



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811

July 10, 2026

Kimberley White  
Mayor, City of Arcata  
City of Arcata  
736 F Street  
Arcata, CA 95521

**Re: Your Request for Advice  
Our File No. A-26-008**

Dear Ms. White:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including the Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Humboldt County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

### QUESTION

Does Section 1090 prohibit the City of Arcata ("City") from transferring City loans into the mayor's name, and executing a new loan agreement with the mayor, for real property that she holds sole title to, when the loan and transfer request were made prior to assuming office?

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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 18104 through 18998 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.

## CONCLUSION

No, the rule of necessity, an exception to Section 1090, applies to authorize the City to transfer a loan to the mayor's name and execute a new loan agreement with her. The City's ability to manage its loans is an essential government function.

## FACTS AS PRESENTED BY REQUESTER

You have been serving on the Arcata City Council since 2022. Prior to assuming office, you tried to transfer two City home loans from your ex-husband's name to your name for property you hold title to and for which you have been making payments. That process has not yet been finalized due to various circumstances, some beyond your control. However, your ex-husband recently passed away in December 2025, and updating the loans to your name is now essential.

In April 2004, your husband at the time, John Grimm, purchased a single-family home in the City (the "Property"). The principal loan for the Property was issued by a residential mortgage lender. In addition, the City issued three loans to Mr. Grimm – one was unsecured, and two were secured by a Deed of Trust listing the Property as collateral. The City could not locate a written loan agreement with Mr. Grimm. The two secured loans were both issued for \$30,000 with a 30-year term. One loan is an interest-free zero percent loan; the other is a two-percent interest loan. The deed to the Property and all Property loans were initially issued in Mr. Grimm's name only, as you were pregnant and not working at the time.

The two secured City loans were issued as part of the City's HOME program ("HOME Program") to assist eligible homebuyers in purchasing their first homes in the City. The City contracted with the California Department of Housing and Community Development ("HCD") to administer HCD-funded homebuyer programs. The HOME Program provides assistance in the form of deferred payment "silent" second priority loans as "gap" financing toward the purchase price and closing costs of affordable housing units occupied by homebuyers. In exchange for lending money, the City receives a share of the Property's equity.

In August 2014, you and Mr. Grimm were in divorce proceedings. Only the two secured City loans were outstanding ("City loans") and in default. Mr. Grimm and you requested a loan modification of the City loans to resolve the delinquency from the City's Loan Advisory Committee ("LAC")<sup>2</sup> under the City's First Time Homebuyer Program Guidelines ("Guidelines") applicable at the time. These Guidelines apply to all first-time homebuyer programs, including the ones that fund the City loans at issue.

The LAC is comprised of the following City staff by virtue of their position: the Community Development Director, the Finance Director, and the Contracts & Special Projects Manager. The LAC evaluates and approves or denies HOME loan applications. The City Council does not act on loan modifications. On August 22, 2014, the LAC approved the action for the

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<sup>2</sup> The LAC was initially managed by the Redwood Community Action Agency and known as the "loan committee." The LAC became an internal committee of the City in 2005.

City's loan servicer to send out a Loss Mitigation/Loan Modification package to you and Mr. Grimm to complete and return.<sup>3</sup> The LAC action summary noted the extent of the default, that you had been in contact with the City and working with the primary lender to modify the primary loan terms, that you and Mr. Grimm were in the process of a divorce, and that Mr. Grimm was willing to transfer the Property to you once the divorce was finalized.

On October 3, 2014, an interspousal transfer deed transferring the Property from Mr. Grimm solely to you as separate property was executed and recorded before your divorce was finalized in 2015. According to you, the City was notified of the property transfer and provided a copy of the recorded deed. The principal loan was updated to list you as the primary borrower and Mr. Grimm as a second borrower. Efforts were made to transfer the City loans to your name and alternatively, to add you as a borrower. A loan transfer reassigns an existing loan to another person or entity, with the new borrower agreeing to assume financial responsibility and make all future payments at the original interest rate.

On December 13, 2017, the Committee "authorize[d] the assignment of the loan to Ms. White and approve[d] modification of her loan to a deferred loan following the current homeownership guidelines, keeping the same interest rate and maturity date as the original loan." According to City staff, the Committee's action was conditioned on the borrower meeting the criteria set forth in the Guidelines.

The loan transfer was not completed due to City staff turnover and administrative circumstances beyond your control. You were elected to City Council in 2022. According to City staff, you have only voted to approve changes to the Homebuyer Downpayment Assistance for Community Land Trust Acquisition Only Program Guidelines, which are different than the Guidelines that your loans are subject to. Mr. Grimm continued to reside at the Property until his passing in December 2025. You have continued to make payments on the City loans, and the City is currently accepting these payments. All payments you made after Mr. Grimm's passing were timely. According to you, the City loans need to be updated now to reflect you as the borrower to comply with standard loan servicing requirements.

A few other provisions from the loan documents and Guidelines are important to note.

Under the promissory note executed by Mr. Grimm, the City has the option to accelerate the loan and make it immediately due and payable whenever there is a default, property sale or transfer (excluding permitted transfers to a spouse or other person signing the promissory note), or the failure of the borrower to reside in the Property unless such failure is due to circumstances beyond the reasonable control of the borrower. Under the promissory note and Deed of Trust, when title to the Property is transferred to, or altered to include, a spouse or person signing the promissory note, and that spouse or person is independently eligible to participate in the HOME Program, the transfer or alteration in title cannot accelerate the loans. Under the Guidelines, all loan applicants must have incomes at or below 80 percent of the County's area median income ("AMI"), adjusted for household size, as published by HCD each year. You have not yet

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<sup>3</sup> The August 21, 2014 LAC action identified the borrower as "John Grimm & Kimberly White-Grimm."

executed a promissory note while the loan application is pending review. However, to date, the City has not exercised its right to accelerate the loans for any reason.

Under the Guidelines, a City official, employee or agent, as well as any other person who exercises policy or decision-making responsibilities (including members of LAC and officers, employees, agents of the LAC, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the HOME Program, are ineligible for the HOME Program while serving in their capacity and for one year after the relationship with the City terminates. Exceptions to this policy can be made only after public disclosure and formal approval by the City Council.

## ANALYSIS

### *Section 1090*

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of their respective agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 (*Stigall*).) Section 1090 is intended not only to strike at actual impropriety but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646 (*Thomson*).) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

As the Mayor of the City, you are subject to the provisions of Section 1090 and the loan agreement is a contract that falls within the scope of Section 1090. The issue is whether you are prohibited from entering into a new loan agreement for a loan transfer you applied for before you assumed office on the City Council, but which has not yet been acted upon.

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333 (*Honig*).) An official “makes” a contract if the official participates in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, planning, drawing of plans and specifications. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, 58 Cal.2d at p. 569.) Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented. We must look to whether the official had the opportunity and did participate in the policy decision to create the government program under which the contract would later be executed. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

Your participation in the loan agreement occurs in your private capacity. With respect to whether you as the Mayor, and thus the entire City Council, will make a decision on this matter, we note that the City Council previously approved the creation of an internal LAC comprised of

City staff, who have the authority to transfer the City loans to you and execute a loan agreement at their discretion. Due to your status as the Mayor, you are presumed to be involved in the making of all contracts by the City Council irrespective of whether you actually participate in the making of the contract. (*Thomson, supra*, 38 Cal.3d at pp. 645, 649.) Therefore, the ultimate power to execute the loan agreement rests in the City Council and you will be considered to have participated in the instant decision in your public capacity regardless of whether City staff signs the loan agreement.

Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) A debtor-creditor relationship is covered by Section 1090 as a contract and financial interest. (81 Ops.Cal.Atty.Gen. 317, 321 (1998), citing *People v. Watson* (1971) 15 Cal.App.3d 28, 37.) If the City loans can be transferred to you, you will benefit financially from an interest rate below market rate as a borrower and avoid new loan origination costs for the Property.

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a remote interest is present, the contract may be made if: (1) the officer discloses the interest in the contract to their public agency; (2) that interest is noted in the agency's official records; and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a).) If a noninterest is present, the contract may be made without the officer's abstention, and a noninterest generally does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515.)

The only exception that merits analysis given the facts presented is the noninterest exception set forth in Section 1091.5(a)(3) for "public services generally provided." That exception provides that an officer or employee "shall not be deemed to be interested" in a public contract if their interest in that contract is "[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board."

An Attorney General opinion noted that the scope of the "public services" exemption in Section 1091.5(a)(3) does not apply to the extension of a business loan because a "government loan involves more complex considerations...[a] loan applicant must qualify, and the public official approving the loan must exercise some degree of discretion and judgment." (81 Ops. Cal. Atty. Gen. 317, 320 (1998).) Similarly, in the *Nerland* Advice Letter, No. A-19-066(a), we advised that the city councilmember was prohibited from obtaining a loan through the city's first-time homebuyer program where the councilmember participated in the establishment of the program. Section 1091.5(a)(3) did not apply because the acquisition of a government loan involves more complex considerations, with the individual approving the loan exercising discretion.

This situation is similar. City staff would assess whether you qualify for the loan transfer. While the criteria would be income-based, and the interest rate and maturity date would remain the same as the original loan, you would need to enter into a new loan agreement with the City and staff would need to determine how to apply the criteria since considerable time has elapsed since the 2017 LAC action. Thus, the noninterest exception provided in Section 1091.5(a)(3) does not apply.

### *Rule of Necessity*

Where the facts presented do not indicate the application of either a remote interest under Section 1091 or a noninterest under Section 1091.5, we examine the rule of necessity to determine if the City may make the loan agreement where you are disqualified. The rule of necessity permits a government decision even where it would otherwise be prohibited. (88 Ops.Cal.Atty.Gen. 106, 110 (2005).) The rule of necessity is applied in limited situations to ensure that essential government functions are performed even where a conflict of interest exists. (*Eldridge v. Sierra View Local Hospital Dist.* (1990) 224 Cal.App.3d 311, 322.) The Attorney General's Office has applied the rule of necessity in "extreme cases of emergency, or where no alternative source of supply of goods or services existed. (76 Ops.Cal Atty.Gen. 118 (1993), citing 59 Ops.Cal.Atty.Gen. 604 (1976).) It has also been applied where the official or board is the only one authorized to act. (See *Hynes* Advice Letter, A-18-093, citing 69 Ops.Cal.Atty.Gen. 102, 109 (1986).)

In the *Weaver* Advice Letter, No. A-18-147, a councilmember wanted to refinance a loan issued by the former redevelopment agency before the councilmember assumed office. The refinancing required the execution of a new subordination agreement between the former redevelopment agency (whose board is the city council) and the new bank. The city council would not vote on the agreement because there was no change of action. The original subordination agreement authorized City staff to sign it. We advised that the rule of necessity applied to allow city staff to execute the subordination agreement because the city was the only entity that could execute the subordination agreement, the city's ability to manage its loans was an essential function of government, and the agreement was in the city's best interests. Further, the original loans were made prior to the official joining the city council and the decision regarding the loan refinance would ultimately be made by city officials, not the city council.

Here, this situation is similar to the *Weaver* Advice Letter with a loan origination predating office, and a modification occurring after office. In this case, there are no changes to the loan terms, just a loan transfer to update the name of the borrower responsible for the City loans. As the issuer of the City loans, the City is the only entity that can legally act to transfer the City loans to you. The City's ability to manage its loans is an essential function of government and fulfills the purpose of the City's first-time homebuyer program. Based on these facts, the rule of necessity applies, and the City may execute a loan agreement with you in order for the City loans to be transferred to your name.

If you have other questions on this matter, please contact me at [JGin@fppc.ca.gov](mailto:JGin@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Joanna Gin**

By: Joanna Gin  
Senior Counsel, Legal Division

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