

November 4, 2013 BLT Agenda Item Comments

Comments on the Newport Beach Board of Library Trustees (BLT) agenda items, submitted by:
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Item 3. Public Comments

As the Trustees know, I object to the interpretation of the statement appearing under this heading in the printed agenda as meaning that all comments by the public on all agenda items must be offered at this time. The impracticality of that interpretation is again highlighted by the absence of any kind of staff report in advance of the meeting for anything other than the draft minutes and four Consent Calendar items. Since the public cannot guess what will be said regarding the remaining items as they come up, meaningful public comment is precluded – to the detriment of both the public and the Board.

I also object to the stated limited of 5 minutes, since it seems to have no basis in any recorded action by the Board. The relevant passage in the [Brown Act](#) is Subsection 54954.3(b): “*The legislative body of a local agency **may adopt** reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker*” (emphasis added), where the BLT is the “legislative body” being referred to, and the “intent of subdivision (a)” is that “*regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item.*” In many people’s view, “consideration” by the body does not begin until the staff report has been presented. Normally that is followed by the body commenting, then the public, then the body again.

To the best of my knowledge, the reasonableness of 5 minutes to comment on the entire agenda has never been discussed or formally adopted by the BLT. Indeed, the [meeting archives](#) suggest that the present format with the language that offends me was introduced by staff, without consulting the Board, in November 2011, shortly after the present City Attorney took office, with the 3 minutes that had [formerly](#) been allowed by the Board for non-agenda comments being initially arbitrarily applied to a [single 3-minute comment](#) on all agenda items. This was changed to 5 minutes on the [December 2011 agenda](#), but nothing in the record suggests the Board ever discussed or took formal action to approve any of these changes to the meeting procedures made by staff. In fact, the present agenda format conflicts with that adopted by the Board in its [by-laws](#) as last revised in October 2012.

It would seem to me that if the BLT wants to establish rules of procedure for the conduct of its meetings, it should agendize the matter for public discussion and make its decisions part of its written by-laws for all to see and know. Staff should then follow the rules set by the BLT, rather than the other way around.

Item 4. Approval of Minutes (October 7, 2013, Meeting)

One minor corrections might be suggested:

On page 3, paragraph 2, line 2 should read "... and passed a copy of *The **Currant Current** front-page news article around ...*").

It might also be noted there may still be confusion about the holiday closure schedule mentioned under Item 2 on page 3. The draft minutes say the libraries will "*adhere to the City holiday closure*" by closing at 1:00 p.m. on December 24; but as [Item 13](#) at the City Council's October 22 meeting it was announced all other City offices would be closing at noon, and before reading the minutes I had thought the libraries would be closed all day on December 24 and 31 (as I thought they were last year).

Item 5.A.1. Customer Comments

1. I at least partially share the sentiment of Comment 5: the peculiar lighting of the steps on the grand staircase seems more decorative than functional. The dappled result creates a camouflage like effect that, at least to me, provides more of a challenge than an aid to those descending the stairs. Along with the massive structural post in the middle of the sliding doors leading to the Civic Green, I would regard this as one of the two most obvious design defects of the Central Library expansion.
2. Comment 6 raises the delicate question of the extent to which library staff should monitor and regulate patrons' use of the internet when it offends another patron, in this case by (in the complaining patron's words) "*viewing porno video violating code of conduct library computers.*"
 - a. While I am sensitive to the concern, depending on the precise content of the images, I am unaware of any formal Board policy regulating such activity, and think such a policy would be very difficult to formulate, so I am greatly surprised by the response saying "*we do not allow customers to engage in viewing pornography,*" suggesting staff routinely monitors internet activity and assuring the complaining patron that the activity in question would have been suppressed if brought to staff's attention in a more timely manner. Given the vague and constantly shifting definition of "pornography," that smacks of censorship and a possible intrusion of patron privacy, for as the American Library Association says in its interpretation of the [Privacy](#) clause of its [Library Bill of Rights](#), "*The library profession has a long-standing commitment to an ethic of facilitating, not monitoring, access to information.*"
 - b. There may be a confusion of terms here: although the NBPL [Use Policy](#) and [Internet Use Policy](#) prohibit *illegal* use of library resources, what many would view as "pornography" – visual, spoken and written – has, for better or worse, been a form of human expression since antiquity, and, with limited exceptions, it is generally understood to enjoy First Amendment protection. The ALA statement recognizes the inappropriateness of librarians being asked to make content based judgments that could be seen as the government blocking the delivery of constitutionally protected expression to willing adult recipients. The

modern thinking is that pornography loses its constitutional protection only when it crosses the line into the illegal by being [obscene](#) (with no clear definition of what “obscene” is) or includes graphic images of actual minors as participants or bystanders (“child pornography”). The most relevant recent jurisprudence would seem to be *United States v. American Library Assn., Inc.*, [539 US 194](#) (2003), in which the United States Supreme Court found that a federal law withholding subsidies to libraries that refused to install blocking software on its internet connections (such as NBPL presumably has on its childrens computers) was constitutional *only* if the blocking could be removed without question at the request of any adult (see especially the concurring opinion of Justice Kennedy and the dissenting opinion of Justice Souter). In the present case, the response to Comment 6 suggests NBPL staff has taken upon itself to act as an additional layer of content based human filtering that cannot be turned off.

- c. Even if staff *could* correctly and effectively recognize and block truly illegal internet activity, in view of the fact that there is a vast amount of constitutionally protected material that can be delivered over the internet, and which although it might well prove offensive to many patrons cannot be legally prohibited (for example, content promoting drug use or terrorism), I would suggest the Board consider better solutions than staff attempting to monitor and regulate patrons’ internet usage. Just as NBPL requires use of headphones to prevent audio information (which unknown to the librarians could be pornographic) from offending others, a possible solution would be to provide public terminals where the screen images are not visible to others (such as at least some of the computer carrels at Mariners already allow). Where this is not practical, the use of portable privacy screens (limiting the angle of view) could be required when a use offends others – much like requiring the use of headphones.
- d. Beyond this there is the question of if the Board banned the viewing of certain material on the public terminals, would the viewing of the same material also need to be banned on the patrons’ own devices while on the library premises? If not, a serious problem of equity would arise, with the more affluent allowed access to materials through the library network denied to the less affluent; but if so, one would create an equally odd situation in which access to information is more limited at the library than away from it.
- e. In searching for (and being unable to find) a library policy or municipal code section that specifically prohibits use of the public terminals for viewing “porno videos,” I found it interesting that the copies of some of the policies now posted on the [library website](#) differ from the versions of ostensibly the same policies archived on the [city website](#). This is not merely a matter of one copy being more up-to-date than the other. For example, the City website has a copy of the *Internet Use Policy*, which it calls [Policy I-8](#), last revised on October 10, 2006. The quite different [library copy](#), which does not seem to have a number, says it was “*Amended & Reassigned – May 7, 2012*,” but does not seem to acknowledge the October 2006 revisions, whatever those may have been. And it is unclear from the [minutes](#) of the May 7, 2012, meeting if all the changes to the

October 2006 version were intended to be made, or not. It is also interesting that the overarching *Library Service Policy* (called [Policy I-1](#) on the [City site](#)) – essentially the Board’s “mission statement” – does not seem to have been copied to the library’s own [policy page](#). There is a somewhat different NBPL mission statement (of unknown origin) quoted as the preamble to staff’s [Collection Development Policy](#) (see more about that under Item 5.B.2, below), and still a different one, paraphrased from Policy I-1, at the top of the Library’s [“About”](#) page.

3. I have long agreed with the sentiment of Comment 7: that patrons would be exposed to a wider variety of choices if the collections of DVDs (and books) could be rotated among the branches – as each branch currently seems to have a different, but relatively unchanging collection. I also appreciate Melissa Kelly’s explanation of why this would be difficult to achieve, but am particularly intrigued by her suggestion that there may be situations in which one branch has multiple copies of an item, while others have none, and asking the patron to call such situations to staff’s attention. While only a partial solution to the problem of increasing diversity of selection, I would think staff should be able to locate and correct those situations with an automated search of the library catalog, and not have to rely on patrons to discover them. It should also be possible to perform other tasks, such as identifying items that have not been checked out for a long time, which might then be moved to a branch where they have never been available. Melissa is, of course, correct that all items can be located in the catalog and delivered to any branch, but that is not quite the same as seeing them in the flesh.

Item 5.A.2. Library Activities

1. On page 2, under “*Teen Services*,” I found interesting the reference to the [YAAC](#) (Young Adult Advisory Council). I do not recall having ever heard the YAAC formally mentioned at a BLT meeting, nor seen evidence of any interaction between the Board and the YAAC. This seems odd to me if they have indeed been empowered to provide advice to library staff.
2. In the new [statistical format](#), the pie chart is useful, but it is not entirely clear to me if it is displaying the month’s statistics or the year to date (YTD) values. Since the YTD values are highlighted in the pane to the left of the chart, one might guess that is what is being plotted, but I would think the statistics for the month being reported might be of more interest.

Item 5.A.3. Expenditure Status Report

I believe the notation “*ACCOUNTING PERIOD: 3/14*” means the reporting “period” is the third month of the fiscal year (that is, September 2013), and the “year to date” totals are for the first three months (that is, July, August and September 2013). Since that is one quarter of the year, for items that have a continuous cost demand throughout the year, such as salaries, one would look for the expenditures to date to be at about 25% of the annually budgeted amount.

Obviously something unexpected happened in the relatively small “7211 - Health/Dental/Vision PT” (PT = “part time”?) account which is already at more than 1000% of the budgeted amount, but more importantly the large “8260 - LIBRARY MATERIALS” account is reported as being at

36% of the projected total for the year. That is nearly half again more than might be expected on an even schedule. The Board might be asking if there was some reason for the heavy spending in the first quarter? And will that affect acquisitions in the remainder of the year?

Item 5.B.1. Review of Library Expansion Donor Wall Naming / NBPL Foundation

In the absence of a report in advance of the meeting, I am unable to offer any meaningful comment.

Item 5.B.2. Library Material Selection

As the "Public Comments on Agenda Items" section of the [minutes](#) reflects, when this item was last reviewed at the Board's March 4, 2013, meeting, I suggested that if the Trustees "Googled" on the key words "library material selection" or "collection development policy" they would find a host of written policies that might be profitably compared with [our own](#). As an example, I called attention to the Racine Public Library [Collection Development Policy](#) and more particularly to the (earlier?) [extensive documentation](#) implementing it. Racine is a waterfront city slightly smaller in population than Newport Beach, and considerably smaller in area. What I find interesting is that, at least in the earlier document, the Board in Racine, like some other library boards, provided its staff with specific goals and standards for selection, retention, weeding and development of each sub-collection based on community interests (it might also be noted that Racine, like [OCPL](#), supplements its collections with free [Interlibrary Loan](#)). Other boards have similarly defined the level of attention they want paid to each collection.

My impression is that in Newport Beach collection development is largely left to staff's intuition, guided perhaps by occasional contacts with patrons. It is impossible to tell, for example, if the BLT ever reviewed or approved the [NPBL Collection Development Policy](#) detailed on the library website. While I appreciate that the public cannot be involved in every decision, I think both staff and the public would benefit if there were a requirement for clear publicly-approved guidance, so that the overall collection strategy would be more community driven, than staff driven. In my view, this applies to the selection of electronic resources (such as e-book licenses) as well as to the more traditional physical items.

A possible indication of how public input may have been marginalized was the recent staff announcement that the Corona del Mar and Balboa Branches were being reconfigured as "current materials only" collections (nothing over five years old). I have no idea if this change was requested by the community; I certainly don't recall it ever being debated at a BLT meeting. Similarly, staff announcements of a plan to replace the Balboa Branch collections with an electronic kiosk at Marina Park, and a still earlier staff plan to relocate the CdM collection to the OASIS Center do not seem to have been community driven.

Some specific comments on the existing staff policy referenced in the preceding paragraph:

1. "*General Principles*" cites City Council Policy I-3 which has in turn, in theory, two attachments -- one reciting the Library Bill of Rights and the other a "*Customer's Request for Evaluation*" form for use by those objecting to an item in the collection, referred to as a "*Patron Request for Evaluation*" under "*Reconsideration of Library*

Materials.” Neither of these documents are attached to [the copy](#) of Policy I-3 currently available on-line.

2. Under both “*Selection*” and “*De-selection*” I’m not sure that checkout rates are the best indicator of community interest or wishes, since some materials may be heavily used and referred to in the library, while those the library doesn’t have can’t be checked out. The former would obviously be especially true of non-circulating reference materials. Could the RFID tagging provide a way to monitor how often items are removed from the shelves?
3. The “*De-selection*” process might be improved by providing some public indication of the items staff is considering discarding prior to their removal, something like the City red-tagging trees prior to their removal.
4. The policy twice refers to unwanted materials being “*disposed of according to City Policy.*” I’m not sure it’s clear what policy that is. Shouldn’t the Trustees provide guidance on how they want library materials disposed of?
5. Under “*Special Collections,*” some of the documents on microfilm, and the map and photo and environmental document collections at Central might be seen as Special Collections separate from the main “Local History” collection. Or perhaps the description of “Local History” should be more expansive than the current implication it is all books?

Item 5.B.4. Donation and Gift Acceptance Procedure

1. I would guess this will be a discussion of the [Gift and Donor Policy](#), as it is called on the library website, which is also archived as ["City Council" Policy I-3](#) on the City website.
2. I believe there was an earlier hint that the topic of discussion might be a suggestion to establish a threshold below which staff could accept gifts without a need to go to the BLT for approval.
 - a. If so, I don’t think such a mechanism would be compatible with the mandate placed on the Board by the people in [City Charter Section 708\(f\)](#) which gives the BLT the power and duty to “*Accept money, personal property or real estate donated to the City for library purposes, subject to the approval of the City Council.*”
 - b. This appears to me to establish a dual approval system, with the BLT accepting the gift, and the Council subsequently approving it; but it sets no threshold amount that I can see, nor does it give the BLT or the Council the authority to set one.
 - c. If staff feels this is a problem, I would think they could consolidate small gifts together until a sufficient quantity or dollar amount had been accumulated to bring to the BLT and Council, say quarterly or yearly.
3. It might be noted that the current written policy does not inform potential donors of the Charter requirement (quoted above) for approval of gifts by the City Council.

Item C.5. Update on Library Services Director Recruitment

As with most of the other agenda items, in the absence of a staff report in advance of the meeting it is impossible to anticipate what might be discussed, and therefore difficult to comment intelligently. Nonetheless...

1. I could not help noticing that the recruitment brochure distributed at the BLT's October 7 meeting seems, to me, to artificially minimize the role of the BLT, and, purposefully or not, completely fails to inform candidates for the Library Services Director position of the City Charter [Section 708\(a\)](#) mandate that the BLT "*Have charge of the administration of City libraries and make and enforce such by-laws, rules and regulations as may be necessary therefor.*" This seems particularly odd since the other powers and duties given by the people to the BLT are all briefly alluded to. I can only guess this is because since the City Manager ultimately appoints and pays the Library Services Director, he believes he also has the ultimate power and duty to administer the libraries. I personally believe the explicit delegation of that authority to the BLT takes it away from all others.
2. At their October 12 meeting, I asked the City Arts Commissioners if they had been contacted to receive their input regarding the Library Services Director recruitment process, as the handout distributed at the BLT's August 16 Special Meeting indicated they would. As of that date it appeared none of them had been contacted.
3. I hope the present report will update the public both on the number and quality of applications received, as well as the status of the online survey placed on the NBPL website.
4. As previously indicated, I would recommend dividing the applicants into those who are willing to be interviewed in public and those who are not. I would personally prefer the former.
5. I am not aware of the BLT publicly contributing towards construction of the online survey mentioned above (or the recruitment brochure), which I think is unfortunate since I believe some extra thought could have made it more useful and informative than it is. I think the completely free-form survey format that was chosen will prove intimidating, and could deter many who might otherwise have responded. In particular, if the BLT wants to gauge public sentiment before making their recommendation, it would have seemed better to focus on the areas in which they would expect a real difference of opinion, and present the options in a more multiple choice fashion. Since the BLT apparently intends to interview the candidates without any further direct public participation, a good (optional) essay question might have been: "What question(s) would you most like to ask each candidate?" That might have helped the BLT formulate their own questions.
6. Regarding the interview process, I don't know if it is expected the Friends and Foundation will have a chance to interview the candidates and somehow transmit their preferences to the BLT. If so, and if the BLT insists on receiving that input in closed session, this would seem to me to create significant Brown Act issues of a semi-closed process.