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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1520**

Julia Wang,
d/b/a Orchid Massage Spa,
Relator,

vs.

City of Minneapolis,
Respondent.

**Filed May 21, 2018
Affirmed
Reilly, Judge**

Minneapolis Department of Regulatory Services

Ryan Kaess, Kaess Law, LLC, St. Paul, Minnesota (for relator)

Susan L. Segal, Minneapolis City Attorney, Joel M. Fussy, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this certiorari appeal, relator Julia Wang challenges a decision by respondent City of Minneapolis denying her license-renewal application for a massage and bodywork business. Because the decision is supported by substantial evidence in the record and is neither arbitrary nor capricious, we affirm.

FACTS

Relator Julia Wang operated a massage and bodywork business in the City of Minneapolis. In 2016, the city sent two inspectors to the business to investigate complaints involving male spa customers. The inspectors were experienced business license inspectors, one of whom had “extensive and particularized expertise and training” in sex trafficking and commercial sex businesses.

Upon arrival, the inspectors noticed unusual parking activity. The business’s large, plate glass front window was broken and completely covered with plywood. Inside, one of the massage rooms was occupied by a male customer and a female masseuse, who immediately closed the room’s door upon seeing the inspectors. Wang was not present at the location. Instead, an unidentified woman in the reception area stated that she was watching the business while Wang was away. Inspectors found a large amount of food, cooking equipment, beds, clothing and personal effects inside, suggesting that the business was used for “long-term and overnight residence by some of the workers, consistent with massage parlors utilized for illicit trafficking and commercial sex.” Further investigation revealed that Wang advertised the business exclusively on the BackPage website using sexually suggestive photographs and copy consistent with commercial sex advertisements.

Wang filed a license-renewal application in 2017. Minneapolis city staff reviewed the application and recommended that it be denied because the business violated several provisions of the Minnesota Code of Ordinances (MCO), including (1) MCO § 286.80 (2018), requiring all massage and bodywork establishments to be open to inspection by city officials during business hours and be capable of providing employment records for

each employee; (2) MCO § 259.250(2) (2018), requiring a licensee to maintain and operate the business in compliance with Minneapolis laws and ordinances, including ordinances related to the exterior maintenance of the business; and (3) MCO § 286.100, prohibiting unlawful acts on the premises.

Wang sought administrative review and the matter came on for an evidentiary hearing before an Administrative Hearing Officer (the AHO). The AHO found that the evidence, “taken in [its] totality and viewed through the expertise of the city staff,” constituted “substantial and credible evidence that the establishment . . . would likely fail to comply with applicable laws and requirements and has as a purpose . . . the facilitation of, or acquiescence to, illicit commercial sex activities.” Based upon these findings, the AHO concluded that the city had good cause to deny the license-renewal application because the business was presently in violation of city ordinances. Consequently, the AHO recommended that Wang’s application for renewal of the business’s massage and bodywork establishment license be denied by the city council. The city council voted unanimously to deny renewal of the business license, and this certiorari appeal follows.

D E C I S I O N

An action undertaken by a municipal government may be either quasi-legislative or quasi-judicial in nature. *See Zweber v. Credit River Twp.*, 882 N.W.2d 605, 609 (Minn. 2016). “City council action is quasi-judicial and subject to certiorari review if it is the product or result of discretionary investigation, consideration, and evaluation of evidentiary facts.” *Mathews v. City of Vill. of Minnetonka Beach*, 899 N.W.2d 881, 882 (Minn. App. 2017). Discretionary licensing decisions are generally regarded as quasi-

judicial acts. See *Lam v. City of St. Paul*, 714 N.W.2d 740, 743 (Minn. App. 2006). We review a quasi-judicial decision rendered by a city using a limited and “nonintrusive” standard of review, and we will only reverse the city council’s decision if it was “arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). Under this standard, we do not substitute our own findings of fact for those of the city or engage in de novo review of conflicting evidence. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012); see also *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (cautioning reviewing court against retrying facts or making credibility determinations). Instead, we will uphold a city council’s decision “if the city has explained how it derived its conclusion and the city’s conclusion is reasonable on the basis of the record.” *Sawh*, 823 N.W.2d at 635 (quotation omitted).

We determine that the city council’s decision is reasonable and sufficient evidence in the record supports the city’s denial of the license-renewal application. The evidence in the record supports a determination that Wang violated city ordinances by failing to provide employment records for each employee upon request during the inspection; MCO § 286.80; by failing to properly maintain the business premises under Minneapolis’s building codes; *id.* at § 259.250(2); and by engaging in unlawful acts; *id.* at § 286.100(7).

First, the record demonstrates that Wang left an unidentified woman in charge of the business and failed to keep employment records on the premises. During business hours, massage and bodywork establishments “shall be open to inspection by city . . . and license inspectors” and, upon demand, “any person engaged in providing services in any

licensed premises shall identify himself/herself giving his/her true legal name and his/her correct address.” MCO § 286.80(a). Additionally,

[e]mployment records, including copies of documents used to determine the employee, agent or contractor is eighteen (18) years of age or older, for each employee employed by a licensed massage and bodywork establishment shall be kept at the licensed premises and available for immediate review upon request of a city officer.

Id. at 286.80(b).

Here, the inspectors did not encounter the spa owner or a business manager on the premises when they arrived. Instead, Wang left an unidentified woman in charge of the business while she ran errands. At the administrative hearing, Wang provided inconsistent testimony regarding the woman’s identity, claiming at various times that she was an employee, was not an employee, or was there for a job interview. The woman lacked any identification. Wang was similarly unable to produce a list of employees or copies of their legal identification, as required by the city ordinance. During the hearing, Wang conceded that she did not keep identification records at the business location but could access the records on her cell phone. Wang later provided the city with copies of employment agreements, most of which were dated *after* the inspection. The record supports the city council’s determination that Wang’s inability to produce employment records for her employees constitutes a violation of code ordinance § 286.80.

Next, the evidence shows that Wang committed an aggravated building code violation by failing to maintain the building exterior in violation of MCO § 259.250(2). This ordinance provides that a licensee is responsible for maintaining and operating a

business in compliance with “all applicable laws and ordinances, including . . . building codes.” *Id.* The building code further articulates that “[w]indows . . . may be temporarily boarded only for security reasons when the building is vacant and is unoccupied,” for a period not to exceed 60 days. *Id.* at § 85.100(g) (2018). Here, the business’s large, plate glass front window was broken and completely covered with plywood. The business was not “vacant” or “unoccupied.” *Id.* The city ordered Wang to repair the window to comply with the city’s building codes. Wang later told a city inspector that the window was repaired. Wang stated that her landlord replaced the original plywood covering with a metal covering, painted to match the exterior of the building. Wang also argued that the repair was taking longer than expected because her insurance company was having difficulty finding a replacement window, “due to the odd shape of [the] window and the huge size of [the] glass.” However, city officials performed a follow-up inspection and discovered that the window was still broken and boarded up with plywood several months later. The city council characterized the violation as an “aggravated” violation due to Wang’s delay in making the required repairs and her misrepresentations to city staff. The evidence supports the city council’s determination that Wang failed to maintain her place of business in violation of MCO §§ 259.250(2) and 85.100(g).

Lastly, the record supports a determination that Wang’s license-renewal application was properly denied under MCO § 286.100, which prohibits unlawful acts. This section makes it unlawful for any person in a massage and bodywork establishment to touch the genital area of another person or the breasts of any female, to expose or otherwise fail to conceal one’s genital area or the genital area of another, or to permit anyone under the age

of 18 to work in or patronize such an establishment, except in limited circumstances not present here. *Id.* at (2)-(6). Moreover, the owner, operator, or manager of a massage and bodywork establishment may not “knowingly . . . cause, allow, suffer or permit in or about such massage and bodywork establishment any agent, employee, independent contractor or any other person under his or her control or supervision to perform or allow such acts prohibited in subsections (2) through (6) of this section.” *Id.* at (7). A business owner bears direct and vicarious responsibility for any violations of this section occurring on the business premises. *Id.*

Acting upon neighbor complaints of suspicious activity near the business, two experienced city inspectors visited the establishment and discovered activity consistent with the operation of an illegitimate massage parlor. The business was “generally cluttered, unkempt, uninviting and unprofessional,” and contained beds, food, cooking equipment, clothing, and personal effects, suggesting that the space was used for “long-term and overnight residence by some of the workers, consistent with massage parlors utilized for illicit trafficking and commercial sex.” The business advertised exclusively on the BackPage website, which is characterized as “the largest commercial sex services advertising platform in the United States.” The advertisements contained “sexually provocative photographs and copy” that were “consistent with commercial sex advertisements.” The inspectors testified that this evidence, taken together, suggested that the massage parlor was being used for illicit trafficking and commercial sex. The AHO and the city council credited the observations of these “specially-trained city staff” and determined that there was a “reasonable conclusion that the facility was not and would not

be operated in compliance with the law and in furtherance of the public interest.” The evidence in the record supports this determination.

Wang argues that the evidence does not sufficiently support the city’s decision because it could have been construed in an alternative way, namely, that her business activities were entirely lawful. But we decline to retry the facts or reconsider the city council’s credibility determinations. *Staheli*, 732 N.W.2d at 303. Applying the deferential standard of review, *Dietz*, 487 N.W.2d at 239, we determine that sufficient evidence in the record supports the city council’s denial of Wang’s massage and bodywork license-renewal application.

Wang also suggests that the decision was arbitrary and capricious because it was motivated by racial animus. Wang failed to provide any evidence for this contention. And, on appeal, the burden is on the appealing party to demonstrate the arbitrariness of the council’s action. *Country Liquors, Inc., v. City Council of Minneapolis*, 264 N.W.2d 821, 824 (Minn. 1978). Wang has failed to do so here. We therefore affirm the city council’s decision denying Wang’s license-renewal application.¹

Affirmed.

¹ Wang urges this court to find MCO § 286.80(b) unconstitutional in light of *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015), and *Free Speech Coal., Inc. v. Attorney Gen. United States*, 825 F.3d 149 (3d Cir. 2016). Because sufficient facts in the record justify denial of the license-renewal application on other grounds, we decline to consider Wang’s constitutional challenge. See *In re Senty–Haugen*, 583 N.W.2d 266, 269 n.3 (Minn. 1998) (“It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise.”).