

**REVISED**

**MUNICIPAL ORDINANCES**

**CITY OF ALCESTER, SOUTH DAKOTA**

Ordinance No. 2014-2

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AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES  
OF THE CITY OF ALCESTER, SOUTH DAKOTA

Revised under the direction of the City Council of the City of Alcester  
Prepared by the South Eastern Council of Governments

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# TABLE OF CONTENTS

	Page #
TITLE 1 - ADMINISTRATIVE CODE	
<u>Chapter 1.01 - Municipal Employees</u> .....	<u>1</u>
<u>Chapter 1.02 - Mayor and City Council</u> .....	<u>1</u>
<u>Chapter 1.03 - Police Department</u> .....	<u>2</u>
<u>Chapter 1.04 - Finance Regulations</u> .....	<u>2</u>
TITLE 2 - BOUNDARIES, WARDS AND VOTING PRECINCTS	
<u>Chapter 2.01 - Boundaries</u> .....	<u>4</u>
<u>Chapter 2.02 - Wards and Voting Precincts</u> .....	<u>4</u>
TITLE 3 - HEALTH AND SANITATION	
<u>Chapter 3.01 - Nuisances</u> .....	<u>5</u>
<u>Chapter 3.02 - Collection of Garbage</u> .....	<u>12</u>
<u>Chapter 3.03 - Restricted Use Facility</u> .....	<u>16</u>
TITLE 4 - LICENSES	
<u>Chapter 4.01 - General Provisions</u> .....	<u>18</u>
<u>Chapter 4.02 - Peddlers</u> .....	<u>18</u>
<u>Chapter 4.03 - Alcoholic Beverages</u> .....	<u>21</u>
<u>Chapter 4.04 - Licensing Provisions for Cannabis Establishment</u> .....	<u>29</u>
TITLE 5 - OFFENSES	
<u>Chapter 5.01 - Offenses Against Public Welfare</u> .....	<u>27</u>
<u>Chapter 5.02 - Animals</u> .....	<u>28</u>
<u>Chapter 5.03 - Fireworks and Firearms</u> .....	<u>35</u>
<u>Chapter 5.04 - Minors</u> .....	<u>36</u>
<u>Chapter 5.05 - Public Nudity and Strip Dancing</u> .....	<u>37</u>
TITLE 6 - STREETS, SIDEWALKS AND PUBLIC PLACES	
<u>Chapter 6.01 - Street Names and Addresses</u> .....	<u>39</u>
<u>Chapter 6.02 - Streets, Sidewalks, Curb and Gutter</u> .....	<u>39</u>
<u>Chapter 6.03 - Snow Removal</u> .....	<u>42</u>
<u>Chapter 6.04 - Moving Buildings</u> .....	<u>42</u>
<u>Chapter 6.05 - Municipal Trees</u> .....	<u>43</u>
<u>Chapter 6.06 - Municipal Parks</u> .....	<u>45</u>
<u>Chapter 6.07 - City Auditorium</u> .....	<u>45</u>
TITLE 7 - TRAFFIC CODE	
<u>Chapter 7.01 - General Provisions</u> .....	<u>47</u>
<u>Chapter 7.02 - Operation of Vehicles</u> .....	<u>49</u>

	<u>Chapter 7.03 - Vehicle Equipment</u> .....	<u>51</u>
	<u>Chapter 7.04 - Speed Restrictions</u> .....	<u>52</u>
	<u>Chapter 7.05 - Parking, Stopping</u> .....	<u>53</u>
	<u>Chapter 7.06 - Trucks</u> .....	<u>58</u>
	<u>Chapter 7.07 - Snowmobiles</u> .....	<u>60</u>
	<u>Chapter 7.08 - Miscellaneous Provisions</u> .....	<u>62</u>
	<u>Chapter 7.09 - Golf Carts</u> .....	<u>64</u>
TITLE 8 -	MUNICIPAL UTILITIES	
	<u>Chapter 8.01 - General Provisions</u> .....	<u>65</u>
	<u>Chapter 8.02 - Water Provisions</u> .....	<u>68</u>
	<u>Chapter 8.03 - Sewer Provisions</u> .....	<u>69</u>
TITLE 9 -	PLANNING AND ZONING	
	<u>Chapter 9.01 - Planning Commission</u> .....	<u>78</u>
	<u>Chapter 9.02 - Property Maintenance Code</u> .....	<u>79</u>
TITLE 10 -	TAXATION	
	<u>Chapter 10.01 - Municipal Sales and Service Tax and Use Tax</u> .....	<u>84</u>
	<u>Chapter 10.02 - Urban and Rural Service Districts</u> .....	<u>84</u>
	<u>Chapter 10.03 - Discretionary Taxation of Real Property</u> .....	<u>85</u>
TITLE 11 -	GENERAL PROVISIONS	
	<u>Chapter 11.01 - Penalties and Repealing Clause</u> .....	<u>88</u>

# TITLE 1 - ADMINISTRATIVE CODE

## Chapter 1.01 - Municipal Employees

## Chapter 1.02 - Mayor and City Council

## Chapter 1.03 - Police Department

## Chapter 1.04 - Finance Regulations

### CHAPTER 1.01 - MUNICIPAL EMPLOYEES

- 1.0101 Appointive Officers, Method of Appointment. All appointive officers shall be appointed by the Mayor with approval by a majority vote of the City Council and shall hold office until their successor shall be appointed and qualified. (SDCL 9-14-3)
- 1.0102 Appointive Officers, Salaries, Bonds. The following offices or positions of the City, as hereinafter created, are continued, and the amounts of salaries to and bonds to be furnished by them shall be fixed by resolution of the City Council and shall be adjusted as deemed necessary by resolution of the City Council of the City of Alcester and said amounts shall be on file at the office of the Finance Officer: Finance Officer, Attorney and such other officers as may be prescribed by ordinance or state statute.
- The salaries of such designated officers or employees shall be paid biweekly except that of the City Attorney shall be paid an hourly rate on a monthly basis.
- 1.0103 Employees Other Than Appointive. In addition to appointive officers, the Mayor with the majority vote of the City Council shall hire such other personnel, professional and otherwise, required and necessary for municipal purposes. The compensation of such employees shall be fixed by resolution at anytime regardless of the time when any City employee may have been hired.
- 1.0104 Personnel Policies. Vacation, sick leave and other employment policies in effect are on file in the office of the City Finance Officer.

### CHAPTER 1.02 - MAYOR AND CITY COUNCIL

- 1.0201 Composition. The City Council shall consist of the Mayor elected at large, who shall hold office for four years, and six aldermen, two elected from each ward, who shall hold office for three years. (SDCL 9-8-1 and 9-8-4)
- 1.0202 Regular Meetings. On the first and third Tuesday of each month at 6:00 p.m., the City Council shall meet at the Alcester City Hall or other designated place, to consider, take under advisement, and act upon such business as may come before it. If a regular meeting day falls upon a City observed holiday, the regular meeting shall be held on the following day or as rescheduled by the City Council. (SDCL 9-8-8)

*(Amended: Ordinance No. 2023-05)*

1.0203 Mayor - Duties. The Mayor shall preside at all meetings of the City Council, but shall have no vote except in case of a tie. The Mayor shall perform such other duties as may be prescribed by laws and ordinances and ensure that such laws and ordinances are faithfully

executed, and shall have the power to veto any part or item of an ordinance or resolution appropriating money. (SDCL 9-8-3).

- 1.0204 President and Vice-President of Council. At the first regular meeting after the annual election in each year and after the qualification of the newly elected aldermen, the council shall elect from among its own members a president and vice-president, who shall hold their respective offices for the municipal year.

The president of the council in the absence of the mayor shall be the presiding officer of the City Council and during the absence or the temporary disability of the mayor shall be acting mayor and possess all the powers of the mayor.

In the absence or disability of the mayor and president of the council the vice-president shall perform the duties of the mayor and president of the council. (SDCL 9-8-7)

- 1.0205 Compensation - Mayor and City Council. The Mayor and Councilmen are to be allowed compensation as set by resolution of the City Council. Compensation of the Mayor and Councilmen as herein set forth shall be paid at such times as may be decided upon by the Council.

- 1.0206 Special Meetings. Special meetings of the City Council may be held at any time on call of the Mayor, or in case of absence or inability to act, then by the President of the City Council; or by three of the Aldermen.

It shall be the duty of the Finance Officer to contact the Aldermen before the time specified for such meetings, and this may be done by telephone or e-mail.

## **CHAPTER 1.03 - POLICE DEPARTMENT**

- 1.0301 Chief of Police. Under the direction of the Mayor and City Council, the Chief of Police is responsible for planning, organizing, and directing the functions of the police department. The Chief of Police determines policies to be followed by personnel in the department with respect to public relations, and enforcement of law and ordinances. The Chief of Police coordinates municipal law enforcement activities with those of other agencies, analyzes budgetary problems and submits an annual budget, administers personnel policies and training requirements, and makes recommendations on all appointments, promotions, discipline, and dismissals made in the department. The Chief of Police maintains a liaison with municipal officials, civic groups, and citizens on law enforcement concerns.

## **CHAPTER 1.04 - FINANCE REGULATIONS**

- 1.0401 Revenues and Special Funds. All money belonging to the City from taxation, licenses, fines, permits, the operation of utilities, or from any other source, shall be paid into the City treasury, and the City Council shall designate by ordinance to what fund or funds such money shall be applied. The Finance Officer shall keep full, true and just accounts of all financial affairs of such form and in such manner from time to time as required by the South Dakota Department of Revenue. (SDCL 9-14-18)

1.0402 Records Retention and Destruction. The Records Retention and Destruction Schedule Manual, authorized for South Dakota municipalities by the Office of Records Management, Bureau of Administration, State of South Dakota, shall be adopted by the City Council, and a printed copy of such manual shall be filed with the Finance Officer.

## TITLE 2 - BOUNDARIES, WARDS AND VOTING PRECINCTS

### Chapter 2.01 - Boundaries

### Chapter 2.02 - Wards and Voting Precincts

#### CHAPTER 2.01 - BOUNDARIES

2.0101 Boundaries. The corporate limits of the City are declared to be such as have been legally established and amended by law and ordinances of the City as shown on the official map on file in the office of the Finance Officer. Such map shall be incorporated in this ordinance by reference and adopted as the official map showing the boundaries and limits of the City. (SDCL 9-3-2, SDCL 9-4-1)

#### CHAPTER 2.02 - WARDS AND VOTING PRECINCTS

2.0201 Wards. The City shall be divided into three wards which shall be designated respectively as Wards One, Two and Three. The wards shall be described by stating the certain street or avenue designations or other landmarks that divide and border the wards. Any reference to street or avenue below shall mean an imaginary line running down the approximate middle of each street or avenue. The wards of the City of Alcester are as set forth below and on the map thereof on file in the office of the Finance Officer. Any discrepancies shall be resolved by reference to the map rather than the physical descriptions set forth herein.

- A. Ward One shall include all of that part of the City west of Broad Street. It shall also include all of that part of the City west of the alley between Broad Street and Iowa Street located between Second Street and the railroad tracks. It shall also include all of that part of the City west of the alley between Broad Street and Iowa Street located between Sixth Street and Third Street.
- B. Ward Two shall include all of that part of the City located between the alley between Broad Street and Iowa Street and a line defined by Park Avenue, the boundary between Lots 32 and 36 of the Morningside Addition, the boundary between Lots 1 and 2 of Block 1 of the Hyden Heights Addition, Hyden Drive, and Church Street. It shall also include all of that part of the City east of Broad Street and west of the alley between Broad Street and Iowa Street located between the Second Street and Third Street.
- C. Ward Three shall include all of that part of the City east of the line defined by Park Avenue, the boundary between Lots 32 and 36 of the Morningside Addition, the boundary between Lots 1 and 2 of Block 1 of the Hyden Heights Addition, Hyden Drive, and Church Street.



## TITLE 3 - HEALTH AND SANITATION

### Chapter 3.01 - Nuisances

### Chapter 3.02 - Collection of Garbage

### Chapter 3.03 - Restricted Use Facility

## CHAPTER 3.01 - NUISANCES

3.0101 Definitions. For the purpose of this Chapter, the following terms are hereby defined.

- A. “Garbage” – The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- B. “Solid Waste” – Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities including, but not limited to wood and other construction materials, appliances, yard waste, tires, scrap iron, chemicals or fuel. (SDCL 34A-6-1.3)
- C. “Wastewater” – The spent water of a community. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
- D. “Abandoned property” – Any junk car, car bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness.
- E. “Abandoned vehicle” – Any vehicle that is left unattended or stored on any public property in the same or substantially same place within the City for a longer period than 24 hours.
- F. “Inoperable vehicle” – Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and/or wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto unexpired license plates, or which constitutes an immediate health, safety, fire or traffic hazard.
- G. “Nuisance” – Unlawfully doing an act, or omitting to perform a duty, which act or omission either: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) offends decency; (3) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; (4) in any way renders other persons insecure in life, or in the use of property; and in addition the specific acts,

conditions and things listed in Section 3.0102 are hereby declared to constitute public nuisances, but such acts, conditions and things shall not be deemed to be exclusive. (SDCL 21-10-1)

- H. "Private property" – Any real property within the City that is privately owned and which is not public property.
- I. "Public property" – Any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.
- J. "Removal agency" – Any public body, private or nonprofit organization authorized, hired or appointed by the City to remove and salvage vehicles.
- K. "Unightly trash or junk" – Property which is deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which is left outside of a permanent, enclosed structure and which shall include, without limitation, motors, lawn mowers, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition.
- L. "Vehicle" – Any conveyance, whether or not self-propelled, and which is designed to travel along the ground or in or on the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-karts, golf carts, boats, jet skis, campers and trailers.
- M. "Litter" – Garbage, rubbish, waste material or animal waste improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing the same outside an approved container.
- N. "Yard waste" – Grass clippings, garden waste, and leaves.

3.0102 Acts, Omissions and Conditions Prohibited. No person, whether an owner, occupant, tenant or other person in charge of any real property within the corporate limits of the City shall create, commit, maintain, or permit to be created, committed, or maintained, any public nuisance, to include, without limitation, the following specific acts, conditions and things, each and all of which are hereby declared to constitute a nuisance: (SDCL 9-32-1)

- A. Depositing, accumulating, or permitting to be accumulated upon any public or private property, any household wastewater, sewage, garbage, refuse, rubbish, offal, excrement, decaying fruit, vegetables, fish, meat, bones; any fowl, putrid, or obnoxious liquid substance; any chemical or hazardous material; or putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9- 32-10, SDCL 34A-7-9)
- B. The accumulation of manure, garbage, or anything whatsoever which may be breeding areas for flies, mosquitoes, or rodents. (SDCL 9-32-10)
- C. For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four hours after its death. (SDCL 9-29-13)

- D. Any excavation, trench, or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb, or safety of the general public. (SDCL 9-29-13)
- E. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substance. (SDCL 9-32-10)
- F. Keeping or maintaining any building or enclosure where livestock or fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)
- G. Disposing of garbage, waste, or refuse by open burning, or causing, allowing, or permitting the conducting of a salvage operation by open burning in the City. The following types of open burning shall be permissible for a specific purpose when conducted in conformity with the subsections set forth below:
  - 1. Fires set for the elimination of a fire hazard, which cannot be abated by any other means when authorized by the City Council.
  - 2. Fires purposely set by the City employees for the purposes as authorized by the City Council.
  - 3. Fires purposely set by the Alcester Fire Department personnel and authorized by the Fire Chief for the purpose of training and conducted in accordance with live fire-training standards.
  - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions and for outdoor preparation of foods.
- H. Maintaining or permitting to be maintained on any private or public property any abandoned property or unsightly trash or junk, abandoned vehicle, or inoperable vehicle or parts thereof. It shall be unlawful to keep or place any of such vehicles or vehicle parts:
  - 1. Upon public streets or property except on an emergency basis.
  - 2. Upon the private property of any person owning, in charge of, or in control of any real property within the City, whether as an owner, tenant, occupant, lessee or otherwise, for longer than fourteen days unless it is within a fully enclosed building or structure. A carport, tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.

In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any real property.
- I. The requirements of paragraph H shall not apply to the following:
  - 1. One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle

is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than fourteen days.

2. Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable City ordinances may place inoperable vehicles being repaired or offered for sale on the premises.
3. Junkyards operated and maintained in compliance with applicable City ordinances.
4. One vehicle specifically designed and used for operation on drag strips or raceways that remains on private property.
5. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City.

3.0103 Diseased Vegetation. Any owner, occupant, or person in charge of any property under the jurisdiction of the City shall remove at his own expense any trees, dead trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so. The City Council shall cause to be mailed by certified mail, return receipt requested, or by personal service to such owner, occupant, or person, or by posting on the property, written notice that they may appear before the said City Council at an appointed time not less than fourteen days from the date of mailing or personal service of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting.

At said meeting the City Council may resolve and declare the same to be a public nuisance and may order its removal by said owner, occupant, or person within twenty-one days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased vegetation stored in the City shall be debarked or covered with four to six mil clear plastic from April 1<sup>st</sup> to October 1<sup>st</sup>, such plastic to be sealed by placing all edges in a three to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this Section shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-12)

3.0104 Vegetation Nuisance.

A. Definitions. For the purposes of this section, the following terms, phrases, words, and their derivations shall have the meanings given herein.

1. “Developed lot or area” means a lot or area with a finished building or building under construction.
2. “Noxious weeds” means all actively growing plants declared to be statewide noxious weeds by the South Dakota Weed and Pest Control Commission.

3. “Undeveloped lot or area” means a vacant lot or area with no structure on it.
4. “Weeds” means any plants growing uncultivated and out of context with the surrounding plant life when such plant has a seed head formed or forming and with a height of eight inches or more, except as otherwise provided in this section.

B. Nuisances.

1. Each owner and each person in the possession or control of any land shall cut or otherwise destroy, in whatever manner prescribed by the City, all noxious weeds thereon and shall keep said lands free of such growth.
2. Each owner and each person in possession or control of any property shall be responsible to keep said lot, place, or area or upon any sidewalk abutting the same free of any noxious weeds and to keep grasses and weeds on said lot mowed so that grass and weeds are less than eight inches in height. However, grass and weeds located on undeveloped and unplatted property located more than one hundred feet from developed or platted property shall be mowed so that grass and weeds are less than twelve inches in height. This does not apply to vegetation which is being grown as a crop, livestock pasture or wildflower display garden.
3. Each owner and each person in the possession or control of any lands shall not allow any plant growth of any sort to remain in such a manner as to render the streets, alleys or public ways adjoining said land unsafe for public travel or in any manner so as to impede pedestrian or vehicular traffic upon any public place or way.

C. Notice to Abate and Abatement by City. The Finance Officer shall annually on or before May 1<sup>st</sup> of each year publish once a week for two consecutive weeks a Notice to Property Owners generally setting forth the duty to control weeds and other vegetation which might be a nuisance in violation of this Section. The Finance Officer or his or her designee may cause a Notice to Abate Nuisance to be served, by posting of notice on such property within view of the public, upon any property owner who fails to comply with the published notice or any person who at any other time has weeds or other vegetation. Upon failure, neglect or refusal of any owner, agent or occupant so notified to comply with said notice within five days, thereof the Finance Officer or his or her designee is hereby authorized and empowered to provide for the cutting, destroying or removal of the weeds, grass or other noxious matter and stabilize the soil if necessary. The City may defray the cost of the work, including administrative costs, by special assessment against the property as set out in Section 3.0104 (D).

D. Costs Recovered. The Finance Officer shall cause an account to be kept against each lot upon which work is done pursuant to Section 3.0104 (C) and shall after completion of the work, bill the owner of the property for such work and if not paid within thirty days thereafter, the Finance Officer shall thereupon add such assessment to the general assessment against said property. The Finance Officer shall certify such special assessment together with the regular assessment to the Union County Auditor to be collected as municipal taxes for general purposes.

Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes. In lieu of special assessment, the City Council may institute a civil action against the owner or occupant of such property to recover said account.

- E. Habitual Violators. If the owner or person in control of any land that has previously received a notice to abate nuisance relating to weeds within the preceding twenty-four months, then, the notice to abate nuisance may include notice that such owner or person in control of said property will be considered to be an habitual violator of this section and that if the nuisance is not abated within the allowed time, the City will consider the property to be subject to having a contract let by the City for mowing property as needed up to a weekly basis for the next following twenty-four month period of time and that the full cost of said contract together with an administrative fee of two hundred dollars will be assessed against the property.

3.0105 Littering in Public Places. No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the City except in authorized public or private receptacles. The following further identifies acts and conditions that constitute nuisances and are therefore prohibited:

- A. No person shall sweep into or deposit in any gutters, streets, or other public place within the City, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property or places of business shall keep the sidewalk in front of such premises free of litter.

For purposes of this Ordinance, a public nuisance shall also include snow and ice when deposited or allowed to accumulate in conflict with the provisions of this Section.

- B. No persons, while a driver or passenger in a vehicle, shall throw or deposit litter or yard waste upon any street or other public place or upon private property within the City.

No person shall drive or move any truck or other vehicle within the City unless such vehicle is so constructed or loaded as to prevent any load, contents, or litter from being blown or deposited upon any street, alley, or public place.

- C. No person shall throw or deposit litter on any occupied, open, or vacant private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being deposited upon any streets, sidewalk, or other public place or upon any private property.

3.0106 Removal of Abandoned or Inoperable Vehicles - Public Property. Whenever the City or any law enforcement officer for the City finds an abandoned or inoperable vehicle on public property within the City, a written notice shall be placed on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within twenty-four hours of the giving of the notice. After the expiration of the twenty-four hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this Section precludes the City or any law enforcement officer for the City from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.

- 3.0107 Disposition of Unclaimed Vehicles. The removal agency shall have the rights and obligations conferred upon it by SDCL Ch. 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions for this article for the costs in taking custody of and storing such vehicles.
- 3.0108 Notice Procedure. A written notice shall be placed on the abandoned or inoperable vehicle by the City or by any law enforcement officer for the City requesting the removal of such motor vehicle in the time specified in this Chapter. Written notice shall also be placed on the front door of any dwelling located on the private property requesting the removal of such motor vehicle in the time specified in this article. In the event the owner and the occupant or tenant of the real property are not the same person, written notice shall be given to the owner by certified mail, return receipt requested, requesting the removal of such motor vehicle in the time specified in this Chapter. In the event the private property is not occupied, written notice shall be given to the owner by certified mail, return receipt requested, requesting the removal of such motor vehicle in the time specified in this Chapter. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, and any period to reply or abate begins to run from the date of mailing.
- 3.0109 Responsibility for Removal. Upon notice having been given, the owner of the abandoned or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal.
- 3.0110 Content of Notice. The notice in section 3.0108 shall request removal of the abandoned or inoperable vehicle within fourteen days after the date of the posting, mailing or personal service of such notice, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this Chapter, that the City may take steps to abate the same, and that in addition to abatement directly or by civil action, the City may pursue criminal fines and penalties against the owner, occupant, tenant or other person in charge of the real property as provided in this Chapter.
- 3.0111 Public and Private Nuisance Defined. A public nuisance is one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. Every other nuisance is private. (SDCL 21-10-3)
- 3.0112 Remedies Against Nuisances. The remedies against any nuisance shall be: (1) A civil action; (2) Abatement; and (3) In cases of public nuisance only, the additional remedy of indictment or information as prescribed by the Ordinance or by the South Dakota Codified Laws, and the rules relating thereto. (SDCL 21-10-5)
- 3.0113 Abatement. A public nuisance may be abated without civil action by the City Council or by any officer authorized thereto by law. Any private person may likewise abate a public nuisance which is especially injurious to him or her, or any private nuisance injurious to him or her in a manner by removing, or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his or her land, reasonable notice shall be given to him before entering to abate it. The City may defray the cost of abating a public nuisance by taxing the cost thereof by

special assessment against the real property on which the nuisance occurred. When the nuisance abated is an unsafe or dilapidated building, junk, trash, debris or similar nuisance arising from the condition of the property, the City may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment. (SDCL 21-10-6)

3.0114 Notice.

- A. Initial notice. The Finance Officer or his or her designee, is authorized and empowered to notify, in writing, the owner of any lot, place or area within the City, or the agent of the owner, or the occupant of the premises, to remedy or abate a public nuisance on the property and to prevent future violation of this Chapter. The notice may be hand delivered or sent by certified mail, return receipt requested, addressed to the owner of record, agent or occupant at his or her last known address, and said notice shall notify the owner, agent, or occupant to remedy or abate a public nuisance within fourteen days of the date the notice was hand delivered or mailed. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Notice is deemed completed at the time it is mailed and said period to reply or abate begins to run from the date of mailing.
- B. Subsequent notices. Upon any subsequent violation of this Chapter in the same calendar year after notice has been given as provided above, notice of a second or subsequent violation of the same or similar nature as the first violation, shall require the owner to remedy the nuisance within three days of personal service or mailing.

3.0115 Public Nuisance Penalty and Remedy. Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this Ordinance shall be subject to a fine not exceeding five hundred dollars, unless otherwise specifically provided. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

## **CHAPTER 3.02 - COLLECTION OF GARBAGE**

3.0201 License for Commercial Collectors. It shall be unlawful for any person, firm or corporation to use the street of the City of Alcester for the collection, removal or disposal of any garbage or rubbish for a fee or charge, without having first procured from the City Council of the City of Alcester, a license so to do in the manner as provided herein, in paying to the City Finance Officer the license fee hereinafter specified which application for such license shall be made to the City Council of the City of Alcester.

3.0202 License Terms. Said license shall be for a three year period commencing on 1<sup>st</sup> day of January and terminating on the 31<sup>st</sup> day of December three years subsequent, unless revoked as hereinafter provided or as provided by the ordinances of the City of Alcester. Such license shall be an exclusive license to operate during the licensing term.

3.0203 License Fees. The fees provided for said license shall be one hundred and fifty dollars (\$150.00) per year payable on the first working day after January 1 of each year during the licensing term.



3.0204 Issuance of License. Any person or firm desiring to obtain a license under the provisions of this Chapter shall make and file application with the City Finance Officer of the City of Alcester, a sworn application in writing on a form furnished by the City Finance Officer which form shall include the following information:

- A. Name of person, persons, partnership or corporation, making application.
- B. Post office address of applicant.
- C. Type of license being requested.
- D. Licenses held elsewhere.
- E. Name of local agent, if any.
- F. Location of business headquarters, if not local, including business telephone number.
- G. A statement as to whether or not any licenses have ever been denied or revoked and the circumstances behind such denial or revocation.
- H. Proof of liability insurance coverage and terms of coverage.
- I. Number of employees.
- J. Copy of valid driver's license or operator's license.
- K. Listing of equipment to be used in conduction of business activity.
- L. Copy of social security card of applicant and primary licensee and all personnel providing collection services within the corporate limits of the City of Alcester.
- M. Date of application for the license.
- N. Statement as to any driving offenses and convictions within the last five years of all operating personnel.
- O. South Dakota sales tax license number, if available.
- P. Proposed garbage collection schedule.
- Q. Proposed recyclable collection plan.
- R. Proposed rate schedule.
- S. List of references.

Attached also to the application shall be the appropriate one year licensing fee which shall be returned to the applicant in the event that the licenses is not issued.

3.0205 Criterion for issuance of License. The City Council of the City of Alcester shall consider all license applications submitted. In making a selection for the license regarding the collection

and handling of garbage within the corporate limits of the City of Alcester, the City Council shall among other things consider the following criterion, to wit:

- A. Past dealing of applicant with the City of Alcester and/or other municipalities.
- B. Dependability of service and personnel.
- C. Quality of equipment and personnel.
- D. Ability to safely and efficiently collect city garbage including driving record of owners and operating personnel and passed criminal record.
- E. Reputation of licensee in collection personnel regarding safety, dependability and efficiency.
- F. Financial responsibility of licensee including ability to post a performance bond and general liability insurance coverage as may be required by the City.
- G. Ability to deliver garbage to the solid waste disposal site as directed by the City Council of the City of Alcester as may from time to time be established by the City of Alcester.
- H. Purposed voluntary recycling plan to be initiated in conjunction with the collection and handling of garbage, which plan shall be subject to prior City Council approval.
- I. Rate schedule, with prior City approval.
- J. Collection schedule regarding garbage and recyclable.
- K. Other valid licenses held by applicant and service to other municipalities.
- L. Valid operator's license for all personnel.
- M. Such references as may be requested or required by the City Council of the City of Alcester.
- N. The best interest of the City of Alcester and its residents.
- O. Any other factors deemed relevant to the City Council.

In evaluating applicants for the license, weight given to each of the above criteria will be determined by the City Council of the City of Alcester.

3.0206 Renewal or Continuation. In the event any licensee desires to continue the business authorized under the license after expiration of such license, a new application shall be filed with the City Finance Officer of the City of Alcester and the same procedure shall be followed as for the issuant of the initial license.

3.0207 Vehicle. The garbage licensee shall provide themselves with suitable vehicles which shall be watertight and permanently covered so as to prevent the escape of odors and contents, and so as to hide the contents from the public view. Such vehicle shall be kept in a clean and

sanitary condition and shall be thoroughly washed at such times and intervals as may be directed by the City Council of the City of Alcester or its designee or as may be directed in order to keep said vehicles in proper sanitary conditions. Such vehicles, when conveying garbage shall be so loaded and unloaded that the contents shall not fall or spill upon the ground. No article or item shall be carried in such vehicle so as to drag upon the city street.

- 3.0208 Equipment. The licensee hereunder is to provide all of its own equipment and personnel necessary to satisfactorily collect and dispose of garbage and refuse of the City of Alcester and its residents and businesses, and the City of Alcester is not obligated to provide any equipment or personnel for the collection and disposal of garbage or refuse. The licensee hereunder shall furthermore be required to dispose of said garbage at the designated disposal site of the City of Alcester, and shall comply with all applicable state and federal regulations concerning said disposal.
- 3.0209 Garbage Rate. No garbage rate shall be charged by the licensee hereunder without first obtaining rate approval from the City Council of the City of Alcester.
- 3.0210 Collection. A collections schedule shall be approved by the City Council of the City of Alcester for garbage as well as yard waste and other recyclable matters and may be modified from time to time only with prior approval of the City Council of the City of Alcester.
- 3.0211 Recyclable Collection Plan. The City Council for the City of Alcester in its discretion may require any current licensee at any time during the term of the garbage license issued hereunder or renewal thereof, or as a criterion for the issuance of a new garbage license hereunder, to establish a recycling plan. If requested by the City Council of the City of Alcester, the licensee or applicant for a license hereunder shall provide a plan of recyclable collection to the City Council of the City of Alcester. The purpose of the plan shall be to minimize the amount of garbage collected and disposed of at the solid waste disposal site as designated by the City Council of the City of Alcester. This plan could include curb side recycling or such other provisions as may be approved by the City Council of the City of Alcester. Responsibility for formulating a collection plan for recyclables, if requested, shall be upon the licensee and failure to provide an acceptable; plan and acceptable recyclable collection shall be grounds for revocation of this licensee.
- 3.0212 Revocation of License. This license may be revoked by the City Council of the City of Alcester prior to the expiration of its term for the following reasons:
- A. Failure to safely and efficiently collect garbage and to operate an acceptable voluntary recyclable plan for the City of Alcester.
  - B. Failure to comply with all city, state and federal regulations concerning the collection and handling of garbage and other solid waste as they may from time to time be established.
  - C. Conviction of a felony or serious motor vehicle violation which in the opinion of the City Council unduly jeopardizes the health, safety and welfare of the residents of the City of Alcester.
  - D. Suspension of driver's privileges of operating personnel for motor vehicle operating violation.

- E. Failure to provide proof of financial responsibility as may be required by the City of Alcester from time to time.
  - F. Failure to post a performance bond securing proper performance of the obligations under the licenses, if requested by the City.
  - G. Failure to maintain a valid South Dakota sales tax licenses and failure to remit South Dakota sales tax to the South Dakota Department of Revenue.
  - H. Failure to maintain Worker's Compensation coverage on employees or failure to provide proof of said Workman's Compensation coverage to the City of Alcester as may be required.
  - I. Failure to deliver solid waste generated within the corporate limits of the City of Alcester to the solid waste facility as may be determined and designated by the City from time to time.
  - J. Failure to account for and keep accurate weight records for the purposes of payments of tipping charges for the City garbage at the solid waste disposal site and to provide such records as requested by the City.
  - K. Failure to pay any tipping charges to the City designated solid waste disposal facility for any garbage over and above City tonnage as established by weight tickets and other records.
  - L. Failure to provide acceptable recycling plan and its implementation.
  - M. Any other substantial reason as may be deemed relevant by the City Council of the City of Alcester, given due consideration for the health, safety and welfare of the residents of the City of Alcester.
- 3.0213 Penalties. Penalties for violation of this Chapter shall be a fine of \$100.00 per violation. Violation shall be determined on a daily basis.

### **CHAPTER 3.03 - RESTRICTED USE FACILITY**

- 3.0301 Definitions. For the purposes of this Chapter, the following terms are hereby defined:
- A. "Restricted Use Facility" shall mean any facility which has received authorization under the General Permit for Restricted Use Solid Waste Disposal, as defined and issued by the State of South Dakota.
  - B. "Restricted Use Waste" shall mean any materials which are allowed by the State of South Dakota to be disposed, temporarily stored or composted at a site which is operating under the General Permit for Restricted Use Solid Waste Disposal.
- 3.0302 Location. The City Council shall select and establish a site for the operation of a Restricted Use facility.
- 3.0303 Use of Facility. The City's Restricted Use facility may be used only for the following

purposes:

- A. Disposal of trees, tree branches, brush and untreated wood;
- B. Periodic burning, under direction of the City, of trees, tree branches, brush and untreated wood;
- C. Composting of garden waste and leaves.

Painted, stained, glued or chemically treated wood is considered treated.

No person living outside the City and no firm or corporation located outside of the City, shall use said Restricted Use facility, unless a permit to do so is secured in advance from the City Finance Officer.

Residents of the City of Alcester or customers delivering their yard wastes for disposal to the restricted use site compost area shall be delivered in a covered or tarped vehicle, or bagged in biodegradable bags designated for yard waste, if in plastic bags the bags must be emptied and removed from the site by the resident. Trees, branches and untreated lumber delivered to the open burn area shall be delivered in a covered or tarped vehicle, or be secured so as not to allow material to fall or be blown off the vehicle while in transit. Failure to deliver the load in an approved manner as set forth in the previous sentences will result in a mandatory cover fee, charged at the rate of \$25.00 per vehicle. Each customer or resident availing him or herself of the disposal site shall deliver and empty the bags to a restricted use site as designated and pay the fee as established.

- 3.0304 Hours of Operation. The hours of operation shall be as set by resolution of the City Council from time to time.
- 3.0305 Rate Schedule. The rate schedule shall be as set by resolution of the City Council from time to time, and is on file in the Municipal Finance Office.
- 3.0306 Signs. At the Restricted Use Facility, the City shall erect adequate signs stating types of acceptable refuse and directing places where refuse shall be deposited and the manner in which it shall be disposed. Any disregard of such signs shall be considered a violation of this Chapter.
- 3.0307 Penalty. Anyone disposing of prohibited materials in the City's Restricted Use Facility are in violation of the regulations set forth by the City of Alcester and the South Dakota Department of Environment and Natural Resources. The City shall impose a fine of \$200.00 for anyone found guilty of such violation; and for any non-resident person, firm or corporation who without proper authorization, use the City's Restricted Use Facility to dump refuse. The City of Alcester may charge patrons of the restricted use facility any and all costs associated with the patron's failure to follow the facilities rules and procedures.

## TITLE 4 - LICENSES

### Chapter 4.01 - General Provisions

### Chapter 4.02 - Peddlers

### Chapter 4.03 - Alcoholic Beverages

### Chapter 4.03 – Licensing Provision For Cannabis Establishments

#### CHAPTER 4.01 - GENERAL PROVISIONS

- 4.0101 Licenses Required. No person shall engage in any activity for which a license is required, or for which a fee is prescribed, by this Chapter or other ordinance, without first having obtained such license. (SDCL 9-34-1)
- 4.0102 Application for License. Any person, persons, firm or corporation wishing to obtain a license as herein provided, shall make written application to the Finance Officer stating the name of the applicant, address, purpose of the activity, the length of time for which said license is wanted, and the particular place at which said license is to be used.
- Fees for all licenses shall be fixed by the City Council where not specified in this Title, and all license fees shall be paid in full at the time of application in such manner as approved by the City Council.
- 4.0103 License Expiration. Unless otherwise provided, all licenses shall take effect when issued and shall terminate on December 31<sup>st</sup> in the year for which issued. Except as otherwise provided, the license fee or charge shall be paid on the basis of a full year. There shall be no rebate made on the termination of said calling, vocation, or kind of business for which said license was issued.
- 4.0104 Revocation. The City Council shall have the authority at any time to suspend or revoke any license granted under the provision of this Chapter whenever the City Council shall be satisfied upon written complaint that such calling, vocation, or kind of business for which said license has been issued, has been made or conducted in an improper or illegal manner.
- 4.0105 Issuance of License. Except as otherwise provided, all licenses shall be issued by the Finance Officer after it has been approved by the City Council and the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City.
- 4.0106 Record of Licenses. The Finance Officer shall keep a record of all licenses issued by the City stating when and to whom issued, for what purpose and for what length of time, the amount of money paid for said license, and the place where such activity is to be carried on. (SDCL 9-34-1)

## **CHAPTER 4.02 - PEDDLERS**

4.0201     Definitions. For the purpose of this Chapter, the following terms are hereby defined:

- A. "Peddler" - any person, whether a resident of this City or not, traveling from place to place, from house to house, or from street to street for the purpose of selling, or soliciting for sale goods, wares, merchandise, or services, including food and beverages, and shall also mean and include any person transacting a temporary business within the City.
- B. "Temporary business" - means the sale of goods, wares, merchandise, or services, including food and beverages, sold by a person, business, or other entity for fewer than ninety days within any period of twelve consecutive months, or from a car, truck, other motor vehicle, trailer, or any structure other than a permanent building.

4.0202 Exceptions to Chapter. The provisions of this Chapter shall not apply to the following:

- A. Solicitations, sales or distributions made by charitable, educational, or religious organizations.
- B. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
- C. Persons selling jams, jellies, vegetables, fruits, or flowers grown or produced by them and not purchased by them for resale.
- D. Bona fide garage, rummage, yard, or moving sales which do not occur at the same location more than four times per year, for more than four days each time.
- E. Vendors at Union County Fair.

4.0203 Refusing to Leave. It shall be unlawful for any peddler who enters upon premises owned or leased by another to fail to promptly leave the premises after having been notified by the owner or possessor of the premises, or his agent, to leave the premises. (SDCL 22-35-5 and 22-35-6)

4.0204 Entrance to Premises Restricted. It shall be unlawful for any peddler to enter upon any private premises when the premises is posted with a sign stating "No Peddlers Allowed," "No Soliciting," or words to that effect.

4.0205 Misrepresentation. No peddler shall make false or fraudulent statements concerning the quality or nature of their goods, wares, merchandise, or services for the purpose of inducing another to purchase the goods, wares, merchandise, or services.

4.0206 Hours of Operation. No peddler shall peddle door-to-door between the hours of 8:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer.

4.0207 Prohibited Conduct. Any peddler selling or soliciting for sale goods, wares, merchandise or services by traveling from place to place, house to house, or street to street shall not remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose.

4.0208 Permit Required. It shall be unlawful for any person to engage in business as a peddler within this City without first obtaining a permit to do so from the City Finance Officer.



- 4.0209 Application for Permit. The application for a permit required by the provisions of this article shall specify:
- A. A statement as to whether or not the applicant has been convicted of any crime, whether state or federal law or municipal ordinance or code other than minor traffic offenses; the nature of the offense; the punishment or penalty assessed therefore, if previously convicted; and the place of conviction.
  - B. Whether the applicant, upon any sale or order, shall demand, accept or receive payment, or deposit of money in advance of final delivery.
  - C. The period of time the applicant wishes to engage in business within the City.
  - D. The local and permanent addresses of the applicant.
  - E. The local and permanent addresses and the name of the entity, if any, that the applicant represents.
  - F. The kind of goods, wares, merchandise, or services the applicant wishes to peddle within the City.
  - G. The last five cities or towns wherein the applicant has worked before coming to this City.
  - H. The applicant's date of birth, drivers license number and social security account number or other identifying number.
  - I. Proof of a current South Dakota Sales Tax License.
- 4.0210 False Information. No person shall give any false or misleading information in connection with his or her application for a permit required by this chapter.
- 4.0211 Fee. Before any permit shall be issued under the provisions of this Chapter, the applicant shall pay a fee of fifty dollars. This fee may be adjusted by resolution by the City Council.
- 4.0212 Issuance Restricted. No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, unless that entity is operating a temporary business at a fixed location, but each individual person engaging in the business of peddling from door-to-door or street-to-street within the City shall be required to have a separate permit, whether acting for himself or herself or as an agent or representative of another.
- 4.0213 Display. Every peddler having a permit issued under the provisions of this chapter and doing business within the City shall display his permit upon the request of any person, and failure to do so shall be a violation of this Chapter.
- 4.0214 Revocation. Any permit issued under the provisions of this chapter may be revoked for the violation by the permittee of any provision of this Title, state law, or City ordinance by the City Finance Officer. Upon such revocation, such permit shall immediately be surrendered, and failure to do so shall be a violation of this Chapter.

## CHAPTER 4.03 - ALCOHOLIC BEVERAGES

4.0301 Definitions. Terms used in this Chapter shall have the meanings as set forth at SDCL 35-1-1 unless a different meaning is set forth within this Chapter.

4.0302 License Required. No person shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend or otherwise concoct, within the City of Alcester, any alcoholic beverages defined by statute without having a license as required by South Dakota law. It shall be unlawful for any person or persons within the City of Alcester to engage in the business of selling or offering for sale any intoxicating liquors or malt beverages without first having procured a license therefore.

No licensed retailer may make any delivery of alcoholic beverages outside of the premises authorized by the license. No licensed retailer with any type of on-sale license shall serve alcoholic beverages outside the premises authorized by the license, unless otherwise provided.

4.0303 Application for License. All applications for alcoholic beverage licenses shall be made in accordance with South Dakota Codified Laws, Chapter 35.

4.0304 Operating Agreements - Markup on Alcoholic Beverages.

A. Liquor Licenses. All on-sale and off-sale liquor licenses within the City of Alcester shall be required to enter into operating agreements with the City of Alcester and shall be required thereunder to purchase all alcoholic beverages sold in such an establishment from the City off-sale establishment for resale under the operating agreement at a price of the actual wholesale cost to the City, transportation charges billed to the City and a markup of ten percent (10%) and such additional compensation or fee as may be mutually agreed upon by the parties.

B. Malt Beverage Licenses. All malt beverages sold within the City of Alcester, whether through on-sale or off-sale licenses shall be purchased through the municipal off-sale establishment at the actual cost price of the malt beverages to the City of Alcester, transportation charges billed to the City and a markup of five percent (5%) and such additional compensation or fee as may be mutually agreed upon by the parties.

C. Payment to City. All licenses shall promptly remit payment for all alcohol, wine or malt beverages purchased from the City within fourteen days from receipt of billing from the City. These bills shall be due and payable not later than fourteen days following billing from the City. Failure to promptly pay the City for alcoholic beverages purchased from the City or for having on the premises of a licensed establishment, beverages procured from sources other than from the municipal off-sale license shall constitute a violation of this Chapter. In addition to criminal penalties, as hereinafter provided, any licensee who fails to pay the City for alcoholic beverages billed, as set forth herein, shall be closed for business until said payment is made.

1. If a licensee fails to pay for alcoholic beverages supplied by the City, in a timely manner as provided above, the City shall issue an Order to Show Cause to said licensee citing him to appear before the City Council at a time and place to be set forth in said Order to Show Cause, no less than five days after service of such notice on said licensee.

2. At that hearing, the licensee shall be required to show cause why he has not paid for the alcoholic beverages supplied by the City.
3. Unless the alcoholic beverages are paid in full, before the date and time set for hearing, or unless the licensee shows good cause at said hearing, for his failure to make the payment, for alcoholic beverages, the City shall enter an Order to the chief of police or any other law enforcement officer of the county to close said business and until such time as said alcoholic beverage billing has been paid in full.

All water, sewer, garbage bills and other obligations to the City of Alcester, must be kept current. Being delinquent on any obligation to the City of Alcester or being delinquent on real estate taxes at any time during the year, shall constitute cause for non-renewal of a liquor license and/or malt beverage license or operating agreement.

4.0305 The Number of On-Sale Licenses to be Issued May Not Exceed the Maximum as Set Forth at SDCL 35-4-10 and SDCL 35-4-11. The maximum number of off-sale licenses and on-sale licenses that may be issued to operate within the City of Alcester shall be established as the maximum number as authorized by SDCL 35-4-10 and SDCL 35-4-11 as they may from time to time be amended based upon population of the City of Alcester. Nothing contained herein requires the City of Alcester to issue the maximum number of on-sale and off-sale licenses available.

The fees to be charged by the City of Alcester for the various licenses shall be as established for the maximum fees per each class of license as set forth at SDCL 35-4-2. The fee for off-sale licenses issued to municipalities, under local option, shall be Two Hundred Fifty Dollars (\$250.00).

The maximum number of on/off sale malt beverage retailer licenses and malt beverage package dealers as defined by SDCL 35-4-2(16) and 35-4-2(17) to be authorized by the City of Alcester in any given year, shall not exceed the total number of ten licenses and the fees for said licenses shall be as established by SDCL 35-4-2(16) and SDCL 35-4-2(17) as they may from time to time be amended.

The maximum number of wine retailers being both packaged and on-sale licensed dealers as defined at SDCL 35-4-2(12) to be authorized by the City of Alcester in any given year, shall not exceed the total number of ten licenses. The fee for said wine retailer license shall be established pursuant to SDCL 35-4-2(12) as it may from time to time be amended. A wine retailer being both packaged dealers and on-sale dealers may not be licensed as a video lottery establishment pursuant to SDCL 42-7A-41.

The maximum number of malt beverage and wine produced pursuant to Chapter 35-12, package dealers defined at SDCL 35-4-2(17A) and off-sale package wine dealer in table wines, sparkling wines, sacramental wine, and distilled spirits produced from product provided to an artisan distiller by the respective farm winery to be operated in conjunction with a farm winery established pursuant to Chapter 35-12 as defined at SDCL 35-4-2(19) that shall be authorized by the City of Alcester in any given year shall not exceed the total number of zero licenses.

4.0306 Hours of Business - Sales Restricted to Premises.

- A. Wine and Malt Beverage Retailer and Package Dealer. It shall be unlawful for any wine or malt beverage retailer and package dealer to sell, serve or allow to be consumed on the licensed premises any malt beverage, wine, or other alcoholic beverages between the hours of 2:00 A.M. and 7:00 A.M. on the same day.
- B. On Sale and Off Sale Liquor Licenses. It shall be unlawful for any On Sale and Off Sale licensee to sell, serve or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of 2:00 A.M. and 7:00 A.M. or, on Memorial Day after 2:00 A.M. or at any time on Christmas Day.
- C. Unlawful to Remain on Premise After Closing. It shall be unlawful for any person including employees, managers and owners to remain in an on-sale liquor establishment or an on-sale malt beverage establishment after 2:30 a.m., without permission of a law enforcement officer.

4.0307 Sales of Alcoholic Beverages. It shall be unlawful for any person within the City limits of the City of Alcester to give away, sell or in any manner provide alcoholic beverages to any person under the age of 21 years or to sell, any alcoholic beverage to any person who is obviously intoxicated at the time.

No on sale licensee may permit any person less than 21 years old to loiter on the licensed premise or to sell, serve, dispense or consume alcoholic beverages on such premises.

Furthermore, an on-sale licensee licensed pursuant to SDCL 35-4-2(4), (12), (16), (20), may permit persons 18 years old or older to sell and serve or dispense alcoholic beverages if less than 50% of the gross business transacted by that establishment is from the sale of alcoholic beverages and provided the licensee or an employee that is at least 21 years of age is on the premises when the alcoholic beverage is sold or dispensed. For the purposes of this Section, the term to "sell and serve alcoholic beverages" means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct to waiting tables. The term does not include tending bar or drawing or mixing alcoholic drinks.

No off-sale licensee licensed under SDCL 35-4-2(3)(5), or (17) may permit any person less than 21 years old to sell, serve or dispense alcoholic beverages on the licensed premise, unless that sale of alcoholic beverage constitutes less than 50% of the gross business transacted by that establishment. In that event, the licensee may permit persons 18 years old or older to sell, serve or dispense alcoholic beverages.

Notwithstanding, an on-sale licensee issued a malt beverage retailers license, being both package dealers and on-sale dealers issued pursuant to SDCL 35-4-2 (16) whose sale of alcoholic beverages constitutes more than 50% of the gross business transacted by that establishment, may erect a physical barrier to allow for multiple uses of the premises by persons of all ages provided persons under the age of 21 are not permitted access to the area reserved for the sale of malt beverages

4.0308 Possession of Alcoholic Beverages. Unless a special permit license shall be obtained from the City pursuant to this Chapter, it shall be unlawful to possess in any public place, street, alley, sidewalk, public park, place of amusement, or business establishment, not authorized to sell alcoholic beverages, pursuant to South Dakota law and the ordinances of the City of

Alcester, any bottle whether or not containing alcoholic beverages on which the seal has been broken and which bottle either did or does contain alcoholic beverages, or any glass, can or other container, containing alcoholic beverages.

It shall be unlawful for any on-sale alcohol and malt beverage establishment of any employees, managers, or owners thereof to allow any person to leave the licensed premises within the City of Alcester, with a container of alcoholic beverage in their possession except for the sale of unopened containers of alcohol and malt beverages, where the licensee has sold the same under an off-sale license.

It shall be unlawful for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.

4.0309 Permit - Public Location. Notwithstanding, Section 4.0308, the City Council of the City of Alcester may permit the consumption, but not the sale of any alcoholic beverage on property owned by the public or by a non-profit corporation within the city limits of the City of Alcester. A permit for the consumption must be obtained from the City. The permit period may not exceed 24 hours and the hours of authorized consumption may not exceed those permitted for on-sale licenses. A permit fee to be established by resolution of the City Council and/or a security deposit may, at the discretion of the City of Alcester, be charged. The City of Alcester may permit the sale of alcoholic beverages on publically owned property or property owned by a non-profit corporation. If it is during a special event for which a temporary license has been issued, pursuant to Section 4.0310 of this Chapter.

4.0310 Special Permit Licenses. The City of Alcester may issue:

- A. A special permit malt beverage retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4) or (16) in addition to any other licenses held by the special events license applicant;
- B. A special permit on-sale wine retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4);
- C. A special permit on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4) or (16) in addition to any other licenses held by the special events license applicant; or
- D. A special permit off-sale package wine dealer's license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(5), in addition to any other licenses held by the special events license applicant.

Any special permit license issued pursuant to this Section may be issued for a period of time established by the municipality. However, no period of time may exceed fifteen consecutive days.

Any special permit license issued pursuant this Section shall be issued to the person and the

location specified on the application. The governing body of the municipality shall determine the fee for this special permit license. Each application shall be accompanied by the fee prior to consideration by the Finance Officer of the municipality. The fee provided for in this Section shall be retained by the Finance Officer of the municipality issuing the special permit license. The issuance of the special permit license is limited and restricted as follows:

- A. Alcoholic beverages for the purposes of this Section include, malt beverages, wines, and distilled spirits.
- B. Applications for a special permit license shall be submitted in writing to the Finance Officer and shall be submitted at least 20 days prior to the day on which the permit is to be effective.
- C. The special, permit license period may not exceed 15 days, and hours of authorized, consumption may not exceed those permitted for on-sale licenses.
- D. Permit fees are established at an amount of not less than \$100.00 for each special permit license. The permit fee may be waived by the Finance Officer for civic, charitable, educational and governmental groups.
- E. Such application shall be accompanied by a payment in cash or guaranteed funds of such special permit license fees and security deposits as the Finance Officer shall establish from time to time, the special permit license fee to be retained by the City to cover the expenses of processing the application and the security deposit to be returned to the applicant organization if the property affected by issuance of such special permit license shall be returned to the condition thereof which existed at the time special permit license was issued, and if this is not done within two days after expiration of such special permit license, the City shall retain the security deposit in partial payment of its expenses in connection therewith, which shall be in addition to any other recourse the City may have by way of criminal proceedings or civil action for the damage of public property or the violation of any law.
- F. Special permit license requests and or applications may be obtained from the Finance Officer.

It is a Class 2 misdemeanor for any person to consume any distilled spirits in any public place, other than upon the premise of licensed on-sale dealers, or on the premise of a special permit license holder or pursuant to Section 4.0309.

4.0311 Conditions. As a condition of being granted a liquor license, and a malt beverage license all such licensees agree to the conditions of this Chapter and that their premises, for the purposes of search and seizure laws of the State and any ordinances of the City of Alcester are considered public premises. In addition, it is agreed:

- A. The premises and all buildings, safes, cabinets, lockers, and store rooms on the premises are at all times on demand of the Secretary of the Department of Revenue, the Attorney General, or law enforcement officers of the City of Alcester, open to inspection;
- B. All of their records and books dealing with the sale and ownership of alcoholic beverages are open to the person specified above for such inspection;

- C. The application and license issued on the application, constitutes a contract between the licensee and the State of South Dakota and the City of Alcester entitling them, for the purposes of enforcing the law, rules and ordinances, to inspect applicant's premises and books at any time.

4.0312 Authority of Law Enforcement to Close Establishment. If in the opinion of a law enforcement officer, the conduct of individuals in an on-sale liquor establishment or malt beverage establishment constitutes a threat to the peace and safety of the citizens of the City of Alcester, such law enforcement officer may close said establishment for the remainder of the operating day. Such action and the reasons therefore must be promptly reported to the Mayor and the City Attorney.

4.0313 Penalties. Any person or any licensee hereunder found to have violated this Chapter shall be subject to the following penalties.

- A. A fine not to exceed \$500.00 for each day of violation of this Chapter shall constitute a separate violation as to the sale of any alcoholic beverage not purchased through the municipal off-sale licensee, each bottle or container sold shall constitute a separate offense.
- B. The City Council of the City of Alcester may by majority vote, find that this Chapter has been violated and may recommend to the South Dakota Secretary of Revenue that the license of any alcoholic beverage licensee/establishment, found to have violated said Chapter may be suspended or revoked pursuant to SDCL 35-2-10 and/or that, civil penalties as provided by SDCL 35-2-10.1 be imposed.
  - 1. Said findings and recommendations shall be made only after a hearing has been held by the City Council of the City of Alcester.
  - 2. The licensee shall have received at least 30 days notice of said hearing and shall be informed in writing of the alleged charges against said licensee.
  - 3. Notice of such hearing shall be published in the official legal newspaper for two weeks prior to such hearing to allow those citizens concerned, to be present and be heard.

## CHAPTER 4.04 -LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

**4.0401: Purpose And Intent** The City Council of the City of Alcester enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

**4.0402: Definitions** Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G- 1.

- A. **Cannabis (or Marijuana):** All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.
- B. **Cannabis Cultivation Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.



- C. **Cannabis Dispensary:** in addition to the definition in SDCL 34-200-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.
- D. **Cannabis Establishment:** cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.
- E. **Cannabis Product Manufacturing Facility:** in addition to the definition in SDCL 34-200-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.
- F. **Cannabis Products:** any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures
- G. **Cannabis Testing Facility:** in addition to the definition in SDCL 34-200-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.
- H. **Department:** the South Dakota Department of Health

**4.0403: License Required**

- A. No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the city pursuant to this article. A violation of this provision is subject to the general penalty provision in § 4.0416. Each day of the violation constitutes a separate offense.
- B. No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-200. A violation of this provision is subject to the general penalty provision in § 4.0416. Each day of the violation constitutes a separate offense.

**4.0404: License Application**

- A. An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.
- B. The applicant must submit the following:
  - 1. Application fee of \$5,000.00. The City will reimburse \$2,500 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
  - 2. An application that will include, but is not limited to, the following:
    - a. The legal name of the prospective cannabis establishment;
    - b. The physical address of the prospective cannabis establishment that meets the zoning requirements in Ordinance No.2018-01: 2018 Revised Alcester Zoning Regulations as well as any location requirements pursuant SDCL 34-200 and the administrative rules promulgated thereunder.
    - c. The name, address, and birth date of each principal officer, owner, and board member of the

proposed cannabis establishment.

- d. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
- e. Any additional information requested by the city.

**4.0405: Issuance Of License**

A. The city will issue a license unless:

- 1. The applicant has made a false statement on the application or submits false records or documentation; or
- 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
- 3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction; or
- 4. The proposed location does not meet the applicable zoning requirements detailed in Ordinance No.2018-01: Revised Alcester Zoning Regulations; or
- 5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder; or
- 6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
- 7. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the city or a registration certificate revoked by the state; or
- 8. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
- 9. The applicant will not be operating the business for which the license would be issued.

B. In the case of an application for a cannabis dispensary license, the city will reject the application if the limit on the number of cannabis dispensaries has been reached.

C. The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

**4.0406: City Neutrality As To Applicants**

A. Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

**4.0.07: Number Of Cannabis Dispensaries**

A. No more than one (1) cannabis dispensary shall be allowed to operate in the City at any time.

#### **4.0408: Expiration Of License And Renewal**

- A. Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 4.04.04. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- B. The renewal fee is \$5,000.00. The City will reimburse \$2,500 for applicants who fail to obtain a renewal of their registration certificate from the Department.
- C. Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the cannabis establishment.
- D. If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

#### **4.0409: Suspension**

- A. A license may be suspended if the license holder or an employee or agent of the license holder:
  - 1. Violates or is otherwise not in compliance with any section of this article.
  - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
  - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- B. A license may be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- C. A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

#### **4.0410: Revocation**

- A. A license may be revoked if the license is suspended under Section 4.0409 and the cause for the suspension is not remedied.
- B. A license may be revoked if the license is subject to suspension under Section 4.0409 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- C. A license is subject to revocation if a license holder or employee of a license holder:
  - 1. Gave false or misleading information in the material submitted during the application process;
  - 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
  - 3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;

4. Repeated violations of Section 4.0409;
5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G;
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired;
9. The license holder allows a public nuisance to continue after notice from the City.

#### **4.0411. Suspension And Revocation Process**

- A. The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the city's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.
- B. If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, Finance Officer, and Chair of the Planning Commission.
- C. A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- D. A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- E. The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.

**4.0412: Appeal** An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City Hall 500 Dakota Street, Alcester, South Dakota, 57001. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

**4.0413: Licenses Not Transferrable.** No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

**4.0414: Hours Of Operation For Dispensaries.** No cannabis dispensary may operate between the hours of 8:00 p.m. and 8:00 a.m. any day of the week.

**4.0415: Liability For Violations.** Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

**4.0416: Penalties.** Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

**Severability.** The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

*(Amended: Ordinance No. 2021-16)*

## TITLE 5 - OFFENSES

### Chapter 5.01 - Offenses Against Public Welfare

### Chapter 5.02 - Animals

### Chapter 5.03 - Fireworks and Firearms

### Chapter 5.04 - Minors

### Chapter 5.05 - Public Nudity and Strip Dancing

#### CHAPTER 5.01 - OFFENSES AGAINST PUBLIC WELFARE

- 5.0101 Interfering with Public Improvements, Etc. It shall be unlawful for any person to hinder or obstruct the City or any employee or agent of the City in lawfully making any improvements in any street, road, alley or on any other public ground in the City or in performing any other official duty.
- 5.0102 Intentional Damage to Property. Any person who intentionally injures, damages or destroys public property without the lawful consent of the appropriate governing body having jurisdiction thereof, or private property in which other persons have an interest, other than by arson under SDCL 22-23, without the consent of the other person.
- 5.0103 Disorderly Conduct. A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:
- A. Engages in fighting or in violent or threatening behavior, including, but not limited to, the use of obscene or profane language directed at a person present;
  - B. Makes unreasonable noise;
  - C. Operates amplified sound equipment at an unreasonably high volume;
  - D. Disturbs any lawful assembly or meeting of persons without lawful authority;
  - E. Obstructs vehicular or pedestrian traffic;
  - F. Resists or obstructs the performance of duties by a law enforcement officer or other authorized official;
  - G. Addresses abusive language or threats to any law enforcement officer, or any other authorized official of the City who is engaged in the lawful performance of his duties, or any other person when such words have direct tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment shall not be prohibited; or
  - H. Commits any act which tends to corrupt the public morals or outrages public decency, is guilty of disorderly conduct which is hereby prohibited.

5.0104 Open Containers. It shall be unlawful to consume any beer or alcoholic beverage or to possess any glass, can or other container containing beer or any alcoholic beverage on which the seal has been broken, in any public place, vacant building, automobile, street, alley, sidewalk or place of amusement or business establishment not authorized to sell beer or alcoholic beverages, unless approved by the City Council. (SDCL 35-1-5.3, SDCL 35-1-9.3)

5.0105 Indecency. No person shall willfully and lewdly expose his or her person, or the private parts thereof, in any public place where there are present other persons to be offended or annoyed thereby.

5.0106 Public Urination and Defecation Prohibited. Any person who urinates or defecates on any public street, alley, sidewalk, or floor of any public building or of any building where the public gathers or has access, or in any other place, whether public or private, where the act could be observed by any member of the public, except in the place that has been designated as a restroom is guilty of an offense and in violation of this section.

5.0107 Bikes, Roller Skates and Skateboards Prohibited in the Business District. No person shall ride upon, in or by means of bikes, roller skates, coasters, go-karts, skateboards or other similar wheeled device upon a sidewalk in any business district. (SDCL 9-32-1)

A. Definition as used in this Section:

"Business District" - An area in which 50% or more of the street footage for a distance of 200 ft. or more is occupied by buildings used for business commercial, educational, governmental or religious purposes and/or is used for parking vehicles either as a parking lot or a parking ramp.

B. Exception. Provisions of this Section do not apply to:

1. Physically handicapped persons who have been disabled in such a manner as to make it difficult and burdensome to walk and who use a wheelchair or other wheeled device on the sidewalk.
2. A wheeled vehicle used to transport a person under five years of age.

5.0108 Penalty. A violation of this Chapter shall be punishable by a fine of twenty-five dollars (\$25.00), for each offense.

*(Amended: Ordinance No. 2021-13)*

## CHAPTER 5.02 - ANIMALS

5.0201 Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. At Large.

1. An animal when off or away from the premises and not under the control of the owner, possessor, keeper, agent, servant, or a member of his immediate family by a leash.
2. An animal when on the premises of the owner, possessor, keeper, agent, or servant if not attended by a competent person unless the animal is chained, restrained, enclosed, or confined in a manner preventing it from leaving the premises.

A. Leash. A cord, thong, or chain, not to exceed six feet in length, by which an animal is controlled by the person accompanying it.

B. Owner. Any person harboring or keeping an animal and who is the head of the household of the residence or the owner or manager in charge of the establishment or premises at which an animal remains or returns to.

C. Brooding. The period of chicken development when supplemental heat and additional care and attention must be provided due to the bird's inability to generate adequate body heat. Chick. A baby chicken not more than eight (8) weeks old.

D. Chicken. A domesticated bird of the order of Galliformes in the genus of Gallus

E. (chickens) that serves as a source of eggs or meat.

F. Cockerel. A young male chicken.

G. Coop. The structure for the keeping or housing of chickens permitted by this subchapter

H. Exercise yard. A larger fenced area that provides space for exercise and foraging for the birds when supervised.

I. Hen. A female chicken

J. Pullet. A young female chicken between the ages of eight (8) weeks and five (5) months.

K. Fowl. Chickens, ducks, geese, turkey, pheasants, quail, partridge, pigeons, guinea, or other like birds.



- L. Pet. Any domestic animal kept in or near a household for the primary purpose of companionship for member(s) of the household and/or companionship for other such animals. This includes dogs, cats, guinea pigs, hamsters, rats, mice, ferrets, rabbits, birds (other than fowl, water-fowl, and birds of prey), reptiles (other than venomous reptiles or constrictor snakes), amphibians, invertebrates, and species of domestic animals commonly kept for the primary purpose of such companionship. Fowl, raptors, and livestock are not a pet.
- M. Rooster. A male chicken.
- N. Run. A fully-enclosed and covered area attached to a coop where the chickens can roam unsupervised.
- O. Raptor. All birds that are members of the order Falconiformes or Strigiformes; specifically, but not limited to, birds of prey such as falcons, hawks, eagles, owls, and vultures.

*(Amended: Ordinance 2024-08)*

5.0202 Running at Large Prohibited. It shall be unlawful for any person to have any animal which is owned, kept, harbored, or allowed to be habitually in or upon the premises occupied by him or under his or their control to be at large and to go in or upon the private premises of others or upon any public property. The fine for an animal running at large is \$50.00. The owner of the animal found in violation of this Section may, within 72 hours of the time when the notice of violation was given, pay to the office of the City Finance Officer, as fine for and in full satisfaction of the violation, the sum of \$50.00. If the owner fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next two weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$75.00. Upon failure of the owner to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner shall be fined not less than \$100.00 plus court costs, which fine shall be collected by the Magistrate Court. The owner also has the right to contest the charges or plead “not guilty” within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

Allowing an animal to run at large as defined in the provisions of this section, shall also constitute a violation of this Ordinance, per Section 11.0101. Notwithstanding any other provision, any animal not having a visible tag and running at large may be deemed a stray and destroyed immediately.

5.0203 Impoundment. The City Council shall be authorized to enter into a contract with some person, association or Humane Society to establish, operate and maintain an animal shelter for the City. Such contract shall provide for the enforcement of this chapter, for the impounding, destroying and disposal of animals, for a schedule of fees to be charged for services rendered, and for a monthly amount to be paid by the City. The City may, in lieu of the provisions of this section, maintain its own impoundment area or quarters, under the supervision of the City Council.

An owner reclaiming an impounded animal shall pay the actual cost of impoundment plus the following fee: First impoundment shall be \$25.00; second impoundment within a twelve month period shall be \$50.00; any subsequent impoundment within a twelve month period shall be \$100.00. Upon impounding, the owner of such animal may at any time within five working days after the same shall have been impounded, reclaim the animal by paying the expense of keeping such animal in addition to the fee prescribed by this section. If any animal so impounded shall not be reclaimed within five working days and reasonable efforts to locate the owner have failed, the City is authorized to destroy, sell, or otherwise dispose of such animal.

No person shall hinder, delay, or obstruct any law enforcement officer or other authorized official when engaged in capturing, securing or impounding any animal.

5.0204 Compulsory Vaccination of Animals for Rabies. Every dog, cat or other animal susceptible to rabies, held as a domestic pet in the City, six months of age or older, shall be vaccinated against rabies by a licensed veterinarian. Vaccination against rabies shall be given at such intervals that guarantee immunity, and the minimum time period between vaccinations shall be determined by the available vaccine and based upon the recommendations and approval of the State Veterinarian.

Any owner acquiring a dog, cat or other animal by purchase, gift, birth or otherwise, shall have such animal vaccinated against rabies within one month following acquisition or when the animal reaches the age of six months.

Any animal impounded shall not be released to any person until such animal has been vaccinated against rabies; provided, however, no animal so impounded shall be vaccinated if the owner can present a certificate of a current vaccination.

All veterinarians or other qualified persons designated to vaccinate animals against rabies shall provide the owner at the time of vaccination with a certificate or metallic tag showing the date of the vaccination. Whenever metallic tags are so given for vaccination, such metallic tags shall be worn by all animals on a collar, harness, or chain when off the premises of the owner.

5.0205 Responsibility of Owner to Place Animal for Observation. When any person owning or harboring a dog, cat, or other animal has been notified that the animal has bitten or attacked any person, the owner shall within twenty-four hours place the animal under the care and observation of the animal control officer or a licensed veterinarian for a period of not less than ten days.

At the end of the ten day observation period, the animal shall be examined by a licensed veterinarian and if cleared by the veterinarian, may be reclaimed by the owner upon paying the expenses incident thereto.

Any animal impounded or placed for observation, showing active signs of rabies, suspected of having rabies, or known to have been exposed to rabies, shall be confined under competent observation for such time as may be deemed necessary to determine a diagnosis.

No person shall knowingly harbor or keep any animal infected with rabies or any animal known to have been bitten by an animal known to have been infected with rabies.

Any person who shall suspect that any animal in the City is infected with rabies, shall report the animal to the animal control officer, the City, or other health authority, describing the animal and giving the name and address of the owner if known.

Whenever the animal control officer, a law enforcement officer or other authorized official shall have determined that there is danger of the existence or spread of rabies in the City, such facts shall be made known to the City Council in writing. The City Council, upon receipt of said facts, may by proclamation, in the interest of public safety and general welfare of the citizenry, order all animals muzzled when off the premises of the owner. Forty-eight hours after the proclamation is issued, all animals found off the premises of the owner

unmuzzled shall be seized and impounded or may be immediately destroyed if all reasonable efforts to seize said animals fail. All animals seized and impounded shall be held for observation as hereinbefore provided for, not less than ten days, and if cleared by a licensed veterinarian, may be claimed by the owner upon paying the expenses incidental thereto. Any animal not claimed may be disposed of as hereinbefore provided.

5.0206 Vicious Animals.

- A. An animal may be declared to be vicious by the animal control officer, a law enforcement officer or other authorized official, under the following guidelines:
  - 1. An animal which, in a vicious or terrorizing manner approaches in an apparent attitude of attack, or bites, inflicts injury, assaults or otherwise attacks a person or other animal upon the streets, sidewalks, or any public grounds or places; or
  - 2. An animal which, on private property, in a vicious or terrifying manner, approaches in an apparent attitude of attack, or bites, or inflicts injury, or otherwise attacks a mailman, meter reader, serviceman, journeyman, delivery person, or other employed person, or any person or animal who is on private property by reason of permission of the owner or occupant of such property or who is on private property by reason of a course of dealing with the owner of such private property.
  - 3. No animal may be declared vicious if the injury or damage is sustained to any person or animal who is committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal, or who was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.
- B. When the animal is declared to be vicious, the City shall notify the owner of such declaration in writing. Said notice shall be sent by certified mail, return receipt requested, or by personal service to such owner, occupant or person, or by posting on the property. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting.
- C. Any mammal, reptile or fowl which is not naturally found in a domestic setting, and because of its size or other characteristic would constitute danger to human life or property is automatically deemed vicious.
- D. The owner of an animal that has been deemed vicious shall comply with the following:
  - 1. Register the animal as vicious with the City and present proof of rabies vaccination within five days of receiving the notice and presenting proof of rabies vaccination on or before March 1<sup>st</sup> of each and every year thereafter.
  - 2. Whenever the animal is outdoors and attended, the animal shall be muzzled, on a leash no longer than six feet, and under the control of a person over sixteen years of age.

3. When the animal will be outdoors and unattended, the animal must be locked in an escape-proof kennel approved by the City. Minimum standards shall include the following:
  - a. Fencing materials shall not have openings with a diameter of more than two inches.
  - b. Any gates within such pen or structure shall be lockable and of such design to prevent the entry of children or the escape of the animal.
  - c. The required pen or structure shall have secure sides and a secure top. If the pen or structure has no permanent bottom secured to the sides, the sides shall be imbedded into the ground or concrete.
  - d. The pen or structure may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.
4. A universal sign denoting a vicious animal shall be displayed on the kennel or enclosure and on a place visible from the sidewalk or road adjacent to the property where the animal is kept.
- E. The vicious animal shall be impounded by animal control at the owner's expense until all provisions of Section 5.0206(D) are complied with. If the conditions in Section 5.0206(D) are not complied within ten days after receiving notice, the animal shall be euthanized in a humane manner and proof of euthanasia filed with the City.
- F. If a vicious animal has been running at large, or bites a person or bites another animal, the animal control officer, a law enforcement officer or other authorized official shall seize the animal by using such means as are necessary and summon the owner to appear in court to show cause why this animal shall not be destroyed. If the animal cannot be captured, it may be destroyed.

This Section shall not be construed to apply to zoological parks, performing animal exhibitions, or circuses.

- 5.0207 Cruelty to Animals. No person shall maltreat or abuse or neglect any animal or fowl. Any animal control officer, law enforcement officer or authorized official finding an animal or fowl mistreated as described in this section shall have the power to lawfully enter the premises where the animal is kept and demand to examine such animal and to take possession of such animal, when in his opinion, the animal requires humane treatment.
- 5.0208 Poisoning Animals. It shall be unlawful for any person to willfully or maliciously administer or cause to be administered, poison of any sort whatsoever to any animal, the property of another, with the intent to injure or destroy such animal, or to willfully or maliciously place any poison or poisoned food where such is accessible to any such animal. (SDCL 9-29-11)
- 5.0209 Stray, Abandoned, or Unkept Animals. No person shall harbor or keep any stray animals or abandon any animal within the City. Animals known to be strays shall be immediately reported to the animal control officer, a law enforcement officer or authorized official. (SDCL 9-29-12)

**5.0210.A Chickens/Keeping of Chickens.** The purpose of this ordinance is to provide for residents of the community to keep and maintain brooding chicks, pullets, and hens for egg and meat sources in a clean and sanitary manner that is not a nuisance to or detrimental to the public health, safety, and welfare of the community within the corporate limits of the City of Alcester, South Dakota. No person shall keep any geese, turkeys, pheasants, quail, partridges, guinea, or other like domestic fowl within the city limits, except for chickens kept within the provisions of this ordinance. The keeping and maintenance of brooding chicks, pullets and hens is permitted to all residents who apply for and obtain a permit from the city in accordance to section 5.0212. All holders of the permit must comply with all requirements, limitations, or prohibitions of this article. Such permit may be revoked if the person holding the permit refuses or fails to comply with this chapter or with any state or local law governing cruelty to animals or the keeping of animals. Any revocation shall be effective after ten days following written notice thereof to the person or persons keeping or maintaining such chickens. Any person whose permit is revoked within ten days thereafter shall humanely dispose of all chickens being owned, kept, or harbored by such person.

1. LIMITATIONS ON THE NUMBER AND KEEPING OF CHICKENS.

A. Chickens are not considered domestic pets.

B. No more than eight (8) hens shall be housed or kept on any one residential lot that is less than one acre in size. Residents may possess a like number of brooding OR pullet chicks intended for the cyclical replacement of hens, but not for the purpose of sale or resale. Once pullets reach full laying potential the flock numbers must be returned to no more than six hens. **Roosters are strictly forbidden.** Chickens may only be kept within areas of the city zoned to permit single-family dwellings. Rooster and chicken breeding are prohibited. Cockerels must be culled from broods without delay. A request for variance on the limitation set forth in this Ordinance must be brought to and approved by the City Council.

2. A coop and a reasonably satisfactory exercise yard, run, or yard fencing is required to house chickens. Chicken facilities must be constructed and maintained to meet the following minimum standards:
  - A. Located in the rear or side yard;
  - B. The setback required for the coop is five (5) feet or more from the rear and side property lines; Such structures will still require a building permit as specified in Ordinance;
  - C. Coop construction and materials must be adequate to prevent access by rodents and predators. such as fox. raccoon. opossum. and domestic animals running at large;
  - D. Coops must be maintained in good repair;
  - E. Coop size may not exceed thirty-two (32) square feet;
  - F. The run size may not exceed sixty-four (64) square feet. Fencing shall prevent the entry into or escape of animals into the run;
  - G. Fencing materials for the run shall consist of wood and wire fencing material with openings not to exceed one (1) inch;
  - H. Coops shall be kept at least twenty-five (25) feet from the door or window of any dwelling of an occupied structure other than the owner's dwelling;
  - I. Manure storage shall be kept twenty (20) feet or more from streams. tributaries. ditches. storm water management facilities. drop inlets. or other storm drainage areas that would allow fecal matter to enter any city storm drainage system or stream. Dumping chicken manure into the city's storm drainage system is prohibited;
  - J. Chickens shall not be housed in a residential dwelling or an attached or detached garage, except when housed for brooding purposes only;
  - K. All premises on which chickens are kept or maintained shall be kept clean from filth. garbage. and any substances which attract rodents. The coop and its surrounding area must be cleaned frequently enough to control odor. Manure and coop waste and food shall be picked up every 24 hours, thereafter kept in an airtight and rodent proof container, and properly disposed of thereafter on a routine basis;
  - L. Chickens shall not be kept in such a manner as to constitute a nuisance to the occupants of adjacent property;
    1. Dead chickens must be disposed of within twenty-four (24) hours after death. Legal forms of chicken carcass disposal include burial and off-site incineration or rendering; and
    2. All slaughtering of chickens for consumption shall be conducted so as not to be visible to the public or adjacent property owners and occupants and
    3. All grain and food stored for the use of the chickens shall be kept in a rodent proof container and
    4. Chickens shall be kept so that visibility is substantially obstructed to the traveling public or surrounding property owners.

*(Amended: Ordinance 2024-08)*

5.0210 Number of Pets Limited. It shall be unlawful for any person to have or to keep more than five domestic pets over the age of six months; guinea pigs, hamsters, rats, mice, ferrets, rabbits, birds (other than fowl, water-fowl, and birds of prey), reptiles (other than venomous reptiles or constrictor snakes), amphibians, invertebrates being exempt, on any lot or premises in the City; unless such person residing on or in the lot or premises has a valid kennel license issued by the City. Humane societies, veterinarian offices, and retail pet stores are exempt from the provisions of this section.

*(Amended: Ordinance 2024-08)*

5.0211 Licensing of Dogs and Cats Required. Each owner or keeper of a dog or cat of the age of six months or over shall within thirty days after the acquisition of such animal or within thirty days after the time such animal becomes six months old, cause such animal to be licensed by the City.

*(Amended: Ordinance No. 2020-02)*

5.0212 Application for License. Every owner or keeper of a dog within the City must submit an application for an animal license for each such animal owned six months old or older on or before the first day of January in each year. The application shall be furnished by the Finance Officer. All applications for license must be accompanied by a rabies immunization certificate and the appropriate fee, as shown in Section 5.0213.

No license shall be issued to any owner of any dog who does not present to the City Finance Officer of the City of Alcester, at the time of making application for such license, a certificate of vaccination for "rabies" issued by a veterinarian, duly licensed to practice veterinary medicine, which certificate must show the date of such vaccination and must state the period of time for which the dog is effectively immunized, which period of immunization must be at least one (1) year from the date of the issuance of the license. In the event that the immunization period is less than one (1) year, the owner of said dog must immediately provide a certificate of vaccination for rabies to the City Finance Officer of the City of Alcester within fifteen (15) days from the expiration date of immunization. A waiver of vaccination may be issued by the Finance Officer of the City of Alcester provided the dog is too young for a vaccination to be administered. Failure to provide said certification or waiver as herein set forth shall constitute a violation of the dog license ordinance and subject the owner to the penalties as hereinabove provided.

A certificate and tag shall be issued upon receipt of a proper application for license. The certificate at all times must be in the possession of the owner. The owner shall contact the Finance Officer to report change of ownership, loss or death of a licensed animal. If a tag or certificate is lost, either may be replaced for a fee of one dollar. The tag must be worn by all dogs. It is the duty of the owner of any licensed dog to assure proper tagging of said dog. The failure to do so shall be a violation of this Ordinance.

A permit for the keeping and raising of chickens shall be required of all residents within the city limits. Current owners of fowl shall be considered grandfathered in under the accordance of this ordinance Residents grandfathered under this ordinance must still apply for and be issued permit but are exempt from 50210.A subsection 1, subsection 2A-J but must comply with 50210.A subsection 2 I, & K-L.

Application for permit must be obtained and returned to the City Office within 90 days of effective date of ordinance and annually thereafter no later than January 31st. All permit applications shall be returned with evidence of compliance of all stipulations set forth in 5.0210.A and will be reviewed by the City. Approved permits will be issued at no charge to the applicant within ten (10) business days. Denied applications will be sent notice containing reasons for denial. Applicant will have thirty (30) days to make corrections or improvements and reapply for permit.

*(Amended: Ordinance No. 2020-02)*



5.0212. A Penalties. The penalty for failing to obtain a dog or cat license or to properly display the metallic dog/cat tag as hereinabove set forth, shall result in a minimum fine for the first violation of \$25.00. It is deemed a separate violation of the dog/cat licensing ordinance for each 30 day period of noncompliance. The fine for all subsequent offenses shall not exceed the maximum fine as authorized for violation of the City ordinances of the City of Alcester.

*(Amended: Ordinance No. 2020-02)*

5.0213 License Fee Schedule. The fee for licenses shall be as follows:

Dog/cat license (spayed or neutered) \$10.00

Dog/cat license (not spayed or neutered) \$25.00

The current fee schedule specifically addresses dog and cat licenses. The City Council may revise any or all license fees by resolution. The City Council may in special instances, after a hearing, exempt the license fee in individual cases.

*(Amended: Ordinance No. 2020-02)*

5.0214 License Fee Exemptions. The licensing provisions of this chapter shall not apply to dogs in the custody of a veterinarian, or animal shelter or animal rescuer, or whose owners are nonresidents temporarily within the City for a period not exceeding thirty days. Also, when a blind person, physically disabled or hearing impaired person requests that no fee be charged to license his/her guide dog, or service dog, no fee shall be charged, upon submission of medical documentation attesting to said disability and/or service animal certification from a bona fide and recognized authority.

5.0215 Kennel Licenses Issued. The City Finance Officer, upon receipt of an application showing the owner's name and address, the name, breed, age, color and sex of each dog kenneled by the owner, a certificate signed by a qualified veterinarian that each dog has been vaccinated and payment of the appropriate license fee, as established by the City Council, shall issue a kennel license to the owners of dog kennels. All dogs housed in a licensed kennel shall be exempt from the other licensing provision of this ordinance.

5.0216 General Prohibitions and Duties.

A. No person shall aid or cause any animal, whether owned by such person or not, to escape confinement or impoundment, whether such confinement or impoundment be upon the such person's property or that of another, by opening any gate, door or window, by making an opening in any fence, enclosure or structure, or by unleashing such animal.

B. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another.

C. It shall be the duty of every person owning or having the custody or control of an animal to clean up, remove and dispose of the feces deposited by such animal upon public property, park property, public right-of way, or the property of another. Anyone walking an animal on public or private property other than his own must carry with him visible

means of cleaning up any fecal matter left by the animal. Animals used in parades or involved in law enforcement are exempt from this subsection. The owner or person having custody of the animal found in violation of this Section may, within 72 hours of the time when the notice of violation was given, pay to the office of the City Finance Officer, as fine for and in full satisfaction of the violation, the sum of \$50.00. If the owner or person having custody fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next two weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$75.00. Upon failure of the owner or person having custody to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner or person having custody shall be fined not less than \$100.00 plus court costs, which fine shall be collected by the Magistrate Court. The owner or person having custody also has the right to contest the charges or plead "not guilty" within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

- D. It shall be the duty of every person owning or having the custody or control of an animal to physically restrain the animal within an enclosure or upon a leash when such animal is left unattended outside or is not at heel. The animal must be restrained so as to prevent the animal from leaving the premises of its owner or from coming in contact with public right-of-way or the property of another.
- E. It is unlawful for a person, owning or having the care or custody or control of an animal to permit such animal to disturb the peace and quiet of the neighborhood by barking, howling, whining, or making any other loud or unusual noise. Leaving an animal unattended who subsequently disturbs the peace and quiet of the neighborhood shall be in violation of this Chapter.
- F. In the event an animal is making any noise to the disturbance of the peace and quiet of the neighborhood and the person owning or having the care or custody or control over the animal cannot be found to remedy the situation or if found refuses to do so, the animal may be impounded. A notice of the impoundment must be left with the person or in an obvious place on the premises where the dog was removed. A written notice of impoundment must also be sent by certified mail, with return receipt requested, as soon as possible to the licensed owner of the animal if known; or the lessee of the premises upon which the animal was found, if known; or the record owner of the premises. Such notice is deemed completed at the time it is mailed, and any period to reply or abate begins to run from the date of mailing. The animal may be claimed on any regular work day during regular work hours. The impoundment fee will be assessed prior to release of the animal.
- G. It shall be prohibited for any person in any manner to interfere with any employee or designated representative of the City so as to hinder, delay or prevent his or her executing his or her duties pursuant to this Chapter.
- H. No person may set traps in the City for the purpose of apprehending wild or domesticated animals. This section does not prohibit:
  1. Trapping mice, rats or other household vermin;
  2. The setting of traps to destroy moles and other underground pests so long as the traps used may be triggered only by subsurface action; or
  3. The setting of traps in the line of duty by an animal control officer or with written permission from and under supervision of an animal control officer or licensed pest-control operators.

The Chief of Police authorizing residents to set traps.

5.0217. Investigation and Enforcement. Officers or employees designated by the city shall have authority in the investigation and enforcement of this article, and no person shall interfere with, hinder, or molest and such officer or employee in the exercise of such powers. The designated officer or employee shall make investigations as is necessary for the health and well-being of the community. Residents keeping brooding chicks, pullets, and hens for the laying of eggs must consent to any request by the Animal Control Officer, designated Animal Control Agency, or designated City Employee to allow any such person to enter property for inspection purposes

## CHAPTER 5.03 - FIREWORKS AND FIREARMS

5.0301 Discharge of Fireworks Prohibited Without Permit. It shall be unlawful for any person to shoot, discharge or explode, or cause to be shot, discharged or exploded, any firecrackers, sky rockets, bottle rockets, blank cartridges, fireworks, or other explosives used for fireworks or fireworks display, in the City of Alcester. Nothing in this section shall prohibit the use of a public display of fireworks in the City, provided that any person responsible for such public display shall, prior thereto, receive a permit from the City Council. Exception: Unless suspended by the City Council, it shall be lawful for a person to discharge fireworks between the dates of June 27th and July 5th of each year, between the hours of 11:00 a.m. to 11:00 p.m.

5.0302 Discharging Weapon. No person shall discharge any pistol, gun, revolver, or other firearm, or any bow and arrow, or any device capable of firing a projectile either by air or compressed gas or any other means which would likely cause injury to any person, or discharge any dangerous weapon, within the City limits.

The following uses are exempt from this section:

- A. Proper use of weapons in a licensed shooting range.
- B. Use by law enforcement or animal control officers in the discharge of their official duties, or to persons who are authorized by the Chief of Police.
- C. Use by persons engaged in instructional courses using air guns, BB guns, or bows and arrows if the course has obtained a permit from the Chief of Police, is conducted by a certified instructor, is covered by adequate liability insurance, and has been approved by the supervising unit if conducted on City property. The Chief of Police may establish conditions for granting a permit to protect the health, safety, and well-being of the general public.
- D. The owner or inhabitant, over 18 years of age, of a parcel of real estate within the City of Alcester may use air guns or BB guns to control predators or pests on such property, provided all such activities comply with South Dakota Statute.

It shall be a defense to a charge of violation of this section that a person was engaged in lawful self defense, as set forth in SDCL 22-5-1, SDCL 22-5-9, and SDCL 22-18-4.

## CHAPTER 5.04 - MINORS

- 5.0401 Imposed. It shall be unlawful for any minor under the age of seventeen years to be on or present upon any streets, avenues, alleys, parks, playgrounds or other public grounds or places of amusements or entertainment, or places of business or vacant lots in the City before 6:00 a.m. or after 11:00 pm. on any days of the week, unless such minor is accompanied by his parent, guardian or other adult person having the care or custody of such minor.
- 5.0402 Parents and Guardians Not to Permit Violations. It shall be unlawful for any parent, guardian or other person having the legal care or custody of any minor under seventeen years of age to allow or permit such minor, while in such legal care, custody or control, to go or be in or upon any of the places and during the hours set forth in Section 5.0401.
- 5.0403 Owners or Managers of Places of Amusement or Business Not to Permit Violations. It shall be unlawful for the owner, manager or person in charge of any show or other place of amusement or business to permit any minor under the age of seventeen years to enter or remain in such show or other place of amusement or business during the hours specified in Section 5.0401, unless such minor shall be accompanied by his parent, guardian or other adult person having the care and custody of such minor.

## CHAPTER 5.05 – PUBLIC NUDITY AND STRIP DANCING

5.0501 It is a violation of this Ordinance for any person to knowingly or intentionally, in a public place:

- (1) Engage in sexual intercourse; or
- (2) Engage in deviate sexual conduct; or
- (3) Appear in a state of nudity; or
- (4) Fondle the genitals of himself, herself or another person.

5.0502 As used in this Ordinance:

- (1) “Nudity” or “state of nudity” means the showing of the bare human male or female genitals, anus or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of the areola; or the showing of the covered male genitals in a discernably turgid state.
- (2) “Public place” means any location frequented by the public, or where the public is present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit) and whether open to the public at large or where entrance is limited by a cover charge or membership requirements, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place. Public place shall not include movie theaters, theaters used for production of legitimate theaters and theatrical productions, enclosed single sex and unisex public rest rooms, enclosed single sex and unisex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor’s offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein.

5.0503 It shall be unlawful for any person or entity maintaining, owning or operating any public place to operate and knowingly, or with reason to know, permit or allow any person to appear nude in such public place or to permit unlawful touching as prohibited by Section 4 hereof.

5.0504 It shall be unlawful for any male or female dancer, stripper or performer to engage in any physical contact with patrons or customers while dancing or performing, to include but not limited to, placing of money in the dancers’ or strippers’ wearing apparel. All such dangers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

- 5.0505 It shall be a violation of this Ordinance for any person or entity to refuse admittance without fee to any on-duty police officer at any time when patrons or customers remain in said premises.
- 5.0506 No person under eighteen (18) years of age shall be permitted access to any public place defined herein which shall permit nude dancing, which otherwise complies with the provisions hereof.
- 5.0507 The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.
- 5.0508 Penalty. A violation of this Ordinance shall be punishable by a fine of up to Two Hundred Dollars (\$200.00), or thirty (30) days in jail, or both for each offense.
- 5.0509 Operation of an establishment in violation of this Ordinance shall constitute a public nuisance and in addition to all other remedies provided herein, the City Attorney may, by civil process, seek, permanent abatement of said nuisance.
- 5.0510 If any provision or section of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder of this Ordinance.

**Editor's note**—Ordinance #7.0508.1, adopted 11/21/2015, was adopted prior to the adoption of this code. However, pursuant to SDCL 9-10-2, all ordinances in force at the effective date of this code which are not inconsistent with its provisions shall continue in force and effect until repealed or amended as provided by law. It is included in this code as Chapter 5.05 due to its compatibility with the general purpose and intent of Chapter 5.

***(Amended: Ordinance No. 7.0508.1, dated 11/21/2005)***

## TITLE 6 - STREETS, SIDEWALKS AND PUBLIC PLACES

### Chapter 6.01 - Street Names and Addresses

### Chapter 6.02 - Streets, Sidewalks, Curb and Gutter

### Chapter 6.03 - Snow Removal

### Chapter 6.04 - Moving Buildings

### Chapter 6.05 - Municipal Trees

### Chapter 6.06 - Municipal Parks

### Chapter 6.07 - City Auditorium

## CHAPTER 6.01 - STREET NAMES AND ADDRESSES

- 6.0101 Names of Streets and Avenues. The names of all streets and avenues in the City shall be fixed and adopted in accordance with the official map of the City on file in the office of the Finance Officer. Other streets shall be named in accordance with guidelines included in the City subdivision regulations. Any such act of naming, establishing, or vacating any street, alley or other public way in the City shall be so designated on such map. (SDCL 9-45-2)
- 6.0102 Numbering Plan. A numbering plan for residences and businesses shall be maintained by the City Council. A listing of the assigned numbers and a map showing the location of addresses shall be maintained and filed in the office of the Finance Officer. The Finance Officer shall be responsible for assigning new numbers and updating the listing of such numbers and the location map. (SDCL 9-45-2)
- 6.0103 Duty of Numbering. That all houses and lots within the corporate limits of City of Alcester, South Dakota, shall be numbered in accordance with the provisions of Chapter 6.01. It shall be the duty of the owner of such houses and lots to so place and construct such numbers as to be easily visible from the street and said numbers shall be not less than four inches in height. If the owner of any dwelling house, building, business establishment or lot fronting on a street or avenue within the City shall fail, refuse or neglect to place the number, or replace the number when necessary, an authorized agent of the City may cause to be mailed by certified mail, return receipt requested, or by personal service to such owner, occupant or person, or by posting on the property a notice to the last known address ordering him to do so. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting. In case of failure of such owner to comply with such notice within ten days after the date of such notice, the authorized agent may cause the same to be done, and assess the cost thereof against the property or premises numbered. (SDCL 9-45-2)

## CHAPTER 6.02 - STREETS, SIDEWALKS, CURB AND GUTTER

- 6.0201 Street Surfacing. The hard surfacing of streets shall be at the expense of the owners of the property abutting the street(s) to be surfaced, with materials to be approved by the City



Council. Total cost of the street improvements including legal, engineering, grading and any other costs related to the improvement, shall be assessed against the property on a frontage foot basis. The cost of each street or alley intersection shall be assessed on a front footage basis to all lots or property included within a project area. (SDCL 9-45-31)

6.0202 Street Excavations. No person shall make or cause to be made any excavation except as hereafter provided, in or under any street, sidewalk, alley, or public ground or remove any earth, soil, paving, gravel or materials therefrom without first having called One Call and having had any underground utilities identified. Application for such approval shall state where such excavation is to be made, the extent thereof, and the purpose of such excavation.

6.0203 Excavation Permits. Applications for excavations other than emergency situations may require a deposit in such sum as deemed necessary by the City Council to ensure proper replacement and refilling of any such excavation or to cover the costs of any damages which may be caused by such excavation.

Any required deposit shall be paid to the City before approval of an application is made and any unused portion of said deposit shall be refunded to the applicant upon recommendation and approval of the City.

6.0204 Excavation Repairs. Approval for any excavation covered by this Chapter shall be issued only upon the express condition that the applicant shall refill such excavation in accordance with the requirements of the City, and shall restore the pavement or surfacing, as the case may be, to its former condition. The City may adopt and amend as necessary such requirements which shall set forth the manner in which various types of excavations shall be backfilled or refilled and the manner in which any street surfacing shall be replaced. Applicant shall be responsible to the City for any such excavation for a period of two years.

6.0205 Excavation Inspections. It shall be the duty of authorized City personnel or his or her designee to inspect all authorized excavation work at any stage of construction and to ensure compliance with approved requirements. If all backfilling, refilling, or surfacing is not completed in accordance with approved requirements, notice thereof in writing shall be given to the applicant, who shall put the same in proper order within a maximum of ten days. If the applicant fails after such notice to complete all requirements, the City Council may authorize the necessary repairs and such applicant shall pay the costs thereof.

6.0206 Excavation Barriers. Any person receiving approval to make excavations in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect and maintain around the same both day and night signs, fences or signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.

6.0207 Sidewalks. Unless otherwise determined by the City Council, the inside of the sidewalk shall be the property line. Sidewalk construction shall include base material of three inches in thickness, of approved materials. Sidewalks shall be no less than four inches in thickness, of Portland Cement Construction, and not less than four feet nor more than five feet wide in residential areas, with slope toward street of one-fourth inch per foot. When considered necessary and advisable for the peace, welfare, and safety of the people, the City Council may direct that new sidewalk be constructed and assessed to any abutting property owner in accordance with SDCL 9-46.

- 6.0208 Driveway Approaches. No driveway approaches shall protrude or extend into the streets beyond the curb line, unless otherwise so authorized by the City Council. Concrete driveway approaches shall be of five inch Portland Cement Construction, with the slope gradual to accommodate modern vehicles. On gravel thoroughfares driveway approaches constructed shall permit flow of surface water without drainage interference and shall permit proper blading and maintaining of streets. (SDCL 9-45-1)
- 6.0209 Curb and Gutter. Curb and gutter shall be of Portland Cement Construction, not less than three thousand PSI, with curb six inches in width, and extending six inches above the gutter. Gutter shall be of six and one-half inch thickness, extending twenty-four inches into the street and shall include two No. 4 Rebar centered on pan. The City Council may direct that curb and gutter be constructed and the cost assessed against any abutting property owner. (SDCL 9-45-5)
- 6.0210 Permits. When constructed separately from an overall construction project, property owners or their agents shall submit applications for permits for approval by the Public Works Director for sidewalks, driveway approaches, curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements, and where any or all are part of new construction projects, only one permit for the overall construction shall be issued. All improvements, installations, and engineering recommendations shall be in conformance with specifications or recommendations approved by the City Council or its Engineer.
- 6.0211 Barrier-Free Construction. Whenever any person, firm or corporation makes new installations of sidewalks, curbs or gutters, in both business and residential areas, it shall be required that they install ramps at crosswalks, so as to make the transition from street to sidewalk easily negotiable for handicapped persons in wheelchairs and for blind persons. All such ramps shall be constructed or installed in accordance with design specifications according to the most current American National Standards Specifications published by the American National Standards Institute or according to Americans with Disabilities Act specifications. (SDCL 9-46-1.2)
- 6.0212 Permission to Deposit Materials. No person shall deposit, place, store, or maintain, upon any public place of the municipality, including street rights-of-way, any dumpster, container, stone, brick, sand, concrete or any other materials, unless approved by the City.
- 6.0213 Sidewalk Maintenance. Whenever any public right-of-way in the City shall have been improved by the construction of a sidewalk along either side thereof, it shall be the responsibility of the owner or occupant of abutting property to inspect, maintain, remove or correct any condition which renders a sidewalk unsafe or unfit to use.
- 6.0214 Removal of Sidewalks Prohibited. It shall be unlawful for any person to remove, alter, or excavate any sidewalk, or cause the same to be done at any location within the City of Alcester where sidewalks exist at the time of the passage of the Ordinance from which this Section was derived. Any person removing, altering or excavating any sidewalk shall be responsible for replacing said sidewalk upon obtaining proper permitting from the City of Alcester. In the event a person violates this Section and fails to replace a sidewalk or any portion thereof which is unlawfully removed or altered, the City of Alcester shall be entitled to cause the same to be replaced, after notice to the property owner, and to assess the cost of replacement as provided for in South Dakota law.

6.0215 Council Permission for Parades or Public Gatherings on Streets or Sidewalks. It shall be unlawful for any person to hold or conduct any parade, meeting or public gathering on the streets or sidewalks of the City, without first obtaining permission to do so from the City Council.

## **CHAPTER 6.03 - SNOW REMOVAL**

6.0301 Duty to Remove. It shall be the duty of the owner, tenant, or person in possession of any property abutting on any sidewalk to keep such sidewalk and boulevard free from snow and to cause any accumulated snow to be removed within twelve hours in the downtown area and forty-eight hours in the rest of the City after the termination of any snowfall, or snow accumulation. When it is impossible to take snow and ice from such walk by reason of its being frozen to the sidewalk, the owner or occupant or person in charge of such lot shall sprinkle or spread some suitable material upon the same to prevent the walk from becoming slippery and dangerous to travel.

6.0302 Disposal of Snow. It shall be the duty of the property owner, tenant, or person in possession of any public or private driveway, parking lot, parking area or boulevard to dispose of accumulated snow upon such property in such manner that any snow when removed shall not be deposited upon any sidewalk, within or upon any public street or alley, after such public street or alley has been cleared of snow by grading of such snow away from the curb or picking up and carrying away of such snow by the City, or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.

6.0303 Removal Costs Assessed. In the event any owner, tenant, or person in possession of any property shall neglect or fail to or refuse to remove such snow or ice within the time provided, the City may issue a citation for such violation and may authorize such removal with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

6.0304 Mailbox Reimbursement. In the event that a City vehicle causes damage to a residential mailbox during the course of snow removal activities, the City shall reimburse the affected property owner the sum of twenty-five dollars (\$25.00) to cover the cost of a replacement mailbox. Reimbursement will not occur if it is deemed that the snow moved with a City vehicle results in the damage. Reimbursement will only occur once a year.

The property owner must report the incident to the City Finance Officer within forty-eight (48) hours of the occurrence. The report should include the following information:

- a. Date and time of the incident.
- b. Location of the damaged mailbox.
- c. Description of the City vehicle involved (if known).
- d. Any available photographic evidence

Upon receipt of the report, the City shall initiate an investigation into the incident to determine the veracity of the claim.

The investigation may include interviews with City employees involved, examination of the damaged property, and any other relevant information.

Following the completion of the investigation, the City Finance Officer shall present the findings to the City Council for approval of the reimbursement.

The City Council shall review the evidence and, if satisfied, approve the reimbursement of twenty- five dollars (\$25.00) to the affected property owner.

***(Amended : Ordinance No. 2024-02)***

## CHAPTER 6.04 - MOVING BUILDINGS

- 6.0401 Permit Required. No person shall move any building or part of building into, along or across any public street, alley, or grounds in the City without having obtained a moving permit. (SDCL 9-30-2)
- 6.0402 Applications. Written application for a moving permit shall be filed with the Finance Officer, and shall include the name of the applicant, the name of the owner of the building, a description of the lot on which such building is standing and the lot to which it is to be moved, if such location shall be within the City. The application shall also specify the route along which it is proposed to move the building, and the length of time likely to be consumed in such moving. Any application so filed shall be considered by the City Council for approval, and any other conditions to be complied with by the applicant, shall be stated.
- 6.0403 Surety Bond. No permit shall be granted until the applicant shall file with the Finance Officer a bond in favor of the City in the penal sum to be established by the City Council, with sufficient surety, and conditioned on the applicant promptly repairing and making good, to the satisfaction of the City Council, any and all damage to any pavement, sidewalk, crosswalk, hydrant, street, alley, or other property, done or caused by the applicant or the applicant's employees, in moving such building or part thereof, or in connection with the moving thereof. The applicant shall indemnify and save harmless the City against any and all liability for damages, costs and expenses, arising or which may arise or be incurred in favor of any person by reason of any conduct by the applicant or applicant's agents or employees, in connection with the moving of such building or part thereof, or the use of any public ground for such purpose.

- 6.0404 Standing Buildings. No building or part of a building being moved, shall be allowed to stand still in any public street or any public ground for more than twenty-four consecutive hours.
- 6.0405 Permission of Property Owners. No moving permit granted by the City shall authorize the holder thereof to break, injure, or move any telephone, electric light, power or cable TV wire or pole, or to cut, trim or otherwise interfere with any property without the written permission of the owner or owners thereof.
- 6.0406 Removal, Demolition or Relocation of Structures. Upon the removal, demolition or relocation of structures from or on any lot within the City of Alcester, the foundation of such structure removed, demolished or relocated must be removed from the property and the basement or excavation remaining after removal of the foundation must be filled with good, clean, fill dirt.
- If a house is removed from the property then all other outbuildings and other structures which are not being used must be removed together with all sidewalks (except along the street). Upon removal, demolition or relocation of the house or other structures, the lot shall be leveled and left in a good, clean, sanitary condition. Upon the property owner's failure to comply with the provisions of this Section, the property shall be deemed a public nuisance which may be abated and the cost thereof assessed against the property pursuant to laws of the State of South Dakota.
- 6.0407 Approval and Fee. No moving permit shall be issued unless the appropriate nonrefundable fee is paid to the Finance Office. The permit fee rate shall be \$250.00 per \$1,000.00 of assessed valuation of a residential building moved out of the City and \$100.00 for all other buildings moved into or out of the City. The permit fee may be amended by resolution of the City Council.
- 6.0408 Safeguards. It shall be the duty of the person, firm or corporation moving any building through the streets to do the same with proper care for the safety of persons and property. Warning barricades and lights shall be maintained wherever necessary for the protection of pedestrians or traffic.
- 6.0409 Protecting Pavement. Where a building or structure is being moved over a street, but is not carried on another vehicle or on a unit equipped with tires, the street surface shall be protected by planking or other device effective to prevent injury to the roadway.

## **CHAPTER 6.05 - MUNICIPAL TREES**

- 6.0501 Authority and Jurisdiction. The City Council shall have the authority to regulate the planting, maintenance, and removal of trees along public streets and other publicly owned property to insure the public safety and to preserve the aesthetics of such public sites. The City Council shall also have the authority to determine the type and kind of trees to be planted upon

municipal streets or in parks and may assist in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits or within the area over which the City has jurisdiction, whether the same be on private or public property, and to make recommendations from time to time as to desirable ordinances concerning the tree program and activities for the City. (SDCL 9-38-2)

Certain species of trees shall not be planted in the street right-of-way for any of the following reasons: high susceptibility to disease, production of large or messy fruit, and growth habit.

Any person or persons planting prohibited trees or shrubs in street right of way area shall be given notice to remove the trees or shrubs, within a reasonable time to be specified in the notice. Failure to remove within the specified time shall constitute a violation of this Chapter, and in such case, in addition to any other penalty provided by law, the City is authorized to remove such plants and assess the owner of the property for the removal costs.

- 6.0502 Duties of Property Owners. It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersections, except where such services are provided for by utility firms. The minimum clearance of any overhanging portion thereof shall be ten feet over all sidewalks and fourteen feet over all streets, unless otherwise determined by the City Council.
- 6.0503 Abuse of Trees. Unless otherwise specifically authorized by the City Council, no person shall intentionally damage, cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to such tree to come in contact with them, or set fire to or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.
- 6.0504 Removal of Hazards. Where any tree branches or hedges protrude or overhang on any thoroughfare within the City so as to be determined as in violation with this Chapter or affecting motor vehicle traffic and good maintenance practices, notification shall be given by the Public Works Director to the property owner to remove such obstructions or undesirable branches or hedges within seventy-two hours. The notification shall be sent by certified mail, return receipt requested, or by personal service to such owner, occupant or person, or by posting on the property. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting. (SDCL 9-38-2)
- 6.0505 Removal Costs Assessed. In the event any owner, tenant, or person in possession of any property shall neglect or fail to or refuse to remove such obstructions or undesirable branches or hedges within the time provided, the City may issue a citation for such violation and may authorize such removal with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

## CHAPTER 6.06 - MUNICIPAL PARKS

- 6.0601 City Park. The City Park of Alcester, South Dakota, shall consist of and include all lands, rights of way, pool and structures used and enjoyed by the citizens of Alcester and others for many years owned and maintained by said City.
- 6.0602 Unauthorized Entry. It shall be unlawful for any person to trespass upon or enter any property designated as a park or golf course unless said entry is in accordance with City ordinances, resolutions or policies governing the times of operation for said park or golf course or unless said person has permission to enter from an authorized municipal official.
- 6.0603 Lawful Manner. Any person using or occupying such City Park or any of its facilities shall conduct him or herself in a carefully, prudent, peaceable and lawful manner, shall honor and respect the rights and privileges of other visitors in the park, and shall at all times maintain and take every precaution to prevent the injury of persons and property in the park.
- 6.0604 Unnecessary Acts. Any person using or occupying such City Park or any of its facilities shall not do or commit any unreasonable or unnecessary acts that may unreasonably annoy other visitors in the park or unreasonably prevent such visitors in the park from the full use and enjoyment of the park.
- 6.0605 Alcester Golf Course - Operation of Motor Vehicles. It shall be unlawful for any person to operate a motorized vehicle upon the Alcester Golf Course except when authorized by the Course Superintendent or other authorized municipal official. The use of snowmobiles, motorcycles, ATV's and other recreational vehicles, except golf carts when permitted, shall be strictly prohibited.
- 6.0606 Protection to Water Areas. It shall be unlawful for any person to enter into or upon any water retention ponds located on any property designated as a park or golf course unless said entry is authorized by the Golf and Park Superintendent or other authorized municipal official. Entry shall be deemed to include swimming, ice skating, boating, fishing, ball retrieval or other entry onto the waters.
- 6.0607 Alcoholic Beverages. No person shall consume any alcoholic beverages in any City Park, except upon approval by the City Council.
- 6.0608 Glass Containers. No glass beverage containers are permitted in any City Park.



## CHAPTER 6.07 - CITY AUDITORIUM

6.0701 City Auditorium Rental. The City Auditorium shall be available for rent to private individuals and groups on a first come first serve basis provided the following terms and conditions are met:

- A. That the leasee enters into a written lease with the City of Alcester on a form as prescribed and approved by the City Council.
- B. That the rental payable in advance of the City Auditorium (Upstairs) will be as follows:

Residential/Non-Residential/Business - \$200.00 per day

Non-Profit Organization - \$50.00 per day

Rummage Sales - \$50.00 per day

Setup Days - \$10.00 per day

Meeting Room - \$10.00 per day

- D. That a \$100.00 security deposit shall be deposited with the City Finance Officer of the City of Alcester. Said security deposit to be refunded if the City Auditorium is returned to as good a condition as at the beginning of the lease.
- E. That the leasee will be responsible for policing and maintaining order during the lease period.
- F. That the leasee will be responsible for any damage done to the City Auditorium and will be solely responsible and liable for any injury or property damage during the term of the lease.



## TITLE 7 - TRAFFIC CODE

### Chapter 7.01 - General Provisions

### Chapter 7.02 - Operation of Vehicles

### Chapter 7.03 - Vehicle Equipment

### Chapter 7.04 - Speed Restrictions

### Chapter 7.05 - Parking, Stopping

### Chapter 7.06 - Trucks

### Chapter 7.07 - Snowmobiles

### Chapter 7.08 - Miscellaneous Provisions

### Chapter 7.09 - Golf Carts

## CHAPTER 7.01 - GENERAL PROVISIONS

7.0101 Definitions. When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Chapter or Title.

- A. Authorized Emergency Vehicle - Vehicles of any fire department, police vehicles and such ambulances and emergency vehicles of municipal department or public service corporations as are designed or authorized by the Chief of Police.
- B. Crosswalk - That portion of a roadway ordinarily included within the prolongation of curb and property lines at intersection, whether marked or not, or any other portion of a roadway clearly indicated for pedestrian crossing by lines or other markings on the surface of the street.
- C. Curb - The extreme edge of lateral boundary of a roadway, whether marked by curbing or not.
- D. Department - The police department of the City of Alcester.
- E. Double Parking - The standing of a vehicle upon a street at the rear of another vehicle which is parked diagonally at the curb, or the standing of a vehicle upon the street alongside and parallel at the curb.
- F. Driver or Operator - Any person who is in actual physical control of a vehicle.
- G. Left Hand Side of a Street - The side to the left of the vehicle as it moves forward.
- H. Motor Vehicle - Every vehicle which is self-propelled.
- I. Parking - The standing of a vehicle, whether attended or unattended upon a roadway, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers.
- J. Pedestrian - Any person afoot.

- K. Private Road or Driveway - Every road or driveway not open to the use of the public for vehicular travel.
  - L. Right Hand Side of Street - The side on the right of the vehicle as it moves forward.
  - M. Right-of-Way - The privilege of the immediate use of the street.
  - N. Roadway - That portion of a street devoted to vehicular traffic.
  - O. Semitrailer - Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.
  - P. Sidewalk - That portion of the street between the curb line and the adjacent property lines.
  - Q. Street - The term street shall mean any street, avenue, boulevard, alley, highway, or public place set apart for the public vehicular traffic.
  - R. Street Intersection - That portion of a street where it joins another at an angle, whether or not it crosses the other street, and shall include the full width of the street between the curb lines, extended, of the intersection streets.
  - S. Through Streets - Streets, or parts thereof, that have been so designated and marked, by order of the City Council.
  - T. Trailer - Every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.
  - U. Vehicle - Every device in, upon, or by which any person or property is or may be transported or drawn upon a street, provided that for the purpose of this title a bicycle or an animal that is being ridden, driven, or led shall be deemed a vehicle.
- 7.0102 Duty to Enforce. It shall be the duty of the Chief of the Police Department and all police officers to enforce all the regulations and requirements of this Title. (SDCL 9-29-19)
- 7.0103 Directing Traffic. Police officers shall direct traffic in conformance with traffic laws and ordinances, provided that in the event of a fire or other emergency, or to expedite traffic or safeguard pedestrians, members of the police or fire department may direct traffic as conditions may require. (SDCL 9-29-19)
- 7.0104 Obedience to Police. It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal, or direction of the police department. (SDCL 9-29-19)
- 7.0105 Exemptions to Authorized Emergency Vehicles. The provisions of this Title regulating the movement, parking and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency in the necessary performance of public duties. This exemption shall not, however, exempt the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

- 7.0106 Application to Workers and Equipment. The provisions of this Title shall not apply to persons, motor vehicles and other equipment while actually engaged in work upon the surface of a street, but shall apply to such persons and vehicles when traveling to or from such work; provided however, such persons and vehicles shall not indiscriminately block traffic, but shall allow reasonable room on the traveled portion of the street for other vehicles to pass.
- 7.0107 Authority to Install Traffic Control Devices. The City Council shall place and maintain traffic control signs, signals and devices when and as required under this Title to make effective the provisions of said Title, and may place and maintain such additional traffic control devices as may be necessary to regulate traffic. When or where necessary the Street Superintendent and the City Engineer shall utilize the Manual on Uniform Traffic Control Devices (MUTCD) guidelines. (SDCL 32-14-5)
- 7.0108 Obedience to Traffic Control Devices. The operator of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed or held in accordance with the provisions of this Title unless otherwise directed by a law enforcement officer subject to the exceptions granted the driver of an authorized emergency vehicle in this Chapter.

## **CHAPTER 7.02 - OPERATION OF VEHICLES**

- 7.0201 Drive on Right Side of Street. Upon all streets, except upon one-way streets, the operator of a vehicle shall drive the same upon the right half of the street and shall drive a slow moving vehicle as closely as possible to the right hand edge or curb of a street unless it is impracticable to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable in overtaking and passing set forth in this Title.

The foregoing provision of this section shall not be deemed to prevent the marking of lanes for traffic upon any street and the allocation of designated lanes to designated speeds.

- 7.0202 Overtaking and Passing. The driver of any vehicle overtaking another vehicle proceeding in the same direction shall first give audible warning of his intention to pass and shall then pass within the speed limit and at a safe distance to the left thereof, but only when such left side is clearly visible and is free from oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety and shall not cut in front of the overtaken vehicle until safely clear of same, and in no case shall a vehicle pass another vehicle in a street intersection. The driver of a vehicle shall move to the right of the roadway a sufficient distance to allow passing when so signaled from a vehicle behind desiring to pass, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. Vehicles shall not travel two abreast on any street.
- 7.0203 Motor Vehicles Left Unattended, Brakes to be Set. No person driving or in charge of a motor vehicle shall allow such vehicle to stand on any street unattended without first setting the brakes or placing an automatic transmission in park. When standing upon any grade, the front wheel shall be turned to the curb or side of the roadway.
- 7.0204 Backing Around Corners or into Intersection Prohibited. It shall be unlawful for the operator of any vehicle to back such vehicle around a corner at an intersection or into an intersection of public streets. (SDCL 32-30-20)

- 7.0205 Right-of-Way at Intersection. Subject to the exception stated in the next succeeding Section, the right-of-way rule as between vehicles at intersections is hereby declared as follows:
- A. The operator of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has fully entered the intersection;
  - B. When two vehicles approach an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right-of-way to the vehicle on the right;
  - C. The operator of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which he may otherwise have hereunder.
- 7.0206 Exceptions to Right-of-Way. The operator of a vehicle entering a public street shall yield the right-of-way to authorized emergency vehicles when the latter are operated upon official business and the operators thereof sound audible signal by bell, siren, or exhaust whistle. This provision shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the operator of any such vehicle from the consequences of an arbitrary exercise of such right-of-way.
- 7.0207 Stop Required Before Operator Entering From Alley or Private Driveway. The operator of a vehicle emerging from an alley, driveway, or garage shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alleyway. (SDCL 32-29-2.2)
- 7.0208 Turning Around at Intersections Prohibited. At any intersection where traffic is controlled by traffic control signals or by a law enforcement officer, or where warned by an official traffic control sign displaying the words "No U Turn," or "No Left Turn," it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection in a complete circle, or so as to proceed in the opposite direction or to make a left turn.
- 7.0209 Right-of-Way, Left Turn. The operator of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. The operator having so yielded and having given a signal when and as required may make such left turn and the operators of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. (SDCL 32-26-18)
- 7.0210 Turning Around in Midblock Prohibited. The operator of a vehicle shall not turn such vehicle so as to park or move in the opposite direction except at an intersection. (SDCL 32-26-25)
- 7.0211 Action Required at Stop Sign. Except when directed to proceed by a law enforcement officer or traffic control signal, every operator of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the operator shall yield the right-of-way to any vehicle which has entered or is approaching the intersection from another highway and shall not proceed into the intersection until certain that

such intersecting roadway is free from oncoming traffic which may affect safe passage. (SDCL 32-29-2.1)

7.0212 Action Required at Yield Sign. The operator of a vehicle approaching an authorized sign bearing the word “Yield” or “Yield Right-of-Way” shall in obedience to such sign slow down to a speed reasonable for the existing conditions or shall stop if necessary and shall yield the right-of-way to any pedestrian legally crossing the roadway on which such operator is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said operator having so yielded may proceed and the operators of all other vehicles approaching the intersection shall yield to the vehicle so proceeding. (SDCL 32-29-3)

7.0213 Pedestrian’s Right-of-Way. The operator of any vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at the end of a block, except at intersections where the movement of traffic is being regulated by law enforcement officers or traffic control signals. Whenever any vehicle has stopped at a marked crosswalk or at any intersection to permit a pedestrian to cross a roadway, it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass such stopped vehicle. (SDCL 32-27-1)

7.0214 One-Way Street and Alleys. The City may by ordinance designate one-way streets or alleys. The City shall place and maintain signs giving notice thereof and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

*(Amended: Unnumbered Ordinance dated 6/1/2015)*

7.0215 Obedience. It shall be unlawful for any person to operate any vehicle in violation of the markings, signs, barriers, or other devices placed in accordance with the provisions of this Chapter.

*(Amended: Unnumbered Ordinance dated 6/1/2015)*

## **CHAPTER 7.03 - VEHICLE EQUIPMENT**

7.0301 Lights Required. A motor vehicle upon a highway within the state during the period from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet shall be equipped with at least two lighted lamps on the front and two on the rear of such motor vehicle, such lamps to conform to SDCL 32-17, provided that a motorcycle or motor bicycle shall be required to display but one lighted lamp in front and one in the rear.

7.0302 Head Lights Dimmed. No person shall use head lights or side lights upon any vehicle on any street unless the same are dimmed in such a way as to prevent the light being blinding to persons using the streets.

- 7.0303 Brakes. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles shall be equipped with brakes in compliance with the requirements of SDCL 32-18.
- 7.0304 Muffler, Excessive Smoke and Noise. No person shall operate or drive any motor vehicle unless such motor vehicle is provided with an adequate muffler, which shall at all times be kept closed so that the exhaust is effectively muffled. No person shall operate a motor vehicle in such manner as to emit unnecessary or excessive smoke or noise from the motor of such vehicle or to needlessly sound the horn or other noise-making device.
- 7.0305 Vehicles with Lugs Prohibited. No person shall operate or move any tractor or vehicle equipped with mud lugs, ice spurs, or spikes upon or across any street that is surfaced with Portland cement concrete or surfaced with bituminous material or any other hard surfacing material without first laying planks at least two inches in thickness over the surface of such street in a manner so as to protect such street surface from any damage.
- 7.0306 Pneumatic Tires with Metal Studs Prohibited. It shall be lawful to operate, upon the streets of the City of Alcester, motor vehicles equipped with pneumatic tires in which there are embedded metal studs or wires of tungsten or other similar metal from October 1 to April 30 as provided by the state law.
- 7.0307 Projecting Loads. No person shall drive any vehicle upon any street with any load or part of a load projecting more than four feet beyond the rear end or front ends or more than two feet beyond the sides of the body, or carrying part of such vehicles unless there be attached to the extreme ends and sides of such projecting load some warning sign or signal plainly discernible to other drivers and clearly indicating the projecting parts of such load.
- 7.0308 Protection of Load. No motor vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dripping, sifting, leaking or otherwise escaping there from except that sand may be dropped for the purpose of securing tractions or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway. No person shall operate on any street any vehicle with any load unless said load and any covering is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.
- 7.0309 Dynamic braking devices. No motor vehicle shall operate with a dynamic braking device engaged except for the aversion of imminent danger. A dynamic braking device (commonly referred to as Jacobs Brake) means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

## **CHAPTER 7.04 - SPEED RESTRICTIONS**

- 7.0401 General Restrictions. Any person driving a vehicle on a street or highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface, and width of the street or highway and to any other conditions existing.



7.0402 Speed Limitations. It shall be unlawful for any driver to drive any vehicle upon a highway or streets of the City or in any municipal park at a greater rate of speed than the following:

- A. Fifteen miles an hour when approaching within fifty feet of a railroad grade crossing when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last two hundred feet of his approach to such crossing he does not have a clear and uninterrupted view of such crossing and of any traffic on such railway for a distance of four hundred feet in such direction from such crossing.

*(Amended: Ordinance No. 2023 – 09)*

- B. Fifteen miles an hour when passing a school during a school recess or while children are going to or leaving school during the opening or closing hours.

- (1) Fifteen miles an hour, at any time, when passing a school zone identified by school zone signs when flashing school speed signs are activated

*(Amended: Ordinance No. 2023 – 09)*

- C. Fifteen miles an hour when approaching within fifty feet and in traversing an intersection of streets when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty feet of his approach to such intersection he does not have a clear and uninterrupted view of such intersection for a distance of two hundred feet in such direction from such intersection.

*(Amended: Ordinance No. 2023 – 09)*

- D. Twenty-five miles per hour on all streets, or as otherwise designated.

*(Amended: Ordinance No. 2023 – 09)*

- E. Fifteen miles per hour in the City parks.

- F. Fifteen miles per hour in the mobile home park

*(Amended: Ordinance No. 2023 – 09)*

## CHAPTER 7.05 - PARKING, STOPPING

7.0501 Parking Prohibited in Certain Places. At any time it shall be unlawful to permit any vehicle to stop, stand or park in any of the following places, except where necessary to avoid conflict with other traffic or in compliance with the directions of a law enforcement officer or traffic control sign or signal:

- A. Within an intersection;
- B. On a crosswalk;
- C. Within fifteen feet of a fire hydrant;
- D. In front of a private driveway;
- E. Within fifteen feet of the driveway entrance to any fire station or EMS building, or directly across the street from such entrance, except personal vehicles of emergency personnel;
- F. On a sidewalk;
- G. Within fifteen feet of inside boundary line of the sidewalk, or if no sidewalk is in place, within twenty-five feet of the intersecting roadway, except that this provision shall not apply to alleys;
- H. Parking against direction of traffic on through streets.
- I. Parking of any vehicle on any City street for the purpose of camping or sleeping.
- J. From October 1 - May 15; no person shall park any recreational vehicle or trailer on any street at any location within the City for a period longer than forty-eight (48) hours. Continuous presence of a recreational vehicle or trailer on a city street, regardless of location(s) or movement by the owner or another person, for a period of more than forty-eight (48) hours, is a violation of this section. Recreational vehicle(s) or trailers shall be issued a warning by a law enforcement officer to remove within forty-eight (48) hours of citation. After a recreational vehicle or trailer has been ticketed, it must stay off city streets for a minimum period of forty-eight (48) hours from the time of removal. Failure to remove shall result in a ticketing and removal in accordance with Section 7.0504 below. For purposes of this Section, recreational vehicles and trailers are defined to include, but shall not be limited to, the following:
  - 1. Cargo trailers;
  - 2. Travel trailers;
  - 3. Pickup campers or coaches;
  - 4. Motorhomes;

5. Camping trailers;
6. Boats and boat trailers;
7. Snowmobiles and snowmobile trailers;
8. Jet skis and jet ski trailers;
9. Golf carts and golf cart trailers;
10. All-terrain vehicles and all-terrain vehicle trailers;
11. Dirt bikes and dirt bike trailers;
12. Grain wagons;
13. Dump trailers and flatbed trailers; and
14. Any other recreational equipment or cases, boxes or items used to store or transport such recreational equipment.

*(Amended: ordinance No. 2021-12)*

7.0502 Standing for Loading or Unloading Only in Certain Places. It shall be unlawful for the operator of a vehicle to stop, stand, or park said vehicle for a period of time longer than is necessary for the actual loading or unloading of passengers, or the unloading and delivery or pick up and loading of materials in any place marked as loading zone. The City Council shall have authority to determine the location of passenger zones and loading zones as described herein, and shall cause to be erected and maintained appropriate signs indicating the same.

7.0503 Parking Zones. The City Council may designate by resolution any street, avenue, or alley in the City of Alcester, as necessity requires, as parking zones for the parking of motor vehicle or vehicles of any nature and description or the storage of any material of any kind, nature, or description; provide the length of time for day and night parking; the hours that constitute day and night; and provide for marking with proper signs setting forth the manner, form, and hours of parking. Such parking zones shall be delineated on a map filed in the office of the finance officer.

The driver or person in charge of any vehicle parked in such a limited time zone shall comply with such time limit for parking as shown on the signs or marked on the curb where such vehicle is parked.



7.0504 Penalty. The offending automobile or other vehicle will be tagged with a tag, listing the date of the offense, license number of the vehicle, make, violation number, and location of offense with reference to street. Whenever a notice is left by any member of the police department in or on any vehicle which has violated the parking regulations, the person in charge of such vehicle shall pay the amount of the assessment described thereon by taking such notice and amount of the assessment to the City Finance Office and depositing the same with the City Finance Officer. The assessment for each violation shall be twenty-five dollars per day of violation.

If the owner or operator fails to comply within seven days from the date of notice of violation, then in that case, a summons will be issued and the assessment shall be raised to fifty dollars for the violation. The increased assessment can be paid at the City Finance Office within the above time frame. If the summons is not complied with, a warrant may be issued to bring the owner or operator of the vehicle into court and a fine of fifty dollars will be assessed by the court, along with court costs, if any, for the violations.

Any vehicle parked in violation of this Chapter may be removed from the streets by the police department and placed in public or private storage and the owner thereof, in addition to the fines and penalties provided in this Chapter, shall pay the charges for towing and storage of said vehicle so removed by the police department. All money so collected by the police department shall be immediately deposited with the City Finance Officer to be paid into the general fund

*(Amended: ordinance No. 2021-12)*

7.0505 Non-Parking Areas. The City Council may from time to time by resolution establish and cause to be designated and marked, non-parking areas along street curbs. No vehicle shall be parked at any time or for any period except to load or unload passengers or merchandise in such place so designated and marked.

7.0506 Obstruction of Traffic. No vehicle shall be operated or allowed to remain upon any street under the jurisdiction of the City in such a manner as to form an unreasonable obstruction to traffic. Whenever any police officer finds a vehicle which constitutes an obstruction to traffic, such officers shall be authorized to provide for the removal of such vehicle by towing, if necessary, at owner's expense, with no liability to the City. (SDCL 32-30-1, 2, 3, 4)

7.0507 Parking in Central Business District Prohibited During Snow Season. Except for loading and unloading, it shall be unlawful to park any vehicle or motor vehicle upon the street of the central business district of the City between the hours of 2:00 a.m. and 5:00 a.m. This restriction shall go into effect on November 1<sup>st</sup> each year and shall continue until March 30<sup>th</sup> of the following year. The purpose of this prohibition is to facilitate and expedite the snow removal operations in the central business district. For purposes of this article, the central business district shall consist of the following: Second Street from Broad to South Dakota Highway 11 and Iowa Street from First Street to Third Street.

7.0508 Parking During Snow Removal Alert Prohibited. It shall be unlawful to park any vehicle or motor vehicle upon any street within the City of Alcester after a snow removal alert has been declared.

A. Definitions. For the purposes of this Section, the following terms and words shall have the meaning given herein:

1. Snow Removal Alert. Such times as there is a snow accumulation on the public streets of two inches or more, or such times as the Street Superintendent or his or

her designee declares that snow removal operations on the public streets will commence and that the provision of this Chapter in regard to parking on public streets during snow removal operations are effective and will be enforced.

2. Street. The entire width of any public roadway within the City, and it shall not be limited to those roadways designated as a *Street* but shall include all other names by which public roadways are designated.

B. Declaration of Snow Removal Alert. When the Street Superintendent or his or her designee determines that snow removal from the public streets will commence, the Street Superintendent or his or her designee will announce through local news media and whatever other sources are available that there has been declared a snow removal alert and that the provisions of this Chapter will be effective and be enforced, designating a particular date and time when the alert shall commence. The determination to declare a snow removal alert will be based on the then existing weather conditions, and the amount of snow then on the ground or expected according to forecasts from the National Weather Service.

C. Termination of Snow Removal Alert. After a snow removal alert has been declared, there will be no declaration of its termination, but the alert shall terminate and the provisions of this Section become not effective nor enforceable as to any particular street or portion of a street, as soon as that street or portion thereof has been plowed and cleared of snow accumulation, curb-to-curb, and the snow removal equipment is no longer operating in that area, after which normal parking may be resumed until the next declared snow removal alert.

D. Violation of Snow Removal Alert. Parking contrary to and in violation of this Section shall be deemed prohibited parking and any vehicle or trailer parked in violation shall be subject to a fine of \$25.00. The owner or operator of the vehicle found in violation of this Section may, within 72 hours of the time when the notice of violation was attached to the vehicle, pay to the office of the City Finance Officer, as a fine for and in full satisfaction of the violation, the sum of \$25.00. If the owner or operator fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next two weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$50.00. Upon failure of the owner or operator to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner or operator shall be fined not less than \$75.00 plus court costs, which fine shall be collected by the Magistrate Court. The owner or operator also has the right to contest the charges or plead "not guilty" within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

7.0509 Ticketing and Towing Vehicles. Any authorized City official or law enforcement officer shall be authorized to ticket and tow away, or have removed and towed away by any commercial towing service, any car or vehicle illegally parked in any place where such parked vehicle creates or constitutes a traffic hazard, blocks the use of a fire hydrant, or obstructs or may obstruct the movement of any emergency or snow removal vehicle, or in any way is in violation with the provisions of this Title. Cars towed away for illegal parking shall be stored in a place designated by the City Council and shall be returned to the owner or

operator of such vehicle upon payment of the penalty under Section 7.0504. (SDCL 32-30-13, 14)

7.0510 Abandoned Vehicles. The abandonment of a motor vehicle or other vehicle or any part thereof on any street in the City shall be subject to action and penalties as provided for in this Title and under Chapter 3.01. The abandonment of a motor vehicle or other vehicle or any part thereof on private or public property, other than a street, in view of the general public, anywhere in the City shall be prohibited except as specifically allowed under Chapter 3.01. (SDCL 32-30-12.1)

7.0511 Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in a completely enclosed building.

7.0512 Towing Costs. When a vehicle is removed from either public or private property as authorized by order of the City Council or Authorized Official, the owner of the vehicle shall be responsible for all towing costs in addition to the penalty for violation. In addition the City shall not be liable for any damages to property or persons incurred as a result of such towing or storage.

7.0513 Establishment of Parking Spaces for Disabled Persons. There is hereby established the following parking spaces for disabled persons within corporate limits of the City of Alcester, to-wit:

- A. The northern most parking space on the west side of Iowa Street between 1<sup>st</sup> Street and 2<sup>nd</sup> Street east of the State Bank of Alcester.
- B. The eastern most parking space on the south side of 2nd Street between Iowa Street and Broad Street north of the State Bank of Alcester.
- C. The southern most parking space on the east side of Iowa Street between 2nd Street and 3rd Street west of the Thrift Store.
- D. Two parking spaces being the western most two spaces on the north side of 2nd Street between Iowa Street and Dakota Street in front of the Senior Citizens building.
- E. The second parking space west of Dakota Street on the north side of 2nd Street, between Dakota Street and Iowa Street, located in front of the Dakota Earth building.
- F. The first parking space east of the curb cutout in front of the City auditorium on the south side of 2nd Street between Broad Street and the north/south alley between Broad Street and Iowa Street.
- G. A parking space on the west side of Park Avenue south of the southern most water tower approach immediately east of the east shelter house in the Alcester City Park.

These parking spaces shall be accessible to and usable by physically disabled persons pursuant to SDCL 32-30-11.1 as it may, from time to time be amended.

7.0514 Parking Spaces for Disabled Marking. Such spaces shall meet the specifications with the Americans with Disabilities Act as amended on January 1, 2002 for marking buildings and facilities accessible to, and usable by, the physically handicapped.

- 7.0515 Parking Spaces for Disabled Eligibility for Use. Any physically disabled person who displays special license plates issued under SDCL 32-5-76 or 32-5-108 a serially numbered certificate issued under SDCL 32-5-76.1 or 32-5-76.2 or a similar license plate or certificate issued in another state on an automobile used in transporting him or her, shall be entitled to park in any space reserved for the physically disabled.
- 7.0516 Report of Improper Use of Special Plates or Certificates - Revocation of Privilege. If any police officer of the City of Alcester shall find that such license plates or certificates are being improperly used, they shall report such violation to the Department of Revenue which may revoke the privilege of displaying license plates or certificates so improperly used.
- 7.0517 Use of Privileges by Persons as a Person Without a Physical Disability as Violation of Chapter. Any person who is not physically disabled or who exercises the privileges granted to a physically disabled person pursuant to this Chapter commits a Class 2 misdemeanor and shall be punished according to the recognized fine schedule for a Class 2 misdemeanor under the laws of the State of South Dakota as said from time to time be established. In no event, however, shall the minimum fine be less than one hundred (\$100.00) dollars per offense.
- 7.0518 Unauthorized Parking in Handicapped Space as Violation of Chapter. The owner of any vehicle not displaying a serially numbered certificate or special license plate parked or stopped in a parking space or blocking a parking space on public or private property designated as reserved for a person with a physical disability shall be ticketed and the owner of the vehicle is guilty of a violation of this Chapter and commits a Class 2 misdemeanor in which instance the maximum penalty shall be the same set forth under SDCL 32-30-11.3 and 11.4 as may from time to time be amended. In no event, however, shall the minimum fine be less than the sum of one hundred (\$100.00) dollars per offense if the parking space is marked in accordance with the Americans with Disabilities Act Accessibility guidelines as of January 1, 2002.

## **CHAPTER 7.06 - TRUCKS**

- 7.0601 Definitions. When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Section.
- A. Person - Any individual, association, company, corporation, firm, partnership or organization.
  - B. Truck - Any motor vehicle designated or operated for the transportation of property which has a body weight or body and load weight which exceeds three (3) tons per axle.
  - C. Motor Vehicle - All machines propelled by any power other than muscular used upon the streets or highways for the transportation of property.
  - D. Trailer - A vehicle of the trailer type, without a power unit of its own, designed and used in conjunction with a motor vehicle for the transportation of property.
  - E. Truck Route - Streets and highways designated as truck routes by the City Council.
  - F. Streets - All other streets with the City which are not designated as truck routes.



- 7.0602 Truck Routes. The City Council, by resolution, may designate streets and highways within the City of Alcester as truck routes.
- 7.0603 Detours. Trucks may operate on any officially established detour of a truck route or street unless such detours are posted prohibiting such operation by trucks.
- 7.0604 Operation of Trucks. All trucks, as defined, may not operate on any City street or highway other than designated truck routes, unless otherwise permitted by this article.
- 7.0605 Owner's Responsibility. In addition to the driver or operator, the owner of any truck being operated with such owner's permission and/or consent is liable for any violation of this Ordinance.
- 7.0606 Load Limits. If load limits have to be imposed with weather changes, these load limits would coincide with state and/or county, whichever is lesser, load limits when they are necessary.
- 7.0607 Exceptions to Use of Truck Routes. There shall be the following exceptions to the use of truck routes:
- A. A truck arriving at the end of any designated truck route may be driven over the most direct course to the nearest truck route which extends in the same general direction.
  - B. The provisions of this Ordinance relating to the operation of trucks shall not apply to emergency vehicles of the Police Department, Fire Department or to any public utility vehicles when actually engaged in the performance of emergency duties necessary to be performed by said public departments or public utilities, nor to any vehicle owned by or performing work for the City, the United States of America or the State or any of its political subdivisions.
  - C. Any contractor, or material supplier, while engaged in the repair, maintenance, and construction of improvements within the City.
  - D. Whenever any truck route has been established and identified, any person driving a truck having a gross weight of or more than ten thousand pounds shall drive such truck on such routes and none other, except when it is impracticable to do so or where it becomes necessary to traverse another street or streets to a destination for the purpose of loading or unloading commodities, or for the purpose of towing a disabled or damaged motor vehicle to or from public or private property, and then only by such deviation from the nearest truck route as is reasonably necessary.
- 7.0608 Truck Route Signs. The Street Superintendent shall cause all truck routes to be clearly marked to give notice that this Chapter is in effect.
- 7.0609 Enforcement of Truck Routes. The police department shall keep and maintain accurate maps setting out truck routes and streets upon which traffic is permitted. The maps shall be kept on file in the office of the Finance Officer and made available to the public.

Any police officer having reason to believe that the weight of a vehicle and load is unlawful shall require any person driving or in control of said vehicle to proceed to any public or private scale available for the purpose of weighing and determining whether this Chapter has been complied with provided that such vehicle is driven to the nearest scale but in no event

more than five miles. It shall be unlawful for any person driving or in control of any such vehicle to fail to comply with their requirement.

Nothing in this Chapter shall be construed to modify or change any of the regulations of the state highway department or the statutes of the state with reference to the gross weight permitted upon any highways within the City.

## CHAPTER 7.07 - SNOWMOBILES

- 7.0701 Definitions. The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:
- A. Operate - to control the operation of a snowmobile.
  - B. Owner - any person, other than a lienholder, having the property in or title to a snowmobile and entitled to the use or possession thereof.
  - C. Private Property - means and includes any and all real property, or land within the City, which has not been opened or dedicated for public use or as a public thoroughfare.
  - D. Snowmobile - any engine-driven vehicle of a type, which utilizes sled type runners, wheels or skis with an endless belt tread or similar means of contact with the surface upon which it is operated.
- 7.0702 Operators License Required. No driver shall operate a snowmobile on a public street in the City without having in his or her possession a valid driver's license.
- 7.0703 Traffic Laws Applicable. The operator of a snowmobile is required to obey the same traffic laws of the state and Ordinances of the City, including street and road signs, as the operators of all other motorized vehicles are required to obey.
- 7.0704 Hours of Operation. No person shall operate a snowmobile on private property of their own or another or upon public highways, streets and alleys within the City between the hours of 11:00 p.m. and 7:00 a.m. the following day.
- 7.0705 Permission of Property Owner Required for Operation. No person shall operate a snowmobile on private property of another without the express permission to do so by the owner or occupant of such property.
- 7.0706 Operation on Public Ground and Streets Prohibited. No person shall operate a snowmobile on any public school grounds, public sidewalks, park property, park, roads, playgrounds and recreational areas within the City. Snowmobiles may be operated over snow-covered highways, streets and alleys within the City limits but only for emergency use as defined in 7.0711 or when the operator must travel upon such for purposes of leaving the City and/or when returning to his residence from outside the City. The operator when using any public street, highway or alley in accordance with the above restrictions, shall use the most expeditious and direct route.

- 7.0707 Crossing Streets at Right Angles. Persons operating snowmobiles are permitted to cross streets at right angles but only may do so after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach.
- 7.0708 Speed. No person shall operate a snowmobile at a speed greater than is reasonable or proper, under all existing circumstances. But in no event shall the speed be greater than the maximum limits allowed in Section 7.0403.
- 7.0709 Careless, Reckless or Negligent Operation Prohibited. No person shall operate a snowmobile in a careless, reckless or negligent manner so as to be likely to endanger the person or property of another or cause injury or damage thereto.
- 7.0710 Loud Noises Prohibited. No person shall operate a snowmobile in such manner as to create any loud unnecessary or unusual noise likely to disturb or interfere with the peace and quiet of any other person.
- 7.0711 Emergency Use.
- A. The City Council may declare that road or weather conditions are such as to constitute emergency travel conditions authorizing use of a snowmobile.
  - B. A snowmobile may also be used when such vehicle is necessary as an emergency vehicle to protect the health, safety and welfare of any individual.
  - C. The operator of a snowmobile under emergency conditions shall be subject to all existing traffic ordinances of the City and traffic laws of the State.
- 7.0712 Equipment Required. All snowmobiles operated in the City shall have the following equipment.
- A. Mufflers which are properly attached and which reduce the noise of operations of the vehicle to the minimum noise necessary for operating the vehicles and no person shall use a muffler cutout, bypass or similar device on such vehicle.
  - B. Adequate brakes in good working condition.
  - C. A safety or “deadman” throttle in operating condition such being a device which when pressure is removed from the accelerator the throttle causes the motor to disengage from the driving tract.
  - D. At least one headlight and one tail light in good working condition.
  - E. A brightly colored vehicle flag hung or suspended at least six feet high and is firmly attached to the snowmobile.
- 7.0713 Unattended Vehicles. No owner or operator of a snowmobile shall leave or allow the snowmobile to be or remain unattended on public property or streets while the motor is running, or where the keys for starting the vehicle are left in the ignition.
- 7.0714 Sidewalk Operation Prohibited. No person shall operate a snowmobile upon any public sidewalk in the City or bike/walking trail.

- 7.0715 Operation Under the Influence. The operator of a snowmobile shall be deemed the driver or operator of a motor vehicle and be subject to South Dakota law relating to driving while under the influence of intoxicating liquor, drugs or otherwise therein provided and such operator shall be punishable for any violation of such laws.
- 7.0716 Towing. No person operating a snowmobile shall tow any person or object behind such snowmobile except when such person or object is situated upon a conveyance, which is attached to such snowmobile by means of a rigid hitch or tow bar.

## **CHAPTER 7.08 - MISCELLANEOUS PROVISIONS**

- 7.0801 Duty Upon Striking Animal. The operator of any vehicle which collides with any dog or domestic animal causing injury thereto shall stop and attempt to ascertain the owner of such animal and notify a law enforcement officer of such accident.
- 7.0802 Manner of Arrest. Except in cases of driving while intoxicated or under the influence of intoxicating liquor or any exhilarating drug and except in the more serious and aggravated cases of speeding or careless and reckless driving, and except when reasonably necessary to secure appearance, a person charged with a violation of this Title by a police officer need not be arrested in the regular manner but may first be given an opportunity, after notice, to appear voluntarily to answer for such traffic violation.
- 7.0803 Notice to Appear. A person charged with violation of a traffic ordinance shall be given a notice to appear before the circuit court magistrate or the county clerk of courts at the time stated in such notice, which shall be written within ten days from the time of the offense; and that in event of failure to do so, a warrant will be issued for his arrest. The notice shall state the name and address of the offender, if known; the license number and make of the vehicle involved in the violation; the nature, date, and location of the offense; and the time and place where the offender is to appear to answer to the charges. The notice shall be made in duplicate and the portion of the original stating the offense and the place and time to appear shall be given to the owner or driver charged with the offense or left in or upon the vehicle involved in the violation.
- 7.0804 Appearance and Deposit for Fine. A person who has received a notice of a traffic violation as provided in the preceding section shall appear at the time and place specified in such notice. In cases of parking violations and other minor traffic violations for which the person charged has been ordered to appear before the circuit court magistrate or county clerk of courts; he may make a deposit for the fine as authorized by the court and sign a statement authorizing a circuit court magistrate or county clerk of courts to enter his plea of guilty to the offense, then he shall not be required to appear in court. Any person who has been guilty of three or more violations of the provisions of the traffic ordinances of this City shall not be permitted to deposit the fine as herein above authorized, but must post a bond for his appearance in court at the time specified by the department, said bond to be in an amount set by the City Council and on file at the office of the finance officer.
- 7.0805 Failure to Appear. Upon failure of a person to appear in response to a notice of a traffic violation as herein provided, he shall be subject to arrest in the manner otherwise provided by law.

## CHAPTER 7.09 - GOLF CARTS

- 7.0901 Definitions. For purposes of this Chapter, the following words shall have the following meanings:
- A. “Golf Cart” - A four wheeled vehicle originally and specifically designed and intended to transport one or more individuals and golf clubs for the purpose of playing the game of golf on a golf course. (SDCL 32-14-13)
  - B. “Operator” - Every person who operates or is in actual physical control of a golf cart.
- 7.0902 Golf Cart Operation. Golf carts shall not be allowed to operate within the City except as authorized by state statute or by this Chapter. Golf carts properly permitted pursuant to this Chapter shall be allowed to travel on the roadway portion of public streets, alleys and other roadways within the City except those highways where golf carts are prohibited by state statute. An operator of a golf cart shall comply with all City and state traffic rules and regulations applying to vehicles.
- (Amended: Ordinance No. 2021-11)*
- 7.0903 Operation of Golf Cart on State or County Highway or Bike/Walking Trail Prohibited. No person may operate a golf cart on a state or county highway except for crossing from one side of the highway to the other or on the bike/walking trail. A golf cart may cross the state or county highway at a right angle, but only after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach. (SDCL 32-14-15)
- 7.0904 Operator’s License and Insurance. No person may operate a golf cart on the streets, alleys, roadways or other public places within the City limits unless the operator has a valid driver’s license and proof that the golf cart is covered by a policy of liability insurance.
- 7.0905 Permit. It shall be unlawful to operate a golf cart within the City, unless the same is permitted in the City of Alcester. Upon submitting of proper application, the Finance Officer, shall issue a sticker that shall be displayed in a readily identifiable location on the golf cart and an annual fee of \$10.00 shall be assessed. If ownership of the vehicle changes, the new owner shall be required to apply for a license. Permit fees and durations may be adjusted by resolution of the City Council.
- 7.0906 Slow-Moving Vehicle Emblem or White or Amber Warning Lights. Golf carts permitted by the City shall display a slow-moving emblem in accordance with SDCL 32-15-20 or a white or amber warning light in accordance with SDCL 32-17-46.
- 7.0907 Violation of Golf Cart Operation. Operating contrary to and in violation of this Chapter shall be deemed prohibited and any operator in violation shall be subject to a fine of \$25.00. The operator of the golf cart found in violation of this Section may, within 72 hours of the time when the notice of violation was given, pay to the office of the City Finance Officer, as a fine for and in full satisfaction of the violation, the sum. If the operator fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next two weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$50.00. Upon failure of the owner or operator to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation

of this Section, the owner or operator shall be fined not less than \$75.00 nor more than \$100.00 plus court costs, which fine shall be collected by the Magistrate Court. Any person claimed to be in violation also has the right to contest the charges or plead “not guilty” within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.



## TITLE 8 - MUNICIPAL UTILITIES

### Chapter 8.01 - General Provisions

### Chapter 8.02 - Water Provisions

### Chapter 8.03 - Sewer Provisions

#### CHAPTER 8.01- GENERAL PROVISIONS

- 8.0101 Application. Any consumer desiring any utility service furnished by the City, including water or sewer, shall make application for the same to the utility office. Such application shall contain the applicant's name, address, and the uses for which such service is desired. A separate application shall be made for each premises to be served. The applicant shall abide by the rules and regulations established by the City relative to utility service in effect at the time of such application and as revised from time to time in addition to conditions and agreements as the City Council shall deem advisable.
- 8.0102 Deposit. Any applicant for City utility service shall make a deposit in an amount set by the City Council. The deposit is also an indemnity against theft, misplacement, or injury to City equipment. The deposit shall be returned to property owners when the applicant has paid twelve consecutive monthly bills by the stated deadline. The deposit for renters shall be returned when the applicant has given due notice of discontinuing utility service and is free from indebtedness to the City.
- 8.0103 Rates. Rates for the use of utilities furnished by the City shall be established by resolution by the Alcester City Council.
- 8.0104 Consumers Bills. All utility bills rendered are net, due and payable on receipt and delinquent if not paid by the twentieth day of the month. If bills are not paid by the due date, a ten dollar(\$ 10.00) additional charge shall be assessed. Provided, however, when a due date falls on a weekend or holiday, bills will not be delinquent until the close of business the next following work day. Bill payments mailed to the City must be received by the City on the first business day after the due date. Postmarks shall not be considered and mailed bills received after first business day after due date will be considered delinquent.

#### (Amended Ordinance No. 2024-07)

- 8.0105 Unpaid Bills. If a bill for utility services is not paid in full as provided in 8.0104, the customer shall be given notice by mail or by personal service to such owner, occupant or person, or by posting on the property that service shall be terminated on the first business day of the month. Unless the customer shall:
- A. Pay the amount in full;
  - B. Pay the undisputed portion of the account and file a written appeal with the City Finance Officer of the disputed portion. Service will be continued until such appeal is heard by the City Council.

Failure by any person to actually receive any document sent to him by certified mail or to sign and



return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting. Mailed or posted notice shall be the only communication of unpaid bill prior to termination of service.

*(Amended Ordinance No. 2024-07)*

time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting.

- 8.0106 Disconnect. The City may disconnect utility service for any of the following reasons:
- A. Failure to pay all charges and penalties;
  - B. Default on an agreement to liquidate a continuing debt;
  - C. Failure to grant the City access to read and inspect meters;
  - D. Customer tampering.
  - E. Failure to obtain a Certificate of Occupancy from the City.
- 8.0107 Extension. A single thirty day extension shall be allowed before disconnection of service upon receipt of a physician's certificate or notice from a public health or social service official that a disconnection of utility services will aggravate an existing medical condition of the customer or other permanent resident of the premises.
- 8.0108 Restoration of Service. All utilities disconnected for nonpayment must pay a reconnect fee as set by resolution by the City Council plus payment in full of the account before any utilities will be reconnected. Reconnections will be made only during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Utilities voluntarily disconnected shall also require a reconnect fee as set by resolution by the City Council and on file in the office of the Finance Officer.
- 8.0109 Owner, Lessee Liable. The owner of a leased property shall provide the City with a means of communication, either telephone or email and will be notified upon delinquency of a tenant in accordance with provision 8.0104. The owner of leased property, which is serviced by municipal utilities from the City, shall, as well as the lessee or occupant of the property, be liable to the City for the utility bills, which may be recovered in an action against such owner, lessee or occupant or against any or all of them, jointly or severally. The provisions contained in 8.0104 shall equally apply to the owner of the property as they do to the consumer/lessee or occupant. Failure of Lessee to adhere to provision 8.0104 will result in the deposit on file for the address being applied in the amount equal to unpaid bill. In the event an unpaid bill is greater than amount of deposit, the provisions in 8.0105 shall be used. If services terminated for failure to pay, a new full deposit shall be required as well as reconnect fee and payment in full of any delinquent amount prior to reconnection of services by the lessee.

*(Amended Ordinance No. 2024-07,07/02/24)*

8.0110 Tampering With City Equipment. It shall be unlawful for any person to, in any manner, tamper with any equipment or facilities of the City of Alcester utilities including, but not limited to water lines or sewer lines, water meters other equipment utilized for the benefit of the municipal utilities of the City of Alcester. Should the City discover damage to its equipment or an attempt to tamper with such equipment or an attempt to falsify the amount of water or sewer used, or the amount due the City for utility service, the City may serve notice upon the consumer of a hearing that is to be held where the consumer may show cause why service should not be discontinued. This notice shall state the reason for the hearing and the time and place it is to be held.

Should the City Council find that a violation of this section has occurred and that there is no justification for said violation, the City Council may order immediate termination of service and service shall be reinstated only upon conditions established by the City Council. In addition to any criminal penalty, the City of Alcester, should be entitled to collect a civil penalty of \$500.00 if the person has obstructed with or tampered with any of the municipal owned utilities whether or not such person received additional services without payment or whether or not the City of Alcester sustained any actual damages as a result of the obstruction or tampering.

- 8.0111 User Responsible for Operation and Maintenance of Water and Sewer Lines. Each occupied residence must have a usable City domestic water and sanitary sewer service. The City of Alcester shall be responsible for the maintenance and proper operation of the domestic watermains, sanitary sewer mains and domestic water service line from the main to the curb stop. Any domestic water service line past the curb stop or sanitary sewer service line from the sanitary sewer main to the structure, shall be the exclusive responsibility of the property owner. Owners at their own expense must keep and maintain their sanitary sewer service lines, from the point of connection at the main line, and all other equipment in good working order and properly protected from frost and other damage. Owners at their own expense must keep their domestic water service line from the point of connection at the curb stop to the structure in good working order and properly protected from frost and other damage. Thirty days after written notice from the City, if the repair has not been replaced, the City shall cause such repairs to be made and the cost of these repairs shall be assessed against the property. In the event that a property owner must excavate to repair a line, it shall be his sole responsibility to fill in such excavation to the satisfaction of the City. It shall be the responsibility of the City to replace the gravel base course and asphalt pavement displaced by such excavation at the cost of the property owner.
- 8.0112 City Not Liable for Damage. No claim shall be made against the City by reason of the breaking of any service pipe or equipment, or for any other damage that may result from shutting off water for repairing or any other purpose, or for any variation in pressure, or ram of water from mains, and no reduction will be made from regular rates because of leaking pipes or fixtures. The City shall not be liable for damage or injury to person or property whether caused by fire, interruption of service, downed lines, blackouts, brownouts, discontinuance of service, or other utility-related problems which shall arise from mechanical breakdowns, electricity supply reductions, and act of God, or other cause beyond the control of the City.
- 8.0113 Construction of Sewer and Water Connections. Whenever a property owner or developer shall deem it necessary to construct sewer and water service connections from the mains to the curb line on any street, highway, alley or public place, in advance of the permanent improvement of such street, highway, alley or public place, it shall be the duty of the owners of property fronting thereon to make such service connections at the cost of the property owner. If no mainline sanitary sewer or domestic waterlines exist in front of said property, it is and shall be the sole responsibility of the property owner to pay for all costs of extending said utilities. All costs associated with the extension and connection of utilities including but not limited to surveying, engineering, road replacement, pipe materials, valves, and miscellaneous items will be the sole responsibility of the property owner.
- 8.0114 Written Notice for Owners. Whenever the City Council shall have ordered, by resolution, any such connections to be made, it shall serve written notice on the owners of said property, either by personal service or by certified mail, return receipt requested, or by posting on the property, to make said connections by a date fixed, which shall not be less than ten days after such notice is given, or to show cause in writing, filed with the City Finance Officer within said time, why such connections should not be made. At the expiration of the time fixed, the City Council shall consider all the objections so filed and if over-ruled, shall thereupon, by resolution, order the making of such connections as they shall deem necessary. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is

mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting.

- 8.0115 City Initiated Work and Assessment of Property Owners. When any such connections are ordered, as herein provided, the City Council shall cause the work to be done, and the cost thereof shall be collected from the owners of the property where such connections are made or assessed as a special tax against such property in the manner provided for assessing the cost of constructing sidewalks, so far as applicable.
- 8.0116 Providing Underground Utility Services When Frost Exists; Fee. When any utility customer of the City requests underground utility services for water or sewer and at the time of installation there is frost present, the City shall, in addition to the usual and customary charges established by the City Council for providing such services, charge the customer requesting such service the following:
- A. The hourly equipment rental rate, as established by resolution from time to time by the City Council, for the equipment necessary to install the utility service, for the number of hours necessary to operate such equipment in the installation of the utility service; and
  - B. The hourly rate, per man, for the labor necessary to install the utility service, as established by resolution from time to time by the City Council.

## **CHAPTER 8.02 - WATER PROVISIONS**

- 8.0201 Connection With City Watermain. No person shall make any connection with any City watermain or tap the same or conduct water therefrom upon his premises or use any water therefrom without first making application therefore to the City.
- 8.0202 City Prescribing Connections. All connections hereafter made with the City water mains shall be at the expense of the person desiring the same and shall be made under the supervision of the City. The City may prescribe the place where and the manner in which the connection shall be made, the size of the service pipe to be used, the place where the valve box and fire hydrant shall be placed and the manner and materials in which the plumbing shall be done.
- 8.0203 Meter Installation. All persons hereafter making application to be furnished with water shall be required to install a meter for the measurement of the amount of water used and shall pay for such water used at the rate hereinafter specified but two or more premises will not be supplied with water measured by the same meter unless one person is liable for the payment for the whole of such water furnished; such meter shall be so placed as to measure all water used. When a meter is placed on a pipe connected to a boiler or other hot water apparatus a check valve must be placed between such meter and boiler or other hot water apparatus to protect meter from back pressure of steam or hot water; in case of the breakage of any pipe or meter or if there be a leak in the same, the water shall be shut off until such breakage or leak is repaired.
- 8.0204 Meter Requirements. All meters shall be of the kind prescribed by the City and shall be placed as to be easily read and charged monthly.

- 8.0205 Meter Tests. Customers may have their meters tested upon payment of the actual cost for test. If the meter is found to be in error, the fee shall be refunded. If the test of the meter shows that it fails to register correctly within two percent, the City shall make a charge or allow a credit in proportion to the error, for all water registered in excess of the minimum amounts allowed by the established rates, the same to be retroactive for three billing periods only.
- 8.0206 Unnecessary Waste of Water. It shall be the responsibility of all consumers of water paying the rates mentioned to prevent unnecessary waste of water and to keep all water outlets closed when not in actual use; unpermissible uses; not to permit other persons or families to use water from any of their faucets, hydrants or pipes.
- 8.0207 Connection to Water Mains. It shall be unlawful for any person, firm or corporation to connect any water pipe or pipe of any kind to any of the water mains of the municipal water works system of the City of Alcester or to in any manner tamper with or bore into said water mains for any purpose whatever, except as hereinafter provided.
- 8.0208 Exceptions. The City may but need not allow connections to the water mains of said system upon application of any person desiring the same. Connections shall only be made on streets where water mains are located and in order to bring the water to the curb along said street in which said water mains are located and shall be at the expense of the applicant desiring connection. The City will review and approve plans and specifications for the utility extension. The applicant shall be responsible for all construction and engineering costs associated with the project.
- 8.0209 Standard Workmanship. The connections made to the City of Alcester water system shall be of standard workmanship of pipe and made according to the provisions of the ordinances of said City heretofore enacted as to size and quality of pipe, material and workmanship, including curb box and other attachments as approved by the City.

### **CHAPTER 8.03 - SEWER PROVISIONS**

- 8.0301 Definitions.
- A. “Biochemical oxygen demand (BOD)” shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20° degrees Centigrade, expressed in milligrams per liter.
  - B. “Building drain” shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from the soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.
  - C. “Building sewer” shall mean the extension from the building drain to the public sewer or other place of disposal also called house connection.
  - D. “Combined sewer” shall mean a sewer intended to receive both wastewater and storm or surface water.

- E. "Easement" shall mean an acquired legal right for the specific use of land owned by others.
- F. "Floatable oil" is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
- G. "Garbage" shall mean the animal and vegetable matter resulting from the handling, preparation, making of foods.
- H. "Industrial wastes" shall mean the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.
- I. "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or groundwater.
- J. "May" is permissive (see "shall").
- K. "Person" shall mean any individual, firm, company, association, society, corporation or group.
- L. "pH" shall mean the logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of  $10^{-7}$ .
- M. "Properly shredded garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than  $\frac{1}{2}$  inch (1.27 centimeters) in any dimension.
- N. "Public sewer" shall mean a common sewer controlled by a governmental agency or public utility.
- O. "Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- P. "Sewage" is the spent water of a community. The preferred term is "wastewater" see Subsection Y.
- Q. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
- R. "Shall" is mandatory (see "may").
- S. "Slug" shall mean any discharge of water or wastewater which is concentration of any given constituent or in quantity of flow exceeds for any period of duration than fifteen minutes more than five times the average twenty-four hour concentration or during normal operation.

- T. “Storm drain” (sometimes termed “storm sewer”) shall mean a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
- U. “Superintendent” shall mean the superintendent of wastewater facilities and/or of wastewater treatment works and/or of water pollution control of the City of Alcester, or his authorized deputy, agent or representative.
- V. “Suspended solids” shall mean total suspended matter that either floats on the surface of or is in suspension in water, wastewater or other liquids and that is removable by laboratory filtering as prescribed in “Standard Methods for the Examination of Water and Wastewater” and referred to as non-filterable residue.
- W. “Unpolluted water” is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
- X. “Wastewater” shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any groundwater, surface water and storm water that may be present.
- Y. “Wastewater facilities” shall mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.
- Z. “Wastewater treatment works” shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with “waste treatment plant” or wastewater treatment plant” or “water pollution control plant”.
- AA. “Watercourse” shall mean a natural or artificial channel for the passage of water either continuously or intermittently.
- BB. “City” shall mean the City of Alcester, South Dakota.

8.0302 Use of Public Sewers Required.

- A. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of said City, any human or animal excrement, garbage or other objectionable waste.
- B. It shall be unlawful to discharge in the City or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been approved in accordance with subsequent provisions of Section 8.03.
- C. It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater unless a public sanitary sewer system is not available within 200 feet of the property line and the private sewer system is approved by the State of South Dakota.



- D. The owner(s) of all houses, buildings or properties used for the human occupancy, employment, recreation or other purposes situated within the City and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the City, is hereby required at the owner(s) expense to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of Section 8.03 within thirty days after date of official notice to do so.

8.0303 Sanitary Sewers, Building sewers and Connections.

- A. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining permission from the City.
- B. There shall be two classes of building sewer permits: (a) For residential and commercial service and (b) for service to establishments producing industrial wastes. In either case the owner(s) or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the City. A permit and inspection fee shall be established by resolution by the Alcester City Council.
- C. All costs and expense incidental to the installation, connection and maintenance of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection afore mentioned.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the City, to meet all requirements of 8.03.
- F. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the buildings and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9 or Ten States Standards shall apply.
- G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

- H. No person(s) shall make a connection of sump pumps, roof downspouts, foundation, drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the City for purposes of disposal of polluted surface drainage.

Any person, owner, lessee or occupant who has presently made or permitted to be made, or shall make or permit to be made, any connection or installation in violation of Section 8.0303(H) shall immediately remove that connection or correct that installation. If not removed or corrected within 30 calendar days after notice of violation has been delivered personally or by mail to that person, owner, lessee or occupant, the City may impose a surcharge of \$100 per month on the sewer bill of the property owners who are not in compliance. All properties found during regular or periodic reinspection programs that violate Section 8.0303(H) will be subject, at the discretion of the City, to the imposition of the monthly fee for all months between the two most recent inspections.

- I. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City or the procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and the Water Pollution Control Federation (WPCF) Manual of Practice No. 9 or Ten States Standards. All such connections shall be made gas tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the City before installation.
- J. The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the City.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

8.0304 Use of the Public Sewers.

- A. No person(s) shall discharge or cause to be discharged by sump pump or other means any unpolluted waters such as storm water, exterior foundation drains, areaway drains, down spouts, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any sewer, or drain which in turn is connected directly or indirectly to a public sanitary sewer. Storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the City.
- B. Storm water other than that exempted under 8.0304(A), and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the City and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the City, to a storm sewer, combined sewer or natural outlet.

- C. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid, or gas.
  2. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.
  3. Any waters or wastes having a pH lower than (5.5) or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
  4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, paper hand towels, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- D. The following described substances, materials, water or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream or will not otherwise endanger lives, limb, public property or constitute a nuisance.

The City may set limitations lower than the limitations established in the regulations below if in its opinion such more severe limitations are necessary to meet the above objectives. In forming its opinion as to the acceptability, the City will give consideration to such factors as the quantity of subject waste in relation to low flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment system, degree of treatability of the waste in the wastewater treatment system and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer which shall not be violated without approval of the City are as follows:

1. Wastewater having a temperature higher than 150 Fahrenheit (65 Celsius).
2. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils or product of mineral oil origin.
3. Wastewater from industrial plants containing floatable oils, fat or grease.
4. Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants,

hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

5. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the City for such materials.
  6. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the City.
  7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established compliance with applicable state or federal regulations.
  8. Quantities of flow, concentrations, or both which constitute a “slug” as defined herein.
  9. Waters or wastes containing substances which are not amenable to treatment or reduction by wastewater treatment processes employed or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
  10. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.
- E. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4 of this Article and which in the judgment of the City, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters or which otherwise create a hazard to life or constitute a public nuisance, the City may:
1. Reject the wastes,
  2. Require pretreatment to an acceptable condition for discharge to the public sewers,
  3. Require control over the quantities and rates of discharge and/or
  4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under provisions of Section A.

When considering the above alternative the City shall give consideration to the economic impact of each alternative on the discharger. If the City permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City.

- F. Grease, oil and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in Section 8.0304(D)(3) or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the City. Any removal and hauling of the collected materials not performed by the owner must be performed by currently licensed waste disposal firms.
- G. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- H. When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meter and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the City. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.
- I. The City may require a user of sewer services to provide information needed to determine compliance with Chapter 8.03. These requirements may include:
1. Wastewaters discharge peak rate and volume over a specified time period.
  2. Chemical analyses of wastewater.
  3. Information on raw materials, processes and products affecting wastewater volume and quality.
  4. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
  5. A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
  6. Details of wastewater pretreatment facilities.
  7. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.
- J. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in Section 8.0304 shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association. Sampling methods, location,

times, durations and frequencies are to be determined on an individual basis subject to approval by the City.

- K. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.

8.0305 Damage of Wastewater Facilities. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of intentional damage to property.

8.0306 Powers and Authority of Inspectors. The City representative or authorized designee shall be permitted to enter all properties upon reasonable notice for the purposes of inspection, observation, measurement, sampling, and testing pertinent to utility service to the community system in accordance with the provisions of this Title.

## TITLE 9 - PLANNING AND ZONING

### Chapter 9.01 – Planning Commission

### Chapter 9.02 – Property Maintenance Code

#### CHAPTER 9.01 - PLANNING COMMISSION

- 9.0101 Creation. The Alcester Planning Commission is hereby created pursuant to SDCL 11-6 for the City of Alcester, South Dakota.
- 9.0102 Number, Appointment and Tenure of Planning Commission Members. The Alcester Planning Commission shall consist of not less than five members appointed by the Mayor and subject to approval by the City Council. If deemed necessary, the City Council may appoint one or more of themselves to the Planning Commission. The term of each of the appointed members shall be five years. Administrative officials of the City may be appointed as ex- officio members of the Planning Commission.
- 9.0103 Vacancies. Any vacancy in the membership of the Planning Commission shall be filled for the unexpired term in the same manner as for appointment.
- 9.0104 Organization. The Planning Commission shall elect a Chairman from among its members for a term of one year with eligibility for re-election and shall also elect a Vice Chairman and Secretary in a manner prescribed by the rules of the members. The Planning Commission shall hold at least one regular meeting each month and shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record. The Planning Commission may appoint such employees as it may deem necessary for its work and may also contract with planners, engineers, architects and other consultants for such services as it may require, provided however, that such appointments and contracts shall be approved by the City Council.
- 9.0105 Removal for Cause. The Mayor, with confirmation of the City Council, shall after public hearing have the authority to remove any member of the Planning Commission for cause, which cause shall be stated in writing and made a part of the record of such hearing.
- 9.0106 Powers and Duties of Commission. The Alcester Planning Commission, its members and employees, shall have all such powers as may be necessary to enable it to perform its functions, promote planning and carry out all the purposes and powers enumerated in SDCL 11-4 and 11-6 and acts amendatory thereof.
- 9.0107 Preparation of Comprehensive Plan. The Planning Commission of Alcester shall propose a comprehensive plan for the physical development of the City pursuant to the terms of SDCL 11-4 and 11-6. The general purpose of the comprehensive plan shall be to guide and accomplish a coordinated and harmonious development within the City. After the comprehensive plan has been adopted according to law, no substantial amendment or modification thereof shall be made, without the proposed change first being referred to the Planning Commission for its recommendations.

- 9.0108 Zoning Regulations. It shall be a duty of the Planning Commission to recommend the boundaries of zoning districts and appropriate regulations to be enforced therein, in accordance with the comprehensive plan. The Planning Commission shall prepare regulations governing land uses and building or set-back lines in accordance with SDCL 11-4 and 11-6. All applications and proposals for changes in or amendments to the zoning regulations shall first be submitted to the Planning Commission for its recommendations.
- 9.0109 Subdivision Plans and Regulations. All plans or subdivisions or resubdivisions of land within the jurisdiction of the City shall first be submitted to the Planning Commission for its recommendation before approval by the City Council. The Planning Commission shall prepare and recommend to the City Council regulations governing the subdivision of land within its jurisdiction. No amendments or changes thereto shall be made without recommendation by the Planning Commission.

## CHAPTER 9.02 – PROPERTY MAINTENANCE CODE

- 9.201 The International Property Maintenance Code, 2021 edition, published by the International Code Council, as amended, is hereby adopted as the Property Maintenance Code to provide standards to safeguard life or limb, health, property, and public welfare by regulating, governing, and controlling the use, occupancy, conditions, and maintenance of all property, buildings, and structures within this jurisdiction and to provide for a just, equitable, and practicable method whereby buildings or structures, which from any cause endanger the life, limb, morals, property, safety, or welfare of the general public or their occupants, may be repaired, vacated, or demolished. The minimum requirements and standards of the 2021 International Property Maintenance Code will become effective on May 10, 2024 unless the referendum shall be invoked.

Notice is hereby given that a printed copy as amended is on file with the Alcester Finance Officer and available for public review during regular business hours at the Alcester City Hall. (500 Dakota Street)

**(Amended: Ordinance No. 2024-03)**

- 9.202 Amendments, additions, and deletions to the 2021 International Property Maintenance Code. The following sections and subsections of the property maintenance code adopted in this article shall be amended, added, or deleted as follows. All other sections or subsections of the 2021 International Property Maintenance Code shall remain the same.

**(Amended: Ordinance No. 2024-03)**

**101.1 Title.** These regulations shall be known as the Property Maintenance Code of City of Alcester, South Dakota hereinafter referred to as “this code.”

**102.3 Application of other codes.** Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the *International Building Code, International Residential Code, Uniform Plumbing Code, National Electric Code, Uniform Mechanical Code* and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside



any provision of the *Zoning Ordinance* of the City of Alcester, South Dakota.

**103.2 Appointment.** The Alcester Code Official or his or her designee is designated as the *code officials* and shall enforce the provisions of this code.

**103.4 Liability.** The *code official*, member of the board of appeals or employee charged with the enforcement of the code, while acting for the jurisdiction, in good faith and without malice in the

discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability from any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection by the City's insurance and any immunities and defenses provided by other applicable state and federal laws and be defended by the legal representative of the City until the final termination of the proceedings. The *code official* or any subordinate shall not be liable for costs in an action suit or proceeding that is instituted in pursuance of the provisions of this code.

**103.5 Fees.** The fees for building permits, activities and services performed by the department in carrying out its responsibilities under this code shall be as established by resolution of the City Council.

In addition, an administrative fee of \$250 may be assessed for the preparation of bids and contractors to correct or abate a violation.

**107.7 Extension of time agreement.** If the code official determines that an extension of time will not create or perpetuate a situation imminently dangerous to life or property, the code official may grant an extension of time, not to exceed 180 days in which to complete the work listed in the Notice and Order. Any extension shall not extend the time to appeal the Notice and Order. Any extension shall be agreed to in writing in a document containing the following:

1. A reasonable and acceptable schedule, setting forth specific dates to complete corrective action for each violation listed in the Notice and Order.
2. A signature of the responsible party.

**110.1 General.** The *code official* shall order the *owner* of any *premises* upon which is located any structure, which in the *code official* judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than 18 months, the *code official* shall order the *owner* to demolish and remove such structure.

**Section 111.1 Application for appeal.** Any person directly affected by a decision of the Code Official or a Notice and Order issued under this code shall have the right to appeal such Notice and Order to the Alcester City Council, provided that a written application for appeal is filed within twenty (20) days after the day a decision, notice or order was served. An application for appeal shall be based upon a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or that the requirements of this code are adequately satisfied by other means. An application for appeal will be deemed timely filed if filed in the office of the Finance Officer at Alcester City Hall within the timeframe set forth hereinabove.

**Section 111.2 Appeal hearing.** Upon receipt of a properly filed application for appeal, the Alcester City Council shall hear the appeal within 30 days after the date of the filing of the application for appeal at a regularly scheduled meeting of the Alcester City Council or a special meeting of the Alcester City Council which is properly noticed under South Dakota law. At the hearing before the Alcester City Council, the appellant, the appellant's representative, the Code Official and any person whose interests are affected shall be given an opportunity to be heard.

**Section 111.3 City Council decision.** At the close of the hearing or at the next regularly scheduled meeting, the City Council shall uphold, modify or reverse the Notice and Order of the Code Official. Notice of said decision shall be sent, in writing, to the appellant and the Code Official at their last known addresses.

**Section 111.4 Court review.** The decision of the Alcester City Council is subject to judicial review by the circuit court as provided for in the Codified Laws of the State of South Dakota.

**Section 111.5 Stays of enforcement.** Any appeals filed on notice and orders, other than Imminent Danger notices, shall stay the enforcement of the notice and order until the appeal is heard by the appeals board. If an Imminent Danger notice is issued by the Code Official and upheld on an appeal, the Code Official may take immediate action to insure compliance with the Immediate Danger notice. All other notice and orders shall be enforced by the Code Official upon exhaustion of all appeals by the appellant.

**112.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to administrative citations through the code enforcement process.

**201.3 Terms defined in other codes.** Where terms are not defined in this code and are defined in the *International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code, Municipal and Zoning Code of the City of Alcester, Uniform Mechanical Code* or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes.

**302.4 Weeds.** All *premises* and *exterior property* shall be maintained free from weeds or plant growth pursuant to Title 3 of the City of Alcester Municipal Code.

**302.8 Motor vehicles.** Abandoned and inoperative vehicles shall be regulated by Title 7 of the City of Alcester Municipal Code.

**302.9 Defacement of property.** Placement of graffiti shall be regulated by Title 3 and Title 5 of the City of Alcester Municipal Code.

**303.2 Enclosures.** Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier at least 44 inches (1,066 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

**Exception:** Spas or hot tubs with a safety cover that complies with ASTM F 1346 shall be exempt from the provisions of this section.

**308.2 Disposal of rubbish.** Every *occupant* of a structure shall dispose of all *rubbish* pursuant to Title 3 of the City of Alcester Municipal Code.

**308.2.1 Rubbish storage facilities.** The *owner* of every occupied *premises* shall supply *approved* covered containers for *rubbish*, and the *owner* of the *premises* shall be responsible for the removal of *rubbish* in accordance with Title 3 of the City of Alcester Municipal Code.

**308.2.2 Refrigerators.** Refrigerators, iceboxes or other similar airtight containers or equipment not in operation shall not be discarded, abandoned or stored on *premises* in accordance with Title 3 of the City of Alcester Municipal Code.

**308.3 Disposal of garbage.** Every *occupant* of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an *approved* garbage disposal facility or *approved* garbage containers in accordance with Title 3 of the City of Alcester Municipal Code.

**308.3.1 Garbage facilities.** Every dwelling shall be supplied with an *approved* leak-proof, covered, outside garbage container in accordance with Title 3 of the City of Alcester Municipal Code.

**308.3.2 Containers.** The *operator* of every establishment producing garbage shall provide, and at all times cause to be utilized, *approved* leak-proof containers provided with close-fitting covers for the storage of such materials until removal from the *premises* for disposal in accordance with Title 3 of the City of Alcester Municipal Code.

**402.1 Habitable spaces.** Every *habitable space* shall have at least one window of *approved* size facing directly to the outdoors or to a court. The minimum total glazed area for every *habitable space* shall be 8 percent of the floor area of such room. Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

**Exception:**

1. Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m<sup>2</sup>). The exterior glazing area shall be based on the total floor area being served.
2. The glazed areas need not be provided in rooms where artificial light is provided capable of producing an average illumination of six footcandles (6.46 lux) over the area of the room at a height of 30 inches (762 mm) above the floor level.

**404.5 Overcrowding.** The number of persons occupying a *dwelling unit* shall not create conditions that, in the opinion of the *code official or City Council*, endanger the life, health, safety or welfare of the *occupants*.

**505.1 General.** Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the applicable *South Dakota Plumbing Commission Code*.

**602.2 Residential occupancies.** Dwelling shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

**602.3 Heat supply.** Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants*

thereof shall supply heat during the period from September 1st to April 30th to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

**Exceptions:**

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity.

**602.4 Occupiable work spaces.** Indoor occupiable work spaces shall be supplied with heat during the period from September 1st to April 30th to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

**Exceptions:**

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

*(Amended: Ordinance No. 2015-3, dated 5/18/2015)*

## TITLE 10 - TAXATION

### Chapter 10.01 - Municipal Sales and Service Tax and Use Tax

### Chapter 10.02 - Urban and Rural Service Districts

### Chapter 10.03 – Discretionary Taxation of Real Property

#### CHAPTER 10.01 - MUNICIPAL SALES AND SERVICE TAX AND USE TAX

- 10.0101 Purpose. The purpose of this Chapter is to provide additional needed revenue for the Municipality of Alcester, Union County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.
- 10.0102 Effective Date. From and after the first day of January, 2006, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by Two Percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Alcester, Union County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.
- 10.0103 Use Tax. In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the first day of January, 2006, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL 10-46, and acts amendatory thereto.
- 10.0104 Collection. Such tax is levied pursuant to authorization granted by SDCL 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue and Regulation of the State of South Dakota shall lawfully prescribe.
- 10.0105 Interpretation. It is declared to be the intention of this Chapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL 10-46 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

#### CHAPTER 10.02 - URBAN AND RURAL SERVICE DISTRICTS

- 10.0201 Service Districts Established. Pursuant to the authority granted in SDCL ch. 9-21A, the City is hereby divided in area into an urban service district and a rural service district constituting separate taxing districts for the purpose of levying all City ad valorem property taxes, except those levied for the payment of bonds.
- 10.0202 Rural Service District - Criteria for Lands Included. The rural service district shall include only such platted or unplatted lands as in the judgment of the City Council are rural in character, are used or usable for agriculture, and are not developed for commercial, industrial

or urban residential purposes. The rural service district may include lands which are not contiguous to one another.

- 10.0203 Lands Described - Rural Service District. The rural service district shall consist of those platted or unplatted lands described in exhibit A on file with the City Finance Officer's office, entitled "Lands Included in the Rural Service District," and made a part of this section, all of which lands are rural in character, are used or usable for agriculture, and are not developed for commercial, industrial or urban residential purposes. The rural service district shall also include lands outside the municipality, if annexed into the corporate limits, which are rural in character, are used or usable for agriculture, and are not developed for commercial, industrial or urban residential purposes.
- 10.0204 Lands Included in Urban Service District. The urban service district shall include all lands within the boundaries of the City which are not included in the rural service district.
- 10.0205 Agricultural Land Annexed; Limitation on Mill Levy and Assessed Value. The tax levy and assessed value on the agricultural land annexed shall not exceed the average tax levy and average assessed value on unannexed agricultural land in adjoining townships in the county so long as the annexed land remains rural property and is included in the rural service district.
- 10.0206 Platting or Construction in Rural District. Whenever any parcel of land included within the rural service district:
- A. Is platted in whole or in part;
  - B. Is the subject of an application for a permit for the construction of a commercial, industrial or urban residential development or improvement to be situated on such parcel or any part thereof; or
  - C. Otherwise fails to meet the criteria as set forth in Section 10.0203 this Chapter.

The board or officer of the City approving such plat or building permit or having knowledge of the change in circumstances shall report the change to the City Council which shall make and enter an order transferring such parcel from the rural service district to the urban service district.

## **CHAPTER 10.03 – DISCRETIONARY TAXATION OF REAL PROPERTY**

- 10.0301 Industrial Structures. Any new industrial structure or addition to an existing structure, which new structure or addition has a true and full value of Thirty Thousand Dollars (\$30,000.00) or more, added to real property located within the Corporate limits of the City of Alcester, shall qualify to be assessed pursuant to the discretionary formula described in SDCL 10-6-137, SDCL 10-6-138 and SDCL 13-13-20.4.)

*(Amended: Ordinance No 2021-04 & Ordinance 2022-03)*

- 10.0302 Commercial Structures. Any new commercial structure, except a commercial residential structure, or addition to an existing structure, which new structure or addition has a true and full value of Thirty Thousand Dollars (\$30,000.00) or more added to real property located

within the Corporate limits of the City of Alcester, South Dakota, shall be qualified to be assessed pursuant to the discretionary formula described in SDCL 10-6-137, SDCL 10-6-138 and SDCL 13-13-20.4.

*(Amended: Ordinance No 2021-04 & Ordinance 2022-03)*



10.0303 Commercial Residential Structures. Any new commercial residential structure or addition to an existing structure, which new structure or addition has a true and full value of Thirty Thousand Dollars (\$30,000.00) or more, added to real property located within the Corporate limits of the City of Alcester, South Dakota shall qualify to be assessed pursuant to the discretionary formula described in Section 10.0307. For purposes of this section, commercial residential structure shall contain four or more units. (Pursuant to SDCL 10-6-137(5))

*(Amended: Ordinance No 2021-04/Ordinance 2022-03)*

10.0304 Residential Structures Any new residential structure or any addition to or renovation of an existing structure located within a redevelopment neighborhood, which new structure, addition or renovation has a true and full value of Five Thousand (\$5,000.00) or more, added to real property located within the corporate limits of the City of Alcester, South Dakota shall qualify to be assessed pursuant to the discretionary formula described in Section 10.0307. (Pursuant to SDCL 10-6-137(7))

*(Amended: Ordinance No 2021-04/Ordinance 2022-03)*

In order to improve the quality of housing, all real property located within the Corporate limits of the City of Alcester, south Dakota shall qualify as property located in a redevelopment neighborhood. The redevelopment neighborhood is being established because the area includes buildings or improvements which, by reason or age, deterioration, obsolescence, and dilapidation injuriously affect the area to the detriment of public health, safety, morals or welfare; and because the redevelopment of housing is being prevented by the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness; the deterioration of site improvements, and obsolete platting. (Pursuant to SDCL 10-6-141 and SDCL 10-6-142).

Any property valued pursuant to this Chapter shall meet any standards as set by the City Council of the City of Alcester, South Dakota

***(Amended: Ordinance No 2021-04 & Ordinance 2022-03)***

10.0305 Affordable Housing Structures. Any new affordable housing structure with a monthly rental rate of the units or below the annually calculated rent for the state's Sixty percent area median income being used by the South Dakota Housing Development Authority for a minimum of ten years following the date of first occupancy, if the structure has a full and true value of thirty thousand dollars (\$30,000) or more, added to real property located within the Corporate limits of the City of Alcester, South Dakota, shall qualify to be assessed pursuant to the discretionary formula described in Section 10.0307. For purposes of this section, an affordable housing structure shall contain four or more units. (Pursuant to SDCL 10-6- 137(6).

***(Amended: Ordinance No 2021-04 & Ordinance 2022-03)***

10.0306 Valuation. Any residential property located within the Corporate limits of the City of Alcester, South Dakota, classified pursuant to the following, shall, following construction, initially be valued for taxation purposed in the usual manner, and that value shall be referred to as the "Pre-Adjustment Value." The assessed value to be used for tax purposes shall follow the discretionary formula described in section 1-102. Following the seven-year period under this section, the property shall be assessed at the same percentage as is all other property for tax purposes. Reconstruction and renovation as used in this chapter means only improvements that increase the true and full value of the structure and shall not include normal maintenance and repair. The assessed value during any of the seven years may not be less than the assessed value of the property in the year proceeding the first year of the tax years following construction. Any structure that is partially constructed on the assessment date may be valued for tax purposes pursuant to this Ordinance and the valuation may not be less than the assessed valuation of the property in the year preceding the beginning of construction. Property owners of any of the above-described property, may request the City Council not apply the discretionary formula, in which case the full assessment shall be made without application of the formula. In waiving the formula for the structure of one owner, the City Council is not prohibited from applying the formula for subsequent new structures by that owner.

***(Amended: Ordinance No 2021-04 & Ordinance 2022-03)***

10.0307 Discretionary Formula. Any real property improvements qualifying for the discretionary formula pursuant to this chapter shall be assessed as follows:

First Year 20% of Pre-Adjustment Value

Second Year 40% of Pre-Adjustment Value

Third Year 60% of Pre-Adjustment Value

Fourth Year 80% of Pre-Adjustment Value

Fifth Year 100% of Pre-Adjustment Value

for any property classified under 10.0301 and 10.0302;

First Year 25% of Pre-Adjustment Value

Second Year 25% of Pre-Adjustment Value

Third Year 50% of Pre-Adjustment Value

Fourth Year 50% of Pre-Adjustment Value

Fifth Year 75% of Pre-Adjustment Value

Sixth Year 75% of Pre-Adjustment Value

Seventh Year 100% of Pre-Adjustment Value

for any property classified under 10.0303, 10.0304, and 10.0305.

***(Amended: Ordinance No 2021-04/Ordinance 2022-03/Ordinance No. 2023-02)***

10.0308 Effective Date. This Ordinance is effective upon passage in accordance with statute and shall be reflected with the taxes payable effective January 01, 2024 and each successive taxation year thereafter unless repealed.

Pursuant to SDCL 10-6-140, any real property receiving benefit from the previously adopted Discretionary Taxation Ordinance, will continue to be assessed and taxed through the course of the said discretionary formula

***(Amended: Ordinance No 2021-04/ Ordinance 2022-03/Ordinance No. 2023-02)***



## TITLE 11 - GENERAL PROVISIONS

### Chapter 11.01 - Penalties and Repealing Clause

#### CHAPTER 11.01 - PENALTIES AND REPEALING CLAUSE

- 11.0101 Penalty in General. Except in cases where a different or additional penalty is imposed by this ordinance or by some existing provision of law, every violation of any of the provisions of this ordinance shall be punishable by a fine not exceeding five hundred dollars. Each day in which a violation of this Ordinance or other ordinance continues shall constitute a separate offense. (SDCL 9-19-3)
- 11.0102 Conflicting Ordinances Repealed. All former ordinances or parts of former ordinances in conflict with the provisions of this ordinance or relating to the subject matter of this ordinance, except as stated in this chapter, are hereby repealed; provided however, that nothing herein shall be construed as repealing any special ordinances, appropriation ordinances, franchise ordinances establishing fees and charges, levy ordinances for the issuance of bonds, or special ordinances of like character, nor shall this ordinance repeal or modify the provisions of any zoning ordinances or any other ordinances requiring a special method of adoption, nor shall this ordinance repeal or modify the provisions of any resolution heretofore adopted by the City of Alcester unless the provisions of this ordinance either modify, repeal, or amend such resolution; and all such ordinances and resolutions shall remain in full force and effect.
- 11.0103 Unconstitutionality. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.
- 11.0104 Publication and Effect. This ordinance shall take effect immediately upon its adoption and publication of the notice of such adoption as provided by SDCL 9-19-17.