

A RESOLUTION

24-315

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 7, 2021

To declare the existence of an emergency with respect to the need to amend section 4917 of the Department of Health Functions Clarification Act of 2001 to exempt the tobacco bar and retail store located at 1120 9th Street, N.W. from the revenue requirements needed to obtain an exemption from the Department of Health from indoor smoking prohibitions.

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 2021”.

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 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) Even though a tobacco bar or a retail store might have been operating in the District at a previous location for years, the Department of Health (“DOH”) has interpreted the Act to require that a tobacco bar or the retail store must show 2 years of sales revenues at its current location to be granted an exemption from the indoor smoking prohibition.

(d) It is important to note that when the relevant language was added to the 2001 law by Bill 16-293/Law 16-90, the committee report accompanying the amendment stated that “the [Committee on Health] recommends preserving a few of the exemptions in Bill 16-293 – namely cigar bars... [and] retail tobacco outlets...”. Therefore, DOH’s interpretation of the law, which disregards sales revenues at a previous District location, is inconsistent with the clearly stated intent of the Council to preserve exemptions for cigar bars and retail tobacco outlets.

(e) DOH’s current interpretation is preventing a District business, T.G. Cigars, from obtaining an exemption from the indoor smoking prohibition at its new location at 1120 9th Street, N.W. Despite the fact that T.G. Cigars was a holder of a smoking exemption at its

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previous location at 1118 9th Street, N.W., DOH will not count T.G. Cigars' sales revenues from that location. According to DOH, T.G. Cigars must first generate 2 years of sales revenues at its new location before DOH will consider granting T.G. Cigars an exemption.

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 2021 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.