



## CITY OF HUNTINGTON BEACH CITY COUNCIL MEETING – COUNCIL MEMBER ITEMS REPORT

TO: Huntington Beach City Council

FROM: Gracey Van Der Mark, Mayor Pro Tem

DATE: June 20, 2023

SUBJECT: Selection, Display and Circulation of Library Books and Other Materials within Huntington Beach Public Libraries (HBPL)

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### ISSUE STATEMENT

It has been a longstanding problem in public education that children are being exposed to obscene, and age-inappropriate material by adults, many of whom are educators we have entrusted with our children. Not too long ago, I learned that our City public libraries also provide similar obscene materials to our youth in the form of obscene and at times pornographic children's books (and other materials). Our City libraries should not be engaged in infecting our children with obscenity or pornography.

According to the Department of Justice (<https://www.justice.gov/criminal-ceos/obscenity>), "Obscenity is not protected under First Amendment rights to free speech, and violations of federal obscenity laws are criminal offenses. The U.S. courts use a three-pronged test, commonly referred to as the Miller test, to determine if given material is obscene. Obscenity is defined as anything that fits the criteria of the Miller test, which may include, for example, visual depictions, spoken words, or written text."

The Department of Justice goes on to say "Federal law strictly prohibits the distribution of obscene matter to minors. Any transfer or attempt to transfer such material to a minor under the age of 16, including over the Internet, is punishable under federal law.. In addition, visual representations, such as drawings, cartoons, or paintings that appear to depict minors engaged in sexual activity and are obscene are also illegal under federal law."

While the Department of Justice may not present the entire legal analysis and controlling authorities here, this publicly available information by one of our top federal agencies should be instructive of the applicable legal standards for obscenity, and the gravity against allowing this kind of material around our children.

There are censored examples of obscene and/or pornographic children's books in the Power Point Presentation. The full, uncensored versions of the images cannot even be shown here tonight, because doing so could very well violate the very same federal laws, and possibly other laws, mentioned here. The City should take action to make these books/materials, and others like them, unavailable to our children by, in, or around our City facilities. Because of the delicate balance required to maintain First Amendment rights, while protecting our children

from unprotected obscene and/or pornographic material, such books and other materials should be submitted to the City Attorney for legal analysis and evaluation for First Amendment protections.

### **RECOMMENDED ACTION**

Direct the City Manager to work with the City Attorney to return to the City Council in August of this year with a proposed Ordinance for the City's Libraries and other public facilities to making obscene and/or pornographic materials, both in hard copy and digitally/electronically, unavailable to minors; with the City Attorney evaluating the materials under the First Amendment. The Ordinance should also present the policy for procurement, which would include new screening protocols for books/materials/content yet to be acquired by the Library or other City facilities that are intended for children at our public facilities, by screened for obscenity and/or pornography. The Ordinance should also present findings and authorities for "obscenity" within the meaning of the First Amendment.

I would also like to direct our City Manager to look into the process to part ways with the American Library Association.

### **STRATEGIC PLAN GOAL**

Not applicable

