

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS—EASTERN DISTRICT**  
**DIVISION TWO**

TCF, LLC d/b/a CLUB LURE,	)	No. ED98627
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	1022-CC11187 and
	)	1022-CC00702
	)	
CITY OF ST. LOUIS, EXCISE DIVISION	)	Honorable Mark H. Neill
OF THE DEPARTMENT OF PUBLIC	)	
SAFETY, and ROBERT KRAIBERG,	)	
	)	
Appellants,	)	
	)	
and	)	
	)	
MATTHEW DOUGLAS O’LEARY,	)	
	)	
Intervenor.	)	FILED: June 28, 2013

The City of St. Louis, the Excise Division of the Department of Public Safety of the City of St. Louis, and Robert Kraiberg, Excise Commissioner of the City of St. Louis and Matthew D. O’Leary, Intervenor (Intervenor O’Leary)<sup>1</sup> (collectively the City of St. Louis), appeal from a judgment reversing a decision of an administrative agency, the Excise Division of the City of St. Louis, revoking a liquor license held by TCF d/b/a/ Club Lure (TCF). We dismiss the appeal as moot.

DISMISSED AS MOOT.

Division Two Holds: Because TCF voluntarily surrendered its liquor license and closed its night club, the matter has become moot. In the absence of an actual controversy, an appellate court ordinarily will dismiss the appeal “or will remand the moot cause with directions to the trial court to vacate the judgment and dismiss the cause.” Joplin Waterworks Co. v. Jasper County, 327 Mo. 964, 978, 38 S.W.2d 1068, 1075 (Mo. 1931). For the foregoing reasons and under the

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<sup>1</sup> Intervenor O’Leary intervened on the side of the City of St. Louis in this appeal as the Protest Representative for the property owners who signed the protest petition at issue in this appeal and as a party aggrieved by the trial court’s judgment below. Intervenor O’Leary was not listed as a party in the Notice of Appeal nor was he formally a party in the trial court proceedings below. However, Intervenor O’Leary has “proprietary, pecuniary, or economic interests which are directly affected by a decision of the excise commissioner to grant dispensation privileges,” and, furthermore, as a property owner within the protest circle, has standing under the City’s Liquor control Ordinance as an aggrieved person entitled to judicial review of the administrative agency decision. Application of 354 Skinker Corp., 622 S.W.2d 724, 727 (Mo. App. E.D. 1981). Pursuant to Rule 84.05(e), Intervenor O’Leary has the status of Appellant. The City of St. Louis has adopted the arguments presented in Intervenor O’Leary’s brief as its own.

circumstances of this particular case, we elect on equitable grounds to vacate the trial court judgment.

Opinion by: Mary K. Hoff, Judge  
Kathianne Knaup Crane, Presiding Judge, and Lisa S. Van Amburg, Judge, concur.

Attorney for Intervenor: Paul M. Brown  
Attorney for Appellant: Daniel Emerson  
Attorney for Respondent: Thomas R. Carnes

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**