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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1545**

In the Matter of the Appeal of the Denial of
Renewal of Therapeutic Massage
License Numbers EMT-13217 and TM15-13217

**Filed June 11, 2018
Affirmed
Smith, Tracy M., Judge**

City of Burnsville
File Nos. EMT-13217, TM15-13217

Rachel K. Nelson, Law Offices of Rachel K. Nelson, PLLC, St. Paul, Minnesota (for
relators Yuanping Huang and Burnsville Bodyworks)

Matthew Brokl, Shana N. Conklin, Campbell Knutson Professional Association, Eagan,
Minnesota (for respondent City of Burnsville)

Considered and decided by Smith, Tracy M., Presiding Judge; Rodenberg, Judge;
and Hooten, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this certiorari appeal, relator Yuanping Huang, owner of Burnsville Bodyworks, challenges the decision of respondent City of Burnsville to deny her application for renewal of an individual massage-therapist license. Because Huang was denied massage-therapist licenses by the City of Minneapolis in 2015 and 2017, and those denials are a proper basis for denial of an individual massage-therapist license by Burnsville, we affirm.

FACTS

Beginning in 2013, Huang was licensed as an “individual massage therapist” by Burnsville under Burnsville’s city code.

In early 2015, Huang applied for a “massage and bodywork establishment license” from Minneapolis under that city’s code. Minneapolis denied the license. The denial letter stated that the city had received “[c]ommunity and Minneapolis Police Department complaints” that the business was operating in a manner “that is not consistent with the regulations of a massage and bodywork establishment” and that approval of the license was “not in the public interest.”

In late 2016, Patrick Orth, then the owner of Burnsville Bodyworks (where Huang worked as a massage therapist), also applied for a massage-and-bodywork-establishment license from Minneapolis for the business Massage Meadows. Following an evidentiary hearing (at which Huang was present), a Minneapolis administrative hearing officer issued a decision recommending denial of Orth’s application. The hearing officer found that Huang had previously been denied a license from Minneapolis; that Orth’s application failed to disclose Huang’s involvement in Massage Meadows; that Huang had paid Orth \$33,000 to use his name on the application and not, as Orth claimed, as payment for house painting; that Huang “us[ed] aliases to recruit Chinese women from different states using promises of making unrealistic amounts of money”; and that online advertisements for Burnsville Bodyworks contained pictures “of a man on a massage table with a woman wearing lingerie on his back” as well as “various therapists’ cleavage,” and language such as “Brand New & New Pretty Young Girls” and “[T]he girls are very pretty and hot

Just come and enjoy!” The hearing officer concluded that the license application should be denied based on false statements and omissions in the application and based on the obligation of a business to prevent criminal activity arising out of the conduct of the business. The Minneapolis city council adopted the hearing officer’s decision in January 2017.

In May 2017, Burnsville sent Huang a letter indicating that it would not be renewing her individual massage-therapist license (individual license). The letter stated that non-renewal was based on the “[d]enial of a massage license in the City of Minneapolis in April, 2015,” “[d]enial of a massage license in the City of Minneapolis in January, 2017,” and Huang’s “[f]ailure to disclose the above denials on [her] 2016 application for renewal.”¹

Huang appealed the nonrenewal of her individual license to a city administrative panel. While that appeal was pending, Huang indicated that, although Orth was the putative owner of Burnsville Bodyworks, she was the “actual owner” of the business. She therefore requested that her appeal be expanded to encompass the transfer of Orth’s enterprise license from Orth to her, as well as the nonrenewal of that license.² The administrative panel concluded that Burnsville properly denied transfer of the enterprise license and renewal of both licenses.³

¹ We note that, because the 2017 denial happened in (of course) 2017, it would have been impossible for Huang to disclose that denial in a 2016 application.

² In April of 2017, Burnsville decided not to renew Burnsville Bodywork’s enterprise license.

³ We explain Burnsville’s licensing scheme for individual and enterprise licenses below.

Huang appealed the administrative panel's decision to the Burnsville city council. The council heard arguments from Huang at a public hearing, and then voted to adopt the administrative panel's decision.

Huang petitioned for certiorari review of the individual-license nonrenewal.⁴

D E C I S I O N

Huang argues that Burnsville wrongly denied her a license. She contends that the Minneapolis massage-license denials do not provide a basis for denial under Burnsville's city code. In addition, she argues that she was not obligated to disclose those denials and thus did not provide false or incomplete information in her license application. She further argues that Burnsville cannot on appeal assert another basis for denial that was not relied on by the city council.

I. Standard of Review

Certiorari review of a city council's decision is "confined to questions affecting whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dead Lake Ass'n, Inc. v. Otter Tail County*, 695 N.W.2d 129, 134 (Minn. 2005) (quotation omitted). We review factual findings "in the light most favorable to the decision, and if there is evidence reasonably tending to sustain them, they will not be disturbed." *Markel v. City of Circle Pines*, 479 N.W.2d 382, 383-84 (Minn. 1992). In determining whether the city council acted under an erroneous theory of law, we review de

⁴ Huang does not seek review of the nonrenewal of the enterprise license.

novo the city's interpretation and application of its ordinances. *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 307 (Minn. App. 2007) (citing *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980)).

We will uphold a licensing denial so long as at least one of the reasons given for denial is legally adequate. *Cf. Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997) (“[A] city’s denial of a land use request is not arbitrary when at least one of the reasons given for the denial satisfies the rational basis test.”), *review denied* (Minn. Sept. 25, 1997).

II. Bases for License Denial

Burnsville provides three bases for refusing to renew Huang’s individual license, all of which Huang challenges. First, the city code permits denial of licenses to applicants that have been refused a massage-therapist license in another jurisdiction. Burnsville, Minn., City Code (BCC) § 3-15-3(A)(7)(c) (2017). Second, the city code permits denial of licenses to applicants that falsely answer a question on the application form. *Id.* (A)(3) (2017). And third, while not cited below by the city council as a basis for denial in this case, the city code permits the city council to base nonrenewal “upon any additional grounds which they may, in their sole discretion, impose.” BCC § 3-15-6(C) (2017). We begin with the first basis.

Under Burnsville’s ordinances governing therapeutic massage, the city manager “shall approve the issuance of a license by the city to an applicant . . . unless the manager finds” one or more potentially disqualifying circumstances to be true. BCC § 3-15-3(A). One such circumstance is that “[a]n applicant or any employee, contractor or other person

associated with the business or performing massages at the licensed premises or as part of the licensed business . . . [h]as had a massage therapist license revoked or denied by a state, city or other licensing authority within five (5) years.” BCC § 3-15-3(A)(7)(c). Burnsville found that Minneapolis had “issued denials of two massage therapy license applications that involved Ms. Huang and her business” and concluded that those denials warranted denial of her license renewal under this subsection.

Huang contends that Burnsville acted under an erroneous theory of law, arguing that the licenses denied by Minneapolis were not “massage therapist license[s] . . . denied by a . . . city” under BCC § 3-15-3(A)(7)(c). Burnsville, on the other hand, argues that the Minneapolis license denials were such denials. Resolution of this issue requires interpretation of the phrase “massage therapist licenses denied by a city.”

We interpret ordinances in the same way we interpret statutes. *In re Haslund*, 781 N.W.2d 349, 354 (Minn. 2010). “Our first task is to determine whether the language of the [ordinance] is ambiguous.” *J.D. Donovan, Inc. v. Minn. Dep’t of Transp.*, 878 N.W.2d 1, 5 (Minn. 2016). An ordinance is ambiguous “if it is unclear or reasonably susceptible to more than one reasonable interpretation.” *Id.* (quotation omitted). Assessing whether an ordinance is ambiguous “does not depend on a reading of words or phrases in isolation.” *Id.* Instead, we “read and construe [the ordinance] as a whole and interpret each section in light of the surrounding sections.” *Eng’g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 711 (Minn. 2013) (quotation omitted). In doing so, “we interpret [the ordinance], whenever possible, to give effect to all of its provisions.” *Id.* (quotation omitted). If we conclude that an ordinance is ambiguous, then we must attempt to

“ascertain and effectuate the intention” of the legislative body. *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 194 (Minn. App. 2010) (quoting Minn. Stat. § 645.16 (2008)).

An understanding of the parties’ competing arguments about the phrase “massage therapist license denied by a city” requires review of Burnsville’s and Minneapolis’s ordinances governing massage services. Burnsville’s city code requires persons and businesses providing therapeutic massage services to be licensed. BCC § 3-15-2 (2017). Burnsville issues what it calls “individual massage therapist licenses” and “enterprise license[s].” *Id.* An enterprise license enables the holder to lawfully operate a “therapeutic massage business.” *See* BCC §§ 3-15-1, -2 (2017). An individual massage-therapist license enables the holder to “practice[] or administer[] therapeutic massage.” BCC § 3-15-1. For an individual therapist to lawfully work at an establishment providing therapeutic-massage services to the public, the therapist must have an individual massage-therapist license and the establishment must have an enterprise license. BCC § 3-15-2.

Minneapolis issues what it calls “massage and bodywork establishment licenses.” Minneapolis, Minn., Code of Ordinances (MCO) § 286.20 (2017). Such licenses are issued to a “person” and enable the person to lawfully operate “a massage and bodywork establishment.” *Id.* Huang argues that Minneapolis, unlike Burnsville, does not require licensure of individuals who perform massages at, but do not operate, a massage and bodywork establishment. Burnsville disagrees with Huang’s interpretation of the Minneapolis ordinance. For purposes of our analysis, however, we assume without

deciding that Minneapolis’s scheme differs from Burnsville’s in the manner claimed by Huang.

Huang argues that a “massage therapist license denied by a city” in BCC § 3-15-3(A)(7)(c) is limited to individual-therapist-license denials—that is, the denial of a license to an individual to perform massage therapy. To support her argument, Huang narrowly focuses on the first two words of that phrase, “massage therapist,” and directs us to the definition of massage therapist in the Burnsville city code. In that code, “massage therapist” is defined as “[a] person who practices or administers therapeutic massage.” BCC § 3-15-1. Based on the definition of that term—which is part of the larger phrase “massage therapist license denied by a city”—Huang’s interpretation of the language is reasonable.

Burnsville, on the other hand, takes a broader view, arguing that “massage therapist license denied by a city” is not limited to denials of individual massage-therapist licenses as they are defined in Burnsville’s code but rather includes any massage-therapy license denial under other jurisdictions’ licensing schemes. As noted above, in considering whether a statute is ambiguous, we do not read its words in isolation, but rather “interpret [the ordinance], whenever possible, to give effect to all of its provisions[,] . . . interpret[ing] each section in light of the surrounding sections.” *Eng’g & Constr. Innovations, Inc.*, 825 N.W.2d at 711 (quotation omitted). Looking at the language of the chapter governing massage licenses as a whole, we find instructive that, when referring to individual licenses, the ordinance requiring such licenses refers to them as “*individual* massage therapist licenses.” BCC § 3-15-2 (emphasis added). That modifier, “individual,” also appears

when discussing licensing fees. BCC § 3-15-4 (2017). The term “individual” is notably absent, however, from subsection 7(c). This absence suggests that the phrase “massage therapist license denied by a city” in subsection 7(c) is not limited to individual-license denials but rather may comprehend other types of massage-therapy-license denials. Burnsville’s interpretation of the language of the phrase is thus also reasonable.

Because the language of BCC § 3-15-3(A)(7)(c) is susceptible of two reasonable interpretations, we conclude that the ordinance is ambiguous. We therefore “may resort to canons of construction” to resolve the ambiguity. *Figgins v. Wilcox*, 879 N.W.2d 653, 656 (Minn. 2016). Our goal is to “ascertain and effectuate the intention” of the city in passing the ordinance. *See Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72-73 (Minn. 2012) (quotation omitted) (“If the words are not free of ambiguity, the court may look beyond the statutory language to ascertain the Legislature’s intent.”). In interpreting the ordinance, we may consider the object to be attained. *See Christianson v. Henke*, 831 N.W.2d 532, 537 n.4 (Minn. 2013) (quotation omitted); *see also* Minn. Stat. § 645.16 (2016) (listing factors for consideration in determining legislative intent). In addition, we are guided by the presumption that the city intended the entire ordinance to be effective and not lead to an absurd or unreasonable result. *See Cannon*, 783 N.W.2d at 194; *see also* Minn. Stat. § 645.17 (2016).

The object to be obtained by section 3-15-3(A) is to set out the criteria under which the Burnsville city manager may refuse to approve the issuance of a license. BCC § 3-15-3(A). And the specific object of subsection 7(c) is to permit the city manager to rely on recent (within five years) license denials by Burnsville or by another jurisdiction—“a state,

city or other licensing authority”—to refuse a license. *Id.* (A)(7)(c). Because not all states, cities, and licensing authorities are likely to use precisely the same definitions or to employ the identical licensing schemes as Burnsville, subsection 7(c), to be effective, must be read to apply to comparable denials of massage-therapy licenses sought by the applicant in other jurisdictions. Here, Huang was the person who applied for the Minneapolis licenses and her conduct was at issue in the denial of those licenses. The Minneapolis license denials were therefore comparable denials falling within the scope of BCC § 3-15-3(A)(7)(c).⁵

Additionally, Huang’s narrow interpretation of subsection 7(c) would lead to an unreasonable result. Notably, the criteria for denying a license under § 3-15-3(A) apply not just to individual massage-therapist licenses (as Huang sought here) but also to enterprise licenses under Burnsville’s code. *See id.* However, unless section 3-15-3(A)(7)(c) is read to include more than just individual massage-therapist licenses, no part of section 3-15-3(A) would allow the denial of an enterprise-license application based on

⁵ We recognize that, in addition to arguing that the Burnsville ordinance does not extend to cover the Minneapolis denials, throughout this litigation Huang has also taken the position that she was never denied a license of any kind, because in 2015 “she withdrew her application,” and in 2017 she was not the applicant, Orth was. However, the Burnsville administrative panel found that “[t]he Minneapolis proceedings resulted in the denial of a massage license for a business, finding that Ms. Huang was the owner of the business.” We defer to administrative fact-findings so long as “they are reasonably supported by the evidence in the record.” *See Rasidescu v. Comm’r of Econ. Sec.*, 644 N.W.2d 504, 506 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). The record reasonably supports the administrative panel’s finding that the Minneapolis proceedings were denials to Huang. In 2015, Huang received a letter denying licensure due to “[c]ommunity and Minneapolis Police Department complaints,” not because Huang withdrew her application. In 2017, the Minneapolis hearing officer concluded that Huang was effectively a “part owner or manager” and that she had paid Orth \$33,000 “to use his name on the application.”

a previous revocation or denial of an enterprise license. This is an unreasonable result. Under Huang's proposed reading, an enterprise-license holder could engage in misconduct resulting in revocation of the enterprise license, *see* BCC § 3-15-6(B) (2017); the license holder could immediately reapply for a new enterprise license; and the city manager would be required to grant a new enterprise license because that enterprise-license revocation was not a "massage therapist license" revocation. Instead, we think that, in passing section 3-15-3(A)(7)(c), Burnsville intended denials of both individual and enterprise licenses to be grounds for denying an application.

Applying this interpretation, we conclude that, even if Huang's Minneapolis license denials were more akin to enterprise-license denials than individual-license denials, they still constituted adequate grounds under BCC § 3-15-3(A)(7)(c) for Burnsville to refuse to renew Huang's individual massage-therapist license. Accordingly, we conclude that Burnsville did not err in refusing to renew Huang's individual massage-therapist license. Because we conclude that the Minneapolis denials were adequate grounds for denying renewal, we do not address the parties' arguments regarding other bases for nonrenewal. *See Goeb v. Tharaldson*, 615 N.W.2d 800, 815 n.9 (Minn. 2000) ("Because the other issues raised are dispositive of this matter, we do not address this argument.").

Affirmed.