

ORIGINAL

2008 MAY 19 P. 3:05

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CITY CLERK

BEFORE THE CITY COUNCIL  
OF THE CITY OF LAS VEGAS, NEVADA

\* \* \*

IN THE MATTER OF:

DEPARTMENT OF FINANCE AND  
BUSINESS SERVICES on behalf of the  
CITY OF LAS VEGAS, NEVADA,

Petitioner,

vs.

WU GUO d/b/a ASIAN MAGIC,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER REVOKING  
REFLEXOLOGY ESTABLISHMENT  
LICENSE NO. R03-00019-H-127248 AND  
REFLEXOLOGY PRACTITIONER  
LICENSE NO. R11-00037-A-127248**

On March 19, 2008, a meeting of the Las Vegas City Council was held to consider the matter of the Complaint for Disciplinary Action filed against Wu Guo d/b/a Asian Magic, 1717 South Decatur Boulevard, Las Vegas, Clark County, Nevada. Wu Guo appeared in proper person. The Department of Finance and Business Services, on behalf of the City of Las Vegas, was represented by William P. Henry, Senior Litigation Counsel to the City of Las Vegas. The City Council heard testimony from witnesses presented by the Department of Finance and Business Services, as well as Wu Guo, considered documents presented, took into account the provisions of the Las Vegas Municipal Code, and good cause appearing, hereby issues these findings of fact, conclusions of law, and order revoking Reflexology Establishment License No. R03-00019-H-127248 and Reflexology Practitioner License No. R11-00037-A-127248.

**FINDINGS OF FACT**

1. The Respondent, Wu Guo d/b/a Asian Magic, holds Reflexology Establishment License No. R03-00019-H-127248 and Reflexology Practitioner License No. R11-00037-A-127248.

1           2.       On February 6, 2008, a Complaint for Disciplinary Action was submitted to the  
2 Las Vegas City Council by Mark Vincent, the Director of Finance and Business Services for  
3 the City of Las Vegas.

4           3.       On the same date, the Las Vegas City Council approved the Complaint for  
5 Disciplinary Action and set hearing on the matter for March 19, 2008.

6           4.       On February 11, 2008, the Complaint for Disciplinary Action and Order  
7 Approving Complaint and Notice of Hearing was personally served on the Respondent.

8           5.       The Respondent answered the Complaint for Disciplinary Action, in letter form,  
9 February 26, 2008. The Complaint for Disciplinary Action on file<sup>1</sup> alleged that Wu Guo  
10 violated the Las Vegas Municipal Code by performing massage without a license January 26,  
11 2007. Wu Guo answered the complaint and asserted an affirmative defense that as a matter of  
12 law, Las Vegas Municipal Code (LVMC) § 6.52.030(a), he was permitted to practice massage  
13 because he was a licensed reflexologist under the provisions of LVMC § 6.69.

14           6.       On March 19, 2008, a hearing on the matter was conducted before the Las  
15 Vegas City Council.

16           7.       The Council considered the Respondent's affirmative defense, and concluded  
17 that a reasonable interpretation of LVMC §§ 6.52.040, 6.69.010, and 6.52.030 did not exempt  
18 a licensed reflexologist from the provisions of LVMC § 6.52.040(a) proscribing the practice of  
19 massage or the operation of a massage establishment without a valid unexpired license.

20           8.       Jim DiFiore appeared and testified that he was the manager of the Business  
21 Services Division of the Department of Finance and Business Services. He related to the  
22 Council that Wu Guo held the licenses set forth in the disciplinary complaint.

23           9.       Robert Cone appeared and testified that he was an inspector for the Business  
24 Services Division of the Department of Finance and Business Services. He related to the  
25 Council that Wu Guo was cited for performing massage without a business license in violation  
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28           <sup>1</sup> A copy of the Complaint for Disciplinary Action is attached hereto as Exhibit 1, and is  
made a part hereof, as if fully set forth herein.

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The licensee or any of its principals has been convicted of having perpetrated, or has solicited, encouraged, caused or procured another to perpetrate, deceptive practices upon the public;

....

The premises on which the business is conducted do not satisfy local, state or federal law or regulations which pertain to the activity which is actually engaged in;

The business activity constitutes, promotes, causes, allows, fosters, aids, or otherwise enables a private nuisance, public nuisance or chronic nuisance, or has been or is being conducted in an unlawful, illegal or impermissible manner, including but not limited to causing, allowing, promoting, fostering, aiding, enabling, exercising deliberate ignorance towards or failing to abate a private nuisance, public nuisance or chronic nuisance . . . .

14. LVMC § 6.69.010 provides:

Unless the context otherwise requires, the following words, as they appear in this Chapter, shall have the meanings ascribed to them in this Section:

“Employee” means any person who performs reflexology as a bona fide employee of a reflexology business.

“Outcall service” means reflexology given or provided off the premises of a licensed reflexology business.

“Reflexology” means a method of using the hands, thumbs or fingers to apply specific pressure to reflex points located in the hands, feet or ears.

15. LVMC § 6.52.030 provides:

This Chapter does not apply to:

(A) The following persons while engaged in their respective professions or occupations for which they are licensed to practice or perform in Nevada, if they do not hold themselves out to the public as massage therapists and their performance of massage is only in connection with their profession or occupation:

(1) Physicians, doctors of oriental medicine, surgeons, chiropractors, osteopaths or physical therapists, and persons directly under their control and supervision.

(2) Registered nurses.

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(3) Barbers, hairdressers and cosmeticians.

(4) Reflexologists licensed under the provisions of LVMC Chapter 6.69.

(B) Participants in a student clinic program certified by the Nevada Department of Education, but only to the extent that an instructor is present.

16. LVMC § 6.52.040 provides:

(A) Except as otherwise provided in this Section, no person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises, the operation of a massage establishment or the performance of massage as a massage therapist or as an independent massage therapist, without first obtaining and thereafter maintaining a valid unexpired license for that activity pursuant to this Title.

(B) Any person who is not licensed as an independent massage therapist but is otherwise authorized to perform massage as a massage therapist under this Chapter may continue to perform massage under that authority until October 1, 2002.

(C) After October 1, 2002, no person may perform massage as a massage therapist without a license, or a temporary license issued in accordance with LVMC 6.02.070, to perform massage as a massage therapist or an independent massage therapist.

17. LVMC § 6.69.130(A) and (B) provides:

It is unlawful for any licensee, employee, or person contracted by a licensee to:

Use lotions, creams or mechanical devices in performing reflexology; or

Diagnose or treat for specific diseases; practice spinal or other joint manipulations; prescribe or adjust medication; or prescribe or administer vitamins.

18. LVMC § 6.88.090 provides:

(A) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted.

(B) The respondent shall have the right to call and examine witnesses on his own behalf, cross-examine opposing witnesses, introduce exhibits and evidence relevant to the issues of the case, and offer rebuttal evidence.

1           19.     The hearing was not conducted according to technical rules relating to evidence  
2 and witnesses, but all relevant evidence was admitted.

3           20.     *Kochendorfer v. Board of County Commissioners of Douglas County*, 93 Nev.  
4 419, 566 P.2d 1131 (1977), provides relevantly that a business owner subject to a disciplinary  
5 hearing by his licensing authority is entitled to due process. Due process is defined as notice  
6 and hearing appropriate to the case. The Respondent, Wu Guo d/b/a Asian Magic, was  
7 provided notice and hearing appropriate to the case.

8           21.     LVMC § 6.02.360, sets forth the range of penalties available to the City  
9 Council upon finding a violation by a licensee, and provides:

10                   Upon a showing of good cause and in the discretion of the  
11 City Council, disciplinary action against a holder may take the  
12 form of cancellation, revocation, refusal to renew, suspension,  
13 imposition of conditions or restrictions or civil fine in an amount  
14 not to exceed one thousand dollars for each day that the violation  
15 which forms the subject matter of the complaint that recommends  
16 such disciplinary action is demonstrated to have been in  
17 existence, or any combination of such actions, as the particular  
18 situation may require. The Council may also impose against the  
19 licensee the actual costs incurred, and a reasonable amount for  
20 attorney's fees, resulting from the imposition of disciplinary  
21 action. The disciplinary actions available in this Section shall be  
22 in addition to, and not exclusive of, any other civil or criminal  
23 remedy which otherwise might be available.

24           22.     Wu Guo, licensed by the City of Las Vegas to practice reflexology and operate  
25 a reflexology establishment, as set forth herein, violated LVMC § 6.52.040(A) when he  
26 performed massage without a license at Asian Magic January 26, 2007. He committed this  
27 violation, after having been witnessed to commit similar violations in the past by City license  
28 inspectors, and cautioned that it was against the law. He also violated LVMC § 6.69.130(A)  
and (B) by unlawfully practicing massage therapy at Asian Magic because he utilized lotions,  
creams or mechanical devices in performing reflexology. Finally, Wu Guo at Asian Magic  
held himself out as a practitioner of massage.

          23.     If any of these conclusions of law should more properly be deemed findings of  
fact, they shall be so deemed.

.....

**ORDER**

IT IS HEREBY ORDERED that Reflexology Establishment License No. R03-00019-H-127248 and Reflexology Practitioner License No. R11-00037-A-127248 are revoked.

DATED this 14<sup>th</sup> day of May, 2008.


THE CITY COUNCIL OF THE  
CITY OF LAS VEGAS, NEVADA

By:   
OSCAR B. GOODMAN  
Mayor

ATTEST:

  
BEVERLY K. BRIDGES, City Clerk

APPROVED AS TO LEGAL FORM:

  
WILLIAM P. HENRY  
Senior Litigation Counsel

9 MAY 08  
Date

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2008 MAY 21 P 2: 04

BEFORE THE CITY COUNCIL

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IN THE MATTER OF:

DEPARTMENT OF FINANCE AND  
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CITY OF LAS VEGAS, NEVADA,

Petitioner,

vs.

WU GUO d/b/a ASIAN MAGIC,

Respondent.

**NOTICE OF ENTRY OF  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER REVOKING  
REFLEXOLOGY ESTABLISHMENT  
LICENSE NO. R03-00019-H-127248 AND  
REFLEXOLOGY PRACTITIONER  
LICENSE NO. R11-00037-A-127248**


TO: WU GUO d/b/a ASIAN MAGIC, Respondent:

PLEASE TAKE NOTICE that the FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER REVOKING REFLEXOLOGY ESTABLISHMENT LICENSE NO. R03-  
00019-H-127248 AND REFLEXOLOGY PRACTITIONER LICENSE NO. R11-00037-A-  
127248 was filed in the above-entitled matter on May 19, 2008. A copy of said document is  
attached hereto.

DATED this 21 day of May, 2008.

BRADFORD R. JERBIC  
City Attorney

By:

  
WILLIAM P. HENRY  
Senior Litigation Counsel  
Nevada Bar No. 101  
400 Stewart Avenue, Ninth Floor  
Las Vegas, NV 89101  
Attorneys for CITY OF LAS VEGAS

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 21, 2008, I served a true and correct copy of the foregoing  
3 NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
4 REVOKING REFLEXOLOGY ESTABLISHMENT LICENSE NO. R03-00019-H-127248  
5 AND REFLEXOLOGY PRACTITIONER LICENSE NO. R11-00037-A-127248 by depositing  
6 the same in the United States Mail at Las Vegas, Nevada, postage fully prepaid, certified mail,  
7 and addressed to:

8 Wu Guo  
9 d/b/a ASIAN MAGIC  
10 1717 South Decatur Boulevard  
11 Las Vegas, NV 89102

11   
12 AN EMPLOYEE OF THE CITY OF LAS VEGAS

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**FINDINGS OF FACT**

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28           <sup>1</sup> A copy of the Complaint for Disciplinary Action is attached hereto as Exhibit 1, and is  
made a part hereof, as if fully set forth herein.

1 of LVMC § 6.52.040 January 26, 2007, and pled nolo contendere in the Las Vegas Municipal  
2 Court and was found guilty April 11, 2007. He also testified that Wu Guo had been warned  
3 by business licensing inspectors on more than one preceding occasion that the practice of  
4 massage without a business license was unlawful. These warnings were prompted by  
5 witnessing Wu Guo or his employee performing massage without a business license at Asian  
6 Magic. Robert Cone showed photographs to the Council that were taken November 16, 2007,  
7 seven months after Wu Guo's plea of nolo contendere, which illustrated that Wu Guo d/b/a  
8 Asian Magic was holding his business out as performing massage, and utilizing massage tables  
9 and lotions and creams, as he had been observed to do at Asian Magic in the past.

10 10. A Clark County Regional Misdemeanor Citation/Complaint and Judgment by  
11 staff, relating to the January 26, 2007-citation, was introduced into evidence.

12 11. Wu Guo appeared and testified. He related that although he had pled nolo  
13 contendere he really was not guilty.

14 12. If any of these findings of fact should more properly be deemed conclusions of  
15 law, they shall be so deemed.

#### 16 CONCLUSIONS OF LAW

17 13. LVMC § 6.02.330(A), (C), (E), (G) and (H) provides:

18 A licensee may be subject to disciplinary action by the  
19 City Council for good cause, which may, without limitation,  
include the following:

20 The licensee or any of its principals is engaged, or has  
21 commenced, instituted, advertised, aided, carried on, continued  
22 or engaged, in a business, trade or profession without having  
23 obtained a valid license, an approval for suitability, a permit or a  
24 work card when such a person knew that one was required or  
under such circumstances that they reasonably should have known  
one was required, or has solicited, encouraged, caused or  
procured another to do so;

25 . . . .

26 The licensee or any of its principals has been convicted of  
27 an act which constitutes a crime which involves moral turpitude  
28 or involves any local, state or federal law or regulation which  
relates to the same or a similar business, or has been convicted of  
having solicited, encouraged, caused or procured another to  
commit such a violation;

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The premises on which the business is conducted do not satisfy local, state or federal law or regulations which pertain to the activity which is actually engaged in;

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5 hearing by his licensing authority is entitled to due process. Due process is defined as notice  
6 and hearing appropriate to the case. The Respondent, Wu Guo d/b/a Asian Magic, was  
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17 existence, or any combination of such actions, as the particular  
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19 licensee the actual costs incurred, and a reasonable amount for  
20 attorney's fees, resulting from the imposition of disciplinary  
21 action. The disciplinary actions available in this Section shall be  
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23 remedy which otherwise might be available.

18           22.     Wu Guo, licensed by the City of Las Vegas to practice reflexology and operate  
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25 held himself out as a practitioner of massage.

26           23.     If any of these conclusions of law should more properly be deemed findings of  
27 fact, they shall be so deemed.

28     . . . .

**ORDER**

IT IS HEREBY ORDERED that Reflexology Establishment License No. R03-00019-H-127248 and Reflexology Practitioner License No. R11-00037-A-127248 are revoked.

DATED this 14<sup>th</sup> day of May, 2008.

THE CITY COUNCIL OF THE  
CITY OF LAS VEGAS, NEVADA

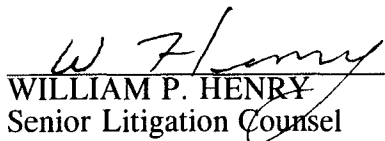
By:

  
\_\_\_\_\_  
OSCAR B. GOODMAN  
Mayor

ATTEST:

  
\_\_\_\_\_  
BEVERLY K. BRIDGES, City Clerk

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
WILLIAM P. HENRY  
Senior Litigation Counsel

9 MAY 08  
Date