

## MEMORANDUM

**TO:** Planning & Zoning Commission

**FROM:** Michele Berry, AICP, Planning manager

**DATE:** December 3, 2024

**SUBJECT:** **Public Hearing: Consideration of a Special Use Permit for Licensed Massage Therapy; on Approximately 1.1601 Acres, Legally Described as Lot 2, Block A, Lewisville Plaza Phase 2, Located at 1010 Edmonds Lane; Zoned Local Commercial District (LC); as Requested by Yangjuan Zhao, Top Massage, on Behalf of Jay Maharaj LLC, the Property Owner. (Case No. 24-09-16-SUP).**

### **BACKGROUND:**

The applicant is requesting a Special Use Permit (SUP) to operate a License Massage Therapy Business at 1010 Edmonds Lane, Suite 107. This space was occupied by another Licensed Massage Therapy business, Top Massage. In March of 2024 the business owner for Top Massage and another person were arrested with four combined charges related to prostitution. The arrest of the business owner on prostitution related offced triggers the requirement for the Special Use Permit for any other medical or massage related use at this location.

During the 2023 Texas Legislative Session, the City of Lewisville worked with state representatives to amend state statutes to allow for increased regulation of massage establishments when there are penal code offenses related to prostitution and human trafficking. Following those changes, the City Council adopted an amendment to the Unified Development Code (UDC) to require Special Use Permits (SUP) for Medical Office and Clinic, Hospital, and Licensed Massage Therapy uses if certain violations had occurred based on these changes. That UDC amendment was recommended for approval by the Planning and Zoning Commission on October 2, 2023, and approved by the City Council on November 6, 2023. That section of the UDC was then amended further on June 17, 2024 after a recommendation from the Planning and Zoning Commission on June 4, 2024. Per the memo to City Council on November 6, 2023 the amendments “*address the issue the Police Department has of illicit businesses reoccupying a space under a different owner name and utilizing the same equipment and setup.*”

### **ANALYSIS:**

Section VII.2.23 contains supplemental standards for Medical Office and Clinic, Hospital and Licenses Massage Therapy uses. Per this section, a Special Use Permit is required for a medical office and clinic, hospital or licensed massage therapy as the previous business owner was arrested based on charges from Section 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02 of the Texas Penal Code. The Section goes on to state, “*To obtain a special use permit required by this section, in addition to the items required in Article III, Chapter 9, the owner or operator will be required to provide documentation showing what actions the*

*owner or operator has taken to ensure that no further violations of the Texas Penal Code as listed in Subsections A.1. or A.2, above, occur at the medical office and clinic, hospital, or licensed massage therapy.”*

Any Special Use Granted will also be subject to the following conditions:

*B. A special use permit required by this section shall:*

- 1. require as a condition that the medical office and clinic, hospital, or licensed massage therapy limit its hours of operation to between the hours of 7:00 a.m. and 10:00 p.m.; and*
- 2. expire after two years unless otherwise provided by the City Council, except that the ordinance granting a special use permit required by this section may be revoked by the City Council as provided for in subsection D or repealed by the City Council as provided for in subsection H, below*

### **Section III.9.2. - Compatibility Criteria for Approval**

The Planning and Zoning Commission and the City Council, in considering a special use permit shall consider:

*A. Compatibility with surrounding uses and community facilities,*

The subject property is a retail center with a mix of retail, restaurant, vehicle and related uses and service uses. Across Edmonds Lane is Office District (OD) zoning that includes Serve Lewisville and the Greater Lewisville Area Association of Realtors. Adjacent to the north is Vistas on the Park, a multifamily development with Multifamily 1 District (MF-1) Zoning. A License Massage Establishment operated in compliance with all state and local statutes may be compatible with these uses.

*B. Compatibility with the comprehensive plan and any adopted long-range plans addressing the area;*

The Lewisville 2025 Plan calls for Diverse and Thriving Neighborhoods in this area. Part of Diverse and Thriving Neighborhood is having access to resources and services. The Local Commercial District supports this goal with its purpose of “providing areas for services and retail shopping primarily serving nearby neighborhoods and local needs.” A Licenses Massage Therapy can support a local neighborhood.

*C. Enhancement or promotion of the welfare of the area;*

A License Massage Therapy business can promote the local welfare of the area provided it is operated in compliance with all state and local statutes. However, one that allows illicit activities such as prostitution and human trafficking would have a negative effect on the area.

*D. Whether the use will be detrimental to the public health, safety or general welfare; and*

A License Massage Therapy business can promote public health, safety or general welfare of the area provided it is operated in compliance with all state and local statutes. However, one that allows illicit activities such as prostitution and human trafficking would have the opposite effect on the area. The previous business at this location was detrimental to public health, safety and general welfare.

*E. Conformity with all zoning regulations and standards.*

Per Section VII.3.23 the owner is required to limit hours of operation to between the hours of 7:00am to 10:00pm. The proposed business owner has provided a letter explaining her hours of operation will be further limited to between the hours of 8am to 8pm.

Per Section VII.3.23 the owner is required to “provide documentation showing what actions the owner or operator has taken to ensure that no further violations of the Texas Penal Code as listed in Subsections A.1. or A.2, above, occur at the medical office and clinic, hospital, or licensed massage therapy.” Ms. Tao has provided a copy of her State License as a Massage Therapist. She has also submitted letters stating that:

- all massage therapist hired must be licensed,
- therapists are required to wear medical scrubs, that no provocative clothing will be allowed at any time,
- that work rooms doors cannot be completely shut during massage sessions, and
- that signage will cover a maximum of 10% storefront windows to allow better visibility into the reception area.

State regulations require that all massage therapists be licensed and prohibits provocative clothing. Medical scrubs, limited storefront window signage and prohibiting workroom doors from being completely shut are three steps to help prevent further violations of the Texas penal code. However, staff does not find these actions are enough to ensure that no further violations of the Texas Penal Code will occur. Staff is concerned that violations of Texas Penal Code may continue based on the past issues related to prostitution at this location. There has been a pattern of facilities in Lewisville that have been closed due to prostitution and human trafficking issues and reopened by new owners to have the same issue occur again, which is why the Special Use Permit requirement was adopted. The applicant could open a licensed massage therapy business at a different location in Lewisville that has not had issues with prostitution or human trafficking without having to obtain a Special Use Permit.

**CITY STAFF’S RECOMMENDATION:**

That the Planning and Zoning Commission recommend **denial** of the Special Use Permit.