



PLANNING COMMISSION AGENDA

Regular Meeting

7:00 P.M. on Tuesday, May 22, 2018

Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, California

- 1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG**
- 2. ADMINISTRATIVE**
 - 2.a. Review of agenda items.
 - 2.b. Declaration of Conflict of Interest.
 - 2.c. Commissioner A. J. Chippero to report at the City Council meeting of June 5, 2018 (alternate Chair Carl Wolfe).
- 3. PUBLIC COMMENT**
- 4. MINUTES**
 - 4.a. Approval of the minutes for the April 24, 2018 Planning Commission meeting.
- 5. PUBLIC HEARINGS**
 - 5.a. **ZOA-02-18, Municipal Code Amendment, City of Clayton.** A request by the City for the Planning Commission to consider and make a recommendation to the City Council regarding amendments to the Clayton Municipal Code Section 17.92 (Inclusionary Housing Requirements) to incorporate rental housing projects.

Staff Recommendation: Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 02-18, recommending City Council approval of an Ordinance amending the City's Inclusionary Housing Requirements.

- 5.b. **ZOA-08-16, Municipal Code Amendment, City of Clayton.** A request by the City for the Planning Commission to consider and make a recommendation to the City Council regarding amendments to the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density.

Staff Recommendation: Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-18, recommending City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

- 8.a. Staff.
8.b. Commission.

9. ADJOURNMENT

- 9.a. The next regularly-scheduled meeting of the Planning Commission will be held on **Tuesday, June 12, 2018.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7300. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
Clayton Planning Commission Meeting
Tuesday, April 24, 2018

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Chair Carl Wolfe called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair Carl Wolfe
Vice Chair Bassam Altwal
Commissioner A. J. Chippero
Commissioner Peter Cloven
Commissioner William Gall

Absent: None

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Commissioner William Gall to report at the City Council meeting of May 1, 2018.

3. PUBLIC COMMENT

None.

4. MINUTES

- 4.a. Approval of the minutes for the March 27, 2018 Planning Commission meeting.

Commissioner Cloven moved and Commissioner Gall seconded a motion to approve the minutes, as amended. The motion passed 5-0.

5. PUBLIC HEARINGS

- 5.a. **SPR-02-18, Site Plan Review Permit, George Pangan**, 5859 Clayton Road (APN: 118-062-011). A request for approval of a Site Plan Review Permit to allow the construction of a single-story garage addition measuring approximately 700 square feet in area and 14 feet in height on an existing split-level single-family residence.

Assistant Planner Sikela presented the staff report.

Commissioner Cloven expressed concern over adequate vehicular turning area being available in the driveway after the addition was constructed, so that a vehicle leaving the property onto Clayton Road would not have to back out on Clayton Road. Assistant Planner Sikela explained that the existing front setback is 54 feet and the proposed front setback is 36 feet. As a result, the remaining 36 feet would appear to be adequate space for a vehicle to maneuver in order to be positioned in such a manner to drive forward from the property onto Clayton Road.

Vice Chair Altwal indicated that a side-loaded garage addition might be preferable to the proposed front-loaded garage. A side-loaded garage would have a garage door that would be located further away from Clayton Road and may alleviate concerns regarding adequate maneuvering area for a vehicle.

The public hearing was opened.

Vice Chair Altwal asked the applicant, Mr. Pangan, if he had considered a side-loaded garage as part of the design of the addition. The applicant indicated that he had not considered a side-loaded garage and preferred the front-loaded garage design as proposed.

Chair Wolfe had the following questions:

- What is the purpose of the second hallway adjacent to the proposed master bedroom? The applicant indicated that the second hallway is merely transitional space to provide separation between the proposed master bedroom and other areas of the house. The existing master bedroom is quite small and, since we have two young children, we need more space inside the residence.
- Could the master bedroom addition area be used as a second dwelling unit? Director Gentry indicated that the proposed master bedroom addition area would not qualify as a second dwelling unit since it does contain kitchen facilities.

Commissioner Chippero asked the applicant if he agreed with the conditions of approval proposed by staff requiring the masonry wainscoting be applied to the front elevation of the proposed garage. The applicant indicated that he agreed with staff's proposed conditions of approval.

The public hearing was closed.

Vice Chair Bassam Altwal expressed concern that enough space be provided on the property after the proposed garage is constructed in order to enable a vehicle to maneuver so that the vehicle exits forward onto Clayton Road instead of backing out onto Clayton Road.

Commissioner Cloven indicated that his only concern was that a vehicle would have enough space to turn around on the property to exit forward onto Clayton Road.

Chair Wolfe asked how we can ensure that there is enough space on the property for the vehicle to turn around.

Director Gentry indicated the following:

- There is adequate space on the property to install a hammerhead turnaround driveway.
- As part of review of the construction plans for building permit issuance, staff ensures the plans are consistent with the plans approved by the Planning Commission as well as the conditions of approval, staff would ensure that a hammerhead turnaround is shown in the construction plans.

Vice Chair Altwal confirmed with staff that the existing and proposed front setback measurements listed in the staff report were consistent with the existing and proposed front setback measurements shown on the project plans. Assistant Planner Sikela confirmed that the existing and proposed front setback measurements listed in the staff report were consistent with the front setback measurements shown on the project plans.

Commissioner Cloven indicated that he was in support of the project as long as staff can verify an adequate turning radius will exist on the property after the proposed addition is constructed.

Given the concerns expressed regarding adequate space for maneuvering a vehicle to exit forward onto Clayton Road, the public hearing was re-opened to discuss this issue with the applicant.

The applicant indicated the following:

- A semi-circular driveway currently exists on the lot.
- We never back our vehicles out onto Clayton Road and, instead, always drive forward out onto Clayton Road
- The garage addition will not encroach into the semi-circular driveway and will, therefore, not impede the maneuvering area of vehicles to enable forward egress onto Clayton Road.

Chair Wolfe asked the applicant that, if a recreational vehicle (RV) was parked in the driveway, would there still be adequate enough space to ensure that another vehicle could exit forward onto Clayton Road? The applicant answered that, yes, there would be adequate space for a vehicle to exit forward onto Clayton Road if an RV was parked in the driveway.

Assistant Planner Sikela indicated that he would work with the applicant to ensure that all hardscape areas, including the driveway, shall be shown on the construction plans in order to address the Planning Commission's concerns regarding the provision of adequate space to maneuver a vehicle on the lot to allow a vehicle to exit onto Clayton Road in a forward facing manner.

Commissioner Cloven moved and Chair Wolfe seconded a motion to approve Site Plan Review Permit SPR-02-18, with the findings and conditions of approval recommended by staff, and with staff assurance that all hardscape areas, including the driveway, shall be shown on the construction plans in order to address the Planning Commission's concerns regarding the provision of adequate space on the lot to allow a vehicle to maneuver and exit in a forward facing manner onto Clayton Road. The motion passed 4-0-1 (Vice Chair Altwal abstained).

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff

None.

8.b. Commission

None.

9. ADJOURNMENT

9.a. The meeting was adjourned at 7:33 p.m. to the regularly-scheduled meeting of the Planning Commission on May 8, 2018.


Submitted by
Mindy Gentry
Community Development Director

Approved by
Carl Wolfe
Chair

PLANNING COMMISSION STAFF REPORT

Meeting Date: May 22, 2018

Item Number: 5.a.

From: Mindy Gentry 
Community Development Director

Subject: Ordinance to Amend the Inclusionary Housing Requirements
(ZOA-02-18)

Applicant: City of Clayton

REQUEST

The City of Clayton is requesting a public hearing for the Planning Commission to consider and make a recommendation to the City Council on a City-initiated Ordinance, amending Title 17 "Zoning", Chapter 17.92 (Inclusionary Housing Requirements) of the Clayton Municipal Code (CMC) for the purpose of incorporating rental housing projects as allowed for by Assembly Bill (AB) 1505 (ZOA-02-18) (**Attachment A**).

PROJECT INFORMATION

Location: Citywide

Environmental: Approval of the Ordinance will not result in a significant adverse environmental impact as these changes were considered as part of the November 18, 2014 City Council adoption of the IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment and anticipated impacts have not changed nor is there new information that would alter those findings.

Public Notice: On May 10, 2018, a public hearing notice was published in the Contra Costa Times and on May 11, 2018 a public hearing notice was posted at designated locations in the City.

BACKGROUND

On August 16, 2016, the City Council adopted an Ordinance implementing inclusionary requirements for affordable housing on new homeownership or for-sale housing developments; the current threshold is ten percent affordable housing units on residential projects having ten or more new units (**Attachment B**). The Ordinance specifically precluded residential rental housing projects due to State law and pending the outcomes of two specific court cases. Rental housing was excluded from consideration in Clayton's Inclusionary Housing Ordinance because of the decision in *Palmer/Sixth Street Properties v. City of Los Angeles (2009)*, which determined that cities may no longer require developers to construct affordable housing units. The court had concluded the City of Los Angeles's inclusionary housing

ordinance conflicted with and was preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act, which allows residential landlords to set the initial rents at the commencement of a tenancy.

This court case was followed by an outcome in the case of the *California Building Industry Association (CBIA) v. City of San Jose (2015)*. In this particular case, the outcome of the court's decision impacted inclusionary housing ordinances Statewide and resulted in a finding that inclusionary housing ordinances do not constitute an unjust taking of property. The result of the court's decision upheld existing inclusionary housing ordinances; it allowed jurisdictions to adopt inclusionary housing ordinances but only for homeownership or for-sale development projects. When the City Council adopted Clayton's Inclusionary Housing Ordinance, the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles* was still relevant; therefore rental housing units were excluded due to the conflict with the Costa-Hawkins Rental Housing Act.

On September 29, 2017, Governor Brown signed a comprehensive package of 15 housing-related bills as the legislature's response to address California's housing supply shortage. One of these bills, AB 1505 (**Attachment C**), known as the "Palmer fix," restores the authority of cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles*. AB 1505 authorizes cities and counties to adopt ordinances that require, as a local condition of development of residential rental units, to include a certain percentage of residential rental units affordable to moderate, low, very low, and extremely low income. AB 1505 also requires cities and counties to provide alternative means of compliance that may include in-lieu fees, land dedication, off-site construction, or acquisition or rehabilitation of existing units.

On April 17, 2018, staff brought forth a policy discussion before the City Council to determine if rental housing units/projects should be considered to be incorporated into the City's existing inclusionary housing requirements (**Attachment D**). The Council provided direction to staff to draft an amendment to the City's Inclusionary Housing Ordinance to include rental housing projects, as allowed for by AB 1505, for local application of the same standards required for homeownership projects, and apply it to all housing types as defined and counted by State Department of Housing and Community Development (HCD).

OVERVIEW AND DISCUSSION

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in its Housing Elements. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development of all types and variations.

State law also requires the HCD to forecast statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 new housing units which are broken down as follows by income category: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units, and 34 above moderate-income units. Given the City's RHNA allocation and the State legislature's push for local governments to identify actions that will make sites available for affordable housing as well as assist in the development of such housing, the City identified a goal

(Goal I) in its certified Housing Element to provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. The City also adopted Policy I.2, which states:

"The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulation concessions and available financial assistance".

To meet Goal I and Policy I.2, Implementation Measure I.2.1 was identified to require residential projects of ten or more units to develop an Affordable Housing Plan, which requires a minimum of 10% of the units to be built or created as affordable housing units. To promote the goal of actively supporting and participating in the provision of housing for all economic segments, the City Council adopted the current Inclusionary Housing Ordinance, which facilitates the fulfillment of Implementation Measure I.2.1 (**Attachment E**). The adoption of the Inclusionary Housing Ordinance fully implements Measure I.2.1 by providing details regarding the process and standards for the City and developers to follow. Adoption of the Inclusionary Housing Ordinance to incorporate residential rental units will only further the City's goal of accommodating its fair share housing allocation and will help fulfill Housing Element Policy I.2.

AB 1505

As indicated earlier, the passage of AB 1505 once again allows cities and counties, as a condition of development of residential units, that the development to include a certain percentage of units be affordable to and occupied by moderate-, low-, very low-, or extremely low- income households. The law also requires cities that adopt inclusionary housing ordinances to provide alternative means for compliance such as an in-lieu fee, dedication of land, the construction of affordable units off-site, or the acquisition and rehabilitation of existing units.

It should be noted that AB 1505 does provide HCD with the authority to review a jurisdiction's inclusionary housing ordinance if the jurisdiction requires, as a condition of development, more than 15 percent of the total number of units to be affordable to households at 80 percent or less of the area median income. However, HCD is only granted this authority if the jurisdiction has: 1) failed to meet at least 75 percent of its share of the RHNA for above-moderate income households over at least a five year period; or 2) the jurisdiction has failed to submit its annual Housing Element progress report for at least two consecutive years. If HCD determines any of the two aforementioned conditions exist, then HCD may request an economic feasibility study demonstrating the Ordinance does not unduly constrain the production of housing.

From staff's perspective, HCD's threshold (for an economic feasibility study of 15 percent of the total number of units to be affordable to households at 80 percent or less of area median income) is significant because it infers the economic feasibility for developers is manageable up to and around this threshold. Therefore, local developers have little substance to an assertion or claim of an economic hardship meeting the City's current and proposed inclusionary housing requirements. Since the City's current inclusionary housing requirements fall under the State's economic feasibility threshold it further infers the proposed requirements are not overly burdensome as to place an obstacle or governmental constraint in preventing housing production. Only if the desire to require affordability to extremely low- or very low-income households would a feasibility study be advisable and possibly trigger a review of the City's Inclusionary Housing Ordinance by HCD.

Proposed Ordinance Amendments

The majority of the amendments to the proposed Ordinance are to incorporate rental housing units in addition to the previously established for-sale housing units as well as to specify that the Ordinance applies to dwelling units defined and counted by HCD (**Attachment F**).

Other proposed changes are to provide more discretion to the City Council regarding the approval process as it pertains to the use of alternatives in lieu of constructing the affordable housing units onsite as well as to clarify the Community Development Director only has the authority to approve Inclusionary Housing Plans that include the construction of the required affordable housing units onsite.

Lastly, the Ordinance will specify, in accordance with case law (*Latinos Unidos del Valle de Napa Y Solano v. County of Napa*), the units provided under Density Bonus law would be counted toward the required number of Inclusionary Housing Units.

Project Impacts

Currently in the City's project pipeline, there are two housing projects that could possibly be affected by the proposed amendments: 1) Clayton Senior Housing project, an 81-unit senior apartment complex to be located on the eastern portion of High Street behind the United States Post Office and fronting onto old Marsh Creek Road, south of the AT&T switch station building; and 2) The Grand Oak Assisted Living Facility and Memory Care project to be located on City-owned vacant property in the Town Center.

The Clayton Senior Housing project is requesting a 35 percent Density Bonus, as allowed for under State law and the Clayton Municipal Code, which is proposed to produce seven units dedicated to very-low income households. However, the decision in the court case *Latinos Unidos v. County of Napa* clarified that jurisdictions are required to count the units granted under the Density Bonus to also be counted toward the inclusionary housing unit requirements; meaning the project will be meeting the inclusionary housing requirements by default. The project is proposing seven very-low income units and the requirements under the existing inclusionary housing ordinance is 5.9 units; therefore the amendments to the Ordinance would not result in any additional impacts beyond what was already contemplated under the Density Bonus Law.

While the prospective developer of the Grand Oak project has not formally submitted an application to the City, the project has been mentioned as part of this discussion since the developer has currently entered into an Exclusive Negotiation Agreement with the City and has made a preliminary submittal for staff review and feedback in addition to the onset of the required community outreach process. This project is proposed as a 95-unit assisted living and memory care facility located on the vacant 1.6-acre City-owned parcel in the Town Center.

HCD defines permitted units as, "A house, an apartment, mobile home, a group of rooms, or a single room occupied as separate living quarters... Separate living quarters are those in which occupants live separately from any other individuals in the building and which have direct access from outside the building or through a common hall." More specifically, HCD's counting of senior housing includes individual units that would allow for eating and living separately from the broader community but does not include beds or quarters in an institution or hospital. After confirming with HCD, the assisted living units would be subject to the proposed Ordinance since they are considered to be a dwelling unit by HCD, but the memory care units would not be subjected to the Ordinance because HCD does not include beds or quarters in an institution or hospital nor do the memory care units provide areas for separate living and eating. Therefore, assuming approval of the Ordinance, as part of its application, the developer of the Grand Oak project would have to submit an Affordable Housing Plan for the assisted living unit component of the project.

Building Industry Associate Comment Letter

Prior to the April 17, 2018 hearing where the City Council considered and discussed the policy direction on whether to include rental housing projects in the Inclusionary Housing Ordinance, a letter was sent to the City from the Building Industry Association (BIA) (**Attachment G**). The letter encouraged Clayton to provide developers with a by-right in-lieu fee option as well as to grandfather residential development projects currently in the City's project pipeline. The Ordinance is being proposed with more discretion

being forwarded to the City Council regarding the use of alternatives and none of the projects in the pipeline have vested rights or will not be impacted by the proposed amendments.

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 02-18, recommending City Council approval of an Ordinance amending the City's Inclusionary Housing Requirements (**Attachment A**).

ATTACHMENTS

- A. Planning Commission Resolution No. 02-18, with attachment:
 - Exhibit 1 – Draft Ordinance Amending Chapter 17.92 – Inclusionary Housing Requirements
- B. Clayton Municipal Code Section 17.92
- C. Assembly Bill 1505
- D. Excerpt of the Staff Report and Minutes from the April 17, 2018 City Council Meeting
- E. Excerpt from the City's Certified 2015-2023 Housing Element
- F. Redline Changes to Clayton Municipal Code Section 17.92
- G. Comment Letter from the Building Industry Association

ATTACHMENT A

CITY OF CLAYTON PLANNING COMMISSION RESOLUTION NO. 02-18

RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 17.92 REGARDING INCLUSIONARY HOUSING REQUIREMENTS (ZOA-02-18)

WHEREAS, the City of Clayton desires to include in rental housing within its Inclusionary Housing Ordinance as allowed for by Assembly Bill 1505 (Government Code Sections 65850 and 65850.01); and

WHEREAS, Implementation Measure I.2.1 of the Housing Element of the Clayton General Plan encourages the City to adopt an Inclusionary Housing Ordinance with desired targets of five percent low income and five percent very low income units for residential projects of ten units or more; and

WHEREAS, as noted in the City's Housing Element (2015-2023), there is a significant need for more affordable housing within the City, including for the following reasons:

(1) The State Legislature, through California Government Code Section 65580, declares the availability of housing of vital statewide importance and local governments have a responsibility to use powers vested in them to facilitate the adequate provision for the housing needs of all economic segments of the community.

(2) Rental units in Contra Costa County are not affordable to people with extremely low incomes, such as those who depend on General Assistance, Temporary Assistance to Needy Families, or Supplemental Security Income. Over 2,000 households within Contra Costa County are on a waiting list for Section 8 assistance, and not all affordable housing units qualify for Section 8 housing assistance. In addition, many persons or families cannot accumulate the money required to move into an apartment (i.e., first and last months' rent plus security deposit);

(3) The high cost of housing makes it difficult to find housing that is affordable for those working minimum wage jobs. For example, based on 2000 Census data, twenty-seven percent of low and very-low income households owning their home and twenty-seven percent of low and very-low income households renting their home overpaid for housing costs;

(4) Only households earning above moderate incomes could afford a home priced at or around median. Homeownership is out of reach in Clayton for most lower-income households. For example, moderate income households within the City could not afford the 2017 median home price of \$615,000. Recent appreciation in real estate prices has increased these concerns;

(5) The City has a significant need for new affordable housing. The Association of Bay Area Governments (ABAG) has allocated the following Regional Housing Needs Allocation (RHNA) to the City for the period 2014 to 2022: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units and 34 above moderate-income units; and

WHEREAS, the legal landscape surrounding the development of affordable housing in California is continually evolving; and

WHEREAS, the court in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 determined that cities may no longer require developers to construct affordable housing units for rent; and

WHEREAS, the court in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 clarified that cities may require developers to construct affordable housing units for sale; and

WHEREAS, on August 16, 2016, the City Council adopted an Inclusionary Housing Ordinance requiring for-sale or homeownership projects of ten or more units to set aside ten percent of the units as affordable or by alternative means such as off-site development, payment of in lieu fee, and/or land dedication; and

WHEREAS, the State of California on September 19, 2017 passed into law Assembly Bill 1505, returning the authority to cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles*; and

WHEREAS, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on May 22, 2018, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended the City Council approve the ordinance amending Chapter 17.92 – Inclusionary Housing Requirements of City of Clayton Municipal Code; and

WHEREAS, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict with and are in general conformance with the City of Clayton General Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code Inclusionary Housing Requirements, attached hereto as Exhibit 1 and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 22nd day of May, 2018.

APPROVED:

ATTEST:

Carl Wolfe
Chair

Mindy Gentry
Community Development Director

ATTACHMENTS

Exhibit 1 – Draft Ordinance Amending the Inclusionary Housing Requirements with Exhibits:
A: Amended Chapter 17.92 – Inclusionary Housing Requirements

EXHIBIT 1

ORDINANCE NO. 482

**AN ORDINANCE AMENDING CHAPTER 17.92 OF THE CLAYTON MUNICIPAL
CODE REGARDING INCLUSIONARY HOUSING REQUIREMENTS**

THE CITY COUNCIL

City of Clayton, California

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

WHEREAS, the City of Clayton desires to include in rental housing within its Inclusionary Housing Ordinance as allowed for by Assembly Bill 1505 (Government Code Sections 65850 and 65850.01); and

WHEREAS, Implementation Measure I.2.1 of the Housing Element of the Clayton General Plan encourages the City to adopt an Inclusionary Housing Ordinance with desired targets of five percent low income and five percent very low income units for residential projects of ten units or more; and

WHEREAS, as noted in the City's Housing Element (2015-2023), there is a significant need for more affordable housing within the City, including for the following reasons:

(1) The State Legislature, through California Government Code Section 65580, declares the availability of housing of vital statewide importance and local governments have a responsibility to use powers vested in them to facilitate the adequate provision for the housing needs of all economic segments of the community.

(2) Rental units in Contra Costa County are not affordable to people with extremely low incomes, such as those who depend on General Assistance, Temporary Assistance to Needy Families, or Supplemental Security Income. Over 2,000 households within Contra Costa County are on a waiting list for Section 8 assistance, and not all affordable housing units qualify for Section 8 housing assistance. In addition, many persons or families cannot accumulate the money required to move into an apartment (i.e., first and last months' rent plus security deposit);

(3) The high cost of housing makes it difficult to find housing that is affordable for those working minimum wage jobs. For example, based on 2000 Census data, twenty-seven percent of low and very-low income households owning their home and twenty-seven percent of low and very-low income households renting their home overpaid for housing costs;

(4) Only households earning above moderate incomes could afford a home priced at or around median. Homeownership is out of reach in Clayton for most lower-income households. For example, moderate income households within the City could not afford the 2017 median home price of \$615,000. Recent appreciation in real estate prices has increased these concerns;

(5) The City has a significant need for new affordable housing. The Association of Bay Area Governments (ABAG) has allocated the following Regional Housing Needs Allocation (RHNA) to the City for the period 2014 to 2022: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units and 34 above moderate-income units; and

WHEREAS, the legal landscape surrounding the development of affordable housing in California is continually evolving; and

WHEREAS, the court in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 determined that cities may no longer require developers to construct affordable housing units for rent; and

WHEREAS, the court in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 clarified that cities may require developers to construct affordable housing units for sale; and

WHEREAS, on August 16, 2016, the City Council adopted an Inclusionary Housing Ordinance requiring for-sale or homeownership projects of ten or more units to set aside ten percent of the units as affordable or by alternative means such as off-site development, payment of in lieu fee, and/or land dedication; and

WHEREAS, the State of California on September 19, 2017 passed into law Assembly Bill 1505, returning the authority to cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles*; and

WHEREAS, on November 18, 2014, the City Council of the City of Clayton adopted an IS/ND for the 2015-2023 Housing Element, which was prepared pursuant to the California Environmental Quality Act (CEQA). The IS/ND concluded there was no substantial evidence to suggest the 2015-2023 Housing Element document would have a significant effect on the environment; and

WHEREAS, on May 22, 2018, the Planning Commission considered all information provided and submitted, took and considered all public testimony, and recommended the City Council approve the ordinance amending Chapter 17.92 – Inclusionary Housing Requirements of City of Clayton Municipal Code; and

WHEREAS, the City Council wishes to adopt this Inclusionary Housing Ordinance to further satisfy Housing Element Implementation Measure I.2.1 in compliance with applicable state and local laws; and

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

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

Section 2. Amendment. Chapter 17.92 of the Clayton Municipal Code is hereby amended to read in full as set forth in the attached Exhibit A, incorporated by this reference.

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. 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 5. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. This Ordinance shall be published or posted as required by law.

The foregoing Ordinance was introduced at a noticed public hearing at a regular public meeting of the City Council of the City of Clayton held on June 5, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on July 17, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Keith Haydon, 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 public hearing of a regular meeting of the City Council of the City of Clayton held on June 5, 2018, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on July 17, 2018.

Janet Brown, City Clerk

EXHIBIT A

Chapter 17.92 - INCLUSIONARY HOUSING REQUIREMENTS

Sections:

17.92.000 - Intent

It is the intent of this Chapter to establish standards and procedures that facilitate the development and availability of housing affordable to a range of households with varying income levels to implement the City's Housing Element and as mandated by Government Code Section 65580. The purpose of this Chapter is to encourage the development and availability of such housing by ensuring the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.92.010 - Definitions

Whenever the following terms are used in this Chapter, they shall have the meaning established by this Section:

- A. "Affordable Housing Costs" means
 - 1. For Very Low-Income Households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
 - 2. For Low-Income Households, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.
 - 3. For Moderate Income Households, Affordable Housing Cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.
- B. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development. The term "Developer" also means the owner or owners for any such property for which such approvals are sought.
- C. "Director" means the City's Director of Community Development.
- D. "Discretionary Approval" means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.
- E. "Inclusionary Housing Agreement" means a legally binding, written agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.
- F. "Affordable Housing Plan" means the plan referenced in Section 17.92.050.
- G. "Inclusionary Housing Fund" shall have the meaning set forth in Section 17.92.080(a).
- H. "Inclusionary Units" means a dwelling unit developed pursuant to an Inclusionary Housing Agreement that will be offered for-sale or rent to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this Chapter.

- I. "Low Income Households" means households who are not very low income households but whose gross income does not exceed the qualifying limits for lower income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development.
- J. "Low Income Units" means Inclusionary Units restricted to occupancy by Low Income Households at an Affordable Housing Cost.
- K. "Moderate Income Households" means households who are not low income households but whose gross income does not exceed one hundred and twenty percent (120%) of the median income for Contra Costa County, adjusted for family size and other factors by the U.S. Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932, or its successor provision.
- L. "Moderate Income Units" means Inclusionary Units restricted to occupancy by Moderate Income Households at an Affordable Housing Cost.
- M. "Residential Development" means the construction of new projects requiring any specific plan, development agreement, planned unit development permit, tentative map, minor subdivision, conditional use permit, site plan review or building permit for which an application has been submitted to the City and which would create one or more additional dwelling units as defined and counted by the State Department of Housing and Community Development (HCD) to be offered for-sale or rent by the construction or alteration of structures. All new construction projects creating one or more additional dwelling units to be offered for sale on contiguous parcels of land by a single Developer shall constitute a single Residential Development subject to the requirements of this Ordinance, and any accompanying regulations, regardless of whether such projects are constructed all at once, serially, or in phases. The term "Residential Development" shall include the conversion of rental units to for-sale units.
- N. "Unrestricted Units" means those dwelling units in a Residential Development that are not Inclusionary Units.
- O. "Very Low Income Households" means households whose gross income does not exceed the qualifying limits for very low income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development, adjusted for family size and other factors by the United States Department of Housing and Urban Development.

17.92.020 - Applicability

This Chapter shall apply to all Residential Developments, except as provided below.

- A. Residential Developments proposed to contain less than ten (10) dwelling units.
- B. Residential Developments that obtained a current, valid building permit prior to the effective date of the ordinance adding this Chapter.
- C. Any dwelling unit or Residential Development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than fifty percent (50%) of the of its reasonable market value at the time of destruction or damage.

17.92.030 - Inclusionary Unit Requirement

- A. If the Residential Development includes ten (10) or more units, a minimum of ten percent (10%) of all newly constructed dwelling units in the Residential Development shall be developed, offered to, and sold or rented to Low and Moderate Income Households, in a ratio determined pursuant to Section 17.92.060, at an Affordable Housing Cost.
- B. The Inclusionary Unit requirement set forth in this Section may be reduced as follows: If only Low Income Units are provided in lieu of any Moderate Income units, a credit of 1.5 units to every 1 unit shall be provided. However, the credits may only be applied to the extent such credit equals a whole number.
- C. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit at Affordable Housing Costs; or (ii) making an in lieu payment to the Inclusionary Housing Fund in an amount equal to the percentage represented by the fractional unit multiplied by the applicable in lieu fee.
- D. The number of Inclusionary Units required for a particular project will be determined at the time a land use application is filed by the Developer for a Residential Development with the City. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.
- E. For purposes of calculating the number of Inclusionary Units required by this Section, any additional units authorized as a density bonus under Chapter 17.90 and California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units.
- F. The number of Affordable Housing Units that are provided in order to secure a density bonus under Chapter 17.90 and California Government Code Section 65915(b)(1) or (b)(2) will be counted toward the required number of Inclusionary Housing Units.

17.92.040 - Alternatives

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.92.030, the requirements of this Chapter may be satisfied through the following alternatives set forth in this Section.

- A. Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Residential Development, the Developer may elect, with the City Council's approval, which may be granted or denied in its sole discretion, to construct Inclusionary Units off-site subject to the following requirements:
 - 1. If the Developer constructs units off-site, the percentage of required Inclusionary Units shall be increased to fifteen percent (15%).
 - 2. The site of the Inclusionary Units has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units, including the additional five percent (5%) for development off-site, within the Residential Development. The Developer shall obtain all required Discretionary Approvals and complete all necessary environmental review of such site.

3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
 4. Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
 5. The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.
 6. Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Residential Development.
 7. Unless otherwise noted, all requirements applicable to on-site Inclusionary Units shall apply to off-site Inclusionary Units.
- B. In Lieu Fee. For Residential Developments proposing ten (10) units, the Developer may elect, by right, at the Developer's sole discretion to pay a fee in lieu of developing an Inclusionary Unit on-site. The amount of the in lieu fee to be paid by Developer pursuant to this Section shall be the applicable in lieu fee set forth in the fee schedule adopted by the City Council. For all Residential Developments proposing eleven (11) units or more, the Developer may request within the proposed Inclusionary Housing Plan to pay a fee in lieu of all or some of the Inclusionary Units otherwise required by the Ordinance in lieu of developing Inclusionary Units on-site. Developer's request may be approved or denied by the Council in its sole discretion. The fee shall be charged for each unit or fraction of a unit as set forth in Section 17.92.030(c), and the fee shall be paid as follows:
1. The amount of the fee to be paid by Developer pursuant to this subsection shall be the fee schedule established by Resolution of the City Council, and as adjusted from time to time by Resolution of the City Council.
 2. One-half (1/2) of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.
 3. The fees collected shall be deposited in the Inclusionary Housing Fund.
 4. No certificate of occupancy shall be issued for any corresponding Unrestricted Units in a Residential Development unless fees required under this Section have been paid in full to the City.
- C. Land Dedication. In lieu of building Inclusionary Units, a Developer may request to dedicate land to the City suitable for the construction of Inclusionary Units that the City Council reasonably determines to be equivalent or greater value than is produced by applying the City's in lieu fee to the Developer's inclusionary obligation and otherwise meets the following standards and requirements:
1. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.

2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.
3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable Residential Development pursuant to zoning regulations.
5. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
6. The City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Housing Fund.

17.92.050 - Procedures

- A. At the times and in accordance with the standards and procedures set forth herein, Developer shall:
 1. Submit an Inclusionary Housing Plan, setting forth in detail the manner in which the provisions of this Chapter will be implemented for the proposed Residential Development. If land dedication or off-site units are proposed, the Inclusionary Housing Plan shall include information necessary to establish site location, suitability, development, constraints, and the number of Inclusionary Units assigned pursuant to this Chapter. Inclusionary Housing Plans that satisfy the express requirements of Section 17.92.030 may be approved by the Director. Inclusionary Housing Plans that include alternatives as set for the in Section 17.92.040 must be approved by the City Council.
 2. Execute and cause to be recorded an Inclusionary Housing Agreement, unless Developer is complying with this Chapter pursuant to Section 17.92.040(b) (in lieu fee) or Section 17.92.040(c) (land dedication).
- B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this Chapter until the Developer has submitted an Inclusionary Housing Plan.
- C. No building permit shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the City Council has approved the Inclusionary Housing Plan and the Inclusionary Housing Agreement (if required) is recorded.

- D. No certificate of occupancy shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.
- E. The City Manager or designee may establish and amend policies for the implementation of this Chapter.

17.92.060 - Standards

- A. Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number of bedrooms, to the Unrestricted Units. If the Residential Development offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be identical with the Residential Development's base-plan in terms of design, appearance, materials, finished quality and interior amenities. If multiple floor plans with the same number of bedrooms are proposed, the Inclusionary Units may be the units with the smaller floor plans.
- B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or prior to the construction of the Unrestricted Units. In the event the City approves a phased project, the Inclusionary Units required by this Chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final dwelling unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).
- C. Inclusionary Units shall be sold to Low and Moderate Income Households or rented to Very Low, Low, and Moderate Income Households at a ratio established pursuant to a Resolution adopted by the City Council, and shall be provided at the applicable Affordable Housing Cost.
- D. The number of bedrooms must be the same as those in the Unrestricted Units, except that if the Unrestricted Units provide more than four (4) bedrooms, the Inclusionary Units need not provide more than four (4) bedrooms.
- E. Inclusionary Units shall prohibit subsequent rental occupancy (for for-sale units) or subletting (for rental units), unless approved for hardship reasons by the City Manager or designee. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty.
- F. Prior the development of any units in a Residential Development, a deed restriction or other enforceable obligation approved by the City Attorney shall be recorded limiting the Developer and any successors, whenever an Inclusionary Unit is sold or leased, to sell such unit to persons meeting the income eligibility requirements for Low and Moderate Income Households or to rent such unit to persons meeting the income eligibility requirements for Very Low, Low, and Moderate Income Households as applicable for a period of fifty-five (55) years.

17.92.070 - Enforcement

- A. The provisions of this Chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be sold or leased in accordance with this Chapter. It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this Chapter at a price exceeding the maximum allowed under this Chapter or to sell or rent an Inclusionary Unit to a Household not qualified under this Chapter. It shall further be a misdemeanor for any person

to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

- B. Any individual who sells, rents, or sublets an Inclusionary Unit in violation of the provisions of this Chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Fund.
- C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this Chapter.
- D. In any action to enforce this Chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, Developer or household from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it would otherwise be entitled under law or equity.

17.92.080 - General Provisions

A. Inclusionary Housing Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Fund. All monies collected pursuant to 17.92.040, 17.92.060 and 17.92.070 shall be deposited in the Inclusionary Housing Fund. Additional monies from other sources may be deposited in the Inclusionary Housing Fund. The monies deposited in the Inclusionary Housing Fund shall be subject to the following conditions:

1. Monies deposited into the Inclusionary Housing Fund must be used to increase and improve the supply of housing affordable to Very Low, Low, and Moderate Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section.
2. The fund shall be administered, subject to the approval by the City Manager, by the Director of Community Development, or his or her designee, who may develop procedures to implement the purposes of the Inclusionary Housing Fund consistent with the requirements of this Chapter and through the adopted budget of the City.
3. Monies deposited in accordance with this Section shall be used in accordance with the City's Housing Element, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The Inclusionary Housing Fund may be used for the benefit of both rental and

owner-occupied housing. In no case is the City obligated to actually construct affordable housing units on its own.

B. Administrative Fees

The City Council may by Resolution establish reasonable fees and deposits, which shall fund the City's costs associated with the administration and monitoring of the Inclusionary Units and administration of the Inclusionary Housing Fund.

C. Appeal

Within ten (10) calendar days after the date of any decision of the Director under this Chapter, an appeal may be filed with the City Clerk. Within ninety (90) calendar days of the request for an appeal is filed or a later time as agreed to by the appellant, the City Council shall consider the appeal. The City Council's decision shall be final.

D. Waiver

1. Notwithstanding any other provision of this Chapter, the requirements of this Chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this Section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 17.92.050. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process in subsection (c) above.
4. In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
 - (i) That the Developer will provide the most economical Inclusionary Units feasible, meeting the requirements of this Chapter and any implementing regulations.
 - (ii) That the Developer is likely to obtain housing subsidies when such funds are reasonably available.

The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

Chapter 17.92 - INCLUSIONARY HOUSING REQUIREMENTS**Sections:****17.92.000 - Intent.**

It is the intent of this chapter to establish standards and procedures that facilitate the development and availability of housing affordable to a range of households with varying income levels to implement the City's Housing Element and as mandated by Government Code § 65580. The purpose of this chapter is to encourage the development and availability of such housing by ensuring the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.92.010 - Definitions.

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

- A. "Affordable Housing Costs" means
 1. For Very Low-Income Households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit.
 2. For Low-Income Households, the product of thirty percent (30%) times seventy percent (70%) of the area median income adjusted for family size appropriate for the unit.
 3. For Moderate Income Households, Affordable Housing Cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten percent (110%) of area median income adjusted for family size appropriate for the unit.
- B. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development. The term "Developer" also means the owner or owners for any such property for which such approvals are sought.
- C. "Director" means the City's Director of Community Development.
- D. "Discretionary Approval" means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.
- E. "Inclusionary Housing Agreement" means a legally binding, written agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

- F. "Affordable Housing Plan" means the plan referenced in Section 17.92.050.
- G. "Inclusionary Housing Fund" shall have the meaning set forth in Section 17.92.080.A.
- H. "Inclusionary Units" means a dwelling unit developed pursuant to an Inclusionary Housing Agreement that will be offered for sale to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this chapter.
- I. "Low Income Households" means households who are not very low income households but whose gross income does not exceed the qualifying limits for lower income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development.
- J. "Low Income Units" means Inclusionary Units restricted to occupancy by Low Income Households at an Affordable Housing Cost.
- K. "Moderate Income Households" means households who are not low income households but whose gross income does not exceed one hundred and twenty percent (120%) of the median income for Contra Costa County, adjusted for family size and other factors by the U.S. Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932, or its successor provision.
- L. "Moderate Income Units" means Inclusionary Units restricted to occupancy by Moderate Income Households at an Affordable Housing Cost.
- M. "Residential Development" means the construction of new projects requiring any specific plan, development agreement, planned unit development permit, tentative map, minor subdivision, conditional use permit, site plan review or building permit for which an application has been submitted to the City and which would create one or more additional dwelling units to be offered for sale by the construction or alteration of structures. All new construction projects creating one or more additional dwelling units to be offered for sale on contiguous parcels of land by a single Developer shall constitute a single Residential Development subject to the requirements of this Ordinance, and any accompanying regulations, regardless of whether such projects are constructed all at once, serially, or in phases. The term "Residential Development" shall include the conversion of rental units to for-sale units.
- N. "Unrestricted Units" means those dwelling units in a Residential Development that are not Inclusionary Units.
- O. "Very Low Income Households" means households whose gross income does not exceed the qualifying limits for very low income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for

family size and other factors by the United States Department of Housing and Urban Development, adjusted for family size and other factors by the United States Department of Housing and Urban Development.

17.92.020 - Applicability.

This Chapter shall apply to all Residential Developments, except as provided below.

- A. Residential Developments proposed to contain less than ten (10) dwelling units.
- B. Residential Developments that obtained a current, valid building permit prior to the effective date of the ordinance adding this chapter.
- C. Any dwelling unit or Residential Development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than fifty percent (50%) of the of its reasonable market value at the time of destruction or damage.

17.92.030 - Inclusionary Unit Requirement.

- A. For-Sale Units: If the Residential Development includes ten (10) or more units for sale, a minimum of ten percent (10%) of all newly constructed for sale dwelling units in the Residential Development shall be developed, offered to and sold to Low and Moderate Income Households, in a ratio determined pursuant to Section 17.92.060, at an Affordable Housing Cost.
- B. The Inclusionary Unit requirement set forth in this section may be reduced as follows: If only Low Income Units are provided in lieu of any Moderate Income units, a credit of one and one-half units to every one unit shall be provided. However, the credits may only be applied to the extent such credit equals a whole number.
- C. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit at Affordable Housing Costs; or (ii) making an in lieu payment to the Inclusionary Housing Fund in an amount equal to the percentage represented by the fractional unit multiplied by the applicable in lieu fee.
- D. The number of Inclusionary Units required for a particular project will be determined at the time a land use application is filed by the Developer for a Residential Development with the City. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.
- E. For purposes of calculating the number of Inclusionary Units required by this section, any additional units authorized as a density bonus under Chapter 17.90 and California Government Code § 65915(b)(1) or (b)(2) will not be counted in determining the required

number of Inclusionary Units.

17.92.040 - Alternatives.

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.92.030, the requirements of this chapter may be satisfied through the following alternatives set forth in this section.

- A. Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Residential Development, the Developer may elect, by right, at the Developer's sole discretion to construct Inclusionary Units off-site subject to the following requirements:
1. If the Developer constructs units off-site, the percentage of required Inclusionary Units shall be increased to fifteen percent (15%).
 2. The site of the Inclusionary Units has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units, including the additional five percent (5%) for development off-site, within the Residential Development. The Developer shall obtain all required Discretionary Approvals and complete all necessary environmental review of such site.
 3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
 4. Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
 5. The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.
 6. Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Residential Development.
 7. Unless otherwise noted, all requirements applicable to on-site Inclusionary Units shall apply to off-site Inclusionary Units.
- B. In Lieu Fee. For Residential Developments proposing ten (10) units, the Developer may elect, by right, at the Developer's sole discretion to pay a fee in lieu of developing an Inclusionary Unit on-site. The amount of the in-lieu fee to be paid by Developer pursuant to this section shall be the applicable in-lieu fee set forth in the fee schedule adopted by the City Council. For all Residential Developments proposing eleven (11) units or more, the Developer may request to pay a fee in lieu of all or some of the Inclusionary Units otherwise required by the

Ordinance in lieu of developing Inclusionary Units on-site. The fee shall be charged for each unit or fraction of a unit as set forth in Section 17.92.030.C, and the fee shall be paid as follows:

1. The amount of the fee to be paid by Developer pursuant to this subsection shall be the fee schedule established by Resolution of the City Council, and as adjusted from time to time by Resolution of the City Council.
 2. One-half of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.
 3. The fees collected shall be deposited in the Inclusionary Housing Fund.
 4. No certificate of occupancy shall be issued for any corresponding Unrestricted Units in a Residential Development unless fees required under this section have been paid in full to the City.
- C. Land Dedication. In lieu of building Inclusionary Units, a Developer may request to dedicate land to the City suitable for the construction of Inclusionary Units that the City Council reasonably determines to be equivalent or greater value than is produced by applying the City's in lieu fee to the Developer's inclusionary obligation and otherwise meets the following standards and requirements:
1. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.
 2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.
 3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
 4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable Residential Development pursuant to zoning regulations.
 5. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the

site by the City.

6. The City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Housing Fund.

17.92.050 - Procedures.

- A. At the times and in accordance with the standards and procedures set forth herein, Developer shall:
 1. Submit an Inclusionary Housing Plan for approval by the Director, setting forth in detail the manner in which the provisions of this chapter will be implemented for the proposed Residential Development. If land dedication or off-site units are proposed, the Inclusionary Housing Plan shall include information necessary to establish site location, suitability, development, constraints, and the number of Inclusionary Units assigned pursuant to this chapter.
 2. Execute and cause to be recorded an Inclusionary Housing Agreement, unless Developer is complying with this chapter pursuant to Section 17.92.040.B. (in lieu fee) or Section 17.92.040.C. (land dedication).
- B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this chapter until the Developer has submitted an Inclusionary Housing Plan.
- C. No building permit shall be issued for the Residential Development, or any portion thereof, subject to this chapter unless the City Council has approved the Inclusionary Housing Plan and the Inclusionary Housing Agreement (if required) is recorded.
- D. No certificate of occupancy shall be issued for the Residential Development, or any portion thereof, subject to this chapter unless the approved Inclusionary Housing Plan has been fully implemented.
- E. The City Manager or designee may establish and amend policies for the implementation of this chapter.

17.92.060 - Standards.

- A. Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number of bedrooms, to the Unrestricted Units. If the Residential Development offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be identical with the Residential Development's base-plan in terms of design, appearance, materials, finished quality and interior amenities. If multiple floor plans with the same number of bedrooms are proposed, the Inclusionary Units may be the units with the smaller floor plans.
- B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or

prior to the construction of the Unrestricted Units. In the event the City approves a phased project, the Inclusionary Units required by this chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final dwelling unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).

- C. Inclusionary Units shall be sold to Low and Moderate Income Households at a ratio established pursuant to a Resolution adopted by the City Council, and shall be provided at the applicable Affordable Housing Cost.
- D. The number of bedrooms must be the same as those in the Unrestricted Units, except that if the Unrestricted Units provide more than four (4) bedrooms, the Inclusionary Units need not provide more than four (4) bedrooms.
- E. Inclusionary Units shall prohibit subsequent rental occupancy, unless approved for hardship reasons by the City Manager or designee. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty.
- F. Prior the development of any units in a Residential Development, a deed restriction or other enforceable obligation approved by the City Attorney shall be recorded limiting the Developer and any successors, whenever an Inclusionary Unit is sold, to sell such unit to persons meeting the income eligibility requirements for Low and Moderate Income Households as applicable for a period of fifty-five (55) years.

17.92.070 - Enforcement.

- A. The provisions of this chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be sold in accordance with this chapter. It shall be a misdemeanor to violate any provision of this chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this chapter at a price exceeding the maximum allowed under this chapter or to sell an Inclusionary Unit to a Household not qualified under this chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.
- B. Any individual who sells an Inclusionary Unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Fund.
- C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any

violator of this chapter civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this chapter.

- D. In any action to enforce this chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.
- E. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any person, owner, Developer or household from the requirements of this chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it would otherwise be entitled under law or equity.

17.92.080 - General Provisions.

- A. Inclusionary Housing Fund. There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Fund. All monies collected pursuant to 17.92.040, 17.92.060 and 17.92.070 shall be deposited in the Inclusionary Housing Fund. Additional monies from other sources may be deposited in the Inclusionary Housing Fund. The monies deposited in the Inclusionary Housing Fund shall be subject to the following conditions:
 - 1. Monies deposited into the Inclusionary Housing Fund must be used to increase and improve the supply of housing affordable to Very Low, Low, and Moderate, Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this section.
 - 2. The fund shall be administered, subject to the approval by the City Manager, by the Director of Community Development, or his or her designee, who may develop procedures to implement the purposes of the Inclusionary Housing Fund consistent with the requirements of this chapter and through the adopted budget of the City.
 - 3. Monies deposited in accordance with this section shall be used in accordance with the City's Housing Element, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The Inclusionary Housing Fund may be used for the benefit of both rental and owner-occupied housing. In no case is the City obligated to actually construct affordable housing units on its own.
- B. Administrative Fees. The City Council may by Resolution establish reasonable fees and deposits, which shall fund the City's costs associated with the administration and monitoring of the Inclusionary Units and administration of the Inclusionary Housing Fund.
- C. Appeal. Within ten (10) calendar days after the date of any decision of the Director under this

chapter, an appeal may be filed with the City Clerk. Within ninety (90) calendar days of the request for an appeal is filed or a later time as agreed to by the appellant, the City Council shall consider the appeal. The City Council's decision shall be final.

D. Waiver.

1. Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 17.92.050. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process in subsection C. above.
4. In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
 - a. That the Developer will provide the most economical Inclusionary Units feasible, meeting the requirements of this chapter and any implementing regulations.
 - b. That the Developer is likely to obtain housing subsidies when such funds are reasonably available.
5. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

(Ord. 464, 2016)


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AB-1505 Land use: zoning regulations. (2017-2018)

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Date Published: 09/29/2017 09:00 PM

Assembly Bill No. 1505

CHAPTER 376

An act to amend Section 65850 of, and to add Section 65850.01 to, the Government Code, relating to land use.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, Bloom. Land use: zoning regulations.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances regulating zoning within its jurisdiction, as specified.

This bill would additionally authorize the legislative body of any county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified, and would declare the intent of the Legislature in adding this provision.

This bill would also authorize the Department of Housing and Community Development, within 10 years of the adoption or amendment of an ordinance by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in the development be affordable to, and occupied by, households at 80% or less of the area median income, to review that ordinance if the county or city meets specified conditions. The bill would authorize the department to request, and require that the county or city provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If the department finds that economic feasibility study does not meet these standards, or if the county or city fails to submit the study within 180 days, the bill would require the county or city to limit any requirement to provide rental units in a development affordable to households at 80% or less of the area median income to no more than 15% of the total number of units in the development. The bill would require the department to report any findings made pursuant to these provisions to the Legislature. The bill would also declare that these provisions regarding department review of certain land use ordinances address a matter of statewide concern.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

- (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.
- (b) Regulate signs and billboards.
- (c) Regulate all of the following:
 - (1) The location, height, bulk, number of stories, and size of buildings and structures.
 - (2) The size and use of lots, yards, courts, and other open spaces.
 - (3) The percentage of a lot which may be occupied by a building or structure.
 - (4) The intensity of land use.
- (d) Establish requirements for offstreet parking and loading.
- (e) Establish and maintain building setback lines.
- (f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.
- (g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

SEC. 2. Section 65850.01 is added to the Government Code, to read:

65850.01. (a) The Department of Housing and Community Development, hereafter referred to as "the department" in this section, shall have the authority to review an ordinance adopted or amended by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15 percent of the total number of units rented in a development be affordable to, and occupied by, households at 80 percent or less of the area median income if either of the following apply:

(1) The county or city has failed to meet at least 75 percent of its share of the regional housing need allocated pursuant to Sections 65584.04, 65584.05, and 65584.06, as applicable for the above-moderate income category specified in Section 50093 of the Health and Safety Code, prorated based on the length of time within the planning period pursuant to paragraph (1) of subdivision (f) of Section 65588, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to the department pursuant to paragraph (2) of subdivision (a) of Section 65400.

(2) The department finds that the jurisdiction has not submitted the annual housing element report as required by paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years.

(b) Based on a finding pursuant to subdivision (a), the department may request, and the county or city shall provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study. The county or city shall submit the study within 180 days from receipt of the department's request. The department's review of the feasibility study shall be limited to determining whether or not the study meets the following standards:

(1) A qualified entity with demonstrated expertise preparing economic feasibility studies prepared the study.

(2) If the economic feasibility study is prepared after September 15, 2017, the county or city has made the economic feasibility study available for at least 30 days on its Internet Web site. After 30 days, the county or city shall include consideration of the economic feasibility study on the agenda for a regularly scheduled meeting of the legislative body of the county or city prior to consideration and approval. This paragraph applies when an economic feasibility study is completed at the request of the department or prepared in connection with the ordinance.

(3) The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.

(c) If the economic feasibility study requested pursuant to subdivision (b) has not been submitted to the department within 180 days, the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until an economic feasibility study has been submitted to the department and the department makes a finding that the study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(d) (1) Within 90 days of submission, the department shall make a finding as to whether or not the economic feasibility study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(2) If the department finds that the jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall have the right to appeal the decision to the Director of Housing and Community Development or his or her designee. The director or his or her designee shall issue a final decision within 90 days of the department's receipt of the appeal unless extended by mutual agreement of the jurisdiction and the department.

(3) If in its final decision the department finds that jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until such time as the jurisdiction submits an economic feasibility study that supports the ordinance under review and the department issues a finding that the study meets the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(e) The department shall not request to review an economic feasibility study for an ordinance more than 10 years from the date of adoption or amendment of the ordinance, whichever is later.

(f) The department shall annually report any findings made pursuant to this section to the Legislature. The report required by this subdivision shall be submitted in compliance with Section 9795.

(g) The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to an ordinance proposed or adopted by any city, including a charter city.

SEC. 3. The Legislature finds and declares all of the following:

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.

(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.

(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty and confusion for local governments regarding the use of this tool to ensure the inclusion of affordable rental units in residential developments.

(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.

(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.

(f) In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.

(g) This act does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for-sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households.

(h) It is the intent of the Legislature to reaffirm that existing law requires that the action of any legislative body of any city, county, or city and county to adopt a new inclusionary housing ordinance be taken openly and that their deliberations be conducted openly consistent with the requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(i) Except as provided in subdivision (e), in no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing rights of an owner of residential real property under Sections 1954.50 to 1954.535, inclusive, of the Civil Code and Sections 7060 to 7060.7, inclusive, of the Government Code.

ATTACHMENT D



Agenda Date: 4-17-2018


Agenda Item: 8a

Approved:


Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: APRIL 17, 2018

SUBJECT: POLICY DISCUSSION OF INCORPORATING RENTAL HOUSING UNITS INTO THE CITY'S EXISTING INCLUSIONARY HOUSING LAW (REF. AB 1505; 2017 STATUTES) (ZOA-02-18)

RECOMMENDATION

It is recommended the City Council discuss and provide policy direction on the incorporation of rental housing units into the City's existing Inclusionary Housing Ordinance.

BACKGROUND

On August 16, 2016, the City Council adopted an Ordinance implementing inclusionary requirements for affordable housing on new homeownership or for-sale housing developments; the current threshold is ten percent affordable housing units on residential projects having ten or more new units. The Ordinance specifically precluded rental units due to State law and pending the outcomes of two specific court cases (**Attachment 1 and 2**). Rental housing was excluded from consideration in Clayton's Inclusionary Housing Ordinance because of the decision in *Palmer/Sixth Street Properties v. City of Los Angeles (2009)*, which determined that cities may no longer require developers to construct affordable housing units. The court had concluded the City of Los Angeles's inclusionary housing ordinance conflicted with and was preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act, which allows residential landlords to set the initial rents at the commencement of a tenancy.

This court case was followed by an outcome in the case of the *California Building Industry Association (CBIA) v. City of San Jose (2015)*. In this particular case, the outcome of the court's decision impacted inclusionary housing ordinances statewide and resulted in a

finding that inclusionary housing ordinances do not constitute an unjust taking of property. The result of the court's decision upheld existing inclusionary housing ordinances; it allowed jurisdictions to adopt inclusionary housing ordinances but only for homeownership or for-sale development projects. When the City Council adopted Clayton's Inclusionary Housing Ordinance, the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles* was still relevant; therefore rental housing units were excluded due to the conflict with the Costa-Hawkins Rental Housing Act.

On September 29, 2017, Governor Brown signed a comprehensive package of 15 housing-related bills as the legislature's response to address California's housing supply shortage. One of these bills, AB 1505 (**Attachment 3**), known as the "Palmer fix," restores the authority of cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles*. AB 1505 authorizes cities and counties to adopt ordinances that require, as a local condition of development of residential rental units, to include a certain percentage of residential rental units affordable to moderate, low, very low, and extremely low income. AB 1505 also requires cities and counties to provide alternative means of compliance that may include in lieu fees, land dedication, off-site construction, or acquisition or rehabilitation of existing units.

DISCUSSION

State law requires that local governments identify and plan for the existing and projected housing needs of all economic segments of the community in its Housing Elements. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development of all types and variations.

State law also requires the State Department of Housing and Community Development (HCD) to forecast statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region's household growth, the state of the local housing market and vacancies, and the jurisdiction's housing replacement needs.

For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 new housing units which are broken down as follows by income category: 51 extremely low- and very low-income units, 25 low-income units, 31 moderate-income units, and 34 above moderate-income units. Given the City's RHNA allocation and the State legislature's push for local governments to identify actions that will make sites available for affordable housing as well as assist in the development of such housing, the City identified a goal

(Goal 1) in its certified Housing Element to provide for adequate sites and promote the development of new housing to accommodate Clayton's fair share housing allocation. The City also adopted Policy I.2, which states, "*The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton's fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulation concessions and available financial assistance*".

To meet Goal I and Policy I.2, Implementation Measure I.2.1 was identified to require residential projects of ten or more units to develop an Affordable Housing Plan, which requires a minimum of 10% of the units to be built or created as affordable housing units. To promote the goal of actively supporting and participating in the provision of housing for all economic segments, the City Council adopted the current Inclusionary Housing Ordinance, which facilitates the fulfillment of Implementation Measure I.2.1 (**Attachment 4**). The adoption of the Inclusionary Housing Ordinance fully implements Measure I.2.1 by providing details regarding the process and standards for the City and developers to follow.

POLICY QUESTIONS AND IMPACTS

Does the City Council wish to expand the City's Inclusionary Housing Ordinance to incorporate new rental housing projects as allowed for by AB 1505? If the Council does wish to include rental housing projects in the City's Inclusionary Housing Ordinance, would this apply to all rental housing units as defined by HCD, including assisted living units?

The passage of AB 1505 by the State legislature raises the above policy questions for City Council consideration. Amending the City's Inclusionary Housing Ordinance to include rental housing units would further the goals and policies contained within the City's Housing Element; however, this amendment would affect housing projects currently within the City's project pipeline and would also affect any future housing projects containing ten or more rental housing units.

The projects that would be directly and immediately impacted, assuming approval of these projects by the City are: 1) A proposed Clayton Senior Housing project, the 81-unit senior apartments to be located on the eastern portion of High Street behind the United States Post Office and fronting onto old Marsh Creek Road, south of the AT&T switch station building; and 2) The proposed Grand Oak Assisted Living Facility and Memory Care project located on City-owned vacant property in the Town Center.

The 81-unit Clayton Senior Housing project is currently requesting a 35 percent Density Bonus, as allowed under State law and the Clayton Municipal Code, which is proposed to produce seven units dedicated to very-low income households; however, in order to determine the number of inclusionary units, the additional housing units authorized by the

Density Bonus would not be counted in determining the required number of inclusionary units. Therefore, if the Inclusionary Housing Ordinance was implemented as currently written but amended to include rental housing, this would require the developer of the Clayton Senior Housing project to incorporate a minimum of 5.9 affordable units (calculated off the maximum base density, not including the Density Bonus) available only to moderate and/or low income households in addition to the seven units already required under the Density Bonus law. Further, the developer could also elect to select one of the alternatives such as the in-lieu fee rather than provide the affordable units onsite.

While the prospective developer of the Grand Oak project has not formally submitted an application to the City, the project has been mentioned as part of this discussion since the developer has currently entered into an Exclusive Negotiation Agreement with the City and has made a preliminary submittal for staff review and feedback in addition to the onset of the required community outreach process.

Unless directed differently by the Council, the application of the Inclusionary Housing Ordinance to include rental housing would apply to all housing types as defined and counted by HCD. HCD defines permitted units as, *“A house, an apartment, mobile home, a group of rooms, or a single room occupied as separate living quarters... Separate living quarters are those in which occupants live separately from any other individuals in the building and which have direct access from outside the building or through a common hall.”* More specifically, HCD’s counting of senior housing includes individual units that would allow for eating and living separately from the broader community but does not include beds or quarters in an institution or hospital. For example and confirmed with HCD, assisted living units would count as housing units but the memory care units would not be included because those units do not have the amenities for separate eating and living, such as a kitchen area. Staff supports applying the HCD definition of “housing unit” due to the definition’s linkage with the City’s RHNA numbers, and by the State’s ever-increasing prescriptive and aggressive stance on local governments to provide an adequate and affordable supply of housing.

It should be noted that AB 1505 does provide HCD with the authority to review a jurisdiction’s inclusionary housing ordinance if the jurisdiction requires, as a condition of development, more than 15 percent of the total number of units to be affordable to households at 80 percent or less of the area median income. However, HCD is only granted this authority if the jurisdiction has: 1) failed to meet at least 75 percent of its share of the Regional Housing Needs Allocation for above-moderate income households over at least a five year period; or 2) the jurisdiction has failed to submit its annual Housing Element progress report for at least two consecutive years. If HCD determines any of the two aforementioned conditions exist, then HCD may request an economic feasibility study demonstrating the ordinance does not unduly constrain the production of housing.

From staff’s perspective, HCD’s threshold (for an economic feasibility study of 15 percent of the total number of units to be affordable to households at 80 percent or less of area median income) is significant because it infers the economic feasibility for developers is manageable

up to and around this threshold. Therefore, local developers have little substance to an assertion or claim of an economic hardship meeting the City's current and proposed inclusionary housing requirements. Since the City's current inclusionary housing requirements fall under the State's economic feasibility threshold it further infers the proposed requirements are not overly burdensome as to place an obstacle or governmental constraint in preventing housing production. Only if the City Council desired to require affordability to extremely low- or very low-income households would a feasibility study be advisable and possibly trigger a review of the City's Inclusionary Housing Ordinance by HCD.

STAFF RECOMMENDATION

By motion, direct staff to initiate the process to modify the City's Inclusionary Housing Ordinance to incorporate rental housing for local application of the same standards as required for homeownership projects, and apply it to all housing types as defined and counted by the State Department of Housing and Community Development.

FISCAL IMPACTS

None.

ATTACHMENTS

1. Excerpt from the July 19, 2016 City Council Staff Report and Minutes [pp. 13]
2. CMC Section 17.92 [pp. 9]
3. AB 1505 [pp. 4]
4. Excerpt from the City's Certified 2015-2023 Housing Element [pp. 4]

8. ACTION ITEMS

- (a) Policy discussion and direction concerning whether to incorporate rental housing units/projects into the City's existing inclusionary housing law (ref. AB 1505).
(Community Development Director)

Community Development Director Mindy Gentry presented the staff report noting in August 2016 the City Council adopted an inclusionary housing Ordinance for home ownership and for-sale units only, with the current threshold requiring 10% of the units to be affordable for projects containing ten or more units. The Ordinance precluded rental units due to State law and the outcomes of two specific court cases, *Palmer/Sixth Street Properties v. Los Angeles* and *California Building Industry Association v. City of San Jose*. The *Palmer/Sixth Street Properties v. City of Los Angeles* determined cities may no longer require developers to construct affordable housing units. The court had concluded inclusionary housing ordinances conflicted with and were preempted by vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act; which allows residential landlords to set the initial rents. The *California Building Industry v. City of San Jose* resulted in a determination that inclusionary housing ordinances do not constitute an unjust taking of property. The court's decision allowed jurisdictions to adopt inclusionary housing ordinances but only for homeownership development projects due to the *Palmer v. City of Los Angeles* still being relevant.

Ms. Gentry stated on September 29, 2017 Governor Brown signed into law AB1505, also known as the "Palmer Fix". This law restores the authority to cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the court decision in the Palmer case. AB1505 also requires alternative means of compliance such as off-site development, an in lieu fee, land dedication, acquisition or rehab of units.

Ms. Gentry noted the City's housing element contains a policy requiring projects with ten or more units to develop an affordable housing plan, requiring 10% or more of the units to be built or created as affordable housing. To promote the goal of actively supporting and participating in the provision of housing for all economic segments, the City Council adopted the current inclusionary housing ordinance, which facilitates the fulfillment of one of the city's housing elements implementation measures. In light of the City previously adopting an inclusionary housing ordinance in compliance with the Housing Element and the passage of AB1505, it raises a policy question: Does the City Council wish to expand the City's Inclusionary Housing Ordinance to incorporate new rental housing projects as allowed for by AB1505? If so, would this apply to all rental housing units as defined by HCD, including assisted living units?

Ms. Gentry identified proposed projects that would be immediately impacted should the City Council include assisted living units: Clayton Senior Housing project on old Marsh Creek/High Street, and Grand Oak Assisted Living Facility and Memory Care project on Main Street. The Clayton Senior Housing project has been deemed complete by staff for processing, however, the project does not have vested rights, therefore the proposed Ordinance would be applicable to the project. This project is requesting a 35% Density Bonus as allowed under State law and Clayton Municipal Code; with seven units dedicated to very-low income households. In *Latinos Unidos v. County of Napa* it clarified jurisdictions are required to count the units granted under the Density Bonus to also be counted toward the inclusionary housing unit requirements. This means the Clayton Senior Housing project will be meeting the inclusionary housing requirements by default. The project proposing 7 very-low income units as required by the Density Bonus law and as the current inclusionary housing Ordinance is written, the project would be required to produce 5.9 units.

Ms. Gentry added unless directed differently by the City Council, the proposed inclusionary housing ordinance would include rental housing and apply to all housing types counted by HCD defined as a house, apartment, mobile home, a group of rooms, or a single room occupied as separate living quarters are those that live separately from any other individuals in the building and which have direct access from outside the building through a common wall. More specifically, HCDs counting of senior housing includes individual units that would allow eating and living separately from the broader community but does not include beds or quarters in an institution or hospital. For example and confirmed by HCD, assisted living units would count as housing units but the memory care units would not be included as those units do not have the amenities for separate eating and living, such as a kitchen area. This determination would have an impact on the proposed Grand Oak Assisted Living Facility and Memory Care on the city-owned parcel in the Town Center. Staff supports applying the HCD definition of "housing unit" due to the definition linkage with the City's RHNA numbers and by the State's ever-increasing prescriptive and aggressive stance on local governments to provide an adequate and affordable supply of housing. It should be noted AB1505 provides HCD the authority to review jurisdictions inclusionary housing ordinance, if the jurisdiction requires, as a condition of development, more than 15% of the total number of units to be affordable to households at 80% or less of the area median income. From staff's perspective, HCD's threshold is significant because it infers the economic feasibility for developers is manageable up to and around this threshold. Therefore, local developers have little substance to an assertion or claim of economic hardship to meet the City's current and proposed inclusionary housing requirements.

Ms. Gentry noted the City received a letter from the Building Industry Association encouraging Clayton to provide all residential developers a by-right in-lieu fee option and grandfather residential development projects currently in the city's application pipeline. Staff is recommending the City retain control over the provision of affordable housing units and decide if they should be constructed on-site or if an alternative such as a payment in-lieu-of fee would be appropriate. This would minimize the City collecting in-lieu fees, thereby removing the burden of constructing affordable housing from the city and placing it onto developers.

Mayor Haydon opened the item to public comments; no comments were offered.

Councilmember Catalano indicated Clayton is subject to RHNA requirements to produce a certain amount of affordable housing and housing element obligations. We support and participate in affordable housing production and it is a good reminder that when we talk about affordable housing that the levels of the area median income are helping teachers and public employees. By not doing this I think we are engineering the type of housing that is built in Clayton by steering toward rental housing away from ownership housing. As noted by Ms. Gentry, current projects are not going to have to do anything additional.

Councilmember Pierce added higher inclusionary standards really costs more for a developer as the cost of land, materials, the labor, is expensive and soon the majority of the housing is subsidized and drives up the median price. If Clayton had redevelopment funding and had another means it would be helpful, but Clayton does not. Councilmember Pierce wants to be as accommodating as possible, working with developers who are willing to come to Clayton. While Clayton needs more affordable housing, Clayton needs more housing overall in order to drive the price down. It seems that HCD has finally made the decision that assisted living units actually count. Ms. Gentry advised she personally called HCD to confirm that assisted living units do count.

Councilmember Pierce inquired if Clayton was able to count the units located in Diamond Terrace? Ms. Gentry advised the individual she spoke with if there is a separate eating and living area away from a common area then it counted.

Mayor Haydon understood this proposed ordinance will bring the city into compliance to include rentals and not have a negative impact on the proposed developments official submitted.

It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to direct staff to initiate the process to modify the City's Inclusionary Housing Ordinance to incorporate rental housing for local application of the same standards required for homeownership projects, and apply it to all housing types as defined and counted by the State Department of Housing and Community Development. (Passed; 5-0 vote).

9. **COUNCIL ITEMS** – limited to requests and directives for future meetings.
None.

10. **CLOSED SESSION**

Mayor Haydon announced the City Council will adjourn into Closed Session for the following noticed items (8:47 pm):

- (a) *Government Code Section 54957.6, Conference with Labor Negotiator*
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers' Association (CPOA)

Report out of Closed Session (9:18 p.m.)

Mayor Haydon reported the City Council received information from and provided direction to its labor negotiator. There is no public action to report.

11. **ADJOURNMENT**– on call by Mayor Haydon, the City Council adjourned its meeting at 9:18 p.m.

The next regularly scheduled meeting of the City Council will be May 1, 2018.


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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



Keith Haydon, Mayor

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8.0 GOALS AND POLICIES

Adequate Sites and New Construction

GOAL I Provide for adequate sites and promote the development of new housing to accommodate Clayton’s fair share housing allocation.

POLICY I.1 The City shall designate and zone sufficient land to accommodate Clayton’s projected fair share housing allocation as determined by the Association of Bay Area Governments.

Implementation Measure I.1.1. To ensure that adequate sites are available through the planning period to meet the City’s Regional Housing Needs Allocation (RHNA), the City will continue to maintain an inventory of sites available and appropriate for residential development for households at all income levels. In keeping with state “no net loss” provisions (Government Code Section 65863), if development projects are approved at densities lower than anticipated in the sites inventory, the City will evaluate the availability of sites appropriate for lower-income housing and, if necessary, shall rezone sufficient sites to accommodate the RHNA.

Responsibility: Community Development Department

Time Frame: Ongoing, as development projects are proposed.

Funding: General Fund

Implementation Measure I.1.2. The City will amend the Multi-Family High Density (MHD) General Plan land use designation or otherwise amend the General Plan and/or Zoning Ordinance as needed to meet state requirements specific to sites rezoned to accommodate the City’s lower-income RHNA from the 2007–2014 planning period, specifically to allow multi-family housing by-right on these sites at a minimum density of 20 units per acre.

The City’s 2007–2014 Housing Element identified a shortfall of land that provided for residential development at a density deemed appropriate for affordable housing to accommodate 84 units to meet the extremely low-, very low-, and low-income RHNA. State law (Government Code Section 65583.2(h) and (i)) requires that land rezoned or redesignated to meet a shortfall meet the following criteria:

- Require a minimum density of at least 20 units per acre.
- Accommodate at least 16 units per site.
- Allow multi-family housing by-right (without a use permit).

- At least 50 percent of rezoned sites must be designated for residential uses only.

In 2012, the City in good faith established the Multi-Family High Density General Plan Land Use and Zoning District designations and made specified General Plan Map and Zoning Map changes in an attempt to accommodate the City’s lower-income RHNA shortfall from the 2007–2014 planning period. The City was advised by HCD that these efforts fell short of state law; therefore, the City’s land use regulations will be appropriately revised to comply with the above stated criteria..

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: By January 31, 2016.

Funding: General Fund

POLICY I.2 The City shall actively support and participate in the development of extremely low-, very low-, low-, and moderate-income housing to meet Clayton’s fair share housing allocation. To this end, the City shall help facilitate the provision of affordable housing through the granting of regulatory concessions and available financial assistance.

Implementation Measure I.2.1. For residential projects of 10 or more units, developers will be required to develop an Affordable Housing Plan that requires a minimum of 10 % of the units to be built or created as affordable housing units. The City has established the following guidelines to provide direction for the review of Affordable Housing Plans associated with individual development projects and to provide direction for the preparation of an Affordable Housing Plan.

The plan shall be approved in conjunction with the earliest stage of project entitlement, typically with the City Council approval of the development agreement or other primary land use entitlement.

The Affordable Housing Plan shall specify and include the following:

- The number of dwelling units that will be developed as affordable to very low-, low-, moderate-, and above moderate-income households shall be a minimum of 10% of the total project. The number of affordable units shall be rounded up to a whole number. It is the City’s desire that at least 5 percent of all project units be built as very low-income housing units and at least 5 percent of all project units be built as low-income housing units.
- The number of affordable ownership and rental units to be produced. Such split shall be approved by the City Council based on housing needs, market

conditions, and other relevant factors. The split of ownership and rental units shall be addressed within the plan for each individual project.

- Program options within project-specific Affordable Housing Plans may include, but are not limited to, the following:
 - Actual production (on-site or off-site) of affordable units (including ownership and rental opportunities in the form of corner units, halfplexes, duplexes, cottages, creative alternative housing products, etc.).
 - Land dedication (on-site and off-site).
 - Payment of in-lieu fees.
- The timing for completion of affordable housing obligations. For projects proposing to construct affordable housing units, the City generally supports construction of affordable dwellings concurrent with the construction of market-rate housing when feasible. For projects providing alternative contributions (land dedication, funds, etc.), timing of such contributions shall be identified in the plan, with the expectation that the City will pursue construction of affordable units generally concurrent with construction of project market-rate housing.
- At the City Council’s discretion, land or other contributions provided by developers as specified within project Affordable Housing Plans may be utilized to augment City efforts and the efforts of its nonprofit partners to provide affordable housing opportunities to all income levels throughout the community. The City will pursue supplemental funding to allow affordability to households earning less than 50 percent of area median income.
- In order to ensure the production and preservation of housing affordable to the City’s workforce, no productive, reasonable program or incentive option will be excluded from consideration within project-specific Affordable Housing Plans. Possible incentives may include, but are not limited to:
 - Density bonuses
 - Fee waivers or deferrals (as reasonably available)
 - Expedited processing/priority processing
 - Reduced parking standards
 - Technical assistance with accessing funding

- Modifications to development standards (on a case-by-case basis)

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: Ongoing, as projects of 10 or more units are processed through the Community Development Department. The City will monitor the implementation of this program to ensure that it does not cause a constraint to the development of housing in the City of Clayton and will make necessary revisions to the program if needed to avoid such a constraint.

Funding: General Fund

POLICY I.3 The City shall encourage the development of second dwelling units on new and existing single-family-zoned lots.

Implementation Measure I.3.1. The City shall continue to promote the development of second dwelling units by publicizing information in the general application packet and posting information on the City’s website. The City will aim to approve two second dwelling units per year during the planning period.

Responsibility: Community Development Department

Time Frame: Ongoing, 2015–2023

Funding: General Fund

POLICY I.4 The City shall aggressively promote mixed-use or second-story residential units above commercial uses in the Town Center.

Implementation Measure I.4.1. To encourage development of mixed-use projects in the Town Center, the City has adopted the Clayton Town Center Specific Plan which provides detailed policy direction, standards, and guidelines that encourage mixed-use and second-story residential development. The City will continue to promote development opportunities in the Town Center, circulate a development handbook that describes the permitting process for mixed-use projects, and offer incentives such as density bonuses to incentivize mixed-use projects. The City will aim to facilitate the development of at least one mixed-use project within the planning period.

Responsibility: City Council, Planning Commission, Community Development Department

Time Frame: Annually and upon receiving development inquiries for mixed-use development.

Funding: General Fund

ATTACHMENT F

Chapter 17.92 - INCLUSIONARY HOUSING REQUIREMENTS

Sections:

17.92.000 - Intent

It is the intent of this Chapter to establish standards and procedures that facilitate the development and availability of housing affordable to a range of households with varying income levels to implement the City's Housing Element and as mandated by Government Code Section 65580. The purpose of this Chapter is to encourage the development and availability of such housing by ensuring the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units.

17.92.010 - Definitions

Whenever the following terms are used in this Chapter, they shall have the meaning established by this Section:

A. "Affordable Housing Costs" means

1. For Very Low-Income Households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
2. For Low-Income Households, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.
3. For Moderate Income Households, Affordable Housing Cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.

B. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential Development. The term "Developer" also means the owner or owners for any such property for which such approvals are sought.

C. "Director" means the City's Director of Community Development.

D. "Discretionary Approval" means any entitlement or approval, including but not limited to a use permit, variance, design approval, and subdivision map.

E. "Inclusionary Housing Agreement" means a legally binding, written agreement between a Developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

F. "Affordable Housing Plan" means the plan referenced in Section 17.92.050.

G. "Inclusionary Housing Fund" shall have the meaning set forth in Section 17.92.080(a).

H. "Inclusionary Units" means a dwelling unit developed pursuant to an Inclusionary Housing Agreement that will be offered for ~~sale~~ **or rent** to Low and Moderate Income Households, at an Affordable Housing Cost, pursuant to this Chapter.

- I. "Low Income Households" means households who are not very low income households but whose gross income does not exceed the qualifying limits for lower income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development.
- J. "Low Income Units" means Inclusionary Units restricted to occupancy by Low Income Households at an Affordable Housing Cost.
- K. "Moderate Income Households" means households who are not low income households but whose gross income does not exceed one hundred and twenty percent (120%) of the median income for Contra Costa County, adjusted for family size and other factors by the U.S. Department of Housing and Urban Development, as published annually in Title 25 of the California Code of Regulations, Section 6932, or its successor provision.
- L. "Moderate Income Units" means Inclusionary Units restricted to occupancy by Moderate Income Households at an Affordable Housing Cost.
- M. "Residential Development" means the construction of new projects requiring any specific plan, development agreement, planned unit development permit, tentative map, minor subdivision, conditional use permit, site plan review or building permit for which an application has been submitted to the City and which would create one or more additional dwelling units as defined and counted by the State Department of Housing and Community Development (HCD) to be offered for sale or rent by the construction or alteration of structures. All new construction projects creating one or more additional dwelling units to be offered for sale on contiguous parcels of land by a single Developer shall constitute a single Residential Development subject to the requirements of this Ordinance, and any accompanying regulations, regardless of whether such projects are constructed all at once, serially, or in phases. The term "Residential Development" shall include the conversion of rental units to for-sale units.
- N. "Unrestricted Units" means those dwelling units in a Residential Development that are not Inclusionary Units.
- O. "Very Low Income Households" means households whose gross income does not exceed the qualifying limits for very low income families as established from time to time pursuant to Section 8 of the United States Housing Act for Contra Costa County as set forth in Title 25 of the California Code of Regulations, Section 6932, or its successor provision and adjusted for family size and other factors by the United States Department of Housing and Urban Development, adjusted for family size and other factors by the United States Department of Housing and Urban Development.

17.92.020 - Applicability

This Chapter shall apply to all Residential Developments, except as provided below.

- A. Residential Developments proposed to contain less than ten (10) dwelling units.
- B. Residential Developments that obtained a current, valid building permit prior to the effective date of the ordinance adding this Chapter.
- C. Any dwelling unit or Residential Development which is damaged or destroyed by fire or natural catastrophes so long as the use of the reconstructed building and number of dwelling units remain the same, and the cost of such rehabilitation constitutes no more than fifty percent (50%) of the of its reasonable market value at the time of destruction or damage.

17.92.030 - Inclusionary Unit Requirement

- A. ~~For Sale Units:~~ If the Residential Development includes ten (10) or more units ~~for sale~~, a minimum of ten percent (10%) of all newly constructed ~~for sale~~ dwelling units in the Residential Development shall be developed, offered to, and sold or rented to Low and Moderate Income Households, in a ratio determined pursuant to Section 17.92.060, at an Affordable Housing Cost.
- B. The Inclusionary Unit requirement set forth in this Section may be reduced as follows: If only Low Income Units are provided in lieu of any Moderate Income units, a credit of 1.5 units to every 1 unit shall be provided. However, the credits may only be applied to the extent such credit equals a whole number.
- C. In the event the calculation for the number of Inclusionary Units results in a fraction of an Inclusionary Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit at Affordable Housing Costs; or (ii) making an in lieu payment to the Inclusionary Housing Fund in an amount equal to the percentage represented by the fractional unit multiplied by the applicable in lieu fee.
- D. The number of Inclusionary Units required for a particular project will be determined at the time a land use application is filed by the Developer for a Residential Development with the City. If a change in the subdivision design results in a change in the total number of units, the number of Inclusionary Units required will be recalculated to coincide with the final approved project.
- E. For purposes of calculating the number of Inclusionary Units required by this Section, any additional units authorized as a density bonus under Chapter 17.90 and California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units.
- ~~E.F.~~ The number of Affordable Housing Units that are provided in order to secure a density bonus under Chapter 17.90 and- California Government Code Section 65915(b)(1) or (b)(2) will be counted toward the required number of Inclusionary Housing Units.

17.92.040 - Alternatives

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 17.92.030, the requirements of this Chapter may be satisfied through the following alternatives set forth in this Section.

- A. Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Residential Development, the Developer may elect, with the City Council's approval, which may be granted or denied in its -by-right, at-the-Developer's sole discretion to construct Inclusionary Units off-site subject to the following requirements:
 - 1. If the Developer constructs units off-site, the percentage of required Inclusionary Units shall be increased to fifteen percent (15%).
 - 2. The site of the Inclusionary Units has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units, including the additional five percent (5%) for development off-site, within the Residential Development. The Developer shall obtain all required Discretionary Approvals and complete all necessary environmental review of such site.

3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
 4. Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
 5. The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.
 6. Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Residential Development.
 7. Unless otherwise noted, all requirements applicable to on-site Inclusionary Units shall apply to off-site Inclusionary Units.
- B. In Lieu Fee. For Residential Developments proposing ten (10) units, the Developer may elect, by right, at the Developer's sole discretion to pay a fee in lieu of developing an Inclusionary Unit on-site. The amount of the in-lieu fee to be paid by Developer pursuant to this Section shall be the applicable in-lieu fee set forth in the fee schedule adopted by the City Council. For all Residential Developments proposing eleven (11) units or more, the Developer may request within the proposed Inclusionary Housing Plan to pay a fee in lieu of all or some of the Inclusionary Units otherwise required by the Ordinance in lieu of developing Inclusionary Units on-site. Developer's request may be approved or denied by the Council in its sole discretion. The fee shall be charged for each unit or fraction of a unit as set forth in Section 17.92.030(c), and the fee shall be paid as follows:
1. The amount of the fee to be paid by Developer pursuant to this subsection shall be the fee schedule established by Resolution of the City Council, and as adjusted from time to time by Resolution of the City Council.
 2. One-half (1/2) of the in-lieu fee required by this subsection shall be paid (or a letter of credit posted) prior to issuance of a building permit for all or any part of the Residential Development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the Residential Development.
 3. The fees collected shall be deposited in the Inclusionary Housing Fund.
 4. No certificate of occupancy shall be issued for any corresponding Unrestricted Units in a Residential Development unless fees required under this Section have been paid in full to the City.
- C. Land Dedication. In lieu of building Inclusionary Units, a Developer may request to dedicate land to the City suitable for the construction of Inclusionary Units that the City Council reasonably determines to be equivalent or greater value than is produced by applying the City's in lieu fee to the Developer's inclusionary obligation and otherwise meets the following standards and requirements:
1. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.

2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.
3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable Residential Development pursuant to zoning regulations.
5. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
6. The City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Housing Fund.

17.92.050 - Procedures

- A. At the times and in accordance with the standards and procedures set forth herein, Developer shall:
 1. Submit an Inclusionary Housing Plan ~~for approval by the Director~~, setting forth in detail the manner in which the provisions of this Chapter will be implemented for the proposed Residential Development. If land dedication or off-site units are proposed, the Inclusionary Housing Plan shall include information necessary to establish site location, suitability, development, constraints, and the number of Inclusionary Units assigned pursuant to this Chapter. Inclusionary Housing Plans that satisfy the express requirements of Section 17.92.030 may be approved by the Director. Inclusionary Housing Plans that include alternatives as set for the in Section 17.92.040 must be approved by the City Council.
 2. Execute and cause to be recorded an Inclusionary Housing Agreement, unless Developer is complying with this Chapter pursuant to Section 17.92.040(b) (in lieu fee) or Section 17.92.040(c) (land dedication).
- B. No Discretionary Approval shall be issued for all or any portion of a Residential Development subject to this Chapter until the Developer has submitted an Inclusionary Housing Plan.
- C. No building permit shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the City Council has approved the Inclusionary Housing Plan and the Inclusionary Housing Agreement (if required) is recorded.

- D. No certificate of occupancy shall be issued for the Residential Development, or any portion thereof, subject to this Chapter unless the approved Inclusionary Housing Plan has been fully implemented.
- E. The City Manager or designee may establish and amend policies for the implementation of this Chapter.

17.92.060 - Standards

- A. Inclusionary Units shall be reasonably dispersed throughout the Residential Development; shall be proportional, in number of bedrooms, to the Unrestricted Units. If the Residential Development offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be identical with the Residential Development's base-plan in terms of design, appearance, materials, finished quality and interior amenities. If multiple floor plans with the same number of bedrooms are proposed, the Inclusionary Units may be the units with the smaller floor plans.
- B. All Inclusionary Units in a Residential Development shall be constructed concurrently with or prior to the construction of the Unrestricted Units. In the event the City approves a phased project, the Inclusionary Units required by this Chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final dwelling unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).
- C. Inclusionary Units shall be sold to Low and Moderate Income Households or rented to Very Low, Low, and Moderate Income Households at a ratio established pursuant to a Resolution adopted by the City Council, and shall be provided at the applicable Affordable Housing Cost.
- D. The number of bedrooms must be the same as those in the Unrestricted Units, except that if the Unrestricted Units provide more than four (4) bedrooms, the Inclusionary Units need not provide more than four (4) bedrooms.
- E. Inclusionary Units shall prohibit subsequent rental occupancy (for for-sale units) or subletting (for rental units), unless approved for hardship reasons by the City Manager or designee. Such hardship approval shall include provision for United States military personnel who are required to leave the country for active military duty.
- F. Prior the development of any units in a Residential Development, a deed restriction or other enforceable obligation approved by the City Attorney shall be recorded limiting the Developer and any successors, whenever an Inclusionary Unit is sold or leased, to sell such unit to persons meeting the income eligibility requirements for Low and Moderate Income Households or to rent such unit to persons meeting the income eligibility requirements for Very Low, Low, and Moderate Income Households as applicable for a period of fifty-five (55) years.

17.92.070 - Enforcement

- A. The provisions of this Chapter shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be sold or leased in accordance with this Chapter. It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an Inclusionary Unit under this Chapter at a price exceeding the maximum allowed under this Chapter or to sell or rent an Inclusionary Unit to a Household not qualified under this Chapter. It shall further be a misdemeanor for any person

to provide false or materially incomplete information to the City or to a seller or lessor of an Inclusionary Unit to obtain occupancy of housing for which he or she is not eligible.

- B. Any individual who sells, rents, or sublets an Inclusionary Unit in violation of the provisions of this Chapter shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Fund.
- C. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; (2) civil actions for injunctive relief or damages; (3) actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment, and/or enforcement costs; and (4) any other action, civil or criminal, authorized by law or by any regulatory document, restriction, or agreement under this Chapter.
- D. In any action to enforce this Chapter or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, Developer or household from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it would otherwise be entitled under law or equity.

17.92.080 - General Provisions

A. Inclusionary Housing Fund

There is hereby established a separate fund of the City, to be known as the Inclusionary Housing Fund. All monies collected pursuant to 17.92.040, 17.92.060 and 17.92.070 shall be deposited in the Inclusionary Housing Fund. Additional monies from other sources may be deposited in the Inclusionary Housing Fund. The monies deposited in the Inclusionary Housing Fund shall be subject to the following conditions:

1. Monies deposited into the Inclusionary Housing Fund must be used to increase and improve the supply of housing affordable to Very Low, Low, and Moderate Income Households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section.
2. The fund shall be administered, subject to the approval by the City Manager, by the Director of Community Development, or his or her designee, who may develop procedures to implement the purposes of the Inclusionary Housing Fund consistent with the requirements of this Chapter and through the adopted budget of the City.
3. Monies deposited in accordance with this Section shall be used in accordance with the City's Housing Element, or subsequent plan adopted by the City Council to construct, rehabilitate, or subsidize affordable housing or assist other government entities, private organizations, or individuals to do so. Permissible uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public-private partnership arrangements. The Inclusionary Housing Fund may be used for the benefit of both rental and

owner-occupied housing. In no case is the City obligated to actually construct affordable housing units on its own.

B. Administrative Fees

The City Council may by Resolution establish reasonable fees and deposits, which shall fund the City's costs associated with the administration and monitoring of the Inclusionary Units and administration of the Inclusionary Housing Fund.

C. Appeal

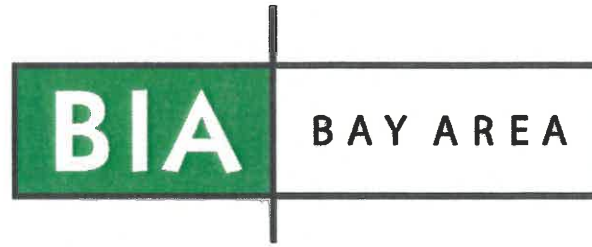
Within ten (10) calendar days after the date of any decision of the Director under this Chapter, an appeal may be filed with the City Clerk. Within ninety (90) calendar days of the request for an appeal is filed or a later time as agreed to by the appellant, the City Council shall consider the appeal. The City Council's decision shall be final.

D. Waiver

1. Notwithstanding any other provision of this Chapter, the requirements of this Chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this Section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 17.92.050. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process in subsection (c) above.
4. In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
 - (i) That the Developer will provide the most economical Inclusionary Units feasible, meeting the requirements of this Chapter and any implementing regulations.
 - (ii) That the Developer is likely to obtain housing subsidies when such funds are reasonably available.

The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

ATTACHMENT G



BUILDING INDUSTRY ASSOCIATION

DATE: April 17, 2018

TO: Mayor Keith Haydon, Vice Mayor David Shuey and Councilmembers
Tuija Catalano, Jim Diaz and Julie K. Pierce

FROM: BIA|Bay Area East Bay Executive Director
for Governmental Affairs Lisa Vorderbrueggen

RE: Agenda Item 8 – Whether to Incorporate Rental Housing Into Existing
Inclusionary Housing Regulation

Dear Mayor Haydon, Vice Mayor Shuey and Councilmembers,

As a membership organization that represents more than 400 companies dedicated to developing and constructing homes, BIA|Bay Area would like to make the following comments on the staff proposal to expand the city's inclusionary ordinance to include rental residential development.

While AB 1505 now allows local governments to impose inclusionary requirements on new rental developments, the regulations must also include alternative means of compliance such as the option of paying an in-lieu fee, making a land donation, building the units off-site or rehabilitating existing units. BIA strongly encourages Clayton to provide all residential developers a by-right in-lieu fee option.

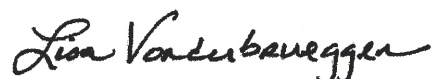
Not only do developers need options to make complex and costly housing projects work from an economic perspective, generating local affordable housing revenue is more important than ever. The state has a number of housing-related programs available for local affordable housing that will receive significant funding increases starting in 2018. Cities need a source of local funds to compete for those dollars as most of these programs require a local match. Local funds are also especially critical when it comes to assembling cash to build homes for the very poor as other sources are nearly non-existent.

We also encourage Clayton to grandfather residential development projects currently in the city's application pipeline. Developers obtain financing based on existing regulatory rules and imposing additional costs this late in the process may postpone or outright kill the much-needed new housing being planned in Clayton. For example, delaying the effective date of the ordinance or exempting projects with pending applications as long as

building permits are pulled within a set time period are effective means of ensuring that good projects are not inadvertently killed during the transition period.

Thank you for your time and consideration. Feel free to contact me at any time if you have any further questions or comments.

Sincerely yours,



Lisa A. Vorderbrueggen
BIA|Bay Area
1350 Treat Blvd., Ste. 140
Walnut Creek, CA 94598
925-348-1956
lvorderbrueggen@biabayarea.org


cc:

Clayton City Manager Gary Napper
Clayton Community Development Director Mindy Gentry

PLANNING COMMISSION STAFF REPORT

Meeting Date: May 22, 2018

Item Number: 5.b.

From: Mindy Gentry 
Community Development Director

Subject: Ordinance to Conditionally Allow Parolee Homes in Multifamily
General Plan Land Use Designations (ZOA-08-16)

Applicant: City of Clayton

REQUEST

The City of Clayton is requesting a public hearing for the Planning Commission to consider and make a recommendation to the City Council on a City-initiated Ordinance, amending Title 17 - "Zoning" of the Clayton Municipal Code (CMC) for the purpose of conditionally allowing parolee homes in the Multifamily Low Density (MLD), Multifamily Medium Density (MMD), and Multifamily High Density (MHD) General Plan designations (ZOA-02-18) (**Attachment A**).

PROJECT INFORMATION

Location: Citywide

Environmental: 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.

Public Notice: On May 10, 2018, a public hearing notice was published in the Contra Costa Times and on May 11, 2018 a public hearing notice was posted at designated locations in the City.

BACKGROUND

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. Due to the passage and implementation of AB 109, there are concerns regarding the possible increased use of parolee homes for offenders to be released from prison to serve the remainder of their sentence within the community, which could result in a higher number of these facilities within the community.

The California Department of Correction and Rehabilitation in its *2015 Outcome Evaluation Report – An Examination of Offenders Released in Fiscal Year 2011-2012 (Attachment B)* 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 parolee homes within the City of Clayton and without further review of the facility's operational and management plans and services and staffing plans as well as the establishment of buffers from sensitive uses, it could result in impacts to the community.

On August 5, 2016, the City of Clayton received an email from a non-profit County contractor/grantee searching for a facility where a use permit would not be required in order to operate what they described as a stable living environment/transitional housing program to assist individuals that have been previously incarcerated as part of the Contra Costa Reentry program. Given the Clayton Municipal Code was silent on parolee housing, this prompted the City Council, in compliance with State law (Government Code Section 65858), on October 16, 2016 to adopt an urgency ordinance placing an interim moratorium on the establishment, construction, and operation of parolee homes. As allowed for by State law, the moratorium was continued twice by the City Council with the last and final moratorium set to expire on October 3, 2018. After having the opportunity to research this issue, City staff is now returning to the Planning Commission with a proposed Ordinance for consideration to appropriately regulate these types of land uses.

DISCUSSION

The proposed Ordinance would allow parolee homes to locate within the multifamily General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, as identified on the General Plan Map, subject to a conditional use permit as well as the regulations identified in the Ordinance. These land uses are located in various places throughout the City, which are more specifically identified on the General Plan Land Use Map, which is contained in **Attachment C** to this staff report. In addition to the General Plan designation locations, the parolee homes are only permitted with a conditional use permit in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H). The use permit process is a public hearing process, whereby property owners within a 300-foot radius would be individually notified; a notice would also be placed in a newspaper of general circulation; and a notice would be posted on the City's community posting boards. The use permit application would then be subject to a discretionary review by the City's Planning Commission.

The Ordinance provides clear definitions of what constitutes a parolee home and a parolee. Further, single housekeeping units would not be subjected to the regulations and there are eight criteria as to what constitutes a single housekeeping unit. Namely, the residents need to have established ties and interact with each other; membership of the household is determined by the residents and not the landlord; each adult resident is named on the lease; and residents do not have separate entrances or food-prep and storage areas, amongst others.

Not only have locational requirements been proposed, but also numerous objective standards have also been incorporated into the Ordinance to mitigate or minimize any impacts. A parolee home cannot be located within 300 feet from any school, daycare, library, park, hospital, group home, or a business licensed for the on- or off-sale of alcoholic beverages, or emergency shelter, amongst others. It also must not be located within 1,000 feet of another parolee home. As part of the use permit application process, the Ordinance requires additional information such as the client profile, maximum number of occupants, and a management plan.

Lastly, multifamily housing projects with 25 units or less are limited to one parolee housing unit and housing projects with 25 units or more are limited to two parolee housing units. These thresholds would be applicable in apartment and condominium style buildings.

It should be noted, as part of the use permit process, that additional conditions of approval, beyond what is contained in the proposed Ordinance, could be added to mitigate any possible impacts associated with the specific application. These conditions would be considered on a case-by-case basis, which would be determined by the applicant's proposal and the location of the facility.

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-18, recommending City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density (**Attachment A**).

ATTACHMENTS

- A. Planning Commission Resolution No. 03-18, with attachment:
 - Exhibit 1 – Draft Ordinance Amending Title 17 – “Zoning” to Conditionally Allow Parolee Homes in General Plan Multifamily Land Use Designations
- B. *2015 Outcome Evaluation Report – An Examination of Offenders Released in Fiscal Year 2011-2012*
- C. General Plan Map with Highlighted Multifamily Land Use Designations

ATTACHMENT A

CITY OF CLAYTON PLANNING COMMISSION RESOLUTION NO. 03-18

RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING CLAYTON MUNICIPAL CODE TITLE 17 – “ZONING” IN ORDER TO CONDITIONALLY ALLOW PAROLEE HOMES IN THE FOLLOWING GENERAL PLAN DESIGNATIONS: MULTIFAMILY LOW DENSITY, MULTIFAMILY MEDIUM DENSITY, AND MULTIFAMILY HIGH DENSITY (ZOA-08-16)

WHEREAS, the City and surrounding communities have seen an increased interest in the establishment of group homes for parolees and probationers. This interest is due, in part, to AB 109 and the increased number of parolees, probationers, and others subject to post-release supervision. These uses may concentrate in residential zoning districts; 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, increased crime, 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, the City adopted an interim zoning ordinance to establish a temporary moratorium on the establishment and operation of parolee and probationer homes in order to study appropriate regulations for these uses; and

WHEREAS, California experiences high recidivism rates, with approximately 60-70% of parolees being re-arrested within three years of release;¹ and

WHEREAS, crime and nuisance-related concerns may be alleviated through public review of the facility’s operational and management plans, house rules, services and staffing plans, as well as buffers from sensitive children-oriented uses, including schools, daycares, parks, youth centers, and libraries, and from businesses selling alcohol; and

WHEREAS, in response to concerns that residential neighborhoods not become institutionalized with parolee homes and that residents of parolee homes fail to integrate into the community, the Ordinance would ensure that parolee homes are separated from other

¹ Cal. Dept. of Corrections, CALIFORNIA PRISONERS AND PAROLEES 2010: Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations (2011) p. 90, at: https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf; see also, [Public Policy Institute of California, *Realignment and Recidivism in California* \(December 2017\), p.3, at: http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf](http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf)

parolee homes as well as other quasi-institutional uses, including hospitals, group homes, emergency shelters, and supportive or transitional housing, to avoid an overconcentration of such uses in residential neighborhoods; and

WHEREAS, other public health, safety, and welfare concerns may be alleviated through enforcement of existing regulations and discretionary review of proposed land use applications; and

WHEREAS, following the results of this planning and research process, the City now desires to adopt permanent regulations to allow parolee and probationer housing within Clayton's multifamily residential General Plan designations subject to the granting of a conditional use permit and the conditions, regulations, and limitations stated herein; and

WHEREAS, 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 as the Ordinance relates to permit procedures for parolee housing in existing multi-family residential land use designations; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on May 22, 2018, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary, and recommended the City Council approve the Ordinance amending Title 17 – "Zoning" of Clayton Municipal Code to conditionally allow parolee homes within Clayton's multifamily residential General Plan designations; and

WHEREAS, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict with and are in general conformance with the City of Clayton General Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to amend the Clayton Municipal Code to conditionally allow parolee homes in the following General Plan land use designations: Multifamily Low Density, Multifamily Medium Density, and Multifamily High Density, attached hereto as Exhibit 1.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 22nd day of May, 2018.

**Planning Commission
Resolution No. 03-18**

APPROVED:

ATTEST:

Carl Wolfe
Chair

Mindy Gentry
Community Development Director

ATTACHMENTS

Exhibit 1 –Draft Ordinance Amending Title 17 – “Zoning” to Conditionally Allow Parolee Homes in General Plan Multifamily Land Use Designations

EXHIBIT 1

ORDINANCE NO. 483

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON ADOPTING AMENDMENTS TO CLAYTON MUNICIPAL CODE, TITLE 17 - ZONING IN ORDER TO CONDITIONALLY ALLOW PAROLEE HOMES IN THE FOLLOWING GENERAL PLAN DESIGNATIONS: MULTIFAMILY LOW DENSITY, MULTIFAMILY MEDIUM DENSITY, AND MULTIFAMILY HIGH DENSITY

THE CITY COUNCIL City of Clayton, California

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

WHEREAS, the City and surrounding communities have seen an increased interest in the establishment of group homes for parolees and probationers. This interest is due, in part, to AB 109 and the increased number of parolees, probationers and others subject to post-release supervision. These uses may concentrate in residential zoning districts; 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, increased crime, 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, the City adopted an interim zoning ordinance to establish a temporary moratorium on the establishment and operation of parolee and probationer homes in order to study appropriate regulations for these uses; and

WHEREAS, California experiences high recidivism rates, with approximately 60-70% of parolees being re-arrested within three years of release;¹ and

WHEREAS, crime and nuisance-related concerns may be alleviated through public review of the facility's operational and management plans, house rules, services and staffing plans, as well as buffers from sensitive children-oriented uses, including schools, daycares, parks, youth centers, and libraries, and from businesses selling alcohol; and

¹ Cal. Dept. of Corrections, CALIFORNIA PRISONERS AND PAROLEES 2010: Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations (2011) p. 90, at: https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf; see also, Public Policy Institute of California, *Realignment and Recidivism in California* (December 2017), p.3, at: http://www.ppic.org/wp-content/uploads/r_1217mbr.pdf

WHEREAS, in response to concerns that residential neighborhoods not become institutionalized with parolee homes and that residents of parolee homes fail to integrate into the community, the ordinance would ensure that parolee homes are separated from other parolee homes as well as other quasi-institutional uses, including hospitals, group homes, emergency shelters, and supportive or transitional housing, to avoid an overconcentration of such uses in residential neighborhoods; and

WHEREAS, other public health, safety, and welfare concerns may be alleviated through enforcement of existing regulations and discretionary review of proposed land use applications; and

WHEREAS, following the results of this planning and research process, the City now desires to adopt permanent regulations to allow parolee and probationer housing within Clayton's multifamily residential General Plan designations subject to the granting of a conditional use permit and the conditions, regulations, and limitations stated herein.

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

Section 1. Incorporation of Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment to Clayton Municipal Code – Zoning Definitions. Section 17.04.155 entitled "Parolee Home" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

"17.04.155 Parolee Home.

"Parolee Home" means any residential or commercial building, structure, unit or use, including a hotel or motel, whether owned and/or operated by an individual or for-profit or non-profit entity, which houses two or more parolees, that is not operated as a single housekeeping unit, 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 or a state-licensed residential treatment facility serving six or fewer persons."

Section 3. Amendment to Clayton Municipal Code – Zoning Definitions. Section 17.04.156 entitled "Parolee" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

"17.04.156 Parolee.

"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 4. Amendment to Clayton Municipal Code – Zoning Definitions. Section 17.04.186 entitled "Single Housekeeping Unit" is hereby added to the Clayton Municipal Code, Chapter 17.04 to read as follows:

"17.04.186 Single Housekeeping Unit.

"Single housekeeping unit" means that the use of the dwelling unit satisfies each of the following criteria:

1. The residents have established ties and familiarity and interact with each other.
2. Membership in the single housekeeping unit is fairly stable as opposed to transient or temporary.
3. Residents share meals, household activities, expenses, and responsibilities.
4. All adult residents have chosen to jointly occupy the entire premises of the dwelling unit; and they each have access to all common areas.
5. If the dwelling unit is rented, each adult resident is named on and is a party to a single written lease that gives each resident joint use and responsibility for the premises.
6. Membership of the household is determined by the residents, not by a landlord, property manager, or other third party.
7. The residential activities of the household are conducted on a nonprofit basis.

8. Residents do not have separate entrances or separate food-storage facilities, such as separate refrigerators, food-prep areas, or equipment.

Section 5. Amendment to Clayton Municipal Code – Multiple Family Residential District Regulations. Clayton Municipal Code Section 17.20.030, entitled “Permitted Uses-Principal” is hereby amended and restated (new text in underline) as follows:

“17.20.030 - Permitted Uses—Principal.

The principal permitted uses in the multiple family residential districts shall be as follows:

- A. Duplex, triplex, townhouses, apartments and other multifamily structures meeting and not exceeding the density limits set by the applicable General Plan Land Use Designation;
- B. Supportive housing and transitional housing;
- C. Single family dwelling units only with a Conditional Use Permit (See Section 17.60.030.B.5).
- D. Employee housing providing accommodations for six (6) or fewer employees, provided that a conditional use permit is obtained. Such permit shall be reviewed and issued under the same procedures and in the same manner as that permit issued for single family dwelling units (See Section 17.60.030.B.5).
- E. Parolee homes only with a Conditional Use Permit (See Section 17.60.030.B.7).”

Section 6. Amendment to Clayton Municipal Code – Use Permits. Clayton Municipal Code Section 17.60.030, Subdivision (B), related to Residential Related Uses requiring a use permit, is hereby amended to add subdivision (7) to read as follows:

“7. Parolee homes on land designated as Multifamily Low Density (MLD), Multifamily Medium Density (MMD) and Multifamily High Density (MHD) on the General Plan Land Use Map. (See Section 17.36.086).”

All other provisions contained in Section 17.60.030 of the Clayton Municipal Code shall remain in full force and effect.

Section 7. Amendment to Clayton Municipal Code – General Regulations. Clayton Municipal Code, Section 17.36.086 entitled “Standards for Parolee Homes” is hereby adopted to read as follows:

“17.36.086 – Standards for Parolee Homes.

Parolee homes are only permitted with a conditional use permit on land designated Multifamily Low Density (MLD), Multifamily Medium Density (MMD) or Multifamily High Density (MHD) on the General Plan Land Use Map and in either a Planned Development (PD) zoning district or in a Multiple Family Residential zoning district (M-R, M-R-M, or M-R-H), subject to the development standards of the zone. Parolee homes must also meet the following objective development standards:

A. Location requirements:

1. A parolee home shall be located a minimum distance of at least three hundred (300) feet from any public or private school (preschool through 12th grade), daycare, library, public park, hospital, group home, business licensed for on- or off-sale of alcoholic beverages, youth center, emergency shelter, supportive or transitional housing when measured from the exterior building walls of the parolee home to the property line of the sensitive use.
2. A parolee home shall be located a minimum distance of 1,000 feet from any other parolee home.

B. The application for a discretionary use permit for a parolee home shall include the following additional information:

1. Client profile (the subgroup of the population of the facility is intended to serve such as single men, families, etc.);
2. Maximum number of occupants and hours of facility operation;
3. Term of client stay;
4. Support services to be provided on-site and projected staffing levels; and
5. Rules of conduct and/or management plan.

C. Multifamily housing projects with 25 units or less shall be limited to one parolee home unit. Multifamily housing projects with more than 25 units shall be limited to two parolee home units. For purposes of this subsection, “multifamily housing project” means a building designed or used for more than two (2) dwelling units sharing common walls on one lot, including apartments and condominiums, but not including attached single-family homes or townhomes.

D. Any proposed modifications to the operating conditions that were approved in the conditional use permit shall require an application to modify the conditional use permit, subject to the review and approval by the Planning Commission, unless the modifications are determined by the Director to not be substantial in nature.”

Section 8. **CEQA.** 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 as the Ordinance relates to permit procedures for parolee housing in existing multi-family residential land use designations.

Section 9. **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 10. **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 Sections 2 through 7 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on June 5, 2018.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on July 17, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Keith Haydon, 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, passed, and ordered posted at a regular meeting of the City Council held on July 17, 2018.

Janet Brown, City Clerk

ATTACHMENT B



**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

You can obtain reports by contacting the Department of Corrections and Rehabilitation at the following address:

California Department of Corrections and Rehabilitation
Office of Research, Research and Evaluation Branch
1515 S Street, Suite 221N
Sacramento, California 95811
916.323.2919

Or

On the internet at:

http://www.cdcr.ca.gov/adult_research_branch/

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Kendra Jensen, Research Program Specialist II
Christopher Nguyen, Assistant Information Systems Analyst

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 942883
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,

A handwritten signature in black ink, appearing to read "Scott Kernan". The signature is stylized with a large, sweeping flourish that extends across the width of the page.

SCOTT KERNAN
Secretary

Table of Contents

1	Introduction	1
2	Evaluation Design.....	3
2.1	Return-to-Prison Definition.....	3
2.2	Methods.....	3
2.3	Data Sources	4
2.4	Data Limitations	4
3	Description of FY 2010-11 Release Cohort	5
3.1	Offender Demographics.....	5
3.2	Offender Characteristics	7
4	Three-Year Return-to-Prison Rate	11
4.1	Overall Return-to-Prison Rates for the FY 2010-11 Release Cohort	11
4.2	Time to Return	13
5	Return-to-Prison Rates by Offender Demographics and Characteristics	15
5.1	Return-to-Prison Rates by Offender Demographics	15
5.1.1	Gender	15
5.1.2	Age at Release.....	17
5.1.3	Race/Ethnicity	19
5.1.4	County of Parole	21
5.2	Return-to-Prison Rates by Offender Characteristics.....	23
5.2.1	Commitment Offense Category	23
5.2.2	Commitment Offense	25
5.2.3	Sentence Type.....	28
5.2.4	Sex Registrants	30
5.2.5	Recommitment Offense for Sex Registrants.....	31
5.2.6	Serious and Violent Offenses	32
5.2.7	Mental Health Status	34
5.2.8	Risk of Return to State Prison	36
5.2.9	Length of Stay	38
5.2.10	Number of Returns to Custody Prior to Release.....	40
5.2.11	Number of CDCR Stays Ever	42
5.2.12	In-Prison and Community-Based Substance Abuse Treatment Programs.....	44

5.2.13	Return-to-Prison Rates by Substance Abuse Treatment Participation for Offenders with an Identified Treatment Need	46
6	Offender Outcomes and Type of Return to CDCR	48
6.1	Three-Year Outcomes for the Fiscal Year 2010-11 Release Cohort.....	48
6.2	Type of Return for the Fiscal Year 2010-11 Offenders Returning to State Prison	51
6.3	Impact of Realignment.....	53
Appendix A	.....	55
Supplemental Recidivism Rates: Arrests, Convictions, and Returns to Prison		55
Appendix B	.....	61
Type of Arrest and Conviction for Fiscal Year 2009-10 and Fiscal Year 2010-11 Release Cohorts.....		61
Appendix C	.....	63
Offender Demographics and Characteristics by Fiscal Year		63
Appendix D	.....	67
Three-Year Return-to-Prison Rates by County of Parole		67
Appendix E	.....	70
Definitions of Key Terms		70

List of Tables and Figures

Tables

Table 1. Demographics of Offenders Released in Fiscal Year 2010-11.....	6
Table 2. Characteristics of Offenders Released in Fiscal Year 2010-11	9
Table 3. Return-to-Prison Rates for First-Releases, Re-Releases, and the Total FY 2010-11 Release Cohort	12
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	14
Table 5. Return-to-Prison Rates by Gender	16
Table 6. Return-to-Prison Rates by Age at Release	18
Table 7. Return-to-Prison Rates by Race/Ethnicity.....	20
Table 8. Return-to-Prison Rates by County of Parole	22
Table 9. Return-to-Prison Rates by Commitment Offense Category.....	24
Table 10. Return-to-Prison Rates by Commitment Offense	27
Table 11. Return-to-Prison Rates by Sentence Type.....	29
Table 12. Number Returned by Sentence Type and Release Type	29
Table 13. Return-to-Prison Rates by Sex Registration Flag.....	30
Table 14. Recommitment Offense for Sex Registrants	31
Table 15. Return-to-Prison Rates for Offenders with a Serious or Violent Offense	33
Table 16. Return-to-Prison Rates by Mental Health Status	35
Table 17. Return-to-Prison Rates by Risk of Return.....	37
Table 18. Return-to-Prison Rates by Length of Stay	39
Table 19. Return-to-Prison Rates by Number of Returns to Custody on the Current Term Prior to Release	41
Table 20. Return-to-Prison Rates by Total Number of Stays	43
Table 21. Return-to-Prison Rates by Substance Abuse Treatment Participation	45
Table 22. Return-to-Prison Rates by Substance Abuse Treatment Participation and Substance Abuse Need.....	47
Table 23. Three-Year Outcomes for Fiscal Year 2008-09, 2009-10, and 2010-11 Release Cohorts	50
Table 24. Type of Return for the 42,661 Offenders Returned to State Prison Following Release in FY 2010-11	52

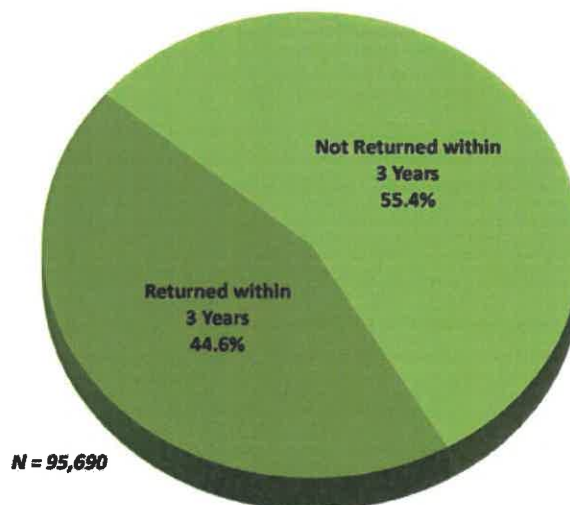
Figures

Figure 1. Return-to-Prison Rates for First Releases, Re-Releases, and the Total FY 2010-11 Release Cohort	11
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	13
Figure 3. Return-to-Prison Rates by Gender	15
Figure 4. Three-Year Return-to-Prison Rate by Age at Release	17
Figure 5. Return-to-Prison Rates by Race/Ethnicity.....	19
Figure 6. Return-to-Prison Rates by County of Parole	21
Figure 7. Return-to-Prison Rates by Commitment Offense Category	23
Figure 8. Three-Year Return-to-Prison Rate by Commitment Offense.....	25
Figure 9. Return-to-Prison Rates by Sentence Type	28
Figure 10. Return-to-Prison Rates by Sex Registration Requirement.....	30
Figure 11. Recommitment Offense for Sex Registrants.....	31
Figure 12. Return-to-Prison Rates for Offenders with a Serious or Violent Offense.....	32
Figure 13. Return-to-Prison Rates by Mental Health Status.....	34
Figure 14. Return-to-Prison Rates by Risk of Return	36
Figure 15. Three-Year Return-to-Prison Rate by Length of Stay.....	38
Figure 16. Three-Year Return-to-Prison Rate by Number of Returns to Custody on the Current Term Prior to Release.....	40
Figure 17. Three-Year Return-to-Prison Rate by Total Number of Stays.....	42
Figure 18. Three-Year Return-to-Prison Rate by Substance Abuse Treatment Participation.....	44
Figure 19. Three-Year Return-to-Prison Rate by Substance Abuse Treatment Participation and Substance Abuse Need	46
Figure 20. Three-Year Outcomes for Fiscal Year 2010-11 Release Cohort	48
Figure 21. Type of Return for the 42,661 Offenders Returned to State Prison Following Release in FY 2010-11	51

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

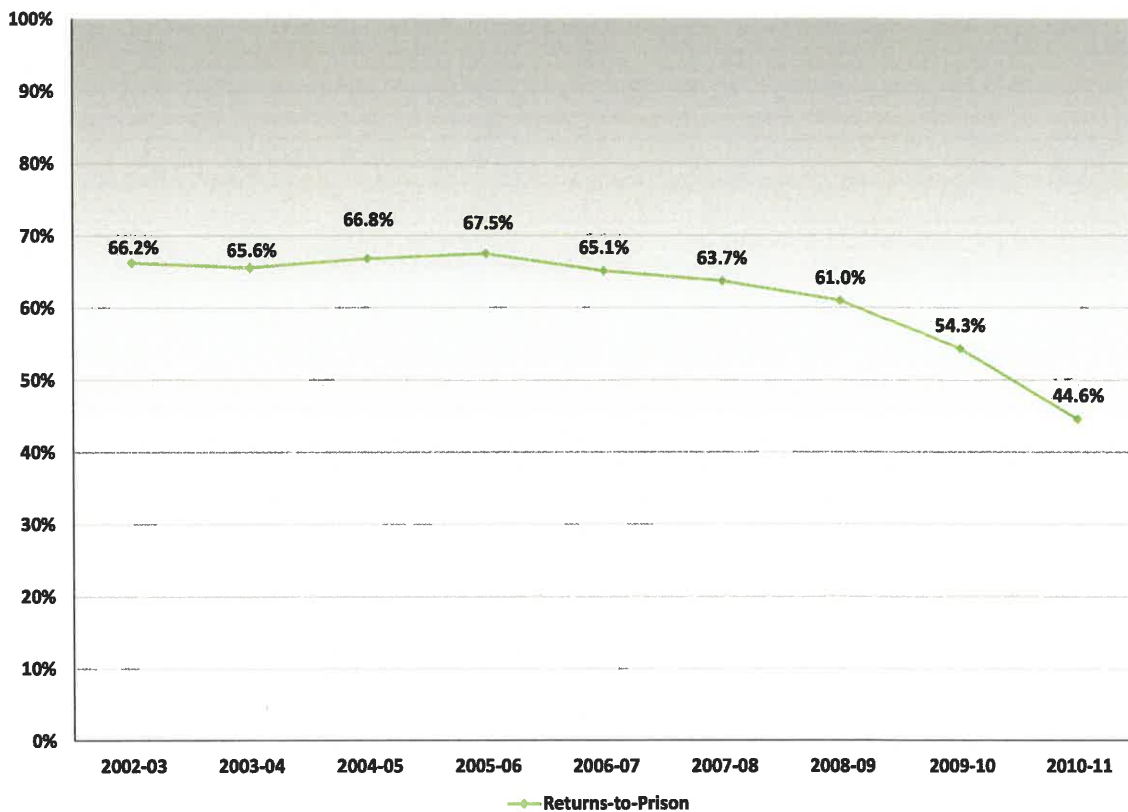


As shown in Figure B, the three-year return-to-prison rate decreased by 6.7 percentage points between Fiscal Years 2008-09 and 2009-10, followed by a drastic decline between Fiscal Years 2009-10 and 2010-11 (9.7 percentage points). Some of the decrease in the three-year return-to-prison rate is attributed 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.¹

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

¹ 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.² 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.³ Empirical research shows that

² 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>

³ 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.

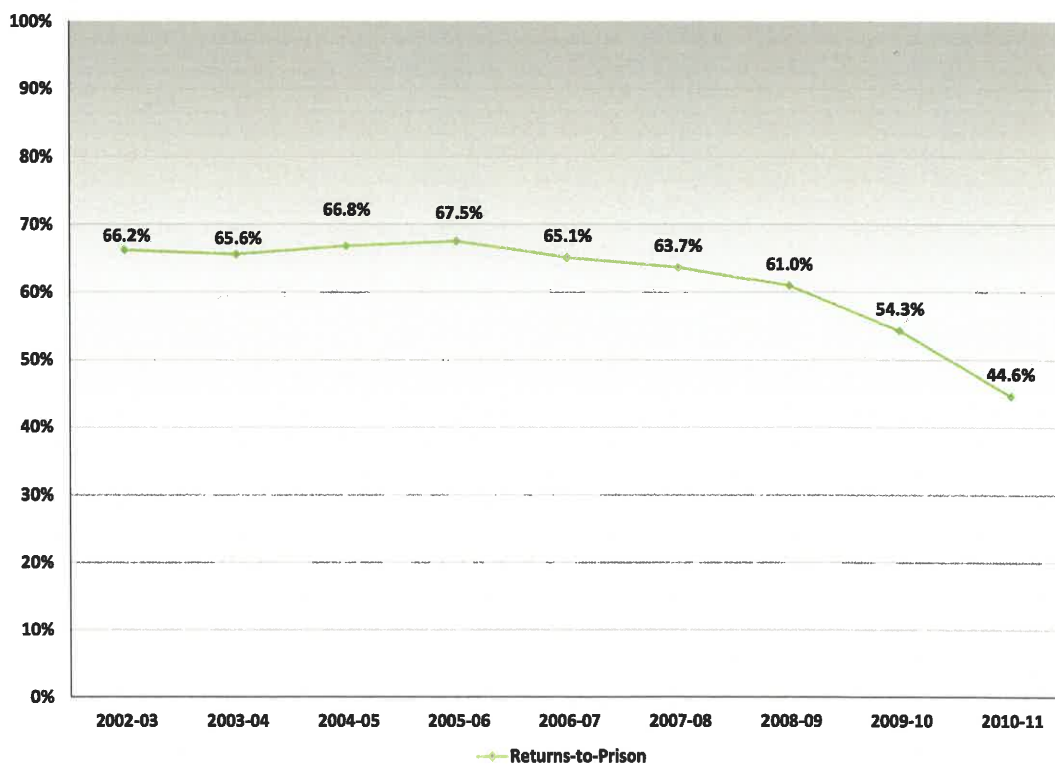
California Department of Corrections and Rehabilitation 2015 Outcome Evaluation Report

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

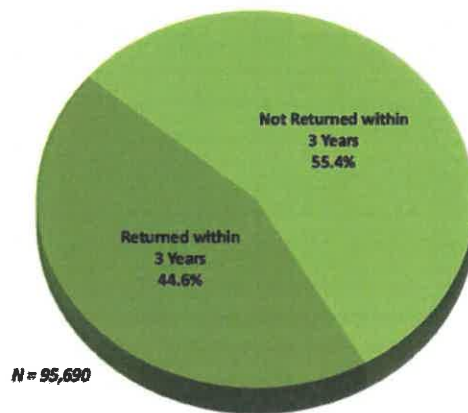


For the first time since the CDCR began reporting the rate in Fiscal Year 2002-03, more offenders did not return to prison during the three-year follow-up period (55.4 percent of the release cohort or 53,029 offenders) than returned to State prison (44.6 percent of the release cohort or 42,661 offenders). 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 felony⁴ 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 prison⁵ 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).

⁴ Due to reporting limitations, civil addicts are excluded.

⁵ 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
Total	95,690	100.0%
Release Type		
First Release	58,122	60.7%
Re-Release	37,568	39.3%
Gender		
Male	86,571	90.5%
Female	9,119	9.5%
Age at Release		
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%
Race/Ethnicity		
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	868	0.9%
Other	3,008	3.1%
County of Parole		
Los Angeles County	24,904	26.0%
San Bernardino County	8,018	8.4%
Orange County	6,804	7.1%
San Diego County	6,431	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
Commitment Offense Category		
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%
Sentence Type		
Determinate Sentencing Law	82,392	86.1%
Second Strikers (Determinate Sentencing Law)	12,900	13.5%
Lifers (Indeterminate Sentencing Law)	398	0.4%
Sex Registration Requirement		
No	86,701	90.6%
Yes	8,989	9.4%
Serious and/or Violent Offenders		
Serious	13,268	13.9%
Violent	10,653	11.1%
Non-Serious/Non-Violent	71,769	75.0%
Mental Health Status		
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%
CSRA Risk Score		
Low	17,421	18.2%
Moderate	25,108	26.2%
High	52,331	54.7%
N/A	830	0.9%
Length of Stay		
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%

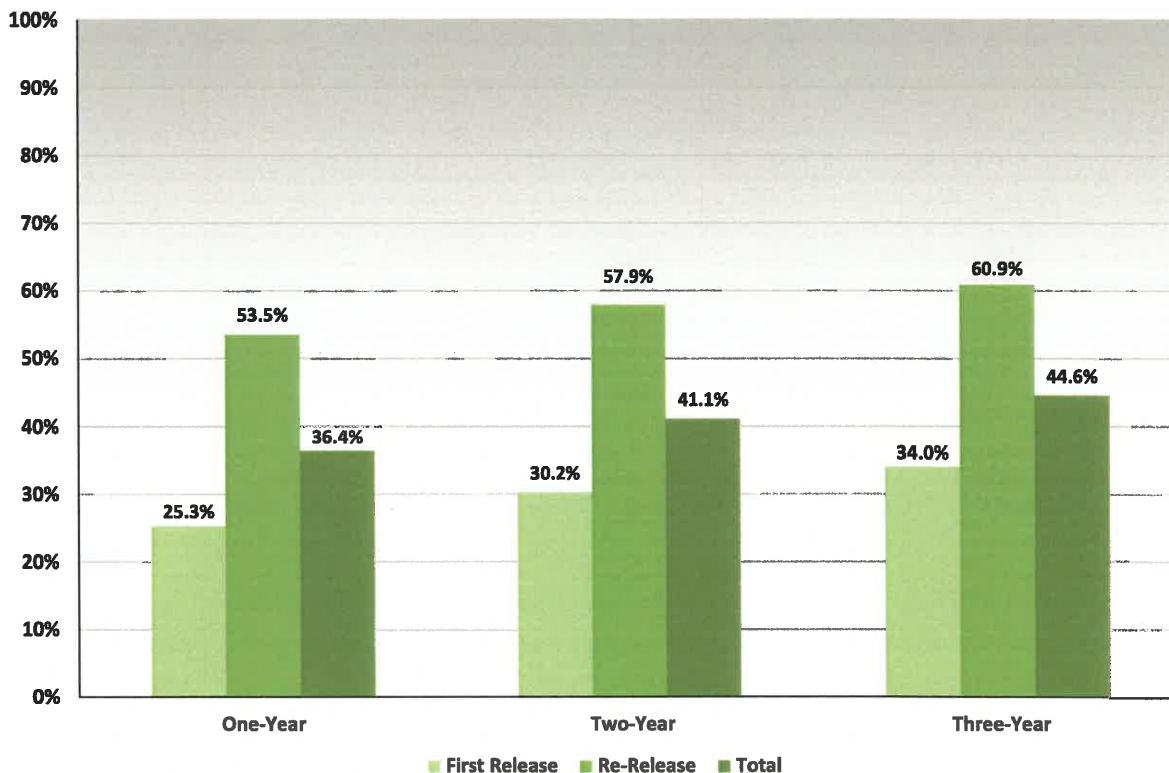
Table 2. Characteristics of Offenders Released in FY 2010-11 (continued)

Characteristics	Number	Percent
Prior Returns to Custody		
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%
Number of CDCR Stays Ever		
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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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

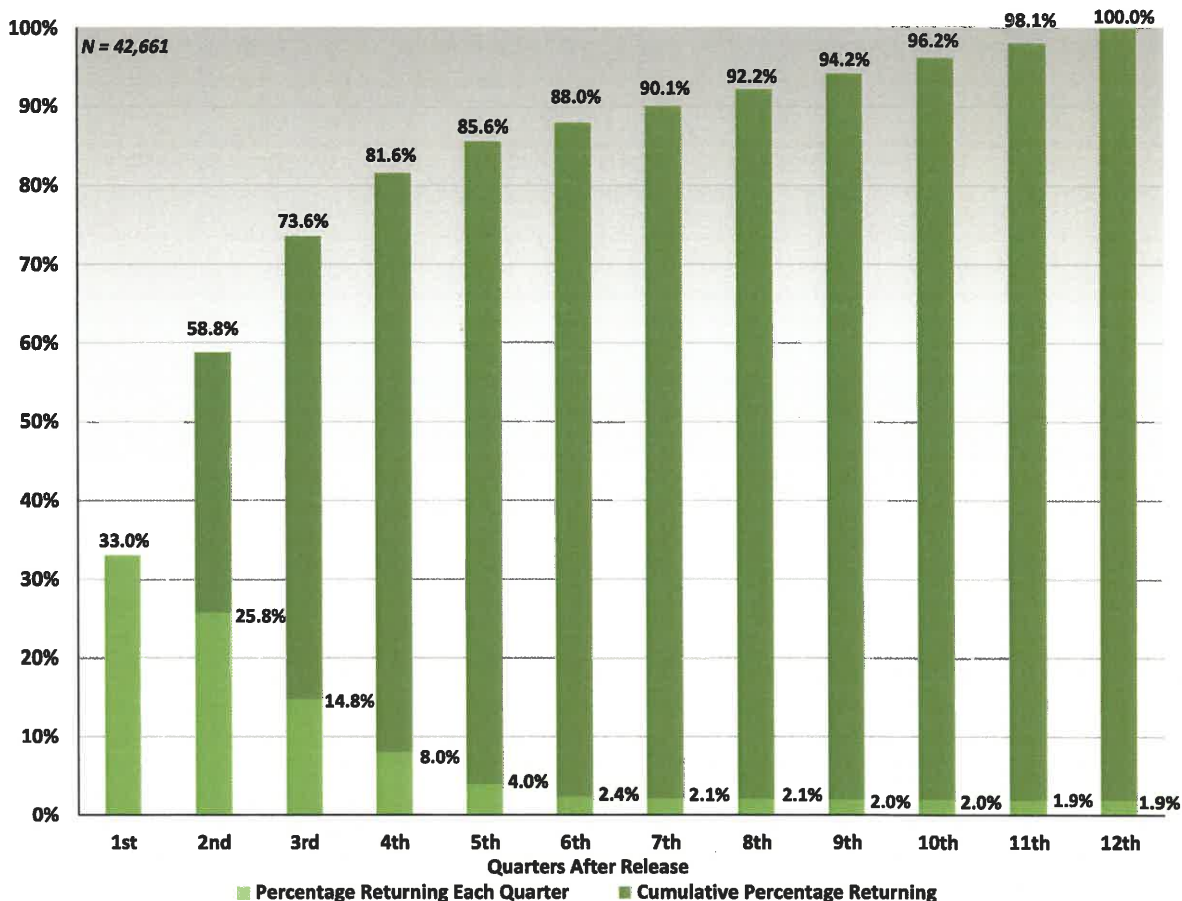


Figure 2 and Table 4 show the percentage of offenders who returned to prison during each quarter (three month period) over the three-year follow-up period, as well as the cumulative percentage of offenders who returned to prison each quarter over the three-year follow-up period. In order to examine how long offenders are in the community before recidivating, only the 42,661 offenders who returned to prison are represented in this section. The 12th 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%

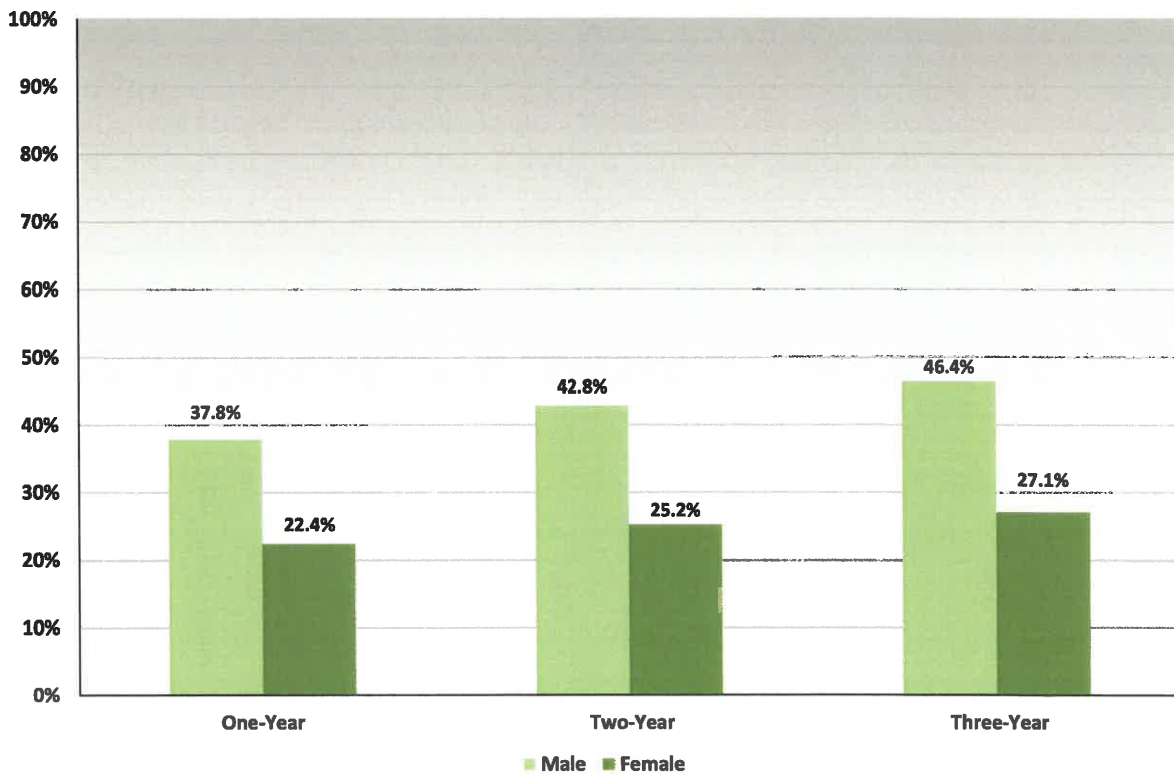
5 Return-to-Prison Rates by Offender Demographics and Characteristics

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.

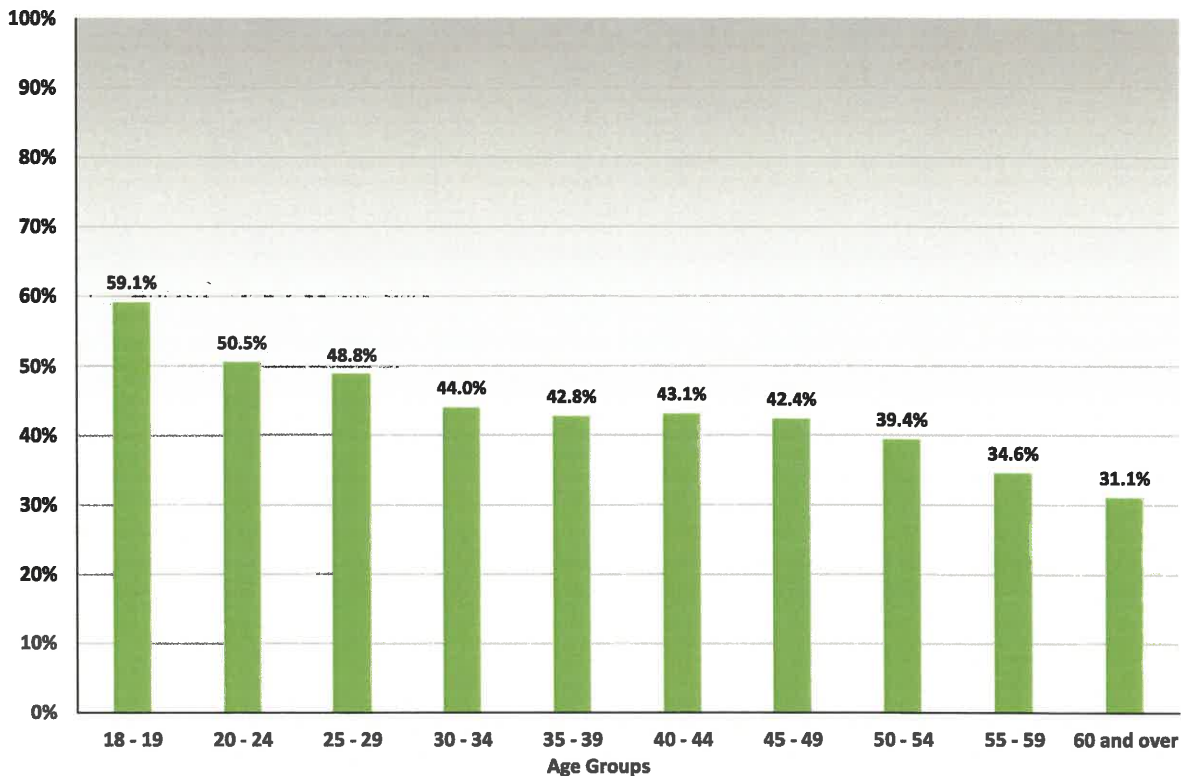
Both male and female offenders experienced a decline in their three-year return-to-prison rate between FY 2009-10 and FY 2010-11. As shown in Appendix C, the three-year return-to-prison rate decreased by 9.9 percentage points for male offenders between FY 2009-10 and FY 2010-11 (56.3 percent and 46.4 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).

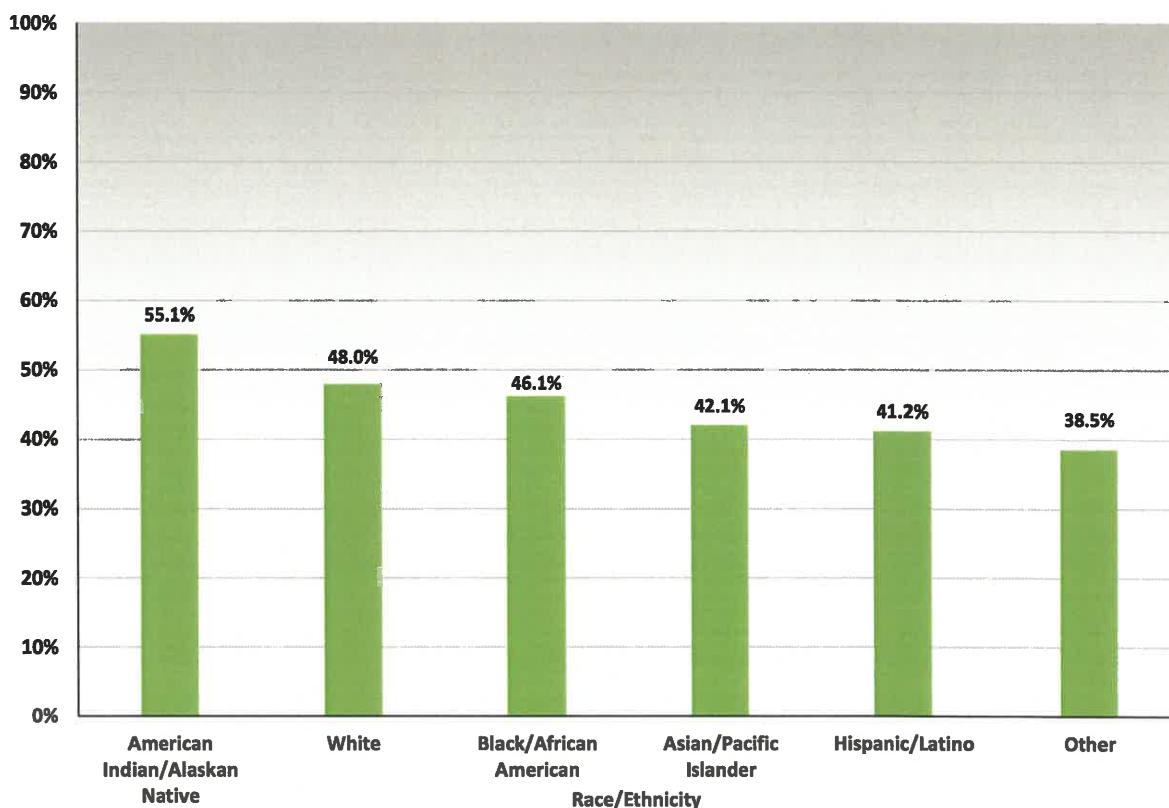
When compared to the FY 2009-10 release cohort, each age group saw a decline in the three-year return-to-prison rate. Offenders ages 20 – 24 saw the largest decrease in the three-year return-to-prison rate (10.8 percentage points) among any age group between FY 2009-10 and FY 2010-11 (61.3 percent and 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	336	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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

5.1.4 County of Parole

Figure 6. Return-to-Prison Rates by County of Parole

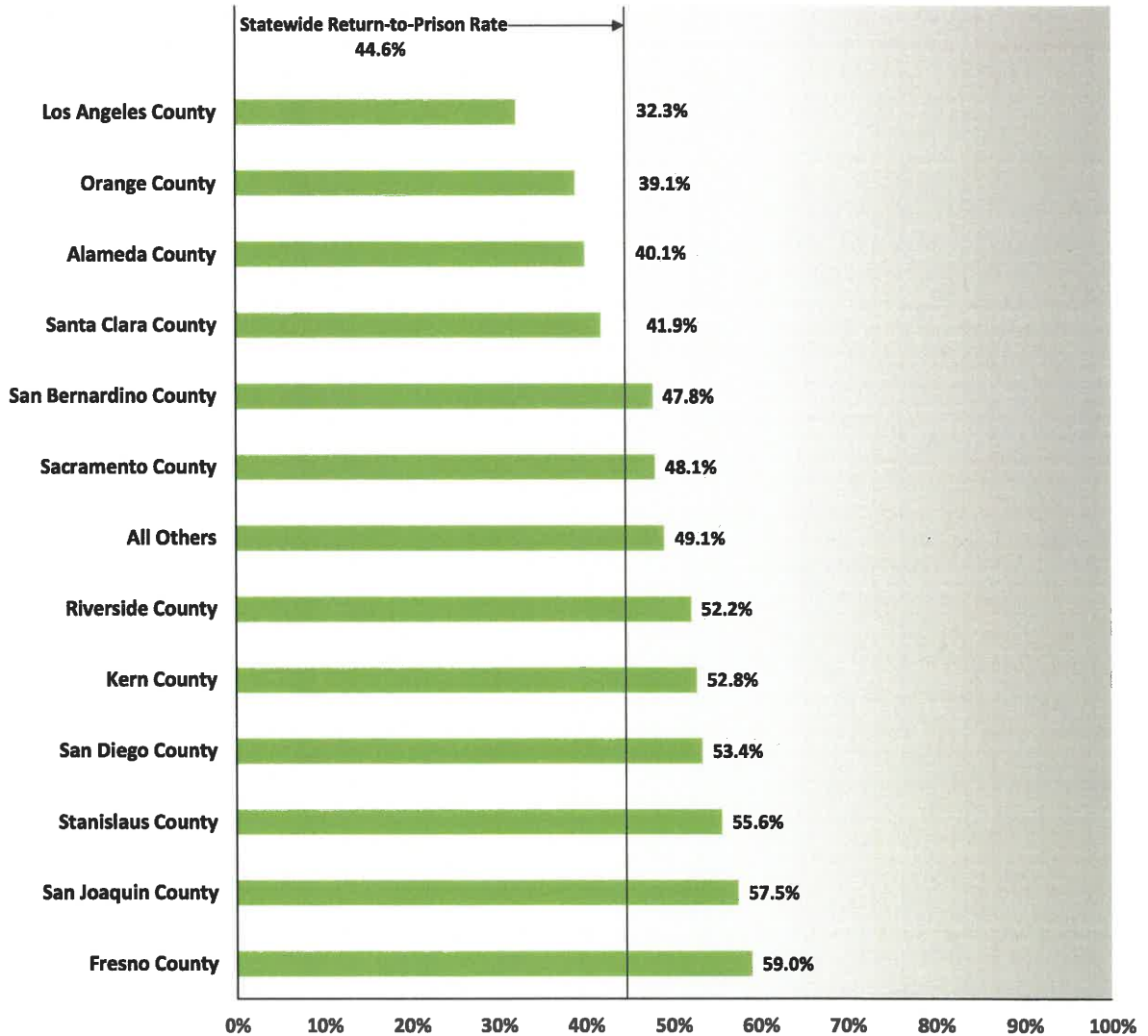


Figure 6 and Table 8 show return-to-prison rates for the 12 counties with the largest number of releases. Together, these 12 counties account for nearly 80 percent (79.6 percent or 76,215 offenders) of the offenders released in FY 2010-11. Approximately 20 percent (20.4 percent) were released to the 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.

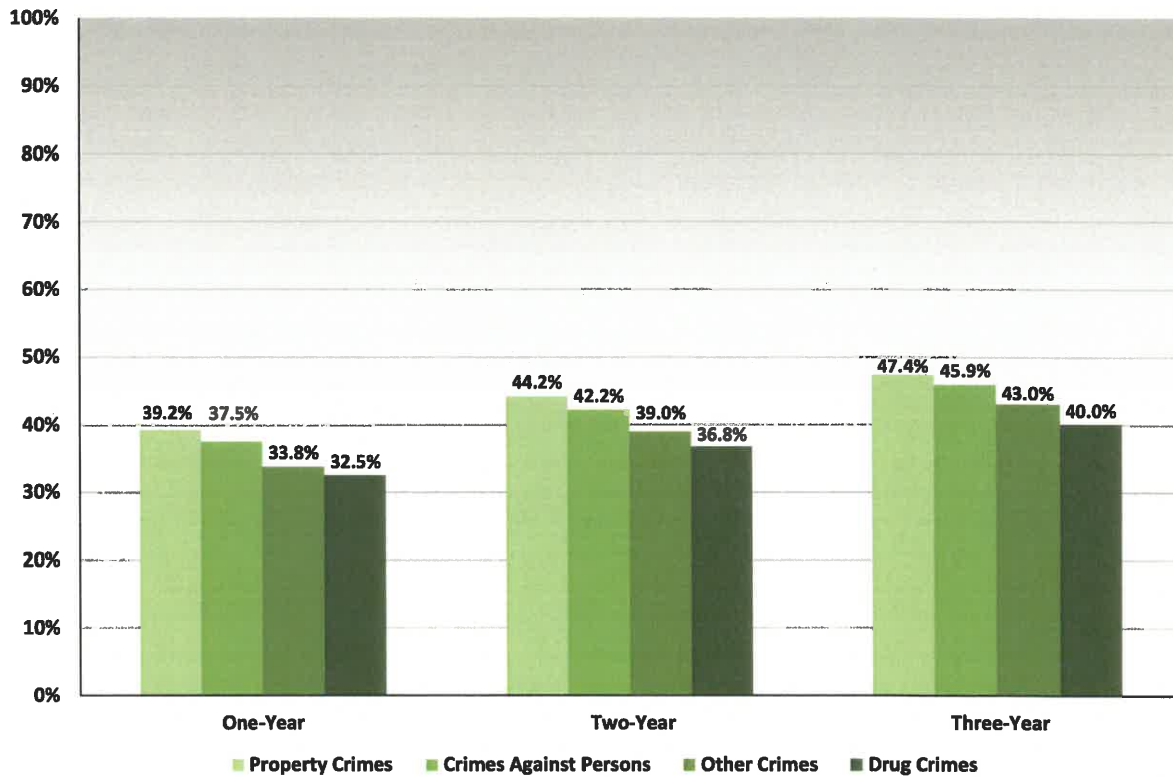
Table 8. Return-to-Prison Rates by County of Parole

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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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).

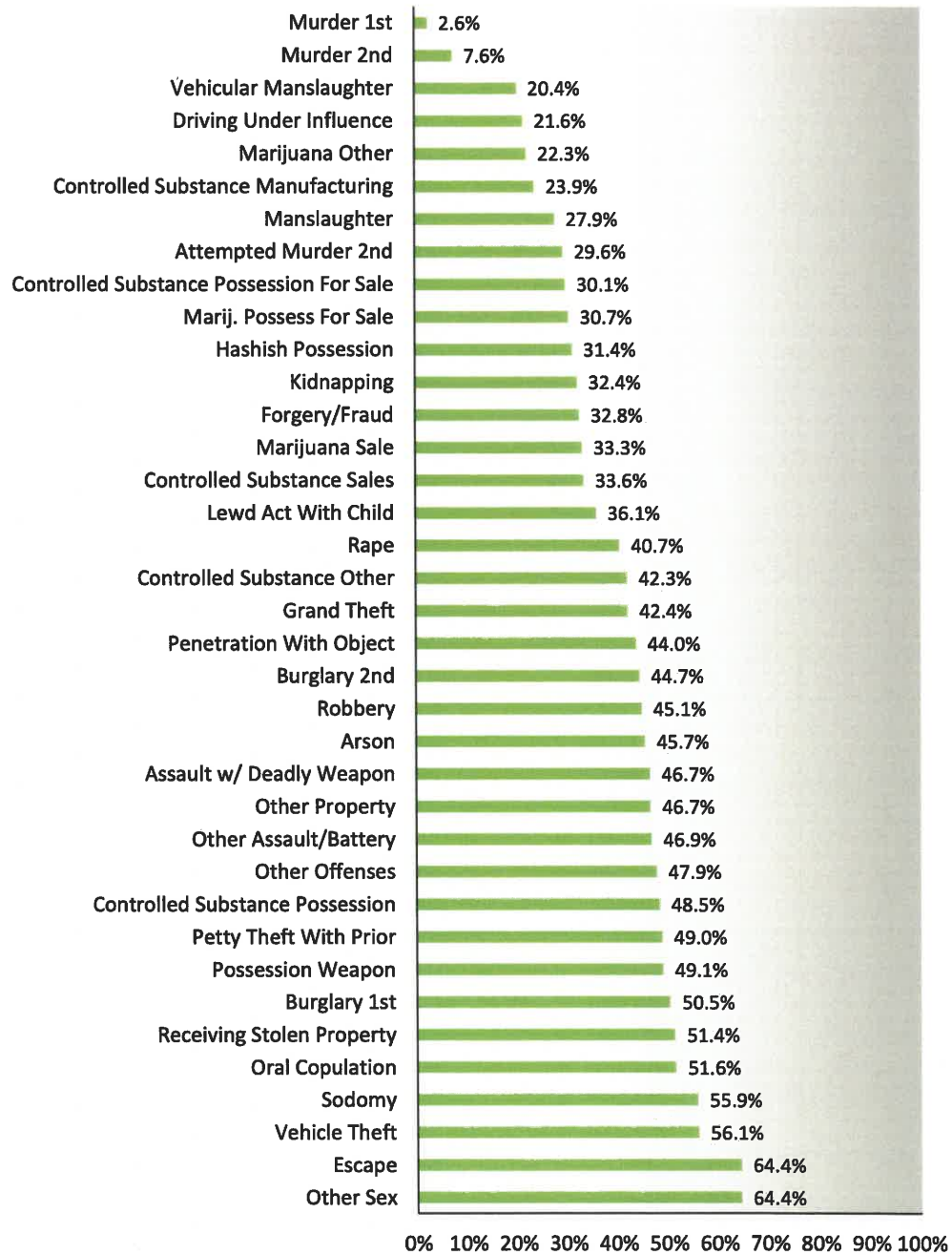
The three-year return-to-prison rate decreased for each commitment offense category between FY 2009-10 and FY 2010-11 (Appendix C). Property crimes saw the largest decrease (10.7 percentage points), between the two fiscal years (58.1 percent and 47.4 percent, respectively). Between FY 2009-10 and FY 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

Commitment Offense Category	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

5.2.2 Commitment Offense

Figure 8. Three-Year Return-to-Prison Rate by Commitment Offense⁶



⁶ “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%	6,032	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	3,393	1,206	35.5%	1,342	39.6%	1,438	42.4%
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%
Marij. 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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

5.2.3 Sentence Type

Figure 9. Return-to-Prison Rates by Sentence Type

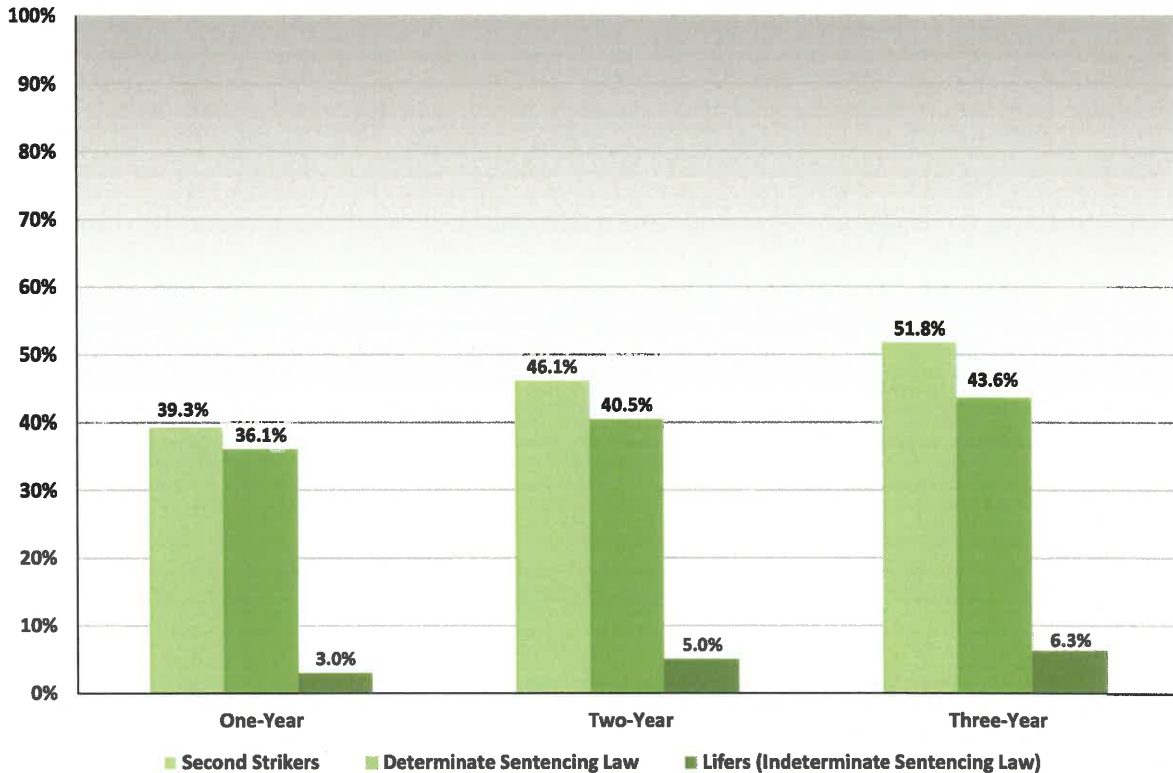


Figure 9 and Table 11 show return-to-prison rates by sentence type. Prior to this report, sentence type was categorized by offenders sentenced under Determinate Sentencing Law (DSL) and Indeterminate Sentencing Law (ISL). The majority of offenders sentenced in California serve a determinate term (a specified 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	82,392	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	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

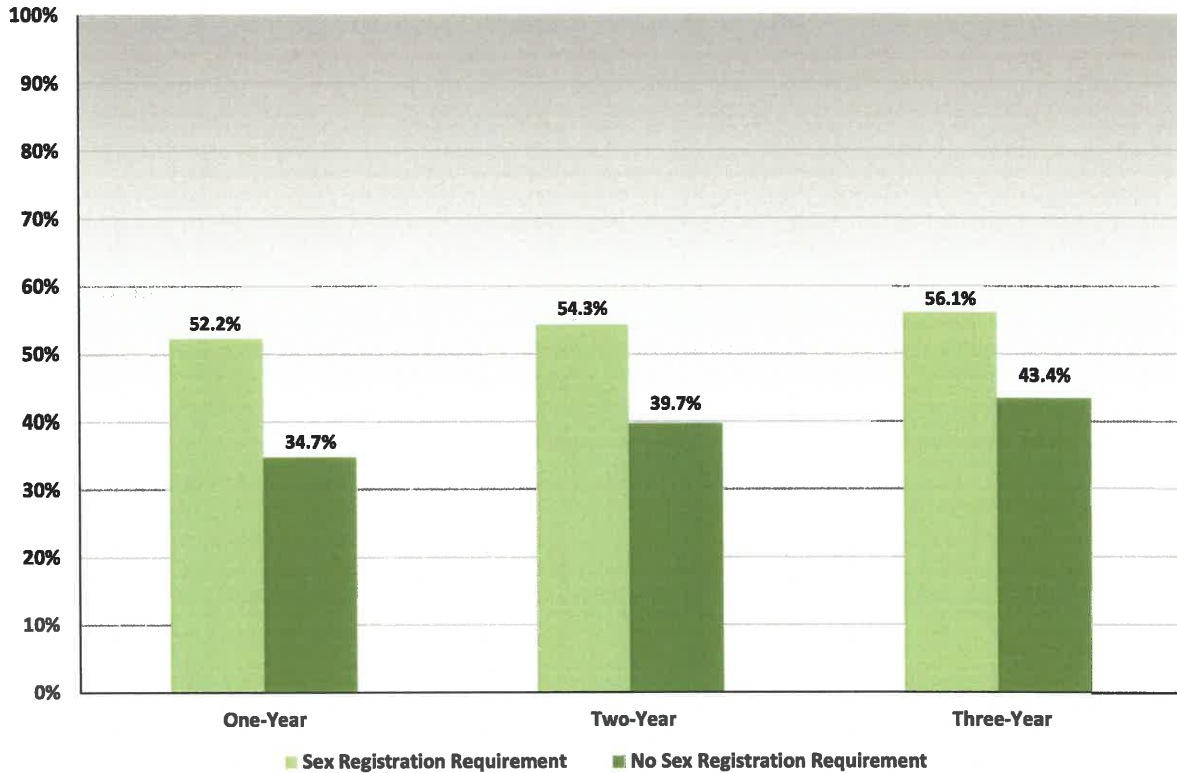
Offenders serving an indeterminate term may be released when the BPH has found them suitable for parole or after the court orders their release. Table 12 shows the number of lifers released by the BPH and by court order. Of the 398 offenders who served an indeterminate term and were released in FY 2010-11, 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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

5.2.5 Recombitment Offense for Sex Registrants

Figure 11. Recombitment Offense for Sex Registrants

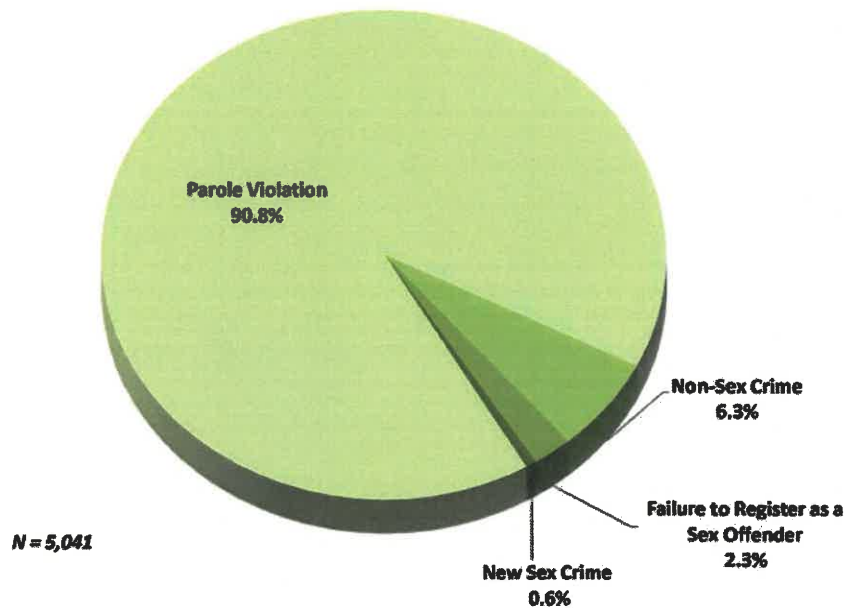


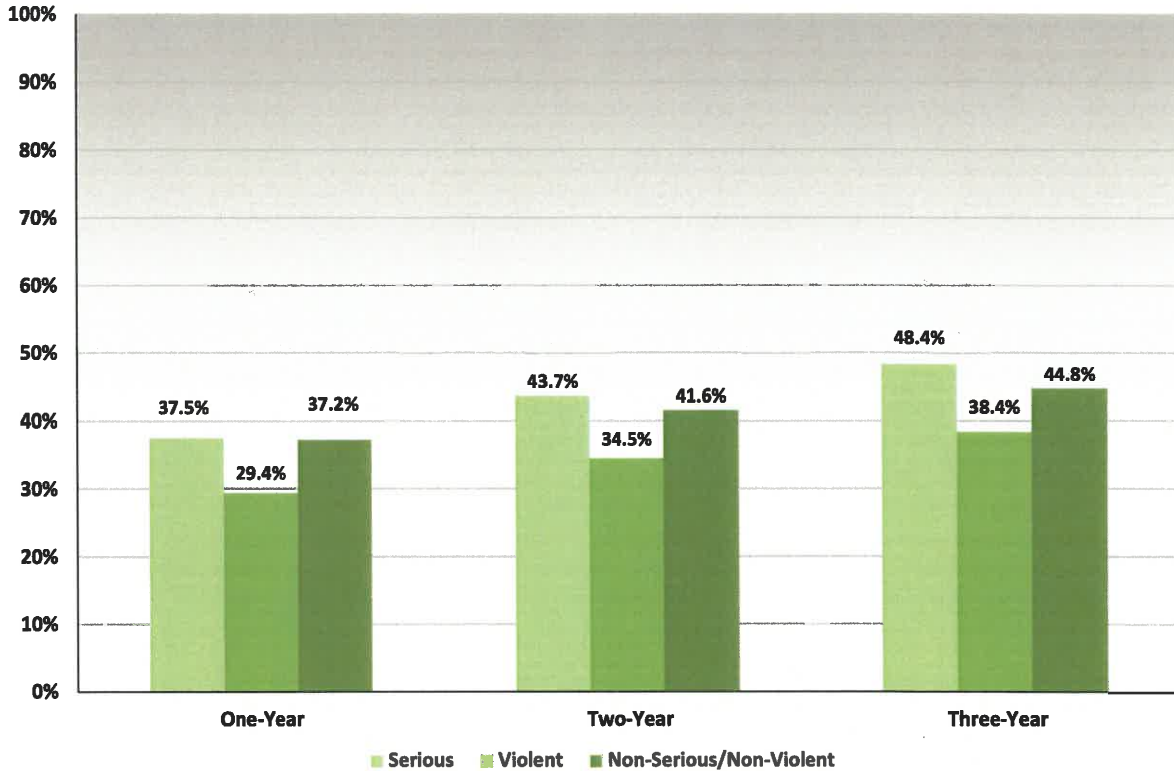
Figure 11 and Table 14 show the recommitment offense for the 5,041 sex registrants that returned to prison during the three-year follow-up period. Of the 5,041 sex registrants, the majority (4,579 offenders or 90.8 percent) returned for a parole violation, followed by 316 offenders (6.3 percent) with 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. Recombitment 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%
Total	5,041	100.0%

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

Serious/Violent Offense	Number Released	One-Year		Two-Year		Three-Year	
		Number Returned	Return Rate	Number Returned	Return Rate	Number Returned	Return Rate
Serious	13,268	4,979	37.5%	5,800	43.7%	6,418	48.4%
Violent	10,653	3,133	29.4%	3,672	34.5%	4,091	38.4%
Non-Serious/Non-Violent	71,769	26,698	37.2%	29,859	41.6%	32,152	44.8%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

5.2.7 Mental Health Status

Figure 13. Return-to-Prison Rates by Mental Health Status

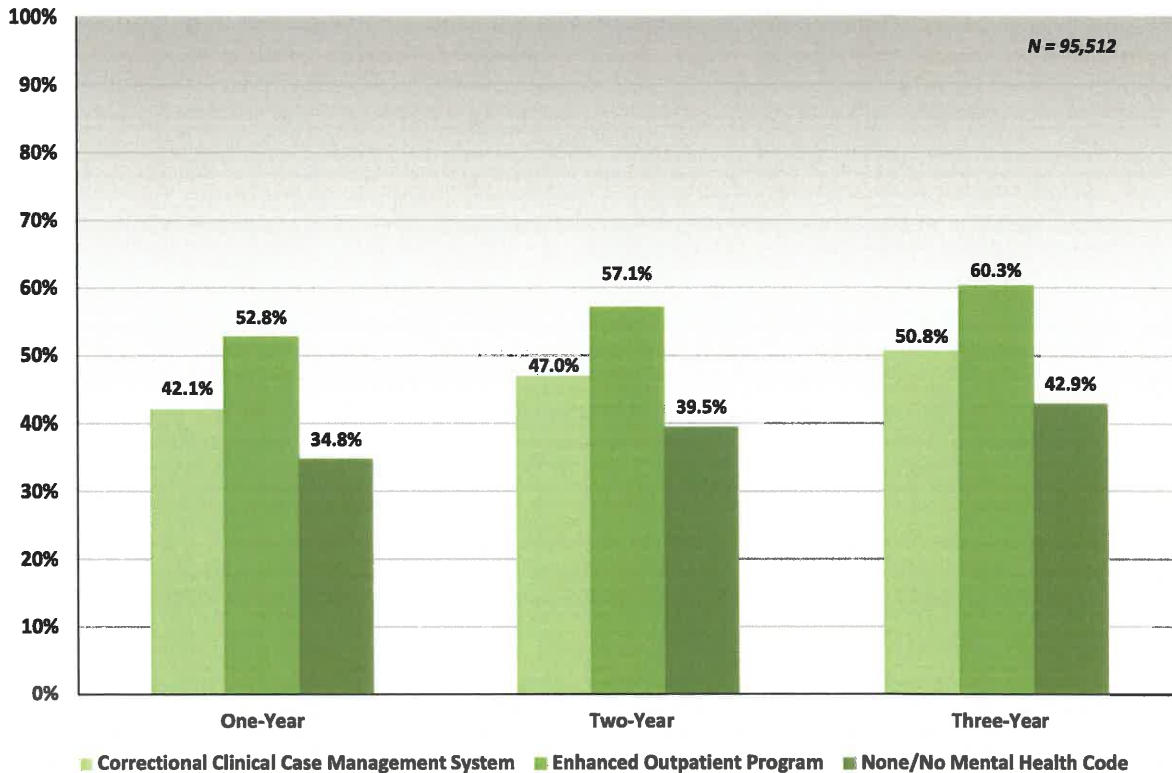


Figure 13 and Table 16 present return-to-prison rates by mental health designation for the three mental health categories with the largest number of releases. The majority of offenders (78,705 offenders or 82.2 percent) did not have a mental health designation and 17.8 percent (16,985 offenders) had 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-

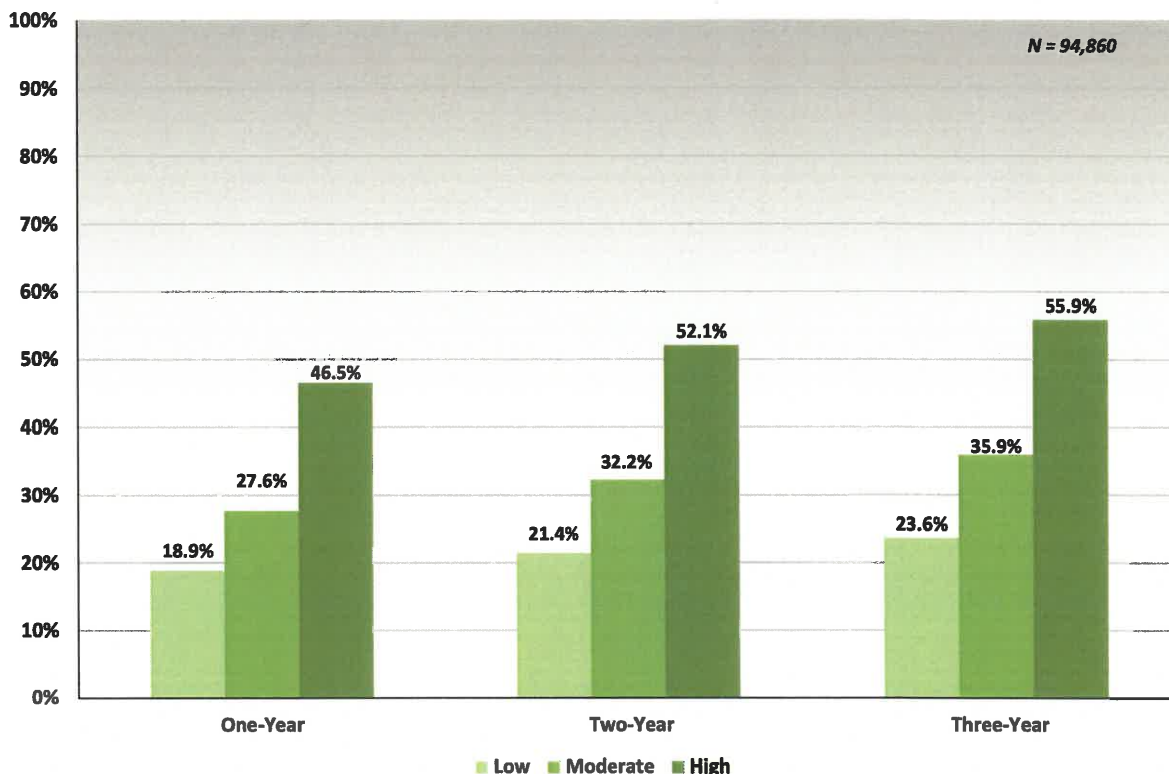
prison rate between FY 2009-10 and FY 2010-11 (73 percent and 58 percent, respectively), followed by EOP offenders with a 9.4 percentage point decrease (69.6 percent and 60.3 percent, respectively), and CCCMS offenders with an 8.6 percentage point decrease (59.3 percent and 50.8 percent, respectively). 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%	1,460	60.3%
Mental Health Crisis Bed	119	59	49.6%	68	57.1%	69	58.0%
Correctional Clinical Case Management System	14,385	6,054	42.1%	6,764	47.0%	7,301	50.8%
None/No Mental Health Code	78,705	27,392	34.8%	31,082	39.5%	33,794	42.9%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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

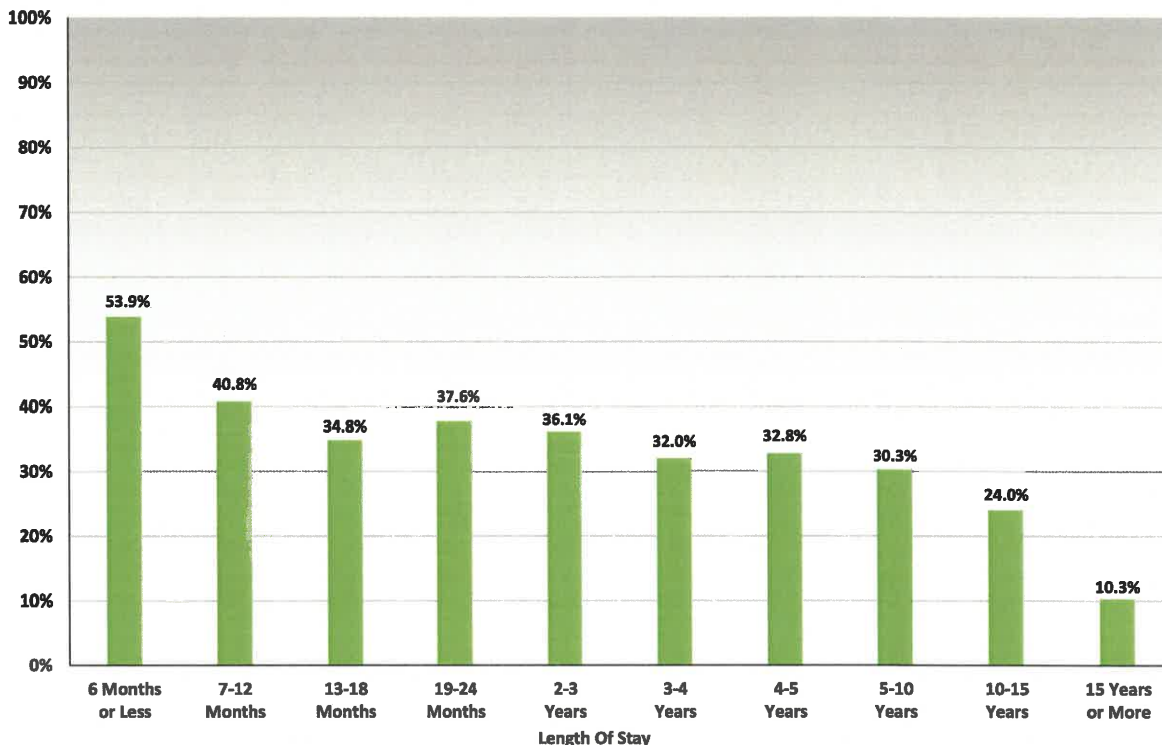
percent and 23.6 percent, respectively). The rate for offenders without a CSRA score decreased by 8.6 percentage points between FY 2009-10 and FY 2010-11 (43.1 percent and 34.5 percent, respectively).

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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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%	22,653	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%	2,099	37.6%
2 - 3 years	5,350	1,325	24.8%	1,668	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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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

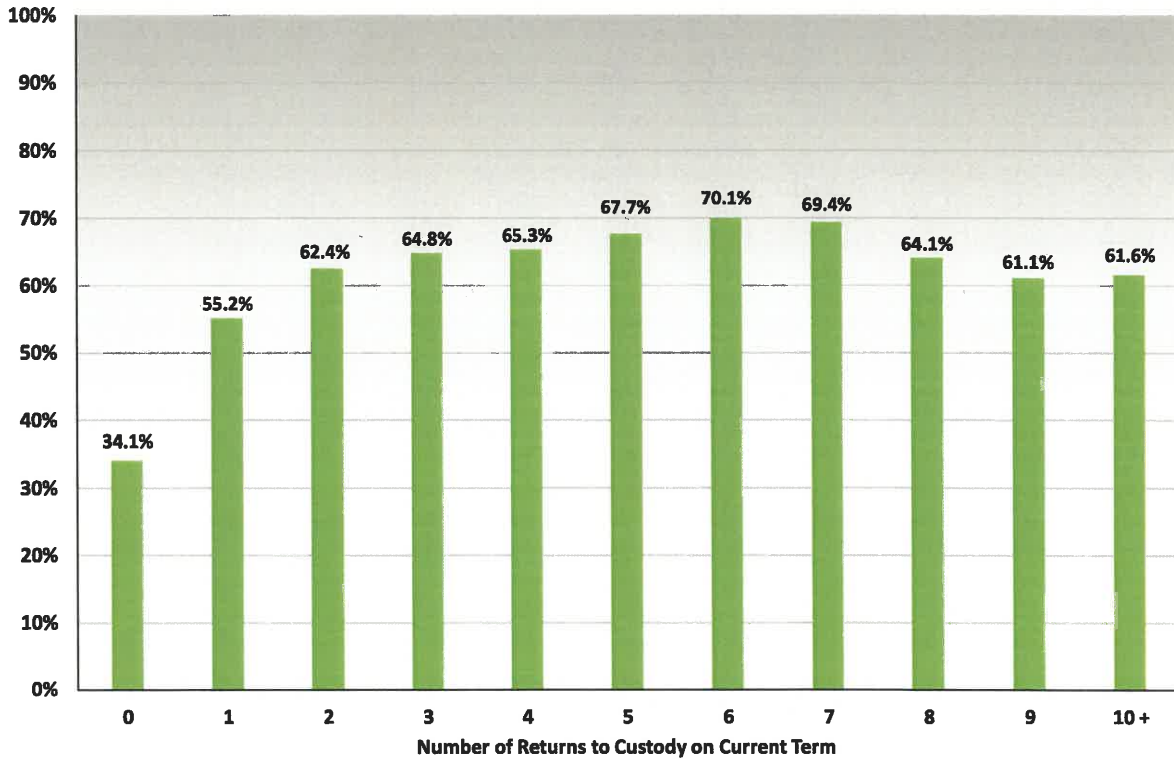


Figure 16 and Table 19 show return-to-prison rates by the number of times an offender returned to a CDCR adult institution on their current term, prior to their release. Offenders with no returns (zero returns), represent offenders released for the first time (i.e. these individuals have no prior returns 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

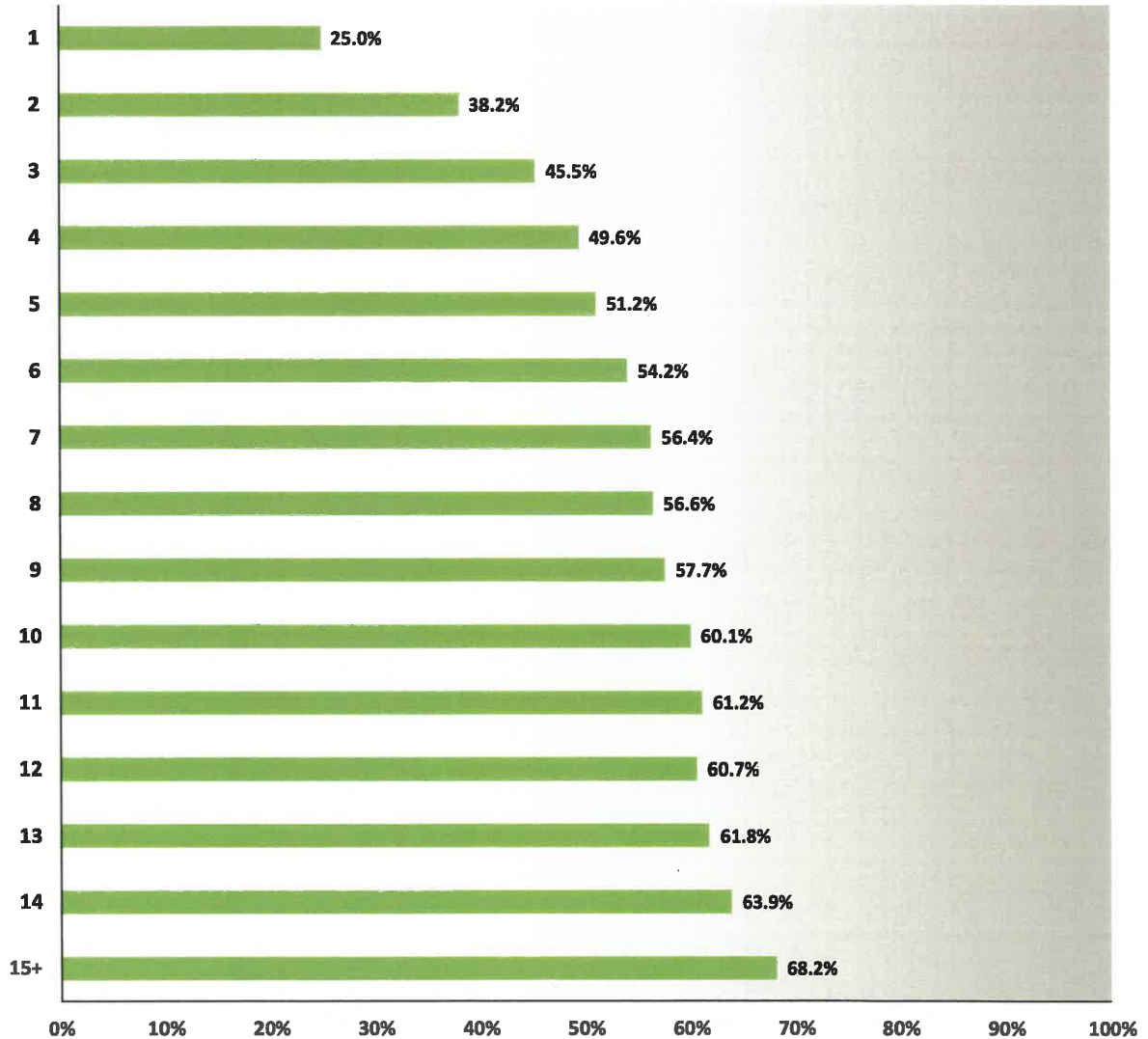
points). The three-year return-to-prison rate remained the same at 69.4 percent for offenders with seven RTCs.

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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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.

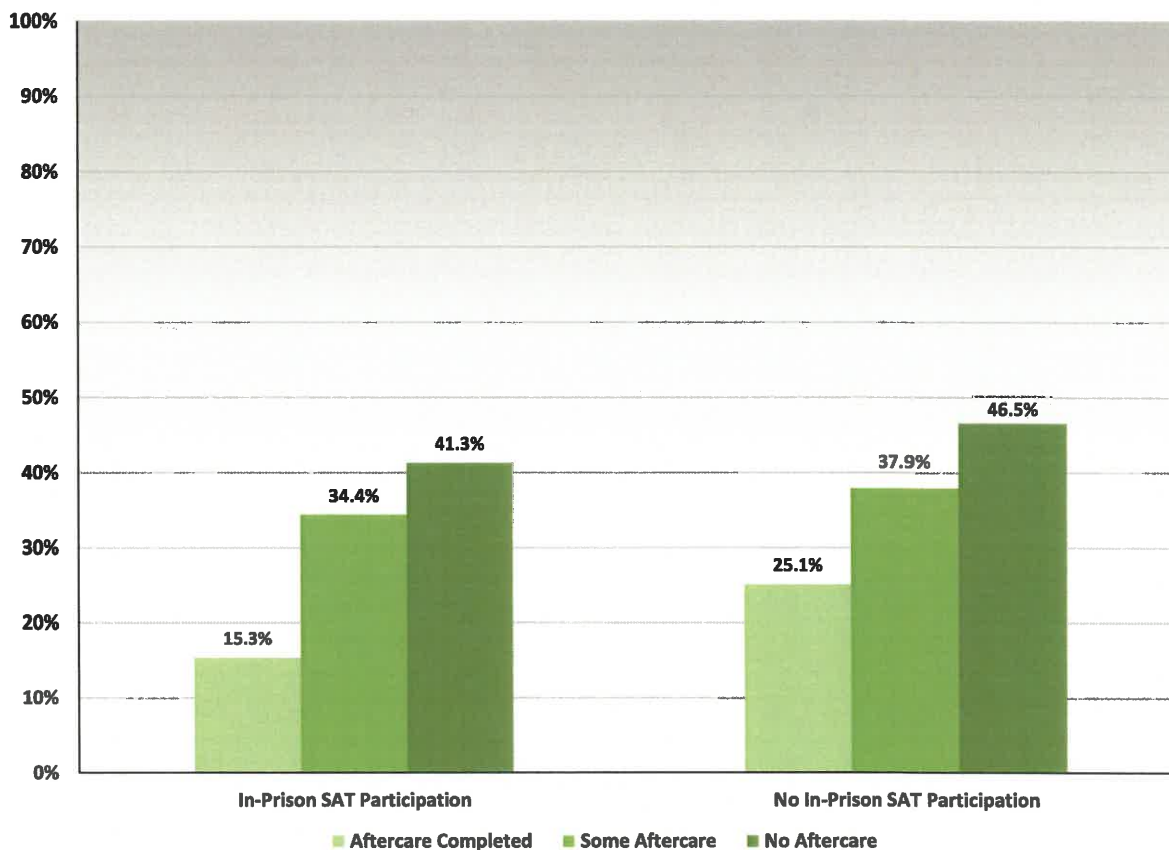
Between FY 2009-10 and FY 2010-11, the three-year return-to-prison rate decreased across every category of stays (Appendix C). The largest decrease (12.5 percentage points) between the two fiscal years was observed at offenders with 14 stays (76.4 percent and 63.9 percent, respectively). The smallest 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	5,303	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	3,734	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%	1,699	60.1%
11	2,296	1,216	53.0%	1,325	57.7%	1,405	61.2%
12	2,072	1,093	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). SASCAs 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.

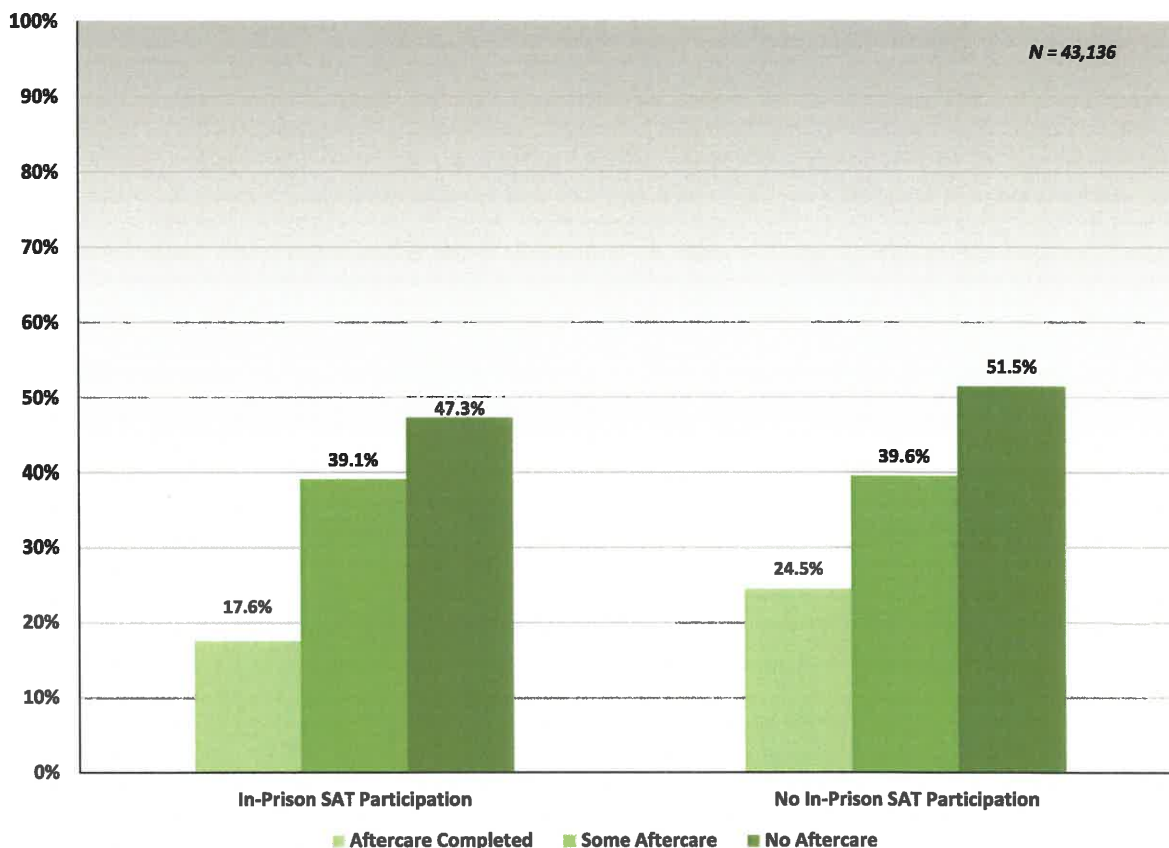
Lower return-to-prison rates among offenders who receive any form of in-prison SAT or aftercare demonstrates the value of these programs. The most substantial impact of SAT on reoffending is seen in offenders who receive in-prison SAT and complete aftercare; the rate for these offenders (15.3 percent) 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
In-Prison SAT Participation							
Completed Aftercare	919	58	6.3%	98	10.7%	141	15.3%
Some Aftercare	858	210	24.5%	250	29.1%	295	34.4%
No Aftercare	4,064	1,280	31.5%	1,500	36.9%	1,678	41.3%
Subtotal	5,841	1,548	26.5%	1,848	31.6%	2,114	36.2%
No In-Prison SAT Participation							
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%
Subtotal	89,849	33,262	37.0%	37,483	41.7%	40,547	45.1%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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
In-Prison SAT Participation/Had Substance Abuse Need							
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%
Subtotal	3,128	943	30.1%	1,119	35.8%	1,268	40.5%
No In-Prison SAT Participation/Had Substance Abuse Need							
Completed Aftercare	2,248	391	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%
Subtotal	40,008	16,356	40.9%	18,322	45.8%	19,769	49.4%
No Assessment/No Substance Abuse Need Identified							
	52,554	17,511	33.3%	19,890	37.8%	21,624	41.1%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

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

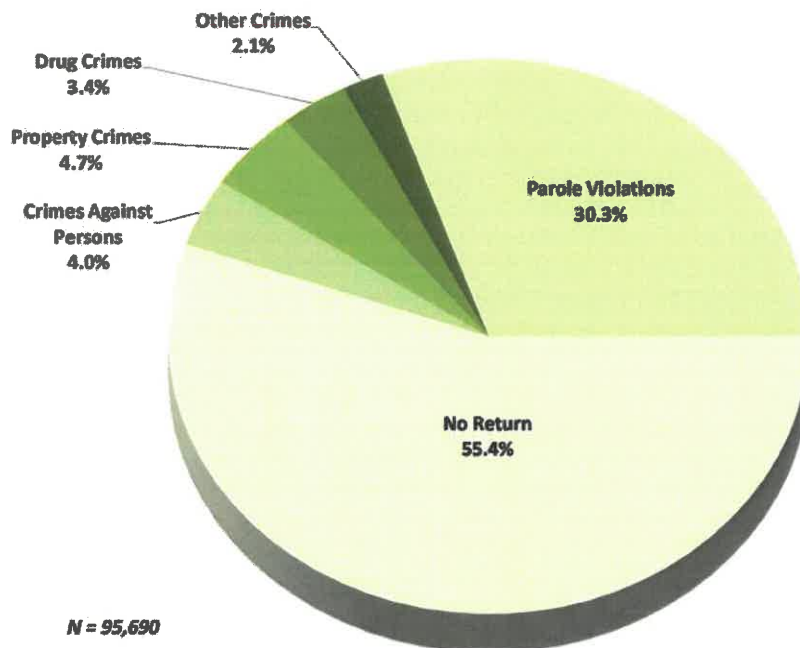


Figure 20 and Table 23 present outcomes for the 95,690 offenders released from prison during FY 2010-11. Of the 95,690 offenders released, 30.3 percent of the release cohort (29,028 offenders) returned to prison for parole violations and nearly 15 percent of the release cohort (14.2 percent or 13,633 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.

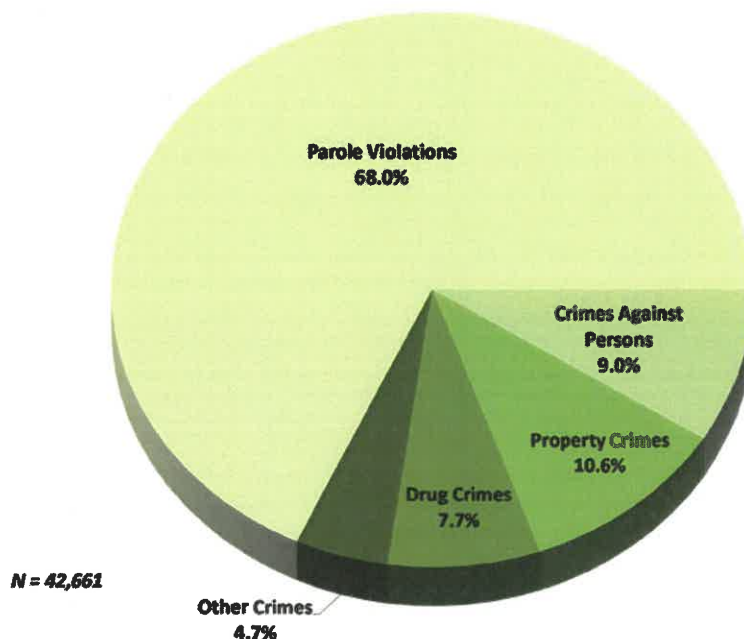
Between FY 2008-09 and FY 2009-10, crimes against persons increased by less than one percentage point (from 3.5 percent to 3.6 percent of the release cohorts, respectively). The increase between FY 2009-10 and FY 2010-11 was also slight; from 3.6 percent to 4 percent of the release cohorts. The decrease 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%
Total	112,877	100.0%	104,981	100.0%	95,690	100.0%

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%
Total	42,661	100.0%

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.⁷ 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.⁸ 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.

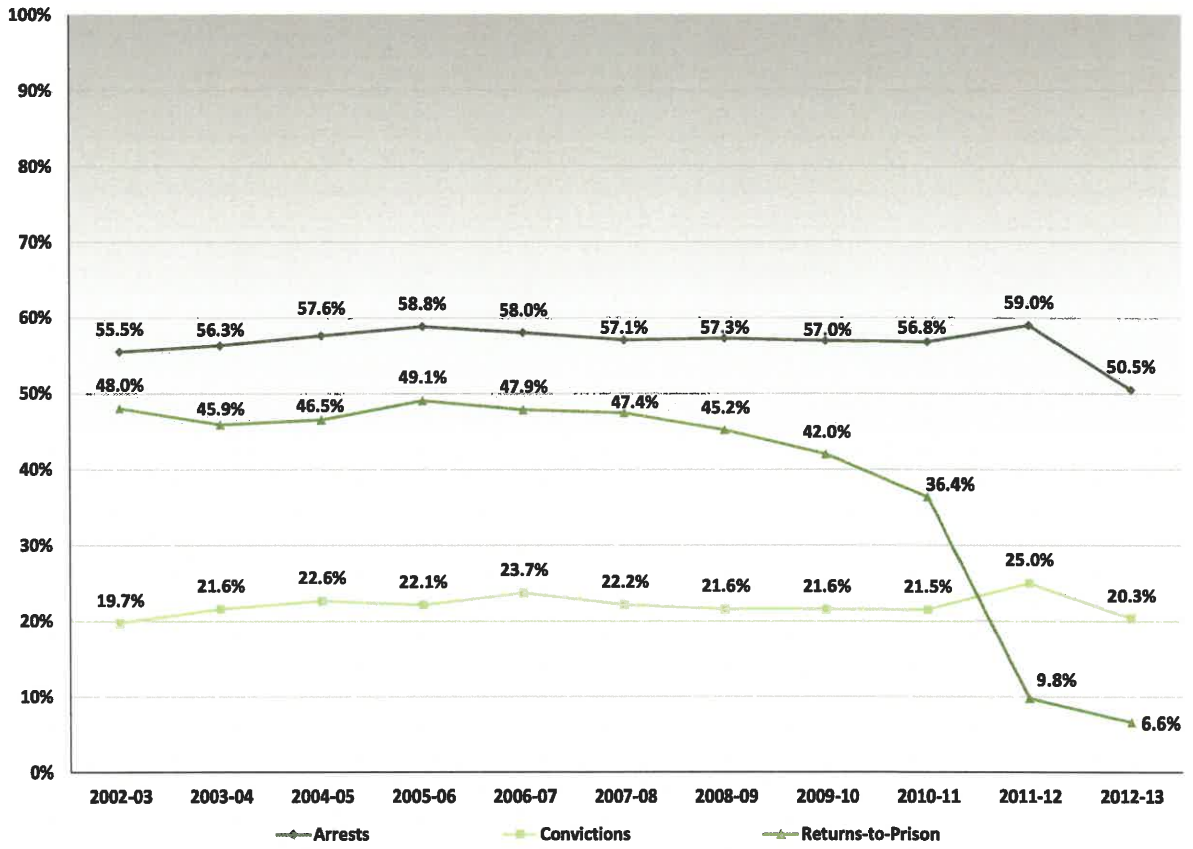
Similar patterns are found in the two-year arrest, conviction, and return-to-prison rates, although less pronounced. Between the FY 2009-10 and FY 2010-11 release cohorts, the two-year return-to-prison rate decreased 11 percentage points, while the two-year arrest and conviction rates slightly increased (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

⁷ 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.

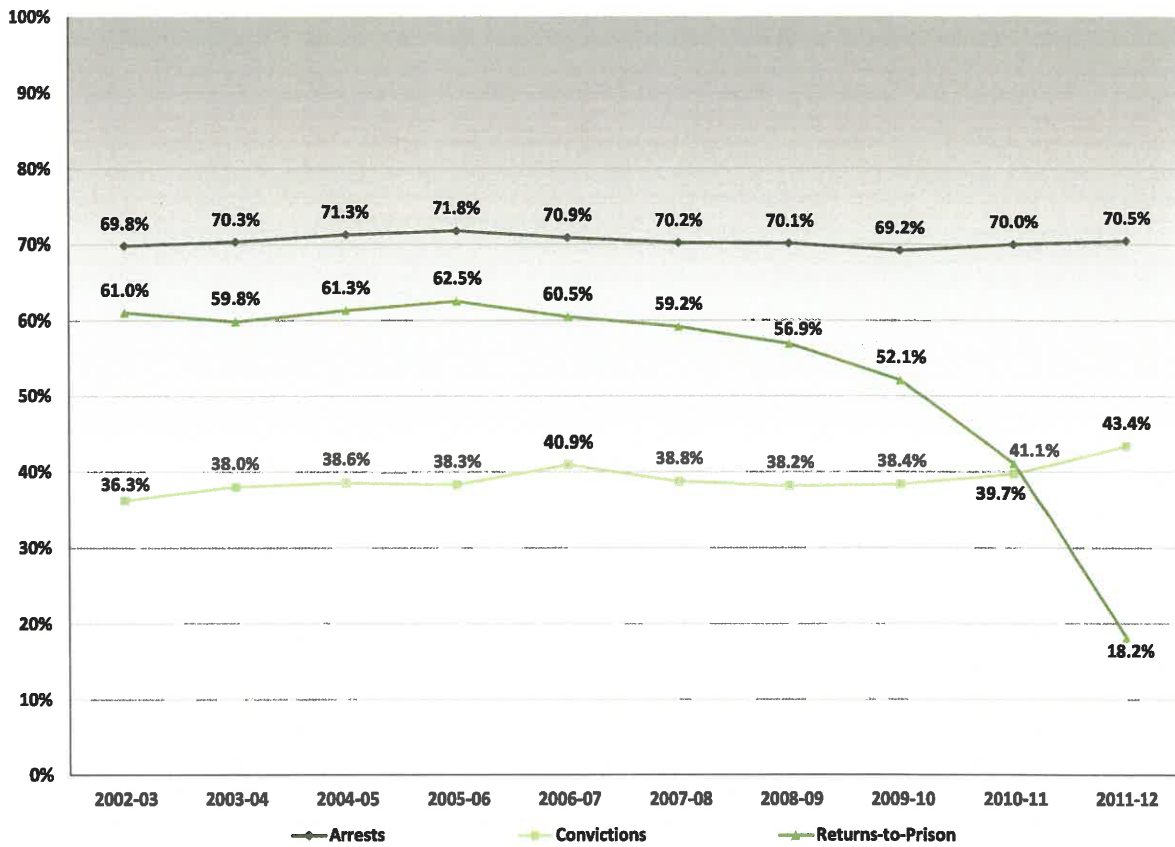
⁸ Supplemental recidivism rates are "frozen" at three years, meaning the three-year follow-up period is complete and no further analyses are performed. Reported one-year and two-year rates may fluctuate slightly, as the data used in subsequent reporting years will likely increase, particularly for arrests 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).

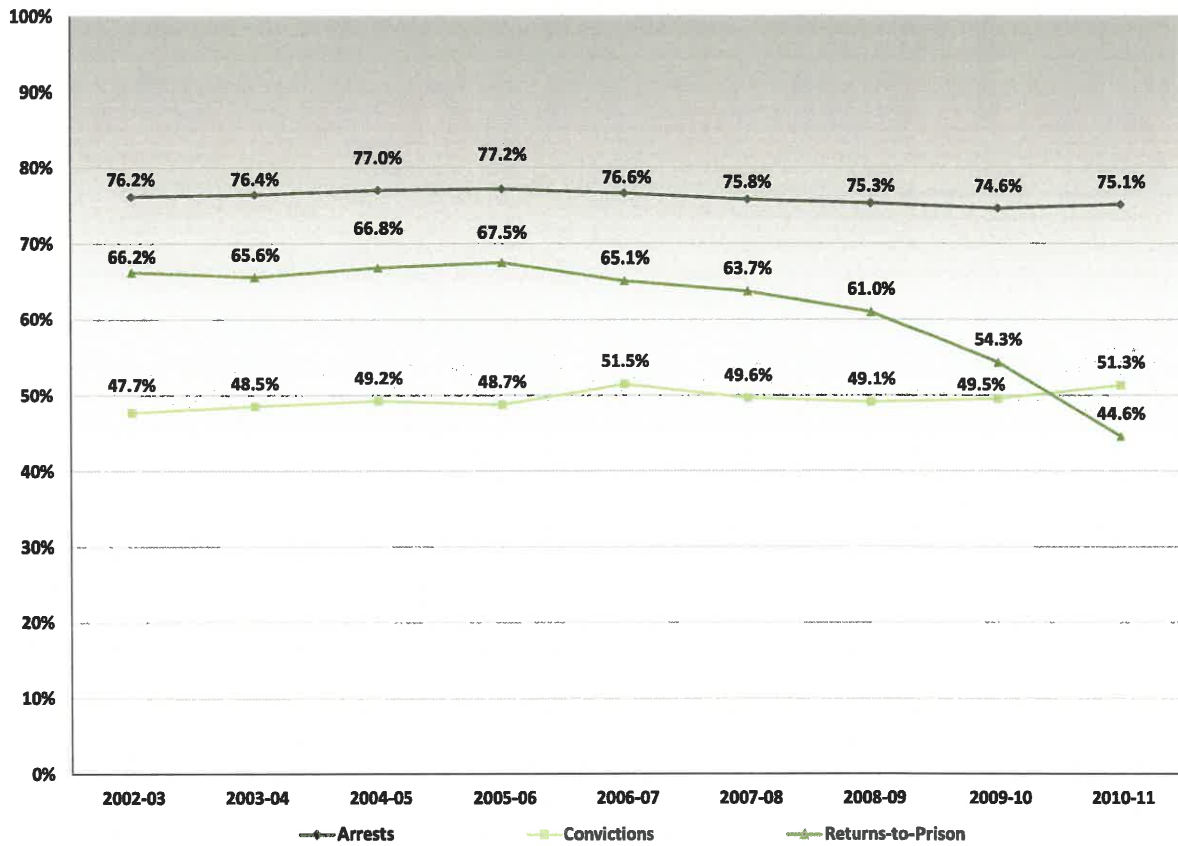
One-Year Supplemental Recidivism Rates by Fiscal Year



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)

		Arrests*					
		One-Year		Two-Year		Three-Year	
Fiscal Year*	Number Released	Number Arrested	Arrest Rate	Number Arrested	Arrest Rate	Number Arrested	Arrest Rate
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

		Convictions*					
		One-Year		Two-Year		Three-Year	
Fiscal Year	Number Released	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate	Number Convicted	Conviction Rate
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%	54,713	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%
Total	103,867	100.0%	94,888	100.0%

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
Release Type									
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)
Gender									
Male	93,937	86,571	(7,366)	52,891	40,193	(12,698)	56.3%	46.4%	(9.9)
Female	11,044	9,119	(1,925)	4,131	2,468	(1,663)	37.4%	27.1%	(10.3)
Age at Release									
18 - 19	643	744	101	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	20,661	18,550	(2,111)	12,190	9,052	(3,138)	59.0%	48.8%	(10.2)
30 - 34	17,436	16,401	(1,035)	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	12,390	(1,550)	7,343	5,342	(2,001)	52.7%	43.1%	(9.6)
45 - 49	12,010	10,716	(1,294)	6,127	4,543	(1,584)	51.0%	42.4%	(8.6)
50 - 54	7,177	6,865	(312)	3,337	2,705	(632)	46.5%	39.4%	(7.1)
55 - 59	3,132	2,986	(146)	1,311	1,032	(279)	41.9%	34.6%	(7.3)
60 and over	1,737	1,844	107	662	573	(89)	38.1%	31.1%	(7.0)
Race/Ethnicity									
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	25,238	(2,369)	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	37,190	(3,217)	20,060	15,321	(4,739)	49.6%	41.2%	(8.4)
Other	3,217	3,008	(209)	1,565	1,159	(406)	48.6%	38.5%	(10.1)
County of Parole									
Fresno	4,382	3,699	(683)	2,911	2,184	(727)	66.4%	59.0%	(7.4)
San Joaquin	2,655	2,363	(292)	1,794	1,358	(436)	67.6%	57.5%	(10.1)
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	3,434	(805)	62.3%	53.4%	(8.9)
Kern	3,953	3,681	(272)	2,509	1,944	(565)	63.5%	52.8%	(10.7)
Riverside	6,718	6,201	(517)	4,127	3,237	(890)	61.4%	52.2%	(9.2)
Sacramento	6,248	5,698	(550)	3,359	2,739	(620)	53.8%	48.1%	(5.7)
San Bernardino	8,505	8,018	(487)	5,087	3,836	(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	26,358	24,904	(1,454)	11,288	8,032	(3,256)	42.8%	32.3%	(10.6)
All Others	21,403	19,475	(1,928)	12,647	9,563	(3,084)	59.1%	49.1%	(10.0)
Commitment Offense Categories									
Property Crimes	34,899	31,756	(3,143)	20,278	15,048	(5,230)	58.1%	47.4%	(10.7)
Crimes Against Persons	28,260	28,732	472	15,672	13,196	(2,476)	55.5%	45.9%	(9.5)
Other Crimes	12,461	10,757	(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
Offense									
Escape	78	45	(33)	48	29	(19)	61.5%	64.4%	2.9
Other Sex	2,683	2,736	53	1,867	1,763	(104)	69.6%	64.4%	(5.1)
Vehicle Theft	5,511	4,413	(1,098)	3,762	2,475	(1,287)	68.3%	56.1%	(12.2)
Sodomy	33	34	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	4,344	(493)	2,968	2,234	(734)	61.4%	51.4%	(9.9)
Burglary 1st	3,468	3,345	(123)	2,042	1,690	(352)	58.9%	50.5%	(8.4)
Possession Weapon	5,892	5,183	(709)	3,544	2,546	(998)	60.1%	49.1%	(11.0)
Petty Theft With Prior	5,135	4,672	(463)	3,063	2,289	(774)	59.6%	49.0%	(10.7)
Controlled Substance Possession	15,319	12,439	(2,880)	8,651	6,032	(2,619)	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	9,234	9,060	(174)	5,224	4,253	(971)	56.6%	46.9%	(9.6)
Other Property	1,368	1,282	(86)	748	599	(149)	54.7%	46.7%	(8.0)
Assault w/ Deadly Weapon	6,344	6,469	125	3,556	3,018	(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	343	3,115	2,635	(480)	56.6%	45.1%	(11.5)
Burglary 2nd	8,033	7,943	(90)	4,542	3,548	(994)	56.5%	44.7%	(11.9)
Penetration With Object	120	100	(20)	55	44	(11)	45.8%	44.0%	(1.8)
Grand Theft	3,699	3,393	(306)	1,886	1,438	(448)	51.0%	42.4%	(8.6)
Controlled Substance Other	634	478	(156)	353	202	(151)	55.7%	42.3%	(13.4)
Rape	450	432	(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	2,786	2,337	(449)	1,231	786	(445)	44.2%	33.6%	(10.6)
Marijuana Sale	446	384	(62)	189	128	(61)	42.4%	33.3%	(9.0)
Forgery/Fraud	2,848	2,364	(484)	1,267	775	(492)	44.5%	32.8%	(11.7)
Kidnapping	225	173	(52)	86	56	(30)	38.2%	32.4%	(5.9)
Hashish Possession	68	70	2	38	22	(16)	55.9%	31.4%	(24.5)
Marij. Possess For Sale	1,172	1,061	(111)	485	326	(159)	41.4%	30.7%	(10.7)
Controlled Substance Possession For Sale	8,466	7,412	(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	473	(70)	195	132	(63)	35.9%	27.9%	(8.0)
Controlled Substance Manufacturing	321	134	(187)	93	32	(61)	29.0%	23.9%	(5.1)
Marijuana Other	149	130	(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	241	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)
Sentence Type									
Second Strikers (Determinate Sentencing Law)	13,353	12,900	(453)	8,107	6,681	(1,426)	60.7%	51.8%	(8.9)
Determinate Sentencing Law	91,350	82,392	(8,958)	48,889	35,955	(12,934)	53.5%	43.6%	(9.9)
Lifers (Indeterminate Sentencing Law)	278	398	120	26	25	(1)	9.4%	6.3%	(3.1)
Sex Registration Requirement									
Yes	8,471	8,989	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)	53.4%	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
Serious and/or Violent Offense									
Serious	13,804	13,268	(536)	7,869	6,418	(1,451)	57.0%	48.4%	(8.6)
Violent	9,978	10,653	675	4,902	4,091	(811)	49.1%	38.4%	(10.7)
Non-Serious/Non-Violent	81,199	71,769	(9,430)	44,251	32,152	(12,099)	54.5%	44.8%	(9.7)
Mental Health Status									
Department of Mental Health	3	59	56	3	37	34	N/A	62.7%	N/A
Enhanced Outpatient Program	5,908	2,422	(3,486)	4,114	1,460	(2,654)	69.6%	60.3%	(9.4)
Mental Health Crisis Bed	37	119	82	27	69	42	73.0%	58.0%	(15.0)
Correctional Clinical Case Management System	14,332	14,385	53	8,505	7,301	(1,204)	59.3%	50.8%	(8.6)
None/No Mental Health Code	84,701	78,705	(5,996)	44,373	33,794	(10,579)	52.4%	42.9%	(9.5)
CSRA Risk Score									
Low	18,700	17,421	(1,279)	5,679	4,117	(1,562)	30.4%	23.6%	(6.7)
Moderate	28,688	25,108	(3,580)	12,833	9,023	(3,810)	44.7%	35.9%	(8.8)
High	56,442	52,331	(4,111)	38,014	29,235	(8,779)	67.4%	55.9%	(11.5)
N/A	1,151	830	(321)	496	286	(210)	43.1%	34.5%	(8.6)
Length of Stay									
0 - 6 Months	46,041	42,018	(4,023)	28,932	22,653	(6,279)	62.8%	53.9%	(8.9)
7 - 12 Months	29,384	25,592	(3,792)	14,968	10,441	(4,527)	50.9%	40.8%	(10.1)
13 - 18 Months	9,792	9,056	(736)	4,429	3,155	(1,274)	45.2%	34.8%	(10.4)
19 - 24 Months	5,972	5,579	(393)	2,803	2,099	(704)	46.9%	37.6%	(9.3)
2 - 3 Years	5,567	5,350	(217)	2,565	1,931	(634)	46.1%	36.1%	(10.0)
3 - 4 Years	2,519	2,567	48	1,172	821	(351)	46.5%	32.0%	(14.5)
4 - 5 Years	1,709	1,583	(126)	758	519	(239)	44.4%	32.8%	(11.6)
5 - 10 Years	2,677	2,552	(125)	1,028	772	(256)	38.4%	30.3%	(8.2)
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%	10.3%	(6.8)
Prior Returns to Custody on Current Term									
None	61,806	58,057	(3,749)	27,251	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%	(11.3)
2	9,612	7,997	(1,615)	6,723	4,994	(1,729)	69.9%	62.4%	(7.5)
3	6,358	5,116	(1,242)	4,521	3,316	(1,205)	71.1%	64.8%	(6.3)
4	4,055	3,412	(643)	2,915	2,229	(686)	71.9%	65.3%	(6.6)
5	2,484	2,230	(254)	1,770	1,509	(261)	71.3%	67.7%	(3.6)
6	1,541	1,380	(161)	1,105	967	(138)	71.7%	70.1%	(1.6)
7	909	889	(20)	631	617	(14)	69.4%	69.4%	0.0
8	525	538	13	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	206	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 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
Number of CDCR Stays Ever									
1	29,136	26,426	(2,710)	9,746	6,615	(3,131)	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%	(11.3)
4	8,583	7,658	(925)	5,123	3,800	(1,323)	59.7%	49.6%	(10.1)
5	7,048	6,376	(672)	4,359	3,265	(1,094)	61.8%	51.2%	(10.6)
6	5,992	5,303	(689)	3,851	2,872	(979)	64.3%	54.2%	(10.1)
7	4,897	4,432	(465)	3,282	2,501	(781)	67.0%	56.4%	(10.6)
8	3,999	3,734	(265)	2,701	2,113	(588)	67.5%	56.6%	(11.0)
9	3,530	3,188	(342)	2,381	1,840	(541)	67.5%	57.7%	(9.7)
10	2,906	2,826	(80)	2,039	1,699	(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	1,613	(84)	1,240	997	(243)	73.1%	61.8%	(11.3)
14	1,344	1,409	65	1,027	900	(127)	76.4%	63.9%	(12.5)
15 +	6,303	6,338	35	4,898	4,320	(578)	77.7%	68.2%	(9.5)
Total	104,981	95,690	(9,291)	57,022	42,661	(14,361)	54.3%	44.6%	(9.7)

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%	2,997	48.3%	3,237	52.2%

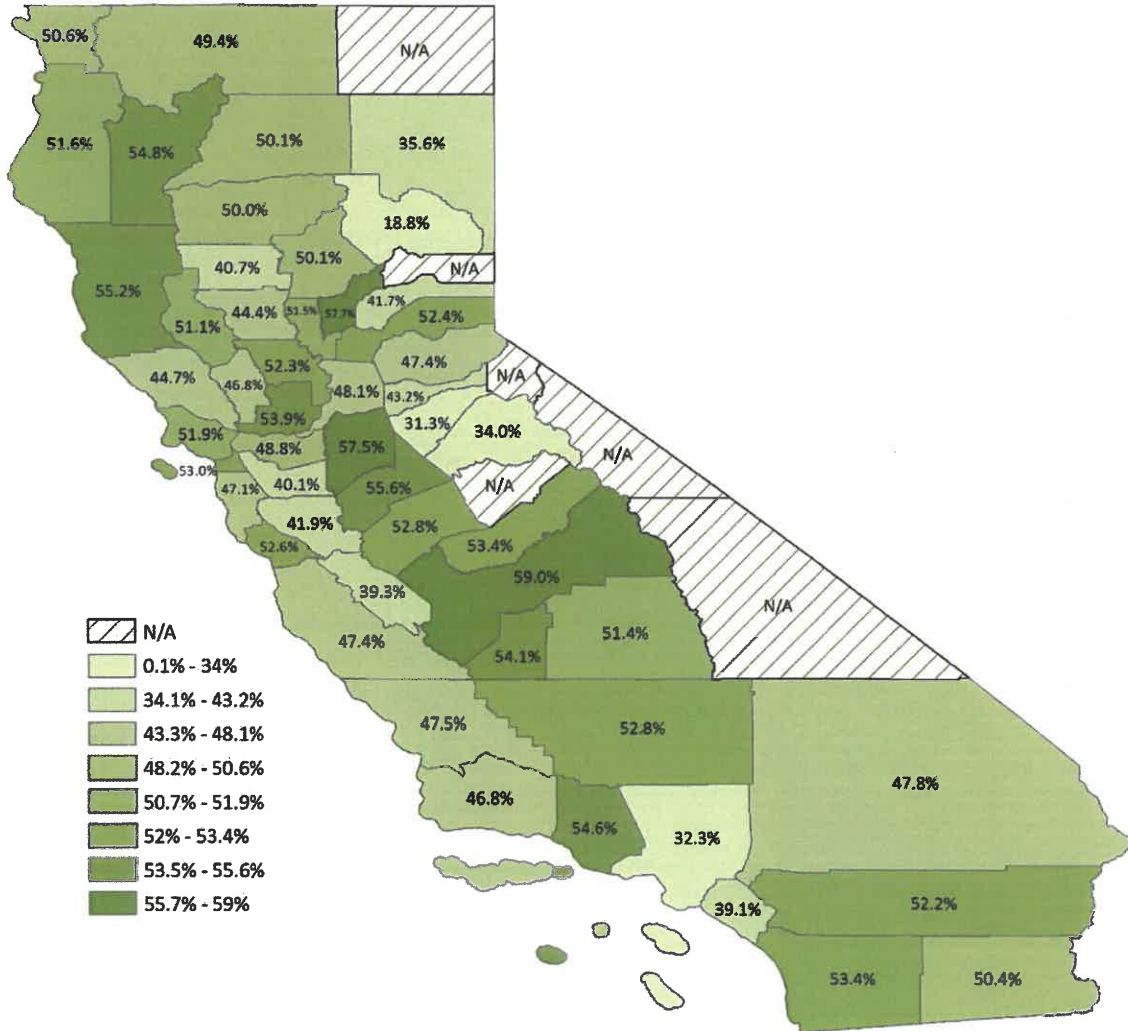
Appendix D

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%
Total	95,690	34,810	36.4%	39,331	41.1%	42,661	44.6%

Appendix D

Three-Year Return-to-Prison Rates by County of Parole



*County names and rates are provided on pages 64 and 65 of this report.

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.

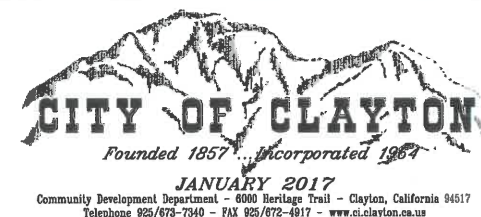
Violent Felony Offenses

Violent felony offenses are specified in Penal Code Section 667.5(c).

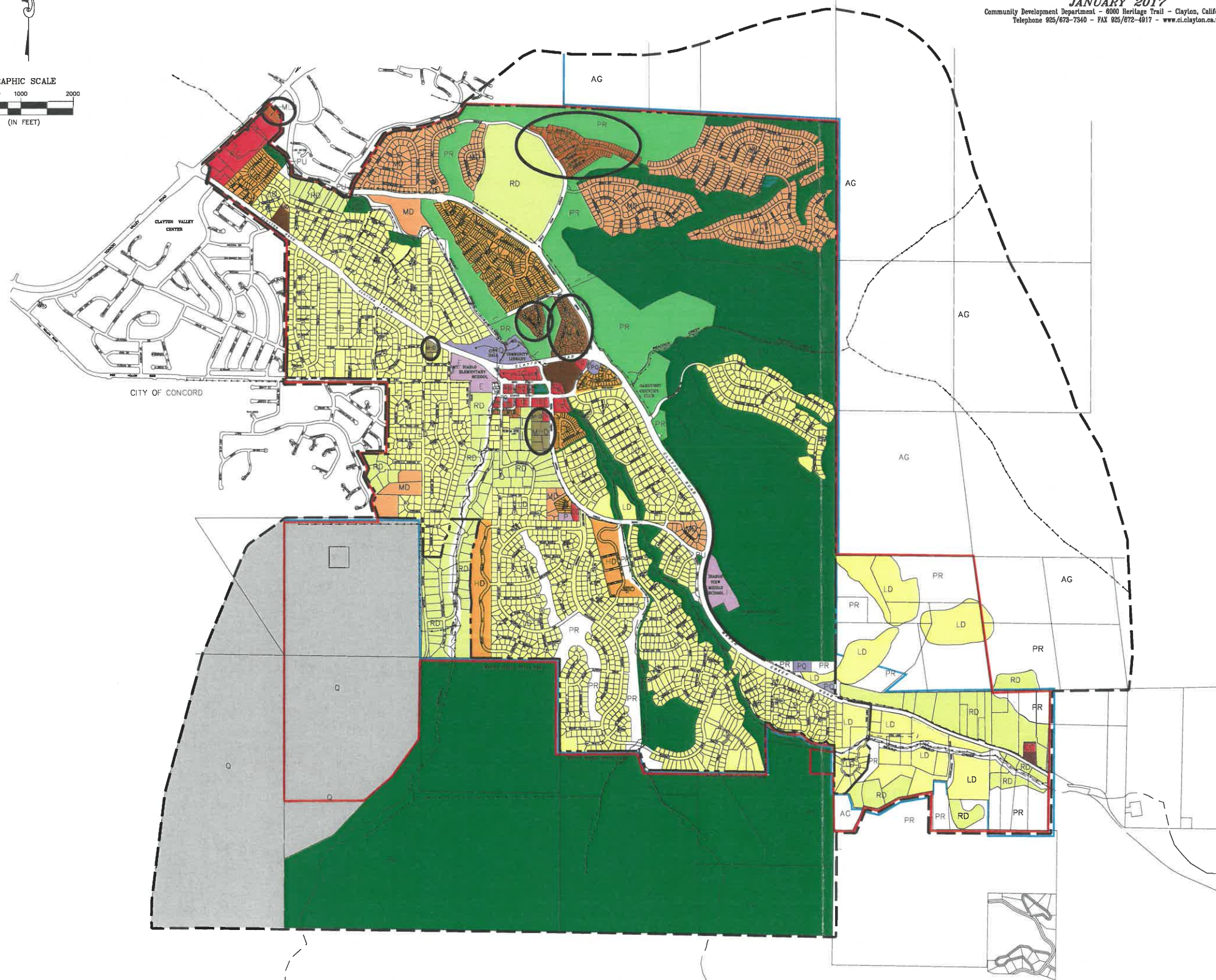
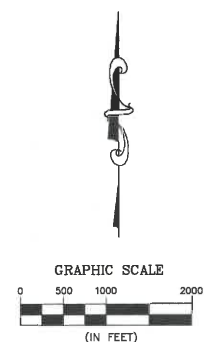
**California Department of Corrections and Rehabilitation
Office of Research, Research and Evaluation Branch**

On the internet at:

http://www.cdcr.ca.gov/adult_research_branch



GENERAL PLAN DIAGRAM



LEGEND		
	RESIDENTIAL	UNITS/GROSS ACRE
[RD]	RURAL ESTATE	(0 TO 1.0)
[LD]	SINGLE FAMILY LOW DENSITY	(1.1 TO 3)
[MD]	SINGLE FAMILY MEDIUM DENSITY	(3.1 TO 5)
[HD]	SINGLE FAMILY HIGH DENSITY	(5.1 TO 7.5)
[M-LD]	MULTIFAMILY LOW DENSITY	(7.6 TO 10)
[M-MD]	MULTIFAMILY MEDIUM DENSITY	(10.1 TO 15)
[M-HD]	MULTIFAMILY HIGH DENSITY	(20)
[I-D]	INSTITUTIONAL DENSITY	(7.6 TO 20)
COMMERCIAL		
[TC]	TOWN CENTER	
[KC]	KIRKER CORRIDOR	
[EC]	CONVENIENCE COMMERCIAL	
COMMUNITY FACILITIES		
[CC]	CULTURAL CENTER	
[PQ]	PUBLIC/QUASI-PUBLIC	
[I]	INTERMEDIATE SCHOOL	
[E]	ELEMENTARY SCHOOL	
[P]	PRIVATE SCHOOL	
OPEN SPACE		
[PR]	PRIVATE OPEN SPACE	
[AG]	PUBLIC PARK/OPEN SPACE/ OPEN SPACE AND RECREATIONAL	
[AG]	AGRICULTURE	
[Q]	QUARRY	
[PR]	PRIVATE OPEN SPACE (GOLF COURSE)	
[---]	TRAILS	
BOUNDARIES		
[---]	CITY LIMITS	
[---]	SPHERE OF INFLUENCE	
[---]	URBAN LIMIT LINE	
[---]	PLANNING AREA	

DATE	RESOLUTION NUMBER	AMENDMENT
7/17/85	22-85	ADOPTION OF CLAYTON 2000 GENERAL PLAN
5/6/87	21-87	KELLER RANCH
3/2/88	13-88	GREYSTONE ESTATES
4/17/90	25-90	OAKWOOD SUBDIVISION
6/15/93	43-93	DOUGLAS ROAD
2/21/95	06-95	MARSH CREEK CIRCLE
6/28/95	43-95	MARSH CREEK ROAD SPECIFIC PLAN
12/1/98	64-98	DIABLO VILLAGE
7/18/00	49-2000	MARSH CREEK ROAD/CLAYTON ROAD
6/1/04	23-2004	DOWNTOWN PARK
7/19/05	03-05	CITY HALL / COMMUNITY LIBRARY
4/5/05	13-2005	OAK CREEK CANYON
12/21/04	63-2004	DIABLO POINTE
2/6/07	05-2007	TOWN CENTER AND VICINITY
4/3/12	11-2012	OLD MARSH CREEK ROAD/CLAYTON ROAD

FIG. JAN 25, 2017 09:25 A. NUMBER: 000004. PLAN: GENERAL PLAN. SHEET: 01. JAN 2017.09