

ORDINANCE NO. 2005 -

AN ORDINANCE AMENDING ORDINANCE NO. 1984-3 ESTABLISHING AND IMPOSING A MUNICIPAL SALES AND SERVICE TAX AND A USE TAX FOR THE MUNICIPALITY OF ALCESTER, UNION COUNTY, SOUTH DAKOTA.

BE IT ORDAINED BY THE MUNICIPALITY OF ALCESTER, UNION COUNTY, SOUTH DAKOTA, THAT IT IS THE INTENTION OF THE CITY OF ALCESTER THAT ITS EXISTING SALES AND USE TAX CONTINUE IN FULL FORCE AND EFFECT AND THAT ORDINANCE NO. 1984-3 AS AMENDED WITH THE LAST AMENDMENT ON AUGUST 1, 2005, BE FURTHER AMENDED AS FOLLOWS:

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. 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 of two percent (2%) of the gross receipts of all persons engaged in business within the jurisdiction of the City 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. The second one percent (1%) shall be earmarked, set aside, and restricted to the funding of Capital Improvements within and for the City of Alcester, Union County, South Dakota.

BE IT FURTHER ORDAINED, that the remaining sections of 1984-3 as heretofore amended and re-amended, shall remain in full force and effect, except as modified by this Ordinance.

BE IT FURTHER ORDAINED that this ordinance shall be effective January 1, 2006.

Dated at Alcester, Union County, South Dakota this 15<sup>th</sup> day of August, 2005.

**CITY OF ALCESTER**

By: William J. Koenig  
William J. Koenig, Mayor

ATTEST:

Michael Kezar  
Michael Kezar, Finance Officer

(SEAL)

First Reading:	August 1, 2005
Second Reading and Adoption:	August 15, 2005
Published:	August 18, 2005
Effective Date:	January 1, 2006

ORDINANCE NO. 1984-\_\_\_\_\_

An Ordinance imposing a municipal sales and service tax and a use tax for the City of Alcester, Union County, South Dakota.

Be it ordained by the City Council of the City of Alcester, Union County, South Dakota.

Section 1. PURPOSE: The purpose of this ordinance is to provide additional needed revenue for the City of Alcester, Union County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

Section 2. EFFECTIVE DATE: From and after the first day of July, 1984, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax of one percent (1%) on the gross receipts of all persons engaging in business within the jurisdiction of the City 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.

Section 3. 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 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 of the State of South Dakota shall lawfully prescribe.

Section 4. EXEMPTIONS FROM TAXATION: In addition to the gross receipts exempted by state law and therefore from tax imposed hereunder, there are hereby specifically exempted from the provisions of this ordinance and from computation of the amount of tax imposed by it, the following:

(a) Farm machinery and irrigation equipment used exclusively for agricultural purposes.

(b) Gross receipts from vending machines, including but not limited to pinball machines, phonographs, and all other mechanical devises for amusement.

(c) Sales of tangible personal property and taxable services to purchasers residing or doing business outside the city provided that delivery is made to such purchaser outside the city by common carrier or by the conveyance of the seller or by the United States mail, and provided that the ordinance so purchased and delivered are used outside the city; sales of tangible personal property to a construction company for use in its business operations outside the city if delivery thereof is made to a truck of the construction company within the city.

Section 5. USE TAX: In addition there is hereby imposed an excise tax on the privilege of the use, storage and consumption within the jurisdiction of the city of tangible personal property purchased from and after the first day of July, 1984, 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.

Section 6. INTERPRETATION: It is declared to be the intention of this ordinance 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.

Section 7. PENALTY: Any person failing or refusing to make reports on payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined no more than one hundred dollars (\$100.00) or imprisoned in the city jail for not more than thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the department of revenue.

Section 8. SEPARABILITY: If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

Dated this \_\_\_\_\_ day of April, 1984.

CITY OF ALCESTER

By: \_\_\_\_\_  
Roger A. Walz, Mayor

First Reading: April 12, 1984  
Second Reading and Adoption: April 24, 1984  
Published: May 3, 1984

ATTEST: (SEAL)

\_\_\_\_\_  
Michael Kezar, Finance Officer

**ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.1 OF THE CITY OF ALCESTER**

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7.0508.1 be established as follows:

7.0508.1: AN ORDINANCE PROHIBITING PUBLIC NUDITY AND  
REGULATING STRIP DANCING.

WHEREAS, it is a lawful purpose of the City Council of the City of Alcester to enact laws to protect and promote the general welfare health, safety and morals of its citizens; and

WHEREAS, the City Council is empowered to enact such laws pursuant to its Charter and the Laws and Statutes of the State of South Dakota; and

WHEREAS, the Supreme Court of the United States has held that public nudity can be constitutionally prescribed, including so-called nude ballroom dancing; and

WHEREAS, the Supreme Court has found that a substantial governmental interest exists in protecting societal order and morality and that because of this governmental interest, a law aimed at regulating public conduct, i.e. nudity, is constitutionally permissible despite its incidental impact on nude dancing; and

WHEREAS, the Courts have found that nude dancing establishments are frequently used for unlawful sexual activities, including prostitution, and that such activity encourages prostitution, sexual assaults and attracts other criminal activity; and

WHEREAS, nude dancing establishments present an unwholesome atmosphere and moral setting for young adults and will tend to corrupt the morals of our young people at a formative time in their lives; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, including nude dancing establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, including nude dancing establishments, have serious objectionable operational characteristics, thereby contributing to urban blight and downgrading the quality of life in the adjacent areas; and

WHEREAS, the City Council desires to minimize and control the above mentioned adverse effects and thereby protect the health, safety and welfare of its citizenry; protect the citizens from increased crime; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the purpose or intent of this act is to regulate public conduct and the public commercial exploitation of sex, without any express or implied intent to suppress or prohibit any legitimate speech or expression, now therefore,

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ALCESTER:

Section 1. 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.

Section 2. 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 discernibly 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 requirement, 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.

Section 3. 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.

Section 4. 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 dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

Section 5. 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.

Section 6. 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.

Section 7. The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.

Section 8. 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.

Section 9. 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.

Section 10. 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.

Dated at Alcester, Union County, South Dakota, the 21st day of November, 2005.  
CITY OF ALCESTER

By: \_\_\_\_\_  
William Koenig, Mayor

ATTEST:

\_\_\_\_\_  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading: November 21, 2005  
Approved/Adopted: November 21, 2005  
Published: November 24, 2005  
Effective Date: December 14, 2005

**ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.2 OF THE CITY OF ALCESTER**

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7,0508.2 be established as follows:

7.0508.2: AN ORDINANCE PROHIBITING INDECENT EXPOSURE

(a) It is unlawful for any person on premises licensed for the sale of alcoholic beverages, while in the presence of any other person, to:

(1) Fail to conceal, with a fully opaque covering, the sexual parts of such person's body, to include the genitals, pubic area and anus of any person, or the nipple and areola of the female breast.

(2) Expose any device, costume or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple or areola of the breast.

(b) It is unlawful for any licensee in alcoholic beverages to cause, allow or permit any person on the licensed premises to violate the provisions of subsection (a) of this section.

Dated at Alcester, Union County, South Dakota, the 21<sup>st</sup> day of November, 2005.

CITY OF ALCESTER

By: \_\_\_\_\_  
William Koenig, Mayor

ATTEST:

\_\_\_\_\_  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading: November 21, 2005  
Approved/Adopted: November 21, 2005  
Published: November 24, 2005  
Effective Date: December 14, 2005

**ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF ALCESTER**

BE IT ORDAINED by the City Council of the City of Alcester, Union County, South Dakota, as follows:

**AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF ALCESTER**

Section

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- 20. Failure of City to Meet Time Frame Not to Risk Applicant/Licensee Rights
- 21. Location of Sexually Oriented Businesses.
- 22. Severability.
- 23. Conflicting Code Provisions Repealed.
- 24. Effective Date.

**WHEREAS**, sexually oriented businesses require special supervision from public safety agencies of in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City of Alcester; and



**WHEREAS**, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and the downgrading of property values; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, the City of Alcester recognizes its constitutional duty to interpret, construe and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

**WHEREAS**, with the passage of any Ordinance, the City of Alcester and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and South Dakota Constitutions, South Dakota Code, and the South Dakota Rules of Civil and Criminal Procedure; and

**WHEREAS**, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the South Dakota Constitution, but to enact any Ordinance to further the content-neutral governmental interests of the City of Alcester, to wit, the controlling of secondary effects of sexually oriented businesses.

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED** by the City Council of the City of Alcester, Union County South Dakota, on the 21<sup>st</sup> day of November, 2005, that the following Ordinance be enacted:

**Section 1. Rationale and findings.**

(a) **Rationale.** It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City of Alcester, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City of Alcester. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) Findings. Based on evidence of the adverse secondary effect of adult uses presented in hearings and in reports made available to the City of Alcester and on finds, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S. Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10<sup>th</sup> Cir. 2003); *Farkas v. Miller*, 151 F.3d 900 (8<sup>th</sup> Cir. 1998); *United States v. Evans*, 272 F.3d 1069 (8<sup>th</sup> Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8<sup>th</sup> Cir. 1981); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8<sup>th</sup> Cir. 2001); *PHE, Inc. v. State*, 2004 Miss. LEXIS 269 (2004); *Yorko v. State*, 690 S.W.2d 260 (Tex. 1985); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8<sup>th</sup> Cir. 2003); *United States v. Frederickson*, 846 F.2d 517 (1988); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.4d 1153 (9<sup>th</sup> Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 386 F.3d 1186 (9<sup>th</sup> Cir. 2004); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11<sup>th</sup> Cir. 1999);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1977; Roncek, McCleary Expert Reports – 2004; New York, New York Times Square – 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

the City Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation.

(2) Sexual acts, including masturbation, oral and anal sex, sometimes occur inside the premises of or in the parking lot of unregulated sexually oriented businesses, including but not limited to those which provide private or semi-private booths, rooms, or cubicles for viewing

films, video, or live sexually explicit shows, which acts pose a risk to public health through the spread of sexually transmitted diseases.

(3) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(4) Each of the foregoing negative secondary effects constitutes a harm which the City of Alcester has a substantial government interest in preventing and/or abating, and said substantial interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.

## **Section 2. Definitions.**

For purposes of this Chapter, the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

*“Adult Arcade”* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or specified “anatomical areas”.

*“Adult Bookstore or Adult Video Store”* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

A “principal purpose” means that the commercial establishment:

(a) has a substantial portion of its displayed merchandise which consists of said items, or

(b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

(c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

(d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

(e) maintains a substantial section of its interior business space for the sale or rental of said items.

*“Adult Cabaret”* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features:

(a) persons who appear nude or semi-nude; or

(b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or

(c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

*“Adult Motel”* means a motel, hotel, or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motions pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

*“Adult Motion Picture Theater”* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five (5) persons for any form of consideration.

*“Art Museum” and/or “Art Gallery”* means any structure where paintings, sculptures, pottery, lithograph and anything of artistic expression is shown, excluding live models in a state of nudity or semi nudity.

“*City Council*” means the City Council of the city of Alcester, Union County, South Dakota.

“*Characterized*” means to describe the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*City*” means City of Alcester, South Dakota

“*Employ, Employee, and Employment*” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the Premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” shall mean and include any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

“*Finance Officer*” means the finance officer for the City Of Alcester.

“*Hearing Body*” shall be the City Council of the City of Alcester.

“*Influential Interest*” means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, (2) ownership of a financial interest of thirty-five percent (35%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the sexually oriented business.

“*Licensed Day-Care Center*” means a facility licensed by the State of South Dakota, whether situated within the City of Alcester or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

“*Licensee*” shall mean a person, whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an “employee,” it shall mean the person whose name the sexually oriented business employee license has been issued.

“*Nudity*” or “*State of Nudity*” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

“*Operate*” or “*Cause to Operate*” shall mean to cause to function or to put or keep in a state of doing business. “*Operator*” means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

“*Person*” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

“*Premises*” means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance.

“*Regularly*” means and refers to the consistent and repeated doing of the act so described.

“*Semi-Nude Model Studio*” means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

*“Sexual Device”* means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representation of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*“Sexual Devise Shop”* means a commercial establishment that regularly features sexual devises. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

*“Sexual Encounter Center”* shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in a form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

*“Sexually Oriented Business”* means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motel,” an “adult motion picture theater,” a “semi-nude model studio,” or a “sexual encounter center.”

*“Specified Anatomical Areas”* means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*“Specified Criminal Activity”* means any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) a sex crime as defined in S.D. Codified Laws § 22-22-30 (1)-(14);

(b) prostitution or promotion of prostitution, as defined in S.D. Codified Laws § 22-23-1 and § 22-23-2;

(c) an obscenity or public indecency offense as defined in S.D. Codified Laws Chapter 22-24;

(d) a controlled substance offense as defined in S.D. Codified Laws § 22-42-2;

(e) attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or

(f) any offense in another jurisdiction that, had the predicate act(s) been committed in South Dakota, would have constituted any of the foregoing offenses.

*“Specified Sexual Activity”* means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

*“Substantial”* means at least thirty-five percent (35%) of the item(s) so modified.

*“Transfer of Ownership or Control”* of a sexually oriented business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, give, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

*“Viewing Room”* shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

### **Section 3. Classification.**

The classifications for sexually oriented businesses shall be as follows:

(a) Adult bookstores or adult video stores;

(b) Adult cabarets;



- (c) Adult motels;
- (d) Adult motion picture theaters;
- (e) Semi-nude model studios;
- (f) Sexual device shops;
- (g) Sexual encounter centers.

#### **Section 4. License required.**

(a) It shall be unlawful for any person to operate a sexually oriented business in the City of Alcester without a valid sexually oriented business license.

(b) It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of a sexually oriented business in the City of Alcester without a valid sexually oriented business employee license.

(c) An applicant for a sexually oriented business license or sexually oriented business employee license shall file in person at the office of the Finance Officer of the City of Alcester a completed application made on a form provided by the Finance Officer’s Office. The application shall be signed as required by Subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or times required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6:

(1) The applicant’s full true name and any other names used by the applicants in the preceding five (5) years.

(2) Current business address or another mailing address of the applicant.

(3) Written proof of age, in the form of a driver’s license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (I) been declared by a Court of Law to be a nuisance; or
- (ii) been subject to a Court Order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this Subsection shall be supplemented in writing by certified mail, return receipt requested, to the Finance Officer's Office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this Chapter shall submit a diagram indicating that the interior configuration meets the requirements of those Sections.

(e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the City's Finance Officer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by Court Order.

#### **Section 5. Issuance of license.**

(a) Upon the filing of a completed application under Section 4©) for a sexually oriented business license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Alcester to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Finance Officer shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Finance Officer shall issue a license unless:

- (1) An applicant is less than eighteen (18) years of age.
  - (2) An applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this Chapter has not been paid.
  - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements of this ordinance or any other part of the Ordinances of the City, or the Ordinances of Union County, South Dakota, or the statutes of the State of South Dakota.
  - (5) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - (I) been declared by a Court of Law to be a nuisance; or
    - (ii) been subject to an Order of closure or padlocking.
  - (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.
- (b) Upon the filing of a completed application under Section 4©) for a sexually oriented business employee license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Alcester to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Finance Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Finance Officer shall approve the issuance of a license unless:
- (1) The applicant is less than eighteen (18) years of age.
  - (2) The applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this Chapter has not been paid.
  - (4) Any sexually oriented business in which the applicant has had an influential interest, has in the previous five (5) years (and at a time during which the applicant had the influential interest):

(I) been declared by a Court of Law to be a nuisance; or

(ii) been subject to an Order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is when working or performing.

#### **Section 6. Fees.**

(a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One Hundred dollars (\$100.00) for the initial fee for a sexually oriented business license and Fifty dollars (\$50.00) for annual renewal; Fifty dollars (\$50.00) for the initial sexually oriented business employee license and Twenty-Five dollars (\$25.00) for annual renewal.

#### **Section 7. Inspection.**

(a) Sexually oriented businesses and sexually oriented business employees shall permit any duly acting law enforcement officer, including but not limited to any police officer of the City of Alcester, the City Attorney for the City of Alcester, the Sheriff of Union County, the Union County State's Attorney, and his or her Deputy and/or agent to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City of Alcester to authorize reasonable inspection of the licensed premises pursuant to this Chapter, but not to authorizing a harassing or excessive pattern of inspections.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

#### **Section 8. Expiration of license.**

- (a) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making applications and payment of a fee as provided in Section 4 and Section 6.
- (b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

**Section 9. Suspension.**

- (a) The City of Alcester shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Chapter or has knowingly allowed an employee to violate this Chapter.
- (b) The City of Alcester shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Chapter.

**Section 10. Revocation.**

- (a) The City of Alcester shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee to violate this Chapter and the licensee's license has been suspended within the previous twelve-month (12-mo.) period.
- (b) The City of Alcester shall issue a written intent to revoke a sexually oriented business license and/or a sexually oriented business employee license, as applicable, if:
  - (1) The licensee has knowingly given false information in the application for the sexually oriented business license.
  - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substance on the premises;
  - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;
  - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
  - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the Notice and Hearing procedure described in Section 11, the Board revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

### **Section 11. Hearing; denial, revocation, and suspension; appeal.**

(a) When the Finance Officer issues a written notice of intent to deny, suspend, or revoke a license, the Finance Officer shall immediately send such Notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (Respondent) by personal delivery or certified mail. The Notice shall be directed to the most current business address or other mailing address on file with the Finance Officer for the Respondent. The Notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the Notice is issued, on which the City Council shall conduct a Hearing on the Finance Officer's intent to deny, suspend, or revoke the license.

At the Hearing, the Respondent shall have the opportunity to present all of Respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Finance Officer's witnesses. The Finance Officer shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The Hearing shall take no longer than two (2) days, unless extended at the request of the Respondent to meet the requirements of due process and proper administration of justice. The City Council shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the Respondent within five (5) days after the Hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30<sup>th</sup>) day after it is rendered, and the decision shall include a statement advising the Respondent of the right to appeal such decision to a Court of competent jurisdiction. If the Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Council shall, contemporaneously with the issuance of the decision, order the Finance Officer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the Respondent is not yet licensed, the Finance Officer shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging the Council's decision is initiated, the Council shall prepare and transmit to the Court a transcript of the Hearing within ten (10) days after receiving

written Notice of the filing of the Court action. The Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the Court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is in operation as of the effective date of this Ordinance: Upon the filing of any Court action to appeal, challenge, restrain, or otherwise enjoin the City of Alcester's enforcement of the denial, suspension, or revocation, the City of Alcester shall immediately issue the Respondent a Provisional License. The Provisional License shall allow the Respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the Court's entry of a Judgment on the Respondent's appeal or other action to restrain or otherwise enjoin the City of Alcester's enforcement.

#### **Section 12. Transfer of license.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

#### **Section 13. Hours of operation.**

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

#### **Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.**

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Finance Officer may waive the foregoing diagram for renewal applications if the applicant

adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 on this Subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business state all of the following:

- (I) That the occupancy of viewing rooms is limited to one person.
- (ii) That sexual activity on the premises is prohibited.
- (iii) That the making of openings between viewing rooms is prohibited.
- (iv) That violators will be required to leave the premises.
- (v) That violations of Subparagraphs (I), (ii) and (iii) of this paragraph are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(I) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of the floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any patron is in the area monitored by direct line of sight from that operator's station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified



in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

#### **Section 15. Loitering, exterior lighting, visibility, and monitoring requirements.**

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and ( c ) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for the person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

#### **Section 16. Penalties and enforcement.**

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a Class 2 Misdemeanor, and, upon conviction, shall be punishable by a fine not to exceed \$200.00 and/or imprisonment in the County Jail for a period not to exceed thirty (30) days. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The City of Alcester's attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunctions, shall be brought in the name of the City of Alcester, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws or ordinances in force in the City of Alcester or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

#### **Section 17. Applicability of Ordinance to existing businesses.**

All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Chapter.

### **Section 18. Prohibited activities.**

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer on a stage at least eighteen (18) inches from the floor in a room of at least eight hundred (800) square feet.

(c) It shall be a violation of this Ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this Ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Finance Officer and summarizing the provisions of Paragraphs (a), (b), (c) and (d) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

### **Section 19. Scierter required to prove violations or business licensee liability.**

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Ordinance, 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 business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

**Section 20. Failure of the City of Alcester to meet deadline not to risk applicant/licensee right.**

In the event that a City official is required to take an act or do a thing pursuant to this Ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of Alcester of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operation or employment the day after the deadline for the City of Alcester action has passed.

**Section 21. Location of sexually oriented businesses.**

(a) Sexually oriented businesses shall not be required to obtain a conditional use permit or special use permit.

(b) The following shall apply only to sexually oriented businesses not established prior to the effective date of this Ordinance: It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City of Alcester, unless said sexually oriented business is at least:

(1) 750 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of South Dakota to sell alcohol at the premises; and

(2) 750 feet from any parcel occupied by a house of worship, licensed day care center, public or private elementary or secondary school, public park, or any residence.

(c) For the purpose of this Section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with a sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in Subsection (b)(1)-(a)(2) above.

(d) If the sexually oriented business use, lot, or occupancy is discontinued for more than one (1) year for any reason, the Council may adopt, after Notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of the nonconforming use, lot, or occupancy.

**Section 22. Severability.**

This Ordinance and each Section and provision of said Chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining Sections or provisions and the application of such Sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such Sections and provisions would have been passed

independently of such Section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

**Section 23. Conflicting code provisions repealed.**

Additionally, any provision(s) in the City of Alcester Code of Ordinances specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

**Section 24. Effective date.**

This Ordinance shall become effective on the Twentieth day after publication in the official newspaper of the City of Alcester and is passed this 21<sup>st</sup> day of November, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST: Michael Kezar  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading: November 21, 2005  
Approved/Adopted: November 21, 2005  
Published: November 24, 2005  
Effective Date: December 14, 2005

**ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.2 OF THE CITY OF ALCESTER**

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7.0508.2 be established as follows:

7.0508.2: AN ORDINANCE PROHIBITING INDECENT EXPOSURE

(a) It is unlawful for any person on premises licensed for the sale of alcoholic beverages, while in the presence of any other person, to:

(1) Fail to conceal, with a fully opaque covering, the sexual parts of such person's body, to include the genitals, pubic area and anus of any person, or the nipple and areola of the female breast.

(2) Expose any device, costume or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple or areola of the breast.

(b) It is unlawful for any licensee in alcoholic beverages to cause, allow or permit any person on the licensed premises to violate the provisions of subsection (a) of this section.

Dated at Alcester, Union County, South Dakota, the 21<sup>st</sup> day of November, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST:  
Michael Kezar  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading: November 21, 2005  
Approved/Adopted: November 21, 2005  
Published: November 24, 2005  
Effective Date: December 14, 2005

ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.1 OF THE CITY OF ALCESTER

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7.0508.1 be established as follows:

7.0508.1: AN ORDINANCE PROHIBITING PUBLIC NUDITY AND REGULATING STRIP DANCING.

WHEREAS, it is a lawful purpose of the City Council of the City of Alcester to enact laws to protect and promote the general welfare health, safety and morals of its citizens; and

WHEREAS, the City Council is empowered to enact such laws pursuant to its Charter and the Laws and Statutes of the State of South Dakota; and

WHEREAS, the Supreme Court of the United States has held that public nudity can be constitutionally prescribed, including so-called nude ballroom dancing; and

WHEREAS, the Supreme Court has found that a substantial governmental interest exists in protecting societal order and morality and that because of this governmental interest, a law aimed at regulating public conduct, i.e. nudity, is constitutionally permissible despite its incidental impact on nude dancing; and

WHEREAS, the Courts have found that nude dancing establishments are frequently used for unlawful sexual activities, including prostitution, and that such activity encourages prostitution, sexual assaults and attracts other criminal activity; and

WHEREAS, nude dancing establishments present an unwholesome atmosphere and moral setting for young adults and will tend to corrupt the morals of our young people at a formative time in their lives; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, including nude dancing establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, including nude dancing establishments, have serious objectionable operational characteristics, thereby contributing to urban blight and downgrading the quality of life in the adjacent areas; and

WHEREAS, the City Council desires to minimize and control the above mentioned adverse effects and thereby protect the health, safety and welfare of its citizenry; protect the citizens from increased crime; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the purpose or intent of this act is to regulate public conduct and the public commercial exploitation of sex, without any express or implied intent to suppress or prohibit any legitimate speech or expression, now therefore,

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ALCESTER:

Section 1. 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.

Section 2. 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 discernibly 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 requirement, 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.

Section 3. 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.

Section 4. 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 dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

Section 5. 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.

Section 6. 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.

Section 7. The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.

Section 8. 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.

Section 9. 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.

Section 10. 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.

Dated at Alcester, Union County, South Dakota, the 21st day of November, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST: Michael S. Kezar  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading: November 21, 2005  
Approved/Adopted: November 21, 2005  
Published: November 24, 2005  
Effective Date: December 14, 2005



ORDINANCE AMENDING ORDINANCE #11.0102 OF THE CITY OF ALCESTER,  
ALCESTER, UNION COUNTY, SOUTH DAKOTA

BE IT ORDAINED, by the City Council of the City Alcester, Union County, South Dakota, that a certain ordinance of the City of Alcester relating to the responsibility for water meters, Section 11.0102 as amended, be amended as follows:

11.0102 DUTY AND RESPONSIBILITY OF OWNER OR OCCUPANT.

A suitable place, safe from frost or other damage and accessible for examination and reading by City personnel, must be provided for any water meter at the expense of the owner or occupant. In all cases, where the meter is injured by freezing or where it is otherwise damaged by the act or neglect of the owner or occupant of the premises or of his or her agent or servants, the cost of repairing or replacing the same shall be paid by the owner or occupant.

Failure of the owner or occupant to provide reasonable accessibility to the water meter, by City personnel or failure to pay the cost of repairing or replacing any damaged water meter, upon demand, may result in the disconnection of water service. In the event of disconnection, the water service shall not be restored until the consumer pays in advance the following:

1. All cost to repair and replace damaged water meter;
2. All delinquent water bills and penalties in full (if any);
3. Any outstanding bills for utility services provided by the City of Alcester subsequent to the date of any delinquent water bill and a reconnect charge of \$50.00.

In addition, in the event the security deposit funds are applied to the above payment, the security deposit shall be restored to its original amount prior to reconnecting.

Dated at Alcester, Union County, South Dakota, the 15<sup>th</sup> day of August, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST: Michael Kezar  
Michael Kezar, Finance Officer

First Reading: August 1, 2005  
Second Reading: August 15, 2005  
Approved/Adopted: August 15, 2005  
Published: August 18, 2005  
Effective Date: September 7, 2005

ORDINANCE AMENDING ORDINANCE #11.0102 OF THE CITY OF ALCESTER,  
ALCESTER, UNION COUNTY, SOUTH DAKOTA

BE IT ORDAINED, by the City Council of the City Alcester, Union County, South Dakota, that a certain ordinance of the City of Alcester relating to the responsibility for water meters, Section 11.0102 as amended, be amended as follows:

11.0102 DUTY AND RESPONSIBILITY OF OWNER OR OCCUPANT.

A suitable place, safe from frost or other damage and accessible for examination and reading by City personnel, must be provided for any water meter at the expense of the owner or occupant. In all cases, where the meter is injured by freezing or where it is otherwise damaged by the act or neglect of the owner or occupant of the premises or of his or her agent or servants, the cost of repairing or replacing the same shall be paid by the owner or occupant.

Failure of the owner or occupant to provide reasonable accessibility to the water meter, by City personnel or failure to pay the cost of repairing or replacing any damaged water meter, upon demand, may result in the disconnection of water service. In the event of disconnection, the water service shall not be restored until the consumer pays in advance the following:

1. All cost to repair and replace damaged water meter;
2. All delinquent water bills and penalties in full (if any);
3. Any outstanding bills for utility services provided by the City of Alcester subsequent to the date of any delinquent water bill and a reconnect charge of \$50.00.

In addition, in the event the security deposit funds are applied to the above payment, the security deposit shall be restored to its original amount prior to reconnecting.

Dated at Alcester, Union County, South Dakota, the 15<sup>th</sup> day of August, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST:

Michael Kezar  
Michael Kezar, Finance Officer

First Reading: August 1, 2005  
Second Reading: August 15, 2005  
Approved/Adopted: August 15, 2005  
Published: August 18, 2005  
Effective Date: September 7, 2005

ORDINANCE AMENDING ORDINANCE #11.0102 OF THE CITY OF ALCESTER,  
ALCESTER, UNION COUNTY, SOUTH DAKOTA

BE IT ORDAINED, by the City Council of the City Alcester, Union County, South Dakota, that a certain ordinance of the City of Alcester relating to the responsibility for water meters, Section 11.0102 as amended, be amended as follows:

11.0102      DUTY AND RESPONSIBILITY OF OWNER OR OCCUPANT.

A suitable place, safe from frost or other damage and accessible for examination and reading by City personnel, must be provided for any water meter at the expense of the owner or occupant. In all cases, where the meter is injured by freezing or where it is otherwise damaged by the act or neglect of the owner or occupant of the premises or of his or her agent or servants, the cost of repairing or replacing the same shall be paid by the owner or occupant.

Failure of the owner or occupant to provide reasonable accessibility to the water meter, by City personnel or failure to pay the cost of repairing or replacing any damaged water meter, upon demand, may result in the disconnection of water service. In the event of disconnection, the water service shall not be restored until the consumer pays in advance the following:

1. All cost to repair and replace damaged water meter;
2. All delinquent water bills and penalties in full (if any);
3. Any outstanding bills for utility services provided by the City of Alcester subsequent to the date of any delinquent water bill and a reconnect charge of \$50.00.

In addition, in the event the security deposit funds are applied to the above payment, the security deposit shall be restored to its original amount prior to reconnecting.

Dated at Alcester, Union County, South Dakota, the 15<sup>th</sup> day of August, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST:  
Michael Kezar  
Michael Kezar, Finance Officer

First Reading:      August 1, 2005  
Second Reading:    August 15, 2005  
Approved/Adopted: August 15, 2005  
Published:          August 18, 2005  
Effective Date:     September 7, 2005

ORDINANCE AMENDING ORDINANCE #11.0102 OF THE CITY OF ALCESTER,  
ALCESTER, UNION COUNTY, SOUTH DAKOTA

BE IT ORDAINED, by the City Council of the City Alcester, Union County, South Dakota, that a certain ordinance of the City of Alcester relating to the responsibility for water meters, Section 11.0102 as amended, be amended as follows:

11.0102 DUTY AND RESPONSIBILITY OF OWNER OR OCCUPANT.

A suitable place, safe from frost or other damage and accessible for examination and reading by City personnel, must be provided for any water meter at the expense of the owner or occupant. In all cases, where the meter is injured by freezing or where it is otherwise damaged by the act or neglect of the owner or occupant of the premises or of his or her agent or servants, the cost of repairing or replacing the same shall be paid by the owner or occupant.

Failure of the owner or occupant to provide reasonable accessibility to the water meter, by City personnel or failure to pay the cost of repairing or replacing any damaged water meter, upon demand, may result in the disconnection of water service. In the event of disconnection, the water service shall not be restored until the consumer pays in advance the following:

1. All cost to repair and replace damaged water meter;
2. All delinquent water bills and penalties in full (if any);
3. Any outstanding bills for utility services provided by the City of Alcester subsequent to the date of any delinquent water bill and a reconnect charge of \$50.00.

In addition, in the event the security deposit funds are applied to the above payment, the security deposit shall be restored to its original amount prior to reconnecting.

Dated at Alcester, Union County, South Dakota, the 15<sup>th</sup> day of August, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST: Michael Kezar  
Michael Kezar, Finance Officer

First Reading: August 1, 2005  
Second Reading: August 15, 2005  
Approved/Adopted: August 15, 2005  
Published: August 18, 2005  
Effective Date: September 7, 2005

ORDINANCE AMENDING AN ORDINANCE REGULATING WATER AND  
SEWER USAGE FOR THE CITY OF ALCESTER

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a certain ordinance entitled "An Ordinance Regulating Water and Sewer Usage for the City of Alcester", dated July 1, 1980, as amended, be further amended as follows:

SECTION I: WATER RATES

The following water rate schedule apply to all water purchased from the City of Alcester:

<u>Usage</u>	<u>Water Rate</u>
Minimum bill for 2000 Gallons	\$12.70
2,000 Gallons @ \$4.35 per Thousand	8.70
2,000 Gallons @ \$3.85 per Thousand	7.70
2,000 Gallons @ \$3.35 per Thousand	6.70
2,000 Gallons @ \$2.85 per Thousand	5.70
In excess of 10,000 Gallons @ \$1.85 per Thousand	

The above rates apply, based upon water usage on a monthly basis. A minimum of \$12.70 per month will be assessed against all water users.

Rates for water users residing outside the City limits of the City of Alcester shall be increased by \$1.00 per month.

From and after June 1, 2006 the City of Alcester shall not establish any new residential water hookups for services outside the City limits of the City of Alcester.

The rates for all inoperative meters will be figured based upon the average of the last three months water usage. The consumer shall immediately report any meter malfunction to the City Finance Officer of the City of Alcester.

SECTION XII: EFFECTIVE DATE

This amended ordinance shall be effective on the 1<sup>st</sup> day of June, 2006, and shall apply to all water bills to be paid on the 1<sup>st</sup> day of July, 2006.

BE IT FURTHER ORDAINED, that the remaining sections of this ordinance, as previously amended, shall remain in full force and effect except as modified by this ordinance.

Dated at Alcester, Union County, South Dakota, the 19th day of April, 2006.

CITY OF ALCESTER

By: William J. Koenig  
William Koenig, Mayor

ATTEST:

Michael Kezar  
Michael Kezar, Finance Officer

First reading: March 20, 2006  
Second reading: April 19, 2006  
Approved: April 19, 2006  
Adopted: April 19, 2006  
Published: April 26, 2006  
Effective Date: June 1, 2006

ORDINANCE AMENDING ORDINANCE #11.0102 OF THE CITY OF ALCESTER,  
ALCESTER, UNION COUNTY, SOUTH DAKOTA

BE IT ORDAINED, by the City Council of the City Alcester, Union County, South Dakota, that a certain ordinance of the City of Alcester relating to the responsibility for water meters, Section 11.0102 as amended, be amended as follows:

11.0102      DUTY AND RESPONSIBILITY OF OWNER OR OCCUPANT.

A suitable place, safe from frost or other damage and accessible for examination and reading by City personnel, must be provided for any water meter at the expense of the owner or occupant. In all cases, where the meter is injured by freezing or where it is otherwise damaged by the act or neglect of the owner or occupant of the premises or of his or her agent or servants, the cost of repairing or replacing the same shall be paid by the owner or occupant.

Failure of the owner or occupant to provide reasonable accessibility to the water meter, by City personnel or failure to pay the cost of repairing or replacing any damaged water meter, upon demand, may result in the disconnection of water service. In the event of disconnection, the water service shall not be restored until the consumer pays in advance the following:

1. All cost to repair and replace damaged water meter;
2. All delinquent water bills and penalties in full (if any);
3. Any outstanding bills for utility services provided by the City of Alcester subsequent to the date of any delinquent water bill and a reconnect charge of \$50.00.

In addition, in the event the security deposit funds are applied to the above payment, the security deposit shall be restored to its original amount prior to reconnecting.

Dated at Alcester, Union County, South Dakota, the 1st day of August, 2005.

CITY OF ALCESTER

By: William Koenig  
William Koenig, Mayor

ATTEST: Michael Kezar  
Michael Kezar, Finance Officer

First Reading:      August 1, 2005  
Second Reading:    August 15, 2005  
Approved/Adopted: August 15, 2005  
Published:          August 18, 2005  
Effective Date:     September 7, 2005

**ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.1 OF THE CITY OF ALCESTER**

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7.0508.1 be established as follows:

7.0508.1: AN ORDINANCE PROHIBITING PUBLIC NUDITY AND REGULATING STRIP DANCING.

WHEREAS, it is a lawful purpose of the City Council of the City of Alcester to enact laws to protect and promote the general welfare health, safety and morals of its citizens; and

WHEREAS, the City Council is empowered to enact such laws pursuant to its Charter and the Laws and Statutes of the State of South Dakota; and

WHEREAS, the Supreme Court of the United States has held that public nudity can be constitutionally prescribed, including so-called nude ballroom dancing; and

WHEREAS, the Supreme Court has found that a substantial governmental interest exists in protecting societal order and morality and that because of this governmental interest, a law aimed at regulating public conduct, i.e. nudity, is constitutionally permissible despite its incidental impact on nude dancing; and

WHEREAS, the Courts have found that nude dancing establishments are frequently used for unlawful sexual activities, including prostitution, and that such activity encourages prostitution, sexual assaults and attracts other criminal activity; and

WHEREAS, nude dancing establishments present an unwholesome atmosphere and moral setting for young adults and will tend to corrupt the morals of our young people at a formative time in their lives; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, including nude dancing establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, including nude dancing establishments, have serious objectionable operational characteristics, thereby contributing to urban blight and downgrading the quality of life in the adjacent areas; and

WHEREAS, the City Council desires to minimize and control the above mentioned adverse effects and thereby protect the health, safety and welfare of its citizenry; protect the citizens from increased crime; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the purpose or intent of this act is to regulate public conduct and the public commercial exploitation of sex, without any express or implied intent to suppress or prohibit any legitimate speech or expression, now therefore,

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ALCESTER;

Section 1. 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.

Section 2. 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 discernibly 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 requirement, 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.

Section 3. 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.

Section 4. 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 dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

Section 5. 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.

Section 6. 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.

Section 7. The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.

Section 8. 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.

Section 9. 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.

Section 10. 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.

Dated at Alcester, Union County, South Dakota, the \_\_\_\_\_ day of \_\_\_\_\_ 2005.

CITY OF ALCESTER

By: \_\_\_\_\_  
William Koenig, Mayor

ATTEST:

\_\_\_\_\_  
Michael Kezar, Finance Officer

First Reading: November 7, 2005  
Second Reading:  
Approved/Adopted:  
Published:  
Effective Date:

ORDINANCE ESTABLISHING  
ORDINANCE #7.0508.2 OF THE CITY OF ALCESTER

BE IT ORDAINED, by the City Council of the City of Alcester, Union County, South Dakota, that a new ordinance #7.0508.2 be established as follows:

7.0508.2: AN ORDINANCE PROHIBITING INDECENT EXPOSURE

(a) It is unlawful for any person on premises licensed for the sale of alcoholic beverages, while in the presence of any other person, to:

(1) Fail to conceal, with a fully opaque covering, the sexual parts of such person's body, to include the genitals, pubic area and anus of any person, or the nipple and areola of the female breast.

(2) Expose any device, costume or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple or areola of the breast.

(b) It is unlawful for any licensee in alcoholic beverages to cause, allow or permit any person on the licensed premises to violate the provisions of subsection (a) of this section.

Dated at Alcester, Union County, South Dakota, the \_\_\_\_\_ day of \_\_\_\_\_ 2005.

CITY OF ALCESTER

By: \_\_\_\_\_  
William Koenig, Mayor

ATTEST:

\_\_\_\_\_  
Michael Kezar, Finance Officer

First Reading: November 7, 2005

Second Reading:

Approved/Adopted:

Published:

Effective Date:

## Amendment to the City of Alcester Personnel Manual

### **7.7 - Jury Duty**

Municipal employees will be granted leave without pay if they are subpoenaed to testify in court.

Time off will be granted during the term of jury duty to any employee. Employees will not be dismissed or suspended from employment and shall be retained and be entitled to the same job status and pay as he or she had prior to performing jury duty. Persons who are absent due to jury duty must notify the finance officer and the mayor in advance. If no prior notification is given, the employee may be subject to disciplinary procedures. Employees shall be entitled to retain any reimbursement for mileage incurred by them for jury duty. In addition, any employee shall be entitled to the differential in compensation between the pay received for jury duty and the employee's regular pay, which differential shall be paid by the City of Alcester.

Vacation and sick leave benefits shall accrue at the normal rate for eligible employees during jury duty.

Municipal employees involved in private litigation are required to use vacation leave or leave without pay.

Amended: March 21, 2005

Effective: March 21, 2005

**ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS  
FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF ALCESTER**

BE IT ORDAINED by the City Council of the City of Alcester, Union County, South Dakota, as follows:

**AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND  
REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF  
ALCESTER**

Section

- Preamble
- 1. Purpose and Findings.
- 2. Definitions.
- 3. Classifications.
- 4. Licenses Required.
- 5. Issuance of License.
- 6. Fees.
- 7. Inspection.
- 8. Expiration of License.
- 9. Suspension.
- 10. Revocation.
- 11. Hearing; License Denial, Suspension, Revocation; Appeal.
- 12. Transfer of License.
- 13. Hours of Operation.
- 14. Regulations Pertaining to Exhibition of Sexually Explicit Films on Premises.
- 15. Loitering and Exterior Lighting and Monitoring Requirements.
- 16. Penalties and Enforcement.
- 17. Applicability of Ordinance to Existing Businesses
- 18. Prohibited Activities.
- 19. Scinter Required to Prove Violation or Business Licensee Liability.
- 20. Failure of City to Meet Time Frame Not to Risk Applicant/Licensee Rights
- 21. Location of Sexually Oriented Businesses.
- 22. Severability.
- 23. Conflicting Code Provisions Repealed.
- 24. Effective Date.

**WHEREAS**, sexually oriented businesses require special supervision from public safety agencies of in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City of Alcester; and

**WHEREAS**, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and the downgrading of property values; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, the City of Alcester recognizes its constitutional duty to interpret, construe and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

**WHEREAS**, with the passage of any Ordinance, the City of Alcester and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and South Dakota Constitutions, South Dakota Code, and the South Dakota Rules of Civil and Criminal Procedure; and

**WHEREAS**, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the South Dakota Constitution, but to enact any Ordinance to further the content-neutral governmental interests of the City of Alcester, to wit, the controlling of secondary effects of sexually oriented businesses.

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED** by the City Council of the City of Alcester, Union County South Dakota, on the \_\_\_ day of \_\_\_\_\_, 2005, that the following Ordinance be enacted:

**Section 1. Rationale and findings.**

(a) Rationale. It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City of Alcester, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City of Alcester. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) Findings. Based on evidence of the adverse secondary effect of adult uses presented in hearings and in reports made available to the City of Alcester and on finds, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 124 S. Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10<sup>th</sup> Cir. 2003); *Farkas v. Miller*, 151 F.3d 900 (8<sup>th</sup> Cir. 1998); *United States v. Evans*, 272 F.3d 1069 (8<sup>th</sup> Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8<sup>th</sup> Cir. 1981); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8<sup>th</sup> Cir. 2001); *PHE, Inc. v. State*, 2004 Miss. LEXIS 269 (2004); *Yorko v. State*, 690 S.W.2d 260 (Tex. 1985); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8<sup>th</sup> Cir. 2003); *United States v. Frederickson*, 846 F.2d 517 (1988); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.4d 1153 (9<sup>th</sup> Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 386 F.3d 1186 (9<sup>th</sup> Cir. 2004); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11<sup>th</sup> Cir. 1999);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1977; Roncek, McCleary Expert Reports – 2004; New York, New York Times Square – 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

the City Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation.

(2) Sexual acts, including masturbation, oral and anal sex, sometimes occur inside the premises of or in the parking lot of unregulated sexually oriented businesses, including but not limited to those which provide private or semi-private booths, rooms, or cubicles for viewing

films, video, or live sexually explicit shows, which acts pose a risk to public health through the spread of sexually transmitted diseases.

(3) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(4) Each of the foregoing negative secondary effects constitutes a harm which the City of Alcester has a substantial government interest in preventing and/or abating, and said substantial interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.

## **Section 2. Definitions.**

For purposes of this Chapter, the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

*“Adult Arcade”* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or specified “anatomical areas”.

*“Adult Bookstore or Adult Video Store”* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

A “principal purpose” means that the commercial establishment:

(a) has a substantial portion of its displayed merchandise which consists of said items, or

(b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

(c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

(d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

(e) maintains a substantial section of its interior business space for the sale or rental or said items.

*“Adult Cabaret”* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features:

(a) persons who appear nude or semi-nude; or

(b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or

(c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

*“Adult Motel”* means a motel, hotel, or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motions pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

*“Adult Motion Picture Theater”* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five (5) persons for any form of consideration.

*“Art Museum” and/or “Art Gallery”* means any structure where paintings, sculptures, pottery, lithograph and anything of artistic expression is shown, excluding live models in a state of nudity or semi nudity.



“*City Council*” means the City Council of the city of Alcester, Union County, South Dakota.

“*Characterized*” means to describe the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*City* ” means City of Alcester, South Dakota

“*Employ, Employee, and Employment*” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the Premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” shall mean and include any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) The addition of any sexually oriented business to any other existing sexually oriented business.

“*Finance Officer*” means the finance officer for the City Of Alcester.

“*Hearing Body*” shall be the City Council of the City of Alcester.

“*Influential Interest*” means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, (2) ownership of a financial interest of thirty-five percent (35%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the sexually oriented business.

“*Licensed Day-Care Center*” means a facility licensed by the State of South Dakota, whether situated within the City of Alcester or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

*“Licensee”* shall mean a person, whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an “employee,” it shall mean the person whose name the sexually oriented business employee license has been issued.

*“Nudity”* or *“State of Nudity”* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

*“Operate”* or *“Cause to Operate”* shall mean to cause to function or to put or keep in a state of doing business. *“Operator”* means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

*“Person”* shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

*“Premises”* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance.

*“Regularly”* means and refers to the consistent and repeated doing of the act so described.

*“Semi-Nude Model Studio”* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

*“Sexual Device”* means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representation of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*“Sexual Devise Shop”* means a commercial establishment that regularly features sexual devises. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

*“Sexual Encounter Center”* shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in a form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

*“Sexually Oriented Business”* means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motel,” an “adult motion picture theater,” a “semi-nude model studio,” or a “sexual encounter center.”

*“Specified Anatomical Areas”* means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*“Specified Criminal Activity”* means any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) a sex crime as defined in S.D. Codified Laws § 22-22-30 (1)-(14);

(b) prostitution or promotion of prostitution, as defined in S.D. Codified Laws § 22-23-1 and § 22-23-2;

©) an obscenity or public indecency offense as defined in S.D. Codified Laws Chapter 22-24;

(d) a controlled substance offense as defined in S.D. Codified Laws § 22-42-2;

(e) attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or

(f) any offense in another jurisdiction that, had the predicate act(s) been committed in South Dakota, would have constituted any of the foregoing offenses.

*“Specified Sexual Activity”* means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

*“Substantial”* means at least thirty-five percent (35%) of the item(s) so modified.

*“Transfer of Ownership or Control”* of a sexually oriented business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

©) The establishment of a trust, give, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

*“Viewing Room”* shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

### **Section 3. Classification.**

The classifications for sexually oriented businesses shall be as follows:

(a) Adult bookstores or adult video stores;

(b) Adult cabarets;

- (c) Adult motels;
- (d) Adult motion picture theaters;
- (e) Semi-nude model studios;
- (f) Sexual device shops;
- (g) Sexual encounter centers.

**Section 4. License required.**

(a) It shall be unlawful for any person to operate a sexually oriented business in the City of Alcester without a valid sexually oriented business license.

(b) It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of a sexually oriented business in the City of Alcester without a valid sexually oriented business employee license.

©) An applicant for a sexually oriented business license or sexually oriented business employee license shall file in person at the office of the Finance Officer of the City of Alcester a completed application made on a form provided by the Finance Officer’s Office. The application shall be signed as required by Subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or times required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6:

(1) The applicant’s full true name and any other names used by the applicants in the preceding five (5) years.

(2) Current business address or another mailing address of the applicant.

(3) Written proof of age, in the form of a driver’s license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (I) been declared by a Court of Law to be a nuisance; or
- (ii) been subject to a Court Order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this Subsection shall be supplemented in writing by certified mail, return receipt requested, to the Finance Officer's Office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 14 and 18 of this Chapter shall submit a diagram indicating that the interior configuration meets the requirements of those Sections.

(e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the City's Finance Officer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by Court Order.

#### **Section 5. Issuance of license.**

(a) Upon the filing of a completed application under Section 4©) for a sexually oriented business license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Alcester to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Finance Officer shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Finance Officer shall issue a license unless:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements of this ordinance or any other part of the Ordinances of the City, or the Ordinances of Union County, South Dakota, or the statutes of the State of South Dakota.

(5) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(I) been declared by a Court of Law to be a nuisance; or

(ii) been subject to an Order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

(b) Upon the filing of a completed application under Section 4©) for a sexually oriented business employee license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Alcester to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Finance Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Finance Officer shall approve the issuance of a license unless:

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has in the previous five (5) years (and at a time during which the applicant had the influential interest):

(I) been declared by a Court of Law to be a nuisance; or

(ii) been subject to an Order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

©) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is when working or performing.

#### **Section 6. Fees.**

(a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One Hundred dollars (\$100.00) for the initial fee for a sexually oriented business license and Fifty dollars (\$50.00) for annual renewal; Fifty dollars (\$50.00) for the initial sexually oriented business employee license and Twenty-Five dollars (\$25.00) for annual renewal.

#### **Section 7. Inspection.**

(a) Sexually oriented businesses and sexually oriented business employees shall permit any duly acting law enforcement officer, including but not limited to any police officer of the City of Alcester, the City Attorney for the City of Alcester, the Sheriff of Union County, the Union County State's Attorney, and his or her Deputy and/or agent to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City of Alcester to authorize reasonable inspection of the licensed premises pursuant to this Chapter, but not to authorizing a harassing or excessive pattern of inspections.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

#### **Section 8. Expiration of license.**



(a) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making applications and payment of a fee as provided in Section 4 and Section 6.

(b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

### **Section 9. Suspension.**

(a) The City of Alcester shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Chapter or has knowingly allowed an employee to violate this Chapter.

(b) The City of Alcester shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Chapter.

### **Section 10. Revocation.**

(a) The City of Alcester shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee to violate this Chapter and the licensee's license has been suspended within the previous twelve-month (12-mo.) period.

(b) The City of Alcester shall issue a written intent to revoke a sexually oriented business license and/or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license.

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substance on the premises;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

©) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the Notice and Hearing procedure described in Section 11, the Board revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

**Section 11. Hearing; denial, revocation, and suspension; appeal.**

(a) When the Finance Officer issues a written notice of intent to deny, suspend, or revoke a license, the Finance Officer shall immediately send such Notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or license (Respondent) by personal delivery or certified mail. The Notice shall be directed to the most current business address or other mailing address on file with the Finance Officer for the Respondent. The Notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the Notice is issued, on which the City Council shall conduct a Hearing on the Finance Officer's intent to deny, suspend, or revoke the license.

At the Hearing, the Respondent shall have the opportunity to present all of Respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Finance Officer's witnesses. The Finance Officer shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The Hearing shall take no longer than two (2) days, unless extended at the request of the Respondent to meet the requirements of due process and proper administration of justice. The City Council shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the Respondent within five (5) days after the Hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30<sup>th</sup>) day after it is rendered, and the decision shall include a statement advising the Respondent of the right to appeal such decision to a Court of competent jurisdiction. If the Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Council shall, contemporaneously with the issuance of the decision, order the Finance Officer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the Respondent is not yet licensed, the Finance Officer shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging the Council's decision is initiated, the Council shall prepare and transmit to the Court a transcript of the Hearing within ten (10) days after receiving

written Notice of the filing of the Court action. The Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the Court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is in operation as of the effective date of this Ordinance: Upon the filing of any Court action to appeal, challenge, restrain, or otherwise enjoin the City of Alcester's enforcement of the denial, suspension, or revocation, the City of Alcester shall immediately issue the Respondent a Provisional License. The Provisional License shall allow the Respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the Court's entry of a Judgment on the Respondent's appeal or other action to restrain or otherwise enjoin the City of Alcester's enforcement.

**Section 12. Transfer of license.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

**Section 13. Hours of operation.**

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

**Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.**

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Finance Officer may waive the foregoing diagram for renewal applications if the applicant

adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 on this Subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business state all of the following:

- (I) That the occupancy of viewing rooms is limited to one person.
- (ii) That sexual activity on the premises is prohibited.
- (iii) That the making of openings between viewing rooms is prohibited.
- (iv) That violators will be required to leave the premises.
- (v) That violations of Subparagraphs (I), (ii) and (iii) of this paragraph are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(I) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of the floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any patron is in the area monitored by direct line of sight from that operator's station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified

in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

**Section 15. Loitering, exterior lighting, visibility, and monitoring requirements.**

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for the person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

**Section 16. Penalties and enforcement.**

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a Class 2 Misdemeanor, and, upon conviction, shall be punishable by a fine not to exceed \$200.00 and/or imprisonment in the County Jail for a period not to exceed thirty (30) days. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The City of Alcester's attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunctions, shall be brought in the name of the City of Alcester, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws or ordinances in force in the City of Alcester or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

**Section 17. Applicability of Ordinance to existing businesses.**

All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Chapter.

**Section 18. Prohibited activities.**

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer on a stage at least eighteen (18) inches from the floor in a room of at least eight hundred (800) square feet.

©) It shall be a violation of this Ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this Ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Finance Officer and summarizing the provisions of Paragraphs (a), (b), ©) and (d) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

**Section 19. Scienter required to prove violations or business licensee liability.**

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Ordinance, 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 business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

**Section 20. Failure of the City of Alcester to meet deadline not to risk applicant/licensee right.**

In the event that a City official is required to take an act or do a thing pursuant to this Ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of Alcester of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operation or employment the day after the deadline for the City of Alcester action has passed.

**Section 21. Location of sexually oriented businesses.**

(a) Sexually oriented businesses shall not be required to obtain a conditional use permit or special use permit.

(b) The following shall apply only to sexually oriented businesses not established prior to the effective date of this Ordinance: It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City of Alcester, unless said sexually oriented business is at least:

(1) 750 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of South Dakota to sell alcohol at the premises; and

(2) 750 feet from any parcel occupied by a house of worship, licensed day care center, public or private elementary or secondary school, public park, or any residence.

(C) For the purpose of this Section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with a sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in Subsection (b)(1)-(a)(2) above.

(d) If the sexually oriented business use, lot, or occupancy is discontinued for more than one (1) year for any reason, the Council may adopt, after Notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of the nonconforming use, lot, or occupancy.

**Section 22. Severability.**

This Ordinance and each Section and provision of said Chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining Sections or provisions and the application of such Sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such Sections and provisions would have been passed

independently of such Section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

**Section 23. Conflicting code provisions repealed.**

Additionally, any provision(s) in the City of Alcester Code of Ordinances specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

**Section 24. Effective date.**

This Ordinance shall become effective on the Twentieth day after publication in the official newspaper of the City of Alcester and is passed this \_\_\_\_\_, day of \_\_\_\_\_, 2005.

CITY OF ALCESTER

By: \_\_\_\_\_  
William Koenig, Mayor

ATTEST: \_\_\_\_\_  
Michael Kezar, Finance Officer

First Reading:  
Second Reading:  
Approved/Adopted:  
Published:  
Effective Date:



ORDINANCE NO. 2005 -

AN ORDINANCE AMENDING ORDINANCE NO. 1984-3 ESTABLISHING AND IMPOSING A MUNICIPAL SALES AND SERVICE TAX AND A USE TAX FOR THE MUNICIPALITY OF ALCESTER, UNION COUNTY, SOUTH DAKOTA.

BE IT ORDAINED BY THE MUNICIPALITY OF ALCESTER, UNION COUNTY, SOUTH DAKOTA, THAT IT IS THE INTENTION OF THE CITY OF ALCESTER THAT ITS EXISTING SALES AND USE TAX CONTINUE IN FULL FORCE AND EFFECT AND THAT ORDINANCE NO. 1984-3 AS AMENDED WITH THE LAST AMENDMENT ON AUGUST 1, 2005, BE FURTHER AMENDED AS FOLLOWS:

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. 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 of two percent (2%) of the gross receipts of all persons engaged in business within the jurisdiction of the City 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. The second one percent (1%) shall be earmarked, set aside, and restricted to the funding of Capital Improvements within and for the City of Alcester, Union County, South Dakota.

BE IT FURTHER ORDAINED, that the remaining sections of 1984-3 as heretofore amended and re-amended, shall remain in full force and effect, except as modified by this Ordinance.

BE IT FURTHER ORDAINED that this ordinance shall be effective January 1, 2006.

Dated at Alcester, Union County, South Dakota this 15th day of August, 2005.

**CITY OF ALCESTER**

By: William J. Koenig  
William A. Koenig, Mayor

ATTEST:

Michael Kezar  
Michael Kezar, Finance Officer

(SEAL)

First Reading:	August 1, 2005
Second Reading and Adoption:	August 15, 2005
Published:	August 18, 2005
Effective Date:	January 1, 2006