



Agenda Date: 03/25/2014
Agenda Item: 5.1

STAFF REPORT

Date: March 12, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek P. Cole, City Attorney;
Dan Gomez, Chief of Police; Ken Strelo, Senior Planner; Josh
McMurray, Senior Planner
SUBJECT: Ordinance Dealing with Parole/Probationer Homes

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF MARCH 25, 2014

Background and Analysis

Councilmember Rios recently attended training regarding potential regulation of "Parole/Probationer Homes" and provided our office with an ordinance adopted by the City of Riverside. Riverside is a large city in the Inland Empire area of Southern California.

"Parole/Probationer Homes" are residential facilities housing parolees and probationers released from state prison or other correctional institutions. The homes are a regulated environment providing a transition between incarceration and independent living within society. California Penal Code Sec. 3000 states as follows:

"The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision and surveillance of parolees..."

The use of parolee/probationer homes may become more widespread as the State faces the problem of prison overcrowding and the transition of inmates from state prison to county jails. To date, there are no known such homes within the City of Oakley, although the potential is real for one or more to be located here.

State law requires cities to automatically allow several types of home care for special populations, including homes for recovery of alcohol and drug abuse, mental disease, senior dementia care, small child care facilities, etc. Thus those types of residential facilities are permitted by State law and cities have no authority to ban or regulate them.

There does not appear to be any similar State law regarding parole and probationer homes. The City of Riverside did not find any such law, nor did we when conducting our own legal research. The first thought might be to ban such uses entirely, but it must be considered that the use of such homes is authorized by State law and is part of a State program. Thus outright prohibition is probably preempted by State law. Thus the City of Riverside concluded, and we think correctly, that the appropriate approach is to regulate such uses.

The attached ordinance is modeled very closely upon the Riverside ordinance. Here are major provisions of the ordinance:

- Parole/probationer homes require the obtaining of a Conditional Use Permit from the City Council;
- The Use Permit application must state the types of probationers to be housed (males, females, etc.), the maximum number of clients, terms of client stay, staffing levels and rules of conduct;
- Homes can only be located in the M-9 and M-12 zoning districts (multiple-family residential), must be compatible with surrounding uses, be not likely to result in harm to the public safety, and located near an arterial street with access to public transportation;
- Homes cannot be located within 5,000 feet of another such home nor within 1,000 feet of a school, day care home, park, library or business selling alcohol;
- Sufficient on-site parking must be provided;
- On-site staff supervision is required during all hours of operation;
- Client stays shall not exceed 180 consecutive days;
- A list of client names shall be provided to the Chief of Police, who may reject any client he/she deems is an unreasonable risk to public safety;
- Notice of a Use Permit application is given to surrounding property owners;
- Oakley's smoking ordinance applies;
- Use permits may be revoked for violations and administrative citations may be issued.

This ordinance has been vetted with the Police and Community Development departments, and all of staff's comments have been incorporated.

Fiscal Impact

None perceived.

Recommendation

Waive the reading of the ordinance and introduce ordinance.

Attachments

1. Ordinance adding Section 9.1.1222 to Article 12 of Title 9 of the Oakley Municipal Code, dealing with Parole/Probationer Homes.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF OAKLEY ADDING SECTION 9.1.1222 TO ARTICLE 12 OF TITLE 9
OF THE OAKLEY MUNICIPAL CODE, DEALING
WITH PAROLE/PROBATIONER HOMES**

The City Council of the City of Oakley does ordain as follows:

Section 1. Section 9.1.1222 is hereby added to Article 12 of Title 9 of the Oakley Municipal Code, to read as follows:

9.1.1222 Parole/Probationer Homes.

a. The purpose of regulating parole/probationer homes is to ensure compatibility of such uses with surrounding uses and properties and to avoid or minimize any adverse impacts associated with such uses.

b. "Parole/Probationer Home" means any residential structure or unit, including any hotel or motel except as provided herein, whether owned and/or operated by an individual or for-profit or non-profit entity, that houses two or more parolees/probationers, unrelated by blood or marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee/probationer and/or any individual or public/private entity on behalf of the parolee/probationer, excluding parolees/probationers who reside in an alcohol and/or drug-free recovery home. Notwithstanding this definition or any other provision of the Oakley Municipal Code, hotels and motels with fourteen rooms or less cannot provide transient lodging services or accommodations to more than three parolees during any thirty consecutive-day period regardless of the length of their respective stays; and hotels and motels with fifteen rooms or more cannot provide transient lodging services or accommodation to more than five parolees during any thirty consecutive-day period regardless of the length of their respective stays.

"Parolee/Probationer" means an individual as follows:

- 1) 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 probation/parole officer; or
- 2) Serving a period of supervised community custody as defined by State Penal Code Section 3000 following a term of imprisonment in a State prison or County jail, and is under the jurisdiction of the California Department of Corrections, Division of Adult Parole Operations; or

- 3) An adult or juvenile sentenced to a term in the California Youth Authority and received conditional and revocable release in the community under the supervision of a Youth Authority parole officer; or
- 4) An adult or juvenile offender released from County jail or State prison after October 1, 2011 on Post Release Community Supervision.

c. Applications for a required Conditional Use Permit to operate a Parolee/Probationer Home shall include at least the following information:

- 1) Client profile (the subgroup of the population that the facility is intended to serve, i.e. 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.

d. Site location standards for issuance of the required permit shall be as follows:

- 1) The use shall be permitted only in the M-9 and M-12 zoning districts;
- 2) The use shall be generally compatible with surrounding uses;
- 3) Establishment of the facility is not likely to result in harm to the health, safety or general welfare of the surrounding neighborhood;
- 4) The facility is located along or near a major arterial with ready access to public transportation;
- 5) The facility will be accessible to necessary support services;
- 6) To avoid over-concentration of parolee/probationer homes, there shall be a 5,000-foot separation between such homes as measured from the nearest outside building walls between the subject use and any other parolee/probationer housing.
- 7) A parolee/probationer home shall not be located within 1,000 feet of any other group housing, assisting living facility, a public or private school (pre-school through twelfth grade), day care home, public park, library, business licensed for on- or off-site sales of alcoholic beverages, emergency shelter, supportive housing or transitional housing as measured from any point on the outside walls of the parolee/probationer housing.

e. Operation and Development Standards shall be as follows:

- 1) Sufficient on-site parking shall be provided. The precise number of parking spaces required will be determined based on the operating characteristics of the specific proposal. Attention shall be directed to whether clients are driving and the rules pertaining to visitation.
 - 2) Both indoor and outdoor common areas shall be provided on site.
 - 3) All setback standards of the underlying zone shall be met.
 - 4) On-site staff supervision shall be required during all hours of facility operation.
 - 5) Individual client stays shall not exceed 180 consecutive days.
 - 6) The facility's management shall participate in any residential crime prevention program provided by the City and as required under the permit.
 - 7) A list of client names, on a continuous basis as clients are received, shall be provided to the Chief of Police. The Chief of Police may determine to reject any client being allowed in the home if the client represents an unreasonable risk to public safety.
- f. Any parolee/probationer home existing prior to the adoption of this Section shall be required to obtain a Conditional Use Permit.
- g. Permits shall pertain to each specific location and operator. Any change of ownership of a facility shall require a new permit. A facility which discontinues operations for any period of time shall require a new permit before recommencing operations.
- h. Notice of the application for a Conditional Use Permit shall be provided as required in the Conditional Use Permit ordinance, and application fees therefore shall be as established in said ordinance.
- i. The ordinances of this Code relating to the regulation of smoking tobacco and other products shall apply to parolee/probationer homes.
- j. Any Conditional Use Permit issued for a parolee/probationer home may be revoked by the City Council for violations of this Section or for otherwise creating a public nuisance. Owners and operators of parolee/probationer homes are also subject to the issuance of administrative citations and the collection of fines for violations, although the absence of an administrative citation does not preclude the remedy of revocation of a Conditional Use Permit.

Section 2. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 3. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date