



Staff Report:

Issue: Public hearing to consider the license suspension/ revocation of the Therapeutic Massage Enterprise License for Chang's Massage issued to Qiulian Zhang.

BACKGROUND:

Chang's Massage is located at 246 2nd Ave. S., in the City of Waite Park. Chang's Massage operates under a Therapeutic Massage Enterprise License issued to Qiulian Zhang with an expiration date of December 31, 2019.

On October 17, 2019, Chief of Police David W. Bentrud responded to two license application requests received from Ms. Yiwen Xing. One of these applications sought a Therapeutic Massage Enterprise License for Chang's Massage. The application indicated that it was not a renewal, but also that Ms. Xing was "Taking Over Original Chang's Massage". As previously noted, Chang's Massage had a current Therapeutic Massage Enterprise License on file with the city. The second application sought an Individual Massage Therapist License for Ms. Xing. According to this application and a review of City records, Ms. Xing has not previously sought an individual Massage Therapist License from the City. The license application paperwork indicated that Ms. Xing had taken ownership of Chang's Massage and was already working as a massage therapist at Chang's Massage despite lacking a license from the City of Waite Park, which is a requirement under City Ordinance 77.

Both application requests were denied. Ms. Xing was notified in Chief Bentrud's October 17, 2019 letter that she must immediately cease work as a massage therapist in Waite Park due to being out of compliance with the relevant City Ordinance (Ordinance 77) and that Chang's Massage was also in violation of the relevant City Ordinance (Ordinance 77) because it was knowingly employing one or more non-licensed massage therapists.

Investigators with the Waite Park Police Department went to Chang's Massage on or about October 22, 2019 and spoke with Yiwen Xing regarding the application paperwork received. Ms. Xing asserted that she had been performing massage therapy services at Chang's Massage for at least five (5) months. Ms. Xing also represented that her fiance, Weichuan Zhang, worked at Chang's Massage and that he had not yet finished his massage therapy training. Ms. Xing further represented that Qiulian Zhang, to whom Chang's Massage Therapeutic Massage Enterprise License was issued, was no longer the owner and no longer working at Chang's Massage. Ms. Xing asserted that she was now the owner of Chang's Massage. The Waite Park Police Department investigators observed posted massage therapy licenses in the business that were issued to Qiulian Zhang. The Waite Park Police Department investigators observed no posted licenses for Ms. Xing.



Ordinance Analysis

Ordinance 77.9, subd. 1 authorizes the suspension and/or revocation of Therapeutic Massage Enterprise Licenses for, among other things:

B - Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business;

C - Failure to comply with city ordinances or state law;

F - Suspension or revocation of a massage therapist license of an employee employed by the licensed premises when such suspension or revocation relates to acts occurring on the licensed premises;

G - Conducting the licensed occupation or business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.

Ms. Zhang is the holder of a Therapeutic Massage Enterprise License for Chang's Massage with an expiration date of December 31, 2019. That license was posted in Chang's Massage as of the October 2019 site visit by the Waite Park City Police. Ms. Zhang's individual license was also posted. Ordinance 77.5, subd. 5 requires a licensee to notify the Issuing Authority within 10 days of any changes in the information or facts required to be furnished on a license application even after the license has been issued. No information was provided to the City indicating that any change had been contemplated or attempted by Ms. Zhang with regard to the Therapeutic Massage Enterprise License and the observations of the Waite Park City Police Investigators indicate that Chang's Massage was being represented to the public as operating under Ms. Zhang's license. Under the Ordinance, Ms. Zhang has responsibility for the conduct of the business, including conduct of any employees, and for ensuring compliance with applicable laws, ordinances, rules and regulations. Ordinance 77.8, subd. 13.

Ordinance 77.8, subd. 3 prohibits a therapeutic massage enterprise from employing or using any person to perform massage who is not licensed as a massage therapist (absent ordinance-authorized exceptions of Ordinance 77.7). According to Waite Park City Police Investigations, Chang's Massage employed two individuals who were not licensed as massage therapists and who did not meet an exemption under the City Ordinance – Yiwen Xing and Weichuan Zhang. This is in violation of Ordinance 77.8, subd. 3.

Ms. Xing indicated that she had been working for as long as five months. Ordinance 77.8, subd. 3 requires massage therapist licenses for all employees to be posted on the premises. No license was posted for Yiwen Xing.



Ordinance 77.5, subd. 5 requires a Therapeutic Massage Enterprise licensee to notify the Issuing Authority within 10 days of any changes in the information or facts required to be furnished on a license application even after the license has been issued. Ordinance 77.4, subd. 2(A)(8) requires that every person employed or who an applicant intends to employ as a massage therapist be identified and a copy of their massage therapist license be submitted as part of any application for a Massage Therapy Enterprise License. Prior to receiving Ms. Xing's application paperwork, no information had been provided to the City regarding Ms. Xing's employment at Chang's Massage. Chang's Massage is therefore in violation of Ordinance 77.

PUBLIC HEARING:

Councilmember _____ moved to open the public hearing.

Councilmember _____ seconded the motion.

The public hearing opened at _____ P.M.

Councilmember _____ moved to close the public hearing.

Councilmember _____ seconded the motion.

The public hearing closed at _____ P.M.

REQUIRED ACTION:

Approve or Deny the suspension (for a period up to but not to exceed one year) of the Therapeutic Massage Enterprise License issued to Qiulian Zhang for the operation of Chang's Massage.

RECOMMENDED ACTION:

It is the recommendation of the police chief based upon a review of the license application materials and interviews conducted with Ms. Xing that the license for Chang's Massage issued to Qiulian Zhang be suspended for a period of one year on the grounds that non-licensed persons were employed as massage therapists in violation of Ordinance 77.

The council has the choice of doing nothing which will allow the operation of the massage enterprise to continue, to suspend the massage enterprise license up to a year (or less), or to revoke the license. In the event of revocation the license holder, Qiulian Zhang, may not reapply for five years.



SUGGESTED MOTION:

Council member _____ moved to approve OR deny suspension of the massage enterprise license of Chang’s Massage, as presented OR with the following revisions (suspension of the license of a period of time not to exceed one year/revocation of the license)

Council member _____ seconded the motion.

ROLL CALL

Councilmember Michael Linquist _____
Councilmember Ken Schmitt _____
Councilmember Vic Schulz _____
Councilmember Frank Theisen _____
Mayor Richard Miller _____

Motion (Approved) (Denied)