

1 A PROPOSED RESOLUTION
2

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

9 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
10 resolution may be cited as the “Department of Health Functions Clarification Emergency
11 Declaration Resolution of 2021”.

12 Sec. 2. (a) Part B of the Department of Health Functions Clarification Amendment Act of
13 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01 *et seq.*) (“Act”),
14 provides that a tobacco bar, as defined in the Act, must “generate 10% or more of its total annual
15 revenue from the on-site sale of tobacco products” in order to qualify as a tobacco bar and be
16 granted an exemption from the District’s indoor smoking prohibition.

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

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

24 (d) It is important to note that when the relevant language was added to the 2006
25 amendment (L16-90) to the Act, the committee report accompanying the amendment stated that
26 “the [Committee on Health] recommends preserving a few of the exemptions in Bill 16-293 –
27 namely cigar bars... [and] retail tobacco outlets...”. Therefore, DOH’s interpretation of the law
28 which disregards sales revenues at a previous District location is inconsistent with the clearly
29 stated intent of the Council to preserve exemptions for cigar bars and retail tobacco outlets.

30 (e) Specifically, DOH’s current interpretation is now preventing a District business, T.G.
31 Cigars, from obtaining an exemption from the indoor smoking prohibition at its new location at
32 1120 9th Street, N.W. Despite the fact that T.G. Cigars was a holder of a smoking exemption at
33 its previous location at 1118 9th Street, N.W., literally next door, DOH will not count T.G.
34 Cigars’ sales revenues from that location. According to DOH, T.G. Cigars must first generate
35 two years of sales revenues at its new location before DOH will consider granting T.G. Cigars an
36 exemption.

37 Sec. 3. The Council of the District of Columbia determines that the circumstances
38 enumerated in section 2 constitute emergency circumstances making it necessary that the
39 Department of Health Functions Clarification Emergency Amendment Act of 2021 be adopted
40 after a single reading.

41 Sec. 4. This resolution shall take effect immediately.