

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: November 2, 2009  
Reviewed by: BP

**SUBJECT:** City Council voting procedures and prior action on Measure WW East Bay Regional Park District per capita allocation

**REPORT BY:** Robert Zweben, City Attorney

---

**STAFF RECOMMENDATION**

By random selection choose one of the three council members with a conflict of interest to participate. When the quorum is chosen, then (a) rescind the prior September 8, 2009 decision related to Pierce Street and (b) make determinations as deemed appropriate for the allocation of WW funds.

**BACKGROUND**

This matter first appeared on the Council's agenda on September 8, 2009. Council members Javandel and Thomsen stated that since they lived within 500 feet of Pierce Street's proposed park, they had a conflict of interest and could not participate in decisions related to the allocation of WW funds for Pierce Street project. They also stated that they did not feel they could make decisions on allocations to other park projects as they believed they could not segment those decisions. Mayor Atkinson, who lives within 500 feet of the Ohlone Greenway, said she could not vote on Ohlone Greenway fund allocations, but felt she could vote on the other projects without taking into account any effects on funding for the Ohlone Greenway.

When it was clear that at least two council members did not feel they could segment their decisions, it was decided that the Council should cease making any further decisions until an opinion was sought from the FPPC.

The City Attorney contacted the FPPC to request an advice letter. On October 20, the FPPC forwarded an advice letter to the City Attorney. (FPPC file no A-09-219). The advice letter concluded that the decisions regarding allocation of funds could not be segmented. Therefore, since 3 council members had conflicts of interest under FPPC regulations, that one of the three council members with a conflict would have to be chosen by random selection to participate in order to achieve a quorum for the purposes of conducting business. This aspect is referred to as the Rule of Necessity, FPPC Regulation Section 18708, implementing Government Code Section 87101.

**DISCUSSION-**

Staff therefore recommends the following process:

The City Clerk will prepare three pieces of paper. One piece will contain the word "Participate". The other two pieces will be blank. In the normal order of voting, Council Member Javendal will select one piece of paper, followed by Council Member Thomsen, and Mayor Atkinson. Whoever draws the "Participate" would join Council members Lieber and Wile, thereby forming a quorum and would vote on the allocation of the WW funds.

The first order of business should be to rescind the prior action taken at the September 8, 2009, meeting of the City Council to allocate funds to Pierce Street. Then the council members should proceed, de novo, to make whatever decisions they deem appropriate as WW allocations.

**ANALYSIS**

N/A

**SUSTAINABILITY IMPACT**

N/A

**FINANCIAL IMPACT**

N/A

**Attachments:**

Fair Political Practices Commission letter of October 20, 2009