

December 2, 2013 BLT Agenda Item Comments

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

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Item 4.A. Public Employee Appointment/Public Employment

The Board last held a closed session under the “*Public Employee Appointment/Public Employment (Government Code § 54957(B)(1))*” exemption at its [September 4, 2013](#), meeting. I continue to suspect the use of the exemption at that time did not serve the public well, since it seems likely that rather than being about specific candidates, the discussion was about the recruitment and evaluation *process* -- a topic regarding which the public has a right to expect full and open public discussion. At least in my view, the [Section 54957](#) exemption should be used, in a hiring context, only for physically interviewing applicants, or possibly for discussing the relative merits of applicants, where a public discussion would reveal information whose public airing the applicant objects to on personal privacy grounds. I would again like to remind the Board that although Section 54957 of the Brown Act provides an *opportunity* to discuss employment matters in closed session (presumably to honor an applicant’s request for privacy), the Library Director is an employee of all the people, in whose employment all the people should be interested, and there is nothing in Section 54957, or anywhere else in the Brown Act, that *requires* employment matters to be discussed in closed session.

Whatever the purpose of the present Closed Session, I hope the Board will have knowledgeable legal counsel present to ensure it does not stray into areas that cannot be discussed under this specific Brown Act exemption (for example, “proposed compensation”), and more generally, if the Board is indeed conducting interviews, that it does not inadvertently ask “improper” questions which might later embroil the City in a lawsuit.

It might be noted that the present agenda does not appear to include any *public* update on the recruitment process. This suggests, rightly or wrongly, that either: (1) the Board doesn’t think the public needs to be informed; or (2) the Board assumes the public knows more than it does. As an example of the public’s lack of knowledge, a timetable proposed by the City Manager was distributed at the Board’s Special Meeting on [August 16, 2013](#). It is unclear to me if the Board ever formally adopted that schedule, or some other one, for if it did so, that action has not been publicly announced.

To minimize the lack of information, I think it would be help if the Board could publicly explain what the purpose and content of the present closed session will be. There may be no legal obligation to do so, but I think it would be in the public interest.

I think it is especially important not to create the impression of a semi-closed process in which input and guidance on the Director selection is sought from certain individuals or organizations, but not in a public way, and not from the public in general.

As specific examples of how the general public could be better engaged in the Library Services Director recruitment process:

1. A clear schedule of the process could be publicly released.
2. The public could be asked what questions they would like the Board to ask the candidates in closed session. The on-line survey posted on the Library website doesn't really do that.
3. Assuming the Board plans to develop a standardized set of questions, that list could also be publicly discussed and refined.
4. The merits and qualifications of the candidates could, to a large extent, be publicly debated without compromising the candidates' privacy by referring to them by letters or numbers that do not reveal their names or the specific institutions with whom they are associated. A public discussion of the applications received might also help the Board refine the questions they wish to ask in closed session.

Item 9. Approval of Minutes – November 4, 2013 Meeting

I would like to suggest the following correction to paragraph 2 under Item C.5 on page 2 of the draft minutes:

“He expressed that the last page of the brochure that was scanned and published online for the October 7 Library Board of Trustees meeting was ~~difficult to read~~ a duplicate of page 2.”

By way of explanation, the brochure referred to is the four-page Library Services Director recruitment brochure prepared for the City by Teri Black & Company. To the best of my knowledge, the only copy saved for future reference is that posted as “LIBRARY SERVICES DIRECTOR RECRUITMENT BROCHURE” on [the web page](#) archiving the Board's October 7, 2013, meeting. In that copy, what purports to be page 4 is accidentally a duplicate scan of page 2. Hence page 4 of the brochure, which informs candidates of deadlines and application procedures, has not been archived. I continue to think this needs to be corrected so that a proper copy of the brochure has been preserved.

Item 10.B.1. Media Suite Update

It is not clear from the report if the fee-based classes mentioned as beginning in Spring 2014 will restrict the hours the Media Suite is available to the general (non-paying) public, or will be scheduled at other times? Whatever the answer, I would think the Library Board would want to play a role in approving use of library resources for fee-based programs, whether sponsored by other City Departments, or not.

Item 10.B.2. Public Computers

I have a feeling I may be the “member of the public” referred to in the staff report as raising questions at the November 4 Board meeting. If so, I want to thank Tim and Natalie for their thorough response regarding staff’s handling of internet activity that disturbs other patrons.

The Board may or may not think this is an issue that needs to be addressed with greater clarity than it is at present, but I think the staff report largely sidesteps several basic policy questions that seem necessary to make an informed decision as whether any further action is needed. In my view, these include:

1. What are the legal limits of the Board’s authority to regulate internet use in the library?
2. Conversely, what *responsibility* does it have to impose regulation?
3. Do the current policies adequately discharge that responsibility within the allowable limits?
4. Specifically:
 - a. Exactly what are the “*illegal activities*” prohibited by the library’s current [Internet Use Policy](#)? Would it help staff and public to better define the term and/or give examples?
 - b. Similarly, exactly what kinds of internet activity should the public expect staff to regard as “*Interfering with other customers’ use of library facilities or staff’s ability to perform their duties,*” a phrase that itself is used as a catch-all *example* of behaviors warranting action in the [NBPL Use Policy](#)?

Regarding these questions, or any others they may have, the Trustees should be aware they have the power to request advice, in writing, from the City Attorney under Charter [Section 602\(d\)](#).

The conclusion of the present report, which does not appear to be based on City Attorney advice, seems to be that staff *does not* believe the “*viewing graphic or disturbing images*” over library internet connections is illegal, or a violation of the library’s *Internet Use Policy*, but that if a complaint about the activity is received from another customer it can be dealt with under the catch-all “*Interfering*” clause of the *Library Use Policy* quoted above. At least to me, since what may be “disturbing” to one patron may not be “disturbing” to others, this places staff in a vague never-never land of having to resolve disputes between patrons when the complained of activity is not one of the specifically problematic behaviors called out in the remainder of the *Library Use Policy*.

In fact, I’m not sure I understand what staff might regard as “graphic or disturbing images.” Setting aside the fact that *all* realistic images (of *any* subject matter) are by definition “graphic images,” Frame 313 of the Zapruder film of the Kennedy assassination is both graphic and deeply disturbing to nearly any thinking person. What is staff’s response supposed to be if one library patron’s viewing of it offends another patron? Similarly, should staff stop the viewing of images of medical surgery that they, or someone else, finds disturbing? Graphic depictions of

sexual activity or sexual organs, which might be regarded as “obscene” in some other context, can likewise be viewed for perfectly legitimate constitutionally protected reasons. Is staff to ask why an image is being viewed? Or is it to prohibit the activity whenever a “sensitive receptor” complains the display interferes with their right to use the library?

Since staff’s response to “disturbing images” does not invoke the “*illegal activities*” clause in the *Internet Use Policy*, the staff report likewise sidesteps the question of what patrons or staff are supposed to do if they observe what they suspect, but do not know, to be *illegal* use of the library’s internet connection; or what the City’s liability might be if illegal activity is occurring with or without the City’s knowledge. Again, it would seem helpful to know exactly what *is* illegal.

At least to me, the survey of how other Orange County libraries deal with “objectionable” use of the internet (it would have been helpful to provide the exact question asked) is not compelling evidence they are good policy models or even legally defensible. In particular, if there is no way to remove the filtering upon request, it seems unlikely the Mission Viejo policy of installing blocking software on all computers could withstand challenge; and if a mechanism for appeal to a higher authority is not provided, the Buena Park policy in which staff is apparently empowered to permanently revoke library privileges for viewing material staff deems “objectionable” raises serious due process concerns.

Regarding the privacy issue alluded to in the next to last paragraph of the staff report, and the reference to California Government Code [Section 6267](#) (which protects the confidentiality of library records and patron’s borrowing habits), the staff report at least partially misses the concern raised. Even if staff is careful not to monitor or record what patrons are viewing/reading, the Snowden revelations have made it clear that others may not be as respectful of our privacy, and library usage would seem a logical target of unwanted and possibly unconstitutional surveillance by governmental or private entities.

At least to me, much like the street side pay phones of old, the library could, and should, provide a safe sanctuary where individuals can anonymously access the internet without fear of their activity being linked to them personally. One might, for example, want to view an Al-Qaeda website without being put on a “no fly” list; or simply surf the internet without Google watching. That opportunity is probably provided by the nearly-anonymous “guest passes” referred to in the [Internet Use Policy](#), although it is not entirely clear to me that the passes are available to those with personal information already in the cardholder database. If they are not now, I think these passes *should* be available to all without permanently recording any personal information, and that if staff cannot provide 100% certainty that the normal log-in procedure would not allow a motivated outside entity to link internet activity with individuals, the *Internet Use Policy* should warn those seeking an assurance of anonymity that they should use a guest pass.

Finally, regarding library records in general, it might be noted that Government Code Section 6267 does not protect them from inspection by federal agencies, and the Trustees do not, at present, appear to have a clear policy for how staff should deal with such requests.

Item 10.B.3. Library Gift and Donation Policy

At the last meeting, Trustee Grant asked why the policy for acceptance of gifts to the library should be different from that for acceptance of gifts by the City Arts Commission (City Council Policy [I-11](#), “*Donation of Art to City of Newport Beach*”), or the Parks, Beaches and Recreations Commission (City Council Policy [B-17](#), “*Parks, Facilities and Recreation Program Donations*”), or by the City Manager (City Council Policy [F-3](#), “*Budget Adoption and Administration*”)?

The reason is that the [policies](#) cited above are all ones established by the City Council, hopefully in a way consistent with the [City Charter](#) (since the Council, and the Trustees, have no power to alter rules and policies promulgated in the Charter). What is different about the library is that the donation of gifts to the library is the *only one* for which a specific policy and acceptance mechanism is defined in the Charter -- [Section 708\(f\)](#) assigns to the Board of Library Trustees 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.”

No other entity, including the City Manager, has such an explicit gift acceptance power and duty imposed upon it directly by the citizens of Newport Beach.

Laws and policy directives like this are always open to interpretation, and the interpretation is often uncertain, but in this case it seems clear the intent of the people is that the Board is expected to decide whether each gift offered to the library, no matter its size, is to be accepted or rejected, and if the recommendation is to accept it, that the acceptance must be confirmed by the City Council.

Similarity to the policies established by the Council with regard to gifts offered to the City Manager or other Commissions does not guarantee consistency with the Charter.

To be consistent with the Charter Section 708(f) mandate, it would seem to me that any “acceptance” by staff needs to be at best a provisional one, contingent upon subsequent approval by both the Board and the Council, with the possibility that the gift might have to be returned if it is rejected at either level. I see no problem with staff accumulating gift offers over some period of time (monthly, quarterly or yearly), or even putting acceptance of them on the Consent Calendar, but mere reporting of completed actions to the Board and Council does not seem adequate to me. To be consistent with the Charter, I believe both the Board and the Council need to take an active role in considering, and possibly rejecting, each gift, whether individually or as part of a list.