



City Council

Agenda Item

Subject: First Reading of Ordinance 22-16, an ordinance regulating outdoor smoking shelters
Meeting: City Council - May 02 2022
From: Matt Roby, City Attorney

BACKGROUND INFORMATION:

State law prohibits smoking in enclosed public places and enclosed places of employment (see attached for state law definitions). The intention of this proposed ordinance is to provide further clarity and a "safe harbor" of sorts for operators of on-sale alcoholic beverage establishments that wish to maintain a smoking shelter that's compatible with state law.

SUGGESTED MOTION:

N/A - First Reading

STAFF REFERENCE(S):

Matt Roby

ATTACHMENT(S):

[Ordinance 22-16 - Outdoor Smoking Shelters](#)
[State Law Smoking Provisions](#)

ORDINANCE NO. 22-16

AN ORDINANCE ADDING A NEW CHAPTER 2.03 TO THE REVISED ORDINANCES OF THE CITY OF WATERTOWN REGULATING OUTDOOR SMOKING SHELTERS

BE IT ORDAINED by the City Council of the City of Watertown, South Dakota, that a new Chapter 2.03 be added to the Revised Ordinances of the City of Watertown as follows:

Chapter 2.03 Outdoor Smoking Shelters

2.0301 Definitions

2.0302 Construction Regulations

2.0301: DEFINITIONS

As used in this Chapter, the following terms shall be defined as follows:

“Enclosed” is that portion of an outdoor smoking shelter surrounded by permanent or temporary walls, doors, windows, ceiling, floor, or other structures securing the outdoor smoking shelter at any time while the associated business use is operating.

“Outdoor Smoking Shelter” is an attached addition, or detached structure, located on the same lot or other legally described premises where a structure exists that is used for on-sale alcoholic beverage sales.

20302: CONSTRUCTION REGULATIONS

All Outdoor Smoking Shelters shall:

- A. Comply with all applicable provisions of the building code, and all amendments thereto, regardless of size;
- B. Have not more than seventy-five percent (75%) of the aggregate wall area enclosed while the associated business use is operating. For purposes of this section, the term “aggregate wall area” excludes doorways, windows, screened components, and any other accessories which may be opened.
- C. Be lighted with appropriate weatherproof fixtures;
- D. Not be taller than the primary structure, i.e., the associated business; and
- E. Be constructed of materials that are similar to the primary structure.

Dated this ____ day of _____, 2022

City of Watertown

Attest:

Kristen Bobzien
Finance Officer

Ried Holien
Mayor

(SEAL)

The above and foregoing Ordinance was moved for adoption by Alderperson _____, seconded by Alderperson _____, and upon voice vote motion carried, whereupon the Mayor declared the Ordinance duly passed and adopted.

I certify that Ordinance No. 22-16 was published in the Watertown Public Opinion, the official newspaper of said City, on the ____ day of _____, 2022.

Kristen Bobzien, Finance Officer

First Reading: May 2, 2022

Second Reading:

Published:

Effective:

34-46-13. Definition of terms used in §§ 34-46-13 to 34-46-19.

Terms used in this section and §§ 34-46-14 to 34-46-19, inclusive, mean:

- (1) "Enclosed area," any space between a floor and a ceiling that is enclosed, exclusive of doorways, on all sides by permanent or temporary walls or windows;
- (2) "Place of employment," any enclosed area under the control of a public or private employer;
- (3) "Public place," any enclosed area to which the public is invited or in which the public is permitted.

Source: SL 2009, ch 171, § 3, approved eff. Nov. 10, 2010.

34-46-14. Smoking in public or place of employment prohibited--Petty offense.

No person may smoke tobacco product or carry any lighted tobacco product in any public place or place of employment. A violation of this section is a petty offense.

Source: SL 2009, ch 171, § 1, approved eff. Nov. 10, 2010; SL 2019, ch 155, § 2.

34-46-15. Person controlling public place or place of employment to inform violators--Petty offense.

Any person that owns, manages, operates, or otherwise controls a public place or place of employment shall inform persons violating § 34-46-14 of the provisions thereof. A violation of this section is a petty offense.

Source: SL 2009, ch 171, § 2, approved eff. Nov. 10, 2010.

34-46-16. Inapplicability to private residences unless used for day care.

The provisions of §§ 34-46-13 to 34-46-15, inclusive, do not apply to any private residence unless the private residence is used for day care.

Source: SL 2009, ch 171, § 4, approved eff. Nov. 10, 2010.

34-46-17. Posted smoking rooms permitted in hotels and lodging establishments.

The provisions of §§ 34-46-13 to 34-46-15, inclusive, do not apply to any sleeping rooms in any hotel or lodging establishment licensed pursuant to subdivision 34-18-1(7) or (9), respectively, if the rooms are rented to guests. Any sleeping room in which smoking is allowed shall be posted as a smoking room.

Source: SL 2009, ch 171, § 5, approved eff. Nov. 10, 2010.

34-46-18. Smoking permitted in certain licensed establishments where alcohol sold.

The provisions of §§ 34-46-13 to 34-46-15, inclusive, do not apply to any establishment licensed pursuant to subdivision 35-4-2(4), (6), (12), or (16) that was in compliance on January 1, 2009, with, and maintains compliance with, the following requirements:

- (1) Generates ten percent or more of its annual gross income from the sale of cigars. For the purposes of this section, a cigar is any individual roll of tobacco that has a wrapper

or cover consisting only of tobacco, that measures a number forty ring size or larger, and that is sold without a filter;

- (2) Has a humidor on the premises; and
- (3) Is enclosed by solid walls or windows, a ceiling, and a solid door and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas.

Any establishment meeting the requirements of this section may permit the smoking of cigars and any premium tobacco product purchased on the premises. However, no establishment may permit the smoking of any other tobacco product on the premises. The establishment shall post a notice of the prohibition.

Any establishment meeting the requirements of this section shall annually report to the Department of Revenue, on a form prescribed by the department, the revenue generated from the sale of cigars as a percentage of annual gross income.

Source: SL 2009, ch 171, § 6, approved eff. Nov. 10, 2010; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011.

34-46-19. Smoking permitted in certain retail tobacco stores.

The provisions of §§ 34-46-13 to 34-46-15, inclusive, do not apply to any retail tobacco store that meets the following requirements:

- (1) Generates sixty-five percent of its annual gross income from the sale of tobacco, tobacco products, and accessories for such products;
- (2) Is enclosed by solid walls or windows, a ceiling, and a solid door that provides egress to the outdoors; and
- (3) Does not allow the consumption of alcoholic beverages on the premises.

Any retail tobacco store meeting the requirements of this section shall annually report to the Department of Revenue, on a form prescribed by the department, the revenue generated from the sale of tobacco, tobacco products, and accessories for such products as a percentage of annual gross income.