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ORDINANCE 60 LIQUOR

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Section 60.01: STATE LAW ADOPTED. The City adopts and incorporates the provisions of Minnesota Statutes Chapter 340A, as amended, pertaining to the retail sale, distribution and consumption of intoxicating and 3.2 malt liquor into this Ordinance.

Section 60.02: DEFINITIONS.

Subd. 1: Alcoholic Beverage. Shall mean any beverage containing more than one-half of one percent alcohol by volume.

Subd. 2: Club. Shall have the meaning designated in Minn. Stat. §340A.101, Subd. 7, as amended.

Subd. 3: Commissioner. Shall mean the Commissioner of Public Safety.

Subd. 4: Exclusive Liquor Store. Shall mean any establishment used exclusively for the sale of those items authorized in Minn. Stat. §3401A.412, Subd. 14, as amended.

Subd. 5: Intoxicating Liquor. Shall mean ethyl alcohol and include distilled, fermented, spirituous, vinous and malt beverages containing more than 3.2 percent of alcohol by weight.

Subd. 6: Licensed Person. Shall include persons, corporations, partnerships, and other unincorporated associations and entities.

Subd. 7: Off Sale. Shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises only.

Subd. 8: On Sale. Shall mean the sale of alcoholic beverages for consumption on the licensed premises only.

Subd. 9: Package or Original Package. Shall mean a sealed or corked alcoholic beverage container.

Subd. 10: Sale and Sell. Shall mean and include all barbers, and all manners or means of furnishing intoxicating liquor or liquors as above described in violation or evasion of law.

Subd. 11: 3.2 Percent Malt Liquor. Shall mean malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight.

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Section 60.03: LICENSE REQUIRED. No Person, except a wholesaler or manufacturer to the extent authorized under state law, shall directly or indirectly manufacture, import, sell, keep for sale, exchange, barter, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without first obtaining the required licenses and permits.

Section 60.04: INTOXICATING LIQUOR LICENSE.

Subd. 1: On-Sale. The City may issue an on-sale intoxicating liquor license only to hotels, restaurants, bowling centers, qualified clubs or congressionally chartered veterans organizations with the Commissioner's approval, and Exclusive Liquor Stores.

Subd. 2: Off-Sale. With the Commissioner's approval, the City may issue an Off-Sale intoxicating liquor license to an Exclusive Liquor Store or drugstore that had an off-sale license before May 1, 1994. The City may not issue more than one (1) Off-Sale license to any one person or place. The City may not issue an Off-Sale license to a place where 3.2 percent malt liquor is sold for consumption on the Premises, unless the premises has both an On-Sale and Off-Sale license under this Section or a combination license.

Subd. 3: Temporary On-Sale. With the Commissioner's approval, the City may issue a temporary license for the On-Sale of intoxicating liquor for not more than four (4) consecutive days to a Club or charitable, religious or other nonprofit organization in existence for at least three (3) years in connection with a social event in the City sponsored by the licensee. The license may authorize the On-Sale of liquor on premises the licensee does not own or permanently occupy, and may provide that the licensee may contract for intoxicating liquor services with the holder of a full-year On-Sale license under this Section.

Subd. 4: Club License. The City may issue a special club license only to a Club or congressionally chartered veteran's organization which has existed for at least three (3) years.

Subd. 5: Sunday Sales. The City may authorize a restaurant holding an On-Sale license under this section to sell intoxicating liquor on Sundays. Hillcrest Family Restaurant – Stubby's Tavern, Albany Golf Club, Inc., Albany American Legion, Paul's Par-a-dice, Ranger Bar, Rookies Sport Bar and Albany Bowl are authorized to sell intoxicating liquor, in conjunction with the sale of food, between the hours of 10:00 a.m. Sundays and 1:00 a.m. Mondays, provided that each individual establishment obtains a Sunday license from the City, and is in conformance with the Minnesota Clean Air Act.

Section 60.04, Subd. 5 amended 10/2003 & June, 2004

Subd. 6: Community Festival. The City may authorize a holder of a retail On-Sale intoxicating liquor license issued by the City to disperse intoxicating liquor off-premises at a community festival held in the City.

Subd. 7: Expiration. All intoxicating liquor licenses, except temporary licenses, shall expire on the same date.

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Subd. 8: Employment of Minors. No person under eighteen (18) years of age may serve or sell intoxicating liquor in a retail intoxicating liquor establishment.

Subd. 9: Off-Site Storage. A licensee under this Section may not store any intoxicating liquor at any location other than the licensed premises without the permission of the Commissioner and City Council.

Subd. 10: Number of Licenses. The City may issue five (5) Off-Sale licenses. The number of Club licenses is limited to qualified applicants and temporary On-Sale licenses are limited by M.S.A. §340A.410, Subd. 10, as amended.

Subd. 11: Combination License. The City may issue both On-Sale and Off-Sale licenses to the same licensee or a combination On-Sale and Off-Sale license to a licensee.

### Section 60.05: 3.2 PERCENT MALT LIQUOR LICENSE.

Subd. 1: On-Sale and Off-Sale. The City may issue one year On-Sale or Off-Sale licenses for the sale of 3.2 percent malt liquor. The City may issue On-Sale licenses to drugstores, restaurants, hotels, Clubs, bowling centers and establishments used exclusively for selling 3.2 percent malt liquor with the individual sale of tobacco and soft drinks.

Subd. 2: Temporary On-Sale. The City may issue a temporary On-Sale license to a Club or charitable, religious, or nonprofit organization. Any Person holding an On-Sale or Off-Sale intoxicating liquor license under Section 60.4 may sell 3.2 percent malt liquor at On-Sale and Off-Sale without further license.

Section 60.06: LICENSE APPLICATION. Every license applicant shall verify and file an application with the City Clerk/Administrator on the form the Commissioner prescribes stating the applicant's name, age and citizenship, representation as to the applicant's character with any required references, whether the sale is for "on sale" or "off sale," the business in connection with which the proposed licensee shall operate and its location, whether applicant owns a business, how long he or she has been in that business at that place, and any other information the City Council may require.

Section 60.07: LIABILITY INSURANCE. The City shall not issue or renew any license unless the applicant demonstrates proof of financial responsibility conforming with Minnesota Statutes §340A.409, as amended, regarding liability under Minnesota Statutes §340A.801, as amended, and files proof with the Commissioner and the City Council.

### Section 60.08: GRANTING LICENSES.

Subd. 1: Preliminary Investigation. On an initial application for or transfer of an existing On-Sale intoxicating liquor license, the applicant shall pay with the application an investigation fee established in Appendix A, not to exceed Five Hundred Dollars (\$500.00), for which the City shall conduct a preliminary background and financial investigation of the applicant. The application shall be made on a form prescribed by the Commissioner and shall include any additional information the City Council requires. If the City Council or Commissioner

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determines that a comprehensive background and financial investigation of the applicant is necessary, the Council may conduct the investigation through the City Police Department, or contract with the Bureau of Criminal apprehension for the investigation. The City Council shall not issue or renew a license if the results show to the satisfaction of the City Council that issuance, transfer or renewal would not be in the public interest. If an investigation outside the State is required, the applicant shall be charged the costs established in Appendix A, not to exceed \$10,000, which shall be paid by the applicant after deducting any initial investigation fee already paid. The applicant shall pay the fee whether or not the license is granted.

Subd. 2: Issuance. The City Council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted. Following the investigation, the Council shall grant or return the application under this Section. No Off-Sale license shall become effective until it, together with the security information furnished by the applicant, has been approved by the Commissioner.

Subd. 3: Person and Premises Licensed. The City Council shall issue each license only to the applicant and only for the premises described in the application. The City Council shall not issue more than one Off-Sale intoxicating liquor license to any one person or any one place. A licensee shall not transfer the license to another person or place without the City Council's approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license and shall be prohibited.

### Section 60.09: LICENSE FEES.

Subd. 1: Fees. The City Council shall set the annual license fees subject to change following a hearing on the proposed increase with notice to all affected licensees at least thirty (30) days before the hearing. Appendix A lists the current license fees.

Subd. 2: Payment. Each license application shall be accompanied by the required license fee, and the City Clerk/Administrator shall issue a receipt to the applicant for payment in full of the required fee. All fees shall be paid into the City's general fund.

Subd. 3: Effective Dates. Each license for "on sale" or "off sale" shall be issued for a period of one year from July 1 through June 30. If the application is made during the license year, the City may issue the license for the remainder of the year, with payment of the full license fee.

Subd. 4: Refunds. The City shall not refund any license fee.

Section 60.10: PERSONS INELIGIBLE FOR LICENSE. No license shall be granted to or be held by any Person:

Subd. 1: Under the age of twenty-one (21) years;

Subd. 2: Who is not of good moral character or repute;

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Subd. 3: Who, if he or she is an individual, is not a resident of the State of Minnesota, or does not become a resident of the State of Minnesota within ninety (90) days after the license is issued. If the applicant is a corporation, at least one (1) principal officer of the corporation must be a resident of the State of Minnesota or must become a resident of the State of Minnesota within ninety (90) days after the license is issued.

Subd. 4: Who is or has been convicted of any violation of any law in the United States or the State of Minnesota, or of any local ordinance regarding the manufacture, sale, distribution, or possession for sale or distribution of intoxicating liquor, or whose liquor license has been revoked or who has committed a willful violation of any such laws or ordinances.

Subd. 5: Who is a manufacturer or wholesaler of intoxicating liquor or is interested directly or indirectly in the ownership or operation of any such business.

Subd. 6: Who is directly or indirectly interested in any other establishment in the municipality to which a license of the same class has been issued under this Ordinance.

### Section 60.11: PLACES INELIGIBLE FOR LICENSE.

Subd. 1: General Prohibition. The City shall not issue a license for any place or any business ineligible for a license under state law.

Subd. 2: Delinquent Taxes and Charges. The City shall not issue a license for any premises on which taxes, assessments, or other financial claims of the City are delinquent and unpaid.

Subd. 3: Charges. The charges referred to in Subdivision 2 of this Section may relate to unpaid water bills, and in being consistent with the policies of the City Council, may relate to charges for legal fees incurred while enforcing this Ordinance against the licensee or the licensee's bona fide employees.

Subd. 4: Another's Premises. The City may not issue an intoxicating liquor license to a Person in connection with the premises of another to whom a license could not be issued, except as State law otherwise provides.

Section 60.12: LICENSE CONDITIONS. Every license is subject to this Ordinance's conditions, regulations promulgated by the Commissioner, and applicable State laws.

Section 60.13: LICENSE POSTING. A retail license to sell alcoholic beverages must be posted in a conspicuous place in the licensed premises.

Section 60.14: PROHIBITIONS. No licensee shall keep, possess, operate or permit the keeping, possession, or operation of any slot machine, or any gambling device or apparatus, nor permit any gambling, prostitution or other disorderly persons on the licensed premises or in any room adjoining or inside the licensed premises, except gambling devices kept or operated and raffles if permitted by City ordinances or state law, including Minn. Stat. ' 349.26, as amended.

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Section 60.15: LICENSEE'S RESPONSIBILITY. Every licensee shall be responsible for the conduct of the licensee's place of business and the condition of sobriety and order in it. The licensee shall employ reputable employees that shall conduct business in his or her absence in a legal manner. The act of any employee on the licensed premises authorized to sell alcoholic beverages shall be the act of the licensee as well, and the licensee shall be liable for all penalties in this Ordinance and the law equally with the employee.

Section 60.16: INSPECTIONS. Every licensee and permittee shall allow any police officer, health officer, or properly designated officer or employee of the City to enter, inspect and search the premises of the licensee or permittee without a warrant during business hours, and within one and one-half hours after the closing time as prescribed by law, without warrant. The Chief of Police, or the Chief's designated agents, shall conduct periodic checks of licensed premises to ensure this Ordinance is not being violated.

Section 60.17: NUDITY AND SEXUAL CONDUCT PROHIBITED. The following acts or conduct on licensed premises shall be strictly prohibited:

Subd. 1: To employ or use any person in the same or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing so as to expose or to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

Subd. 2: To employ or use services of any host or hostess while the host or hostess is unclothed or in such attire, costume or clothing as described in subdivision 1 of this Section.

Subd. 3: To employ or use any dancers, musicians, or other performers or entertainers, who are unclothed or in such attire, costume or clothing as described in subdivision 1 of this Section.

Subd. 4: To directly or indirectly sponsor any contests which may foreseeably cause, result in or lead to the occurrence of the acts or incidents described in subdivision 6 of this Section.

Subd. 5: To encourage or permit any person on the licensed premises to touch, caress or fondle breasts, buttocks, anus or genitals of any employee of the licensee or any performers or entertainers who are employed or whose services are used by the licensee.

Subd. 6: To permit any person to perform acts of or acts which simulate:

- a) With or upon another person sexual intercourse, sodomy, oral copulation, flagellation or any sexual act which is prohibited by law;
- b) Masturbation or bestiality;
- c) With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breasts;

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- c) The displaying of the pubic hair, anus, vulva, genitals or female breasts below the top of the areola;

Subd. 7: To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this Section.

Subd. 8: To permit any person to remain in or upon the licensed premises, or any area owned or controlled by the licensee which is viewable from upon the licensed premises, who exposes to public view any portion of his or her genitals or anus.

Subd. 9: To permit the showing of film, still pictures, electronic reproduction, or other visual reproduction depicting:

- a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual act which is prohibited by law.
- b) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
- c) Scenes where a person displays the vulva, the anus or the genitals.
- d) Scenes where a person displays the vulva, the anus or the genitals.

Subd. 10: Any person violating any portion of this Section shall be guilty of a misdemeanor. Any violation of this section shall also constitute grounds for revocation or suspension of the licensee's license, in accordance with the rules and procedures otherwise established by this Ordinance and State law.

### Section 60.18: CONSUMPTION AND DISPLAY PERMITS.

Subd.1: Approval. No business establishment or Club not holding an On-Sale intoxicating liquor license shall directly or indirectly allow the consumption and display of alcoholic beverages or knowingly serve any liquid for the purpose of mixing it with intoxicating liquor without first securing the approval of the City Council and obtaining a permit from the Commissioner according to M.S.A. §340A.414, as amended. The permit does not authorize the sale of intoxicating liquor on the premises.

Subd. 2: Permit Term and Fee. Consumption and Display permits expire on March 31st of each year. Applicants for consumption and display permits shall pay to the City the permit fee established in Appendix A, for which the City shall issue a proof of payment that must be posted in a conspicuous place upon the premises alongside the permit issued by the Commissioner. The City's fee for the initial consumption and display permit issued to any premises shall be for a full year even if the term is for less than a full year.

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Subd. 3: No Refunds. The City shall not refund any license or permit fees upon surrender of a permit.

Subd. 4: Furnishing to Minors. Patrons upon the premises holding a consumption and display permit are prohibited from furnishing intoxicating liquor to minors or anyone other than their own bona fide guests.

Subd. 5: Inspection. The premises shall be open for inspection by law officers or duly qualified designees of the City at any time when the premises is open to the public for business or any other time when the premises is occupied. Intoxicating liquor sold, served or displayed in violation of law may be seized and disposed of.

Subd. 6: License Required. To qualify for a consumption and display permit, the premises must be licensed by the City for the sale of On Sale 3.2 percent malt liquor.

Subd. 7: State Notification. The City, its duly qualified designees or law officers shall notify the Commissioner of any violations of this Section.

Subd. 8: Non-Applicability. This Section does not apply to any premises licensed for On-Sale or Off-Sale intoxicating liquor.

Section 60.19: HOURS AND DAY OF SALE. Unless this Ordinance provides otherwise, the hours and days of sale shall be according to M.S.A. §340A.504, as amended. All Persons, except the licensee, the licensee's bona fide employees, and law enforcement officers, shall be excluded from the premises within thirty (30) minutes after the expiration of the time on any day when intoxicating liquor may be legally sold on the premises. Each licensee shall be required to keep a current written list setting forth the names of current employees, including their names, addresses and social security numbers. This list shall be provided to members of the police department or other persons acting on behalf of the City upon demand. It shall be unlawful to permit the consumption or displaying of intoxicating liquors later than thirty (30) minutes after the sales of such liquors must terminate. It shall be conclusively presumed that any intoxicating liquor remaining on a bar, or in a booth, or on a table, shall be for the purpose of consuming it in violation of this Section.

### Section 60.20: PERSONS TO WHOM SALE IS ILLEGAL.

Subd. 1: No Person to whom the sale of intoxicating liquor or 3.2 percent malt liquor is forbidden by state law in On-Sale or Off-Sale licensed premises shall (1) misrepresent his or her age to obtain intoxicating liquor or 3.2 percent malt liquor, (2) enter any premises licensed under this Ordinance to procure, consume, purchase or attempt to purchase alcoholic beverages, or (3) have another purchase or attempt to purchase for him or her any alcoholic beverage on the licensed premises.

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Subd. 2: No Person to whom the sale of intoxicating liquor or 3.2 percent malt liquor is forbidden shall remain in any place where “on sale” intoxicating liquor or 3.2 percent malt liquors are sold or given away, except as permitted in this Section. This Section shall not prohibit a person 19 years of age or older from entering or remaining after the hours of 10:00 p.m. in an establishment that is licensed to sell intoxicating liquor or 3.2 percent malt liquor so long as they are accompanied by a person 21 years of age or older. A person 18 years or younger may be in the establishment before 10:00 p.m. when accompanied by a parent/guardian. This Section shall not prohibit a person from entering an establishment licensed to sell intoxicating liquor or 3.2 percent malt liquor for purposes of said person eating, or from entering a bowling alley for purposes of bowling, or a special club for special functions occurring within that establishment, as long as the individual stays in the eating or bowling area, or an area where the special function is occurring without consuming intoxicating liquors or 3.2 percent malt liquor. The licensee shall be responsible for enforcing this Section.

Updated 60.20, Subd. 2 on 2/16/05

Subd. 3: No Person shall give, procure or purchase intoxicating liquor or 3.2 percent malt liquor for any Person to whom the sale of intoxicating liquor or 3.2 percent malt liquor is forbidden by state law or this Ordinance.

### Section 60.21: CONSUMPTION IN PUBLIC PLACES.

Subd. 1: No Person shall mix or prepare intoxicating liquor or 3.2 percent malt liquor for consumption in any public place or place of business not licensed to sell "on sale" intoxicating liquor or 3.2 percent malt liquor in any such place.

Subd. 2: No Person shall sell or consume any intoxicating liquor or 3.2 percent malt liquor on a public highway or in an automobile in any public place in the City.

Subd. 3: No Person shall consume or carry any open container of intoxicating liquor or 3.2 percent malt liquor on any public street, highway, alley, public sidewalk, public parking lot, or private parking lot which is open for use by the general public in the City limits.

Subd. 4: No Person shall carry or consume an open container of any intoxicating liquor or 3.2 percent malt liquor on any parking lot provided for patrons of a licensee under this Ordinance.

Subd. 5: All intoxicating liquor or 3.2 percent malt liquor sold On-Sale shall be possessed and consumed inside the building where purchased On-Sale. No Person shall possess or consume any intoxicating liquor or 3.2 percent malt liquor outside the building of an On-Sale licensed premises if the intoxicating liquor or 3.2 percent malt liquor was purchased On-Sale. The licensee shall be responsible for enforcing this Section. Permitting a Person possessing intoxicating liquor or 3.2 percent malt liquor On-Sale to leave the building may be deemed to be a violation of this Ordinance by the licensee.

Subd. 6: No Off-Sale intoxicating liquor or 3.2 percent malt liquor may be consumed while on the licensed "off sale" premises.

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Subd. 7: The City Council may, upon application and upon such other proof as may be deemed appropriate by the Council, grant special exceptions to the preceding sections regarding sales on a licensed premises or in public areas or parking lots. A special exception shall be limited to a period no longer than twenty-four (24) hours. The approval shall be further subject to proof of insurance for the type of event requested by the applicant. The City Council shall determine the fee to be charged for a special permit on a case-by-case basis.

### Section 60.22: IDENTIFICATION.

Subd. 1: Proof of Age. Proof of age for purposes of consuming, purchasing or possessing an alcoholic beverage, the consumption, sale, or possession of which is regulated by age, shall only be established by a valid driver's license issued by the State of Minnesota or of another state, or a current Minnesota identification card issued pursuant to Minnesota Statutes §171.07, as amended.

Subd. 2: Refusal. No Person shall refuse to show proper identification to the licensee, the licensee's bona fide employees, or to a police officer when requested. Refusal to show proper identification shall be a violation of this Ordinance if the Person is in an establishment licensed to sell alcoholic beverages, or is consuming, or possessing, alcoholic beverages outside such establishments.

Section 60.23: LICENSE SUSPENSION OR REVOCATION. The City Council may revoke the license or permit, suspend the license or permit for up to sixty (60) days, impose a civil penalty of up to \$2,000, or impose any combination of these sanctions, for each violation by a licensee or permittee under this Ordinance or State law. No suspension or revocation shall take effect until the license or permit holder has received notice and an opportunity for a hearing under M.S.A. §14.57 to 14.69 of the Administration Procedure Act, as amended.

Section 60.24: PENALTIES. Any Person violating this Ordinance shall be guilty of a petty misdemeanor upon the first offense and a misdemeanor upon the second and subsequent offenses. The City may also recover costs of prosecution. The City may elect to handle the case with a civil hearing rather than criminal prosecution for any violation of this Ordinance. The City's costs of civil hearings, including, but not limited to a court reporter and the City Attorney's fees, may also be charged against a licensee. Fines for violations are as established by the City Council in Appendix A.

Updated 60.24 on 1/4/06