



Memorandum

TO: PUBLIC SAFETY, FINANCE, AND
STRATEGIC SUPPORT COMMITTEE

FROM: Edgardo Garcia

SUBJECT: SEE BELOW

DATE: September 6, 2018

Approved

Date

9/7/18

SUBJECT: CITY COUNCIL POLICY PRIORITY #10: PERSONAL CARE BUSINESS COMPLIANCE INITIATIVE

RECOMMENDATION

Accept a report on the implementation of the City Council Policy Priority #10: Personal Care Business Compliance Initiative.

BACKGROUND

On March 7, 2017, the City Council added the Personal Care Business Compliance Initiative to the Council Priority List and ranked it at No. 10 of the new policy priorities. The initiative required the following:

1. A registry requiring all personal care businesses that provide any form of massage services to annually register prior to obtaining a business tax certificate with an additional cost-recovery fee for a city employee position to proactively coordinate administrative processes and inspection for compliance.
2. A moratorium on the distribution of new massage parlor permits to all personal care businesses that provide any form of massage services during the initiative development up to a period of one year with an option to extend per council's approval.
3. Conduct outreach and discussion with industry business professionals.

On September 21, 2017, the Public Safety, Finance, and Strategic Support Committee (PSFSS) accepted the "Massage Parlors Ordinance Status Report."¹ The report cited that the Personal Care Compliance Initiative could not be implemented fully due to limitations in staffing to complete the required outreach and operationalize program changes. Additionally, full implementation would require reallocation of staff from other prevention or enforcement

¹ 2017 Staff Report: http://sanjose.granicus.com/MetaViewer.php?meta_id=659044

activities, which was not recommended until position vacancies were substantially filled. Instead, a recommendation was made to focus on enforcing the existing ordinance and allow massage businesses the opportunity to come into full compliance by obtaining the required permits. The Committee directed the Administration to have the Police Department return in one year with a status update on massage parlor operating, regulation, and enforcement efforts. This direction included the understanding that the moratorium on the issuance of massage parlor permits as part of the Personal Care Business Compliance Initiative had not yet been implemented, but was to be explored and possibly implemented in the next year.

This memorandum will provide an update on these efforts.

ANALYSIS

Operational Regulations – Implementation and Status Report

The Police Department's Vice Unit is responsible for coordinating the enforcement of the new Massage Ordinance, which took effect on January 15, 2016. The Department's Permits Unit is responsible for issuing massage permits; under the ordinance, massage permits are required for each massage business, owner, and manager.

When the ordinance took effect in 2016, the Vice Unit had identified 300 known massage businesses. Of those, 100 received warning letters from the Police Department, which resulted in minimal compliance. Due to Department-wide staffing shortages, the Department was only able to conduct limited enforcement and outreach activities at that time.

In September 2017, the Department staffed the Vice Unit's Sergeant position. Funding was also approved in the 2017-2018 Adopted Budget for the Code Enforcement Division to add a dedicated Code Inspector in the Department of Planning, Building and Code Enforcement to work in partnership with the Police Department on massage enforcement.

In January 2018, Polaris, a non-profit, non-government organization that works to combat and prevent human trafficking, published a study called "Human Trafficking in Illicit Massage Business²." This report cited Santa Clara County as having the third highest concentration of illicit massage businesses (IMBs) among all counties in the United States; this ranking was attributed to a lack of strong laws and the related enforcement of those laws. The report also cited user awareness of IMBs as a contributing factor to their prevalence. Polaris made this finding based on concentration information gathered in 2017 from open source networks. It is not reflective of the current status of IMBs in San José.

With new staffing resources, the Vice Unit created an updated list identifying 191 IMBs suspected of prostitution. This list was based on complaints from residents, explicit online postings, and areas of heavy clustering.

² Polaris report: <https://polarisproject.org/sites/default/files/Full%20Report%20-%20Human%20Trafficking%20in%20Illicit%20Massage%20Businesses.pdf>

In February 2018, the Vice Unit implemented a robust plan to target IMBs suspected of prostitution activities. This new effort involved the following components:

- 1) **Collaborative effort between the Vice Unit, Code Enforcement, City Attorney's Office, and the Permits Unit.** This effort consisted of an enhanced working relationship with a focus on communication and coordination. The Vice Unit regularly met with Code Enforcement, the City Attorney's Office, and the Permits Unit to share information and update each other on permitting and enforcement efforts. The partnership between the Vice Unit and the dedicated Code Enforcement Inspector has greatly expanded the City's enforcement directly with the property owners. The Code Enforcement program began enforcement operations in August of 2017 and has seen success; businesses and property owners are receiving compliance orders for failure to have proper permits or other Municipal Code violations, as well as for zoning issues. The City Attorney amended the existing compliance order form to require unpermitted massage businesses to immediately stop performing massage services until they receive required permits. The Attorney's Office has been very responsive in facilitating Police Department efforts to gain compliance from businesses offering massage services.
- 2) **Increased covert investigations at suspected IMBs.** To overcome a lack of staffing, the Vice Unit brought in officers on an overtime basis to assist with covert investigations. Enforcement efforts also included the presence of the newly appointed Code Inspector, who conducted inspections immediately after undercover operations to identify unpermitted modifications to the suspect facility.
- 3) **Landlord Education Program.** To reduce overtime costs and supplement enforcement efforts, a robust Landlord Education Program was implemented. The program consisted of the following:
 - Reviewing County property records and identifying the property owner/landlord who was renting a building or space to the suspected IMB.
 - Having a meeting with the landlord (primarily at the Police Department).
 - Providing the landlord with copies of erotic online reviews from customers who frequent the subject property.
 - Providing the landlord a letter from the Vice Unit outlining the investigation conducted by the Vice Unit and explaining State of California Red Light Abatement Laws.
 - Providing the landlord a copy of the Polaris Report on Human Trafficking in IMBs.
 - Discussing how IMBs operate and the potential for human trafficking to take place in such locations.
 - Providing the landlord an example of a Massage Permit and explaining that the business is operating without proper permits.
 - Educating the business owner about City ordinances and laws related to prostitution, massage businesses, public nuisances, and answering any questions.

Since January of 2018, the Vice Unit has completed 114 Landlord Education Program meetings and 59 covert investigations.

Results of Implementation Efforts

This new strategy has yielded the following results:

- 107 IMBs have closed
- 26 IMBs closed solely as a result of a covert investigation
- 62 IMBs closed solely as a result of the Landlord Education Program
- 19 IMBs closed as a result of a combination of the Landlord Education Program and a covert investigation.
- 33 IMBs are in-process and expected to close in the next six months.
- 45 IMB's are unprocessed and have not yet been subject to the landlord education program or a covert investigation.
- 90 percent of the massage businesses were confirmed to be offering prostitution services as a result of a covert investigation. (Out of 60 covert investigations, 54 were confirmed to be engaged in prostitution)
- 2 IMBs where prostitution was occurring had uncooperative landlords; this resulted in City Attorney involvement, civil court hearings, and significant fines.
- 7 fully permitted IMBs were found to be offering prostitution services. Their permits have been revoked and have closed.
- Over the last nine months, the Permits Unit saw a substantial increase in Massage Business owners applying for a Massage Business permit:
 - 2016 - 4 applicants
 - 2017 - 7 applicants
 - 2018 - 67 applicants
- 19 massage business are currently fully permitted.
- The Code Enforcement Division conducted 463 inspections (some businesses were inspected more than once). The Division issued 193 compliance orders and 106 citations.

COUNCIL PRIORITY RECOMMENDATIONS

1. *A registry requiring all personal care businesses that provide any form of massage services to annually register prior to obtaining a business tax certificate with an additional cost-recovery fee for a city employee position to proactively coordinate administrative processes and inspection for compliance.*

Staff has consulted with the Finance Department about establishing a registry. The goal of the proposed registry is to track personal care businesses that provide massage services to prevent and enforce against illicit operations. In the past year, the Police Department has determined most IMBs are obtaining business tax certificates; however, the business owners may not indicate that the business includes massage services. This action mirrors

the City's experience with medical cannabis businesses prior to the regulation of the industry by the City and State.

Using lessons learned from these two industries, the Finance and Police departments are collaborating, using the existing business tax system. The departments are in the process of determining the most likely industry codes that IMBs are using when they pay the business tax. Moving forward, the Finance Department will run a query of these businesses quarterly and provided the list of personal care businesses to the Police Department. Vice Unit and Code Enforcement staff will determine if the businesses have State licenses for massage, determine if they have reviews on sites for customers of IMBs, and will use other investigatory tools to determine if the business is compliant with City and State regulations.

Staff believes this process will implement and close out the above Council direction in a practical and cost-effective manner.

2. *A moratorium on the distribution of new massage parlor permits to all personal care businesses that provide any form of massage services during the initiative development up to a period of one year with an option to extend per council's approval.*

Of the initial 191 IMBs identified, approximately 45 have not been subject to the Owner Education Program or a covert operation. This number is a much more manageable figure and the Vice Unit anticipates all 45 will be contacted within next six months.

As outlined above, the Vice Unit will be obtaining business tax data quarterly from the Finance Department, as well as using other information sources, to track new massage businesses in San José.

For these reasons, the Police Department no longer supports the need for a moratorium of new massage parlor permits or additional changes to the Municipal Code. The Department recommends this item be dropped from the Council Policy Priority direction.

3. *Conduct outreach and discussion with industry business professionals.*

Since July 2017, Code Enforcement has conducted 463 inspections of various personal care businesses. These inspections have included outreach to on-site industry professionals, who were provided information about how come into compliance; this information included how to obtain the appropriate city permits and state licenses, as well as information about the City's Massage Ordinance. The outreach has had a positive effect. As stated above, Massage Permit applications increased from seven in 2017 to 67 in 2018. Additionally, staff conducted outreach through the Landlord Education Program. Landlords were educated on the same rules and regulations as industry professionals. This allows landlords to educate future tenants and amend lease agreements to require the proper permits in advance of opening.

Staff considers this portion of the Council Policy Priority to be implemented.

September 6, 2018

Subject: City Council Policy Priority #10: Personal Care Business Compliance Initiative

Page 6

CONCLUSION

In addition to the above data, the Police Department has been asked by neighboring cities, which have seen an increase in IMBs, for information on San José's enforcement approach to try to emulate our success. In viewing online message boards that advertise illicit massage services, staff has also seen warnings to potential customers about the strong enforcement conducted in San José.

Both the data and anecdotal reports demonstrate the Police Department's new approach and partnership with the Code Enforcement Division, City Attorney's Office, and the Permits Unit has proven to be extremely successful. The Department recommends focusing on continued enforcement of the existing ordinance and laws, while promoting the Landlord Education Program.

COORDINATION

This memorandum has been coordinated with the Code Enforcement Division of the Department of Planning, Building and Code Enforcement, and the City Attorney's Office.

/s/
Edgardo Garcia
Chief of Police

For questions, please contact Lieutenant Paul Messier at (408) 537-1447.