

May 14, 2019, City Council Item 15 Comments

The following comments on an [item](#) on the Newport Beach City Council [agenda](#) are submitted by:

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Item 15. Proposed Revisions to City Council Policy B-17 - Parks, Facilities and Recreation Program Donations

The staff-provided narrative correctly recounts the recent history of [Policy B-17](#), but that's not to say it tells the full story.

As indicated in the staff report, Policy B-17 was last amended by the Council on August 8, 2017. But that was part of a 338-page [Item 18](#) in an 869-page agenda packet. The changes proposed and approved then can be found starting on [page 188](#) of Item 18, accompanied by a description of the changes on [page 152](#). Since this was part of a comprehensive revision to the entire [Council Policy Manual](#), with only 19 of the Council's 128 then-current policies left untouched, it seems safe to assume the detailed changes to Policy B-17 were not thoughtfully considered by the Council on August 8. Nor, to the best of my knowledge, had any of the revisions advanced to the Council on August 8 on any of the policies been reviewed or recommended by any citizens board or commission, including PB&R. And in my own [comments on Item 18](#), I didn't mention them.

The staff report is also correct in saying the presently proposed revisions were reviewed by an ad hoc committee of PB&R and reviewed by the full Commission on April 2, 2019. However, as happens with such things, the deliberations of the ad hoc committee were conducted in private and (as detailed in the [minutes](#)) the full Commission confined itself primarily to congratulating the committee on its work. I *did* submit some written comments, which as best I can tell have not been preserved as part of the [permanent record](#) of the April 2 meeting (even though staff seems to have made some changes based on them, not explicitly approved by PB&R). I am, therefore, separately attaching them with this.

Of the changes made on August 8, 2017, the references to dollar limits set by Policy F-3 (rather than attempting to separately and redundantly set them, again, in B-17) seems useful. The elimination of the Gift Donation Catalog came as a surprise. The insertion of an option to dedicate gifts "In Loving Memory of" reflected the unwritten practice of PB&R at the time, but was likely counter-productive and contributory to the need for the current revisions.

Most problematic of all was the insertion into Section B.1.c of language requiring Council approval of all restricted gifts – a provision staff and PB&R have ignored. For all the gift offers approved by PB&R have been restricted to specific purposes and none of them, to the best of my knowledge, have been referred to the Council for further consideration. In that connection, Policy B-17, as offered in the present agenda item, continues, in Section B, to make an artificial distinction between "Cash" and other kinds of gifts, when the "Tree," "Bench" and other "Improvement" donations are rarely, if ever, donations of an actual tree, bench or other object owned by the donor, but they are, rather, gifts of cash designated for City staff to acquire and install an item of the type specified.

Equally or more importantly, the revised Policy B-17, as presented, leaves unanswered the donor's options at the end of the new 10-year recognition period. As indicated in the [minutes](#), Commissioner Englebrecht suggested it would be in the interest of the City, the donor, and within the spirit of the program, to offer an option to extend the recognition for another 10 years upon payment of a new maintenance fee for that period. The suggestion was ignored by the remainder of the Commission, but should be considered by the Council. Without it, the donor would seem to have the awkward option of offering to donate a replacement object (with 10 new years of recognition) even though a replacement, and the added cost, is not needed; yet support for continued maintenance would be.

The interaction between this policy and the "Dedicated Tree List" in [Policy G-1](#) has similarly been left unresolved. That list has not been systematically updated as new tree donations have been accepted by PB&R, and it is unclear if Council, in adopting the revised B-17, wants the 10-year limit to apply to tree donations, wants trees dedicated more than 10 years ago to be removed from the list in Policy G-1, or wants newly dedicated trees to be added to it (and if so, for how long).

It might further be noted that it is also not clear from the new policy what role PB&R will have in the donation program in the future. If it was Council's intention that PB&R approve tree donations, it would seem the second sentence in Section B.2 should be modified to read: "*Trees may be donated and installed at parks recommended by the Deputy Public Works Director **and if** approved by the Parks, Beaches and Recreation Commission.*" Otherwise, it would appear PB&R's role is confined to designating a list of parks suitable for donations, with who accepts a specific gift being left unspecified – unless the "Cash Gifts" rules are applied, in which case all tree gifts seem to go to the Council since they are restricted. PB&R's role with regard to specific bench donations is similarly ambiguous, as is the Council's authority to even restrict PB&R's advisory function under the City Charter ([Section 709](#)).

In short, and as indicated in the previous comments to PB&R, I continue to believe this policy needs more work.

If nothing else, Section B.4.d should be revised to read: "*Donations to be installed on public sidewalks shall meet the criteria described in Policy L-6 Encroachments in Public Rights-of-Way and **be** approved by the Public Works Director.*"

Finally, the proposed Resolution 2019-44 (staff report page 15-21) says it was the "**August 7, 2018**" meeting at which the Council directed PB&R to review Policy B-17. The Council did not meet on August 7, 2018. This seems, instead, to be a reference to the **July 10, 2018**, City Council meeting mentioned on page 15-2 of the staff report. As [Item 11](#) on the July 10 Consent Calendar, the Council directed staff to suspend the acceptance of tangible street and park donations. A staff plan to work with PB&R on revisions to Policy B-17 is indeed mentioned in the staff report, but that does not (despite what the resolution says) appear to have been a part of the [formal action](#), either as recommended by staff or as taken by the Council (unsurprisingly, I had [some comments](#) then, too).

April 2, 2019, PB&R Agenda Comments

These comments on the Newport Beach [Parks, Beaches and Recreation Commission agenda](#) are submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660

Item V.A. Minutes of the PB&R Commission Meeting of March 5, 2019

The following corrections are suggested:

Page 1, last sentence: "Motion carried unanimously with Commissioners Daruty, ~~Commissioner~~ Englebrecht, and ~~Commissioner~~ Granoff absent."

Page 2, first paragraph under Public Comments:

"Jim Mosher wanted to know how much ~~all~~ the turf replacement improvements were going to cost and how that cost could be justified if ~~playground playing field~~ hours were not to be extended.

Chair Howald answered that the project was in the design phase and no cost analysis had been done yet. The playing fields would be used during the existing hours but on more days of the year."

Page 2, paragraph 2 from end, sentence 2: "He is in favor of keeping the natural ~~artificial~~ turf ..."

Page 2, paragraph 2, last sentence: "He emphasized that there were numerous studies that showed that ~~a~~ such fields do not cause health concerns."

Page 3, motion: "Motion carried unanimously with Commissioners Daruty, Englebrecht, and Granoff absent."

Page 3, Item B, paragraph 2: "Staff ~~was~~ is planning to bring updates on the G-6 Policy, amendments to the Special Tree Category, and the Parkway Tree Designation list to the Commission at a future meeting."

Page 3, Item B, paragraph 4: "Chair Howald suggested that there be an informational flyer ~~be~~ handed out to local nurseries pertaining to scale and diseases that were coming from the nurseries themselves. He ~~advised~~ asked Staff that informational items be added to future agendas on City Council actions or input that pertained to the Commission's work."

Page 4, Item VII, paragraph 5: "Deputy Director Martin announced that the Commission ~~would be seeing~~ some Council items including the contract amendments for the maintenance of the trees, a contract amendment for Great Scott to increase the not to exceed amount for the tree trimming program, amendments to the B-17 Policy, and changes that will be made to the G-6 Policy, and a presentation on pesticides."

[I don't recall the phrasing of this. Perhaps rather than "would be seeing" it was "might be seeing" – as in, the Commissioners might read about these items in the newspaper. The items about contract amendments for the maintenance of trees, the increase in the [Great Scott not to exceed amount](#) for the tree trimming program, and the [presentation on pesticides](#) all went to the Council without prior review by PB&R.]

Page 4, Item VII, paragraph 5: "Michael (~~no last name given~~) disclosed that he created a locker system that could be accessed by scanning a QR code."

Item V.B. Parks, Trees & Beach Maintenance Divisions Activity Report

The report makes no mention of problem trees removed, even though a monthly report is required by [Council Policy G-1](#) ([page 4](#)).

It is unclear if this means no problem trees were removed during the reporting period, or if mention of them was inadvertently omitted.

Item V.D. Reforestation Request - 421 Dahlia Avenue

The report does not explain why City staff is requesting the replacement be a Little Gem Magnolia tree when the property owner (who apparently does not live at the address) specifically requested a "Maidenhair Tree (Ginkgo Biloba)."

It also assures the Commission that the applicant submitted the required reforestation petition, but does not disclose what the results of the petition were. Also, although City staff seems to regard this as a case of "incorrect tree species," the reforestation request form specifies no reason for the reforestation. It is not clear what is "incorrect" about this tree.

Whether or not it applies here, it might be noted that "declining in health" is a possible justification for reforestation stated in [Policy G-1](#) (see [page 9](#)), but that justification does not seem to be available as a choice on the request form.

Item V.E. Reforestation Request - 3426 East Coast Highway

Although it is good to see the [Corona del Mar Business Improvement District](#) board (somewhat reluctantly) approved the request, this application does not appear to meet the technical requirements of Policy G-1. In particular, the permission to bypass the petitioning requirement by obtaining a board approval applies only to home owners associations in residential areas. Also, although past Councils seem to have given the CdM BID a considerable measure of control over the street trees, the BID is an association of *tenants* (business owners), not *property* owners, which seems inconsistent with the petitioning requirements of Policy G-1, that very specifically seek agreement from neighboring *property owners*, not occupants.

Item VI.B. Reforestation Request - 301 Poppy Avenue

Again, the attachments indicate a petition was submitted, but the staff report does not disclose the results.

Also, the leaning toward the house, cited by the applicant, does not look very severe in the photographs.

Item VI.C. Proposed Revisions to City Council Policy B-17 - Parks, Facilities and Recreation Program Donations

I like the idea of limiting dedicatory commitments to 10 years. But it raises several issues that may still need to be resolved:

1. I believe many of the existing donated items have been modified to accept the plaques, for example by cutting out recessed areas in benches in which to mount the plaques. It is not obvious the plaques can be removed without defacing the objects.
2. Although the practice may have been abandoned in recent years, the trees whose donations included naming rights in earlier years were regarded as a class of "Special City Trees" in Council [Policy G-1](#), and were individually listed as "Dedicated Trees" in Attachment 1 to it. Although many of these may be ones where a donor merely paid for the planting of the tree, others may have a different history -- for example, having been specially dedicated by the Council in recognition of an event or accomplishment, rather than merely for payment of a fee. The Commission will need to formulate a recommendation for what to do with the Dedicated Tree designation and the Dedicated Tree list in G-1.
3. Does City staff really plan to remove all undated plaques 10 years from now, in 2029? If not, what does it plan to do?
4. As I'm sure the Commission appreciates, many past donors who qualified for plaques may have believed they were purchasing recognition in perpetuity even though the City made no such commitment. When their plaques disappear, some of them will likely feel they have been cheated.

More broadly speaking,

1. In reviewing the policy, the Commissioners may wish to know that the City Clerk maintains an [archive](#) of previously-adopted versions of Council policies [Earlier versions of Policy B-17 are here](#).
2. It is not entirely clear from the title if the [current](#) Policy B-17 is intended as the Council's policy just for those donations that PB&R has involvement with, or for *all* donations to City park, *facility* and recreation programs, or (the distinction being that PB&R does not have any authority over donations to City facilities such as a police or fire station, unless the Council chooses to give it that authority). I think B-17 would be clearer if it were the former, and that would also put PB&R in a better position to make recommendations about it. If it is indeed a policy for donations through PB&R, the "Purpose" paragraph should be revised to say that.
3. In that same vein, the Commission should be aware of the existence of a very slightly overlapping Council [Policy B-9](#) ("Naming of City Parks & Facilities"), which mentions a conflicting condition for naming "site amenities" (see Item "C" on page 4 of the present proposal), as well as Council [Policy I-9](#) ("Art in Public Places") and [Policy I-11](#) ("Acquisition of Art by the City of Newport Beach") which can lead to the placement of dedicated (or undedicated) objects in City parks and facilities, coordinated by the City Arts Commission (such as the Civic Center Park Sculpture exhibition, which, to the best of my knowledge, PB&R has never weighed in on). The Board of Library Trustees also is empowered by [City Charter Section 708\(f\)](#) to accept donations, separately from any of those policies, it would seem, with approval of the City Council, and which has also led to the placement of objects in library facilities and grounds.

4. Policy B-17 is also confusing (and will become even more so if staff is proposing to eliminate the "[City Donation Catalog](#)") in that the section headings (and the reference to "tangible" donations) gives the impression that, in addition to cash, the City is soliciting the donation of *actual* trees, benches and other amenities, when in fact it is inviting *cash* donations to enable the City to acquire such things. If someone were offering to donate an actual tree, bench or water fountain that they had purchased on their own, I would think the policy for accepting it would be written quite differently from this.

As to the proposed policy, looking at the proposed "Clean Version" ([Attachment C](#)):

1. **Page 1** ("Purpose"): Should it be "... establish a fair, equitable, and uniform procedure ~~for~~ **by** which gifts may be donated to the City" or "... establish a fair, equitable, and uniform procedure for ~~which donating~~ gifts ~~may be donated~~ to the City"?
2. **Page 1** ("Purpose"): "*Each donation considered for inclusion in the City's **parks** and **street** system will ...*" (the words should either both be plural or both be singular)
3. **Page 1** ("Purpose"): "*... be subject to established limitations and guidelines **for each particular area.***"

(does this mean **geographic area**? or "area of the policy," that is, **donation type/category**?)

4. **Page 1** ("Types of Donations"):

*"Donations may be received in the form of cash, **real, or personal property.**"*

(As indicated above, this is confusing. I don't think this is an intended as a policy for people wishing to donate they own (other than cash) to the City – especially, [real property](#), such as offering to donate a home for dedication as a park.)

"Restricted donations are those donations that the donor specifies for a particular City location or purpose."

(This, too, is confusing, since most of the donations being offered through this policy **are** for a specific location or purpose, making them "restricted donations," yet paragraph "c", which follows this, says "*Gifts of cash or items that have a restriction must first be approved by the City Council*" – which seems to conflict with the remainder of the policy, which suggests that the gifts mentioned in the policy can be accepted by City staff or PB&R.)

5. **Page 1** ("1. Cash Gifts"), paragraph "a":

*"Donation of cash **or items** valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager."*

(Referring to "or items" in a section titled "Cash Gifts" is confusing. Beyond that, it might be noted that per the current [Council Policy F-3](#), the City Manager can accept donations up to \$30,000 if a request for such authority is included in the Council's budget adoption [see [page 5](#)].)

“However, any donation considered a park facility improvement that would result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, Park, Public Improvement, and Street Amenities.”

(This is perhaps a nod to the [Charter Section 709\(a\)](#) requirement that PB&R “Act in an advisory capacity to the City Council in all matters pertaining to parks, beaches, recreation, parkways and street trees.” In other words, it seems unlikely the Charter allows the Council to substitute the City Manager (or his employees) as its advisor on the matters assigned to PB&R in the Charter. But it seems the exception to the City Manager’s approval authority (without involving PB&R) should apply to more than just “subsection 4” and more than just “a permanent fixture in the parks.”)

6. **Page 1** (“1. Cash Gifts”), paragraph “b”:

“Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.”

(Policy F-3 says that “restricted donations in excess of \$ 30,000 must be specifically approved by the City Council,” which seems to contradict the statement that PB&R can accept them without approval by the Council.)

7. **Page 1** (“1. Cash Gifts”), paragraph “c”:

“Gifts of cash or items that have a restriction must first be approved by the City Council.”

(As noted above, this seems to contradict everything else in the policy.)

8. **Page 2** (“2. Trees”), last sentence: *“Tree donations are not eligible for donation plaques, however the ~~doner~~ **donor** will be provided with a certificate acknowledging the donation and the location of the donated tree.”*

(Why are tree donations not eligible for plaques on the same terms as other donations, that is, if over \$5,000? This would seem to eliminate one of the main incentives for donating trees. I like the idea of the certificates. But considering that the plaques are no longer permanent, shouldn’t a certificate be provided for all donations or all types, regardless of value?)

9. **Page 2** (“3. Benches”): The role of PB&R in the bench approval process is unclear.

My reading of the introductory paragraph and paragraphs “a” and “b” is that PB&R is tasked with approving a citywide list of bench locations and the style at each, and the donation requests will be processed by City staff with no further involvement by PB&R – although this is somewhat contradicted by paragraph “c”, which suggests donors can select the style they want with even more available upon approval by PB&R. Or is paragraph “c” meant to say donors can pick a *location* in the city where the style they want is available?

Although the language is not much changed, this seems quite different from the historic practice in which, it seemed, all bench donation requests came to PB&R for approval.

Was the existing policy being misread?

10. **Page 3**, paragraph c.3: *“Victoria **Series** Style **Bench**”*

(Why do the extra words appear on this line and not the others??)

11. **Page 3** (“4. Park, Public Improvement, and Street Amenities”), paragraph “b”: *“Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.”*

(Again, under Council Policy F-3, the City Manager can accept donations up to \$30,000 if a request for such authority is included in the Council’s budget adoption. But depending on the nature of the donation, it is not clear the Charter allows the Council to substitute the City Manager (or his employees) as its advisor on the matters assigned to PB&R in the Charter.)

12. **Page 3** (“4. Park, Public Improvement, and Street Amenities”), paragraph “d”: *“Donations to be installed on public sidewalks shall meet the criteria described in Policy ~~L-15~~ L-6 Encroachments ~~on in~~ Public Sidewalks Rights-of-Way and ~~7667~~ be approved by the Public Works Director.”*

([Former Policy L-15](#) no longer exists. In December, on recommendation of the Planning Commission, and without consulting PB&R, the Council consolidated it with [Policy L-6](#).)

13. **Page 4** (“D. Sponsorships”):

(This seems to apply to outside entities making a donation to a City-initiated and conducted event, although that could be made clearer, if that is the intent.)

“Signs and literature at all such special events would be at the discretion of the appropriate Department Director.”

(It is unclear to me what the “*appropriate Department Director*” is referring to. Is the policy contemplated a department other than RS&S would be running the event, and that Director’s approval would be needed? If so, it should probably say something like “*the Director of the hosting Department.*”)

“All signs must comply with the City’s existing sign code and Council Policies B-3 and B-8.”

([Policy B-8](#) [in its final line] prohibits “*any signage promoting alcohol or tobacco company(ies)*” at athletic events approved by the City. The current version of [Policy B-3](#) says nothing about signs. Former versions do not seem to have, either, although if the City was asked to co-sponsor an event hosted by an outsider, it did require the host to share the profits with the City.)

14. **Page 4** (“G. Timeliness”): The word “Timeliness” should be set of as a title, like the other section titles (bold, underlined and on separate line). That said, the word “Duration” might be more appropriate. Also, shouldn’t this mention that the City’s obligation to maintain any recognition provided expires at the end of the 10 years?

15. **Page 5**, paragraphs “a” and “b”: Again, why are trees not eligible?

16. **Page 5**, paragraph “e”: *“The year of the donation will be included on all ~~plagues~~ plaques.”*