

Regular City Council Meeting**Monday, April 10, 2023****Page 4**

b. **Review and Consider an Ordinance Amending City Code Chapter 309:
Massage Therapy**

City Manager Patrick Trudgeon briefly highlighted this item as detailed in the request for Council Action and related attachments dated April 10, 2023.

Mr. Trudgeon provided a timeline history of changes and proposed changes to be made the Chapter 308, Massage Therapy.

Councilmember Strahan asked Mr. Trudgeon to relate to the public the need for this as far as massage therapy licenses with the State of Minnesota.

Mr. Trudgeon reviewed the regulations of Massage Therapists and establishments within the City.

Chief Scheider and Deputy Chief Adams provided a law enforcement update on massage therapy and provided additional background and context regarding this item.

Councilmember Etten indicated one of the things brought up at the last meeting was regarding third party inspectors. He asked what discussions have happened at the staff level around having someone else do some or all of these inspections versus the City staff or officers.

Mr. Trudgeon thought that discussion was around background checks.

Councilmember Etten agreed and indicated he was not talking about inspections. It was regarding 100 therapists, how the City would track them, and then there is a separate part regarding enforcement and if the City is able to pull those pieces apart and have some work done not by the City's Police Officers.

Mr. Trudgeon explained there is a third party portal where the therapists enter in their information and the City gets a report back. This company does the background checks but staff does still coordinate with the Police Department if anything hits from the background check to try to find out more and also if any knowledge the Police Department may have from other communities. The City is already using that third party to do the background checks and is not taking much time directly on the hundred therapists.

Councilmember Groff indicated from what he understands, the City has laws in place that would make sexual trafficking behavior illegal. The City is trying to do something else to enforce that law, which seems a little backwards to him. He wondered what laws are already in place that the City is trying to enforce but are unable to.

Chief Scheider explained the main thing the Police Department is trying to do is disrupt the business. The people are actually profiting from this. The Police Department views the people working in these establishments as victims. This is not something these people want to do, they get forced into it, coerced, and sometimes are immigrants and fearful of not getting their passport back or being able to work to put food on the table. The Police Department's main focus into the investigations is to disrupt the criminal enterprise, which is making a lot of money. To do those kinds of investigations takes a tremendous amount of time.

Mr. Trudgeon reviewed what the City is doing to stop the illegal businesses and indicated if the City has some better regulations, it is another way to ensure going into it that it is very clear what the expectations are.

Councilmember Groff asked how many cases have come forward on the existing massage businesses.

Chief Scheider explained there are very few direct complaints. The Police Department has gotten information from online searches, information from other agencies like the BCA's Human Trafficking Task Force. The Police Department has received tips coming in that way but very few complaints, other than people frustrated that the business is down the street from them. That is what takes these cases so long to come together because the Police Department has to build the case with maybe an informant or someone who comes forward with information or a victim and the Police Department does not see that in these cases.

Mayor Roe stated he wanted to follow up on this string of thought because it gets to the question that the City is dealing with. There are two things being requested, one is to stiffen up their requirements and make it much more difficult for the bad actors to either operate the businesses and or for people to get a therapist license who should not be getting them. Then there is the question of this cap and the cap

is only on the number of establishments. He noted the City is not proposing a cap on the number of therapists. He was trying to understand of the twenty-four licenses the City has now, are there twenty-two bad actors and two good ones or is it the other way around. He was not sure if there was any knowledge specifically but the concern he has is if the City Council puts a cap of ten and there are still the same five bad actors, now the City has only allowed five additional good businesses and is not serving the needs of the community for the folks that are looking for the services provided. He stated this is not to mention the fact that if the City goes down from twenty-four to ten, the City is also, essentially, putting out of business fourteen businesses in the community over the next five years, which is very concerning too, especially if those folks are not contributing to the issues.

The question he is trying to figure out through this process is the notion of capping the number of establishments does not make the crimes any easier to investigate. It does not necessarily make the establishments less likely to be potentially bad actors but at the same time the City has all these other requirements being put in place that may get to that. He was trying to understand if the City is just limiting the number of establishments because it makes for less staff time to process applications, in the first place. He was not necessarily sure that was getting at what the City is trying to do.

Chief Scheider explained it is hard to know the exact number, noting across the Country it is estimated that one in every five massage establishments are illicit massage businesses. These are hard to know about and the Police Departments hope is to make it hard for these businesses to come to Roseville. If it is easy then these businesses will come and set up shop. She knows that these types of businesses have been shut down in other communities because of strict ordinances. It is really a capacity issue and these cases take a long time.

Councilmember Etten asked if Chief Scheider felt the regulations, other than the number of establishments, would make it easier to prevent an establishment from opening and then to enforce something later.

Chief Scheider explained the businesses will go to a city where there are less regulations, easier to come in, and set up. This is why the City of Roseville had some that had been in other cities, maybe with different owners but connected by families. Having those stricter regulations will help so those businesses do not come to Roseville.

Councilmember Etten asked if individuals are getting relicensed each year.

Mr. Trudgeon indicated that was correct.

Councilmember Etten asked if this is something that within a year of passing these regulations, having someone come in with a local address and any of that would start to have an effect, theoretically.

It was indicated that was true.

Mr. Trudgeon explained the licensing cycle goes from July 1st to June 30th so if the City Council were to pass something before that date and get the information out, it would start July 1st.

Councilmember Etten indicated having third party inspectors would do random checks in establishments to make sure these therapists that are there are posted and licensed. He wondered if that was something the City could move off their own Police Department to a third party. He thought that is the piece, understanding the licensing background checks are handled electronically and separately.

Chief Scheider indicated that is something staff can look at although it gets complicated. She thought there were opportunities for some of it but around the actual enforcement, there would need to be a sworn law enforcement officer.

Mr. Trudgeon thought it was an excellent observation that the City could leverage a third party to help, at least in some of the regulatory functions and then when there is something that does not add up, law enforcement could get involved. As the City creates these stricter regulations, staff needs to make sure to follow up on them and make sure they are followed. Right now, the City has very minimal standards but now the City would need to physically go out to the sites and having some assistance with that would really go a long way in making sure that the City would identify some problem actors and deal with the Police Department from there.

Councilmember Schroeder asked if there are a number of these bad actors possibly setting up shop even without getting a license.

Chief Scheider indicated there may occasionally be ones the Police Department has run across without a license. But the majority of them are getting a license and trying to look legitimate because those businesses realize that if there is a license, there is little that the City can do.

Councilmember Strahan indicated she wanted to follow up on Councilmember Etten's comments. She knew the last time this came up, one of the massage therapy location owners offered to serve as a third-party inspector, sit outside, and report people he thought looked illegal. She was certain that does not fit into the City's parameters but was curious and felt it was important to mention because there could be all kinds of legal and ethical questions related to that but felt it was important to follow up on that.

Chief Scheider explained the Police Department sees the same thing but it is somebody going to a business that is licensed in the City and they cannot just start going up to people and harassing them for going to a business. When the Police Department has tried to talk to people who have just left the business, the answer is always the same as the individual who just went and got a massage. It is kind of a dead end there so if the person is not going to cooperate, and most of the time those individuals will not, then there is nothing the Police Department can do. Being able to enforce and prove illegal activity is where it becomes difficult.

Councilmember Groff asked if the City could use fire codes as a way to inspect the properties that are identified as problem properties.

Chief Scheider explained that is certainly an option and another way to provide the notion that the City is paying attention to the business and that the business is operating the way it should be.

Mayor Roe asked how the six hundred hours of training was arrived at as the qualification. He asked if it is based on best practices that staff has researched and found elsewhere. He did notice it seemed to correspond with what might be in State legislation for licensing that was out there.

Mr. Trudgeon explained that has been a standard the City has used for a long time and is certainly a best practice and something established in multiple codes throughout cities. The six hundred is the level of certification that staff has determined qualifies as a massage therapist but it is his understanding that it is pretty standard throughout the cities as the number used.

Mayor Roe asked if there is an intent behind requiring it all at a single institution. He imagined that individuals may go into one or two different institutions over the course of their life.

Deputy City Clerk Bruno explained that was added to the last Ordinance because the City has had times where people come in that have a portion of that and will want to go quickly, get it somewhere else, and then bring that certification in stating there is six hundred hours. However, it did not always seem like it was accurate. She noted most courses are six hundred hours.

Mr. Trudgeon thought having a disjointed amount of hours from different schools may be repetitive and might not be as comprehensive as a person would have from a program that has complete certification. He noted staff looked at other city's ordinances as well, did notice that, and thought it was a good idea to make sure there was something that was consistent training at an accredited institution.

Mayor Roe indicated it was his understanding that the way the Ordinance is written right now, transfers are essentially prohibited after the five year period. He noted there are no more transfers at all even if from below the cap. He wanted to understand if that was the intent or an oversight. He could imagine once this is under the cap do people really care if people do transfers at that point.

Mr. Trudgeon explained as long as this is under the cap there is no concern.

Public Comment

Mayor Roe offered an opportunity for public comment.

Ms. Amy Adams, Woodhouse Spas

Ms. Adams explained some of the regulations she is very excited about. Having additional regulations to this industry and this municipality is really important for their business. In other municipalities in which her business operates there are similar requirements for the therapists and licensing as an establishment. She believed that elevates their business as a spa with massage therapy as one of those many services that are provided. But it also elevates the profession of the massage therapists. She has been watching the regulation happening at the State level because her business is also licensed at the State level with the Board of Cosmetology. Many of the things the Council has discussed today her business goes through routinely. She stated as professionals in this industry, the Board of Cosmetology is over their esthetician practices which covers all of their facial services as well as the nail technicians and all of the nail services. Her business is inspected a minimum of every year by a State assigned representative that comes into her business unannounced. As discussed previously, the inspectors match the license on the wall to the salon manager and she has a professional salon manager at each of her locations as well as inspecting the esthetician, not only the facilities but also matching the name on the name tag to the Government ID and to the license on the wall. That protects staff and guests and elevates the quality and safety of the services. She feels the regulations related to the six hundred hours is a wonderful addition because institutions that provide massage therapy education are wonderful in Minnesota and Nationwide. She stated it is often a hang-up for applicants that are not able to prove or establish that profession and for her. Then it protects the business and clientele. She explained there is very rigorous training done internally with protocols and a franchisor at the National level that ensures the services her business provides as a spa with over seventy luxury resort services are safe, not only from a hand on perspective but also from a sanitation and safety perspective. She is the owner of the business but is not a massage therapist so she truly appreciates when municipalities take these regulations seriously. But, unfortunately in Roseville, she is looking to open up a business this year that will not be able to open because of the caps and being under the umbrella of a massage therapy license only. She indicated her business is a spa and she opens spas because she is a mom and a

professional and has everything in her life except for balance and time for herself. Her business is not only a one service massage therapy business, but also an escape and a place to celebrate where friends meet. She noted they are in the celebration and self-care business and she was very concerned that some of the caps will not allow them to open a beautiful flagship of almost seven thousand square foot facility in Rosedale to elevate the experience for residents to foster self-care and continue to grow a beautiful community in Roseville.

Mr. Mark Adams

Mr. Adams noted he was Amy's husband and co-owns the businesses in Minnesota and everything said about the lack of State guidance is absolutely correct. As a business owner, that makes their job in terms of due diligence where they are going to invest next very important. Even in the Twin Cities, not every municipality has licenses at all. When they opened their first spa, they went to the city that they felt was the most stringent. He indicated ninety percent of what has been shown he is extremely in favor of, the one percent he is not in favor of is the cap.

Ms. Lisa Crain, General Manager Rosedale Center

Ms. Crain indicated she works on behalf of the ownership of the Center and understands the purpose of the proposed ordinance. She encourages enforcement of illegal behavior at massage therapy establishments; however, there needs to be consideration for businesses that are professional with reputable operators in the community and provide training and strict education regiments for their employees, which is Woodhouse Spa. She stated Woodhouse Spa encompasses these traits and follows a strict franchise business model that requires additional training, reporting, and guidelines with their daily operations. She explained that Rosedale Center has been courting Woodhouse Spa for over two years to come to Rosedale Center because of its reputation, luxurious spa services, and their impeccable amenities. This type of tenant will provide more impact to their tenants since it will draw people that have not been able to enjoy self-care at the top level tier within Roseville. More importantly, these groups will be utilizing the spa for major milestone events or just routine self-care. The residual dollars it will generate, not just for Rosedale Center but will financially impact the surrounding hotels, restaurants and entertainment venues and other retail surrounding them. The new Ordinance will prevent Rosedale Center from engaging in any lease agreements with a luxurious spa salon. This is a missing experience that has been carefully selected to compliment the exceptional retailers. Rosedale Center agrees there needs to be consequences or revoking licenses to massage establishments that continue to operate illegally. There needs to be considerations for businesses that operate in an exceptional level of professionalism and provide multiple spa services. Rosedale Center was unaware of the changes being made with this Ordinance and appreciate City staff bringing this to their attention.

Ms. Rachel Lauer, Owner of Healing Wings Massage and Energy Work

Ms. Lauer explained she started massage in 2015 in St. Paul and worked for a

wellness center for five years before opening up her business in Roseville. She started her business in 2020. After COVID, she started back up and slowly came back up to speed with her business. She explained her work is important and people need the therapy that these businesses offer. She likes almost everything in the proposed Ordinance, but more massage is needed and to put the cap at ten is not a good thing as it will stop other people who may come out as students who are just now getting back into massage. She asked the Council to reconsider the cap at ten and an alternative might be to have something separate for sole proprietors which might help with the regulations.

Ms. Tonnie McCloney, Owner of Optimal Wellness

Ms. McCloney indicated if the City caps the massage therapy at ten, her business and Ms. Lauer's business are essentially two of the ten and the cap would only allow eight more facilities in the entire City of Roseville. She did not understand that and felt the cap is a problem. She indicated they were just through a health crisis in the last three years. People are conscious of their health and wellness and are going to be reaching out more to people that are providing alternative care and utilizing salons so if anything, they need more legitimate services in Roseville, not fewer. She thought there needed to be another solution because the cap does not make sense to her.

Mr. Roger Hess, Wagner Place

Mr. Hess explained it is great to make sure that everyone who is working in Roseville is legitimate and the City can easily do that without destroying the whole industry. The City does not need to limit the number of massage therapy businesses, just get rid of the bad ones. He explained right now the industry is supporting 24 locations in the City and if the total is decreased to ten, where will all of the clients go. He indicated people need massage and there are alternate ways to make sure the businesses are legitimate and a charge should not equal a revocation unless the person is actually guilty of the crime.

Mayor Roe closed the public comment.

Mayor Roe stated the biggest question the Council has before them is capping the number of establishment licenses or not and what the cap should be if there is one.

Councilmember Strahan thought it was more important for people to know that this is not a new Ordinance. There is an Ordinance in place and right now the limit is twenty-four. She thought it was important to understand that the current limit is twenty-four and should be the starting point.

Councilmember Groff indicated he was very concerned with the caps, especially with hearing from these very legitimate businesspeople talking about their businesses and how this would affect their business. This is exactly the thing he does not like to see government getting involved in, over regulating things and trying to

488 solve a problem with the wrong answer. Having heard this and not having any hard
489 data about how many arrests the City has had or how many cases inspected, he does
490 not favor a cap right now.
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492 Mayor Roe asked if Councilmember Groff would want to go away from a cap of
493 twenty-four.
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495 Councilmember Groff indicated that was correct.
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497 Councilmember Etten agreed with much of what Councilmember Groff said but he
498 was not sure about no cap. He was not prepared to reduce the number at this time
499 for reasons that have been stated by multiple people. He appreciated giving addi-
500 tional tools to staff and the Police Department to ensure that there are quality, safe
501 businesses and that the people in the businesses are healthy and safe.
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503 Councilmember Strahan stated she wanted to echo Mr. Hess's concern that a charge
504 should not equal a revocation. The one transfer in a five-year period she struggles
505 with and she is not in a position to change the cap, also because she does not feel
506 comfortable adding additional for one business right now because that certainly can
507 be seen as preferential because they came forward and were the loudest. She was
508 comfortable with leaving the cap where it is right now but wants it to be known that
509 it does not include clinics or chiropractic massage and that the City is not forcing
510 fourteen businesses to close. The goal would be to eventually get down to a cap of
511 ten or whatever the cap would be.
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513 Councilmember Schroeder explained she was glad to hear that everyone was in
514 support of stricter regulations and thought the City could actually end up doing
515 better law enforcement with the stricter regulations. She was very much in favor
516 of the stronger regulations and maybe even to go further on some of that. She was
517 a little concerned about the transferring piece because she did not think any other
518 type of business is restricted by that. She thought limiting the number seemed ar-
519 bitrary. She was all for having well established good businesses come into Rose-
520 ville and appreciated the thought about owner operators being in a separate
521 class. But she did not think limiting the number would help to lessen the bad
522 businesses, and stricter regulations will help. She indicated she is struggling with
523 the cap as well.
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525 Mayor Roe indicated he joined with Councilmember Groff and probably being the
526 most radical about the cap in terms of not having one. He has raised this question
527 throughout the process; what is this tool solving. He thought the Council heard
528 very much from people in the industry that everything else the City is trying to do
529 with the Ordinance is aimed at and will likely be successful to a greater degree
530 in terms of resolving the issues that are out there in the industry than the cap.
531 He personally will go along with what the Council agrees on regarding the cap
but he is against keeping a cap. He thought it seemed that the majority of the
Council

532 agrees not moving the cap to ten and perhaps the Council could talk about whether
533 to keep the existing cap in place or not.

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535 Councilmember Strahan asked if Chief Scheider could talk about what it would
536 mean if there were an unlimited cap.

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538 Chief Scheider explained this comes down resources. The Police Department obvi-
539 ously has limited resources and if the Council is asking the Police Department to
540 continue to try to weed out an unlimited number it just makes it difficult. It really
541 comes down to resources.

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543 Mayor Roe indicated before the 2021 Ordinance there was not any kind of cap in
544 Roseville and the numbers fluctuated around twenty-five licenses. Mayor Roe
545 thought it seemed like there was some sort of consensus of the Council to not go to
546 ten and potentially not having a cap as a part of the Ordinance, but he would like
547 Council confirmation on that.

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549 Councilmember Strahan asked if it was possible, because there are so many options,
550 to bring this back with some of the changes.

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552 Councilmember Schroeder thought the number was random and at this point, she
553 would be comfortable lifting the cap but to be sure when that is done to make sure
554 the regulations are very restrictive. She thought the combination of the two would
555 get the City to where it wants to be. She would be in favor of lifting the cap.

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557 Mayor Roe stated that helped clarify things. He thought there was already a note
558 for a change to the definition of massage therapy to include wording regarding in-
559 jury rehabilitation. He indicated if the cap is lifted, transfers would not be an issue
560 and would be allowed with the language removed from the Ordinance. The notion
561 of the conviction versus charge on criminal activity, he understood the notion that
562 if someone is charged with something, the City may want to limit their ability to
563 continue to serve the public in that way, at least for a limited time.

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565 City Attorney Tierney clarified what the language means is not if someone is
566 charged the City can take their license away, it means that the City could bring an
567 action on their license on the basis of those facts. The burden of proof in a criminal
568 courtroom is beyond a reasonable doubt. The burden of proof to remove a license
569 is preponderance of the evidence. She explained that even though someone may
570 not be found guilty in a court, the City may still have enough evidence to prove that
571 it happened and the City would be held to that burden of proof before it could take
572 a license action.

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574 Mayor Roe indicated as he understands it, there are different levels of action that
575 could be taken.
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577 City Attorney Tierney indicated that was correct and there is due process associated
578 with them.

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580 Councilmember Etten indicated he would like staff to follow up on some of the
581 businesses that the City knows are reputable about the single institution licensing.

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583 Mr. Trudgeon indicated staff will make the proposed changes and bring it back to
584 the Council for further discussion.

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586 **Recess**

587 Mayor Roe recessed the meeting at approximately 8:03 p.m., and reconvened at approximately
588 8:10 p.m.

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