

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **NO 1 MASSAGE LLC,**
4 a 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.**

HEX2023-007
(T&L Acct. #500197498)

DECISION ON CITY'S
MOTION TO DISMISS

11
12 **THIS MATTER** comes before the City of Tacoma’s duly appointed Hearing Examiner
13 on a Motion to Dismiss Due to Untimely Filing (the “Motion”) submitted by the City of Tacoma
14 (the “City”) seeking dismissal of Appellant, No 1 Massage LLC’s (“Appellant”), appeal of the
15 City’s denial of Appellant’s Tacoma Business License application dated March 29, 2023.

16 **FINDINGS OF FACT**

- 17 1. The City received a business license application from the Appellant on March 13,
18 2023. *Larry Declaration, p. 1 and Exhibit A to the Motion.*
- 19 2. After review of the application, the City issued a Letter of Denial (the “Denial
20 Letter”), citing to Tacoma Municipal Code (“TMC”) 6B.10.140. The City based the denial on
21 alleged violation(s) of the TMC that the City discovered in investigating Appellant’s business

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1 activity at 6317 Pacific Ave, Tacoma WA. *Exhibit B to the Motion.*

2 3. City staff hand delivered the Denial Letter to someone identified as the landlord,
3 presumably at Appellant's business location on March 29, 2023. The Denial Letter set forth the
4 requirements for appealing the denial, including the requirement that an appeal of the City's
5 decision be filed within ten (10) days of the date of the Denial Letter by emailing the City Clerk's
6 office. *Larry Declaration, p. 1~2 and Exhibit B to the Motion.*

7 4. On March 31, 2023, City staff emailed a "courtesy copy" of the Denial Letter that
8 had been translated into Mandarin to the registered agent of Appellant, No 1 Massage LLC,
9 Yuping Wang Wilson. *Id., p. 2 and Exhibit C to the Motion.*

10 5. The Denial Letter was dated and delivered on March 29, 2023. To be timely, any
11 appeal of the Denial Letter should have been filed with the City no later than April 10, 2023.¹

12 6. Although Appellant's legal counsel contacted the City by email on April 8, 2023, the
13 Appellant did not email its Notice of Appeal to the City Clerk's Office until April 11, 2023, at
14 03:08:47 PM.² *Id.*

15 7. Thereafter, the City filed its Motion on April 26, 2023. The City's stated grounds for
16 dismissal is Appellant's untimely filing.

17 8. In regard to motions, the Hearing Examiner's *Rules of Procedure for Hearings*
18 ("HEXRP"), Rule 1.09 provides, in part, as follows:

19 (b) Parties of record shall have an opportunity to respond to written
20 motions no later than five days after receipt or at the outset of the
21 hearing, whichever time period is shorter, unless the Hearing
Examiner orders a different time period for responding.

¹ The Hearing Examiner uses Rule 1.04 of the *Rules of Procedure for Hearings*, Resolution No. 40485, adopted on November 20, 2019, for the computation of time. The *Rules of Procedure for Hearings* can be found at: http://cms.cityoftacoma.org/hex/HEX_RULES_of_PROCEDURES_Adopted_11.20.19.pdf.

² See Hearing Examiner Decision ("HEXD") Exhibit A.

1 The Office of the Hearing Examiner notified Appellant’s legal counsel of the requirements of
2 HEXRP 1.09 by email on April 26, 2023, and Appellant’s legal counsel responded confirming
3 receipt. *See HEXD Exhibit B.*

4 9. More than ten (10) days have now passed since the City filed its Motion. The
5 Appellant has not filed a response.

6 **ANALYSIS AND CONCLUSIONS OF LAW:**

7 1. Appellant’s appeal of the City’s Denial Letter was filed one (1) day past the deadline
8 of April 10, 2023. Since the appeal was not filed within the time period prescribed by TMC
9 section 6B.10.140.E., it was untimely.

10 2. Case law has traditionally held that the doctrine of “substantial compliance” is not
11 available in the context of the present appeal to overcome a late filing, because substantial
12 compliance generally does not apply to a statutorily or legislatively established time limit for
13 accomplishing an act such as the filing requirement in TMC 6B.10.140.³

14 3. Compliance with filing deadlines is traditionally considered jurisdictional.⁴ In order
15 for the Hearing Examiner to acquire jurisdiction to review the appeal of the Denial Letter, the
16 appeal must be properly filed within the time limit prescribed by the TMC.⁵ The end result of
17 Appellant’s late filing is that the Hearing Examiner does not have jurisdiction to consider its
18 appeal, and the City’s Motion must be granted.⁶

19 _____
20 ³ *Boehm v. City of Vancouver*, 111 Wn. App. 711, 724, 47 P.3d 137 (2002); *Trohimovich v. State*, 90 Wn. App. 554,
21 556-57, 952 P.2d 192 (1998). The Examiner is aware of the newly minted state Supreme Court case *Kenmore MHP LLC v. City of Kenmore* (100934-8, May 4, 2023) which deals with substantial compliance in the context of an appeal to the Growth Management Hearings Board. That case notwithstanding, in filing no response to the City’s Motion, the Appellant made no argument for the application of the *Kenmore MHP LLC* holding here. The Examiner is not required to make arguments in the absence of their being advanced by a party.

⁴ *Keep Watson Cutoff Rural v. Kittitas County*, 145 Wn. App. 31, 37-39, 184 P.3d 1278, 1280-1282 (2008).

⁵ See e.g., *Graham Thrift Group v. Pierce County*, 75 Wn. App. 263, 877 P.2d 228 (1994).

⁶ *Inland Foundry Co. Inc. v. Spokane County Pollution Control Auth.*, 98 Wn. App. 121, 123-124, 989 P.2d 102 (1999) (holding that without subject matter jurisdiction, a court or an administrative tribunal is compelled to dismiss).

1 **DECISION AND ORDER:**

2 Based on the foregoing facts, analysis, and conclusions, the City’s Motion to Dismiss this
3 appeal is HEREBY granted and the present appeal is dismissed.

4 **SO ORDERED** this 9th day of May, 2023.

5 

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

7 **NOTICE**

8 **1.23.140 Reconsideration of Hearing Examiner decisions and recommendation.**

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

16 **1.23.160 Appeal of Hearing Examiner decisions.**

17 A. Appeal of those matters in which the Hearing Examiner enters a final decision as set forth in
18 subsection B of Section 1.23.050, except in regard to applications from preliminary plat approval,
19 may be brought by any party to the adjudicative proceeding which led to the decision entered. In
regard to applications for preliminary plat approval, any aggrieved person having standing under
the ordinance governing such application, or as otherwise provided by law, may appeal the
Examiner’s decision as provided herein.

20 B. Appeals from decisions of the Hearing Examiner in regard to those matters set forth in
21 subsection B of Section 1.23.050 shall be appealable to the Superior Court for the State of
Washington; provided, however, that those determinations regarding civil penalties, as set forth in
subsections B.18 and B.19, and disputes concerning utility service, as set forth in subsection B.21,
shall be appealable to the Tacoma Municipal Court. Any court action to set aside, enjoin, review
or otherwise challenge the decision of the Examiner shall be commenced within 21 days of the
entering of the decision by the Examiner, unless otherwise provided by statute.

**Hearing Examiner Decision
Exhibit A**

From: [Paul Cullen](#)
To: [City Clerk's Office](#)
Cc: [Paul Cullen](#)
Subject: FW: notice of appeal account 500197498
Date: Tuesday, April 11, 2023 3:08:47 PM

Good Afternoon :

I represent No ! Massage LLc , a recent applicant for a City of Tacoma business license Please consider this email as our notice of appeal of denial of the license . The basis of this appeal is that there is a mistake of fact upon which the denial was based : specifically a reference to online advertising alleges that the business is violating prostitution laws . This is a serious mistake of fact . There are a number of reasons the online materials are false and in fact are designed to drive this new competitor out of the legitimate practice they engage in . Shortly after forming its LLC and applying for a Tacoma license the owners of this business were the victims of threats demanding they close the business . The documentation referred to as “online advertising “ is not sourced with the business but rather is an anonymous bulletin board that does not attribute authorship to the spurious and false hearsay allegations sourced in the denial. In fact the so called “reviews” are obviously written by the same person who has taken steps to maintain a private profile and avoid identification. We believe they are obviously the work of a competitor in light of other characteristics of the reviews and that we can introduce testimony that shows this including that of a former police officer who is expert in this area and has offered testimony for law enforcement regarding the practice involved herein. . Thank you .

Respectfully submitted, Paul Cullen
Cullen Law Offices PLLC
PO box 11577
Bainbridge Island , Wa
981102067864311

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- 5 -

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3701
Ph: (253) 591-5195 F: (253) 591-2003

1 **Hearing Examiner Decision**
2 **Exhibit B**

3 Paul Cullen paul@cullenlawoffices.com
4 Hearing Examiner <hexcal@cityoftacoma.org>; Casparian, Debra (Legal) <dcasparian@cityoftacoma.org>; Brown,
5 Yvonne (Legal) YBrown@cityoftacoma.org
6 4/26/2023
7 RE: HEX2023-007 No. 1 Massage LLC v. City of Tacoma

8 Thank you Paul Cullen

9 **From:** Meyers, Aundrea <AMeyers@cityoftacoma.org> **On Behalf Of** Hearing Examiner
10 **Sent:** Wednesday, April 26, 2023 3:38 PM
11 **To:** Casparian, Debra (Legal) <dcasparian@cityoftacoma.org>; Paul Cullen <paul@cullenlawoffices.com>; Brown,
12 Yvonne (Legal) <YBrown@cityoftacoma.org>
13 **Cc:** Hearing Examiner <hexcal@cityoftacoma.org>
14 **Subject:** RE: HEX2023-007 No. 1 Massage LLC v. City of Tacoma

15 Good Afternoon,

16 Received and thank you. The Hearing Examiner's Office will await the appellant's response to the City's motion
17 within five days. For reference, please see *HEXRP 1.09 Motions* from the attached *Office of the Hearing Examiner*
18 *Rules of Procedure for Hearings* below:

19 **1.09 Motions**

20 Any application to the Examiner for an order shall be by motion. Unless agreed to by all
21 known participants or made during a hearing, a motion shall be in writing. Known
participants include all parties of record at the time the motion is made.

(a) Written motions shall be filed at least eight (8) days in advance of hearing, unless the
Hearing Examiner orders a different time period for submissions, and copies thereof shall
be served on other known participants. Such motions shall state the reasons for the
request and specify the relief sought.

(b) Parties of record shall have an opportunity to respond to written motions no later
than five days after receipt or at the outset of the hearing, whichever time period is
shorter, unless the Hearing Examiner orders a different time period for responding.

Sincerely,
Aundrea Meyers
Office Assistant
Tacoma City Hearing Examiner's Office
253.591.5195
hearing.examiner@cityoftacoma.org

From: Brown, Yvonne (Legal) <YBrown@cityoftacoma.org>
Sent: Wednesday, April 26, 2023 3:10 PM
To: Hearing Examiner <hexcal@cityoftacoma.org>; Legg, Louisa <llegg@cityoftacoma.org>;
paul@cullenlawoffices.com
Cc: Casparian, Debra (Legal) <dcasparian@cityoftacoma.org>
Subject: HEX2023-007 No. 1 Massage LLC v. City of Tacoma

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Tacoma Municipal Building
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Good afternoon,

Attached, please find the Notice of Appearance, the City’s Motion to Dismiss Due to the Untimely Filing and the Declaration of Deborah Larry in Support of Motion.
Please confirm receipt of the documents.

Thank you,

Yvonne Brown
Legal Assistant
Office of the City Attorney | Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402
Tel: 253.591.5617 Fax: 253.591.5755

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