

A RESOLUTION

23-150

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to amend part B of the Department of Health Functions Clarification Amendment Act of 2001 to exempt the tobacco bar and retail store located at 1132 19th Street, N.W., from the revenue requirements needed to gain an exemption from the indoor smoking prohibition from the Department of Health.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Department of Health Functions Clarification Emergency Declaration Resolution of 2019”.

Sec. 2(a) Part B of the Department of Health Functions Clarification Amendment Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01 *et seq.*) (“Act”), provides that a tobacco bar, as defined in the act, must “generate “10% or more of its total annual revenue from the on-site sale of tobacco products” in order to qualify as a tobacco bar and be granted an exemption from the District’s indoor smoking prohibition.

(b) The Act further provides that a retail store seeking to sell tobacco products and accessories must generate “no greater than 25% of the total revenue of the establishment” from the sale of non-tobacco products or accessories.

(c) The Department of Health (“DOH”) has interpreted the Act to require that tobacco bars and retail stores must show one year of sales in order to be granted an exemption from the indoor smoking prohibition.

(d) DOH’s interpretation appears to be contrary to the Council’s intent when the pertinent language was added to the statute in 2006, as the committee report from D.C. Law 16-90 notes that “the [Committee on Health] recommends preserving a few of the exemptions in Bill 16-293 – namely cigar bars . . . [and] retail tobacco outlets. . . .”

(e) Such an interpretation of the law is now preventing a District business, J.R. Cigars, from moving to a new location at 1132 19th Street, N.W., and operating as the tobacco bar and retail store Casa de Montecristo Cigar Store and Lounge. DOH will not allow J.R. Cigar’s to use total annual revenue from its previous site at 1730 L Street, N.W., to qualify for the indoor smoking prohibition exemption.

ENROLLED ORIGINAL

(f) An emergency exists because the ambiguity in the existing statute and DOH's interpretation of it will not enable Case de Montecristo to allow indoor smoking in a lounge designed for the purpose of consuming cigars on-site.

(g) The emergency legislation will exempt Case de Montecristo from the revenue requirements of the Act needed to gain an exemption from the indoor smoking prohibition from DOH.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Department of Health Functions Clarification Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.