

**IN THE SUPREME COURT OF IOWA**

No. 22-0473

Polk County No. CVCV058214

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**LIME LOUNGE, LLC,**

Plaintiff-Appellant

v.

**CITY OF DES MOINES, IOWA,**

Defendants-Appellee.

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APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY  
HON. AUSTRIA A. RELPH

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RESISTANCE TO APPLICATION FOR FURTHER REVIEW  
(Court of Appeals Decision February 8, 2023)

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## **STATEMENT SUPPORTING RESISTANCE TO FURTHER REVIEW**

Contrary to the claim of the Applicant/Appellant this case is not a usurpation of statutory powers, specifically, Iowa Code §123. It is about land use and zoning. Both the district court and the Court of Appeals properly found that §123's provisions are harmonious with a municipality's home rule powers to engage in matters protected the health and welfare of its citizens. The City of Des Moines has a zoning scheme for use to preserve the health and welfare of its citizens. That scheme applies to a wide variety of businesses including bars and taverns. The Plaintiff violated the obligations it had under the City Ordinances to comply with City ordinances that are in place to protect the safety and welfare of the citizenry. See, *Lime Lounge v. City of Des Moines*, 927 N.W.2d 701, \*11 (Iowa Ct. App. 2019)(table). As such the right to conduct its business at this location was revoked because of those violations.

This is a zoning case and the City's revocation having been found proper, the tavern/bar must face the consequences of its actions before that state body that considers liquor licenses. The district court's decision was proper, and the Court of Appeals decision was proper. The Application for Further Review should be denied.

## ARGUMENT

### I. THIS CASE IS NOT ABOUT A LIQUOR LICENSE, IT IS ABOUT A VIOLATION OF A ZONING ORDINANCE

#### A. This Case is Not in Conflict with §123

As stated by the Court of Appeals in this matter, the Iowa Constitution, Article III, Section 38A, grants municipal corporations, with the authority to determine their local affairs and government, i.e., "home rule". The City of Des Moines has broad authority to regulate matters of local concern to its community at large. See, *Lime Lounge, LLC v. City of Des Moines*, 2023 WL 1813326 \*2 (2/8/2023) citing *Davenport v. Seymour*, 755 N.W.2d 533, 537-8 (Iowa 2008).

The key in this matter is found in the second clause, "not inconsistent with the laws of the general assembly...". Appellant argues the provisions on liquor licensing within Iowa Code §123.37 meant the City's requirements of a Conditional Use Permit (CUP) are a tax on the sale of liquor. However, as the District Court and then the Court of Appeals correctly found, the City was acting under the broad power given to municipal corporations on issues of *land use*:

"...it is apparent the legislature provides Des Moines the authority to Impose regulations so long as they do not impose taxes and permits on liquor licenses themselves or restrict the hours in which alcohol may be sold." *Lime Lounge, LLC v. City of Des Moines*, 2023 WL 1813326 \*3 (2/8/2023)

The city is not taxing the liquor license or permit of Lime Lounge, it is engaging in its zoning powers for the purpose of protecting public welfare. Yes, Lime Lounge has a liquor license, but that does not give it, nor any business, the right to violate city ordinances that are enacted for the purpose of public health and welfare.

Indeed, as noted by both courts considering this matter, Iowa Code §123.39(2) specifically allows such ordinances:

Local authorities may suspend any retail alcohol license for a violation of any ordinance or regulation adopted by the local authority. *Local authorities may adopt ordinances or regulations for the location of the premises of retail alcohol licensed establishments and local authorities may adopt ordinances, not in conflict with this chapter and that do not diminish the hours during which alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of alcoholic beverages and the health, welfare and morals of the community involved.* (emphasis added)

"A zoning ordinance, including amendments to it, carries a strong presumption of validity." *TSB Holdings, L.L.C. v. Bd. of Adjustment for City of Iowa City*, 913 N.W.2d 1, 14 (Iowa 2018)

Further, Iowa Code 123.37(2) specifically allows a municipality to adopt an ordinance like Des Moines 134-954 which limits noise (the violation here) to protect the "health, welfare, and morals of the community."

Excessive noise unnecessarily jeopardizes the health and welfare and degrades the quality of the lives of the residents of this community. *Id.* § 42-

248(5). The health, safety, and quality of the lives of the city's residents are important interests, balanced with a business's right to function without excessive regulation. See, *Lime Lounge*, 927 N.W.2d 701, 2019 WL 480197, at \*8. Asking Lime Lounge to abide by the terms of the CUP it agreed to abide by long ago was determined to be proper.

Lime Lounge repeatedly ignores in their application that the ordinance in question has been upheld and the CUP's revocation found proper. See, *Lime Lounge v. City of Des Moines*, 927 N.W.2d 701, 2019 WL 480197 at \*5 (Iowa Ct. App. 2019) citing *Iowa Code* § 123.39(2). What Lime Lounge wants is to violate an ordinance and suffer no consequences; that the City's ordinance means nothing if you already have a liquor license. Such a result would be absurd. A liquor license is not a right to act illegally. As the Court of Appeals stated in 2019, "[i]t would defy logic to conclude the “further amendment or revocation” was not within the Board's authority." *Lime Lounge, LLC*, 927 N.W.

The status of Lime Lounge's liquor license is for the determination of the Alcoholic Beverages Division, as determined by Iowa Code §123.

**B. As this Case is Not About a Liquor License, but Land Use  
Iowa Grocery is Inapplicable**

The Appellant/Applicant consistently and errantly asserts that the revocation of their Conditional Use Permit, nay the very existence of a

Conditional Use Permit, violates this court's decision in *Iowa Grocery Industry Association v. City of Des Moines*, 712 N.W.2d 675 (Iowa 2006).

As stated by the Court of Appeals on February 8, 2023, *Iowa Grocery* does not apply because regulations over the use of land are far different than controls over license to sell liquor.

Here, the CUP and accompanying fees are separate from the application for the state license...the ordinance and permits regulate the use of premises selling alcohol rather than imposing regulations on the sale itself. *Lime Lounge, LLC v. City of Des Moines*, 2023 WL 1813326 \*3 (2/8/2023)

Iowa Code §123.39 allows cities to exercise their power to regulate the safety, health and welfare of the community; §123.30(2) requires Lime Lounge and similar businesses to comply with local ordinances. Lime Lounge makes the illogical argument here that §123.30(2) does not apply to them.

Lime Lounge repeatedly asks, if not this case, where *does Iowa Grocery* apply? The answer is, not in this case, because this case is about city zoning laws and following city ordinance. To find that *Iowa Grocery* allows a holder of a state liquor license to be unaffected by laws controlling the safety, health and welfare of a municipality's citizens is truly an absurd result. A license under §123 is not a right to ignore all other laws.

Even were such an absurd result to be considered, Lime Lounge has not shown *Iowa Grocery* was violated.



There is no special or *additional fee*. The CUP fee is for obtaining the ability to use the land and allowed under §123.39. A CUP is consistent with *home rule authority*.

The City's ordinances and CUP requirement is not "practically identical" to *Iowa Grocery* and violative of the *Iowa Beverages Act*. If §123.37 meant what Lime Lounge implies there would be no need for the statute's provision. Again, this is not a liquor license issue, but a land use issue as specifically allowed under the express provisions of §123.30(2) and §123.39.

Likewise, the CUP is related to a specific piece of property, not a liquor license, if a different plot of land is intended to be used, of course a CUP is not transferable to another plot of land. Zoning laws are dedicated to land use, not liquor permits, by their nature they are non-transferable. The *transfer fee* argument is inapplicable.

Nor is the *uniformity* argument applicable. Again, the issue of the "liquor license" is not what is at issue here, it is the land being used in violation of a city ordinance. Similarly, the *repayment mechanism* has no application here, land use has no specific relationship to a liquor license fee. Nor is a conditional use permit regarding the use of land as it related to zoning *an additional fee* for a liquor license.

## CONCLUSION

The decision of the district court and the appellate court was proper. The City's ordinances are proper under the express provisions of §123.30 and §123.39 of the Code. The plaintiff/appellant was properly found to have violated the city's ordinance and proper had its conditional use permit revoked. It is now up to the administrative agency of the State to determine the ramifications of this as it pertains to the plaintiff/appellants liquor license under §123. The application for further review should be denied.

Respectfully submitted.

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 1,494 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) and 6.1103(4).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, John O. Haraldson, attorney for Appellees, hereby certify that I served the Appellee's Final Brief by EDMS to the following counsel on March 13, 2023.

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