



**Office of the City Auditor**

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**Report to the City Council  
City of San José**

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**CODE ENFORCEMENT  
MANAGEMENT CONTROLS:  
IMPROVEMENTS TO  
OVERSIGHT AND  
COORDINATION NEEDED**

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**Report 21-04  
September 2021**

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September 2, 2021

Honorable Mayor and Members  
Of the City Council  
200 East Santa Clara Street  
San José, CA 95113

### **Code Enforcement Management Controls: Improvements to Oversight and Coordination Needed**

The mission of the Code Enforcement Division of the Department of Planning, Building and Code Enforcement (PBCE) is to “work in partnership with the people of San José to promote and maintain a safe and desirable living and working environment.” The Division aims to improve the quality of life for residents through outreach, education, and enforcement of ordinances in the San José Municipal Code, including building and zoning codes. Code Enforcement programs are wide-ranging and include general code enforcement, multiple housing, and other special programs. General code enforcement addresses issues such as blight. Multiple housing inspections ensure facilities like apartments comply with the Municipal Code. Special programs, including the massage and cannabis programs coordinated with the Police Department, are fee-based programs that regulate specific businesses or issues.

The objective of this audit was to review Code Enforcement management and oversight. It was added to our workplan by the Rules Committee in November 2020, following charges that a former code inspector assigned to the massage program had abused his position for personal gain. Based on City Council’s request, we broadly reviewed the timeline of events relating to the City’s complaint handling and coordination of the massage program by Code Enforcement and the Police Department.

**Finding 1: The City Received Multiple Anonymous Allegations of Inspector Misconduct.** In September 2020, a former code enforcement inspector was charged with 14 felony charges related to extortion of sex and bribery from massage business owners in San José. While the inspector was working with the City, the City received multiple allegations of misconduct by the inspector. We found:

- Because of the anonymous nature of the allegations, the City was unable to investigate as there was no way to contact the complainants.
- The inspector continued to work in the same assignment until his resignation in 2019.
- A gap in communication between departments limited the ability for Code Enforcement or the Office of Employee Relations (OER) to respond.

#### **RECOMMENDATIONS**

To better address potential misconduct of City staff, we recommend:

- Code Enforcement revise its incident policy
- To the extent it has additional questions about the inspector’s activities, Council should consider appointing an outside investigator

- Code Enforcement does not have specific guidance on how to address extortion, bribery, or other serious concerns in its current incident policy, nor did the City’s Whistleblower Hotline Policy document the process for addressing potential criminal complaints. During the audit, OER updated its policies to document this process.
- The City’s online Whistleblower Hotline form did not allow users to upload supporting documentary evidence or explain the differences between anonymous and confidential submissions, which could potentially prevent investigators from asking anonymous users follow-up questions. During the audit, the Administration updated the form to allow users to submit documentation and to encourage follow-up by anonymous users.

**Finding 2: The Massage Program Needs Defined Goals and Responsibilities to Strengthen Management Oversight.** In 2015, the City Council passed an ordinance that modified the regulation of massage businesses in San José. The Police Department oversees the massage program in coordination with Code Enforcement. Program goals include ensuring massage businesses are permitted and operating in accordance with the ordinance, closing illicit massage businesses, and preventing human trafficking. We found:

- Since FY 2017-18, the Police Vice Unit has reported closing over 200 illicit massage businesses (i.e., businesses offering commercial sex).
- Just 16 massage businesses had active massage permits as of April 2021. Over 200 businesses described their nature of business as “massage” on their business tax certificate and may require a massage permit under the Municipal Code.
- During the audit, the Vice Unit began notifying the Police Department’s Human Trafficking team before taking enforcement actions at illicit massage businesses; previously, there had been limited coordination between the units related to the massage program.
- Given the potential high-risk nature of the massage program, the Administration should consider a policy for backgrounding or use of partners for massage code inspectors.
- Establishing performance goals and enhancing supervisory oversight for the massage and cannabis program will also help ensure high-risk police-related programs function appropriately.

### RECOMMENDATIONS

To help the City meet the goals of the Massage Ordinance, we recommend the Police Department and Code Enforcement:

- Develop a roster of massage businesses subject to the ordinance
- Conduct outreach and post materials online to help more businesses become permitted
- Standardize the Human Trafficking team’s role in the massage program
- Clearly define Code Enforcement’s role and develop guidelines around backgrounding and use of partners
- Establish performance goals and enhance supervisory oversight of inspectors in high-risk programs

**Finding 3: Code Enforcement Can Improve Supervisory Oversight and Staff Guidance.** Following the charges against the former inspector, PBCE created a plan to improve management and accountability in the Code Enforcement Division. Although the plan has important tools for improvement, there are additional steps the Division can take to improve supervisory oversight, standardize work in the Division, and clarify expectations for staff. We found:

- An employee survey showed staff feel that Division management is responsive to concerns and ideas for improvement, both of which are important elements of a positive organizational culture.
- In some instances, closed code cases did not comply with Division policies or had limited evidence of compliance in files (e.g., photos to support inspector testimony).
- The Division has over 90 different policies with an average age of over 11 years. Some policies are obsolete and some expectations for staff or supervisors are not outlined in policies.
- The Division does not currently maintain a log of public complaints it receives regarding inspector conduct.
- Letters attempting to contact property owners do not always describe the code complaint or other expectations for an inspection.
- Open general code cases have grown despite a decline in new complaints and there are no clear performance expectations or targets for case closure rates or timing.
- As of July 2020 and January 2021, about 20 percent of staff had not had performance evaluations in more than 2.5 years.

## RECOMMENDATIONS

To improve supervisory oversight and staff guidance, Code Enforcement should:

- Create or update policies into a comprehensive digital manual, and set a schedule for periodic review
- Develop training for new supervisors
- Establish a regular review of a sample of closed cases to ensure policy compliance
- Maintain a confidential log of customer complaints about staff conduct
- Revise the standard “attempt to contact” letter to include helpful information to the customer
- Develop meaningful performance targets and incorporate them into the performance evaluation process
- Complete all outstanding performance evaluations

This report has 20 recommendations. We plan to present this report at the September 9, 2021 meeting of the Neighborhood Services & Education Committee of the City Council. We would like to thank the Department of Planning, Building and Code Enforcement; the Police Department; the Office of Employee Relations; and the City Attorney’s Office for their time and insight during the audit process. The Administration has reviewed the information in this report, and their response is shown on the yellow pages.



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This report is also available online at [www.sanjoseca.gov/audits](http://www.sanjoseca.gov/audits)

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# Background

The mission of the Code Enforcement Division of the Department of Planning, Building and Code Enforcement (PBCE) is to “work in partnership with the people of San José to promote and maintain a safe and desirable living and working environment.” The Division aims to improve the quality of life for residents through outreach, education, and enforcement of ordinances in the San José Municipal Code, including building and zoning codes.

## **Code Inspectors Enforce City Ordinances to Support Safe and Sanitary Community Conditions**

Code Enforcement is staffed primarily with code enforcement inspectors, who generally work within one of three core services:

- **Community Code Enforcement**, inspecting complaints of violations against general Municipal Code requirements to mitigate issues like blight, lawn parking, and unpermitted construction;
- **Multiple Housing Code Enforcement**, completing routine and complaint-based inspections of multiple housing facilities like apartments, hotels, and residential care facilities;
- **Solid Waste Code Enforcement**, regulating and inspecting solid waste facilities.

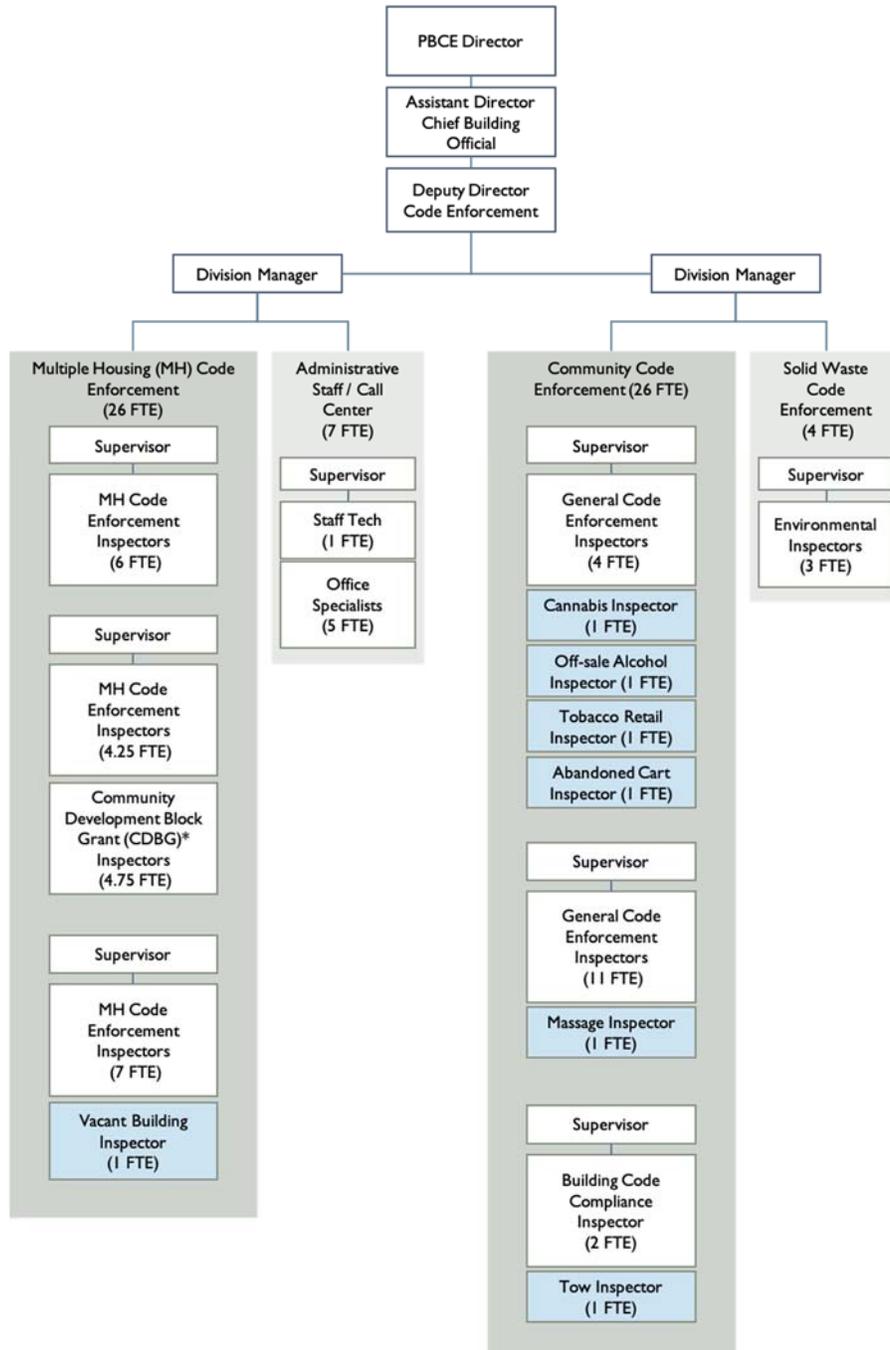
In addition, there are special programs that are fee-based and have dedicated inspectors. These include:

- **Abandoned shopping carts**, approving and enforcing cart management plans at stores,
- **Building code compliance**, assisting staff and customers in addressing building violations and navigating the building permit process,
- **Cannabis**, regulating dispensaries and enforcing home-grow laws,
- **Massage**, regulating massage businesses,
- **Off-sale alcohol**, regulating businesses permitted for off-sale of alcohol, such as at liquor and grocery stores,
- **Tobacco retail license**, regulating businesses that sell tobacco products, and
- **Vehicle abatement**, authorizing towing of inoperable vehicles from private property and enforcement and administrative support of the City-generated tow services contract administration.

## Audit of Code Enforcement Management Controls

Most code enforcement inspectors are assigned to the Community Code Enforcement and Multiple Housing core services. Exhibit I shows the Division's organizational structure.

### Exhibit I: Most Inspectors Work in Community Code Enforcement and Multiple Housing



\*Community Development Block Grants (CDBG) funds enhanced multiple housing inspections in neighborhoods with ongoing issues related to crime, poverty, and blight.

Source: Auditor chart based on PBCE organizational charts dated November and December 2020. Includes vacant positions. Special programs inspector positions are shaded blue. Does not include retiree rehires.

### **Case Assignments Vary Across Programs**

Except for the citywide special programs, code inspectors receive case assignments based on program and geographic area defined by census tracts.

General code inspectors' workload is normally driven by community complaints. When the City receives a complaint, administrative staff assign the complaint to an inspector based on census tract. The inspector:

- Contacts the complaining party for details on the complaint,
- Researches the responsible party (the property owner or business owner),
- Researches any prior cases,
- Verifies existing permits or licenses, and
- Inspects the property in question.

Multiple housing and special programs operate similarly, though cases are primarily proactive (driven by the Division as opposed to complaints). Usually, proactive cases are based on a roster of properties or businesses to which an inspector is assigned. For example, the tobacco retail license inspector aims to inspect all licensed retailers once per year. Likewise, multiple housing inspectors receive case assignments based on the City's roster of multiple housing facilities. Multiple housing and special programs inspectors may also respond to complaints.

In Fiscal Year (FY) 2019-20, general code had about 3,000 new cases. Multiple housing inspected about 6,750 units.

In March 2020, due to the pandemic, the City's "COVID-19 Continuity of Operations Plan" limited Code Enforcement's work to only essential services, namely health and safety issues. Later, Code Enforcement started exterior inspections and remote interior inspections for non-emergency cases. Additionally, some inspectors were activated to the City's Emergency Operations Center which also affected the Division's workload.

### **Code Enforcement Uses an Internal Database (CES) to Document Cases**

Inspectors document research, inspection notes, photos, and other relevant communication in the Division's Code Enforcement System (CES) database. As needed, inspectors generate merged documents and letters to contact a property

owner or manager, announce an inspection, or issue a warning notice or compliance order,<sup>1</sup> for example. These letters are also saved to the database.

It is standard procedure for cases to be routed to supervisors for review prior to case closure. When all violations have been resolved, or an annual inspection has been completed without violations, the inspector routes the case to their supervisor. The supervisor then reviews the case, generally reviewing the chronology of the case, supporting evidence (photos), enforcement actions and compliance, and sometimes verifying permits, before closing the case. Supervisors are expected to follow up with staff before case closure to resolve any outstanding items or issues. These procedures apply across different Code Enforcement programs.

### **Some High-Risk Programs Require Coordination With the Police Department**

Some Code Enforcement programs require close coordination with the Police Department:

- Code Enforcement's cannabis inspector works closely with the Police Department's Division of Cannabis Regulation. Cannabis Regulation is an administrative division that permits and regulates cannabis dispensaries in the city. The cannabis inspector supports business inspections by Cannabis Regulation and inspects home growing operations or other cannabis-related concerns based on complaints.
- Code Enforcement's massage inspector works with the Police Department's Vice Unit. The Vice Unit does both administrative and criminal enforcement work around massage businesses in the city, including approving massage permits and investigating potential illicit massage businesses (i.e., businesses offering commercial sex). The massage inspector role has been to inspect permitted businesses for compliance with the Municipal Code, conduct initial inspections at the time of massage permit application submittal, and conduct administrative enforcement of unpermitted massage businesses.

### **The Code Enforcement Division Has an Accountability Improvement Plan**

In November 2020, the San José Police Department arrested a former code enforcement inspector assigned to the massage program on charges that he extorted sex and bribery from massage business owners in San José. Following

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<sup>1</sup> Code Enforcement issues compliance orders based on a determination that a code violation exists. Compliance orders must contain information on the date and location of the violation, the section of the Municipal Code violated and a description of the violation, actions required to correct the violation, the time period after which penalties will accrue if compliance has not been achieved, and an explanation of the consequences for noncompliance and a description of the appeal process.

the charges against the former employee, PBCE created a plan to improve management and accountability in the Division. The plan describes action items, target dates, and next steps. Example items include:

- Adding a second inspector (0.5 FTE) for the massage program.
- Adding a supervisor dedicated to special programs (including massage).
- Rotating police-related special programs staff every two years.
- Implementing a pilot program for body worn cameras for police-related programs (i.e., massage and cannabis).
- Providing regular refresher trainings for inspectors on safety, human trafficking, and Division values.
- Providing regular refresher trainings for supervisors.
- Hiring a consultant for revised ethics trainings.
- Random customer audits by supervisors, included as part of supervisors' performance standards.
- Adding contact information online, on business cards, and on documents for customers to report concerns.

At the time of this audit, the Department is working on implementing these items. The FY 2021-22 Adopted Operating Budget does not include additional staffing resources for Code Enforcement and would be subject to future budget approval.

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# **Finding I      The City Received Multiple Anonymous Allegations of Inspector Misconduct**

## **Summary**

In late 2020, a former code enforcement inspector assigned to the massage program was arrested on charges relating to extortion of sex and bribery from massage business owners in San José. While the inspector was working for the City, the City received anonymous letters and complaints in late 2018 alleging inappropriate or criminal activity by the inspector. Because of their anonymous nature, the City was unable to investigate. The inspector continued to work in the same assignment until his resignation in March 2019. We recommend that Code Enforcement revise its incident policy to account for incidents involving extortion, bribery, or other serious concerns. During the audit, the Administration revised the City's Whistleblower Hotline Policy to document the process for handling potential criminal allegations such that relevant departments are notified when and as appropriate. Additionally, the Administration updated the Whistleblower Hotline Complaint form to allow documents to be uploaded and be available in multiple languages. These revisions will help to reduce communication gaps that could prevent the City from taking mitigating actions when there is a criminal allegation made against staff, as well as improve information from whistleblowers to help investigators substantiate complaints. To the extent it has additional questions or concerns related to allegations against the former code inspector, we recommend the City Council consider appointing an outside investigator.

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## **Former Code Inspector Assigned to the Massage Program Was Charged with Extorting Massage Businesses**

In November 2020, the San José Police Department arrested a former code enforcement inspector assigned to the massage program on charges that he extorted sex and bribery from massage business owners in San José. The inspector worked for the City from 2007 to 2019. Until his resignation in 2019, he was the only code inspector assigned to the massage program since Code Enforcement became involved in the program in 2017.

Prosecutors initially charged the former inspector in September 2020 with 14 felonies including rape, extortion, and soliciting bribes. These offenses were alleged to have occurred between August 27, 2018 and April 30, 2019. Prosecutors amended the charges in November 2020 to add two more charges, including one for asking or receiving a bribe, alleged to have occurred in 2019.

### **The City Received Anonymous Allegations About Inspector Behavior**

Between October 2018 and March 2019, there were at least three incidents where allegations about the inspector's behavior were made to the City.

- In **October and November 2018**, Code Enforcement and the Police Department each received anonymous letters that appeared to be similar in nature. Letters addressed to the code inspector at City Hall threatened to expose inappropriate behavior by the inspector if he did not close a particular business. Some letters enclosed a picture of the inspector with his arms around a woman allegedly at a massage business. Division leadership referred letters it had received to the Police Department's Vice Unit for investigation and instructed the inspector not to go to the locations identified within the letters until further notice. The Police Department report that they received similar letters. The Police Department interviewed the code inspector and determined that the letters were extortion letters to the inspector and filed a police report.
- In **December 2018**, an anonymous complaint came through the City's online Whistleblower Hotline form alleging instances of inappropriate touching<sup>2</sup> and taking bribes and soliciting services from other businesses. The Office of Employee Relations (OER) forwarded it to the Vice Unit in the Police Department. Because of the anonymous nature of the complaint, the Police Department determined it could not investigate as there was no way to contact the complainant. Code Enforcement reports they were not made aware of this complaint.
- In late **March 2019**, another anonymous complaint came through the Whistleblower Hotline alleging that the inspector was taking bribes and services in exchange for keeping massage businesses off the Police Department's radar. OER also referred this to the Vice Unit. Like the December 2018 complaint, the Police Department determined they could not investigate because of the anonymous nature of the complaint. Code Enforcement reports they were not made aware of this complaint either.

Shortly before the last complaint, the massage inspector resigned and moved out of state.

After the inspector's resignation, the Police Department received four additional anonymous letters between April and July 2019. In September 2019, the City Attorney's Office (CAO) received a claim against the City related to the inspector's activities. The CAO began its investigation of the claim although the claimant and attorney did not respond to CAO efforts to obtain more information. The claim was rejected within the required statutory time frame but the CAO

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<sup>2</sup> The complaint alleges that in one encounter the inspector grabbed the individual's hands and touched the individual's shoulder and back with a rubbing and squeezing motion. In a second encounter, the individual alleged that the inspector immediately started touching them again and asked for a massage.

continued to investigate. Apart from the claim, the CAO reports there was no further communication from or on behalf of the complainant.

In July 2020, a separate witness report triggered the investigation that led to the former employee's arrest.

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### **The City and Code Enforcement Should Update Incident and Complaint Policies**

The inspector continued to work in the same assignment after the October/November 2018 extortion letters and the December 2018 Whistleblower Hotline complaint. Some of the alleged crimes occurred after these came in.

#### **Code Enforcement's Incident Policy Does Not Address Extortion or Bribery**

The Code Enforcement Division has an incident policy that outlines reportable incidents including inspector injury, verbal abuse, and death threats.<sup>3</sup> The policy suggests that "for alarming or unusual cases, [management] discuss and analyze the course of action that was taken [assessing] what improvements, trainings, discussions that may be required with staff." However, the policy does not outline specific steps for risk mitigation or escalation for incidents such as extortion or bribery. In the absence of such policy or other management intervention, the massage inspector remained in the same assignment after he had received extortion letters and continued working alone.

Code Enforcement also maintains an incident log, the purpose of which according to management is to document the incident and provide awareness to staff. This is so future inspection staff know of past issues and can take proper precautions to ensure safety, such as bringing another inspector to the property or requesting the Police Department's assistance as needed.

Code Enforcement should update its incident policy to add appropriate follow-up and escalation in instances of potential extortion or bribery attempts made of staff, serious allegations or complaints, or other instances deemed appropriate by the Administration. This could include temporary reassignment, adding another inspector, or some other action. This would protect the inspector from unsubstantiated claims against them, and protect the City when there is alleged inspector misconduct.

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<sup>3</sup> "Reportable incidents" within the policy include "any other criminal activity (i.e., theft)."

### **Code Enforcement Was Not Aware of the December 2018 Whistleblower Complaint**

According to Code Enforcement, they were not aware of the December 2018 Whistleblower Hotline complaint. As such, they could not respond, such as reassigning the inspector or taking some other action.

At the time, the City's Whistleblower Hotline Policy (CPM 1.2.8) and Investigations Principles Policy (CPM 2.1.4) did not specifically address handling criminal allegations and there was not a documented process for ensuring appropriate follow up for criminal allegations that come through the City's Whistleblower Hotline.

For non-criminal complaints, OER's standard practice is to follow up with departments to make sure that cases have been addressed appropriately. To avoid interfering with a Police investigation, OER reports that alleged criminal complaints that are referred to the Police Department do not receive the same follow up, rather a personnel investigation would follow the criminal investigation.

During the audit, OER revised its Whistleblower Hotline Policy and Investigations Principles Policy to document the process for handling criminal allegations. The updated policies read:

*Allegations that are criminal in nature are referred to the San José Police Department (SJPD) prior to the commencement of a personnel investigation. The Office of Employee Relations will notify departments when matters are referred to SJPD, unless it is determined that the referral could interfere with a Police investigation, and will apprise departments of the findings of any investigation.*

The gap in communication between departments limited the ability for Code Enforcement or OER to respond, potentially reassign the inspector, review case files for indications of impropriety, or take other actions. The update to the City's policies should help reduce the risk of such a gap in the future.

### **Updating the Whistleblower Hotline Complaint Form Could Provide Investigators With More Information to Substantiate Anonymous Complaints**

As previously noted, the Police Department reports that the anonymous nature of the complaints made it difficult to follow up for investigation. During the audit, we noted that the City can improve its online Whistleblower Hotline form and website to better aid future investigations of anonymous complaints by:

- Providing information to inform potential whistleblowers that submitting anonymously via the online form may limit investigators' ability to follow up on the complaint.

- Having the functionality to collect documents that help to verify the details of the allegation.

The City accepts Whistleblower Hotline complaints via phone (with blocked caller ID), fax, email, letter, or online form. Whistleblowers may submit complaints anonymously or confidentially.

- **Confidential complaints** allow investigators to contact the whistleblower for follow-up questions which can help them collect details to verify the allegation. The City protects confidential whistleblowers' identities to the extent permitted by the law, but the City may need to release the identity of a whistleblower pursuant to a subpoena or other circumstance in which the City is legally required by law.
- **Anonymous complaints** protect the whistleblower's identity because there is not information to release. Anonymous complaints may limit investigators' ability to follow up on the details of a complaint, though, particularly when submitted via online form. According to OER, however, anonymous whistleblowers may provide an anonymous email which will allow investigators to contact the whistleblower. Alternately, anonymous whistleblowers can call the City's Whistleblower Hotline number periodically to offer opportunity for investigators to ask follow-up questions while maintaining anonymity.

At the time of the audit, the City's online Whistleblower Hotline form directed users that wish to remain anonymous to skip the contact information section (see Exhibit 2). Adding information to the form, or a link to the FAQ on anonymous submissions, would alert potential whistleblowers to the available options for confidential and anonymous submissions. In addition, other jurisdictions, like the City and County of San Francisco and the City of Austin, allow users to upload files to the online form that support their allegation. These files can also help investigators to verify details of the allegation and proceed with the investigation.

## Exhibit 2: Whistleblower Hotline Online Form Did Not Allow for File Attachments or Alert Users to Differences Between Anonymous and Confidential Complaints

The screenshot shows the City of San Jose Whistleblower Hotline online form. The page header features the City of San Jose logo and navigation links for Residents, Business, Visitors, Your Government, and News & Stories. The breadcrumb trail indicates the path: Your Government > Departments & Offices > Office of the City Manager > Employee Relations > Whistleblower Hotline. The form title is "ONLINE FORM". It contains several required fields: "Date and Time of Incident", "Suspected Person(s) Involved", and "Description of Complaint". Below these is a note: "If you wish to remain anonymous, you may skip this section." The form also includes fields for "Name" (split into First Name and Last Name), "Phone", and "Email". At the bottom right are "Review" and "Submit" buttons.

Source: Auditor screenshot of [www.sanjoseca.gov/your-government/departments/employee-relations/whistleblower-hotline/form](http://www.sanjoseca.gov/your-government/departments/employee-relations/whistleblower-hotline/form) as of May 2021.

During the audit, OER updated the online form to advise anonymous complainants to provide as much information as possible in support of their concerns because their ability to investigate may be solely dependent on the information provided. They also advised creating an anonymous email for follow-up purposes at the beginning of the form. In addition, OER expanded the number of fields on the form to gather additional information and now allows complainants to upload documents to help substantiate complaints.

Finally, the Whistleblower Hotline form and associated FAQs can be translated to Spanish, Vietnamese and other languages using the Google translate functionality on the City's Website. OER is working with Spanish and Vietnamese fluent speakers to determine the sufficiency of these translations. This will ensure that

non-English speakers can submit complaints and will provide access to as many residents and business owners as possible.

**Recommendation:**

- I: The Department of Planning, Building and Code Enforcement should revise the Code Enforcement Division’s incident policy to include direction around courses of action (e.g., temporary reassignment, partner-use, other actions) to address instances such as:**
- a) extortion or bribery attempts made to staff,**
  - b) serious allegations and complaints, or**
  - c) other instances deemed appropriate by the Administration.**

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**Further Investigation May Answer Any Additional Council Questions or Concerns**

In a November 18, 2020 memorandum to the City’s Rules and Open Government Committee (Rules Committee), the Mayor and two Councilmembers, in requesting this audit, wrote “[w]e need to better understand how long [the massage inspector’s] conduct transpired before it was detected.” Based on reporting of the October 2018 extortion letter by the San José Mercury News in November 2020, the memo also noted that the “[t]he implication, of course, is that other crooks knew of [the massage inspector’s] conduct spanning well before October of 2018.”

**“We need to better understand how long [the massage inspector’s] conduct transpired before it was detected, what management practices might have enabled such criminal activity, and what changes need to be implemented...”**

*November 2020 Rules Committee Memo from the Mayor and two Councilmembers*

The arrested former employee was initially assigned to the massage program in Summer 2017. As detailed in the initial criminal complaint filed with the Santa Clara County Superior Court the allegations go back to August 2018.

The Rules Committee also asked, as part of this audit, whether the former employee had delayed closure of some illicit massage businesses.

**In Contrast to Audits, Investigations Focus on Misconduct of Individuals**

The objective of this audit was to review Code Enforcement management and oversight. To address Council’s concerns, we reviewed the timeline of events. We focused our review on the City’s complaint handling process, particularly as it related to the City’s ability to respond to the allegations against the former code inspector in the massage program. Specifically, we:

- Interviewed staff in relevant departments to understand the flow of information around the anonymous complaints, and
- Reviewed limited source materials, namely extortion letters received by PBCE, the criminal complaint filed in the Santa Clara County Superior Court, and a civil complaint filed in the United States District Court (including an exhibit of the December 2018 Whistleblower Hotline complaint).

In addition, we overlaid Code Enforcement performance data (massage inspections and business closures) with dates relevant to the charges. (See Appendix B.) We did not conduct an investigation of the former code inspector's alleged criminal activities or assess potential delay, or cause for delay, in closures.<sup>4</sup>

Section 416 of the City Charter authorizes the Council to make investigations into the affairs of the City. To the extent that the City Council has additional questions or desires further investigation, we recommend the City Council hire an outside investigator under its Charter authority to conduct that work.

### **Recommendation:**

- 2: To the extent the City Council has further questions or concerns, the City Council should consider appointing an outside investigator to review the activities of the former code inspector in the massage program or the handling and investigation of related complaints under Section 416 of the City Charter.**

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<sup>4</sup> In contrast to audits, which typically examine organizational program performance of a systemic nature, investigations are usually undertaken in response to reports of misconduct and focus on a person(s). The objectives of performance audits are generally to determine the efficiency and effectiveness of programs and whether established objectives or desired results are being achieved. The U.S. Government Accountability Office (GAO) establishes Government Auditing Standards for performance audits. Investigations are generally carried out to resolve specific allegations, complaints, or information concerning possible violations of law, regulation, or policy. The Council of Inspectors General for Integrity and Efficiency establishes Quality Standards for Investigations. It should be noted that these types of investigations differ from criminal investigations or personnel investigations like those conducted by OER.

## **Finding 2     The Massage Program Needs Defined Goals and Responsibilities to Strengthen Management Oversight**

### **Summary**

In 2015, the City Council passed an ordinance that modified the regulation of massage businesses in San José. The ordinance was meant to address, in part, a growth in the number of illicit massage businesses (i.e., suspected of prostitution or human trafficking). The Police Department oversees the massage program in coordination with Code Enforcement. Since FY 2017-18, the Department's Vice Unit has reported closing over 200 illicit massage businesses. However, the program has not fully met the intent of the Massage Ordinance, which seeks to ensure massage services are qualified, lawful, and professional. Just 16 massage businesses had active permits as of April 2021. Meanwhile, over 200 businesses describe their nature of business as "massage" on their San José business tax certificate. These businesses may require a massage permit under the Municipal Code. Conducting outreach and posting materials online can help more businesses become permitted. Additionally, basing code enforcement inspections on a list of all potentially subject businesses would reduce the risk that the ordinance is enforced inequitably.

The massage program has multiple goals, including ensuring massage businesses are permitted and operating in compliance with the Municipal Code, closing illicit massage businesses, and preventing human trafficking. When the massage program began, the Vice Unit developed a list of massage businesses based on complaints from residents, explicit online postings, and areas of heavy clustering. The massage inspector used this list to identify businesses for inspection. As a result, the program has focused enforcement on illicit massage businesses. The responsibilities of the inspector and coordination between Code Enforcement and the Police Department were unclear and not documented. To strengthen management oversight, the Police Department and Code Enforcement should clearly define the process, procedures, and responsibilities of the massage inspector and related police units, including the Human Trafficking team. Based on the responsibilities of the inspector, Code Enforcement should mitigate risks through backgrounding and/or the use of partners for high-risk inspections. Finally, establishing performance targets and improving supervisory oversight for massage and cannabis programs will also help ensure high-risk, police-related programs function appropriately.

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## The City Council Made Regulation of Massage Businesses a City Priority

In 2015, the City Council amended Chapter 6.44 of the City's Municipal Code, modifying the regulation of massage businesses in San José.<sup>5</sup> The ordinance states:

*It is the purpose and intent of the city council that the operation of massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.*

*It is the intent of this chapter to enact regulations to [ensure] that those offering massage services are qualified and trained and can be expected to conduct their services in a lawful and professional manner. The city council finds that existing controls have not satisfactorily addressed or regulated serious criminal or public health problems, nor have the existing controls regulated the profession so as to sufficiently encourage compliance with state and local laws.*

Under the ordinance, all massage businesses are required to meet certain requirements. Among the requirements, they must:

- Have a massage permit issued by the Police Department.
- Keep massage tables at least two feet away from any wall.
- Have hot and cold running water and adequate facilities such as lockers and toilets.
- Operate between the hours of 7 AM and 10 PM.
- Have all clients enter and exit exclusively through the front door.

The Ordinance took effect in January 2016. The Police Department is responsible for coordinating the implementation of the Massage Ordinance. At that time the Police Department's Vice Unit reported identifying roughly 300 known massage businesses that they determined were likely subject to the ordinance based on complaints, explicit online postings, and areas of heavy clustering.

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<sup>5</sup> See Municipal Code Chapter 6.44 – Massage  
[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodetd=TIT6BULIRE\\_CH6.44MA](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodetd=TIT6BULIRE_CH6.44MA)

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### **City Council Prioritized Implementation of the Massage Ordinance in 2017**

In March 2017, the City Council prioritized the massage program, also known as the “Personal Care Business Compliance Initiative,” to enforce the Massage Ordinance. Among the items the initiative proposed were:

- 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.
- Conduct outreach and discussion with industry business professionals.

The memorandum recommending the initiative be added to the Council priority list noted the need to add staff:

*With an estimate of over 300 massage parlors and Vice Unit that has been reduced to one sergeant, there simply are not enough resources to enforce this public safety crisis expediently. ...A registry of all businesses providing massage services and an associated fee would fund the position of a city employee to be the coordinating hub between all involved departments. This position would also ensure that all services provided are legal, protecting the number of legitimate massage therapists who do provide a safe health service.*

### **The FY 2017-18 Budget Added a Code Inspector to Help Expand the Police Department’s Capacity**

A follow-up memo to the City Council’s Public Safety, Finance and Strategic Support Committee in September 2017 stated that because of the Police Department’s staffing shortages, the Department was only able to conduct limited enforcement. Outreach had similarly been limited; of the massage businesses identified the year the ordinance took effect, 100 had received warning letters from the Police Department. These had limited effect and no additional letters were sent out by the Department. The FY 2017-18 Adopted Operating Budget added a code inspector to help expand capacity.

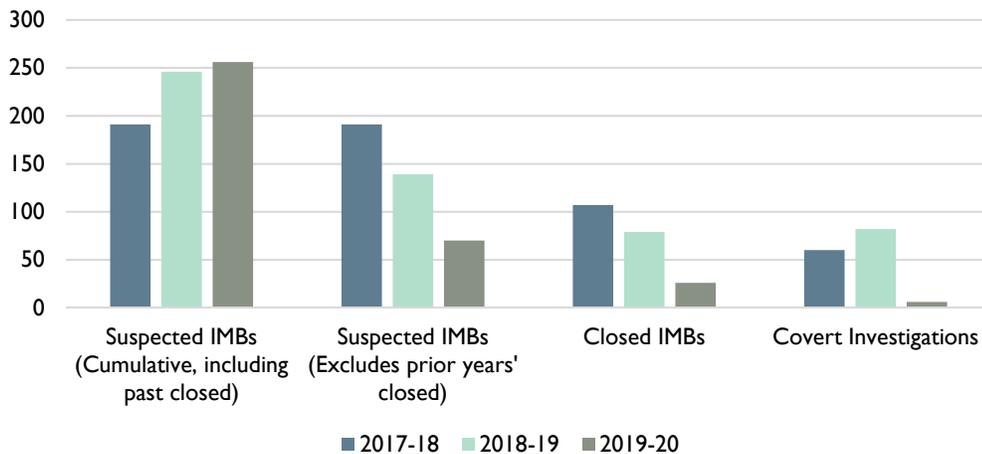
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### **Enforcement Efforts Have Closed Many Illicit Massage Businesses; However, the Program Has Not Fully Met the Intent of the Massage Ordinance in Permitting Businesses**

The Vice Unit maintains a list of alleged illicit massage businesses (IMBs) suspected of prostitution based on resident complaints, explicit online postings, and areas of heavy clustering. In September 2018, the list had 191 suspected IMBs.

In subsequent years, the Vice Unit identified an additional 65 establishments, bringing the total number up to 256 as of November 2020. According to the Police Department, 212 of those were closed as a result of the Vice Unit’s efforts. (See Exhibit 3.)

**Exhibit 3: The Police Department Reports Over 200 Illicit Massage Businesses Closed Since 2017-18**



Source: Auditor summary of performance data presented to Public Safety, Finance, and Strategic Support Committee.

**Just 16 Massage Businesses in San José Had a Massage Permit as of April 2021**

The Massage Ordinance requires all massage businesses to have an active massage permit through the Police Department. Based on active business tax certifications,<sup>6</sup> more than 200 businesses in the city list “nature of business” as massage.<sup>7</sup> However, as of April 2021, just 16 massage businesses had active massage permits through the Police Department.

The Police Department’s Permits Unit tracks massage businesses with active permits, permits in-process, and expired permits. According to the Permits Unit,

<sup>6</sup> A business tax certificate, issued by the Finance Department, is like a general business license or business permit. Every person or company conducting business in San José must register for a business tax certificate. Business tax certificates are renewed on an annual basis. This is separate from the massage permit, which is issued by the Police Department.

<sup>7</sup> As of March 2021. Not all of these businesses may be subject to a massage permit under the Municipal Code. There are some exemptions including licensed physicians, physical therapists, acupuncturists, chiropractors, and nurses, as well as other services offered at healthcare facilities, nursing homes, or by coaches or trainers of athletic teams. In reviewing the number of potential massage businesses in the city, we excluded 15 businesses that appeared to meet an exemption or did not fit the requirements under the Municipal Code (e.g., massage chairs). Additionally, this estimate does not include businesses that list “day spa,” “spa,” or “foot spa” as nature of business, some of which may be subject to the Massage Ordinance. In identifying businesses that require permits, Code Enforcement must inspect sites to verify massage services as defined under the Municipal Code and whether they require a massage permit.

this list contains all the businesses that have been permitted since 2016. The list has just 63 businesses, including the 16 businesses with current permits.

Businesses become permitted by either:

- Applying for the massage permit, or
- By being inspected based off complaints or inspector research.

See Appendix C for a flow chart of the permit application and inspection process.

### **There Is Limited Outreach to Massage Business for Permits**

The program relies on voluntary compliance of business owners, complaints, or self-initiated inspections by the code enforcement inspector. These self-initiated or complaint-based inspections appear to be the primary outreach for the massage program to businesses.<sup>8</sup>

If businesses are not in compliance with the Massage Ordinance at the time of inspection, they are expected to immediately cease operations. In our sample review of massage cases, it appeared that some businesses were only made aware of the program during the first inspection which resulted in the immediate cease of operations. In one instance, a business owner wrote to the PBCE Director for a Director's hearing, requesting their business remain open during the application process noting lack of awareness of regulations and the financial hardship caused by ceasing operations.

In 2017, the Vice Unit provided Code Enforcement with a list of potential IMBs to identify massage businesses for inspection. As such, it appears Code Enforcement's activities have been focused on massage businesses suspected of being potential IMBs (i.e., suspected of prostitution). This has potentially excluded legitimate massage businesses (i.e., businesses not suspected of prostitution), which, under the ordinance, should have a massage permit and meet other health and safety requirements.

Under the Massage Ordinance, permits expire every two years and must be renewed. Although the Police Department's Permits Unit is working to develop a system to trigger an alert for when business permits have expired, currently there is no active follow up with businesses for permit renewals.

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<sup>8</sup> Separately, in 2018, the Police Department implemented a landlord education program in which Vice Unit staff met with and educated landlords who were renting a building or space to a suspected IMB about human trafficking, City ordinances, and laws related to prostitution. From January to September 2018, the Vice Unit completed 114 landlord meetings. As of September 2019, the Vice Unit held 21 landlord meetings. Vice reported there were fewer landlord education program meetings due to a decrease in reviews on illicit websites. In 2020, the program was amended to focus on residential landlords, as IMBs were transitioning from commercial to residential properties.

*The City's Website Has Limited Information About the Massage Program*

Currently, information regarding the massage program, including its goals, the inspection process, and details on penalties and fines are not easily available on the City's website. While the Massage Ordinance and massage permit application are posted online, they do not fully detail the inspection process.

Code Enforcement provides details on other programs on its website, including informational brochures and other information. For example, the PBCE website has a brochure on the tobacco retailer license and inspection program that outlines the program purpose, who is subject to regulations, fines and fees, and an inspection checklist so business owners can prepare to comply by the time of inspection. It is also translated into multiple languages. (See Exhibit 4.)

**Exhibit 4: Other Code Enforcement Programs, Like Tobacco Retailer License, Have Brochures Explaining the Program Goals and Inspection Requirements in Multiple Language**

**REGULACIÓN DE LA VENTA** de productos de tabaco en San José es el objetivo del Programa de licencia e inspección de vendedor de tabaco. En particular, el programa busca eliminar la venta de productos del tabaco y parafernalia a personas menores de 21 años.

**Usted es un vendedor de tabaco si vende, ofrece vender o intercambia o se ofrece a intercambiar productos de tabaco o parafernalia por cualquier tipo de recompensa.** Si usted es un vendedor de tabaco en San José, debe obtener una licencia de vendedor de tabaco de la ciudad de San José o San José Tobacco Retail License (TRL). La venta de tabaco en la ciudad es ilegal si no tiene una licencia de vendedor de tabaco de la ciudad de San José válida. El estado de California también requiere una licencia estatal del tabaco. Es necesario tener ambas licencias.

**Renovación anual y tarifa.** Debe renovar su licencia de vendedor de tabaco de la ciudad de San José o San José Tobacco Retail License (TRL). El precio de la licencia cubre la inspección primera más una inspección anual para verificar cumplimiento. Vea la última página para obtener la LISTA DE INSPECCIÓN. Cargos adicionales pueden ser requeridos si son necesarias inspecciones adicionales. Se es propietario de varios locales de venta de tabaco, debe obtener una licencia y pagar una tarifa por cada ubicación.

**Cuidado Sea informado. Puede recibir una multa de \$2,500 y perder su licencia si vende productos de tabaco a menores.** Comerciantes que se descubren vendiendo productos de tabaco a menores serán multados \$2,500 por cada violación. La ciudad puede revocar su licencia por repetición de violaciones y usted ya no podrá de vender productos de tabaco legalmente. Siempre exija identificación válida a compradores de tabaco que compruebe que tengan por lo menos 21 años de edad. La ciudad lleva a cabo operaciones de señuelo para garantizar el cumplimiento de esta ley.

**Điều Chính Việc Mua Bán** các sản phẩm thuốc lá là mục tiêu của Chương trình cấp phép và thanh tra bán lẻ thuốc lá. Đặc biệt, chương trình tìm cách loại bỏ việc bán các sản phẩm thuốc lá và phụ tùng hút sách cho những người dưới 21 tuổi.

**Bạn là nhà buôn lẻ thuốc lá nếu trao đổi, buôn bán hay đề nghị buôn bán, trao đổi sản phẩm liên quan thuốc lá hay phụ tùng để hút thuốc.** Nếu bạn là nhà buôn lẻ thuốc lá tại San José, bạn cần sở hữu Giấy Phép Bán Lẻ Thuốc Lá. Bán thuốc lá tại bang California là phạm pháp trừ phi bạn có giấy phép. Bang California cũng yêu cầu sở hữu Giấy Phép Bang. Bạn cần có cả hai loại.

**Gia Hạn và Lệ Phí Hàng Năm.** Bạn phải gia hạn Giấy Phép Bán Lẻ Thuốc Lá San José hàng năm. Lệ phí sẽ được chỉ cho lần thanh tra khởi đầu kèm theo một lần thanh tra tuân thủ thường niên. Các lần thanh tra bổ sung có thể đòi hỏi thêm tiền phí. DANH SÁCH THANH TRA có ở mặt trong. Các lần thanh tra bổ sung có thể đòi hỏi thêm tiền phí. Một chủ doanh nghiệp có nhiều hơn một chi nhánh bán lẻ thuốc lá phải đóng phí và xin giấy phép cho từng địa điểm.

**Hãy coi chừng. Bạn có thể bị phạt \$2500 và mất giấy phép nếu bán thuốc lá cho trẻ vị thành niên.** Các nhà bán lẻ bị phát hiện bán thuốc lá cho trẻ vị thành niên sẽ bị phạt \$ 2.500 cho mỗi vi phạm. Đối với hành vi tái phạm, Thành Phố có thể thu hồi giấy phép và bạn sẽ không còn được bán hợp pháp các sản phẩm thuốc lá. Luôn hỏi người mua trình ID hợp lệ khi mua thuốc lá để chứng minh họ ít nhất 21 tuổi. Thành phố tiến hành các hoạt động nghi binh nhằm đảm bảo sự tuân thủ pháp luật của người mua bán.

## Tobacco Retailer License and Inspection Program

Programa de Licencias minorista de tabaco

Chương trình giấy phép bán lẻ thuốc lá



**Regulating the sale** of tobacco products in San José is the goal of the Tobacco Retailer License and Inspection Program. In particular, the program seeks to eliminate the sale of tobacco products and paraphernalia to persons under the age of 21.

**You are a tobacco retailer if you sell, offer for sale, or exchange or offer to exchange tobacco products or paraphernalia for any form of consideration.** If you are a tobacco retailer in San José, you must obtain a San José Tobacco Retail License (TRL). It is illegal to sell tobacco within the City unless you have a valid San José Tobacco Retail License. The state of California also requires a State Tobacco License. You need to have both.

**Annual renewal and fee.** You must renew your San José Tobacco Retail License every year. The license fee pays for the initial inspection plus one annual compliance inspection. See the INSPECTION CHECKLIST inside. Additional fees may be required if additional inspections are needed. A business owner who operates multiple tobacco retail locations must obtain a license and pay a fee for each location.

**Beware. You can be fined \$2,500 and lose your license for selling tobacco to minors.** Retailers found selling tobacco products to minors will be fined \$2,500 for each violation. For repeat violations, the City may revoke your Tobacco Retail License, and you'll no longer be able to legally sell tobacco products. Always ask any buyer of tobacco products to show a valid ID proving they are at least 21 years old. The City conducts decoy operations to ensure compliance with this law.

**For additional information**  
 Para mas informacion | Để biết thêm thông tin  
 Call: 408-535-7770 | Email: TRL@sanjoseca.gov



Code Enforcement | San José City Hall - 4th Floor  
200 E. Santa Clara St., San José, CA 95113  
408-535-7770 | [sanjoseca.gov/CodeEnforcement](http://sanjoseca.gov/CodeEnforcement)

Source: City's website

**An Incomplete List of Massage Businesses Has Revenue Implications**

Based on a comparison of businesses with current massage permits and active business tax certificates listing massage as the nature of business, we estimate the

initial applications of these businesses would generate roughly \$500,000 in permit fees and \$280,000 in ongoing renewal fees.<sup>9</sup> We should note that this estimate may potentially increase or decrease based on Code Enforcement's verification that inspected businesses require a massage permit.

By comparison, the program's actual revenues in permit fees over the last three fiscal years totaled less than \$155,000 (or just over \$50,000 per year on average).<sup>10</sup> That level of funding has not fully covered the costs associated with the dedicated code inspector, despite the expectation that it be a fee-funded position.<sup>11</sup>

### **Creating a Roster of Massage Businesses Can Help Ensure Businesses Comply with Massage Ordinance and Recover Program Costs**

To help recover costs associated with the massage program, and to ensure even enforcement, the Police Department and Code Enforcement should create and regularly update a registry or roster of massage businesses as noted in the Council adopted Personal Care Compliance Initiative. This roster could be based on active business tax certificates and/or a list of certified massage therapists under the California Massage Therapy Council.<sup>12</sup> This is how other jurisdictions, like Oakland, have compiled lists of potentially subject businesses.

In addition to a regularly updated, comprehensive list of businesses, the Police Department and Code Enforcement should work in coordination to create an outreach program for massage businesses to increase awareness and compliance with the Massage Ordinance. Adding user-friendly information online would help ensure massage businesses are aware of the Municipal Code requirements, including the need for a permit, prior to an inspection.

### **Recommendations:**

- 3: To enforce the Massage Ordinance permitting requirements, the Administration should:**
  - a) Create a roster of massage businesses based on active Business Tax Certificates and/or the list of certified massage therapists under the California Massage Therapy Council, and procedures to regularly update the roster, and**

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<sup>9</sup> Estimate is based on a minimum estimated business permit and renewal cost for FY 2020-21. An initial massage business permit costs \$1,900, an ownership/management license costs \$444. Renewing these permits costs \$896 and \$399, respectively.

<sup>10</sup> This may include massage business permit fees, reinspection fees, renewals, ownership/management license, ownership/management license renewals.

<sup>11</sup> The massage permit is a category I fee, meaning that it is anticipated to recover 100 percent of costs.

<sup>12</sup> The California Massage Therapy Council (CAMTC) provides voluntary certification to massage professionals who meet the requirements in the California Massage Therapy Act. They are implementing a database system to enable reports on massage therapists and massage establishments by city.

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- b) **Based on the roster of businesses, implement an outreach program to inform and educate massage businesses on the Massage Ordinance.**
- 4: **To ensure massage businesses are aware of the permit and other requirements of the massage program:**
    - a) **The Administration should create and post on the City's website multi-lingual informational brochures that provide information regarding the massage program goals, inspection process, and penalties or fines, and**
    - b) **The Police Department should update the massage permit application to include details on Code Enforcement's role and inspection expectations.**
  - 5: **To ensure massage businesses renew their massage permits timely, the Police Department should establish a procedure for ensuring permitted businesses are notified when they need to renew their massage permit and the consequences of not renewing their permit.**

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### **Clarity in Roles and Responsibilities in the Massage Program Can Improve Its Effectiveness**

There are multiple related goals for the massage program, including ensuring massage businesses are permitted and operating in compliance with the Municipal Code, closing IMBs, and preventing human trafficking. Multiple units within the Police Department, along with Code Enforcement, are involved with the massage program:

- **Police Department Vice Unit:** According to staff in the Vice Unit, their role is to investigate IMBs and conduct raids to shut down such businesses. Additionally, they also educate and encourage landlords with possible criminal activities (such as residential brothels) on their property to terminate those leases. Vice coordinates with Code Enforcement's massage inspector for case referrals and correspond about cases.<sup>13</sup>
- **Police Department Permits Unit:** The Permits Unit is responsible for processing massage permit applications and maintaining a list of massage businesses that are permitted, in process to be permitted, have expired permits, or have been sold. The Permits Unit coordinates with the Vice Unit and Code Enforcement as a part of processing permit applications.

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<sup>13</sup> According to the Police Department, this function is under review. They are considering moving all administrative functions to the Permits Unit.

- **Code Enforcement:** Code Enforcement is responsible for the administrative enforcement of Municipal Code violations including permit requirements and building standard requirements. According to Code Enforcement, the goal of the massage inspector is to ensure the health and safety of the community and support Police Department administrative enforcement efforts.

**The Police Department Should Standardize the Case Referral Process to the Human Trafficking Team**

**The Police Department's Human Trafficking team works separately from the massage program.**

Human trafficking prevention is one of the City's stated goals of the massage program. The Special Victims Unit's Human Trafficking team investigates human trafficking but works separately from the massage program. The Vice Unit

and Code Enforcement are primarily responsible for the massage program.

Prior to the audit, there was little coordination between the Vice Unit and Human Trafficking related to the massage program. The Vice Unit may refer cases to the Human Trafficking team, but it is not required and there is no standard process for these referrals. The Vice Unit reports it worked with the Human Trafficking team to establish a list of residential properties for their landlord education program. The Vice Unit may also contact community advocates to be on-site after a raid has been conducted to provide services to survivors of human trafficking. Generally, however, the focus of the Vice Unit has been to shut IMBs down.

During the audit, the Vice Unit began notifying Human Trafficking before taking any enforcement action at IMBs. According to the Vice Unit, this means that the Human Trafficking team will be alerted and able respond to a scene to identify and contact potential human trafficking survivors.

The Police Department should formalize this role. To support the goal of preventing human trafficking, the Special Victims Unit's Human Trafficking team should have a more clearly defined role in the massage program, such that there are procedures for referring potential victims of human trafficking to the Human Trafficking team as part of an investigation.

Other jurisdictions' massage permit programs address human trafficking prevention by coordinating and corresponding directly with their police departments' human trafficking teams, as well as with advocate groups. Other jurisdictions' massage program staff also attend trainings on human trafficking, sometimes in coordination with their police department. We should note that Code Enforcement has included human trafficking refresher trainings for all staff as part of its improvement plan.

### **The Role of the Code Inspector Can Be More Clearly Defined**

Code Enforcement's role in the massage program is to support the Police Department's administrative enforcement efforts by enforcing the Massage Ordinance's permitting and other Municipal Code requirements through administrative enforcement procedures. However, this role has not been clearly defined.

#### *Code Inspector's Workload Has Been Driven by Vice Unit Requests, and Self-Initiated and Complaint-Based Inspections*

Between FY 2017-18 and 2019-20, Code Enforcement reports that it conducted over 1,000 massage business inspections at over 260 locations.<sup>14</sup> The code inspector's workload comes from Vice Unit requests, complaints from the public, and self-initiated inspections. In addition, as a part of the permitting process, the assigned code inspector conducts an initial inspection of businesses that submit a massage permit application for compliance with the Massage Ordinance and building codes.

Other business-oriented special programs in Code Enforcement, such as the tobacco retail license and off-sale alcohol programs, identify sites for inspections from rosters of businesses based on State registries. This helps them to identify new businesses that are potentially subject to regulation. The inspectors for these programs complete routine, annual inspections based on a periodically updated list of potentially subject businesses. Other jurisdictions' massage inspection programs use similar lists to identify sites for routine inspection as well. For example, Oakland uses cross-referenced data from the California Massage Therapy Council and business tax certificates to identify sites for inspection.

#### *Code Inspector's Investigatory Role Can Be Better Defined*

Code Enforcement is investigatory by nature because inspectors must collect evidence to confirm that code violations exist. Generally, Code Enforcement has very limited involvement with criminal activity. A multiple housing or general code inspector, for example, may discover criminal activity during an inspection, at which point they would stop the inspection and notify the Police Department. In contrast, our sample review of massage cases showed a massage inspector conducting potentially inappropriate investigative work or work more appropriate for police officers rather than inspectors, for example:

- Booking an appointment at a business based on internet research on illicit websites.
- Not immediately announcing reasons for a visit upon arrival.

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<sup>14</sup> Inspections are inspector-reported. The number of locations is based on CES records.

- Taking pictures of massage staff without consent.<sup>15</sup>

Both the Vice Unit and Code Enforcement management reported that conducting police-like activities was not Code Enforcement's role in the program. However, in some cases the inspector went to potentially IMBs without being accompanied by the Vice Unit or another inspector. In doing so, and in conducting their own investigation of IMBs, there is also a risk that the inspector could unknowingly affect a police investigation.

### **Information Sharing and Case Referrals Between the Vice Unit and Code Enforcement Are Informal and Inconsistent**

The Police Department and Code Enforcement should document expectations for inspections referred by the Vice Unit, as well as points of referral from the inspector to the Vice Unit when there are indications of criminal activity. We noted various points of code inspector involvement in cases where clarity of the purpose and documentation may be warranted.

- The Vice Unit has shared information with the code inspector prior to a raid on a suspected IMB so the inspector could be on-site and prepared to issue administrative citations as needed. According to the Police Department, this practice offered the opportunity for holistic enforcement, concentrating the City's enforcement authority in one action. However, the massage inspector could provide similar support without advance knowledge of raid information. The inspector does not need to be on-site at the time of a raid to issue an administrative citation.
- Based on a review of massage cases in CES, the Vice Unit may make specific referrals to the code inspector for inspection. The referrals generally go directly to the massage inspector (via email or phone call). The reasons for the referrals have not always been documented in CES nor is the purpose clear. By contrast, Police Department referrals from the Cannabis Regulation Division generally go through Code Enforcement administrative staff.
- There may be instances where a code inspector suspects potential criminal activity during an inspection. Several massage cases in CES indicated potential commercial sex (e.g., recent explicit reviews online, presence of condoms on-site). Though these may have been referred to the Vice Unit, there is no documentation in these cases of such referrals in CES.
- Last, information from the massage inspector about potential illegal activity should be appropriately recorded. According to the Vice Unit, the former massage inspector would sometimes send tip information to an officer in the Vice Unit via text message. The Vice Unit reports that these texts

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<sup>15</sup> For example, we found instances of photos of people with their hands covering their faces as though to hide themselves from the camera.

were treated as regular tips though they were not generally recorded as part of police reports.

### **Given Its High-Risk Nature, The Massage Program Should Have Additional Controls to Mitigate Risks**

Because of the risk of code inspectors coming across criminal activities at IMBs, and the potential for code inspectors encountering vulnerable populations due to class, gender, immigration status, or English proficiency who may be survivors of human trafficking, the Police Department and Code Enforcement should consider additional measures to mitigate risks.

#### *Background Checks Should Be Considered Depending on the Inspector's Responsibilities Moving Forward*

The Police Department requires Vice Unit staff to undergo a thorough background check when they apply to be an officer and again when they join the Vice Unit. The Police Department also conducts background checks for others who work on police matters. The level of backgrounding is based on their role and responsibilities. For example, the lowest level of backgrounding the Police Department requires is for people who have remote access to the Police Department computer systems. Contractors and civilian employees (e.g., analysts and administrative staff) working for the Police Department also undergo different levels of backgrounding. For example, a contractor or civilian employee that handles money would undergo a financial check.

Depending on how the future role of the code inspector in the massage program is defined, the Police Department should determine whether backgrounding is necessary. For example, if the massage inspector will be accessing the Police Department's computer systems, the lowest level of backgrounding will be required.

#### *Code Enforcement Could Develop a Policy for Using Partners for High-Risk Inspections*

Currently, it is the inspector's discretion for when to have a partner (e.g., for safety concerns). However, Code Enforcement does not have a standard policy when a partner is recommended. All jurisdictions we benchmarked had at least two inspectors go out for high-risk inspections (i.e., potential for criminal activity). Some jurisdictions used partners for all massage inspections, reporting that partners promote inspector safety and provide another set of eyes as witness to the inspection. Two jurisdictions allowed inspectors to go to routine massage inspections for permitted sites alone.

The City has just one code inspector for the massage program, going to inspections in most instances alone. By inspecting high-risk sites alone, the inspector faces potential risks to their physical safety or extortion (due to lack of a witness).

The Division plans to add a second inspector to the program (0.5 FTE) and implement a pilot for body worn cameras for police-related programs (massage and cannabis).<sup>16</sup> It also is looking into other approaches that will help make sure inspectors act appropriately in the field. To further promote inspector safety and ensure a witness is present for high-risk inspections, the Division should consider when partners should be used.

### **The Police Department and Code Enforcement Should Align and Document Program Goals, Roles, and Responsibilities**

To strengthen management oversight, the Police Department and Code Enforcement should clearly define the process, procedures, and responsibilities of the massage inspector and related police units. Additionally, standardizing coordination with the Human Trafficking team will help the program to address its goal of human trafficking prevention. Defined roles and expectations, aligned with program goals, will standardize processes and referrals, and help the program better meet its overall goals.

Documentation of who does what, when, where, and why is also a means to retain program knowledge and mitigates the risk of limiting knowledge to a few staff. This is particularly important as the Vice Unit rotates staff every three years and Code Enforcement plans to rotate special program staff every two years.

### **Recommendations:**

- 6: To ensure appropriate follow-up on massage cases with indications of human trafficking, the Police Department should formalize the role of the Special Victims Unit's Human Trafficking team within the massage program, including the process for case referrals by the Vice Unit.**

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<sup>16</sup> Body worn cameras were included as part of the FY 2021-22 Proposed Operating Budget. The FY 2021-22 Adopted Operating Budget does not include additional staffing resources for Code Enforcement and would be subject to future budget approval.

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- 7: To clarify the purpose and responsibilities in the massage program, the Police Department and Department of Planning, Building and Code Enforcement should align on and create guidance through a Memorandum of Understanding or other means of documentation, to include:**
- a) Massage permit program goals;**
  - b) Roles and responsibilities of the different Police Department units and Code Enforcement;**
  - c) Expectations for code inspections upon application, renewal, and/or regular compliance;**
  - d) Protocols for how and when the Vice Unit should inform the Code Enforcement inspector and Code supervisor of investigatory activities; and**
  - e) Criteria and procedures for case referral between Code Enforcement, the Vice Unit, and the Permits Unit for businesses not in compliance with the Massage Ordinance or where there are indications of criminal activity.**
- 8: To mitigate risk associated with the massage program, the Police Department and the Department of Planning, Building and Code Enforcement should consider:**
- a) Backgrounding Code Enforcement inspectors assigned to the massage program, at a level determined appropriate by the Police Department's Background Unit, and/or**
  - b) Implementing a policy for partner use for complaint-based massage inspections and other non-routine, high-risk inspections (e.g., inspections of unpermitted businesses) for the massage program.**

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### **Code Enforcement Can Improve Supervisory Oversight for Massage and Other High-Risk Programs**

Under Code Enforcement's normal procedures, supervisory review is generally triggered when a case is submitted to be closed in CES. This could be a result of the code violation being addressed, a business closing, or there is no evidence of a code violation. Supervisory review may also occur under other circumstances while a case is open, such as to address questions from management, Council offices, or the public. However, these are not defined or part of the normal oversight process.

For the massage program, many cases are not closed in CES and, as such, do not trigger supervisory review of the case. As of April 2021, 40 percent of massage cases were open (with some dating back to 2017). Open cases often do not show

evidence of supervisory review, though Code Enforcement's procedures do not require supervisors to document when they have reviewed an open case.

**Code Enforcement Should Establish a Procedure for Regular Supervisory Case Review of High-Risk Programs**

Regular review of open cases would help ensure that cases are appropriately addressed and completed according to Division policy. Exhibit 5 shows an Appeals Hearing Board warning letter for a massage case that presents several issues that should have been addressed through supervisory review. For example, the letter emphasizes the massage inspector as the source of authority and does not detail the basis for over \$25,000 in fines. As noted in Finding 3, according to Division policy, all warning letters and notices should have descriptions of the violation and related Municipal Code section, information about the fine, and other information.

The letter was sent while the case was open, however, and may not have been reviewed by a supervisor until closure.

**Exhibit 5: Example Letter Without Authority or Basis for Fines**

**1** Failure to comply will result in the Appeals Hearing Board issuing an order for corrective action and an order to pay Administrative Costs and Administrative Penalties. I have put together a rough estimate of what those costs will be so that you are fully aware of the financial burden you are facing. I have estimated a total of \$1,500.00 for Administrative Costs. I have estimated a total of \$25,000.00 for Administrative Penalties. These fees will be levied against the Subject Property in the form of liens. Please be advised that the Appeals Hearing Board can increase these amounts if the panel of commissioners believe it is warranted. Furthermore, you will also be charged a daily fee of approximately \$1,000.00 after the hearing until full compliance is achieved. This amount can also be increased by the panel of commissioners. Once the total amount of fines and penalties reaches \$100,000.00, your case will then be turned over to the city attorney for further enforcement. Penalties of up to \$2,500 per violation per day may be imposed by the board.

**2** Failure to comply will result in the Appeals Hearing Board issuing an order for corrective action and an order to pay Administrative Costs and Administrative Penalties. I have put together a rough estimate of what those costs will be so that you are fully aware of the financial burden you are facing. I have estimated a total of \$1,500.00 for Administrative Costs. I have estimated a total of \$25,000.00 for Administrative Penalties. These fees will be levied against the Subject Property in the form of liens. Please be advised that the Appeals Hearing Board can increase these amounts if the panel of commissioners believe it is warranted. Furthermore, you will also be charged a daily fee of approximately \$1,000.00 after the hearing until full compliance is achieved. This amount can also be increased by the panel of commissioners. Once the total amount of fines and penalties reaches \$100,000.00, your case will then be turned over to the city attorney for further enforcement. Penalties of up to \$2,500 per violation per day may be imposed by the board.

**3** Failure to comply will result in the Appeals Hearing Board issuing an order for corrective action and an order to pay Administrative Costs and Administrative Penalties. I have put together a rough estimate of what those costs will be so that you are fully aware of the financial burden you are facing. I have estimated a total of \$1,500.00 for Administrative Costs. I have estimated a total of \$25,000.00 for Administrative Penalties. These fees will be levied against the Subject Property in the form of liens. Please be advised that the Appeals Hearing Board can increase these amounts if the panel of commissioners believe it is warranted. Furthermore, you will also be charged a daily fee of approximately \$1,000.00 after the hearing until full compliance is achieved. This amount can also be increased by the panel of commissioners. Once the total amount of fines and penalties reaches \$100,000.00, your case will then be turned over to the city attorney for further enforcement. Penalties of up to \$2,500 per violation per day may be imposed by the board.

**4** You are welcome to contact me if you have any questions. I may be reached at [redacted].

Code Enforcement Inspector

- 1** Presents inspector as source of authority
- 2** Does not give basis for \$25,000 penalty
- 3** Does not outline process for appeal; solely presents Appeals Hearing Board as vehicle for increased fines
- 4** Provides inspector contact for questions

Source: Auditor analysis of letter linked to CES.

*Cases Are Held Open Because Code Enforcement Does Not Have Access to a List of Massage Businesses*

Currently, practice in Code Enforcement is to keep massage cases open in CES to track the status of permits and to easily access permit information on businesses. The reason for this is that Code Enforcement does not have access to the Permit Unit’s list of permitted massage businesses. Practice in the cannabis program is to similarly keep cases open for permitted dispensaries.

Other special programs, such as off-sale alcohol, close cases regularly. This is due to those programs having a list of permitted businesses, so they do not need to keep cases open to access permit or other information.

Code Enforcement should establish procedures for supervisors to regularly review and standardize closure of massage and cannabis cases. In addition, the Permits Unit should give Code Enforcement access to the list of permitted businesses. This would give the massage inspector access to permit status information to support enforcement and inform inspections. This, in turn, would enable Code Enforcement to close massage cases based on resolution, like other Code Enforcement programs.

### Performance Targets Would Help Supervisors Monitor Inspector Workload and Program Effectiveness

Code Enforcement’s massage and cannabis programs do not have performance measures that allow management to assess program or individual performance. The programs have internal measures that describe workload, but do not have targets associated with them. For example:

- The massage program measures the number of new cases, closed cases, compliance orders and citations issued, inspections, and locations closed.<sup>17</sup> (See Exhibit 6.)
- The cannabis program measures new complaints, citations and pre-citations issued, and inspections.

#### Exhibit 6: Reported Massage Inspection Activity Decreased After 2017-18



Source: Auditor summary of performance data presented to the Public Safety, Finance, and Strategic Support Committee.

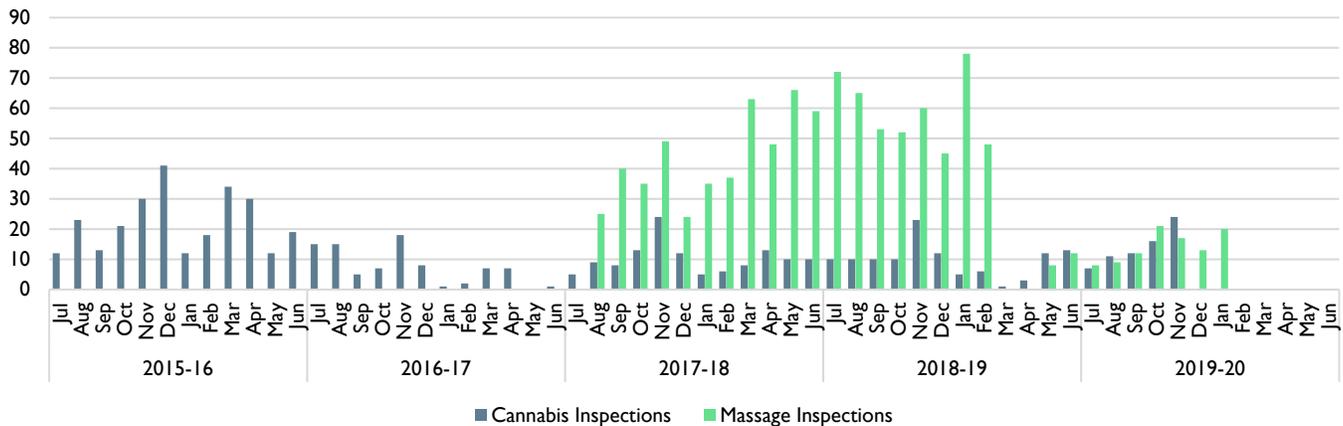
These current internal measures assess levels of activity but do not necessarily measure progress toward program goals (e.g., percentage of businesses inspected in compliance with the Massage Ordinance). In addition, performance data for special programs is self-reported by inspectors. Other programs’ performance measures are based on reports from CES data.

Exhibit 7 shows the number of inspections completed by the cannabis and massage inspectors, but without an idea of how many inspections they should do, it is difficult to assess performance.

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<sup>17</sup> Some measures including number of code enforcement inspections, compliance orders, and citations are reported by the Police Department to the Public Safety, Finance and Strategic Support Committee (see Exhibit 6). However, the data presented is limited because it does not include targets or measures on program performance relative to the number of businesses or some other denominator.

**Exhibit 7: Existing Performance Measures Track Activity, But Without Performance Targets, It Is Difficult to Assess Inspector and Program Performance**



Source: Auditor summary of Code Enforcement performance measure data. Data is inspector-reported for internal performance measure reporting.

Note: The massage program started in 2017-18 and was put on hold in March 2020 due to the shelter-in-place orders issued by public health officials. The City temporarily stopped all special program inspections, as they were not deemed an essential City service.

In contrast, other special programs have performance measures and targets that relate to program goals. For example, tobacco retail license, off-sale alcohol, and abandoned shopping carts have measures showing percentage of facilities inspected for the year against total facilities. These measures help give management a sense of coverage – the proportion of businesses in the city that have been inspected to ensure compliance with Municipal Code. These programs also have annual inspection targets which set clear expectations regarding inspector case workload.

In contrast, neither massage nor cannabis have annual inspection targets. A roster of massage businesses, as recommended earlier, would enable more effective performance measures like percentage of businesses inspected in compliance with the Massage Ordinance. System-based reports or a process to validate inspector-reported data would also help ensure the accuracy of the data on which management bases decisions. These measures should also be reported to department management or an appropriate oversight body.

**Recommendations:**

- 9: To allow the Department of Planning, Building and Code Enforcement to track the permit status of massage businesses, the Police Department should grant access to the roster of permitted massage businesses to Code Enforcement.**
- 10: To increase oversight and supervisory review in high-risk programs, the Department of Planning, Building and Code Enforcement should establish procedures for supervisors to**

regularly review cases in the massage and cannabis programs and/or to close cases to ensure supervisory review.

- II: To aid in evaluating program performance, the Department of Planning, Building and Code Enforcement should:**
- a) Establish performance measures and targets for special programs, like cannabis and massage, that relate to program goals (e.g., annual inspection targets, percentage of completed inspections based on the roster, percentage of businesses brought into compliance),**
  - b) Either create system-based reports for special program performance measures or establish a process to check inspector-reported data for accuracy, and**
  - c) Report performance measures to the appropriate City Council committee.**

## **Finding 3      Code Enforcement Can Improve Supervisory Oversight and Staff Guidance**

### **Summary**

Following the charges against the former inspector, PBCE created a plan to improve management and accountability in the Division. Many of the items in the plan provide more “controls,” or ongoing, built-in procedures to help make sure the organization meets its goals. Our review identified gaps in supervisory oversight and need for clarity in expectations for staff. For example, supervisors can better ensure inspectors’ work aligns with Division policies. Additionally, updated policies would help communicate Division values and set standard expectations for both staff and supervisors. In addition, performance targets for case closure do not have feedback systems to support Division goals and some staff have not had performance evaluations in well over a year. (As of July 2020 and January 2021, 20 percent had not had an evaluation in over 2.5 years.) We recommend additional controls to support supervisory oversight and clarify staff expectations.

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### **Code Enforcement Is Working to Improve Management and Oversight**

As noted in the Background, PBCE has created a plan to improve management and accountability in the Division. Example items include:

- Adding a supervisor dedicated to special programs (including massage).<sup>18</sup>
- Hiring a consultant for revised ethics trainings.
- Providing regular refresher trainings for supervisors.
- Random customer audits by supervisors, included as part of supervisors’ performance standards.
- Adding contact information to the website, business cards, and documents for customers to report concerns.

Our review identified additional steps the Division can take to improve supervisory oversight and standardize work in the Division.

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<sup>18</sup> The FY 2021-22 Adopted Operating Budget does not include additional staffing resources for Code Enforcement and would be subject to future budget approval.

### **Division Management Values Professionalism, Communication, and Safety**

The Code Enforcement Division aims to set a positive tone at the top. Division management describes professionalism, communication, and safety among values of the Division, and have touched on these values in staff meetings.

Organizational culture goes hand in hand with management controls. Culture can support or undercut the effectiveness of management controls. For example, a culture that does not enforce codes of conduct and related policies undermines those rules. Similarly, pressures from tight deadlines or unreasonable expectations may result in cutting corners.

It is important that management lead by example and demonstrate organizational values and ethical behavior. According to the U.S. Government Accountability Office (GAO), strong tone at the top helps to ensure an organization addresses all risks, designs appropriate controls, and responds effectively to correct problems. From our meeting observations, a staff survey, and review of Code Enforcement's improvement plan, we found that the Division exhibits some positive organizational traits, such as staff feeling management is responsive to concerns and feeling supported at work.

### **Most Staff Feel Engaged at Work and Agree That Management Is Responsive to Concerns**

While there are areas where Code Enforcement can improve, an employee survey shows some positive organizational traits. Most staff agreed that:

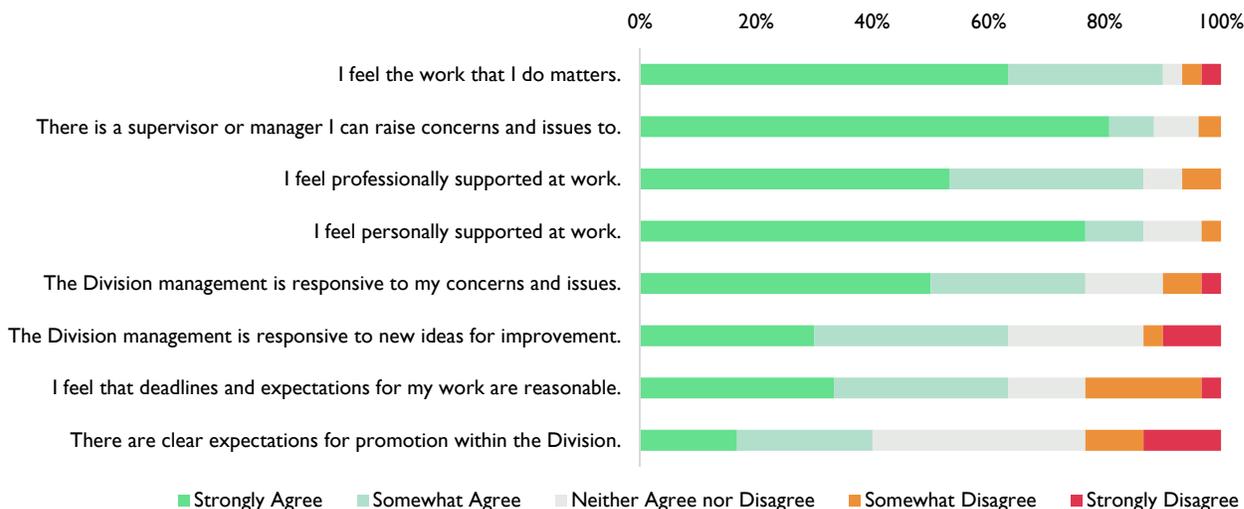
- Division management is responsive to concerns and issues.
- Division management is responsive to ideas for improvement.
- There is a supervisor they can raise concerns or issues to.
- They feel professionally supported at work.
- They feel personally supported at work.
- Deadlines and expectations for their work is reasonable.<sup>19</sup>

Additionally, 90 percent of staff felt the work they do matters.

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<sup>19</sup> Auditor-conducted survey of 43 staff had a response rate of 70 percent. See Appendix A for methodology.

**Exhibit 8: Most Staff Surveyed Agree They Feel Supported at Work**



Source: Auditor-conducted survey of Code Enforcement inspectors and supervisors. See Appendix A for methodology.

These results suggest staff are engaged. They also indicate that management generally respond to staff concerns. Both are important elements of positive organizational culture. These also have positive implications for the implementation of Code Enforcement’s improvement plan.

Our review identified ways that Code Enforcement can better disseminate positive organizational values and improve management controls in the areas of clear communication and aligning incentives with values. Specifically, we identified gaps in supervisory oversight, areas for clarity in expectations for staff, and potential to improve accountability for individual employees.

**Code Enforcement Can Better Disseminate Organizational Values Through Consistent Supervision and Updated Policies**

Division management should set expectations for how supervisors ensure inspectors’ work is in accordance with Department policy. In addition, having complete and up-to-date policies will clearly help communicate expectations for inspectors. Setting standard expectations are important; tolerance for deviations from policy can be a risk to organizational culture, result in the Division not meeting its performance goals, and create opportunities for fraud.

**Supervisors Can Better Ensure Inspector’s Work Aligns With Division Policies**

In some instances, supervisors have signed-off on cases that do not align with policies or have limited evidence to support inspector conclusions. For example:

- Division policy requires inspectors to take a picture if a code violation no longer exists. In some closed cases, inspectors noted in the file that there was no violation but did not add a picture.
- Most supervisors said they would expect photos of the violation and resolution. A sample review of closed community code enforcement cases found 30 percent of cases lacked initial photos and half did not have a photo of the resolution, or did not include additional supporting evidence noted in the case notes.<sup>20</sup>

Division management reports that Code Enforcement can rely on inspector testimony as case evidence for appeals hearings. However, additional supporting evidence is frequently required to be documented in CES by Division policy, and provides assurance that inspectors' notes are accurate and that the case has been addressed appropriately.

According to the Division, some deviations in policy may be appropriate in given circumstances. However, the Division does not have a consistent practice for documenting the reason for deviating from policies, nor when it is appropriate for deviations to occur. Code Enforcement should set expectations for when and how staff document an exception in a case to ensure they are appropriate.

The Division's improvement plan includes regular refresher trainings for supervisors. In addition, the Division should provide training for new supervisors moving forward. Currently, the Division does not have internal trainings for new supervisors. In addition, because the Division does not have a quality assurance system outside supervisor case review, Division managers should set a regular sample review of closed cases to make sure they were closed appropriately.

### **Updated Policies Would Help Communicate Division Values and Set Standard Expectations**

Up-to-date, clear policies and procedures would further support the Division's values. The Division has over 90 different policies and procedures, with an average age of over 11 years. Some policies are obsolete; others are not used in practice. Some expectations for staff or supervisors are not outlined in policies and procedures. Lack of standard or clearly communicated expectations weakens the control that policies and procedures provide.

**Code Enforcement has over 90 policies and procedures with an average age of over 11 years.**

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<sup>20</sup> We reviewed a random sample of 101 cases closed in 2019 and 2020. See Appendix A for methodology. Percentages represent a subsample of general code and special program cases (excluding vehicle abatement) that had a self-initiated, proactive, or complaint-based inspection. In the overall sample, 17 cases appeared to be handled exclusively by administrative staff (i.e., sent a form letter to complaining party and responsible party) and did not show supervisory review. These were excluded from percentages presented.

Additionally, current policies do not address some potential risks. For example, the Division does not have policies that:

- Outline elements for supervisory case review.
- Require staff to document reasons for deviating from policies.
- Specify when staff should use a partner for an inspection.
- Guide special programs like massage or cannabis.

The Division reports it does not have policies for every scenario, so staff must adapt as needed. Staff report some difficulty finding relevant guidance within the policies and may look to their peers for guidance. Additionally, written policies ensure procedures are consistent even after staff turnover.

Combining policies into a comprehensive digital manual will make it easier for staff to find relevant guidance. It also ensures that all staff refer to the same guidance, rather than relying on other staff (who may have different interpretations or understanding of department policies). Having current policies also sets objective standards for staff performance and helps disseminate Division values. When establishing and updating policies, Division management should consider the organization's objectives and put in controls to support objectives and reduce risks, including potential for fraud.<sup>21</sup>

#### **Recommendations:**

- I2: To better set expectations for staff and address potential risks in its programs, the Department of Planning, Building and Code Enforcement should:**
- a) **Create and update Code Enforcement policies using a risk-based approach to identify where programs may not meet objectives, for example, incorporating policies or guidance for elements of supervisory review, documentation for deviating from policies, and for special programs,**
  - b) **Combine the policies into a comprehensive digital manual, and**
  - c) **Set a schedule for periodic review of policies and procedures to update as needed.**

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<sup>21</sup> GAO standards on internal controls states that management should consider the potential for fraud when identifying organizational risks. "Fraud risk factors do not necessarily indicate that fraud exists but are often present when fraud occurs." Fraud risk factors include opportunities for fraud, such as absence of controls, weak controls, or ability for management to override controls (Green Book 8.01, 8.04).

- 13: To promote consistent case review practices, the Department of Planning, Building and Code Enforcement should develop training for new Code Enforcement supervisors.**
- 14: To ensure consistency in inspector documentation and supervisory review, the Department of Planning, Building and Code Enforcement should establish a regular sample review by Division Managers of closed Code Enforcement cases to ensure that supervisors and inspectors follow policies in documenting inspections.**

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### **Code Enforcement Can Improve Expectations for Inspections and Document Handling of Complaints Regarding Employee Conduct**

Currently, inspectors do not have many checks on their conduct in the field other than customer complaints. Inspectors have cases assigned by program and by census tract, such that no one else will typically inspect the same site.<sup>22</sup> Inspectors also do their own follow-up for re-inspection. Last, inspectors choose when to have a partner accompany them.

The Division's improvement plan has items to support inspector accountability by the public. For example, the Division plans to add contact information on the City's website, business cards, and other documents for customers to report concerns. It also plans to implement random customer audits. These items are important because inspectors often work in the field alone which limits supervisors' ability to monitor inspector's activities.<sup>23</sup> While supervisors have access to inspectors' case files, they may not have time to review all open cases. Case files may also have limited evidence of inspectors' activities.<sup>24</sup>

Working in the field alone may also pose challenges to inspectors. Inspector safety is a concern in the Division. Additionally, residents or business owners may not understand inspectors' authority, or agree with their assessment of a violation. This may result in complaints, prolonged non-compliance, or even altercations.

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<sup>22</sup> The same site may be inspected under different programs. For example, a business that sells tobacco and off-sale alcohol would be inspected by two inspectors with different purviews. Additionally, a general code inspector may also inspect the business if there were a general code complaint. Reassignment of an inspector to a new program or geographic area would also result in a site receiving an inspection by different inspectors.

<sup>23</sup> We should note that inspectors do not spend all their time in the field. Code Enforcement reports that most inspectors split their time between the field and office. Supervisors and peers may regularly engage staff in the office to discuss cases for feedback and direction. Beginning in March 2020, staff worked remotely due to the shelter-in-place order put in place during the COVID-19 pandemic.

<sup>24</sup> Inspectors may not document everything they do (through written notes or photographs). Additionally, there may not be other forms of documentation to compare against inspector notes.

### Code Enforcement Should Describe Potential Code Violations in Its Standard “Attempt to Contact” Letters

The Division should revise its standard “attempt to contact” letters to better describe potential code violations and clarify the code inspector’s authority.<sup>25</sup> Letters that clearly outline violations and means of resolution support the Division’s goals of bringing residents into voluntary compliance. Staff report property owners’ lack of understanding about a violation can be a barrier to being able to bring their property into compliance. Clear letters also provide information that can help property owners understand the inspection process and support the inspectors’ credibility in the field.

According to the Division, all warning letters and notices should have:

- A description of the violation and related Municipal Code section.
- An explanation of how to correct the violation.
- A date for compliance.
- Information on the fine, if applicable.

These are based in part on Municipal Code requirements for compliance orders and administrative citations. In contrast to other administrative letters sent by Code Enforcement, “attempt to contact” letters do not describe the complaint as shown in Exhibit 9. Without this information, property owners and business owners may not be able to verify information from inspectors or understand the nature of the code violation.

#### Exhibit 9: The “Attempt to Contact” Letter Does Not Provide Information on Complaint or Expectations for Inspection

**1** Our office is in receipt of a complaint regarding possible code violations at the above referenced address. We have attempted to contact you to arrange for an inspection of your property and have left business cards requesting you to call our office.

**2** Please contact our office promptly at [REDACTED] or email [REDACTED] to arrange for a property inspection. Failure to do so may require the City of San Jose to take further enforcement action as appropriate.

SUBJECT: [REDACTED]  
CASE NO: [REDACTED]

Our office is in receipt of a complaint regarding possible code violations at the above referenced address. We have attempted to contact you to arrange for an inspection of your property and have left business cards requesting you to call our office.

Please contact our office promptly at [REDACTED] or email [REDACTED] to arrange for a property inspection. Failure to do so may require the City of San Jose to take further enforcement action as appropriate.

Thank you for your cooperation.

[REDACTED]  
Code Enforcement Inspector

**1** Does not describe complaint

**2** Does not outline expectations for inspection

Source: Auditor analysis of letter linked to CES.

<sup>25</sup> The Division has two different types of letters that go out early in the process: (1) Administrative staff send template letters to properties where there has been complaints of lawn parking or overgrown weeds, for example, and (2) for other cases that require an initial field inspection, inspectors may send an “attempt to contact” letter instead. This letter is sent when an inspector has tried to go out to a site or call a property without response.

The Division should revise its standard “attempt to contact” letters to ensure that they address, as appropriate, the:

- Inspector and City authority.
- Description of the complaint.
- Purpose of the inspection.
- Provide clear guidance for compliance.

This information will help property owners understand the process and their rights. As described in the Division improvement plan, these letters should include separate contact information for customers to report concerns or complaints about inspector conduct.

### **Code Should Document Handling of Public Complaints Regarding Employee Conduct**

As part of its management and accountability improvement plan, the Division intends to add contact information to websites, business cards, and documents for complaints about employee conduct. While public complaints about employee conduct may come directly to Code Enforcement already, this will make it easier for customers to report concerns. Additionally, public complaints about conduct may continue to go to the Office of Employee Relations (OER) through the Whistleblower Hotline.

Currently, the Division documents its handling of Whistleblower Hotline complaints but does not maintain a log of complaints about conduct it receives directly. As the Division adds complaint contact information as part of its improvement plan, it should also begin to maintain a log of complaints about employee conduct it receives directly. The Division should similarly document handling and resolution of those complaints within the log, including whether it is necessary to coordinate a response with OER.

### **Recommendations**

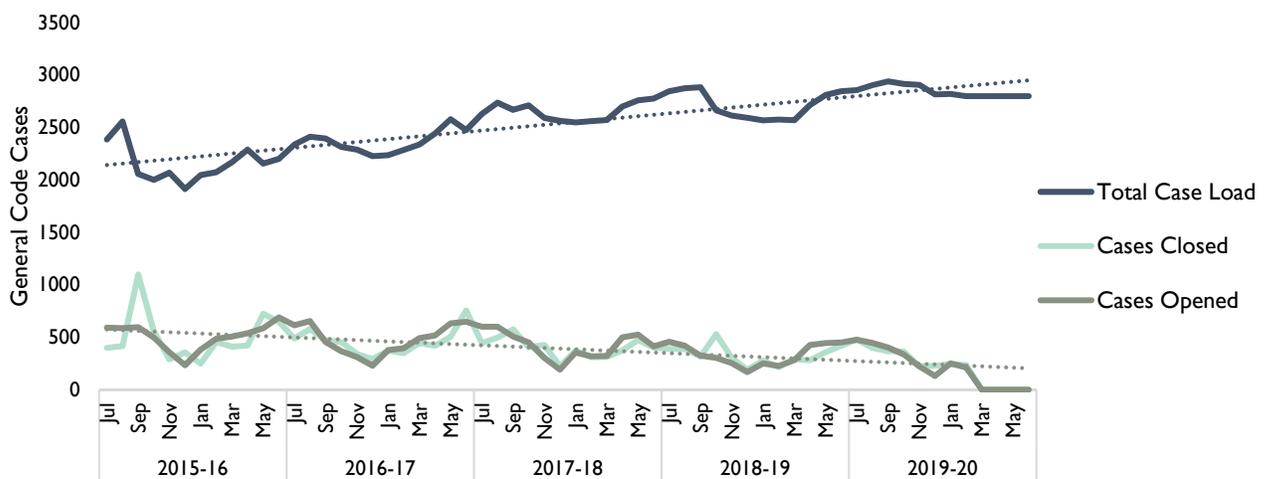
- 15: The Department of Planning, Building and Code Enforcement should revise Code Enforcement’s “attempt to contact” letter template to include authority, complaint description, and purpose of inspection prior to inspection, and as appropriate, supervisors’ contact information for questions or concerns.**
- 16: To document Code Enforcement’s complaint process and improve Division oversight, the Department of Planning, Building and Code Enforcement should maintain a confidential log of complaints related to inspector conduct, including the date of the complaint and how it was handled.**

**Management Should Develop Meaningful Performance Targets for Closing Cases**

General code open cases have grown despite a decline in new complaints.<sup>26</sup> Code Enforcement does not have clear expectations for inspectors on the time to case closure based on the type of violation. This is in part because resolution depends on responsiveness of the property owner.<sup>27</sup> Additionally, inspector vacancy rates may affect the number of open cases and time to closure.<sup>28</sup> Without clear expectations for case escalation and time to closure, caseloads may continue to grow. This means that code violations have not been addressed and remain outstanding.

Code Enforcement emphasizes timeliness to initial response by the inspector and regular contact with the property owner thereafter. However, cases are not closed until violations are addressed. Individual violations can be resolved throughout the duration of the case, but the inspector does not submit a case for closure until the property or business reaches compliance for all violations.

**Exhibit 10: Total General Code Cases Have Grown, Though the Number of Newly Opened Cases Has Decreased**



Source: Auditor analysis of Code Enforcement performance data from CES.

<sup>26</sup> General code open cases grew by 17 percent from FY 2015-16 to 2019-20. (Excludes months following shelter-in-place orders during the COVID-19 pandemic.) See Exhibit 6.

<sup>27</sup> According to the Division, property owners may face significant challenges like lack of resources or other difficulties that prevent them from complying more expeditiously. Code Enforcement aims to work in partnership with the community to reach compliance and factors these situations into the time to resolve a violation. If a responsible party is working in good faith to achieve compliance, the Division grants extensions or additional time.

<sup>28</sup> From FY 2015-16 to 2019-20, there were between 38 and 41 active code enforcement inspectors, with less than half assigned to general code.

### *Some Inspectors Have Large Caseloads*

Within the Division, only some staff have expected caseloads to maintain. Staff in the multiple housing program have unwritten expectations for caseload. General code and some special programs do not have expected caseloads.<sup>29</sup> Management report that general code inspectors ideally have around 100 cases in total. Some inspectors have well over 200 cases.

Management reports that it is working to update timelines for case closure. Measuring against an updated timeline will help management understand how well the Division meets its goals (i.e., fixing code violations). It may also help reduce the number of open cases. Management should balance such performance measures with evaluating pressure on staff. (While most staff surveyed agreed that deadlines for their work are reasonable, the Division does not currently set staff expectations on case closure times.) If staff are under too much pressure (large caseloads), management should rebalance workloads or add resources, as budget allows.

### **Recommendation:**

- 17: Department of Planning, Building and Code Enforcement should develop targets and track Code Enforcement program performance to:**
- a) Establish expectations for inspector activity and performance and incorporate into regular performance evaluations (e.g., time to case closure based on type of violation and number of open cases).**
  - b) Rebalance workloads or add resources, as needed.**

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### **Code Enforcement Can Improve Feedback With Staff**

According to the GAO, management should review performance to ensure staff carry out their responsibilities in support of program goals. Performance evaluations are a way to do this, as well as reiterate how staffs' work supports Division values and goals and set objective expectations for growth within the organization. A survey of Code Enforcement inspectors and supervisors found that just 40 percent agreed that there are clear expectations for promotion within the Division.

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<sup>29</sup> Inspectors for roster-based special programs inspections like for the tobacco retailer license program and off-sale alcohol program are expected to do one inspection per business annually. These programs have performance measures for the percentage of applicable businesses inspected. As noted in Finding 2, other special programs staff, like for massage and cannabis, do not have similar performance targets.

### **Code Enforcement Can Improve Employee Accountability Through Regular Performance Evaluations**

As of February 2021, most non-management staff were overdue for performance evaluations. Of those, a third of staff had not had performance evaluations completed in over a year. Some staff have not had an evaluation in well over a year. In January 2021 and July 2020, 20 percent of staff had not had performance evaluations in over 2.5 years.<sup>30</sup> One inspector had not had an evaluation since 2014.

The City requires that staff receive evaluations at least once a year. Code Enforcement management attributes the delay in evaluations in part to changing dates for completion (based on fiscal year, employee anniversary, etc.). Code Enforcement should set a schedule for regular evaluations going forward and complete all outstanding performance evaluations.

### **Code Enforcement Can Improve Performance Evaluations by More Closely Tying Staff Expectations and Division Policies**

Written expectations communicate to staff how they are evaluated and how the evaluation is done. Code Enforcement can more closely tie staff expectations and Division policies to evaluation criteria.

Code Enforcement has a matrix that defines expectations for supervisors. The matrix includes items like:

- Timely performance evaluations.
- Timely responses to customers.
- Ensuring closed cases meet standards.

Currently, Code Enforcement does not have a process to assess supervisor performance in ensuring closed cases meet standards. The Division plans to include random customer audits and mandatory ride-alongs in supervisors' evaluations. Additionally, the division manager review of a sample of closed cases could be part of a standard process for evaluating supervisor performance (see Recommendation #16).

For inspectors, Code Enforcement ties the City-standard performance elements with Division expectations. Example items include:

- Knowledge of Division policies and procedures.
- Timely responses to customers.
- Clear written communications.

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<sup>30</sup> Auditor analysis based on PeopleSoft data as of the first of each month. Excludes retiree-rehires. Does not include division manager or deputy director positions.

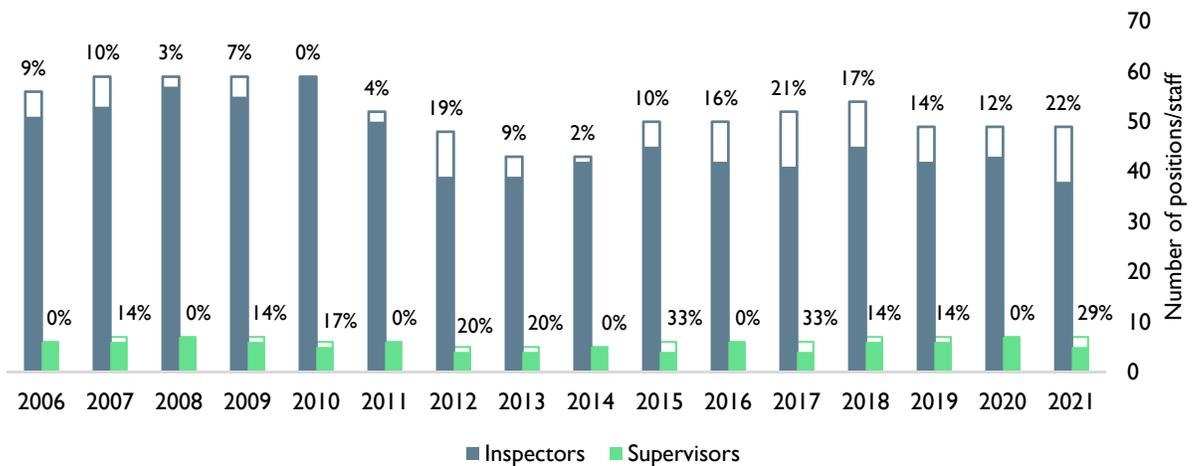
Code Enforcement should review and revise these expectations to incorporate specific employee expectations, such as inspectors’ use of photos and consistency in case notes, under City-standard performance elements. This would more closely align performance evaluations with Division goals.

**Code Enforcement Should Conduct Exit Interviews to Inform Division Improvement**

Vacancy rates have been relatively high since 2015 (See Exhibit 11) and staff highlighted this as an issue in the Division. As of January 2021, the Division had a:

- 22 percent vacancy rate among inspectors (11 of 49 positions) and
- 29 percent vacancy rate among supervisors (2 of 7 positions).<sup>31</sup>

**Exhibit 11: Code Inspector Vacancy Rates Have Been Relatively High Since 2015**



Source: Auditor analysis of PeopleSoft data for number of active employees and budgeted employees on January 1 of each year. Does not include retiree-rehires. Includes environmental supervisor position. Does not include administrative supervisor position.

Research shows that high turnover can impact performance. Additionally, vacancies limit staffing options for programs. Since 2011, 50 percent of departures among Code Enforcement inspectors and supervisors have been due to retirement. Over a third have been due to resignation.

Exit interviews can help the Division understand reasons for employee departure, as well as gain insights from experienced staff who have reached retirement age. Analyzing exit interview data can point to specific items for improvement. It also shows that management values staff’s views.

<sup>31</sup> Includes building and environmental inspectors and supervising environmental staff in the Code Enforcement Division.

**Recommendations:**

- 18: The Code Enforcement Division within the Department of Planning, Building and Code Enforcement should complete all outstanding performance evaluations and set a schedule for regular evaluations going forward.**
  
- 19: To align performance evaluations with Division goals, the Department of Planning, Building and Code Enforcement should review and revise its employee expectations and incorporate into Code Enforcement performance evaluations based on objective criteria and measurement (e.g., inspector use of photos, consistency in case notes; supervisor quality of supervisory case review).**
  
- 20: To identify lessons for future improvement, the Department of Planning, Building and Code Enforcement should implement a standard process of exit interviews for Code Enforcement inspectors and supervisors.**

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# Conclusion

The objective of this audit was to review Code Enforcement management and oversight. It was added to our workplan by the Rules Committee in November 2020, following charges that a former code inspector dedicated to the City's massage permitting program had abused his position for personal gain. Based on the request, we also broadly reviewed the timeline of events relating to the City's complaint handling and coordination of the massage program by Code Enforcement and the Police Department. While the inspector was working for the City, the City received anonymous complaints and letters alleging inappropriate and criminal activity. We recommend improvements to Code Enforcement's incident policy. During the audit, the Administration updated the City's Whistleblower Complaint Policy to ensure that there is a clear process for handling complaints alleging crimes by City staff, and revised the Whistleblower Hotline form.

The Police Department oversees the massage program in coordination with Code Enforcement. Since FY 2017-18, Police Vice Unit has reported closing over 200 illicit massage businesses. However, the program has not fully met the intent of the Massage Ordinance, which seeks to ensure massage services are qualified, lawful, and professional. Conducting outreach and posting materials online can help more businesses become permitted. Additionally, basing code enforcement inspections on a list of all businesses potentially subject to the ordinance would reduce the risk that the ordinance is enforced inequitably. To strengthen management oversight, the Police Department and Code Enforcement should clearly define the process, procedures, and responsibilities of the massage inspector and relevant police units, and mitigate risks through backgrounding and use of a partner for high-risk inspections.

Finally, in response to the charges against the former inspector, the Department of Planning, Building and Code Enforcement created a plan to improve management and accountability in the Code Enforcement Division. Many of the items in the plan provide more "controls," or ongoing, built-in procedures to help make sure the organization meets its goals. We recommend additional controls to support supervisory oversight and clarify staff expectations.

## RECOMMENDATIONS

### **Finding 1: The City Received Multiple Anonymous Complaints Alleging Inspector Misconduct**

Recommendation #1: The Department of Planning, Building and Code Enforcement should revise the Code Enforcement Division's incident policy to include direction around courses of action (e.g., temporary reassignment, partner-use, other actions) to address instances such as:

- a) extortion or bribery attempts made to staff,
- b) serious allegations and complaints, or

- c) other instances deemed appropriate by the Administration.

Recommendation #2: To the extent the City Council has further questions or concerns, the City Council should consider appointing an outside investigator to review the activities of the former code inspector in the massage program or the handling and investigation of related complaints under Section 416 of the City Charter.

**Finding 2: The Massage Program Needs Defined Goals and Responsibilities to Strengthen Management Oversight**

Recommendation #3: To enforce the Massage Ordinance permitting requirements, the Administration should:

- a) Create a roster of massage businesses based on active Business Tax Certificates and/or the list of certified massage therapists under the California Massage Therapy Council, and procedures to regularly update the roster, and
- b) Based on the roster of businesses, implement an outreach program to inform and educate massage businesses on the Massage Ordinance.

Recommendation #4: To ensure massage businesses are aware of the permit and other requirements of the massage program:

- a) The Administration should create and post on the City's website multi-lingual informational brochures that provide information regarding the massage program goals, inspection process, and penalties or fines, and
- b) The Police Department should update the massage permit application to include details on Code Enforcement's role and inspection expectations.

Recommendation #5: To ensure massage businesses renew their massage permits timely, the Police Department should establish a procedure for ensuring permitted businesses are notified when they need to renew their massage permit and the consequences of not renewing their permit.

Recommendation #6: To ensure appropriate follow-up on massage cases with indications of human trafficking, the Police Department should formalize the role of the Special Victims Unit's Human Trafficking team within the massage program, including the process for case referrals by the Vice Unit.

Recommendation #7: To clarify the purpose and responsibilities in the massage program, the Police Department and Department of Planning, Building and Code Enforcement should align on and create guidance through a Memorandum of Understanding or other means of documentation, to include:

- a) Massage permit program goals;
- b) Roles and responsibilities of the different Police Department units and Code Enforcement;
- c) Expectations for code inspections upon application, renewal, and/or regular compliance;

- d) Protocols for how and when the Vice Unit should inform the Code Enforcement inspector and Code supervisor of investigatory activities; and
- e) Criteria and procedures for case referral between Code Enforcement, the Vice Unit, and the Permits Unit for businesses not in compliance with the Massage Ordinance or where there are indications of criminal activity.

Recommendation #8: To mitigate risk associated with the massage program, the Police Department and the Department of Planning, Building and Code Enforcement should consider:

- a) Backgrounding Code Enforcement inspectors assigned to the massage program, at a level determined appropriate by the Police Department's Background Unit, and/or
- b) Implementing a policy for partner use for complaint-based massage inspections and other non-routine, high-risk inspections (e.g., inspections of unpermitted businesses) for the massage program.

Recommendation #9: To allow the Department of Planning, Building and Code Enforcement to track the permit status of massage businesses, the Police Department should grant access to the roster of permitted massage businesses to Code Enforcement.

Recommendation #10: To increase oversight and supervisory review in high-risk programs, the Department of Planning, Building and Code Enforcement should establish procedures for supervisors to regularly review cases in the massage and cannabis programs and/or to close cases to ensure supervisory review.

Recommendation #11: To aid in evaluating program performance, the Department of Planning, Building and Code Enforcement should:

- a) Establish performance measures and targets for special programs, like cannabis and massage, that relate to program goals (e.g., annual inspection targets, percentage of completed inspections based on the roster, percentage of businesses brought into compliance),
- b) Either create system-based reports for special program performance measures or establish a process to check inspector-reported data for accuracy, and
- c) Report performance measures to the appropriate City Council committee.

**Finding 3: Code Enforcement Can Improve Supervisory Oversight and Staff Guidance**

Recommendation #12: To better set expectations for staff and address potential risks in its programs, the Department of Planning, Building and Code Enforcement should:

- a) Create and update Code Enforcement policies using a risk-based approach to identify where programs may not meet objectives, for example, incorporating policies or guidance for elements of supervisory review, documentation for deviating from policies, and for special programs,
- b) Combine the policies into a comprehensive digital manual, and
- c) Set a schedule for periodic review of policies and procedures to update as needed.

Recommendation #13: To promote consistent case review practices, the Department of Planning, Building and Code Enforcement should develop training for new Code Enforcement supervisors.

Recommendation #14: To ensure consistency in inspector documentation and supervisory review, the Department of Planning, Building and Code Enforcement should establish a regular sample review by Division Managers of closed Code Enforcement cases to ensure that supervisors and inspectors follow policies in documenting inspections.

Recommendation #15: The Department of Planning, Building and Code Enforcement should revise Code Enforcement's "attempt to contact" letter template to include authority, complaint description, and purpose of inspection prior to inspection and, as appropriate, supervisors' contact information for questions or concerns.

Recommendation #16: To document Code Enforcement's complaint process and improve Division oversight, the Department of Planning, Building and Code Enforcement should maintain a confidential log of complaints related to inspector conduct, including the date of the complaint and how it was handled.

Recommendation #17: Department of Planning, Building and Code Enforcement should develop targets and track Code Enforcement program performance to:

- a) Establish expectations for inspector activity and performance and incorporate into regular performance evaluations (e.g., time to case closure based on type of violation and number of open cases).
- b) Rebalance workloads or add resources, as needed.

Recommendation #18: The Code Enforcement Division within the Department of Planning, Building and Code Enforcement should complete all outstanding performance evaluations and set a schedule for regular evaluations going forward.

Recommendation #19: To align performance evaluations with Division goals, the Department of Planning, Building and Code Enforcement should review and revise its employee expectations and incorporate into Code Enforcement performance evaluations based on objective criteria and measurement (e.g., inspector use of photos, consistency in case notes; supervisor quality of supervisory case review).

Recommendation #20: To identify lessons for future improvement, the Department of Planning, Building and Code Enforcement should implement a standard process of exit interviews for Code Enforcement inspectors and supervisors.

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# APPENDIX A

## Audit Objective, Scope, and Methodology

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability, and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services. In accordance with the City Auditor's Fiscal Year (FY) 2021-22 Audit Work Plan, we have completed an audit of Code Enforcement management controls. The audit was conducted in response to a request by the Mayor and Councilmembers.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this audit was to review Code Enforcement management and oversight. To understand management controls and meet our audit objectives, we did the following:

- To understand management practices within the Division:
  - Reviewed the Division's management, oversight, and accountability improvement plan.
  - Reviewed 90 Division policies and procedures.
  - Interviewed Division management, supervisors, and inspectors about expectations and practices within the Division.
  - Reviewed Code Enforcement System (CES) controls and policies and expectations for data entry.
  - Compared Division management practices against standards for internal control set by the U.S. Government Accountability Office.<sup>1</sup>
- To understand the effectiveness of management practices:
  - Reviewed Division performance measures and performance targets. We did not assess the validity of underlying data. Where possible, we compared values presented within internal or external performance reports to records from CES, like the number of open or closed cases. We relied on reported activity to understand what the Division measured and what targets they compared against.
  - Reviewed a sample of case files in the CES database for supervisory review and adherence to Division policies. We reviewed 101 cases closed in 2019 and 2020. These cases were randomly selected and approximately weighted to include all programs.
  - Checked timeliness and completion of staff performance appraisals. We did not review the content or rating of performance.

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<sup>1</sup> <https://www.gao.gov/greenbook>

- To understand the effect of and reasons for staff turnover on the Division:
  - Analyzed PeopleSoft data to assess Division tenure among current supervisors, inspectors, and management.
  - Analyzed PeopleSoft data to understand the number of vacancies over time, reasons for staff departure, and the years of experience lost to staff departure.
  - Reviewed changes in supervisor span of control based on active inspector and supervisor position data from PeopleSoft.
  
- To understand the organizational culture, especially how it related to support for internal controls:
  - Reviewed employee engagement survey data from 2014, 2016, 2017 and 2019 (Gallup Q12).
  - Anonymously surveyed 43 code inspectors and supervisors about Division culture. Auditors emailed an online link to an eight-question survey to employees' work email addresses, with a follow-up email to encourage participation. The survey received 30 responses for a response rate of 70 percent.
  - Observed staff meetings for Code Enforcement's Community Code Enforcement and Multiple Housing programs.
  - Reviewed the Division incident log.
  
- To understand the Police Department's coordination with Code Enforcement for massage and cannabis programs:
  - Reviewed Municipal Code sections relating to massage and cannabis permitting and requirements.
  - Interviewed staff in the Police Department including the Vice Unit, Permits Unit, and Cannabis Regulation Division.
  - Interviewed the Police Department and PBCE leadership to understand goals of the massage program.
  - Compared backgrounding and training requirements between Code Enforcement and the Police Department.
  - Interviewed staff from six California jurisdictions (San Francisco, Oakland, San Diego, Cupertino, Santa Clara County, and Sacramento) on coordination and controls for massage permit programs.
  
- To understand the effectiveness of the massage program:
  - Compared list of permitted massage businesses against City business tax certificates with "massage" or "spa" as nature of business.
  - Compared list of permitted massage businesses against list of massage businesses in San José, as advertised on Yelp, a crowd-sourced business review site.

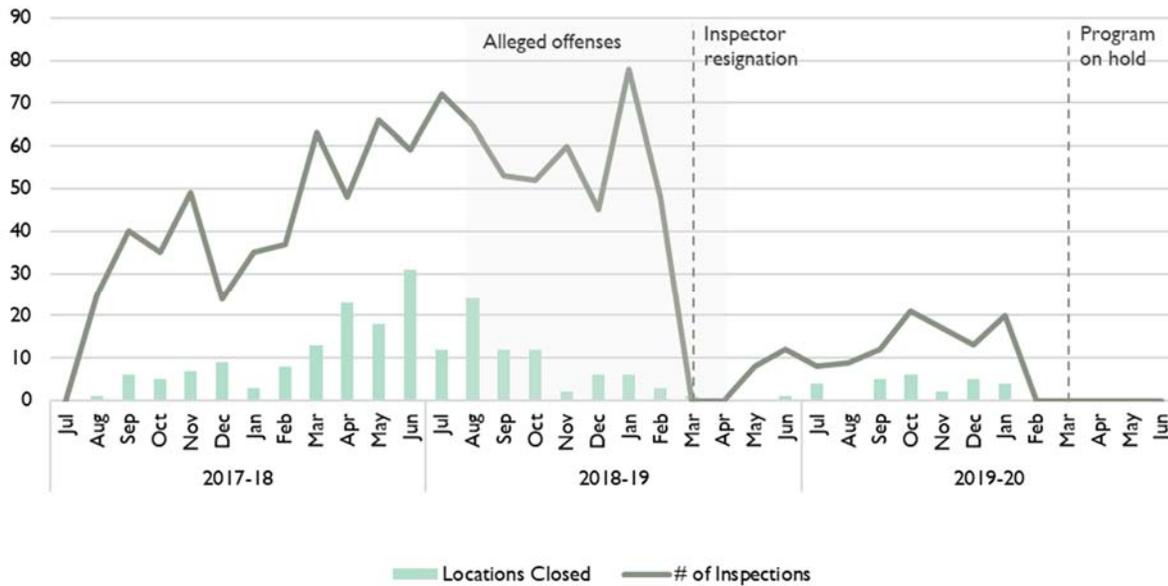
- Cross-referenced Code Enforcement massage program cases with list of closed businesses provided by the Vice Unit, as well as an initial list of potential IMBs provided to Code Enforcement by the Vice Unit.
  - Analyzed massage permit revenues in the City’s Financial Management System (FMS).
  - Reviewed internal Police Department performance measures and reports to the Public Safety, Finance, and Strategic Support Committee on illicit massage businesses.
  - Reviewed Code Enforcement performance measures for the massage program.
  - Reviewed massage inspection case data and sample cases from CES.
- To understand the City’s handling of the complaints against the former code inspector:
    - Compiled a timeline of allegations and whistleblower complaint handling with staff in Planning, Building and Code Enforcement, the Police Department, the Office of Employee Relations, and the City Attorney’s Office.
    - Reviewed relevant criminal and civil complaints filed in Santa Clara County Superior Court and the United States District Court for the Northern District of California.
    - Reviewed City policies relating to complaint handling and investigation such as Whistleblower Hotline Policy (CPM 1.2.8), Investigations Principles Policy (CPM 2.1.4), OER Discipline Handbook for Supervisors and Managers, and the Police Duty Manual. We also reviewed the revisions to the Whistleblower Hotline Policy and Investigations Principles Policy made on July 8, 2021.
    - Reviewed the Whistleblower Hotline Form, as compared with analogous forms used by the City of Austin and the City and County of San Francisco. We also reviewed the July 8, 2021 revisions to the Whistleblower Hotline Form.

We would like to thank the Department of Planning, Building and Code Enforcement, the Police Department, the Office of Employee Relations, and City Attorney’s Office for their time and insight during the audit process.

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## APPENDIX B

### Overlay of Massage Program Performance Data with Dates of Alleged Offenses



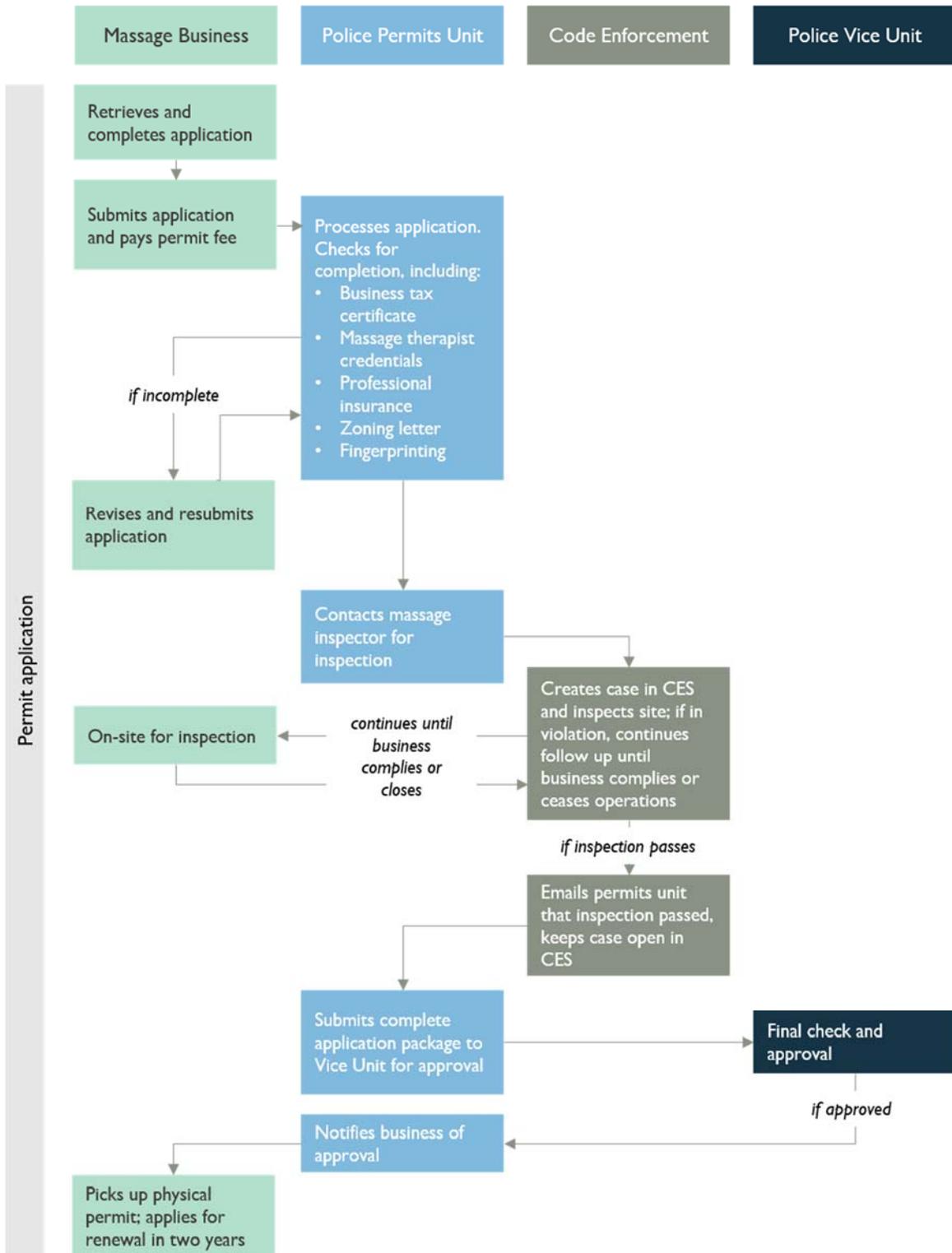
Source: Auditor overlay of massage program performance data with dates of alleged offenses based on court documents, inspector resignation, and program hold due to shelter-in place orders and the City’s COVID-19 Continuity of Operations Plan. As part of its motion to request this audit, the Rules Committee asked whether there had been delays in massage business closure related to the activity of the code inspector that had been charged, specifically whether those events could be overlaid to identify interruptions in operations. (See Finding I.)

Note: Locations closed is inspector-reported data for internal performance measures and is based on a count of businesses that received a compliance order where there had been a follow-up inspection to confirm the business closed pending compliance.

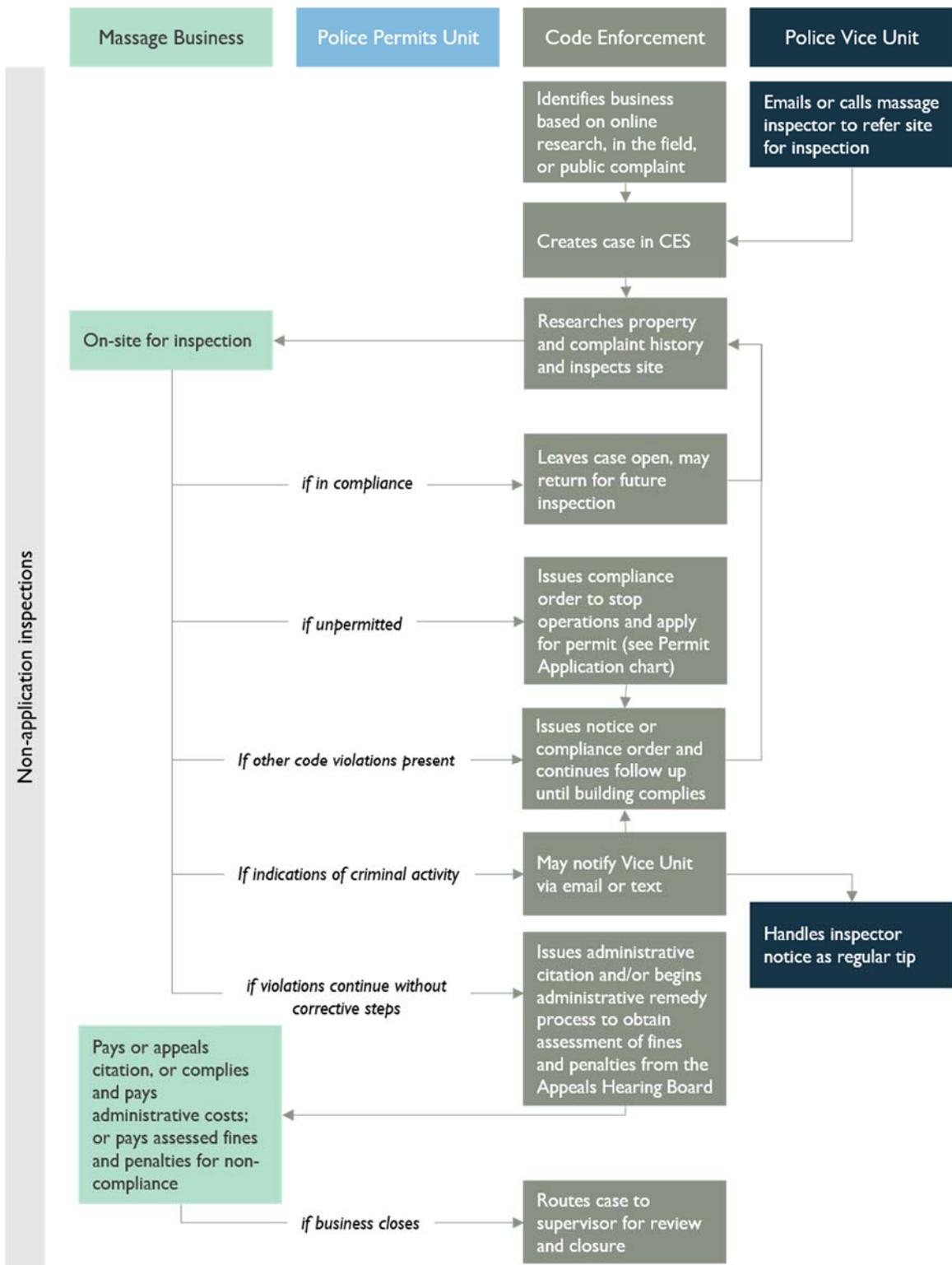
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# APPENDIX C

## Process Maps for Massage Permit Application and Other Inspections (Current Process)



Source: Auditor analysis of interviews, massage permit application, and CES records.

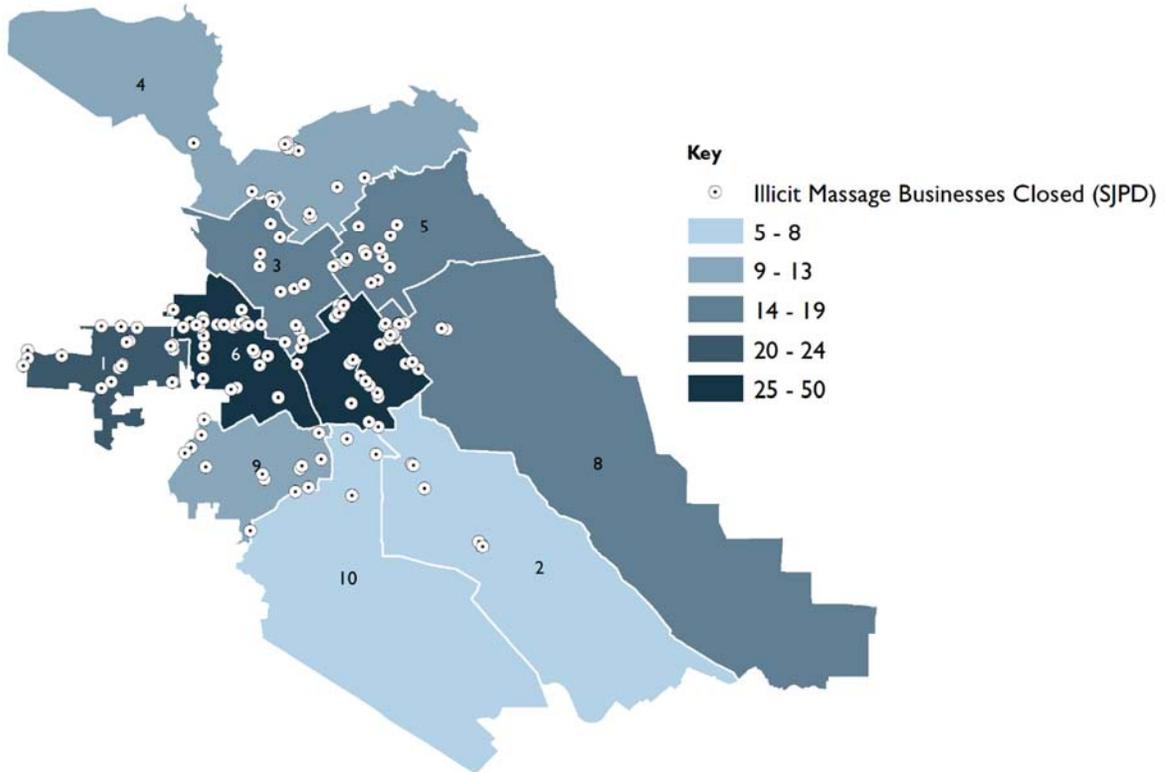


Source: Auditor analysis of interviews, CES records, Code Enforcement policies, and Municipal Code.

# APPENDIX D

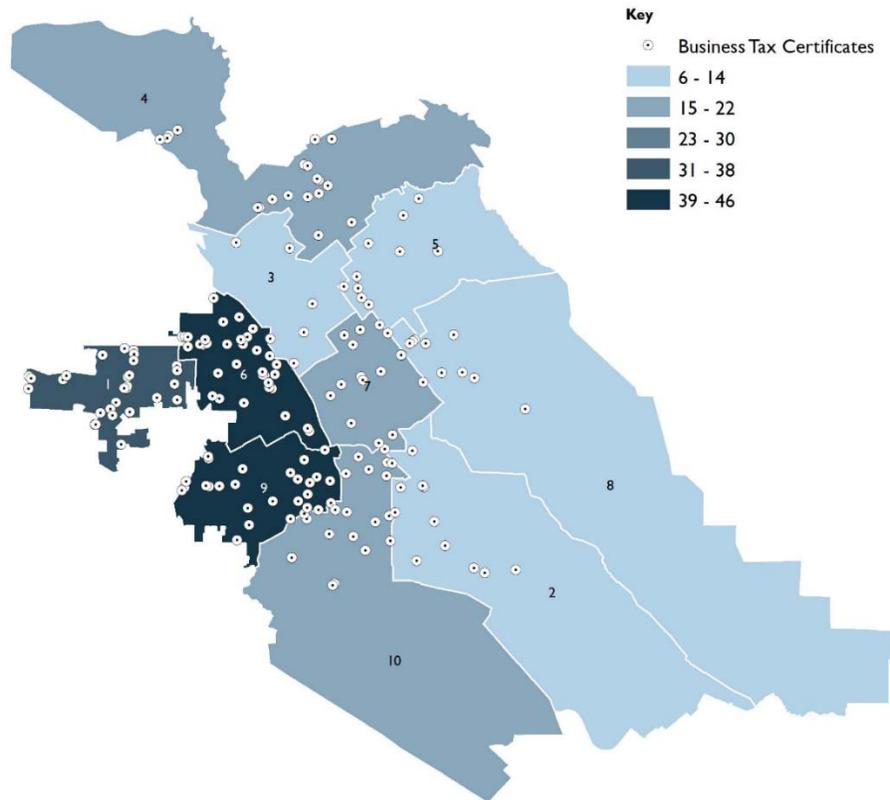
## Maps

Map of illicit massage business locations closed by the Vice Unit



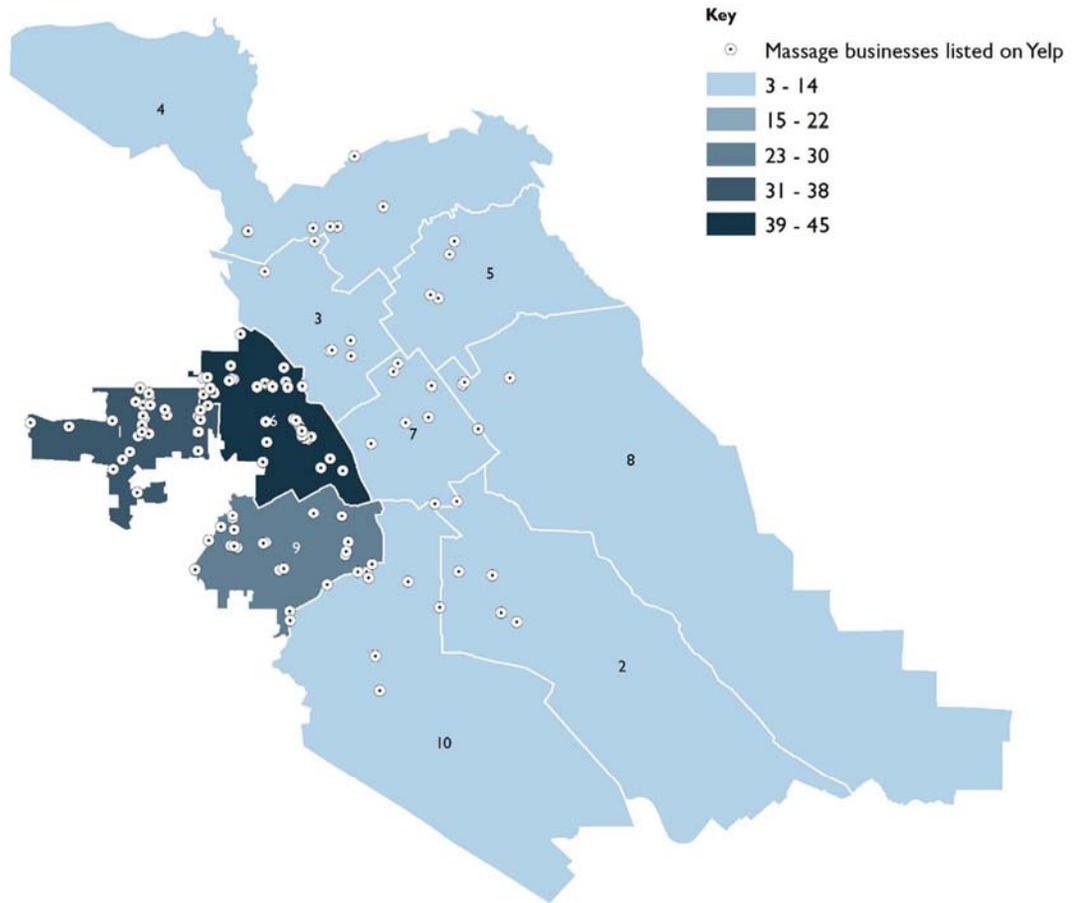
Source: Auditor analysis of Vice Unit data on closed massage businesses from 2017 to March 2021. Map is shaded based on the number of closed businesses in each Council District.

### Map of massage businesses based on business tax certificates



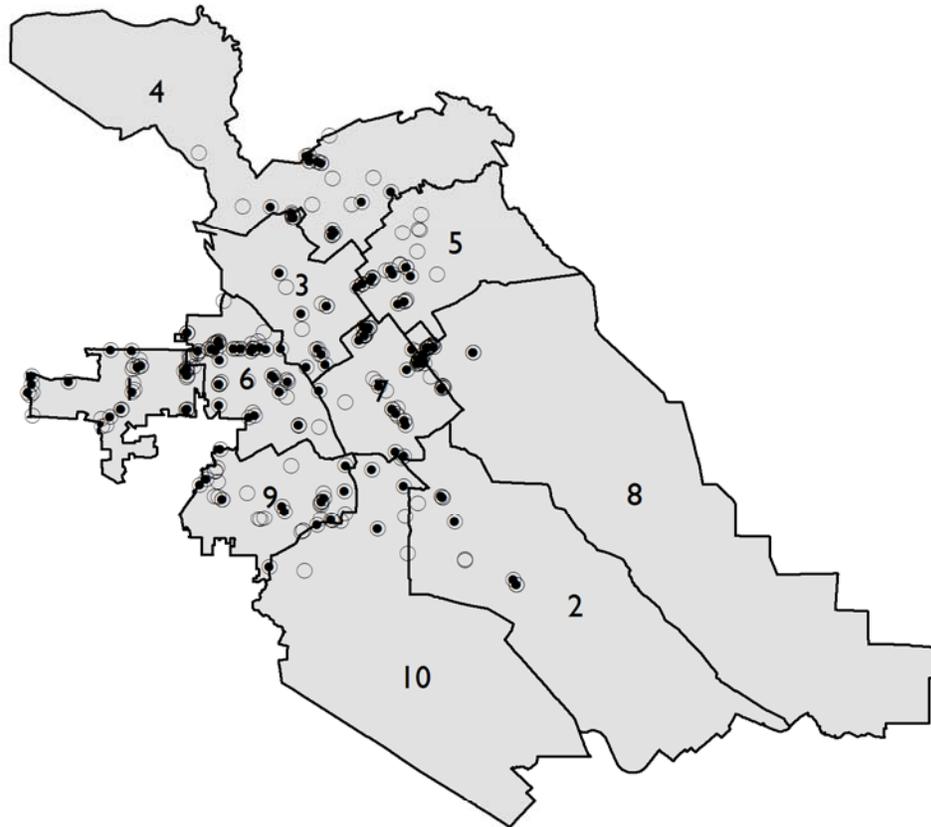
Source: Auditor analysis of businesses with nature of business listed as “massage” on business tax certificates as of March 2021. Map is shaded based on the number of massage businesses in each Council District.

### Map of massage businesses advertised on Yelp



Source: Auditor analysis of businesses appearing on Yelp for search term “massage.” Map is shaded based on the number of massage businesses in each Council District. Data as of April 2021.

### Map of massage cases and business closures

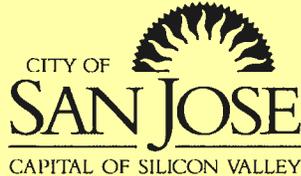


**Key**

- Locations of all massage Code Enforcement cases (CES)
- Locations of Code Enforcement cases that overlap with Vice Unit's list of closed massage businesses

Source: Auditor analysis of all massage cases from CES as of February 2021 and Vice Unit data on closed massage businesses as of March 2021.

Note: There were 121 open CES cases. CES cases that do not appear on the Vice Unit closed list may be permitted and operating, unpermitted and operating, or closed without Police Department involvement.



# Memorandum

**TO:** JOE ROIS  
CITY AUDITOR

**FROM:** Chris Burton

**SUBJECT:** RESPONSE TO AUDIT

**DATE:** August 31, 2021

Approved

Date

08/31/21

## BACKGROUND

The Administration has reviewed the report from the City Auditor entitled Code Enforcement Management Controls: Improvements to Oversight and Coordination Needed, which contains 20 recommendations described below. This memorandum captures the Administration's responses to each recommendation and presents an overview of the work required to implement the recommendations and projected target dates for completion.

## RECOMMENDATIONS AND RESPONSE

**Finding 1: The City Received Multiple Anonymous Complaints Alleging Inspector Misconduct**

**Recommendation #1:** The Department of Planning, Building and Code Enforcement should revise the Code Enforcement Division's incident policy to include direction around courses of action (e.g., temporary reassignment, partner-use, other actions) to address instances such as:

- a) extortion or bribery attempts made to staff,
- b) serious allegations and complaints, or
- c) other instances deemed appropriate by the Administration.

**Administration Response:** The Administration agrees with this recommendation. While these types of instances are rare, the Planning, Building, and Code Enforcement Department (PBCE) understands the potential, inherent risks associated with Code Enforcement work and recognizes the importance of providing formal direction to staff on how to appropriately address criminal and/or serious allegations or complaints of employee misconduct should they occur.

**Green:** PBCE's Code Enforcement Division is in the process of updating its current *Incident Policy*, in coordination with the Office of Employee Relations, to complete this recommendation.

**Target Date for Completion:** Q3, 2021.

**Recommendation #2:** To the extent the City Council has further questions or concerns, the City Council should consider appointing an outside investigator to review the activities of the former code inspector in the massage program or the handling and investigation of related complaints under Section 416 of the City Charter.

**Administration Response:** The Administration is committed to implementing all recommendations where feasible to improve overall management and oversight and reduce risk for criminal conduct or other unethical behavior. During the Audit, the City Administration revised the City's Whistleblower Hotline Policy to document the process for handling potential criminal allegations and has implemented several Audit recommendations. Additionally, PBCE's Code Enforcement Division has developed a *Management, Oversight and Accountability Plan* that will be implemented in parallel to completion of the audit recommendations as an added measure to deter criminal or unethical incidents from occurring. Lastly, the Administration found the Auditor's report to be thorough, reasonable, and comprehensive.

N/A: This recommendation is for City Council consideration.

**Target Date for Completion:** N/A

<p><b>Finding 2: The Massage Program Needs Defined Goals and Responsibilities to Strengthen Management Oversight</b></p>
--

**Recommendation #3:** To enforce the Massage Ordinance permitting requirements, the Administration should:

- a) Create a roster of massage businesses based on active Business Tax Certificates and/or the list of certified massage therapists under the California Massage Therapy Council, and procedures to regularly update the roster, and
- b) Based on the roster of businesses, implement an outreach program to inform and educate massage businesses on the Massage Ordinance.

**Administration Response:** The Administration agrees with this recommendation. The San Jose Police Department (SJPD) Vice Unit is currently tracking this information using an internal roster. SJPD, in coordination with PBCE, will review the current SJPD Massage businesses roster and reconcile the roster with the California Massage Therapy Council list of certified massage therapist. Additionally, SJPD will review the massage businesses in the City of San Jose Business Tax Certificate database to determine if the business is potentially subject to the massage program regulations. As a final step an on-site inspection will be needed to confirm the nature of the business and whether the business should be added to the massage business roster. Once established, the roster will be made available for use among SJPD and PBCE and reviewed

and reconciled annually by SJPD to ensure the roster is accurate and up to date. SJPD, in coordination with PBCE, will expand upon current outreach efforts to proactively inform and educate massage businesses about the Massage Ordinance, permit requirements, and program such as at the time of application submittal to the Permit Unit or when PBCE conducts routine compliance inspections.

**Yellow:** Additional staffing and other resources will be required to both update the roster of massage businesses and fully implement the outreach component of this recommendation. As part of this process, PBCE, the Police Department, and the Budget Office will collaborate to update and revise the Massage Parlor fee program. With a more complete roster of massage businesses, bringing these businesses into the compliance program is expected to generate additional revenue that may be able to support increased staffing levels. The Administration anticipates bringing forward revisions to the Massage Parlor fee program and corresponding staffing level adjustments as part of the 2022-2023 Proposed Budget development process.

**Target Date for Completion:** Q1-Q2, 2022.

**Recommendation #4:** To ensure massage businesses are aware of the permit and other requirements of the massage program:

- a) The Administration should create and post on the City's website multi-lingual informational brochures that provide information regarding the massage program goals, inspection process, and penalties or fines, and
- b) The Police Department should update the massage permit application to include details on Code Enforcement's role and inspection expectations.

**Administration Response:** The Administration agrees with this recommendation. Instructions on the massage permit application are currently handled by the SJPD Permit Unit and can be readily updated to include Code Enforcement's role and other relevant information. Creating and posting a multi-lingual, informational Massage Program brochure would be beneficial to many stakeholders, such as property and business owners who may not be proficient in English, entities interested in starting a massage business or who are applying for a permit, and those already in the massage program. A brochure would also provide transparency to the community of the requirements for massage businesses and how to report any possible violations.

**Green:** The Administration can readily implement this recommendation.

**Target Date for Completion:** Q3-Q4, 2021.

**Recommendation #5:** To ensure massage businesses renew their massage permits timely, the Police Department should establish a procedure for ensuring permitted businesses are notified when they need to renew their massage permit and the consequences of not renewing their permit.

**Administration Response:** SJPD agrees substantially with this recommendation. Currently the massage permit application package includes San Jose Municipal Code (SJMC) 6.44 and all related sub-sections such as SJMC 6.44.120 and 6.44.130 including the requirement to renew massage permits every two years and that it is a violation if they operate a business without a valid permit. The specific consequences (such as fine amounts), however, are not listed and should be clarified. For the Police Department to track and send out notifications, a large amount of resources will be required due to the amount of massage businesses in the city. SJPD will explore adding resources to support this work as part of the 2022-2023 Proposed Budget development process. In the interim, SJPD, in coordination with PBCE, will incorporate guidance on permit renewal and potential fines and penalties in the Massage Program brochure to be developed as part of recommendation #4 and in the permit cover letter at the time of issuance.

**Yellow:** The Administration believes implementation of this recommendation will be challenging due to the significant resources that will be needed to implement this recommendation. As noted in recommendation #3, with a more complete roster of massage businesses, bringing these businesses into the compliance program is expected to generate additional revenue that may be able to support increased staffing levels. The Administration anticipates bringing forward revisions to the Massage Parlor fee program and corresponding staffing level adjustments as part of the 2022-2023 Proposed Budget development process.

**Target Date for Completion:** Q3-Q4, 2022

**Recommendation #6:** To ensure appropriate follow-up on massage cases with indications of human trafficking, the Police Department should formalize the role of the Special Victims Unit's Human Trafficking team within the massage program, including the process for case referrals by the Vice Unit.

**Administration Response:** SJPD has partially implemented this recommendation. The Vice Unit assumes the administrative role in processing permit applications and managing the roster for massage businesses in the city (including applicant information and contacts). In the event human trafficking is suspected, the Special Victims Unit Human Trafficking team will be responsible for follow-up and the Vice Unit will assist with the investigation in providing any necessary information on the property owner, business owners, party of interest or employees.

**Green:** While this recommendation has been partially implemented, SJPD will formalize the role of the Special Victims Unit's Human Trafficking team within the massage program procedure as part of recommendation #7, including the process for case referrals by the Vice Unit.

**Target Date for Completion:** Q3, 2021.

**Recommendation #7:** To clarify the purpose and responsibilities in the massage program, the Police Department and Department of Planning, Building and Code Enforcement should align on and create guidance through a Memorandum of Understanding or other means of documentation, to include:

- a. Massage permit program goals;
- b. Roles and responsibilities of the different Police Department units and Code Enforcement;
- c. Expectations for code inspections upon application, renewal, and/or regular compliance;
- d. Protocols for how and when the Vice Unit should inform the Code Enforcement inspector and Code supervisor of investigatory activities; and
- e. Criteria and procedures for case referral between Code Enforcement, the Vice Unit, and the Permits Unit for businesses not in compliance with the Massage Ordinance or where there are indications of criminal activity.

**Administration Response:** The Administration agrees with this recommendation.

**Green:** The Administration is in the process of implementing this recommendation. PBCE's Code Enforcement Division, in coordination with SJPD, is in the process of drafting Massage Program Procedures to clearly identify the program goals; establish roles, responsibilities, and expectations of SJPD and Code Enforcement staff; implement communication protocols between departments; and identify criteria and protocols for case referral between departments and working groups. The Administration anticipates the role of the Code Enforcement Massage Program Inspector will be limited to routine, initial inspections at the time of the initial Massage Permit application, and an annual compliance inspection for each year that the permit is renewed and remains active. In addition, Code Enforcement will continue to respond to complaints from the public related to Massage permit violations. However, complaints or allegations of criminal activity received by Code Enforcement will be referred to SJPD for follow up. The roles of SJPD's Vice Unit, Special Victims Unit Human Trafficking team, and the Permits Unit will be clearly defined and formalized as part of the Massage Program Procedures.

**Target Date for Completion:** Q3, 2021.

**Recommendation #8:** To mitigate risk associated with the massage program, the Police Department and the Department of Planning, Building and Code Enforcement should consider:

- a) Backgrounding Code Enforcement inspectors assigned to the massage program, at a level determined appropriate by the Police Department's Background Unit, and/or
- b) Implementing a policy for partner use for complaint-based massage inspections and other non-routine, high-risk inspections (e.g., inspections of unpermitted businesses) for the massage program.

**Administration Response:** The Administration agrees substantially with this recommendation.

Prior to the audit, a partner system was implemented for the SJPD Permit Unit, when conducting permit inspections, and the Vice Unit in which more than one police officer would be present at business inspections, especially non-routine or high-risk inspections. Furthermore, police officers are equipped with Body Worn Cameras which are expected to be on when interacting with the public during these inspections. Implementation of this recommendation for Code Enforcement, however, will require completion of the Massage Program Procedures (Recommendation #7) as well as staffing and resources analysis (Recommendation #17).

Implementation of either backgrounding or a partner use policy will present challenges for the Code Enforcement Division. Requiring backgrounding for this program would likely require a change in minimum qualifications for the Code Enforcement Inspector I/II Classification subject to review and approval by Human Resources, Office of Employee Relations, and/or the Municipal Employee Federation. Depending on the level of backgrounding determined appropriate by the Police Department's Background Unit, the duration of the backgrounding process could further delay the reinstatement of Code Enforcement's Massage Program, suspended in October 2020, as well as the rotation of the program to a different inspector every 2 years as current staff would need to be backgrounded. Additionally, implementing a partner policy for complaint-based massage inspections and other non-routine, high-risk massage program inspections (e.g., inspections of unpermitted businesses) will require additional staffing and resources outside of the Division's current capacity. Currently, the Massage Program is funded for 1.0 FTE Code Enforcement Inspector which is not fully cost recovery. As of August 23, 2021, the Code Enforcement Division had a vacancy rate of 26% among its Code Enforcement Inspector positions (12 vacancies out of 45 positions). In order to implement the partner system, either an additional 0.5 FTE Inspector position would need to be added to the budget or existing Inspectors in the General Code Program – funded by the General Fund – would need to be removed from their current assignment to assist. This solution would be significantly detrimental to the already severely impacted and under-resourced General Code Program (see response to Recommendation #17). Additionally, any additional resources funded by the Massage Program would need to be 100% cost recovery. Thus, to implement this recommendation, the Administration will be evaluating staffing and resource needs as part of its efforts to update the Massage Parlor fee program – as described in the response to Recommendation #3 – and will bring forward cost recovery staffing recommendations as appropriate as part of 2022-2023 Proposed Budget development process.

**Yellow:** The Administration will need to complete Recommendations #7 and #17, including identifying the roles and responsibilities of the Code Enforcement Inspector in the Massage Program, in order to determine the appropriate safeguards necessary to mitigate risk. The Administration will also need to explore the impacts of implementing this recommendation on staffing and resources. Staffing and resources needed to support the implementation of this recommendation will be evaluated and brought forward as part of the 2022-2023 Proposed Budget development process, as appropriate.

**Target Date for Completion:** Q1-Q2, 2022.

**Recommendation #9:** To allow the Department of Planning, Building and Code Enforcement to track the permit status of massage businesses, the Police Department should grant access to the roster of permitted massage businesses to Code Enforcement.

**Administration Response:** The Administration agrees with this recommendation. SJPD Vice Unit is currently tracking this information using an internal roster. SJPD Permit Unit does not keep track of this information. A universal roster of approved permits where SJPD Vice Unit, SJPD Permit Unit, and PBCE can access and update to provide the most current status and information will be established. However, access to the roster will be limited to only persons with need to know and right to know as it contains private information of members of the public.

**Green:** SJPD will provide access to the roster of permitted massage businesses to Code Enforcement and the SJ Permit Unit.

**Target Date for Completion:** Q3, 2021

**Recommendation #10:** To increase oversight and supervisory review in high-risk programs, the Department of Planning, Building and Code Enforcement should establish procedures for supervisors to regularly review cases in the massage and cannabis programs and/or to close cases to ensure supervisory review.

**Administration Response:** The Administration agrees with and has implemented this recommendation.

**Green:** PBCE's Code Enforcement Division has implemented the *Periodic Case Review Policy* to ensure regular supervisory review of all cases including the Massage and Cannabis Programs. Conducted quarterly, the Supervisor will review open cases and will evaluate each case for consistency with applicable policies and procedures, performance standards, and overall customer service.

**Target Date for Completion:** Completed.

**Recommendation #11:** To aid in evaluating program performance, the Department of Planning, Building and Code Enforcement should:

- a) Establish performance measures and targets for special programs, like cannabis and massage, that relate to program goals (e.g., annual inspection targets, percentage of completed inspections based on the roster, percentage of business brought into compliance),
- b) Either create system-based reports for special program performance measures or establish a process to check inspector-reported data for accuracy, and
- c) Report performance measures to the appropriate City Council committee.

**Administration Response:** The Administration agrees with this recommendation.

**Green:** Upon completion of Recommendations #7 and #9, PBCE will revise program performance measures and inspection targets for the Massage and Cannabis Programs. Code Enforcement will also develop protocols for monthly system-based reporting to be completed by the Program Supervisor. Previously, Code Enforcement's performance measures for the Massage Program were reported as part of SJPD's Vice Unit report to the Public Safety, Finance, and Strategic Services Committee. The Administration will report Code Enforcement's Massage Program performance measures as part of the Audit status report to the Neighborhood Services and Education Committee (NSE) as part of the FY21-22 NSE Work Plan.

**Target Date for Completion:** FY21-22 as determined by the NSE Work Plan

**Finding 3: Code Enforcement Can Improve Supervisory Oversight and Staff Guidance**

**Recommendation #12:** To better set expectations for staff and address potential risks in its programs, the Department of Planning, Building and Code Enforcement should:

- a) Create and update Code Enforcement policies using a risk-based approach to identify where programs may not meet objectives, for example, incorporating policies or guidance for elements of supervisory review, documentation for deviating from policies, and for special programs,
- b) Combine the policies into a comprehensive digital manual, and
- c) Set a schedule for periodic review of policies and procedures to update as needed.

**Administration Response:** The Administration agrees with this recommendation. Currently all Code Enforcement policies and procedures are accessible to all Code Enforcement staff on the city network. Historically, Code Enforcement policies and procedures have been created and/or updated as needed to standardize performance and set service delivery expectations for inspections and enforcement; reflect new ordinances or ordinance changes; communicate a change in process; or establish protocols for addressing emerging code enforcement violations or issues within the community. Code Enforcement's policies are typically developed to provide guidance and direction for specific case types or to address operational matters such as customer service policy. Thus, some procedures and policies have not been updated since creation because the policy or procedure has not changed. Nonetheless, the Administration understands the importance and value of reviewing policies and procedures at a regular interval to ensure the policies and procedures are current, relevant, and clear and are providing the appropriate level of guidance and direction to staff.

**Yellow:** PBCE's Code Enforcement Division will develop a work plan to review and evaluate all current policies and procedures using a risk-based approach; identify need for the creation of

new policies and procedures; update existing policies and procedures; and retire outdated policies and procedures. Staff will create a digital manual or equivalent for staff use and establish an annual review of policies and procedures beginning in 2022. Due to the volume of current policies and procedures, a significant amount of staff time and resources will be needed to complete this recommendation. Staff will focus their efforts on the update and development of the most critical policies and procedures first such as the Massage and Cannabis Program procedures, Incident Policy, and Inspector safety.

**Target Date for Completion:** Q2-Q3, 2022

**Recommendation #13:** To promote consistent case review practices, the Department of Planning, Building and Code Enforcement should develop training for new Code Enforcement supervisors.

**Administration Response:** The Administration agrees with this recommendation.

**Green:** PBCE's Code Enforcement Division has begun building upon the Division's current Code Enforcement Supervisor onboarding process, standards, and expectations to develop a new comprehensive training program for new Supervisors. The recruitment process for two vacant Code Enforcement Supervisor positions is currently underway. The Administration anticipates implementation of the new Code Enforcement Supervisor training program as part of the upcoming recruitment process and onboarding.

**Target Date for Completion:** Q4, 2021

**Recommendation #14:** To ensure consistency in inspector documentation and supervisory review, the Department of Planning, Building and Code Enforcement should establish a regular sample review by Division Managers of closed Code Enforcement cases to ensure that supervisors and inspectors follow policies in documenting inspections.

**Administration Response:** The Administration agrees with and has implemented this recommendation.

**Green:** PBCE's Code Enforcement Division has implemented the *Periodic Case Review Policy* to ensure the regular review of closed Code Enforcement cases by Division Managers. Per the policy, Division Managers will review a random sample of closed cases once per quarter to increase oversight and standardize supervisory review, promote consistency, and ensure adherence to Code Enforcement's policies and procedures.

**Target Date for Completion:** Completed.

**Recommendation #15:** The Department of Planning, Building and Code Enforcement should revise Code Enforcement’s “attempt to contact” letter template to include authority, complaint description, and purpose of inspection prior to inspection and, as appropriate, supervisors’ contact information for questions or concerns.

**Administration Response:** The Administration has implemented this recommendation.

**Green:** The “attempt to contact letter” is a standard, template letter used by Code Enforcement to contact a responsible party (i.e. property owner, tenant, or property manager) when other attempts to contact the responsible party, such as an in person inspection, email, or phone call, have been unsuccessful. As recommended, the Code Enforcement Division revised the “attempt to contact letter” to include enforcement authority per the municipal code, complaint description, and, an option to add supervisors’ contact information, as appropriate, for questions or concerns, and the purpose of the letter or inspection. The revised letter has been added to the Code Enforcement Case Management System and staff have been advised of the change.

**Target Date for Completion:** Completed.

**Recommendation #16:** To document Code Enforcement’s complaint process and improve Division oversight, the Department of Planning, Building and Code Enforcement should maintain a confidential log of complaints related to inspector conduct, including the date of the complaint and how it was handled.

**Administration Response:** The Administration has implemented this recommendation.

**Green:** Beginning July 1, 2021, the Code Enforcement Division began documenting formal complaints regarding Inspector conduct, including the date of the complaint and how it was handled, in a confidential log.

**Target Date for Completion:** Completed.

**Recommendation #17:** Department of Planning, Building and Code Enforcement should develop targets and track Code Enforcement program performance to:

- a) Establish expectations for inspector activity and performance and incorporate into regular performance evaluations (e.g., time to case closure based on type of violation and number of open cases).
- b) Rebalance workloads or add resources, as needed.

**Administration Response:** The Administration agrees with part (a) of this recommendation. PBCE’s Code Enforcement Division will research and review historical and current data, reports, dashboards, timelines, etc. to revise or update current case response times, case closure timelines

by violations type, manageable caseload level, etc., as appropriate, to develop and establish clear and reasonable expectations for inspector activity and performance. The updated expectations and performance standards will be incorporated into staff's performance evaluations in alignment with recommendations 11, 12, and 18.

The Administration agrees with part (b) of this recommendation but is constrained by existing staff and resources. As described in Recommendation #3, with an increased number of massage businesses participating in the Massage Parlor fee program, additional revenues are anticipated to support a modest increase in resources for the program, including staffing. In its current form, the Massage Parlor fee program is not fully cost recovery.

Furthermore, Code Enforcement currently has a vacancy rate of 26% (or 12 of 45) among its' Code Enforcement Inspector I/II classification. Unfortunately, Code Enforcement has endured high turnover for the last several years resulting in inexperienced staff and unmanageable caseloads. Additionally, staffing and resources have not kept pace with the growth of the City. The demand on Code Enforcement services increases in proportion to the volume of new and existing housing developments, commercial and industrial buildings, increase in blight, and economic factors (i.e. rise of vacant buildings during a downturn), or community challenges such as illegal dumping and homeless encampments. In the last 5+ years, the City's physical growth and needs have outpaced Code Enforcement resources creating a significant imbalance, increasing timelines to resolve cases and increasing caseloads to unmanageable levels. The impact to services through the COVID 19 Pandemic has only compounded the problem.

As a result of these factors, capacity to process General Code cases has diminished and the ongoing backlog of cases has increased over time. The current General Code program data shows that it would require a total of 21.89 Inspectors to work through the active caseload. However, the program is budgeted for 15.0 FTE and currently has 4 vacancies. This is a deficit of 6.89 FTE when fully staffed and 10.0 FTE with current vacancies. Additionally, the data indicates it will take 23.09 months to work through the existing backlog of active cases (3,843 open cases as of August 25, 2021) and the caseload backlog is expected to double by 2023 under current conditions (See Attachment A). Recruitment for these vacancies is currently underway and Code Enforcement will rebalance workloads as new staff is onboarded, however, workloads will still be a challenge. PBCE's Code Enforcement Division will continue to evaluate staffing and resource needs to adequately support workloads and service delivery currently and into the future. In addition to the updating of the fee program to increase permitted participants and associated revenue to support additional staffing for consideration during the 2022-2023 Proposed Budget development process, PBCE will also develop a five-year staffing plan for consideration during future budget process. However, it is important to note that non-fee supported position additions in the General Fund would need to be considered along with other high priority needs of the City.

**Yellow:** While the Administration can readily implement part (a), the Administration will work to implement part (b) pending approval of staffing and resources as part of the 2022-2023 Proposed Budget development process and in future budget cycles.

**Target Date for Completion: Q2, 2022**

**Recommendation #18:** The Code Enforcement Division within the Department of Planning, Building and Code Enforcement should complete all outstanding performance evaluations and set a schedule for regular evaluations going forward.

**Administration Response:** The Administration is in the process of implementing this recommendation as part of the Non-Management Performance Evaluations for fiscal year 2020-2021.

**Green:** The Code Enforcement Division is currently engaged in the performance evaluation process and expects to complete all evaluation by the end of Q3, 2021. Code Enforcement will establish an annual performance evaluation schedule for Supervisors and Managers to ensure all required evaluations are completed and timely going forward.

**Target Date for Completion: Q3, 2021**

**Recommendation #19:** To align performance evaluations with Division goals, the Department of Planning, Building and Code Enforcement should review and revise its employee expectations and incorporate into Code Enforcement performance evaluations based on objective criteria and measurement (e.g., inspector use of photos, consistency in case notes; supervisor quality of supervisory case review).

**Administration Response:** The Administration agrees with this recommendation.

**Green:** PBCE's Code Enforcement Division will review and revise its current inspector performance standards and expectations, and incorporate the updated standards and expectations into staff's performance evaluations based on objective criteria and measurement (e.g., inspector use of photos, consistency in case notes; supervisor quality of supervisory case review). This will be completed in alignment with recommendation #11 and #12 and be implemented for FY21-22 Performance Evaluation Process.

**Target Date for Completion: Q2, 2022**

**Recommendation #20:** To identify lessons for future improvement, the Department of Planning, Building and Code Enforcement should implement a standard process of exit interviews for Code Enforcement inspectors and supervisors.

**Administration Response:** The Administration agrees with and has implemented this recommendation.

**Green:** PBCE's Code Enforcement Division completed its' first exit interview on August 19, 2021.

**Target Date for Completion:** Completed

## **CONCLUSION**

The Administration thanks the City Auditor's Office for the comprehensive audit of Code Enforcement's Management Controls and Oversight. The audit report provides recommendations that will strengthen interdepartmental program communication, coordination, and processes, enhance management and oversight, improve overall performance, foster accountability, and reduce risk. The report is focused, and the recommendations are fair and practical. We want to recognize the San Jose Police Department, City Attorney's Office, the Budget Office, and the Office of Employee Relations for their collaboration and coordination in developing the Administration's response to the Audit. We appreciate the City Auditor Office's hard work and professionalism in conducting this audit and will work diligently to implement the recommended improvements.

/s/

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Planning, Building, and Code Enforcement

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Attachment A

FTEs	Avg Cases Closed Per Inspector Per Month	Current Case Capacity Per Month	New Cases Per Month	Delta	Implied FTE Increase
	11	15.13	166.43	330	163.57
					10.811

Open Cases	3,843
Current Case Capacity	166.43
Total Months Backlog	23.09

Backlog Chart	
Month	CE Backlog-Current Staffing
Jul-21	3,843
Aug-21	4,007
Sep-21	4,170
Oct-21	4,334
Nov-21	4,497
Dec-21	4,661
Jan-22	4,824
Feb-22	4,988
Mar-22	5,152
Apr-22	5,315
May-22	5,479
Jun-22	5,642
Jul-22	5,806
Aug-22	5,969
Sep-22	6,133
Oct-22	6,297
Nov-22	6,460
Dec-22	6,624
Jan-23	6,787
Feb-23	6,951
Mar-23	7,114
Apr-23	7,278
May-23	7,442
Jun-23	7,605

