

***Law Offices of Ricardo A. Nicol***

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April 27, 2018

**RECEIVED**

APR 27 2018

City of Riverside  
City Clerk's Office

City Clerk - City of Riverside, California  
Riverside City Hall  
3900 Main Street  
Riverside, California 92522

Re: Sunny Day Spa – Appeal of Revocation

Dear Clerk:

Our client Mark Bacher hereby appeals from the April 20, 2018 revocation of the Massage Establishment Permit of his business, Sunny Day Spa. A copy of the April 20<sup>th</sup> revocation letter is attached for your reference.

As required by Riverside Municipal Code 5.52.140(A), the bases of the appeal are as follows:

**CONTENTION 1.** The original revocation notice dated February 9, 2018 was vague and ambiguous in its allegations. The second paragraph talks about conduct prohibited by RMC §5.52.080(C)(2).

The third paragraph, however, states that the revocation is based instead upon the failure of the spa to "...comport with the peace, health, safety, convenience, good morals, and general welfare of the public", quoting the language of RMC §5.52.050(A)(3).

The latter code section is not, strictly speaking, a basis for permit revocation by the Police Chief. It is, rather, a basis for the Chief's refusal to issue the permit. While RMC §5.52.130(A)(5) seems to permit a revocation on this basis, it does not seem appropriate for the Police Chief to have sustained such an abstractly framed finding on the strength of a single episode of prohibited conduct.

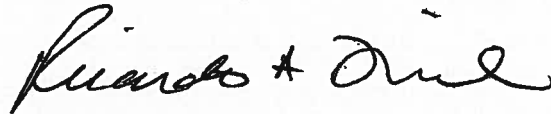
Further, the February 9 revocation notice is unclear as to whether the revocation is based upon any conduct within the purview of RMC §5.52.050(A)(3) that is separate from and addition to the conduct prohibited by RMC §5.52.080(C)(2).

**CONTENTION 2.** We presently have no information or belief concerning the truth or falsity of the allegations which are the subject matter of Citation No.758182. We are, however, informed and believe that no prosecution has been initiated or is contemplated against citee Xiaoqiong Hall.

More to the point, RMC §5.52.130(A), (1) through (3) require findings of actions attributable to the "holder of [the] establishment permit", while subsection (4) requires a finding of violations of law attributable to the holder or to his "agents, contractors or employees". Uncontradicted evidence presented to the Police Chief, and to be presented upon the hearing of this appeal, showed that Ms. Hall was not an agent or employee, nor was she authorized to be present upon the premises of Sunny Day Spa.

Thank you for your attention to this matter. Please advise us of the assigned hearing date.

Respectfully,

A handwritten signature in black ink, appearing to read "Ricardo A. Nicol", with a stylized flourish at the end.

Ricardo A. Nicol  
Attorney at Law

RAN/gt



## Police Department

*City of Arts & Innovation*

April 20, 2018

Mr. Mark Bacher  
24930 Washington Avenue, #125  
Murrieta, CA 92564

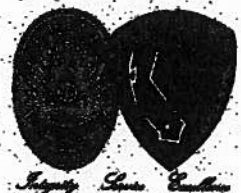
Re: Revocation of Massage Establishment Permit for Sunny Day Spa

Dear Mr. Bacher:

On February 9, 2018, Captain Frank Assumma of the Riverside Police Department (RPD) provided you with a written notice reference an incident that occurred at your business, Sunny Day Spa, 1450 University Avenue, Unit F, on February 7, 2018. During the visit by the RPD, personnel ascertained uncontroverted evidence that prohibited conduct was being conducted by one of your employees, inside your business, in violation of Riverside Municipal Code Sections 5.52.080 (A) and 5.52.080 (C) (2). As a result of the allegations that your business failed to act in a manner that comports with the peace, health, safety, convenience, good morals, and general welfare of the general public, a recommendation was made to revoke the Massage Establishment Permit for Sunny Day Spa. This prompted you to exercise your right to appeal and schedule a hearing with the RPD's Deputy Chief of Operations prior to the revocation of the Massage Establishment Permit.

On April 19, 2018, the Deputy Chief of Operations conducted a hearing to determine if you had any evidence to refute the factual allegations that lead to the proposed revocation. After careful review of the information you provided, it was determined that there was no evidence that refuted the allegation of prohibited conduct that occurred inside your business, and sufficient grounds existed to uphold the revocation of the permit. As such, the revocation of your Massage Establishment Permit for Sunny Day Spa is upheld.

You have the right to appeal this decision to the City Council's Public Safety Committee by notifying the City Clerk within ten (10) calendar days after receiving this correspondence pursuant to RMC Section 5.52.140. However, Sunny Day Spa must remain closed until the appeal is heard by the Public Safety Committee and a decision is made on whether or not to uphold the revocation of your Massage Establishment Permit.



Please be advised that you are responsible for providing a language interpreter if one is needed. The City of Riverside will not arrange for or provide a language interpreter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Greer', written in a cursive style.

Jeffrey L. Greer  
Deputy Chief, Operations  
Riverside Police Department

cc: Aaron L. Chandler, Deputy City Attorney  
Frank Assumma, Captain, Riverside Police Department  
Ricardo A. Nicol, Attorney at Law

### **PROOF OF SERVICE BY MAIL**

I am employed in the State of California. I am over the age of 18 years and not a party to the within action; my business address is 1020 N. Ross Street, Santa Ana CA 92701.

On April 27, 2018, I served the foregoing document described as **Notice of Appeal – Revocation of Permit** in a sealed envelope with United States postage fully prepaid, and addressed to:

Deputy Chief Jeffrey L. Greer  
4102 Orange Street  
Riverside CA 92501

I sealed and placed such envelope for collection and mailing to be deposited in the mail on the same day in the ordinary course of business at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for the mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed: April 27, 2018, at Santa Ana, California.

  
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GRACIELA TORRES