

January 18, 2022, BLT Agenda Comments

These comments on Newport Beach [Board of Library Trustees](#) (BLT) [agenda](#) items are submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Discuss the Library Services Director's Retirement and Recruitment/ Appointment Process (Government Code § 54957(b))

Although I can find nothing about it on the Library website, the draft minutes from the previous meeting (Item 2) or in Item 4 (the Library Activities report), it appears from this notice that Library Services Director Tim Hetheron has announced, or is considering announcing, a plan for his retirement. Whether that would be soon or in the distant future, I can't tell.

It further appears that someone wishes the Board to discuss the **process** for his eventual replacement. Under [Section 504\(a\)](#) of our City Charter, the hiring (and firing) of the Director is a decision ultimately made by the City Manager, but one which the Library Board has both the power and the duty to approve or reject under [Section 708\(e\)](#).

While I appreciate and applaud the need to discuss that process, **I see nothing that justifies the noticed discussion of the hiring process taking place out of public view.**

California's local agencies open meeting law, the Brown Act, famously begins (Government Code [Sec. 54950](#)) with the admonition to local officials that "*The people of this State do not yield their sovereignty to the agencies which serve them. **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. The people insist on remaining informed so that they may retain control over the instruments they have created.***"

While acknowledging that "*Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1,*" [Article I, Section 3\(b\)](#), overwhelming added to our state Constitution by the people of California in 2014, clarifies regarding the Brown Act and similar laws that "*(1) **The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny***" and "*(2) **A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.***"

The specific section of law cited to purportedly justify the noticed closed session discussion (Government Code [Sec. 54957\(b\)](#)) reads: "*(1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting 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 by another person or employee unless the employee requests a public session.*"

A closed session relying on this exception to the open meetings rule is recommended to be noticed on the agenda in one of the formats shown in Government Code [Section 54954.5\(e\)](#), none of which were chosen in the present case.

And although Government Code Sec. 54957(b) was last revised prior to the adoption of Article I, Section 3(b), the reason the Legislature created any exceptions to the open meeting rule for personnel matters was presumably to protect the privacy of the person(s) being considered for public employment or discipline.

In the present case, **what is proposed to be discussed does not appear to be any specific person whose privacy may need to be protected under our Constitution, but rather, according to the notice, the process by which a person will be selected in the future.**

Rather than being a topic needing the protection of a closed session, the development and refinement of the process for filling a public position is precisely the creation of public policy about which “*The people insist on remaining informed so that they may retain control over the instruments they have created.*”

As best I can see, there is nothing in the formulation of the process for public hiring for which any public interest allows, let alone requires, secrecy.

In summary, I very much encourage the Board to be fully involved in the development of the process by which the next Library Services Director will be selected, and at some point in the future the Board may need to honor specific candidates’ right to be interviewed in private, but, at least in my view, the discussion preceding that should and must be conducted in public, not in closed session: concluding otherwise would require the Brown Act employment exception be construed to disfavor public access to the process, when our Constitution requires the opposite.

Item 2. Minutes of the Dec 20, 2021 Board of Library Trustees Meeting

Suggested corrections: The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections indicated in **strikeout underline** format.

Page 4 (page 8 of agenda packet), paragraph 5: “*Circulation & Technical Processing Coordinator Hartson said that automatic renewals have been a ~~good-will~~ goodwill gesture to the community.*”

Page 4 (page 8 of agenda packet), paragraph 13: “*Library Services Director Hetherton described the concierge service at Marina Park, Newport Coast Community Center, and ~~Oasis~~ OASIS and noted they are always looking for ways to expand the program.*”

Page 5 (page 9 of agenda packet), paragraph 2, sentence 1: “*Jerold Kappel, CEO of ~~the~~ Newport Beach Public Library Foundation (NBPLF) explained they were developing a prospectus, brand, and logo for the campaign.*”

Page 5 (page 9 of agenda packet), paragraph 2 from end of page: “*Vice Chair Kost confirmed it was not geared to ~~the peninsula~~ Peninsula residents.*”

Page 7 (page 11 of agenda packet), Item IV.A, paragraph 2, last sentence: “*The \$5,000 from the “Giving Tuesday” campaign will ~~also~~ go to the ~~Crean~~ Mariners Library and the children’s section.*”

Page 7 (page 11 of agenda packet), Item IV.A, paragraph 4, last sentence: “*They just received \$1,500 from a former teacher at the ~~Mariner’s Library~~ Mariners School which will also be directed to the Library by the Foundation.” [or “a former teacher ~~at~~ who used the*

~~Mariner's~~ Mariners Library – noting that although the City has an area known as “Mariner’s Mile” (often spelled with a hyphen), “Mariners” is not, and never has been, hyphenated in the name of the westside [library](#), [school](#) or [park](#) or the name of the [street](#) after which those three are all named]

Page 9 (page 13 of agenda packet), paragraph 2: “*Chair Watkins* **~~Chair~~ Watkins** called for Board or public comments or questions.”

Item 3. Patron Comments

It is good to see the relatively large volume of comments.

Several regard the Central Library [study rooms policy](#), and the response to #7 confirms that reservations need to be made in person – with staff recommending the patron stop by at 9:00 a.m. to make a reservation for a time possibly much later in the day or even that night.

It is unclear why NBPL would enforce this in-person requirement, especially since the reserved time can be many hours after the in-person contact. It is certainly not a very “green” policy, as it requires physical trips to the Central Library for a matter that could easily be handled by phone or internet. It additionally inconveniences persons who may inquire by phone or internet about the availability of a room at a particular time, only to find the slot is no longer available by the time they show up in person to complete the reservation.

An online reservation system, showing the available slots and allowing them to be booked remotely might correct this.

Item 5. Expenditure Status Report

Why is there a report for the Friends, but not the Foundation?

Item 7. Library Gift and Donor Policy (NBPL 3)

1. In the second paragraph on page 1, it is not clear what funds the gifts are not intended to supplant. Should it say something like: “*It is the position of the Board of Library Trustees that gifts and bequests given to the Library shall be used to supplement ~~these~~ the normal governmental funds appropriated for use by the Library, and shall not in any way supplant such funds appropriated for Library salaries and maintenance and operations of the Library*”?
2. In the first paragraph under “Foundation Gifts” on page 1 and “Friends Gifts” on page 2, there is an extraneous space between the two parentheses in “501(c) (3)”. I believe it should be “501(c)(3)” with no space.
3. On page 3, under “Library Gifts,” I do not understand why the comma is proposed to be removed from the last sentence of the second paragraph. That sentence seems grammatically correct *with* the comma. If it must be removed, it should be deleted from the parallel sentence at the end of paragraph 4 under “Foundation Gifts” on page 1.