

September 4, 2013 BLT Agenda Item Comments

Comments on the Newport Beach Board of Library Trustees agenda items, submitted by:

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Item 3. Public Comments Regarding Closed Session

I hope the Board will reconsider the propriety of holding the proposed discussion (whatever the intended subject matter may be?) behind closed doors. The Trustees should be mindful that prior to the revisions emplaced by last November's Measure EE, Section 704 of the [City Charter](#) held that "All proceedings [of Council-appointed boards and commissions] shall be open to the public." Measure EE relaxed Section 704 to the looser standard that "All proceedings of a board or commission shall be conducted pursuant to the Ralph M. Brown Act," however the basic tenet of the [Brown Act](#) is that "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know" (California Government Code Section 54950).

To implement that principle, closed sessions are allowed only for certain explicitly defined and strictly constrained purposes, and even for those purposes, are rarely, if ever, *required* to be closed to the public. Among them is the personnel exception of Gov. Code Sec. 54957(B)(1), cited in the present agenda. However, the language of the exception ("*to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee*") suggests it was created to allow, and intended to be limited to, **discussion of a particular individual**. That interpretation is bolstered by the California Attorney General's belief that "*the underlying purposes of the "personnel exception" are to protect the employee from public embarrassment and to permit free and candid discussions of personnel matters by a local governmental body*" (paraphrased in *San Diego Union v. City Council* (1983) [146 Cal.App.3d 947](#), 955).

A New York court recently made this observation about a School Board's improper use of a similar exemption in their Open Meeting Law to discuss the **search process** (as opposed to the candidates) for a new Superintendent: "*the Superintendent search ... is precisely the type of issue that is required to be discussed in an open meeting. It is a policy discussion by the Board, which is not a legal matter for Executive Session. The qualities and qualifications that the Board is seeking in a Superintendent, as well as the process which it intends to utilize, are matters for public observation in a public meeting. The ability to adjourn to Executive Session is a statutory exemption limited, on the facts of this case, to discussing the prospective appointment of a particular individual. It is a separate step that the Board may consider if it truly needs to address confidential matters about that individual and is not to be used as an all-encompassing exemption.*" (*Matter of Zehner v. Board of Educ. of the Jordan-Elbridge Cent. School Dist.* (2010) [NY Slip Op 51709](#))

Moreover, a closed session at this point in the recruitment process contradicts the schedule proposed by the City Manager and publicly discussed at the Special Meeting on [August 16](#) (although to the best of my knowledge, that handout has not been posted for online review). That schedule indicated closed sessions would be held only for the purpose of interviewing

applicants, after the close of the recruitment/winnowing period. Since no listing of a Library Services Director opening has yet appeared on the City [Job Opportunities page](#), and since the Teri Black firm lists "[Library Services Director](#) - City of Newport Beach, CA" as an "Upcoming Search" (Opening: September, 2013; Closes: Saturday, October 05, 2013), I find it difficult to believe the Board is already interviewing candidates.

I **would** hope that before getting too deeply into the search process the Board conducts a candid exit interview with the current Director, however if that required a closed session the proper safe harbor notice would seem to be "Public Employee Performance Evaluation" (rather than "Appointment/Employment").

But at this stage, the Trustees should, I believe, still be very much in the public input gathering stage, and after a hopeful start with the August 16 Special Meeting it is extremely disappointing that no further open session discussion of the recruitment process is scheduled.

Regarding the propriety of using closed sessions in the future to screen and interview applicants, the justification advanced by the City Manager was that it allows more candid and honest responses. I would like to suggest the Board consider adding to the application form a question as to whether the applicant would prefer their interview to be conducted in open or closed session. The applicants could then be separated into two groups, and treated accordingly. Those applying secretly could be discussed in open session by referring to them by number or some other device that would hide any personal identifying information. Since the Library Services Director position is a highly visible and public one, I would give strong preference to applicants willing to speak candidly and honestly in public.

Item 8. Public Comments

As the Trustees know all too well, I have frequently expressed concerns regarding the recent practice of requiring all public comment on agenda items to take place at the start of the meeting, before those items are heard (except, oddly, for Consent Calendar items, which the public seems able to "pull" and discuss separately).

Whether the City Attorney feels this practice is marginally legal, or not, I have recently noticed a letter from California open government advocate Terry Francke that expresses my concerns more eloquently than I have been able to, and which I hope the Trustees will take time to read. His letter can be found appended to an April 25, 2013 [article](#) at *CalCoastNews.com* and deals with a variety of likely Brown Act violations by the Oceano Community Services District. As Mr. Francke argues, "*We are confident that a court would find that a rule forcing citizens to address the Board on an agenda item before it is given its explanatory introduction by the staff member or other person presenting it is not "reasonable" within the meaning of the Brown Act. This practice does not permit an informed comment to the board, since the agenda itself often provides no clue as to the content of a proposal or report to be provided under a given agenda item. ... Even when the agenda attaches a good deal of introductory material ... it can be anticipated that there will be an oral introduction as well, providing background and other explanations and adding emphasis to selected points. Forcing public comment to precede these presentations effectively denies the public the opportunity to react to them.*"

Item 9. Approval of Minutes

August 5, 2013, Regular Meeting

1. Page 3, in the line 6 under “2. Check Approval”: “This year, the Newport/Mesa ProLiteracy Board decided that in order for the program to get more **notoriety**, they would like to present this donation at a City Council Meeting scheduled prior to the International Literacy Day in September.” I believe “**notoriety**” is the word that was used, but I assume something more like “**publicity**” was intended since notoriety generally connotes being famous for bad reasons.
2. Page 4, in the final paragraph under “4. Branch Librarian Updates”: “The Balboa Branch, known as the Library at the Beach, was built in 1929 and is the oldest building in the City.” I believe this is what was said, but I don’t think the information is accurate. The Balboa Pavilion, as just one example, is obviously older, and judging from the salvaged plaques in the Balboa Branch entryway and the historic photo in the hallway outside the Central Library Conference Room, much (if not all?) of what we see today at the Balboa Branch is of more recent construction.

August 16, 2013, Special Meeting

1. Page 2, paragraph 2: “~~Terry Black and Associates~~ **Teri Black & Company**, a municipal recruiter, will be used for this recruitment. ... ~~Terry Teri~~ Black will communicate with key members ...” [note: suggested correction based on sample brochure distributed at meeting]
2. Page 3, line 3 from end: “... and the Board of Library Trustees **role** in articulating their vision for this position and ...”
3. Page 4, paragraph 2: “Another suggestion was to not put too much information in the brochure so that applicants **need** to do research prior to applying.”

Item 10.A.1. Customer Comments

I agree, at least in part, with comment #10, that access to hardcopies of current newspapers at the Central Library could be improved. Since the expansion it has not been working as well as it does at the branches. At the branches, both the current copy and recent past issues are readily available most of the time. At Central, despite multiple subscriptions, both current and past copies are frequently missing from the current newspapers shelves, making a trip to Central to read a current paper quite problematic – the chance of finding the issue you are looking for, especially of the local papers, is surprisingly small.

Item 10.A.3. Expenditure Status Report

Per Melissa’s discussion at the August 5 meeting, the Trustees should be aware that despite the late August printout date, according to the header line “ACCOUNTING PERIOD: 1/14” the tabulation provided probably reflects expenditures made in July (month 1 of the fiscal year).

Also I believe the significance of the header line "*SELECTION CRITERIA: orgn.orgn2='4000' and expdedgr.key_orgn between '4010' and '4060'*" is that this tabulation **does not** fold in expenditures related to Divisions 4090 (Library Foundation Donations) and 4091 (Friends of the Library Donations). I'm not sure the August 5 draft minutes accurately reflect the Trustees' discussion of this item, but I seem to recall a request was made to see an occasional (quarterly?) printout of how the expenditures related to those gifts were progressing.

For reference, the "Divisions" included appear to be 4010=Support Services, 4015=Technical Processing, 4020=Balboa Branch, 4030=CdM Branch, 4040=Mariners Branch, 4050=Central Library, and 4060=Literacy.

Item 10.A.4. Board of Library Trustees Monitoring List (current)

It might be noted that on the previous list, "*Review of Library Expansion Donor Wall Naming / NBPL Foundation*" was scheduled for the September 3 meeting, which somehow got changed to September 4. The item does not seem to have made it onto the September agenda.

Item 10.B.1. Board of Library Trustees Monitoring List (discussion)

As previously indicated, there are a number of items that would seem like they should be on the list. These include Children's Services, Youth Services, and for the next several months, the Library Services Director replacement process. It would also seem appropriate to have an occasional review of the effectiveness of the library system as a system (that is, is the present structure providing the best possible service to the city as a whole?), as well as to monitor the success, or lack or success, of such high cost initiatives as the Media Center. On the other hand, I'm not sure why the Public Give-Away Shelf Policy is given special prominence over the many other policies that need review.

Item 10.B.2. Report on the Summer Reading Program

1. It is excellent to have a thorough staff report available for review by the Trustees and public prior to the meeting!
2. It might have been helpful to highlight the areas, if any, in which policy guidance is being sought.

Item 10.B.3. Circulation Policy

1. Again, it is good to have a staff report, especially one highlighting the question staff most wants guidance on (reduction of overdue DVD fine).
2. Regarding the proposed reduction in fines for overdue DVDs:
 - a. The justifications presented seem reasonable to me, although I think by the same logic the Board may wish to consider aligning the checkout period and maximum fine to be the same as for books.
 - b. At least for me, the problem with DVDs has been that with a 7 day loan period, one barely gets the item home before one receives the email reminder that it will be due in 3 days. Like DMV license renewal forms sent out 3 months ahead of

the renewal date, by the time the day for renewal comes I have completely forgotten the reminder. Since the purpose of the fines is presumably to promote good behavior, rather than to generate revenue, and since sending the reminders presumably costs nothing more than a little programming effort, I would suggest that an additional email reminder be sent out the day before the item is due, and more importantly, periodic email reminders as fines begin to mount. It should, in fact, be a fairly simple matter for patrons to select how many email reminders they want, and when, in their account profile.

3. Regarding the remainder of the proposed changes (listed by rule number):

1.0: The third sentence refers, without explanation, to “*Guest cards.*” What are they? How do they differ from the other classes of cards? Who is eligible for them?

1.02: The Trustees may recall wrestling with the question of whether non-California residents with some connection to Newport Beach, such as a business or summer home, should be charged the \$10. And what about foreign exchange students and the like?

1.03: There used to be a charge for replacing a lost card. If there still is, this policy line should call attention to that.

1.04: “... *will be issued* ...” should read “... *may be issued* ...” because as written (after deleting “*only*”), it appears to say every patron must obtain a special, separate “*computer use only*” card to use workstations and on-line databases. I don’t think that was the intent.

2.06: I think one of the fundamental concepts of public libraries, that access to information and services not be conditioned on financial ability, requires an opportunity be provided to enjoy the rental materials in the library, without charge. I believe this is already true of the rental books, if there are copies available, and should be true of any other materials provided, such as the DVDs.

2.09: Should it be “*iPod Audio Books*” rather than “*iPods Audio Books*”? But are *iPod Audio Books* still available, other than as part of the *Book Club in a Bag* program? The deletion of rule 3.09 (formerly setting the loan period) and other lines related to them suggests they are not.

3.0: “*The loan period for General is 21 days.*” should read “*The loan period for General **Materials and Paperbacks** is 21 days.*” and this sentence should be followed by the 3.02 text on renewal of General Materials, after which the sentence beginning “*Loan periods and renewals...*” should introduce just the exceptions to the general rule.

3.02: Unnecessary, and should be combined with 3.0 as indicated.

3.03: This rule for *Paperbacks* appears unnecessary, since it looks identical to the rule for *General Materials*, and can be combined with 3.0 as indicated above.

4.01: The second sentence regarding biennial review of fines is repeated in the line under 9.0, later in the Policy. It should be stated only once.

7.0: Aside from the final sentence saying “*Library employees must refer all court-ordered requests to the Library Services Director,*” this section appears to be an attempt to quote California Government Code [Section 6267](#), but is no longer current since that section was amended by Stats. 2011, Ch. 80, Sec. 1. effective January 1, 2012. It would probably be best to include the Government Code reference in the section title, and quote it correctly, or simply say library personnel are required to adhere to Section 6267.

8.03: I think ILL is a basic part of the California library concept, and I don’t think NBPL should be charging for the service.

9.0: See note under 4.01, above. The same text currently appears in two places

9.02:

- The daily fine for Paperbacks is not defined, although a maximum is.
- In general, how are DVD and CD boxed sets treated? Are the daily and maximum fines, and the replacement costs, per disc or per set?
- Is “*Book Group in a Bag*” supposed to read “*\$0.25/day to Maximum*” (25 cents) instead of “*\$.025/day to Maximum*” (2.5 cents)?
- In the first line of “*Maximum Fines*” is “*Audio Books*” intended to be different from “*iPod Audio Books*”?
- Should the maximum fine for DVDs be the same as for books?
- The maximum fines listed for Laptops, iPads and Book Group in a Bag appear to be replacement costs (compare with 9.03), rather than maximum fines.

9.03:

- I’m not sure I understand why the accrued fine is applied towards the replacement cost. I would think it should be in addition that cost.
- If the fine is added to the replacement cost (rather than being subtracted from it), the additional processing fee could be eliminated.
- If the processing fee is retained, there are items for which it is not specified: CDs

9.04:

- What is a “BOCD Case”? (a Google search comes up empty)
- In my opinion, the per item charge for ILL is too high (the neighboring Orange County Public Library branches, at last check, charged nothing), and there should be no charge if the requested item cannot be supplied.

Finally, in the last line of the policy, I don’t understand the intended significance of “**as authorized by**” in “*This policy is subject to review and change as authorized by the Board of Library Trustees.*” It sounds like the Board might authorize someone else to review and change the policy. I think it should be deleted.

I also find odd the final note on the last page “**Approved** by City Attorney December 22, 2011.” The City Attorney provides legal **advice**, but has [no authority](#) under the City Charter to make or approve library (or any other) policy. The words “**Reviewed by**” would be appropriate. “**Approved by**” is not.

Item 10.B.4. Circulating iPad and Laptop Policy

Rule 5: “Customers **must present a valid NBPL card and** must be current in the Library’s circulation system.” [reason for suggested change: Rule 1 already established the customer needs a currently valid card and Rule 6 establishes they don’t have to physically present it.]

Rule 11: Needs to be rewritten: The 2.5 hour rule applies *only* to iPads (with a 2 hour initial checkout). For laptops (now with a 1 hour checkout under CASSIE) the corresponding number would be 1.5 hours. However it would be simpler just to say **all** laptops and iPads are due back at the checkout point 30 minutes before closing, regardless of when they were checked out. But as previously stated, I think 30 minutes is an arbitrary and unnecessarily long time for the branches, where the return process is much quicker. In addition, as indicated in Rule 4, the Circulation Desk is the correct return point *only* at Balboa.

Rule 14: Again, as in the previous item, I don’t understand the intended significance of “as authorized by” in “*This policy is subject to review and change **as authorized by** the Board of Library Trustees.*” I think it should be deleted.

Item 10.B.5. Media Center Update

1. Is the “Recording Studio” that was described in a May 6, 2013, [staff report](#) a separate activity to be governed by a separate policy, or is it now regarded as part of the Media Center and intended to be governed by this policy?
2. I suspect a Media Center and Recording Studio (together called the Media Suite?), in some form, will eventually prove a useful and appropriate addition to the services offered by the Newport Beach Library system, but I have a feeling its present incarnation is an example of a kind of development selected because it is possible, not because there was any great public clamor for it. Having attended nearly all the Board of Trustees meetings, the genesis of the idea remains unclear. I have the feeling library staff is not expert in this kind of thing, and I do not think the design and equipment selected were driven by comprehensive public input. I think this both because the opportunity for meaningful public input at Board meetings has been extremely limited, and because I do not recall any solicitation for public input outside those meetings.
3. Despite the excellent intentions, my initial impression is the Center is over-sized and over-ambitious for the trial of a previously untested service, and probably not the best use of the always limited library budget.
4. The tentative policy announced at previous meetings seems, to me, similarly to have been developed in a vacuum.