

1 **OFFICE OF THE HEARING EXAMINER**
2 **CITY OF TACOMA**

3 **TEXTURED CURLZ LLC**, a
4 Washington Limited Liability
5 Company,

6 **Appellant,**

7 **v.**

8 **CITY OF TACOMA**, a Washington
9 Municipal corporation, through its
Finance Department, Tax & License
Division,

10 **Respondent.**

HEX2024-004
(CA #500185784)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

11 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing
12 Examiner for the City of Tacoma, Washington, (the “City”), on April 4, 2024.¹ Appellant
13 Textured Curlz LLC (“Appellant” or “TCLLC”) was represented at the hearing by its state-
14 listed governor Adefolakemi Babatunde. The City’s Finance Department, Tax & License
15 Division (“T&L”) was represented by Deputy City Attorney Debra E. Casparian.

16 Adefolakemi Babatunde testified as the sole witness for the Appellant. Michael
17 Hubbard, T&L Compliance Officer, and Danielle Larson, T&L Manager, testified for the
18 City.² All testimony was taken under oath and penalty of perjury. Exhibits were admitted

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¹ This hearing was conducted over Zoom with no cost to any participant with video, internet, and telephonic access.

² After first introduction, parties and witnesses may be referred to by last name only.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 and reviewed.³ Based upon the evidence presented, the Hearing Examiner makes the
2 following:

3 **FINDINGS OF FACT**

4 1. This appeal challenges the summary suspension of TCLLC’s annual business
5 license in the city of Tacoma, and involves commercial property at 6317 East Portland Ave.,
6 Tacoma, WA 98404 that TCLLC was using/leasing for business purposes (the “Subject
7 Property”). *Larson Testimony, Babatunde Testimony; Exs. R-1~R-3, Ex. R-8.*

8 2. TCLLC applied for a City business license on August 23, 2021 (the “License”).
9 The License was issued with “Hair Salon” listed as TCLLC’s “Business Activity
10 Description.” At some point after issuance of the License, TCLLC appears to have operated a
11 hair salon business at the Subject Property, but that operation either ceased or moved
12 elsewhere.⁴ *Babatunde Testimony, Larson Testimony; Exs. R-1~R-3, Ex. R-8.*

13 3. TCLLC is the owner of record of the Subject Property, which is zoned C-1 for
14 commercial use. Sometime after TCLLC stopped salon operations at the Subject Property, it
15 entered into a lease with 1&1 SPA LLC⁵ for occupancy of the Subject Property. Exhibit A-1,
16 which TCLLC submitted at the Examiner’s request is the lease with 1&1 SPA LLC (the
17 “Lease”).⁶ *Babatunde Testimony, Larson Testimony; Ex. A-1, Ex. R-2.*

18 4. What became of 1&1 SPA LLC’s occupancy of the Subject Property is unclear.
19 There was no testimony or other evidence offered at the hearing of any kind of assignment of
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21 ³ At the close of the hearing, the Examiner left the evidentiary record open for TCLLC to submit a copy of the lease it had in place for the Subject Property (defined below). The lease was received later that same day.

⁴ City testimony indicated that TCLLC had been seen operating from a kiosk in the Tacoma Mall at one point. Babatunde indicated that, aside from leasing the Leased Premises, TCLLC’s business had since moved online.

⁵ According to the Washington Secretary of State’s corporate listings, 1&1 SPA LLC is an active Washington limited liability company with a registered office in Spokane.

1 the Lease from 1&1 SPA LLC to a successor tenant of the Subject Property. Babatunde
2 testified that she thought all occupants were part of the same business enterprise and they all
3 used the same phone number.

4 5. Activity that led to the summary suspension at issue here started as part of a City
5 effort focused on unlawful activities in the massage industry in the city of Tacoma. As part of
6 the City's efforts, a protracted series of communications were exchanged between Babatunde
7 and the City regarding the occupancy and operation of the Subject Property. Both parties
8 testified to what they perceived as communication difficulties between themselves. Both
9 parties were dissatisfied with the level of responsiveness from the other. *Hubbard Testimony,*
10 *Larson Testimony, Babatunde Testimony; Exs. R-3~R-10.*

11 6. The City's reason for contacting Babatunde, as the listed governor of TCLLC,
12 was to enlist her in addressing suspected unlawful activities taking place at the Subject
13 Property by the tenant/occupant. Babatunde has not contested that the tenant was engaging in
14 unlawful activities at the Subject Property. Given that lack of contest, the City's information
15 in the record regarding the unlawful activities at the Subject Property is considered a verity.
16 *Id.*

17 7. At some point, the City made the determination that "Korean Spa 6317 LLC"
18 was operating unlawfully at the Subject Property and issued a business license summary
19 suspension to that entity.⁷ Korean Spa 6317 LLC is now a voluntarily dissolved Washington
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⁶ The City mistakenly referenced to the tenant as "#1 Spa LLC."

⁷ See Exhibit R-6.

1 limited liability company. Korean Spa 6317 LLC listed the Subject Property as its Principal
2 Office Address.⁸ *Larson Testimony; Ex. R-3, Ex. R-6.*

3 8. In its frustration in dealing with issues at the Subject Property, and due to the
4 failures of communication with TCLLC, the City made the decision to summarily suspend
5 TCLLC’s business license after it had already suspended the presumed tenant, Korean Spa
6 6317 LLC. *Larson Testimony; Ex. R-8.*

7 9. The City sent TCLLC a summary suspension notice letter date February 5, 2024.
8 The letter informed Babatunde that TCLLC “[m]ust cease all business activity in the City of
9 Tacoma immediately,” and that an “informal hearing” was scheduled two days later on
10 “Wednesday, February 7, 2024, at 1:00 P.M.” The letter explained that the informal hearing
11 “[i]s an opportunity for you to appeal the summary suspension and present information that
12 supports your position that your business should be allowed to operate.” *Id.*

13 10. Because of the short turnaround time, Babatunde did not respond to the letter or
14 attend the informal hearing. As a result, the City formalized the summary suspension of
15 TCLLC’s business license in a letter dated February 26, 2024. TCLLC then filed this appeal.
16 *Babatunde Testimony, Larson Testimony; Ex. R-10.*

17 11. Babatunde testified that her tenants at the Subject Property assured her multiple
18 times that they were properly licensed. At some point these assurances became untrue.
19 Korean Spa 6317 LLC, apparently without authorization, took over the tenancy of the Subject
20 Property and was then dissolved as a valid business entity at the state level. The City then
21 suspended Korean Spa 6317 LLC’s business license. *See Finding of Fact 7; Ex. R-3.*

⁸ [Corporations and Charities System \(wa.gov\)](https://www.wa.gov/corporations-and-charities-system).

1 12. Babatunde testified that she had no knowledge of what was actually happening
2 at the Subject Property during the occupancy period in question here. She indicated that once
3 she was made aware that the occupants were not properly licensed, she asked them to leave
4 and informed them verbally that their tenancy was terminated.⁹ The occupants did not leave
5 entirely until after TCLLC was also suspended. The City boarded up the Subject Property the
6 day after the informal hearing was held, February 8, 2024. The Subject Property has been
7 unoccupied since. *Babatunde Testimony; Ex. R-9.*

8 13. Ultimately, it appears that the City’s decision to suspend TCLLC’s business
9 license was due to (a) lack of communication from TCLLC, (b) lack of cooperation from
10 TCLLC in helping to address the unlawful operation and activities at the Subject Property,
11 and (c) failure of TCLLC to keep its license information current. That said, the underlying
12 unlawful operation/activity at the Subject Property has ceased since February 8, 2024.
13 *Babatunde Testimony, Larson Testimony; Exs. R-3~R-10.*

14 14. Any conclusion of law herein which may be more properly deemed or
15 considered a finding of fact is hereby adopted as such.¹⁰

16 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the
17 following:

18 **CONCLUSIONS OF LAW**

19 1. The Hearing Examiner has jurisdiction over this appeal under Tacoma
20 Municipal Code (TMC) 1.23.050.B.9 and TMC 6B.10.145.E. The proceedings are conducted
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⁹ Larson testified that TCLLC was notified that Korean Spa 6317 LLC had been summarily suspended shortly after the suspension was finalized.

¹⁰ The abbreviations “FoF” for “Finding(s) of Fact” and “CoL” for “Conclusion(s) of Law” may be used herein after.

1 *de novo. TMC 1.23.060.*

2 2. As the party seeking enforcement of the February 5, 2024 summary suspension,
3 the City has the burden of proof to establish that the violation(s) giving rise to the suspension
4 occurred/was/were committed by a preponderance of the evidence and therefore, that the
5 City’s decision to issue and then uphold (at the informal hearing held February 7, 2024) Tax
6 & License’s issuance of a summary suspension against TCLLC was correct. *TMC*
7 *6B.10.140.A.10.*

8 3. As the Examiner has pointed out before in prior appeals, TMC 6B.10.145 titled
9 “Summary suspension – Appeal.” is silent on the burden of proof before the Hearing
10 Examiner on appeal. The Examiner concludes, as he has done before, that the burden of proof
11 rests with the City for a number of reasons. First, this proceeding involves the Appellant’s
12 due process right as the suspended holder of a City business license. Normally, the enforcing
13 party that seeks to take away a life, liberty or property (as here) interest bears the burden of
14 showing that such an action is justified. Second, most TMC enforcement proceedings follow
15 the just-mentioned paradigm and put the burden of proof on the City. Third, and most closely
16 on point is TMC 6B.10.140, which is a related/immediately preceding provision of the TMC
17 titled “Denial or revocation – Appeal.” At subsection A.10 it states: “If a licensee appeals
18 such a *suspension*, revocation, or denial of a license under this subsection, the violation must
19 be proved by a preponderance of the evidence;...” [Emphasis added.] Although in the section
20 seemingly dealing with denials and/or revocations, this provision mentions and applies to
21 license suspensions by its own words, and the Examiner applies it in the present case. There

1 is no cognizable reason for the burden of proof in TMC 6B.10.140 proceedings to be any
2 different under TMC 6B.10.145.

3 4. “Preponderance of the evidence” means that the trier of fact is *convinced* that
4 the issue at hand is more likely true than not from the credible evidence presented.¹¹

5 5. The preponderance of the evidence standard is at the low end of the spectrum
6 for burden-of-proof evidentiary standards in the U.S. legal system.¹²

7 6. The party bearing the burden of proof may meet this burden through direct or
8 circumstantial evidence.¹³ Circumstantial evidence is typically considered on par with direct
9 evidence.¹⁴

10 7. In this appeal, the issue the City must prove by a preponderance of the evidence is
11 the violation upon which the City based its February 5, 2024 summary suspension. The City’s
12 February 26, 2024 Affirmation of Summary Suspension letter sets forth the basis for
13 suspension as being, “[d]ue to an unlicensed operation being conducted at 6317 East Portland
14 Ave., Tacoma.” In other words, TCLLC’s allowing unlawful activity/operation at the Subject
15 Property is the basis for the suspension. As noted above (*FoF 13*) this unlawful activity/
16 operations have ceased.

17 8. The evidence shows by a preponderance that unlawful activity was occurring at
18 the Subject Property. The evidence also shows by a preponderance that the City was not getting
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20 ¹¹ *Allison v. Dep’t of Labor & Indus.*, 66 Wn.2d 263, 268, 401 P.2d 982, 986 (1965).

21 ¹² *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006) (“The lowest legal standard of proof [in the U.S. legal system] requires the proponent to prove its case by a preponderance of the evidence.”).

¹³ *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 41-42, 338 P.3d 842, 854 (2014); *Sam v. Okanogan County Sheriff’s Office*, 136 Wn. App. 220, 229, 148 P.3d 1086 (2006).

¹⁴ *State v. Jackson*, 145 Wn. App. 814, 818, 187 P.3d 321, 322 (2008) *citing State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

1 the communication or cooperation from TCLLC that the City desired in order to address the
2 tenant/occupant’s unlawful activity until after TCLLC had been suspended. That said, the basis
3 for the suspension has now been alleviated.

4 9. TMC 6B.10.145.E. authorizes the Hearing Examiner to “[a]ffirm, modify, or
5 overrule the summary suspension and reinstate the license, and may impose any terms upon the
6 continuance of the license” based on appropriate findings and conclusions.

7 10. Based on the evidence, the summary suspension, as issued, is affirmed as having
8 been validly issued, but also based on the evidence, TCLLC’s business license is reinstated
9 here, with conditions, because the violations that gave rise to the summary suspension have
10 been alleviated. Keeping the summary suspension in place after the justifying conditions have
11 been remedied seems unnecessarily punitive. The Examiner imposes conditions on the
12 reinstatement below in order to attempt to prevent similar circumstances from arising at the
13 Subject Property as those that gave rise to the present suspension.

14 11. Any finding of fact herein which may be more properly deemed or considered a
15 conclusion of law is hereby adopted as such.

16 Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing
17 Examiner makes the following:

18 **DECISION AND ORDER**

19 IT IS HEREBY ORDERED that because the unlawful activities/operation at the
20 Subject Property have ceased, and although the summary suspension was validly issued,
21 Appellant TCLLC’s appeal is GRANTED insofar as the summary suspension dated February 5,
2024 is hereby conditionally lifted, and the suspended license conditionally reinstated. That

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 lifting, and TCLLC's return to business operations at 6317 East Portland Avenue, Tacoma, WA
2 98404, are conditioned on the following:¹⁵

- 3 1. TCLLC must update its license information with the City and keep its
4 license information (location, business operation information, etc.)
current; and
- 5 2. TCLLC must not lease/let the Subject Property to any business
6 engaged in massage services specifically, or for any other unlawful
purpose; and
- 7 3. TCLLC must include provisions in any lease for the Subject Property
8 that allows TCLLC to terminate the lease/occupancy for unlawful
conduct;¹⁶ and
- 9 4. TCLLC must require its tenants at the Subject Property to submit
10 written, conclusive proof to TCLLC as the landlord/lessor of the
tenant's current business license status upon the beginning of the
11 tenancy and upon request thereafter; and
- 12 5. TCLLC must respond to City inquiries from Tax & License regarding
the Subject Property within a reasonable time, generally not to exceed
13 five business days.

14 **DATED** this 17th day of April, 2024.

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16 **JEFF H. CAPELL, Hearing Examiner**

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¹⁵ And although not set forth as a condition of the license reinstatement/continued operation of the Subject Premises, the Examiner would suggest that TCLLC take care to ensure that only its actual lease counterparts occupy the Subject Property rather than *de facto* allowing for unauthorized assignment and rotating occupants.

¹⁶ Such as paragraph 6 of the 1&1 Spa LLC lease.

1 **RECONSIDERATION/APPEAL OF EXAMINER’S DECISION**

2 **RECONSIDERATION:**

3 Any aggrieved person or entity having standing under the ordinance governing the matter, or
4 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
5 requesting reconsideration of a decision or recommendation entered by the Examiner. A
6 motion for reconsideration must be in writing and must set forth the alleged errors of
7 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
8 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not
9 counting the day of issuance of the decision/recommendation. If the last day for filing the
10 motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be
11 the next working day. The requirements set forth herein regarding the time limits for filing of
12 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
13 motions for reconsideration that are not timely filed with the Office of the Hearing Examiner
14 or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be
15 within the sole discretion of the Hearing Examiner to determine whether an opportunity shall
16 be given to other parties for response to a motion for reconsideration. The Hearing Examiner,
17 after a review of the matter, shall take such further action as he/she deems appropriate, which
18 may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code*
19 *1.23.140*)
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11 **APPEAL TO SUPERIOR COURT OF EXAMINER’S DECISION:**

12 **NOTICE**

13 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
14 decision is appealable to the Superior Court for the State of Washington. Any court action to set
15 aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be
16 commenced within 21 days of the entering of the decision by the Hearing Examiner, unless
17 otherwise provided by statute.
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