



Code Enforcement Management Controls: Improvements to Oversight and Coordination Needed

A Report from the City Auditor
Issued September 2021

<http://www.sanjoseca.gov/auditor>

Background

Code Enforcement programs are wide-ranging and include general code enforcement, multiple housing, and other special programs.

Three core services

1. **Community Code Enforcement** - inspecting violations regarding blight, lawn parking, and unpermitted construction
2. **Multiple Housing Code Enforcement** - routine inspections of multiple housing facilities (i.e., apartments, hotels, and residential care facilities)
3. **Solid Waste Code Enforcement** - regulating and inspecting solid waste facilities

Special Programs

1. **Abandoned shopping carts** - enforcing cart management plans at stores
2. **Building code compliance** - assisting customers in addressing building violations
3. **Cannabis** - regulating dispensaries and enforcing home-grow laws
4. **Massage** - regulating massage businesses
5. **Off-sale alcohol** - regulating businesses permitted for off-sale of alcohol
6. **Tobacco retail license** - regulating businesses that sell tobacco products
7. **Vehicle abatement** - authorizing towing of vehicles on private property, enforcement/admin support for City-generated tow services

Background

- Code Enforcement’s mission is “to work in partnership with the people of San José to promote and maintain a safe and desirable living and working environment”
- Code Enforcement aims to improve the quality of life for residents through outreach, education, and enforcement of ordinances in the San José Municipal Code

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Finding I: 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 businesses in San José. While the inspector was working with the City, the City received multiple anonymous allegations of misconduct by the inspector.

We found:

- The City was unable to investigate as there was no way to contact the complainants, and departments were limited in their ability to respond because not all were aware of the complaints
- Code Enforcement policies did not provide direction to staff on how to address extortion, bribery, or other serious allegations
- OER has updated the online Whistleblower Hotline form to allow users to upload documents and gather additional information, and now encourages follow-up by anonymous users

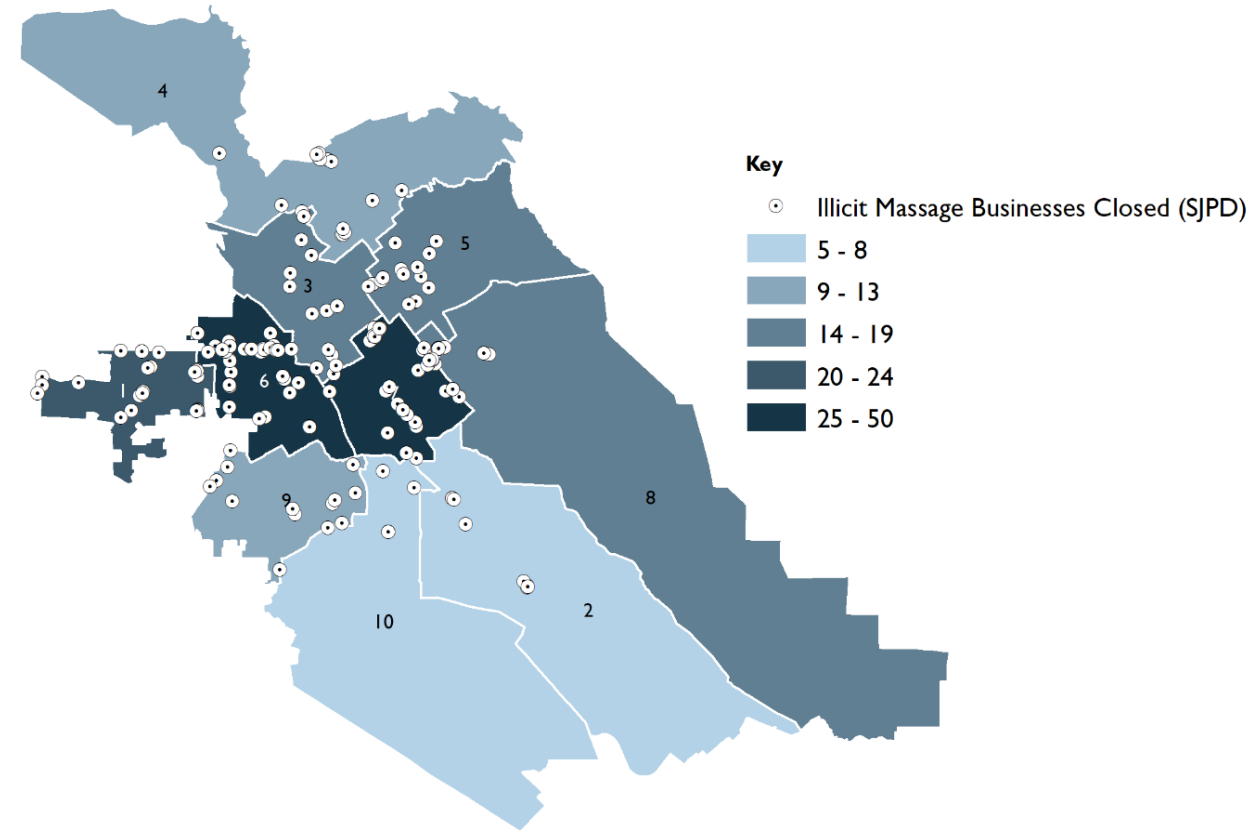
To better address potential misconduct of City staff, we recommend:

- 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

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

In 2017, Council prioritized the massage program, also known as the "Personal Care Business Compliance Initiative" to enforce the City's Massage Ordinance.

- The Police Department oversees the massage program in coordination with Code Enforcement
- Program goals include ensuring massage businesses are permitted and operate in accordance with the Massage Ordinance, closing IMBs, and preventing human trafficking
- Since FY 2017-18, the Vice Unit has reported closing over 200 IMBs



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

We found:

- As of April 2021, 16 massage businesses had active massage permits, whereas over 200 businesses describe their nature of business as “massage” on their business tax certificate
- There was limited coordination between the Vice Unit and Human Trafficking team related to the massage program
- The responsibilities of the Code Inspector and coordination between Code Enforcement and the Police Department were unclear and not documented
- Establishing performance goals and enhancing supervisory oversight for the massage and cannabis programs will help ensure they function appropriately

To help meet the goals of the Massage Ordinance, we recommend:

- Develop a roster of massage businesses subject to the ordinance
- Conduct outreach and post information online
- Standardize the Human Trafficking team’s role in the program
- Clearly define Code’s role in the massage program and consider backgrounding or use of partners to mitigate risk
- Establish performance goals and enhance supervisory oversight of inspectors

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

PBCE created a plan to improve management and accountability in the Code Division. There are additional steps the Division can take to improve supervisory oversight, standardize work, and clarify expectations for staff.

We found:

- An employee survey showed that staff feel management is responsive to concerns and ideas for improvement
- In some instances, closed code cases did not comply with Division policy or had limited evidence in case files (e.g., photos showing resolution of a violation)
- The Division has over 90 different policies with an average age of over 11 years, some of which are obsolete. Not all staff expectations are included in policies as well.

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

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

We found:

- The Division does not currently maintain a log of customer complaints (which will be important as they begins to add complaint contact information to business cards)
- Letters attempting to contact property owners did not always describe the code complaint or expectations for an inspection
- Open general code cases have grown despite a decline in new complaints, and there are no clear expectations or targets for case closure rates or timing
- About 20 percent of staff had not had performance evaluations in more than 2 ½ years.

To improve supervisory oversight and staff guidance, we recommend:

- Maintain a confidential log of customer complaints
- 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

Conclusion

Our audit report includes a total of 20 recommendations to improve Code Enforcement management controls and the coordination of the message program.

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 audit report is available at: www.sanjoseca.gov/auditor