



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 07, 2021

Rebecca L. Moon  
Office of the City Attorney  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

Re: Your Request for Advice  
**Our File No. A-21-148**

Dear Ms. Moon:

This letter is in response to your request for advice on behalf of Alysa Cisneros, Councilmember with the City of Sunnyvale (the City), regarding the conflict-of-interest provisions of the Political Reform Act (the Act).<sup>1</sup> Please note that we are providing advice under the Act only and not under any other body of law. Our advice is based solely on the facts provided; we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71). If the facts underlying these decisions change, then you should contact us for additional advice.

### QUESTION

May Sunnyvale City Councilmember Alysa Cisneros participate in decisions related to the proposed permanent closure of the City's Historic Murphy Avenue to vehicle traffic that would allow expanded outdoor restaurant seating to continue after the COVID-19 pandemic, when the Councilmember has a one-year lease in an apartment complex located one block from the northeast corner of Murphy Avenue and she plans to extend her existing lease past the existing termination date in February 2022?

### CONCLUSION

Yes. The Councilmember may participate in governmental decisions regarding the proposed permanent closure of the City's Historic Murphy Avenue because it is not reasonably foreseeable that the decisions would have a material financial effect on her leased residence located near Historic Murphy Avenue.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

### A. Decisions Regarding Historic Murphy Avenue.

Historic Murphy Avenue (Murphy Avenue), also known as the 100 Block of South Murphy Avenue, is a one-block heritage landmark district within Downtown Sunnyvale between East Washington Avenue and East Evelyn Avenue. The street is lined with bars, restaurants, and small retail businesses, and is a popular destination for dining and nightlife. A weekly Farmer's Market takes place at the southern end of Murphy Avenue. There are also periodic special events on Murphy Avenue, including live concerts, art and wine festivals, and an annual holiday tree lighting.

Murphy Avenue has been closed to vehicle traffic since June 2020 so that restaurants could provide additional outdoor seating during the Covid-19 pandemic. City staff initially approved the closure<sup>2</sup> by granting a Special Event Permit. In July 2021, the City Council voted to direct the City Manager to extend the closure through December 31, 2021, by issuance of a Special Event Permit in accordance with Sunnyvale Municipal Code 9.45 for special events and Vehicle Code Section 21101(e) for temporary street closures.

The closure of Murphy Avenue has been popular with many residents and restaurant owners. The closure allows the bars and restaurants on Murphy Avenue to create outdoor dining areas in the street with tables, tents and umbrellas. The sidewalks and center of the street are open to pedestrians. Temporary traffic barricades were placed to block vehicles from turning onto Murphy Avenue from Washington and Evelyn Avenues.

On December 7, 2021, the City Council will consider whether to extend the temporary closure through August 31, 2022. The Council will also be asked to decide if the City should initiate a study to make the closure permanent for reasons of public safety and to further the City's goals, as stated in the Downtown Specific Plan, to promote a pedestrian-friendly environment in the Downtown. The proposed study will include community and stakeholder outreach and will analyze the potential impacts of a permanent closure on businesses, traffic, parking, and the environment.

The City's Traffic Division reviewed the proposal to temporarily close Murphy Avenue in June 2020 and determined that creating additional outdoor restaurant seating would result in fewer than 100 new vehicle trips. Therefore, the project did not require a traffic impact analysis. The closure also eliminates parking on Murphy Avenue. However, this affects only a small number, less than 30 parallel parking spaces. Based on the City's 2020 parking study, visitors to Murphy Avenue have ample parking options, including public surface lots on streets directly behind the businesses on Murphy Avenue and a public parking garage two blocks away on Taaffe Street that is currently under-utilized. In addition, an office/residential development is under construction immediately south of Murphy Avenue that, when completed, will provide 345 new public parking spaces and more than 1,000 shared parking spaces that will be open to the public after business hours and on weekends.

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<sup>2</sup> For purposes of this letter, "closure" means closure to vehicle traffic; the street remains open to the public.

**B. The Councilmember's Residence and the Decisions' Impact on the Surrounding Area.**

In March 2020, the Sunnyvale voters approved a charter amendment to divide the City into six City Council districts with an at-large mayor. Alysa Cisneros was elected in November 2020 to represent Sunnyvale Council District 2, which includes Downtown Sunnyvale and Murphy Avenue.

Councilmember Cisneros's primary residence is a rental apartment in the Villa Del Sol apartment complex on the north side of East Evelyn Avenue at the corner of Evelyn and South Sunnyvale Avenue. The apartment complex is approximately 335 feet from the northeast corner of Murphy Avenue when measured from the closest point of the parcel along Sunnyvale Avenue. Councilmember Cisneros has a one-year lease that will expire on February 14, 2022. The Councilmember plans to extend her lease beyond this termination date.

The closure of Murphy Avenue is not expected to have noticeable impacts on residents of the surrounding neighborhoods compared to existing conditions, although this question will be fully evaluated in the proposed study. Outdoor and sidewalk dining has existed on Murphy Avenue before the COVID-19 pandemic. The area has been a popular spot for dining, nightlife, and periodic special events for many years. Although the closure will increase the amount of outdoor dining on Murphy Avenue, it will not change the existing character of the area as a busy and active neighborhood. The Councilmember's apartment complex is a block away and on the other side of Evelyn Avenue from the corner of Murphy Avenue and buffered from activities and noise by the line of buildings on Murphy and the parking lot on the southwest corner of Evelyn and Sunnyvale Avenue. The Councilmember would not be affected by any spillover parking because her apartment has secure parking facilities, and parking is prohibited on Evelyn Avenue in front of the apartment buildings.

**C. Amendments to the Downtown Specific Plan.**

Councilmember Cisneros's apartment is located within the Downtown Specific Plan (DSP) area. Permanent closure of Murphy Avenue may require minor amendments to the DSP to update descriptive text and maps that depict or describe the 100 Block of South Murphy Avenue as a public street. The proposed closure of Murphy Avenue will not re-open, re-affirm, or nullify any major policy decisions affecting the DSP and will not change the size, type or nature of development allowed in the DSP area.

**ANALYSIS**

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.) An official's interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103. With respect to decisions relating to the Project, the Councilmember has a real property interest in her leased residence (see Section 87103(b)), and an interest in her personal finances and those of immediate family members (see Section 87103), based on the facts presented.

## Foreseeability and Materiality

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Here, neither the Councilmember's real property interest in her leased residence nor her interest in her personal finances is explicitly involved in decisions related to the governmental decisions regarding Murphy Avenue.

Regulation 18702.2 provides the materiality standards under the Act that apply to a decision's effect on an official's real property interest.<sup>3</sup> Regulation 18702.2(c) provides that financial effects on a leasehold interest are material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

Based on the facts provided in this case, there is no indication that the permanent closure decisions at issue will cause any of these four results to occur. The City's review of temporary closure in June 2020 found that creating additional outdoor restaurant seating would result in fewer than 100 new vehicle trips, and thus the project did not require a traffic impact analysis. Closure would have a minimal impact on parking; less than 30 parallel parking spaces are affected. The City's 2020 parking study found that Murphy Avenue would have ample parking options if temporarily closed. Additional parking immediately south of Murphy Avenue will be available after completion of an office/residential development this is currently under construction.

The facts provided indicate that permanent closure would not have noticeable impacts on residents in the surrounding neighborhoods compared to the existing conditions. The conditions caused by permanent closure of Murphy Avenue would not be new since the area has been temporarily closed since June 2020. Moreover, outdoor and sidewalk dining existed on Murphy Avenue before the COVID-19 pandemic. The Murphy Avenue area has been a popular spot for

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<sup>3</sup> Regulation 18702.5 sets forth the materiality standard applicable to a decision's effect on an official's personal finances and those of immediate family members. Regulation 18702.5(c), however, provides that if the decision at issue affects the official's real property interest, materiality is determined pursuant to Regulation 18702.2. Therefore, we apply Regulation 18702.2 to determine whether the decisions relating to the project would have a disqualifying effect on the Councilmember's interests.

dining, nightlife, and periodic special events for many years, and permanent closure will not change the existing general character of the area. The Councilmember's apartment complex is located one block away and on the other side of Evelyn Avenue from the corner of Murphy Avenue and buffered from activities and noise by the line of buildings on Murphy and the parking lot on the southwest corner of Evelyn and Sunnyvale Avenue. The Councilmember would not be affected by any spillover parking because her apartment has secure parking facilities, and parking is prohibited on Evelyn Avenue in front of the apartment buildings.

The facts presented do not indicate that decisions relating to the permanent closure of Murphy Avenue will change the termination date of the Councilmember's lease; increase or decrease the potential rental value of her property; change the Councilmember's actual or legally allowable use of the property; or impact her use and enjoyment of the property. The Act, therefore, does not prohibit the Councilmember from taking part in decisions regarding Murphy Avenue.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.  
Senior Counsel, Legal Division

JMF:dkv