

**MINUTES OF A REGULAR MEETING
OF THE LICENSE REVIEW BOARD**

1. CALL TO ORDER

The Torrance License Review Board convened in a regular session at 9:08 a.m. on Tuesday, January 19, 2010 in the West Annex meeting room, Torrance City Hall.

2. ROLL CALL

Present: Chairman Michael Smith, City Manager's Office
Board Member Eddie Harris, Sr. Business Manager
Board Member Jasun Botiller, Business Manager-Cultural Arts Center

Absent: Aram Chaparyan, City Manager's Office

Also Present: Assistant City Attorney Patrick Sullivan,
Assistant Finance Director Flewellyn
Senior Account Clerk Jill Weldin

3. AFFIDAVIT OF POSTING

MOTION: Member Botiller, seconded by Member Harris, moved to accept and file the report of the City Clerk on the posting of the agenda for this meeting; hearing no objection, Chairman Smith so ordered.

4. APPROVAL OF FINDINGS AND FACT AND CONCLUSIONS OF LAW

4A. CRENSHAW SPA REVOCATION

MOTION: Member Botiller moved to approve the Findings of Fact and Conclusions of Law for the revocation of Crenshaw Spa's business license. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

4B. EASTERN HEALTH MASSAGE AND SPA REVOCATION

MOTION: Member Botiller moved to approve the Findings of Fact and Conclusions of Law for the revocation of Eastern Health Massage and Spa Revocation's business license. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

5. BUSINESS LICENSE APPLICATIONS

5A. GONPACHI RESTAURANT

Application for approval of a Business License to allow the operation of a restaurant with the sale of alcohol.

Vincent Barrios, corporate manager for Global Dining of California, Inc., parent company of Gonpachi Restaurant, confirmed the application for a Business License to operate a restaurant at 21381 Western Avenue with the sale of alcohol and verified that he had met with the Police Department and understood the rules and regulations governing the sale of alcohol.

MOTION: Member Botiller moved for the approval of Gonpachi Restaurant's application for a Business License. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

5B. BELLAMERI DAY SPA

Application for approval of a Business License to allow the operation of a massage establishment (change of ownership).

Kelly Nishimoto, new owner of Bellameri Day Spa, confirmed the application for a Business License to allow the operation of a massage establishment at 1439 Marcelina Avenue and verified that she had met with the Police Department and understood the rules and regulations governing this type of business.

MOTION: Member Botiller moved for the approval of Bellameri Day Spa's application for a Business License. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

5C. IEM USA, LLC

Application for approval of a Business License to allow the operation of a Secondhand Dealer.

Emily Chen, general manager of IEM USA, LLC, confirmed the application for a Business License to operate as a Secondhand Dealer of used shipping containers at 370 Amapola Avenue, #202, and verified that she had met with the Police Department and understood the rules and regulations governing this type of business.

MOTION: Member Botiller moved for the approval of IEM USA, LLC's application for a Business License. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

6. REVOCAATION HEARINGS

6A. ACUPUNCTURE AND MASSAGE CENTER – 2112 ARTESIA BOULEVARD

Request that the Board hear evidence in support of not revoking Healthy Spa Massage's Business License.

For the Board:

Assistant City Attorney Sullivan

For the City/Finance Department:

Jocelyn Poblete

Legal Counselor, City Attorney's Office

For the Licensee – Acupuncture and Massage Center:

No representative present

Legal Counselor Jocelyn Poblete noted correspondence dated January 15, 2010 from Long Z. Liu of Lui Law Group (attorney for the licensee) indicating his inability to attend this meeting, as well as correspondence from Long Z. Liu dated January 18, 2010 relating Acupuncture and Massage Center's desire to withdraw this request since the business has closed. Ms. Poblete explained that, due to the late notice, she emailed Mr. Liu that a representative for the business should attend this meeting, but no one was present. Due to the lack of proof of documentation affirming the closure of the business, Ms. Poblete related the City Attorney's recommendation that the business license for Acupuncture and Massage Center be revoked.

Chairman Smith indicated that he was inclined to concur with the recommendation to revoke the business license, given that nothing would prevent the business from operating if the license is not revoked. He asked if it would be necessary for the Board to hear verbal evidence, or if this matter could be considered based on written documents.

Assistant City Attorney Sullivan advised that the Board could consider this matter based on written documentation, however, it would be appropriate to invite input from individuals wishing to discuss this matter. For the record, Assistant City Attorney Sullivan noted that both he and Ms. Poblete work in the City Attorney's office, but there is a professional barrier and they do not discuss cases in which they are both involved.

Chairman Smith invited input from the public. No speakers came forward.

Member Botiller agreed that the Board should move forward with revoking the business license.

Ms. Poblete asked that a copy of the email from Long Z. Liu (of record, dated January 15, 2010) addressed to Jocelyn Poblete be included in the record as Exhibit L. She clarified that Mr. Liu's letter of January 6, 2010 addressed to Torrance City Hall (of record) is part of the opposing counsel's exhibits.

Deputy City Attorney Sullivan recommended that Mr. Liu's letter of January 6, 2010 and corresponding documents to which Ms. Poblete referred be entered into the record as Exhibit M.

MOTION: Member Botiller moved to close the public hearing. The motion was seconded by Member Harris and voice vote reflected unanimous approval.

MOTION: Member Botiller moved to concur with the staff recommendation to revoke the business license for Acupuncture and Massage Center based on written documentation, in accordance with Torrance Municipal Code §35.11.12 and 31.9.10(f) and due to the arrest of an employee for violating Section 647(a) of the California Penal Code. The motion was seconded by Member Harris and voice vote reflected unanimous approval.

6B. HEALTHY SPA MASSAGE – 1515 CRENSHAW BOULEVARD

Request that the Board hear evidence in support of not revoking Healthy Spa Massage's Business License.

For the Board:

Assistant City Attorney Sullivan

For the City/Finance Department:

Jocelyn Poblete
Legal Counselor, City Attorney's Office

For the Licensee – Healthy Spa Massage:

Ted K. Yoon, Esq.
3435 Wilshire Boulevard, #2727
Los Angeles, CA

Certified Interpreter Anthony Kim, 2305 W. 180th Street, indicated that he would be interpreting the proceedings for the licensee, Jun Nam Choi, owner of Healthy Spa Massage, 1515 Crenshaw Boulevard.

Assistant City Attorney Sullivan outlined the procedure for the hearing.

Assistant City Attorney Sullivan disclosed that he and Jocelyn Poblete, legal counsel for the Finance Department, work in the City Attorney's office, however, they have created an ethical barrier and do not discuss cases in which they are both involved and this is allowed pursuant to the Morongo Band of Mission Indians case.

The following documents were entered into the record:

Letter of January 8, 2010 from Ted K. Yoon to Counselor Jocelyn M. Poblete and 130 pages of documents to be introduced by the licensee at the hearing (Deputy City Attorney Sullivan noted that exhibits in a black folder with tab nos. A through B-1 were the same as Exhibit L)	Exhibit L
Jun Nam Choi's Exhibit List	Exhibit M
Jun Nam Choi's Hearing Brief	Exhibit N
Written Material from MPreviews.com dated January 12, 2010	Exhibit O

RECESS AND RECONVENE

At 9:26 a.m., there was a recess for the Board to review the above exhibits. The meeting reconvened at 9:30 a.m. and discussion of Agenda Item No. 6B (Healthy Spa Massage) continued with all members present.

Sr. Account Clerk Weldin provided clarification regarding the exhibits.

Ms. Poblete noted that she had just received Jun Nam Choi's Hearing Brief this morning.

OPENING STATEMENTS

CITY

On behalf of the City, Legal Counselor Poblete reviewed the legal basis for the recommendation to revoke the business license for Healthy Spa Massage. She explained that a Police Department undercover investigation of Healthy Spa Massage was conducted on April 15, 2009, which resulted in the arrest of an employee for California Penal Code Section 647(b), commonly known prostitution, and this employee was subsequently convicted of this offense on July 24, 2009. She further explained that, pursuant to Torrance Municipal Code (TMC) §35.11.5(a)(2), a conviction for a crime involving sexual misconduct is imputed to the business owner and, per TMC §31.9.10(f), the License Review Board has the discretion and ability to revoke a business license if the Board finds revocation is necessary for the preservation of the public health, morals, safety or general welfare. She urged that, based on documents submitted and upcoming testimony from the Torrance Police Department, the business license for Healthy Spa Massage should be revoked.

LICENSEE

On behalf of the Licensee, Ted K. Yoon explained his viewpoint that the operative words in TMC §35.11.5(a)(2) are “...will be considered imputed to the principal...” which means that the owner must have directly or indirectly permitted the act to happen, which is not the case in this instance because it was an isolated incident involving one bad employee. He related his belief that the City should not even suspend Healthy Spa Massage’s license, let alone revoke it.

CITY’S WITNESS – DETECTIVE WALTER HARRIS, TORRANCE POLICE DEPARTMENT, COMMUNITY LEAD DETAIL

DIRECT EXAMINATION OF DETECTIVE WALTER HARRIS – by Legal Counselor Jocelyn Poblete

After being duly sworn, Detective Walter Harris provided background information about his training and experience as a police officer. He reported that he has been a Torrance Police Officer for the past six years and is currently assigned to the Community Lead Detail and was so assigned on April 15, 2009. He described the undercover operation that took place on April 15, 2009 at Healthy Spa Massage, 1515 Crenshaw Boulevard, which resulted in the arrest of Xia Li Taylor for 647(b), as detailed in Torrance Police Department Crime Report, DR#090025293 (Exhibit E).

CROSS EXAMINATION OF DETECTIVE WALTER HARRIS – by Ted K. Yoon

In response to questions from Mr. Yoon, Detective Harris testified as follows:

- That he had not been to Healthy Spa Massage before April 15, 2009 when he was there in an undercover capacity, nor has he been there subsequently.
- That it was difficult to determine if the business was clean or dirty, but it appeared to be relatively clean.
- That he was not aware that Mr. Choi had constructed the business from scratch in 2008.

CITY'S WITNESS – DETECTIVE SCOTT BARGAR, TORRANCE POLICE DEPARTMENT, VICE AND NARCOTICS DIVISION, INTELLIGENCE DETAIL

**DIRECT EXAMINATION OF DETECTIVE SCOTT BARGAR –
by Legal Counselor Jocelyn Poblete**

After being duly sworn, Detective Scott Bargar provided background information about his training and experience as a police officer. He confirmed that he interviewed Jun Nam Choi on July 22, 2008 concerning his application for a Massage Establishment License as detailed in the License Review Interview Summary (Exhibit F). He described the interview process, explaining that he goes over the Municipal Code Highlights for Massage and Acupressure Establishments (Exhibit G) and that PC §647(a), lewd sexual acts, and §647(b), prostitution are specifically discussed during the interview. He further explained that applicants initial and sign a document verifying that they understand the rules and regulations discussed and they are given a copy of the Code Highlights to keep for reference and they are instructed to share the information with employees.

Ms. Poblete noted her intent to question Detective Bargar with regard to items included in Exhibit O (Written Material from MPreviews.com dated January 12, 2010).

There was a brief recess for the Board to review Exhibit O (Written Material from MPreviews.com dated January 12, 2010).

Mr. Yoon voiced objections to Exhibit O because it was not provided to him in a timely manner.

Chairman Smith asked how Detective Bargar and Ms. Poblete learned of the information in Exhibit O and why it was just now being presented.

Ms. Poblete advised that she provided Exhibit O at the meeting as she only became aware of it last Thursday when she found it in her in box; that she received it from the Police Department and had only read it this morning; and that it includes statements from anonymous individuals concerning the type of business going on at Healthy Spa Massage.

Detective Bargar advised that the information came from an internet-based service and contains information provided by anonymous individuals who frequent massage establishments throughout Los Angeles County; that the Department monitors the website to see what kind of activity might be occurring in Torrance; and that this information was obtained on January 12, 2010 during a routine search and provided to Ms. Poblete late last week.

Assistant City Attorney Sullivan noted that the City was closed on Friday, January 15, and Monday, January 18.

Mr. Yoon objected to the introduction of Exhibit O, maintaining that it was very prejudicial to his client. He reported that his client had no idea this information was on the internet and did not know who had put it there and that his client had no involvement.

Chairman Smith related his discomfort with Exhibit O being considered at this time.

Ms. Poblete stated that not allowing this information to be presented would be prejudicial to the City's case because according to his brief, Mr. Yoon intends to argue that what occurred on April 15, 2009 was an isolated incident with one bad employee, however, information in Exhibit O shows that this is not the case and individuals go to this establishment specifically to elicit this type of massage whether the business owner knows it or not.

Chairman Smith asked if there were any rules regarding the timeframe for submitting evidence.

Deputy City Attorney Sullivan advised that there are no formal rules for the submittal of evidence at License Review Board hearings, noting that both sides have submitted evidence this morning. He recommended should the Board be concerned about the timeliness of providing the evidence to the licensee, that it be held until the licensee's witnesses have testified and the Board could decide at that time whether it could be used for purposes of impeachment.

Having previously served on the License Review Board, Assistant Finance Director Flewellyn related his understanding that the decision of whether to allow the submittal of evidence lies with the Board. He recalled that when he was on the Board, the Board sometimes allowed evidence to be submitted at a hearing and at other times rejected it, and explained that the rationale for accepting it was a desire to have all the information possible when making a decision.

Without objection from the other Board members, Chairman Smith declared that the submission of Exhibit O would be held pending the licensee's presentation of witnesses.

Mr. Yoon – *comments inaudible*.

**CROSS EXAMINATION OF DETECTIVE SCOTT BARGAR –
by Ted K. Yoon**

In response to questions from Mr. Yoon, Detective Bargar testified as follows:

- That he went to Healthy Spa Massage on April 15, 2009 some time after the undercover operation.
- That he was there after the fact to check on the operation because his detail was overseeing numerous operations in the City that night.
- That while at the establishment, a member of the Police Department's Forensic Department was doing an investigation/inspection, but he (Detective Bargar) did no inspections that night.
- That he had been to Healthy Spa Massage approximately eight to ten times prior to April 15, 2009.
- That he was aware that the business was constructed from scratch, but did not know the exact date.
- That he inspected the business on July 22, 2008 for the first time and his impression was that it was very clean and well maintained and all of the equipment and surroundings appeared to be new to the best of his recollection.

- That the general nature and cleanliness of the site did not change during his many visits to the site for compliance checks, including after the incident, but he would not say it was the cleanest and best maintained business of this type.
- That another member of the Department accompanied him during his visits to the business and he did not recall any negative comments about the business from his partner.
- That he knows the licensee Jun Nam Choi who was present almost every time he visited.
- That he made recommendations about providing a means to view inside the massage rooms in a discussion with Susan Lee after the April 15 incident.
- That he is aware the licensee followed his suggestion to add windows to the doors of massage rooms, but does not know when.
- That the licensee and Susan Lee were always friendly when he visited.
- That he never had a massage at the business and never saw anything illicit or immoral happening there.
- That he was not surprised about the April 15 incident, in that there are a lot of massage establishments in the City and he has been to quite a few and was not surprised by what goes on.
- That as the lead detective on this case, he has not heard any other complaints or negative comments about Xia Li Taylor or Healthy Spa Massage.

Responding to Ms. Poblete's inquiry, Detective Bargar clarified that he has been to other massage establishments as clean as the licensee's and arrests for violations of California Penal Code 647(a) or (b) have occurred at those establishments as well.

CITY'S WITNESS – JOHN BOCKRATH, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, SENIOR CRIMINALIST

**DIRECT EXAMINATION OF JOHN BOCKRATH –
by Legal Counselor Jocelyn Poblete**

Having been duly sworn, John Bockrath, senior criminalist, Los Angeles County Sheriff's Department provided background information about his position with the Sheriff's Department; his training and experience as a criminalist; and his current assignment as a contract criminalist with the City of Torrance, which involves the analysis of all biological testing for the City, forensic analysis and crime scene investigation upon request. He explained that on April 15, 2009, he was requested to participate in inspections of various massage establishments for biological fluid identification and crime scene investigation if a violation was found and that Healthy Spa Massage was one of the locations he investigated. Referring to the County of Los Angeles Sheriff's Department Scientific Services Bureau Field Investigation Report dated May 6, 2009 (Exhibit E), Detective Bockrath described how the investigation was conducted using an Alternate Light Source (ALS) and presumptive chemical test. He reported that all massage rooms were examined and several stains were identified using the ALS, but only one, a stain on the north wall of massage room #7, tested positive for semen and a sample was subsequently collected and identified as K097877.

**CROSS EXAMINATION OF JOHN BOCKRATH –
by Ted K. Yoon**

In response to questions from Mr. Yoon, John Bockrath testified as follows:

- That he is employed by the Los Angeles County Sheriff's Department, which has contracted with the City of Torrance to provide forensic analysis and crime scene investigation upon request.
- That the reason the Field Investigation Report lists a "possible" semen stain on the north wall of massage room #7 is because the analysis performed in the field is a presumptive test and there are further confirmation steps, which include a microscopic examination and potentially a DNA analysis to identify the source of the semen, and those steps were not done in this case.
- That he did not do the confirmation tests and had no results to submit beyond the results in his Field Investigation Report.
- That he examined each of the seven massage rooms and only the one stain in room #7 tested positive for semen.
- That the stain was found on the wall, not on the floor and not on the bed or its coverings.

Mr. Yoon requested that the Board exclude the Field Investigation Report (Exhibit E) from evidence on the grounds that it was a preliminary report and does not conclusively state that the stain was semen.

Ms. Poblete stated that while it was a presumptive test, Senior Criminalist Bockrath has had extensive training and experience and urged the Board to take his opinion into consideration.

Mr. Yoon renewed his objection as the test results were not conclusive (*additional comments inaudible*).

Ms. Poblete stated that Mr. Bockrath did not testify that conclusive testing was never done, only that he was not the one who did it. She noted that Mr. Bockrath testified that he did presumptive testing at the location, which is the only testing that can be done in the field, and related her belief that his opinion should be considered based on his experience in detecting this type of biological fluid.

Without objection from other Board members, Chairman Smith accepted the Field Investigation Report into evidence.

RECESS AND RECONVENE

At 10:30 a.m., the Board briefly recessed. The meeting reconvened at 10:35 a.m., and discussion of Agenda Item No. 6B (Healthy Spa Massage) continued with all members present.

LICENSEE'S WITNESS – JUN NAM CHOI

**DIRECT EXAMINATION OF JUN NAM CHOI, OWNER OF HEALTHY SPA MASSAGE
– by Ted K. Yoon**

Jun Nam Choi was duly sworn, and testified as follows (with the aid of interpreter):

- That he is the sole owner of Healthy Spa Massage, which he constructed from scratch.
- That the site was a dental lab before he leased it.
- That he came to the United States from Korea on September 11, 2007 and is now a permanent resident.
- That he was very aware that according to immigration laws, he could be deported or denied citizenship if he does something illegal.
- That since coming to the United States, he has never been charged with any crime or cited for any offense other than a traffic ticket or a parking ticket.
- That he ran a company in Korea and was involved in interior design and the construction of houses.
- That upon arriving in the US, he applied for a job at the 99¢ Store, but was told that he could not be hired because his English was poor.
- That he tried to find a more appropriate job or business and came across the massage business, which he believed to be a very clean and simple business, and he subsequently built the business at this location.
- That a general contractor did the construction, but he oversaw every step in the process to ensure compliance with the Code.
- That the business passed all inspections and opened for business after receiving a license from the License Review Board on August 5, 2008.

At Mr. Yoon's request, Mr. Choi identified Exhibit A, pages 1-12 as being the rules and regulations for operating a massage establishment that were explained to him during the police interview by Detective Bargar and verified that he understood them.

Mr. Choi identified Exhibit A, page 13, as a Korean language document summarizing the guidelines and requirements for massage technicians, including that they shall be clean and hygienic and wear non-transparent clothing and that they shall not induce clients to do anything improper. He reported that he prepared the document with the assistance of Mr. Kim, who is knowledgeable about the massage business, and that he posted it on the wall in the waiting room of the massage establishment and he also had it translated into English as shown on pages 14 and 15 of Exhibit A.

In response to Mr. Yoon's inquiry, Mr. Choi reported that he has employed 24 massage technicians since opening in August 2008 and they were comprised of Koreans, Japanese, Vietnamese, Chinese and Americans. He confirmed that non-Korean massage technicians were able to understand the English version of the regulations he posted in the waiting room or had someone with better English skills explain them.

Mr. Yoon asked about efforts to educate massage technicians, and Mr. Choi explained that he educated the Korean massage technicians and Susan Lee educated the non-Korean massage technicians about the rules and regulations every month and

they signed a form verifying that they had received this instruction as evidenced by Exhibit B, pages 1-3. He reported that the massage technicians who work for him are independent contractors, not employees, and identified Exhibit B, page 4, as a list of every independent contractor who had worked for him since the business opened (alphabetized by first name), along with the dates they started and ended their employment, and their massage therapist license numbers.

Referring to Exhibit B, pages 5 and 6, Mr. Choi explained that this was a list of the contractors, their license numbers and their physical characteristics, which he used to verify their identity.

Mr. Yoon asked how long massage technicians typically stayed at his business, and Mr. Choi reported that there was a great deal of turnover. He stated that he believed it was because they were bothered by so much education and also their income was not that good, so they left after a short period, with some not even lasting a day.

Mr. Choi identified Exhibit C, pages 1-8 as complete payroll records for the independent contractors since the business opened. With regard to page 8, entitled, "Missing Check List," he explained these were checks that were still outstanding or for some reason, he couldn't find.

Referring to Exhibit D, pages 1-4, Mr. Choi reviewed the documents he requires from every independent contractor: page 1 – Acknowledgment of Independent Contractor; page 2 – Acknowledgment that the contractor understands the rules and regulations and swears not to engage in improper services; page 3 – Massage therapist diploma; and page 4 – copy of contractor's California Driver's License and copy of California Certified Massage Therapist License/ or City of Torrance Massage Technician Business License. He identified Exhibits D through Z as copies of this information for each of his independent contractors, except for Xia Li Taylor and verified that every independent contractor he ever hired provided all the requested documentation and was properly licensed.

Mr. Choi identified Exhibit A-1, pages 1-4 as Xia Li Taylor's employment documents, which show that she was properly licensed.

In response to Mr. Yoon's inquiry, Mr. Choi testified at follows:

- That he had no idea when he hired Ms. Taylor that she was the type of person who would engage the type of act that occurred on April 15, 2009.
- That he had no suspicion that illicit acts were occurring from the time he hired her until April 15.
- That none of his contractors ever mentioned, or voiced concerns that she was engaging in this type of behavior at his business or any other place.
- That she usually worked in massage rooms #7 & 8.
- That Ms. Taylor never asked for permission to engage in illicit conduct and he did not know at the time she was engaging in this conduct.
- That he had asked his technicians to leave the door open while providing service to clients.
- That prior to April 15, 2009, there was one window in each massage room and after the April 15 incident, he add two more in each door.

- That there have never been any similar incidents involving any of his massage technicians before or after the April 15 incident.

Mr. Choi identified Exhibit B-1, page 2, as photographs of documents posted at his business, including workmen's compensation insurance information; payroll information; a summary of rules and regulations for massage technicians; a notice stating that doors should not be shut; and a notice directing technicians to put towels and sheets in the wash immediately after every customer.

Mr. Choi identified Exhibit B-1, page 3, as photographs showing the two windows he had installed in the door of each massage room after the April 15 incident. He explained that he tried to figure out how to prevent another incident and had wanted to install closed circuit TV, but was told that he could not do this so he added the windows.

In response to Mr. Yoon's inquiry, Mr. Choi testified as follows:

- That he advertised his business to the general public, but never did any internet advertising.
- That he never directed anyone to advertise the business on the internet and was not aware of anyone ever doing so.
- That Susan Lee, who was present at this hearing, was an employee who had helped him with his business since he began it.
- That she currently works as an acupuncture therapist, but started as a receptionist.
- That she began working as massage technician in November 2009 and she is properly licensed.

Mr. Yoon requested that Exhibits A through B-1 be entered into evidence.

Hearing no objection from the Board, Chairman Smith so ordered.

**CROSS EXAMINATION OF JUN NAM CHOI –
By Legal Counselor Jocelyn Poblete**

In response to Ms. Poblete's inquiry, Jun Nam Choi testified as follows (with the aid of interpreter):

- That he was interviewed by the Torrance Police Department before he received his business license and the rules concerning the business were thoroughly explained to him and he understood them.
- That he was told that he was responsible for what happens at the business.
- That he understood it was possible that he could lose his business license if criminal activity occurred at the business, however, he could not stay in the room during massages and did not have the authority to do so.
- That he does not possess a massage technician's license, but he visited several massage establishments and had massages prior to opening his business so he has a general idea of how massages are to be performed.
- That he currently lives in Aliso Viejo and chose to open the business in Torrance because he heard Torrance was one of the cleanest cities and a very safe place.

- That at the time he opened the business, he had no friends or relatives who owned massage businesses in Torrance.
- That he had no experience in the massage business prior to opening his business in Torrance.
- That he decided on the massage business after looking at other potential business opportunities and concluding that it was a clean and simple business that would not give him a lot of headaches.
- That he reached this conclusion based on input from Korean acquaintances, who were in the construction field.
- That he searched for an appropriate location and decided on Torrance because he heard it was an honorable city.

Ms. Poblete asked about Mr. Choi's hiring practices, and Mr. Choi stated:

- That he looks for technicians who are hard working and have a lot of experience.
- That he has required that applicants provide a State of California Massage Technician License since January 1, 2010 and prior to that time he required a City of Torrance Massage Technician License.
- That he did not do criminal background checks on applicants because he knew the City of Torrance takes fingerprints and checks for criminal records going back seven years.
- That he hires 100% females.
- That he attempted to hire a male at one time, but the clients didn't like him.
- That since his workers are independent contractors and not employees, he files 1099 forms instead of W-2s.
- That his technicians are independent contractors because each one has her own license and he provides the facility and education.

RECESS AND RECONVENE

At 11:55 a.m., the Board took a short recess. The meeting reconvened at 12:05 p.m., and discussion of Agenda Item No. 6B (Healthy Spa Massage) continued with all members present.

Ms. Poblete resumed her questioning, and Mr. Choi confirmed that it was his understanding that his technicians were independent contractors rather than employees because each one has her own license. He verified that he understood that each massage technician must be licensed whether employees or independent contractors and that the business owner is responsible for the actions of both employees and independent contractors.

In response to Mr. Yoon's inquiry, Jan Nam Choi reported that he constructed the business from scratch at a cost of between \$130,000 – 140,000 and confirmed that he would not allow anything to occur at the business that would jeopardize his investment.

Chairman Smith invited arguments concerning the admission of Exhibit O.

Ms. Poblete requested that Exhibit O be admitted for purposes of impeachment. She explained that the licensee has contended that he was running a legitimate massage business and the April 15, 2009 was a one-time incident, but information

contained in Exhibit O indicates that this has happened several times at the location and people go to Healthy Spa Massage specifically for this type of massage.

Mr. Yoon related his belief that Exhibit O was a crucial piece of evidence, whether direct evidence or impeachment evidence, and that it was very prejudicial to his client to be given this type of information during the hearing. He stated that there was nothing to connect the document to his client, that it does not contain his name, and that there was nothing to show that he put this information out or allowed someone else to do so. He pointed out that the document mentions a massage provider named "Mia" and no technician by this name has ever worked at Healthy Spa Massage.

Referring to Exhibit B, page 2, Chairman Smith asked about a signature listed halfway down the page that appears to be "Mia."

Mr. Choi clarified that the signature is "Hua" for massage technician Shan Hua Jin.

Mr. Yoon urged that Exhibit O be excluded. He stated that Mr. Choi never put anything on the internet or allowed any internet advertising and there was nothing to prove that the item was materially connected to the business. He contended that the City had had plenty of time and should have done a better job preparing the case and that submitting this information during the trial was patently unfair.

Assistant City Attorney Sullivan advised that in criminal cases, impeachment evidence is not required to be turned over to opposing counsel in advance of a hearing. With regard to Mr. Yoon's objection that this was not his client's advertisement, he explained that the information is from a website like "Yelp," which includes reviews of restaurants and other businesses that are anonymous and anecdotal. He suggested that the fact that none of the business's massage technicians has the legal name "Mia" does not mean that the information must be discounted because one of them could be using the name Mia as an anglicized version of her name. (*Additional comments inaudible*)

Ms. Poblete noted that Detective Harris testified that Xia Li Taylor introduced herself as "Lisa" on April 15, 2009 so it could be that the massage technicians do not necessarily use their real names. She emphasized that she just read Exhibit O this morning and would have submitted it along with the rest of the exhibits if she had had it sooner.

Mr. Yoon stated that in order to use Exhibit O for impeachment purposes, the City must establish that it has some material connection to his client or his business and this has not been done. He contended that information pulled from the internet could not be used against his client simply because it has the business's name and address. He suggested that it would be different if the business had a massage technician named Mia to show a connection.

Chairman Smith asked if the Board was required to determine the methodology used to submit reviews and/or the validity of the information of if it could be accepted on face value.

Assistant City Attorney Sullivan stated that the rules for impeachment evidence are very relaxed. (*Additional comments inaudible*)

Chairman Smith asked that Detective Bargar testify regarding his knowledge of how the information was acquired from the website.

In response to Chairman Smith's inquiry, Detective Bargar testified as follows:

- That he became aware of the website through a group of detectives from the Inglewood Police Department who were conducting the same type of undercover operation a couple of years ago.
- That it was explained to him that it was a good investigative tool to get an idea of what's going on in massage establishments.
- That he believed the people who write the reviews are frequent customers of massage establishments.
- That they are basically putting out information regarding where one can go if they are seeking certain lewd acts or sexual satisfaction.
- That the site also includes posts about places people should not go because they offer only legitimate massages.
- That officers registered on the site and obtained a user name and password and they periodically check it to identify places where illegal activity might be taking place.
- That Exhibit O contains all the information he was able to find related to 1515 Crenshaw Boulevard on the website on January 12, 2010.
- That he also found information on other addresses in Torrance on that date.
- That reviews on the site are constantly changing and seem to be added and deleted at random.
- That recently he has seen posts regarding the police crackdown in Torrance.
- That MPreviews.com is the only site that officers have registered on, but he also checks ads on Craig's List concerning massage establishments.

In response to Ms. Poblete's inquiry, Detective Bargar testified as follows:

- That the name of the business is included on the first page of the reviews along with its address.
- That one can search the website for a massage establishment by name, address, or city.
- That he did not recall how he searched for reviews on Healthy Spa Massage on January 12, 2010.

In response to Mr. Yoon's inquiry, Detective Bargar testified as follows:

- That he was instructed by his boss to search the website on January 12, 2010, which is done routinely to monitor massage establishments, and it was not related to the timing of this hearing.
- That anyone can post a review on the site and there was nothing to guarantee the accuracy of the information and it could be entirely false.

Member Botiller stated that despite the late submission of this information, he thought it could suggest a certain pattern and he favored allowing it to be used because it provides additional documentation for the Board to consider.

Member Harris noted his agreement with Member Botiller's remarks.

Indicating that he also favored allowing Exhibit O to be used, Chairman Smith noted that both the City and the Licensee would have an opportunity to argue the merits of the information obtained from the website and how much weight it should be given.

Without objection from other Board members, Chairman Smith accepted Exhibit O into evidence for purposes of impeachment.

Mr. Yoon contended that the document could be referred to but could not be admitted into evidence.

Assistant City Attorney Sullivan and Mr. Yoon briefly debated how the questioning regarding the information in Exhibit O should be handled. Mr. Yoon objected to Ms. Poblete's reading of the information and called for it to be summarized. (Additional comments inaudible)

Ms. Poblete asked if Mr. Choi was aware of the website MPreviews.com, and he indicated that he was not. She asked if he was aware that a comment was posted on the website claiming that a customer of Healthy Spa Massage received a hand job on March 29, 2006, and Mr. Choi noted that he did not open the business until August 2008.

Mr. Yoon objected to the reference to the March 29, 2006 review.

Ms. Poblete asked if Mr. Choi was aware that the website includes a claim that a customer received a hand job on December 18, 2008 at his establishment.

Mr. Yoon responded that there was none of those types of activities going on at his establishment except for the one incident on April 15. He stated that ever since he opened the business, a police officer inspects the business every three days and they also send out undercover officers to verify that everything is done properly, so those activities could not be happening.

Ms. Poblete directed Mr. Choi to confine his answers to "yes" or "no".

Ms. Poblete asked if Mr. Choi was aware the website includes a claim that a customer received a hand job on October 2, 2008 at his establishment, and Mr. Choi responded "no."

Ms. Poblete asked if Mr. Choi was aware the website includes a claim that a customer received a hand job on October 1, 2008 at his establishment.

Mr. Yoon objected to Ms. Poblete's use of the word "hand job" to summarize the comments in the October 1, 2008 review. He noted that the comments mention that "it wasn't really sexual."

Chairman Smith related his belief that Ms. Poblete had accurately characterized what was described in the comments and overruled Mr. Yoon's objection.

Ms. Poblete indicated that she had no further questions.

Mr. Yoon requested that all the testimony regarding the March 29, 2006 review be stricken from the record because the date was more than two years before the business was opened on August 5, 2008.

Chairman Smith acknowledged that the date was curious, but stated that he did not think it was necessary to go over every detail in the reviews.

In response to Mr. Yoon's inquiry, Mr. Choi stated that if he found out that one of his contractors had advertised on the internet, he would report her to the police so they could investigate her and confirmed that he would no longer employ her.

RECESS AND RECONVENE

At 12:50 p.m., the Board took a short recess. The meeting reconvened at 12:57 p.m., and discussion of Agenda Item No. 6B (Healthy Spa Massage) continued with all members present.

LICENSEE'S WITNESS – SUSAN LEE

DIRECT EXAMINATION OF SUSAN LEE – by Ted K. Yoon

After being duly sworn, Susan Lee testified as follows (with the aid of interpreter):

- That she first became acquainted with the business when she interviewed for the receptionist job at Healthy Spa Massage and later became engaged to Mr. Choi but now they are just friends.
- That she works the front counter, shows customers to the massage rooms and assists with education.
- That she obtained a Massage Technician License in October 2009, but never worked in this capacity for Mr. Choi and has been the receptionist since August 5, 2008.
- That page 13 of Exhibit A has been posted on the wall of the waiting room of the establishment since August 5, 2008, as well as pages 14 and 15.
- That Exhibit B, pages 1-3, includes the signatures of massage technicians confirming that they were educated regarding the rules and regulations and both she and Mr. Choi were involved in this education.
- That contractors received education on a daily basis.
- That she was not involved in the bookkeeping for the business.
- That Exhibit B, page 4 was complete list of massage technicians who had worked for the business.
- That on Exhibits E through Z, her signature appears on the "signature of witness" line of the Acknowledgment of the Independent Contractor Form along with Mr. Choi's signature.
- That she never told Mr. Choi it was okay to hire technicians who did not have licenses and he did not tell her that he ever hired a technician without a license.
- That Exhibit A-1, pages 1-4, were documents related to Xia Li Taylor, the woman involved in the April 15, 2009 incident.
- That she was present at the business when the incident occurred and it occurred in massage room #8.
- That Ms. Taylor usually worked in massage rooms #7 and 8.
- That she did not know Ms. Taylor before she was hired.

- That she (Susan Lee) has no criminal record.
- That to her knowledge, Healthy Spa Massage had never had any trouble with the law at any time other than the April 15, 2009 incident.
- That Detective Bargar visited the establishment approximately once a month before the incident occurred.
- That she spoke with Detective Bargar during his visits and he had complimented the way the business was run.
- That she has spoken with other police officers who have visited the business since the April 15 incident, but they have not commented on the business.
- That when Ms. Taylor applied for a job, she had no suspicions that she would commit an illicit act and none of the other employees ever told her anything negative about Ms. Taylor.
- That Exhibit B, page 2, shows photographs of documents posted at the business, including payroll information and worker's compensation information.
- That massage technicians tended not to stay too long at the business, with some leaving after a month, a week, or a day, and she believed the reason was due to the "rigid education."
- That technicians had complained that they were being treated like they were in elementary school when they were adults and had their own licenses.
- That she did not know of any illicit activity by any of the technicians.
- That Exhibit B-1, page 3, shows the two windows in the door of massage rooms that were installed after the April 15, 2009 incident.
- That she considers the establishment to be very clean, including the waiting room, hallways and massage rooms.

CROSS EXAMINATION OF SUSAN LEE – by Legal Counselor Poblete

In response to Ms. Poblete's inquiry, Susan Lee testified as follows:

- That she worked at the business almost every day.
- That she believed the main reason massage technicians left was because they thought there was too much education, but their pay could also be a factor.
- That the technicians were instructed on ethics, cleanliness and warned not to do anything illegal, but they were not instructed on how to perform massages because they had their own licenses and were supposed to know how to do this.
- That she listened in on conversations technicians had with clients in the waiting room to ensure that only proper massages were done.

Ms. Poblete asked if it was possible that improper massages could have occurred at the establishment without her knowing about it and Ms. Lee responded that she did not know.

Chairman Smith noted that Ms. Lee's answer was non-responsive. Ms. Poblete asked the question again and Ms. Lee conceded that it was possible.

Ms. Poblete asked if it was possible that she didn't know improper massages were occurring, but Mr. Choi did.

Mr. Yoon objected, and Ms. Poblete withdrew the question.

Chairman Smith requested clarification regarding Ms. Lee's date of employment since an employment log (Exhibit B, page 1) submitted by the licensee indicates her employment started in November 2009.

Ms. Lee stated that she started working as an acupressure/massage technician in November 2009 and prior to that time she worked as a receptionist. Mr. Yoon clarified that the log Chairman Smith mentioned was a list of massage technicians only.

CLOSING ARGUMENTS

CITY- by Legal Counselor Jocelyn Poblete

Ms. Poblete stated that the fact remains, that Mr. Choi hired Xia Li Taylor and she was arrested for PC 647(b), commonly known as prostitution, on April 15, 2009 and subsequently convicted of this offense on July 24, 2009, noting that Detective Harris described in detail how the massage technician agreed to perform a sexual act in exchange for money. She pointed out that Detective Bargar testified that the Torrance Police Department takes the time to meet with every owner of a massage establishment, including Mr. Choi, and thoroughly explain what a massage establishment is supposed to do and not do, including PC 647 (a) and (b). She stated that the City goes above and beyond to ensure that this type of activity does not occur because it affects its citizens and they expect when they get a massage, that it will be proper, healthy and moral. She stated that the City has taken a pro-active approach to prevent this kind of illegal activity and because it is taken very seriously, there is no tiered consequence and the business's license is either suspended or revoked, with no probationary period.

Ms. Poblete stated that Sr. Criminalist Bockrath testified that he found a semen stain in massage room #7 and the fact that the stain was not in the room where the April 15 incident occurred could be viewed as an indication that more than one massage technician was engaging in this type of activity. Noting that Mr. Choi testified that he constructed the business from scratch and a dental business formerly occupied the site, she pointed out that a semen stain was unlikely to result from a dental business and contended that the stain supports the conclusion that lewd acts and prostitution were occurring at this business. She suggested that since Mr. Choi was at the business most of the time, he likely would have been aware that this type of activity was occurring.

Ms. Poblete stated that while the cleanliness of the establishment was emphasized by Mr. Yoon, Detective Bargar testified that lewd acts have occurred at the cleanest establishments. She noted that the licensee claimed to run a legitimate business and submitted evidence about the posting of signs and the educating of technicians regarding rules and regulations, but he didn't take any active measures to learn what type of massage any of his technicians were performing or to let them know what a proper massage should be. She pointed out that all of the technicians hired by Mr. Choi were female, with the exception of one male, and urged the Board to consider why he did this. She stated that the City feels this arrest and conviction was very egregious because it goes beyond lewd acts and involves prostitution, a sexual act in exchange for money, and even though it happened only once, the City takes every

precaution to prevent it from happening even one time. She urged the Board to revoke the business license of Healthy Spa and Massage.

LICENSEE – by Ted K. Yoon

Mr. Yoon noted that he has read TMC §35.11.5(a) (2) over and over and quoted from the portion which states, “...or has permitted, through an act of omission or commission, his or her employee or agent to engage in any type of moral turpitude or sexual misconduct offense, whether misdemeanor or felony (under such circumstances, the conduct of the employee or agent, if such resulted in a conviction or a plea of *nolo contendere* or guilty, will be considered imputed to the principal, and shall be grounds for license denial).” He contended that the Board has discretion in this matter since it says “considered imputed,” not “imputed” and “shall” be grounds for denial rather than “automatic” grounds for denial and related his belief that the Board had several burdens to overcome before taking away his client’s livelihood.

Mr. Yoon pointed out that Senior Criminalist Bockrath’s investigation revealed possible seminal fluid in only one of the seven massage rooms and it was not on the floor or on the bed where one might expect to find it, but rather it was on the wall and contended that Mr. Bockrath should have done the lab test to confirm that the stain was semen. He noted that the possible stain was found in room #7, that the April 15 incident occurred in room #8, and that both Mr. Choi and Ms Lee testified that Ms. Taylor usually worked in rooms #7 and 8. He stated that it was only conjecture that any other massage technician engaged in illicit activity at this business.

Mr. Yoon contended that someone who was habitually breaking the law would not keep the meticulous records Mr. Choi kept or post all the notices on bulletin board, including a notice concerning what technicians should and shouldn’t do, and noted that neither Ms. Lee nor Mr. Choi have a criminal record. He pointed out that Mr. Choi constructed the business from scratch, overseeing every phase of the construction to ensure that it complied with the Code.

Mr. Yoon stated that Mr. Choi should not be found guilty because he hired only females and asserted that if this issue was going to be raised, Ms. Poblete should have presented testimony that other massage establishments hire male massage technicians. He contended that a certified record of Ms. Taylor’s conviction should have been submitted and objected to Exhibit K, the court docket, being used as evidence of her conviction. He reported that Ms. Taylor attempted to withdraw her guilty plea but the request was denied by the court.

Mr. Yoon suggested that if Mr. Choi was running the type of operation the City has contended, he would not make the effort to ensure that every technician was properly licensed with all the necessary documentation, he would simply hire the most attractive ladies he could find. He related his belief that the turnover was high at this business because technicians were constantly being harassed to obey the law and bad people cannot get along with good people. He reported that he took this case because he observed how clean the massage establishment was and believes a shady operation would not look like this.

Mr. Yoon stated that the City must prove that Mr. Choi permitted something illegal to occur either by an act of omission or commission and no evidence has been

presented that Mr. Choi permitted anything other than obeying the law therefore there was no act of omission or commission. He contended that the wording “considered imputed” means that the Board must not automatically impute Ms. Taylor’s conviction to Mr. Choi and must take everything into account and he believed the testimony presented had overcome the presumption that this conviction should be imputed to Mr. Choi. He reiterated that §35.11.5(a)(2) states, “shall” be grounds for denial, which gives the Board the discretion not to revoke the license. He urged the Board use their discretion wisely and fairly and to recognize his client’s efforts to maintain a good place of business.

MOTION: Member Botiller moved to close the public hearing. The motion was seconded by Member Harris, and voice vote reflect unanimous approval.

Chairman Smith stated that considerable relevant information and testimony had been presented during the course of the hearing. He related his belief that the fact that a semen stain was found in room #7 was more important than which technician used that room. He stated that the Board had no reason to doubt that the court record submitted as evidence was accurate and official and it was clear that Ms. Taylor had been convicted.

Chairman Smith voiced his opinion that the City always has to take a higher moral ground in terms of the types of businesses that are conducted and whether or not the owner of Healthy Spa Massage was directly aware of what was going on, he was ultimately responsible for the actions of those who work there whether independent contractors or employees. He pointed out that each contractor acknowledged the code of ethics within the business, and the business owner acknowledged understanding the Code Highlights as explained by Detective Bargar, so there was a clear awareness of the standards for operating a business in Torrance. He stated that he appreciated that the business was very clean and he also appreciated Mr. Choi’s investment in the business of approximately \$130,000, which is a significant investment. He suggested that when making this type of investment, it’s important to know as much as possible about the business and everything must be done to ensure that the business and its employees and contractors are in compliance. He stated that it was unfortunate when situations like this occur, but ultimately the business owner is responsible.

MOTION: Member Botiller moved to revoke Healthy Spa Massage’s business license. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

Assistant City Attorney Sullivan noted that findings of fact would be brought back for the Board’s approval in two weeks.

Chairman Smith advised the licensee of his right to appeal the Board’s decision to the City Council.

7. REQUEST FOR RECONSIDERATION OF REVOCATION

7A. SOUTH BAY HEALTH THERAPY

Recommendation of staff to reconsider the Board’s decision to revoke their license.

Assistant Finance Director Flewellyn reported that South Bay Health Therapy did not respond to notices informing them that a License Review Board hearing would be held on December 15, 2009 to consider the revocation of their business license and since no representative was present at the hearing, the Board accepted staff's recommendation to revoke their business license. He explained that on December 30, 2009, Tae Sun Oh, owner of South Bay Health Therapy, filed an appeal of the Board's decision and requested that the matter be heard by the City Council, however, Ms. Oh subsequently retained an attorney, who waived her right to have a hearing before the City Council within 30 days. He stated that based on this information, staff was recommending that the Board reconsider its decision to revoke South Bay Health Therapy's business license and allow staff to schedule a hearing date.

MOTION: Member Botiller moved to reconsider the Board's decision to revoke the business license of South Bay Health Therapy and to allow staff to schedule the hearing at a future date. The motion was seconded by Member Harris, and voice vote reflected unanimous approval.

8. **ORAL COMMUNICATIONS FROM THE PUBLIC** – None.

9. **ADJOURNMENT**

At 2:03 p.m., the meeting was adjourned to February 2, 2010 at 9:00 a.m.

Approved as Submitted May 18, 2010 s/ Sue Herbers, City Clerk
