

“The Lynchpin To Parole Reform: A Case Study of Two Parolee Housing Proposals in
Redlands, California”

Benjamin Singerman
Professor Joan Petersilia
California Prison Reform
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PART I: THE ISSUE OF PAROLEE HOUSING

1. Parolee Housing Should Be Supportive, Secure, and Efficient

The challenge of designing supportive, secure, and efficient housing for recently released parolees is the key to effectively reforming California's parole system. Parolees require supportive parolee housing so that they will not re-offend, and can successfully reintegrate into their communities. Communities require secure parolee housing, so that those who live near parolees will not suffer from increased crime and devaluation of their properties. State and local governments require efficient parolee housing so that they can easily and affordably keep track of parolees' whereabouts. Parolee housing has been called the "lynchpin that holds the reintegration process together."¹ If all three needs – support, security, and efficiency – can be met, many of the problems that have recently plagued California's parole system will be significantly reduced.

2. California's Parole System: A Billion Dollar Failure

In recent years, the California parole system has come under a great deal of criticism for its failings. In November 2003, the government's watchdog Little Hoover Commission labeled California's parole system a "billion-dollar failure."² According to the Commission, the goals of parole are not being realized.³

¹ JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* 219 (2005) (quoting Katherine H. Bradley, Noel C. Richardson, R. B. Michael Oliver, and Elspeth M. Slayter, "No Place Like Home: Housing and the Ex-Prisoner" Policy Brief. Boston: Community Resources for Justice. (2001)).

² LITTLE HOOVER COMMISSION, *BACK TO THE COMMUNITY: SAFE AND SOUND PAROLE POLICIES*. 1 <http://www.lhc.ca.gov/lhcdir/172/execsum172.pdf>. (2003).

³ *Id.*, at 56.

California's parole system is not secure, which jeopardizes public safety. For example, in 2000, California Department of Corrections lost track of about 25% of the 117,000 parolees under its supervision, compared to a national average abscondence rate of only 9%.⁴

California's recidivism rate is also far above the national average: In California, 67% of prison commitments are returning parolees, compared to 35% nationally.⁵ Only 21% of California parolees successfully complete parole, compared to 42% nationally.⁶ Last year, California prisons held 165,000 inmates, of whom 58,725 were paroled felons who were re-incarcerated for violating parole.⁷ These statistics suggest that California's current parole system does not offer parolees the support they need to reintegrate successfully into their communities.

Nor is California's current parole system efficient. California spends about \$900 million a year on parolees who violate their parole and are sent back to prison, nearly one fifth of the \$5 billion spent annually on the entire California prison system.⁸ If recidivism and re-incarceration could be reduced by implementing high-quality parole supervision, the state would realize substantial savings even if the cost of supervising each parolee went up.

Shortly after the Little Hoover Commission report was released, Governor Schwarzenegger signed an agreement on his first day in office to reform the California

⁴ Id.

⁵ Id, at i.

⁶ Little Hoover Commission, "Commission Urges Parole Reforms," press release, (Nov. 13, 2003).

⁷ Mark Martin, *California's System For Parolees Called Ineffective Revolving Door*, San Francisco Chronicle, Sep 10, 2005

⁸ Id.

parole system.⁹ The agreement settled a class action lawsuit over how California treats its parole violators.¹⁰ However, progress thus far has been fitful. In April 2005, the state ended three programs under the settlement that diverted parole violators to halfway houses, drug treatment, or electronic monitoring instead of returning them to prison; the program was considered ineffective because it focused on parole violators instead of recently released parolees who had not re-offended.¹¹ Additionally, California's budget crisis forced the governor to propose a state budget that cut \$95 million from inmate and parolee rehabilitation programs.¹² This is unfortunate, because high-quality parole supervision that effectively reduces recidivism is expensive in the short-term, even though it ultimately saves money through lower re-incarceration rates.

3. Why Housing Matters So Much

An essential ingredient to solving the challenges faced by the California parole system is to find all parolees supportive, secure, and efficient housing. When they are released from prison, about 97% of California inmates are placed on supervised parole.¹³ Upon their release, they are each given \$200 and a ride to the nearest bus stop.¹⁴ Their most immediate concern upon release is finding shelter.¹⁵

Most California prisoners are released without the benefit of a “step down” process to help them successfully transition back into their communities.¹⁶ This is

⁹ Dan Thompson, *No Contempt, But Judge Scolds Officials For Parole Programs*, San Diego Union-Tribune, May 12, 2005.

¹⁰ Judy Campbell, *Parole Reform in Court*, The California Report, May 12, 2005.

¹¹ *Id.*

¹² *Cop-Out On Parole Reform*, Los Angeles Times, Editorial, May 4, 2005.

¹³ Martin, *supra*, note 7.

¹⁴ *Id.*

¹⁵ See TRAVIS, *supra*, note 1.

¹⁶ LITTLE HOOVER, *supra*, note 2, at 57.

unfortunate, because “[p]risoners should ideally make the transition from prison to the community in a gradual, closely supervised process.”¹⁷

More specifically, to be effective, the supervision of parolees must be structured, be intensive, maintain firm accountability for program participation, and connect the offenders with pro-social networks and activities.¹⁸ This allows them to reintegrate with their personal relationships, employment, and home communities in manageable steps, and allows the authorities the chance to test the parolees’ progress.¹⁹ A comprehensive RAND study of 9 programs in 14 states found that when parolees and probationers had at least two contacts a week with their probation or parole officers and participated in pro-social activities such as education, work, or community service, their recidivism rates dropped as much as 10 to 20% compared to other offenders.²⁰

“I was lucky because I had a house, a supportive family, and a job waiting for me when I got out of prison,” Tim O’Hearn, a parolee told me in an interview. “Most guys don’t have that, which is why they fall back into the same old lifestyle and get into trouble again. Getting them into programs is the only way to give them the kind of support and structure that helped me succeed.”

Instead, most California parolees are on their own when trying to find housing upon release. Without a stable residence, parolees cannot reintegrate effectively into their communities. “Continuity in substance abuse and mental health treatment is

¹⁷ JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 98 (2003)

¹⁸ TRAVIS, *supra*, note 1, at 110 (discussing and quoting Joan Petersilia, *A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?*” FEDERAL PROBATION 62(2): 3-9

¹⁹ *Id.*

²⁰ TRAVIS, *supra*, note 1, at 109-110.

compromised. Employment is often contingent upon a fixed living arrangement. And, in the end, a polity that does not concern itself with the housing needs of returning prisoners finds that it has done so at the expense of its own public safety.”²¹

4. The Main Difficulties Parolees Face In Obtaining Housing

Parolees’ housing options are frequently limited. State prisoners are often imprisoned far from the home communities to which they return, and have no opportunity to secure housing prior to their release.²² Most prisoners return to live with their families, but this can present difficulties.²³ “Family dynamics surrounding prisoner reentry can be very complicated,” and families may not always provide the necessary support and stability that parolees need to keep themselves out of trouble.²⁴ In addition to any emotional issues presented by family dynamics, parole conditions legally forbid parolees from living or associating with anyone involved with criminal activity, including family and friends.

High housing prices in many parts of California have made the private housing market cost prohibitive for most parolees, who tend to be poor.²⁵ Most parolees don’t have enough money for a security deposit for a private rental. Furthermore, landlords are often reluctant to rent to parolees.

Many parolees also have trouble finding public housing. Federal policy prohibits drug offenders from living in public housing and receiving food stamps.²⁶ In selecting families for admission to public housing, the Public Housing Authority may consider the

²¹ Petersilia, *supra*, note 16, at 121 (quoting Bradley, et al., *supra*, note 1)

²² *Id.*

²³ TRAVIS, *supra*, note 1, at 220.

²⁴ *Id.*

²⁵ *Id.*, at 223.

²⁶ LITTLE HOOVER, *supra*, note 2, at 57.

criminal history of the applicant.²⁷ Furthermore, high demand for public housing has led to long waiting lists for admission: in Oakland, California, the average wait is 6 years. Parolees cannot wait that long to receive support: recidivism data shows that 30% of re-offenders are arrested within six months of release, and that after five years without an arrest, recidivism is very low.²⁸

With no other options available, many parolees become homeless. California Department of Corrections officials estimate that 10% of the state's parolees are homeless. In large urban areas like San Francisco and Los Angeles, as many as 50% of parolees are estimated to be homeless.²⁹

5. Community Opposition To Parolee Housing

Communities frequently oppose the placement of parolee group homes in their neighborhoods. This reflects their understandable concerns about the high recidivism rates of offenders: they fear parolee behavioral problems, rising neighborhood crime, increased comings and goings of non-related parties, and devaluation of their properties. Upon further consideration, this opposition is irrational. In most instances, “these criminals are returning to their community in any event. Giving them a place to live and structured assistance at release can provide residents with *more* security than if the inmate were simply on the streets.”³⁰

Nevertheless, a growing number of California communities have passed local ordinances restricting parolee housing. In Lancaster, in Los Angeles County, city officials designated a 20-block area of north downtown a “drug-free zone.” The plan’s goal is to

²⁷ TRAVIS, *supra*, note 1, at 229.

²⁸ PETERSILIA, *supra*, note 16, at 18.

²⁹ *Id.*, at 122.

³⁰ *Id.*, at 100.

keep parolees and probationers out of the zone as a condition of their parole or probation. The law also makes it a criminal offense for anyone on parole or probation to rent or own property in the area.³¹

Three years ago, Fontana enacted an ordinance that required any group operating a non-state-licensed home with two or more parolees to acquire a conditional use permit from the city.³² At the time, some homeowners were renting up to 12 beds to parolees in residential areas. Since the ordinance was passed, no non-state-licensed parolee homes have applied to move into Fontana.³³

The city of Yucaipa recently adopted a moratorium on non-state-licensed parolee homes and is considering a provision similar to the one adopted by Fontana. It would require permits from anyone operating a home with two or more parolees. Bart Gray, captain of the sheriff's Yucaipa station, told the San Bernardino County Sun that the provision would ensure the safety of residents and keep crime rates down because it would let police know where parolees are living.³⁴

However, law enforcement agencies already know the location of parolees.³⁵ The law is actually likely to have the opposite effect. If it reduces the availability of parolee housing, more parolees are likely to abscond, or become homeless. Then the police will be less likely to know where the parolees are living.

6. Poor Coordination Between State and Local Government

³¹ TRAVIS, *supra*, note 1, at 224.

³² Fontana Ordinance No. 1385, adopted Nov. 19, 2002.

³³ Stacia Glenn, *Yucaipa Eyes Parolees*, San Bernardino County Sun, Aug 14 2005.

³⁴ *Id.*

³⁵ *Id.*

Due to budgetary constraints, California has in the past had trouble expanding, developing, and managing pre-release planning with community parole services.³⁶ In 2003, there were only approximately 900 re-entry prison slots and a small number of substance abuse treatment slots available for prisoners to be released using the ideal, “step down” transition process.³⁷ According to the Little Hoover Commission report, most communities already have a wide range of services that could serve parolees but often do not due to poor coordination or community opposition.³⁸

There are several types of parolee group homes under California law. Despite the ordinances passed by Fontana and Yucaipa, California cities share power with the state government under California law to regulate the various types of parolee group homes, and cannot necessarily prevent the state from establishing any parolee group homes at all.

The cities do have the power to effectively prevent the state from establishing “large” parolee group homes within their city limits. “Large” residential care facilities are defined as those with seven or more parolee residents or beds. Large parolee group homes are licensed by the State of California, but are also subject to regulation by city governments, which may impose restrictions such as special permit requirements.³⁹

Although cities must follow state-mandated procedures in considering the zoning and placement decisions of these large facilities, they have been effectively able to block construction of new large residential care facilities in their communities by citing various concerns including public opposition due to noise, public safety concerns, and questions

³⁶ LITTLE HOOVER, *supra*, note 2, at 57.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Redlands City Council Meeting, Sept 20, 2005, Agenda Item J-1, Request For Council Action on proposed Ordinance 2622, p. 3.

about the ability to properly control residents of the facilities. Indeed, even though the State of California currently has set aside funds for building more parolee re-entry centers, and has issued a Request for Proposals for their construction, communities have been unwilling to offer sites for such large facilities, fearing community backlash against housing parolees together in residential areas.

Currently, the State Department of Corrections and Rehabilitation operates just 19 re-entry facilities and 2 restitution facilities for all 58 counties of California.⁴⁰ In San Bernadino County, for example, no communities have been willing to accept a large parolee group home, and no such homes are currently in operation there.⁴¹

In the face of this opposition to large residential care facilities, the State has increasingly relied on small parolee group housing as places to house parolees. These small group homes consist of six or fewer persons or beds. A city has no ability to regulate small group homes that are licensed by the State of California. It cannot force state-licensed small group homes to request a city permit, nor can it subject the placement of such homes to the same strict notification and public hearing requirements that apply to large group homes.

Nevertheless, many parolee group homes are not licensed by the state. Because of the informal nature of these homes, it is difficult to quantify statewide exactly how many parolees choose to live with other parolees in an unlicensed, unregulated arrangement. One example of a type of unlicensed parolee group home is a so-called “sober living home.” In a sober living home, six or fewer parolees live together and agree not to use

⁴⁰ California Department of Corrections, www.corr.ca.gov

⁴¹ Oral communication by Jeffrey Gazer, California Department of Corrections, Parole Division, San Bernadino Unit; Redlands City Council Meeting; September 20, 2005.

drugs or alcohol as a condition to continue living in the home. A sober living home is a non-licensed cooperative living arrangement. It is not a residential care facility under the law, is not required or eligible to be licensed by the state, and is not subject to state Department of Alcohol and Drug Program oversight or regulatory requirements.

Brandy Pitt, the house manager for a sober living home in Redlands, California, described the sober living homes as currently “self-run, self-help facilities.” Because they are not licensed, they do not have to hire professional staff, or meet state or city requirements beyond the strong restrictions already placed on the residents by virtue of their status as parolees.⁴²

Despite their unregulated status, Pitt feels the homes are important and effective in giving structure and discipline to parolees with substance abuse problems. She said, “If you shut down sober living homes, instead of being tested and reporting to their parole officers if parolees start using again, no one will report them and they’ll be stealing your mail and the stereo from your car so they can support their habit.”⁴³

The recent ordinances passed by Fontana and Yucaipa are designed to restrict or prohibit parolee group homes which are not licensed by the state, such as the sober living facilities described above. It is unclear under federal and state law whether local and city governments have the power to regulate and prohibit even these unlicensed parolee group homes, or whether such power is reserved to the state. Whether the recent ordinances passed by Fontana and Yucaipa are legally and constitutionally permissible is an issue that may ultimately be decided by the courts. In the meantime, other cities in the Inland

⁴² Oral communication by Brandy Pitt, Redlands City Council Meeting; September 20, 2005.

⁴³ Id.

Empire and Central Valley – such as Redlands, Victorville, Apple Valley, Adelanto, and Hesperia – are considering similar ordinances.⁴⁴

By failing to consistently or adequately provide transitional housing and other “step down” services to released prisoners, and by failing to coordinate such services with local and city governments, the State has created the chaotic present system: a billion dollar failure. Parolees do not receive the housing and services they need to succeed, so they re-offend in high numbers. The State cannot keep track of its parolees, and the high recidivism rate makes communities fearful to allow parolees into their neighborhoods. Because of the State’s failure to coordinate prison release and parolee services with local governments, some cities are now passing or considering their own piece-meal, counter-productive, and possibly unconstitutional legislation restricting parolee houses.

PART II: REDLANDS CASE STUDY

7. Two Proposals, Two Paths

On September 21, 2005, the city of Redlands passed a 45 day ban on new group homes for parolees. The moratorium forbids housing two or more unrelated parolees in a home not licensed by the state. The city is simultaneously considering two separate proposals for a long term solution to the problem of parolee housing. The first proposal is to adopt an ordinance like Fontana’s, requiring city licenses for parolee homes that are not licensed by the state. The second proposal is for Redlands to work with the state

⁴⁴ Leroy Standish, *High Desert Home To 2,384 Parolees*, Victorville Daily Press, Nov. 6, 2005.

government to construct its own city-operated parolee housing facility, to be run by the Redlands police department.

These two proposals are notable because they represent two very different possible approaches that local communities can take as they consider how to deal with the issue of parolee housing. The first Redlands proposal, modeled on the Fontana ordinance, would impose fees on both established and new parolee homes not licensed by the state, and require them to obtain conditional use permits from the city of Redlands. The ordinance seems implicitly designed to effectively prohibit such non-licensed parolee group homes within the city. In Fontana, no new parolee group homes not licensed by the state have been established since the ordinance was passed. According to Casandra Haramcio, who runs a facility for recovering addicts in Redlands, “I barely make my operating costs. This ordinance would shut me down.”⁴⁵

Brandy Pitt said of this proposed ordinance, “Even though you say you aren’t shutting down the sober living homes, really you are, because they can’t afford to pay for the permits.”⁴⁶ This may be a popular political move in the short-run, but it does little to address the long-term need to design supportive, secure, and efficient parolee housing that reduces recidivism, abscondance, and threats to public safety.

The second Redlands proposal, by contrast, offers the possibility of a revitalized state-local partnership to tackle the issue of parolee housing. When asked about the problems that California faces in housing its parolees, Jeanne Woodford, the Undersecretary of California Department of Corrections and Rehabilitation, said that

⁴⁵ Oral communication by Casandra Haramcio, Redlands City Council Meeting; September 20, 2005.

⁴⁶ *Supra*, note 41.

“reaching out to communities is the best way to make re-entry programming more effective and to reduce recidivism.”⁴⁷

8. An Overview of Redlands

An analysis of Redlands, California suggests why two such distinct proposals for parolee housing might both be under consideration there. Redlands is one of the communities in the Inland Empire of San Bernadino County that have been considering or adopting severe restrictions on parolee housing, but Redlands is also in some ways distinct from its neighbors in ways that might help explain why it is also considering a progressive solution in the proposed city-run parolee housing facility.

Redlands, California is a city of about 70,000 people, located 70 miles east of Los Angeles in San Bernadino County.⁴⁸ One of the oldest cities of the so-called “Inland Empire” region east of Los Angeles, it was established in the late 19th century as a packing center and distribution hub for that region’s then-growing citrus industry.⁴⁹ In 2003, there were about 24,000 households in Redlands. The city is about 74% white; 4% African American or black; 5% Asian; and 24% Hispanic or Latino, including Hispanics of any race.⁵⁰ Statewide, Californians are about 60% white, 7% black, 11% Asian, and

⁴⁷ Personal communication, November 9, 2005.

⁴⁸ <http://quickfacts.census.gov/qfd/states/06/0659962.html>

⁴⁹ ENCYCLOPEDIA BRITANNICA, *Redlands* (DVD ed. 2003)

⁵⁰ TRAVIS, *supra*, note 1, at 224.

⁵⁰ Fontana Ordinance No. 1385, adopted Nov. 19, 2002.

⁵⁰ Stacia Glenn, *Yucaipa Eyes Parolees*, San Bernardino County Sun, Aug 14 2005.

⁵⁰ *Id.*

⁵⁰ *Id.*

⁵⁰ LITTLE HOOVER, *supra*, note 2, at 57.

⁵⁰ *Id.*

⁵⁰ *Id.*

32% Hispanic. About 10.5% of Redlands residents were below the poverty line in 1999, compared to 14.2% statewide. In 2000, the median value of an owner-occupied housing unit in Redlands was \$159,300, compared to \$211,500 for the state as a whole. Redlands is thus less racially diverse, less poor, and cheaper to own a home in than California on average.⁵¹

In the Inland Empire around Redlands, development and population growth in the last several decades have caused significant demographic shifts.⁵² The region between Los Angeles and the old Inland Empire cities like Redlands and Riverside was a comparatively open and rural boundary between the regions until the 1970s. Since then, the region has been built up into new communities– with citrus groves and horse pastures becoming strip malls and chain restaurants – until no clear boundary remains.⁵³

Because of high housing prices in established cities like Los Angeles and San Diego, middle- and working- class people have migrated from those areas to the Inland empire. San Bernadino’s population grew 20.5% between 1990 and 2000, compared to 13.6% growth in California as a whole.⁵⁴ Between 1990 and 2000, the Inland Empire’s white population increased only 7%, while the number of blacks grew 61%, Asians 62%,

⁵⁰ Personal email communication from Dan McHugh, city attorney of Redlands. Also, see Redlands City Council Agenda Item No. J-1, September 20, 2005, Request For Council Action, 2-3.

⁵⁰ <http://quickfacts.census.gov/qfd/states/06/0659962.html>

⁵¹ Id.

⁵² David Holthouse, *Southern Poverty Law Center Intelligence Report*, Nov 3, 2005.

<http://www.alternet.org/module/printversion/27461>

⁵³ Id.

⁵⁴ <http://quickfacts.census.gov/qfd/states/06/06071.html>

and Latinos 82%.⁵⁵ Today, the Inland Empire has more than 50 small and mid-sized cities with a combined population of about 3 million.⁵⁶

The city of Redlands itself has not experienced the same growth as the area around it. Between 1990 and 2000, the Redlands population grew a mere 0.7%.⁵⁷ Nor has Redlands recently experienced an increasing crime rate. From 1998 to 2004, violent crime in Redlands decreased 32%, according to FBI statistics.⁵⁸ In 2004, there were 379 reported violent crimes in Redlands, according to FBI statistics.⁵⁹ Redlands currently has 171 active parolees, 148 of whom were Redlands residents or had family ties to the city of Redlands prior to their incarceration.⁶⁰ Very few of these parolees are sex offenders or high risk offenders.⁶¹

Redlands is thus a relatively low-crime community with a stable population. There are currently no small parolee group homes in Redlands that are not licensed by the state. However, neighbors of some existing state-licensed facilities, including a home for troubled juveniles, voiced concerns to the local government about noise, visitors coming to the facilities at late hours, inadequate control over the residents, and diminished property values around the facilities. Although it could do nothing to affect state-licensed facilities, the Redlands City Council nevertheless took up the issue.

One resident, Pastor Felix Jones, commented during the September 20, 2005 city council meeting considering the two proposals, “I want to caution us against over-reacting. We

⁵⁵ Holthouse, *supra*, note 44.

⁵⁶ *Id.*

⁵⁷ <http://quickfacts.census.gov/qfd/states/06/0659962.html>

⁵⁸ http://www.fbi.gov/ucr/cius_04/

⁵⁹ http://www.fbi.gov/ucr/cius_04/

⁶⁰ Oral communication by Jeffrey Gazer, California Department of Corrections, Parole Division, San Bernadino Unit; Redlands City Council Meeting; September 20, 2005.

⁶¹ *Id.*

shouldn't rush forward on this. There is no emergency here in Redlands.”⁶² The city council seemed ready to heed this advice.

9. The Debate In Redlands

The debate over parolee housing in Redlands was kindled by an existing state-licensed facility for troubled juveniles in the city at the intersection of Clover and University.⁶³ Neighbors of the home voiced concerns to the city officials about noise, visitors coming to the facilities at late hours, inadequate control over the residents, and diminished property values around the facilities.⁶⁴ Many were concerned that the state facilities might receive a license to operate housing one type of resident – for example, trouble juveniles or mentally ill senior citizens – and then “flip” the license to operate housing another, more dangerous type of resident – for example, high risk violent sex offenders.⁶⁵ Even though the Redlands City Council could do nothing to regulate a state-licensed facility like the one at Clover and University, and even though the facility at Clover and University subsequently closed, the Council nevertheless took up the issue of parolee housing, with the aim to assert as much local control as possible over non-state licensed facilities.⁶⁶

On September 21, 2005, the Redlands City Council debated for three hours about how it could extend local control over small parolee group housing not licensed by the State of California. The first proposal was an ordinance proposed by Mayor Susan Pepler that would require nonlicensed group homes, including sober living homes, to get

⁶² Oral communication by Pastor Felix Jones; Redlands City Council Meeting; September 20, 2005.

⁶³ Redlands City Council Meeting, September 20, 2005.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

city conditional-use permits. These permits would cost an existing facility \$1,900, and would cost a new facility \$4,400, according to Peppler's proposal.

In order to receive a city license, a small group home would be subject to approval by the city based on an evaluation of the home's possible threat to the public health, safety, and welfare. As noted, it seems likely that, as in Fontana, which adopted a similar ordinance, the effect of this proposal would be to effectively prevent the establishment and operation of any non-state-licensed small group homes in Redlands. Many of the residents who spoke in favor of the proposal did not try to hide the fact that this was their goal:

"Do I want these people living next to me?" asked one resident, Cliff Cunningham, who spoke at the September 20 meeting and was representative of the residents who spoke in favor of the ordinance. "No, I don't."⁶⁷

"Parolees chose their way of life," said another resident, Lois Luke. "I have no sympathy for them."⁶⁸

However, most of the residents who spoke at the meeting opposed the proposed ordinance. Some were people who had been parolees, and who had previously lived in small "sober-living" group homes in Redlands. One of these speakers, Philip Rademacher, is now the cameraman who tapes the Redlands City Council meetings. "We're all parolees, but we're not degenerates," he said to the Council, urging them not to place onerous burdens on the establishment of small parolee homes. "I'm so blessed today that I got these chances in life" to live in such a home, which allowed him to overcome his addiction.

⁶⁷ Id.

⁶⁸ Id.

Monica Will, a current parolee and resident at a sober living home since May, said, “The sober living home has real structure. It has helped me build a foundation, and make my goals to help my family and myself. I know I’ve made mistakes, but I am just trying to get my life back together. It is very structured, so we are accountable for what we do.”⁶⁹

Alfred Martinez, chief deputy administrator for the Parole Division in Redlands, said at the meeting, “Our concern is that sometimes cities are moving to ban parolees. Regardless of where we place them, they are going to be in our communities.”⁷⁰

An alternative proposal for parolee housing was also put forward at the City Council meeting by Redlands Police Chief Jim Buermann. Rather than merely license private, non-state-licensed small group housing for parolees, he suggested that the city actually construct and operate a single, large local parolee re-entry facility which would serve as transitional housing for many parolees. This proposal suggested that the parolee housing be operated by the police department.

Under Chief Buermann’s proposal, parolees would stay at the re-entry facility for the first three months of their release. This would give the parolees positive structure as they adjusted to life outside prison, found employment, participated in programs such as drug rehabilitation or job training, and re-connected with their families and communities. It would also give the police an opportunity to get to know the parolees. The city of Redlands would retain control of the facility, and would either operate it directly or would supervise any privately contracted staff. Only parolees with prior ties to Redlands

⁶⁹ Id.

⁷⁰ Id.

would be permitted to enter the Redlands facility, so that it would not become a “dumping ground” for parolees from all over the region.

Chief Buermann stated at the City Council meeting on September 20, “From my perspective, these parolees are at a fork in the road. We are either going to facilitate their road to rehabilitation, or their road back to prison.”⁷¹

On October 4, Chief Buermann reported back to the Redlands City Council that shortly after the September 20 City Council meeting, he was contacted by California Cabinet Secretary Roderick Hickman, who was appointed the Secretary of the California Department of Corrections and Rehabilitation by Governor Schwarzenegger in July, 2005, and who oversees the entire California correctional system, including parole. Buermann reported that Hickman expressed significant interest in Redlands becoming a model for California cities as to how to safely manage inmates returning to their communities. Hickman pledged full support of the state department in helping Redlands develop a police-managed reentry facility.⁷² Hickman agreed that under this proposal, the re-entry facility would be paid for by the state, but managed locally by the Redlands Police Department.

Mayor Pepler emphatically said that she still favored her original proposal and was opposed to Chief Buermann’s proposal. She said Chief Buermann’s proposal was “dangerous” and “irresponsible.” “There is a reason that no communities will accept these re-entry facilities,” she said.⁷³ However, she also professed that her own proposal was not designed to ban all parolee housing, only housing for high risk parolees and sex

⁷¹ Id.

⁷² Redlands City Council Meeting, October 4, 2005.

⁷³ Id.

offenders. She suggested that her proposed ordinance would not prohibit sober living facilities, which she claimed to support for nonviolent offenders with substance abuse problems.

Chief Buermann noted that parolees would be returning to Redlands anyway. “Any cop, any parole officer will tell you, homeless parolees are a danger to the community,” he said.⁷⁴ The other council members expressed a range of tentative opinions about the Buermann proposal, from tentative support to a desire for more information before making a final decision on which proposal to favor. The City Council ultimately voted to extend the temporary moratorium on new parolee housing in Redlands while it conducted further research.⁷⁵

11. Legal and Constitutional Issues Around The Redlands Licensing Proposal

The proposed ordinance that requires small group parolee housing to obtain conditional use permits not only is questionable public policy, it presents several legal and constitutional issues. Although the Fontana ordinance on which it is based has not been challenged in court to date, these issues could present potential bases for court challenges against these types of ordinances in the future.

There are three main questions that may potentially form a legal basis for challenging or attacking the legality of the Redlands ordinance. These questions are: (1) do the city’s delegated land-use powers and zoning enabling laws permit it to regulate housing arrangements for a certain designated class of persons, namely parolees, or to regulate the private alcohol consumption by this class of persons in such living

⁷⁴ Id.

⁷⁵ Id,

arrangements under the auspices of regulating parolee sober living arrangements?; (2) does state preemption of alcohol regulation prohibit the city from attempting to regulate parolee sober living arrangements by regulating private alcohol consumption or to enforce a city-mandated prohibition on private alcohol consumption by the parolee-residents of these homes?; (3) do federal and state antidiscrimination and fair housing laws prohibit the city from regulating parolee or sober living housing arrangements?

The city of Fontana's similar ordinance regulating parolee homes in residential family zones using the conditional use permit has been in effect since November 2002 with no apparent problems or legal challenges against it. This may indicate that the ordinance is politically or even possibly legally viable.

Polk County, Iowa has also proposed a similarly structured ordinance regulating the areas in which convicted sex offenders may reside within a residential zone. The ordinance under consideration in Redlands mirrors one recently implemented in Des Moines that would restrict convicted sex offenders from residing within 2,000 feet of certain child-oriented facilities including public parks, public libraries, public swimming pools, and multi-use recreational trails, in addition to the current residency restrictions for sex offenders around schools and day care centers mandated by existing Iowa state law.

Following this example, it is reasonable to think that if a city may restrict residency for a certain class of ex-convicts, namely sex offenders, without issue, then a city ordinance restricting residency for a similar class of citizens—parolees—for similar public safety concerns might withstand legal scrutiny as well.

The strongest avenue for challenging the proposed Ordinance might be a claim that the city's delegated land-use power from the state or its zoning enabling laws do not

include the authority from the state to regulate parolee or sober living housing arrangements under the auspices of local land-use regulation powers. This is an argument that would be made by citing the pertinent laws and state-delegated land-use authority in Redlands.

A second possible attack on the ordinance would be a claim that the city does not have legal authority to regulate parolees using conditional use permits under occupancy limitation laws. The claim would be specifically that the city's proposed residency restrictions on certain classes of people – in this case, parolees – would not count as a legitimate “land-use” such that it would fall under the city's delegated authority to regulate land-use.

This second possible attack on the ordinance draws from two related cases that deal with the topic of a city's ability to regulate based on occupancy limitations. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) involved a city ordinance that restricted land use to single-family dwellings, where the word “family” was defined as one or more related persons or a number of persons not exceeding two that were unrelated. The U.S. Supreme Court upheld the constitutionality of this ordinance since the ordinance did not involve a fundamental right guaranteed by the Constitution and did not involve a procedural disparity inflicted on some persons, but not others.

However, in *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977), the Supreme Court found that a city's housing ordinance which attempted to regulate which members of an extended family network could permissibly live together under the zoning definition of “family” was unconstitutional because it bore no rational relationship to any permissible state objective and violated the Due Process Clause of the Fourteenth

Amendment by infringing on the sanctity of family autonomy. Unlike the Belle Terre ordinance, this ordinance defined “family” in such a way that a second grandchild was excluded from living in the dwelling. The Court distinguished this case from *Belle Terre* by saying that the Belle Terre ordinance drew the line between related and unrelated individuals, while the East Cleveland ordinance distinguished between degrees of related individuals. The Court said here that cutting off the definition of “family” to include only the nuclear family was unfounded, since the security and support benefits characteristic of families were traditionally provided by the extended family as well.

However, the Court’s loosening of the definition of “family” past the nuclear family does not seem like it would extend to a group of unrelated persons whose sole common characteristic is that they are on parole from a federal or state prison, and it would be unlikely that six or fewer parolees living in a common dwelling would qualify as a “family” for legal purposes. In fact, in *Belle Terre*, the Court explicitly authorized it as within legislature’s purview to define family on the basis of related versus unrelated persons. This indicates that this second avenue of attack on the ordinance is unlikely to succeed.

A third possible avenue for attacking the ordinance would be to make a claim that ordinance violates fair housing or equal protection laws. A potential fair housing or equal protection claim may arise if, as a result of the proposed ordinance, most or all parolee homes were relegated to poorer, more minority-influenced areas of the city, and if most parolees who were relegated to the minority neighborhoods were themselves minorities. In this case, the ordinance might have a disparate impact effect of enforcing racial

segregation in housing by sending the minority parolees to existing minority neighborhoods and keeping them out of predominantly white neighborhoods.

However, because the ordinance has not yet been adopted, it is unclear what specific effect it would have in terms of racial demographics in Redlands. There is also the possibility that homes of six or fewer occupants fall under the federal housing law minimum occupancy limit for federal regulation, such that federal housing law would not even apply to them. This means that this third possible avenue for attack on the proposed ordinance is unlikely to succeed.

If the proposed ordinance were amended to regulate sober living homes as separate from parolee homes, so as to enforce sobriety in sober living homes by prohibiting private alcohol consumption by the occupants of the homes, then the ordinance might be vulnerable to a preemption challenge that the state's regulation of alcohol effectively prohibits the city from attempting to regulate it. Under state law, the city may not be permitted to prohibit certain classes of people or certain areas of the city from privately consuming alcohol. Generally, cities are not permitted, nor have ever attempted, to restrict private consumption of alcohol for certain classes of people or in certain areas within its borders. However, if the aim of the Ordinance would simply be to regulate those parolee homes that self-identify as "sober living arrangements" without any city-mandated adherence to such sober living principles, the preemption problem would disappear.

The ordinance is not likely vulnerable to attack on grounds that it violates disability law, or that it discriminates against parolees under the equal protection clause of the Constitution. Drug and alcohol addiction are explicitly *not* categorized as

disabilities for the purposes of federal antidiscrimination, disabilities, and fair housing law, so drawing a distinction around sober living parolee homes will most likely not implicate these protections. For purposes of equal protection law, parolees are not a suspect class, so that an ordinance regulating housing on the basis of parolee status would be subject only to a low level rational basis scrutiny by the courts. The proposed ordinance would likely pass rational basis scrutiny if challenged.

In summary, it therefore seems probable that the licensing ordinance, if passed by the city, would go unchallenged and could legally withstand any challenge brought against it. Nevertheless, there is a broad gap between what policies are legally and constitutionally permissible and what policies are in the best public interest. The proposed licensing ordinance would make it harder for the police to track and control parolees, and would make it harder to provide parolees with safe, secure, and efficient housing that they need.

PART III: CONCLUSION

The city of Redlands has the opportunity to be a model of providing supportive, secure, and efficient housing for recently released parolees by choosing to work with the state government to build and operate a large re-entry facility for Redlands parolees under the control of the Redlands police department. This facility would be expressly for parolees who are already going to be returning to the city of Redlands anyway, but it would provide the structure necessary to give the parolees the best possible chance to rehabilitate and reintegrate with the community successfully, and to give the community the security and control necessary to maintain the safety of Redlands residents. The

proposed Redlands ordinance to license and restrict parolee housing, in contrast, would only complicate and aggravate these challenges.

Research has shown that prisoners should ideally make the transition from prison to the community in a gradual, closely supervised process.⁷⁶ One example of a successful program is the Illinois Department of Correction's Chicago Day Reporting Center (DRC). The program is for high-risk parolees on the Southside of Chicago. The DRC program participants normally stay in the program for about six months, during which time they gradually progress through three phases, each with more relaxed restrictions on curfew, drug testing, and electronic monitoring. The inmates do not live at the facility, but report to it every day. They participate in many programs such as anger management, family reintegration, employment training, cognitive skills, GED and education courses, job development, and substance abuse treatment and education. Employees must be employed to get out of phase 3 and graduate from the program.

A recent evaluation of the program found that rearrest and reincarceration rates for the participants were significantly lower than those of a matched comparison group, such that the DRC participants were returned to prison at about half the rate of the comparison group at the end of year one and at the end of year three after release. The evaluation estimated that, even accounting for the cost of the program of about \$6,600 per participant, the DRC program saved about \$3.6 million over 3 years by lowering the reincarceration rate. The program thus was a success both for the participants and for society.

⁷⁶ PETERSILIA, *supra*, note 16, at 98.

The choice that Redlands makes between the two proposals that it is considering could prove to be influential to the other communities that are considering similar ordinances. If Redlands can develop a model program of parolee housing, it could be a significant positive turning point in the reform of California's parole system.