

January 6, 2014 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 Regarding Closed Session

It is good to see that an update on the Library Services Director recruitment effort has been separately agendaized for discussion as Item 10.B.1. in the open session. This implies the discussion of "Public Employee Appointment/Public Employment" in the closed session will be limited, as it should be.

I would like to reiterate my view that the justification (which I do not fully understand or agree with) for the specific Brown Act exemption cited in the agenda -- Government Code Section 54957(b)(1) -- is confined to shielding from the public certain "private" matters related to the candidates for public employment. As such, I feel discussion should be limited to matters related to specific candidates. At least in my view, matters that *do not* intrude on any specific candidate's personal privacy, such as the general mechanism or criteria to be used for making the selection, or a general dissatisfaction with the depth or quality of the candidate pool and a need to extend recruitment efforts, are not proper topics for closed session discussion. On the contrary, they are important matters of public policy, and should be deliberated entirely in public.

The Trustees should also be aware that although the salary to be offered to (or demanded by) the candidates is – in view of the Board's Charter responsibility to oversee and make recommendations to the City Council on the library budget – a critically important matter, it explicitly *cannot* be discussed at all in a closed session called pursuant to the cited Brown Act exemption. Compensation, and the impact it might have on the library budget, must be discussed only in open session, or in a closed session called citing Government Code Section 54957.6, in which case the BLT could provide closed session instruction to a person negotiating an employment contract, although even then, final action on the proposed compensation cannot take place behind closed doors.

Finally, I don't know how close the BLT is to providing its approval or disapproval (as required by the City Charter) to the City Manager's choice for the next Library Services Director, but it might be noted that in the City Manager's written recruitment timeline – which was distributed to the Board and public at the August 16, 2013, Special Meeting, but, to the best of my knowledge has never been posted on-line – it appears "the City" plans to announce the Library Services Director selection sometime *after* the BLT lends its consent to the selection in closed session. That plan appears to be in violation of the Brown Act. Section 54957.1(a)(5) requires that ***"Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held."*** Section 54957.1(e) further immunizes the body against any claim "*for injury to a reputational, liberty, or other personal interest*" resulting from the required announcement – such as, if the person announced decided to decline the offer. Please note also the definition of "*action taken*" provided in Section 54952.6: the development of a collective agreement or commitment without

an actual vote is regarded as an action taken. In other words, the City Manager cannot announce his selection of a Library Services Director with the BLT's concurrence unless the BLT's agreement to offer that concurrence was publicly announced at the meeting where it was offered.

Item 9. Approval of Minutes

December 2, 2013, Regular Meeting

1. On page 2, paragraph 2, I suspect the text was intended to read "*Deputy **City** Attorney Michael Torres reminded the Trustees ...*"
2. On page 3, the last sentence of Item B.2 memorializes a promise to bring back a report regarding the number of disruptive computer usage incidents handled by staff since the last meeting. The report does not seem to have been agendaized for discussion.
3. Also on page 3, the last sentence of Item B.3 memorializes a promise to discuss revised Gift and Donation Policies at the present meeting. Again, the topic does not seem to have been agendaized for discussion.
4. On page 4, the antecedent of the pronoun "Their" is not obvious from the context, at least to me. Does "DSLS" – which I assume is an acronym for "Distinguished Speakers Lecture Series" – refer to a group separate from the Foundation? If so, is it this group which held a "retreat" in December? Or some other group?

December 16, 2013, Closed Session

I don't object to the minutes as written, but from the summary under "Public Comments Regarding Closed Session" it is evident I didn't make my point very well.

What I was trying to say is that the veto power over the City Manager's choice of Library Services Director given to the Board in the City Charter – the only City Manager appointment with such citizen oversight – and the requirement in the original Charter that all meetings of the Board be open to the public, combine to imply the final decision to approve or not approve the City Manager's selection of a Library Director was intended to be done publicly, based on information known to the public. Since the Charter was changed in 2012 to allow the Board to meet in closed session whenever a closed session is allowed by the Brown Act, the public is potentially deprived of the opportunity of knowing what the Trustees' decision is based on.

Although no longer legally required to do so, my suggestion was that the Trustees try to provide as much information to the public as possible to enlighten the basis for their decision. The Brown Act is frustratingly unclear on who can attend a closed session regarding employment matters without making it an illegal semi-closed meeting and what actions taking place in them need to be reported out, but I was trying to suggest that the revelation of such basic information as how many applicants were interviewed, and who, other than the applicants, was present would both be helpful to the public and not implicate any of the privacy-of-applicants concerns that seem to justify the closed session. Likewise, revealing the kinds of things the candidates were evaluated on would not invade their privacy.

Item 10.A.2. Library Activities

It would be helpful if the written reports indicated more clearly the period they are intended to cover. The statistical reports starting on page 4 are labeled as being for November 2013, and I would have guessed the written narratives were for the same period, but some seem to describe December activities.

Incidentally, I agree with the Acting Director's assessment (on page 1) of the new study areas at Central as a welcome and aesthetically pleasing addition to the library infrastructure. I found the Acting Director's comment particularly interesting having just read (on-line) a January 3rd [Associated Press article](#) in the *Dallas Morning News* about what purports to be the wave of the future: the first "bookless public library" in San Antonio, and which mentions Newport Beach City staff's aborted effort to convert the Balboa Branch to a bookless library at Marina Park. I found the images of the San Antonio facility (actually, the Orange County Public Library has operated a [very similar facility](#) in Costa Mesa – currently at the corner of Wilson and Fairview – for many years) incredibly sterile and uninviting. It is as if the Central Library consisted of the tables of limited privacy computer monitors in the Media Lab, and nothing more. I hope the bookless library – at least in the form shown -- is not the wave of the future in Newport Beach.

Item 10.A.3. Expenditure Status Report

1. The new quarterly reports on the status of the donations accepted from the Friends and Foundation are helpful.
2. Does the notation "Accounting Period: 6/14" in the upper left of the main report mean the printout lists expenditures for six months, that is, including all of July-December even though it was printed out very slightly before the end of the month, and representing half the fiscal year?

Item 10.A.4. Board of Library Trustees Monitoring List

It might be noted that this Consent Calendar item is related to Action Item 10.B.3 (the proposal to change the BLT meeting date to the third Mondays of the month) in the sense that if the latter action went forward, the future dates indicated on the Monitoring List would need to change.

In addition, I gathered from the last meeting that there is a possibility the meetings at which updates on branch operations are heard may be held at the branch being reviewed. I think this is an excellent suggestion but in both cases it would require an amendment to the By-laws, which currently read: "*ARTICLE IV (MEETINGS) - Section 1. The regular meetings shall be held on the first Monday of each month commencing at 5:00 p.m. at the Central Library unless noticed otherwise.*" Note also that ARTICLE VIII, Section 2 of the By-laws requires that written notice of any proposed new language be made available for review at least 10 days before the meeting at which it is to be adopted.

Although the existing "*unless noticed otherwise*" clause in Article IV, Section 1 could be taken to mean the regular meetings can be arbitrarily rescheduled to any date, time and location – so that no change is ever needed -- I feel that to be consistent with the Brown Act the By-laws should spell out as correctly as possible the intended Regular Meeting schedule and the escape

clause should be used only in the rarest of emergencies. The primary purpose of the original Brown Act of 1953 was to ensure that public meetings take place at predictable times and places. The current Act requires: “*Government Code Section 54954.(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.*” There would seem little point in establishing a regular time and place if it could be changed with each new agenda.

As to meeting at the branch locations, the Trustees may remember the Board used to do this when it held two meetings per month, with one of those monthly meetings regarded as a “study session” and frequently held at a branch.

Item 10.B.1. Library Services Director Recruitment Update

It is difficult to comment on this item without any indication of the content of the update. I hope it will describe to the public in some detail what happened at the December 16, 2013, “Assessment Center,” including who (other than the candidates) was present, what their function was, and what test the candidates were put to.

I would also certainly hope that at some point the BLT will agendize discussion of an agreement with the City Manager regarding their roles overseeing the new Director’s job performance – something similar to the agreement developed by a former Board, and signed by a former City Manager, that was circulated at the August 16, 2013, Special Meeting.

Item 10.B. 2. Critical Review of Online Database Resources & Services / Database Usage Report

Again it is difficult or impossible to comment on this item before hearing it.

In this connection, I might note that under Yolo County Superior Court Judge Dave [Rosenberg’s Rules of Order](#), which have been endorsed by the [California League of Cities](#), and were recommended to the BLT as part of its Boards, Commissions and Committees training as practical substitute for the arcane, complex and poorly accessible *Robert’s Rules of Order* under which all BLT meetings are ostensibly conducted – under *Rosenberg’s Rules of Order*, the hearing of public comment at a public meeting is the fourth step in the handling of *each* agenda item, coming *after* the item has been announced, the appropriate person has presented the report, and the body has asked clarifying questions, and *before* the body acts on it.

The BLT’s practice of expecting meaningful public comment *before* the agenda item has been announced, and *before* the report on the item has been given is highly irregular, and at least my view may contribute to the poor attendance by the public at its meetings.

Item 10.B.3. Possible Meeting Date Change from the first Monday to the third Monday of every month

I favor this change. Since moving to first Mondays, the BLT meetings have coincided with those of the City’s Civil Service Board, making it impossible to attend both, and neither makes

recordings readily available to the public. In addition, more recently, the Bicycle Master Plan Oversight Committee, which meets sporadically, has chosen the first Monday of the month at 5:00 pm. As a result, three public meetings take place at the same hour on those evenings.

A review of the City calendar suggests no other City body normally meets on the other three Monday evenings, although the Council's three-member Finance Committee sometimes meets at 4:00 p.m. on a Monday before a Council meeting (second or fourth Tuesday of the month).

Item 12. Public Comments on Non-Agenda Items

A couple of things I forgot to mention at the last meeting:

1. On the evening of November 22, 2013, Mayor Curry hosted a ticketed event in the Friends Room commemorating the 50th anniversary of the assassination of John F. Kennedy. My recollection is that this required all regular patrons to leave Central at 5:00 p.m. (an hour before the normal closing time) to make way for a wine and cheese reception planned for 6:00 p.m., prior to the event proper at 7:00 p.m. I feel the displacement of the library-going public for a private event is highly inappropriate and that the Board should have been involved in the decision to permit this, and should require staff to obtain its approval for any future closures. In this particular case, I can think of no obvious reason why the private event could not have been held later in the evening so as not to disrupt normal library use.
2. Regarding the safety concerns that have been raised concerning the steps in the new Grand Staircase at the Central Library, I noticed the first and last steps in each flight have a grooved metal safety pattern at the lip. A very simple solution to the problem would be to add the same detailing to *each* step. This would not only make the edges non-slip, but would also make the edges more visually prominent. C. W. Driver built all the weather-exposed stairways in the City Hall (parking garage steps and steps from Council Chamber/Community Room to lower level) this way, but for some reason put the non-slip enhancements only on the first and last steps of each flight on indoor stairways. Due to the unusual Grand Staircase lighting, the detailing is needed at the edge of *every* step.

Finally, since the Brown Act training provided by City staff seems to be sporadic, at best, the Board may wish to be aware that effective January 1st, the existing prohibition against public bodies taking action by secret ballot has been augmented by the following new requirement: "*Section 54953(c)(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.*" I think the new rule will have limited effect on the conduct of BLT meetings since the BLT has generally been good about clearly announcing, both at the meetings and in the minutes, each action taken and the details of the vote, but they should be aware that practice is now mandatory. It might be noted that there is an interesting discrepancy between the new rule and previously mentioned definition of "*action taken,*" since a Brown Act action can be regarded as taken without a vote. It is unclear what the reporting requirement is then.