



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



Date: June 6, 2012
Board Meeting Date: June 26, 2012
Special Notice / Hearing: 5 days
Vote Required: Majority

To: Honorable Board of Supervisors
From: Dean Peterson, Chair, License Board
Subject: Appeal of Decision of the San Mateo County License Board to Revoke License to Operate a Massage Establishment at 3365 Middlefield Rd., Menlo Park, CA (Owner: Bao Ling Qi, d.b.a. Oriental Spa)

RECOMMENDATION:

Uphold the decision of the San Mateo County License Board to revoke license to operate a massage establishment at 3665 Middlefield Rd., Menlo Park, CA (Owner: Bao Ling Qi, d.b.a. Oriental Spa)

BACKGROUND:

Under section 5.04.370 of the San Mateo County Ordinance Code, a business license may be revoked on any one or more of the grounds upon which a denial of said license would be authorized pursuant to section 5.04.210, and pursuant to the procedure provided in the Ordinance Code for denial of a license as set forth in sections 5.04.140 through 5.04.200.

On January 23, 2012 the San Mateo County License Board voted 3-0 to adopt an Intent to Revoke Ms. Bao Ling Qi's license to operate a massage establishment at 3665 Middlefield Rd., Menlo Park, CA. Ms. Qi thereafter requested a public hearing for further consideration of the matter. A public hearing was held on February 27, 2012. After hearing testimony from San Mateo County Sheriff's staff and Ms. Qi, the License Board voted 2-1 to revoke Ms. Qi's license to do business as Oriental Spa. Notice of the License Board's decision was sent to Ms. Qi by certified and regular mail on March 9, 2012.

Under section 5.04.230, a business owner may appeal the decision of the License Board to the Board of Supervisors by filing a notice of appeal within five (5) days after receiving notice of the License Board's decision. As stated, notice of the License Board's decision to revoke Ms. Qi's license was sent by certified and regular mail on March 9, 2012. On March 12, 2012, Ms. Qi e-mailed Dean Peterson, Chair of the License Board, with notice of her appeal of the License Board's decision. Mr. Peterson

responded and instructed Ms. Qi to provide her notice directly to the Board of Supervisors. On March 14, 2012, Ms. Qi delivered an undated, unsigned notice of appeal to the County Manager's Office. Given the lack of detail in Ms. Qi's correspondence, the notice was not immediately recognized as an appeal of the License Board's decision to the Board of Supervisors. The document was forwarded to the County Counsel's Office where it was eventually recognized as an appeal. As such, the appeal hearing was not set within the thirty (30) days prescribed by Ordinance Code section 5.04.230.

The procedure for the Board of Supervisors in its consideration of this appeal is as follows:

1. Consider the information contained in the record of the proceedings before the License Board (summarized below and attached hereto).
2. Consider any facts that the appellant may wish to present at the hearing as to why the License Board's decision to revoke should be reversed.
3. Hear testimony from any other persons as to why the License Board's decision should be upheld, modified, or reversed.
4. At the close of the hearing, or within thirty (30) days thereafter, determine whether the decision of the License Board should be upheld, modified, or reversed, based upon evidence presented at the hearing.

Staff intends to submit this matter on the evidence and testimony that constitutes the record of the hearing before the License Board. It is not known whether interested members of the public may wish to speak at the hearing, or whether the appellant will present additional witnesses or evidence.

DISCUSSION:

The record in this matter consists of the December 19, 2011 memorandum from Detective Leslie Talley of the Sheriff's Office and supporting documentation, and the transcript of oral proceedings before the License Board on February 27, 2012. In summary, the evidence established the following:

1. Ms. Bao Ling Qi applied for a massage establishment license on November 12, 2009 and was approved on December 16, 2010 to operate the Oriental Spa located at 3365 Middlefield Rd., Menlo Park, CA.
2. On November 18, 2009, Ms. Qi sent Detective Leslie Talley movie theater tickets which Detective Talley returned to her with a letter explaining that she cannot accept gifts or gratuities as an employee of the San Mateo County Sheriff's Office.

3. On January 31, 2011, the San Mateo County District Attorney filed a Complaint charging Ms. Qi with four counts of violating Penal Code section 67.5(A), Bribe Public Officer, a misdemeanor (Case SM374105).

4. On December 5, 2011, Ms. Qi withdrew her previous not guilty plea and entered a plea of Nolo Contendere to Count 1, Penal Code section 67.5(A) and the remaining counts were dismissed with a negotiated plea. Ms. Qi was sentenced to five (5) days County Jail, Sheriff's Alternative Sentencing Bureau, court probation for eighteen (18) months, and a fine and fees.

After consideration of the evidence, the License Board decided to revoke Ms. Qi's license to operate a massage establishment pursuant to sections 5.04.370 and 5.04.210.

FISCAL IMPACT:

There is no fiscal impact to the County.

Dean Peterson
Chair, License Board

Enclosures:

1. Notice of Appeal and associated correspondence
2. Record as presented to the License Board
3. Transcript of Proceedings before the License Board, February 27, 2012