

**STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION**

LAMBERT ENTERPRISES, INC  
Premises Located at:  
1529 N. Broadway Street, Joliet, IL

Appellant,  
vs.  
JOLIET, IL,

Appellee.

Case No.: 20APP09

**FINAL ORDER**

**FINAL ORDER**

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the Commission”) upon the appeal of LAMBERT ENTERPRISES, INC. Appellant, (hereinafter “Lambert”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

**Procedural History**

On or about March 5, 2020, Lambert filed an application for a Class A liquor license with the City of Joliet, IL for the premises located at 1529 N. Broadway Street, Joliet, IL. A hearing was held before the Liquor Commission of the City of Joliet, Illinois on June 17, 2020. On July 31, 2020, Local Liquor Commissioner Robert O’Dekirk (hereinafter Joliet) denied Lambert’s application for a license. On August 6, 2020, Lambert filed this appeal. A hearing was held before the Commission on October 5, 2020. The matter was heard by agreement of all parties via video conference. Lambert was represented by its attorneys Marron A. Mahoney and James Murphy. The Local Liquor Commissioner for Joliet, Illinois was represented by its attorneys Sabrina Spano and Chris Regis. The matter was deliberated by the Commission on November 18, 2020.

**Discussion**

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by Local Liquor Commissioners on the State Commission. 235 ILCS 5/7-9. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an “On the Record” review of the official record of proceedings before

the Local Liquor Commission. Id. The Commission may only review the evidence found in the official record. Id. Joliet has adopted as part of the Joliet, Illinois Code of Ordinances and ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. Joliet City Code §4-56(e). Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record. 235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether local agency abused its discretion. Koehler v. Illinois Liquor Control Comm'n, 405 Ill. App. 3d 1071, 1080, (2010). "Such review mandated assessment of the discretion used by the local authority, stating that "[t]he functions of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion. Id.

**A. Whether the local liquor control commissioner has proceeded in the manner provided by law.**

Section 7-5 of the Liquor Control Act (the Act) sets forth the procedures for which a Local Liquor Commissioner can discipline a license. 235 ILCS 5/7-5. The Act mandates the licensee shall be afforded with at least a three-day written notice of hearing and be given the opportunity to defend itself before taking disciplinary action. Id. Following a hearing, the Local Liquor Commissioner shall issue a written order stating the reasons for the suspension and fine within five days. Id. The Act does not provide such a process for reviewing an application for a license.

Although the Liquor Control Act does not provide for a process by which a hearing is to occur for an application, however, the Joliet City Code provides for an application hearing process. The code requires a hearing to take place within 30 days of the application. The City

Code further requires that the City Council be notified, and that the city council determine that the issuance of the license is in the best interest of the city. Following the review by the City Council, the Local Liquor Commissioner is to issue an order consistent with the review conducted by the City Council. Joliet City Code Section 4-13.

In this case, Joliet proceeded in the manner provided by law. The application was received on March 5, 2020. A hearing was held on June 17, 2020. Although this was beyond the 30-day timeframe, the City Code establishes that the deadlines are directory and not mandatory. Furthermore, during the interim period, the Commission has taken notice of the fact that Governor Pritzker issued various disaster declarations and executive orders regarding the COVID-19 pandemic which may have caused a reasonable delay. Following the hearing, the application was reviewed by the Joliet City Council on July 21, 2020. The Joliet City Council review resolved that the local liquor commissioner should deny the application. On July 31, 2020, Joliet denied the application for a license. Accordingly, we find that the local liquor commissioner proceeded in the manner provided by law.

**B. Whether the order is supported by the findings;**

In reviewing, whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to deny the license. Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” Daley v. El Flanboyan Corp., 321 Ill. App. 3d 68, 71, (2001). We take guidance from Administrative Review Law jurisprudence. We limit our review to whether the local liquor commissioner’s order contained factual findings that support the imposed sanctions.

The order and the Joliet City Council resolution adopt the Findings of the Liquor Commission. The Joliet Liquor Code prohibits the issuance of a liquor license at a business location that sells motor fuel. (Joliet City Code Section 4-39). The findings indicate that the premises are utilized as a gas station and a convenience store and, therefore, not compliant with 4-39. Additionally, the order incorporates the determination by the City Council that it is not in the best interest of the city to issue a liquor license to Lambert. Accordingly, the order is supported by the findings.

**C. Whether the findings are supported by substantial evidence in the light of the whole record.**

Finally, this Commission must review whether the findings are supported by substantial evidence in the light of the whole record. We find that findings are not supported by substantial evidence in light of the whole record.

The Illinois Appellate Court has ruled that as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago, 277 Ill. App. 3d 959, 966, (1996). The findings of the local commissioner are presumed to be correct and will not be disturbed unless contrary to the manifest weight of the evidence. Soldano v. State of Ill. Liquor Control Comm'n, 131 Ill. App. 3d 10, 13 (1985). It is the function of the commissioner to determine the credibility of witnesses and the weight accorded their testimony. Id. Additionally, the courts have found that the question of revocation of a liquor license “presents a peculiarly local problem which can be best solved by the respective local commissioners who, because of their proximity to and familiarity with the situation, have greater access to information from which an intelligent determination can be made. That determination should not be disturbed in the absence of a clear abuse of discretion” Weinstein v. Daley, 85 Ill.App.2d 470, 481–82 (1967). Further the courts have found that, “in cases of this kind, we, and the Circuit Court, and the License Appeal Commission are all required to accept the judgment of the Local Commissioner as to the credibility of the witnesses. It is only he, as the trier of the facts, who is authorized to assess credibility, weigh the evidence, reconcile conflicting evidence, if possible, and, if not possible, determine which witnesses are worthy of belief.” Dugan's Bistro, Inc. v. Daley, 56 Ill. App. 3d 463, 470–71 (1977).

The issue in this case is not one of fact or credibility. There is no disagreement regarding the facts. The facts are simple, Lambert has applied for a liquor license for a gas station. The basis for denying the application is that the Joliet City Code prohibits the issuance of a liquor license to a business that sells motor fuels (Joliet City Code Sec. 4-12(p)) and prohibits the holder of a liquor license from selling motor fuel (Joliet City Code Sec. 4-39). There is also no dispute that the Joliet City Council passed Resolution 7450 on October 15, 2019 which permitted a liquor license to be issued to a Thornton’s gas station for the premises at 411 E.

Jackson, Joliet, Illinois. There is also no dispute that the Resolution 7450 was a legislative action taken by the Joliet City Council and that legislative action was required to not run afoul of Sections 4-12(p) and 4-39 of the Joliet Liquor Code.

The ultimate issue is whether the legislative action taken by the City of Joliet in waiving the Section 4-12(p) and 4-39 requirement for Thornton's constituted the effective repeal of Section 4-12(p) and 4-39 for Class A licensees. If the waiver constituted a repeal of Section 4-12(p) and 4-39, then the record is bereft of any other basis to deny the application. However, if the legislative action does not constitute the repeal of 4-12(p) and 4-39, then Joliet properly denied the application.

Illinois courts provide necessary guidance in interpreting ordinances. "Whether an ordinance is amendatory is not determined by its title; nor is the reference to another ordinance in the title of the new provision determinative. (People v. Bowman (1911), 253 Ill. 234, 245, 97 N.E. 304.) An act is complete in itself as to the subject with which it deals when it is intelligent and when upon examination without reference to other acts it discloses its purposes and its methods of carrying out those purposes. (\*\*298 People v. Ladwig (1937), 365 Ill. 574, 581, 7 N.E.2d 313.) A subsequent statute revising the whole subject matter of a former statute and intended as a substitute for it, although it contains no express words to that effect, operates as a repeal of the former act. \*368 City of Metropolis v. Gibbons (1929), 334 Ill. 431, 434, 166 N.E. 115; DuPage v. Molitor (1960), 26 Ill.App.2d 232, 234—235, 167 N.E.2d 592." Athey v. City of Peru, 22 Ill. App. 3d 363, 367–68, 317 N.E.2d 294, 297–98 (1974). "Our courts continually have held that in construing ordinances, the same rules apply as those which govern the construction of statutes. (See, e.g. *Village of Park Forest v. Wojciechowski* (1963), 29 Ill.2d 435, 437, 194 N.E.2d 346, 348; *State National Bank v. Zoning \*190 Board of Appeals* (1st Dist.1979), 81 Ill.App.3d 105, 107, 36 Ill.Dec. 13, 15, 400 N.E.2d 433, 435; *Berman v. Prendergast* (1st Dist.1949), 338 Ill.App. 580, 584, 88 N.E.2d 374, 376.) One of these rules is that an amendatory ordinance does not repeal an ordinance as it previously existed but merely changes or alters the original ordinance, or some of its provisions, to read as stated in the amendment, with the original ordinance continuing to operate in its changed form. \*\*\*188 \*\*1199 (*Village of Park Forest v. Wojciechowski* (1963), 29 Ill.2d 435, 438, 194 N.E.2d 346, 348. See also *Athey v. City of Peru* (3d Dist.1974), 22 Ill.App.3d 363, 367, 317 N.E.2d 294, 297.) Repeal by implication is not favored. (*Board of Commissioners v. County of Du Page* (2d Dist.1982), 107 Ill.App.3d 409,

412, 63 Ill.Dec. 274, 277, 437 N.E.2d 923, 926, *aff'd* (1983), 96 Ill.2d 378, 70 Ill.Dec. 859, 450 N.E.2d 332; *Berman v. Prendergast* (1st Dist.1949), 338 Ill.App. 580, 584, 88 N.E.2d 374, 377.) Only if there is a clear conflict between the two ordinances so that they both cannot be carried out will the intention to repeal be presumed. (*Berman v. Prendergast* (1st Dist.1949), 338 Ill.App. 580, 584, 88 N.E.2d 374, 377.) Otherwise, ordinances should be interpreted consistently with one another as part of a coherent system of legislation and those ordinances relating to the same subject matter should be construed harmoniously where possible, giving meaning to each. See *In re Marriage of Pick* (2d Dist.1983), 119 Ill.App.3d 1061, 1065, 75 Ill.Dec. 865, 868, 458 N.E.2d 33, 36; *Board of Commissioners v. County of Du Page* (2d Dist.1982), 107 Ill.App.3d 409, 412, 63 Ill.Dec. 274, 278, 437 N.E.2d 923, 927, *aff'd* (1983), 96 Ill.2d 378, 70 Ill.Dec. 859, 450 N.E.2d 332; *Schwartz v. City of Chicago* (1st Dist.1974), 21 Ill.App.3d 84, 88, 315 N.E.2d 215, 219.” *Nolan v. City of Granite City*, 162 Ill. App. 3d 187, 189–90, 514 N.E.2d 1196, 1198–99 (1987).

Section 4-12(p) states in pertinent part: “The following people are ineligible to hold a liquor license and the commissioner shall deny a liquor license to the following persons without hearing or council action thereof: (p) Any person who operates the proposed premises in whole or in part as a retail station for servicing motor vehicles with the sale or dispensing of gasoline or other motor fuels (service station). This subsection shall not apply to any person who has been issued a liquor license for premises on which a service station is in operation or under construction prior to the effective date of this amendment to the Joliet Liquor Ordinance;” Section 4-39 states: No licensee shall sell or otherwise transfer from the licensed premises any motor fuel, gasoline, or other similar product used to propel motorized vehicles. This section shall not apply to any person who has been issued a liquor license for premises on which such sales occur or will occur as part of a service station in operation or under construction prior to the effective date [September 20, 1989] of this amendment to the Joliet Liquor Ordinance.”

Both sections of the Joliet Liquor Code make it abundantly clear that it is prohibited to issue a license to a motor fuel station, and it is prohibited for a liquor licensee to sell motor fuels. The only exception listed in both sections is for licensees who held licenses prior to September 20, 1989. There are no other exceptions. There is no process included in the ordinance by which a licensee or applicant could apply for a waiver. Therefore, the only

avenue for a licensee or applicant who wishes to both sell liquor and motor fuels is by having the ordinance amended.

The Joliet City Council enacted resolution number 7450 on October 15, 2019. That resolution adopted the Development Agreement entered into by Thornton's, the Will County Historical Society, and the City of Joliet. Section 4(d)(1) of the Development agreement states as follows: "Upon application by Thornton's, the City shall issue to Thornton's: (a) a Class A license for the Subject Property, waiving the requirements of Section 4-39 regarding the prohibition of motor fuel sales at a liquor license premise (upon issuance, the Class A license shall include an affirmative waiver of Section 4-39)." The resolution of the Joliet City Council must be construed (and is admitted to by Joliet during argument) as a legislative action amending the prohibition regarding the sale of liquor and motor fuels by the same licensee.

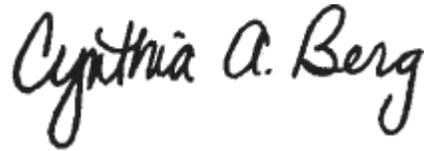
Section 4-12(p) and Section 4-39 and Resolution 7450 stand in contrast to one another. Section 4-12(p) and Section 4-39 prohibit the issuance of a license to the seller of motor fuels and prohibits a licensee from selling motor fuels. In contrast Resolution 7450 permits the sale of motor fuels at the Thornton's Class A liquor license. In order to interpret the ordinances in harmony, the only way to read these legislative actions is that Resolution 7450 exempted Class A liquor licenses from the prohibitions regarding motor fuel sales. It should be noted that our interpretation only applies to Class A liquor licenses and not any other class of liquor license issued by the City of Joliet.

Accordingly, as Joliet created an exemption from the prohibition regarding motor fuels in Resolution 7450, that exemption should have applied to any Class A liquor license holder or applicant. Lambert applied for a Class A liquor license. The Class A liquor license permits the sale of motor fuels, accordingly, Joliet's decision to deny the application based on the sale of motor fuels was not supported by the evidence in light of the entire record.

**IT IS HEREBY ORDERED:**

For the reasons stated herein, the decision of the Local Liquor Commissioner for Joliet, Illinois denying of LAMBERT ENTERPRISES, INC. application for licensure for the premises located at 1529 N. Broadway Street, Joliet, IL is reversed. The Local Liquor Commissioner for Joliet, Illinois shall take such action to conform with this order by issuing a Class A license to LAMBERT ENTERPRISES, INC for the premises located at 1529 N. Broadway Street, Joliet, IL.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on January 11, 2020.



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Cynthia Berg, Chairman



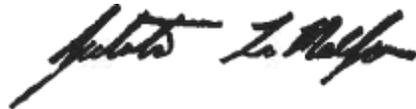
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Melody Spann Cooper, Commissioner



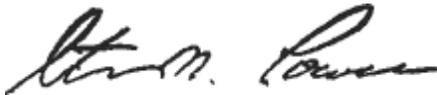
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Thomas Gibbons, Commissioner



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Julieta LaMalfa, Commissioner



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Steven Powell, Commissioner



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Donald O'Connell, Commissioner



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Patricia Pulido Sanchez, Commissioner

**THIS IS A FINAL ORDER**

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such Petition is a jurisdictional prerequisite to the Administrative Review.

