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2 Councilmember Robert White, Jr.

  
Councilmember Brooke Pinto

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5 A PROPOSED RESOLUTION  
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9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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13 To declare the existence of an emergency with respect to the need to amend section 4917(a) of  
14 the Department of Health Functions Clarification Act of 2001 to exempt the tobacco bar  
15 and retail store located at 1120 9th Street, N.W. from the revenue requirements needed to  
16 obtain an exemption from the Department of Health from indoor smoking prohibitions.  
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18 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
19 resolution may be cited as the “Department of Health Functions Clarification Emergency  
20 Declaration Resolution of 2022”.

21 Sec. 2. (a) Part B of the Department of Health Functions Clarification Amendment Act of  
22 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01 *et seq.*) (“Act”),  
23 provides that a tobacco bar, as defined in the Act, must generate 10% or more of its total annual  
24 revenue from the on-site sale of tobacco products in order to qualify as a tobacco bar and be  
25 granted an exemption from the District’s indoor smoking prohibition.

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

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

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

39 (e) DOH’s current interpretation is now preventing a District business, T.G. Cigars, from  
40 obtaining an exemption from the indoor smoking prohibition at its new location at 1120 9th  
41 Street, N.W. Despite the fact that T.G. Cigars was a holder of a smoking exemption at its  
42 previous location at 1118 9th Street, N.W., DOH will not count T.G. Cigars’ sales revenues from  
43 that location. According to DOH, T.G. Cigars must first generate 2 years of sales revenues at its  
44 new location before DOH will consider granting T.G. Cigars an exemption.

45 (f) On December 7, 2021, the Council passed the Department of Health Functions  
46 Clarification Emergency Amendment Act of 2021, effective December 22, 2021 (D.C. Act 24-  
47 251; 68 DCR 14065). On December 21, 2021, the Council passed the Department of Health  
48 Functions Clarification Temporary Amendment Act of 2021, effective March 15, 2022 (D.C.  
49 Law 24-100; 69 DCR 595), which is set to expire October 26, 2022. Without additional  
50 legislation extending its exemption from the District’s indoor smoking ban, T.G. Cigars risks  
51 liability under the Act.

52 Sec. 3. The Council of the District of Columbia determines that the circumstances  
53 enumerated in section 2 constitute emergency circumstances making it necessary that the  
54 Department of Health Functions Clarification Emergency Amendment Act of 2022 be adopted  
55 after a single reading.

Sec. 4. This resolution shall take effect immediately.