



Memorandum

**TO: PUBLIC SAFETY, FINANCE, AND
STRATEGIC SUPPORT COMMITTEE**

FROM: Anthony Mata

**SUBJECT: PERSONAL CARE BUSINESS
COMPLIANCE INITIATIVE
FOLLOW-UP REPORT**

DATE: October 14, 2021

Approved

Date

10/15/2021

RECOMMENDATION

Accept a follow-up report on the Personal Care Business Compliance Initiative with respect to the status of illicit massage businesses.

BACKGROUND

On March 7, 2017, the City Council added the Personal Care Business Compliance Initiative to the Council Priority List. The initiative involved the following:

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

The San Jose Police Department (Department) reported on the status of this work at the March 7, 2017 Public Safety, Finance and Strategic Support (PSFSS) Committee meeting and again at the September 6, 2018 meeting. At the September 6, 2018 meeting, the Department described the plan it had implemented to address the problem of illegal massage businesses (IMBs). The plan involved close collaboration between the Police Department, Code Enforcement, and City Attorney's Office; creation of a Landlord Education Program that helped educate landlords on the

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

SUBJECT: Personal Care Business Compliance Initiative Follow-up Report

October 14, 2021

Page 2

need to close IMBs; and increased covert investigations at suspected IMBs. At the time of the September 6, 2018 meeting, 107 IMBs had been closed through these methods.

In the September 2018 report, the Department also provided responses to the three bulleted items specified in the Council Priority. Regarding the first bullet recommending establishment of a registry, the Department described a plan for the Finance Department to query the business tax system on a quarterly basis for industry codes associated with massage and provide the resulting list of businesses to the Vice Unit. The Vice Unit and Code Enforcement would then check the businesses for compliance with City and State regulations. With regard to the second bullet recommending a moratorium, the Department indicated that given the progress enforcing against IMBs, the Department did not believe a moratorium was necessary. Finally, for the third bullet recommending outreach, the Department described its outreach efforts through the Landlord Engagement Program and other efforts. The Department indicated that based on these responses it believed the direction provided in the Council Priority had been satisfied. The priority was subsequently declared complete as part of the Council's March 5, 2020 Council Priority Setting Session.

The Department provided subsequent follow-up reports on the Personal Care Business Compliance Initiative at the October 24, 2019 and on November 19, 2020 PSFSS Committee meetings. The most recent report in the November 19, 2020 report highlighted best practice interventions for human trafficking survivors and an enforcement/education program which resulted in the closure of a total of 212 IMBs.

In November 2020, the 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. In September 2021, the San José City Auditor released an audit entitled "Code Enforcement Management Controls: Improvements to Oversight and Coordination Needed." This audit assessed the joint work of the Code Enforcement Division and Police Department on the massage program and made recommendations as to how the program could be improved. The audit found that enforcement efforts have closed many illegal massage businesses, but program improvements are needed to ensure awareness of and compliance with the permit requirements among all massage businesses. In particular, the audit found that the coordination of massage permit enforcement with the business tax system, as recommended in the original Council Policy Priority and described in the September 2018 staff report, was still in need of implementation. Recommendation 3 from the audit covers this topic, as follows:

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.*

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

SUBJECT: Personal Care Business Compliance Initiative Follow-up Report

October 14, 2021

Page 3

Per Council direction, this report provides an update on the status of the program and discusses the Department's plan to complete the above recommendation—ensuring that the direction provided in the original council priority is carried out.

ANALYSIS

Overview

By the end of September of 2020, the Vice Unit successfully closed 212 illegal massage businesses. Over the past year, the Vice unit has closed an additional 7 IMBs, which results in a total of 219 IMBs closed since the initiation of the program in 2018. In addition, 10 residential brothels that have been identified but not yet closed.

As described in the November 19, 2020 Personal Care Business Compliance Initiative report to the PSFSS Committee, the success in closing illegal commercial massage businesses and the limitation on all businesses, including massage businesses, imposed by the County COVID-19 health order has resulted in an increase in residential brothels. Several anonymous tips also revealed previous closed IMB's had transformed into residential brothels. Further investigation revealed an increase in online escort ads directing customers to residential brothels. Websites such as, "Skipthegames" and "Rubmaps" continue to be a popular for advertising illicit activity. Over the past year, the Vice Unit has closed 2 residential brothels. As noted above, 10 residential brothels that have been identified but not yet closed. Note that there are also additional unverified tips for suspected brothels.

Residential brothel investigations can be more challenging than investigations of businesses that operate out of a retail storefront and require additional time. A brothel investigation may involve multiple locations, various parties involved (victim & suspects), and may involve multiple solicitation methods. Various judicial orders are needed for additional information pertaining to individuals and/or businesses. As with enforcement of IMBs, the Vice Unit has made use of the Landlord Education Program to address residential brothels. Through this program, staff informs landlords of possible illegal activity on their property, educates them about human trafficking, and thus motivates landlords to terminate or not renew the leases of tenants engaging in illegal activity.

Human Trafficking Investigative Strategies

IMBs and residential brothels can involve human trafficking. Gaining the cooperation of victims as witnesses in human trafficking investigations can be challenging, because of their distrust of police in their home countries, trafficking survivors fear law enforcement agencies and are concerned that they will be treated as criminals, incarcerated, or deported. These fears must be overcome for victims to become cooperating witnesses but take time. Additionally, human trafficking survivors often do not identify themselves as such. Law enforcement investigators may therefore have difficulty in identifying survivors among detainees and separating them from

perpetrators. To address these challenges, the Vice Unit deploys multiple strategies, including cross-agency collaboration, evidence collection, and interviewing strategies.

A human trafficking investigation requires cooperation among many agencies. Investigators may work closely with prosecutors to secure corroborating testimony from trafficking victims and witnesses and consult with specialist community-based organizations, such as the YWCA and Community Solutions that provide services and advocacy to trafficked persons. Other agencies, such as those dealing with labor, can assist law enforcers in the process of investigating and prosecuting.

When investigators know where to look, they can gather evidence and locate victims and perpetrators. Traffickers use ordinary methods of commerce for activities in support of their crimes; reviewing records can provide valuable evidence. Other technological and methodological investigative techniques reveal critical information in identifying potential residential brothels.

The nature of these crimes requires appropriate social and cultural orientation to effectively gather criminal intelligence and arrest perpetrators. Community groups, immigrants' and community-based organizations, such as Community Solutions and South Bay Coalition to End Human Trafficking can assist in gaining access to affected communities. Law enforcement agencies should seek only the assistance of organizations with a proven record of assisting trafficking survivors and collaborating with investigating authorities.

Even when trust is established with survivors and witnesses, they may never provide a full account in a single interview. Aside from the trauma they have suffered, other sociological and psychological barriers impede the process, including sociocultural differences, language, and gender. For example, issues of gender and sexual violence significantly affect the interviewer's capacity to obtain information. Trafficked women and children frequently suffer sexual abuse and violence and may be reluctant to seek assistance because of the shame and stigmatization which may flow from disclosing their experiences. Men, particularly those from a culture with a traditional view of masculinity, may not want to admit their victimization because they fear their disclosure of losing control of their lives may lead to perceptions of diminished masculinity. For these reasons, men and women may perhaps be more willing to talk to law enforcement personnel and service providers of the same gender. Similarly, investigators who are fluent in the language of the person they are interviewing and have cultural affinity with the person may have more success.

Residential Brothel Investigations

To give the Committee a sense of how residential brothel investigations are carried out, this section provides the Committee with descriptions of how two recent investigations of residential brothels were conducted.

The first investigation began in October 2019, when a sexual assault and robbery incident was reported to the Department. During the investigation the survivor was identified as a "Human Trafficking victim." She was forced to leave Las Vegas, NV by her pimp (trafficker). Upon

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

SUBJECT: Personal Care Business Compliance Initiative Follow-up Report

October 14, 2021

Page 5

arriving in San José, the survivor was forced to work in a nail salon business front. The owner of the salon and the survivor's trafficker had a previous forced labor business agreement. The survivor was forced to perform sex acts at a residential brothel. The survivor assisted investigators with identifying one of three residential brothels within the City of San José. Based on intelligence provided by the survivor, each brothel was occupied with at least four additional survivors. The Human Trafficking Task Force took on the task of corroborating the victim's statement. The investigation detailed well over 1,000 hours of surveillance, authoring search warrants, social media, and cell phone analysis performed by the Human Trafficking Task Force. At the conclusion of the initial investigation the Human Trafficking Task Force rescued nine survivors in all. On September 29th, 2021, additional search warrants were requested for further prosecution. To date, a total of five subjects, including the primary trafficker, have been arrested and are pending adjudication. Additionally, approximately \$20,000 in cash was seized at one of the residential brothels.

The second investigation began in July 2020, when the Human Tracking Task Force received information from an apartment manager regarding a potential residential brothel. The Human Trafficking Task Force worked vigorously to corroborate illicit social media sex advertisement ads to the target resident. The investigation revealed not only were traffickers utilizing the suspected apartment, but two additional locations were identified within the City of San José. At the conclusion of a 9-month investigation, the Human Trafficking Task Force was able to rescue two human trafficking survivors. Two adults were also located and apprehended. A total of \$70,000 in cash was seized.

The Human Tracking Task Force emphasized the importance of joint operations and collaborations with various law enforcement and community entities. The Human Trafficking Task Force collaborates with the following:

1. Community-based Organizations including Community Solutions and the South Bay Coalition to End Human Trafficking.
2. Employment Developmental Department
3. CA Department of Industrial Relations
4. CA State Franchise Tax Board
5. CA Department of Labor
6. Alcohol Beverage Control
7. Department of Homeland Security Investigations
8. California Department of Tax and Fee Administration
9. Santa Clara County District Attorney's Office

Collectively, the groups focus on providing a variety of aid to the victims while identifying various criminal elements for the successful long-term prosecution of the traffickers. **Audit Response and Council Priority Implementation**

To ensure full implementation of the original council priority and carry out Recommendation 3 from Code Enforcement Management Controls audit, the Department will create and maintain a roster of massage businesses based on active Business Tax Certificates and the list of certified

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

SUBJECT: Personal Care Business Compliance Initiative Follow-up Report

October 14, 2021

Page 6

massage therapists under the California Massage Therapy Council. To accomplish this objective, the following tasks will be undertaken:

- Ensure staff resources are available to update the roster of massage businesses and conduct outreach as specified in Recommendation 3, revisions to the Massage Parlor Fee program along with staffing level adjustments will be brought forward as part of the 2022-2023 Proposed Budget development process.
- Develop a roster of massage businesses based on active Business Tax Certificates and certifications under the California Massage Therapy Council. This task is anticipated to be complete by April of 2022.
- Implement outreach program informing and educating businesses on the City of San José's Massage Ordinance. This task is anticipated to be complete by April of 2022.

Other important tasks specified in the audit recommendations include:

- Creation and posting of multi-lingual informational brochures about the massage program on the City's website.
- Explanation of Code Enforcement's role and expectations on the San José Police Department Permits Unit application.
- Establish procedure for ensuring permitted businesses are notified when their massage permit renewal is due as well as the consequences of not renewing their permit.
-
- Backgrounding Code Enforcement inspectors assigned to the massage program and implementing a policy for partner use for complaint-based massage inspections and other non-routine, high-risk inspections for the massage program.

The Department will continue to coordinate with the Code Enforcement Division, Finance Department, and other partners to address the recommendations in the audit.

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

SUBJECT: Personal Care Business Compliance Initiative Follow-up Report

October 14, 2021

Page 7

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

/s/

ANTHONY MATA

Chief of Police

For questions, please contact Lieutenant Brian Spears, Vice and Intelligence Unit, San José Police Department at (408) 277-4041.