

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the Department of Health Functions Clarification Amendment Act of 2001 to clarify that the Department of Health must consider anticipated revenue when deciding whether to grant tobacco bars or retail stores from the indoor smoking prohibition.

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) 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.*), 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 such a 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.

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

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

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

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

46 (g) The emergency legislation will clarify that qualifying as an exempt tobacco bar or  
47 retail store will be based on anticipated total revenue rather than prior year total revenue.

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

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