

APPLICATION INFORMATION FOR SMOKE-FREE WORKPLACE EXEMPTION

Workplaces, including bars and restaurants, must be smoke-free unless they have exemptions approved by DC Health. Establishments that **may** be eligible for exemptions are tobacco bars (including hookah bars) and tobacco retail stores. This document provides information on the application for the smoke-free workplace exemption. The following guidelines are being provided for you to review and help ensure you submit a complete application. Submission of an incomplete application will delay processing and review. There is no cost to apply for a smoke-free workplace exemption.

The sale of flavored tobacco products, including hookah, is prohibited by D.C. Law 24-25 *Flavored Tobacco Product Prohibition Amendment Act of 2021*. Businesses without a smoke-free workplace exemption in place on September 30, 2021, **do not** qualify for an exemption to sell flavored tobacco products.

Businesses who fail to comply with the smoke-free workplace and flavors prohibition laws will be subject to civil fines up to \$10,000 and possible suspension of license.

Application Guidelines

The Department of Health Functions Clarification Amendment Act of 2006 offers an exemption from the smoking ban for some establishments that operate in the District of Columbia. To be considered for an exemption the Department of Health Functions Clarification Amendment Act of 2006, regulations clarify that *exemptions are not automatic* and must be supported by appropriate documentation and reviewed by the Department of Health (D.C. Law 16-90 and implementing rules). An establishment may apply for an exemption by completing the application, which includes the following items:

- Completed DC Health Application for Smoking Exemption
 - Establishment owner signature
 - Notarized declaration form
 - Acknowledgement by Certified Public Accountant
- Current certificate of occupancy, cigarette retail or wholesale license **and** business licenses.
 - Current
 - Previous two years
- Tobacco sales revenue as a percentage of your gross revenue
Tobacco is taxed at a different rate than other products, therefore revenue for on-site tobacco sales cannot be bundled with revenue for any other products in your reporting.
 - Submission of a summary balance sheet in Excel/Quickbooks to document this information is recommended
 - Rentals for on-site humidor or pipe rentals and vending machine sales *must be separated from total tobacco revenue*
- Signed DC and federal IRS tax returns for the previous two years
- District of Columbia Tax Registration
- Clean Hands certificate issued within the last 60 days

Applicants may contact DC Health Tobacco Control Programs at 202-442-5433 or tobaccocontrol@dc.gov for further information on the application process.

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Application Review Process

Upon receiving an application, the following steps will be taken by DC Health to conduct the review:

- DC Health Tobacco Control Programs will send a confirmation receipt.
- The application will undergo an initial review for completeness.
- If an application is deemed incomplete, DC Health Tobacco Control Programs will contact the applicant to request any missing information.
- The program will review the completed application and supporting documentation.
- Tobacco Control Programs may request an inspection as part of the application review process.
- Tobacco Control Programs will issue a recommendation for approval or disapproval of the application to the Director of DC Health.
- The Director or a designee acting on the Director's behalf will make a final determination. *All applications meeting statutory requirements will be approved.*
- If approved, a certificate of exemption will be sent via certified mail to the establishment. If denied, a letter of denial will be sent via certified mail to the establishment. An electronic notification will be sent if an email is provided with the application.
- The exemption will be issued for two years or until the expiration of the current cigarette license, whichever is earlier.
- The list of establishments with approved exemptions will be updated regularly on the Smoke-free Workplaces website page (<https://doh.dc.gov/node/122542>).

Definitions

The following are definitions of words and terms used in D.C. Law 16-90; D.C. Official Code § 7-741.01 et seq.

“Place of employment” means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer, if the vehicle is used by more than one person, and excludes a private residence, unless it is used as a childcare, adult day care, or health care facility.

“Public place” means an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms. This term does not apply to a private residence unless it is used as a child development center, adult day care facility, or health care facility.

“Smoking” or “to smoke” means the inhaling, exhaling, burning, or carrying of a lighted or heated cigar, cigarette, pipe, electronic smoking device, or any other tobacco or plant product intended for human consumption through inhalation, in any manner or in any form.

“Tobacco product” means any product made from or containing any percentage of the dried processed leaves of the plant genus *nicotiana* or any byproduct thereof used primarily for the purpose of smoking.

“Tobacco Bar” means a restaurant, tavern, brew pub, club, or nightclub that generates 10% or more of its total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, or the rental of on-site humidors.

The following are definitions of words and terms used in Flavored Tobacco Products Prohibition Amendment Act of 2021 (D.C. Official Code § 7-1721.01)

“Characterizing flavor” means a distinguishable taste or aroma other than tobacco, including fruit, chocolate, vanilla, candy, dessert, alcoholic beverage, menthol, mint, or wintergreen

“Hookah” means a type of waterpipe used to smoke shisha or other tobacco products with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

“Hookah bar” means a restaurant, tavern, brew pub, club, or nightclub that:

- Generates revenue from the sale for on-site consumption of tobacco products used with a hookah, excluding sales from vending machines or the rental of on-site humidors; *provided that the restaurant, tavern, brew pub, club, or nightclub has a valid smoking exemption* from the Department of Health pursuant to section 4917(a)(2) or (3) of the Department of Health Functions Clarification Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.03(a)(2) or (3)); and
- Does not permit any person under 21 years of age to be present or enter the premises at any time

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