



# **AGENDA**

## **REGULAR MEETING**

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## **CLAYTON CITY COUNCIL**

\* \* \*

**TUESDAY, October 3, 2017**

**7:00 P.M.**

*Hoyer Hall, Clayton Community Library  
6125 Clayton Road, Clayton, CA 94517*

**Mayor:** Jim Diaz

**Vice Mayor:** Keith Haydon

### **Council Members**

Julie K. Pierce

David T. Shuey

Tuija Catalano

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's Website at least 72 hours prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at [www.ci.clayton.ca.us](http://www.ci.clayton.ca.us)
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

**\* CITY COUNCIL \***

**October 3, 2017**

1. **CALL TO ORDER AND ROLL CALL** – Mayor Diaz.

2. **PLEDGE OF ALLEGIANCE** – led by Mayor Diaz.

3. **CONSENT CALENDAR**

*Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or further input may request so through the Mayor.*

- (a) Approve the minutes of the City Council's regular meeting of September 19, 2017. ([View Here](#))
- (b) Approve the Financial Demands and Obligations of the City. ([View Here](#))
- (c) Approve the proposed schedule for the ten (10) Saturday "Concerts in The Grove" series in The Grove Park in 2018. ([View Here](#))
- (d) Approve the denial of a liability claim filed against the City by Ms. Brenda Defoe on behalf of Robert Joseph Smith, represented by Christopher Scranton, Esq., and authorize the City Clerk to send the Notice of Rejection. ([View Here](#))

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to "Do the Right Thing" public school students selected for exemplifying the character trait of "Responsibility" for August and September 2017. ([View Here](#))

5. **REPORTS**

- (a) Planning Commission – Vice Chairman Bassam Altwal.
- (b) Trails and Landscaping Committee – Meeting held September 25, 2017.
- (c) City Manager/Staff
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
- (e) Other

## 6. **PUBLIC COMMENT ON NON - AGENDA ITEMS**

*Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.*

*Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.*

## 7. **PUBLIC HEARINGS**

- (a) Consider the Introduction and First Reading of Ordinance No. 478 amending Chapter 15.09 of the *Clayton Municipal Code* to adopt the 2016 California Fire Code with changes, additions and deletions as allowed by State law. ([View Here](#))  
(Community Development Director)

Staff recommendations: **1).** Receive the staff presentation; **2).** Open the Public Hearing and receive public comments; **3).** Close the Public Hearing; **4).** Following City Council discussion and any modifications to the Ordinance, approve a motion to have the City Clerk read Ordinance No. 478 by title and number only and waive further reading; **5).** Upon completion of the City Clerk's reading, adopt a motion to approve Ordinance No. 478 for First Reading with findings its adoption will not have a significant adverse effect on the environment and is therefore exempt under CEQA.

- (b) Consider the adoption of Urgency Ordinance No. 479 placing an interim local moratorium on the operation or establishment of parolee homes and community supervision programs within the city of Clayton. ([View Here](#))  
(Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comment; **3)** Motion to have the City Clerk read Urgency Ordinance No. 479 by title and number only and waive further reading; and **4)** Following the City Clerk's reading, approve a motion to adopt Urgency Ordinance No. 479 with the finding the adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) because CEQA only applies to projects which have the potential for causing a significant effect on the environment and this activity is not considered to be a project and can be seen with certainty that it will not have a significant effect or physical change to the environment.  
(Requires 4/5ths affirmative vote)

**8. ACTION ITEMS**

- (a) Policy discussion of encroachments into the public right-of-way and fence locations for exterior side setbacks. ([View Here](#))  
(Community Development Director)

Staff recommendation: Following the staff presentation and the opportunity for public comment, the City Council provide policy direction on encroachments into the public right-of-way and amending the Clayton Municipal Code for exterior side setbacks.

- (b) Discussion of staff recommendations for various local policy issues arising from the California voters' passage of Proposition 64 and the State legislature's passage of SB 94 – the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) regarding local regulation of cannabis. ([View Here](#))  
(Community Development Director)

Staff recommendation: Following the staff presentation and the opportunity for public comment, the City Council provide policy direction on local regulation of cannabis.

**9. COUNCIL ITEMS – limited to requests and directives for future meetings.**

**10. CLOSED SESSION – None.**

**11. ADJOURNMENT**

The next regularly scheduled meeting of the City Council will be October 17, 2017.

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**MINUTES  
OF THE  
REGULAR MEETING  
CLAYTON CITY COUNCIL**

Agenda Date: 10-03-2017

Agenda Item: 3a

**TUESDAY, September 19, 2017**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Diaz in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Diaz, Vice Mayor Haydon and Councilmembers Catalano, Pierce and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Finance Manager Kevin Mizuno, City Engineer Scott Alman, PE, Community Development Director Mindy Gentry, and City Clerk/HR Manager Janet Brown.
  
2. **PLEDGE OF ALLEGIANCE** – led by Mayor Diaz.
  
3. **CONSENT CALENDAR**  
**Councilmember Shuey requested Item 3(a) be pulled from the Consent Calendar for separate discussion.**  
  
**It was moved by Vice Mayor Haydon, seconded by Councilmember Pierce, to approve the Consent Calendar Items (b) – (k). (Passed; 5-0 vote).**
  - (a) Information Only – No Action Requested.
    1. Status Report on the City's CalPERS unfunded actuarial liabilities (UALs).
  - (b) Approved the minutes of the City Council's regular meeting of August 1, 2017 and its special meetings of August 2, 2017 and August 14, 2017.
  - (c) Approved the Financial Demands and Obligations of the City.
  - (d) Adopted Resolution No. 35-2017 approving the Final Map (Tract Map 9419), and authorizing the executions of a Storm Water Operations and Maintenance Agreement and a Subdivision Improvement Agreement for the Verna Way Development Project, a 6-lot subdivision stretching between Verna Way and Pine Hollow Road.
  - (e) Adopted Resolution No. 36-2017 approving the Parcel Map (MS 01-15) and authorizing the execution of a Subdivision Improvement Agreement for the St. John's Church/Southbrook Drive Mixed Use Planned Development Project.
  - (f) Adopted Resolution No. 37-2017 adding the City Hall ADA Accessibility Improvement Project to the City's Capital Improvement Program (CIP) as Project No. 10443, awarding a competitive bid contract to Greentech Industry, Inc., in the amount of \$24,050 for ADA remedial improvements to the front entrance of City Hall, and approving the allocation of necessary Project monies.
  - (g) Adopted Resolution 38-2017 approving three (3) contracts for the purchase and outfitting of a new 2017 Ford Police Interceptor in the total amount of \$49,358.68, and declaring a

2011 Ford Crown Victoria patrol vehicle (Unit 1733) as property surplus to the City's needs and authorizing its disposal by the City Manager at public auction.

- (h) Approved the Mayoral re-appointment of Ronald Tervelt to the Contra Costa County Advisory Council on Aging as the City of Clayton's representative with the term of office ending September 30, 2019.
- (i) Approved the City's Investment Portfolio Report for the 4<sup>th</sup> Quarter of FY 2016-17 ending June 30, 2017.
- (j) Adopted two (2) Resolutions No. 39-2017 and Resolution No. 40-2017 approving a series of actions authorizing the City's submittal of a regional grant application with the City of Concord to the California Department of Resources Recycling and Recovery (CalRecycle) to incorporate rubberized asphalt materials in the City's 2018 Neighborhood Street Repaving Project.
- (k) Adopted Resolution No. 41-2017 approving the redirection of \$375,000 in unused Measure J funds (CCTA) from the completed 2016 Arterial Street Rehabilitation Project to rehabilitate the City's portion of Pine Hollow Road as a local arterial street project (CIP Project No. 10379), including installation of a City entryway monument sign.

**Consent Calendar Item 3 (a) - Pulled**

- (a) Information Only – No Action Requested.

1. Status Report on the City's CalPERS unfunded actuarial liabilities (UALs).

Councilmember Shuey asked to have Finance Manager Kevin Mizuno provide a brief update regarding the CalPERS unfunded actuarial liabilities (UALs) and specifically if the City is able to leave the CalPERS retirement system and the requirements to do so.

Vice Mayor Haydon added CalPERS stands for the California Public Employees' Retirement System; which is the retirement system the City of Clayton is a participant.

Finance Manager Kevin Mizuno clarified the numbers that Councilmember Shuey is referring to is the termination liability, where the numbers are publicly available on the CalPERS website within the annual actuarial reports published annually in August/September. Mr. Mizuno noted the City has been a member with CalPERS since July 1, 1975; in lieu of Social Security. There is an option of terminating the City's relationship with CalPERS, under a termination liability which is in excess of \$15,000,000.00 assuming a discounted rate 6.65%. At this time there is no possibility as there is not enough liquid cash available to consider termination.

Councilmember Shuey inquired on the amount of reserves available?

Mr. Mizuno advised the General Fund reserves are approximately \$5,000,000.00. If the City decided to terminate with CalPERS, it would have to consider purchasing bonds at a comparable interest rate. Because we are a small employer with less than 100 active participants, we qualify for the cost sharing multiple employer plans in CalPERS with several hundred other plans, mandated by CalPERS in 2006. Our Cost - Of - Living Adjustments (COLA) has been well under the 4% assumed by the cost-sharing plan we participate in, although we make the same contribution percentages as other participants in the plan.

Councilmember Shuey advised the information Mr. Mizuno provided is exactly what he wanted the community to know Council is monitoring.

Councilmember Pierce emphasized even before the State made the changes for a mandatory new Tier, Clayton created its own new tier for new employees known as Tier II and CalPERS implemented Public Employees' Pension Reform Act (PEPRA) which made even more changes. The City has chosen to participate in some of the lowest plans in the county, the cost to buy our way out of CalPERS would be cost prohibitive. If we decided we absolutely had to, we would still have to pay Social Security and pay into a 401K plan or similar type of benefit; which would cost more than what we are currently paying. When the budget was put together this year we set aside extra money in anticipation of the rate adjustments that are coming.

City Manager Gary Napper added there is a range which can go up to \$30,000,000.00 to terminate CalPERS, depending on which formula is used. If an entity decides to withdraw from CalPERS it actually is required to purchase an actuarial report which will provide the amount owed for all past, current and future retiring employees. The current city CalPERS contributions are able to be absorbed within the existing balanced budget. As Councilmember Pierce indicated that we are getting better, as there are some side funds, one of those will be paid off next year resulting in a rate reduction. I have talked to Mr. Mizuno to budget at the same level next fiscal year and the savings can go into the new City Council established Pension Rate Stabilization Fund. Another option is to pre-pay, it would be my professional recommendation not do that with the reasoning CalPERS is showing that they are creating new additional liabilities and we would still owe additional monies. Overall, our city is in very good shape and able to handle the costs because we have not offered the highest plans that are available. Statewide, if the City is not a CalPERS participant it would either be in Social Security with a 401K plan, or like the City of San Jose a charter city, and create your own retirement plan. Our city is not a charter city so we are unable to offer our own plans, we can only offer the plans CalPERS offers and we are in the Plan that has the least amount of benefit offered to our employees when they retire.

No action taken.

#### **4. RECOGNITIONS AND PRESENTATIONS**

- (a) Certificate of Recognition to Kate Amos, student at Clayton Valley Charter High School, for her design work and assistance developing a joint postal mailer from the Clayton Police Department and the U.S. Postal Service regarding mail theft.

Mayor Diaz, Clayton Police Chief Chris Wenzel, Kelsey Thomas - CVCHS Digital Arts Instructor, and Steve Sherwood - Assistant Inspector in Charge United States Postal Inspector, presented Certificates of Recognition to Kate Amos.

- (b) Proclamation declaring September 17 – 23, 2017 as "U.S. Constitution Week."

Mayor Diaz noted the issuance of the Proclamation and indicated staff will send it to the requestor as no representative was present.

- (c) Presentation by Ernesto Avila, Director, Contra Costa Water District (Division 3). Director Avila discussed a variety of water topics including efforts at the state level to establish long-term statewide water conservation regulations and the potential future expansion of Los Vaqueros Reservoir.

Director Avila, noted he is a resident of Clayton. Director Avila provided an overview of Contra Costa Water District; noting the four key water sources for CCWD are from the Delta. In terms of today, the District was able to put the water collected into Los

Vaqueros Reservoir. Overall the precipitation is currently at 192% of average, with Los Vaqueros containing 152,000 acre feet of water, and is 95% full.

Director Avila provided a brief update on the work performed by Contra Costa Water District in regards to Morgan Territory Road landslide, where they used their mutual-aid agreement with Alameda County to install a temporary pipeline providing water service to its customers in just a few days.

Director Avila indicated a challenge for a local run water agency is the management of local water supplies. By working with a local water agencies and their water conservation programs, they have the ability to work with local communities to enhance conservation and water reclamation to optimize the use of water. Because of the California water shortage that occurred, the state started mandating water conservation measures. When the California drought occurred, the community overall saved over 35% of its normal water usage. The Contra Costa Canal is over 80 years old and is an aging infrastructure in need of updating to a pipeline system for quality and reliability.

Director Avila provided an update on the Los Vaqueros Reservoir Expansion Project. It was originally constructed back in 1997 and was expanded once from 100,000 acre feet to 160,000 acre feet. The next expansion is planned to increase it 270,000 acre feet. The opportunity has arisen to have more of a regional role working with eleven potential water agencies to enhance water supply, storage and optimize the use of those assets, by sharing the costs. If the project is approved by the State, the expansion will take place in 2020.

Director Avila concluded his presentation noting services available to Contra Costa Water District customers such as "In-Home Water Survey", "Lawn to Garden", Conversions and "My Water Report" available on their website.

Councilmember Shuey inquired on why the Los Vaqueros Reservoir is not 100% full?

Director Avila advised due to water movement by the wind spills over the spillway which is how the Reservoir was designed.

Councilmember Catalano asked what has the most impact for a local resident to do to conserve water?

Director Avila advised local resident water consumption is 50% for landscaping and 50% for indoor usage. If a resident uses high efficiency appliances or changes how they water their lawn they could conserve water.

Councilmember Pierce inquired if there are any rebates available for lawn replacement?

Director Avila advised there are rebates available for lawn replacement at \$1.00 per square foot up to a 1,000 foot maximum.

## **5. REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.



Councilmember Catalano attended the special meeting for elected officials involving Incident Command System and the Contra Costa County Mayors' Conference hosted by Oakley.

Councilmember Shuey mentioned the Board of Supervisors appointed an Interim District Attorney and will be a race for re-election in 2018; Clayton's own Paul Graves currently an Assistant District Attorney has declared candidacy.

Vice Mayor Haydon attended the special meeting for elected officials involving Incident Command System, the Contra Costa County Mayors' Conference hosted by Oakley, the 10<sup>th</sup> Anniversary of the East Contra Costa County Habitat Conservancy plan at Roddy Ranch and the last Saturday Concert in The Grove.

Councilmember Pierce, as a member of the Contra Costa Transportation Authority with Alameda County Transportation Authority representatives, attended meetings in Sacramento regarding the upcoming Senate Bill 595 - Bridge Tolls; attended meeting at the Bay Area Council, the Contra Costa County Mayors' Conference, the Contra Costa Transportation Authority, the Metropolitan Transportation Committee, the Bay Area Regional Collaborative, and the Rail-volution conference in Denver.

Mayor Diaz attended the final Classic Car Show and D.J. event, the last Concerts in The Grove, the Relay for Life event, the Boy Scout Troop 484 Eagle Court ceremony, the Cops for Kids 19<sup>th</sup> Annual Golf Tournament, the County Connection Board meeting, the Clayton Community Church Labor Day Derby, the Special meeting of the City Council appointing its City Engineer, the Contra Costa County Mayors' Conference hosted by Oakley, and the Annual Conference of the League of California Cities held in Sacramento.

(e) Other – None.

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS** – None.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

(a) Consider the Second Reading and Adoption of Ordinance No. 476 adding Section 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas to Title 17 Zoning of the Clayton Municipal Code describing and establishing how General Plan densities are calculated for proposed residential projects with sensitive land areas.

Community Development Director Mindy Gentry stated the subject Ordinance was introduced to the Council on August 1<sup>st</sup>. The Ordinance would add a chapter to the *Clayton Municipal Code* for the purpose of describing and establishing how General Plan densities are calculated for proposed residential properties with sensitive land areas. A General Plan Amendment was already approved by the City Council modifying the manner in which densities are calculated on "Residential" zoned parcels with sensitive land areas. This Ordinance and the General Plan Amendment together will reduce the overall buildable density on residentially zoned parcels by taking the sensitive land areas into consideration. The reduction in density occurs because sensitive land areas are not considered to be developable, therefore subtracted from the overall acreage; reducing the available land area by the calculation of units per acre applied to determine the allowable number of housing units. No changes were made to the Ordinance.

Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 476, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 476 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to adopt Ordinance No. 476 amending Title 17, "Zoning". By adding Chapter 17.22 to the Clayton Municipal Code regarding Residential Density Calculations for Residential Parcels with Sensitive Land Areas. (Passed; 5-0 vote).**

- (b) Consider the Second Reading and Adoption of Ordinance No. 477 adding Section 15.96 – Electric Vehicle Charging Stations to Title 15 Building & Construction of the Clayton Municipal Code to establish an expedited and streamlined permitting process in compliance with State law.

Community Development Director Mindy Gentry presented the staff report noting on August 1<sup>st</sup> this Ordinance was introduced to the City Council. The Ordinance would be implementing AB 1236 which requires a process to streamline the approval of Electrical Vehicle Charging Stations. Any application made for an Electrical Vehicle Charging Station must be approved administratively through the issuance of a building permit and the review of the Building Official is limited to health and safety requirements of local, state and federal law. This process will be enacted in coordination and consultation with Contra Costa County Building Division, since the County provides building and inspection services for the city of Clayton. No changes were made to the Ordinance.

Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Shuey, seconded by Vice Mayor Haydon, to have the City Clerk read Ordinance No. 477, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 477 by title and number only.

**It was moved by Councilmember Shuey, seconded by Vice Mayor Haydon, to adopt Ordinance No. 477 adding Chapter 15.96 to the Clayton Municipal Code Establishing procedures for expedited permit processing for Electric Vehicle Charging Stations. (Passed; 5-0 vote).**

- (c) Consider the adoption a Resolution amending the City's FY 2017-2018 Capital Improvement Program (CIP) regarding the 2018 Neighborhood Streets Project (CIP No. 10436) recognizing additional state revenue (\$76,157) allocated to Clayton in FY 2017-18 from the new state-legislated Road Maintenance and Rehabilitation Fund (via Senate Bill 1, the "Road Repair and Accountability Act of 2017"), and establishing the list of neighborhood streets to be treated in 2018 using said monies.  
(City Engineer)

City Engineer Scott Alman, presented the staff report noting Senate Bill 1 was enacted earlier this year providing additional revenues to the city for street maintenance. One of

the requirements of obtaining that revenue is to have a list of the streets where the revenue will be used, included in a Council resolution and amending our Capital Improvement Program to include those streets. With approval from the California Transportation Commission (CTC), these streets will be included in the funding through this program beginning January 1, 2018. The streets were selected based on the Street Saver Program list, using the first six from the list which are a part of the next Neighborhood paving project would be funded through RMRA funds. The number of streets were based RMRA funding amount, and the other streets would be covered by Measure J, and or Gas Tax funds.

Councilmember Catalano asked is this an annual source of funding?

Mr. Alman confirmed yes it is an annual source of funding.

Councilmember Catalano asked if the sources of funding could increase next year as it looks like it is tax based.

Mr. Alman advised yes, this year we were projected to have a total of \$76,157 and that is made up of a loan repayment where previously issued Gas Tax money was lent to the General Fund, under SB1 there is a requirement that be repaid at an amount of \$12,825. Next year the projection would be \$12,825 in loan repayment and RMRA funds projected to be \$189,985.

Councilmember Pierce added this was hard fought legislation. What it does for our community is that it almost completely doubles our portion of Measure J funds for Local Street and road maintenance.

Mayor Diaz opened matter for public comments; no comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 42-2017 amending the City's 2017/2018 Capital Improvement Program for its 2018 Neighborhood Streets Project (CIP No. 10436), recognizing new revenue allocated to Clayton from the Road Maintenance and Rehabilitation account through SB1, the Road Repair and Accountability Act of 2017, establishing a list of local streets to be maintained in 2018, and approve findings the contemplated street maintenance is categorically exempt under CEQA Section 15301(c).  
(Passed; 5-0 vote).**

- (d) Policy discussion and direction on whether to prepare an ordinance to establish local regulations on the use of unmanned aerial systems (aka: drones) within the city.  
(Chief of Police)

Chief of Police Chris Wenzel presented the staff report noting the many differences in regulations of surrounding areas, such as the State Park (allows), East Bay Park (prohibits), School District (no current policy) and adjacent communities. Chief Wenzel noted that drones fly several miles from the operator location, therefore there is difficulty for the drone operator to know what jurisdiction they are flying in or over or through.

The City of Richmond's Ordinance seems to be the guideline used throughout the Contra Costa, which appears to be comprehensive and accurately covers the use of drones. One item that requires more work is the registration of the drones, the interpretation of the registration process for a recreational drone and tracking to identify the owner of the drone. This is because the current FAA registry process is not in an accessible data base where the registered number and owner can be located. Chief Wenzel contacted Mount Diablo School District to inquire on any policies they may have

in place regarding drones. The School District does not have a policy, other than the use of drones for educational purposes under the supervisor of an instructor. The establishment of the areas where drones can be flown would need to need to be determined and included in any ordinance, as there are not too many places other than your own property. Other component's that would need to be considered in any ordinance are the heights in which drones can be flown, to what speeds and determination of fines if found in violation.

Councilmember Catalano asked if complaints are being received from our community regarding drones?

Chief Wenzel advised there has been at least one complaint of a drone flying by. The issue with drones from the police responding to a complaint is in following them to find their owner as they can travel long distances, don't follow streets where the patrol cars travel, and without accessible registry there is not the ability to trace it back to the individual who is using it.

Councilmember Pierce understands the need to be cautious however the rules are vague, and wonder how necessary it is.

Vice Mayor Haydon favors the prohibition on hovering over private property and looking into residence. Mr. Haydon asked about the co-sponsorship of the California Police Chiefs Association on SB 168 and how closely neighboring cities have followed.

Chief Wenzel advised he does not know the specifics of is unsure of SB 168 however is aware of concerns of the potential interruption of law enforcement and what they do with their drones in the recreational use and disruption of law enforcement.

City Manager Gary Napper noted the use of drones in Clayton is not currently a problem; however we wanted to be ahead of this issue as drones become more popular, and in case the city council decides to implement local regulations. There are currently codes addressing trespassing. The item this evening was to provide a glimpse of what is happening.

Mayor Diaz opened matter for public comments; no comments were offered.

No Action was taken.

**9. COUNCIL ITEMS – None.**

**10. CLOSED SESSION**

Mayor Diaz announced the City Council will adjourn into Closed Session (8:36 pm) for the following noticed items:

- (a) *Government Code Section 54956.8, Conference with Real Property Negotiator.*  
Real Properties: 6005 Main Street (APNs 119-011-002-1; 118-560-010-1; 118-370-041-6).  
Instructions to City Negotiators: Council Members Pierce and Shuey, and Ed Del Beccaro, Managing Director, Transwestern, concerning price and terms of payment.  
Negotiating Parties:  
1. Avesta Development Group (Mohammad Javanbakht, Managing Partner);  
2. Fulcrum Development (Steven Ring, Sr. Executive Vice President)

9:10 p.m. Report out of Closed Session

Mayor Diaz reported the City Council received information from staff and its property negotiators and gave directions. There is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Diaz, the City Council adjourned its meeting at 9:10 p.m.

The next regularly scheduled meeting of the City Council will be October 3, 2017.

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Respectfully submitted,

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Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Jim Diaz, Mayor

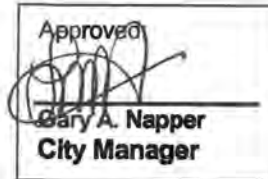
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Agenda Date 10/3/2017

Agenda Item: 3b

# STAFF REPORT



**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** Kevin Mizuno, FINANCE MANAGER   
**DATE:** 10/03/2017  
**SUBJECT:** INVOICE SUMMARY

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## RECOMMENDATION:

Approve the following obligations:

08/22/2017	Cash Requirements (checks cut)	\$ 2,320.00
09/29/2017	Cash Requirements	\$ 171,842.09
09/26/2017	ADP Payroll week 39, PPE 09/24/17	\$ 87,323.31

**Total \$ 261,485.40**

### Attachments:

Cash Requirements Report dated 9/20/2017 (1 page)  
Cash Requirements Report dated 9/29/2017 (4 pages)  
ADP payroll report for week 39 (1 page)

**Bank Register Report - B of A-Checking - B of A-Checking**

Transaction Number	Source	Transaction Type	Transaction Date	Reference	Deposits	Payments	Running		Status
							Total	Post Date	
9100822	Accounts Payable	Computer Check	8/22/2017	Denise Cone	\$0.00	\$500.00	(\$500.00)	8/22/2017	Outstanding
9100823	Accounts Payable	Computer Check	8/22/2017	Stacey Frost	\$0.00	\$500.00	(\$1,000.00)	8/22/2017	Outstanding
9100824	Accounts Payable	Computer Check	8/22/2017	Dawn Levy	\$0.00	\$200.00	(\$1,200.00)	8/22/2017	Outstanding
9100825	Accounts Payable	Computer Check	8/22/2017	Barb Panzica	\$0.00	\$120.00	(\$1,320.00)	8/22/2017	Outstanding
9100826	Accounts Payable	Computer Check	8/22/2017	Matthew Pizzagoni	\$0.00	\$500.00	(\$1,820.00)	8/22/2017	Outstanding
9100827	Accounts Payable	Computer Check	8/22/2017	Robin Riley	\$0.00	\$500.00	(\$2,320.00)	8/22/2017	Outstanding

**Summary by Transaction Type**

<b>Total Deposits</b>	<b>\$0.00</b>
Less Payments by Transaction Type:	
Computer Check	<b>(\$2,320.00)</b>
<b>Total Payments:</b>	<b>(\$2,320.00)</b>
Adjustments:	
Payment Adjustments	<b>\$0.00</b>
Deposit Adjustments	<b>\$0.00</b>
<b>Total Adjustments:</b>	<b>\$0.00</b>
<b>Total Change in Register Balance:</b>	<b>(\$2,320.00)</b>

# City of Dayton

## Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<b>ADP, LLC</b>								
ADP, LLC	10/3/2017	10/3/2017	500152375	Payroll fees PPE 9/10/17	\$159.00	\$0.00		\$159.00
ADP, LLC	10/3/2017	10/3/2017	500662210	Custom program change for paystubs	\$175.00	\$0.00		\$175.00
				<i>Totals for ADP, LLC:</i>	<u>\$334.00</u>	<u>\$0.00</u>		<u>\$334.00</u>
<b>All City Management Services, Inc.</b>								
All City Management Services, Inc.	10/3/2017	10/3/2017	50245	School crossing guard svcs 8/17/17-9/9/17	\$498.69	\$0.00		\$498.69
				<i>Totals for All City Management Services, Inc.:</i>	<u>\$498.69</u>	<u>\$0.00</u>		<u>\$498.69</u>
<b>All-Guard Systems, Inc.</b>								
All-Guard Systems, Inc.	10/3/2017	10/3/2017	882965	Repair alarm box @ EH	\$246.66	\$0.00		\$246.66
				<i>Totals for All-Guard Systems, Inc.:</i>	<u>\$246.66</u>	<u>\$0.00</u>		<u>\$246.66</u>
<b>AT&amp;T (CalNet3)</b>								
AT&T (CalNet3)	10/3/2017	10/3/2017	10271342	Phone 8/22/17-9/21/17	\$1,653.95	\$0.00		\$1,653.95
				<i>Totals for AT&amp;T (CalNet3):</i>	<u>\$1,653.95</u>	<u>\$0.00</u>		<u>\$1,653.95</u>
<b>Authorize.net</b>								
Authorize.net	10/3/2017	10/3/2017	July, August	Online bankcard processing monthly fee	\$33.00	\$0.00		\$33.00
				<i>Totals for Authorize.net:</i>	<u>\$33.00</u>	<u>\$0.00</u>		<u>\$33.00</u>
<b>Bay Area Barricade Serv.</b>								
Bay Area Barricade Serv.	10/3/2017	10/3/2017	0348715-IN	Street signs	\$626.89	\$0.00		\$626.89
				<i>Totals for Bay Area Barricade Serv.:</i>	<u>\$626.89</u>	<u>\$0.00</u>		<u>\$626.89</u>
<b>Berlogar Stevens &amp; Associates Inc.</b>								
Berlogar Stevens & Associates Inc.	10/3/2017	10/3/2017	227083	Inclinometer, v-ditch services for 2017	\$4,300.00	\$0.00		\$4,300.00
				<i>Totals for Berlogar Stevens &amp; Associates Inc.:</i>	<u>\$4,300.00</u>	<u>\$0.00</u>		<u>\$4,300.00</u>
<b>Best Best &amp; Kreiger LLP</b>								
Best Best & Kreiger LLP	10/3/2017	10/3/2017	804400	Legal services for August	\$8,500.00	\$0.00		\$8,500.00
Best Best & Kreiger LLP	10/3/2017	10/3/2017	804402	Legal services for August	\$270.00	\$0.00		\$270.00
Best Best & Kreiger LLP	10/3/2017	10/3/2017	804402	Legal services for August	\$2,035.00	\$0.00		\$2,035.00
Best Best & Kreiger LLP	10/3/2017	10/3/2017	804403	Legal services for August	\$1,622.50	\$0.00		\$1,622.50
				<i>Totals for Best Best &amp; Kreiger LLP:</i>	<u>\$12,427.50</u>	<u>\$0.00</u>		<u>\$12,427.50</u>
<b>CalPERS Health</b>								
CalPERS Health	10/3/2017	10/3/2017	15042165	Medical for October	\$29,912.65	\$0.00		\$29,912.65
				<i>Totals for CalPERS Health:</i>	<u>\$29,912.65</u>	<u>\$0.00</u>		<u>\$29,912.65</u>
<b>CalPERS Retirement</b>								
CalPERS Retirement	10/3/2017	10/3/2017	092417	Retirement PPE 9/24/17	\$14,485.73	\$0.00		\$14,485.73
				<i>Totals for CalPERS Retirement:</i>	<u>\$14,485.73</u>	<u>\$0.00</u>		<u>\$14,485.73</u>
<b>CBCA</b>								
CBCA	10/3/2017	10/3/2017	BBQ2017	Deposit refund for BBQ Cook-off 2017	\$234.25	\$0.00		\$234.25



## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for CBCA:</i>					<u>\$234.25</u>	<u>\$0.00</u>		<u>\$234.25</u>
<b>CCWD</b>								
CCWD	10/3/2017	10/3/2017	C617260	Irrigation @ Marsh Creek Rd	\$204.40	\$0.00		\$204.40
<i>Totals for CCWD:</i>					<u>\$204.40</u>	<u>\$0.00</u>		<u>\$204.40</u>
<b>Clayton Community Church</b>								
Clayton Community Church	10/3/2017	10/3/2017	SBD2017	Deposit refund for Soap Box Derby 2017	\$474.00	\$0.00		\$474.00
<i>Totals for Clayton Community Church:</i>					<u>\$474.00</u>	<u>\$0.00</u>		<u>\$474.00</u>
<b>Clean Street</b>								
Clean Street	10/3/2017	10/3/2017	87511	Street Sweeping for August	\$4,500.00	\$0.00		\$4,500.00
<i>Totals for Clean Street:</i>					<u>\$4,500.00</u>	<u>\$0.00</u>		<u>\$4,500.00</u>
<b>Concord Uniforms</b>								
Concord Uniforms	10/3/2017	10/3/2017	12880	Explorer Uniform	\$189.01	\$0.00		\$189.01
<i>Totals for Concord Uniforms:</i>					<u>\$189.01</u>	<u>\$0.00</u>		<u>\$189.01</u>
<b>Continental Electric</b>								
Continental Electric	10/3/2017	10/3/2017	3113-1	Install poles for city cameras	\$19,715.00	\$0.00		\$19,715.00
<i>Totals for Continental Electric:</i>					<u>\$19,715.00</u>	<u>\$0.00</u>		<u>\$19,715.00</u>
<b>Contra Costa County Animal Svcs Dept</b>								
Contra Costa County Animal Svcs Dept	10/3/2017	10/3/2017	ASD M5988	Animal services for October 1-December 21, 2	\$16,645.37	\$0.00		\$16,645.37
<i>Totals for Contra Costa County Animal Svcs Dept:</i>					<u>\$16,645.37</u>	<u>\$0.00</u>		<u>\$16,645.37</u>
<b>CSAC Excess Insurance Authority</b>								
CSAC Excess Insurance Authority	10/3/2017	10/3/2017	18401086	EAP for October-December	\$312.00	\$0.00		\$312.00
<i>Totals for CSAC Excess Insurance Authority:</i>					<u>\$312.00</u>	<u>\$0.00</u>		<u>\$312.00</u>
<b>De Lage Landen Financial Services, Inc.</b>								
De Lage Landen Financial Services, Inc.	10/3/2017	10/3/2017	56282900	Copier contract 9/15/17-10/14/17	\$319.82	\$0.00		\$319.82
<i>Totals for De Lage Landen Financial Services, Inc.:</i>					<u>\$319.82</u>	<u>\$0.00</u>		<u>\$319.82</u>
<b>Dillon Electric Inc</b>								
Dillon Electric Inc	10/3/2017	10/3/2017	3556	Street light maintenance	\$665.12	\$0.00		\$665.12
<i>Totals for Dillon Electric Inc:</i>					<u>\$665.12</u>	<u>\$0.00</u>		<u>\$665.12</u>
<b>Globalstar LLC</b>								
Globalstar LLC	10/3/2017	10/3/2017	8719397	Sat phone 8/16/17-9/15/17	\$69.40	\$0.00		\$69.40
<i>Totals for Globalstar LLC:</i>					<u>\$69.40</u>	<u>\$0.00</u>		<u>\$69.40</u>
<b>Grainger, Inc.</b>								
Grainger, Inc.	10/3/2017	10/3/2017	9554003609	Stormwater safety equipment	\$290.63	\$0.00		\$290.63
<i>Totals for Grainger, Inc.:</i>					<u>\$290.63</u>	<u>\$0.00</u>		<u>\$290.63</u>
<b>Hammons Supply Company</b>								

# City of Clayton

## Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Hammons Supply Company	10/3/2017	10/3/2017	99564	The Grove janitorial supplies	\$110.37	\$0.00		\$110.37
Hammons Supply Company	10/3/2017	10/3/2017	99563	Library janitorial supplies	\$184.22	\$0.00		\$184.22
				<i>Totals for Hammons Supply Company:</i>	<u>\$294.59</u>	<u>\$0.00</u>		<u>\$294.59</u>
<b>Harris &amp; Associates, Inc.</b>								
Harris & Associates, Inc.	10/3/2017	10/3/2017	35499	SW O&M Plan, Agreement for Verna Wy Pr	\$460.00	\$0.00		\$460.00
Harris & Associates, Inc.	10/3/2017	10/3/2017	35500	Engineering services for September	\$9,585.00	\$0.00		\$9,585.00
				<i>Totals for Harris &amp; Associates, Inc.:</i>	<u>\$10,045.00</u>	<u>\$0.00</u>		<u>\$10,045.00</u>
<b>J O Groschwitz</b>								
J O Groschwitz	10/3/2017	10/3/2017	CAP0256	C&D refund for 5720 Clayton Rd	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for J O Groschwitz:</i>	<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
<b>J&amp;R Floor Services</b>								
J&R Floor Services	10/3/2017	10/3/2017	Nine 2017	Janitorial services for September	\$4,910.00	\$0.00		\$4,910.00
				<i>Totals for J&amp;R Floor Services:</i>	<u>\$4,910.00</u>	<u>\$0.00</u>		<u>\$4,910.00</u>
<b>LarryLogic Productions</b>								
LarryLogic Productions	10/3/2017	10/3/2017	1684	City Council meeting production 9/19/17	\$390.00	\$0.00		\$390.00
				<i>Totals for LarryLogic Productions:</i>	<u>\$390.00</u>	<u>\$0.00</u>		<u>\$390.00</u>
<b>Rickie Leinenweaver</b>								
Rickie Leinenweaver	10/3/2017	10/3/2017	CAP0258	C&D Deposit refund for 43 Nottingham Cir	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for Rickie Leinenweaver:</i>	<u>\$2,000.00</u>	<u>\$0.00</u>		<u>\$2,000.00</u>
<b>Miracle Play Systems, Inc</b>								
Miracle Play Systems, Inc	10/3/2017	10/3/2017	F2017-0761	Repair hole in rubber surfacing @ CCP	\$695.21	\$0.00		\$695.21
				<i>Totals for Miracle Play Systems, Inc:</i>	<u>\$695.21</u>	<u>\$0.00</u>		<u>\$695.21</u>
<b>NBS Govt. Finance Group</b>								
NBS Govt. Finance Group	10/3/2017	10/3/2017	91700247	CFA 2007 Bonds - Interim Arbitrage Analysis	\$1,200.00	\$0.00		\$1,200.00
NBS Govt. Finance Group	10/3/2017	10/3/2017	91700078	CFD Admin 10/1/17-12/31/17	\$4,460.56	\$0.00		\$4,460.56
				<i>Totals for NBS Govt. Finance Group:</i>	<u>\$5,660.56</u>	<u>\$0.00</u>		<u>\$5,660.56</u>
<b>Neopost (add postage)</b>								
Neopost (add postage)	10/3/2017	10/3/2017	091517	Postage added 9/15/17	\$300.00	\$0.00		\$300.00
				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
<b>Peace Officers Research Assoc of CA</b>								
Peace Officers Research Assoc of CA	10/3/2017	10/3/2017	189248	Member dues 10/1/17	\$10.00	\$0.00		\$10.00
				<i>Totals for Peace Officers Research Assoc of CA:</i>	<u>\$10.00</u>	<u>\$0.00</u>		<u>\$10.00</u>
<b>PG&amp;E</b>								
PG&E	10/3/2017	10/3/2017	092217	Electricity 8/22/17-9/22/17	\$4,775.16	\$0.00		\$4,775.16
PG&E	10/3/2017	10/3/2017	091517	Electricity/Gas 8/16/17-9/14/17	\$22,294.41	\$0.00		\$22,294.41
				<i>Totals for PG&amp;E:</i>	<u>\$27,069.57</u>	<u>\$0.00</u>		<u>\$27,069.57</u>

## City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<b>Riso Products of Sacramento</b>								
Riso Products of Sacramento	10/3/2017	10/3/2017	174838	Copier usage 8/20-9/19/17	\$66.82	\$0.00		\$66.82
				<i>Totals for Riso Products of Sacramento:</i>	<u>\$66.82</u>	<u>\$0.00</u>		<u>\$66.82</u>
<b>Stericycle Inc</b>								
Stericycle Inc	10/3/2017	10/3/2017	3003996841	Medical waste disposal	\$101.44	\$0.00		\$101.44
				<i>Totals for Stericycle Inc:</i>	<u>\$101.44</u>	<u>\$0.00</u>		<u>\$101.44</u>
<b>U S Healthworks Medical Group, PC</b>								
U S Healthworks Medical Group, PC	10/3/2017	10/3/2017	3194489-CA	Pre-employment exam for new Maint.workers	\$425.00	\$0.00		\$425.00
				<i>Totals for U S Healthworks Medical Group, PC:</i>	<u>\$425.00</u>	<u>\$0.00</u>		<u>\$425.00</u>
<b>Workers.com</b>								
Workers.com	10/3/2017	10/3/2017	119602	Seasonal workers week end 7/30/17	\$4,055.94	\$0.00		\$4,055.94
Workers.com	10/3/2017	10/3/2017	119972	Seasonal workers week end 9/10/17	\$3,065.50	\$0.00		\$3,065.50
Workers.com	10/3/2017	10/3/2017	120030	Seasonal workers week end 9/17/17	\$2,614.39	\$0.00		\$2,614.39
				<i>Totals for Workers.com:</i>	<u>\$9,735.83</u>	<u>\$0.00</u>		<u>\$9,735.83</u>
				<b>GRAND TOTALS:</b>	<b>\$171,842.09</b>	<b>\$0.00</b>		<b>\$171,842.09</b>

WEEK 39 BATCH 3231 33 PAYS

0 Employees With Overflow Statement

0 Overflow Statement 1 Total Statement

# Earnings Statement

Tot Cks/Vchrs:00000000033 Total Pages:00000000036 - Page count not applicable for iReports

First No. Last No. Total

Checks: ADPCHECK ADPCHECK 00000000008

Vouchers: 00000390001 00000390025 00000000025

Z7L TOTAL DOCUMENT

CITY OF CLAYTON

LOCATION 0001

**CHECK STUFFING, RECONCILIATION**

COPY

87323.31 GROSS  
 59726.21 NET PAY (INCLUDING ALL DEPOSITS)  
 10801.71 FEDERAL TAX  
 204.38 SOCIAL SECURITY  
 1208.56 MEDICARE  
 .00 MEDICARE SURTAX  
 .00 SUI TAX  
 3247.51 STATE TAX  
 .00 LOCAL TAX  
 67982.18 DEDUCTIONS  
 3878.97 NET CHECK

COMPANY CODE Z7L  
 CITY OF CLAYTON  
 TOTAL DOCUMENT  
 LOCATION 0001

COPY

COPY

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE  
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681000 0000 AND 110 All Rights Reserved



Agenda Date: 10-03-2017

Agenda Item: 3c

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Janet Brown, City Clerk

DATE: October 3, 2017

SUBJECT: APPROVE PROPOSED SCHEDULE FOR CALENDAR YEAR 2018  
SATURDAY "CONCERTS IN THE GROVE" SERIES

## RECOMMENDATION

As requested by Mr. Howard Geller, Concerts' Organizer, by minute motion it is recommended the City Council authorize the use of The Grove Park for ten (10) Saturday "Concerts in The Grove" series and approve the following dates in calendar year 2018:

### Saturday

May 12, 2018

May 26, 2018

June 9, 2018

June 23, 2018

July 7, 2018

July 21, 2018

August 4, 2018

August 18, 2018

September 1, 2018

September 15, 2018

### Calendar Comment

Mothers' Day Weekend

Memorial Day Weekend

Labor Day Weekend

## BACKGROUND

The popular "Concerts in The Grove" series on selected Saturdays requires the City Council's official approval for use of the public park for this purpose at no rental fee. In addition, the City Council's approval accompanies its allowance of alcohol consumption in The Grove Park only during the times of this community event, since the *Clayton Municipal Code* prohibits alcohol consumption in any municipal park unless otherwise expressly permitted by the City (ref. CMC Section 11.04.190; which, by definition, include public open spaces, recreation areas, and City trails).

Attachments: 1. Mr. Geller's email  
2. 2018 May, June, July, August and September monthly Calendars

## Janet Brown

---

**From:** Howard Geller <hgeller617@aol.com>  
**Sent:** Tuesday, September 26, 2017 11:53 AM  
**To:** Janet Brown  
**Cc:** Gary Napper; Julie Pierce  
**Subject:** Re: 2018 Concerts series

Janet,

Below are the proposed dates for the 2018 Concert Series

May 12, 2018	Mothers' Day Weekend
May 26, 2018	Memorial Day Weekend
June 9, 2018	
June 23, 2018	
July 7, 2018	
July 21, 2018	
August 4, 2018	
August 18, 2018	
September 1, 2018	Labor Day Weekend
September 15, 2018	

I do not think there would be a conflict from any of the other events we have other than the Soap Box Derby which they hold on the Saturday of labor day Weekend. They are done by about 2ish and we worked out the logistics this year with them since we had a concert scheduled.

If the Art and Wine moves back to their "normal" date, which I do not think they are going to do it would be the weekend before Mother's day. Not sure about the Rib Cook off or if the CBCA will host one next year. With locking in our dates early, it should give them plenty of time to work around our calendar. The Round Up and Relay for life people always check our schedule and work around it.

Howard Geller

◀ Apr 2018

# May 2018

Jun 2018 ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 City Council Meeting	2	3 CCC Mayors' Conference -	4	5
6	7	8 Planning Commission Meeting	9	10	11	12 Saturday Concert in The Grove
13 Mother's Day	14	15 City Council Meeting	16	17	18	19
20	21	22 Planning Commission Meeting	23	24	25	26 Saturday Concert in The Grove
27	28 Memorial Day	29	30	31		

# June 2018

◀ May 2018

Jul 2018 ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 City Council Meeting	6	7 CCC Mayors' Conference -	8	9 Saturday Concert in The Grove
10	11	12 Planning Commission Meeting	13	14	15	16
17 Father's Day	18	19 City Council Meeting	20	21	22	23 Saturday Concert in The Grove
24	25	26 Planning Commission Meeting	27	28	29	30



◀ Jun 2018

# July 2018

Aug 2018 ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 City Council Meeting	4 Independence Day	5 CCC Mayors' Conference -	6	7 Saturday Concert in The Grove
8	9	10 Planning Commission Meeting	11	12	13	14
15	16	17 City Council Meeting	18	19	20	21 Saturday Concert in The Grove
22	23	24 Planning Commission Meeting	25	26	27	28
29	30	31				

◀ Jul 2018

# August 2018

Sep 2018 ▶

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2 CCC Mayors' Conference -	3	4 Saturday Concert in The Grove
5	6	7 City Council Meeting	8	9	10	11
12	13	14 Planning Commission Meeting	15	16	17	18 Saturday Concert in The Grove
19	20	21 City Council Meeting	22	23	24	25
26	27	28 Planning Commission Meeting	29	30	31	

# September 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1 Saturday Concert in The Grove
2	3 Labor Day	4 City Council Meeting	5	6 CCC Mayors' Conference - Clayton	7	8
9	10	11 Planning Commission Meeting	12	13	14	15 Saturday Concert in The Grove
16	17	18 City Council Meeting	19	20	21	22
23	24	25 Planning Commission Meeting	26	27	28	29
30						



Agenda Date: 10-03-2017

Agenda Item: 3d

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: Janet Brown, City Clerk**

**DATE: October 3, 2017**

**SUBJECT: REJECTION OF LIABILITY CLAIM FILED BY BRENDA DEFOE ON BEHALF OF ROBERT JOSEPH SMITH, REPRESENTED BY CHRISTOPHER SCRANTON, ESQ.**

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## **RECOMMENDATION**

Approve the denial of liability claim against the City filed by Brenda Defoe on behalf of Robert Joseph Smith, represented by Christopher Scranton, Esq., for alleged damages reportedly occurring on October 31, 2016.

## **BACKGROUND**

On April 28, 2017 the City received a liability claim filed by Brenda Defoe on behalf of Robert Joseph Smith, represented by Christopher Scranton, Esq., for contribution to Mr. Smith's death, which occurred on Kirker Pass Road between Kirkwood Drive and Myrtle Drive. The City is self insured for general liability purpose and the Municipal Pooling Authority of Northern California administers the self-insured program. On April 28, 2017 the liability claim was transmitted to the Municipal Pooling Authority for processing and investigation.

Liability adjustors for the Municipal Pooling Authority investigated the claim. Following its investigation the Municipal Pooling Authority has advised the City to deny the claim and issue a notice of rejection to the claimant.

## **FISCAL IMPACT**

None.

Attachment: Copy of Claim (1 page)

**CLAIM PRESENTED TO THE CITY OF CLAYTON**

\*Please read the instructions on the back before completing.

Reserve for Filing Stamp

**Received**

APR 28 2017

**City of Clayton**

City Claim #

1. **Claimant's Name:** (PLEASE PRINT) Brenda DeFoe on behalf of Robert Joseph Smith, deceased

**Claimant's Address:** 300 North Civic Drive, # 509

**City, State, Zip:** Walnut Creek, CA 94596

**Day Phone:** (925) 383-4142 **Eve Phone:** ( ) \_\_\_\_\_

2. **When did the damage or injury occur?**  
Month: 10 Day: 31 Year: 2016 Time: 2:20 Approximately 8.m. p.m.

3. **At which location did the damage or injury occur?** **Police Report #**  
Kirker Pass Road, Concord between Kirkwood Dr. and Myrtle Dr.

4. **What happened and why is the City responsible?**

a. Officer Borman of the Clayton Police Department negligently ran over Robert Joseph Smith contributing to his death, after Smith

**Name and position of responsible City Employee(s), if known:**

b. Officer Borman (per Traffic Collision Report, 16-16453)

had already been run over by a car driver.

5. **What damage or injury occurred?**

Death.

6. **Claim amount (only if less than \$10,000):**

If the amount exceeds \$10,000, please check (X) the court of appropriate jurisdiction:

\_\_\_\_\_ Municipal Court (claims up to \$25,000)  Superior Court (claims over \$25,000)

7. **How did you arrive at the amount claimed? Please attach documentation.** \$4,364.10 in actual damages - Alta Vista Cremation \$1149; Flowers \$450; Food & Drink Reception \$1850; Chappel \$850; Oak Hills Park \$65.10. 1.5 Million in pain and suffering.

8. **I declare under penalty of perjury under the laws of the State of California that the following information is true and correct, and that this declaration was executed on** 20 17  
at Concord, CA.

[Signature]  
Signature of Claimant or Representative's Signature

9. **Official Notices and Correspondence**

If represented by an insurance company or an attorney, please provide the information requested below.

**Name and Capacity:** (PLEASE PRINT) Christopher Scranton, Scranton Law Firm

**Address:** 2450 Stanwell Drive

**City, State, Zip:** Concord, CA 94520

**Daytime Telephone:** 925 602-2727 **Evening Phone:** ( ) \_\_\_\_\_

**JONAH CESARIN**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great "Responsibility"  
August and September 2017

Agenda Date: 10-03-2017

Agenda Item: 4a

**LOGAN KONEMANN**

for

**"Doing the Right Thing"**

at

**Mt. Diablo Elementary School**

**by exemplifying great "Responsibility"**

**August and September 2017**

**AMAIA PEREZ**  
for  
"Doing the Right Thing"  
at  
Diablo View Middle School  
by exemplifying great "Responsibility"  
August and September 2017

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**SCOTT TOMASZEWICZ**

for

"Doing the Right Thing"

at

Diablo View Middle School

by exemplifying great "Responsibility"

August and September 2017

**SAMUEL PEARSON**  
for  
"Doing the Right Thing"  
at  
Clayton Valley Charter High School  
by exemplifying great "Responsibility"  
August and September 2017

**LOGAN SCHOFFSTALL**

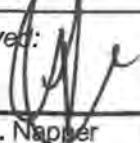
for

"Doing the Right Thing"

at

Clayton Valley Charter High School  
by exemplifying great "Responsibility"  
August and September 2017


Agenda Item: 7a

Approved: 
Gary A. Napper City Manager



# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

**DATE:** OCTOBER 3, 2017

**SUBJECT:** INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 15.09 OF THE CLAYTON MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2016 EDITION OF THE CALIFORNIA FIRE CODE WITH CHANGES, ADDITIONS, AND DELETIONS (ZOA-05-17)

**RECOMMENDATIONS**

It is recommended the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

1. Motion to have the City Clerk read Ordinance No. 478 by title and number only and waive further reading; and
2. Following the City Clerk's reading; by motion approve Ordinance No. 478 for Introduction to amend the Clayton Municipal Code Chapter 15.09 in order to implement the 2016 Fire Code with local changes, additions, and deletions (ZOA-05-17) (**Attachment 1**).

**BACKGROUND**

On November 1, 2016, the Contra Costa County Fire Protection District (District) held a public hearing and adopted Ordinance 2016-23, which adopted the 2016 California Fire Code with amendments. The 2016 California Fire Code replaces the 2013 California Fire Code. Although the code applies statewide, State law authorizes a local jurisdiction to modify or change the code and establish more restrictive standards if the local jurisdiction finds that the modifications and changes are reasonably necessary because of local, climatic, geological, or topographical conditions. The attached Ordinance would adopt the statewide codes and ratify the District's adopted

Fire Code Ordinance, which amended the statewide codes to address local conditions (**Attachment 2**).

The District provides fire protection services to the city of Clayton. Since the city is served by the District, staff recommends ratification of the District's Fire Code Ordinance without any changes. The ratification of the District's Fire Code Ordinance will provide consistency in the application and enforcement of building and housing standards with an emphasis on local needs, with the goal of protecting lives and property from fire damage.

### **DISCUSSION**

The following is a summary of the proposed amendments, which mirrors the District's amendments to the 2016 Fire Code. The specific amendments are fully contained in Exhibit A of the attached draft Ordinance (**Attachment 1**).

The proposed amendments to the 2016 Fire Code are due to local, climatic, geographical, and topographic conditions and these conditions are described in the attached findings (**Exhibit B of Attachment 1**). The following are the substantive changes to the 2016 Fire Code:

- Automatic sprinkler system requirements are more restrictive than the statewide code and requires the installation of automatic fire sprinkler systems in most commercial buildings greater than 5,000 square feet and in private and charter schools greater than 2,000 square feet. Reducing the sprinkler threshold to 2,000 square feet for private schools brings the requirements more in line with public schools. Several other occupancies were clarified to require sprinklers as well, including light hazard warehouse type occupancies.
- Clarification of a requirement for standby EMS personnel for large events that may tax the EMS system. This clarification was necessary because the statewide code did not address that a fire agency could also be an ambulance providing entity.
- The statewide code was amended to include the Fire District's weed abatement program which authorizes the Fire District to declare certain weeds that pose a fire hazard as a public nuisance, to abate those weeds if there is an unresponsive real property owner, and to recover its abatement costs from that property owner.
- Establishing requirements for fire apparatus access roads, including requirements for turnouts, parking on access roads, and maximum grades.

### **ENVIRONMENTAL**

This Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

### **FISCAL IMPACT**

There is no direct fiscal impact as the Contra Costa County Fire Protection District will coordinate the implementation of the 2016 Fire Code within the city of Clayton.

### **ATTACHMENTS**

1. Ordinance No. 478 with the following Exhibits: [27 pp.]
  - Exhibit A – Clayton Municipal Code Section 15.09 with the 2016 Fire Code amendments
  - Exhibit B – Findings of Fact
2. Contra Costa County Fire Protection District Ordinance 2016-23 [26 pp.]

# **ATTACHMENT 1**

## **ORDINANCE NO. 478**

### **AN ORDINANCE AMENDING CHAPTER 15.09 OF THE CLAYTON MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2016 CALIFORNIA FIRE CODE WITH LOCAL CHANGES, ADDITIONS, AND DELETIONS (ZOA-05-17)**

#### **THE CITY COUNCIL City of Clayton, California**

#### **THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS FOLLOWS:**

**WHEREAS**, the California Building Standards Commission has adopted the 2016 California Fire Code, which became effective on January 1, 2017; and

**WHEREAS**, the Contra Costa County Fire Protection District ("District") is authorized pursuant to Health and Safety Code Section 13869.7 to adopt building standards relating to fire safety that are more stringent than the building standards adopted by the State Fire Marshal and contained in the California Building Standards Code; and

**WHEREAS**, the City of Clayton ("City") has elected to receive health and fire safety services from the District; and

**WHEREAS**, on November 1, 2016, the District held a public hearing and adopted Ordinance No. 2016-23 ("District Fire Code Ordinance") adopting and amending the 2016 California Fire Code and appendices thereto; and

**WHEREAS**, the District has transmitted the District Fire Code Ordinance to the City for ratification, pursuant to Health & Safety Code Section 13869.7; and

**WHEREAS**, Health & Safety Code Section 13869.7 provides the District Fire Code Ordinance will only take effect upon the City's ratification of the District Fire Code Ordinance; and

**WHEREAS**, the City Council has examined the District Fire Code Ordinance and finds it provides consistency in the application and enforcement of building and housing standards with an emphasis on local needs, and with the goal of protecting lives and property from fire damage; and

**WHEREAS**, the City Council desires to ratify the District Fire Code Ordinance; and

**WHEREAS**, the City Council desires to delegate the enforcement of the District Fire Code Ordinance to the District's Fire Official, or his or her authorized representative; and

**WHEREAS**, notice of a public hearing on this ordinance was published in the East Bay Times on September 22, 2017 and again on September 29, 2017; and

**WHEREAS**, the City Council conducted its first reading of this ordinance on October 3, 2017; and

**WHEREAS**, the City Council held a noticed public hearing on October 17, 2017, as required by law, at which time the Council determined the adoption of the District Fire Code Ordinance and amendments thereto are in the best interest of the City, its residents, property owners and business owners, and are based on the findings required by law; and

**WHEREAS**, the City Council has reviewed all written evidence and oral testimony presented to date on this matter.

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and hereby incorporated into this Ordinance.

**Section 2. Purpose, Intent, and Findings**

This ordinance is adopted by the City Council of the City of Clayton to adopt by reference the 2016 California Fire Code (California Code of Regulations, Title 24, Part, 9 [based on the 2015 International Fire Code published by the International Code Council]), including Chapters 1-10 and 12-80, Appendix B, Appendix C, Appendix D, Appendix F, Appendix H, Appendix I, Appendix J, and Appendix K, as amended by the changes, additions, and deletions that are necessary because of local climatic, geological, or topographical conditions, which are set forth in Exhibit A to this Ordinance and added to the Clayton Municipal Code as Chapter 15.09. As of the effective date of this Ordinance, the provisions of this Fire Code are controlling and enforceable within the limits of this jurisdiction and shall be enforced by the District and its Fire Official. Further, this Ordinance is adopted pursuant to Health and Safety Code Section 13869.7, and Government Code sections 50020 through 50022.10, based upon the findings set forth in attached Exhibit B, which are incorporated herein by reference.

**Section 3. Amendments to Clayton Municipal Code**

Chapter 15.09 of the Clayton Municipal Code is hereby amended and restated in its entirety as provided in Exhibit "A" attached hereto and incorporated herein by reference.

**Section 4. Action to Challenge This Ordinance**

Any action or proceeding to attack, review, set aside, void or annul this ordinance must be commenced and the service made on the City no later than ninety (90) days after its effective date.

**Section 5. Conflicting Ordinances Repealed**

Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.



**Section 6. Severability**

If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 7. CEQA**

The City Council hereby determines this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

**Section 8. Effective Date and Publication**

This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Section 3 of this Ordinance to be entered into the City of Clayton Municipal Code.

**Section 9. Penalty for Violations**

Any violation of this Ordinance shall be subject to applicable provisions of Clayton Municipal Code Section 1.20.010. Penalty for Violations - Infractions and Misdemeanors.

The foregoing Ordinance was introduced at a regular noticed public meeting of the City Council of the City of Clayton held on October 3, 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof following a public hearing held on October 17, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a noticed regular meeting of the City Council of the City of Clayton held on October 3, 2017 and was duly adopted, passed, and ordered posted following a noticed public hearing at a regular meeting of the City Council held on October 17, 2017.

\_\_\_\_\_  
Janet Brown, City Clerk

Attachments:

Exhibit A: Amended Chapter 15.09 of the Clayton Municipal Code

Exhibit B: Findings for Adoption of Ordinance No. 478

# EXHIBIT A

## CHAPTER 15.09

### 2016 CALIFORNIA FIRE CODE WITH AMENDMENTS

#### Sections:

15.09.001	Adoption.
15.09.002	Amendments
15.09.003	Repeal of 2013 Fire Code
15.09.004	References to Prior Code

#### 15.09.001 Adoption.

The fire code of this City is the 2016 California Fire Code (California Code of Regulations, Title 24, Part, 9 [based on the 2015 International Fire Code published by the International Code Council]), including Chapters 1-10 and 12-80, Appendix B, Appendix C, Appendix D, Appendix F, Appendix H, Appendix I, Appendix J, and Appendix K, as amended by the changes, additions and deletions set forth in this ordinance. The 2016 California Fire Code, with the changes, additions, and deletions set forth in this ordinance, is adopted by this reference as though fully set forth in this ordinance. As of the effective date of this Ordinance, the provisions of this Fire Code are controlling and enforceable within the City and shall be enforced by the Contra Costa County Fire Protection District and its Fire Official.

#### 15.09.002 Amendments.

The 2016 California Fire Code is amended by the local changes, additions and deletions set forth in this chapter. Chapter and Section numbers used below are those of the 2016 California Fire Code.

#### **Chapter 1. Scope and Administration.**

Section 101.1 is amended to read:

**101.1 Title.** This code is the Fire Code of the City of Clayton, and is hereinafter referred to as "this code".

Section 102.1 is amended to add item 5, to read:

5. Where not otherwise limited by law, the provisions of this code shall apply to vehicles, ships, and boats that are permanently affixed to a specific location within the boundaries of this jurisdiction.

Section 105.6 is amended to read:

**105.6 Required operational permits.** The fire code official is authorized to issue operational permits for the operations set forth in Chapter 1, Sections 105.6.1 through 105.6.60.

Section 105.6.5 is amended to read:

**105.6.5 Carnivals, Fairs, Festivals and Exhibitions.** A permit is required to operate a carnival, fair, festival, or exhibition.

Section 105.6.31 is amended to read:

**105.6.31 Motor Fuel Dispensing Facilities.** An operational permit is required for the operation of automotive, marine, and fleet motor fuel dispensing facilities, as well as for sites that allow mobile fueling from a service provider to the general public.

Section 105.6 is amended by adding subsections 105.6.50 through 105.6.60, to read:

**105.6.50 Asbestos removal.** A permit is required to conduct asbestos-removal operations regulated by Section 3318.

**105.6.51 Automobile Wrecking or Dismantling Yard.** An operation permit is required for all automobile wrecking yards, automobile dismantling operations, and similar operations.

**105.6.52 Battery systems.** A permit is required to operate stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L) pursuant to Section 608.

**105.6.53 Christmas tree sales.** A permit is required to use a property for the purpose of selling cut Christmas trees.

**105.6.54 Emergency Responder Radio Coverage.** A permit is required for facilities with Emergency Responder Radio Coverage Systems.

**105.6.55 Firework aerial display.** A permit is required to conduct a firework display regulated by California Code of Regulations, Title 19 and Chapter 56 of this code.

**105.6.56 Model rockets.** A permit is required to sell model rocket motors or launch model rockets (in excess of 3 launches per event) pursuant to California Code of Regulations, Title 19, Division 1, Article 17. Permits issued in accordance with this section are for the site, and are effective as long as site conditions have not changed.

**105.6.57 Temporary water supply.** A permit is required to use a temporary water supply for construction of residential projects or subdivisions pursuant to Section 3312.1.

**105.6.58 Tire storage.** A permit is required to store more than 1,000 cubic feet (28.3m<sup>3</sup>) of tires inside buildings pursuant to Chapter 34.

**105.6.59 Oil Extraction Process.** A permit is required to operate a process that uses a volatile solvent or Liquid Carbon Dioxide to extract oil from organic material.

**105.6.60 Indoor Growing Operation.** A permit is required to operate an indoor growing operation.  
**Exception:** Agricultural Greenhouses in an agricultural zone.

Section 105.7 is amended to read:

**105.7 Required construction permits.** The fire code official is authorized to issue construction permits for the operations set forth in Chapter 1, Sections 105.7.1 through 105.7.21.

Section 105.7 is amended by adding sections 105.7.17 through 105.7.22, to read:

**105.7.17 Access for fire apparatus.** Plans shall be submitted and a permit is required to install, improve, modify, or remove public or private roadways, driveways, and bridges for which Fire District access is required by the Fire Code. A permit is required to install a gate across a fire apparatus access road pursuant to Section 503.

**105.7.18 Construction, alteration, or renovation of a building for which a building permit is required.** Plans shall be submitted to the fire code official for all land developments or for the construction, alteration, or renovation of a building within the jurisdiction where a building permit is required.

**Exception:** Non-sprinklered Group R-3 Occupancies where work does not involve a substantial addition or expansion.

**105.7.19 Medical gas systems.** A construction permit is required for the installation of or modification to a medical gas system pursuant to Section 5306.

**105.7.20 Refrigeration equipment.** A permit is required to install a mechanical refrigeration unit or system regulated by Chapter 6, and the California Mechanical Code.

**105.7.21 Land Development, Subdivisions.** Plans shall be submitted to the fire code official for all land developments or improvements proposed within the jurisdiction that involve the subdivision of land.

**105.7.22 Water supply for fire protection.** Plans shall be submitted to the fire code official for the purpose of determining whether adequate water supplies, fire hydrants, and associated systems are provided for all facilities, buildings, or portions of buildings either constructed or moved into the District pursuant to Section 507.

Section 105.8 is added, to read:

**105.8 Responsibility of permittee.** Construction permits shall be presumed by the Fire District to incorporate all of the work that the applicant or the applicant's agent, employees, or contractors shall carry out. Work performed shall be in accordance with the approved plans and with all requirements of this code and any other laws or regulations applicable thereto. No Fire District approval shall relieve or exonerate any person from the responsibility of complying with the provisions of this code nor shall any vested rights be created for any work performed in violation of this code.

Section 108.1 is amended to read:

**108.1 Board of Appeals established.** In order to hear and decide appeals of orders, decisions, or determinations made by the fire code official relative to the application and interpretation of this code, there is hereby created a board of appeals. The board of appeals is comprised of the Board of Directors.

Section 108.3 is deleted.

Section 109.4 is amended to read:

**109.4 Violation penalties.** Every person who violates any provision of this fire code is guilty of an infraction or misdemeanor in accordance with Health and Safety Code Section 13871 and Government Code Section 53069.4. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions

are maintained shall constitute a separate offense. The application of the aforesaid penalty shall not be held to prevent the enforced removal of prohibited conditions.

Section 111.4 is amended to read:

**111.4 Failure to comply.** Any person who continues any work after having been served with a stop work order is subject to citation, except any work that a person is directed by the fire code official to perform to remove a violation or unsafe condition.

## **Chapter 2. Definitions**

Section 202 is amended by adding the following definitions to that section:

**Administrator.** Fire Chief.

**All-weather driving surface.** A roadway with a minimum surface finish of one layer of asphalt or concrete that is designed to carry the imposed weight loads of fire apparatus.

**Automobile Dismantling.** The operation of dismantling or removing parts from salvaged vehicles including engines or engine parts.

**Automobile Wrecking Yard.** An area that stores or dismantles salvaged vehicles.

**Board of Directors.** The Contra Costa County Board of Supervisors as the governing body of the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District.

**Board of Fire Commissioners.** An advisory commission appointed by the Board of Directors to act as set forth in this ordinance and by resolutions of the Board of Directors.

**Cost of Abatement.** Includes all expenses incurred by the jurisdiction in its work of abatement and administrative costs pursuant to Section 319.5 of this ordinance.

**Defensible Space.** The area within the perimeter of a parcel providing the key point of defense from an approaching wildland or escaping structure fire.

**Driveway.** A private roadway that provides access to no more than two (2) single-family dwellings.

**Fire Code Official.** In the Contra Costa County Fire Protection District, the Fire Code Official is the Fire Marshal. In the Crockett-Carquinez Fire Protection District, the Fire Code Official is the Fire Chief.

**Firebreak.** A continuous strip of land upon and from which all rubbish, weeds, grass, or other growth that could be expected to burn has been abated or otherwise removed in order to prevent extension of fire from one area to another.

**Firetrail.** A graded firebreak of sufficient width, surface, and design to provide access for personnel and equipment to suppress and to assist in preventing a surface extension of fires.

**Nuisance Fire Alarm.** The activation of any fire protection or alarm system which results in the response of the Fire District and is caused by malfunction, improper maintenance, negligence, or misuse of the

system by an owner, occupant, employee, or agent, or any other activation not caused by excessive heat, smoke, fire, or similar activating event.

**Person.** Includes individuals, firms, partnerships, and corporations.

**Priority Hazard Zone.** An area where the threat from wildfire is severe due to proximity to open space, topography, degree of space, density of homes and/or amount of vegetation (native and ornamental), and/or other conditions favorable to fast moving fires.

**Reduced Fuel Zone.** The area that extends from thirty (30) feet to one hundred (100) feet away from the structure, or to the property line, whichever is closer to the structure.

**Response time.** The elapsed time from receipt of call to the arrival of the first unit on scene.

**Rubbish.** Waste matter, litter, trash, refuse, debris, and dirt on streets or private property in the jurisdiction which is, or when dry may become, a fire hazard.

**Rural area.** An area generally designated for agricultural or open space uses with parcels more than 10 acres (4.046873ha) in size.

**Rural residential area.** An area generally designated for single family residential use with parcels between three (1.2140619ha) and 10 (4.046873ha) acres in size.

**Running time.** The calculated time difference between leaving the first-due station and arriving on the emergency scene.

**Sprinkler Alarm and Supervisory System (SASS):** A Dedicated Function Fire Alarm System located at the protected premise installed specifically to monitor sprinkler water-flow alarm, valve supervisory, and general trouble conditions where a Building Fire Alarm is not required.

**Streets.** Includes alleys, parkways, driveways, sidewalks, and areas between sidewalks and curbs, highways, public right of ways, private road, trails, easements, and fire trails.

**Substantial Addition or Expansion.** Addition, expansion, remodel, or renovation of any structure where the addition of new fire area exceeds fifty percent of the existing fire area. For the purposes of this definition, areas of a building in which construction elements including walls and roof assemblies were demolished and rebuilt are considered new fire area.

**Temporary fire department access road for construction.** An approved temporary roadway for emergency vehicle use during construction of residential subdivision projects.

**Temporary fire department access road for construction of one (1) residential (R3) unit.** A temporary roadway for emergency vehicle use during construction of an individual residential (R3) structure where a fire department access road is required as part of the project.

**Temporary water supply.** Water stored for firefighting purposes in an approved aboveground tank during combustible construction.

**Tree litter.** Any limbs, bark, branches, and/or leaves in contact with other vegetation or left to gather on the ground.

**Weeds.** All weeds growing upon streets or private property in the jurisdiction, including any of the following:

1. Weeds that bear seeds of a fluffy nature or are subject to flight.
2. Sagebrush, chaparral (including Chamise, Coyote Brush/Greasewood, Brooms, and Buckwheat), and any other brush or weeds that attain such large growth as to become, when dry, a fire menace to adjacent improved property.
3. Weeds that are otherwise noxious or dangerous.
4. Poison oak and poison sumac when the conditions of growth constitute a menace to public health.
5. Dry grass, brush, tree litter, litter, or other flammable materials that endanger the public safety by creating a fire hazard.

### **Chapter 3. General Precautions Against Fire.**

Section 304.1.2 is amended to read:

**304.1.2 Vegetation.** Hazards created by the growth of weeds, grass, vines, trees, or other growth capable of being ignited and endangering property shall be mitigated in accordance with Section 320.

Section 304.1.4 is added, to read:

**304.1.4 Clothes Dryers.** Clothes dryers shall be frequently cleaned to maintain the lint trap, mechanical and heating components, vent duct, and associated equipment free from accumulations of lint and combustible materials.

Section 308.1.4, Exception 1 is amended to read:

**Exception 1.** Residential Occupancies.

Section 320 is added to Chapter 3, to read:

#### **SECTION 320 Exterior Fire Hazard Control.**

##### **320.1 General.**

**320.1.1 Jurisdictional Authority.** The Board of Directors, as the supervising, legislative, and executive authority of the jurisdiction, hereby delegates to the Board of Fire Commissioners of the jurisdiction all its powers, duties, and rights to act pursuant to Part 5 (commencing with Section 14875), Division 12, of the Health and Safety Code, to clear or order the clearing of rubbish, litter, or other flammable material where such flammable material endangers the public the safety by creating a fire hazard. Fire hazard abatement will be conducted in accordance with the provisions of said Part 5 and this ordinance. In the application of the provisions of said Part 5 to fire hazard abatement proceedings under this ordinance and the Fire Protection District Law of 1987, the terms "Board of Directors" or "Board," when used in Part 5, means the Board of Fire Commissioners of this jurisdiction under this section; and the officers designated in Health and Safety Code Section 14890 are the employees of the jurisdiction.

**320.1.2 Retention of Jurisdictional Authority.** If no Board of Fire Commissioners has been appointed for the jurisdiction, then the Board of Directors retains its powers and rights to act pursuant to said Part 5.



**320.1.3 Contract for Services.** The Board of Directors reserves and retains the power to award a contract for fire hazard abatement work when the employees of the jurisdiction are not used to perform the abatement work.

**320.2 Definitions.** The following terms are defined in Chapter 2.

**Cost of Abatement**

**Defensible Space**

**Person**

**Priority Hazard Zone**

**Reduced Fuel Zone**

**Rubbish**

**Streets**

**Weeds**

**320.3 Weeds and Rubbish a Public Nuisance.** The Board hereby declares that all weeds growing upon private property or streets in this jurisdiction and all rubbish on private property or streets in this jurisdiction are public nuisances. Such weed nuisance is seasonal and recurrent.

**320.4 Abatement of Hazard.**

**320.4.1 Prohibition.** No person who has any ownership or possessory interest in or control of parcel of land shall allow to exist thereon any hazardous rubbish, weeds, trees, or other vegetation that constitutes a fire hazard. Destruction by burning within this jurisdiction is unlawful unless the written permission of the fire chief is first obtained, and all other applicable permits are obtained from appropriate governing agencies or jurisdictions.

**320.4.2 Specific Requirements.** The District shall develop minimum abatement standards for land in residential, rural and/or rural residential, business, industrial areas, or land which is unused or vacant. Such standards may be modified periodically as circumstances dictate.

**320.4.2.1 Clearance of Weeds from Streets.** The Fire Code Official is authorized to cause areas within 10 feet (3048 mm) on each side of portions of streets which are improved, designed, or ordinarily used for vehicular traffic to be cleared of flammable vegetation and other combustible growth. The Fire Code Official is authorized to enter upon private property to do so, to the extent allowed by law.

**320.5 Abatement Procedures.**

**320.5.1 Abatement Order.** The fire code official may order the abatement of the weeds and rubbish described in Sections 304.1.2 and this Section 320. On making the order, the fire code official will mail a copy of a notice to the owners of the affected property as their names and addresses appear upon the last county equalized assessment roll, or as their names and addresses are known to the fire code official. As an alternative to mailing, the notice may be posted upon the affected property and published in the jurisdiction, not less than 15 days prior to the date of the abatement hearing. Copies of the notice will be headed with the words "Notice to Abate Weeds and Rubbish" in letters at least one inch high. The notice will be in substantially the following form:

NOTICE TO ABATE WEEDS AND RUBBISH

You are hereby notified that weeds and rubbish constitute a fire hazard on the following described property owned by you:

(Describe property by common street designation, by metes and bounds, Assessor's code area and parcel number, or by reference to attached map).

You must remove the weeds and rubbish within fifteen (15) days from the date of this notice. If you fail to do so, the (jurisdiction) Fire Protection District will remove it, and the cost of the abatement, including administrative costs, will be collected as property taxes and will be a lien on your property until paid.

You are further notified that the Board of Supervisors has declared that such weeds and rubbish constitute a public nuisance and that such weeds also constitute a seasonal and recurring nuisance.

You may appear before the Board of Fire Commissioners of this jurisdiction on (time and date) at (place-room, street, address, and city) to show cause why this order should not be enforced.

(Signed): (Name of fire code official of name of jurisdiction)

**320.5.2 Hearing Date.** A date for hearing on the notice will be sent at least 15 days after the date of the notice. The date of the notice is the date on which the notice is placed in the United States mail or the date on which it is posted on the property. At the hearing, the property owner or his agent may appear to show cause why the order should not be enforced. For good cause shown, the Board of Fire Commissioners may extend the time for compliance with the order or may rescind the order.

**320.5.3 Contract Award.** If the owner fails to comply with the order, the fire code official may have the weeds and rubbish abated either by employees of this jurisdiction or by contract. If a contract is awarded, it will be by public bid, awarded to the lowest responsible bidder. A contract may include work on more than one parcel. Concerning any contract previously awarded as provided in this subsection and that has been fully extended as provided in that contract, it may thereafter be extended on its same terms and conditions for a further period (not to exceed one year) by agreement of the Board of Supervisors and the involved contractor.

**320.5.4 Abatement Report of Costs.** The fire code official or his or her designee abating the nuisance will keep an account of the cost of abatement in front of or on each separate parcel of land and will render an itemized report in writing to the Board of Fire Commissioners showing the cost of removing the weeds and rubbish on or in front of each separate lot or parcel of land, or both. Before the report is submitted to the Board of Fire Commissioners, a copy of it will be posted for at least three days on or near the chamber door of the Board with a notice of the time and when the report will be submitted to the Board for confirmation. At the time fixed for receiving and considering the report, the Board of Fire Commissioners will hear it and any objections of any of the property owners liable to be assessed for the work of abatement. Thereupon, the Board of Fire Commissioners may make such modifications in the report as it deems necessary, after which the report will be confirmed. The amount of the cost, including administrative costs, of abating the nuisance in front of or upon the various parcels of the land mentioned in the report as confirmed will constitute special assessment against the respective parcels of land, and are a lien on the property for the amount of the respective assessments. Such lien attaches upon recordation, in the office of the County Recorder, of a certified copy of the Resolution of Confirmation.

**320.5.5 Cost Assessments.** Upon confirmation of the report of cost by the Board of Fire Commissioners and the recordation of the Resolution of Confirmation, a copy of the report of cost will be sent to the County Auditor, who will enter the amount of the assessments against the parcels. Thereafter the amount

of the assessments will be collected at the same time and in the same way as County taxes are collected. The owners are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to these assessment taxes.

**320.6 Alternate Mitigation.** In lieu of ordering abatement as provided in Section 320.5.1, the fire code official of this jurisdiction may order the preparation of firebreaks/fuelbreaks around parcels of property where combustible weeds, crops, or brush are present. In determining the proper width for firebreaks/fuelbreaks, the fire code official will consider the height of the growth, weather condition, topography, and the accessibility to the property for fire protection equipment. The procedure set forth in Section 320.5.1 for the abatement of weeds and rubbish shall apply to the preparation of firebreaks/fuelbreaks.

### **320.7 Subsurface Fires.**

**320.7.1 Peat Fire.** It is the duty of each person, firm, corporation, or association not to permit a peat fire or a fire involving combustible vegetable matters under the surface of the natural ground to remain upon the property. It is hereby declared that it is the duty of any person as herein defined to take all necessary precautions to extinguish any subsurface fire involving peat or vegetable material at the owner's own cost and expense.

**320.7.2 Fire Suppression Costs.** If there exists upon the lands or property of any person as herein defined a subsurface fire involving the burning or combustion of peat, vegetable matter, or vegetation, and the owner or occupant thereof has not taken reasonable precautions within a reasonable time to extinguish or minimize such fire or combustion, this jurisdiction may, in addition to its regular duties to extinguish or minimize such fire or combustion, go upon the lands of any person as herein defined and extinguish such fire or combustion. Any costs incurred by the Fire District in fighting the fire and for the cost of proving rescue or emergency medical services shall be a charge against the property owner. The charge shall constitute a debt of the property owner and is collectable by the jurisdiction incurring those costs in the same manner as in the case of an obligation under a contract, express or implied. (See Health and Safety Code, §13009.)

Section 321 is added to Chapter 3, to read:

### **321 Automobile Wrecking Yards.**

**321.1 General.** The operation of automobile wrecking yards shall be in accordance with this section.

**321.2 Definitions.** The following terms are defined in Chapter 2.

#### **Automobile Dismantling Automobile Wrecking Yard**

### **321.3 Requirements.**

**321.3.1 Permits.** An operational fire code permit is required as in Section 105.6.51.

**321.3.2 Fire Apparatus Access Roads.** Fire apparatus access roads shall be constructed throughout the site in accordance with this code and shall be maintained clear of all vehicles and stored items.

**321.3.3 Welding and cutting.** Welding and cutting operations shall be conducted in an approved location, clear of all flammable liquids and combustible materials, including weeds, tires, and all other debris.

**321.3.4 Housekeeping.** Combustible rubbish accumulated on site shall be collected and stored in approved containers, rooms, or vaults of noncombustible materials. Combustible vegetation, cut or uncut, shall be removed when determined by the fire code official to be a fire hazard.

**321.3.5 Fire Protection.** Offices, storage buildings, and vehicles used for site operations shall each be provided with at least one portable fire extinguisher with not less than a 4-A: 40-B-C rating. When required by the fire code official, additional fire extinguishers shall be provided.

**321.3.6 Tire storage.** Tires shall be stored in racks or in a manner as approved by the fire code official.

**321.3.6.1 Distance from Water Supply.** Tire storage shall be located on-site and no further than 500 feet from a fire hydrant or an approved water supply as determined by the fire code official.

**321.3.7 Storage Piles.** Storage piles shall be located a minimum of 20 feet from property lines and shall have an unobstructed access road on all sides of not less than 20 feet.

**321.3.8 Burning operations.** The burning of salvaged vehicles and salvaged or waste materials is prohibited.

**321.3.9 Motor vehicle fluids.** Motor vehicle fluid shall be drained from salvaged vehicles when such liquids are leaking onto the ground and prior to dismantling or removing engine/motor parts.

**321.3.9.1 Mitigation of leaking fluids.** Precautions shall be taken to prevent fluids from salvaged vehicles from leaking onto the ground. Supplies or equipment capable of mitigating leaks from fuel tanks, crankcases, brake systems, and transmissions shall be kept available on site. Single-use plugs, diking, and absorbent materials shall be disposed of as hazardous waste and removed from the site in a manner in accordance with federal, state, and local requirements.

**321.3.10 Fuel tanks.** Fuel tanks of salvaged vehicles shall be emptied of all flammable (gasoline, diesel) fuels in an approved manner and stored in approved tanks.

**321.3.10.1 Repair of vehicle fuel tanks.** The repair of fuel tanks, including cutting, welding, or drilling of any kind, is prohibited.

**321.3.11 Lead acid batteries.** Lead acid batteries shall be removed from all salvaged vehicles and stored in an approved manner in a location approved by the fire code official.

## **Chapter 4. Emergency Planning and Preparedness.**

Section 401.5.1 is added, to read:

**401.5.1 Nuisance Fire Alarm Fee.** A fee may be charged for false and/or nuisance fire alarms in accordance with a fee schedule adopted by the Board of Directors.

Section 403.12.1 is amended to read:

**403.12.1 Standby Personnel.** Where, in the opinion of the fire code official or Fire Chief, it is essential for public safety in a place of assembly, or any other place where people congregate, because of the number of persons, or the nature of the performance, exhibition, display, contest, or activity, the owner, agent, or lessee shall provide standby personnel as required and approved by the fire code official or Fire Chief. If the activity requires fire watch, fire watch shall be provided in accordance with Sections 403.12.1.1 and 403.12.1.2. Standby personnel needed for EMS standby shall be provided in accordance with Contra Costa County EMS Protocols.

## **Chapter 5. Fire Service Features.**

Section 503.1.4 is added, to read:

**503.1.4 Access to Open Spaces.** When existing access to open land or space, or to fire trail systems maintained for public or private use, is obstructed by new development of any kind, the developer shall provide an alternate means of access into the area that is sufficient to allow access for fire personnel and apparatus. The alternate means of access must be approved by the fire code official.

Section 503.2.1 is amended by adding the following exception:

**Exception:** A minimum 16 foot wide driveway is acceptable for access to one or two single-family dwellings.

Section 505.3 is added, to read:

**505.3 Street names and addressing.** Street names and addressing shall be submitted for review and approval to the fire code official, whose approval will not be unreasonably withheld. The purpose of the review is to verify that new street names and addressing will not duplicate existing street names and addressing.

Section 507.2.3 is added, to read:

**507.2.3 Suburban and rural water supply storage.** Swimming pools and ponds shall not be considered water storage for the purposes of Section 507.1.

## **Chapter 6. Building Services and Systems.**

Section 603.6.6 is added, to read:

**603.6.6 Sparks from chimneys.** A chimney that is used with either a fireplace or heating appliances in which solid or liquid fuel is used shall be maintained with spark arresters that are required for incinerators pursuant to the 2016 California Mechanical Code.

## **Chapter 8. Interior Finish, Decorative Materials and Furnishings.**

Section 806.1.4 is added, to read:

**806.1.4 Flame retardants.** Cut trees shall be treated by a California State Fire Marshal-licensed fire retardant applicator. Trees shall be properly treated with an approved flame retardant.

Section 806.1.5 is added, to read:

**806.1.5 Tags.** Trees shall bear a tag stating date of placement in the public building, type of flame-retardant treatment used, name of the person who applied the flame retardant, the name of the person affixing the tag, a permit expiration date, and the name of the designated individual making daily tests.

Section 806.1.6 is added, to read:

**806.1.6 Daily tests.** Trees shall be tested daily by a designated individual. The test shall include a check for dryness in accordance with Section 806.1.3 and for adequate watering.

## **Chapter 9. Fire Protection Systems.**

Section 901.6.2 is amended to read:

**901.6.2 Records.** Records of all system inspections, tests, and maintenance required by the reference standards shall be maintained in paper form and/or by a third party electronic record keeping service as chosen by the fire district.

Section 902 is amended to add:

### **Substantial Addition or Expansion**

Section 903.2.1.1 is amended to read:

**903.2.1.1 Group A-1.** An automatic sprinkler system shall be provided for fire areas containing Group A-1 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The fire area contains a multi-theater complex.

Section 903.2.1.3 is amended to read:

**903.2.1.3 Group A-3.** An automatic sprinkler system shall be provided for fire areas containing Group A-3 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The structure exceeds 10,000 square feet, contains more than one fire area containing exhibition and display rooms, and is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.

Section 903.2.1.4 is amended to read:

**903.2.1.4 Group A-4.** An automatic sprinkler system shall be provided for fire areas containing Group A-4 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.

Section 903.2.1.8 is amended to read:

**903.2.1.8 Group B.** An automatic sprinkler system shall be provided for Group B occupancies where the fire area exceeds 5,000 square feet.

Section 903.2.3 is amended to read:

**903.2.3 Group E.** An automatic sprinkler system shall be provided for new Group E occupancies as follows:

1. Throughout all Group E fire areas greater than 2,000 square feet in area.  
**Exception:** An automatic sprinkler system is not required in any Group E Day Care Facility less than 5,000 square feet
2. Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.  
**Exception:** An automatic sprinkler system is not required in any area below the lowest level of exit discharge serving that area where every classroom throughout the building has at least one exterior exit door at ground level.
3. In rooms or areas with special hazards such as laboratories, vocational shops, and other such areas where hazardous materials in quantities not exceeding the maximum allowable quantity are used or stored.
4. Throughout any Group E structure greater than 4,000 square feet in area, which contains more than one fire area, and which is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.
5. For public school state-funded construction projects see Section 903.2.19.

Section 903.2.4 is amended to read:

**903.2.4 Group F**

Section 903.2.4.1 is added, to read:

**903.2.4.1 Group F-1.** An automatic sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:

1. A Group F-1 fire area exceeds 5,000 square feet.
2. A Group F-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group F-1 occupancy used for the manufacture of upholstered furniture or mattresses exceeding 2,500 square feet (230 m<sup>2</sup>).

Section 903.2.4.2 is added, to read:

**903.2.4.2 Group F-2.** An automatic sprinkler system shall be provided throughout all buildings containing a Group F-2 occupancy greater than 5000 square feet.

Section 903.2.7 is amended to read:

**903.2.7 Group M.** An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 5,000 square feet.

2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group M occupancy used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 m<sup>2</sup>).
5. The structure exceeds 10,000 square feet, contains more than one fire area containing a Group M occupancy, and is separated into two or more buildings by fire walls of less than 4-hour fire-resistance rating without openings.

Section 903.2.8 is amended to read:

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all Group R occupancies, including manufactured and mobile homes, including those located in mobile home parks.

Section 903.2.8.2.1 is added to read:

**903.2.8.2.1 Group R-3 Substantial Addition or Expansion.** An automatic sprinkler system shall be provided throughout all existing Group R-3 dwellings where a substantial addition or expansion occurs **and** the new total fire area of the structure exceeds 3,600 square feet.

**Exception:** If a sprinkler system is required by the local building department regardless of the size of the addition or expansion, a sprinkler system shall be installed in accordance with the appropriate standard.

Section 903.2.9 is amended to read:

**903.2.9 Group S-1.** An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 5,000 square feet.
2. A Group S-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m<sup>2</sup>).
5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeding 2,500 square feet (230 m<sup>2</sup>).

Section 903.2.9.1 is amended to read:

**903.2.9.1 Repair garages.** An automatic sprinkler system shall be provided throughout all buildings used as repair garages in accordance with Section 406.8 of the California Building Code, as shown:

1. Buildings having two or more stories above grade plane, including basements, with a fire area containing a repair garage exceeding 5,000 square feet.
2. Buildings not more than one story above grade plane, with a fire area containing a repair garage exceeding 5,000 square feet.
3. Buildings with repair garages servicing vehicles parked in basements.
4. A Group S-1 fire area used for the repair of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m<sup>2</sup>).

Section 903.2.10 is amended to read:



**903.2.10 Group S-2 enclosed parking garages.** An automatic sprinkler system shall be provided throughout buildings classified as enclosed parking garages in accordance with Section 406.6 of the California Building Code where either of the following conditions exist:

1. Where the fire area of the enclosed parking garage exceeds 5,000 square feet.
2. Where the enclosed parking garage is located beneath other occupancy groups.

Section 903.2.10.2 is added to read:

**903.2.10.2 Group S-2 Low Hazard Storage.** An automatic sprinkler system shall be provided throughout all buildings containing a Group S-2 occupancy exceeding 5,000 square feet.

Section 903.3.1.1.3 is added, to read:

**903.3.1.1.3 Undeclared Use.** In buildings of undeclared use with floor to structure height greater than 14 feet (4256 mm), the fire sprinkler system shall be designed to conform to Extra Hazard Group I design density. In buildings of undeclared use with floor to structure height less than 14 feet (4256 mm), the fire sprinkler system shall be designed to conform to Ordinary Group II design density. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner and/or the occupant to upgrade the system.

Section 903.3.1.3 is amended to read:

**903.3.1.3 Sprinkler Systems for One and Two family dwellings.** Automatic sprinkler systems for one and two- family dwellings shall be permitted to be installed in accordance with sections 903.3.1.3.1 through 903.3.1.3.3.

Sections 903.3.1.3.1, 903.3.1.3.2, and 903.3.1.3.3 are added, to read

**903.3.1.3.1 NFPA 13D Sprinkler Systems.** Automatic sprinkler systems installed in one and two family dwellings; Group R-3; and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D as amended in Chapter 80.

**903.3.1.3.2 California Residential Code Section R313.** Systems are permitted to be installed in accordance with the California Residential Code (CRC) Section R313 as modified by the CRC.

**903.3.1.3.3 Pipe limitations.** Where CPVC pipe is installed above the insulation or is otherwise located in an unconditioned space, such as in an attic space, or a garage without conditioned living space above, CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

Section 903.3.5.3 is added, to read:

**903.3.5.3 Non-permissible water supply storage.** Swimming pools and ponds shall not be considered water storage for the purposes of Section 903.3.5.

Section 903.3.9 is amended to read:

**903.3.9. Floor control valves.** Individual floor control valves and waterflow detection assemblies shall be provided for each floor in multi-floor buildings at an approved location.

**Exception:** Group R-3 and R-3.1 Occupancies.

Section 903.4.2 is amended to read:

**903.4.2 Alarms.** One approved audible and visual device shall be connected to every automatic sprinkler system at an approved location. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Audible and visual alarm devices shall be provided on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system.

Sections 903.6.1 and 903.6.2 are added, to read:

**903.6.1 Substantial Addition or Expansion.** An automatic sprinkler system shall be provided throughout all existing buildings where a substantial addition or expansion occurs and the total fire area of the structure exceeds 5,000 square feet. Group R-3 substantial additions or expansions shall comply with Section 903.2.8.2.1.

**903.6.2 Change of occupancy classification.** Any existing building that undergoes a change of occupancy classification into a higher hazard category shall comply with the requirements of Section 903.2. Relative hazard categories of occupancy groups shall be established based upon the Heights and Areas Hazard Categories of Table 1012.4 of the current edition of the International Existing Building Code, as published by the International Code Council. The requirements of Section 903.2 shall not be required when a change of occupancy classification is made to an equal or lesser hazard category. Group L occupancies shall be considered a relative hazard of 1 (highest hazard). R-3.x occupancies shall be considered a relative hazard of 4 (lowest hazard).

Section 907.4.4 is added, to read:

**907.4.4 Monitoring of other fire systems.** In buildings equipped with a fire alarm system or sprinkler alarm and supervisory service (SASS) system, where other fire suppression or extinguishing systems are installed in the building (including but not limited to commercial kitchen suppression systems, pre-action fire suppression systems, dry chemical systems, and clean agent systems), these other suppression systems shall be monitored by the SASS dedicated function fire alarm system and transmitted as a specific signal to the Central Station. The system shall be monitored in compliance with Section 907.6.5.

Section 907.5.2.3.1 is amended to read:

**907.5.2.3.1 Public and common areas.** Visible alarm notification appliances shall be provided in public use areas and common use areas, including but not limited to:

1. Sanitary facilities including restrooms, bathrooms, shower rooms, and locker rooms.
2. Corridors, hallways, and aisles with shelving and/or fixtures obstructing the required light intensity for that area.
3. Music practice rooms.
4. Band rooms.
5. Gymnasiums.
6. Multipurpose rooms.
7. Occupational shops.
8. Occupied rooms where ambient noise impairs hearing of the fire alarm.
9. Lobbies.

10. Meeting/Conference rooms.
11. Classrooms.
12. Medical exam rooms.
13. Open office areas.
14. Sales floor areas.
15. Break or lunch rooms
16. Copy or work rooms.
17. Computer server rooms exceeding 200 sq. ft.
18. File or Storage rooms exceeding 200 sq. ft.

Section 907.6.6 is amended to read:

**907.6.6 Monitoring of fire alarm systems.** A fire alarm system required by this chapter, or by the California Building Code, shall be monitored by a UL-listed Central Station service in accordance with NFPA 72 and this code.

**Exception:** Monitoring by a UL-listed central station is not required for:

1. Single and multiple station smoke alarms required by Section 907.2.11
2. Group I-3 occupancies shall be monitored in accordance with Section 907.2.6.3.4.
3. Residential Day Care Facilities (occupancy load of 14 or less).
4. One and two family dwellings.
5. Residential Care Facilities licensed by the state with an occupant load of 6 or less.
6. Occupancies with a local fire alarm system that will give an audible and visible signal at a constantly attended location, as approved by the Fire Code Official.

Section 907.8.6 is added, to read:

**907.8.6 Certification.** New fire alarm systems shall be UL-Certified. A Certificate of Completion and other documentation as listed in NFPA 72 shall be provided for all new fire alarm system installations. It is the responsibility of the building owner or owner's representative to obtain and maintain a current and valid Certificate.

Section 907.8.6.1 is added, to read:

**907.8.6.1 Posting of Certificate.** The UL Certificate shall be posted in a durable transparent cover within 3 feet of the fire alarm control panel within 45 days of the final acceptance test/inspection.

## **Chapter 10. Means of Egress.**

Section 1028.5.1 is added, to read:

**1028.5.1 Exit discharge surface.** Exterior exit pathway surfaces shall be suitable for pedestrian use in inclement weather, and shall terminate at a public way as defined in the California Building Code.

## **Chapter 33. Fire Safety During Construction and Demolition.**

Section 3301.3 is added, to read:

**3301.3 Permits.** Permits shall be obtained for asbestos removal operations, temporary fire department access roads for construction, and temporary water supplies as set forth in sections 105.6 and 105.7.

Section 3318 is added, to read:

**Section 3318 Asbestos removal.**

**3318.1 General.** Operations involving removal of asbestos or asbestos-containing materials from buildings shall be in accordance with Section 3318.

**Exception:** Section 3318 does not apply to the removal of asbestos from:

1. Pumps, valves, gaskets and similar equipment.
2. Pipes, ducts, girders or beams that have a length less than 21 linear feet (6400 mm).
3. Wall or ceiling panels that have an area of less than 10 square feet (0.93 m<sup>2</sup>) or a dimension of less than 10 linear feet (3048 mm).
4. Floor tiles when their removal can be completed in less than four hours.
5. Group R-3 occupancies.

**3318.2 Notification.** The fire code official shall be notified 24 hours prior to the commencement and closure of asbestos-removal operations. The permit applicant shall notify the building official when asbestos abatement involves the removal of materials that were used as a feature of the building's fire resistance.

**3318.3 Plastic Film.** Plastic film that is installed on building elements shall be flame resistant as required for combustible decorative material, in accordance with Section 807.

**3318.4 Signs.** Approved signs shall be posted at the entrance, exit and exit-access door, decontamination areas, and waste disposal areas for asbestos-removal operations. The signs shall state that asbestos is being removed from the area, that asbestos is a suspected carcinogen, and that proper respiratory protection is required. Signs shall have a reflective surface. Lettering shall be a minimum of 2 inches (51 mm) high.

**Chapter 50. Hazardous Materials – General Provisions.**

Section 5001.5.3 is added, to read:

**5001.5.3 Emergency response support information.** Floor plans, material safety data sheets, Hazardous Materials Management Plans (HMMP), Hazardous Material Inventory Statements (HMIS), and other information must be stored at a readily accessible location, as determined by the fire code official. This location may be in cabinets located outside of facilities or buildings. Information may be required to be maintained in a specific electronic media format to facilitate computer aided dispatching.

Section 5003.9.1.2 is added, to read:

**5003.9.1.2 Documentation.** Evidence of compliance with provisions of this chapter as well as with state and federal hazardous material regulations shall be maintained on site and available for inspection by fire department personnel.

**Chapter 56 Explosives and Fireworks.**

Section 5601.1.3 is amended to read:

**5601.1.3 Fireworks.** The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited within the jurisdiction of the District.

**Exceptions:**

1. The use of fireworks for fireworks displays, pyrotechnics before a proximate audience, pyrotechnic special effects in motion pictures, television, theatrical, or group entertainment productions as allowed by Title 19, Division 1, Chapter 6 Fireworks reprinted in Section 5608 and the Health and Safety Code
2. Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

Section 5601.2.2 is amended to read:

**5601.9 Sale and retail display.** No person shall construct a retail display or offer for sale any explosives, explosive materials, or fireworks within the jurisdiction

**Exception:** Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

Section 5601.2.4 is amended as follows:

**5601.2.4 Financial responsibility.** Before a permit is issued pursuant to Section 5601.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$2,000,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond requirement.

**Exception:** Fireworks in accordance with California Code of Regulations, Title 19, Division 1, Chapter 6. See section 5608.

Section 5601.9 is added, to read:

**5601.9 Prohibited and Limited Acts.** The storage of explosive materials is prohibited in any central business district and in all zoning districts except districts zoned for industrial or agricultural uses. In districts where the storage of explosive materials is permitted, the quantities of explosives and distances shall be in accordance with California Fire Code Section 5601.8

## **Chapter 57. Flammable and Combustible Liquids.**

Section 5704.2.9.6.1 is amended to read:

**5704.2.9.6.1 Locations where above-ground tanks are prohibited.** The storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited in all zoning districts except districts zoned for commercial, industrial, or agricultural uses.

**Exception:** Protected above-ground tanks for the purpose of emergency power generator installations in areas zoned commercial, industrial, agricultural, central business district, rural or rural residential, and for facilities on an individual basis consistent with the intent of this provision. Tank size shall not exceed 500 gallons (1892.706L) for Class I or II liquids, or 1,000 gallons (3785.412L) for Class III liquids.

Section 5706.2.4.4 is amended to read:

**5706.2.4.4 Locations where above-ground tanks are prohibited.** Storage of Class I and II liquids in above-ground tanks is prohibited in all zoning districts except district zoned for commercial, industrial, or agricultural use.

## **Chapter 58. Flammable Gases and Flammable Cryogenic Fluids.**

Section 5806.2 is amended to read:

**5806.2 Limitation.** The storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited in any area which is zoned for other than industrial use.

**Exception:** Liquid hydrogen fuel systems in compliance with Section 5806.3 or 5806.4.

## **Chapter 61. Liquefied Petroleum Gases.**

Section 6103.2.1.7 is amended to read:

**6103.2.1.7 Use for food preparation.** Individual portable L-P containers used, stored, or handled inside a building classified as a Group A, Group B, or Group M occupancy for the purposes of cooking, food display, or a similar use, shall be limited in size to one quart capacity and shall be of an approved type. The number of portable containers permitted will be at the discretion of the fire code official. LP-gas appliances used for food preparation shall be listed for such use in accordance with the California Mechanical Code and NFPA 58.

Section 6104.2 is amended to read:

**6104.2 Maximum capacity within established limits.** The storage of liquefied petroleum gas is prohibited in any central business district and in all zoning districts except districts zoned for commercial, industrial, rural, or agricultural uses. The aggregate capacity of any one installation used for the storage of liquefied petroleum gas shall not exceed a water capacity of 2,000 gallons (7570 L).

## **Chapter 80. Referenced Standards**

Chapter 80 is amended as follows:

The following referenced standards are added:

NFPA 3 (2015): Recommended Practice for Commissioning of Fire Protection and Life Safety Systems

NFPA 4 (2015): Standard for Integrated Fire Protection and Life Safety System Testing

NFPA 850 (2015): Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations

The NFPA 13D (2016) (Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes) standard is amended as follows:

Section 7.7.1 is added, to read:

**7.7.1** Where CPVC pipe is installed above the normal insulation in an unconditioned space, such as in an attic space, or a garage without conditioned living space above, CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

Section 8.3.5.1.2 is amended to read:

**8.3.5.1.2** Where fuel-fired equipment is below or on the same level as occupied areas of the dwelling unit, at least one quick-response intermediate temperature sprinkler shall be installed above the equipment or at the wall separating the space with the fuel-fired equipment from the occupied space. In unconditioned spaces, CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

#### **Appendix B. Fire-Flow Requirements for Buildings.**

Section B105.2, Exception 2 is added to read:

**Exception 2:** A reduction in required fire-flow of 50 percent, as approved by the fire code official, when the building is provided with an approved automatic sprinkler system and installed in accordance with Section 903.3.1.1. The resulting fire-flow shall be not less than 1,500 gallons per minute (5678L/min) for the prescribed duration as specified in Table B105.1.

#### **Appendix C. Fire Hydrant Locations and Distribution.**

Table C102.1 is amended as follows:

The title of Table C102.1 is amended to read:

##### TABLE C102.1<sup>i</sup>

The heading of the fourth column of Table C102.1 is amended to read:

MAXIMUM DISTANCE FROM ANY POINT ON STREET OR ROAD FRONTAGE TO A HYDRANT<sup>d,f,g,h,i</sup>

Footnotes "h" and "i" are added to Table C102.1, to read:

- h. A fire hydrant shall be provided within 250 feet of a fire trail access point off a public or private street.
- i. For infill projects within existing single-family residential developments, Section 507.5.1 applies.

#### **Appendix D. Fire Apparatus Access Roads**

Section D102.1 is amended to read:

**D102.1 Access and loading.** Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete, or other approved all-weather driving surface capable of supporting the imposed load of fire apparatus weighing at least 74,000 pounds (33 566 kg) in accordance with CalTrans Design Standard HS-20-44.

**Exception:** Driveways serving one or two single-family dwellings may be constructed of an alternate surface material, providing the imposed weight load design minimums are met and the grade does not exceed 10 percent.

Section D103.1 is deleted.

Section D103.2 is amended to read:

**D103.2 Grade.** Fire department access roadways having a grade of between 16 percent and 20 percent shall be designed to have a finished surface of grooved concrete sufficient to hold a 44,000 pound (19 958 kg) traction load. The grooves in the concrete surface shall be ½ inch (13 mm) wide by ½ inch (13 mm) deep and 1 ½ inch (38 mm) on center and set at a 30 to 45 degree angle across the width of the roadway surface. No grade shall exceed 20 percent, nor shall the cross slope exceed 8%, unless authorized in writing by the fire code official.

Section D103.2.1 is added, to read:

**D103.2.1 Angles of approach and departure.** The angles of approach and departure for any means of access shall not exceed 10 percent at 10 feet of the grade break.

Section D103.3 is amended to read:

**D103.3 Turning radius.** Based on a minimum unobstructed width of 20 feet, a fire apparatus access roadway shall be capable of providing a minimum standard turning radius of 25 feet (7620 mm) inside and 45 feet (13 716 mm) outside.



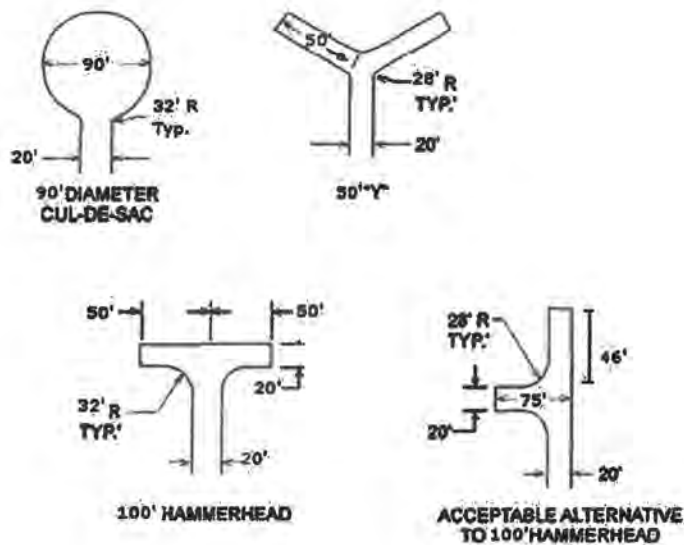
Table D103.4 is amended to read:

**Table D103.4**  
**REQUIREMENTS FOR DEAD-END FIRE**  
**APPARATUS ACCESS ROADS**

LENGTH (feet)	MINIMUM WIDTH (feet)	TURNAROUNDS REQUIRED
0 – 150	20 <sup>a</sup>	None required
151 – 750	20 <sup>a</sup>	100-foot Hammerhead, 50-foot "Y", 75-foot Shunt or 90-foot-diameter cul-de-sac in accordance with figure D103.1
Over 750	Special approval required <sup>b</sup>	

- a. A *driveway* with a minimum width of 16 feet is acceptable for access to no more than two single-family *dwelling*s.
- b. Any fire apparatus access roadway or *driveway* that is approved to be less than 20 feet wide and to exceed 750 feet in length shall have outlets or turnouts every 300 feet along the length of the road or driveway, or at locations approved by the fire code official. Each outlet or turnout shall be of the following dimensions; an 8 foot wide turnout that extends at least 40 feet in length.

Figure D103.1 is amended to read:



**Figure D103.1**  
**Dead-end Fire Apparatus Access Road Turnaround**

Section D103.5 is amended as follows:

Criteria 1 of Section D103.5 is amended to read:

1. The minimum clear width shall be 20 feet (6096mm).

**Exception:** For access to one or two single-family dwellings, 16 feet clear width is acceptable.

Criteria 9 is added to Section D103.5, to read:

9. All gates shall be installed and located a minimum of 30 feet off the street.

Section D103.6.1 is amended to read:

**D103.6.1 Roads less than 28 feet in width.** Fire apparatus access roads less than 28 feet wide shall be posted on both sides as a fire lane.

Section D103.6.2 is amended to read:

**D103.6.2 Roads 28 feet in width or greater, but less than 36 feet in width.** Fire apparatus access roads 28 feet wide or greater, but less than 36 feet wide, shall be posted on one side of the road as a fire lane.

Section D106.1 is amended by deleting the exception and to read:

**D106.1 Projects having more than 100 dwelling units.** Multiple-family residential projects having more than 100 dwelling units shall be provided with two separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3.

Section D106.2 is deleted in its entirety.

15.09.003      REPEAL OF 2013 FIRE CODE.

The 2013 California Fire Code with amendments, although not expressly adopted in the Clayton Municipal Code but enforced by the City of Clayton in association with the Contra Costa County Fire Protection District, is hereby repealed.

15.09.004      REFERENCES TO PRIOR CODE.

Unless superseded and expressly repealed by this ordinance, references in Fire District forms, documents, and regulations to the chapters and sections of the 2013 Fire Code of the City of Clayton shall be construed to refer to the corresponding chapters and sections of the 2016 Fire Code of the City of Clayton.

## EXHIBIT B

### FINDINGS OF FACT IN SUPPORT OF LOCAL CHANGES, MODIFICATIONS AND AMENDMENTS TO THE 2016 CALIFORNIA BUILDING STANDARDS, TITLE 24, PART 9, CALIFORNIA FIRE CODE DUE TO LOCAL CLIMATIC, GEOLOGIC, AND TOPOGRAPHIC CONDITIONS

#### I. Purpose

The California Building Standards Commission has adopted and published the 2016 California Fire Code. The purpose of the code is to regulate and govern the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials, and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises. This code is enforced by the Contra Costa County Fire Protection District ("District").

#### II. Changes or Modifications

Health and Safety Code Section 13869.7 authorizes the District to adopt building standards relating to fire safety that are more stringent than the building standards adopted by the State Fire Marshal and contained in the California Building Standards Code if the jurisdiction finds that the modifications and changes are reasonably necessary because of local climatic, geological, or topographical conditions.

Ordinance No. 478 adopts the 2016 California Fire Code and amends it to address local conditions.

#### III. Findings

Pursuant to Health and Safety Code Section 13869.7 of the State of California Health and Safety Code, the City Council of the City of Clayton, finds that the more restrictive standards contained in Ordinance No. 478 are reasonably necessary because of certain local climatic, geological, and topographical conditions that are described below.

##### A. Climatic

##### 1. Precipitation and Relative Humidity

###### (a) Conditions

Precipitation ranges from fifteen (15) to twenty-four (24) inches per year with an average of approximately twenty (20) inches per year. Ninety-six (96) percent falls during the months of October through April and four (4) percent from May through September. This is a dry period of at least five (5) months each year. Additionally, the area is subject to occasional drought. Relative humidity remains in the middle range most of the time. It ranges from forty-five (45) to sixty-five (65) percent during spring, summer, fall, and from sixty (60) to ninety (90) percent in the winter. It occasionally falls as low as fifteen (15) percent.

###### (b) Impact

Locally experienced dry periods cause extreme dryness of untreated wood shakes and shingles on buildings and non-irrigated grass, brush, and weeds, which are often near buildings with wood roofs and sidings. Such dryness causes these materials to ignite very readily and burn rapidly and intensely.

Because of dryness, a rapidly burning grass fire or exterior building fire can quickly transfer to other buildings by means of radiation or flying brands, sparks, and embers. A small fire can rapidly grow to a magnitude beyond the control capabilities of the Fire District resulting in an excessive fire loss.

## 2. Temperature

### (a) Conditions

Temperatures have been recorded as high as 114° F. Average summer highs are in the 90° range, with average maximums of 105° F.

### (b) Impact

High temperatures cause rapid fatigue and heat exhaustion of firefighters, thereby reducing their effectiveness and ability to control large building and wildland fires.

Another impact from high temperatures is that combustible building material and non-irrigated weeds, grass, and brush are preheated, thus causing these materials to ignite more readily and burn more rapidly and intensely. Additionally, the resultant higher temperature of the atmosphere surrounding the materials reduces the effectiveness of the water being applied to the burning materials. This requires that more water be applied, which in turn requires more Fire District resources in order to control a fire on a hot day. High temperatures directly contribute to the rapid growth of fires to an intensity and magnitude beyond the control capabilities of the Fire District.

## 3. Winds

### (a) Conditions

Prevailing winds in the area are from the south or southwest in the mornings and from the north or northwest in the afternoons. However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the fourteen (14) mph to twenty-three (23) mph ranges, gusting to twenty-five (25) to thirty-five (35) mph. Forty (40) mph winds are experienced occasionally and winds up to fifty-five (55) mph have been registered locally. During the winter half of the year, strong, dry, gusty winds from the north move through the area for several days creating extremely dry conditions.

### (b) Impact

Winds such as those experienced locally can and do cause fires, both interior and exterior, to burn and spread rapidly. Fires involving non-irrigated weeds, grass, and brush can grow to a magnitude and be fanned to intensity beyond the control capabilities of the Fire District very quickly even by relatively moderate winds. During wood shake and shingle roof fires, or exposure fires, winds can carry sparks and burning brands to other structures, thus spreading the fire and causing conflagrations. When such fires are not controlled, they can extend to nearby buildings, particularly those with untreated wood shakes or shingles. In building fires, winds can literally force fires back into the building and can create a blow torch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

Winds of the type experienced locally also reduce the effectiveness of exterior water streams used by the Fire District on fires involving large interior areas of buildings, fires which have vented through windows and roofs due to inadequate built-in fire protection and fires involving wood shake and shingle building exteriors. Local winds will continue to be a definite factor towards causing major fire losses to buildings not provided with fire resistive roof and siding materials and buildings with inadequately separated interior areas or lacking automatic fire protection systems. National statistics frequently cite wind conditions, such as those experienced locally, as a major factor where conflagrations have occurred.

## B. Geological and Topographic

### 1. Seismicity

#### (a) Conditions

Contra Costa County is located in Seismic Risk Zone 4, which is the worst earthquake area in the United States. Buildings and other structures in Zone 4 can experience major seismic damage. Contra Costa County is in close proximity to the San Andreas Fault and contains all or portions of the Hayward, Calaveras, Concord, Antioch, Mt. Diablo, and other lesser faults. A 4.1 earthquake with its epicenter in Concord occurred in 1958, and a 5.4 earthquake with its epicenter also in Concord occurred in 1955. The Concord and Antioch faults have a potential for a Richter 6 earthquake and the Hayward and Calaveras faults have the potential for a Richter 7 earthquake. Minor tremblers from seismic activity are not uncommon in the area.

The fire environment of a community is primarily a combination of two factors: the area's physical geologic characteristics and a historic pattern of urban-suburban development. These two factors, alone and combined, create a mixture of environments which ultimately determines the area's fire protection needs. The Fire District has 3 distinct areas. They are: the West, which includes the City of San Pablo and the communities of North Richmond, El Sobrante, and East Richmond Heights; the Central, which includes the Cities of Lafayette, Martinez, Pleasant Hill, Concord, Walnut Creek, Clayton, and the communities of Clyde, Pacheco, Alhambra Valley, and Alamo; and the East, which includes the Cities of Antioch and Pittsburg and the community of Bay Point.

Because of the size of the Contra Costa County Fire Protection District (304 Square miles), the characteristics of the fire environment changes from one location to the next. Therefore the District has not one, but a number of fire environments, each of which has its individual fire protection needs from two major oil refineries, to heavy industrial facilities, freeways, rail lines, waterways, port facilities, wildland areas, urban and suburban town settings, and major downtown areas.

Interstates 80 and 680, State Highways 4, 24, and 242, Bay Area Rapid Transit District (BART), and major thoroughfares travel throughout the District. There are 2 major rail lines which run through the District. An overpass or underpass crossing collapse would alter the response route and time for responding emergency equipment. This is due to the limited crossings of the major highways and rail lines.

Earthquakes of the magnitude experienced locally can cause major damage to electrical transmission facilities, which, in turn, cause power failures while at the same time starting fires throughout the Fire District. The occurrence of multiple fires will quickly deplete existing fire district resources; thereby reducing and/or delaying their response to any given fire. Additionally, without electrical power, elevators, smoke management systems, lighting systems, alarm systems, and other electrical equipment urgently needed for building evacuation and fire control in large buildings without emergency generator systems would be inoperative, thereby resulting in loss of life and/or major fire losses in such buildings.

#### (b) Impact

A major earthquake could severely restrict the response of the Fire District and its capability to control fires involving buildings of wood frame construction, with ordinary wood shake and shingle exteriors, or with large interior areas not provided with automatic smoke and fire control systems.

## 2. Soils

### (a) Conditions

The area is replete with various soils, which are unstable, clay loam and alluvial fans being predominant. These soil conditions are moderately to severely prone to swelling and shrinking, are plastic, and tend to liquefy.

Throughout the Fire District, the topography and development growth has created a network of older, narrow roads. These roads vary from gravel to asphalt surface and vary in percent of slope, many exceeding twenty (20) percent. Several of these roads extend up through the winding passageways in the hills providing access to remote, affluent housing subdivisions. Many of these roads are private with no established maintenance program. During inclement weather, these roads are subject to rock and mudslides, as well as down trees, obstructing all vehicle traffic. It is anticipated that during an earthquake, several of these roads would be practically impassable.

## 3. Topographic

### (a) Conditions

#### i. Vegetation

The service area of the Contra Costa County Fire Protection District has a varied topography and vegetative cover. A conglomeration of flat lands, hills, and ridges make up the terrain. Development has occurred on the flat lands in the District and in the past fifteen (15) years development has spread into the hills, valleys and ridge lands of the District.

Highly combustible dry grass, weeds, and brush are common in the hilly and open space areas adjacent to built-up locations six (6) to eight (8) months of each year. Many of these areas frequently experience wildland fires, which threaten nearby buildings, particularly those with wood roofs, or sidings. This condition can be found throughout the Fire District, especially in those fully developed areas and those areas marked for future development.

#### ii. Surface Features

The arrangement and location of natural and manmade surface features, including hills, creeks, canals, freeways, housing tracts, commercial development, fire stations, streets and roads, combine to limit efficient response routes for Fire District resources into and through many areas.

#### iii. Buildings, Landscaping and Terrain

Many of the "newer" large buildings and building complexes have access and landscaping features or designs which preclude, or greatly limit, efficient approach or operational access to them by Fire District vehicles. In addition, the presence of security gates, roads of inadequate width and grades which are too steep for Fire District vehicles create an adverse impact on fire suppression efforts.

When Fire District vehicles cannot gain access to buildings involved with fire, the potential for complete loss is realized. Difficulty reaching a fire site often requires additional fire personnel and resources to successfully and safely mitigate the event. Access problems often result in severely delaying, misdirecting, or making fire and smoke control efforts unsuccessful.

(b) Impact

The above local geological and topographical conditions increase the magnitude, exposure, accessibility problems, and fire hazards presented to the Contra Costa County Fire Protection District. Fire following an earthquake has the potential of causing greater loss of life and damage than the earthquake itself. Hazardous materials, particularly toxic gases, could pose the greatest threat to the largest number, should a significant seismic event occur. Public Safety resources would have to be prioritized to mitigate the greatest threat, and may likely be unavailable for smaller single dwelling or structure fires.

Other variables may intensify the situation:

1. The extent of damage to the water system.
2. The extents of isolation due to bridge and/or freeway overpass collapse.
3. The extent of roadway damage and/or amount of debris blocking the roadways.
4. Climatic conditions (hot, dry weather with high winds).
5. Time of day will influence the amount of traffic on roadways and could intensify the risk to life during normal business hours.
6. The availability of timely mutual aid or military assistance.
7. The large portion of dwellings with wood shake or shingles coverings could result in conflagrations.

Necessity for More Restrictive Standards

Because of the conditions described above, the City Council of the City of Clayton, finds that there are building and fire hazards unique to Contra Costa County that require the increased fire protection requirements set forth in Ordinance No. 478.

The Ordinance amends Chapter 1 (Scope and Administration) of the statewide Fire Code by requiring a permit for certain activities and operations that pose fire hazards. The Ordinance amends the statewide Fire Code by incorporating into Chapter 3 (General Precautions Against Fire), the Fire District's existing weed abatement program that authorizes the Fire District to declare certain weeds that pose a fire hazard as a public nuisance and to abate those weeds. The Ordinance amends Chapter 4 of the statewide Fire Code (Emergency Planning and Preparedness) to require standby EMS personnel for large events as well as standby fire personnel to account for the fact that the Fire District is both the local fire and EMS provider. The Ordinance amends the statewide Fire Code by reducing the square footage thresholds found in Chapter 9 (Fire Protection Systems) for installation of automatic fire sprinkler systems in most commercial buildings and in private and charter schools. The Ordinance amends Chapter 5 (Fire Service Features) and Appendix D (Fire Apparatus Access Roads) of the statewide Fire Code to establish requirements for fire apparatus access roads.

# ATTACHMENT 2

## ORDINANCE NO. 2016-23

### FIRE CODE

#### ORDINANCES OF THE COUNTY OF CONTRA COSTA, THE CROCKETT-CARQUINEZ FIRE PROTECTION DISTRICT, AND THE CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT ADOPTING THE 2016 CALIFORNIA FIRE CODE WITH AMENDMENTS.

The Contra Costa County Board of Supervisors, as the Board of Supervisors for Contra Costa County and as the Board of Directors of the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District, ordains as follows:

#### SECTION 1. ADOPTION OF THE CALIFORNIA FIRE CODE.

Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District hereby adopt the 2016 California Fire Code (California Code of Regulations, Title 24, Part, 9 [based on the 2015 International Fire Code published by the International Code Council]), including Chapters 1-10 and 12-80, Appendix B, Appendix C, Appendix D, Appendix F, Appendix H, Appendix I, Appendix J, and Appendix K, as amended by the changes, additions, and deletions set forth in this ordinance. The 2016 California Fire Code, with the changes, additions, and deletions set forth this ordinance, is adopted by this reference as though fully set forth in this ordinance. As of the effective date of this ordinance, the provisions of the fire code are controlling and enforceable within the limits of each jurisdiction.

#### SECTION 2. AMENDMENTS TO THE CALIFORNIA FIRE CODE.

The 2016 California Fire Code is amended by the changes, additions, and deletions set forth in this Section 2. Chapter and Section numbers used below are those of the 2016 California Fire Code.

##### **Chapter 1. Scope and Administration.**

Section 101.1 is amended to read:

**101.1 Title.** This code is the Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District, and is hereinafter referred to as "this code."

Section 102.1 is amended to add item 5, to read:

5. Where not otherwise limited by law, the provisions of this code shall apply to vehicles, ships, and boats that are permanently affixed to a specific location within the boundaries of this jurisdiction.

Section 105.6 is amended to read:

**105.6 Required operational permits.** The fire code official is authorized to issue operational permits for the operations set forth in Chapter 1, Sections 105.6.1 through 105.6.60.

Section 105.6.5 is amended to read:

**105.6.5 Carnivals, Fairs, Festivals and Exhibitions.** A permit is required to operate a carnival, fair, festival, or exhibition.

ORDINANCE NO. 2016-23



Section 105.6.31 is amended to read:

**105.6.31 Motor Fuel Dispensing Facilities.** An operational permit is required for the operation of automotive, marine, and fleet motor fuel dispensing facilities, as well as for sites that allow mobile fueling from a service provider to the general public.

Section 105.6 is amended by adding subsections 105.6.50 through 105.6.60, to read:

**105.6.50 Asbestos removal.** A permit is required to conduct asbestos-removal operations regulated by Section 3318.

**105.6.51 Automobile Wrecking or Dismantling Yard.** An operation permit is required for all automobile wrecking yards, automobile dismantling operations, and similar operations.

**105.6.52 Battery systems.** A permit is required to operate stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L) pursuant to Section 608.

**105.6.53 Christmas tree sales.** A permit is required to use a property for the purpose of selling cut Christmas trees.

**105.6.54 Emergency Responder Radio Coverage.** A permit is required for facilities with Emergency Responder Radio Coverage Systems.

**105.6.55 Firework aerial display.** A permit is required to conduct a firework display regulated by California Code of Regulations, Title 19 and Chapter 56 of this code.

**105.6.56 Model rockets.** A permit is required to sell model rocket motors or launch model rockets (in excess of 3 launches per event) pursuant to California Code of Regulations, Title 19, Division 1, Article 17. Permits issued in accordance with this section are for the site, and are effective as long as site conditions have not changed.

**105.6.57 Temporary water supply.** A permit is required to use a temporary water supply for construction of residential projects or subdivisions pursuant to Section 3312.1.

**105.6.58 Tire storage.** A permit is required to store more than 1,000 cubic feet (28.3m<sup>3</sup>) of tires inside buildings pursuant to Chapter 34.

**105.6.59 Oil Extraction Process.** A permit is required to operate a process that uses a volatile solvent or Liquid Carbon Dioxide to extract oil from organic material.

**105.6.60 Indoor Growing Operation.** A permit is required to operate an indoor growing operation.  
**Exception:** Agricultural Greenhouses in an agricultural zone.

Section 105.7 is amended to read:

**105.7 Required construction permits.** The fire code official is authorized to issue construction permits for the operations set forth in Chapter 1, Sections 105.7.1 through 105.7.21.

Section 105.7 is amended by adding Sections 105.7.17 through 105.7.22, to read:

**105.7.17 Access for fire apparatus.** Plans shall be submitted and a permit is required to install, improve, modify, or remove public or private roadways, driveways, and bridges for which Fire District access is required by the Fire Code. A permit is required to install a gate across a fire apparatus access road pursuant to Section 503.

**105.7.18 Construction, alteration, or renovation of a building for which a building permit is required.** Plans shall be submitted to the fire code official for all land developments or for the construction, alteration, or renovation of a building within the jurisdiction where a building permit is required.

**Exception:** Non-sprinklered Group R-3 Occupancies where work does not involve a substantial addition or expansion.

**105.7.19 Medical gas systems.** A construction permit is required for the installation of or modification to a medical gas system pursuant to Section 5306.

**105.7.20 Refrigeration equipment.** A permit is required to install a mechanical refrigeration unit or system regulated by Chapter 6 and/or the California Mechanical Code.

**105.7.21 Land Development, Subdivisions.** Plans shall be submitted to the fire code official for all land developments or improvements proposed within the jurisdiction that involve the subdivision of land.

**105.7.22 Water supply for fire protection.** Plans shall be submitted to the fire code official for the purpose of determining whether adequate water supplies, fire hydrants, and associated systems are provided for all facilities, buildings, or portions of buildings either constructed or moved into the District pursuant to Section 507.

Section 105.8 is added, to read:

**105.8 Responsibility of permittee.** Construction permits shall be presumed by the Fire District to incorporate all of the work that the applicant or the applicant's agent, employees, or contractors shall carry out. Work performed shall be in accordance with the approved plans and with all requirements of this code and any other laws or regulations applicable thereto. No Fire District approval shall relieve or exonerate any person from the responsibility of complying with the provisions of this code nor shall any vested rights be created for any work performed in violation of this code.

Section 108.1 is amended to read:

**108.1 Board of Appeals established.** In order to hear and decide appeals of orders, decisions, or determinations made by the fire code official relative to the application and interpretation of this code, there is hereby created a board of appeals. The board of appeals is comprised of the Board of Directors.

Section 108.3 is deleted.

Section 109.4 is amended to read:

**109.4 Violation penalties.** Every person who violates any provision of this fire code is guilty of an infraction or misdemeanor in accordance with Health and Safety Code Section 13871 and Government Code Section 53069.4. The imposition of one penalty for any violation shall not excuse the violation or

permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of the aforesaid penalty shall not be held to prevent the enforced removal of prohibited conditions.

Section 111.4 is amended to read:

**111.4 Failure to comply.** Any person who continues any work after having been served with a stop work order is subject to citation, except any work that a person is directed by the fire code official to perform to remove a violation or unsafe condition.

## **Chapter 2. Definitions.**

Section 202 is amended by adding the following definitions to that section:

**Administrator.** Fire Chief.

**All-weather driving surface.** A roadway with a minimum surface finish of one layer of asphalt or concrete that is designed to carry the imposed weight loads of fire apparatus.

**Automobile Dismantling.** The operation of dismantling or removing parts from salvaged vehicles including engines or engine parts.

**Automobile Wrecking Yard.** An area that stores or dismantles salvaged vehicles.

**Board of Directors.** The Contra Costa County Board of Supervisors as the governing body of the Crockett-Carquinez Fire Protection District and the Contra Costa County Fire Protection District.

**Board of Fire Commissioners.** An advisory commission appointed by the Board of Directors to act as set forth in this ordinance and by resolutions of the Board of Directors.

**Cost of Abatement.** Includes all expenses incurred by the jurisdiction in its work of abatement and administrative costs pursuant to Section 319.5 of this code.

**Defensible Space.** The area within the perimeter of a parcel providing the key point of defense from an approaching wildland or escaping structure fire.

**Driveway.** A private roadway that provides access to no more than two (2) single-family dwellings.

**Fire Code Official.** In the Contra Costa County Fire Protection District, the Fire Code Official is the Fire Marshal. In the Crockett-Carquinez Fire Protection District, the Fire Code Official is the Fire Chief.

**Firebreak.** A continuous strip of land upon and from which all rubbish, weeds, grass, or other growth that could be expected to burn has been abated or otherwise removed in order to prevent extension of fire from one area to another.

**Firetrail.** A graded firebreak of sufficient width, surface, and design to provide access for personnel and equipment to suppress and to assist in preventing a surface extension of fires.

**Nuisance Fire Alarm.** The activation of any fire protection or alarm system which results in the response of the Fire District and is caused by malfunction, improper maintenance, negligence, or misuse of the system by an owner, occupant, employee, or agent, or any other activation not caused by excessive heat, smoke, fire, or similar activating event.

**Person.** Includes individuals, firms, partnerships, and corporations.

**Priority Hazard Zone.** An area where the threat from wildfire is severe due to proximity to open space, topography, degree of space, density of homes and/or amount of vegetation (native and ornamental), and/or other conditions favorable to fast moving fires.

**Reduced Fuel Zone.** The area that extends from thirty (30) feet to one hundred (100) feet away from the structure, or to the property line, whichever is closer to the structure.

**Response time.** The elapsed time from receipt of call to the arrival of the first unit on scene.

**Rubbish.** Waste matter, litter, trash, refuse, debris, and dirt on streets or private property in the jurisdiction which is, or when dry may become, a fire hazard.

**Rural area.** An area generally designated for agricultural or open space uses with parcels more than 10 acres (4.046873ha) in size.

**Rural residential area.** An area generally designated for single family residential use with parcels between three (1.2140619ha) and 10 (4.046873ha) acres in size.

**Running time.** The calculated time difference between leaving the first-due station and arriving on the emergency scene.

**Sprinkler Alarm and Supervisory System (SASS).** A Dedicated Function Fire Alarm System located at the protected premise installed specifically to monitor sprinkler water-flow alarm, valve supervisory, and general trouble conditions where a Building Fire Alarm is not required.

**Streets.** Includes alleys, parkways, driveways, sidewalks, and areas between sidewalks and curbs, highways, public right of ways, private road, trails, easements, and fire trails.

**Substantial Addition or Expansion.** Addition, expansion, remodel, or renovation of any structure where the addition of new fire area exceeds fifty percent of the existing fire area. For the purposes of this definition, areas of a building in which construction elements including walls and roof assemblies were demolished and rebuilt are considered new fire area.

**Temporary fire department access road for construction.** An approved temporary roadway for emergency vehicle use during construction of residential subdivision projects.

**Temporary fire department access road for construction of one (1) residential (R3) unit.** A temporary roadway for emergency vehicle use during construction of an individual residential (R3) structure where a fire department access road is required as part of the project.

**Temporary water supply.** Water stored for firefighting purposes in an approved aboveground tank during combustible construction.

**Tree litter.** Any limbs, bark, branches, and/or leaves in contact with other vegetation or left to gather on the ground.

**Weeds.** All weeds growing upon streets or private property in the jurisdiction, including any of the following:

1. Weeds that bear seeds of a fluffy nature or are subject to flight.
2. Sagebrush, chaparral (including Chamise, Coyote Brush/Greasewood, Brooms, and Buckwheat), and any other brush or weeds that attain such large growth as to become, when dry, a fire menace to adjacent improved property.
3. Weeds that are otherwise noxious or dangerous.
4. Poison oak and poison sumac when the conditions of growth constitute a menace to public health.
5. Dry grass, brush, tree litter, litter, or other flammable materials that endanger the public safety by creating a fire hazard.

### **Chapter 3. General Precautions Against Fire.**

Section 304.1.2 is amended to read:

**304.1.2 Vegetation.** Hazards created by the growth of weeds, grass, vines, trees, or other growth capable of being ignited and endangering property shall be mitigated in accordance with Section 320.

Section 304.1.4 is added, to read:

**304.1.4 Clothes Dryers.** Clothes dryers shall be frequently cleaned to maintain the lint trap, mechanical and heating components, vent duct, and associated equipment free from accumulations of lint and combustible materials.

Section 308.1.4, Exception 1 is amended to read:

**Exception 1.** Residential Occupancies.

Section 320 is added to Chapter 3, to read:

### **SECTION 320 Exterior Fire Hazard Control.**

#### **320.1 General.**

**320.1.1 Jurisdictional Authority.** The Board of Directors, as the supervising, legislative, and executive authority of the jurisdiction, hereby delegates to the Board of Fire Commissioners of the jurisdiction all its powers, duties, and rights to act pursuant to Part 5 (commencing with Section 14875), Division 12, of the Health and Safety Code, to clear or order the clearing of rubbish, litter, or other flammable material where such flammable material endangers the public the safety by creating a fire hazard. Fire hazard abatement will be conducted in accordance with the provisions of said Part 5 and this ordinance. In the application of the provisions of said Part 5 to fire hazard abatement proceedings under this ordinance and the Fire Protection District Law of 1987, the terms "Board of Directors" or "Board," when used in Part 5, means the Board of Fire Commissioners of this jurisdiction under this section; and the officers designated in Health and Safety Code Section 14890 are the employees of the jurisdiction.

**320.1.2 Retention of Jurisdictional Authority.** If no Board of Fire Commissioners has been appointed for the jurisdiction, then the Board of Directors retains its powers and rights to act pursuant to said Part 5.

**320.1.3 Contract for Services.** The Board of Directors reserves and retains the power to award a contract for fire hazard abatement work when the employees of the jurisdiction are not used to perform the abatement work.

**320.2 Definitions.** The following terms are defined in Chapter 2:

**Cost of Abatement**  
**Defensible Space**  
**Person**  
**Priority Hazard Zone**  
**Reduced Fuel Zone**  
**Rubbish**  
**Streets**  
**Weeds**

**320.3 Weeds and Rubbish a Public Nuisance.** The Board hereby declares that all weeds growing upon private property or streets in this jurisdiction and all rubbish on private property or streets in this jurisdiction are public nuisances. Such weed nuisance is seasonal and recurrent.

**320.4 Abatement of Hazard.**

**320.4.1 Prohibition.** No person who has any ownership or possessory interest in or control of parcel of land shall allow to exist thereon any hazardous rubbish, weeds, trees, or other vegetation that constitutes a fire hazard. Destruction by burning within this jurisdiction is unlawful unless the written permission of the fire chief is first obtained, and all other applicable permits are obtained from appropriate governing agencies or jurisdictions.

**320.4.2 Specific Requirements.** The District shall develop minimum abatement standards for land in residential, rural and/or rural residential, business, industrial areas, or land which is unused or vacant. Such standards may be modified periodically as circumstances dictate.

**320.4.2.1 Clearance of Weeds from Streets.** The Fire Code Official is authorized to cause areas within 10 feet (3048 mm) on each side of portions of streets which are improved, designed, or ordinarily used for vehicular traffic to be cleared of flammable vegetation and other combustible growth. The Fire Code Official is authorized to enter upon private property to do so, to the extent allowed by law.

**320.5 Abatement Procedures.**

**320.5.1 Abatement Order.** The fire code official may order the abatement of the weeds and rubbish described in Sections 304.1.2 and this Section 320. On making the order, the fire code official will mail a copy of a notice to the owners of the affected property as their names and addresses appear upon the last county equalized assessment roll, or as their names and addresses are known to the fire code official. As an alternative to mailing, the notice may be posted upon the affected property and published in the jurisdiction, not less than 15 days prior to the date of the abatement hearing. Copies of the notice will be

headed with the words "Notice to Abate Weeds and Rubbish" in letters at least one inch high. The notice will be in substantially the following form:

#### NOTICE TO ABATE WEEDS AND RUBBISH

You are hereby notified that weeds and rubbish constitute a fire hazard on the following described property owned by you:

(Describe property by common street designation, by metes and bounds, Assessor's code area and parcel number, or by reference to attached map).

You must remove the weeds and rubbish within fifteen (15) days from the date of this notice. If you fail to do so, the (jurisdiction) Fire Protection District will remove it, and the cost of the abatement, including administrative costs, will be collected as property taxes and will be a lien on your property until paid.

You are further notified that the Board of Supervisors has declared that such weeds and rubbish constitute a public nuisance and that such weeds also constitute a seasonal and recurring nuisance.

You may appear before the Board of Fire Commissioners of this jurisdiction on (time and date) at (place-room, street, address, and city) to show cause why this order should not be enforced.

(Signed): (Name of fire code official of name of jurisdiction)

**320.5.2 Hearing Date.** A date for hearing on the notice will be sent at least 15 days after the date of the notice. The date of the notice is the date on which the notice is placed in the United States mail or the date on which it is posted on the property. At the hearing, the property owner or his agent may appear to show cause why the order should not be enforced. For good cause shown, the Board of Fire Commissioners may extend the time for compliance with the order or may rescind the order.

**320.5.3 Contract Award.** If the owner fails to comply with the order, the fire code official may have the weeds and rubbish abated either by employees of this jurisdiction or by contract. If a contract is awarded, it will be by public bid, awarded to the lowest responsible bidder. A contract may include work on more than one parcel. Concerning any contract previously awarded as provided in this subsection and that has been fully extended as provided in that contract, it may thereafter be extended on its same terms and conditions for a further period (not to exceed one year) by agreement of the Board of Supervisors and the involved contractor.

**320.5.4 Abatement Report of Costs.** The fire code official or his or her designee abating the nuisance will keep an account of the cost of abatement in front of or on each separate parcel of land and will render an itemized report in writing to the Board of Fire Commissioners showing the cost of removing the weeds and rubbish on or in front of each separate lot or parcel of land, or both. Before the report is submitted to the Board of Fire Commissioners, a copy of it will be posted for at least three days on or near the chamber door of the Board with a notice of the time and when the report will be submitted to the Board for confirmation. At the time fixed for receiving and considering the report, the Board of Fire Commissioners will hear it and any objections of any of the property owners liable to be assessed for the work of abatement. Thereupon, the Board of Fire Commissioners may make such modifications in the report as it deems necessary, after which the report will be confirmed. The amount of the cost, including administrative costs, of abating the nuisance in front of or upon the various parcels of the land mentioned in the report as confirmed will constitute special assessment against the respective parcels of land, and are a lien on the property for the

amount of the respective assessments. Such lien attaches upon recordation, in the office of the County Recorder, of a certified copy of the Resolution of Confirmation.

**320.5.5 Cost Assessments.** Upon confirmation of the report of cost by the Board of Fire Commissioners and the recordation of the Resolution of Confirmation, a copy of the report of cost will be sent to the County Auditor, who will enter the amount of the assessments against the parcels. Thereafter the amount of the assessments will be collected at the same time and in the same way as County taxes are collected. The owners are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to these assessment taxes.

**320.6 Alternate Mitigation.** In lieu of ordering abatement as provided in Section 320.5.1, the fire code official of this jurisdiction may order the preparation of firebreaks/fuelbreaks around parcels of property where combustible weeds, crops, or brush are present. In determining the proper width for firebreaks/fuelbreaks, the fire code official will consider the height of the growth, weather condition, topography, and the accessibility to the property for fire protection equipment. The procedure set forth in Section 320.5.1 for the abatement of weeds and rubbish shall apply to the preparation of firebreaks/fuelbreaks.

#### **320.7 Subsurface Fires.**

**320.7.1 Peat Fire.** It is the duty of each person, firm, corporation, or association not to permit a peat fire or a fire involving combustible vegetable matters under the surface of the natural ground to remain upon the property. It is hereby declared that it is the duty of any person as herein defined to take all necessary precautions to extinguish any subsurface fire involving peat or vegetable material at the owner's own cost and expense.

**320.7.2 Fire Suppression Costs.** If there exists upon the lands or property of any person as herein defined a subsurface fire involving the burning or combustion of peat, vegetable matter, or vegetation, and the owner or occupant thereof has not taken reasonable precautions within a reasonable time to extinguish or minimize such fire or combustion, this jurisdiction may, in addition to its regular duties to extinguish or minimize such fire or combustion, go upon the lands of any person as herein defined and extinguish such fire or combustion. Any costs incurred by the Fire District in fighting the fire and for the cost of providing rescue or emergency medical services shall be a charge against the property owner. The charge shall constitute a debt of the property owner and is collectable by the jurisdiction incurring those costs in the same manner as in the case of an obligation under a contract, express or implied. (See Health and Safety Code, §13009.)

Section 321 is added to Chapter 3, to read:

#### **321 Automobile Wrecking Yards.**

**321.1 General.** The operation of automobile wrecking yards shall be in accordance with this section.

**321.2 Definitions.** The following terms are defined in Chapter 2:

**Automobile Dismantling**  
**Automobile Wrecking Yard**



### **321.3 Requirements.**

**321.3.1 Permits.** An operational fire code permit is required as in Section 105.6.51.

**321.3.2 Fire Apparatus Access Roads.** Fire apparatus access roads shall be constructed throughout the site in accordance with this code and shall be maintained clear of all vehicles and stored items.

**321.3.3 Welding and cutting.** Welding and cutting operations shall be conducted in an approved location, clear of all flammable liquids and combustible materials, including weeds, tires, and all other debris.

**321.3.4 Housekeeping.** Combustible rubbish accumulated on site shall be collected and stored in approved containers, rooms, or vaults of noncombustible materials. Combustible vegetation, cut or uncut, shall be removed when determined by the fire code official to be a fire hazard.

**321.3.5 Fire Protection.** Offices, storage buildings, and vehicles used for site operations shall each be provided with at least one portable fire extinguisher with not less than a 4-A: 40-B-C rating. When required by the fire code official, additional fire extinguishers shall be provided.

**321.3.6 Tire storage.** Tires shall be stored in racks or in a manner as approved by the fire code official.

**321.3.6.1 Distance from Water Supply.** Tire storage shall be located on-site and no further than 500 feet from a fire hydrant or an approved water supply as determined by the fire code official.

**321.3.7 Storage Piles.** Storage piles shall be located a minimum of 20 feet from property lines and shall have an unobstructed access road on all sides of not less than 20 feet.

**321.3.8 Burning operations.** The burning of salvaged vehicles and salvaged or waste materials is prohibited.

**321.3.9 Motor vehicle fluids.** Motor vehicle fluid shall be drained from salvaged vehicles when such liquids are leaking onto the ground and prior to dismantling or removing engine/motor parts.

**321.3.9.1 Mitigation of leaking fluids.** Precautions shall be taken to prevent fluids from salvaged vehicles from leaking onto the ground. Supplies or equipment capable of mitigating leaks from fuel tanks, crankcases, brake systems, and transmissions shall be kept available on site. Single-use plugs, diking, and absorbent materials shall be disposed of as hazardous waste and removed from the site in a manner in accordance with federal, state, and local requirements.

**321.3.10 Fuel tanks.** Fuel tanks of salvaged vehicles shall be emptied of all flammable (gasoline, diesel) fuels in an approved manner and stored in approved tanks.

**321.3.10.1 Repair of vehicle fuel tanks.** The repair of fuel tanks, including cutting, welding, or drilling of any kind, is prohibited.

**321.3.11 Lead acid batteries.** Lead acid batteries shall be removed from all salvaged vehicles and stored in an approved manner in a location approved by the fire code official.

## **Chapter 4. Emergency Planning and Preparedness.**

Section 401.5.1 is added, to read:

**401.5.1 Nuisance Fire Alarm Fee.** A fee may be charged for false and/or nuisance fire alarms in accordance with a fee schedule adopted by the Board of Directors.

Section 403.12.1 is amended to read:

**403.12.1 Standby Personnel.** Where, in the opinion of the fire code official or Fire Chief, it is essential for public safety in a place of assembly, or any other place where people congregate, because of the number of persons, or the nature of the performance, exhibition, display, contest, or activity, the owner, agent, or lessee shall provide standby personnel as required and approved by the fire code official or Fire Chief. If the activity requires fire watch, fire watch shall be provided in accordance with Sections 403.12.1.1 and 403.12.1.2. Standby personnel needed for EMS standby shall be provided in accordance with Contra Costa County EMS Protocols.

## **Chapter 5. Fire Service Features.**

Section 503.1.4 is added, to read:

**503.1.4 Access to Open Spaces.** When existing access to open land or space, or to fire trail systems maintained for public or private use, is obstructed by new development of any kind, the developer shall provide an alternate means of access into the area that is sufficient to allow access for fire personnel and apparatus. The alternate means of access must be approved by the fire code official.

Section 503.2.1 is amended by adding the following exception:

**Exception:** A minimum 16 foot wide driveway is acceptable for access to one or two single-family dwellings.

Section 505.3 is added, to read:

**505.3 Street names and addressing.** Street names and addressing shall be submitted for review and approval to the fire code official, whose approval will not be unreasonably withheld. The purpose of the review is to verify that new street names and addressing will not duplicate existing street names and addressing.

Section 507.2.3 is added, to read:

**507.2.3 Suburban and rural water supply storage.** Swimming pools and ponds shall not be considered water storage for the purposes of Section 507.1.

## **Chapter 6. Building Services and Systems.**

Section 603.6.6 is added, to read:

**603.6.6 Sparks from chimneys.** A chimney that is used with either a fireplace or heating appliances in which solid or liquid fuel is used shall be maintained with spark arresters that are required for incinerators pursuant to the 2016 California Mechanical Code.

## **Chapter 8. Interior Finish, Decorative Materials and Furnishings.**

Section 806.1.4 is added, to read:

**806.1.4 Flame retardants.** Cut trees shall be treated by a California State Fire Marshal-licensed fire retardant applicator. Trees shall be properly treated with an approved flame retardant.

Section 806.1.5 is added, to read:

**806.1.5 Tags.** Trees shall bear a tag stating date of placement in the public building, type of flame-retardant treatment used, name of the person who applied the flame retardant, the name of the person affixing the tag, a permit expiration date, and the name of the designated individual making daily tests.

Section 806.1.6 is added, to read:

**806.1.6 Daily tests.** Trees shall be tested daily by a designated individual. The test shall include a check for dryness in accordance with Section 806.1.3 and for adequate watering.

## **Chapter 9. Fire Protection Systems.**

Section 901.6.2 is amended to read:

**901.6.2 Records.** Records of all system inspections, tests, and maintenance required by the reference standards shall be maintained in paper form and/or by a third party electronic record keeping service as chosen by the fire district.

Section 902 is amended to add:

### **Substantial Addition or Expansion**

Section 903.2.1.1 is amended to read:

**903.2.1.1 Group A-1.** An automatic sprinkler system shall be provided for fire areas containing Group A-1 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The fire area contains a multi-theater complex.

Section 903.2.1.3 is amended to read:

**903.2.1.3 Group A-3.** An automatic sprinkler system shall be provided for fire areas containing Group A-3 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet.
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.
4. The structure exceeds 10,000 square feet, contains more than one fire area containing exhibition and display rooms, and is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.

Section 903.2.1.4 is amended to read:

**903.2.1.4 Group A-4.** An automatic sprinkler system shall be provided for fire areas containing Group A-4 occupancies and intervening floors of the building where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.

Section 903.2.1.8 is amended to read:

**903.2.1.8 Group B.** An automatic sprinkler system shall be provided for Group B occupancies where the fire area exceeds 5,000 square feet.

Section 903.2.3 is amended to read:

**903.2.3 Group E.** An automatic sprinkler system shall be provided for new Group E occupancies as follows:

1. Throughout all Group E fire areas greater than 2,000 square feet in area.  
**Exception:** An automatic sprinkler system is not required in any Group E Day Care Facility less than 5,000 square feet
2. Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.  
**Exception:** An automatic sprinkler system is not required in any area below the lowest level of exit discharge serving that area where every classroom throughout the building has at least one exterior exit door at ground level.
3. In rooms or areas with special hazards such as laboratories, vocational shops, and other such areas where hazardous materials in quantities not exceeding the maximum allowable quantity are used or stored.
4. Throughout any Group E structure greater than 4,000 square feet in area, which contains more than one fire area, and which is separated into two or more buildings by fire walls of less than four hour fire resistance rating without openings.
5. For public school state-funded construction projects see Section 903.2.19.

Section 903.2.4 is amended in its entirety, to read:

#### **903.2.4 Group F**

**903.2.4.1 Group F-1.** An automatic sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:

1. A Group F-1 fire area exceeds 5,000 square feet.
2. A Group F-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group F-1 occupancy used for the manufacture of upholstered furniture or mattresses exceeding 2,500 square feet (230 m<sup>2</sup>).

**903.2.4.1.1 Woodworking operations.** An automatic sprinkler system shall be provided throughout all Group F-1 occupancy fire areas that contain woodworking operations in excess of 2,500 square feet in area (232 m<sup>2</sup>) that generate finely divided combustible waste or use finely divided combustible materials. A fire

wall of less than 4-hour fire-resistance rating without openings, or any fire wall with openings, shall not be used to establish separate fire areas.

**903.2.4.2 Group F-2.** An automatic sprinkler system shall be provided throughout all buildings containing a Group F-2 occupancy greater than 5,000 square feet.

Section 903.2.7 is amended to read:

**903.2.7 Group M.** An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 5,000 square feet.
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group M occupancy used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 m<sup>2</sup>).
5. The structure exceeds 10,000 square feet, contains more than one fire area containing a Group M occupancy, and is separated into two or more buildings by fire walls of less than 4-hour fire-resistance rating without openings.

Section 903.2.8 is amended to read:

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all Group R occupancies, including manufactured and mobile homes, including those located in mobile home parks.

Section 903.2.8.1.1 is added, to read:

**903.2.8.1.1 Group R-3 Substantial Addition or Expansion.** An automatic sprinkler system shall be provided throughout all existing Group R-3 dwellings where a substantial addition or expansion occurs and the new total fire area of the structure exceeds 3,600 square feet.

**Exception:** If a sprinkler system is required by the local building department regardless of the size of the addition or expansion, a sprinkler system shall be installed in accordance with the appropriate standard.

Section 903.2.9 is amended to read:

**903.2.9 Group S-1.** An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 5,000 square feet.
2. A Group S-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 10,000 square feet.
4. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeding 2,500 square feet (230 m<sup>2</sup>).

Section 903.2.9.1 is amended to read:

**903.2.9.1 Repair garages.** An automatic sprinkler system shall be provided throughout all buildings used as repair garages in accordance with Section 406.8 of the California Building Code, as shown:

1. Buildings having two or more stories above grade plane, including basements, with a fire area containing a repair garage exceeding 5,000 square feet.
2. Buildings not more than one story above grade plane, with a fire area containing a repair garage exceeding 5,000 square feet.
3. Buildings with repair garages servicing vehicles parked in basements.
4. A Group S-1 fire area used for the repair of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m<sup>2</sup>).

Section 903.2.10 is amended in its entirety, to read:

**903.2.10 Group S-2.**

**903.2.10.1 Group S-2 enclosed parking garages.** An automatic sprinkler system shall be provided throughout buildings classified as enclosed parking garages in accordance with Section 406.6 of the California Building Code where either of the following conditions exists:

1. Where the fire area of the enclosed parking garage exceeds 5,000 square feet.
2. Where the enclosed parking garage is located beneath other occupancy groups.

**903.2.10.2 Group S-2 Low Hazard Storage.** An automatic sprinkler system shall be provided throughout all buildings containing a Group S-2 occupancy exceeding 5,000 square feet.

Section 903.3.1.1.3 is added, to read:

**903.3.1.1.3 Undeclared Use.** In buildings of undeclared use with floor to structure height greater than 14 feet (4256 mm), the fire sprinkler system shall be designed to conform to Extra Hazard Group I design density. In buildings of undeclared use with floor to structure height less than 14 feet (4256 mm), the fire sprinkler system shall be designed to conform to Ordinary Group II design density. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner and/or the occupant to upgrade the system.

Section 903.3.1.3 is amended to read:

**903.3.1.3 Sprinkler Systems for One and Two family dwellings.** Automatic sprinkler systems for one and two-family dwellings shall be permitted to be installed in accordance with sections 903.3.1.3.1 through 903.3.1.3.3.

Sections 903.3.1.3.1, 903.3.1.3.2, and 903.3.1.3.3 are added, to read

**903.3.1.3.1 NFPA 13D Sprinkler Systems.** Automatic sprinkler systems installed in one and two family dwellings, Group R-3 buildings, and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D as amended in Chapter 80.

**903.3.1.3.2 California Residential Code Section R313.** Automatic sprinkler systems shall be permitted to be installed in accordance with California Residential Code section R313.

**903.3.1.3.3 Pipe limitations.** Where CPVC pipe is installed above the insulation or is otherwise located in an unconditioned space, such as in an attic space, or a garage without conditioned living space above,

CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

Section 903.3.5.3 is added, to read:

**903.3.5.3 Non-permissible water supply storage.** Swimming pools and ponds shall not be considered water storage for the purposes of Section 903.3.5.

Section 903.3.9 is amended to read:

**903.3.9. Floor control valves.** Individual floor control valves and waterflow detection assemblies shall be provided for each floor in multi-floor buildings at an approved location.

**Exception:** Group R-3 and R-3.1 Occupancies.

Section 903.4.2 is amended to read:

**903.4.2 Alarms.** One approved audible and visual device shall be connected to every automatic sprinkler system at an approved location. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Audible and visual alarm devices shall be provided on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system.

Sections 903.6.1 and 903.6.2 are added, to read:

**903.6.1 Substantial Addition or Expansion.** An automatic sprinkler system shall be provided throughout all existing buildings where a substantial addition or expansion occurs and the total fire area of the structure exceeds 5,000 square feet. Group R-3 substantial additions or expansions shall comply with Section 903.2.8.2.1

**903.6.2 Change of occupancy classification.** Any existing building that undergoes a change of occupancy classification into a higher hazard category shall comply with the requirements of Section 903.2. Relative hazard categories of occupancy groups shall be established based upon the Heights and Areas Hazard Categories of Table 1012.4 of the current edition of the International Existing Building Code, as published by the International Code Council. The requirements of Section 903.2 shall not be required when a change of occupancy classification is made to an equal or lesser hazard category. Group L occupancies shall be considered a relative hazard of 1 (highest hazard). Group R-3 occupancies shall be considered a relative hazard of 4 (lowest hazard).

Section 907.4.4 is added, to read:

**907.4.4 Monitoring of other fire systems.** In buildings equipped with a fire alarm system or sprinkler alarm and supervisory service (SASS) system, where other fire suppression or extinguishing systems are installed in the building (including but not limited to commercial kitchen suppression systems, pre-action fire suppression systems, dry chemical systems, and clean agent systems), these other suppression systems shall be monitored by the SASS dedicated function fire alarm system and transmitted as a specific signal to the Central Station. The system shall be monitored in compliance with Section 907.6.5.

Section 907.5.2.3.1 is amended to read:

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**907.5.2.3.1 Public and common areas.** Visible alarm notification appliances shall be provided in public use areas and common use areas, including but not limited to:

1. Sanitary facilities including restrooms, bathrooms, shower rooms, and locker rooms.
2. Corridors, hallways, and aisles with shelving and/or fixtures obstructing the required light intensity for that area.
3. Music practice rooms.
4. Band rooms.
5. Gymnasiums.
6. Multipurpose rooms.
7. Occupational shops.
8. Occupied rooms where ambient noise impairs hearing of the fire alarm.
9. Lobbies.
10. Meeting/Conference rooms.
11. Classrooms.
12. Medical exam rooms.
13. Open office areas.
14. Sales floor areas.
15. Break or lunch rooms
16. Copy or work rooms.
17. Computer server rooms exceeding 200 sq. ft.
18. File or Storage rooms exceeding 200 sq. ft.

Section 907.6.6 is amended to read:

**907.6.6 Monitoring of fire alarm systems.** A fire alarm system required by this chapter, or by the California Building Code, shall be monitored by a UL-listed Central Station service in accordance with NFPA 72 and this code.

**Exception:** Monitoring by a UL-listed central station is not required for:

1. Single and multiple station smoke alarms required by Section 907.2.11.
2. Group I-3 occupancies shall be monitored in accordance with Section 907.2.6.3.4.
3. Residential Day Care Facilities (occupancy load of 14 or less).
4. One and two family dwellings.
5. Residential Care Facilities licensed by the state with an occupant load of 6 or less.
6. Occupancies with a local fire alarm system that will give an audible and visible signal at a constantly attended location, as approved by the Fire Code Official.

Section 907.8.6 is added, to read:

**907.8.6 Certification.** New fire alarm systems shall be UL-Certified. A Certificate of Completion and other documentation as listed in NFPA 72 shall be provided for all new fire alarm system installations. It is the responsibility of the building owner or owner's representative to obtain and maintain a current and valid Certificate.

Section 907.8.6.1 is added, to read:

**907.8.6.1 Posting of Certificate.** The UL Certificate shall be posted in a durable transparent cover within 3 feet of the fire alarm control panel within 45 days of the final acceptance test/inspection.



## **Chapter 10. Means of Egress.**

Section 1028.5.1 is added, to read:

**1028.5.1 Exit discharge surface.** Exterior exit pathway surfaces shall be suitable for pedestrian use in inclement weather, and shall terminate at a public way as defined in the California Building Code.

## **Chapter 33. Fire Safety During Construction and Demolition.**

Section 3301.3 is added, to read:

**3301.3 Permits.** Permits shall be obtained for asbestos removal operations, temporary fire department access roads for construction, and temporary water supplies as set forth in sections 105.6 and 105.7.

Section 3318 is added, to read:

### **Section 3318 Asbestos removal.**

**3318.1 General.** Operations involving removal of asbestos or asbestos-containing materials from buildings shall be in accordance with Section 3318.

**Exception:** Section 3318 does not apply to the removal of asbestos from:

1. Pumps, valves, gaskets and similar equipment.
2. Pipes, ducts, girders or beams that have a length less than 21 linear feet (6400 mm).
3. Wall or ceiling panels that have an area of less than 10 square feet (0.93 m<sup>2</sup>) or a dimension of less than 10 linear feet (3048 mm).
4. Floor tiles when their removal can be completed in less than four hours.
5. Group R-3 occupancies.

**3318.2 Notification.** The fire code official shall be notified 24 hours prior to the commencement and closure of asbestos-removal operations. The permit applicant shall notify the building official when asbestos abatement involves the removal of materials that were used as a feature of the building's fire resistance.

**3318.3 Plastic Film.** Plastic film that is installed on building elements shall be flame resistant as required for combustible decorative material, in accordance with Section 807.

**3318.4 Signs.** Approved signs shall be posted at the entrance, exit and exit-access door, decontamination areas, and waste disposal areas for asbestos-removal operations. The signs shall state that asbestos is being removed from the area, that asbestos is a suspected carcinogen, and that proper respiratory protection is required. Signs shall have a reflective surface. Lettering shall be a minimum of 2 inches (51 mm) high.

## **Chapter 50. Hazardous Materials – General Provisions.**

Section 5001.5.3 is added, to read:

**5001.5.3 Emergency response support information.** Floor plans, material safety data sheets, Hazardous Materials Management Plans (HMMP), Hazardous Material Inventory Statements (HMIS), and other information must be stored at a readily accessible location, as determined by the fire code official. This

location may be in cabinets located outside of facilities or buildings. Information may be required to be maintained in a specific electronic media format to facilitate computer aided dispatching.

Section 5003.9.1.2 is added, to read:

**5003.9.1.2 Documentation.** Evidence of compliance with provisions of this chapter as well as with state and federal hazardous material regulations shall be maintained on site and available for inspection by fire department personnel.

## **Chapter 56. Explosives and Fireworks.**

Section 5601.1.3 is amended to read:

**5601.1.3 Fireworks.** The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited within the jurisdiction of the District.

**Exceptions:**

1. The use of fireworks for fireworks displays, pyrotechnics before a proximate audience, pyrotechnic special effects in motion pictures, television, theatrical, or group entertainment productions as allowed by Title 19, Division 1, Chapter 6 Fireworks reprinted in Section 5608 and the Health and Safety Code Division 11.
2. Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

Section 5601.2.2 is amended to read:

**5601.9 Sale and retail display.** No person shall construct a retail display or offer for sale any explosives, explosive materials, or fireworks within the jurisdiction.

**Exception:** Snap Caps and Party Poppers classified by the State Fire Marshal as pyrotechnic devices.

Section 5601.2.4 is amended as follows:

**5601.2.4 Financial responsibility.** Before a permit is issued pursuant to Section 5601.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$2,000,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond requirement.

**Exception:** Fireworks in accordance with California Code of Regulations, Title 19, Division 1, Chapter 6. See Section 5608.

Section 5601.9 is added, to read:

**5601.9 Prohibited and Limited Acts.** The storage of explosive materials is prohibited in all zoning districts except districts zoned for industrial or agricultural uses. In districts where the storage of explosive materials is permitted, the quantities of explosives and distances shall be in accordance with California Fire Code Section 5601.8.

**Chapter 57. Flammable and Combustible Liquids.**

Section 5704.2.9.6.1 is amended to read:

**5704.2.9.6.1 Locations where above-ground tanks are prohibited.** The storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited in all zoning districts except districts zoned for commercial, industrial, or agricultural uses.

**Exception:** Protected above-ground tanks for the purpose of emergency power generator installations in areas zoned commercial, industrial, agricultural, central business district, rural or rural residential, and for facilities on an individual basis consistent with the intent of this provision. Tank size shall not exceed 500 gallons (1892.706L) for Class I or II liquids, or 1,000 gallons (3785.412L) for Class III liquids.

Section 5706.2.4.4 is amended to read:

**5706.2.4.4 Locations where above-ground tanks are prohibited.** Storage of Class I and II liquids in above-ground tanks is prohibited in all zoning districts except district zoned for commercial, industrial, or agricultural use.

**Chapter 58. Flammable Gases and Flammable Cryogenic Fluids.**

Section 5806.2 is amended to read:

**5806.2 Limitation.** The storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited in any area which is zoned for other than industrial use.

**Exception:** Liquid hydrogen fuel systems in compliance with Section 5806.3 or 5806.4.

**Chapter 61. Liquefied Petroleum Gases.**

Section 6103.2.1.7 is amended to read:

**6103.2.1.7 Use for food preparation.** Individual portable L-P containers used, stored, or handled inside a building classified as a Group A, Group B, or Group M occupancy for the purposes of cooking, food display, or a similar use, shall be limited in size to one quart capacity and shall be of an approved type. The number of portable containers permitted will be at the discretion of the fire code official. LP-gas appliances used for food preparation shall be listed for such use in accordance with the California Mechanical Code and NFPA 58.

Section 6104.2 is amended to read:

**6104.2 Maximum capacity within established limits.** The storage of liquefied petroleum gas is prohibited in any central business district and in all zoning districts except districts zoned for commercial, industrial, rural, or agricultural uses. The aggregate capacity of any one installation used for the storage of liquefied petroleum gas shall not exceed a water capacity of 2,000 gallons (7570 L).

**Chapter 80. Referenced Standards.**

Chapter 80 is amended by adding the following referenced standards:

ORDINANCE NO. 2016-23

NFPA 3 (2015): Recommended Practice for Commissioning of Fire Protection and Life Safety Systems

NFPA 4 (2015): Standard for Integrated Fire Protection and Life Safety System Testing

NFPA 850 (2015): Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations

Chapter 80 is further amended by amending the NFPA 13D (2016) (Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes) standard as follows:

Section 7.7.1 is added, to read:

7.7.1 Where CPVC pipe is installed above the normal insulation in an unconditioned space, such as in an attic space, or a garage without conditioned living space above, CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

Section 8.3.5.1.2 is amended to read:

8.3.5.1.2 Where fuel-fired equipment is below or on the same level as occupied areas of the dwelling unit, at least one quick-response intermediate temperature sprinkler shall be installed above the equipment or at the wall separating the space with the fuel-fired equipment from the occupied space. In unconditioned spaces, CPVC pipe shall be adequately insulated to a minimum R-19 value, or equivalent, or pipe shall be limited to Type K or L copper, or ferrous piping.

#### **Appendix B. Fire-Flow Requirements for Buildings.**

Section B105.2 is amended by amending the exception to read:

##### **Exceptions:**

1. Group B, S-2, and U occupancies having a floor area not exceeding 1,000 square feet, primarily constructed of noncombustible exterior walls with wood or steel roof framing, having a Class A roof assembly, with uses limited to the following or similar uses:
  - 1.1. California State Parks buildings of an accessory nature (restrooms).
  - 1.2. Safety roadside rest areas, (SRRA), public restrooms.
  - 1.3. Truck inspection facilities, (TIF), CHP office space and vehicle inspection bays.
  - 1.4. Sand/salt storage buildings, storage of sand and salt.
2. A reduction in required fire-flow of 50 percent, as approved by the fire code official, when the building is provided with an approved automatic sprinkler system and installed in accordance with Section 903.3.1.1. The resulting fire-flow shall be not less than 1,500 gallons per minute (5678L/min) for the prescribed duration as specified in Table B105.1.

#### **Appendix C. Fire Hydrant Locations and Distribution.**

Table C102.1 is amended as follows:

The title of Table C102.1 is amended to read:

ORDINANCE NO. 2016-23

TABLE C102.1<sup>1</sup>

The heading of the fourth column of Table C102.1 is amended to read:

MAXIMUM DISTANCE FROM ANY POINT ON STREET OR ROAD FRONTAGE TO A  
HYDRANT<sup>d,f,g,h</sup>

Footnotes "h" and "i" are added to Table C102.1, to read:

- h. A fire hydrant shall be provided within 250 feet of a fire trail access point off a public or private street.
- i. For infill projects within existing single-family residential developments, Section 507.5.1 applies.

**Appendix D. Fire Apparatus Access Roads.**

Section D102.1 is amended to read:

**D102.1 Access and loading.** Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete, or other approved all-weather driving surface capable of supporting the imposed load of fire apparatus weighing at least 74,000 pounds (33 566 kg) in accordance with CalTrans Design Standard HS-20-44.

**Exception:** Driveways serving one or two single-family dwellings may be constructed of an alternate surface material, providing the imposed weight load design minimums are met and the grade does not exceed 10 percent.

Section D103.1 is deleted.

Section D103.2 is amended to read:

**D103.2 Grade.** Fire department access roadways having a grade of between 16 percent and 20 percent shall be designed to have a finished surface of grooved concrete sufficient to hold a 44,000 pound (19 958 kg) traction load. The grooves in the concrete surface shall be ½ inch (13 mm) wide by ½ inch (13 mm) deep and 1 ½ inch (38 mm) on center and set at a 30 to 45 degree angle across the width of the roadway surface. No grade shall exceed 20 percent, nor shall the cross slope exceed 8%, unless authorized in writing by the fire code official.

Section D103.2.1 is added, to read:

**D103.2.1 Angles of approach and departure.** The angles of approach and departure for any means of access shall not exceed 10 percent at 10 feet of the grade break.

Section D103.3 is amended to read:

**D103.3 Turning radius.** Based on a minimum unobstructed width of 20 feet, a fire apparatus access roadway shall be capable of providing a minimum standard turning radius of 25 feet (7620 mm) inside and 45 feet (13 716 mm) outside.

ORDINANCE CONTINUES ON NEXT PAGE

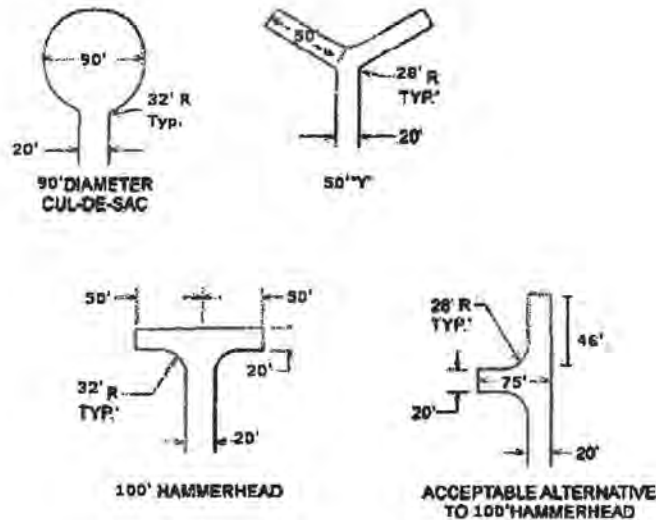
Table D103.4 is amended to read:

**Table D103.4  
REQUIREMENTS FOR DEAD-END FIRE  
APPARATUS ACCESS ROADS**

LENGTH (feet)	MINIMUM WIDTH (feet)	TURNAROUNDS REQUIRED
0 – 150	20'	None required
151 – 750	20'	100-foot Hammerhead, 50-foot "Y", 75-foot Shunt or 90-foot-diameter cul-de-sac in accordance with figure D103.1
Over 750		Special approval required <sup>b</sup>

- a. A driveway with a minimum width of 16 feet is acceptable for access to no more than two single-family dwellings.
- b. Any fire apparatus access roadway or driveway that is approved to be less than 20 feet wide and to exceed 750 feet in length shall have outlets or turnouts every 300 feet along the length of the road or driveway, or at locations approved by the fire code official. Each outlet or turnout shall be of the following dimensions: an 8 foot wide turnout that extends at least 40 feet in length.

Figure D103.1 is amended to read:



**Figure D103.1  
Dead-end Fire Apparatus Access Road Turnaround**

Section D103.5 is amended as follows:

Criteria 1 of Section D103.5 is amended to read:

1. The **minimum clear width shall be 20 feet (6096mm).**

**Exception:** For access to one or two single-family dwellings, 16 feet clear width is acceptable.

Criteria 9 is added to Section D103.5, to read:

9. All gates shall be installed and located a minimum of 30 feet off the street.

Section D103.6.1 is amended to read:

**D103.6.1 Roads less than 28 feet in width.** Fire apparatus access roads less than 28 feet wide shall be posted on both sides as a fire lane.

Section D103.6.2 is amended to read:

**D103.6.2 Roads 28 feet in width or greater, but less than 36 feet in width.** Fire apparatus access roads 28 feet wide or greater, but less than 36 feet wide, shall be posted on one side of the road as a fire lane.

Section D106.1 is amended by deleting the exception and to read:

**D106.1 Projects having more than 100 dwelling units.** Multiple-family residential projects having more than 100 dwelling units shall be provided with two separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3.

Section D106.2 is deleted in its entirety.

### SECTION 3. REPEAL OF FIRE CODE.

Ordinance No. 2013-22, adopting the 2013 California Fire Code with amendments, is hereby repealed.

### SECTION 4. REFERENCES TO PRIOR CODE.

Unless superseded and expressly repealed, references in City forms, documents, and regulations to the chapters and sections of the Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District, 2013, shall be construed to apply to the corresponding provisions contained within the Fire Code of Contra Costa County, the Crockett-Carquinez Fire Protection District, and the Contra Costa County Fire Protection District, 2016. Ordinance 2013-22 and all other ordinances or parts of ordinances in conflict herewith are hereby superseded and expressly repealed.

### SECTION 5. VALIDITY.

The Contra Costa County Board of Supervisors declares that if any section, paragraph, sentence, or word of this ordinance or of the 2016 California Fire Code as adopted and amended herein is declared for any reason to be invalid, it is the intent of the Contra Costa County Board of Supervisors that it would have passed all other portions or provisions of this ordinance independent of the elimination here from any portion or provision as may be declared invalid.



SECTION 6. MORE RESTRICTIVE REQUIREMENTS.

If requirements more restrictive than those in this fire code are adopted by the city of Antioch, Clayton, Concord, Lafayette, Martinez, Pittsburg, Pleasant Hill, San Pablo, or Walnut Creek, or the County of Contra Costa, those requirements will apply only within the jurisdiction adopting those requirements.

SECTION 7. EFFECTIVE DATE.

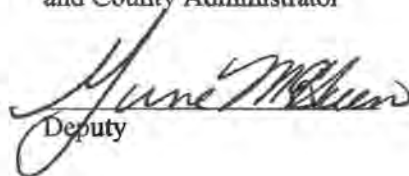
This ordinance becomes effective on January 1, 2017 or 30 days after passage, whichever is later. Within 15 days of passage, this ordinance shall be published once in the Contra Costa Times, a newspaper published in this County. This ordinance shall be published in a manner satisfying the requirements of Government Code Section 25124, with the names of supervisors voting for and against it.

Passed on November 1 2016, by the following vote:

AYES: Gioia, Andersen, Piepho, Mitchoff, Glover  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST: David Twa,  
Clerk of the Board of Supervisors  
and County Administrator

  
Board Chair Candace Andersen

By:   
Deputy

[SEAL]

KCK:

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Agenda Item: 7b  
Approved \_\_\_\_\_  
Gary A. Napper  
City Manager



# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*

**DATE:** OCTOBER 3, 2017

**SUBJECT:** ADOPTION OF AN INTERIM URGENCY ORDINANCE EXTENDING THE PROHIBITION OF THE ESTABLISHMENT, CONSTRUCTION, AND OPERATION OF COMMUNITY SUPERVISION PROGRAMS AND PAROLEE HOMES (ZOA-08-16)

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## RECOMMENDATIONS

It is recommended the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

1. Hold a Public Hearing to consider public comments regarding the proposal to adopt interim Urgency Ordinance No. 479.
2. Motion to have the City Clerk read the interim Urgency Ordinance No. 479 by title and number only and waive further reading; and
3. Following the City Clerk's reading, by motion adopt the interim Urgency Ordinance No. 479 by 4/5ths affirmative vote of the full City Council to continue the prohibition on the establishment, construction, and operation of Community Supervision Programs and parolee homes for an additional one year period (ZOA-08-16) (**Attachment 1**).

## BACKGROUND/DISCUSSION

On November 1, 2016, following a public hearing and pursuant to Government Code Section 65858, the City Council adopted an interim urgency ordinance (Ordinance No. 469) prohibiting the establishment, construction, and operation of Community

Supervision Programs and parolee homes for a period of forty-five (45) days (**Attachment 2**).

On December 6, 2016, following a public hearing, the City Council extended the moratorium (Ordinance No. 472) of these uses for a period of ten (10) months and fifteen (15) days to provide staff with additional time to research, analyze, and draft regulations regarding these issues (**Attachment 3**). Due to the uses associated with the County's Community Supervision Program, including parolee homes, and these uses not being defined within the Clayton Municipal Code, the Council had concerns regarding the potential for negative impacts to public health, safety, and welfare, particularly if there were a dense concentration of parolee homes or service providers or these uses were to be located near sensitive uses such as parks, schools, or day care centers.

### **DISCUSSION**

Ordinance No. 472 is an interim ordinance, which is in effect for ten (10) months and fifteen (15) days and will expire on October 21, 2017. California Government Code Section 65858(a) allows the City of Clayton to adopt an interim urgency ordinance for forty-five (45) days and then may extend the urgency ordinance for ten (10) months and fifteen (15) days with a third extension of up to one year. The additional time, one year, provided by the subject Ordinance, allows the extra time for City staff to research, study, and draft regulations. This is the last extension allowed by State statute and during this final one-year timeframe, staff must conclude its research and analysis, and then draft proposed regulations for both the Planning Commission's and City Council's consideration.

### **ENVIRONMENTAL**

Adoption of the urgency Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA.

### **FISCAL IMPACT**

There is no direct fiscal impact; however there will be staff time associated with the preparation of the necessary ordinance to address recent state law regarding the Community Supervision Program and parolee homes.

**ATTACHMENTS**

1. Ordinance No. 479 [5 pp.]
2. Excerpt of the Staff Report and Minutes from the November 1, 2016 City Council Meeting [4 pp.]
3. Excerpt of the Staff Report and Minutes from the December 6, 2016 City Council Meeting [89 pp.]

# ATTACHMENT 1

## ORDINANCE NO. 479

### AN URGENCY ORDINANCE MAKING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT, CONSTRUCTION, AND OPERATION OF PAROLEE HOMES AND COMMUNITY SUPERVISION PROGRAMS FOR A PERIOD OF ONE YEAR

#### THE CITY COUNCIL City of Clayton, California

#### THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS FOLLOWS:

**WHEREAS**, Government Code Section 65858 provides that for the purpose of protecting the public safety, health and welfare, a City Council may adopt, without following the procedures otherwise required prior to the adoption of a zoning ordinance, as an urgency measure, an interim ordinance, by a vote of four-fifths (4/5) majority, prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

**WHEREAS**, the City of Clayton ("City") and surrounding communities have seen and experienced an increased interest in the establishment of group homes and community supervision programs for parolees and probationers; and

**WHEREAS**, this interest is due, in part, to AB 109 and the increased number of parolees, probationers and others subject to post-release supervision. Specifically, the *2015 Outlook Evaluation Report – An Examination of Offenders Released in Fiscal Year 2010-11 Report* by the California Department of Corrections and Rehabilitation (CDCR), indicates the statewide recidivism rate of offenders is 44.6 percent with 80 percent of those offenders returning to prison within the first year of release. The CDCR report indicates the percentage of recidivism after one, two, and three-year periods within Contra Costa County are 43.4, 46.7, and 48.8 respectively; and

**WHEREAS**, citizens of the City have expressed significant concerns regarding the impacts that a proliferation of parolee/probationer homes may have on the community, including, but not limited to, impacts on traffic and parking, excessive delivery times and durations, commercial and/or institutional services offered in private residences, more frequent trash collection, daily arrival of staff who live off-site, loss of affordable rental housing, violations of boardinghouse and illegal dwelling unit regulations, obvious business operations, secondhand smoke, and nuisance behaviors such as excessive noise, litter, and loud offensive language; and

**WHEREAS**, due in part to AB 109, the City anticipates receiving requests for the construction, establishment and operation of Community Supervision Programs (as defined below) within the City. However, this use is not defined in the Clayton Municipal Code and applying current commercial zoning regulations may not take into account potential impacts of Community Supervision Programs on the surrounding community such as loitering and

increased calls for service and particularly impacts on sensitive uses such as schools and parks;  
and

**WHEREAS**, the City has commenced a study of appropriate regulations for these uses, but additional planning and research are necessary before the City can adopt any permanent regulation; and

**WHEREAS**, any parolee/probationer homes or community supervision programs established prior to the adoption of comprehensive regulations may do so in areas that would be inconsistent with surrounding uses and would be immediately detrimental to the public peace, health, safety, and welfare; and

**WHEREAS**, should those uses be allowed to proceed, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding these uses; and

**WHEREAS**, the City Council at its regularly scheduled meeting on November 1, 2016 adopted Ordinance No. 469, pursuant to California Government Code 65858, establishing a forty-five (45) day moratorium on the establishment and operation of Parolee Homes and Community Supervision Programs; and

**WHEREAS**, the circumstances and conditions that led to the adoption of Ordinance No. 469 have not been alleviated and continue to create concerns; and

**WHEREAS**, the City Council at its regularly scheduled meeting on December 6, 2016 adopted Ordinance No. 472, pursuant to California Government Code Section 65858(a), extending the interim urgency moratorium for ten (10) months and fifteen (15) days after meeting the notice requirements pursuant to Government Code Section 65090 and a public hearing has complied with the public hearing noticing requirements of Government Code Section 65858(a); and

**WHEREAS**, the circumstances and conditions that led to the adoption of Ordinance No. 469 and 472 have not been alleviated and continue to create concerns; and

**WHEREAS**, the City has complied with the public hearing noticing requirements of Government Code Section 65858(a) to consider and adopt the time extension of the current moratorium by enactment of Urgency Ordinance No. 479; and

**WHEREAS**, Government Code Section 65858(a) allows an interim urgency ordinance to be extended for one year after meeting the notice requirements pursuant to Government Code Section 65090 and a public hearing.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**Section 1. Recitals and Findings.** The above recitals are true and correct and are hereby incorporated into this Ordinance. The Council further finds and determines the staff report for this Ordinance describes the measures taken to alleviate the conditions that led to the adoption of the Ordinance No. 479. This staff report is hereby adopted and approved by the Council as required by Government Code section 65858(d).

**Section 2. Moratorium.** In accordance with the authority granted to the City Council of Clayton, California, under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use or expansion of an existing use shall be approved or issued by the City for the establishment or operation of a Parolee Home or Community Supervision Program for a period of one year. For purposes of this ordinance, Parolee Home shall be defined as "any residential or commercial building, structure, unit or use, whether owned and/or operated by an individual or for-profit or non-profit entity, which houses between two or more parolees, unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee and/or any individual or public/private entity on behalf of the parolee. Parolee Home shall not mean any state-licensed residential care facility."

For purposes herein, Community Supervision Program shall be defined as "any facility, building, structure or location, where an organization, whether private, public, institutions of education, not for-profit, or for-profit, provide re-entry services, excepting housing, to previously incarcerated persons or persons who are attending programs in-lieu of incarceration including, but not limited to: employment support and placement services, peer and mentoring services, and resource centers. Included in this definition are services provided to Parolees."

Parolee shall include probationer, and shall mean any of the following: "(1) an individual convicted of a federal crime, sentenced to a United States Federal Prison, and received conditional and revocable release in the community under the supervision of a Federal parole officer; (2) an individual who is serving a period of supervised community custody, as defined in Penal Code Section 3000, following a term of imprisonment in a State prison, and is under the jurisdiction of the California Department of Correction, Parole and Community Services Division; (3) a person convicted of a felony who has received a suspension of the imposition or execution of a sentence and an order of conditional and revocable release in the community under the supervision of a probation officer; and (4) an adult or juvenile individual sentenced to a term in the California Youth Authority and received conditional revocable release in the community under the supervision of a Youth Authority parole officer. As used herein, the term parolee includes parolees, probationers, and/or persons released to post-release community supervision under the "Post-release Community Supervision Act of 2011" (Penal Code Section 3450 et seq.) as amended or amended in the future."

**Section 3. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be

unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

**Section 4. CEQA.** The City Council finds, under CEQA Guidelines section 15061(b)(3), that this Ordinance is exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa in accordance with the CEQA Guidelines.

**Section 5. Effective Date and Publication.** This Ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for one year from the date of adoption. This Ordinance shall be published or posted as required by law.

PASSED, APPROVED and ADOPTED by the City Council of the City of Clayton, California at a regular public meeting thereof held on the 3<sup>rd</sup> day of October, 2017, by the following four-fifths affirmative vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

---

Jim Diaz, Mayor

ATTEST

---

Janet Brown, City Clerk



APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian, City Attorney


\_\_\_\_\_  
Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly adopted and passed at a regular public meeting of the City Council held on October 3, 2017.

\_\_\_\_\_  
Janet Brown, City Clerk



Agenda Item: 8a

Approved: 

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Gary A. Nappes  
City Manager

# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MDG*

**DATE:** NOVEMBER 1, 2016

**SUBJECT:** ADOPTION OF AN URGENCY ORDINANCE PROHIBITING THE ESTABLISHMENT AND OPERATION OF COMMUNITY SUPERVISION PROGRAMS AND PAROLEE HOMES

### RECOMMENDATIONS

It is recommended the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

- 1a. Motion to have the City Clerk read the Ordinance No. 469 by title and number only and waive further reading; and
- 2b. Following the City Clerk's reading; by motion approve Ordinance No. 469 to prohibit the establishment, construction, and operation of Community Supervision Programs and parolee homes for 45 days. (ZOA-08-16) (Attachment 1).

### BACKGROUND/DISCUSSION

On October 1, 2011, the Public Safety Realignment Act (Assembly Bill 109) went into effect transferring responsibility for supervising specified inmates and parolees from the California Department of Correction and Rehabilitation to counties. The Contra Costa County Board of Supervisors adopted the Contra Costa County Realignment Plan on October 4, 2011. The County's Realignment Plan called for the establishment of community programs for employment support and placement services, mentoring and family reunification services, short and long-term housing access, and civil legal services.

Currently, the type of support services being provided by the County's Community Supervision Program, which are provided to parolees and probationers, are not defined in the Clayton Municipal Code. As such some of these services (similar to family counseling) could be characterized as Professional Office, which are permitted by right in the Limited Commercial (LC) District and are allowable on the second story of buildings in the Town Center Specific Plan.

Recently, the City received an inquiry from a County contractor/grantee that is a service provider for the County's Community Supervision Program. The inquiry was regarding the City's regulations for establishing residences for those that have been previously incarcerated. While the intent of the Community Supervision Program is laudable by providing support programs to parolees and probationers to reduce recidivism and assist these individuals in becoming productive members of society, recidivism rates however indicate that these types of services and homes raise the potential for negative impacts to public health, safety, and welfare, particularly if there were a dense concentration of parolee homes or service providers or these uses were to be located near sensitive uses such as parks, schools, or day care centers.

The California Department of Correction and Rehabilitation in its *2015 Outcome Evaluation Report – An Examination of Offenders Released in Fiscal Year 2011-2012 (Attachment 2)* indicates the recidivism rate in Contra Costa County for years one, two and three following release is 43.4 percent, 46.7 percent, and 48.8 percent respectively. These rates raise public safety concerns regarding the operation or establishment of the Community Supervision Program and parolee homes within the City of Clayton without examining their potential impacts.

#### **REQUESTED ACTION**

By adoption of a local moratorium via urgency Ordinance, the prohibition for these Community Supervision Program uses and parolee homes would last for 45 days unless extended further, pursuant to California Government Code. The intent is not to permanently ban these uses but rather to allow the City the opportunity to study appropriate locations, concentrations, distances from sensitive uses such as school, parks, and day care facilities, and adopt operational requirements such as hours of operations. This prohibition would not apply to any existing social service provider that may be currently operating within the City; however this moratorium would not allow for an expansion of the use. To staff's knowledge there are no known operators currently within the city limits.

It is foreseen the moratorium will require further time extension by the City Council as it is unlikely staff will complete its analyses and preparation of new draft law to address this matter; plus additional time is necessary for submittal of the proposed ordinance to the Planning Commission for its hearing and recommendation to the City Council.

### **ENVIRONMENTAL**

Adoption of the urgency Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA.

### **FISCAL IMPACT**

There is no direct fiscal impact; however there will be staff time associated with the preparation of the ordinance to address the Community Supervision Program and parolee homes.

### **ATTACHMENTS**

1. Ordinance No. 469 [4 pp.]
2. *2015 Outcome Evaluation Report – An Examination of Offenders Released in Fiscal Year 2011-2012* [87 pp.]

the location needs of larger retailers. We are working on having a vibrant downtown that can accommodate the preferred low-traffic downtown area. Ms. Pierce indicated she is active with the Clayton Historical Society, CBCA, and Boy Scouts. Ms. Pierce advised she is much honored to receive an official endorsement by the *East Bay Times* and she would appreciate one's vote by next Tuesday.

Mayor Geller advised that he plans to continue to bring the Concert in The Grove series even when he is not on the City Council but is always looking for volunteers to help out.

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS** – None.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Consider the adoption of an interim Urgency Ordinance No. 469 placing a local moratorium on the operation or establishment of parolee homes and community supervision programs within the city of Clayton.

Community Development Director Mindy Gentry provided a summary of the staff report advising this item arises from the Public Safety Realignment Act (AB109) from October 2011. The County Realignment Plan called for the establishment of community programs for employment support and placement services, mentoring and family reunification services, short and long-term housing access, and civil legal services. These services are currently not defined within the Clayton Municipal Code; some services could be characterized as Professional Office which would then be permitted by right in the Limited Commercial District and allowable on a second story in the Town Center Specific Plan.

An inquiry was recently made regarding the City's regulations for establishing residences for parolees that have been previously incarcerated. An adoption of a local moratorium would prohibit Community Supervision Program uses and parolee homes in Clayton for 45 days. It is foreseen that further time extension will be needed for staff to complete its analysis of the land use situation and then draft its proposed ordinance for a Planning Commission hearing and ultimate recommendation to the City Council.

Mayor Geller opened the floor to receive public comment; no public comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Urgency Ordinance No. 469, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 469 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Urgency Ordinance No. 469 for Introduction with findings the Ordinance is not subject to the California Environmental Quality Act because this activity is not considered to be a project and it can be seen with certainty that it will not have a significant effect or physical change to the environment. (Passed 5-0 vote).**



Approved:   
Gary A. Napper  
City Manager

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**  
**FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR** *MG*  
**DATE: DECEMBER 6, 2016**  
**SUBJECT: ADOPTION OF AN INTERIM URGENCY ORDINANCE EXTENDING THE PROHIBITION OF THE ESTABLISHMENT AND OPERATION OF COMMUNITY SUPERVISION PROGRAMS AND PAROLEE HOMES**

---

## RECOMMENDATIONS

It is recommended the City Council consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, take the following actions:

1. Motion to have the City Clerk read the Ordinance No. 472 by title and number only and waive further reading; and
2. Following the City Clerk's reading; by motion adopt Ordinance No. 472 to prohibit the establishment, construction, and operation of Community Supervision Programs and parolee homes for ten (10) months and fifteen (15) days. (ZOA-08-16) (Attachment 1).

## BACKGROUND/DISCUSSION

On November 1, 2016, following a public hearing and pursuant to Government Code Section 65858, the City Council adopted an interim urgency ordinance prohibiting the establishment, construction, and operation of Community Supervision Programs and parolee homes for a period of forty-five (45) days (Attachment 2 and 3). Due to the uses associated with the County's Community Supervision Program, including parolee homes, not being defined within the Clayton Municipal Code, the City Council adopted Ordinance No. 469 because of concerns regarding the potential for negative impacts to public health, safety, and welfare, particularly if there were a dense concentration of parolee homes or service providers or these uses were to be located near sensitive uses such as parks, schools, or day care centers.

### **REQUESTED ACTION**

Ordinance No. 469 is an interim ordinance and is in effect for forty-five (45) days and will expire on December 15, 2016. California Government Code Section 65858(a) allows the City of Clayton to adopt an interim urgency ordinance for forty-five days and then may extend the urgency ordinance for ten (10) months and fifteen (15) days with a possible third extension of up to one year. The additional time, ten (10) months and fifteen (15) days, provided by the subject Ordinance, allows for extra time for City staff to research, study, and draft regulations. It is not anticipated an extension beyond the ten (10) months and fifteen (15) days will be required in order to research, analyze and draft proposed regulations for both the Planning Commission's and City Council's consideration.

### **ENVIRONMENTAL**

Adoption of the urgency Ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA.

### **FISCAL IMPACT**

There is no direct fiscal impact; however there will be staff time associated with the preparation of the ordinance to address recent state law regarding the Community Supervision Program and parolee homes.

### **ATTACHMENTS**

1. Ordinance No. 472 [5 pp.]
2. Staff Report from the November 1, 2016 City Council Meeting [92 pp.]
3. Excerpt of the Minutes from the November 1, 2016 City Council [1 pp.]



**California Department of  
Corrections and Rehabilitation**

**2015 Outcome Evaluation Report**  
**An Examination of Offenders Released in**  
**Fiscal Year 2010-11**

Office of Research  
August 2016



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[http://www.cdcr.ca.gov/adult\\_research\\_branch/](http://www.cdcr.ca.gov/adult_research_branch/)

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This report would not have been possible without the generous support of others. Specifically, the Office of Research would like to thank the following: the Department of Justice for the data-sharing agreement that allows us to examine arrests and convictions; and Ursula Sanchez from the Office of Research for providing data quality assurance and the tables and charts provided in this report.

Permission is granted to reproduce reports.  
For questions regarding the contents of this report, please contact  
Denise Allen, Chief of Research

**OFFICE OF THE SECRETARY**

P. O. Box 942888  
Sacramento, CA 94283-0001



Dear Colleagues:

The mission of the California Department of Corrections and Rehabilitation (CDCR) is to protect the public by safely and securely supervising adult and juvenile offenders, providing effective rehabilitation and treatment, and integrating offenders successfully into the community. Consistent with this purpose, we hold ourselves accountable for data-driven policies informed by the latest research on what works in corrections and rehabilitation.

As a part of this commitment, I am pleased to present the sixth in a series of annual reports on the outcomes of offenders released from CDCR correctional institutions. This report features measures of recidivism, which we can use to track improvement and compare our performance with that of other states that are similarly situated.

This report is a tangible result of our commitment to transparency and accountability. My hope is that this information will provide new insights to policy-makers and correctional stakeholders that will be useful in moving the State forward with regard to efforts that increase public safety through the reduction of recidivism.

Sincerely,

**SCOTT KERNAN**  
Secretary

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## Executive Summary

Between July 1, 2010 and June 30, 2011 (Fiscal Year 2010-11), 95,690 offenders were released from a California Department of Corrections and Rehabilitation (CDCR) adult institution and tracked for three years following the date of their release. The three-year return-to-prison rate for the 95,690 offenders who comprise the Fiscal Year 2010-11 release cohort is 44.6 percent, which is a 9.7 percentage point decrease from the Fiscal Year 2009-10 rate of 54.3 percent. Fiscal Year 2010-11 marks the fifth consecutive year the three-year return-to-prison rate has declined and is the most substantial decrease to-date. As shown in Figure A, Fiscal Year 2010-11 also marks the first cohort of offenders where more offenders did not return to prison during the three-year follow-up period (55.4 percent or 53,029 offenders) than returned to State prison (44.6 percent or 42,661 offenders).

*Figure A. Three-Year Outcomes for Offenders Released from State Prison in Fiscal Year 2010-11*

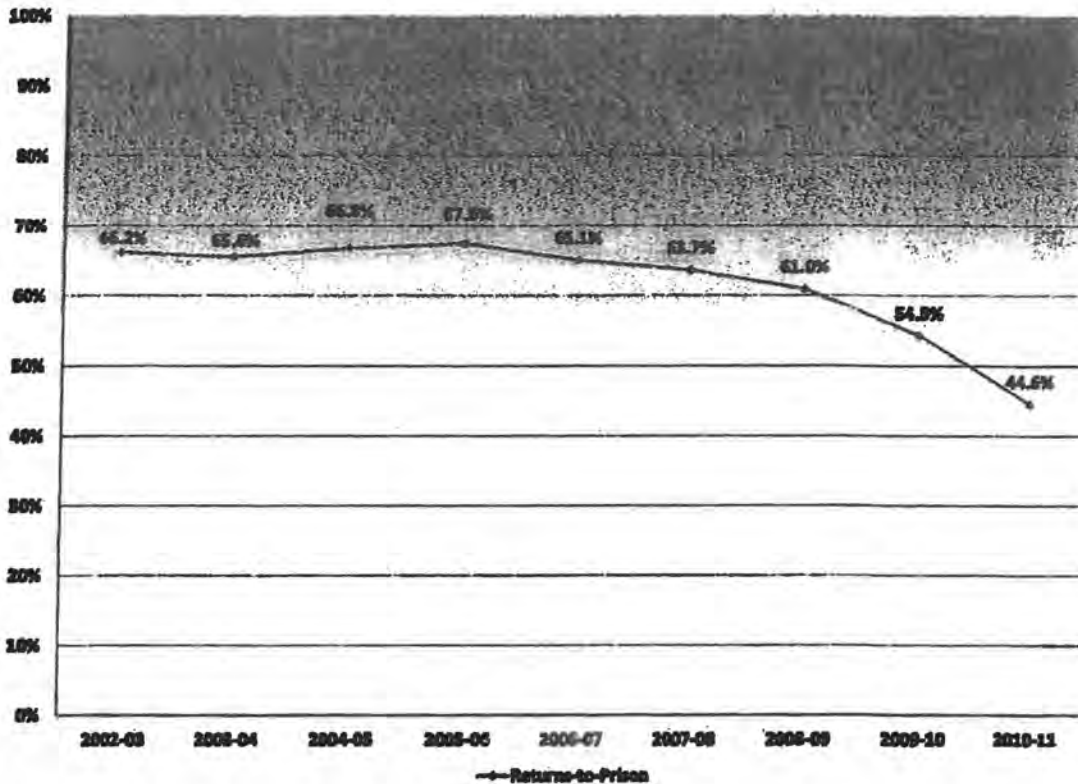


As shown in Figure B, the three-year return-to-prison rate decreased by 6.7 percentage points between Fiscal Years 2008-09 and 2009-10, followed by a drastic decline between Fiscal Years 2009-10 and 2010-11 (9.7 percentage points). Some of the decrease in the three-year return-to-prison rate is attributed to the implementation of the Public Safety Realignment Act (Realignment) in October 2011. Although each of the offenders in the Fiscal Year 2010-11 cohort were released pre-Realignment, Realignment was in effect for varying amounts of time during each offender's three-year follow-up period, contributing to a decline in the number of offenders returning for parole violations, which decreased by 7.6 percentage points between the Fiscal Year 2009-10 and 2010-11 release cohorts (37.9 percent and 30.3 percent of the total releases in each cohort, respectively), and accounted for some of the decrease in the three-year return-to-prison rate.

Impacts of Realignment were also observed in other types of return categories: returns for property crimes decreased 1.5 percentage points between Fiscal Years 2009-10 and 2010-11 (6.2 percent and 4.7 percent of the release cohorts, respectively) and returns for drug crimes decreased 1.1 percentage

points (4.5 percent and 3.4 percent of the release cohorts, respectively). Crimes against persons, which tend to be more serious and/or violent, increased slightly (0.4 of a percentage point) from 3.6 percent of the release cohort in Fiscal Year 2009-10 to 4 percent of the release cohort in Fiscal Year 2010-11. Realignment's impact on the number of offenders returning for parole violations and property and drug crimes is largely expected, as many parole violators and non-serious, non-violent, and non-sex registrant offenders now serve their sentences in county jail, rather than State prison. In future years, the number of offenders returning for property and drug crimes is expected to decline further due to the impacts of Proposition 47, which was passed in November 2014 and mandates a misdemeanor sentence, instead of a felony for some property and drug offenses.<sup>1</sup>

**Figure B. Three-Year Return-to-Prison Rate for Offenders Released in Fiscal Year 2002-03 through Fiscal Year 2010-11**



In addition to returns to prison, Appendix A examines arrests and convictions at one-, two-, and three-year intervals. With the implementation of Realignment and subsequent decreases in returns to prison for parole violations, a potentially offsetting increase in arrests and convictions was anticipated by some criminal justice experts. As shown in Appendix A, a slight increase in both arrests and convictions was observed following the immediate implementation of Realignment, however, the initial uptick in the one-year arrest and conviction rate was followed by a more substantial decrease. A further examination

<sup>1</sup> The Safe Neighborhoods and Schools Act full text version: [https://oag.ca.gov/system/files/initiatives/pdfs/130060%20\(130060%20\(Neighborhood%20and%20School%20Funding\)\).pdf](https://oag.ca.gov/system/files/initiatives/pdfs/130060%20(130060%20(Neighborhood%20and%20School%20Funding)).pdf)



of arrests and convictions among the Fiscal Year 2009-10 and Fiscal Year 2010-11 release cohorts (Appendix B) shows little change in the number of offenders arrested or convicted during the three-year follow-up period for drug crimes, property crimes, and crimes against persons. Although a longer follow-up period is needed to examine the full impact of Realignment, preliminary findings show that decreases in parole violations and the three-year return-to-prison rate have not been offset by a spike in arrests and convictions.

Similar to other cohorts examined by the CDCR, most offenders in the Fiscal Year 2010-11 release cohort returned to State prison within the first year of their release. Of the 42,661 offenders who returned to prison during the three-year follow-up period, 33 percent (14,093 offenders) returned within the first three months of their release and over half (58.8 percent or 25,085 offenders) returned within the first six months of their release. After one year of follow-up, 81.6 percent (34,810 offenders) of the 42,661 offenders who returned to prison during the three-year follow-up period, had returned.

The three-year return-to-prison rate for the 37,568 re-releases, offenders released after a parole violation, is substantially higher (60.9 percent or 22,884 offenders) than the 58,122 first releases, offenders released for the first time on their current term (34 percent or 19,777 offenders). Offenders with a serious offense also returned to State prison at a higher rate than other offenders; offenders with a serious offense had a three-year return-to-prison rate of 48.4 percent (6,418 offenders), violent offenders had a rate of 38.4 percent (4,091 offenders), and offenders without a serious or violent offense had a rate of 44.8 percent (32,152 offenders).

While a large portion of the release cohort was paroled to Los Angeles County (26 percent of the cohort or 24,904 offenders), Los Angeles County has one of the lowest three-year return-to-prison rates (32.3 percent) among all California counties. Los Angeles County also has the lowest rate among the top 12 counties with the largest number of CDCR releases. Three-year return-to-prison rates for each of California's counties are provided in Appendix D of this report.

An examination of the three-year return-to-prison rate based on offender demographics shows younger offenders return to State prison at higher rates than older offenders. In general, as the age of the offender increases, their likelihood of completing the three-year follow-up period without returning to prison also increases. Offenders ages 18 – 19 returned to prison at the highest rate (59.1 percent or 440 offenders) of all age groups, while offenders 60 and over returned to State prison at the lowest rate (31.1 percent or 573 offenders) of all age groups, a difference of 28 percentage points.

The Bureau of Justice Statistics (BJS) estimates that 69.2 percent of offenders in state prisons regularly used drugs prior to their incarceration and 56 percent used drugs in the month before committing their offense.<sup>2</sup> According to BJS, 53 percent of offenders in state prisons in the United States are estimated to meet the criteria for drug dependence or abuse, but only 15 percent of those offenders were reported to participate in drug treatment programs with a trained professional.<sup>3</sup> Empirical research shows that

<sup>2</sup> U.S. Department of Justice, Bureau of Justice Statistics "Special Report: Drug Use and Dependence, State and Federal Prisoners, 2004". p. 2, <http://www.bjs.gov/content/pub/pdf/dudsfp04.pdf>

<sup>3</sup> U.S. Department of Justice, Bureau of Justice Statistics "Special Report: Drug Use and Dependence, State and Federal Prisoners, 2004". p. 1 and p. 9, <http://www.bjs.gov/content/pub/pdf/dudsfp04.pdf>

participation in substance use treatment is associated with lower rates of future drug use and reoffending, demonstrating the importance of both in-prison substance abuse treatment and post-release aftercare.

The CDCR offenders who received in-prison substance abuse treatment (SAT) and/or aftercare demonstrate positive outcomes when compared to offenders who do not receive in-prison SAT or aftercare. Offenders who received in-prison SAT and completed aftercare (919 offenders) returned to State prison at a rate of 15.3 percent (or 141 offenders), while offenders who did not receive any form of in-prison SAT or aftercare (81,743 offenders) returned to prison at a rate of 46.5 percent (or 38,030 offenders), slightly above (1.9 percentage points) the overall three-year return-to-prison rate of 44.6 percent. The 31.2 percentage point difference between the two groups of offenders is one of the most remarkable differences observed in this report and suggests participation in SAT and completion of aftercare has a positive effect on the outcomes of offenders. As shown in the following sections of this report, offenders who received some form of in-prison SAT or aftercare, consistently returned to prison at lower rates (15.3 percent for offenders who participate in SAT and complete aftercare and 34.4 percent for offenders who participate in SAT and receive some aftercare) than the overall three-year return-to-prison rate of 44.6 percent and at a substantially lower rate than offenders who do not receive any form of in-prison SAT or aftercare (46.5 percent).

To enable comparison of reoffending rates among CDCR offenders over time, one-, two-, and three-year arrest, conviction, and return-to-prison rates are provided in Appendix A of this report. Appendix C contains the three-year return-to-prison rate by offender demographics and characteristics for the Fiscal Year 2009-10 and Fiscal Year 2010-11 release cohorts and finally, Appendix D contains the three-year return-to-prison rate by county of parole. The CDCR will continue to update and report arrest, conviction, and return-to-prison data with the goal of spurring discussion around the best possible ways to reduce returns to prison and better protect public safety.

## Key Findings

### Three-Year Return-to-Prison Rate

- Between July 1, 2010 and June 30, 2011 (Fiscal Year 2010-11), 95,690 offenders were released from California's State prisons. Of these offenders, 42,661 offenders returned to State prison within three years of their release for a three-year return-to-prison rate of 44.6 percent.
- The Fiscal Year 2010-11 rate (44.6 percent) is a 9.7 percentage point decrease from the Fiscal Year 2009-10 rate of 54.3 percent.
- Fiscal Year 2010-11 marks the fifth year in a row the three-year return-to-prison rate has decreased and also marks the most substantial decrease over the last five fiscal years.

### Type of Return and the Impact of Realignment

- Although all of the 95,690 offenders released in Fiscal Year 2010-11 were released pre-Realignment, Realignment was in effect for varying amounts of time during an offender's three-year follow-up period depending on their date of release.
- Some of the 9.7 percentage point decrease in the three-year return-to-prison rate between Fiscal Years 2009-10 and 2010-11 is attributed to a decrease in parole violations, which decreased 7.6 percentage points between Fiscal Years 2009-10 and 2010-11 (37.9 percent and 30.3 percent of the release cohorts, respectively).
- Returns for property crimes decreased 1.5 percentage points between Fiscal Years 2009-10 and 2010-11 (6.2 percent and 4.7 percent of the release cohorts, respectively) and returns for drug crimes decreased 1.1 percentage points (4.5 percent and 3.4 percent of the release cohorts, respectively). Crimes against persons, which tend to be more serious and/or violent, increased slightly (0.4 of a percentage point) from 3.6 percent of the release cohort in Fiscal Year 2009-10 to 4 percent of the release cohort in Fiscal Year 2010-11.
- As Realignment is in effect for longer amounts of time during each offender's follow-up period and as offenders continue to be released post-Realignment, the number of returns for parole violations is expected to decrease with future cohorts studied by the CDCR. With the passage of Proposition 47 in November 2014, continued decreases in drug and property crimes are also expected in future cohorts examined by the CDCR.

### Offender Outcomes by Offender Demographics

- **Male offenders comprised over 90 percent of the release cohort (90.5 percent or 86,571 offenders) and their three-year return-to-prison rate (46.4 percent) is 19.3 percentage points higher than female offenders (27.1 percent), who comprised 9.5 percent (9,119 female offenders) of the release cohort.**
- **Younger offenders returned to prison at higher rates than older offenders. Offenders ages 18 – 19 (0.8 percent of the release cohort or 744 offenders) returned to prison at the highest rate (59.1 percent) of any age group and offenders 60 and over (1.9 percent of the release cohort or 1,844 offenders) returned to prison at the lowest rate (31.1 percent) of any age group.**
- **Nearly 80 percent of the release cohort was released to 12 California counties. Los Angeles County had the largest number of releases (26 percent of the release cohort or 24,904 offenders) and had the lowest three-year return-to-prison rate (32.3 percent) among the 12 counties with the largest number of releases.**

### Offender Outcomes by Offender Characteristics

- **Offenders committed for property crimes (33.2 percent of the release cohort or 31,756 offenders) have the highest three-year return-to-prison rate (47.4 percent) of any commitment offense category, while offenders committed for drug crimes (25.5 percent of the release cohort or 24,445 offenders) have the lowest rate (40 percent) of any commitment offense category.**
- **Although the majority of offenders released (86.1 percent of the release cohort or 82,392 offenders) served a determinate sentence, offenders sentenced to an indeterminate sentence (lifers), who comprised less than one percent of the release cohort (398 offenders), have a substantially lower return-to-prison rate (6.3 percent) than those serving a determinate sentence (43.6 percent).**
- **Of the 392 lifers released by the Board of Parole Hearings (BPH), 0.8 percent returned to prison with a new term.**
- **The 8,989 offenders (9.4 percent of the release cohort) required to register as sex offenders (sex registrants) have a higher three-year return-to-prison rate (56.1 percent) than non-sex registrants (43.4 percent). Over 90 percent (4,579 returns) of the total returns to prison for sex registrants (5,041 returns) were for parole violations (90.8 percent).**
- **Offenders committed for an offense that was serious (13.9 percent of the release cohort or 13,268 offenders) returned to prison at a higher rate (48.4 percent), than offenders without a serious or violent offense (75 percent of the release cohort or 71,769 offenders) with a rate of 44.8 percent. Offenders committed for a violent offense (11.1 percent of the release cohort or 10,653 offenders) returned to prison at a rate of 38.4 percent.**

- **Offenders with a California Static Risk Score (CSRA) score of high (54.7 percent of the release cohort or 52,331 offenders) returned to prison at a higher rate (55.9 percent), than offenders with a score of moderate (26.2 percent of the release cohort or 25,108 offenders) with a rate of 35.9 percent, and offenders with a score of low (18.2 percent of the release cohort or 17,421 offenders) with a rate of 23.6 percent.**
- **For the second year in a row, offenders who received in-prison substance abuse treatment and completed aftercare (919 offenders), returned to prison at a substantially lower rate (15.3 percent) than the 81,743 offenders who did not receive substance abuse treatment (46.5 percent). Three-year return-to-prison rates show that offenders who receive in-prison substance abuse treatment and some form of aftercare consistently have lower rates of return than offenders who do not receive substance abuse treatment.**

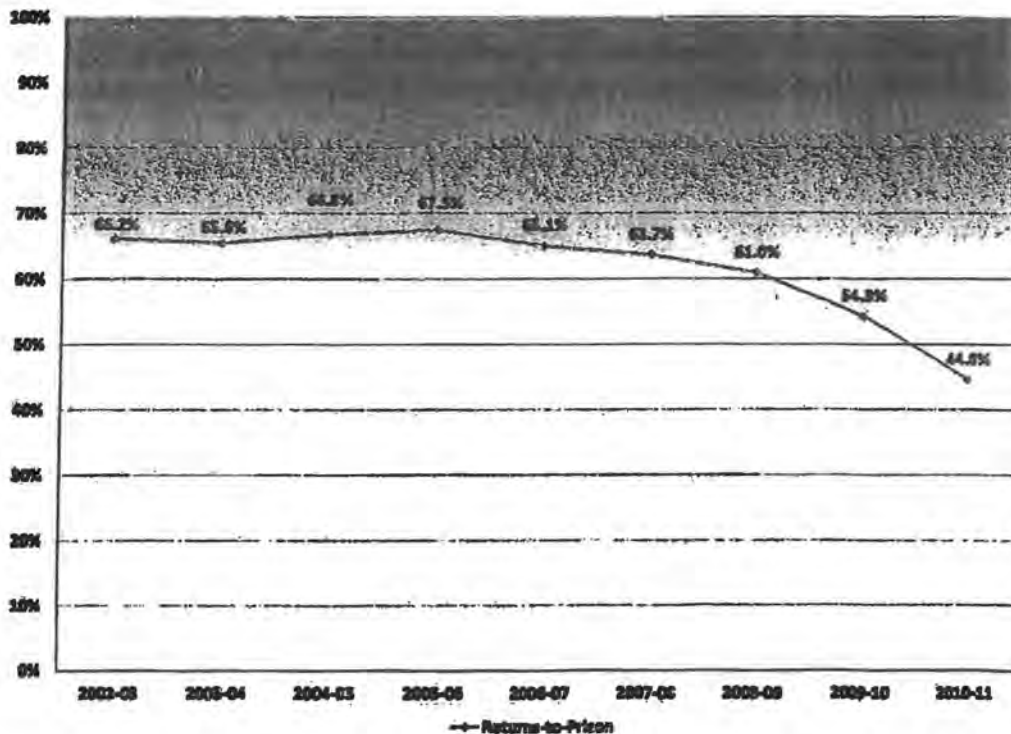
# California Department of Corrections and Rehabilitation 2015 Outcome Evaluation Report

## 1 Introduction

The California Department of Corrections and Rehabilitation (CDCR) presents the 2015 Outcome Evaluation Report, our sixth report in an annual series, which examines the return-to-prison rate of offenders released from California adult institutions during a given fiscal year. This year's report presents the three-year return-to-prison rate for the 95,690 offenders released from CDCR adult institutions between July 1, 2010 and June 30, 2011 (Fiscal Year 2010-11), in addition to arrest and conviction data. This report also provides return-to-prison rates by offender demographics (e.g. age, gender) and characteristics (e.g. commitment offense category, sentence type) to CDCR executives, lawmakers, and other correctional stakeholders with an interest in reoffending behavior and reducing recidivism among California's offender population.

The three-year return-to-prison rate for the 95,690 offenders released in Fiscal Year 2010-11 is 44.6 percent, a 9.7 percentage point decrease from the Fiscal Year 2009-10 rate of 54.3 percent. As shown in Figure A, the three-year return-to-prison rate has trended downward since the Fiscal Year 2005-06 release cohort, with the most substantial decreases occurring between Fiscal Years 2008-09 and 2009-10 (6.7 percentage points) and Fiscal Years 2009-10 and 2010-11 (9.7 percentage points).

**Figure A. Three-Year Return-to-Prison Rates for Offenders Released in Fiscal Year 2002-03 through Fiscal Year 2010-11**



For the first time since the CDCR began reporting the rate in Fiscal Year 2002-03, more offenders did not return to prison during the three-year follow-up period (55.4 percent of the release cohort or 53,029 offenders) than returned to State prison (44.6 percent of the release cohort or 42,661 offenders). The substantial decreases in the three-year return-to-prison rates over the last two fiscal years are largely attributed to Assembly Bill (AB) 109, California's Public Safety Realignment Act (Realignment), which requires most non-serious, non-violent, and non-sex registrant offenders be sentenced to county jail, rather than State prison. Realignment also changed the parole revocation process so that only offenders previously sentenced to a life-term can be revoked to prison and all other parole revocations are served in county jails. Returns to State prison for parole violations decreased 7.6 percentage points between Fiscal Year 2009-10 (37.9 percent of the release cohort) and Fiscal Year 2010-11 (30.3 percent of the release cohort), contributing to the decrease in the three-year return-to-prison rate of 44.6 percent.

Impacts of Realignment were also observed in other types of return categories: returns for property crimes decreased 1.5 percentage points between Fiscal Years 2009-10 and 2010-11 (6.2 percent and 4.7 percent of the release cohorts, respectively) and returns for drug crimes decreased 1.1 percentage points (4.5 percent and 3.4 percent of the release cohorts, respectively). Crimes against persons, which tend to be more serious and violent, increased slightly (0.4 of a percentage point) from 3.6 percent of the release cohort in Fiscal Year 2009-10 to 4 percent of the release cohort in Fiscal Year 2010-11. As intended by Realignment, decreases in parole violations and slight decreases in drug crimes and property crimes are expected, as many parole violators and non-serious, non-violent, and non-sex registrant offenders will serve their sentences in county jail, rather than State prison. Slight increases in crimes against persons may be observed as more serious and violent offenders are sentenced to and returned to State prison. The impact of Realignment on the types of returns to State prison are discussed in greater detail in the following sections of this report.

All of the offenders in the Fiscal Year 2010-11 cohort were released pre-Realignment and depending on their date of release, Realignment was in effect for varying amounts of time during the offenders' three-year follow-up period. Although the majority of the Fiscal Year 2011-12 cohort will be released post-Realignment, the Fiscal Year 2012-13 release cohort will be the first cohort where all offenders are released post-Realignment and a full three-year follow-up period will occur. At this time, the CDCR will be able to fully examine the impact of Realignment on CDCR offenders.

*Figure B. Three-Year Outcomes for Offenders Released from State Prison in Fiscal Year 2010-11*



## 2 Evaluation Design

### 2.1 Return-to-Prison Definition

The Board of State and Community Corrections (BSCC) defines recidivism as "conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction". The BSCC definition allows for other measures of recidivism, including supplemental measures. Supplemental measures of recidivism may include new arrests, returns to custody, criminal filings, or supervision violations. While arrest and conviction data are provided in the appendices of this report, the CDCR continues to use a supplemental measure, the three-year return-to-prison rate, as its primary measure of recidivism.

The three-year return-to-prison rate is defined as follows:

"An individual convicted of a felony<sup>4</sup> and incarcerated in a CDCR adult institution who was released to parole, discharged after being paroled, or directly discharged during Fiscal Year (FY) 2010-11 and subsequently returned to State prison<sup>5</sup> within three years of their release date."

The return-to-prison rate is calculated using the ratio of the number of offenders in the release cohort who returned to prison during the follow-up period, to the total number of offenders in the release cohort, multiplied by 100.

$$\text{Return-to-Prison Rate} = \frac{\text{Number Returned}}{\text{Release Cohort}} \times 100$$

Appendix A of this report provides supplemental recidivism rates using arrest and conviction data, in addition to returns to prison. Three-year rates for each of these supplemental measures are available for FY 2002-03 through 2010-11. One-year and two-year rates are available for FY 2011-12 and one-year rates for FY 2012-13.

### 2.2 Methods

This report provides return-to-prison rates at one-, two-, and three-year intervals for the 95,690 offenders released from CDCR's Division of Adult Institutions (DAI) between July 1, 2010 and June 30, 2011 (FY 2010-11). The release cohort includes; 1) Offenders who were directly discharged from CDCR; 2) Offenders who were released to parole for the first time on their current term; and 3) Offenders who were released to parole on their current term prior to FY 2010-11, returned to prison on this term, and were then re-released during FY 2010-11. Rates of return are further examined according to offender demographics (e.g. gender, age, race/ethnicity) and offender characteristics (e.g. commitment offense, sentence type).

<sup>4</sup> Due to reporting limitations, civil addicts are excluded.

<sup>5</sup> This may include individuals who returned to prison pending revocation, but whose cases are "continued on parole" or dismissed.



### 2.3 Data Sources

Data were extracted from the CDCR Strategic Offender Management System (SOMS), CDCR's system of record, to identify offenders released between July 1, 2010 and June 30, 2011 and to determine which released offenders returned to State prison during the three-year follow-up period.

Arrest and conviction data, included in the appendices of this report, were obtained from the Department of Justice (DOJ) Criminal Justice Information System (CJIS) and the California Law Enforcement Telecommunications System (CLETS).

### 2.4 Data Limitations

Data quality is important with all analyses performed by the CDCR's Office of Research. The intent of this report is to provide summary (aggregate) information, rather than individual information. The aggregate data are strong when a large number of records (releases) are available for analysis, but are less robust as subgroups are influenced by nuances associated with each case. Therefore, caution should be exercised when interpreting results associated with fewer records. Return-to-prison rates are only presented for offender releases (i.e. denominators) that are equal to or greater than 30.

Return-to-prison rates are fixed at three years, meaning the follow-up period is considered complete and no further analyses are performed. Arrests and conviction data presented in the appendices of this report may see slight fluctuations, particularly as the one-year and two-year rates are updated in subsequent reporting years. These data are routinely updated in accordance with criminal justice system processing. As data become available, subsequent reports will be updated.

The CDCR transitioned to SOMS in 2013 from CDCR's legacy system of record Offender Based Information Systems (OBIS), which included the integration of paper files into one automated system. As a result, CDCR data are more reliable and reporting is more comprehensive. As with any data system, data entry issues may cause data quality issues. The CDCR has implemented remedy processes and business rules to enhance the data contained within SOMS.

### 3 Description of FY 2010-11 Release Cohort

Between July 1, 2010 and June 30, 2011, 95,690 offenders were released from CDCR adult institutions. Of these offenders, 58,122 offenders (60.7 percent) were first releases and 37,568 offenders (39.3 percent) were re-releases. A first release refers to the first release on the current term for offenders with a new admission or offenders who returned for a parole violation with a new term. Any subsequent release on the same (current) term is a re-release. The following sections provide demographics and characteristics of the 95,690 offenders released during FY 2010-11 and comprise the 2015 Outcome Evaluation cohort.

#### 3.1 Offender Demographics

##### Gender

Of the 95,690 offenders released in FY 2010-11, 86,571 offenders were male (90.5 percent) and 9,119 offenders were female (9.5 percent).

##### Age at Release

Offenders ages 25 – 29 comprised the largest number of releases (19.4 percent or 18,550 offenders) in FY 2010-11, followed by offenders ages 30 – 34 (17.1 percent or 16,401 offenders) and offenders ages 35 – 39 (13.1 percent or 12,528 offenders). Offenders ages 18 – 19 comprised the smallest number of releases (0.8 percent or 744 offenders), followed by offenders ages 60 and over (1.9 percent or 1,844 offenders). Nearly 90 percent of the releases (87 percent) were between the ages of 20 to 49.

##### Race/Ethnicity

Nearly 40 percent of the FY 2010-11 release cohort (38.9 percent or 37,190 offenders) were Hispanic/Latino, followed by White (29.6 percent or 28,323 offenders), and Black/African American (26.4 percent or 25,238 offenders). Over 3 percent (3.1 percent or 3,008 offenders) belonged to the other race/ethnicity category, 1.1 percent (1,063 offenders) were American Indian/Alaskan Native, and 0.9 percent (868 offenders) were Asian/Pacific Islander.

##### County of Parole

Twenty-six percent (24,904 offenders) of the FY 2010-11 cohort were released to Los Angeles County, followed by San Bernardino County (8.4 percent or 8,018 offenders), and Orange County (7.1 percent or 6,804 offenders). Nearly 80 percent (79.6 percent or 76,215 offenders) were released to the 12 counties presented in Table 1, 19.2 percent (18,367 offenders) were released to all other California counties, and 1.2 percent (1,108 offenders) were directly discharged.

**Table 1. Demographics of Offenders Released in Fiscal Year 2010-11**

Demographics		Number	Percent
<b>Total</b>		95,690	100.0%
<b>Release Type</b>			
	First Release	58,122	60.7%
	Re-Release	37,568	39.3%
<b>Gender</b>			
	Male	85,571	90.5%
	Female	9,119	9.5%
<b>Age at Release</b>			
	18 - 19	744	0.8%
	20 - 24	12,666	13.2%
	25 - 29	18,550	19.4%
	30 - 34	16,401	17.1%
	35 - 39	12,528	13.1%
	40 - 44	12,390	12.9%
	45 - 49	10,716	11.2%
	50 - 54	6,865	7.2%
	55 - 59	2,986	3.1%
	60 and over	1,844	1.9%
<b>Race/Ethnicity</b>			
	Hispanic/Latino	37,190	38.9%
	White	28,323	29.6%
	Black/African American	25,238	26.4%
	American Indian/Alaskan Native	1,063	1.1%
	Asian/Pacific Islander	898	0.9%
	Other	3,008	3.1%
<b>County of Parole</b>			
	Los Angeles County	24,904	26.0%
	San Bernardino County	8,018	8.4%
	Orange County	6,804	7.1%
	San Diego County	6,491	6.7%
	Riverside County	6,201	6.5%
	Sacramento County	5,698	6.0%
	Alameda County	4,022	4.2%
	Fresno County	3,699	3.9%
	Kern County	3,681	3.8%
	San Joaquin County	2,363	2.5%
	Santa Clara County	2,776	2.9%
	Stanislaus County	1,618	1.7%
	All Others	19,475	20.4%
	None (Direct Discharge)	1,108	1.2%

### 3.2 Offender Characteristics

#### Commitment Offense

Nearly a third (33.2 percent or 31,756 offenders) of the FY 2010-11 release cohort were committed for property crimes, followed by crimes against persons (30 percent or 28,732 offenders), and drug crimes (25.5 percent or 24,445 offenders). Over 10 percent (11.2 percent or 10,757 offenders) were committed for other crimes.

#### Sentence Type

The majority of offenders released (86.1 percent or 82,392 offenders) served a determinate sentence. An additional 13.5 percent (12,900 offenders) served a determinate sentence as second strikers. A small portion of the release cohort (0.4 percent or 398 offenders) served an indeterminate sentence (lifers).

#### Sex Registration Requirement

Less than 10 percent of the release cohort (9.4 percent or 8,989 offenders) were required to register as sex offenders. Over 90 percent (90.6 percent or 86,701 offenders) did not have a sex registration requirement.

#### Serious/Violent Offenders

The majority of offenders released (75 percent or 71,769 offenders) do not have a serious or violent offense, 13.9 percent (13,268 offenders) had a serious offense, and 11.1 percent (10,653 offenders) had a violent offense.

#### Mental Health Status

Most offenders (82.2 percent or 78,705 offenders) did not have a mental health designation. Of those with a mental health designation, 15 percent (14,385 offenders) were assigned to the Correctional Clinical Case Management System, and 2.5 percent (2,422 offenders) were assigned to the Enhanced Outpatient Program. Less than one percent of offenders were assigned to a Mental Health Crisis Bed (119 offenders) or the Department of Mental Health (59 offenders).

### CSRA Risk Score

The majority of offenders (54.7 percent or 52,331 offenders) had a California Static Risk Score (CSRA) score of high, followed by 26.2 percent (25,108 offenders) with a score of moderate, and 18.2 percent (17,421 offenders) with a score of low. Less than one percent of the release cohort (0.9 percent or 830 offenders) did not have a CSRA score.

### Length of Stay

Of the 95,690 offenders released, 43.9 percent (42,018 offenders) had a length of stay of six months or less, 26.7 percent (25,592 offenders) had a stay of 7 – 12 months, and 9.5 percent (9,056 offenders) had a stay of 13 – 18 months. The number of offenders in each length of stay category decreases (with the exception of 5 – 10 years) as the length of stay increases. Less than one percent (0.5 percent or 474 offenders) had a length of stay of 15 years or longer.

### Prior Returns to Custody

Of the total offenders released, 60.7 percent (58,057 offenders) did not have a prior return to custody on their current term, prior to release. Over 16 percent (16.1 percent or 15,431 offenders) had one prior return to custody on their current term, followed by 8.4 percent (7,997 offenders) with two prior returns on their current term. In general, the number of offenders decreases as the number of prior returns to custody increases.

### Number of CDCR Stays Ever

Of the 95,690 offenders released, 27.6 percent (26,426 offenders) had one stay at a CDCR institution, followed by 13.4 percent (12,837 offenders) with two stays at a CDCR institution, and 9.6 percent (9,182 offenders) with three stays. The number of offenders in each category decreases as the number of stays increases, with the exception of 15 or more stays (6.6 percent or 6,338 offenders).

Table 2. Characteristics of Offenders Released in Fiscal Year 2010-11

Characteristics	Number	Percent
<b>Commitment Offense Category</b>		
Property Crimes	31,756	33.2%
Crimes Against Persons	28,732	30.0%
Drug Crimes	24,445	25.5%
Other Crimes	10,757	11.2%
<b>Sentence Type</b>		
Determinate Sentencing Law	82,392	86.1%
Second Strikers (Determinate Sentencing Law)	12,900	13.5%
Lifers (Indeterminate Sentencing Law)	398	0.4%
<b>Sex Registration Requirement</b>		
No	86,701	90.6%
Yes	8,989	9.4%
<b>Serious and/or Violent Offenders</b>		
Serious	19,268	19.9%
Violent	10,653	11.1%
Non-Serious/Non-Violent	71,769	75.0%
<b>Mental Health Status</b>		
Correctional Clinical Case Management System	14,385	15.0%
Enhanced Outpatient Program	2,422	2.5%
Department of Mental Health	59	0.1%
Mental Health Crisis Bed	119	0.1%
None/No Mental Health Code	78,705	82.2%
<b>CSRA Risk Score</b>		
Low	17,421	18.2%
Moderate	25,108	26.2%
High	52,331	54.7%
N/A	830	0.9%
<b>Length of Stay</b>		
Less than 6 Months	42,018	43.9%
7 - 12 months	25,592	26.7%
13 - 18 months	9,056	9.5%
19 - 24 months	5,579	5.8%
2 - 3 years	5,350	5.6%
3 - 4 years	2,567	2.7%
4 - 5 years	1,583	1.7%
5 - 10 years	2,552	2.7%
10 - 15 years	919	1.0%
15 + years	474	0.5%

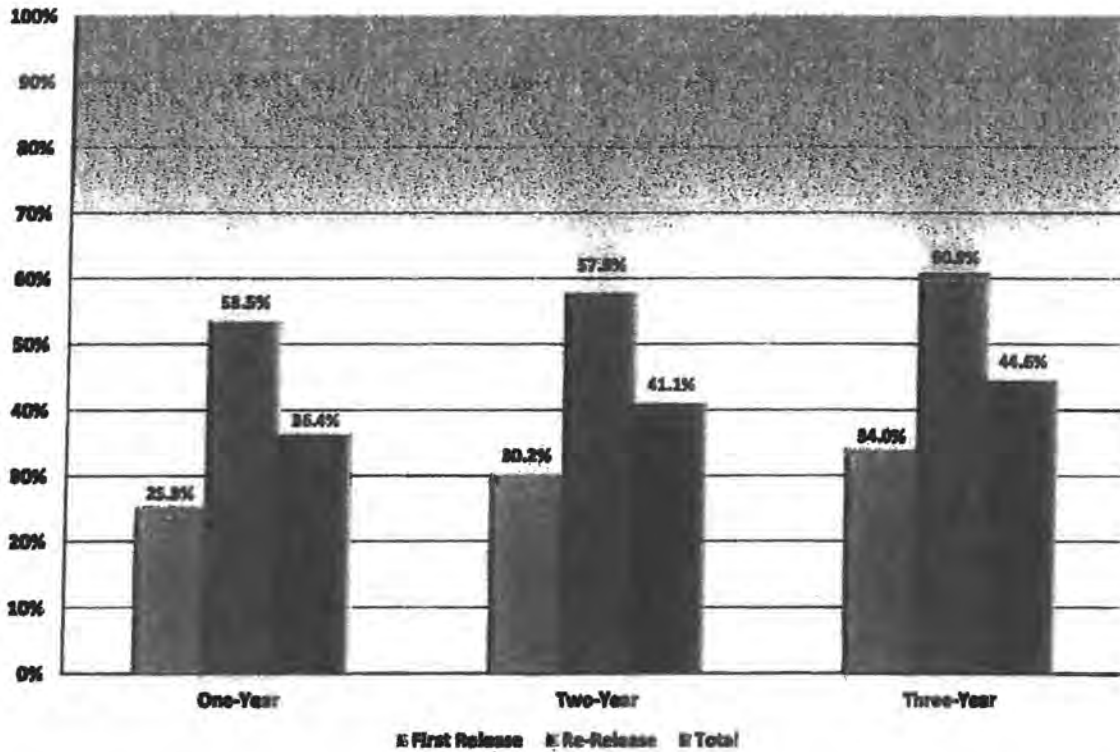
**Table 2. Characteristics of Offenders Released In FY 2010-11 (continued)**

<b>Characteristics</b>		<b>Number</b>	<b>Percent</b>
<b>Prior Returns to Custody</b>			
	0	58,057	60.7%
	1	15,431	16.1%
	2	7,997	8.4%
	3	5,116	5.3%
	4	3,412	3.6%
	5	2,230	2.3%
	6	1,380	1.4%
	7	889	0.9%
	8	538	0.6%
	9	265	0.3%
	10+	375	0.4%
<b>Number of CDCR Stays Ever</b>			
	1	26,426	27.6%
	2	12,837	13.4%
	3	9,182	9.6%
	4	7,658	8.0%
	5	6,376	6.7%
	6	5,303	5.5%
	7	4,432	4.6%
	8	3,734	3.9%
	9	3,188	3.3%
	10	2,826	3.0%
	11	2,296	2.4%
	12	2,072	2.2%
	13	1,613	1.7%
	14	1,409	1.5%
	15 +	6,338	6.6%

## 4 Three-Year Return-to-Prison Rate

### 4.1 Overall Return-to-Prison Rates for the FY 2010-11 Release Cohort

**Figure 1. Return-to-Prison Rates for First Releases, Re-Releases, and the Total FY 2010-11 Release Cohort**



The three-year return-to-prison rate for the 95,690 offenders released in FY 2010-11 is 44.6 percent. The largest number of offenders were returned within the first year following their release from State prison (34,810 offenders or 36.4 percent). In the second year of follow-up, an additional 4,521 offenders returned to State prison for a total of 39,331 offenders or 41.1 percent of the release cohort. In the third and final year of follow-up, an additional 3,330 offenders returned to State prison for a total of 42,661 offenders and a three-year return-to-prison rate of 44.6 percent.

As shown in the above figure and below table, re-releases return to State prison at substantially higher rates than first releases. Of the 37,568 re-releases, 60.9 percent returned to State prison within three years of their release. Of the 58,122 first releases, 34 percent returned to State prison within three years of their release. This pattern is consistent with other release cohorts examined by the CDCR. The three-year return-to-prison rate for the FY 2009-10 release cohort was 69 percent for re-releases and 44.1 percent for first releases (Appendix C).



**Table 3. Return-to-Prison Rates for First-Releases, Re-Releases, and the Total FY 2010-11 Release Cohort**

Release Type	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
First Release	58,122	14,702	25.3%	17,575	30.2%	19,777	34.0%
Re-Release	37,568	20,108	53.5%	21,756	57.9%	22,884	60.9%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

4.2 Time to Return

**Figure 2. Three-Year Quarterly and Cumulative Rate of Return for the 42,661 Offenders Returning to Prison during the Three-Year Follow-Up Period**

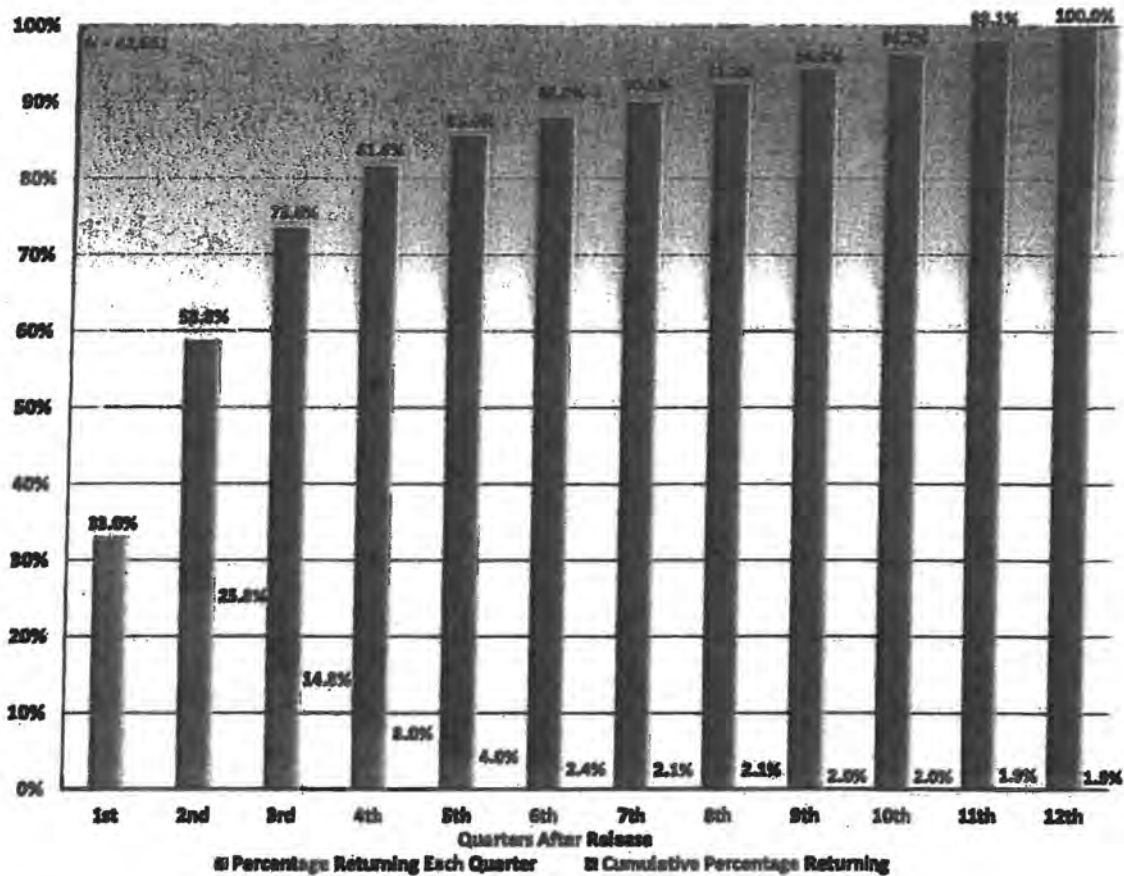


Figure 2 and Table 4 show the percentage of offenders who returned to prison during each quarter (three month period) over the three-year follow-up period, as well as the cumulative percentage of offenders who returned to prison each quarter over the three-year follow-up period. In order to examine how long offenders are in the community before recidivating, only the 42,661 offenders who returned to prison are represented in this section. The 12<sup>th</sup> quarter represents the final, cumulative results (i.e. 100 percent) of the 42,661 offenders that returned to prison.

Of the 42,661 offenders who returned to prison during the three-year follow-up period, nearly a third (33 percent) returned to prison during the first quarter following their release. Following the first quarter, the percentage of offenders returned during any subsequent quarter decreases. Over half (58.8 percent) of those who returned to prison were returned after being in the community for six or fewer months. Together, 81.6 percent of the offenders who returned to prison during the three-year follow-up period were returned within 12 months of release. Very few offenders (less than 2 percent of those returned) were returned during the final two quarters of the three-year follow-up period. These results

are consistent with other release cohorts examined by the Department; the majority of offenders who return to State prison are returned within the first year of their release.

**Table 4. Three-Year Quarterly and Cumulative Rate of Return for the 42,661 Offenders Returning to Prison during the Three-Year Follow-Up Period**

Quarters After Release	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
Percentage Returning	33.0%	25.8%	14.8%	8.0%	4.0%	2.4%	2.1%	2.1%	2.0%	2.0%	1.9%	1.9%
Cumulative Percentage	33.0%	58.8%	73.6%	81.6%	85.6%	88.0%	90.1%	92.2%	94.2%	96.2%	98.1%	100.0%

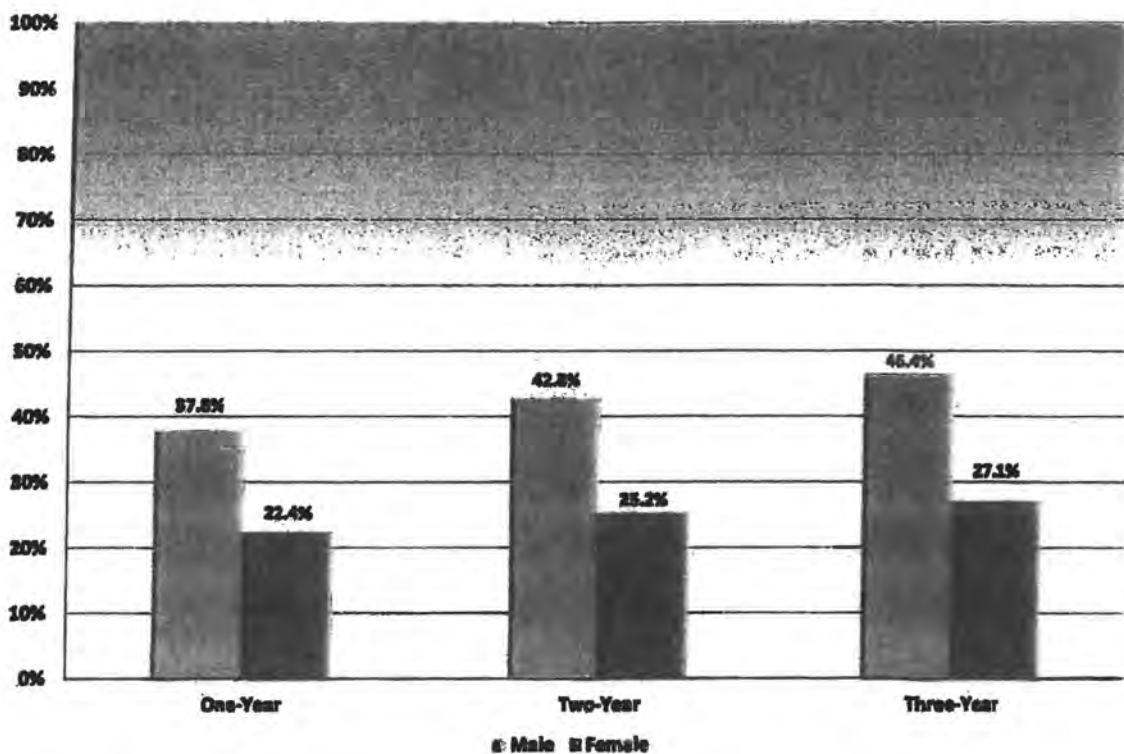
## 5 Return-to-Prison Rates by Offender Demographics and Characteristics

The following section presents one-year, two-year, and three-year return-to-prison rates for the 95,690 offenders released during FY 2010-11, by offender demographics (e.g. gender, age, race/ethnicity) and offender characteristics (e.g. release type, commitment offense category, mental health designation). Appendix C provides a comparison of the three-year return-to-prison rate by offender demographics and characteristics for the FY 2009-10 and the FY 2010-11 release cohorts.

### 5.1 Return-to-Prison Rates by Offender Demographics

#### 5.1.1 Gender

**Figure 3. Return-to-Prison Rates by Gender**



Of the 95,690 offenders released in FY 2010-11, the vast majority (86,571 offenders or 90.5 percent) were male and 9,119 offenders (9.5 percent) were female. Male offenders returned to State prison at a substantially higher rate after three years of follow-up than female offenders (46.4 percent and 27.1 percent, respectively). As shown in the above figure and below table, the three-year return-to-prison rate for male offenders is 19.3 percentage points higher than the rate of female offenders.

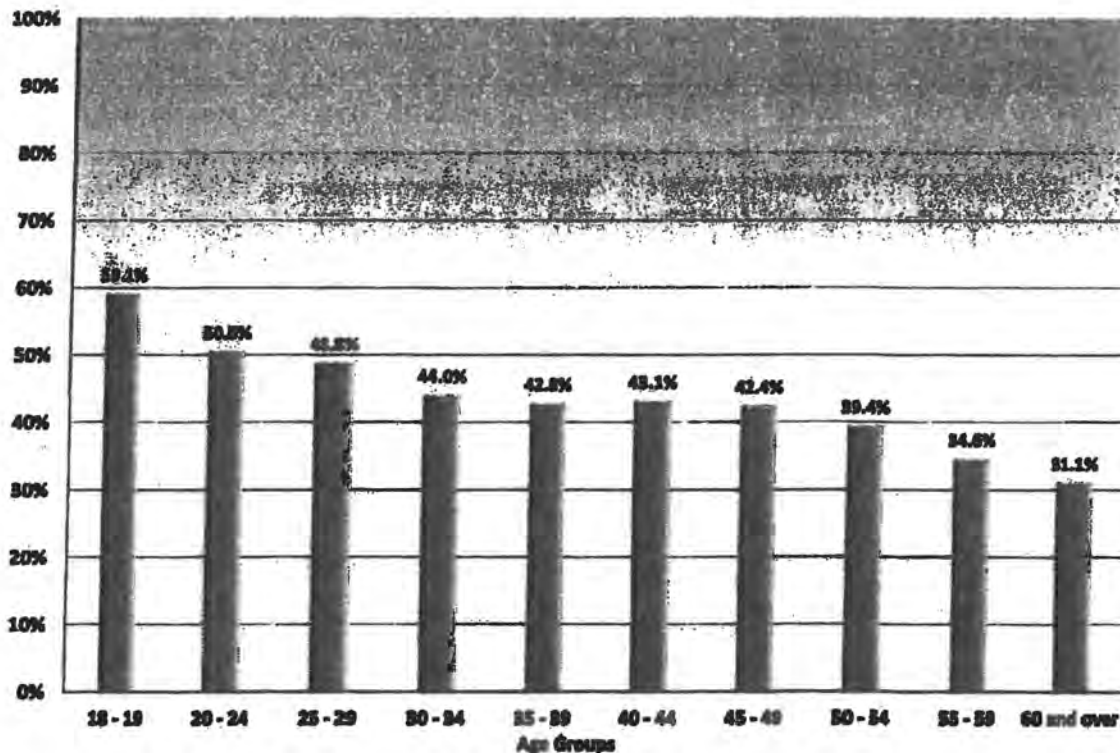
Both male and female offenders experienced a decline in their three-year return-to-prison rate between FY 2009-10 and FY 2010-11. As shown in Appendix C, the three-year return-to-prison rate decreased by 9.9 percentage points for male offenders between FY 2009-10 and FY 2010-11 (56.3 percent and 46.4 percent, respectively) and for female offenders, the three-year return-to-prison rate decreased by 10.3 percentage points (37.4 percent and 27.1 percent, respectively) between FY 2009-10 and FY 2010-11.

*Table 5. Return-to-Prison Rates by Gender*

Gender	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Male	86,571	32,766	37.8%	37,029	42.8%	40,193	46.4%
Female	9,119	2,044	22.4%	2,302	25.2%	2,468	27.1%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

### 5.1.2 Age at Release

Figure 4. Three-Year Return-to-Prison Rate by Age at Release



Similar to other release cohorts observed by the CDCR, younger offenders (ages 18 – 24) returned to prison at higher rates than other age groups. While offenders ages 18 – 19 comprised a small portion of the release cohort (744 offenders or 0.8 percent), their three-year return-to-prison rate (59.1 percent) is higher than any other age group. Offenders ages 20 – 24 had a three-year return-to-prison rate of 50.5 percent and offenders ages 25 – 29 had a three-year return-to-prison rate of 48.8 percent. The return-to-prison rate continues to decrease as the age of the offender increases, with the exception of offenders ages 40 – 44, when the rate increases by 0.3 of a percentage point. Offenders ages 60 and over had the lowest return-to-prison rate among all age groups at 31.1 percent (or 573 offenders).

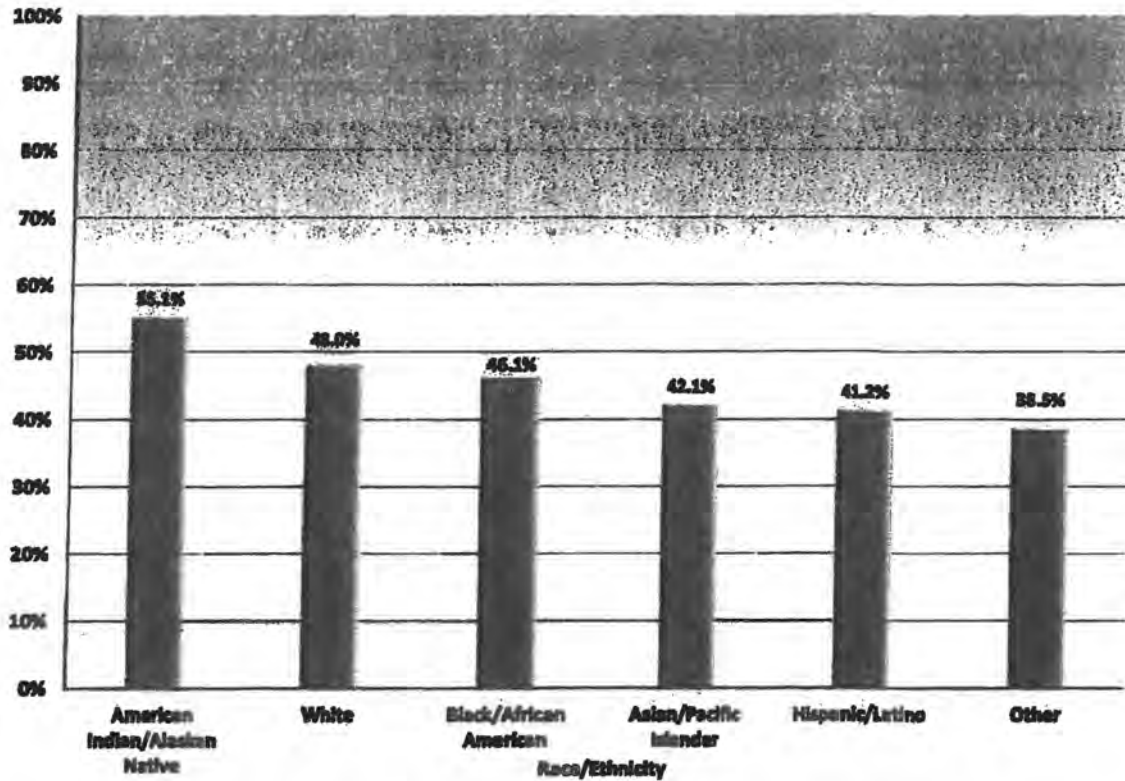
When compared to the FY 2009-10 release cohort, each age group saw a decline in the three-year return-to-prison rate. Offenders ages 20 – 24 saw the largest decrease in the three-year return-to-prison rate (10.8 percentage points) among any age group between FY 2009-10 and FY 2010-11 (61.3 percent and 50.5 percent, respectively). The smallest decrease (7 percentage points) in the three-year return-to-prison rate was observed in offenders ages 60 and over (38.1 percent and 31.1 percent, respectively) between FY 2009-10 and FY 2010-11 (Appendix C).

**Table 6. Return-to-Prison Rates by Age at Release**

Age Groups	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
18 - 19	744	396	45.2%	401	53.9%	440	59.1%
20 - 24	12,666	5,044	39.8%	5,841	46.1%	6,400	50.5%
25 - 29	18,550	7,304	39.4%	8,315	44.8%	9,052	48.8%
30 - 34	16,401	5,764	35.1%	6,616	40.3%	7,217	44.0%
35 - 39	12,528	4,429	35.4%	4,931	39.4%	5,357	42.8%
40 - 44	12,390	4,467	36.1%	4,967	40.1%	5,342	43.1%
45 - 49	10,716	3,802	35.5%	4,237	39.5%	4,543	42.4%
50 - 54	6,865	2,291	33.4%	2,524	36.8%	2,705	39.4%
55 - 59	2,986	867	29.0%	955	32.0%	1,032	34.6%
60 and over	1,844	506	27.4%	544	29.5%	573	31.1%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

### 5.1.3 Race/Ethnicity

**Figure 5. Return-to-Prison Rates by Race/Ethnicity**



The above figure and below table show return-to-prison rates by race/ethnicity. Although American Indian/Alaskan Native offenders comprised a small number of releases (1,063 offenders or 1.1 percent of the release cohort) their three-year return-to-prison rate is the highest (55.1 percent) among all race/ethnicity categories. The rate for American Indian/Alaskan Native offenders (55.1 percent) was followed by White offenders (48 percent), Black/African American offenders (46.1 percent), Asian or Pacific Islander offenders (42.1 percent), and Hispanic offenders (41.2 percent). The three-year return-to-prison rate for other offenders was 38.5 percent.

The three-year return-to-prison rate decreased for each race/ethnicity category between FY 2009-10 and FY 2010-11. Black/African American offenders saw the largest decrease at 12.3 percentage points (58.5 percent and 46.1 percent, respectively) and Asian/Pacific Islander offenders saw the smallest decrease at 3.9 percentage points (46 percent and 42.1 percent, respectively) between FY 2009-10 and FY 2010-11 (Appendix C).



*Table 7. Return-to-Prison Rates by Race/Ethnicity*

Race/Ethnicity	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
American Indian/Alaskan Native	1,063	495	46.6%	552	51.9%	586	55.1%
White	28,323	11,535	40.7%	12,728	44.9%	13,586	48.0%
Black/African American	25,238	9,370	37.1%	10,693	42.4%	11,644	46.1%
Asian/Pacific Islander	868	293	33.8%	327	37.7%	365	42.1%
Hispanic/Latino	37,190	12,115	32.6%	13,956	37.5%	15,321	41.2%
Other	3,008	1,002	33.3%	1,075	35.7%	1,159	38.5%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,381</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.1.4 County of Parole

Figure 6. Return-to-Prison Rates by County of Parole

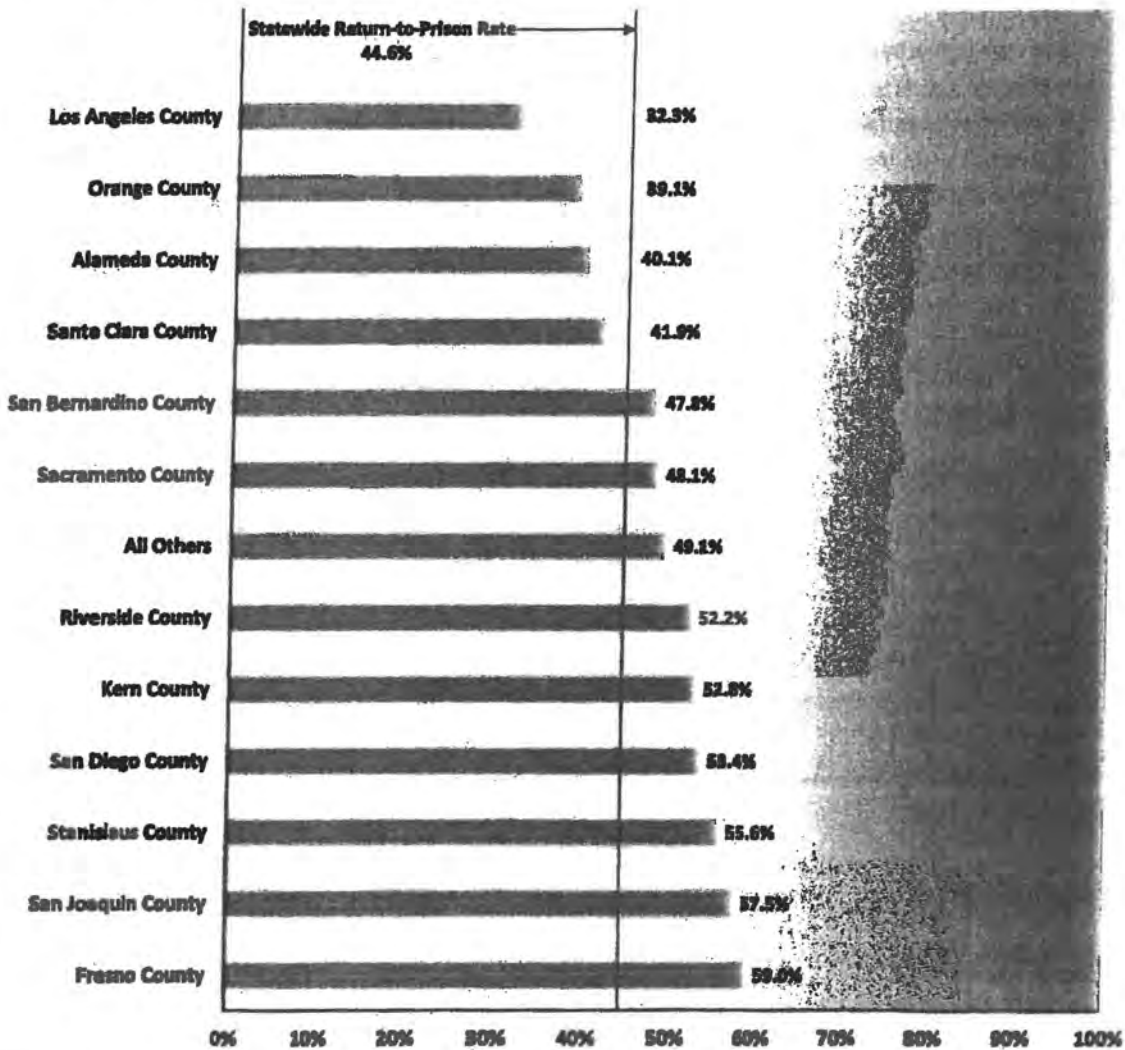


Figure 6 and Table 8 show return-to-prison rates for the 12 counties with the largest number of releases. Together, these 12 counties account for nearly 80 percent (79.6 percent or 76,215 offenders) of the offenders released in FY 2010-11. Approximately 20 percent (20.4 percent) were released to the remaining 46 California counties (all others) or were directly discharged. Three-year return-to-prison data for all other counties are presented in Appendix D of this report.

Los Angeles County had the largest number of releases (24,904 offenders) in FY 2010-11, accounting for 26 percent of the total releases. Los Angeles County also has the lowest three-year return-to-prison rate (32.3 percent) among the top 12 counties with the largest number of releases, followed by Orange County (39.1 percent), and Alameda County (40.1 percent). Among the top 12 counties with the largest

number of releases, Fresno County has the highest return-to-prison rate (59 percent) among the top 12 counties, followed by San Joaquin County (57.5 percent), and Stanislaus County at (55.6 percent).

The number of offenders released to Los Angeles County (24,904 offenders or 20.4 percent of the release cohort) and the low three-year return-to-prison rate (32.3 percent) are factors which drive the overall three-year return-to-prison rate downward. When Los Angeles County is excluded from the examination, the State's three-year return-to-prison rate is 48.9 percent or 4.3 percentage points higher than the State's actual three-year return-to-prison rate of 44.6 percent.

Between FY 2009-10 and FY 2010-11 each of the top 12 counties with the largest number of releases saw a decrease in the three-year return-to-prison rate. Santa Clara County saw the largest decrease (13.1 percentage points), followed by San Bernardino County (12 percentage points), and Alameda County (11.5 percentage points). Orange County had the smallest decrease among the top 12 counties (5.6 percentage points), followed by Sacramento (5.7 percentage points), and Fresno (7.4 percentage points). A comparison of the three-year return-to-prison rate between the two fiscal years for each county is provided in Appendix C of this report.

The above data should be interpreted with caution because offenders may leave the county to which they were paroled, or offenders may be returned to prison in a county other than their county of parole. When an offender returns to prison in a county other than their county of parole, the return is still counted in the county to which they were paroled. Additionally, a small number of offenders (1,108 offenders or 1.2 percent of the release cohort) were directly discharged from State prison and have a low three-year return-to-prison rate (22.3 percent). One-year, two-year, and three-year return-to-prison rates for direct discharges and all California counties may be found in Appendix D of this report.

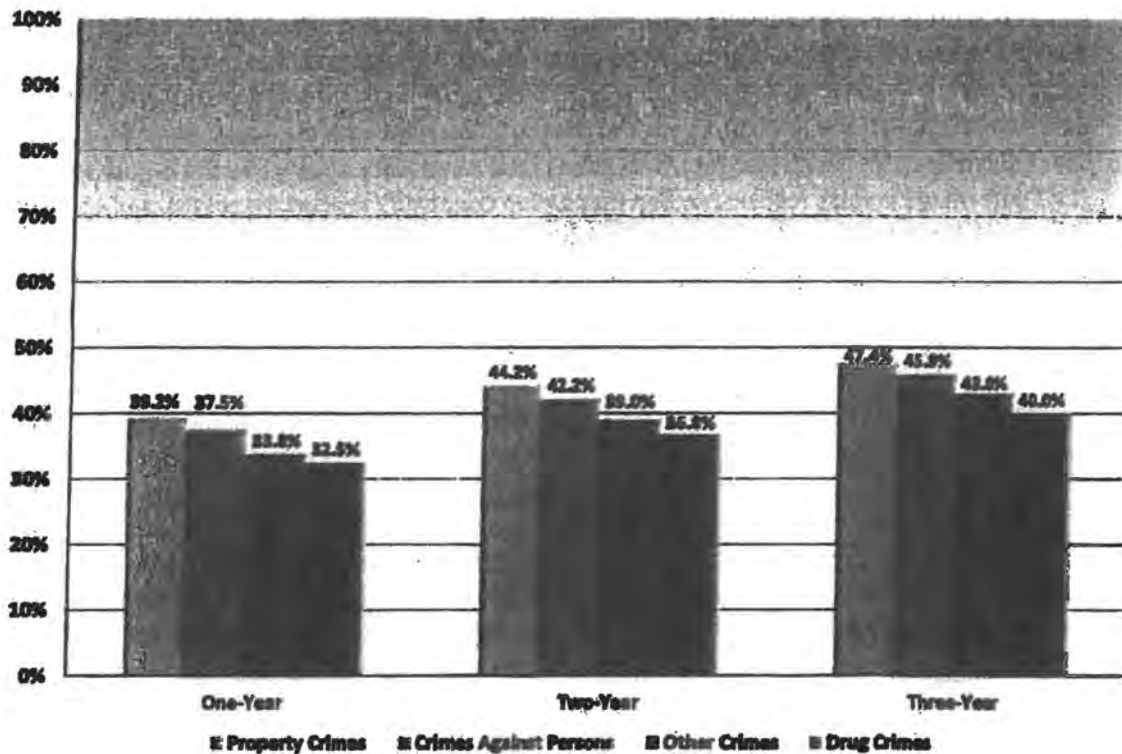
*Table 8. Return-to-Prison Rates by County of Parole*

County of Parole	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Fresno County	3,699	1,958	52.9%	2,086	56.4%	2,184	59.0%
San Joaquin County	2,363	1,191	50.4%	1,280	54.2%	1,358	57.5%
Stanislaus County	1,618	778	48.1%	846	52.3%	900	55.6%
San Diego County	6,431	2,956	46.0%	3,240	50.4%	3,434	53.4%
Kern County	3,681	1,620	44.0%	1,805	49.0%	1,944	52.8%
Riverside County	6,201	2,721	43.9%	2,997	48.3%	3,237	52.2%
Sacramento County	5,698	2,388	41.9%	2,584	45.3%	2,739	48.1%
San Bernardino County	8,018	3,123	38.9%	3,548	44.3%	3,836	47.8%
Santa Clara County	2,776	977	35.2%	1,093	39.4%	1,164	41.9%
Alameda County	4,022	1,448	36.0%	1,549	38.5%	1,612	40.1%
Orange County	6,804	2,253	33.1%	2,498	36.7%	2,658	39.1%
Los Angeles County	24,904	5,229	21.0%	6,807	27.3%	8,032	32.3%
All Others	19,475	8,168	41.9%	8,998	46.2%	9,563	49.1%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

## 5.2 Return-to-Prison Rates by Offender Characteristics

### 5.2.1 Commitment Offense Category

**Figure 7. Return-to-Prison Rates by Commitment Offense Category**



The above figure and below table show the three-year return-to-prison rate by the offense an offender was committed to prison for (commitment offense category). Offenders committed for property crimes have the highest three-year return-to-prison rate of all commitment offense categories at 47.4 percent, followed by crimes against persons (45.9 percent), other crimes (43 percent), and drug crimes (40 percent). Offenders committing property crimes and crimes against persons comprise the largest number of releases (31,756 offenders and 28,732 offenders, respectively), followed by drug crimes (24,445 offenders), and other crimes (10,757 offenders).

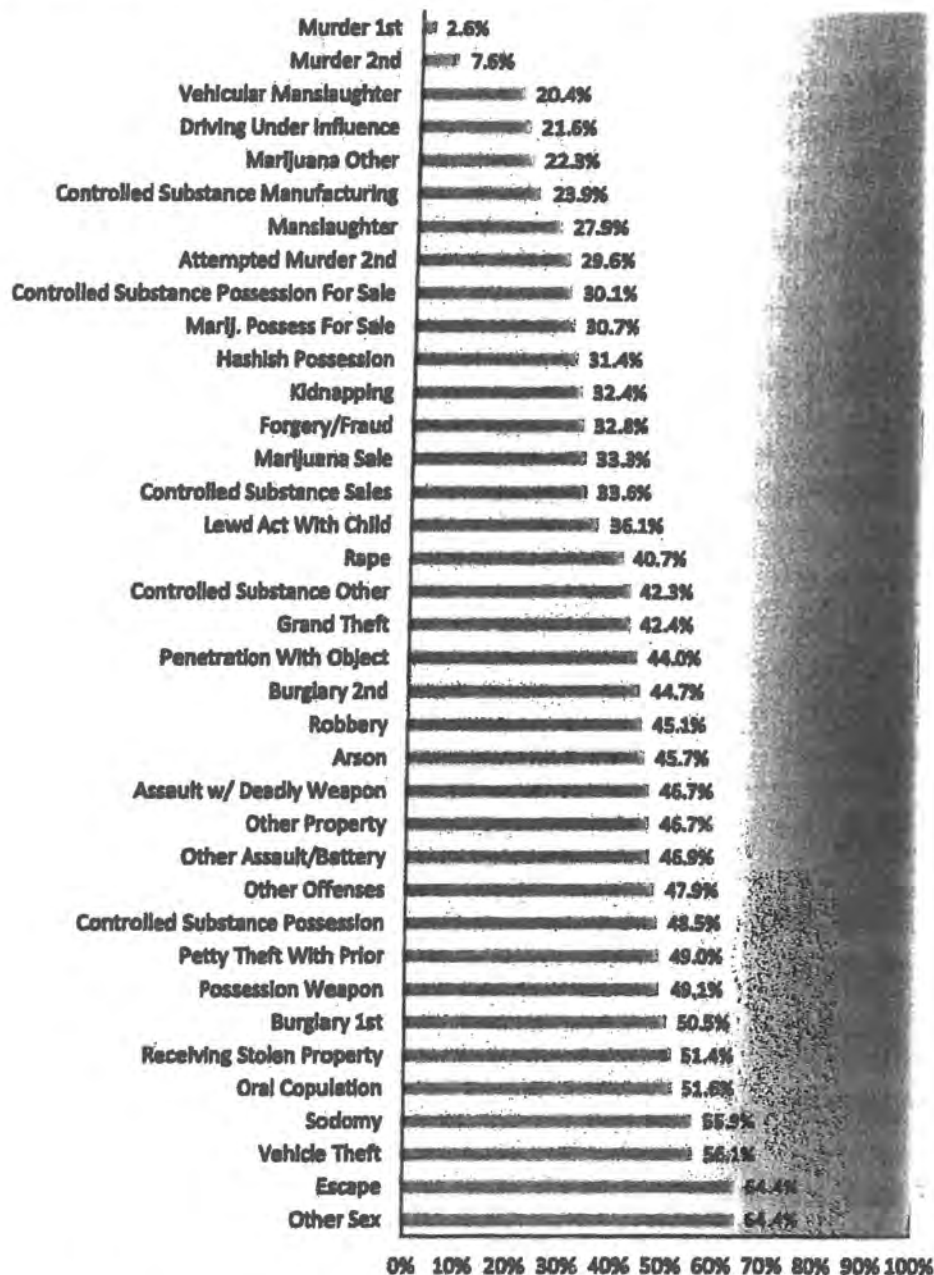
The three-year return-to-prison rate decreased for each commitment offense category between FY 2009-10 and FY 2010-11 (Appendix C). Property crimes saw the largest decrease (10.7 percentage points), between the two fiscal years (58.1 percent and 47.4 percent, respectively). Between FY 2009-10 and FY 2010-11, crimes against persons decreased by 9.5 percentage points (55.5 percent and 45.9 percent, respectively), as did drug crimes (49.5 percent and 40 percent, respectively). Between the two fiscal years, other crimes decreased by 9.3 percentage points (52.4 percent and 43 percent, respectively).

*Table 9. Return-to-Prison Rates by Commitment Offense Category*

<b>Commitment Offense Category</b>	<b>Number Released</b>	<b>One-Year</b>		<b>Two-Year</b>		<b>Three-Year</b>	
		<b>Number Returned</b>	<b>Return Rate</b>	<b>Number Returned</b>	<b>Return Rate</b>	<b>Number Returned</b>	<b>Return Rate</b>
Property Crimes	31,756	12,455	39.2%	14,030	44.2%	15,048	47.4%
Crimes Against Persons	28,732	10,782	37.5%	12,126	42.2%	13,196	45.9%
Other Crimes	10,757	3,632	33.8%	4,191	39.0%	4,630	43.0%
Drug Crimes	24,445	7,941	32.5%	8,984	36.8%	9,787	40.0%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.2.2 Commitment Offense

Figure 8. Three-Year Return-to-Prison Rate by Commitment Offense<sup>6</sup>



<sup>6</sup> "Marijuana Other" offenses include planting, cultivating, harvesting, or possessing marijuana; hiring, employing, using a minor in the unlawful transportation, sale, or peddling of marijuana to another minor, furnishing, giving, and/or offering marijuana to a minor. "CS Other" offenses include possession of a controlled substance in prison; soliciting, encouraging, inducing a minor to furnish, sell, offer a controlled substance; agreeing, consenting, offering to sell, furnish, and/or transport a CS. "Other Offenses" include false imprisonment, accessory, and/or malicious harassment. "Other Sex Offenses" including failing to register as a sex offender, unlawful sex with a minor, and/or indecent exposure.

As shown in Figure 8, the three-year return-to-prison rate varies substantially when examined by commitment offense. Offenders with a commitment offense of escape and other sex offenses returned to prison at the highest rates after three years of follow-up (each at 64.4 percent), followed by vehicle theft (56.1 percent or 2,475 offenders), and sodomy (55.9 percent or 19 offenders). Rates for offenders required to register as sex offenders (sex registrants) are provided later in this report.

Offenders with a commitment offense of first degree murder returned to prison at the lowest rate among all commitment offenses after three years of follow-up (2.6 percent or two offenders), followed by second degree murder (7.6 percent or 20 offenders), vehicular manslaughter (20.4 percent or 45 offenders), and driving under the influence (21.6 percent or 485 offenders). Return-to-prison rates were not calculated for categories with fewer than 30 releases.

Between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate decreased across all commitment offense groups, with the exception of two; escape increased by 2.9 percentage points (from 61.5 percent to 64.4 percent) and vehicular manslaughter increased by 1.3 percentage points (from 19.1 percent to 20.4 percent). The largest decrease in the three-year return-to-prison rate was for hashish possession, which decreased 24.5 percentage points (from 55.9 percent to 31.4 percent) between FY 2009-10 and FY 2010-11 (Appendix C).

Table 10. Return-to-Prison Rates by Commitment Offense

Offense	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Escape	45	25	55.6%	27	60.0%	29	64.4%
Other Sex	2,736	1,648	60.2%	1,712	62.6%	1,763	64.4%
Vehicle Theft	4,413	2,107	47.7%	2,357	53.4%	2,475	56.1%
Sodomy	34	17	50.0%	18	52.9%	19	55.9%
Oral Copulation	215	103	47.9%	107	49.8%	111	51.6%
Receiving Stolen Property	4,344	1,910	44.0%	2,111	48.6%	2,234	51.4%
Burglary 1st	3,345	1,229	36.7%	1,497	44.8%	1,690	50.5%
Possession Weapon	5,183	2,012	38.8%	2,318	44.7%	2,546	49.1%
Petty Theft With Prior	4,672	1,957	41.9%	2,155	46.1%	2,289	49.0%
CS Possession	12,439	4,999	40.2%	5,570	44.8%	6,082	48.5%
Other Offenses	3,075	1,188	38.6%	1,354	44.0%	1,474	47.9%
Other Assault/Battery	9,060	3,458	38.2%	3,902	43.1%	4,253	46.9%
Other Property	1,282	483	37.7%	550	42.9%	599	46.7%
Assault w/ Deadly Weapon	6,469	2,437	37.7%	2,770	42.8%	3,018	46.7%
Arson	210	83	39.5%	88	41.9%	96	45.7%
Robbery	5,847	1,902	32.5%	2,299	39.3%	2,635	45.1%
Burglary 2nd	7,943	2,936	37.0%	3,307	41.6%	3,548	44.7%
Penetration With Object	100	43	43.0%	43	43.0%	44	44.0%
Grand Theft	3,993	1,206	30.5%	1,342	33.6%	1,438	36.0%
CS Other	478	164	34.3%	186	38.9%	202	42.3%
Rape	432	161	37.3%	171	39.6%	176	40.7%
Lewd Act With Child	2,272	765	33.7%	796	35.0%	820	36.1%
CS Sales	2,337	621	26.6%	720	30.8%	786	33.6%
Marijuana Sale	384	102	26.6%	115	29.9%	128	33.3%
Forgery/Fraud	2,364	627	26.5%	711	30.1%	775	32.8%
Kidnapping	173	37	21.4%	50	28.9%	56	32.4%
Hashish Possession	70	17	24.3%	20	28.6%	22	31.4%
Marj. Possess For Sale	1,061	259	24.4%	300	28.3%	326	30.7%
CS Possession For Sale	7,412	1,735	23.4%	2,022	27.3%	2,230	30.1%
Attempted Murder 2nd	335	74	22.1%	86	25.7%	99	29.6%
Manslaughter	473	97	20.5%	115	24.3%	132	27.9%
CS Manufacturing	134	24	17.9%	29	21.6%	32	23.9%
Marijuana Other	130	20	15.4%	22	16.9%	29	22.3%
Driving Under Influence	2,244	324	14.4%	404	18.0%	485	21.6%
Vehicular Manslaughter	221	28	12.7%	37	16.7%	45	20.4%
Attempted Murder 1st	25	3	N/A	3	N/A	3	N/A
Murder 2nd	264	8	3.0%	15	5.7%	20	7.6%
Murder 1st	76	1	1.3%	2	2.6%	2	2.6%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>



### 5.2.3 Sentence Type

**Figure 9. Return-to-Prison Rates by Sentence Type**

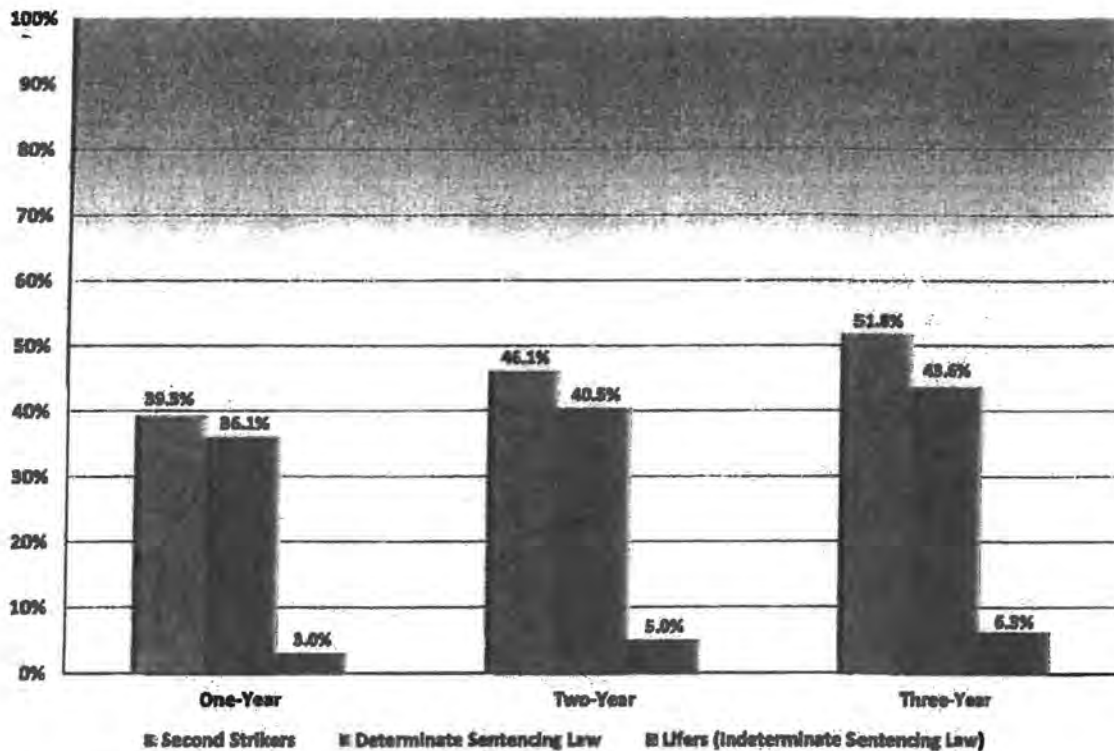


Figure 9 and Table 11 show return-to-prison rates by sentence type. Prior to this report, sentence type was categorized by offenders sentenced under Determinate Sentencing Law (DSL) and Indeterminate Sentencing Law (ISL). The majority of offenders sentenced in California serve a determinate term (a specified sentence length) and are released once they have served their sentence. Generally, offenders sentenced to an indeterminate term (lifers) are released only after the Board of Parole Hearings (BPH) has found them suitable for parole or the court orders their release. The above figure and below table show the number of offenders who served an indeterminate term, a determinate term, and the number of offenders that served a determinate term as second strikers.

Second strikers serving a determinate sentence returned to State prison after three years of follow-up at the highest rate (51.8 percent) of any sentence type. Second strikers comprised 13.5 percent of the release cohort (12,900 offenders). Other offenders who served a determinate sentence comprised 86.1 percent of the release cohort (82,392 offenders) and had a three-year return-to-prison rate of 43.6 percent. Lifers serving an indeterminate sentence comprised less than one percent of the release cohort (398 offenders) and had a three-year return-to-prison rate of 6.3 percent.

Each sentence type saw a decline in the three-year return-to-prison rate between FY 2009-10 and FY 2010-11 (Appendix C). Offenders serving a determinate term saw the largest decrease at 9.9 percentage points between FY 2009-10 and FY 2010-11 (53.5 percent and 43.6 percent, respectively), followed by

second strikers at 8.9 percentage points (60.7 percent and 51.8 percent, respectively) and lifers at 3.1 percentage points (9.4 percent and 6.3 percent, respectively).

**Table 11. Return-to-Prison Rates by Sentence Type**

Sentence Type	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Second Strikers (Determinate Sentencing Law)	12,900	5,072	39.3%	5,950	46.1%	6,681	51.8%
Determinate Sentencing Law	82,882	29,726	36.1%	33,361	40.5%	35,955	43.6%
Lifers (Indeterminate Sentencing Law)	398	12	3.0%	20	5.0%	25	6.3%
Total	95,680	34,810	36.4%	39,331	41.1%	42,661	44.6%

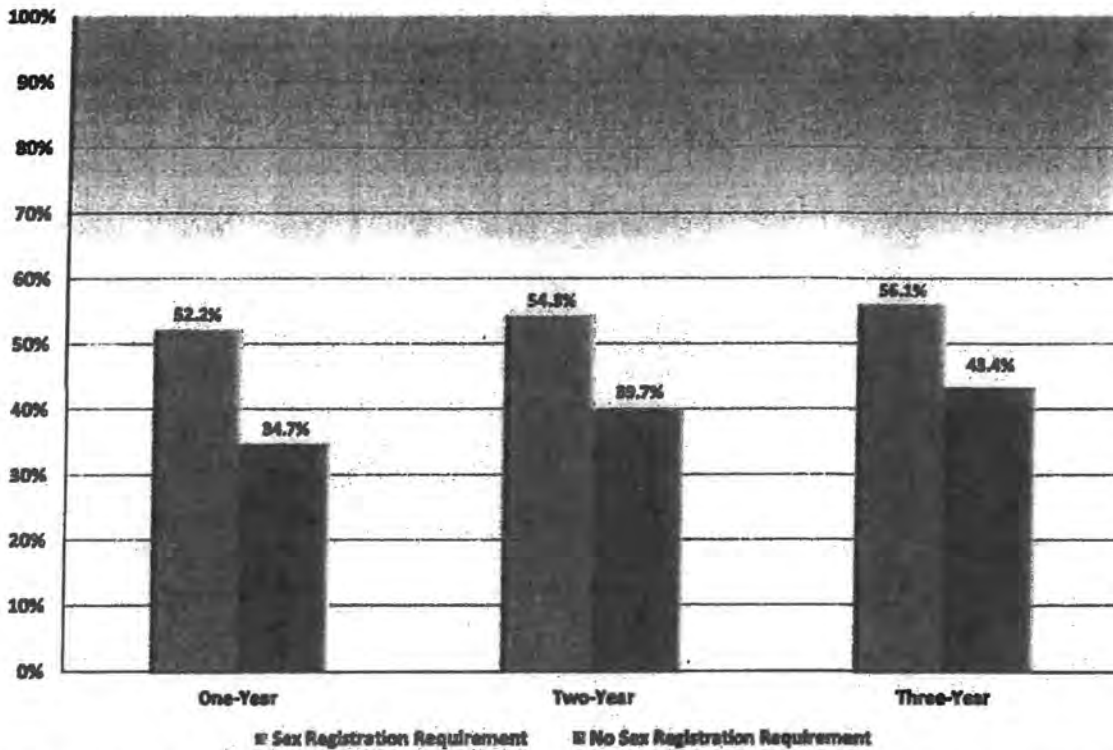
Offenders serving an indeterminate term may be released when the BPH has found them suitable for parole or after the court orders their release. Table 12 shows the number of lifers released by the BPH and by court order. Of the 398 offenders who served an indeterminate term and were released in FY 2010-11, six offenders were released due to a court order and 392 were released by BPH. All six of the offenders released due to a court order returned to prison for a parole violation within three years of their release. Of the 392 offenders released by the BPH, three offenders were returned with a new term, and 16 offenders were returned for a parole violation. Together, 19 offenders or 4.8 percent of the offenders released by the BPH returned to State prison in the three years following their release.

**Table 12. Number Returned by Sentence Type and Release Type**

Reason for Release	Number Released	Returned with a New Term		Parole Violation Return		Total Number of Returns	
		Number	Percent	Number	Percent	Number	Percent
Court Ordered	6	0	0.0%	6	100.0%	6	100.0%
Board of Parole Hearings (BPH)	392	3	0.8%	16	4.1%	19	4.8%
Total	398	3	0.8%	22	5.5%	25	6.3%

5.2.4 Sex Registrants

Figure 10. Return-to-Prison Rates by Sex Registration Requirement



The above figure and below table show the return-to-prison rates for offenders required to register as sex offenders (sex registrants). The three-year return-to-prison rate is 12.7 percentage points higher for sex registrants (56.1 percent) than non-sex registrants (43.4 percent). Between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate for sex registrants decreased by 9.1 percentage points (65.2 percent and 56.1 percent, respectively) and the rate for non-sex registrants decreased by 10 percentage points (53.4 percent and 43.4 percent, respectively) as shown in Appendix C of this report.

Table 13. Return-to-Prison Rates by Sex Registration Flag

Sex Registration Requirement	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Yes	8,989	4,694	52.2%	4,881	54.3%	5,041	56.1%
No	86,701	30,116	34.7%	34,450	39.7%	37,620	43.4%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.2.5 Recommitment Offense for Sex Registrants

Figure 11. Recommitment Offense for Sex Registrants

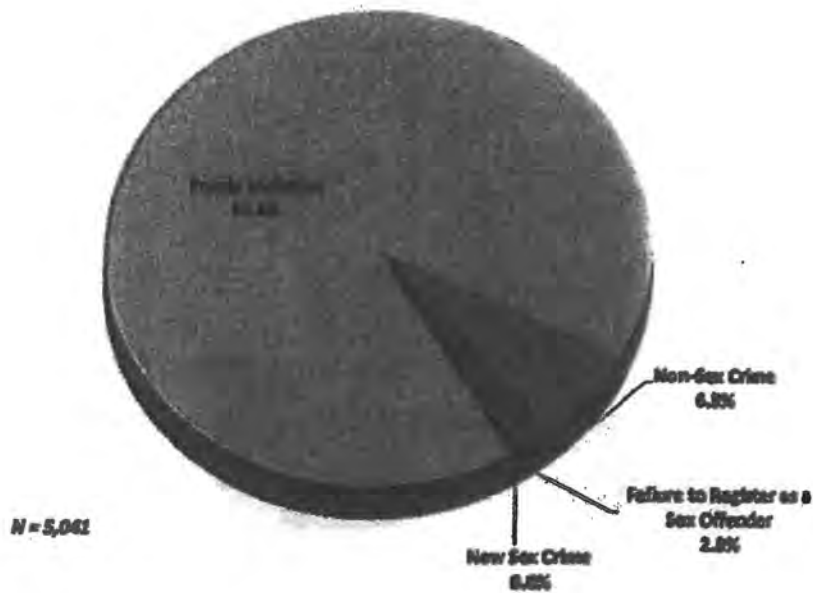


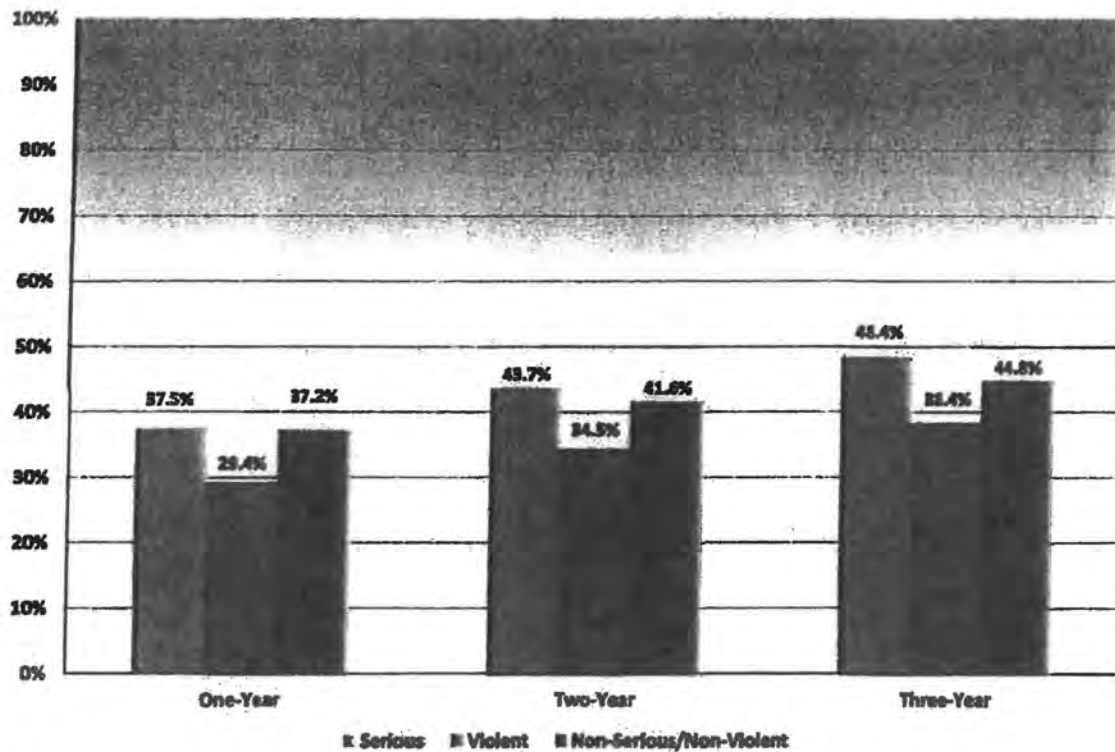
Figure 11 and Table 14 show the recommitment offense for the 5,041 sex registrants that returned to prison during the three-year follow-up period. Of the 5,041 sex registrants, the majority (4,579 offenders or 90.8 percent) returned for a parole violation, followed by 316 offenders (6.3 percent) with a new non-sex crime, and 115 offenders (2.3 percent) for failing to register as a sex offender. Thirty-one offenders (0.6 percent) were returned for a new sex crime.

Table 14. Recommitment Offense for Sex Registrants

Reason for Return-to-Prison	Returned	
	Number	Percent
Parole Violation	4,579	90.8%
New Non-Sex Crime	316	6.3%
Failure to Register as a Sex Offender	115	2.3%
New Sex Crime	31	0.6%
<b>Total</b>	<b>5,041</b>	<b>100.0%</b>

### 5.2.6 Serious and Violent Offenses

**Figure 12. Return-to-Prison Rates for Offenders with a Serious or Violent Offense**



The above figure and below table show return-to-prison rates for offenders with a serious offense or violent offense, and offenders with a non-serious and non-violent offense. In previous reports, serious and violent offenses were grouped together, rather than treated separately.

Of the 95,690 offenders released, the majority released (71,769 offenders) did not have a serious or violent offense, followed by 13,268 offenders with a serious offense, and 10,653 offenders with a violent offense. Offenders whose offense was serious returned to prison after three years of follow-up at a higher rate (48.4 percent) than offenders whose offense was not serious or violent (44.8 percent), and offenders whose offense was violent (38.4 percent).

Between FY 2009-10 and FY 2010-11 the three-year return-to-prison rate decreased among offenders committing each type of offense. The rate for offenders committing a violent offense had the most substantial decrease (10.7 percentage points) between the two fiscal years (49.1 percent and 38.4 percent, respectively). The rate for offenders committing a non-serious/non-violent offense decreased by 9.7 percentage points (54.5 percent and 44.8 percent, respectively) between the two fiscal years and the rate for offenders committing a violent offense decreased by 8.6 percentage points (57 percent and 48.4 percent, respectively) between FY 2009-10 and FY 2010-11 (Appendix C).

**Table 15. Return-to-Prison Rates for Offenders with a Serious or Violent Offense**

<b>Serious/Violent Offense</b>	<b>Number Released</b>	<b>One-Year</b>		<b>Two-Year</b>		<b>Three-Year</b>	
		<b>Number Returned</b>	<b>Return Rate</b>	<b>Number Returned</b>	<b>Return Rate</b>	<b>Number Returned</b>	<b>Return Rate</b>
<b>Serious</b>	<b>13,268</b>	<b>4,979</b>	<b>37.5%</b>	<b>5,800</b>	<b>43.7%</b>	<b>6,418</b>	<b>48.4%</b>
<b>Violent</b>	<b>10,653</b>	<b>3,133</b>	<b>29.4%</b>	<b>3,672</b>	<b>34.5%</b>	<b>4,091</b>	<b>38.4%</b>
<b>Non-Serious/Non-Violent</b>	<b>71,769</b>	<b>26,698</b>	<b>37.2%</b>	<b>29,859</b>	<b>41.6%</b>	<b>32,152</b>	<b>44.8%</b>
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

## 5.2.7 Mental Health Status

Figure 13. Return-to-Prison Rates by Mental Health Status

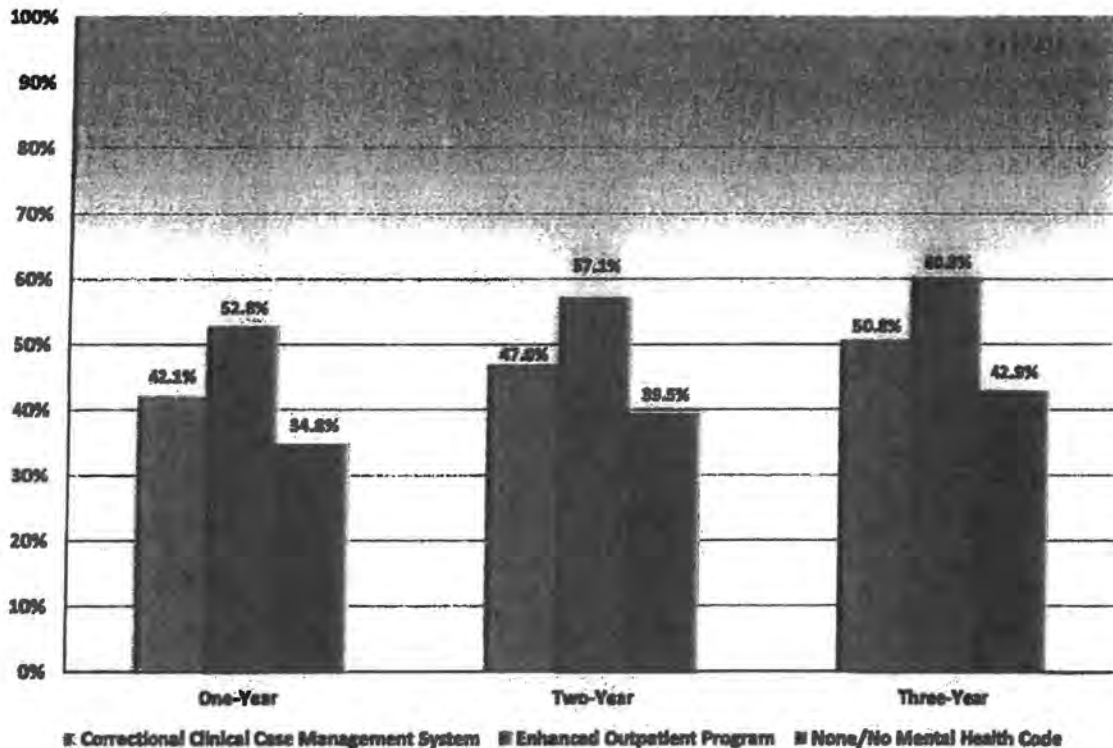


Figure 13 and Table 16 present return-to-prison rates by mental health designation for the three mental health categories with the largest number of releases. The majority of offenders (78,705 offenders or 82.2 percent) did not have a mental health designation and 17.8 percent (16,985 offenders) had a mental health designation. Fifteen percent of the release cohort was assigned to the Correctional Clinical Case Management System (CCCMS), 2.5 percent were assigned to the Enhanced Outpatient Program (EOP), and less than one percent were assigned to a Mental Health Crisis Bed (119 offenders or 0.1 percent) and the Department of State Hospitals (59 offenders or 0.1 percent).

Offenders assigned to the Department of State Hospitals returned to prison at the highest rate (62.7 percent) among all mental health designations after three years of follow-up. Over sixty percent (60.3 percent) of EOP offenders returned to prison, followed by 58 percent of offenders assigned to a Mental Health Crisis Bed, and 50.8 percent of CCCMS offenders. Offenders without a mental health designation returned at a rate of 42.9 percent after three years of follow-up.

As shown in Appendix C, between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate decreased among each mental health category, with the exception of offenders assigned to the Department of State Hospitals because a rate was not calculated for these offenders in FY 2009-10 (only three offenders assigned to the Department of State Hospitals were released). Offenders assigned to a Mental Health Crisis Bed saw the largest decrease (15 percentage points) in the three-year return-to-

prison rate between FY 2009-10 and FY 2010-11 (73 percent and 58 percent, respectively), followed by EOP offenders with a 9.4 percentage point decrease (69.6 percent and 60.3 percent, respectively), and CCCMS offenders with an 8.6 percentage point decrease (59.3 percent and 50.8 percent, respectively). The three-year return-to-prison rate for offenders without a mental health designation decreased by 9.5 percentage points between the two fiscal years (52.4 percent and 42.9 percent, respectively).

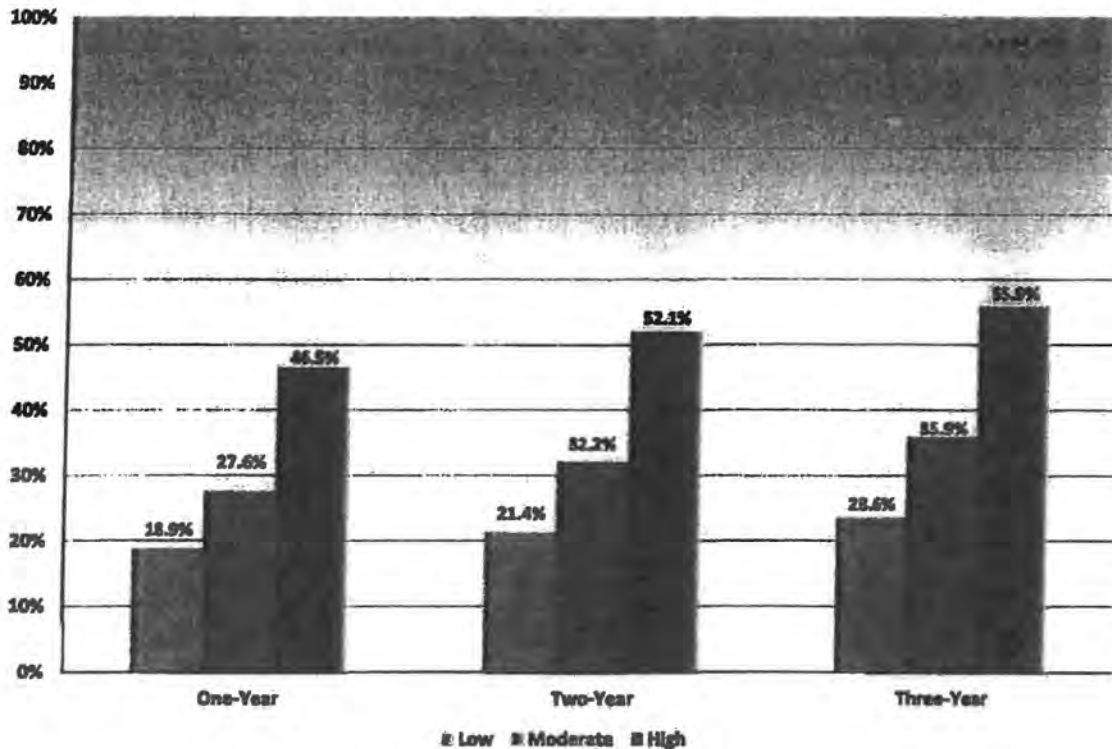
**Table 16. Return-to-Prison Rates by Mental Health Status**

Mental Health Code	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Department of State Hospitals	59	27	45.8%	33	55.9%	37	62.7%
Enhanced Outpatient Program	2,422	1,278	52.8%	1,384	57.1%	1,480	60.9%
Mental Health Crisis Bed	119	59	49.6%	68	57.1%	68	58.0%
Correctional Clinical Case Management System	14,385	6,054	42.1%	6,764	47.0%	7,801	50.8%
None/No Mental Health Code	78,705	27,392	34.8%	31,082	39.5%	33,794	42.9%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,581</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>



### 5.2.8 Risk of Return to State Prison

Figure 14. Return-to-Prison Rates by Risk of Return



The California Static Risk Assessment (CSRA) is a tool used to calculate an offender's risk of being convicted of a new offense after release from prison. Based on their criminal history and demographics, offenders are designated as having a low, moderate, or high risk of being convicted of a new offense after release. High risk is further delineated into three sub-categories (high drug, high property, and high violence).

Nearly half of the offenders released in FY 2010-11 (54.7 percent or 52,331 offenders) had a CSRA score of high risk, followed by moderate risk (26.2 percent or 25,108 offenders), and low risk (18.2 percent or 17,421 offenders). Less than one percent (0.8 percent or 830 offenders) did not have a CSRA score. The three-year return-to-prison rates for each risk category show the CSRA tool is predictive of reoffending; offenders with a score of high returned to State prison at the highest rate (55.9 percent) among all CSRA categories, followed by moderate risk (35.9 percent), and low risk (23.6 percent). Offenders without a CSRA score returned to prison at a rate of 34.5 percent after three years of follow-up.

Between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate decreased for each CSRA category (Appendix C). High risk decreased by 11.5 percentage points between FY 2009-10 and FY 2010-11 (67.4 percent and 55.9 percent, respectively), moderate risk decreased by 8.8 percentage points (44.7 percent and 35.9 percent, respectively), and low risk decreased by 6.7 percentage points (30.4

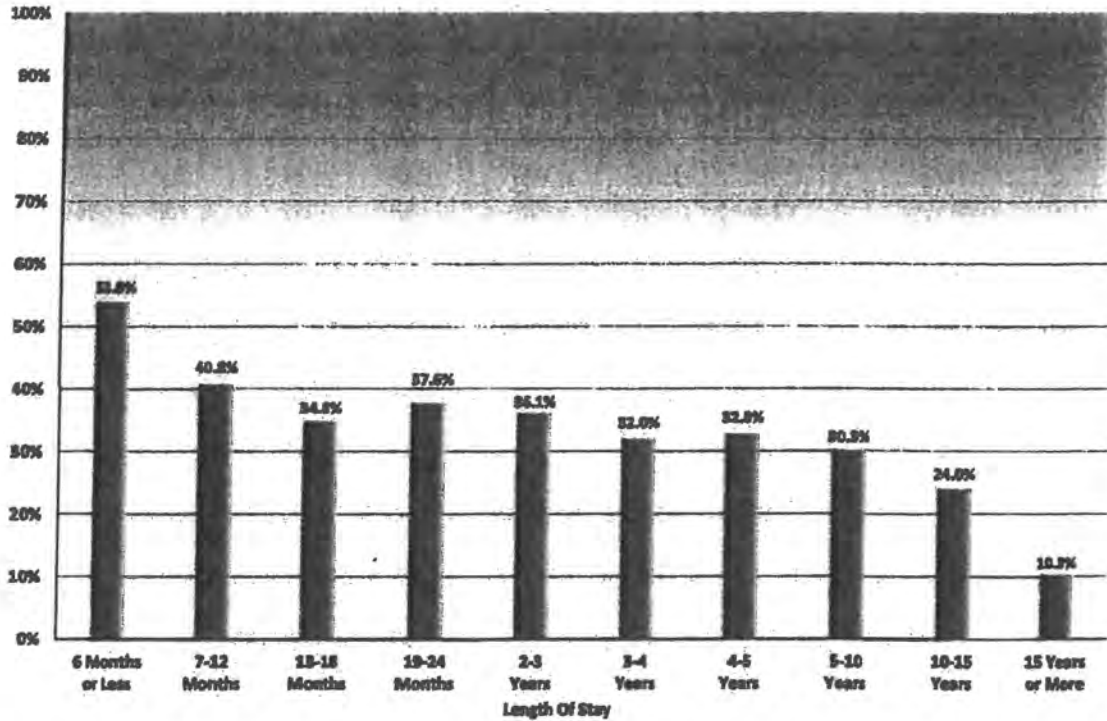
percent and 23.6 percent, respectively). The rate for offenders without a CSRA score decreased by 8.6 percentage points between FY 2009-10 and FY 2010-11 (43.1 percent and 34.5 percent, respectively).

*Table 17. Return-to-Prison Rates by Risk of Return*

CSRA Score	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Low	17,421	3,287	18.9%	3,724	21.4%	4,117	23.6%
Moderate	25,108	6,941	27.6%	8,087	32.2%	9,023	35.9%
High	52,331	24,351	46.5%	27,258	52.1%	29,235	55.9%
N/A	830	231	27.8%	262	31.6%	286	34.5%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.2.9 Length of Stay

Figure 15. Three-Year Return-to-Prison Rate by Length of Stay



The above figure and below table show offenders' length of stay for their current term. The three-year return-to-prison rate is highest (53.9 percent or 22,653 offenders) for offenders who stayed six months or less. The rate drops 13.1 percentage points for offenders who stay between seven months to a year (40.8 percent or 10,441 offenders). After one year, the rate ranges from 37.6 percent (19 to 24 months) to 10.3 percent for offenders who stay 15 years or longer.

As shown in Appendix C, the three-year return-to-prison rate decreased for each length of stay category between FY 2009-10 and FY 2010-11. The largest decrease between the two fiscal years (14.5 percentage points) was seen for offenders staying between three to four years (46.5 percent and 32 percent, respectively). Although offenders who stay 15 years or longer had the lowest three-year return-to-prison rate (10.3 percent) among all length of stay categories, the decrease between FY 2009-10 and FY 2010-11 was the smallest at 6.8 percentage points.

**Table 18. Return-to-Prison Rates by Length of Stay**

Length of Stay	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
6 months or less	42,018	19,810	47.1%	21,489	51.1%	22,659	53.9%
7 - 12 months	25,592	8,332	32.6%	9,566	37.4%	10,441	40.8%
13 - 18 months	9,056	2,322	25.6%	2,803	31.0%	3,155	34.8%
19 - 24 months	5,579	1,464	26.2%	1,803	32.3%	2,089	37.6%
2 - 3 years	5,350	1,325	24.8%	1,658	31.2%	1,931	36.1%
3 - 4 years	2,567	539	21.0%	690	26.9%	821	32.0%
4 - 5 years	1,583	344	21.7%	437	27.6%	519	32.8%
5 - 10 years	2,552	507	19.9%	645	25.3%	772	30.3%
10 - 15 years	919	134	14.6%	187	20.3%	221	24.0%
15 years or more	474	33	7.0%	43	9.1%	49	10.3%
<b>Total</b>	<b>95,600</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

## 5.2.10 Number of Returns to Custody Prior to Release

**Figure 16. Three-Year Return-to-Prison Rate by Number of Returns to Custody on the Current Term Prior to Release**

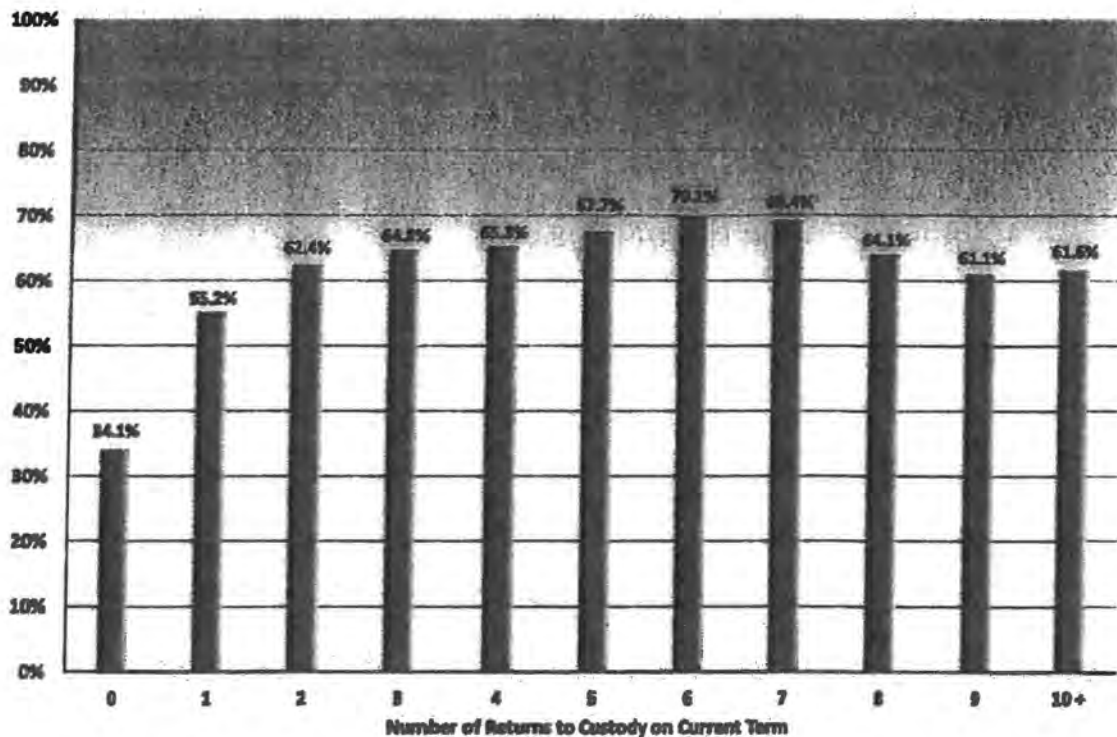


Figure 16 and Table 19 show return-to-prison rates by the number of times an offender returned to a CDCR adult institution on their current term, prior to their release. Offenders with no returns (zero returns), represent offenders released for the first time (i.e. these individuals have no prior returns for their current term). An offender with one return to custody (RTC) was previously released from CDCR on the current term and returned once on their current term.

Offenders without an RTC (zero RTCs) have the lowest three-year return-to-prison rate (34.1 percent or 19,778 offenders) of all RTC categories, followed by offenders with one return (55.2 percent or 8,513 offenders). The increase in the three-year return-to-prison rate between no RTCs and one RTC is substantial; 21.1 percentage points. From this point, the three-year return-to-prison rate is relatively stable and increased slightly with each return to custody, until the seventh return to custody. Offenders with six RTCs return at a rate of 70.1 percent and those with seven RTCs return at a rate of 69.4 percent. The rate decreases until a slight increase is observed between nine RTCs (61.1 percent) and 10 or more RTCs (61.6 percent).

With the exception of seven RTCs (69.4 percent), the three-year return-to-prison rate decreased across all RTC categories between FY 2009-10 and FY 2010-11 (Appendix C). The largest decrease was observed at one RTC (11.3 percentage points) and the smallest decrease was at six or more RTCs (1.6 percentage

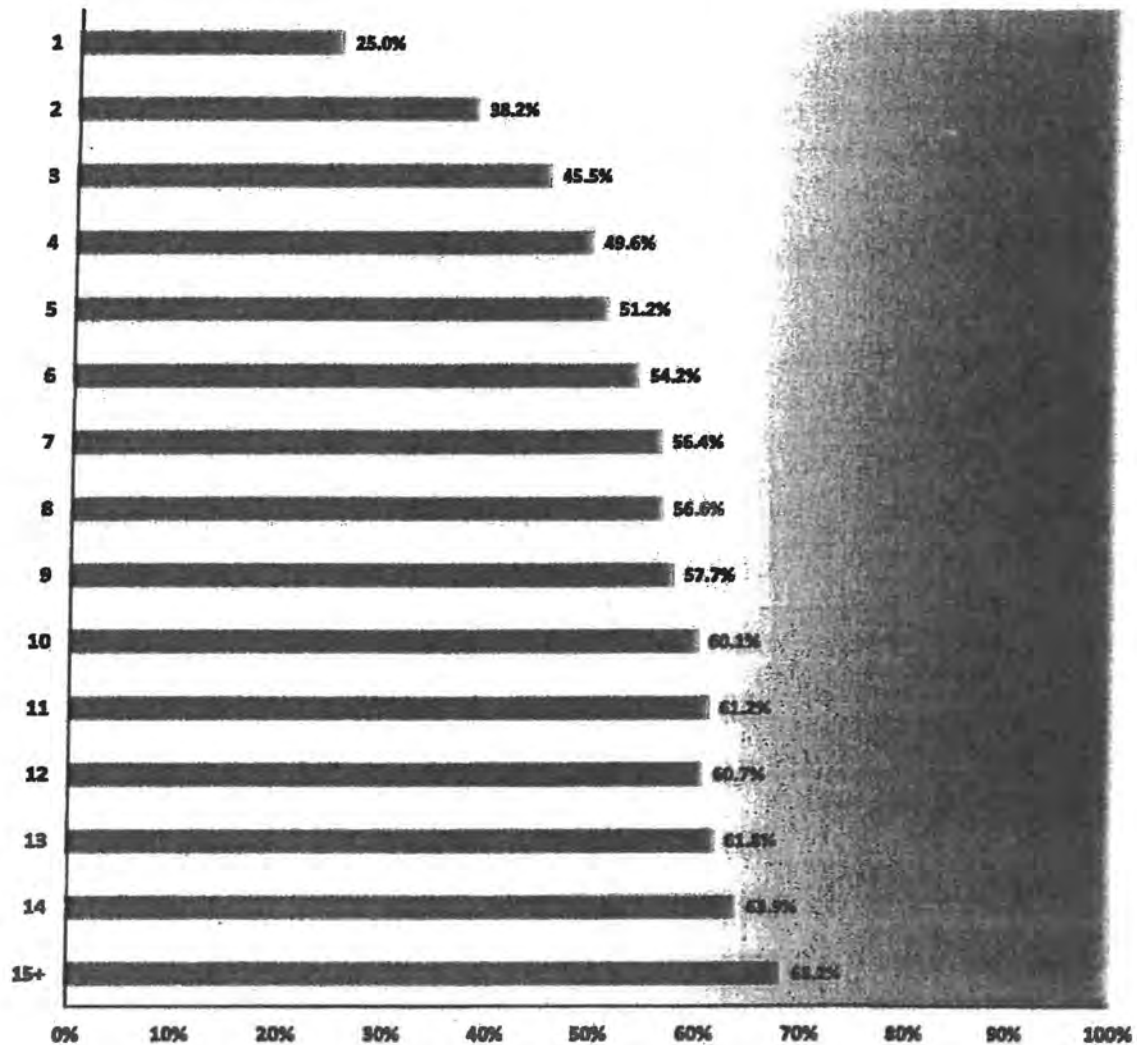
points). The three-year return-to-prison rate remained the same at 69.4 percent for offenders with seven RTCs.

**Table 19. Return-to-Prison Rates by Number of Returns to Custody on the Current Term Prior to Release**

Returns to Custody on Current Term	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
0	58,057	14,708	25.3%	17,580	30.3%	19,778	34.1%
1	15,431	7,299	47.3%	8,031	52.0%	8,513	55.2%
2	7,997	4,352	54.4%	4,739	59.3%	4,994	62.4%
3	5,116	2,993	58.5%	3,170	62.0%	3,316	64.8%
4	3,412	2,001	58.6%	2,133	62.5%	2,229	65.3%
5	2,230	1,345	60.3%	1,439	64.5%	1,509	67.7%
6	1,380	871	63.1%	927	67.2%	967	70.1%
7	889	562	63.2%	600	67.5%	617	69.4%
8	538	319	59.3%	334	62.1%	345	64.1%
9	265	152	57.4%	158	59.6%	162	61.1%
10 +	375	208	55.5%	220	58.7%	231	61.6%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.2.11 Number of CDCR Stays Ever

Figure 17. Three-Year Return-to-Prison Rate by Total Number of Stays



A stay is defined as any period of time an offender is housed in a CDCR adult institution. Each time an offender returns to prison, it is considered a new stay, regardless of whether the return represents a new admission, a parole violation with a new term, or a return-to-prison following a parole violation. The number of stays is cumulative over any number of convictions or terms in an offender's criminal history.

Figure 17 and Table 20 show the three-year return-to-prison rate by the number of stays ever at a CDCR institution. As the number of stays increases, the three-year return-to-prison rate also increases, with the exception of 12 stays when the rate slightly decreases. The most substantial increase (13.2 percentage points) in the three-year return-to-prison rate occurs between one stay (25 percent) and

two stays (38.2 percent). In general, the return-to-prison rate increases slightly with each stay, with the exception of 12 stays (60.7), where the rate decreases by half of a percentage point from 11 stays (61.2 percent). Offenders with one stay have the lowest three-year return-to-prison rate of all number of stay categories at 25 percent, while offenders with 15 or more stays have the highest rate at 68.2 percent.

Between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate decreased across every category of stays (Appendix C). The largest decrease (12.5 percentage points) between the two fiscal years was observed at offenders with 14 stays (76.4 percent and 63.9 percent, respectively). The smallest decrease (8.4 percent) was observed at offenders with one stay between FY 2009-10 and FY 2010-11 (33.5 percent and 25 percent, respectively).

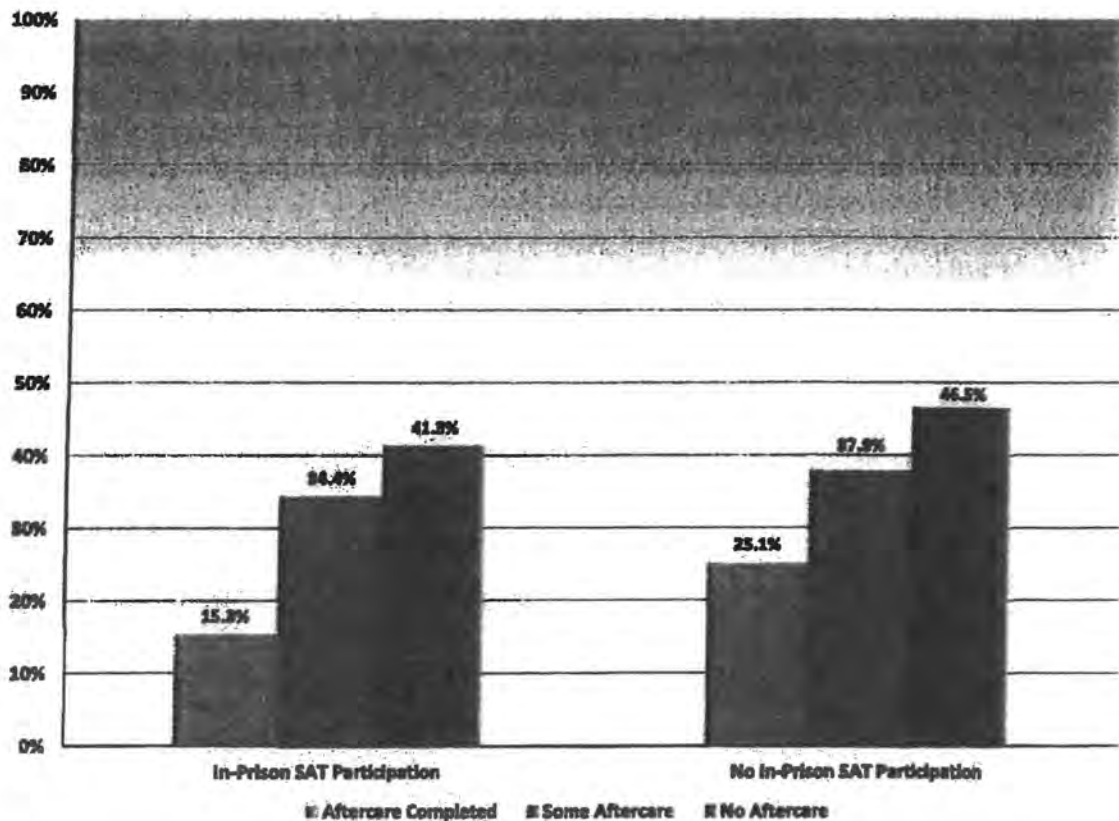
*Table 20. Return-to-Prison Rates by Total Number of Stays*

Stays	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
1	26,426	4,843	18.3%	5,814	22.0%	6,615	25.0%
2	12,837	3,844	29.9%	4,464	34.8%	4,903	38.2%
3	9,182	3,305	36.0%	3,811	41.5%	4,174	45.5%
4	7,658	3,065	40.0%	3,504	45.8%	3,800	49.6%
5	6,376	2,673	41.9%	3,011	47.2%	3,265	51.2%
6	5,308	2,394	45.1%	2,667	50.3%	2,872	54.2%
7	4,432	2,057	46.4%	2,304	52.0%	2,501	56.4%
8	3,794	1,781	47.7%	1,975	52.9%	2,113	56.6%
9	3,188	1,556	48.8%	1,718	53.9%	1,840	57.7%
10	2,826	1,446	51.2%	1,587	56.2%	1,689	60.1%
11	2,296	1,216	53.0%	1,325	57.7%	1,405	61.2%
12	2,072	1,083	52.8%	1,199	57.9%	1,257	60.7%
13	1,613	861	53.4%	945	58.6%	997	61.8%
14	1,409	787	55.9%	855	60.7%	900	63.9%
15 +	6,338	3,889	61.4%	4,152	65.5%	4,320	68.2%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%



## 5.2.12 In-Prison and Community-Based Substance Abuse Treatment Programs

Figure 18. Three-Year Return-to-Prison Rate by Substance Abuse Treatment Participation



In-prison substance abuse treatment (SAT) and community-based SAT programs are designed to expose offenders to a continuum of services during incarceration and facilitate successful re-entry into community living. Services include: substance abuse treatment, recovery services, social, cognitive and behavioral counseling, life skills training, health-related education, and relapse prevention services. Community-based substance abuse treatment programs (also referred to as "continuing care" or "aftercare") provide post-release substance abuse treatment services through Substance Abuse Services Coordination Agencies (SASCA). SASCA's are responsible for referring, placing, and tracking parolees in appropriate SAT programs.

Return-to-prison rates by participation in SAT and aftercare programs are presented in Figure 18 and Table 21. As shown in Table 21, offenders who received in-prison SAT and complete aftercare (919 offenders) have the lowest return-to-prison rate (15.3 percent or 141 offenders). The three-year return-to-prison rate increases by nearly 20 percentage points (from 15.3 percent to 34.4 percent) if an offender only receives some aftercare. Among offenders who received in-prison SAT, offenders who do not receive aftercare return-to-prison at the highest rate (41.3 percent). Overall, offenders who received in-prison SAT, regardless of aftercare, return-to-prison at a rate of 36.2 percent after three years of follow-up, which is 8.4 percentage points below the state-wide rate of 44.6 percent.

Participation in aftercare or community-based SAT, without in-prison SAT, is also associated with lower rates of return. Offenders who did not receive in-prison SAT, but completed aftercare have a three-year return-to-prison rate of 25.1 percent and offenders who complete some aftercare have a three-year return-to-prison rate of 37.9 percent. Offenders who do not receive in-prison SAT or aftercare return-to-prison at a rate of 46.5 percent, which is substantially higher than offenders who receive some form of in-prison SAT or aftercare, and is 1.9 percentage points higher than the state-wide rate of 44.6 percent.

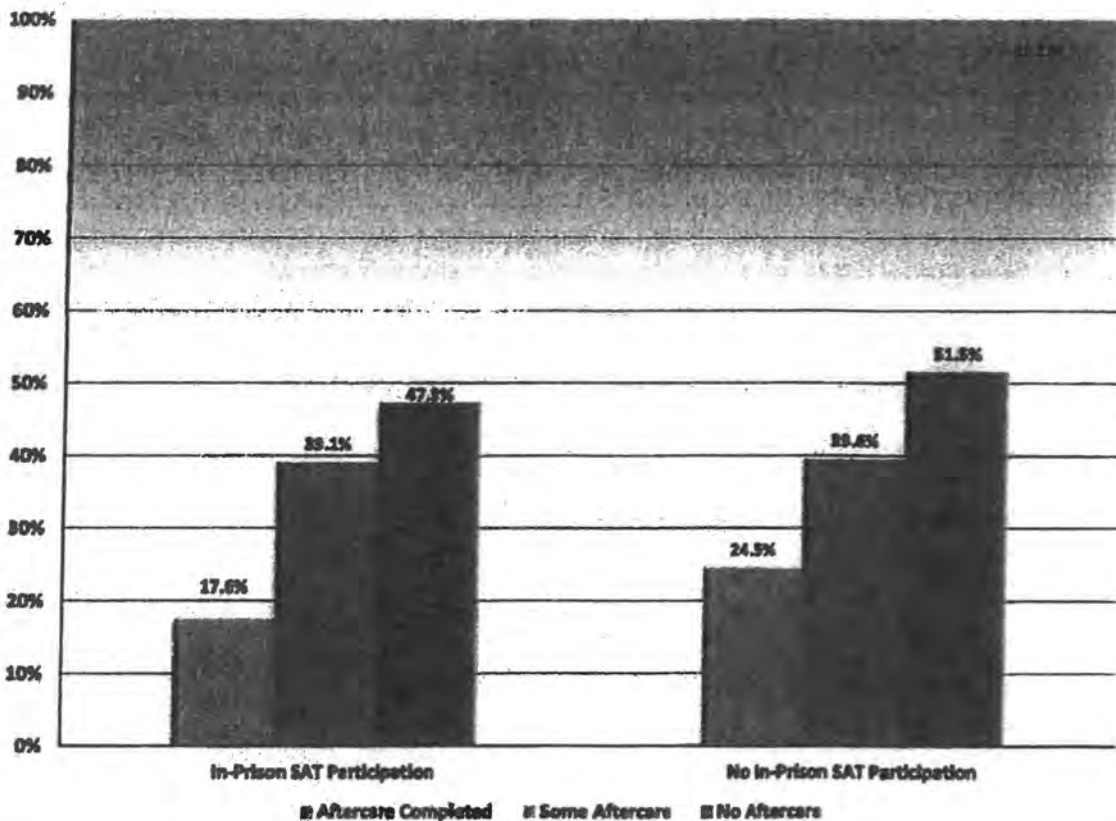
Lower return-to-prison rates among offenders who receive any form of in-prison SAT or aftercare demonstrates the value of these programs. The most substantial impact of SAT on reoffending is seen in offenders who receive in-prison SAT and complete aftercare; the rate for these offenders (15.3 percent) is 29.3 percentage points lower than the state-wide rate (44.6 percent) and 31.2 percentage points lower than the rate for offenders who do not participate in SAT or aftercare (46.5 percent).

**Table 21. Return-to-Prison Rates by Substance Abuse Treatment Participation**

Substance Abuse Treatment Participation	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
<b>In-Prison SAT Participation</b>							
Completed Aftercare	919	58	6.3%	98	10.7%	141	15.3%
Some Aftercare	858	210	24.5%	250	29.1%	285	34.4%
No Aftercare	4,064	1,280	31.5%	1,500	36.9%	1,678	41.3%
<b>Subtotal</b>	<b>5,841</b>	<b>1,548</b>	<b>26.5%</b>	<b>1,848</b>	<b>31.6%</b>	<b>2,114</b>	<b>36.2%</b>
<b>No In-Prison SAT Participation</b>							
Completed Aftercare	4,348	770	17.7%	957	22.0%	1,092	25.1%
Some Aftercare	3,758	1,044	27.8%	1,251	33.3%	1,425	37.9%
No Aftercare	81,743	31,448	38.5%	35,275	43.2%	38,030	46.5%
<b>Subtotal</b>	<b>89,849</b>	<b>33,262</b>	<b>37.0%</b>	<b>37,483</b>	<b>41.7%</b>	<b>40,547</b>	<b>45.1%</b>
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>

5.2.13 Return-to-Prison Rates by Substance Abuse Treatment Participation for Offenders with an Identified Treatment Need

Figure 19. Three-Year Return-to-Prison Rate by Substance Abuse Treatment Participation and Substance Abuse Need



The Correctional Offender Management and Profiling Alternative Sanctions (COMPAS) is an automated tool designed to assess offenders' criminogenic needs. The COMPAS is used by criminal justice agencies across the nation to inform decisions regarding placement, supervision, and case management of offenders. The needs assessment categorizes offenders as having no need, probable need, or a highly probable need for services and treatment in areas such as substance abuse, criminal thinking, and education. The COMPAS is used by CDCR and has been validated on its population. However, the COMPAS alone cannot reduce reoffending. The COMPAS is a tool that provides CDCR with information regarding an offender's individual needs. Information from the assessment can be used to place offenders in programming that can meet an offender's specific criminogenic needs. Use of the COMPAS, along with an appropriate (and well-implemented) evidence-based program should reduce reoffending.

Figure 19 and Table 22 show return-to-prison rates by COMPAS assessment and participation in SAT. Of the 95,690 offenders released in FY 2010-11, 72.1 percent of the release cohort (69,014 offenders) had a COMPAS assessment. Of those offenders, 45.1 percent (43,136 offenders) either had a probable need or

a highly probable need for services and treatment, and 27.9 percent (26,676 offenders) did not have a need for treatment services.

Offenders with an identified treatment need and who received in-prison SAT and completed aftercare returned to prison at the lowest rate (17.6 percent) after three years of follow-up, followed by offenders who completed some aftercare (39.1 percent), and offenders who completed no aftercare (47.3 percent). Overall, offenders with a treatment need who received in-prison SAT, regardless of aftercare, returned to prison at a rate of 40.5 percent.

Offenders with an identified treatment need who did not receive in-prison SAT, but received some sort of aftercare, returned to prison at slightly higher rates than those who received in-prison SAT. Offenders with an identified treatment need who did not receive in-prison SAT but completed aftercare returned to prison at the lowest rate (24.5 percent) after three years of follow-up, followed by offenders who completed some aftercare (39.6 percent), and offenders who did not receive aftercare (51.5 percent). Offenders with an identified treatment need who did not receive in-prison SAT or aftercare are expected to return to State prison at higher rates. Their rate of return (51.5 percent) is 10.4 percentage points higher than offenders with no assessment/no treatment need (41.1 percent) and 6.9 percentage points higher than the state-wide rate (44.6 percent), demonstrating the importance of treatment for those with an identified treatment need.

**Table 22. Return-to-Prison Rates by Substance Abuse Treatment Participation and Substance Abuse Need**

Substance Abuse Treatment Participation and Substance Abuse Need	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
<b>In-Prison SAT Participation/Had Substance Abuse Need</b>							
Completed Aftercare	564	38	6.7%	68	12.1%	99	17.6%
Some Aftercare	537	157	29.2%	185	34.5%	210	39.1%
No Aftercare	2,027	748	36.9%	866	42.7%	959	47.3%
<b>Subtotal</b>	<b>3,128</b>	<b>943</b>	<b>30.1%</b>	<b>1,119</b>	<b>35.8%</b>	<b>1,268</b>	<b>40.5%</b>
<b>No In-Prison SAT Participation/Had Substance Abuse Need</b>							
Completed Aftercare	2,248	891	17.4%	482	21.4%	550	24.5%
Some Aftercare	1,886	559	29.6%	661	35.0%	746	39.6%
No Aftercare	35,874	15,406	42.9%	17,179	47.9%	18,473	51.5%
<b>Subtotal</b>	<b>40,008</b>	<b>16,856</b>	<b>40.9%</b>	<b>18,322</b>	<b>45.8%</b>	<b>19,769</b>	<b>49.4%</b>
<b>No Assessment/No Substance Abuse Need Identified</b>							
	52,554	17,511	33.3%	19,890	37.8%	21,624	41.1%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,891</b>	<b>41.1%</b>	<b>43,661</b>	<b>44.8%</b>

## 6 Offender Outcomes and Type of Return to CDCR

### 6.1 Three-Year Outcomes for the Fiscal Year 2010-11 Release Cohort

*Figure 20. Three-Year Outcomes for Fiscal Year 2010-11 Release Cohort*

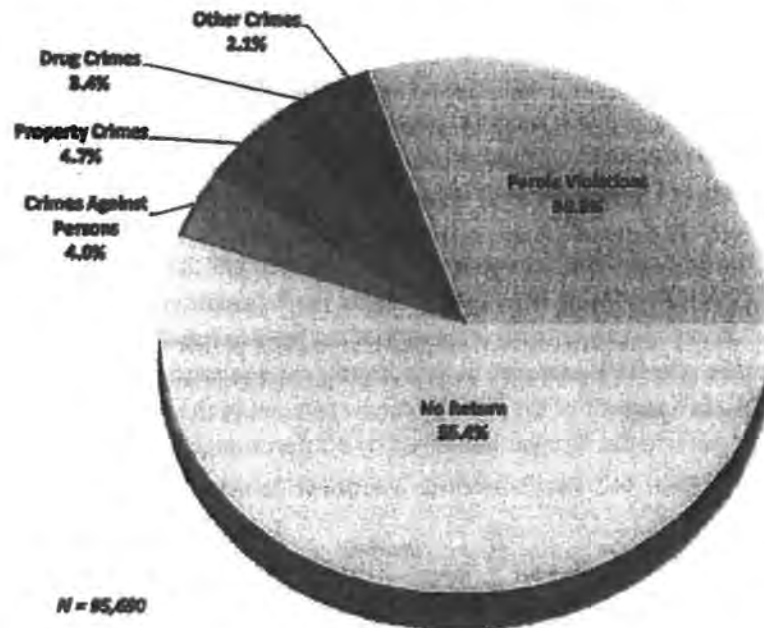


Figure 20 and Table 23 present outcomes for the 95,690 offenders released from prison during FY 2010-11. Of the 95,690 offenders released, 30.3 percent of the release cohort (29,028 offenders) returned to prison for parole violations and nearly 15 percent of the release cohort (14.2 percent or 13,633 offenders) returned to prison after conviction of a new criminal offense. Of the 13,633 offenders that returned after conviction of a new criminal offense, 4.7 percent of the release cohort (4,520 offenders) were returned for property crimes, followed by 4 percent of the release cohort (3,834 offenders) for crimes against persons, and 3.4 percent of the release cohort (3,279 offenders) for drug crimes. Over two percent of the release cohort (2.1 percent or 2,000 offenders) were convicted of other crimes and over 55 percent of the release cohort (55.4 percent or 53,029 offenders) completed the three-year follow-up period without returning to prison.

When examining the 95,690 offenders released in FY 2010-11, changes in the type/reason for returning to CDCR can largely be attributed to the implementation of Realignment in October 2011. Although each of the 95,690 offenders were released pre-Realignment, depending on their date of release, Realignment was in effect for various amounts of time during an offender's three-year follow-up period. Realignment changed the parole revocation process so that only offenders previously sentenced to a

life-term can be revoked to prison and all other parole revocations are served in county jail, instead of State prison.

An examination of returns to State prison for the last three release cohorts studied by the CDCR (FY 2008-09, FY 2009-10, and FY 2010-11) shows substantial decreases in returns to prison for parole violations. As shown in Table 23, 42.3 percent of the FY 2008-09 release cohort returned for parole violations. In FY 2008-09 there were more offenders returned for parole violations (42.3 percent of the release cohort or 47,793 offenders) than offenders who did not return to State prison during the three-year follow-up period (39 percent of the release cohort or 44,074 offenders). The percentage of offenders returned for parole violations decreased by 4.4 percentage points between FY 2008-09 (42.3 percent of the release cohort) and FY 2009-10 (37.9 percent of the release cohort) and the number of offenders who did not return to State prison during the three-year follow-up period increased by 6.7 percentage points (39 percent to 45.7 percent of the release cohorts, respectively).

The most substantial decrease in parole violations is noted between FY 2009-10 and FY 2010-11. While 37.9 percent of the FY 2009-10 release cohort returned for parole violations, the percentage decreased by 7.6 percentage points in FY 2010-11 to 30.3 percent of the release cohort. The number of offenders who completed the three-year follow-up period without returning to prison also saw a substantial increase; in FY 2009-10, 45.7 percent of the release cohort completed the three-year follow-up period without returning to prison and the number increased by 9.7 percentage points to 55.4 percent of the release cohort in FY 2010-11.

Realignment intended for offenders committing more serious and violent crimes, such as crimes against persons, to serve sentences in State prison, while low-level offenders who cycled in and out of prison, would serve their sentences in county jail. The percentage of offenders returning to State prison has changed according to Realignment's Intent; the number of offenders returned for crimes against persons, which tend to be more serious and violent, have slowly increased over the last three release cohorts and the number of offenders returning for property and drug crimes have decreased.

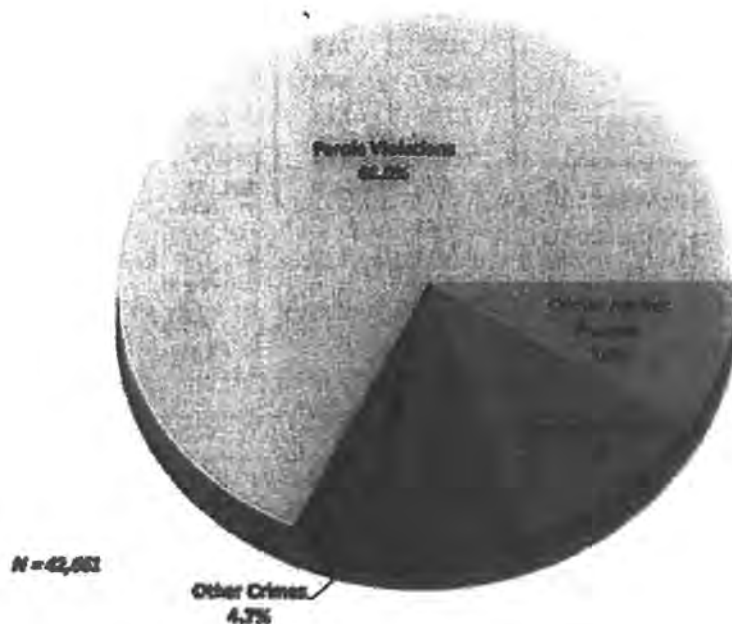
Between FY 2008-09 and FY 2009-10, crimes against persons increased by less than one percentage point (from 3.5 percent to 3.6 percent of the release cohorts, respectively). The increase between FY 2009-10 and FY 2010-11 was also slight; from 3.6 percent to 4 percent of the release cohorts. The decrease in property crimes and drug crimes were more substantial across the three release cohorts. Property crimes decreased from 7.1 percent to 6.2 percent of the release cohorts between FY 2008-09 and FY 2009-10 and from 6.2 percent to 4.7 percent of the release cohorts between FY 2009-10 and FY 2010-11. Drug crimes decreased from 5.6 percent of the release cohort in FY 2008-09 to 4.5 percent of the release cohort in FY 2009-10 and from 4.5 percent of the release cohort to 3.4 percent of the release cohort between FY 2009-10 and FY 2010-11. Other crimes have remained fairly consistent; 2.4 percent of the release cohort was returned for other crimes in FY 2008-09, 2.1 percent of the release cohort in FY 2009-10, and again, 2.1 percent of the release cohort in FY 2010-11.

**Table 23. Three-Year Outcomes for Fiscal Year 2008-09, 2009-10, and 2010-11 Release Cohorts**

Type of Return	FY 2008-09		FY 2009-10		FY 2010-11	
	Number	Percent	Number	Percent	Number	Percent
No Return to Prison	44,074	39.0%	47,959	45.7%	53,029	55.4%
Crimes Against Persons	3,925	3.5%	3,771	3.6%	3,834	4.0%
Property Crimes	8,055	7.1%	6,541	6.2%	4,520	4.7%
Drug Crimes	6,299	5.6%	4,730	4.5%	3,279	3.4%
Other Crimes	2,731	2.4%	2,233	2.1%	2,000	2.1%
Parole Violations	47,793	42.3%	39,747	37.9%	29,028	30.3%
<b>Total</b>	<b>112,877</b>	<b>100.0%</b>	<b>104,981</b>	<b>100.0%</b>	<b>95,690</b>	<b>100.0%</b>

## 6.2 Type of Return for the Fiscal Year 2010-11 Offenders Returning to State Prison

**Figure 21. Type of Return for the 42,661 Offenders Returned to State Prison Following Release in FY 2010-11**



Of the 95,690 offenders released in FY 2010-11, 42,661 offenders (44.6 percent of the release cohort) returned to State prison within three years of their release. This section provides further analysis of the 42,661 returns to prison (excluding the 53,029 offenders that did not return to prison), in order to more closely examine the return types of offenders released in FY 2010-11. Of the total returns (42,661 offenders), parole violations (68 percent of all returns or 29,028 offenders) accounted for the largest number of returns, followed by property crimes (10.6 percent of all returns or 4,520 offenders), crimes against persons (9 percent of all returns or 3,834 offenders), and drug crimes (7.7 percent of all returns or 3,279 offenders). Other crimes comprised 4.7 percent (2,000 offenders) of all returns.

As intended under Realignment, most parole violators serve their sentences in county jail, rather than State prison, thus, decreases in parole violations have been observed since Realignment's passage in October 2011. However, due to the timing in which the FY 2010-11 cohort was released and the passage of Realignment in October 2011, parole violations still comprise a large number of the returns for the FY 2010-11 release cohort (68 percent of all returns). Each of the 95,690 offenders released in FY 2010-11 were released pre-Realignment, but Realignment was in effect for varying amounts of time during each offender's three-year follow-up period and many offenders were released into the community for a year or more when Realignment was implemented. An examination of the FY 2010-11 release cohort, as well as other CDCR cohorts, shows most offenders who return to State prison, return within the first year of their release. Over eighty percent (81.6 percent of the release cohort or 34,810 offenders) of the 42,661 offenders who were released in FY 2010-11 and returned to prison, returned within the first year of



their release. For most of these offenders, returns to prison for parole violations, rather than county jail, was possible because Realignment had not yet been implemented. As Realignment continues to be in place during a larger portion of future release cohorts' follow-up period, further decreases in returns to prison for parole violations are expected.

**Table 24. Type of Return for the 42,661 Offenders Returned to State Prison Following Release in FY 2010-11**

Type of Return	Returned	
	Number	Percent
Parole Violations	29,028	68.0%
Property Crimes	4,520	10.6%
Crime Against Persons	3,834	9.0%
Drug Crimes	3,279	7.7%
Other Crimes	2,000	4.7%
<b>Total</b>	<b>42,661</b>	<b>100.0%</b>

### 6.3 Impact of Realignment

Realignment became law on October 1, 2011 and requires most non-serious, non-violent, and non-sex registrant offenders be sentenced to and serve parole revocations in county jails, rather than State prison, with the intent of reducing the number of low-level offenders cycling in and out of California's prisons. Realignment also changed the State's system of post-release supervision so that most non-serious, non-violent, and non-sex registrant offenders are released to Post-Release Community Supervision (PRCS), which is administered by county probation departments; whereas most high-risk sex offenders, lifers, and offenders committing a serious or violent crime are released to parole and supervised by State parole agents. Realignment changed the parole revocation process so that only offenders previously sentenced to a life-term can be revoked to prison and all other parole revocations are served in county jails.

As shown in the time to return section of this report, a large number of offenders who return to State prison, return during the first and second quarters following their release, meaning that a large number of offenders had already returned to prison when Realignment was implemented in October 2011. Of the 95,690 offenders released during FY 2010-11, 33,666 offenders (35.2 percent) had returned to prison prior to the implementation of Realignment and 62,024 offenders (64.8 percent) had not returned to prison. The 33,666 offenders who returned to prison prior to the implementation of Realignment have been removed from this analysis in order to further examine the impacts of Realignment by analyzing only those offenders who did not return to prison prior to the implementation of Realignment (62,024 offenders). The 62,024 offenders were followed for a period ranging from one day to approximately 33 months, post-Realignment, before they were either returned to prison or completed the three-year follow-up period without returning to prison. Although each of the 95,690 offenders were followed for a full three-year follow-up period, regardless of whether they returned to prison prior to or after the implementation of Realignment, this section further examines the 62,024 offenders that did not return to prison prior to the implementation of Realignment.

Of the 62,024 offenders not returned to prison prior to the implementation of Realignment, 18.7 percent (11,598 offenders) were discharged from parole prior to the implementation of Realignment and 25.9 percent (16,051 offenders) remained on parole post-Realignment. Over half (55.4 percent or 34,375 offenders) were on parole when Realignment was implemented, but were later discharged from parole after Realignment was implemented.

Of the 11,598 offenders discharged from parole prior to the implementation of Realignment, 92.2 percent (10,696 offenders) completed the three-year follow-up period without returning to State prison and 7.8 percent (902 offenders) were returned to State prison with a new term. Of the 16,051 offenders who remained on parole post-Realignment, 63.2 percent (10,147 offenders) completed the three-year follow-up period without returning to State prison, 31.9 percent (5,122 offenders) were returned to CDCR with a new term, and 4.9 percent (782 offenders) were returned for parole violations. Of the 34,375 offenders who were on parole prior to the implementation of Realignment and were later discharged, 93.6 percent (32,186 offenders) completed the follow-up period without returning to State prison and 6.4 percent (2,189 offenders) were returned with a new term.

Until a CDCR cohort is released post-Realignment and an entire three-year follow-up period occurs, the full impact of Realignment on the State's return-to-prison rate will be unknown. It is expected the State's three-year return-to-prison will continue to decrease through the next two fiscal years of releases (FY 2011-12 and FY 2012-13 release cohorts). As the rate continues to be impacted by Realignment, the make-up of CDCR's offender population will be impacted as well. The CDCR will continue to examine changes to the State's three-year return-to-prison rate, the offender population, and arrest and conviction data when available.

## Appendix A

### Supplemental Recidivism Rates: Arrests, Convictions, and Returns to Prison

The below figures and tables present supplemental recidivism rates (arrests, convictions, and returns to prison) for adult offenders released from CDCR adult institutions. One-year rates are provided for FY 2002-03 through FY 2012-13 and provide the most years of comparative data.<sup>7</sup> Although only a one-year rate is provided for these years, it is a good indicator of recidivism (as previously indicated in this report) because over 80 percent of offenders who returned to prison, returned within the first year of release. In order to provide the most comprehensive data available, one-year rates are followed by two- and three-year supplemental recidivism rates.<sup>8</sup> Two-year supplemental recidivism rates are available for Fiscal Year 2002-03 through Fiscal Year 2011-12 and three-year rates are available for Fiscal Year 2002-03 through Fiscal Year 2010-11.

An examination of one-year return-to-prison rates by fiscal year, shows a substantial difference (26.6 percentage points) between the FY 2010-11 (36.4 percent) and FY 2011-12 release cohorts (9.8 percent). The decrease between the two rates was preceded and followed by less substantial decreases; the one-year return-to-prison rate decreased 5.6 percentage points between the FY 2009-10 and FY 2010-11 release cohorts and 3.2 percentage points between the FY 2011-12 and FY 2012-13 release cohorts. The one-year arrest and conviction rate remained relatively stable through the FY 2010-11 release cohort and both rates saw a slight increase with the FY 2011-12 release cohort; arrests increased 2.2 percentage points and convictions 3.5 percentage points. Following the increase in the arrest and convictions rates among the FY 2011-12 release cohort, both rates decreased with the FY 2012-13 release cohort. The FY 2012-13 one-year arrest rate (50.5 percent) was the lowest among all release cohorts examined. Similarly, the one-year conviction rate for the FY 2012-13 release cohort was 20.3 percent, which is the lowest one-year conviction rate since the FY 2002-03 rate of 19.7 percent. The FY 2011-12 time period (July 1, 2011 through June 30, 2012) encompassed the start of Realignment (October 2011) and may account for the increase in arrests and convictions, and the substantial decrease in returns to State prison, as the state and counties adjusted to the new system.

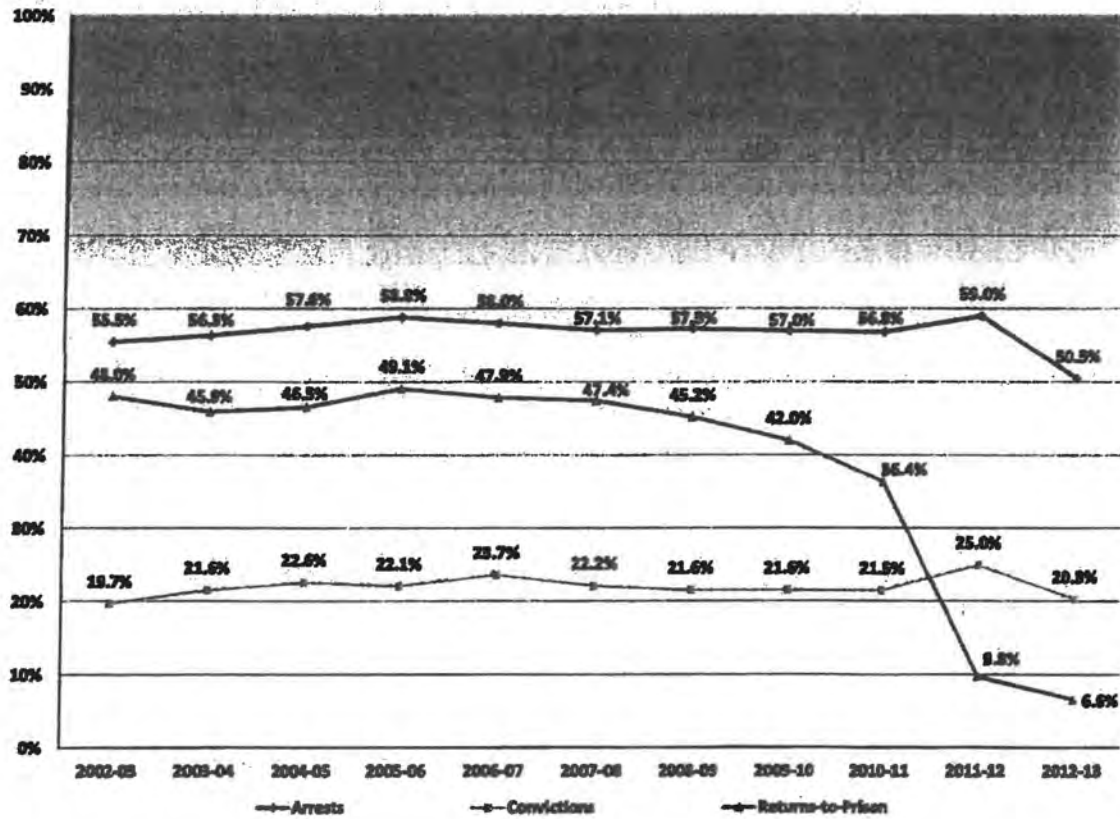
Similar patterns are found in the two-year arrest, conviction, and return-to-prison rates, although less pronounced. Between the FY 2009-10 and FY 2010-11 release cohorts, the two-year return-to-prison rate decreased 11 percentage points, while the two-year arrest and conviction rates slightly increased (0.8 of a percentage point and 1.3 percentage points, respectively). Between FY 2010-11 and FY 2011-12, the two-year return-to-prison rate decreased 22.9 percentage points, while the two-year arrest and conviction rates saw another slight increase (0.5 of a percentage point and 2.3 percentage points, respectively). When examining the three-year arrest, conviction, and return-to-prison rates, arrests and convictions remained relatively stable between the FY 2009-10 and 2010-11 release cohorts (arrests

<sup>7</sup> The arrest, conviction, and return-to-prison data contained in these figures and charts were extracted in April 2016 to minimize the effects of the time lag of data entry into the State's systems.

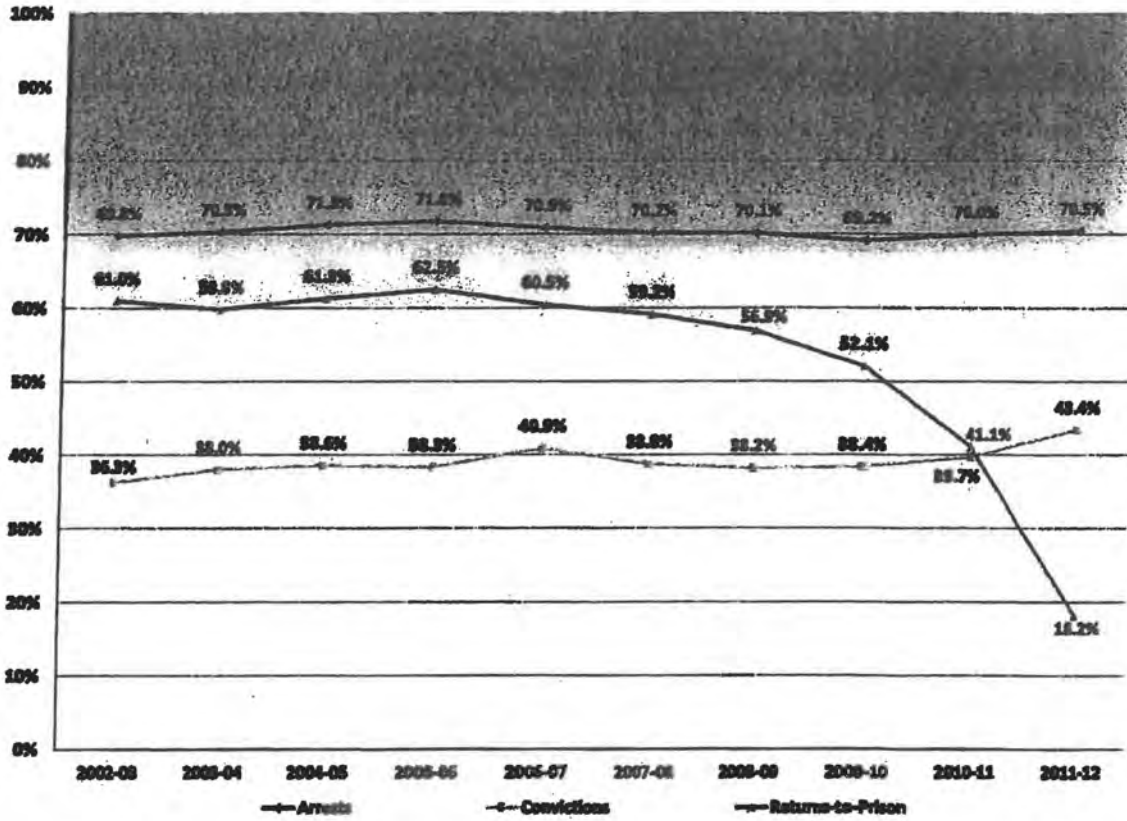
<sup>8</sup> Supplemental recidivism rates are "frozen" at three years, meaning the three-year follow-up period is complete and no further analyses are performed. Reported one-year and two-year rates may fluctuate slightly, as the data used in subsequent reporting years will likely increase, particularly for arrests and convictions since these data are routinely updated in accordance with criminal justice processing.

increased 0.5 of a percentage point and convictions increased 1.8 percentage points), while the decrease in the three-year return-to-prison rate was more substantial (9.7 percentage points).

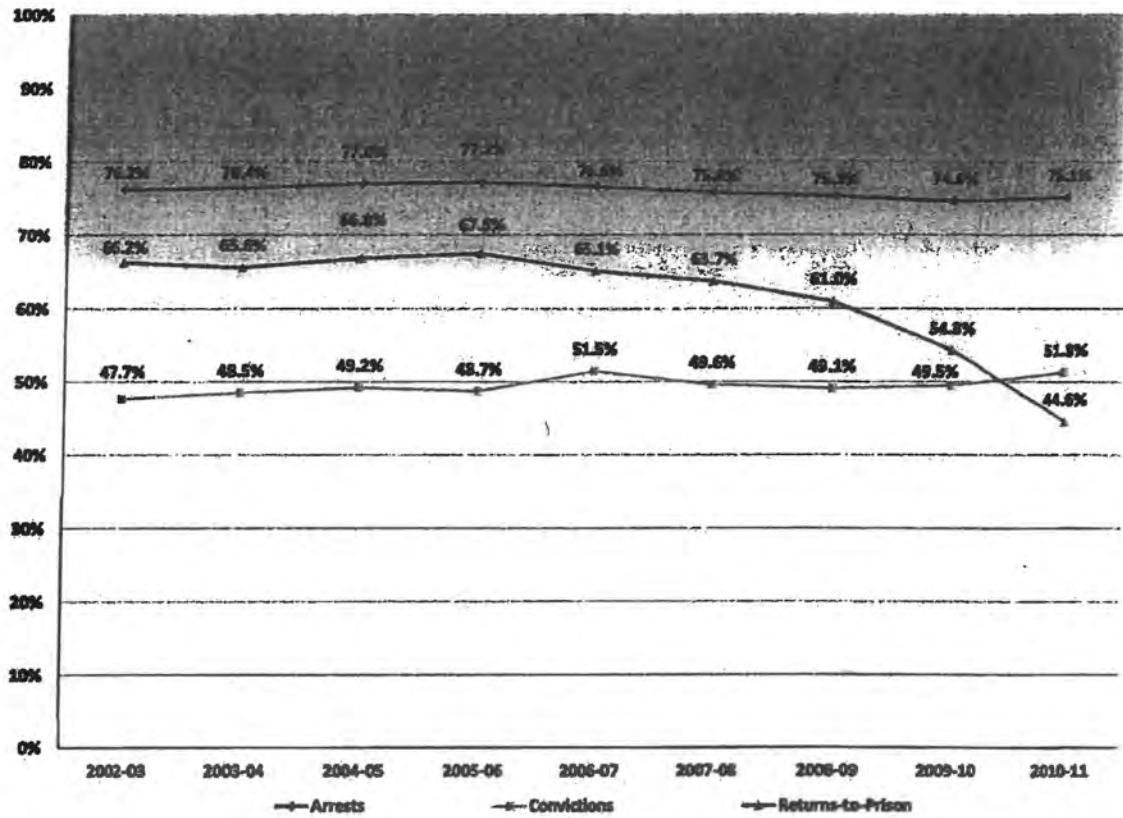
*One-Year Supplemental Recidivism Rates by Fiscal Year*



**Two-Year Supplemental Recidivism Rates by Fiscal Year**



**Three-Year Supplemental Recidivism Rates by Fiscal Year**



## Appendix A

Supplemental Recidivism Rates: Arrests, Convictions, and Returns to Prison  
(continued)

		<b>Arrests*</b>					
		<b>One-Year</b>		<b>Two-Year</b>		<b>Three-Year</b>	
<b>Fiscal Year*</b>	<b>Number Released</b>	<b>Number Arrested</b>	<b>Arrest Rate</b>	<b>Number Arrested</b>	<b>Arrest Rate</b>	<b>Number Arrested</b>	<b>Arrest Rate</b>
2002-03	99,482	55,204	55.5%	69,449	69.8%	75,765	76.2%
2003-04	99,635	56,127	56.3%	70,070	70.3%	76,135	76.4%
2004-05	103,647	59,703	57.6%	73,881	71.3%	79,819	77.0%
2005-06	105,974	62,331	58.8%	76,079	71.8%	81,786	77.2%
2006-07	112,665	65,369	58.0%	79,893	70.9%	86,330	76.6%
2007-08	113,888	64,981	57.1%	79,978	70.2%	86,309	75.8%
2008-09	110,356	63,193	57.3%	77,412	70.1%	83,080	75.3%
2009-10	103,867	59,159	57.0%	71,837	69.2%	77,495	74.6%
2010-11	94,888	53,911	56.8%	66,399	70.0%	71,284	75.1%
2011-12	75,172	44,345	59.0%	52,974	70.5%	N/A	N/A
2012-13	35,910	18,131	50.5%	N/A	N/A	N/A	N/A

		<b>Convictions*</b>					
		<b>One-Year</b>		<b>Two-Year</b>		<b>Three-Year</b>	
<b>Fiscal Year</b>	<b>Number Released</b>	<b>Number Convicted</b>	<b>Conviction Rate</b>	<b>Number Convicted</b>	<b>Conviction Rate</b>	<b>Number Convicted</b>	<b>Conviction Rate</b>
2002-03	99,482	19,643	19.7%	36,087	36.3%	47,443	47.7%
2003-04	99,635	21,509	21.6%	37,881	38.0%	48,350	48.5%
2004-05	103,647	23,464	22.6%	40,022	38.6%	51,026	49.2%
2005-06	105,974	23,428	22.1%	40,635	38.3%	51,650	48.7%
2006-07	112,665	26,657	23.7%	46,106	40.9%	57,980	51.5%
2007-08	113,888	25,233	22.2%	44,164	38.8%	56,525	49.6%
2008-09	110,356	23,831	21.6%	42,181	38.2%	54,175	49.1%
2009-10	103,867	22,410	21.6%	39,908	38.4%	51,456	49.5%
2010-11	94,888	20,403	21.5%	37,710	39.7%	48,689	51.3%
2011-12	75,172	18,778	25.0%	32,651	43.4%	N/A	N/A
2012-13	35,910	7,303	20.3%	N/A	N/A	N/A	N/A

\*Arrests and convictions are only included for offenders with an automated criminal history record available from the California Department of Justice. Fiscal years without enough follow-up time to capture recidivism are reported as "N/A".



## Appendix A

Supplemental Recidivism Rates: Arrests, Convictions, and Returns to Prison  
(continued)

Fiscal Year	Number Released	Returns to State Prison					
		One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
2002-03	103,934	49,924	48.0%	63,415	61.0%	68,810	66.2%
2003-04	103,296	47,423	45.9%	61,788	59.8%	67,734	65.6%
2004-05	106,920	49,761	46.5%	65,559	61.3%	71,444	66.8%
2005-06	108,662	53,330	49.1%	67,958	62.5%	73,350	67.5%
2006-07	115,254	55,167	47.9%	69,691	60.5%	75,018	65.1%
2007-08	116,015	55,049	47.4%	68,643	59.2%	73,885	63.7%
2008-09	112,877	51,010	45.2%	64,244	56.9%	68,803	61.0%
2009-10	104,981	44,104	42.0%	54,719	52.1%	57,022	54.3%
2010-11	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%
2011-12	76,102	7,447	9.8%	13,838	18.2%	N/A	N/A
2012-13	36,899	2,436	6.6%	N/A	N/A	N/A	N/A

*Fiscal years without enough follow-up time to capture recidivism are reported as "N/A".*

## Appendix B

### Type of Arrest and Conviction for Fiscal Year 2009-10 and Fiscal Year 2010-11 Release Cohorts

The below tables show the type of arrest and type of conviction for the FY 2009-10 and 2010-11 release cohorts. Data represent the first arrest or conviction episode and only the most serious offense in the arrest or conviction cycle is presented. At the time of this report, the type of arrest or conviction for some offenders was unknown.

In FY 2009-10, 25.4 percent of the offenders completed the three-year follow-up period without an arrest. In FY 2010-11, 24.9 percent of the offenders completed the three-year follow-up period (a decrease of 0.5 of a percentage point from the previous release cohort) without an arrest. Supervision violations, which account for the largest number of arrests, increased by 1.8 percentage points between FY 2009-10 and FY 2010-11 (22.3 percent and 24.1 percent, respectively), while arrests for crimes against persons (11.6 percent) and other crimes (4.8 percent) remained unchanged. Between FY 2009-10 and FY 2010-11, arrests for drug/alcohol crimes decreased 1.2 percentage points (20.5 percent and 19.3 percent, respectively) and property crimes decreased by 0.2 of a percentage point (11.5 percent and 11.3 percent, respectively).

The portion of the release cohort arrested for each offense category remained static across the two fiscal years; arrests for supervision violations comprised the largest number of arrests, followed by drug/alcohol crimes, crimes against persons, property crimes, and other crimes.

#### Type of Arrest for Fiscal Year 2009-10 and Fiscal Year 2010-11 Release Cohorts

Type of Arrest	FY 2009-10		FY 2010-11	
	Number	Percent	Number	Percent
No Arrests	26,372	25.4%	23,604	24.9%
Crimes Against Persons	12,035	11.6%	11,035	11.6%
Property Crimes	11,969	11.5%	10,692	11.3%
Drug/Alcohol Crimes	21,321	20.5%	18,356	19.3%
Other Crimes	5,010	4.8%	4,545	4.8%
Supervision Violations	23,195	22.3%	22,829	24.1%
Unknown	3,965	3.8%	3,827	4.0%
<b>Total</b>	<b>103,867</b>	<b>100.0%</b>	<b>94,888</b>	<b>100.0%</b>

The percentage of offenders without a conviction during the three-year follow-up period decreased by 1.8 percentage points between FY 2009-10 and FY 2010-11 (50.5 percent and 48.7 percent, respectively). With the exception of drug/alcohol crimes, which decreased by 0.5 of a percentage point between the two fiscal years (19 percent and 18.5 percent, respectively), all other conviction types increased slightly. Crimes against persons increased by 1 percentage point (10.3 percent and 11.3 percent, respectively), property crimes increased by 0.6 of a percentage point (12.9 percent and 13.5

percent, respectively) and other crimes increased by 0.5 of a percentage point (4 percent and 4.5 percent, respectively).

The portion of the release cohort convicted for each offense category also remained relatively static across the two fiscal years; convictions for drug/alcohol crimes comprised the largest number of convictions, followed by property crimes, crimes against persons, and other crimes.

*Type of Conviction for Fiscal Year 2009-10 and Fiscal Year 2010-11 Release Cohorts*

Type of Conviction	FY 2009-10		FY 2010-11	
	Number	Percent	Number	Percent
No Convictions	52,411	50.5%	46,199	48.7%
Crimes Against Persons	10,659	10.3%	10,741	11.3%
Property Crimes	13,368	12.9%	12,765	13.5%
Drug/Alcohol Crimes	19,683	19.0%	17,573	18.5%
Other Crimes	4,162	4.0%	4,296	4.5%
Unknown	3,584	3.5%	3,314	3.5%
Total	103,867	100.0%	94,888	100.0%

# Appendix C

## Offender Demographics and Characteristics by Fiscal Year

	FY 2009-10 Number Released	FY 2010-11 Number Released	Number Released Difference	FY 2009-10 Number Returned	FY 2010-11 Number Returned	Number Returned Difference	FY 2009-10 Three-Year Return Rate	FY 2010-11 Three-Year Return Rate	Three-Year Rate Difference
<b>Release Type</b>									
First Release	61,810	58,122	(3,688)	27,254	19,777	(7,477)	44.1%	34.0%	(10.1)
Re-Release	43,171	37,568	(5,603)	29,768	22,884	(6,884)	69.0%	60.9%	(8.0)
<b>Gender</b>									
Male	95,937	96,571	(7,645)	52,891	40,196	(12,695)	56.3%	46.4%	(9.9)
Female	11,044	9,119	(1,925)	4,131	3,468	(1,663)	37.4%	27.1%	(10.3)
<b>Age at Release</b>									
18 - 19	648	744	301	437	440	3	68.0%	59.1%	(8.8)
20 - 24	14,061	12,666	(1,395)	8,621	6,400	(2,221)	61.3%	50.5%	(10.8)
25 - 29	20,861	18,550	(2,311)	12,190	9,052	(3,138)	58.0%	48.8%	(10.2)
30 - 34	17,486	16,401	(1,085)	9,452	7,217	(2,235)	54.2%	44.0%	(10.2)
35 - 39	14,184	12,528	(1,656)	7,542	5,357	(2,185)	53.2%	42.8%	(10.4)
40 - 44	13,940	12,380	(1,560)	7,343	5,342	(2,001)	52.7%	43.1%	(9.6)
45 - 49	12,010	10,714	(1,294)	6,127	4,548	(1,579)	51.0%	42.4%	(8.6)
50 - 54	7,177	5,865	(812)	3,337	2,705	(632)	46.5%	39.4%	(7.1)
55 - 59	2,132	1,986	(146)	1,311	1,082	(229)	41.3%	34.6%	(7.3)
60 and over	1,787	1,844	107	662	573	(89)	38.3%	31.1%	(7.0)
<b>Race/Ethnicity</b>									
American Indian/Alaskan Native	1,105	1,063	(42)	729	586	(143)	66.0%	55.1%	(10.8)
White	31,786	28,323	(3,463)	18,128	13,586	(4,542)	57.0%	48.0%	(9.1)
Black/African American	27,607	25,298	(2,309)	16,145	11,644	(4,501)	58.5%	46.1%	(12.3)
Asian/Pacific Islander	859	868	9	395	365	(30)	46.0%	42.1%	(3.9)
Hispanic/Latino	40,407	37,180	(3,217)	20,080	15,321	(4,759)	49.6%	41.2%	(8.4)
Other	3,217	3,098	(209)	1,865	1,159	(406)	48.6%	38.6%	(10.1)
<b>County of Pardon</b>									
Fresno	4,382	3,699	(683)	2,911	2,184	(727)	66.4%	59.0%	(7.4)
San Joaquin	2,855	2,963	(202)	1,794	1,358	(436)	67.8%	67.5%	(0.1)
Stanislaus	1,840	1,618	(222)	1,200	900	(300)	65.2%	55.6%	(9.6)
San Diego	6,801	6,431	(370)	4,239	3,484	(805)	62.3%	53.4%	(8.9)
Kern	3,853	3,681	(272)	2,509	1,944	(565)	63.5%	52.6%	(10.7)
Riverside	6,718	6,201	(517)	4,127	3,237	(890)	61.4%	52.2%	(9.2)
Sacramento	6,248	5,896	(352)	3,359	2,789	(570)	53.8%	48.1%	(5.7)
San Bernardino	8,505	8,018	(487)	5,087	3,886	(1,251)	59.8%	47.8%	(12.0)
Santa Clara	3,161	2,776	(385)	1,741	1,164	(577)	55.1%	41.9%	(13.1)
Alameda	4,788	4,022	(766)	2,468	1,612	(856)	51.5%	40.1%	(11.5)
Orange	8,169	6,804	(1,365)	3,652	2,658	(994)	44.7%	39.1%	(5.6)
Los Angeles	26,858	24,904	(1,954)	11,289	8,082	(3,256)	42.8%	32.8%	(10.6)
All Others	21,403	19,475	(1,928)	12,647	9,563	(3,084)	59.1%	49.1%	(10.0)
<b>Commitment Offense Categories</b>									
Property Crimes	34,899	31,756	(3,143)	20,276	15,048	(5,228)	58.1%	47.4%	(10.7)
Crimes Against Persons	28,360	28,782	422	15,671	13,186	(2,475)	55.5%	45.9%	(9.5)
Other Crimes	12,461	10,787	(1,704)	6,525	4,630	(1,895)	52.4%	43.0%	(9.3)
Drug Crimes	29,361	24,445	(4,916)	14,547	9,787	(4,760)	49.5%	40.0%	(9.5)

## Appendix C

## Offender Demographics and Characteristics by Fiscal Year (continued)

	FY 2009-10 Number Released	FY 2010-11 Number Released	Number Released Difference	FY 2009-10 Number Returned	FY 2010-11 Number Returned	Number Returned Difference	FY 2009-10 Three-Year Return Rate	FY 2010-11 Three-Year Return Rate	Three-Year Rate Difference
<b>Offense</b>									
Escape	78	45	(33)	48	29	(19)	61.5%	64.4%	2.9
Other Sex	2,683	2,796	59	1,867	1,768	(104)	69.6%	64.4%	(5.1)
Vehicle Theft	5,511	4,818	(1,098)	3,762	2,475	(1,287)	68.3%	56.1%	(12.2)
Sodomy	85	84	1	21	19	(2)	63.6%	55.9%	(7.8)
Oral Copulation	205	215	10	115	111	(4)	56.1%	51.6%	(4.5)
Receiving Stolen Property	4,837	4,844	(468)	2,988	2,294	(794)	61.4%	51.4%	(9.9)
Burglary 1st	3,468	3,945	(123)	2,042	1,690	(352)	58.9%	50.5%	(8.4)
Possession Weapon	5,892	5,183	(708)	3,544	2,545	(998)	60.1%	49.1%	(11.0)
Petty Theft With Prior	5,185	4,672	(463)	3,069	2,289	(774)	59.6%	49.0%	(10.7)
Controlled Substance Possession	15,319	12,489	(2,880)	8,851	6,032	(2,819)	56.5%	48.5%	(8.0)
Other Offenses	3,517	3,075	(442)	2,020	1,474	(546)	57.4%	47.9%	(9.5)
Other Assault/Battery	9,294	8,080	(174)	5,224	4,259	(971)	56.6%	46.9%	(9.6)
Other Property	1,368	1,282	(86)	748	589	(148)	54.7%	46.7%	(8.0)
Assault w/ Deadly Weapon	6,344	6,489	125	3,556	3,019	(538)	56.1%	46.7%	(9.4)
Arson	267	210	(57)	138	96	(42)	51.7%	45.7%	(6.0)
Robbery	5,504	5,847	943	3,115	2,635	(480)	56.6%	45.1%	(11.5)
Burglary 2nd	8,038	7,943	(80)	4,542	3,548	(994)	56.5%	44.7%	(11.9)
Penetration With Object	120	109	(20)	55	44	(11)	45.8%	44.0%	(1.8)
Grand Theft	3,699	3,393	(306)	1,886	1,488	(448)	51.0%	42.4%	(8.6)
Controlled Substance Other	634	478	(156)	382	202	(181)	55.7%	42.8%	(13.4)
Rape	450	482	(18)	245	176	(69)	54.4%	40.7%	(13.7)
Lewd Act With Child	2,104	2,272	168	977	820	(157)	46.4%	36.1%	(10.3)
Controlled Substance Sales	2,795	2,387	(449)	1,281	786	(445)	44.2%	33.6%	(10.6)
Marijuana Sale	446	384	(62)	189	118	(61)	42.4%	33.5%	(8.9)
Forgery/Fraud	2,848	2,364	(484)	1,267	775	(492)	44.5%	32.8%	(11.7)
Kidnapping	225	173	(52)	85	56	(30)	38.2%	32.4%	(5.9)
Hashish Possession	68	70	2	38	22	(16)	55.9%	31.4%	(24.5)
Marj. Possess For Sale	1,172	1,061	(111)	485	326	(159)	41.4%	30.7%	(10.7)
Controlled Substance Possession For Sale	4,466	7,432	(1,054)	3,461	2,230	(1,231)	40.9%	30.1%	(10.8)
Attempted Murder 2nd	337	335	(2)	150	99	(51)	44.5%	29.6%	(15.0)
Manslaughter	543	478	(70)	185	132	(63)	35.9%	27.9%	(8.0)
Controlled Substance Manufacturing	321	194	(127)	99	32	(61)	29.0%	23.9%	(5.1)
Marijuana Other	149	180	(19)	46	29	(17)	30.9%	22.3%	(8.6)
Driving Under Influence	2,707	2,244	(463)	775	485	(290)	28.6%	21.6%	(7.0)
Vehicular Manslaughter	141	221	(20)	46	45	(1)	19.1%	20.4%	1.3
Attempted Murder 1st	25	25	0	3	3	0	N/A	N/A	N/A
Murder 2nd	145	264	119	13	20	7	9.0%	7.6%	(1.4)
Murder 1st	67	76	9	4	2	(2)	6.0%	2.6%	(3.3)
<b>Sentence Type</b>									
Second Strikers (Determinate Sentencing Law)	13,853	12,900	(453)	8,107	6,681	(1,426)	60.7%	51.8%	(8.9)
Determinate Sentencing Law	91,850	82,382	(8,958)	48,889	35,955	(12,834)	53.5%	43.8%	(9.9)
Lifers (Indeterminate Sentencing Law)	278	388	120	26	25	(1)	8.4%	6.3%	(2.1)
<b>Sex Registration Requirement</b>									
Yes	4,471	4,589	518	5,522	5,041	(481)	65.2%	56.1%	(9.1)
No	96,510	86,701	(9,809)	51,500	37,620	(13,880)	33.4%	43.4%	(10.0)

## Appendix C

### Offender Demographics and Characteristics by Fiscal Year (continued)

	FY 2009-10 Number Released	FY 2010-11 Number Released	Number Released Difference	FY 2009-10 Number Returned	FY 2010-11 Number Returned	Number Returned Difference	FY 2009-10 Three-Year Return Rate	FY 2010-11 Three-Year Return Rate	Three-Year Rate Difference
<b>Serious and/or Violent Offense</b>									
Serious	13,804	13,288	(516)	7,889	6,418	(1,471)	57.0%	48.4%	(8.6)
Violent	9,978	10,653	675	4,802	4,081	(821)	48.1%	38.4%	(10.7)
Non-Serious/Non-Violent	61,189	71,769	(9,430)	44,251	52,152	(12,099)	54.5%	44.8%	(9.7)
<b>Mental Health Status</b>									
Department of Mental Health Enhanced Outpatient Program	3	29	56	3	37	34	N/A	62.7%	N/A
Mental Health Crisis Bed	5,808	2,422	(3,486)	4,114	1,460	(2,654)	69.6%	60.9%	(8.6)
Correctional Clinical Case Management System	97	119	22	27	69	42	79.0%	58.0%	(15.0)
None/No Mental Health Code	14,332	14,885	55	8,505	7,801	(1,204)	59.3%	50.8%	(8.6)
	84,701	78,705	(5,996)	44,373	53,794	(10,579)	52.4%	42.9%	(9.5)
<b>CSRA Risk Score</b>									
Low	18,700	17,421	(1,279)	5,679	4,117	(1,562)	30.4%	23.6%	(6.7)
Moderate	28,888	25,108	(3,780)	12,833	9,023	(3,810)	44.7%	35.9%	(8.8)
High	56,442	52,831	(4,111)	38,014	29,295	(8,779)	67.4%	55.9%	(11.5)
N/A	1,151	890	(261)	486	285	(201)	43.1%	34.5%	(8.6)
<b>Length of Stay</b>									
0 - 6 Months	46,041	42,018	(4,023)	29,882	22,653	(7,229)	64.8%	53.9%	(10.9)
7 - 12 Months	29,384	25,582	(3,792)	14,988	10,441	(4,527)	50.9%	40.8%	(10.1)
13 - 18 Months	9,792	9,056	(736)	4,429	3,135	(1,274)	45.2%	34.8%	(10.4)
19 - 24 Months	5,972	5,579	(393)	2,803	2,089	(704)	46.9%	37.6%	(9.3)
2 - 3 Years	5,567	5,350	(217)	2,885	1,891	(994)	46.3%	36.1%	(10.2)
3 - 4 Years	2,529	2,587	48	1,172	821	(351)	46.3%	32.0%	(14.5)
4 - 5 Years	1,709	1,589	(120)	798	539	(259)	44.4%	32.8%	(11.6)
5 - 10 Years	2,677	2,552	(125)	1,028	772	(256)	38.4%	30.8%	(7.6)
10 - 15 Years	941	919	(22)	302	221	(81)	32.1%	24.0%	(8.0)
15+ Years	379	474	95	65	49	(16)	17.2%	10.8%	(6.8)
<b>Prior Returns to Custody on Current Term</b>									
None	61,806	58,057	(3,749)	27,261	19,778	(7,473)	44.1%	34.1%	(10.0)
1	17,072	15,431	(1,641)	11,341	8,513	(2,828)	66.4%	55.2%	(11.5)
2	9,612	7,897	(1,715)	5,723	4,994	(729)	59.6%	52.4%	(7.5)
3	5,358	5,116	(242)	4,321	3,316	(1,005)	71.1%	64.8%	(6.3)
4	4,055	1,412	(2,643)	2,815	2,229	(586)	71.9%	65.3%	(6.6)
5	2,484	2,230	(254)	1,770	1,509	(261)	71.8%	67.7%	(4.1)
6	1,541	1,380	(161)	1,105	967	(138)	71.7%	70.1%	(1.6)
7	908	889	(19)	631	617	(14)	69.4%	69.4%	0.0
8	325	538	213	351	345	(6)	66.9%	64.1%	(2.7)
9	300	265	(35)	208	162	(46)	69.3%	61.1%	(8.2)
10+	319	375	56	205	231	25	64.6%	61.6%	(3.0)

## Appendix C

### Offender Demographics and Characteristics by Fiscal Year (continued)

	FY 2009-10 Number Released	FY 2010-11 Number Released	Number Released Difference	FY 2009-10 Number Retained	FY 2010-11 Number Retained	Number Retained Difference	FY 2009-10 Three-Year Return Rate	FY 2010-11 Three-Year Return Rate	Three-Year Rate Difference
<b>Number of CDCR Stays Ever</b>									
1	29,136	25,426	(2,710)	9,746	6,615	(9,131)	33.5%	25.0%	(8.4)
2	14,282	12,837	(1,445)	7,049	4,903	(2,146)	49.4%	38.2%	(11.2)
3	10,775	9,182	(1,593)	6,121	4,174	(1,947)	56.8%	45.5%	(11.5)
4	8,583	7,638	(925)	5,123	3,900	(1,323)	59.7%	49.6%	(10.1)
5	7,048	6,376	(672)	4,339	3,265	(1,094)	61.8%	51.2%	(10.6)
6	5,892	5,303	(589)	3,531	2,872	(579)	64.3%	54.2%	(10.1)
7	4,897	4,432	(465)	3,282	2,501	(781)	67.0%	56.4%	(10.6)
8	3,989	3,794	(265)	2,701	2,113	(588)	67.5%	56.6%	(11.0)
9	3,530	3,198	(342)	2,381	1,940	(541)	67.5%	57.7%	(9.7)
10	2,905	2,826	(80)	2,039	1,899	(340)	70.2%	60.1%	(10.0)
11	2,433	2,296	(137)	1,741	1,405	(336)	71.6%	61.2%	(10.4)
12	2,056	2,072	16	1,464	1,257	(207)	71.2%	60.7%	(10.5)
13	1,697	1,623	(84)	1,340	997	(343)	73.1%	61.8%	(11.5)
14	1,344	1,408	65	1,027	900	(127)	76.4%	63.9%	(12.5)
15 +	6,303	6,338	35	4,896	4,320	(576)	77.7%	68.2%	(9.5)
<b>Total</b>	<b>164,881</b>	<b>155,890</b>	<b>(9,291)</b>	<b>57,022</b>	<b>42,661</b>	<b>(14,361)</b>	<b>64.3%</b>	<b>44.6%</b>	<b>(19.7)</b>

## Appendix D

## Three-Year Return-to-Prison Rates by County of Parole

County of Parole	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Alameda County	4,022	1,448	36.0%	1,549	38.5%	1,612	40.1%
Alpine County	4	3	N/A	3	N/A	3	N/A
Amador County	95	36	37.9%	39	41.1%	41	43.2%
Butte County	751	318	42.3%	351	46.7%	376	50.1%
Calaveras County	32	10	31.3%	10	31.3%	10	31.3%
Colusa County	36	16	44.4%	16	44.4%	16	44.4%
Contra Costa County	1,091	474	43.4%	509	46.7%	532	48.8%
Del Norte County	81	39	48.1%	41	50.6%	41	50.6%
El Dorado County	268	108	40.3%	117	43.7%	127	47.4%
Fresno County	3,699	1,958	52.9%	2,086	56.4%	2,184	59.0%
Glenn County	59	20	33.9%	23	39.0%	24	40.7%
Humboldt County	471	215	45.6%	233	49.5%	243	51.6%
Imperial County	262	107	40.8%	123	46.9%	132	50.4%
Inyo County	25	11	N/A	12	N/A	13	N/A
Kern County	3,681	1,620	44.0%	1,805	49.0%	1,944	52.8%
Kings County	753	343	45.6%	383	50.9%	407	54.1%
Lake County	219	98	44.7%	107	48.9%	112	51.1%
Lassen County	73	22	30.1%	25	34.2%	26	35.6%
Los Angeles County	24,904	5,229	21.0%	6,807	27.3%	8,032	32.3%
Madera County	395	180	45.6%	195	49.4%	211	53.4%
Marin County	104	43	41.3%	53	51.0%	54	51.9%
Mariposa County	12	3	N/A	4	N/A	4	N/A
Mendocino County	232	119	51.3%	124	53.4%	128	55.2%
Merced County	762	342	44.9%	376	49.3%	402	52.8%
Modoc County	18	7	N/A	7	N/A	7	N/A
Mono County	9	3	N/A	3	N/A	3	N/A
Monterey County	1,015	381	37.5%	440	43.3%	481	47.4%
Napa County	126	50	39.7%	56	44.4%	59	46.8%
Nevada County	60	24	40.0%	25	41.7%	25	41.7%
Orange County	6,804	2,253	33.1%	2,498	36.7%	2,658	39.1%
Placer County	464	223	48.1%	235	50.6%	243	52.4%
Plumas County	32	6	18.8%	6	18.8%	6	18.8%
Riverside County	6,201	2,721	43.9%	2,987	48.3%	3,237	52.2%



## Appendix D

## Three-Year Return-to-Prison Rates by County of Parole

County of Parole	Released	One-Year		Two-Year		Three-Year	
		Returned	Rate	Returned	Rate	Returned	Rate
Sacramento County	5,698	2,388	41.9%	2,584	45.3%	2,739	48.1%
San Benito County	56	19	33.9%	21	37.5%	22	39.3%
San Bernardino County	8,018	3,123	38.9%	3,548	44.3%	3,836	47.8%
San Diego County	6,431	2,956	46.0%	3,240	50.4%	3,434	53.4%
San Francisco County	1,281	643	50.2%	667	52.1%	679	53.0%
San Joaquin County	2,363	1,191	50.4%	1,280	54.2%	1,358	57.5%
San Luis Obispo County	465	178	38.3%	201	43.2%	221	47.5%
San Mateo County	803	326	40.6%	361	45.0%	378	47.1%
Santa Barbara County	728	271	37.2%	313	43.0%	341	46.8%
Santa Clara County	2,776	977	35.2%	1,093	39.4%	1,164	41.9%
Santa Cruz County	350	153	43.7%	167	47.7%	184	52.6%
Shasta County	782	336	43.0%	372	47.6%	392	50.1%
Sierra County	9	5	N/A	5	N/A	5	N/A
Siskiyou County	77	30	39.0%	32	41.6%	38	49.4%
Solano County	1,280	638	49.8%	672	52.5%	690	53.9%
Sonoma County	635	251	39.5%	274	43.1%	284	44.7%
Stanislaus County	1,618	778	48.1%	846	52.3%	900	55.6%
Sutter County	297	126	42.4%	142	47.8%	153	51.5%
Tehama County	252	111	44.0%	117	46.4%	126	50.0%
Trinity County	31	14	45.2%	16	51.6%	17	54.8%
Tulare County	1,378	618	44.8%	672	48.8%	708	51.4%
Tuolumne County	50	14	28.0%	14	28.0%	17	34.0%
Ventura County	1,450	687	47.4%	749	51.7%	791	54.6%
Yolo County	547	256	46.8%	271	49.5%	286	52.3%
Yuba County	447	224	50.1%	244	54.6%	258	57.7%
Discharged	1,108	67	6.0%	172	15.5%	247	22.3%
<b>Total</b>	<b>95,690</b>	<b>34,810</b>	<b>36.4%</b>	<b>39,331</b>	<b>41.1%</b>	<b>42,661</b>	<b>44.6%</b>



## Appendix E

### Definitions of Key Terms

#### **California Static Risk Assessment (CSRA)**

The CSRA is an actuarial tool that utilizes demographic and criminal history data to predict an offender's risk of returning-to-prison at the time they are released from CDCR. Offenders are categorized as low, moderate or high risk of incurring a new criminal conviction.

#### **Cohort**

A group of individuals who share a common characteristic, such as all inmates who were released during a given year.

#### **Controlling Crime or Commitment Offense**

The most serious offense on the conviction for which the inmate was sentenced to prison on that term.

#### **Correctional Clinical Case Management System (CCCMS)**

The CCCMS facilitates mental health care by linking inmate/patients to needed services and providing sustained support while accessing such services. CCCMS services are provided as outpatient services within the general population setting at all institutions.

#### **Determinate Sentencing Law (DSL)**

Established by Penal Code Section 1170 in 1977, Determinate Sentencing Law identifies a specified sentence length for convicted felons who are remanded to State prison. Essentially, three specific terms of imprisonment (low, middle, and high) are assigned for crimes, as well as enhancements (specific case factors that allow judges to add time to a sentence). Opportunities to earn "credits" can reduce the length of incarceration.

#### **Enhanced Outpatient Program (EOP)**

A mental health services designation applied to a severely mentally ill inmate receiving treatment at a level similar to day treatment services.

#### **First Release**

The first release on the current term for felons with new admissions and parole violators returning with a new term (PV-WNT).

### **Indeterminate Sentencing Law (ISL)**

Established by Penal Code Section 1168 in 1917, the Indeterminate Sentencing Law allowed judges to determine a range of time (minimum and maximum) a convicted felon would serve. Different felons convicted for the same crimes could spend varying lengths of time in prison; release depended on many factors, including each prisoner's individual conduct in prison. After the minimum sentence passed, felons were brought to a parole board that would identify the actual date of release. Indeterminate Sentencing was replaced by Determinate Sentencing (Penal Code Section 1170) in 1977. After the implementation of Determinate Sentencing, only individuals with life sentences and third strikers are considered "indeterminately" sentenced, since the parole board determines their release.

### **Manual California Static Risk Assessment (CSRA)**

Inmates who do not have automated criminal history data available from the Department of Justice (DOJ) must have their CSRA score calculated manually. This is done with a review of a paper copy of the inmate's rap sheet. Manual scores calculated in Fiscal Year 2008-09 are not readily available for some inmates included in this report.

### **Parole**

A period of conditional supervised release following a prison term.

### **Parole Violation (Law)**

A law violation occurs when a parolee commits a crime while on parole and returns to CDCR custody (RTC) by action of the Board of Parole Hearings rather than by prosecution in the courts.

### **Parole Violation (Technical)**

A technical violation occurs when a parolee violates a condition of his/her parole that is not considered a new crime and returns to CDCR custody (RTC).

### **Parole Violator Returning With a New Term (PV-WNT)**

A parolee who receives a court sentence for a new crime committed while under parole supervision and returned-to-prison.

### **Recidivism**

Conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.

**Registered Sex Offender**

An inmate is designated as a registered sex offender if CDCR records show that the inmate has at some point been convicted of an offense that requires registration as a sex offender under Penal Code Section 290. This designation is permanent in CDCR records.

**Re-Release**

After a return-to-prison for a parole violation, any subsequent release on the same (current) term is a re-release.

**Return-to-Prison**

An individual convicted of a felony and incarcerated in a CDCR adult institution who was released to parole, discharged after being paroled, or directly discharged during Fiscal Year 2010-11 and subsequently returned to prison within three years of their release date.

**Serious Felony Offenses**

Serious felony offenses are specified in Penal Code Section 1192.7(c) and Penal Code Section 1192.8

**Stay**

A stay is any period of time an inmate is housed in a CDCR institution. Each time an inmate returns to prison it is considered a new stay, regardless of the reason for returning.

**Term**

A term is a sentence an inmate receives from a court to be committed to CDCR for a length-of-time. If an inmate is released after serving a term and is later returned-to-prison for a parole violation, the inmate returns and continues serving the original (current) term. If that inmate returns for committing a new crime, the inmate begins serving a new term.

**Violent Felony Offenses**

Violent felony offenses are specified in Penal Code Section 667.5(c).

# ATTACHMENT - 3

the location needs of larger retailers. We are working on having a vibrant downtown that can accommodate the preferred low-traffic downtown area. Ms. Pierce indicated she is active with the Clayton Historical Society, CBCA, and Boy Scouts. Ms. Pierce advised she is much honored to receive an official endorsement by the *East Bay Times* and she would appreciate one's vote by next Tuesday.

Mayor Geller advised that he plans to continue to bring the Concert in The Grove series even when he is not on the City Council but is always looking for volunteers to help out.

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS** – None.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Consider the adoption of an interim Urgency Ordinance No. 469 placing a local moratorium on the operation or establishment of parolee homes and community supervision programs within the city of Clayton.

Community Development Director Mindy Gentry provided a summary of the staff report advising this item arises from the Public Safety Realignment Act (AB109) from October 2011. The County Realignment Plan called for the establishment of community programs for employment support and placement services, mentoring and family reunification services, short and long-term housing access, and civil legal services. These services are currently not defined within the Clayton Municipal Code; some services could be characterized as Professional Office which would then be permitted by right in the Limited Commercial District and allowable on a second story in the Town Center Specific Plan.

An inquiry was recently made regarding the City's regulations for establishing residences for parolees that have been previously incarcerated. An adoption of a local moratorium would prohibit Community Supervision Program uses and parolee homes in Clayton for 45 days. It is foreseen that further time extension will be needed for staff to complete its analysis of the land use situation and then draft its proposed ordinance for a Planning Commission hearing and ultimate recommendation to the City Council.

Mayor Geller opened the floor to receive public comment; no public comments were offered.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to have the City Clerk read Urgency Ordinance No. 469, by title and number only and waive further reading. (Passed; 5-0 vote).**


The City Clerk read Ordinance No. 469 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve Urgency Ordinance No. 469 for Introduction with findings the Ordinance is not subject to the California Environmental Quality Act because this activity is not considered to be a project and it can be seen with certainty that it will not have a significant effect or physical change to the environment. (Passed 5-0 vote).**




Agenda Date: 10-03-2017

Agenda Item: 8a

Approved:  
  
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** SCOTT ALMAN, CITY ENGINEER  
MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

**DATE:** OCTOBER 3, 2017

**SUBJECT:** POLICY DISCUSSION OF ENCROCHMENTS INTO THE PUBLIC RIGHT-OF-WAY AND FENCE LOCATIONS FOR EXTERIOR SIDE SETBACKS

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## RECOMMENDATION

It is recommended the City Council discuss and provide direction to staff on structures encroaching into the public right-of-way and fencing regulations for exterior side setbacks.

## BACKGROUND

In the month of September 2017, City staff initiated two code enforcement cases regarding the construction of retaining walls and fencing in the public right-of-way and without building permits. One case consisted of a stacking block retaining wall, with a six-foot wooden fence on top of the wall, located on a corner lot at the intersection of Mountaire Parkway and Mt. Wilson Way, more specifically at 199 Mountaire Parkway (**Attachment 1**). The retaining wall and fence, built in the public right-of-way, run parallel to Mt. Wilson Way, along the side yard of the residence, and perpendicular to Mountaire Parkway.

The public right-of-way, which is reserved for streets, sidewalks, utilities, streetlights, etcetera, on Mt. Wilson Way is fifty-six (56) feet in width, which places the side yard property line for the residence at 199 Mountaire Parkway approximately five (5) feet six (6) inches behind the back of the sidewalk. Prior to the construction of the retaining wall, the side yard fence was located well into the subject property and there was a slight slope between the back of the sidewalk and the fence (**Attachment 2**). The property owner has not only constructed the retaining wall in the public right-of-way, but has also placed fill in the side

yard and in the public right-of-way to level out the slope and increase the size of his/her rear and side yards on property belonging to the City. The existing construction and design has allowed a homeowner to receive a private benefit from public land by allowing the encroachment into the public right-of-way.

Depending on the City Council's direction on this issue, there are a couple of options for consideration to achieve compliance. The first option would be to have the property owner remove the retaining wall from the public right-of-way and relocate it to the property line. If this option were selected, then the six-foot fence would then be required to be located five feet from the property line as required by the Clayton Municipal Code (CMC). This would result a five (5) foot six (6) inch area of public right-of-way between the back of sidewalk and the retaining wall and a five foot separation between the retaining wall and the fence. Staff is also seeking direction from the City Council regarding the placement of fences along exterior side yards, which will be discussed in further detail below.

A second option is to allow the existing encroachment of the retaining wall into the right-of-way to remain and if the Council decides this is acceptable; staff would urge the Council to consider placing conditions on the encroachment in order to best protect the City. These protections could include, but are not limited to, recording a document indemnifying the City of Clayton, requiring insurance in perpetuity, and the encroachment is revocable. These protections will also be discussed in further detail below. In this scenario, the six-foot fence would still be required to be located five (5) feet from the property line, creating a large separation between the retaining wall and the fence, approximately 8.5 feet. The retaining wall would be located approximately two feet behind the walk and then there would be eight feet between the fence and retaining wall.

In both of these options for compliance, it requires the placement of the six-foot fence to be at least five feet from the property line in conformance with the Clayton Municipal Code. Staff has concerns regarding the fence placement from the exterior side property line being so far back and would like to seek direction from the Council to consider amending the Clayton Municipal Code to allow exterior side yard fences to be located on the property line. However, the CMC would still require fences to be placed three feet from retaining walls in order to not have them be counted as one structure. This issue is also discussed in more detail below.

The second code enforcement case consists of a wood retaining wall, with a fence on top of the wall, located on the corner of El Molino Drive and Wright Court, more specifically at 401 Wright Court. This case is very similar to 199 Mountaire Parkway in that the retaining wall and fence are located on a corner lot and are encroaching into the public right-of-way (**Attachment 3**). The property owner in this case has moved the retaining wall and fence into the public right-of-way for similar reasons, to level out the slope in the backyard (**Attachment 4**). The options above in regards to compliance would be the same with this particular case as well.



The structures at 199 Mountaire Parkway and 401 Wright Court would both require building permits as they are currently constructed. The contractors for both structures never made contact with the City to apply for a building permit; therefore staff was unable to provide direction about the City's regulations and prevent these structures from occurring within the public right-of-way and with their current design. The block wall at 199 Mountaire Parkway is over three (3) feet in height and will require a building permit regardless if it is required to be relocated to the property line. At 401 Wright Court, if the fence is relocated to the appropriate distance on the exterior side lot then a building permit in this instance would not be required because the fence does not exceed seven (7) feet in height and the retaining wall does not exceed three (3) feet in height.

## **DISCUSSION**

### ***ISSUE #1: ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY***

Local government's public rights-of-way are an oft-forgotten asset that form the infrastructure backbone and skeleton of the city. Through this interconnected right-of-way network flows domestic water; information and communications; vehicular, pedestrian, and bicycle traffic; commerce; public safety and assistance; waste collection and disposal; as well as many other unseen facilities and pipelines that support the community's day-to-day lives, through the provision of fuel for our vehicles. These public rights-of-way also provide the opportunity for new or the expansion of existing necessary services when required.

The public rights-of-way are considered to be a planning tool and a "savings account" to help ensure the City is prepared for the future. As local governmental requirements increase in magnitude and difficulty, and as public demands for increased connectivity and data consumption continue to grow, there is an ever increasing request for space to be able to construct the infrastructure required to satisfy these increased requirements and demands.

When rights-of-way are required as a condition of development entitlement, they are intended to not only fulfill the current needs imposed by that development but also future needs that may come with increased demands from both the public and governmental oversight agencies.

Local governments, including Clayton, are currently faced with, or will be faced with in the near future, two such demands for additional space within the City's existing rights-of-way. The public demand for data and wireless connectivity has been steadily rising as more business is being conducted online as well as the change in entertainment consumption from cable to internet or wireless based. In order to meet those demands, requests are being made of the City and will continue to be made for the foreseeable future to provide additional underground space for the placement of fiber optic, and other communications related facilities. These demands have already begun with wireless companies such as Zayo and Mobilitie requesting space in the public right-of-way and it is anticipated more of these requests will be forthcoming due to bills such as SB 649, which if signed into law, will make it easier for wireless telecommunication facilities to be placed in the public right-of-

way. These requests are a cause for concern as more linear facilities are being placed into the limitedly available right-of-way.

Additionally, the ever increasing requirements of the Regional Water Quality Control Board (RWQCB) through the City's Municipal Regional Stormwater Permit for green infrastructure and the treatment of stormwater from city streets are becoming very onerous and the only real opportunity available to meet these ever-increasing requirements is within the City's existing rights-of-way. The requirement for the treatment of stormwater from city streets is starting to become prevalent with new developments and will more than likely become an eventuality for all streets as cities repave them and as indicated above, the stormwater treatment facilities will have to be located in the public right-of-way.

By allowing private structures to be constructed within public rights-of-way, the City could be severely limiting its ability to prepare for the future and could be pushing this issue off onto future generations instead of preventing them from occurring now. The City does have the ability through the Clayton Municipal Code (CMC Section 12.04.360) to require the owner of any encroachments that necessitate removal, relocation, or abandonment to be done so at the cost of the owner (**Attachment 5**). While, the City does have this option, it raises a myriad of possible logistical matters for a city with limited staff and resources. These issues include additional timing on a necessary City project due to the relocation of these structures, additional paperwork to memorialize the encroachment, as well as coordination with the property owner on the construction and removal of these structures, amongst others. Further, if the property owner does not have the funds to remove these structures, then the City is in the position of removing them, outlying public funds to do so, and then recouping those costs at a later date by placing a lien the property.

Given the aforementioned issues, staff is strongly recommending any further unauthorized encroachments into the City's rights-of-way not be tolerated and require them to be removed or alternatively require a recorded document with conditions to best protect the City.

If City Council desires to permit non-typical encroachments within the City's rights-of-way, the City Engineer recommends, at a minimum, the following conditions of approval to be enacted for each encroachment:

1. The permitted encroachment is only allowed under a revocable permit at the sole discretion of the City;
2. The permittee, its successors and assigns shall be solely liable and responsible for the encroachment and its maintenance in perpetuity;
3. The permittee indemnifies the City, in perpetuity, for the encroachment and any liability arising from the encroachment;
4. The permittee provides liability insurance naming the City as an additional insured on the policy covering the encroachment;
5. All costs for the removal of the encroachment shall be borne solely by permittee;

6. All City costs and expenses incurred due to management and/or removal of the encroachment shall be compensated, in full, to the City and may become a lien on the permittee's adjacent property.

**POLICY QUESTIONS:** Does the City Council want to allow encroachments into the public right-of-way?

If so, what conditions, if any, does the City Council want to impose on these encroachments to best protect the City?

### ***ISSUE #2: EXTERIOR SIDE SETBACK FENCING REGULATIONS***

The Clayton Municipal Code currently allows fences on an exterior side lot line to be a maximum of 30 inches in height within five feet of the property line and a maximum of six feet in height in the remaining portion of the exterior side setback (**Attachment 6**). Prior to 2004, the CMC had ambiguous language regarding exterior side fencing regulations, but was being interpreted to restrict fences on an exterior side at a maximum height of thirty (30) inches within ten (10) feet of the property line and then up to six feet in height for the remainder of the setback. As part of an omnibus cleanup in 2004, the City Council amended the CMC to the existing regulations; however staff could not find documentation explaining the reasoning for the change beyond the direction provided to staff to clarify the fencing requirements for exterior sides.

Staff sees the current fencing regulations for exterior side lots as a potential issue because a residential property owner either compromises privacy by having a fence only 30 inches in height at the exterior side property line or has to sacrifice usable land in order to have a six-foot fence. Further, the required five-foot setback from the property line creates a larger "no-man's land" when coupled with the approximate five (5) foot public right-of-way directly behind the sidewalk on the exterior side yard. The City of Clayton does not maintain landscaping within the public right-of-way and it is left up to or is the responsibility of the property owner and depending on property owner, he/she may or may not maintain the landscaping. If six-foot fences were allowed to be located on the property line, it would then reduce the amount of space to be landscaped between the back of sidewalk and fence. Further, there are numerous instances in Clayton currently where fences are located on the property line on exterior side lot (**Attachment 7**). By amending the code it would not only create a smaller landscape area or "no-man's land", but it would also allow property owners to enjoy the full breadth of their property as well as reduce the number of illegal or legal non-conforming fences around the City.

A good example showing the discrepancy of fence locations is along El Molino Drive where there are fences encroaching in the public right-of-way, fences along the property lines, and fences meeting the current Municipal Code requirements, which are located five from the property line (**Attachment 8**). Staff is recommending the City Council consider changing the Clayton Municipal Code to allow exterior side yard fences to be located on the property

line as long as they are not located in the front setback or create a visual obstacle by encroaching into the intersection's sight triangle.

**POLICY QUESTION:** Does the City Council want staff to research and analyze allowing exterior side setback fences at the property line?

***ISSUE #3: CODE ENFORCEMENT***

While attempting to achieve compliance with the two aforementioned code enforcement cases, it became apparent to staff that this issue of unauthorized encroachments into the public right-of-way was much more prevalent than these two occurrences. **Attachment 9** only shows a small representative sample of the countless number of unauthorized encroachments into the public right-of-way. Staff is seeking direction from the City Council on how to approach these violations to achieve compliance.

Historically, Code Enforcement has been reactive to complaints from the community and not proactively seeking out violations. This issue has raised the question, since the City has initiated the two aforementioned cases and the City is now aware of the existing encroachments, should the City be seeking compliance from all the property owners that have unauthorized encroachments? Some of the issues that arise are the allocation of staff time and resources, which are already limited, to address this wide spread issue as well as fairness of enforcement. The enforcement of the two subject properties raises the question of, should the others that are in violation also be compelled to comply?

The City is not required to enforce its Municipal Code and courts have recognized that due to limited resources, some violations of a city's ordinance will go uncited and that absent deliberate or intentional discrimination, such selective enforcement is legal. Alternatively, the City could enforce prospectively on either a proactive or reactionary basis; however it raises the question of staff trying to determine when the construction of these structures occurred unless the structure is currently under construction.

**POLICY QUESTIONS:** Does the City Council want Code Enforcement to be proactive and seek compliance for all unauthorized encroachments into the public right-of-way?

Or, does the Council want City staff to enforce prospectively and is that enforcement proactive or reactive?

***ISSUE #4: PUBLIC EDUCATION***

Lastly, to help circumvent these unauthorized encroachments from becoming code enforcement cases, a public education effort to help get the word out to the community would be beneficial. Currently, the City's fencing requirements are located in the Citizen's Guide and within the Clayton Municipal Code. Other possibilities would be mailing out

notifications to Homeowners Associations and fencing contractors, posting on the City's website, and an article in the Clayton Pioneer.

### **FISCAL IMPACTS**

The Council's direction regarding these issues would dictate and determine the costs. To address all of the unauthorized encroachments would take a significant, but unknown, amount of staff time and those costs would only be recoverable if the property owner sought a City permit to keep the unauthorized encroachment. However, there may be long term financial benefits to addressing the issue now, rather than undertaking the issue when it becomes a problem in the future.

There would be staff time associated with amending the Municipal Code pertaining to fence locations along the exterior side lot line.

Depending on the level of public education effort put forward, would determine the costs. The notification of the HOAs would be nominal, but notification of fencing contractors, which would not necessarily be include, could be more intensive.

### **ATTACHMENTS**

1. 199 Mountaire Parkway Current Photos [3 pp.]
2. 199 Mountaire Parkway 2011 Google Street View [3 pp.]
3. 401 Wright Court Current Photos [3 pp.]
4. 401 Wright Court 2011 Google Street View [3 pp.]
5. Clayton Municipal Code Section 12.04 – Street Encroachments [12 pp.]
6. Clayton Municipal Code Section 17.36.075 – Fencing Standards [3 pp.]
7. Fences at Exterior Side Property Line [2 pp.]
8. Fences along El Molino Drive [4 pp.]
9. Pictures of Encroachments into the Public Right-of-Way [14 pp.]

ATTACHMENT 1











200 Mountaire Pkwy



Image capture: May 2011 © 2017 Google United States

Clayton, California



Street View - May 2011

ATTACHMENT 2



200 Mountaire Pkwy



Image capture: May 2011 © 2017 Google United States

Clayton, California



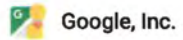
Street View - May 2011

Google Maps 199 Mt Wilson Way



Image capture: May 2011 © 2017 Google United States

Clayton, California



Google, Inc.

Street View - May 2011



**ATTACHMENT 3**







136 El Molino Dr

ATTACHMENT 4



Image capture: May 2011 © 2017 Google United States

Clayton, California



Street View - May 2011



Google Maps 136 El Molino Dr



Image capture: May 2011 © 2017 Google United States

Clayton, California



Street View - May 2011





Google Maps 400 Wright Ct



Image capture: May 2011 © 2017 Google United States

Clayton, California



Google, Inc.

Street View - May 2011



# ATTACHMENT 5

## Chapter 12.04

### STREET ENCROACHMENTS\*

#### Sections:

#### I. GENERAL PROVISIONS AND DEFINITIONS

12.04.010	Definitions
12.04.020	Right of lawful use.
12.04.030	Exceptions.

#### II. PERMITS

12.04.040	Acts requiring.
12.04.050	Non-acceptable applications.
12.04.055	Prohibition against cutting or trenching of new city streets.
12.04.060	Emergency work authorized--Time for application
12.04.070	Written permits--Issuance.
12.04.080	Application--Form
12.04.090	Application--Data required.
12.04.100	Consent of public bodies--Evidence to be filed.
12.04.110	Liability for damages.
12.04.120	Action on applications.
12.04.130	Fees--Schedule--Payment required--Exceptions.
12.04.140	Permit to move certain vehicles or objects.
12.04.150	Term--Beginning of work or use.
12.04.160	Term--Completion of work.
12.04.170	Nontransferable.
12.04.180	Form and validity.
12.04.190	Display.
12.04.200	Changes allowed when--Permit not required when.

#### III. CASH DEPOSIT AND BONDS

12.04.210	Cash Deposit.
12.04.220	Bond in lieu of cash deposit.
12.04.230	Annual bond.
12.04.240	Additional bond or cash deposit.
12.04.250	Condition of bond and cash deposit.
12.04.260	Bond payable to city--Release of bond or cash deposit.

#### IV. REGULATIONS

12.04.270	Erection and maintenance of safety provisions--Permit cancelled when.
12.04.280	Excavation or obstruction--Warning signs and lighting requirements.

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<sup>1</sup>For Statutory provisions authorizing cities to prevent encroachments upon public ways, see Gov. Code Sec. 38775; for provisions on local issuance of permits for movement of otherwise prohibited vehicles, see Vehicle Code Sec. 35780.

12.04.290	Safety devices--Requirements.
12.04.300	Beginning of work--Notification.
12.04.310	Completion of work--Notification.
12.04.320	Care of drainage.
12.04.330	Interference with use.
12.04.340	Street restoration.
12.04.350	Maintenance of encroachment.
12.04.360	Relocation or removal of encroachments.
12.04.370	Specifications conformance--Supervision and inspection.
12.04.380	Storage of material.
12.04.390	Use of small pipes or rigid conduits--Disturbing paved surface--Tunneling.
12.04.400	Minimum cover for pipes and conduits.
12.04.410	Backfilling specifications.
12.04.420	Construction of poles and transmission line carriers--Regulations.
12.04.430	Aids to visibility--When required.
12.04.440	Movement of vehicles.
12.04.450	Mail box placement.
12.04.460	Tree planting--Application--Form--Removal agreement.
12.04.470	Tree maintenance--Permittee's responsibility--Removal when.
12.04.480	Tree planting--Permit denial when.
12.04.490	Tree trimming--Permit required.
12.04.500	Tree removal--Permit issued when--Procedure.
12.04.510	Hedges, plantings and fences--Permit required.
12.04.520	Hedges, plantings and fences--Prohibited on pedestrian walkways.
12.04.530	Hedges, planting and fences--Maintenance.
12.04.540	Lawns--Permitted.
12.04.550	Planted areas--Public use.
12.04.560	Irrigation systems--Interference with street or sidewalk areas.
12.04.570	Markings or streets, curbs and sidewalks--Permit required.
12.04.580	Monuments--Removal or disturbance--Permit required.
12.04.590	Maps of facilities.

## V. PROCEDURE AND RULES FOR APPEAL

12.04.600	Right of appeal.
12.04.610	Appeal--Method of filing.
12.04.620	Action of city council.
12.04.630	Appeal--Findings--Permit granting.

## VI. VIOLATIONS

12.04.640	Penalties.
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### I. GENERAL PROVISIONS AND DEFINITIONS

12.04.010 Definitions. As used in this chapter the following words and phrases shall have the meanings given in this section:

A. "City engineer" means the city engineer of the city of Clayton, California, or his authorized agent.

B. "Encroach" or "encroachment" means going over, upon or under or using any right-of-way in such a manner as to prevent, obstruct, or interfere with its normal use, including the performance thereon of any of the following acts:

1. Excavating, filling, or disturbing the right-of-way;
2. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over or under a right-of-way;
3. Planting any tree, shrub, grass or other growing thing within a right-of-way;
4. Placing or leaving on a right-of-way any rubbish, brush, earth or other material of any nature whatsoever;
5. Constructing, placing or maintaining on, over, under or within the right-of-way any pathway, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility, any pipe, conduit, wire or cable;
6. Traveling on the right-of-way by any vehicle or combination of vehicles or object of dimension, weight or other characteristic prohibited by law without a permit;
7. Lighting or building a fire;
8. Constructing, placing, planting or maintaining any structure, embankment, excavation, tree or other object adjacent to a right-of-way which causes or will cause an encroachment.

C. "Permittee" means any person, firm, company, corporation, association, public agency or organization that proposes to do work or encroach upon a right-of-way as defined in this section and has been issued a permit for encroachment by the city engineer. All obligations, responsibilities and all requirements of the permittee as described in this chapter shall be binding on subsequent owners of the encroachment.

D. "Private contract" means a contract between two or more parties for the installation, construction, revision, operation or creation of an encroachment, to which contract the city is not a party.

E. "Public street" means the full width of the right-of-way of any road, street, highway, alley, lane or pedestrian walkway used by or for the general public whether or not said road, street, highway, alley, lane or pedestrian right-of-way has been improved or accepted for maintenance by the city, except streets and highways forming part of the State Highway System.

F. "Right-of-way" means land or interest thereon which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, or pedestrian walkway purposes. (Ord. 37, 1965).

12.04.020 Right of lawful use. Any permit granted under this chapter shall be subject to the right of the city, or any other person, or persons, firm, corporation, district, or other body of persons entitled thereto, to use that part of the public street for any purpose for which it may be lawfully used, and no part of the street shall be unduly obstructed at any time. (Ord. 37, 1965)

12.04.030 Exceptions. This chapter shall not apply to any officer or employee of the city acting in the discharge of his official duties, or to any work being performed by any person or persons, firm or corporation under contract with the city. (Ord. 37, 1965)

## II. PERMITS

12.04.040 Acts requiring. It is unlawful for any person(s), firm, company, corporation, association, public agency, or organization, without first obtaining a written

permit, to encroach or to make or cause to be made any encroachment of any nature whatever within, upon, over or under the limits of any right-of-way in the incorporated territory of the city, or to make or cause to be made any alteration of any nature within, upon, over, or under such right-of-way; or to construct, put upon, maintain or leave thereon, or to cause to be constructed, put upon, maintained or left thereon, any obstruction or impediment of any nature whatever; or to remove, cut or trim trees thereon; or to set a fire thereon, or to place on, over or under such right-of-way any pipeline, conduit or other fixture; or to move over or cause to be moved over the surface of any right-of-way or over any bridge, viaduct, or other structure maintained by the city any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging the right-of-way; or to place any structure, wall, culvert, or similar encroachment; or to make any excavation or embankment in such a way as to endanger the normal usage of the right-of-way. (Ord. 37, 1965)

12.04.050 Non-acceptable applications. No application will be accepted nor permit issued for constructing or maintaining a loading platform within or on the right-of-way or for erecting, using, or maintaining a post, pole, column, or structure for support for advertising signs within or on the right-of-way or for erecting, using, or maintaining advertising signs which overhang the right-of-way. Any such installation is illegal encroachment. (Ord. 37, 1965)

12.04.055 Prohibition against cutting or trenching of new city streets. The cutting or trenching of any newly constructed or reconstructed city street within a period of five years from completion of the street work and acceptance thereof by the city is expressly prohibited unless such work receives the prior written approval of the city engineer in addition to the permit required by the provisions of this Chapter. (Ord. 262, 1988).

12.04.060 Emergency work authorized--Time for application. This chapter shall not prevent any person or persons, firm or corporation from performing emergency maintenance on any pipe or conduit lawfully on or under any right-of-way or from making an emergency use or encroachment necessary to preserve life or property when an urgent necessity arises, except that the person or persons, firm or corporation making an emergency use or encroachment on a right-of-way shall apply for a permit therefore within one calendar day after the offices of the city are open. (Ord. 37, 1965).

12.04.070 Written permits--Issuance. The written permits required by this chapter shall be issued by the city engineer, subject to conditions set forth in this chapter or required by law. (Ord. 37, 1965)

12.04.080 Application--Form. The city engineer shall prescribe and provide a regular form of application for the use of any applicant for a permit required by this chapter. The application form shall contain space for the name, address and principal place of business of the applicant, together with such detail as in the judgment of the city engineer is necessary to establish the exact location, dimensions, duration and purpose of the proposed use or encroachment. The application form shall be completed and signed by the applicant and filed with the city engineer. (Ord. 37, 1965)

12.04.090 Application--Data required. The applicant shall enclose with, attach or add to the application for a permit a map, plat, sketch, diagram or similar exhibit when required by the city engineer, and of a size and in such quantity as he may prescribe, on which shall be plainly shown any and all information necessary to locate, delineate, illustrate, or identify the proposed use or encroachment and the right of

applicant to so use or encroach thereon. If necessary, changes, corrections, and notes will be made on the map, plat, sketch, diagram or similar exhibits and these items will become an integral part of the permit. (Ord. 37, 1965)

12.04.100     Consent of public bodies--Evidence to be filed. The applicant shall also enclose with, attach or add to the application, the written order or consent to any work thereunder, required by law, of the Public Utilities Commission, Sanitary Districts, Water Districts, or any other public body having jurisdiction. A permit shall not be issued until and unless such order or consent is first obtained and evidence thereof filed with the city engineer. The permittee shall keep himself adequately informed of all state and federal laws and local ordinances and regulations which in any manner affect the permit. The applicant shall at all times comply with and shall cause all his agents and employees to comply with all such laws, ordinances, regulations, decisions, court and similar authoritative orders. (Ord. 37, 1965)

12.04.110     Liability for damage. The permittee shall be responsible for all liability imposed by law for personal injury or property damage proximately caused by work permitted and done by the permittee under the permit, or proximately caused by failure on the permittee's part to perform his obligations under the permit in respect to maintenance. If any claim of such liability is made against the city, its officers, or employees, the permittee shall defend, indemnify and hold them, and each of them, harmless from such claim insofar as permitted by law. (Ord. 37, 1965)

12.04.120     Action on applications. Applications may be approved, conditionally approved or denied. Where the city engineer finds that the application is in accordance with the requirements of this chapter, he shall issue a permit for the use or encroachment, attaching such conditions as he may deem necessary for the health, safety and welfare of the public and for the protection of the city. If the city engineer finds the application is in conflict with the provisions of this chapter, he shall deny the permit, giving in writing the reasons for the denial. (Ord. 37, 1965)

12.04.130     Fees--Schedule--Payment required--Exceptions.

A.     The schedule of fees will be those recommended by the city engineer and established and adopted by the city council from time to time by resolution. Before a permit is issued the applicant shall deposit with the city, cash or check, in a sufficient sum to cover the fee for issuance of the permit, charges for field investigation, and the fee for necessary inspection, all in accordance with schedule established and adopted by the city council.

B.     Public utilities and political subdivisions, at the city engineer's option, may make payment for the above charges as billed by the city instead of advance deposit as required above.

C.     Fees will not be required of any public agency which is authorized by law to establish or maintain any works or facilities in, under or over any public street or right-of-way. (Ord. 37, 1965)

12.04.140     Permit to move certain vehicles or objects. Before a vehicle or combination of vehicles or objects of weight, dimension or characteristic, prohibited by law without a permit, is moved on any public right-of-way, a permit to do so must first be granted by the city engineer as set forth in specifications established by the city engineer and adopted by resolution of the city council. (Ord. 37, 1965)

12.04.150     Term--Beginning of work or use. The permittee shall begin the work or use authorized by a permit issued under this chapter within ninety days from date of issuance, unless a different period is stated in the permit. If the work or use is not

begun within ninety days, or within the time stated in the permit, then the permit shall become void, unless before its expiration the time for beginning has been extended in writing by the city engineer. A permit for temporary encroachments, as determined by the city engineer for continuing a use or maintaining a temporary encroachment previously authorized, shall be valid for a term of one year from date of issuance, unless the permit specifies otherwise, or unless sooner terminated by discontinuance of the use, removal of the encroachment, or termination of the permit by written order of the city engineer mailed thirty days before the date of termination. (Ord. 37, 1965)

12.04.160 Term--Completion of work. The permittee shall complete the work or use authorized by a permit within the time specified in the permit. If at any time the city engineer finds that delay in beginning, prosecuting, or completing the work or use is due to lack of diligence by the permittee, he may cancel the permit and restore the right-of-way to its former condition. The permittee shall reimburse the city for all expenses incurred by the city engineer in restoring the right-of-way, plus fifteen percent as administrative costs. (Ord. 37, 1965)

12.04.170 Nontransferable. No permit issued under this chapter is transferable. The person, public agency, firm or corporation actually making or maintaining the encroachment shall obtain the permit and furnish the bond. (Ord. 37, 1965)

12.04.180 Form and validity. Permits must be written on a form prescribed by the city engineer. No permit shall be valid unless signed by the city engineer or his authorized representative. (Ord. 37, 1965)

12.04.190 Display.

A. The permittee shall keep any permit issued pursuant to this chapter at the site of work, or in the cab of a vehicle when movement thereof on a public street is involved, and the permit must be shown to any authorized representative of the city engineer or law enforcement officer on demand.

B. A permit issued for continued use or maintenance of an encroachment may be kept at the place of business of the permittee or otherwise safeguarded during the term of validity, but shall be made available to an authorized representative of the city engineer or law enforcement officer within a reasonable time after demand therefore is made. (Ord. 37, 1965)

12.04.200 Changes allowed when--Permit not required when. No changes may be made in the location, dimension, character or duration of the encroachment or use as granted by the permit except upon written authorization of the city engineer. No permit shall be required for the continuing use or maintenance of encroachments installed by public utilities, or for changes therein or thereto where such changes or additions require no excavation of the right-of-way. (Ord. 37, 1965)

### III. CASH DEPOSIT AND BONDS

12.04.210 Cash deposit. Unless this part is waived in the permit and before a permit is effective, an applicant shall deposit with the city engineer, or agent authorized by resolution of the city council, cash or a certified or cashier's check, in a sum to be fixed by the city engineer as sufficient to reimburse the city for costs of restoring the right-of-way to its former condition, based on the schedules, if any, adopted by resolution of the city council, provided, however, that an applicant may file a cash deposit on an annual basis in a sum estimated by the city engineer as sufficient to cover his activities during any twelve-month period. (Ord. 37, 1965)

12.04.220 Bond in Lieu of Cash Deposit. In lieu of the cash deposit prescribed in the Section above, the applicant may, upon approval by the City Engineer, file a cash deposit in the minimum sum established by the schedules, if any, adopted for that purpose by the City Council and in effect at the time of the application for a permit, and the balance of the sum fixed by the City Engineer as sufficient to reimburse the City expenses incurred in restoring the right-of-way to its former condition, may be filed in the form of an approved surety bond issued by a company authorized to do a general surety business in the State of California. (Ord. 37, 1965)

12.04.230 Annual bond. In lieu of a cash deposit, the applicant may, upon approval by the city engineer, annually file with the city engineer an approved surety bond issued by a company authorized to do a general surety business in the state of California, in a sum fixed by the city engineer as sufficient to reimburse the city for expenses to be incurred in restoring the right-of-way to its former condition, subject to the schedules, if any, adopted by resolution by the city council. (Ord. 37, 1965)

12.04.240 Additional bond or cash deposit. The city engineer may require an additional bond or cash deposit at any time when in his opinion the amount of the bond or cash deposit previously made is insufficient, subject to the schedules, if any, adopted for that purpose by the city council, and in effect at the time of application for a permit. (Ord. 37, 1965)

12.04.250 Condition of bond and cash deposit. The condition of any bond or cash deposit made pursuant to this chapter shall be that the permittee will diligently and with good faith comply with this chapter and the terms and conditions of the permit. (Ord. 37, 1965)

12.04.260 Bond payable to city--Release of bond or cash deposit. Any bond or cash deposit required by the city engineer pursuant to this chapter shall be payable to the city, and shall be filed with the city engineer. Upon satisfactory completion of all work authorized in the permit and fulfillment of all conditions of the permit, the city council will release the bond or cash deposit upon the expiration of ninety days. (Ord. 37, 1965)

#### IV. REGULATIONS

12.04.270 Erection and maintenance of safety provisions--Permit cancelled when. The permittee in the conduct of the work, use, or maintenance of an encroachment authorized by a permit issued pursuant to this chapter shall provide, erect, and/or maintain such lights, barriers, warning signs, patrols, watchmen, and other safeguards as are necessary to protect the traveling public. Any omission on the part of the city engineer to specify in the permit what lights, barriers, or other protective measures or devices, shall not excuse the permittee from complying with all requirements of law and appropriate regulations and ordinances for adequately protecting the safety of those using public streets. If, at any time, the city engineer finds that suitable safeguards are not being provided, the city may provide, erect, maintain, relocate, or remove such safeguards as are deemed necessary or may cancel the permit and restore the right-of-way to its former condition, all at the expense of the permittee. (Ord. 37, 1965)

12.04.280 Excavation or obstruction--Warning signs and lighting requirements. A permittee making any excavation or erecting or leaving any obstruction within, under, or upon the right-of-way, or causing the same to be made, erected, or left, shall place and maintain lights at each end of the excavation or obstruction, at not more than fifty-foot intervals along the excavation or obstruction, from one-half hour before



sunset of each day to one-half hour after sunrise of the next day, until the excavation is entirely refilled or the obstruction removed and the right-of-way made safe for use. In addition, reflectorized warning signs conforming to the requirements of the California Division of Highways shall be placed two hundred and four hundred feet from each excavation or obstruction, in such a position as to adequately warn public traffic. (Ord. 37, 1965)

12.04.290 Safety devices--Requirements. The warning signs, lights and other safety devices shall conform to the requirements of Section 21406 of the Vehicle Code and of any sign manual issued by the Department of Public Works of the state of California. (Ord. 37, 1965)

12.04.300 Beginning or work--Notification. Before beginning any work which is or includes excavation, construction of concrete sidewalks, curbs, gutters or driveway approaches, planting, trimming or removing trees, making, placing or causing an obstruction in the traveled way, the permittee shall notify the city engineer.

Before starting work on which an inspector is required, the permittee shall notify the city engineer twenty-four hours in advance of beginning such work. (Ord. 37, 1965)

12.04.310 Completion of work--Notification. The permittee shall upon completion of all work authorized in the permit, notify the city engineer. No work shall be deemed to be completed until notification of completion is given pursuant to this section and the work is accepted by the city engineer. (Ord. 37, 1965)

12.04.320 Care of drainage. If the work, use or encroachment authorized in the permit issued pursuant to this chapter shall interfere with the established drainage, the permittee shall provide for proper drainage as directed by the city engineer. Should the permittee fail to properly care for drainage, the city engineer shall notify the permittee to take corrective action; if the permittee fails to complete such corrective action immediately upon receiving said notice, the city engineer shall take such action as may be necessary to correct the drainage at the expense of the permittee. (Ord. 37, 1965)

12.04.330 Interference with use. All work or use shall be planned and executed to cause least interference with the safe and convenient travel of the general public at the place where the work or use is authorized. At no time shall a public highway be closed or its use denied the general public without the written permission of the city engineer, nor shall use of private property be interfered with unreasonable without the consent of the owner. (Ord. 37, 1965)

12.04.340 Street restoration. Upon completion of the work, acts or things for which the permit was issued, or when required by the city engineer, the permittee shall replace, repair or restore the public street at the place of work to the same condition existing prior thereto unless otherwise provided in the permit. The permittee shall remove all obstruction, impediments, material or rubbish caused or placed upon the right-of-way of the public street under the permit, and shall do any other work or perform any act necessary to restore the public street to a safe and usable condition. (Ord. 37, 1965)

12.04.350 Maintenance of encroachment. After completion of all work, the permittee shall exercise reasonable care in inspecting and maintaining the area affected by the encroachment. For a period of one year after the completion of the work, the permittee shall repair and make good any injury or damage to any portion of the street which occurs as the result of work done under the permit, including any and all injury or damage to the street which would not have occurred had such work not been done, by the acceptance of the permit, the permittee agrees to comply with the above. The permittee

shall, upon notice from the city engineer, immediately repair any injury, damage or nuisance, in any portion of the right-of-way, resulting from the work done under the permit. In the event that the permittee fails to act promptly or should the exigencies of the injury or damage require repairs or replacement to be made before the permittee can be notified or can respond to notification, the city may, at its option, make the necessary repairs or replacements or perform the necessary work and the permittee shall be charged with all the expenses incurred in the performance of said work, plus fifteen percent as administrative costs. By acceptance of the permit, the permittee agrees to comply with this section and Section 12.04.340. (Ord. 37, 1965)

12.04.360 Relocation or removal of encroachments. If any future construction, reconstruction, or maintenance work by the city on a public right-of-way requires the relocation, removal or abandonment of installations or encroachments in, on or under the public right-of-way, the permittee owning, controlling, or maintaining such installations or encroachments shall relocate, remove or abandon the same at his sole expense provided, however, that this provision, shall apply to and remain in force and effect only so long as the right-of-way upon which such installations or structures are located shall be used for usual street purposes and not as a freeway, and this provision shall cease to apply when such street shall become a freeway. When removal, relocation or abandonment is required, the city engineer shall give the permittee a written demand specifying the place of relocation, or that the installations or encroachment must be removed, relocated or abandoned. If said permittee fails to comply with said instructions, the city may cause the removal, relocation or abandonment of the encroachment at the expense of the permittee. (Ord. 37, 1965)

12.04.370 Specifications conformance--Supervision and inspection. All work done under a permit issued pursuant to this chapter shall conform to specifications established by the city engineer, or in the absence of established specifications to recognize standards of construction and approved practices in connection with the work to be done. All work shall be done subject to the supervision of and to the satisfaction of the city engineer.

Unless otherwise noted on the permit, all encroachment repair work performed on any public street or right-of-way under the jurisdiction of the city shall conform to the construction specifications contained in the current edition of the Standard Specifications of the state of California, issued by the Department of Public Works, Division of Highways, as may be amended by resolution by the city council. (Ord. 37, 1965)

12.04.380 Storage of material. No material shall be stored within a public street, unless otherwise approved by the city engineer. Excess earth materials from trenching or other operations shall be removed from the pavement, traveled way, or shoulder as the trench is backfilled or other work carried forward unless otherwise approved by the city engineer. (Ord. 37, 1965)

12.04.390 Use of small pipes or rigid conduits--Disturbing paved surface--Tunneling. Utility, service, and other small diameter pipes or rigid conduits shall be jacked, bored, or driven, or otherwise forced underneath a paved surface. The paved surface of a road shall not be cut, trenched, or otherwise disturbed unless specifically authorized in the permit. No tunneling will be permitted except as specifically set forth in the permit. (Ord. 37, 1965)

12.04.400 Minimum cover for pipes and conduits. The minimum cover over any and all pipes or conduits larger than two and one-half inches installed within the right-of-way shall be three feet of earth or imported materials, unless otherwise specified

in the permit. Within the public street, the minimum cover of three feet shall be measured from the surface, existing or planned. The city engineer is authorized to permit installation of pipes or conduits where three feet of cover cannot be provided because of topography, structures, or other engineering necessity. (Ord. 37, 1965)

12.04.410 Backfilling specifications. Backfilling of an excavation shall be in accordance with specifications established by the city engineer or as otherwise required by him, both as to material and method, and backfill shall not be placed in any excavation without compaction of the material used therein, the degree and method thereof to be to the satisfaction of the city engineer. (Ord. 37, 1965)

12.04.420 Construction of poles and transmission line carriers--Regulations.

A. Clearances and types in the construction of poles and transmission line carriers shall accord with rules, regulations, and orders of the Public Utilities Commission and other public agencies having jurisdiction.

B. No guy wires shall be attached to trees without specific authorization in the permit, and in no event shall guy wires be attached to girdle the tree or interfere with its growth. Guy wires shall not be below the minimum elevation above the ground prescribed in the rules, orders, and regulations of the Public Utilities Commission.

C. The permittee shall remove and keep clear all vegetation on the right-of-way within a radius of at least five feet of poles when ordered by the city engineer.

D. When a pole, guy, stub, or similar timber is removed and not replaced, the entire length shall be removed from the ground and the hole backfilled and compacted. (Ord. 37, 1965)

12.04.430 Aids to visibility--When required. When the location or position of a pole or other obstruction make accentuation of its visibility to vehicular traffic necessary, the city engineer may require that the pole or other obstruction be painted or equipped with reflectors or other aids to visibility prescribed or authorized by the Public Utilities Commission or the Department of Public Works of the state of California at the expense of the permittee. (Ord. 37, 1965)

12.04.440 Movement of vehicles. When authorized by a permit issued under Section 12.04.140 to move a vehicle or combination of vehicles or load of dimension, weight, or other characteristic generally prohibited by law, the permittee, unless exempt by special permit, shall comply with the general law regulating travel over a public street, including:

- A. Posted signs or notices which limit speed or direction of travel;
- B. Weight which may be placed on a structure;
- C. The width or height that may be moved; or
- D. Other restrictions or control of travel on a public street.

The permittee at all times shall conform to and abide by the practice and procedure necessary to make safe and convenient the travel of the general public and to keep safe and preserve the public street over and on which movement is being made. Any violation of this section shall automatically cancel the permit issued to the permittee. (Ord. 37, 1965)

12.04.450 Mailbox placement. All mailboxes must be placed in accordance with the rules and regulations of the United States Post Office Department, but no box shall be so placed within the road right-of-way as to endanger the life or safety of the traveling public. A permit is not required for the placing of mailboxes. (Ord. 37, 1965)

12.04.460 Tree planting--Application--Form--Removal agreement.

Applications for permits to plant trees in the right-of-way shall be made on a form prescribed by the city engineer. The form shall include, in addition to the other requirements, an agreement by the applicant to maintain the trees in a neat, healthy, and safe condition to the satisfaction of the city engineer, and an agreement to remove the trees as directed by the city engineer and to pay the cost of removal on the permittee's failure promptly to remove the trees on direction of the city engineer. The application shall show the exact location and kind of trees to be planted, and no change shall be made either in the location or kind of trees without the written approval of the city engineer. (Ord. 37, 1965)

12.04.470 Tree maintenance--Permittee's responsibility--Removal when.

All trees placed in the right-of-way shall be maintained by the permittee or his successor in interest or by some other interested party in a neat, healthy, and safe condition to the satisfaction of the city engineer and at no expense to the city. If the encroachment is not located or maintained as specified in Section 12.04.460, the city engineer may direct the permittee to remove the encroachment and restore the right-of-way to its former condition at the expense of the permittee. If the permittee fails promptly to remove the encroachment as directed, the city engineer shall have the right to remove it and collect the cost of removal from the permittee, together with all of the city's costs and expenses in enforcing collection. (Ord. 37, 1965)

12.04.480 Tree planting--Permit denial when.

The city engineer shall refuse to issue a permit authorizing the planting of trees in the right-of-way when in his judgment the location as described in the application or the nature of the growth above or below ground of the kind of tree proposed will impede or inconvenience public travel, unduly disturb the right-of-way, interfere with the construction or maintenance of necessary facilities, or interfere with existing pipelines, utility installations, or other facilities lawfully placed within the right-of-way. (Ord. 37, 1965)

12.04.490 Tree trimming--Permit required.

Trimming of trees will be permitted only when and in the manner authorized by a permit issued under this chapter so that the shapeliness of the tree may be preserved. (Ord. 37, 1965)

12.04.500 Tree removal--Permit issued when--Procedure.

An application for removal of a tree will be approved and permit issued only when a necessity for removal exists. When a tree is removed under authority of a permit, the entire stump shall be taken out for a distance of at least two feet below the ground surface unless otherwise specified in the permit, and the hole shall be backfilled and tamped. All debris from trimming or removal shall be removed from the site and the right-of-way restored to its former condition. (Ord. 37, 1965)

12.04.510 Hedger, Plantings, and Fences -- Permit Required.

No hedge, shrub, or other planting whatever, fence or similar structure shall be planted, erected, or maintained in a right-of-way where there is a potential to impair or impede pedestrian or vehicular traffic without a permit. (Ord. 319, 1995)

12.04.520 Hedges, plantings and fences--Prohibited on pedestrian walkways.

No hedge, shrub, or other planting whatever, fence or similar structure, shall be maintained across any existing walkway in a sidewalk area or shoulder. The intent of this restriction is to keep free a walkway for pedestrian or other lawful public travel without interference by or with vehicular travel. No encroachment of any nature will be permitted or maintained which impedes, obstructs, or denies such pedestrian or other lawful travel within the limits of the right-of-way of a public street, or which impairs

adequate sight distance for safe pedestrian or vehicular traffic. (Ord. 37, 1965)

12.04.530 Hedges, Plantings, and Fences -- Maintenance. The permittee, or the owner of the property, shall maintain any hedges, trees, shrubs, walls, fences, or similar structures erected for landscaping purposes as follows:

A. All fences, walls or other similar structures abutting the public right-of-way shall be kept in a good condition and state of repair.

B. No trees, shrubbery, or plants shall be permitted to grow into, on, over, or obstruct in any manner, any public right-of way (including, but not limited to sidewalks), street light, street sign, or traffic safety sign where it impairs pedestrian or vehicular traffic. Any obstruction or impairment shall constitute a safety hazard and is subject to immediate removal. There shall be a minimum of eight (8) feet of vertical clearance between the sidewalk and any plantings that overhang the sidewalk. There shall be a minimum of ten (10) feet of vertical clearance between the street and any plantings that overhang the street. (Ord. 319, 1995)

12.04.540 Lawns--Permitted. Other provisions of this chapter notwithstanding, it is lawful for a person, firm, or corporation or other body of persons to plant and maintain a lawn or similar ground cover of any grass or type not otherwise prohibited by law within the right-of-way without a written permit. However, the lawn or similar ground cover shall not extend into the traveled way not into the drainage ditches, gutter, or other drainage facilities. (Ord. 37, 1965)

12.04.550 Planted areas--Public uses. The general public shall not be denied the use of a planted area for pedestrian travel or other lawful use. The city may use the planted area for any purpose and may issue a permit to any applicant to go on the planted area to perform work or otherwise encroach under this chapter. If the lawn or similar ground cover is damaged or disturbed in the course of an authorized encroachment, the permittee will be held responsible for the replacement unless the permit specifically states otherwise. (Ord. 37, 1965)

12.04.560 Irrigation systems--Interference with street or sidewalk areas. No portion of any irrigation system shall extend above the level of the surrounding ground or pavement. No irrigation system shall be installed in such a way as to direct sprays or streams of water into or over adjacent street, sidewalk or driveway areas. (Ord. 37, 1965)

12.04.570 Markings of streets, curbs and sidewalks--Permit required. It is unlawful for any person, without first obtaining a permit, to solicit on a commercial or donation basis, to place, or maintain any number, figure, letter, carving, drawing, design, or other marking upon any street, sidewalk, or curb; except that markings for the purpose of identifying survey, utility or construction locations shall not be subject to this chapter. (Ord. 37, 1965)

12.04.580 Monuments--Removal or disturbance--Permit required. Any monument of granite, concrete, iron or other lasting material set for the purpose of locating or preserving the lines and/or elevation of any public street or right-of-way, property subdivision, or a precise survey point or reference point shall not be removed or disturbed or caused to be removed or disturbed of caused to be removed or disturbed without first obtaining permission from the city engineer to do so, said permission to be granted in conformance with requirements as set forth in specifications established by the city engineer. Replacement of removed or disturbed monument will be at the expense of the permittee. (Ord. 37, 1965)

12.04.590 Maps of facilities. Each permittee installing, constructing, or maintaining underground facilities, such as pipes, wires, conduits, or similar structures, shall maintain accurate and complete maps of such facilities. The city engineer shall be furnished, at no cost to the city, information regarding location, size, and character of such facilities, either by sketcher or maps, as may be necessary from time to time. (Ord. 37, 1965)

## V. PROCEDURE AND RULES OF APPEAL

12.04.600 Right of appeal. Any person aggrieved by the refusal of a permit required by this chapter may appeal the decision to the city council. (Ord. 37, 1965)

12.04.610 Appeal--Method of filing. The aggrieved person shall file notice in writing with the city clerk within seven days after final action of the administrative official whose decision is being appealed. (Ord. 37, 1965)

12.04.620 Action of city council. The city council may affirm, modify or reverse the action of the administrative official from whom the appeal is taken. (Ord. 37, 1965)

12.04.630 Appeal--Findings--Permit granting. If the city council finds all of the following to be true, the permit shall be granted:

A. That the applicant will be substantially damaged by the refusal to grant the permit as requested;

B. That no other reasonable method of obtaining the desired results is available except as proposed by applicant;

C. That the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other property. (Ord. 37, 1965)

## VI. VIOLATIONS

12.04.640 Penalties. Any person, firm, corporation, or other body or association of persons who violates this chapter is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more than one hundred eighty days, or by both. Each day's violation of this chapter is a separate offense. (Ord. 37, 1965).

# ATTACHMENT 6

controlling dust within the entire riding area. Permitting a strong pervasive odor or horse manure or urine to exist which is offensive to the senses of the surrounding residents, thereby interfering with the comfortable enjoyment of their property, for a period of twenty-four hours after a warning by the Code Enforcement Officer, shall be cause for said officer to issue an infraction notice.

2. All applicable requirements of the Contra Costa County health department, building inspection department, mosquito abatement district, and state humane laws shall be complied with.
  3. Rodent control shall be maintained.
  4. During dry weather, and if the soil is dry, wet manure and bedding may be spread thinly to dry in a manner not conducive to fly-breeding. All horse stalls and small corral areas shall receive daily maintenance in regards to disposing of wet manure and bedding.
  5. All areas that are subject to irrigation shall be kept free of manure.
  6. For dust control, during periods of dry weather, riding or exercising horses on the lot will be prohibited unless irrigated riding areas are used.
  7. Ungelded male horses shall not be permitted to be domiciled or temporarily maintained on the premises. Foals or mares shall be permitted to remain with their dams until six months of age.
  8. The permit holder shall comply with any additional conditions the Planning Commission shall deem necessary.
- G. All improvements constructed upon the applicant's property pursuant to a permit issued under this section shall conform to the following provisions:
1. As close as circumstances will allow, all accessory structures shall be aesthetically compatible with the main structure on the lot. Accessory structures shall be limited to a maximum of sixteen feet in height. Plans for proposed barns or stables should reflect adequate drainage and ventilation (see U.C. Davis Extension Barn Specifications).
  2. Setbacks of any barn, stable or shelter for horses shall be determined by the Planning Commission but the minimum setback shall be not less than one hundred feet from the front property line and shall be not less than fifty feet from any side or rear property line. Fences shall be constructed to enclose the entire area used for horse keeping, shall be in good repair at all times, and shall be built of materials sufficiently strong to retain horses. Fenced pasture, paddocks, or other enclosed equestrian areas shall be as determined by the Planning Commission, but in no event shall they be located nearer than ten feet to any property line or any public right-of-way. The setback on a property line adjacent to any horse trail can be less than ten feet if a six-foot masonry wall, chain link or solid wooden fence is erected along the trail easement.
- H. Any violation of this section is an infraction and shall be punishable as provided in California Government Code Section 36900(b). (Ord. 168, 1977; Ord. 325, 1996)

**17.36.070 Regulations for the Keeping of Agricultural Animals.** The keeping of not more than two agricultural animals within zoning districts other than R-40-H and Agricultural is allowed subject to a Use Permit obtained from the Planning Commission. The keeping of agricultural animals is limited to not more than 18 months, the applicant being a minor and a bona fide member of a 4-H Club or similar club, and the applicant having the permission of the property owner and supervision of the leader of such 4-H or similar club. The Planning Commission may restrict the species and sex of the animal and impose such other conditions to insure neighborhood compatibility. (Ord. 325, 1996)

**17.36.075 Fencing Standards.** Fencing shall conform to the following standards:

- A. **Front Setbacks.** Fences shall not exceed a maximum height of thirty (30) inches within ten (10) feet of the front property line and a maximum height of six (6) feet in the remaining portion of the front setback.
- B. **Interior Side Setbacks and Rear Setbacks.** Fences shall not exceed a maximum height of six

- (6) feet on the interior side and rear property lines or anywhere within the interior side and rear setbacks.
- C. Exterior Side Setbacks. Fences shall not exceed a maximum height of thirty (30) inches within five (5) feet of the exterior side property line and a maximum height of six (6) feet in the remaining portion of the exterior side setback.
  - D. Corner Lots. Fences on corner lots shall conform with the restrictions on sight obstructions at intersections provided in Chapter 12.08.
  - E. Driveways. Fences shall not exceed a maximum height of thirty (30) inches on either side of a driveway within the triangular areas formed by the edge of the driveway, the property line, and a line joining points on each of these twelve feet from their intersection
  - F. Main Building Area. Fences shall not exceed a maximum height of eight (8) feet within an area in which a main building is permitted.
  - G. Measurement. The height of fences shall be the average height of an eight-foot length of fence, measured from the lower of either the lowest adjacent ground level or the top of the footing of any retaining walls located within three (3) feet.
  - H. Safety Fences. Safety fences and railings required by the Uniform Building Code are excluded from the height standards of this Section.
  - I. Barbed Wire. Barbed wire or other sharp materials shall not be used as a fencing material except on lands where agricultural grazing is actively conducted or where a use permit has been approved by the Planning Commission.
  - J. Hazardous Locations. In no case shall any fence be located so as to cause a hazard to the movement of vehicles or pedestrians.
  - K. Height Exceptions. The Director may issue an administrative use permit to allow a fence up to seven (7) feet in height in a rear setback or side setback of a lot in residential district. The Director may impose such conditions as the Director deems appropriate to mitigate any visual or other adverse impacts of the fence, including, but not limited to, requirements with respect to the height, design, and materials of the fence and landscape screening. Applications for an administrative use permit under this subsection shall be filed with the Director on such form as the Director prescribes, and shall be accompanied by a processing fee in such amount as established from time to time by resolution of the City Council. Prior to granting the administrative use permit, the applicant shall demonstrate and the Director shall find that:
    1. The issuance of such a permit is reasonably necessary by reason of unusual or special circumstances or conditions relating to the property, for the preservation of valuable property rights or the full use and enjoyment of the property;
    2. The fence will not create a safety hazard to pedestrians or vehicular traffic;
    3. The fence will not unreasonably interfere with access by police, fire, and emergency service personnel;
    4. The appearance of the fence is compatible with the scale, mass, design, and appearance of other existing buildings and structures in the neighborhood;
    5. The orientation and location of the fence is in proper relation to the physical characteristics of the property and neighborhood;
    6. The applicant has obtained the written consent of the adjacent property owner, unless the fence is adjacent to public right-of-way, in which case written consent is not necessary; and
    7. The fence will be of sound construction.

(Ord. 178, 1978; Ord. 197, 1979; Ord 375, 2004)

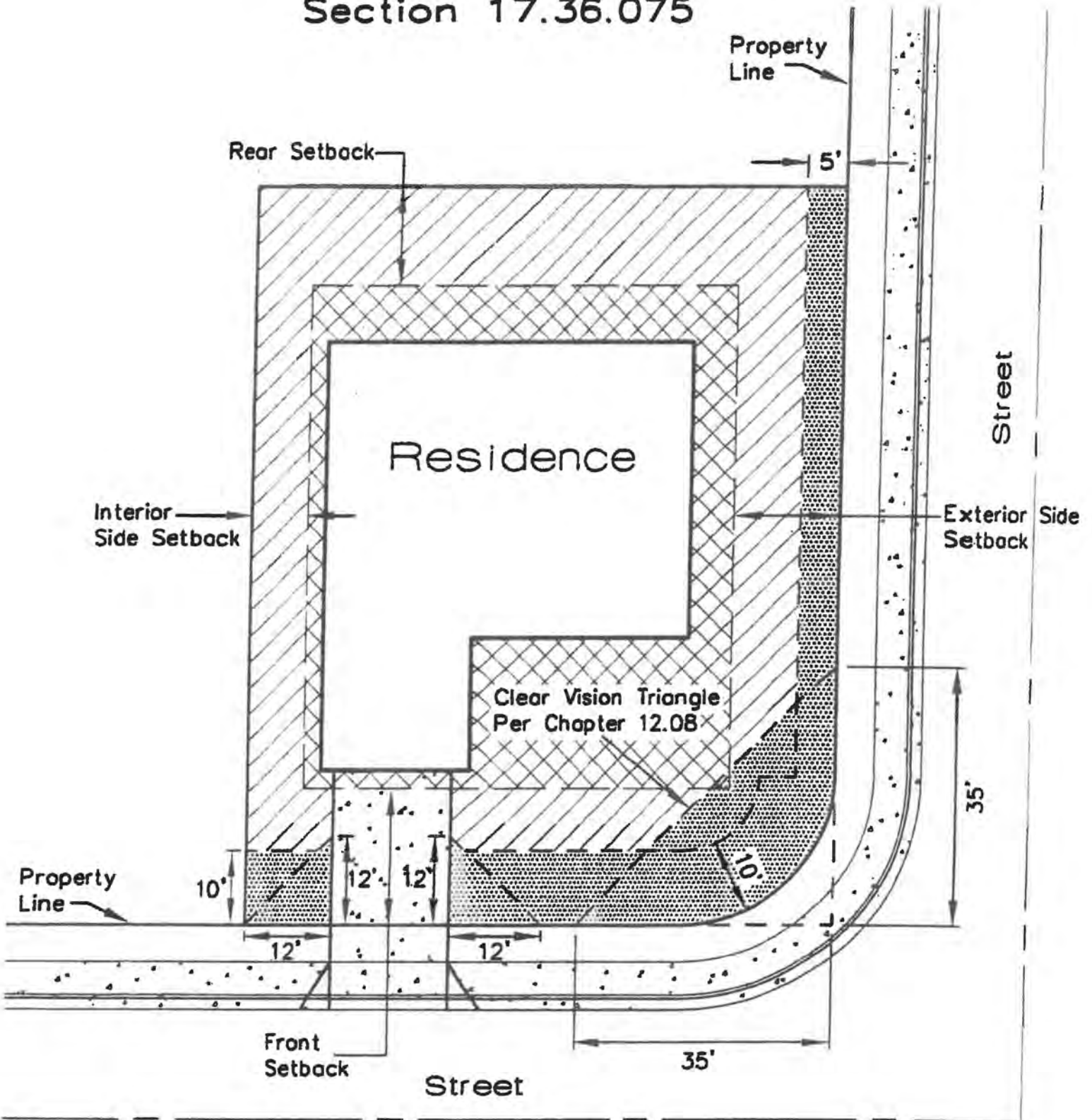
**17.36.076 Fenced Recreational Enclosures.**




- A. Any recreational uses such as tennis and paddle ball which require fencing higher than permitted by Section 17.36.075 shall be subject to the issuance of a land use permit. A maximum twelve (12) foot high fence enclosure for recreational uses may be permitted by a land use permit.
- B. The Planning Commission shall consider all appropriate City ordinances with reference to



# FENCE HEIGHTS

## Section 17.36.075



-  30" Maximum Fence Height
-  6'-0" Maximum Fence Height
-  8'-0" Maximum Fence Height

This diagram is for illustration purposes only and has not been adopted as part of the Zoning Ordinance.

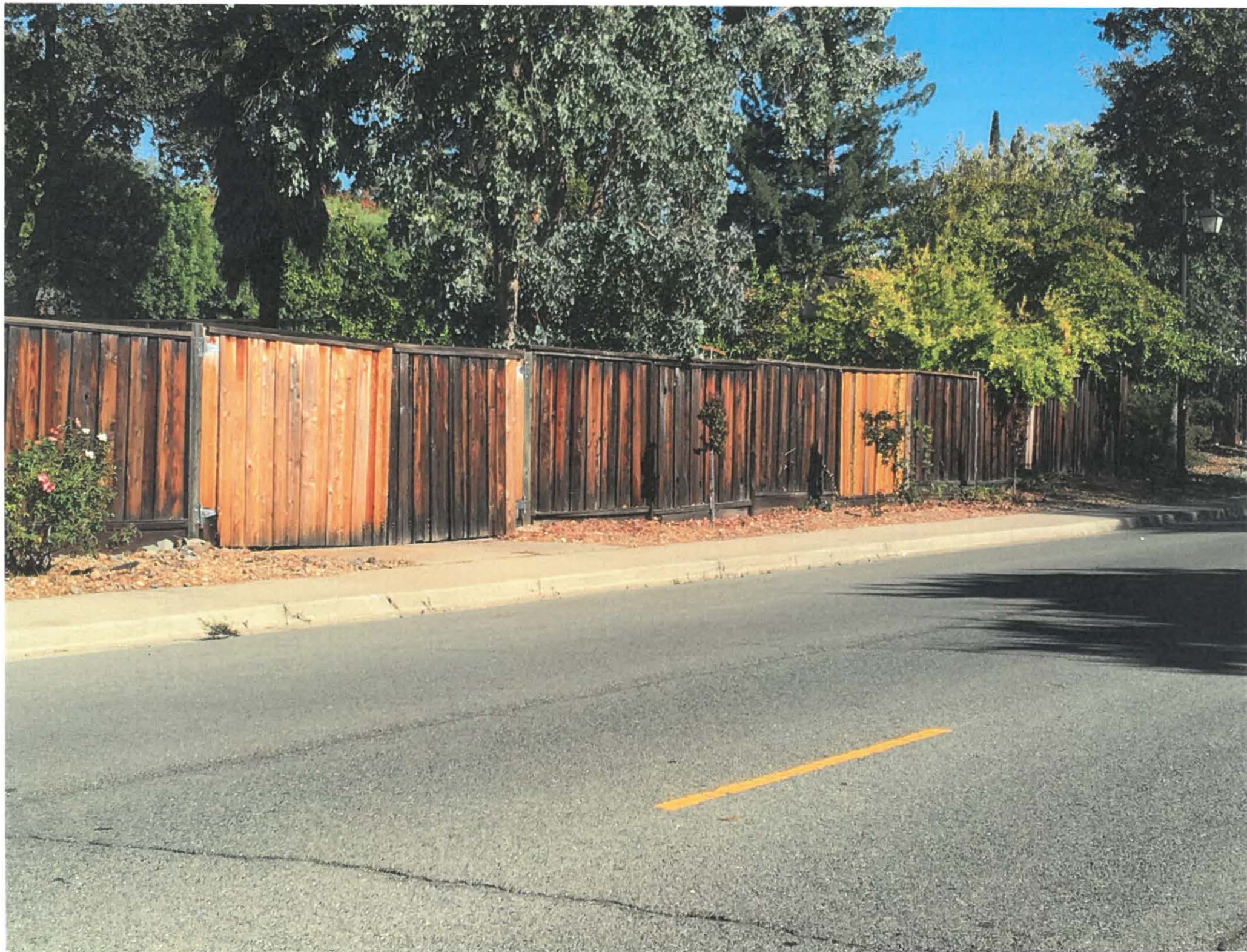
**ATTACHMENT 7**





**ATTACHMENT 8**









**ATTACHMENT 9**



































Agenda Date: 10-03-2017

Agenda Item: 8b



# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MG*

**DATE:** OCTOBER 3, 2017

**SUBJECT:** CONTINUED DISCUSSION OF LOCAL CANNABIS REGULATIONS – PROPOSITION 64 AND SB 94

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## **RECOMMENDATION**

It is recommended the City Council discuss and provide direction on the various staff recommendations regarding the potential prohibition and/or regulation of medical and adult use cannabis following the passage of Proposition 64 and SB 94.

## **BACKGROUND**

On December 20, 2016, the City Council passed an Urgency Ordinance banning the personal outdoor cultivation of cannabis, which is limited to six plants per residence, and staff made a presentation requesting direction from the Council regarding Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") (**Attachment 1**). Following staff's presentation, the City Council provided direction to staff to not regulate the indoor cultivation for the personal use of marijuana; add provisions in the Clayton Municipal Code to treat marijuana similarly to alcohol with no consumption in public; further address marijuana in 2017 to allow more time for legal clarification; and lastly determine what actions neighboring jurisdictions have taken. Staff is now bringing this discussion back to the City Council with updated information on recent legislation and the status of cannabis in neighboring jurisdictions. Following, the Council's direction, staff will draft the appropriate ordinance, which is recommended to be enacted prior to the State issuing licenses on January 2, 2018.

For a more in depth overview on the regulation of cannabis at the federal, state, and local levels, see **Attachment 1**.

## **LEGISLATION UPDATE**

### ***FEDERAL ENFORCEMENT – COLE MEMO***

To date, Congress has not made any changes to the federal Controlled Substances Act; however a bill has been introduced to change marijuana from a Schedule I narcotic to another controlled substances schedule. The bill is currently at the committee level. Further, the Trump Administration and Attorney General Jeff Sessions have not made any changes at the federal level in regards to cannabis enforcement and the Cole Memo issued by Attorney General James M. Cole during the Obama Administration is still relevant. The Cole Memo essentially conveys that states that have legalized marijuana should have a robust regulatory system in place and demonstrate the willingness of enforcement of such regulations. Further, the Memo hints that prosecuting state legal marijuana enterprises are probably not an efficient use of federal resources. Attorney General Sessions has been an avowed opponent to marijuana legalization and his office has commented publicly about cannabis reform; however the Trump Administration has not yet decided whether to reverse the Cole Memo.

### ***SB 94 AND AB 133 – MAUCRSA***

On June 26, 2017, Governor Brown signed into law SB 94 – Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a budget trailer bill that made significant changes to the regulatory scheme of cannabis. The new law combines the medical and adult use of cannabis systems into one licensing structure with the same regulatory framework governing both medical and adult use facilities. Many of the regulations have not changed but the highlights of the bill include:

- Cities still retain full regulatory authority over ALL commercial cannabis businesses – both medical and adult use, which includes the ability to ban;
- Deliveries can still be regulated/prohibited;
- Cities must allow indoor cultivation for personal use, but it can be reasonably regulated (six plants per residence, not per person);
- Commercial indoor and outdoor cultivation can still be banned;
- Anticipated recall of medical marijuana regulations with State regulations requiring to be updated to reflect the most recent changes in SB 94;
- Emergency regulations at the State level for both medical and adult use are expected to be released in November 2017;
- Sales tax on medical cannabis is still prohibited, but to qualify, the purchaser must have a state-approved, County-issued ID card;
- Vertical integration is now allowed, except for testing due to possible conflicts of interest. An example of vertical integration could be a business model including onsite cultivation and retail sales; and

- The state cannot issue a license if it is in violation of local ordinances. Therefore, the best local practice is to either clearly deny the use or to have a regulatory structure in place. Moratoriums on cannabis related uses may not be valid from the state's point of view due to them being temporary in nature.

AB 133 was signed into law by Governor Brown on September 16, 2017, which made a few technical fixes or changes to MAUCRSA. The most notable changes eliminated the requirement that potential licenses have separate and distinct premises and the bill increased the amount of possession of concentrated cannabis from 4 to 8 grams.

#### *EXISTING MARIJUANA REGULATIONS IN CLAYTON*

Currently, the City of Clayton laws referencing marijuana mostly pertain to medical purposes and the Municipal Code is silent on the recreational use or adult use of marijuana. Per Section 17.36.080 of the Clayton Municipal Code, the City has prohibited: medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation (**Attachment 2 and 3**). The CMC does allow for the indoor cultivation of medical marijuana within residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential structure at a location inhabited by a qualified patient or primary caregiver. In March of 2016, the City Council did not prohibit the delivery of medical marijuana due to accessibility concerns for community patients.

#### *STATUS OF RECREATIONAL CANNABIS IN NEIGHBORING JURISDICTIONS*

The policies and status for recreational marijuana in neighboring jurisdictions are as follows:

- Antioch, Brentwood, Pittsburg, and Danville – These cities have City Council banned the sale, cultivation, and deliveries of both medical and adult use cannabis.
- Concord – On July 25, 2017, the City of Concord adopted an ordinance that allows delivery of medical cannabis to qualified patients and primary caregivers by dispensaries located outside of Concord upon registration with the Concord Police Department. City Council has directed staff to draft an ordinance for a complete prohibition and ban on both the sale and cultivation of medical and adult use cannabis, except for deliveries for medical cannabis. The Concord City Council has publicly stated that the issue will be revisited when additional information is made available and the State has fully addressed the regulations.
- Contra Costa County – Directed staff to prepare a permanent ordinance to prohibit all commercial uses and prohibit personal cultivation except for indoor grows until an ordinance to regulate the cultivation, delivery, manufacturing, and dispensing of medical and recreational cannabis is completed. Also directed staff to research and develop land use and health ordinances with recommendations of zoning districts and the appropriate types of industries (cultivation, distribution, manufacturing, testing, retail sales).



- Martinez – The City Council held a workshop regarding the regulation of cannabis on September 6, 2017; however no formal decisions have been made.
- Orinda – The City Council enacted an ordinance banning all commercial cannabis land uses and outdoor cultivation of cannabis.
- Pleasant Hill – The Planning Commission has recommended to the City Council to allow retail medical cannabis subject to a Use Permit and to prohibit all other cannabis related commercial activities including adult use retail facilities. The Council will be conducting a public hearing on October 2, 2017 to consider the Planning Commission's recommendations.
- Walnut Creek – A moratorium for all commercial cannabis activities and outdoor cultivation was passed by the City Council on April 4, 2017 and in May 2017, the City Council directed staff to return in the fourth quarter of 2017 with information regarding the state regulatory environment; the financial consequences of adopting various components; the perspective of the business community, in regards to commercial and retail sales; additional information on personal cultivation, commercial, wholesale operations and retail sales; and additional information regarding what is occurring in the surrounding communities. Nothing has been presented to the City Council as of the writing of this staff report.

## **DISCUSSION**

Under AUMA and MAUCRSA, medical and recreational use and possession of cannabis is legal and is now under the same regulatory framework at the state level. The State of California will begin issuing a variety of license types, for the various aspects of the industry, to cannabis businesses on January 2, 2018. Clayton does not legally have to have an ordinance in place by January 1, 2018, but cities will only have sixty days to respond to the state once notified of an application to open a business in the jurisdiction. Further, under SB 94, if a local jurisdiction does not have an ordinance enacted to address the licensed activity, the state can unilaterally issue a license for that business. The State is only prohibited from issuing a license if the business activity would violate local ordinances and if there is no applicable ordinance, then there is no violation. One city is already in litigation after denying an adult use cannabis business based on an ordinance that banned medical cannabis only, and was silent on adult use.

The local regulation of medical and recreational cannabis does not have to be consistent with one another and can be regulated differently; however staff is recommending the Clayton Municipal Code (CMC) be amended in such a manner that thoroughly addresses both medical and adult use cannabis. This recommendation is based on the legal direction that if the CMC does not explicitly address or is silent on the matter it could be interpreted that the City allows all types of cannabis uses within the jurisdiction or the City could be legally challenged for denying a permit if an ordinance does not cover the activity. The challenge may or may not have merit, but it would mean litigation costs for the City regardless. Additionally, a moratorium may not be valid from the state's point of view because it is not a permanent or a bona fide ordinance fully addressing cannabis. The state

will be looking to local jurisdictions to determine if cannabis uses are allowed and it is recommended the City has an ordinance that affirmatively regulates or affirmatively prohibits commercial cannabis businesses.

Given the aforementioned, staff is looking for direction from the City Council on recommendations on the following policy issues for both medical and adult use cannabis: 1) retail sales; 2) commercial cultivation; 3) distribution 4) delivery; 5) testing; and 6) manufacturing. Based on the direction given regarding staff's recommendations, a proposed ordinance will be brought back to the Council at a later date for consideration for enactment prior to January 2, 2018.

### ***RETAIL SALES***

Following the passage of MAUCRSA, vertical integration is now allowed within the cannabis industry, except for testing due to a conflict of interest, but was previously prohibited under AUMA. Therefore, retail sales could mean a variety of different scenarios, considering vertical integration is allowed. A retail location could have a traditional storefront and a delivery component; operate as a non-storefront location (i.e. closed to the public), such as warehouses making deliveries; or operate a "microbusiness" with a combination of licensed activities. The City has the ability through its local police powers to be as stringent or as flexible as it desires within the bound of state law regarding what it will allow or prohibit as it pertains to cannabis. For example, the City could allow medical retail cannabis only and prohibit adult use or the City could prohibit or allow both.

Staff does have concerns: the cannabis industry is new and untested; the State of California is lacking complete industry regulations; and Clayton is a small city with limited resources to be on the forefront of these issues. Staff's recommends a prohibition, which would allow time to see how these areas evolve and the City could readjust its ordinances at a later date.

**STAFF RECOMMENDATION:** Prohibit all retail cannabis, both medical and adult use.

### ***INDOOR/OUTDOOR COMMERCIAL CULTIVATION***

While Clayton does not have large areas of land dedicated to agricultural uses or industrial buildings that could be utilized for the indoor cultivation of cannabis, there are still opportunities where commercial cultivation could conceivably be proposed. The aforementioned legal recommendation regarding having an ordinance that affirmatively prohibits or affirmatively regulates coupled with staff's previous concerns regarding the untested waters of this new industry, staff is advising that commercial cultivation should be addressed in an ordinance. Staff does have concerns regarding security and impacts to public safety if commercial cultivation were to occur within Clayton.

**STAFF RECOMMENDATION:** Prohibit both the indoor and outdoor commercial cultivation of medical and adult use cannabis.

It should be noted, the City Council, at its December 20, 2016, meeting prohibited the outdoor cultivation of cannabis for personal use; however, State law allows indoor cultivation that local jurisdictions must allow, but can reasonably regulate, which is limited to six plants per residence.

### ***DISTRIBUTION***

Again, Clayton does not have land use designations or existing facilities that are typically used or zoned for the warehousing and the distribution of products, but there could still be available opportunities for this type of use. Distributors of cannabis cannot deliver directly to consumers, they can only distribute from licensee to licensee and perform the transport, verify quality control, and collection of the state tax; however this has become more ambiguous after the passage of SB 94, which allows for vertical integration. Local jurisdictions have the discretion to determine if the use is appropriate; however cannot prohibit the use of local roads and streets. Again, staff has concerns regarding security and impacts to public safety.

**STAFF RECOMMENDATION:** Prohibit the distribution and warehousing of medical and adult use cannabis.

### ***DELIVERY***

At the state level, deliveries are no longer a separately licensed activity. Instead, delivery services would fall under the state retailer license. Whether or not the City decides to allow a delivery service to set up its headquarters in Clayton (see discussion of retail sales, above), the City may choose whether to allow cannabis deliveries originating from licensed retailers located outside the jurisdiction. The CMC currently does not prohibit the delivery of medical cannabis; however the Code is silent on issue. The City Council, at its March 15, 2016, did not prohibit, but did not expressly allow for, deliveries of medical cannabis. The City Council did express concern regarding patient accessibility to medical cannabis and were supportive of the allowing deliveries that did not originate in the municipal limits, but changes to the ordinance to expressly allow deliveries were not made. Given the City Council's historical support of medical cannabis deliveries originating outside the jurisdiction, this should be clearly stated as allowable within the Municipal Code to remove any ambiguity regarding allowable or prohibited uses and activities.

The City Council's support of medical cannabis raises the question of allowing deliveries of adult use cannabis by licensed facilities that originate outside of the municipal limits. Proposition 64 received 53.8% support of the voters in Clayton. Adult use cannabis deliveries would provide access to a product that the majority of Clayton voters supported and would not have the same impacts and permanence that retail storefront could create. If Council enacted an Ordinance to allow deliveries, it could be easily be modified in the future without nonconforming land uses (e.g. no grandfathering). In this case, the City would not need to pass a ballot measure to generate some tax revenue as the delivery businesses that would deliver to consumers within the city limits would be covered under the existing

business license tax provisions, CMC Section 5.04; however a ballot measure would need to be passed to collect any new type of excise or use tax.

**STAFF RECOMMENDATION:** Allow deliveries of medical and adult use cannabis that originate outside of the municipal limits and send letters to all businesses serving the City of Clayton indicating they need to apply for a business license in order to conduct business within the City.

### **TESTING**

Cannabis testing is a key component for all cannabis businesses because all are subjected to this requirement. Testing will determine the purity, potency, concentration, and cannabinoid ratios. Some of the state regulations include verified methods of sampling, ISO/IEC 17025 accreditation, destruction of the remains of sample cannabis, and disposal of waste byproducts resulting from their operations. From a land use perspective, testing can be located in an office or lab type environment; however staff has concerns regarding odors and safety due to the storage and keeping of cannabis products within the business location.

**STAFF RECOMMENDATION:** Prohibit cannabis testing facilities for both medical and adult use cannabis.

### **MANUFACTURING**

The manufacturing component of the cannabis industry is probably the widest ranging component due to the vast business types. Manufacturing would include, but are not limited to, bakeries, extraction facilities, and the creation of personal products such as lotions and salves. These facilities could range from large facilities to home-based businesses. Manufacturing is also governed by AB 2679, which codified a legal form of extraction which includes regulations such as the use of a solvent-less process or non-flammable, non-toxic solvents, closed loop system, and equipment certified by a licensed engineer as safe. While some of these manufacturing processes maybe benign, some could require extensive oversight and regulation due to their extraction techniques. As stated earlier, due to the newness of the cannabis industry, staff has concerns about allowing manufacturing to occur within Clayton.

**STAFF RECOMMENDATION:** Prohibit all cannabis manufacturing, including extraction, for both medical and adult use cannabis products.

### **OTHER ISSUES**

If the Council is interested in allowing any cannabis uses in the future, staff would recommend placing a tax measure on the ballot to provide the opportunity for additional tax revenue to address any enforcement issues related to cannabis as well as to create a financial benefit to the City for the provision of facilities and services. Additionally, if the Council decides to allow these uses, staff would recommend, in addition to the ballot

measure, a robust regulatory system in place such as land use permits, buffers from sensitive uses, and review of security plans, amongst others.

The direction by the City Council at its meeting on December 20, 2016 included amending the Clayton Municipal Code to restrict the use of cannabis to mimic that of alcohol, with no consumption in public. Given the short timeframe, between now and when the state will begin to issue licenses on January 2, 2018, staff is recommending the aforementioned issues regarding cannabis be addressed by the City prior to licenses being issued by the State and staff will return to the City Council with an ordinance amending the Clayton Municipal Code regarding the smoking and ingesting of cannabis in public at a later date.

State law, Health & Safety Code, section 11632.3, already contains some limitations public consumption including, but not limited to:

- Smoking and ingesting cannabis or cannabis products in a public place;
- Smoking cannabis or cannabis products in a location where smoking tobacco is prohibited; and
- Smoking cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present (except in or upon the grounds of a private residence and only if such smoking is not detectable by others on the grounds of the school, day care center, or youth center while children are present) or upon the grounds of a school, day care center, or youth center while children are present.

Lastly, any prohibition made by the City Council regarding cannabis uses can also be revised at a later date if there is a change of sentiment or if additional information arises.

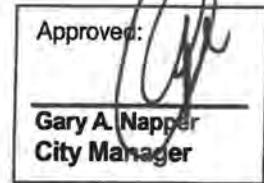
### **FISCAL IMPACTS**

Due to the increased enforcement and regulatory costs, the passage of Proposition 64 will likely result in a number of financial impacts to the City and depending on the direction of the City Council in response to the adult use of cannabis, these costs may be more or less impactful.

If the City Council adopts business regulations to govern cannabis businesses, such regulations will likely lead to an increase in administrative and enforcement costs, but may also lead to increased revenue due to the imposition of new business license fees and taxes. Any new taxes must be adopted pursuant to a vote of the electorate in accordance with Proposition 218. Furthermore, any general tax ballot measure would likely have to be consolidated with a regularly scheduled City Council election.

### **ATTACHMENTS**

1. Excerpt of the Staff Report and Minutes from December 20, 2016 City Council Meeting [pp. 10]
2. CMC Section 17.36.080 – Prohibited Uses and Activities [pp. 1]
3. CMC Section 17.04.138 – Medical Cannabis Uses [pp. 1]



## AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** MALA SUBRAMANIAN, CITY ATTORNEY  
MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR *MS*

**DATE:** DECEMBER 20, 2016

**SUBJECT:** DISCUSSION OF POTENTIAL RECREATIONAL MARIJUANA REGULATIONS – PROPOSITION 64

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### RECOMMENDATIONS

It is recommended the City Council:

- 1a. Motion to have the City Clerk read the Urgency Ordinance No. 473 by title and number only and waive further reading; and
- 1b. Following the City Clerk's reading; by motion adopt Urgency Ordinance No. 473 to prohibit the personal use of outdoor cultivation of marijuana (**Attachment 1**); and
2. Discuss and provide direction to staff on the various issues regarding the potential prohibition and/or regulation of recreational marijuana following the passage of Proposition 64.

### BACKGROUND

#### *CONTROLLED SUBSTANCES ACT*

In 1970, Congress passed the Controlled Substances Act (CSA), which is the federal government's drug policy under which the manufacture, importation, possession, use and distribution of marijuana is illegal. According to the CSA, marijuana is classified as a Schedule 1 narcotic, which means it is defined as a drug with no currently accepted medical use and has a high potential for abuse.

***PROPOSITION 215: THE COMPASSIONATE CARE ACT***

In 1996 California voters passed Proposition 215 exempting patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws, which otherwise prohibit possession or cultivation of marijuana.

***COLE MEMO***

In 2009, the federal government announced it would effectively end the raids on distributors of marijuana. These marijuana enforcement guidelines were updated in June of 2011 and most recently in August of 2013, which are known as the Cole Memo. The Cole Memo issued updated guidelines to federal prosecutors concerning marijuana under the Controlled Substances Act and set the priorities of the Department of Justice. The Cole Memo essentially conveys that states that have legalized marijuana should have a robust regulatory system in place and demonstrate the willingness of enforcement of such regulations. Further, the Memo hints that prosecuting state legal marijuana enterprises are probably not an efficient use of federal resources.

This guidance regarding marijuana enforcement occurred under the Obama Administration and given a new administration with a possibly less lenient stance on marijuana usage will be taking office on January 20, 2017 this could possibly change the Department of Justice guidelines for state's that have legalized marijuana.

***MEDICAL MARIJUANA REGULATION AND SAFETY ACT (MMRSA)***

In September of 2015, the State of California passed three separate bills: AB 266, AB 243, and AB 643, which are collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA). These bills effectively created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical marijuana. While the law went into effect January 1, 2016, the state will not begin issuing licenses until January 1, 2018.

***PROPOSITION 64***

On November 8, 2016, voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). The State of California passed Proposition 64 with 57.1% in favor. Locally, Contra Costa County voted 60.72% in favor and Clayton voted 53.8% in favor. AUMA legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults can possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. It would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services. Proposition 64 took effect immediately following its passage and while some of these issues will not be in effect until January 1, 2018 when the State of California starts to issue licenses for the commercial sale, distribution, and cultivation of marijuana; there are

some aspects of the law that went into immediate effect such as the personal use and cultivation of marijuana.

AUMA allows for local control of marijuana uses. It allows local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services.
- Ban the outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under federal law (If marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited).
- Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.

#### *EXISTING MARIJUANA REGULATIONS IN CLAYTON*

Currently, the City of Clayton laws referencing marijuana mostly pertain to medical purposes and the Municipal Code is silent on the recreational use of marijuana. Per Section 17.36.080 of the Clayton Municipal Code, the City has prohibited: medical marijuana dispensaries; testing laboratories; facilities that store or maintain marijuana as part of their operations; and outdoor cultivation or production of cannabis; and some indoor cultivation (**Attachment 2 and 3**). The CMC does allow for the indoor cultivation of medical marijuana within residential zones within a detached, fully enclosed and secure secondary structure or within a primary residential structure at a location inhabited by a qualified patient or primary caregiver. In March of 2016, the City Council allowed for the delivery of medical marijuana due to accessibility concerns for community patients.

Additionally, the regulation of medical and recreational marijuana does not have to be consistent with one another and can be regulated differently.

#### *STATUS OF RECREATIONAL MARIJUANA IN NEIGHBORING JURISDICTIONS*

Since this issue is extremely new, staff researched the policies and status for recreational marijuana in neighboring jurisdictions:

- Concord – Ban on outdoor cultivation and is waiting on providing further direction until additional information is made available.
- Walnut Creek – Provided direction to staff to address the various issues, but have not acted on any aspects of Proposition 64 thus far.

#### **DISCUSSION**

Under AUMA, recreational use of marijuana is legal, as is recreational possession of marijuana and some level of indoor cultivation. Staff suggests the adoption of an Urgency Ordinance to ban the outdoor cultivation of marijuana, which is discussed in further detail below, as it is consistent with City Council previous action to ban the outdoor cultivation of



medicinal marijuana plants. In addition, staff is looking for direction from the City Council on the following policy issues: 1. Commercial retail sale; 2. Cultivation; 3. Delivery; 4. Testing; and 5. Personal use of marijuana. Based on the direction given regarding these policy issues, staff will return with additional information and proposed ordinances at a later date for Council consideration.

**ISSUE #1: OUTDOOR/INDOOR CULTIVATION FOR PERSONAL USE**

As stated previously, AUMA allows for the keeping of up to six marijuana plants for those over 21 years or older for personal use which can be cultivated either indoors or outdoors. Cities can regulate the cultivation of marijuana by banning or regulating the outdoor cultivation and "reasonably regulating" the indoor cultivation.

Given the City's Council's previous position prohibiting the outdoor cultivation of medical marijuana and staff's immediate concerns regarding the outdoor cultivation of recreational marijuana such as marijuana cultivation sites being clearly visible from public areas and easily accessible by the public, including youth and children; attraction to those looking to steal marijuana; the odorous nature of the plants; the potential for broader growth due to a larger space; and is less secure. Further, it is conceivable under the AUMA one could grow up to six plants in one's front yard unless local regulation prohibits it. These concerns raise an immediate threat to the public health, safety, and welfare in the City due to the negative effects created by the outdoor cultivation of marijuana. Due to these concerns and the Council's previous position on banning the outdoor cultivation of medical marijuana, staff is recommending the City Council adopt an Urgency Ordinance 473, pursuant to California Government Code Sections 36934, 36937, and 65858, placing an immediate ban on the outdoor cultivation of marijuana.

While AUMA allows for the prohibition of outdoor cultivation, local jurisdictions cannot prohibit the indoor cultivation but can "reasonably regulate". The Clayton Municipal Code allows for the indoor cultivation of medical marijuana but does not provide any regulations beyond those established by State law (**Attachment 2 and 3**).

- **POLICY QUESTION:** Does the City Council wish to reasonably regulate the indoor cultivation of marijuana? These regulations could range from a robust permitting system, including inspections by code enforcement, to a registration requirement system or no requirements beyond compliance with existing State law.

**ISSUE #2: INDOOR/OUTDOOR COMMERCIAL CULTIVATION**

Proposition 64 establishes a regulatory framework for commercial recreational marijuana operations. Local jurisdictions retain local land use and zoning authority over these operations; therefore jurisdictions may elect to allow or to prohibit the commercial outdoor and commercial indoor cultivation. A state license would be required for commercial indoor or outdoor cultivation of marijuana and the state would not issue a license unless the local jurisdiction permitted the operation of such business.

- **POLICY QUESTION:** Does the City Council wish to allow the indoor or outdoor commercial cultivation of marijuana?
- If the Council allows commercial cultivation; how does the Council foresee regulating these activities? These regulations could include a permit process, land use applications, security measures, and/or codified restrictions on locations and operating procedures.

### ***ISSUE #3: COMMERCIAL MARIJUANA ACTIVITIES***

Under AUMA, the creation of a variety of new commercial marijuana ventures, including recreational retail services, is forthcoming. The following is a list of possible commercial activities that could occur around recreational marijuana: commercial delivery, commercial manufacturing, commercial testing, and any commercial dispensaries or recreational retailers. This list is not comprehensive and there could conceivably be commercial recreational marijuana operations that have not been established or thought of yet. The City Council could ban all commercial uses or allow some or all of these commercial uses with appropriate regulations. Staff is seeking direction on the following policy issues:

- **POLICY QUESTIONS:** Allow or prohibit commercial marijuana activities within the City of Clayton?
- If the Council would allow the operation of commercial marijuana uses, identify which uses the Council would prohibit and which ones it would allow.
- If the Council allows commercial marijuana activities, please specify the general parameters of how the Council would like to regulate these activities. These regulations could include a permit process, land use applications, security measures, and/or codified restrictions on locations and operating procedures.
- If the Council wishes to allow commercial recreational marijuana uses does the Council wish to explore the fees and taxes to be imposed on these types of uses?
- Shall the City allow for recreational marijuana deliveries that begin or end within the City's boundaries? AUMA allows for the prohibition of deliveries but cannot prevent a delivery service from using public roads to pass through its jurisdiction. The City currently allows medical marijuana to be delivered in its municipal limits.

### ***ISSUE #4: REGULATION OF PERSONAL MARIJUANA USE LOCATIONS***

As indicated above, AUMA legalizes recreational use of marijuana. This means the City can no longer ban the use of marijuana by an individual in their own home. AUMA does not allow the smoking or ingesting of marijuana or marijuana products in any public place, absent local enabling legislation allowing use of marijuana or marijuana products in some public places. While AUMA does not define "public place," it does limit the smoking of marijuana to places where tobacco is permitted, which would be subject to the Clayton Municipal Code's smoking regulations (**Attachment 4**). Therefore anyone smoking in a blatantly public place without a local ordinance allowing so would be in violation of AUMA.

and guilty of an infraction. However, the City's smoking ordinance does not explicitly mention marijuana. Note that medical marijuana is governed under a separate state statutory scheme and may be subject to different enforcement protocols. In addition, if the City Council opts to revise the smoking regulations to include marijuana, the Council may want to also expand the smoking ordinance to prohibit smoking in quasi-public spaces. These quasi-public spaces could include front yards, parking lots, and shopping centers.

- **POLICY QUESTION:** Does the City Council wish to modify the smoking ordinance to include marijuana?
- Does the Council wish to limit the scope of the allowable smoking locations?

### **OTHER ISSUES**

Since Proposition 64 is so new, the City Council may wish to consider waiting on providing policy directions to staff to see how legal interpretations may change over time. However, staff recommends at least acting on the outdoor cultivation aspect as this element is the most pressing issue. The other issues can wait to be addressed in 2017 because the State of California will not start issuing licenses for commercial operations until January 1, 2018.

Further, the City Council may want to delay direction and base its decision on what neighboring jurisdictions will adopt. For example if Concord allows commercial retail sales, this could negatively impact the City of Clayton from these uses but the City will not be privy to any of the associated revenue. Any decision made by the City Council can also be revised at a later date if there is a change of sentiment or if additional information arises.

### **OPTIONS**

The City Council can also consider the following options:

- 1) Not adopt Urgency Ordinance 473 prohibiting the outdoor cultivation of recreational marijuana. Should that be the City Council's preferred directive, a corollary question arises whether the City's current prohibition on outdoor cultivation for medicinal marijuana, presently in place, should be lifted by a subsequent ordinance at its next public meeting.
- 2) Adopt an Urgency Ordinance placing a temporary moratorium on the outdoor cultivation of recreational marijuana and direct staff to explore regulating the outdoor cultivation of both recreational and medical marijuana for personal use.

### **FISCAL IMPACTS**

Due to the increased enforcement and regulatory costs, the passage of Proposition 64 will likely result in a number of financial impacts to the City and depending on the direction of the City Council in response to Proposition 64 these costs may be more or less impactful.

If the City Council chooses to adopt an outdoor personal cultivation ban and/or regulations governing indoor/outdoor cultivation, such regulations will likely lead to an increase in administrative and code enforcement costs.

If the City Council adopts a commercial marijuana ban, such regulations will likely lead to an increase in administrative and enforcement costs. Alternatively, if the City Council adopts business regulations to govern marijuana businesses, such regulations will likely lead to an increase in administrative and enforcement costs, but may also lead to increased revenue due to the imposition of new business license fees and taxes. Any new taxes must be adopted pursuant to a vote of the electorate in accordance with Proposition 218. Furthermore, any general tax ballot measure would likely have to be consolidated with a regularly scheduled City Council election.

If the City Council chooses to adopt changes to the City's smoking regulations this could increase the costs of enforcement and regulation.

**ATTACHMENTS**

1. Urgency Ordinance 473 [pp. 5]
2. CMC Section 17.36.080 – Prohibited Uses and Activities [pp. 1]
3. CMC Section 17.04.138 – Medical Cannabis Uses [pp. 1]
4. CMC Section 8.14 – Regulation of Smoking [pp. 6]

Max Kahn, Northgate High School student, added our nation is led by egregious levels of income inequality, specifically in the Bay Area; it is imperative Congress act in any way to reduce and curtail gaps between the “haves and the have nots” in our society. Like Portland, Senator DeSaulnier proposed a similar measure when he was in the California State Senate with a corporate tax imposed based on a CEO earning over 100 times the amount of the median salary of the average worker. He would like to see the City of Clayton curtail the inequality of income in its community and do the same.

## **7. PUBLIC HEARINGS**

- (a) Public Hearing to consider the adoption of Urgency Ordinance No. 473 to prohibit outdoor cultivation of recreational marijuana plants, and discussion of various local policy issues arising from the California voters’ passage of Prop 64 regarding local regulation of legal recreational marijuana.

[Councilmember David Shuey arrived – 7:14 p.m.]

Community Development Director Mindy Gentry advised she would summarize prevailing federal, state and local laws on this subject before addressing the local policy questions. She provided background regarding marijuana regulation per federal law: in 1970 Congress passed the Controlled Substances Act declaring marijuana as a Schedule 1 narcotic, defined as a drug with no currently accepted medical use and has a high potential for abuse. That Act declares the manufacture, importation, possession, use and distribution of marijuana is illegal. In 2013, the U.S. Department of Justice under the Obama Administration issued a memo providing guidance on marijuana enforcement; with the recent Presidential Election, this DOJ enforcement abeyance may change under new administration taking place January 20, 2017.

Ms. Gentry noted in 1996 voters passed state law entitled the Compassionate Care Act (Prop 215) allowing patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from prosecution under criminal laws, which otherwise prohibit possession or cultivation of marijuana. In 2015 three bills were passed by State legislation to license the commercial cultivation, manufacture, retail sale, transport, distribution and delivery of medical marijuana but with no licenses to be issued until January 1, 2018.

Ms. Gentry advised Clayton’s Municipal Code addresses medical marijuana regulation but is silent on recreational/personal use. The Code does prohibit outdoor cultivation, dispensaries, and testing facilities, however, it allows limited indoor cultivation for patients and caregivers under physician orders and medical marijuana deliveries due to concerns with patient access.

Ms. Gentry added State Proposition 64 recently passed with Clayton voting 53.8% in favor; effective immediately, personal use and personal cultivation is allowed but no issuance of commercial licensing until January 1, 2018. The legalization allows possession, transport, purchase, use and transfer for those 21 years of age or older with no more than 28.5 grams or 8 grams in concentrate and cultivation of up to six plants for personal use. Proposition 64 further allows some local control in the areas of banning marijuana-related commercial businesses, all outdoor cultivation, and for regulation of indoor cultivation in private residences without banning it outright.

Ms. Gentry reviewed the recommended policy option for Council to adopt an Urgency Ordinance to place a similar ban on outdoor personal-use cultivation due to concerns of the plants being seen from public areas which would attract easy access by the public, including youth and children, possible theft and odor and broader growth due to larger

spaces, and the plants being less secure. These concerns raise an immediate threat to public safety and health and are negative effects of allowing outdoor cultivation.

Ms. Gentry concluded her presentation with policy questions to the City Council to consider regarding local regulations on Indoor/Outdoor Cultivation, Commercial Marijuana Activities, Regulation of Personal Marijuana Use locations and other issues, and with options to wait and see if the legal interpretations change over time or see what other neighboring jurisdictions adopt before embarking on local policies.

Mayor Diaz opened the Public Hearing for public comment.

Dylan Kupsh recommended the City Council not regulate indoor cultivation of marijuana as it is private property and the government should not interfere within private property as the smell will not affect surrounding neighbors.

Max Kahn considers it obscene to regulate the indoor cultivation of marijuana and thinks the police force and City resources could be better used in other areas.

Mayor Diaz closed the Public Hearing.

Councilmember Shuey offered he does not feel that indoor cultivation needs regulation and he would like the smoking of marijuana to be included within Clayton's smoking policy.

Vice Mayor Haydon would like to allow the indoor cultivation of marijuana for personal use without regulation by City staff. He also had some concerns on the smoking restrictions in regards to workers and patrons who are required to go outside to smoke tobacco; he is hesitant to allow the smoking of marijuana in those same places as cigarettes. Vice Mayor Haydon preferred marijuana restrictions be included under the City's alcohol ordinances; alcohol cannot be consumed out in public or on public streets, and he would like further staff research as this is a brand new law that has just been passed.

Councilmember Catalano inquired on commercial sales as a state license is required which will not be issued until January 2018, and asked what happens in the interim with other cities that allow medical dispensaries: are they able to sell recreational marijuana prior to January 1, 2018? Ms. Gentry responded the passage of Prop 64 left medical marijuana regulations in place for which state-issued commercial licenses are slated for issuance in January 2018. Currently there is a ban on marijuana dispensaries in the City of Clayton; if someone were to come into the city to open a dispensary, the City would rely on the Municipal Code which states it is still against federal law and therefore issuance of a local City business license to operate in town would be unlawful.

Councilmember Catalano asked since Prop 64 passed it still allows local jurisdictions to do some regulation; in terms of the cities enacting some regulation based on health and safety, is that allowed within the Adult Use of Marijuana Act? Acting City Attorney Katy Wisinski advised the City is authorized to regulate or ban outdoor cultivation or personal marijuana use and if the City opts to ban, it that is fine; if the City opts to regulate it in some fashion then it becomes a land-use decision and we would apply the same land-use principles as are used with any other proposed use.

Councilmember Catalano indicated she is in favor of the outdoor cultivation ban and would like to explore this item further in 2017 so far as brick and mortar sales in commercial sites.

Mayor Diaz wished to wait and see what develops following the passage of Prop 64; he has heard some surrounding communities who authorized commercial marijuana sales have had some problems as it is presently a federal illegal matter. Those businesses must operate on a cash-only basis as banks cannot accept monetary transactions from

these types of businesses without jeopardizing its FDIC standing. Cash-only businesses also become enhanced targets for ensuing criminal activities.

City Manager Napper added the only item for immediate attention this evening is the Urgency Ordinance as it would be difficult at this time for a police officer to differentiate between marijuana plants for medical or personal use. The remainder of the policy items raised by staff can wait for a full City Council to discuss in the new year.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Urgency Ordinance No. 473 by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Urgency Ordinance No. 473 by title and number only.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Urgency Ordinance No. 473 with the finding the action does not constitute a project under CEQA. (Passed; 4-0 vote).**

## 8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of Ordinance No. 471 amending the Clayton Zoning Map from Agricultural District (A) to Planned Development District (PD) for 2.77 Acres that comprise the St. John's Church/Southbrook Drive Mixed Use Planned Development Project.

Community Development Director Mindy Gentry provided a brief background including the subject Ordinance's introduction back on December 6, 2016 to rezone the 2.77-acre St. John's Episcopal Church/Southbrook Drive Mixed Use Planned Development project site from Agricultural District (A) to Planned Development District (PD). No changes were made to the introduced Ordinance, the approval of a corresponding general plan amendment, rezone, and lot split for two single-family homes.

Mayor Diaz opened the item for Public Comment on this item; no comments were offered and Mayor Diaz then closed Public Comment.

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 471, by title and number only and waive further reading. (Passed; 4-0 vote).**

The City Clerk read Ordinance No. 471 by title and number only.

[Maintenance Supervisor John Johnston arrived – 7:42 p.m.]

**It was moved by Vice Mayor Haydon, seconded by Councilmember Shuey, to adopt Ordinance No. 471 with the finding the project will not have a significant effect on the environment as outlined in the City Council-adopted St. John's Church/Southbrook Drive Mixed Use Planned Development Project Final Initial Study/Mitigated Negative Declaration (IS/MND). (Passed; 4-0 vote).**

- (b) Continued consideration of a proposal to share the cost for installation of fencing and related field improvements and storage by Clayton Valley Little League (CVLL) involving permanently fixed outfield baseball fence on Sports Field No. 3 at Clayton Community Park.

# ATTACHMENT 2

Historic Places= pursuant to Government Code Section 65852.3(b). (Ord. 425, 2009).

**17.36.080 Prohibited Uses and Activities.** The following uses and activities in all zoning districts;

- (a) Any use or activity which is prohibited by local, regional, state, or federal law;
- (b) Establishment or operation of cannabis dispensaries, as defined in Section 17.04.138;
- (c) Outdoor cultivation or production of cannabis, as defined in Section 17.04.138, or marijuana;
  - i. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
  - ii. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
    - (a) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
    - (b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (d) Cannabis manufacturers as defined in Section 17.04.138;
- (e) Cannabis testing laboratories, as defined in Section 17.04.138, or other facilities that store or maintain marijuana as part of their operations, whether commercial or non-commercial; and (Ordinance No. 461, 2016);
- (f) Other use or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited. (Ordinance No. 448, 2013)

**17.36.082 Emergency Shelters Standards.**

Emergency shelters are only permitted in the Public Facilities (PF) zoning district subject to the development standards of the zone. In accordance with the authority granted to cities under State law (SB-2; 2007), emergency shelters must also meet the following objective development and management standards:

- A.** An emergency shelter building shall be located a minimum distance of at least 300 feet from any residential use building or public or private K-12 school.
- B.** An emergency shelter shall be located a minimum distance of at least 300 feet from another emergency shelter.
- C.** The maximum number of beds or persons permitted to be served nightly by the facility shall not exceed ten (10).
- D.** The maximum length of stay by an individual shall not exceed one hundred and eighty (180) consecutive days in a consecutive 12-month period.
- E.** Off-street parking shall be provided in the ratio of one (1) space for every three (3) beds, plus one (1) parking space for each staff member on the largest shift. Provisions



# ATTACHMENT 3

D. "Rear lot line" means the lot line not intersecting a front lot line which is most distant from and most closely parallel to the front lot line. A lot bounded by only three lot lines will not have a rear lot line. (Ord 375, 2004)

E. "Side lot line" means any lot line which is not a front or rear lot line. (Ord 375, 2004)

**17.04.136 Lot, Through.** "Through lot" means a lot, other than a corner lot, having frontage on two parallel, or approximately parallel streets (or vehicular access easements). (Ord 375, 2004)

**17.04.137 Manufactured Home.** A Manufactured Home@ means a single-family dwelling transportable in one or more sections constructed to a federally preemptive standard (Ord. 425, 2009).

**17.04.138 Medical Cannabis Uses.** A facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215). (Ordinance No. 448, 2013)

A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. "Cannabis dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, wither individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of retail sale.

C. "Cannabis manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis products or labels or relabels its container.

D. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

E. "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state; and

(2) Registered with the State Department of Public Health. (Ordinance No. 461, 2016)

**17.04.139 Mixed Use.** A Mixed Use@ means properties on which various uses, such as residential, commercial, or institutional, are combined in a single building or on a single site