

ALBION CITY ORDINANCE NO. 2003-12-2

AN ORDINANCE OF THE CITY OF ALBION, CASSIA COUNTY, IDAHO, AMENDING ALBION CITY CODE, TITLE 3, CHAPTER 2, ENTITLED "BEER REGULATIONS", PROVIDING FOR APPLICATION INFORMATION TO BE PROVIDED ON A LICENSE APPLICATION; BY PROVIDING FOR THE FORM OF LICENSE AND ITS NONTRANSFERABILITY; BY PROVIDING THAT LICENSES ARE PROHIBITED TO CERTAIN PERSONS; BY PROVIDING FOR REGULATIONS AND RESTRICTIONS ON CONDUCT OF BUSINESS OPERATING UNDER A BEER LICENSE, AND SETTING FORTH PROHIBITED ACTS; BY PROVIDING FOR TRANSFER OF LICENSE, POSTING OF LICENSE ON PREMISES, AND CHANGE OF LOCATION OF LICENSED PREMISES; BY PROVIDING FOR REVOCATION, SUSPENSION OR DENIAL OF RENEWAL OF BEER LICENSES; BY PROVIDING FOR PENALTY PROVISIONS FOR VIOLATION OF BEER REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Albion has conducted a review of its codified ordinances; and

WHEREAS, upon review of beer and liquor regulations, the City Council has determined that the beer regulation were insufficient for governing of such licensing and conduct of business within the City of Albion; and

WHEREAS, the City Council has determined that provisions set forth for governing the conduct and licensing of liquor by the drink regulations has appropriate terms for taking of applications, considering of applications and designating form of license and transferability, prohibiting licenses to certain persons, regulations and restrictions on conduct of business, transfer of license, posting of license on premises, change of location of licensed premises, revocation, suspension or denial of renewal of licenses, and penalties for violations of such regulations; and

WHEREAS, the City Council has determined it to be in the best interests of the City and its citizens to have constancy and continuity in regulation of similar businesses within the City; and

WHEREAS, the City Council has determined it to be in the best interests of the general health, welfare and interests of the City of Albion to amend its current Beer Regulations to provide meaningful guidance, direction and even-handed regulation;

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ALBION, CASSIA COUNTY, IDAHO, AS FOLLOWS:

That Albion City Code, Title 3, Chapter 2 be, and hereby is amended to provide the following sections, in addition to those already set forth in the Albion City Code:

Section 1. 3-2-2-1: APPLICATION FOR LICENSE: Each applicant for a license hereunder shall execute and file with the city clerk an application in writing verified by the oath of the applicant, or one of his officers, upon a form to be provided by the city and shall pay to the city the amount of the

fee for the license applied for, as specified in section 3-2-6 of this chapter. The application shall contain the following information:

- A. Personal Information: The name and place of residence of the applicant for the three (3) years preceding the date of the application.
- B. Place Description: A description of the particular place for which the license is desired, designating the same by street and number, if practicable, or by such other apt description as definitely locates such place, and the name of the owner of the premises for which the license is sought.
- C. Owner: That the Owner is the bona fide owner of the business which will be engaged in the sale of beer, for which the license is sought.
- D. Interest In Premises: The interest of the applicant in the premises where the business is to be conducted.
- E. Other Interested Persons: The name of any other person other than the applicant who is interested financially or otherwise in the business.
- F. Statement Of Facts: A statement of the following facts concerning the applicant or his associates, if any:
 - 1. Age: That the applicant is not less than the age of nineteen (19) years.
 - 2. Record: That within three (3) years immediately preceding the date of filing the application, the applicant has not been convicted of any violation of law regulating, governing or prohibiting the sale of beer or intoxicating liquors.
 - 3. Felony Conviction: That within five (5) years immediately preceding the date of filing the application, that the applicant, and any person interested in the applicant's business as a retailer, has not been convicted of a felony or paid any fine or completed any sentence of confinement therefore within said time.
 - 4. That within three (3) years next preceding the date of filing said application the applicant has not had any license provided for herein, or any license or permit issued to the applicant pursuant to the law of the state of Idaho, or any other state, or of the United States, to sell, manufacture, transport or possess alcoholic beverages or intoxicating liquors, revoked.

Section 2. 3-2-2-2: FORM OF LICENSE; NONTRANSFERABLE: The license shall be upon a form to be provided by the city and shall be for a particular room or place. It shall not be transferable except by operation of the law, and shall expire on August 1 at one o'clock (1:00) A.M. next succeeding the date of its issue.

Section 3. 3-2-2-3: LICENSE PROHIBITED TO CERTAIN PERSONS: No license shall be granted to, nor the licensee's business carried on under such license by, any of the following persons:

- A. **Revoked License:** Any person whose license herein provided for is at any time revoked or cancelled for any violation of this chapter.
- B. **State/County Disqualification:** Any person who is not qualified to obtain a retailer's license from the state of Idaho and/or Cassia County.
- C. **False Representation:** Any person who makes any false statement or representation in any application for a license hereunder.
- D. **Associate Of Disqualified Person:** Any person who is the business associate, employee, partner or agent of any disqualified person hereunder, or under the laws of the state of Idaho, when such disqualified person is interested in the ownership, management or control of the business of retailer for which application is being made.
- E. **Previous Operation:** Any person who, at any time prior to making application, has failed, neglected or refused to conduct a quiet, orderly place of business as a retailer within the city.

Section 4. 3-2-7: REGULATIONS AND RESTRICTIONS:

- A. **Conduct Of Business:** Every person to whom a license is granted hereunder shall, at all times while doing business thereunder, conduct a quiet and orderly place of business.
- B. **Prohibited Acts:** No licensee shall:
 1. **Sale Off Premises:** Sell or dispense any beer or alcoholic liquor outside the licensed premises.
 2. **Underage Persons:** Sell, dispense or serve any beer or alcoholic liquor to a person under twenty one (21) years of age.
 3. **State Law:** Violate any law of the state of Idaho relating to the selling, serving or distribution of beer or alcoholic liquor.
 4. **Posting License:** Fail to keep the license posted in a conspicuous place within the licensed premises.
 5. **Inspection:** Fail to keep the licensed premises open to inspection by the police officers of any city and the sheriff of Cassia County.
 6. **Hours:** Sell, serve, dispense, or give away any beer between the hours of one (1:00) o'clock A.M. and six (6:00) o'clock A.M.

Section 5. 3-2-8: TRANSFER OF LICENSE; POSTING; CHANGE OF LOCATION:

- A. **Rights Not Granted:** Nothing in this chapter shall be construed to create any vested right in any person to assignment, renewal or reissuance or continuance of any license or the right to assign any license, or the right to issue a power of attorney over a license.

- B. Approval Required; Examination: No license shall be assigned or transferred nor power of attorney issued over a license without the written consent and approval of the city council. The sheriff or any police officer or any officer of the United States treasury department or officer of the state of Idaho charged with the enforcement of any of the provisions of the regulations for the retail sale of beer or intoxicating liquor, or the Mayor of Albion or any member of the Albion City Council, shall have the right at any time to make an examination of any licensed premises to ascertain if the licensee of such premises is conforming to the provisions of this chapter, the laws of the state of Idaho, or the laws of the United States applicable thereto.
- C. Posting Of License: All licenses shall be posted in a conspicuous place on the premises and kept posted during the full period of time for which the license is issued.
- D. Death, Bankruptcy, Etc: In case of death, receivership, assignment, bankruptcy or incompetency of the licensee, the licensee's business may be carried on under the license by the duly appointed, qualified and acting receiver, assignee, trustee in bankruptcy, guardian, executor or administrator of the licensee; provided, that such receiver, assignee, trustee, guardian, executor or administrator shall file with the City Clerk a certified copy of his appointment and secure the written consent of the City Council.
- E. Change Of Location: Any licensed person desiring to change his place of business from one location to another shall file with the city clerk an application therefor. The city clerk shall make investigation of the new proposed place of business and within four (4) days make report thereon to the mayor and city council, accompanied by the application.

Section 6. 3-2-9: REVOKE, SUSPEND, OR DENY RENEWAL:

- A. Cause For Revocation, Suspension, Or Denial Of Renewal: Any license issued hereunder may be revoked by the city council or suspended for a period not to exceed six (6) months or the city council may refuse to grant a renewal of said license after the date of expiration thereof, for any fraud or misrepresentation on the part of the licensee or his employee or agent or for any violation of any ordinance of the city, county, or of any law of the state relating to the manufacture, sale or possession of intoxicating liquor or beer.
- B. Procedure: Whenever information shall be received by the mayor and/or city council that any licensee has rendered his license subject to revocation or suspension as herein provided, or any complaint in writing is filed with the mayor and/or city council stating facts establishing that such licensee has rendered his license subject to revocation or suspension, a copy of such report or complaint shall be mailed to the licensee together with a notice directing him to appear before the city council at its next succeeding regular meeting and answer said charge. At such meeting the mayor and city council shall hear the licensee and any evidence that may be offered by him of the complaint, and thereupon, if it shall find that cause exists for the revocation or suspension of such license, the city council may revoke such license or suspend the same for a period not to exceed six (6) months and may direct that the license theretofore issued shall be taken by the sheriff or city police chief and forthwith cancelled or revoked or suspended as the case may be.

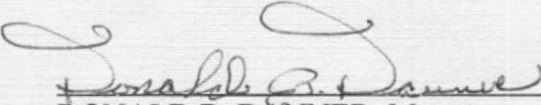
Section 7. 3-2-10: PENALTY: Any person, firm, corporation, or individual whether as principal, agent, employee, or otherwise who shall violate the terms of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as set forth in section 1-4-1 of this code.

Section 8. EFFECTIVE DATE: This ordinance amending Title 3, Chapter 2, Beer Regulations shall take effect and in be in full force and effect on January 1, 2004, provided all other requirements of passage, approval and publication, as by law provided, are duly met.

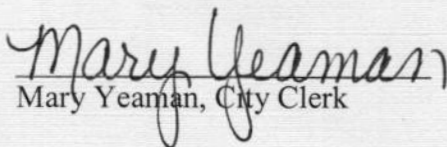
Section 9. The members of the City Council, by unanimous vote and pursuant to Idaho Code Section 50-902, and the Albion City Code, Title 1, Chapter 5, Section 5(B), have dispensed with the rule requiring three (3) readings of this ordinance.

PASSED this 2nd day of December, 2003, by the City Council of the City of Albion, Idaho, with 3 council members voting for the Ordinance, and 0 council members being opposed to the Ordinance.

APPROVED this 2nd day of December, 2003, by the Mayor of the City of Albion, Idaho.


DONALD B. DANNER, Mayor

ATTEST:


Mary Yeaman, City Clerk

CITY OF ALBION, CASSIA COUNTY, IDAHO

**SUMMARY OF AMENDED ALBION CITY CODE, TITLE 3, SECTION 2
BEER REGULATIONS**

ALBION CITY ORDINANCE NO. 2003-12-2

AN ORDINANCE AMENDING ALBION CITY CODE, TITLE 3, SECTION 2, PROVIDING FOR AMENDMENTS TO BEER REGULATIONS IN ADDITION TO SUCH REGULATIONS AS PRESENTLY CONSTITUTED: DEFINING THE APPLICATION FOR LICENSE; THE FORM OF LICENSE AND NONTRANSFERABILITY; THAT LICENSES WILL BE PROHIBITED TO CERTAIN PERSONS; PROVIDING REGULATIONS AND RESTRICTIONS ON CONDUCT OF BUSINESS; PROVIDING REGULATION FOR TRANSFER OF LICENSE, POSTING OF LICENSE ON PREMISES, CARRYING ON OF BUSINESS IN EVENT OF LICENSEE'S DEATH, BANKRUPTCY, ETC., AND CHANGE OF BUSINESS LOCATION; PROVIDING REGULATION FOR REVOCATION, SUSPENSION OR DENIAL OF RENEWAL OF LICENSE; PROVIDING FOR A PENALTY FOR VIOLATION OF TERMS OF CHAPTER; AND PROVIDING FOR AN EFFECTIVE DATE OF ORDINANCE.

SECTION 1: Adds Albion City Code Section 3-2-2-1 providing for application for beer licenses in the City of Albion. This section requires personal information, place description, owner information, interest in premises, other interested persons in license, a statement of facts concerning applicant and associates, including age, criminal record, and felony conviction information.

SECTION 2: Adds Albion City Code Section 3-2-2-2 setting forth that a city form of application is required and that such license is only transferable by operation of law, and expiration date of licenses on August 1 at one o'clock a.m. next succeeding date of issue.

SECTION 3: Adds Albion City Code Section 3-2-2-3 prohibiting licenses to persons who have license revoked for violations of this chapter, or that are disqualified by the State of Idaho or Cassia County, who makes false representations in application, who is a business associate of a disqualified person, or who fails or neglects to conduct an orderly place of business as a retailer within the City.

SECTION 4: Adds Albion City Code Section 3-2-7 requiring the orderly conduct of business and prohibits sale off premises, sale to persons under age twenty-one, violation of State law for sale of beer or liquor, failure to post license in conspicuous place on premises, and fails to keep premises open to inspection by police officers.

SECTION 5: Adds Albion City Code Section 3-2-8 providing that there is no vested right or assignment, renewal, or reissuance or continuance of license; requiring city council written approval before license can be assigned or transferred; providing a right to Mayor or law enforcement to make examination of premises to assure conformance to laws, ordinances and regulations; requires posting of license in conspicuous place on premises; provides for carrying on of business by appointed receivers, assignees, trustee in bankruptcy guardian, executor or administrator of licensee; and provides for application of change of location of place of business.

SECTION 6: Adds Albion City Code Section 3-2-9, setting forth cause for revocation, suspension or denial of renewal for fraud, misrepresentation or violation of city or county ordinance or state law relating to manufacture, sale or possession of intoxicating liquor or beer; provides a procedure for hearing and deciding issues of suspension or revocation; and that license may be revoked by city council for not to exceed six (6) months


SECTION 7: Adds Albion City Code Section 3-2-10 providing that any person, firm, or corporation violating the terms of the beer regulations shall be guilty of a misdemeanor, to be punished as set forth in Albion City Code Section 1-4-1.

SECTION 8: Provides that this ordinance amending Title 3, Chapter 2, Beer Regulations of the Albion City Code shall take effect and be in full force and effect on January 1, 2004, provided all other requirements of passage, approval and publication, as by law provided, are duly met.

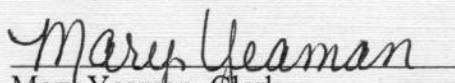
SECTION 9: The full text of Albion City Ordinance No. 2003-12-2 is available at the Albion City Offices, in Albion, Idaho, and will be provided to any citizen without charge upon personal request during normal office hours, Monday through Friday, excepting City recognized holidays.

DATED this 3rd day of December, 2003.

CITY OF ALBION


DONALD B. DANNER, Mayor

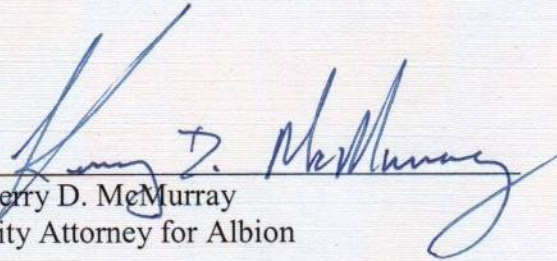
ATTEST:


Mary Yeaman, Clerk

CITY ATTORNEY STATEMENT

I, the undersigned City Attorney for the City of Albion, Idaho hereby certify that the foregoing Summary of Albion City Ordinance No. 2003-11-2, amending the Albion City Code, Title 3, Chapter 2, Beer Regulations is a true and complete summary of the amendments to said ordinance and provides adequate notice to the public of said amendments.

Dated this 3rd day of December, 2003.


Kerry D. McMurray
City Attorney for Albion