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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 of the
14 Department of Health Functions Clarification Act of 2001 to exempt the tobacco bar and
15 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
30 District at a previous location for years, the Department of Health (“DOH”) has interpreted the
31 Act to require that the tobacco bar or the retail store must show 2 years of sales revenues at their
32 current 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
34 law by Bill 16-293/Law 16-90, the committee report accompanying the amendment stated that
35 “the [Committee on Health] recommends preserving a few of the exemptions in Bill 16-293 –
36 namely cigar bars... [and] retail tobacco outlets...”. Therefore, DOH’s interpretation of the law
37 which disregards sales revenues at a previous District location is inconsistent with the clearly
38 stated 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.
40 Cigars, from obtaining an exemption from the indoor smoking prohibition at its new location at
41 1120 9th Street, N.W. Despite the fact that T.G. Cigars was a holder of a smoking exemption at
42 its previous location at 1118 9th Street, N.W., DOH will not count T.G. Cigars’ sales revenues
43 from that location. According to DOH, T.G. Cigars must first generate 2 years of sales revenues
44 at its new location before DOH will consider granting T.G. Cigars an exemption.

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

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