to express their ideas through media by learning how media works. What you do with the content, whether it goes on YouTube, Vimeo, community cable access TV, is not the point. It's learning to create good content that can deliver a powerful message. This is what the Media Center is all about. The MidPen Media Center studio and equipment give people with very little means access to professional tools they couldn't afford. To rent a studio generally, just the studio, is \$1,000. You tell me anybody in East Palo Alto that has a spare \$1,000 to go into a studio and produce a show. That doesn't include cameras, lights, tripods, other costs that are involved. How do you even use that equipment? You can't learn how to use the equipment if you don't have access to it. So much of what I see happen at the studio is people from all income levels and education that share a learning opportunity and a team working spirit to help each other share our individual messages and release them in the world. The more one can learn how to effectively express themselves in a media whirlwind and understand how to navigate the media outlets and audiences, the more their voice can and will make a difference. Thank you.

Chair DuBois: Thank you. Phillip Pflager.

Phillip Pflager: My name is Phillip Pflager; I'm a retired broadcast engineer. I worked for KGO TV in San Francisco for 22 years, and I received a good wage for doing that. Retired now, I volunteer at the Media Center for free because I believe in the mission of the Media Center. The Media Center provides an opportunity for those who don't have a voice to have a voice. It provides a voice for your constituency. There are six corporations that control 90 percent of the media. While they have a large cable channel system, it's a corporate cable channel. The Media Center provides an alternative that provides views and ideas that are not allowed on corporate TV. I come here today to implore you not to reduce the funding to the Media Center and silence the voice of those who are voiceless and reduce the opportunity for people to present alternate views that are not allowed on corporate TV. Thank you.

Chair DuBois: Michael Di Battista followed by Barbara Noparstak.

Michael Di Battista: Hello. I'm Mike Di Battista. I've been a member of the Board since 2005 representing the town of Atherton. I've been the treasurer of the Board since 2008. I appreciate the opportunity to speak to you today. I wanted you to know what steps the Media Center is taking in terms of its accounting principles and policies to avoid any future scrutiny regarding the use of the PEG Fees. First, we have redefined and narrowed the definition of

capital in our policy to include only those items that are purchased which exceed a certain dollar amount and have a useful life of one year or more. We believe that that should be an acceptable definition of capital by just about any accounting principle. Second, the Media Center now uses PEG income solely for those capital purchases. The Cable Co-Op Legacy Fund, which was previously used, which we refer to as the Investment Fund, will now be used for noncapital expenses. However, capital purchases are generally a small part of the Media Center operation costs. Limiting PEG Fees solely to capital equipment purchases will have a significant effect of shortening the life of the Investment Fund and, hence, the life of the Media Center or at least the extent of services that it's capable of offering. We have developed a forecast model to predict the life of the Investment Fund. The model predicts that limiting PEG income to solely the amount of Capital Purchases will reduce the life of the Investment Fund by at least 10 years. There is a solution that we would propose to provide for a long-term sustaining of the Media Center. The Investment Fund was used to purchase capital equipment, the property, the building that the Media Center now owns and operates. We propose that future PEG income which exceeds the amount of capital purchased in a year be applied towards the purchase of those items. Ultimately, that would result appropriately in the Joint Powers Authority (JPA) owning those items, and it would extend the use and the lifetime of the Investment Fund.

Chair DuBois: If you can wrap up please.

Mr. Di Battista: At any rate, we hope that our actions and proposal be taken into consideration. Thank you.

Chair DuBois: Thank you. Barbara followed by Andrew Mellows.

Barbara Noparstak: Good evening. I'm Barbara Noparstak, President of the MidPen Media Center Board of Directors. I'm a volunteer. I do it because I love my community and I value public access. We've earned the best station in the nation award from the National Alliance for Community Media, which represents 3,000 public access stations, three times. What's more important is how we are valued by the community we serve. Last year for our 25th anniversary, we received so many proclamations including one from the City of Palo Alto. There are lots of people here today who are testifying to the value of our Media Center and PEG access, government transparency, inclusivity, social capital including youth self-esteem. I want to address one additional important value head-on, integrity. Everything we do is above board and open to scrutiny. Each of the six JPA member jurisdictions is entitled to representation on the Board. I've represented San Mateo County since 2002. Palo Alto's seat has been vacant since the end of 2014 when Donna Grider retired. The Auditor has blocked nomination of a

replacement. I encourage you to direct Staff to nominate someone, someone to share our fiduciary responsibilities, to participate actively in our upcoming strategic planning and community outreach and to link constructively to the City. Let's not fight about the past; let's think about the future. Thank you.

Chair DuBois: Thank you. Just so you know, I'm cutting off speaker cards at this point. Our next speaker is Andrew Mellows followed by Rick Row.

Andrew Mellows: I'm Andrew Mellows; I live at 791 Coastland Drive. In respect to your request, I will say I agree with everything that's been said. I will limit my comments to my own little experience. My wife and I have a small video production business in Palo Alto. We have taken classes in the Media Center as our business becomes more sophisticated, and the instruction was excellent and the cost modest. I help with the sports summer camp program at the Media Center. Children are instructed in the use of the Media Center's production truck. During May this year, East Palo Alto children have been producing live coverage of sports at Palo Alto high schools. It is a unique opportunity for elementary, middle and high school children to work as a team on a project that would normally be far out of their reach. To be clear, the children do the entire production including camera, director, audio, replay, graphics and commentary. Many who have been involved in the Media Center have gone on to study film and media in college and have related careers. I have been able to broadcast Grace Lutheran Church's services on cable for 25 years and recently of course on the internet also, all this with no cost. The audience of shut-ins, people who have moved away and people who are traveling is small, but they really appreciate the facility. As a grateful immigrant, the right to public access is a real gift and one thing I love about America. I value the Media Center enough to volunteer as a Board Member, to maintain and repair equipment without cost and to give a modest annual gift in support of operations. I hope you share my enthusiasm for supporting the Media Center as a worthwhile community resource. Thank you to all of you for your efforts for the people of Palo Alto.

Chair DuBois: Thank you. Rick Row followed by Ben Stetson.

Rick Row: Hi. Thanks for getting my name right the second time. Yes, it is Rick Row. I'm a resident of Palo Alto. I am a graduate of the video production class, and I'm actually in the middle of doing a video for the Tuolumne River Trust and one next week for Acterra as well. I just wanted to say that I found it quite reprehensible that the City Auditor went from talking about financial management to commenting on community values. I just find it very inappropriate for someone who's an employee of the City—sorry, I'm not sure whether she's an employee or contractor—to talk at

length with the media and (inaudible) media than TV actually about the social value of a program. I noted on one of her slides under Finding 1 she asked the question if PEG channel's relevant given today's technology. She's already given her answer to that, but that question has nothing to do with Finding 1. I don't know whether they're supposed to be spending this money on Capital Expenditures or not. That question is just another thinly veiled attempt to continue the discussion of social values. I think that's between us and our elected officials. Thank you.

Chair DuBois: Ben Stetson followed by Arlen Comfort.

Ben Stetson: My name's Ben Stetson, and I just want to add my support to all that you've heard and the emails you've received in support of the Media Center. I've attended maybe six live tapings of Paul George's interview show. I found them extremely worthwhile. Again, I just want to add my support and appreciation for the value the Media Center provides us. Thank you.

Chair DuBois: Thank you. Arlen Comfort followed by Roy Blitzer.

Arlen Comfort: I'm Arlen Comfort from Menlo Park. I'm not part of any staff of the Media Center; I'm a user, I'm a customer or however you call it. I'm very happy with what I see from the Media Center. The other thing I would say is that I'm a cynic about everything that I see that's commercial television, cable, on-air, whatever. I believe when I'm listening to Paul George and his group, which is one of my favorites, if they're not telling the truth, they're trying their hardest to get the right information out to us. They're trustable, I can do that. The other thing I get at home, to bring up something here, is a lot of survey calls. My first question is, when somebody calls for a survey, who's paying for this. If they won't tell me, I won't tell them any information, because I don't know how they'll use it, because I know they'll use it for their own purposes, throw out what they don't want and keep what they do want. My question is, who behind this audit helped pay for it, pay for any the Study, was it just the City or was there other people involved. We need to know that because that's part of how you determine whether this is right or wrong. Thank you.

Chair DuBois: Thank you. Roy Blitzer followed by Steven Gredinger.

Roy J. Blitzer: I'm here both as a supporter of the Media Center and also as a former City employee. I sat on the Human Relations Council or Commission for 9 1/2 years and was also one of their Chairs. I guess my first point is to imply in any way, shape or form that the Media Center was not acting in an integrity mode is really ridiculous. I have never met a greater group of committed, honest and basically high-integrity people.

Whatever you're after is certainly a miniscule amount of time and energy for a community service that is very worthwhile. I'm also a producer there that helps young people and old people learn more about their careers, that they will be happy and more satisfied at work. I want you to reiterate that this is a process that may not need to take place. The Media Center is a valuable resource to the community. It is something that you should be proud of and not scrutinizing and questioning. Thank you.

Chair DuBois: Thank you. Steven Gredinger followed by Judy.

Steven Gredinger: Hello. Thank you for taking public comment on this important issue. I would like to reinforce and support the comments of the people who have gone before me. In addition, I'd like to note that in fact there is a studio in the MidPen and that you cannot obtain studio-like quality on your cell phone. One of the things that actually attracted me to the neighborhood of MidPen was the fact that there were opportunities to volunteer and produce the kind of educational programming that is created there. Our children are not going to live in a text-only world. We don't even know the relative importance of text-based and multimedia communication into the future. We should allow them as many opportunities as we can to explore multimedia and to explore the integration of web video and other media. Really from my perspective, the only question worth asking here is how do we drive more utilization of the facility and how do we get more kids and more people interested in exploring opportunities there. Now, we could consider enhancing the facility by soliciting some kind of a public-private partnership maybe, but really I would encourage the Council to think about policy and how to make the Media Center even more vibrant than it already is.

Chair DuBois: Thank you. Judy followed by Elliot Margolies.

Judy Adams: I think I'm the Judy in question, Judy Adams.

Chair DuBois: There's no last name. Judy blue eyes wanted (inaudible).

Judy Adams: I can't speak for the fiscal issues which are complex, but I will add my support to the statement that in an Auditor's Report there should not be an analysis of the social, educational relevance of a service. I can speak as others have for the educational opportunities provided by the Media Center and its predecessor in the '70s, which was down by Fry's where MaxiAids used to be. That's where I first got involved in public access TV for the Peace Center as a Board Member which happily hired Paul George, who's still obviously going strong. I use the Media Center more recently for the Women's International League for Peace and Freedom, which put on an exhibit at Rinconada Library for our centennial from

November through January, last November and this January, and then other nearby venues. I made a slide show in the '80s of interviews with women peace activists, and the Media Center helped me edit, bring that together as a video program. Now it's true that was shown on Vimeo, available on Vimeo, but it was shown in the community. I continue to learn skills that I learned in the beginning, in the '70s. It's an invaluable resource, and I encourage the City Council to solve whatever issues there are, keep the programming going. As a community resource, as everyone has said, it's unmatched. Thank you.

Chair DuBois: Thank you. Elliot followed by Henrietta Burroughs.

Elliot Margolies: I'm Elliot Margolies. I was the first Executive Director of the Media Center. We put all the Palo Alto government meetings online. In the first half of 2015, no less than an average of 717 views every month came to the Palo Alto meetings page. That doesn't include those who watch at home live on the government channel. In fact, the City Council meetings are the most long-running series we have. Now inspiring speakers tonight have illuminated the incredible value that they bring. Their viewers find them on the cable channels but also on our web streams, our YouTube channel and on the producers' own websites. These are platforms that the one-sided report quoted by the Auditor doesn't even measure. I want to point out that a significant portion of what the Media Center does have very little to do with the cable channels at all and everything to do with community building. Some examples: violence prevention, media projects with teenagers, community forums on health and legal issues in Spanish, afterschool activities in the Ravenswood District, town meetings that we've set up on local issues, dozens of candidate forums and ballot measure debates on almost—yes, we're doing yours later—every local contested election since 1990, and a growing archive of immigration stories that over 5,000 people a month come to visit, and community events such as author readings done in partnership with the Palo Alto libraries. My last line is that the scope of what we do goes far past what plays on the cable channels. Our staff is passionately involved in community building and dismantling the digital divide. Our work is not television per se, but about building bridges of empathy and empowering people with the tools of engagement and storytelling. Thank you.

Chair DuBois: Thank you. Henrietta Burroughs to be followed by Leif Erickson.

Henrietta Burroughs: I'm Henrietta Burroughs, the founder and editor in chief of the *East Palo Alto Today* newspaper and the host and producer of *Talking with Henrietta*. I am delighted to be here to speak on behalf of the Media Center, but not as delighted as I was in the 1980s when I moved to

Palo Alto and found that there was a small group of people who wanted to set up community media in Palo Alto. Why was I so delighted? Because I'm a professional journalist, and I worked in New York City as a print reporter and as a broadcast journalist, even hosting a television show. I worked at Rockefeller Center with some of the broadcasters that you know of. Even at the top of my field in the number one media market, I was not happy with the way news was selected and produced. Here was the chance to meet with a small group of people, which I did, on a regular basis, and was delighted that the Media Center was launched. Since that time, I produce one of the first shows at the Media Center as a Commissioner on the Human Relations Commission (HRC) and five years later started the *East Palo Alto Today* newspaper, the *Talking with Henrietta* show that has been going since 2002. I've interviewed Congressional representatives, State officials, City officials, even some of you, business representatives, community representatives on a variety of critical issues. There is no way that I could have had that opportunity outside of a commercial media network, to present the type of quality shows that receive national, State recognition. No institution or agency is perfect, but the Media Center needs to be commended for the way it has kept to its mission, allowed some of us to keep to our mission. I hope, while you might consider cuts, that they not be the beginning of a thousand cuts that would destroy what we value in this community so much.

Chair DuBois: Thank you, Henrietta. I'm available for interviews all week. Leif Erickson followed by Thomas Atwood.

Leif Erickson: I'm Leif Erickson, Executive Director of Youth Community Service (YCS), and honored to be speaking with Henrietta. YCS, Youth Community Service, also is enjoying a 25-year anniversary this year along with the Media Center. Media Center has been an essential partner for our work of civic engagement and social and emotional learning and community service with young people in our mid-Peninsula communities. Media Center folks have trained and broadcast video messages created by our students with messages that it's okay to ask for help when you're having a bad day. They have broadcast public education programming for our parents and our staff and our young people. One of the particular areas of overlap is our community footprint where we also serve East Palo Alto, Menlo Park, Palo Alto and the surrounding community like the Media Center. We appreciate the way that the Media Center not only promotes communication and information sharing within a city, but also across the freeway, across communities in a way that helps to overcome the extreme inequality of wealth and education. In short, the Media Center is a beloved and essential community institution. I'm puzzled at the findings of this Audit Report. I'll look forward to hearing your resolution. Thank you.

Chair DuBois: Thank you. Thomas Atwood followed by Dorothy Fadiman.

Thomas Atwood: Hi. My name is Thomas Atwood, which I guess makes me an anglicized version of your name, Council Member DuBois. I also find it strange that the Audit included claims about the usefulness of the Media Center to the community. Is this evaluation within the scope of an audit? I'm not an auditor, and I don't know the answer to that question. If it's not, then let's focus on whether the Media Center followed appropriate accounting practices and correct any problems. If it is in scope, let's use more reliable sources than the Mackinac Center to make the evaluation. Last fall, I became a producer in retirement when Peninsula New Economy partnered with the Media Center to record a series of three local cable programs on banking, finance and the economy. We brought Marco Vangelisti, a Fulbright Scholar and economist, to deliver these talks. Marco shared perspectives that are virtually unavailable in mainstream media and probably threatened the Agenda of the Kochs and Waltons of this world. I sure hope the programs didn't attract the attention of the Koch brothers and they just don't want to pay the fees. The City's PEG Fee Audit states that government auditing standards require auditors to be free from external influences that could create the appearance that the Auditor's professional judgment may be compromised. What could be a more biased influence than a brief funded by families whose express goal is to make government small enough to drown in the bathtub? The Koch brothers, the Scaifes, the Waltons, the DeVoses and the Bradleys already own more than 50 percent of Americans combined. The five Walton heirs alone own more than 40 percent of us. The death by a thousand cuts tactics of libertarian think tanks are incremental and patient, but they're unworthy of Palo Alto. In summary, if evaluation of the usefulness of PEG channels or the Media Center is not part of the scope of an audit, let's reject it or at least set aside the section of the Report titled Concerns About Ongoing Usefulness of PEG Channels. Thanks.

Chair DuBois: Thank you. Dorothy Fadiman followed by John Kelley.

Dorothy Fadiman: My name is Dorothy Fadiman. I'm an independent documentary filmmaker. I had five minutes prepared because I didn't know, and I got it down to a minute. After everyone spoke, I got it down to about 45 seconds. I'm always looking for ways to share my completed work. I've been nominated for an Oscar; I have an Emmy. Still I face the same old challenges of how can I share what I've produced. Through the Media Center's broadcasts and my ability to be on their channels and speak about my work, I'm able to reach not only my own community but, once the films are online, they can be seen by millions of people anywhere in the world. Through PEG access, my films are picked up and shown station by station in places which I could never reach myself through DVDs or on foot. I've worked on various shows at the Media Center, both as a producer and on

camera. Afterwards, when I thank the volunteer crew, invariably every one of them says something like, "Thank you for giving us this opportunity." What the Media Center does is create a two-way highway between producers and on-air guests and volunteers. All of them make it possible for us to reach audiences. They produce our programs with us and then thank us for the opportunity. They never make us feel that they're doing us a favor. I always feel that they're giving me a gift. Thank you.

Chair DuBois: John Kelley followed by Peter Drekmeier.

John Kelley: Thank you. I'd like to associate myself with the remarks of Ken Allen, with Andrew Mellows, with the gentleman from the Media Center who was talking about how they plan to go forward on a financial basis, and with the woman whose name I can't remember who talked so eloquently about the need to increase funding for the Media Center, not cut it. I would like to add very quickly—I could probably talk for two hours on this subject. I was the President of Cable Co-Op for over a decade. I was a member of its Board of Directors for 19 years. I was the person who lead the franchising effort. I spent a lot of time here in the early '80s trying to win the franchise for Cable Co-Op. I was also the person who negotiated the agreements with MPAC and in the sale. I know this stuff cold, at least as it was originally funded. I can tell you that, from the consumer's perspective, providing support for PEG channels, providing support first for Midpeninsula Access Center (MPAC) and then the Media Center in its creation was fundamental to our franchising effort. It was continually reaffirmed not only by the community and its elected officials, but also by the subscribers themselves. That was part of what the subscribers voted on to dedicate a substantial portion of the proceeds from the sale of Cable Co-Op at the time that we turned the system over to AT&T. The other thing I'd like to say is from Ken's remarks and from what other information I've gleaned from the audit itself, there's at least an open question about the treatment of the Capital Expenditures. I think if you're going to go back and look at things, going back five years, you should really go back and look at the money that went into the building of the—that went from Cable Co-Op to the building and perhaps amortize that over almost 20 years now. I think you would probably end up owing a great deal to the Media Center. Finally I'd like to say that the real challenge, particularly now when the City's looking at constructing a fiber network, is how to provide more and better content that's relevant to this community. I think you should be directing the Staff not to find ways to cut funding for PEG programming, but to increase it, particularly if you're going to build a fiber system here in Palo Alto. Thank you.

Chair DuBois: Thank you. Peter Drekmeier followed by Larry Klein.

Peter Drekmeier: Good afternoon, Chair DuBois and Committee Members. I thank you for your great service to our community. Like others, I just wanted to share the value of the Media Center to me and my community. When we started Bay Area Action on Earth Day 1990, we had a number of projects, and one was a video project. We had a member who was producing public service announcements for Beat the Backup Day, for the Downtown Environmental Action project. He encouraged us to go through the training, so I did it at MPAC. It opened up a new world for me. I produced several documentaries including one on San Francisquito Creek that is now available on the Media Center YouTube channel. We had a program called *Common Ground*, a monthly program, that lasted for several years and had quite a strong following. I used to broadcast the City Council meetings; that was when I learned that it might be fun to serve on Council at some point. I was working with Vince, who's now doing KZSU, so you can imagine it was quite a scene in the broadcast room. Just the broadcasting of debates, of community forums is so important. We had a community forum in the chambers here on December 11, 2014, with the City, the Water District and Stanford, and it was on water reuse. I mention December 11 because that was the biggest storm we've had in the last five years, and here we are talking about the need to reuse water. People were getting texts that you shouldn't drive unless you have to. A lot of people who had signed up worked for Public Works Departments, and they had to be on call. About half the people, about 100 people, didn't show up, but it was videotaped by the Media Center, and they all got to see it. It was really great information. Just last night I realized we had the Tuolumne River film and culture fest at the Menlo-Atherton (MA) Center for Performing Arts. One of the documentaries about the Tuolumne Wild and Scenic Campaign from 1983, I was able to convert it at the Media Center from 3/4 inch to digital. Rick Row, who you heard from earlier, was videotaping that event so other people would be able to see it. Thank you, and thank you for providing the best reality TV on Monday nights. We all appreciate that.

Chair DuBois: Larry Klein followed by Ellen Forbes.

Larry Klein: Good evening, Committee Members. I'm here to urge you to adopt the position of the Media Center as set forth in their March 24th letter to you. Four reasons. First, I would urge you to look at this from the 30,000-foot level. You've heard a great deal of testimony this evening about how valuable the Media Center is to the community. You've heard nothing on the other side. There's nobody here complaining except perhaps the Auditor. No citizen has come down here to criticize anything about the Media Center. You haven't heard anything even from Comcast and AT&T. We've heard nothing that the Federal Government doesn't like the way the accounting has been handled. We've heard nothing from the State. The only person complaining against all these citizens is our Auditor, and that to

me is strange. Second, you've heard a lot of about this Capital Expenditure issue versus operating costs. I'm not going to get into that. You've heard some very eloquent speeches, and I want to add that Ken Allen, perhaps out of modesty, did not mention to you that he has been voted one of the distinguished patent lawyers in the world and has 40 years of experience in dealing with statutes like the Cable Act of 1984. There's an easy way to find out who's right on the issue of capital versus operating expenses. You can ask the Federal Communications Commission (FCC) for their opinion. We don't have to have this duel of lawyers. The FCC has the right to issue opinions. Lawyers frequently use things like that to Federal Agencies. The criticism of the PEG channels by the Auditor, I think, is out of bounds, but it's also using the wrong lens. This isn't a question of a cost-benefit analysis or Nielsen ratings or things of that nature. This is a service to the public. I don't think we should look at it in that narrow of a light. Lastly, I would urge you to do no harm. We have a great asset here; don't harm it.

Chair DuBois: Ellen Forbes to be followed Batya Bell de Berenfus.

Ellen Forbes: Good evening. I'm Ellen Forbes, President of the League of Women Voters of Palo Alto. Since you have the League's letter on this subject in your Packet, I will limit my remarks here. As I was sitting here tonight, it occurred to me that all three categories, public, education and government, apply to the League's work. The mission of the League is an informed electorate; therefore, any question that public access to governmental affairs might be pared back deeply concerns the League of Women Voters. The League believes that the democratic government depends on informed and active participation in government. Democratic government also requires that government bodies protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. Most of the City's public meetings are available to the public via the PEG access channels maintained by the Media Center. Should there be limited PEG access channels, the City would be impairing the citizens' right to know. The League of Women Voters of Palo Alto heavily relies on PEG access channels to air its many voter education activities such as City Council candidate forums, presentations of the pros and cons of the ballot measures and many more events. If PEG access channels were not available, the League of Women Voters would lose this valuable means of educating voters and ensuring that our democracy works. Thank you.

Chair DuBois: Thank you. Batya Bell de Berenfus, and then our last speaker will be Beth Charlesworth.

Batya Bell de Berenfus: My name is Batya Bell de Berenfus, and I actually moved to Palo Alto in 2002. I'm a businesswoman, and was told by a

political candidate in Menlo Park about the Media Center. One thing that I did want to say is—I wrote a letter to you not knowing if I'd be here—that Capital Expenditures are only as good as the people who steward them that benefit the local communities. The MidPen Media Center is a thoughtful and responsible custodian of these assets, doing a value-added job. The Media Center's operations and cutting-edge equipment is a necessary component to the continuum of informal and entertainment community engagement that is essential to and among other things First Amendment rights, workforce development, community relevance, affordability and access. On one hand, people have mentioned that YouTube is that impulsive, creative mind armchair way of engaging with people. On the other end of the continuum is the Holly Bollywood entertainment industry. The Media Center is conveniently and comfortably nestled in the middle of this continuum with professional supervisors, seasoned and knowledgeable trainers and nationally recognized, award-winning TV and film productions. When we talk about free speech, you already heard from a few people here. Yes, there's public access options throughout Northern California, but the Media Center puts the Mid-Peninsula on the map. It's the only Media Center where East Palo Alto, Palo Alto and Menlo Park issues are regularly addressed in a thoughtful and cohesive way. Karen mentioned *Making the Call* as an example, and then *Talking with Henrietta* is another example. In terms of workforce—there is workforce development and community relevance that other people have also addressed. What I want to say is please weigh the assumptions of the audit carefully against the merits of the Media Center that offers a unique benefit to the community where there is no other option.

Chair DuBois: Thank you. Beth Charlesworth. I missed one speaker; Annie Folger will be our last speaker.

Beth Charlesworth: Thank you for giving me the opportunity to share a few thoughts with you about the Media Center and about this Audit Report, which I have read. The thing that disturbs me most about the Report is the attitude that the marketplace should be the arbiter of how citizens exercise their First Amendment rights. The Mackinac Center, which is the sponsor of the 2008 Report cited by the Auditor to support her views, is explicit about that in the conclusion section of the Report where it states that the video marketplace will sort out issues such as the value of PEG channels and the funding of media centers. The City Auditor and the Mackinac Report both suggest that PEG media facilities are no longer needed because there are alternatives in the marketplace to the Media Center. It's true that commercial means of self-expression have arisen since the Media Center was founded, such as YouTube and Facebook, but this ignores another vital purpose filled by the Media Center which is teaching citizens to use the technology to communicate as effectively as possible including on YouTube

and Facebook and other hosts as well as on local TV channels. Creating a video to promote your small business or nonprofit or school or political views takes more than waving an iPhone and then uploading raw footage to YouTube. The Media Center provides education on getting good quality video, good audio, editing raw footage, promoting the video and getting it out on host services. It provides that education at a cost far below market price. Finally, I question, as another speaker has, why the political attitudes of City officials and employees should have any role in an audit. The residents of Palo Alto, I believe, are entitled to an audit process which is fair, neutral and has no political axe to grind. Thank you.

Chair DuBois: Last speaker, Annie Folger.

Annie Folger: Hi. I'm Annie Folger, the Executive Director of the Community Media Center. Thank you, and thank you especially to all of our amazing speakers here for validating so eloquently our value. In wrapping up, I'd like to briefly summarize for you three major points. First, while we appreciate and support the principle of an independent audit, in our audit response we address why we believe this Report is critically flawed and why it's recommendations ought to be rejected. Rather than spending City Staff time and the public's money on investigating whether PEG access has value, we think it makes more sense for Staff, the Center and other concerned parties to work together for the real mission to inform, inspire and empower people to speak and act on behalf of their communities. Let's focus on the future. The Cable Act of 1984 mandated public access to ensure our communities could express their First Amendment right of free speech on television. Television is a 20th century tool. Our goal is to do our best to see that our 21st century legislators continue to support the need for public discourse in emerging communication technologies. We want to work with the City Staff, with the City's fiber to the home and similar initiatives and be part of solutions that allow local residents active participation in civic affairs. Democracy is not a spectator sport. We challenge ourselves to use our entrepreneurial spirit to invent new, interactive ways to participate in choosing our future. Second, we don't think that PEG fees should be cut or eliminated or that they should flow through each of the JPA cities' individual accounting systems. We disagree with the audit's recommendation and want to put this matter behind us. We recommend that the PEG fees continue to flow to the Media Center, to now be spent only on capital. We will continue to be transparent in our accounting and reporting. In order to preserve free speech, we were set up as an independent agency. It is our responsibility to define Capital Policy and take the liability if we define it wrong. Third and last, our agreement to use PEG Fees only for capital represents a severe change in how we continue to fund our efforts, but we believe we've offered a solution. Mike Di Battista, our treasurer, gave that to you earlier. I would just like to respectfully urge that you direct the City

to work with the JPA and with us to finalize the feasibility of this plan that will allow the Media Center to continue to serve our cities. Thank you very much.

Chair DuBois: Thank you. We now shift to the Committee. I was going to suggest that we look at the findings one at a time, but I know Marc Berman needs to leave and participate in public discourse at a candidate debate. Marc, if you want to make a few comments before you leave.

Council Member Berman: Thank you, Chair Tom. I find myself more conflicted than I anticipated when I walked into this meeting. It just dawned on me during all of your public comment that, if the Media Center has less funding, then the things that I say at 11:00 at night, six hours into a Council meeting, won't be preserved for all of eternity. I'm having a tough time—no. In all seriousness, thank you everybody for coming out and telling us how much you value the Media Center as a community asset. I do apologize; I have to run off for something that's going to be taped by the Media Center and played later. I just want to say a couple of quick things. One is—I do want to say that I have full faith in the integrity of our City Auditor and the Auditor's Office. That doesn't mean that we're all—none of us are perfect. Sometimes we might choose sources that aren't great, and sometimes we might make judgments that the rest of us don't agree with. I do have 100 percent faith in the integrity and the independence of our City Auditor's Office. This is something that was funded fully by the City, to just answer another gentleman's question. Clearly not every benefit of an asset can be quantified, and sometimes it shouldn't necessarily be quantified. I think we've heard clearly tonight that you could justify the Media Center through metrics, but there are also a whole lot of other benefits, intangible benefits, that it provides to the community in giving a platform for people to express themselves, to learn new skills, to educate the public. Those are all critically important things for the City of Palo Alto and for the region that the Media Center serves. There are two questions. To me, there really aren't two questions, but clearly there seems to be two questions. One is, is the Media Center a valuable asset to our community. Clearly the answer is unequivocally yes. There are legal questions that I'll leave my colleagues to have to haggle over and hash through. I'm confident that we can do that in a way that doesn't negatively impact the Media Center. I do think it's important that we do it in a way that makes sure that the City is abiding by Federal Law. There's clearly some question amongst lawyers as to what the law states. I also have a lot of faith in our City Attorney who is fantastic. Those are questions that will be debated tonight, and it'll go to Council. I'll be there to participate in that conversation. I apologize that I have to run off now. Thank you all for coming out to let us know what you think and how much you guys value the Media Center. Appreciate it.

Council Member Berman left the meeting at 6:37 P.M.

Chair DuBois: I know we were going to call in an attorney. If my Colleagues agree, I thought we could break this into three parts and talk about the findings on the use of funds and then on the underpayment. The last one was roles and responsibilities of managing the communications program. I think ...

Council Member Kniss: Just some general comments I want to make at some point.

Chair DuBois: We can make general comments and talk about the finding on use of funds. Looks like our Auditor may want to make a comment.

Ms. Richardson: A couple of things I wanted to just address in response to the comments that were made. First of all, the audit did not question the value of the Media Center. We did not look at the value of the Media Center, and we did not question their value or the social aspect of the work that they perform. What we did do was question the value of the PEG channels. Based on the research that we found, the research that supports PEG access channels was all done by people in the industry. As an auditor, we try to be as objective as possible. When it's based on the industry promoting itself, it's more difficult to view it as an objective source. When we looked at the Report from the Mackinaw Center, they did rely on other resources. We also spoke to the author of the paper before we determined that it was appropriate to use, and then we corroborated their comments with our own National Citizens Survey, which is a statistically valid survey, that does ask a question about viewership of government access on TV. Based on those, we felt it was a reliable, appropriate source to use. It was an independent source. The fact that it was funded by the Koch brothers, we don't look at that kind of thing. They get funding from a lot of different sources, and that was just irrelevant to us. We also note that we did not say stop funding the Media Center. What we said was stop providing the PEG Fees automatically, determine if there is a bona fide capital need for the funds, and then put the funds into a reserve account either for the City to use—the City has some identified PEG access needs—or allocate those funds based on actual documented expenses. We also suggested an alternative which is to fund the Media Center through an alternate source that would not be restricted funding. We have not recommended just pulling the funds. We've looked at options. I think the City Manager's Office concurs with us that there is a need to review what the options are and make some decisions based on City needs as well as if there is an option for funding the Media Center in an alternate way. One more thing that I wanted to point out is that the audit is really about the need for accountability. We know that the Media Center has had these funds for a long time. The discussion about backing up, going

backwards and retroactively applying those funds all the way back to when they purchased the building, that doesn't make sense because the fee restriction was not in place at the time they purchased the building. That is their big Capital Expense. Since then, the expenses have been limited up until recently when they determined it was time to upgrade their studio to High Definition (HD) quality. Based on that, we do not recommend going backwards. We have not recommended pulling the money back. Our recommendations are looking forward.

Chair DuBois: If we'd like to make some general comments.

Council Member Kniss: I'm (inaudible) whenever you're ready.

Chair DuBois: I'm sorry. One second.

Molly Stump, City Attorney: Chair DuBois, thank you. City Attorney Molly Stump. I just want to introduce myself, because I'm joining you from the Clerk's table today. We are in this beautiful room without modern telecommunications equipment. We have a challenge because the City's outside counsel, specialist counsel on telecommunications issues, Tillman Lay with the law firm of Spiegel and McDiarmid, is in Washington D.C. He is on this cell phone, which is pointed at a microphone. Hopefully if there are technical legal questions, between Mr. Lay and myself we can assist the Committee today. I just did want to introduce myself and Tim. He is on the phone. We await your questions. Thank you.

Chair DuBois: Tim, if you can hear me, thank you for joining us.

Tillman Lay, Spiegel and McDiarmid: (Inaudible.)

Chair DuBois: Go ahead.

Council Member Kniss: Let me kind of go backwards on this and maybe start from the top. Harriet, I have no question that you certainly went about this in the way that an auditor would go about doing this. That is clear. Questioning your integrity, certainly not. What I would question, though, is how this community operates and what they believe has value. I've been involved with the Media Center for so long—Elliot, I know you're out there somewhere, if you'll wave—that I couldn't remember when I first began. I have done things like be there—Karen Adams is here—for the nights when we've announced who has won the City Council. I have been there to be interviewed by Henrietta—are you still here, Henrietta, or did you—and by Mike Cobb when he used to be the Mayor. I have been involved at that Center over a very long period of time. I think our job tonight is to find a way to keep this functioning. I'm very troubled by this alternate source of funding. I can't hear the need for that. Maybe my colleagues will. It

sounds to me as though this—unless it's broken and needs fixing, which I don't hear, I don't think we need to go forward with our tool kit at this point. I'm just not hearing that. I think there must be other ways for us to go about this that will make sense financially. I was particularly interested in John Kelley's comments, because I know John has been involved in this for such a long period of time. He took it way back. The only person we're missing tonight is—where is Bob Moss? I can't believe he's not here, who is extremely involved with this. I was fascinated. Who is the gentleman who spoke about the capital, the PEG funding solely on capital, what would happen to the Investment Fund? What was your name? I'm so sorry.

Mr. Di Battista: Mike Di Battista. I'm the treasurer of the Board.

Council Member Kniss: Thank you. I apologize; I didn't remember your name. We don't need to work this all out in public tonight. That's too complicated, I think, to go through each part of this. I think that if we say to both the Auditor tonight and we say to Molly Stump, our legal counsel, there is a way to work this out financially. We would like you to do that before we come back to the full Council. I think that can be done. Harriet, I'm looking at you. Do you believe that can be done or do you not believe that?

Ms. Richardson: I think there's a legal question here for Molly and Mr. Lay on the phone. The real issue is the Federal Law is what restricts the way the money is spent. The Media Center has not had sufficient capital needs up until this year when they made—last year when they started working on the studio. They had not had sufficient capital needs to offset the amount of revenues they were getting from the PEG fee, which does have a legal restriction. To continue using the PEG fee as a source puts the City at risk. Ultimately it's the City that's liable, not the Media Center, if those funds are misspent. Molly may want to chime in right here.

Ms. Stump: Thank you, Auditor Richardson and Council Member Kniss. We do believe—there is a lot of information in the record this evening about various aspects of the legal arguments, but we believe it's clear; our outside counsel concurs. Essentially through all of the detail, we read the Media Center's response as not objecting to the essential conclusion that on a going-forward basis the PEG Access Fees need to be used for Capital Expenditures. There are lots of policy issues to be explored. I think there are lots of avenues by which that could be accomplished. I'd certainly agree with the sentiment that the City Manager and the Staff and the Media Center and the community folks who are involved with this wonderful institution have a lot of work to do to develop a plan to come into consistent compliance with that, if that's what you meant, Council Member Kniss. We do believe that that ...

Council Member Kniss: As always, Molly, you've put it very well and beautifully. Even though I can't see your mouth which is a little bit (inaudible).

Ms. Stump: It is very odd sitting over here.

Council Member Kniss: I'm just watching one part of your face.

Ms. Richardson: Can I say one more thing to that? I think the City Manager's Office is also committed. Ed Shikada is here. I believe that they're also committed to resolve the issue. We did have a meeting today to discuss it. David Ramberg is also in the audience where he might want to discuss some of the financial aspect from an ASD perspective.

Council Member Kniss: What I'm hearing tonight is this can be resolved. I think that none of us want to look at, at least I don't want to look at this alternate source of funding, which to me would say it comes out of the General Fund or something else like that. It is a puzzle to me that this has gone on—I realize two laws have intervened, but this has gone on for this long without it being questioned by the Federal Government. Am I correct? Are they breathing down our neck? Just yes or no.

Ms. Richardson: No, but they have not—but typically they would not come in and look at that. It would be up to us.

Council Member Kniss: I'm not suggesting we break the law. I'm simply saying I think there's a way that we can work this through. I think that when something has this much value, and you can look at what looks like 40 or 50 people here tonight. I'm not talking about one particular aspect of the Center, but multiple aspects of the Center. I've worked with Leif and his kids with YCS, with—looking around in this room, Judy Gittelsohn who put on her show for a year and a half. This makes a difference. Our job, I think, is to make this continue to operate and to operate, yes, within the letter of the law, but to operate wisely and to operate in such a way that it continues to serve us as a cultural resource in our community and as a terrific place for people to go and learn more about public access and about government.

Vice Mayor Scharff: Thank you all for coming today. I don't think there's any question that the Media Center is a community gem. I think that's—it goes without saying. I think everyone of us up here—I'm going to speak for Tom before he speaks—would support the Media Center. I think that's true for all of Council. I don't think any of you should feel that that's not true. However, with that said, I do think—I've talked to Annie out there. I do think there's no question that we can't continue to use PEG fees for

noncapital expenses. I think that's fairly clear. I don't think it's a close call. With all respect to my dear esteemed former Mayor colleague, Larry Klein, I actually think if we asked for an FCC opinion, we would probably get an opinion that hurts the Media Center, and we'd be going down a road that makes things worse, not better. I also agree with all the comments that we need to figure out a way to make this work. I think that's where Council Member Kniss was going. I think what would be useful today too is to have the City Manager's Office go look at issues of how do we make this work, how do we come up with a plan that works for all. We want the Media Center to continue. We want them to offer all of the great programming they offer and all of that. However, we can't violate the law. I don't think we can say we're just going to wink, wink and hope that nothing bad comes. I think that's not a good government and not a good approach. I don't think that works. One of the speakers did talk about the City possibly buying the building; I think that's what they meant by that as opposed to going back and looking at old Capital Expenses. I think what they said is why don't we, the Media Center, sell the City the building and you use the PEG Fees to pay for it over time. If I'm misstating that—I see you guys nodding. I think the City Manager's Office and the Auditor should look at that and the City Attorney and say is that a possibility. What I'd like to see happen is the City Manager's Office come back to us—frankly I think before we go to Council, because I don't think it would be useful to go to Council without more information frankly than what we have today, information of what are the options here. The options are obviously we could say we're not going to give the PEG Funds unless they're for Capital Expenses. We could fund with the General Fund. We could maybe do something creative like that. Maybe there are other options. I don't think we could design it from the dais today; I don't think that's what we should do. What I'd like to see is the City Manager's Office come back, working with the audit, with a City Manager's Report (CMR), saying here are the options. The other thing I do want to say is that I'm not happy with part of what we have which is the quality of the technology in this room. I think the City Attorney said that right there. I think it's obvious. I'm not happy that the fact that we don't use HD when we record the Council meetings and all that, that the technology we have here is poor. I've talked to the Media Center about that. I think they agree with us. I would like to see us invest in that, and I think we should use the PEG fees for that. I personally think it's a waste of time to decide whether or not we should collect the PEG fees. I think we should collect as much of the PEG fees as we could possibly collect because, as far as I can tell, there is a huge unmet need for capital that we need to invest in. We need to use those funds to invest in great capital so we have the most up-to-date technology, and we have the best user experience for the people of Palo Alto. That's the broad things. I also would like, when the City Manager's Office comes back, them to analyze that and say what do we need to have

to have the best possible user experience with the highest quality when people watch our City Council meetings, when we record things here and all of that. That's sort of what I'm looking for. I also wanted to say that I appreciate all the volunteer time in the Media Center. I don't think that anyone is saying that anyone at the Media Center did anything wrong or underhanded or anything like that. I think that's really important to say that, because I know you all volunteer. I know sometimes as a Council Member, I've got to say I sort of feel that same way. You volunteer, you stand up. I know you sort of feel a little like wow. I understand that. The Media Center's great. I just think that we need to on an ongoing basis, however, make sure that we do this correctly, so that we don't end up with problems down the road. I think it's important to note that the Media Center is in agreement with that. I don't think it's an issue of whether or not we should go back and say, "Can they use it for these or not?" I think everyone's in agreement including the Media Center that we're not going to use PEG fees for operational expenses. We're going to use them for capital. With that said, then the question is let's move on to make sure that we continue to fund the Media Center in a way and what options we have and how this all works.

Council Member Kniss: Could I do a clarification with the Council Member? I think when I—Greg, I think we're concurring with each other. I think one of the things I'm hearing you say is keep it in policy until our policy is clearer than what we are probably able to come up with tonight.

Vice Mayor Scharff: Let's at least give the Council options as opposed to—let's give (inaudible).

Council Member Kniss: I would totally agree with that. I just wanted to make sure I'd heard it correctly.

Chair DuBois: If I could just make some general comments. First of all, I see a lot of value in just independent audit process. I want to thank the Auditor for completion of the audit. No one mentioned the finding of underpayment, which is another purpose of the audit, which generates more money for both the Media Center and for the General Fund. We want to make sure that our telecommunications providers are meeting their obligations. To me this kind of boils down to the fourth branch of government, a free press. The DIVCA Act has forced a lot of communities to lose their community access because of this issue of operational costs. We're very lucky here that we have the funds from the Cable Co-Op and some flexibility. To me, this is primarily how do we fix the accounting going forward to be compliant. I agree maybe that the concept of channels may be archaic. As several speakers suggested, we need to separate the creation of content from the distribution mechanisms. I would expect that

some of these laws—2006, I think it is, they're going to be updated to deal with new media, media on demand, things like interactive media. I can see storytelling and virtual reality. I don't see capital needs ending anytime soon. I think there's a role for PEG fees. Again, it's just making sure that we're tracking and allocating it correctly. I think as a Council we need to make sure we address our fiduciary responsibility. As Marc Berman said, we can do that in a way that doesn't harm the Media Center but protects the City. I think we have the issue of how do we deal with the past fees. I think we can just largely wait and see if anybody comes calling on those. As Liz and Greg have both said, we need to fix the accounting structure going forward. I do think the proposal that we spend PEG fees to purchase the asset of the building is interesting and would like to explore that option and see if Staff comes up with other options in terms of the use of funds. Those are my comments on the First Finding, on the use of funds.

Council Member Kniss: Might we just look at Ed and see? Ed, you've heard what the three of us have said, are you in concurrence with us? Do you have a ...

Ed Shikada, Assistant City Manager: Absolutely. On behalf of Staff, we'd be happy to follow up with the Media Center and identify a go-forward plan in order to ensure the various parameters that the Committee has referenced can be reinforced. Certainly to the extent through your discussion tonight, that helps give us some clear focus areas. Hope the Media Center takes that as well in identifying the primary issues of concern and priorities for the City. As we try to identify what those options are coming forward, that we're focused in the most productive areas.

Council Member Kniss: If I might. We have many other similar provisions of content and so forth in the Bay Area. We might look at some of the others. You've been in San Jose where they have their own set up. Mountain View has their own station, which I imagine will be televising Marc Berman tonight. We do have some others we can look at and see whether they have run into some similar situations.

Mr. Shikada: We do. I'll say in the interest of full disclosure and keeping the options open, I recognize that some of the options could involve the City self-performing in some measure the services for broadcast and the like. If we're looking at options, we would want to look at the most cost-effective options for the City as an institution. I think we'll proceed accordingly.

Vice Mayor Scharff: That was my intent, that we'd look at full options, that you'd come back with all the difference options, and then it becomes a policy issue of how we proceed. I also think, in terms of the structure, a lot of

people seem to conflate in their mind—I believe we pay separately for the broadcast of the City Council.

Ms. Richardson: That's correct.

Vice Mayor Scharff: I think what would be great is to have a framework and a CMR so everyone understands—it's clear in everyone's mind what services we pay for, what services the PEG fees go to, so every understands the structure, and then we move forward based on full information of how all this works.

Chair DuBois: I'd like to add, though, that when we look at those options, one of the goals is really preserving the Operational Budget for the Media Center and to keep the life as long as possible.

Council Member Kniss: I don't want to lose the fact that we value this Media Center so much that our goal is keeping it functional, keeping it relevant, keeping it an exciting place to be. I don't think there's any message at all from this dais tonight saying we wouldn't continue to find that way to fund the Center and for everyone to keep up not only their good work, but apparently their learning. So many of you said tonight you've taken classes or you've learned from someone else, and that has great value.

Chair DuBois: Do we want to break this up and have an actual Motion about the use of funds?

Vice Mayor Scharff: Sure, I'll make the Motion. I'll just make a Motion of what I would like to see, and you can see the same. I would simply like to make a Motion that the City Manager's Office come back to us with options as we discussed today along the lines of what we discussed. I don't need to be more specific; I think they know what (inaudible).

Chair DuBois: Do we have a second?

Council Member Kniss: You have a second.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss that the Policy and Services Committee direct Staff to work with the Mid-Peninsula Media Center and develop options for the Council to consider for a plan going forward that complies with PEG funding restrictions while supporting the Media Center's public access function, such as:

- a) A framework for meeting City communications and public access needs; and
- b) Consider approaches used by other agencies; and

- c) City purchase the Media Center's building; and
- d) Upgrading City Hall broadcast technology.

Chair DuBois: All in favor. We've got three out of four.

MOTION PASSED: 3-0 Berman absent

Chair DuBois: I would like to shift now to maybe findings on underpayment, because I actually had a few questions in that area. I don't know if either of you have comments or questions.

Vice Mayor Scharff: On underpayment?

Chair DuBois: Yep.

Vice Mayor Scharff: Yeah, let's go get the money. I'd like to get that done as quickly as possible.

Council Member Kniss: I think that one's pretty simple. That one just says ...

Vice Mayor Scharff: Right. I'm all for it.

Chair DuBois: If I could ask a couple of questions particularly with our Attorney; hopefully he can hear me.

Ms. Stump: As it turns out, it is very difficult for him to hear. I know, Chair DuBois, you do have some questions. I got a ...

Chair DuBois: I actually had some different questions.

Ms. Stump: You do have different questions. I wonder if it would be more efficient, if you can get those to me offline, and I can transmit them to our outside counsel. When the Item comes back, we might be able to have a more thorough conversation and even have outside counsel here in the room where it's easier to communicate. I think it's going to be difficult. I will have to translate your question.

Chair DuBois: Okay. I have one question maybe you can answer or Harriet can answer. How does the State DIVCA Law and Federal Cable Act interact with each other? Does one take precedent?

Ms. Stump: In general, Federal Law takes precedence over State Law through the supremacy clause of the U.S. Constitution. There are some complex ways that those two laws work together. The State Law references

the Federal Law. I suspect that behind your question is a practical, more specific inquiry.

Chair DuBois: It was just really understanding which law ruled. Again, there seems to be some discussion nationally about media communications in general and this idea of video versus Broadband Franchise Fees. I did note that Google is registered as a video provider, so we potentially would have a third source of income from Video Franchise Fees and PEG fees.

Ms. Stump: These are very cutting-edge questions. I do want to get some specialized advice for you on them. My recommendation, given our challenges today, is that you do what you are so good at which is to write or we can chat, and then we can get answers for you perhaps when the Item comes back to the Committee. Will that be satisfactory?

Chair DuBois: Yes. For my Colleagues, it's just really quickly this idea that video services are now being bundled with voice and broadband. There's a lot of ability to shift pricing to minimize these Franchise Fees. I think there's a question, probably at the State level and the national level, should we be looking at overall revenue for media communications and not just video and where the law has changed to do that. We can take that up in the future. I guess there is really no Motion to be made here. I think we're going to pursue that revenue as you outlined, or do we need to make a Motion?

Council Member Kniss: You need a Motion to go out and get the money?

Ms. Richardson: We don't have a Motion yet about the status of the audit. If you're wanting us to come back later before you refer the audit to the full Council, it might be good to have a Motion right now on that aspect of it.

Vice Mayor Scharff: Are we going to make the Motion?

Chair DuBois: Sure.

Vice Mayor Scharff: I'll move that on Finding 2 we move forward to go ahead and collect the money.

Chair DuBois: I second that.

MOTION: Vice Mayor Scharff moved, seconded by Chair DuBois that the Policy and Services Committee recommend the Council move forward with Finding No. 2 recommendation to direct the City Manager's Office, in coordination with ASD, IT, and the City Attorney's Office:

- a) Send a letter to AT&T and Comcast describing the results of the audit and demanding payment of the underpaid franchise and PEG Fees

shown in Exhibit 4, plus interest calculated in accordance with DIVCA requirements; and

- b) Include in AT&T's letter a demand for payment of the audit costs that are attributable to AT&T; and
- c) Work with Comcast and AT&T to develop methods to ensure:
 - i) Their address databases accurately reflect all potential service addresses within the Cable Joint Powers geographic areas; and
 - ii) They have a separate billing code for each member jurisdiction and accurately report and remit payments to the City of Palo Alto based on those billing codes; and
 - iii) Develop criteria for assessing the accuracy of future Comcast and AT&T franchise and PEG Fee payments on an ongoing basis,
 - iv) Communicate the criteria to Comcast and AT&T and that it will be used to review the accuracy of future payments; and
 - v) Require Comcast and AT&T to report the breakdown of their fees in more detail, including identifying what is and is not included in the gross revenues used to calculate the fees and the reason for any exclusions; and
 - vi) Review the franchise and PEG Fee payments to ensure that they were calculated on all revenues that are subject to franchise and PEG Fees and promptly follow up with Comcast and AT&T regarding any discrepancies; and
 - vii) Request that San Mateo and Santa Clara Counties revise their municipal codes to reflect only a single adopted rate to accommodate the cable companies' billing system capabilities, if the PEG Fee continues to be collected.

Council Member Kniss: It'll be hard to vote no on that one.

Chair DuBois: All in favor.

MOTION PASSED: 3-0 Berman absent

Chair DuBois: The third finding is worth a little bit of discussion as well, which is the role of oversight and really the nature of that oversight. Do you have some comments?

Ms. Richardson: I think there's going to be some decisions that need to be made about—I think it's going to wrap up really into part of the Finding 1 issue about the policy about what functions the City might perform versus what functions we leave at the Media Center. If there's more of an IT role for what the City might do, then I think those roles need to be defined based on the revenue piece of it, which is more of an ASD function, and then the communications piece which would be more of an IT function. Jasmine might want to speak a little bit to that on the IT piece.

Jasmine Frost, Information Technology Chief of Staff: Good evening. Jasmine Frost, IT Chief of Staff. Currently we do fund and manage the coordinator. I defer to whatever the Council wants to say. We'd be happy to take on that responsibility should the Council wish.

Mr. Shikada: Just to amplify on that. As Harriet pointed out, the current staffing for the JPA effectively is through the IT Department. Depending on where the primary body of work ends up with respect to the City's role versus the Media Center, we may want to reevaluate how that staffing is handled in addition to the question of the complexity of the financial transactions that might be involved depending on the providers and the follow-up necessary there. Ultimately, this would be a longer-term conversation; it's a question of the role of PEG in general in our digital communications strategy with the community. Clearly that's one that might dovetail in a number of different directions. I think that we'd want to give some thought as to how best to tackle that based upon where we end up on PEG specifically.

Chair DuBois: Can you just clarify when you guys talk about staffing versus participating on the Board? They seem to be very different. It's not clear to me why that's IT versus communications.

Mr. Shikada: It's actually, I suppose, primarily a legacy of the organization and how responsibilities have been handled originally, I understand, through the City Clerk's Office to ASD. When IT was split off from ASD, the contract administration went to IT.

Chair DuBois: Are we talking about different functions? Is there a Staff ongoing function that's in IT now?

Mr. Shikada: The Staff person who serves on the working group, I guess is the appropriate term, is a contractor through IT.

Mr. Richardson: That is a different position than being a Board Member on the Media Center Board.

Chair DuBois: I think there's that question of both of those levels of interaction, the City has not been represented on the Board, even though I believe in the Charter we're supposed to have a representative. We may want to fill that position.

Ms. Richardson: The delay on that was really trying to identify who should be the right person. Until the roles were clearly defined, it didn't seem appropriate to just draw the City Clerk back into it when the City Clerk isn't actively involved in the process. I think it wraps into part of this decision making about what roles each department plays in the overarching issue of PEG fees, Franchise Fees, provision of services and that sort of thing.

Chair DuBois: I'll make one last comment, and then I'd like to hear what you guys think. I think there's two levels here, which is the financial interactions, but I think there's also this role of communications which it might be nice to continue to involve the City Clerk or somebody maybe in the communications area in the City.

Vice Mayor Scharff: Again, I'd prefer to see the City Manager's Office come back with options. I don't really see a role for the City Clerk's Office in this. It doesn't seem like the right—I'm not sure what the expertise is in the City Clerks' Office frankly, what role they have and why they should be involved. I'm open to it. If you're worried about communications, I actually wonder why Claudia might not be a better choice frankly. There's all sorts of IT issues in that. I just would want the City Manager's Office to analyze and see who should be the representative. What we're looking for and what the point is, I'd just rather they come back and tell us what they think.

Council Member Kniss: I think this is—we're making it surprisingly complicated. What I'm hoping is, Ed, that you and others can work with this and bring it to the fore in such a way that we can have clarity in how we're working together. I'm sorry that it's been empty now since Donna Grider left, but I wouldn't begin to guess who exactly the right person would be.

Vice Mayor Scharff: I think it's Liz Kniss.

Council Member Kniss: I had forgotten her. That might be okay.

Chair DuBois: I support the idea of Staff coming back. Again, I want to distinguish between a Staff role of tracking the finances versus a community communications and outreach role, which either the City Clerk or our Communications Director—again at the level of discussion about just communications out to the community, it's a different area. I'll make a Motion that we roll that into the First Finding and that Staff come back with some proposals on the roles and responsibilities for oversight.

Vice Mayor Scharff: You have a second.

MOTION: Chair DuBois moved, seconded by Vice Mayor Scharff that the Policy and Services Committee direct Staff to return to the Committee with clearly defined roles and responsibilities for oversight of tracking funds and communications.

Chair DuBois: All in favor. That concludes this Item. Thank you everybody for coming out tonight and speaking.

MOTION PASSED: 3-0 Berman absent

Chair DuBois: We're going to take a two minute break.

The Committee took a break from 7:12 to 7:24 P.M.

1. Discussion and Possible Recommendation to Council Regarding Conflict of Interest Provision that Allows Architects and Engineers to Advocate for Private Clients Before the City Under Certain Conditions.

Chair DuBois: Our second item and final item tonight is—nope, not final item. Second item is further discussion and recommendation to Council regarding amendments to Palo Alto's Revolving Door and other Conflict of Interest Regulations. City Attorney.

Molly Stump, City Attorney: Thank you, Chair DuBois and Policy and Services Committee (Committee) members. This is a follow-up item from last year. To cut to the chase, the issue that the Staff was asked to bring back to the Committee—it was the Committee as it was constituted last year—concerns a very narrow exception in State Law to the general rule that City officials can't appear before the City to advocate for money on behalf of paid clients. I'll describe the exception, but let me just say that the question we were asked to bring back is help the Committee decide whether Palo Alto should establish a stricter rule than the State Law, which the Council has the authority to do. It's not required to do that. If you see that the State Law is too lax in your view for this community, we could draft and establish a stricter local rule. Here's what the State Law says. Generally City officials cannot appear for money before the City. There is a very narrow exception for architects and engineers. It only applies as follows: architects and engineers, who are solo practitioners, can submit plans and drawings to City Staff and respond to questions from those Staff. They can also appear before their own Commission if the Commission's purpose is to review plan and design, and the Commission is required to have architects and engineers on it and the architect or engineer was appointed for that purpose. What is all this about? This is the State Legislature creating this very narrow exception because in small communities design professionals tend to be solo

practitioners. Communities want locally involved design professionals to serve on these design review boards. Folks are needing also to make a living and tending to work in their own communities. The general State rule was making it very difficult to appoint good people to these boards and commissions. That's the rule. It's currently allowed in Palo Alto. I will just sort of say it, because maybe it's a little bit the elephant in the room. This exception has not been used too much in Palo Alto, but it was used a little bit last year. A sitting member of the Architectural Review Board (ARB)—I think it was the Chair, Randy Popp—did have a paying client who submitted a project, and he was their advocate. When my office worked with Mr. Popp to understand how narrow his role could be on behalf of that client if he was to remain on the ARB, he felt that that was not going to allow him to meet his duty to the client. He did resign. That really is an illustration of how narrow the rule is. It does not allow for full advocacy, the way that a project manager would typically assist a developer. It's a much more narrow rule; otherwise, you have to choose between continuing your membership on the board or doing that private advocacy. That's what occurred in that case. I'm here to answer questions. I should say one more thing. The Committee last year wanted to have a little bit more understanding of if there was a stricter local rule, would that discourage people from applying and serving on the ARB. The Clerk was asked to do a survey. She did that; the results are in your Packet. I would say that—you can ask questions of the Clerk about it—it appears that there was sort of a variety of opinions there. It may have some impact or may not on our ability to staff those Boards. I will say I think that it has been—we ask a lot of our Board and Commission Members, and it's a big assignment. For those who may actually be working as solo practitioners, it may be something that would discourage them.

Council Member Kniss: Yes, it's a question.

Vice Mayor Scharff: I want to hear from the public (inaudible).

Council Member Kniss: Gennady, are you speaking? I really looked at this with great interest, because we require that architects serve on our Architectural Review Board (ARB). We want professionals to serve on our Boards and Commissions. I remembered Randy, and I remembered that case so well. I thought, "It's troubling, but I do understand it." I think perhaps he could have decided to keep his involvement very narrow, but decided he actually didn't want to do that. I hope it doesn't discourage people in the future especially from applying for the ARB where we need architects.

Vice Mayor Scharff: I actually think this is a silly waste of our time, if you want to know the truth.

Council Member Kniss: How do you really feel about it?

Vice Mayor Scharff: It's such a narrow exception. It worked. Randy looked at it and resigned. I think the really better part is that if you're going to have to appear before your own Board, you're going to resign. I think that's the way this comes. The way it's written there's no way you can advocate, when I read this. It's not like you're going to step off the dais and suddenly become an advocate; you can't do that under this. What strikes me as the important part of this is you need to be able to deal with Staff if you're a sole practitioner. You need to be able to submit and answer the questions, which to me is perfectly appropriately. Otherwise, no sole practitioner or anyone who's practicing in Palo Alto could practice and interact with the Staff. If you can't interact with the Staff, you can't do it. I want people who practice, who understand Palo Alto. We complain that we don't get enough architects who actually live in Palo Alto. We put people on our Board who don't, then they don't like the projects we put in Palo Alto. One of the other complaints I've heard about the Architectural Review Board is it becomes a training ground for young architects who are out of town. Of course, young architects who are out of town always want the most cutting-edge stuff; the community doesn't want the most cutting-edge stuff. In terms of this, I just think this is a waste of our time.

Council Member Kniss: Everything is a waste of our time to have the discussion and, therefore, we ...

Vice Mayor Scharff: We had the discussion already, but I think the discussion should end here. I think we should just be done with it.

Chair DuBois: (Inaudible) point, I have a counterpoint. I disagree, and now I'll explain why. One question was, I saw the responses to the survey. How many people were invited to take the survey?

Beth Minor, City Clerk: It was sent out to 49 current, past and applicants.

Chair DuBois: We got 14 responses out of 49.

Ms. Minor: Correct.

Chair DuBois: I think this is about appearance of conflict. In fact, our Chair of Architectural Review Board did get up off the dais and present to this Board. It did happen exactly as you described it. Whether there was a conflict there or not, I just think that does not look great. I think a lot of the intent of this law was perhaps maybe for a more rural community where there's no options. We're a City surrounded by cities in a big metropolitan Bay Area. The restriction, we could have a Palo Alto architect that works in Mountain View. It doesn't seem to limit us in that way. I don't know if you

guys looked at the comparison table, but San Jose and Santa Clara both ban Commission members for two years or one year after serving. I actually think we're talking about banning people while they're currently active on a board to not present to that same board. I'm actually in favor of that. I just think it's a reasonable avoidance of a conflict of interest.

Vice Mayor Scharff: Was it an in appropriate—I'm not saying it was done on purpose. Was it inappropriate to get off and present to the ARB? That's what I heard it was. That shouldn't happen.

Ms. Stump: The State Law allows that presentation. What it does not allow is ...

Vice Mayor Scharff: Advocacy.

Ms. Stump: Yes. What is typically done for a project lead—it was explained to us—is not just presenting at the mike and then answering technical questions from Staff, but rather interactive meetings with Staff where the lead is saying, "I think this exception applies. How about this interpretation?" The State Law does not allow that. That's why I say it's relatively narrow. Just to clarify, I think, especially for Council Member Kniss, the question before the Committee is whether you'd recommend to Council that this activity just be banned outright.

Vice Mayor Scharff: Are we looking at banning just the part about presenting to your own or the interaction with Staff? I'm fine with the interaction with Staff. If we're going to go forward with this—I think it's so impossible under the thing to do it. I would be fine with saying, "It's not going to work. You can't interact before your own board." A lot of things don't come to the Board as an architect. We're saying you could not serve on a board and do any work in Palo Alto if you serve on our board. I don't want to go there. If it comes before the ARB, I'm probably okay if the guy doesn't, because I don't think you can act properly anyway and do that. What are we looking at here? What's the scope of this?

Chair DuBois: I was thinking more about presenting to your own board. I would ask the City Attorney if that makes sense.

Ms. Stump: To make a distinction. I'm not aware of any jurisdiction that parses it that way, but I can't think of a reason off the top of my head why we couldn't draft something like that, that would preserve the part of the exception that allows—again, it's narrow. It allows the architect to draw the drawings, submit them and then answer the technical questions of Staff about what the drawings mean.

Chair DuBois: Somebody else would have to present to the ARB?

Ms. Stump: To the Board, to the Assistant Planning Director, the Planning Director, to the planner assigned, to have the interactive meetings that typically occur when there's a project.

Chair DuBois: They would clearly have to recuse themselves from those meetings when they were being presented their own project.

Ms. Stump: That is correct. They would need to do that.

Vice Mayor Scharff: They have to do that now.

Ms. Stump: Yes.

Chair DuBois: I can tell you what my Motion was, and you can tell me what you think. I was going to direct Staff to bring to Council an updated Ordinance that states that active Board and Commission Members cannot represent anyone whether or not for compensation in front of their own Board or Commission during service on that Board.

Vice Mayor Scharff: It's limited narrowly to not representing people at their won Commission or Board?

Chair DuBois: Yeah.

Council Member Kniss: It seems relatively simple. I'm trying to think of some point where we get into difficulty. That's probably the safest way to do it, just to say—what you're really doing is just saying no. You're just saying, "These are the limits. If you want to serve on a board, you cannot come before that board and advocate for your project." Correct?

Chair DuBois: Correct.

Vice Mayor Scharff: We preserve the rest of it, as long as we're clear on that. I'm good with that, Tom. I think that it's fine, given how narrow the exception was (inaudible) worked.

MOTION: Chair DuBois moved, seconded by Vice Mayor Scharff that the Policy and Services Committee direct Staff to bring forward to the Council an updated Ordinance stating active Board and Commission Members cannot represent anyone whether or not for compensation in front of their own Board or Commission during service on that Board or Commission.

Council Member Kniss: I think it makes very—it's crispy, clean. It's just like that.

Chair DuBois: I'm looking at these San Jose and Santa Clara—it would apply to all Boards and Commissions, the Historic Resources Board (HRB) ...

Vice Mayor Scharff: They're not going to be able to get off (inaudible).

Ms. Stump: The exception actually—although, the Clerk I think at the Committee's direction surveyed Planning and Transportation Commission (PTC), ARB and HRB. Arguably under our system, the exception really only applies to ARB because it applies only where the purpose of the board is to review and make recommendations on design.

Chair DuBois: Why wouldn't it apply to the Historic Resource Board?

Ms. Stump: It might. I'm not familiar enough exactly with what the Historic Resources Board does. It probably doesn't apply to Planning because they're not doing those design and zoning.

Chair DuBois: Yeah. There are some architects on that Board that work on historic buildings that need to be reviewed by that Board.

Ms. Stump: For design. We haven't had it come up in that context, so we didn't look closely at it. It's very possible it also includes HRB.

Council Member Kniss: It probably isn't their own building. It could be, but it probably isn't. I think they could recuse themselves if it is their own building and let the rest of the Historic Board make that decision.

Ms. Stump: Just looking at the language of the State Law, it applies where the review Committee's sole function is to review architectural designs or engineering plans and make recommendations.

Chair DuBois: Do you want me to restate that Motion?

Vice Mayor Scharff: Sure.

Chair Dubois: Again, the Motion was direct Staff to bring to Council an updated Ordinance that states that active Board and Commission Members may not represent anyone whether or not for compensation in front of their own Board or Commission during service.

MOTION RESTATED: Chair DuBois moved, seconded by Vice Mayor Scharff that the Policy and Services Committee direct Staff to bring forward to the Council an updated Ordinance stating active Board and Commission Members cannot represent anyone whether or not for compensation in front of their own Board or Commission during service on that Board or Commission.

Ms. Stump: Would it be the Committee's direction that we would—that's clear. I don't recommend that we come to discuss it further. Could we prepare that Ordinance and put it on the Council's Consent Agenda?

Vice Mayor Scharff: Yes.

Chair DuBois: Yep.

Council Member Kniss: A quick question. Have we before—the issue that Randy ran into, had we had that happen previously?

Ms. Stump: Not during my time. I was told by Mr. Popp that there was a prior ARB Member who did occasionally use the exception.

Council Member Kniss: It doesn't sound like it's been a big problem, so we're just packaging it.

Vice Mayor Scharff: That's my view. Since it's before us ...

Council Member Kniss: We have to deal with it.

Vice Mayor Scharff: ... we might as well just get it fixed.

Council Member Kniss: Get it over with.

Chair DuBois: All those in favor. Thank you, guys.

MOTION PASSED: 3-0 Berman absent

3. Auditor's Office Quarterly Report as of March 31, 2016.

Chair DuBois: We have Item Number 3 which is the Auditor's Office Quarterly Report. I don't think I got a—was this in the Packet?

Vice Mayor Scharff: It's in the back.

Council Member Kniss: Yeah, in the very back.

Vice Mayor Scharff: The last few pages.

Council Member Kniss: My Packet's still—my Packet is missing ...

Chair DuBois: I think I missed it.

Vice Mayor Scharff: Since I'm the only one here with one, I guess I'll be the one to ask questions.

Council Member Kniss: I know it was there, because I saw it.

Vice Mayor Scharff: Do you want me to go first?

Chair DuBois: Yes. Go ahead, Harriet.

Harriet Richardson, City Auditor: Are you ready?

Chair DuBois: Yep.

Ms. Richardson: I'm here to present the Auditor's Office Third Quarter Update for January through March 2016. This is a fiscal year (FY) update. I'm not going to repeat the overview; that's pretty standard language we use every time. Some highlights during the quarter. We did publish and present to the Council the 2015 Annual Performance Report, the National Citizen Survey results and the Citizen Centric Report. We presented those at the Council Retreat. I think that was—it was a different way of how we approached it, but I think it worked well for setting up some of the issues discussed at the Retreat and expect to do it the same way next year as long as that's Council's expectation. The External Financial Audit that we had with Macias, Gini and O'Connell expired, so we issued an Request for Proposal (RFP). We received four bids. Again, Macias, Gini and O'Connell was awarded the contract for the next five fiscal years. The first one ending this year on June 30th, and then running through June 30th, 2020. The total five year contract amount is \$875,569. It starts off with \$149,925 for the Fiscal Year '16 Financial Audit, and then it has some incremental increases for cost of living increases over the next few years, inflationary costs. We also have a contingency in there. Sometimes there's some unexpected audit needs that come up. For example, there's a potential that we may have to do something at the request of the Valley Transportation Authority (VTA) with some funds we get from them. We built in a contingency to cover those unexpected things. It's not generally to increase just the standard cost for a fiscal year. The third highlight is that we were notified the Association of Local Government Auditors is awarding us an Exemplary Award; it's called the Knighton Award which recognizes high-quality audit reports throughout the year. It was formally called the Gold Award; they changed the title to Exemplary. We won the award in the medium audit size shop category for the Animal Services Audit that we completed in April 2015. We'll receive the award itself this month at the annual conference. Lisa Wehara in my office, who worked on the audit, will be doing a short presentation with the focus on the methodologies that we used in the audit and the lessons learned that can benefit other auditors when doing audits. The award letter that we received cited our focus on addressing the concerns of the Council and the public, our methodologies for conducting the audit, and specifically the use of a Citizens' Survey to help inform our recommendations, and also recognized the ease of reading the audit while at the same time providing sufficient detail to help policymakers

make good decisions regarding the animal control function. The first two Items on the summary of work completed, I've discussed in our highlights. The third Item is the Cable Audit. Since we just had a presentation, I'll pass on that one. You know all about that one. We have several audits in progress, and we expect to complete all of these by the end of this calendar year. We've had a little bit of a lull in actually issuing the audits, but we have quite a few that are well in progress and will be done by the end of the year. The first one is the Disability Rates and Workers' Compensation Audit. At the end of the quarter, it was in process; it's actually out for comment right now. We expect to get it back in time to present at the June Policy and Services Committee. The objective was to assess the effectiveness of activities used to manage and minimize disability retirements and workers' compensation claims. We're moving right along with that one. The next is—we have two on here that are to look at analytical processes for continuous monitoring. We have some software called ACL software that can do a variety of data analytics. We're looking at ways to expand the use where the City can do some ongoing monitoring of different activities to see if there's a benefit of using that software in a more expanded way in City departments and to catch issues that you want to be watching on an ongoing basis but, otherwise, would have to do more in a more manual way. The first one is—we're calling it Procure to Pay, which is typical language used in that sort of function. It's really looking at accounts payable and seeing if there's duplicate payments and a way to minimize duplicate payments by catching them early. As part of that, we also looked at the vendor master file because one of the reasons you typically end up with duplicate payments is a vendor might use an official name and then a "doing business as" name, and you might get bills under both names and pay them. That one is—the report is drafted. It's ready for me to review. We were originally expecting to present that tonight. Because the Cable Audit ended up taking so much of our time, we didn't get it completed in time. We're actually now looking at delaying that until the August Policy and Services Committee meeting. The other one is a couple of rows down. We're looking at overtime; we're focusing on Police and Fire for those, and looking if there are ways to really monitor how you're using your overtime and see if there's more effective ways you can manage it, if you're more aware of how you're using it. We have a discrepancy here. It says the end date is May 2016, but then in the results column we say we're going to present it in September, and September is the actual date. We're also working on a Fee Schedules Audit. This is primarily going to focus on the fee schedules that Community Services Department (CSD) uses. We're looking at how the department establishes its fees to determine if it covers the cost of services when expected. That would be based on City Policy, and CSD has a policy in looking at where's there's differences between those policies that can be better aligned to help ensure that we are recovering fees when appropriate.

That one we expect to present to Policy and Services in September. We're also doing Utilities Customer Service Audit that's looking at the rate and billing accuracy. When we say rate and billing accuracy, we're really looking at does the rate that's on a bill match the rate that they're supposed to be charged. We're not looking at the rate-setting process as part of this. This came about as a result of the Meters Audit that we completed last year where we identified several issues related to the types of meters that were installed versus the types of meters that were actually recorded in Systems Application and Data Processing (SAP). It resulted in some billing discrepancies, and some customers ended up with some significant back bills as a result of that. We're looking at if there's ways to make sure that that's being monitored on an ongoing basis. That one we expect to present in September also. We just started an audit, the City's sustainable purchasing practices, to ensure that where appropriate the City is requiring sustainable purchasing. We are, again, not looking at Utilities for this; that's another separate issue for how we approach sustainability in Utilities. It's really looking at more paper, vehicles, things like that, other areas where we can improve our opportunities for increasing sustainable purchases. We expect to complete that one in October. On the next page, we do ongoing monitoring of sales and use tax to ensure that the City is getting what it's entitled to. It's common for businesses to misallocate their sales tax to another jurisdiction, particularly when they operate in more than one jurisdiction. We go back and we try and identify where there's variances between what we got in one quarter from a business to what we're getting in recent quarters or if we're aware of a business that just came onboard but we haven't seen any taxes. We don't actually do those audits. What we do is we fill out a form that we send to the State Board of Equalization, and they actually do the reviews. Our collections this year are substantially lower than they have been in the past. They're only \$22,000 to date for this quarter, and the primary reason for that is that the State is short-staffed in that area right now. We're showing that we have 56 potential misallocations waiting to be researched. I think that's the highest number we've had in the queue in a very long time. It's just they're taking a very long time for us to get them back.

Council Member Kniss: Just quickly, what would the amount usually be?

Ms. Richardson: Last year, I believe it was—I'd have to go back and look, but I want to say it was about \$119,000 that we got last year. I believe the previous year was about \$150,000. We are significantly lower.

Council Member Kniss: Way under.

Ms. Richardson: Yeah. Because we don't do the work ourselves, we have to rely on the State to do that work. We can't make them do ...

Council Member Kniss: We should get a windfall.

Ms. Richardson: At some point I would expect we're going to get a really big—if they get their staffing up, I would expect at one point we'll get a pretty big chunk of money. What this doesn't reflect is we also have an agreement with Stanford regarding the construction project going on there. They have agreed that we get all that sales tax directly, but we don't know what that is until the end of the fiscal year. We normally hear about it around—on the September Quarterly Report is when I'll probably have the number to report on that. That's usually a pretty good chunk of money at the end of the year. That will run out when the construction project is complete.

Chair DuBois: When you say there are 45 requests, we don't know how much money those represent?

Ms. Richardson: We don't. We've tried to estimate in the past, but it's difficult to really kind of estimate because you don't know, especially if it's a new business, what their revenue is.

Chair DuBois: How does the number of requests compare to last year?

Ms. Richardson: It's been growing; it's been growing over time.

Chair DuBois: Not outstanding, but total requests in a quarter.

Ms. Richardson: I don't recall. I'd have to go back and look at our year-end report. I don't have that number. I can email that to you. We continue to serve in our advisory roles for the Utilities Risk Oversight Committee, Information Security Steering Committee and the Information Technology (IT) Governance Review Board. We were also in an advisory role on the Library Bond Oversight Committee (LBOC), but that committee has disbanded now that both library projects are complete and it has been determined how that last bit of money should be spent or used to defease a portion of the bonds. We're done with that particular role. The next section of our report is on the status of audit recommendations. In 2014, the Policy and Services Committee recommended and we changed the Ordinance to switch from us reporting once a year on the status of all open audit recommendations to the departments reporting through the City Manager's Office. What we've done now is just put a list of the audits that were open at the beginning of the quarter and then the status of any recommendations that were implemented during the quarter, and then what the total recommendations were. You can see previous Status Report dates, total recommendations from the audit, the number that were implemented this quarter, and then the number that are still open. We also put a graph in

there, but I noticed that I don't think this graph still accurately reflects—there's two graphs here. What we're doing is we're putting a graph that shows for each quarter how many recommendations were implemented. The second graph is supposed to show how many are open. What we've done is we've put just the totals of how many were open at the beginning of the year versus the end. I think it would be helpful for us also to highlight off of that how many have been implemented, so you can see the change. We'll fix that for the next quarter. Right now what we have open are 41 older recommendations and eight current recommendations from a recent audit that was not yet due for a reporting. The last item on our Report is our Fraud, Waste and Abuse Hotline. We continue to receive a low amount of complaints, but generally the complaints we receive have not been substantiated. We received one complaint this quarter. Previously year-to-date it was ten. All of those ten have been closed out, and the one that we received this past quarter is still open. Those ten that were closed out, seven of them were actually different versions of the same issue. One small portion of it was substantiated, but for the most part they were unsubstantiated. That concludes my presentation. If you have any questions, I can take those.

Vice Mayor Scharff: Just briefly, Ed, since you're the City Manager's guy, on the ones that say past due, which I guess are the Inventory Management and Utility Meters Procurement, it says it's past due. It says none of the recommendations were implemented. What's going on? I mean inventory management and—yeah.

Chair DuBois: (Inaudible).

Vice Mayor Scharff: That's what's been waiting for the new year.

Ed Shikada, Assistant City Manager: I'm sorry. I missed the sidebar there.

Chair DuBois: I'm sorry. We've talked about that in the past. I thought we were waiting on the new Enterprise Resource Planning (ERP) system to (crosstalk).

Mr. Shikada: That is a part of it. Part of the question and discussions I've had with Utilities Staff is how much progress we can make before there is a new ERP. I think it's fair to say that we're starting with some pretty rudimentary existing systems. There is some work flow improvement that we can make in addition to the system upgrades that are necessary. At this point, I'm still working to identify what's possible in the short run. That said, we have been working with the Auditor's Office. There has been quite, to be honest, arm wrestling around how far this can go in the short term. I think

we're going to need to finish the next round of arm wrestling and bring that back.

Vice Mayor Scharff: I guess my ...

Council Member Kniss: Is arm wrestling, though, a technical term (inaudible)?

Vice Mayor Scharff: I guess my question ...

Mr. Shikada: It's a bureaucratic term.

Vice Mayor Scharff: My question, though, is when we look at the report, why does it say past due? That implies that the City Manager's Office hasn't done something that they should do.

Ms. Richardson: The concept that was adopted was that instead of us reporting once a year, the departments would report six months after the Council accepted an audit, and then every six months thereafter until the audit recommendations were all implemented.

Vice Mayor Scharff: What does a report look like? I mean, you can give a report and say, "We're arm wrestling with the"—or it can be really short. I just don't know why it says past due.

Ms. Richardson: If you look at the Cable Audit that's in your Packet, at the end there's the City Manager's response, and you have each of the recommendations and the City Manager's response. Then, there's a column at the end that's blank. That column is for them to respond. What we've done is we've created a template that can be continuously used for the initial response and then used for updates so that you can always see what happened along the way. That would be—they generally attach a letter to it.

Mr. Shikada: The big change, though, in the follow-up reports is that the power of the keyboard went over to Staff. Utilities Staff drafted and Audit Staff reviewed the write up, and they didn't like the way it was written up. That's where the arm wrestling stands. It's a matter of perspective. Utility wrote it up saying, "We're making some progress. This one's complete. This one has more to go." Audit Staff said, "No, that one's not complete. We're not happy with the way that's written up." That's where the arm wrestling exists. A little too much information (TMI) perhaps, but that's the reality.

Vice Mayor Scharff: No, no, just the opposite. No, no. I think we want that TMI. Basically what happened in the past is these audit recommendations dragged on forever. Sometimes the City Manager's Office may be right and

the Auditor may be wrong. Maybe we shouldn't implement the audit recommendations the way written. That's fine. If you have a dispute, we're happy to have you come to Council and solve it. What I don't want to have happen is it just languishes for years like we've done. I don't want to go back to that. That's my only concern. I actually don't really care if you come in here and say, "We're still working it out." I just don't want it to be like who knows what's happening.

Ms. Shikada: Just get buried at some point. Understood.

Ms. Richardson: I have told the City Manager—I work pretty closely with Suzanne on these. I've been very open about discussing these older recommendations to see if they are still feasible. I'm trying to work hard with my Staff to make sure that the recommendations we make now are feasible and making sure they're discussing them with the departments before we publish them, to make sure that they're feasible.

Vice Mayor Scharff: Thanks.

Council Member Kniss: I looked at it before, so I knew about the cable.

Chair DuBois: Thank you. It's all clear to me, so thank you for the update. I guess we need to recommend the City Council accept the Quarterly Report.

Vice Mayor Scharff: What do we need to do?

Council Member Kniss: You want a recommendation—I mean, you want a Motion?

Chair DuBois: Yes.

Vice Mayor Scharff: To do what?

Chair DuBois: To accept the Auditor's Quarterly Report.

Council Member Kniss: I would move that we accept the Quarterly Report (inaudible).

Vice Mayor Scharff: Second.

MOTION: Council Member Kniss moved, seconded by Vice Mayor Scharff that the Policy and Services Committee review and recommend to the City Council acceptance of the Auditor's Office Quarterly Report as of March 31, 2016.

Chair DuBois: All in favor. That concludes Item 3.

MOTION PASSED: 3-0 Berman absent

Future Meetings and Agendas

Council Member Kniss: When is our next meeting?

Chair DuBois: Future Meetings and Agendas is the next topic here.

Council Member Kniss: (Inaudible) in front of me.

Chair DuBois: I think we have a meeting June 14th.

Ed Shikada, Assistant City Manager: Fourteenth.

Chair DuBois: We have one on July 12th.

Vice Mayor Scharff: When does vacation start?

Chair DuBois: After that, July 12th.

Council Member Kniss: July 3rd. (Crosstalk.)

Vice Mayor Scharff: Isn't it July 3rd?

Harriet Richardson, City Auditor: No June 20th.

Council Member Kniss: Is it July 3rd? I think it's July 3rd.

Ms. Richardson: It's right after the last Council meeting in June.

Council Member Kniss: Isn't it July 1st?

Ms. Richardson: I want to say it's July 1st until August ...

Council Member Kniss: Sixteenth I think.

Chair DuBois: There isn't a July meeting. I had that on my calendar.

Council Member Kniss: June is on the 14th for sure?

Vice Mayor Scharff: Yes, that's what I have on my calendar.

Mr. Shikada: Yes, that's what we're showing.

Chair DuBois: In terms of Agendas, we have obviously several Auditor Reports. Ed, I don't know if you have a list of Agenda Items.

Mr. Shikada: I do. In fact, let me pass this out.

Council Member Kniss: Also, Tom, this is in good part up to you, but I like starting early.

Vice Mayor Scharff: Yeah, me too.

Council Member Kniss: I seriously do.

Vice Mayor Scharff: Me too.

Chair DuBois: I thought we already agreed we would do that. Aren't we scheduled ...

Vice Mayor Scharff: I think Liz meant 5:00 P.M. instead of 6:00 P.M.

Council Member Kniss: I'd be happy to start at 5:00 P.M.

Chair DuBois: That's pretty hard for me actually.

Council Member Kniss: I know. That's why I'm saying it's up to you. We could do 5:30 P.M. All right, back to (inaudible).

Chair DuBois: Sorry.

Council Member Kniss: I'm not hearing any response.

Chair DuBois: I'll think about it. June 14th, what's the high speed internet City Manager's Office (CMO)? Ed?

Mr. Shikada: I'm not familiar with the specifics of what's planned to be presented.

Vice Mayor Scharff: What does CMO stand for?

Mr. Shikada: City Manager's Office. I actually think Jim mentioned this was based on a conversation with you, Chair.

Vice Mayor Scharff: This is your fault.

Chair DuBois: Now I'm interested. There was several items I'd like to just throw on the list for potential Future Meetings. We had started a minimum wage discussion last year. I think it was supposed to come back at some point.

Council Member Kniss: To Policy?

Chair DuBois: Yeah.

Vice Mayor Scharff: Is that true? Is it supposed to come back to Policy? Are you sure?

Chair DuBois: Yeah, it was. You can check it.

Vice Mayor Scharff: What was the issue that (crosstalk).

Mr. Shikada: Was it the increase in future years? The rate of increase.

Chair DuBois: Potential increases to 15. We did the one increase, and we deferred the rest of that conversation. I also would be interested—we had the airplane noise come to Policy and Services. I'd like to get an update from our consultant on progress of the study they're doing.

Vice Mayor Scharff: I'll just give you the update if you want. The update is simply this ...

Council Member Kniss: (Inaudible) also Joe is the new Chair, right?

Vice Mayor Scharff: Yeah. We're waiting for the Federal Aviation Administration (FAA) to come out with their Report. They're supposed to do it next week, I think it is. Then, the select Committee is going to talk about it at their next select Committee meeting. Once the Report comes out, our consultant will then work on the Report and look at it and analyze it and (crosstalk).

Chair DuBois: They haven't started anything?

Vice Mayor Scharff: They can't without the Report.

Chair DuBois: I thought we were doing our own analysis of historical ...

Vice Mayor Scharff: We're probably doing that kind of stuff. What's really important is to analyze what the FAA says in that Report. That's what matters.

Chair Dubois: There's the new one, the Surveillance Memo.

Mr. Shikada: Surveillance ...

Council Member Kniss: Wait, what surveillance?

Chair DuBois: It's the Colleagues Memo on Surveillance Technologies that got referred to Policy and Services. Maybe you weren't at that meeting.

Council Member Kniss: (Crosstalk) if I wasn't at that meeting. I think I'd remember surveillance.

Vice Mayor Scharff: We're planning on putting cameras on every block.

Council Member Kniss: How about drones?

Vice Mayor Scharff: We're going to fly drones as well.

Council Member Kniss: I think drones are what you're after. That's real surveillance.

Chair DuBois: Any other comments on this Agenda?

Vice Mayor Scharff: Wait. We're going to add the Surveillance, and then there was a referral to Policy and Services on the Minimum Wage. If there was, then obviously we should put it on. If there wasn't, then I don't think we should. What else do we got here?

Council Member Kniss: The airplane noise, though, unless we've got something that we (crosstalk).

Chair DuBois: At the appropriate time, we said that ...

Council Member Kniss: Otherwise, I think we'll get a chamber full of people (crosstalk) including me.

Mr. Shikada: Not much to ...

Council Member Kniss: Greg, while you're looking at that, is there any progress being made at all?

Vice Mayor Scharff: On that? Yeah, I thought the first meeting was really good on the select Committee.

Chair DuBois: Was that this weekend?

Vice Mayor Scharff: No, it was last week.

Council Member Kniss: Are they going to change any of the routes?

Vice Mayor Scharff: I believe they will. If the community—if the counties come together and everyone agrees in the Bay Area of what those changes should be, I believe the FAA will work with (crosstalk) but I think it has to be an Agreement.

Council Member Kniss: One of the things that worried me that you said is that each city doesn't want the planes (crosstalk) over their sky.

Vice Mayor Scharff: It's not Agendized (crosstalk).

Chair DuBois: If it's okay

Mr. Shikada: If the City Attorney were here ...

Chair DuBois: I would like to adjourn the meeting, and then you guys can continue your conversation. Meeting adjourned. Thank you. Thanks to Staff.

ADJOURNMENT: The meeting was adjourned at 8:08 P.M.