

Honorable Mayor and Members
Of the City Council
City Hall
Torrance, California

Subject: Finance – Adoption of the Findings of Fact and Conclusions of Law in the revocation appeal of Healthy Spa Massage

RECOMMENDATION

Recommendation of the Finance Director that the City Council adopt the Findings of Fact and Conclusions of Law in the revocation appeal of Healthy Spa Massage.

BACKGROUND/ANALYSIS

On April 27, 2010, the City Council heard the appeal regarding the revocation of the massage establishment license for Healthy Spa Massage. The appeal was heard based upon the record from the License Review Board pursuant to City Council Rules of Order Section 7.7. After reviewing the entire record and hearing the arguments of counsel for Healthy Spa Massage and counsel for the Finance Department, the City Council voted unanimously to uphold the decision of the License Review Board to revoke the massage establishment license of Healthy Spa Massage. The Findings of Fact and Conclusion of Law in the revocation appeal of Healthy Spa Massage is attached for your review and adoption.

Respectfully submitted,

ERIC E. TSAO
FINANCE DIRECTOR

By

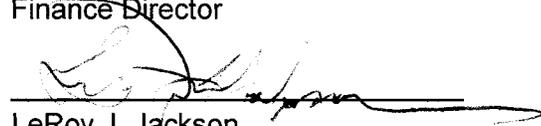


Kenneth A. Flewellyn
Assistant Finance Director

CONCUR:



Eric E. Tsao
Finance Director



LeRoy J. Jackson
City Manager

Attachment: Findings of Fact and Conclusions of Law

BEFORE THE CITY COUNCIL OF THE CITY OF TORRANCE

APPEAL HEARING) FINDINGS OF FACT
)
REVOCATION OF HEALTHY SPA) AND
MASSAGE'S MASSAGE BUSINESS)
LICENSE) CONCLUSIONS OF LAW
)
)

WHEREAS, the Chief of Police requested that the License Review Board (“Board”) revoke the massage business license of Jun Nam Choi, the owner and licensee, of Healthy Spa Massage (“Licensee”).

WHEREAS, the City Clerk sent a letter dated December 11, 2009 to Licensee providing him with notice of the license suspension or revocation and the right to a hearing, if requested by the Licensee.

WHEREAS, the Licensee responded by a letter dated December 15, 2009 through legal counsel requesting a hearing before the Board.

WHEREAS, Section 35.14.140(a) of the Torrance Municipal Code states, in pertinent part, that the Board may suspend or revoke a massage business license or establishment license if the Board finds: (1) that any owner, operator, corporation, or partnership, or employee, agent, independent contractor, or other representative of the massage business or establishment has violated any of the provisions of this article; (2) that any owner, operator, corporation, or partnership, or employee, agent, independent contractor, or other representative of the massage business or establishment conducts business in any manner that would have been grounds for denial of a license; or (3) that any owner, operator, corporation or partnership, or employee, agent, independent contractor, or other representative of the massage business or establishment is engaging in behavior or actions which violate any of the provisions of the Article.

WHEREAS, Section 35.14.140(b) of the Torrance Municipal Code states that no suspension or revocation will become effective until the massage or business establishment has been notified in writing of the right of such licensee to appear before the Board and hear the evidence which is offered in support of the suspension or revocation, and to examine witnesses offering such evidence, to offer evidence in his or her own behalf, to be represented at such hearing, and to have the services of an interpreter paid for at their own expense.

WHEREAS, Section 35.14.140(c) of the Torrance Municipal Code, in pertinent part, states that written notification of the suspension or revocation, as well as the right to a hearing before the Board will be served upon the licensee at the last address shown in the records of the Revenue Administrator for the massage business or establishment. Upon mailing or personal service of the notice, the massage business or establishment will have 15 days to petition for a hearing before the Board. If a petition for a hearing is filed, the hearing will be set within 30 days and may be continued from time to time thereafter. If no such petition is filed, the suspension or revocation will become effective on the 16th day after mailing or personal service.

WHEREAS, Section 31.9.10(f) of the Torrance Municipal Code states that the Board may revoke or suspend a business license if any such suspension or revocation shall occur upon one or more of the following grounds:

(f) Such suspension or revocation is necessary for preservation of the public health, morals, safety, or general welfare.

WHEREAS, Section 35.11.5(a)(2) of the Torrance Municipal Code, in pertinent part, states that neither the applicant (if an individual), nor other person principally in charge of the operation of the existing or proposed massage or acupuncture establishment; nor any natural person employed or contracted with to be a massage or acupressure technician or to provide services, has been convicted or pleaded nolo contendere or guilty to a misdemeanor or felony crime involving sexual misconduct, including but not limited to all offenses listed in Government Code Section 51032, or has permitted, through an act of omission or commission, his or her employee or agent to engage in any type of moral turpitude or sexual misconduct offense, whether misdemeanor or felony (under such circumstances, the conduct of the employee or agent, if such resulted in a conviction or a plea of nolo contendere or guilty, will be considered imputed to the principal, and shall be grounds for license denial.)

WHEREAS, Section 35.11.9(c) states that in the day to day conduct of the business, the following requirements shall be met:

(c) Massage or acupressure business licensee shall have the premises supervised at all times when open for the business by the operator or manager. The violation upon the premises of any massage or acupressure establishment of any provision of this Article by any agent, employee or independent contractor of the holder of a massage or acupressure business license shall constitute a violation by the license holder.

WHEREAS, Section 35.11.12(a) of the Torrance Municipal Code states the License Review Board may suspend or revoke a massage or acupressure establishment license issued pursuant to this Article if the Board finds that any responsible person, corporation or partnership, or employee of such responsible person, corporation, or partnership holding such license has violated any of the provisions of this Article;

conducts such business in any manner that would have been grounds for denial of a license as set forth in Section 35.11.5; or finds that any responsible person, employee, corporation, or partnership is engaging in behavior or actions which violate any of the provisions of this Article.

WHEREAS, on January 19, 2010, the Board held a public hearing on whether to revoke the Licensee's business license for Healthy Spa Massage. Licensee was represented by attorney Ted K. Yoon. The Finance Department was represented by attorney Jocelyn N. Poblete from the City Attorney's Office. At the hearing, both sides presented evidence, opening statements, and closing arguments. Each party's witnesses were cross-examined. No rebuttal witnesses were presented.

WHEREAS, on January 19, 2010 the Board, by a vote of 3-0, decided to revoke the Licensee's business license for Healthy Spa Massage.

WHEREAS, on February 2, 2010, the Board adopted Findings of Fact and Conclusions of Law in support of their decision to revoke the business license of Healthy Spa Massage.

WHEREAS, on February 8, 2010, the Licensee filed an appeal with the City Clerk's Office.

WHEREAS, on April 27, 2010, the Licensee's appeal was heard before the City Council pursuant to Section 7.7 of the Council Rules of Order.

Section 7.7 of the Council Rules of Order states, in pertinent part, if a hearing is an appeal from a decision of the License Review Board...or from the decision of any other commission, board or officer which has made a record of its proceedings and findings in support of its decision, the decision of the City Council shall be based on the record before such commission, board, or officer. Except with permission of the City Council for good cause shown, no new oral or written testimony or other evidence or material may be presented to the City Council.

WHEREAS, during the appeal, the Licensee was represented by attorney Ted K. Yoon. The Finance Department was represented by Deputy City Attorney Jocelyn N. Poblete from the City Attorney's Office. At the hearing, both sides presented arguments. Licensee was given rebuttal time.

NOW, THEREFORE, the City Council makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

FIRST FINDING OF FACT

On April 15, 2009, an employee of Healthy Spa Massage, Xia Li Taylor, was arrested for violating Section 647(b) of the California Penal Code, most commonly known as prostitution, while working as a massage technician. The employee of the Licensee massaged an undercover police officer in a sexual manner, making intentional contact with her hand and his genitals. During the massage, the undercover officer asked the employee for a “blow job,” which is street vernacular for oral copulation. The employee agreed, accepted additional money, and made an intentional act to place her right hand around his penis and place her mouth over his penis. Section 647(b) is a misdemeanor crime involving lewd acts and sexual misconduct.

SECOND FINDING OF FACT

On July 24, 2009, an employee of Healthy Spa Massage, Xia Li Taylor, was convicted of violating Section 647(b) of the California Penal Code while working as a massage technician for Healthy Spa Massage.

THIRD FINDING OF FACT

A Field Investigation Report conducted by the Los Angeles Sheriff's Department indicated that one of the massage rooms tested positive for semen on the walls when a presumptive chemical test and an alternate light source test were performed.

CONCLUSIONS OF LAW

FIRST CONCLUSION OF LAW

The underlying actions that led to an arrest of an employee at Healthy Spa Massage for violating Section 647(b) of the California Penal Code are grounds for revocation as it is necessary for the preservation of public health, morals, safety, and general welfare as set forth in 31.9.10(f) of the Torrance Municipal Code.

SECOND CONCLUSION OF LAW

The conviction of an employee for violating Section 647(b) of the California Penal Code is imputed to the business owner as set forth in Sections 35.11.5(a)(2) and 35.11.9(c) of the Torrance Municipal Code and is grounds for revocation as set forth in 35.11.12(a) of the Torrance Municipal Code.

ORDER

Based on the above stated Findings of Fact and Conclusions of Law, the City Council upholds the revocation by the License Review Board of Healthy Spa Massage's massage business license.

DATED: May , 2010

Frank Scotto, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____