

**BEFORE THE CITY OF REDMOND  
HEARING EXAMINER**

In the Matter of the Appeal of	)	
	)	NO. CV-2015-01 (BL)/RED00052498
	)	
<b>Jong Jiang (Tony) Guo, Owner</b>	)	<b>Sunshine Foot Spa</b>
	)	
	)	
Of a June 29, 2015 Letter of Business	)	FINDINGS, CONCLUSIONS,
License Revocation and Denial of	)	AND RECOMMENDATION
<u>Application to Renew Business License</u>	)	

**SUMMARY OF RECOMMENDATION**

Based on a clear preponderance of evidence offered, it is the recommendation of the Redmond Hearing Examiner that the appeal of the June 29, 2015 letter of business license revocation and denial of application to renew business license for Sunshine Foot Spa should be denied and revocation of the business license should be upheld.

**SUMMARY OF RECORD**

**Request**

Jong Jiang (Tony) Guo (Appellant) appealed the June 29, 2015 letter of business license revocation and denial of application for business license renewal related to the Sunshine Foot Spa operating at 16720 Redmond Way, Suite C, Redmond, WA.

**Hearing Date**

The Redmond Hearing Examiner conducted an open record hearing on the request on July 20, 2015. On the record, a recommendation issuance date of August 10, 2015 was agreed to by the parties.

**Testimony**

At the open record hearing, the following individuals presented testimony under oath:

YongJiang (Tony) Guo, Owner/Appellant  
Jerome Gin, City of Redmond Program Administrator (Public Works, Natural Resources)  
Deborah Farris, City of Redmond Code Enforcement Officer  
Officer AnneMarie Fein, Redmond Police Department  
Mike Lamb, Washington State Department of Health Investigator

Mr. Guo's testimony was interpreted by Ginger Wong, certified interpreter

The City was represented by Larry Mitchell of the Redmond Prosecutor's Office.

## **Exhibits**

At the open record hearing the following exhibits were admitted in the record:

### *City Exhibits*

- A. Staff Report
- B. City of Redmond Notice and Order dated January 29, 2015 –personally served
- C. Declaration of Service for Notice and Order dated January 29, 2015
- D. Letter of Revocation and Denial of Issuance (Renewal) dated June 29, 2015 –personally served and sent certified return receipt requested
- E. Declaration of Service for Letter of Revocation and Denial of Issuance (Renewal) – certified mail
- F. Declaration of Service for Letter of Revocation and Denial of Issuance (Renewal) – personally served
- G. Copy USPS Forms 3811 & 3800
- H. Certified Mail Signed Delivery Receipt for Letter of Revocation
- I. Redmond Police Report –Case Number 15-009557
- J. Redmond Police Report –Case Number 15-010725
- K. Redmond Police Report –Incident Report Number 15-010725
- L. Photo of Baohua Chen taken June 8, 2015
- M. Photo of Feng Zhang taken June 8, 2015
- N. Appointment Book Page dated May 18, 2015
- O. Photo of Displayed Licenses taken Jun 8, 2015
- P. WA State Massage Practitioner’s License –Yukun (Helen) Mao (MA60489597)
- Q. WA State Massage Practitioner’s License –Hui Hong Gu (MA60475773)
- R. WA State Massage Practitioner’s License –Hai Yuan (William) Wang (MA60383816)
- S. WA State Massage Practitioner’s Application - Wang –Photo
- T. Sunshine Foot Spa – City of Redmond Expired Business License
  - 1. September 18, 2009 (RED00052498)
- U. Sunshine Foot Spa City of Redmond Business License Application for Renewal/Change of Address
  - 1. January 27, 2015 (App#52498)
- V. WA State Massage Practitioner’s License –Yu Fang Cui (MA60293310)
  - 1. (Received by the City of Redmond on July 10, 2015)
- W. Witness Subpoenas
- X. Department of Health Investigation Report –Case #2015-419 MA
- Y. Department of Health Investigation Report –Case #2015-5367(MA) UL

### *Appellant Exhibits*

- 1. Washington State Department of Health Massage Practitioner Licenses for the following four individuals:
  - a. Yu Fang Cui, expiring 10/9/2015
  - b. Hai Yuan Wang, expiring 9/27/2015
  - c. Hui Hong Gu, expiring 11/26/2015
  - d. Yukun Mao, expiring 4/27/2016

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

### **FINDINGS**

1. The Sunshine Foot Spa opened in November 2009. The business provides full body massage and foot reflexology services. *Guo Testimony.*
2. On January 23, 2015, Redmond Code Enforcement Officer Deborah Farris, Redmond Police Department (RPD) Officer AnneMarie Fein, and RPD Detective Rebecca Atkinson visited Sunshine Foot Spa at 16720 Redmond Way, Suite C, Redmond, Washington. The visit was for the purpose of identifying a male employee called “Jerry” in order to confirm that he was a licensed massage practitioner in the wake of a complaint filed with RPD by a female customer. Officer Farris brought with her Redmond Public Works employee Jerome Jin to assist in communication, because Mr. Jin is fluent in Mandarin, the language spoken by the spa’s owner. *Exhibit A; Jin Testimony; Farris Testimony.*
3. When the above-listed City of Redmond personnel arrived at the time of the January 23<sup>rd</sup> site visit, two or three apparent employees left by the back door and were not identified. Three employees remained, each of whom was asked to show personal identification and a copy of their State of Washington massage practitioner license. One female employee was able to provide a copy of a state massage license; the other two employees were not licensed by Washington State. Business owner YongJiang Guo was not able to provide contact information for “Jerry”. Subsequently, the manager informed City staff that the individual had been providing full body massage services but no longer worked at the spa and had moved to California. *Exhibit A; Jin Testimony; Farris Testimony.*
4. While there, Code Enforcement Officer Farris noted that no Washington state licenses or certifications for any practitioner were hung in public view; an expired Redmond business license was displayed; partitions had been constructed to create individual rooms; and netting had been hung along the ceiling. With Mr. Jin translating, Code Enforcement Officer Farris informed Mr. Guo and the manager, Ms. Wu, that Officer Farris was going to check whether City of Redmond building permits had been obtained for installation of the partitions and that, if not, she would return with a Building Inspector and Fire Marshal who would conduct a walk through. She also informed Mr. Guo that because no Washington state practitioner licenses were displayed and none had been provided to the City, all massage would have to stop immediately. She further informed Mr. Guo that all foot reflexology practitioners would have to provide evidence of a state certification. Mr. Guo indicated that he had been unaware of this requirement, which had become law in 2012. Because he was unaware, Ms. Farris gave Sunshine Foot Spa 60 days to hire certified reflexology practitioners or have their currently employees become certified. *Exhibit A; Jin Testimony; Farris Testimony.*
5. Having found no construction permits on file, on January 27, 2015 Code Enforcement Officer Farris returned to Sunshine Foot Spa with a City of Redmond Building Inspector

and a Fire Marshal. Also on January 27<sup>th</sup>, the City received the Appellant's application for business license renewal. *Exhibit A; Farris Testimony.*

6. On January 29, 2015, Code Enforcement Officer Farris returned to the site with Mr. Jin and with Michael Lamb, Washington State Department of Health Investigator. During this visit she personally delivered to Mr. Guo a Notice and Order (N&O) dated January 29, 2015. Mr. Jin interpreted. Ms. Wu, the spa's manager, was on-site. *Farris Testimony; Exhibit A; Jin Testimony; Lamb Testimony.*

7. The N&O required that by February 2, 2015:

- Sunshine Foot Spa cease and desist all activity that violated the provisions of the N&O.
- That all life-safety violations be corrected.
- That no full body massage be conducted on the premises unless the practitioner is licensed by Washington State and a copy of the practitioner's license has been provided to the City.

The N&O also required that by February 23, 2015 Sunshine Foot Spa apply for all applicable permits to correct remaining building and fire code regulations. Finally, the N&O required that by March 2, 2015 Sunshine Foot Spa provide the City with copies of certifications for any person providing foot massage/reflexology. Mr. Jin read the N&O to Mr. Guo, who indicated that he understood. *Farris Testimony; Exhibit A; Jin Testimony.*

8. During the January 29, 2015 site visit, Health Care Investigator Lamb asked for employee identification and copies of licenses. *Lamb Testimony; Exhibit X.*

9. On February 3, 2015, Sunshine Foot Spa's application for business license renewal was placed in "under review" status. *Exhibit A.*

10. On February 5, 2015 Code Enforcement Officer Farris and the Deputy Fire Marshall conducted an inspection to verify that the life-safety issues required by the January 29, 2015 N&O had been addressed. Mr. Jin was present as an interpreter. As of this date, the City had not received copies of State of Washington practitioner licenses or reflexology certifications for any employees of the business. During that site visit, City personnel observed no state of Washington licenses or certifications displayed. Officer Farris issued a verbal warning to Mr. Guo (through Mr. Jin) reminding him that no full body massages could be conducted on the premises until the required licenses were provided to the City and displayed on-site for public viewing. *Exhibit A; Farris Testimony.*

11. On February 10<sup>th</sup>, an inspection of the premises was performed by Deputy Fire Marshal Hill, who confirmed that life-safety violations had been corrected and the netting had been removed from the ceiling. *Exhibit A.*

12. On April 9, 2015, the City's The Business License Program Administrator received an email from Sunshine Foot Spa manager Ms. Wu informing the City that spa employee Faith Shao Wang had been fired. The City had no record of this massage therapist as an employee of the spa. *Exhibit A.*
13. On May 18, 2015, Sunshine Foot Spa manager Ms. Wu submitted Washington state massage practitioner licenses for two employees: Hui Hong Gu (MA60475773) and Hai Yuan (William) Wang (MA60383816). *Exhibits A, Q, and R.*
14. On May 28, 2015, Redmond Police Detective Matt Peringer and Police Officer Fein contacted Officer Farris and asked to meet with her to discuss a new, recently reported problem involving a male employee at the Sunshine Foot Spa. The employee in question had been performing a full body massage at the time of the incident complained of. Officer Fein informed Officer Farris that on at least two other occasions she had documented unlicensed employees performing full body massage and uncertified reflexologists performing foot massage. *Exhibits A, I, J, and N.*
15. Following up on this information, Code Enforcement Officer Farris, State Investigator Lamb, RPD Officer Fein, and Mr. Jin returned to the site on June 8, 2015 for the purpose of checking identification of all employees, confirming that anyone performing full body massage had a current state of Washington massage practitioner's license, and confirming that anyone performing foot massage only had a state of Washington reflexology certification. When they arrived, Officer Farris observed three massage practitioner licenses displayed on the wall: Hai Yuan (William) Wang, Yukun (Helen) Mao, and Hui Hong Gu. It was confirmed that Mr. Wang and Ms. Mao were present and performing full body massages at the time of the site visit. Officer Farris informed Mr. Guo that the City of Redmond did not have a copy of Ms. Mao's license on file, and he provided a copy at that time. In addition to these two practitioners and Mr. Guo (owner), two other male employees and one other female employee were present onsite. The male employees were Baohua (Jason) Chen and Feng Zhang and the female was Chongju Guo. A male patron who was receiving services on-site confirmed that Baohua (Jason) Chen was performing a full body massage when City staff arrived for the June 8<sup>th</sup> site visit at approximately 1:00 pm. Officer Fein photographed Mr. Chen and Mr. Zhan. *Exhibits L and M.* As of the date of the instant appeal hearing, the City had not received state of Washington massage practitioner licenses or reflexologist certifications for Mr. Chen, Mr. Zhan, and Ms. Guo. *Exhibits A, I, J, O and P; Farris Testimony; Lamb Testimony.*
16. As of the hearing date, the City had received no proof of reflexology certification for any employee of Sunshine Foot Spa. Code Enforcement Officer Farris saw customers receiving foot massage during three different site visits by persons with no certification. *Farris Testimony.* RPD Officer Fein and State Department of Health Investigator both reported that they observed Baohua (Jason) Chen providing foot massage services to a customer on the June 8, 2015 site visit. Mr. Guo was present at the time. *Exhibits A and Y; Lamb Testimony; Fein Testimony.*

17. Following the site visit, State Investigator Lamb generated a Department of Health Investigation Report, Case #2015-5367(MA) UL. *Exhibits X and Y.*
18. Subsequently, on June 15, 2015, RPD Officer Fein and State Investigator Lamb interviewed a female customer who had filed a complaint regarding an assault she experienced at the spa in May. The female customer identified Baohoa Chen from the photograph taken on June 8, 2015 as the person who had performed her full body massage. *Exhibit I.*
19. On June 29, 2015, City of Redmond Finance Director Michael Bailey issued a letter of business license revocation and denial of renewal for Sunshine Foot Spa. The letter was mailed certified return receipt requested and hand delivered to Mr. Guo by Code Enforcement Officer Farris and RPD Lt. Brian Coats, and Mr. Jin again was present to interpret. Officer Farris asked Mr. Jin to translate while she explained the reasons for the Finance Director's decision to revoke his business license and deny his application for renewal. *Exhibits A, D, E, G, and H.*
20. During the exchange, Mr. Guo asked Officer Farris, through Mr. Jin, and in the presence of Redmond Police Lt. Coats, whether the business could remain open if he got rid of the employees who didn't have licenses. Officer Farris told him no and explained that he had been given several opportunities to bring his business into compliance. She informed him of his appeal rights. *Exhibits A and K.*
21. Spa manager Ms. Wu contacted City Hall to clarify appeal procedures. Ms. Wu timely requested the appeal on Mr. Guo's behalf. *Exhibit A.*
22. During the appeal hearing, the City offered the testimony and official investigation reports of Mike Lamb, Washington State Department of Health investigator. Mr. Lamb verified the contents of his reports in the record at Exhibits X and Y. Based on his investigation, he requested that the Sunshine Foot Spa business license not be renewed. *Lamb Testimony; Exhibits X and Y.*
23. At hearing, the City argued that, despite several warnings and having been given five months to bring the business into compliance, Mr. Guo knowingly and repeatedly violated the public massage and reflexology establishment provisions of the Redmond Municipal Code including RMC 5.05.020(A) and .020(B), which require state massage practitioner license (A) and reflexology certification (B) prior to any person offering said services commercially in Redmond. The City's Prosecutor requested that Mr. Guo be found in violation, that the letter of business license revocation be upheld, and that the application for business license renewal be denied. *Exhibit A; Mitchell Argument.*
24. At the appeal hearing, Mr. Guo testified that he had no difficulty understanding the interpreter provided for him at the hearing. Through the interpreter, he indicated that he had been able to understand the translation provided by Mr. Jin when Redmond Staff conducted the various site visits. *Guo Testimony.*

25. In support of his appeal, Mr. Guo testified that when the business opened in 2009, reflexology did not require certification. He stated that he learned of the requirement on January 29, 2015. He stated that after learning this information, he advertised for practitioners with licenses and as of the hearing date, he had not received any application by potential employees who were certified foot massage practitioners. He noted that prior to the end of May the spa had hired three employees licensed for massage and that he continues to look for licensed therapists. He stated, however, that this market is very competitive and there are not enough practitioners. As of the hearing date, he stated they have four licensed practitioners and the business could survive with only these four employees. *Exhibit 1; Guo Testimony.*
26. Mr. Guo testified that he hired the most recent of the four licensed practitioners on approximately June 10<sup>th</sup> or 11<sup>th</sup>. He indicated that Baohua (Jason) Chen was employed on-site at the time of the June 8, 2015 site visit by City Staff and that at that time he was providing foot massage, but that now he works only as a janitor, cleaning and doing laundry. He subsequently testified that Jason had never provided reflexology at the Sunshine Foot Spa. *Guo Testimony.*
27. In closing, Mr. Guo testified that since January this year, they have earnestly looked for licensed providers, but contended that this is a short time frame, not enough time to find licensed providers. He noted that he has paid 2015 business license fee and stated that he is making best efforts to meet City requirements. He indicated that they need more time, maybe one or two more months, to allow them to hire three or four people, and then the business would operate normally. He requested that his business license be renewed. *Guo Testimony.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is authorized to conduct open record hearings and issue recommendations to City Council on appeals from notices of suspension, revocation, or denial of business licenses by the Finance Director pursuant to Redmond Municipal Code (RMC) 5.04.150(B), consistent with the following procedure.

Upon written request as set out above, the hearing examiner shall schedule and hold a hearing within thirty (30) days following receipt of such request. During the pendency of the hearing and until action by the city council the action of the director shall be stayed. At the hearing, both the applicant or licensee and the city shall be entitled to present evidence. Upon completion of the hearing, the hearing examiner shall make written findings and a recommendation to the city council. At a public meeting, the City Council, upon considering the findings and recommendations of the hearing examiner, shall, without need for further evidence:

- (1) Accept the hearing examiner's recommendation as presented; or
- (2) Determine no action is warranted; or
- (3) Modify the recommended action.

### **Criteria for Review of Appeal**

Pursuant to RMC 5.04.140, the finance director may deny issuance of a business license to any applicant or suspend or revoke any and all business licenses of any holder when such person, or any other person with any interest in the application or license:

- (1) Knowingly violates or knowingly causes, aids, abets, or conspires with another to cause any person to violate any state, federal, or city law which may affect or relate to the applicant or license holder's business, except for federal statutes, rules and regulations relating to marijuana that are in conflict with state law, as long as the applicant or person with interest in the application has a current state license to operate a marijuana facility;
- (2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;
- (3) Is or has been convicted of, forfeits bond upon, or pleads guilty to any felony offenses directly related to the operation of the applicant's or license holder's business unless the offense relates to marijuana and the applicant has a current state license to operate a marijuana facility;
- (4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;
- (5) Violates any building, safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations;
- (6) Is in violation of a zoning regulation of the city;
- (7) Is indebted or obligated to the city for past due taxes excluding special assessments such as LID assessments.

### **Relevant Redmond Municipal Code Provisions**

#### *5.05.012 Definitions.*

- (A) For purposes of this chapter, a public massage establishment means any place within the city where massages, as defined by RCW 18.108.010, are given or furnished for, or in expectation of, any fee, compensation or monetary consideration.
- (B) For purposes of this chapter, a public reflexology establishment means any place within the city where reflexology, as defined by RCW 18.108.010, is provided, given or furnished for, or in expectation of, any fee, compensation or monetary consideration.

#### *5.05.020 Additional business license requirement for public massage or reflexology establishment.*

- (A) Any individual who applies for a business license for a public massage establishment must, in addition to meeting the licensing requirements of Chapter 5.04, provide the finance director with evidence that the individual has received a state of Washington massage practitioner's license pursuant to RCW Chapter 18.108, which license shall be current and in effect unless such person is exempt from the state license



requirement. Additionally, any individual rendering services at the public massage establishment must also possess a state of Washington massage practitioner's license.

- (B) Any individual who applies for a business license for a public reflexology establishment must, in addition to meeting the licensing requirements of Chapter 5.04, provide the finance director with evidence that the individual has received a state of Washington reflexology certification pursuant to RCW Chapter 18.108, which certification shall be current and in effect unless such person is exempt from the state license requirement. Additionally, any individual rendering services at the public reflexology establishment must also possess a state of Washington reflexology certification.

### **Conclusions Based on Findings**

1. After the January 29, 2015 notice of the requirement to provide licensure or certification evidence both to the City and to the public as posted conspicuously on the premises and notice of the prohibition against unlicensed practitioners providing services, Mr. Guo continued to allow unlicensed practitioners to provide services at his facility. This was observed in person and confirmed by customer interview by multiple members of City Staff, RPD, and State Department of Health personnel as recently as June 8, more than four months after the initial Notice and Order and more than three months past the deadline given by City Code Enforcement officials for all reflexology providers to be certified. During that time in which Mr. Guo was on notice that he was obligated to provide evidence of licensure/ certification for all providers to the City/posted on the premises, there was complaint to Redmond Police Department of assault against a patron by an unlicensed provider. While the record does not contain evidence of subsequent prosecution or conviction for any crime by practitioners, this was at least the second complaint of assault against customers by unlicensed providers of Sunshine Foot Spa of whom the City had been given no record in violation of RMC 5.05.020. *Findings 2, 3, 4, 6, 7, 10, 12, 14, 14, 16, 18, 19, 20, 23, 24, and 26.*
2. As a massage/reflexology establishment owner, the burden is on Mr. Guo to maintain current awareness of and compliance with all local and state licensure requirements relevant to the services his business provides. Mr. Guo has failed to do so. In the record presented, which tracks language-appropriate notification and communications over a five month period, the City has shown by a preponderance of the evidence that Mr. Guo knowingly violated RMC 5.05.020.A and 5.05.020.B for several months. *Findings 2, 3, 4, 6, 7, 10, 12, 14, 15, 16, 19, and 26.*
3. The request to deny renewal submitted by Washington State Department of Health Investigator Lamb is found to be particularly significant, persuasive evidence. *Findings 6, 8, 15, 16, 17, 18, and 22.*
4. From his testimony and requested relief, it appears that Mr. Guo fails to comprehend the serious nature of these proceedings. The record shows that the City took consistent measures to attempt meaningful and effective communication through the use of an employee who is fluent in Mandarin during each site visit and through providing a

professional interpreter at the hearing itself. Mr. Jin testified that he read each notice to Mr. Guo, and Mr. Guo testified that he was able to understand Mr. Jin, and yet Mr. Guo persists in requesting more time and ongoing lenience regarding his difficult finding certified reflexology practitioners to work at his business. It is possible that there are other barriers to effective communication, such as potential cultural barriers, that are not addressed in the record. The City Council may wish to consider this fact in deciding the ultimate outcome of the appeal. However, the evidence offered shows ongoing, knowing failure to comply with RMC 5.05.020. There is nothing in the record to suggest that the Finance Director failed to provide any notice or process required by the municipal code or has acted arbitrarily, and his decision to revoke the Sunshine Foot Spa business license appears to be consistent with the City's obligation to protect public health and safety. *Findings 1, 2, 3, 4, 6, 7, 10, 12, 14, 15, 16, 19, 20, 23, 24, 25, 26, and 27.*

### DECISION

Based on the preceding findings and conclusions, the City has proven by a preponderance of evidence that the owner of Sunshine Foot Spa has engaged in knowing and ongoing violation of RMC 5.05.020 over the course of five months. The Hearing Examiner recommends to City Council that the appeal be denied and the business license be revoked and/or not renewed.

**Recommended** August 10, 2015.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner

**Note:** Pursuant to Redmond Municipal Code 5.04.150(C), appeal from a decision of the city council shall be to the King County Superior Court and must be served and filed within thirty (30) days of the decision of the city council. In the event the applicant or license holder does not follow the procedures within the time periods set forth above, the license of said person shall be denied, suspended or revoked, and that action shall be final.