

PRELIMINARY STAFF REPORT

To: City Planning Commission  
Zoning Docket: 031/15

Prepared by: Stephen Kroll  
Date: April 7, 2015

I. GENERAL INFORMATION

**Applicant:** City Council Motion M-15-85

**Request:** Text Amendment to the Comprehensive Zoning Ordinance, No. 4,264 M.C.S., as amended, to:

- 1) Amend **Article 2, Section 2.2** *Definitions* of the Comprehensive Zoning Ordinance to define a new use, “Cigar Bar.”
- 2) Amend **Article 8, Section 8.5.5** *Conditional Uses* of the Comprehensive Zoning Ordinance to classify “Cigar Bar” as a conditional use in the VCC-2 Vieux Carré Commercial District.

**Why is City Planning Commission action required?**

The City Planning Commission is required to make a recommendation on all amendments to the text of the Comprehensive Zoning Ordinance prior to City Council action, in accordance with **Article 16, Section 16.2.3.2** *Planning Commission Recommendation* of the Comprehensive Zoning Ordinance.

II. ANALYSIS

**A. What is the reason for the text amendment? What area would be affected by the text amendment?**

This text amendment is intended to create a use classification which does not currently exist in the Comprehensive Zoning Ordinance, that of a “Cigar Bar,” and to classify cigar bars as conditional uses in the VCC-2 Vieux Carré Commercial District. This text amendment application, as well as a related effort to modify the definition of “cigar bar” in the City Code, is motivated by an effort to allow an existing business, La Habana Hemingway Cigar Bar at 533 Toulouse Street in the VCC-2 District, to become licensed as a cigar bar. La Habana Hemingway Cigar Bar is currently licensed as a restaurant but has operated as a de facto cigar bar, oriented toward the sale of cigars and alcoholic beverages for on-premises consumption. Should they be approved, this text amendment to the Comprehensive Zoning Ordinance and the related modifications to the City Code

would allow La Habana Hemingway Cigar Bar to potentially become a legally-established cigar bar.

*Proposed changes to the City Code*

Although this report does not consider the changes to the definition of “cigar bar” in the City Code, it is helpful to discuss them since they do relate to the proposed changes to the Comprehensive Zoning Ordinance which are considered in this report. Pursuant to Ordinance No. 26,201 MCS<sup>1</sup>, Section 66-36 of the City Code defines “bar” as follows:

“*Bar* means an area the primary purpose of which is the selling and/or serving of alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food, if served at all, is only incidental to the consumption of such beverages. For purposes of this article, a bar located within a restaurant is considered a restaurant.”

A subset of existing bars which generate at least 10% of their income from the sale of cigars and rental of humidors are defined by that section of the City Code as “cigar bars,” as follows:

“*Cigar Bar* means a bar, as defined in this Section, legally in operation that generated ten (10) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines, for the calendar year ending December 31, 2014 and every year thereafter. A cigar bar does not permit the smoking of cigarettes and shall not knowingly sell to or permit entrance to any person less than 21 years of age.”

This definition has the effect of grandfathering in existing cigar bars but not allowing new ones.

The City Council is currently considering amending this “cigar bar” definition in the City Code. The amendment would make an exception to the general prohibition on new cigar bars to potentially allow La Habana Hemingway Cigar Bar to also be considered to be a cigar bar even though it was not a legally-established bar in 2014. This amendment would do this by expanding the cigar bar definition to include not only legally-established bars which have since 2014 generate at least 10% of their income from the sale of cigars and rental of humidors, but also entities with applications pending as of March 6, 2015 to operate as cigar bars which would generate at least 10% of their income from the sale of cigars and rental of humidors.

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<sup>1</sup> Ordinance No. 26,201 MCS, which is sometimes informally referred to as the “smoking ordinance” or “smoking ban,” amended Article II of Chapter 66 of the Code of the City of New Orleans relative to the prohibition of the smoking of tobacco, natural or synthetic marijuana, electronic smoking devices, and related products and activity. The ordinance was adopted by the City Council on January 22, 2015, signed by the Mayor on January 30, 2015, and becomes effective on April 22, 2015.

The revised definition, as included in Calendar Ordinance No. 30,611, would read as follows. The new language which would be added is in **underlined, bold** text.

“Cigar Bar means **either**

- (1) A bar, as defined in this Section, legally in operation, that generated ten (10) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines, for the calendar year ending December 31, 2014 and every year thereafter; or**
- (2) An entity that has a pending application to operate a Cigar Bar as of March 6, 2015, and after approval of the application by the City Council by ordinance, generates ten (10) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines for the first year of operation and every year thereafter.**

A cigar bar does not permit the smoking of cigarettes and shall not knowingly sell to or permit entrance to any person less than 21 years of age.”

This revision to the cigar bar definition to include entities with applications pending as of March 6, 2015 would potentially allow La Habana Hemingway to become legally established as a cigar bar since the pending conditional use application was received by the City Planning Commission on March 6, 2015. There are no other properties with applications for cigar bars that were pending with the City Planning Commission as of March 6, 2015.

#### *Proposed changes to the Comprehensive Zoning Ordinance*

The City Council motion proposes modifying **Article 2, Section 2.2 Definitions** of the Comprehensive Zoning Ordinance to create a definition for “Cigar Bar”. Although the City Council Motion does not include specific language for “Cigar Bar” definition, for the purposes of this report, the staff will evaluate using the Cigar Bar definition that is proposed for the City Code by City Council<sup>2</sup> under Calendar Ordinance No. 30,611.

Should these changes to the language of the City Code and the Comprehensive Zoning Ordinance be made, it would be possible for La Habana Hemingway Cigar Bar to potentially become legally established as a cigar bar.

#### *Previous proposal*

This text amendment application is the successor to an earlier proposal to create a definition for “tobacco retail business,” which would be an establishment “whose principal business is the sale of tobacco products and accessories, where the sales of tobacco products and accessories (for on or off-premises) produces seventy (70) percent or more of the gross revenue for said establishment, where alcoholic beverages and/or

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<sup>2</sup> At its March 26, 2015 meeting, the City Council deferred Calendar Ordinance No. 30,611 to its April 9, 2015 meeting.

food products are sold or served for consumption on premises, but where neither live entertainment nor gambling are provided, where package liquor products are not advertised outside or off the premises or in any place visible from the exterior of the premises.” The text amendment application proposed that tobacco retail businesses be classified as conditional uses in the VCC-2 District.

This previous text amendment proposal was considered under Zoning Docket 110/14. The staff recommended denial of the application and the City Planning Commission passed a motion recommending denial at its December 9, 2014 meeting. The City Council approved the text amendment at its meeting of December 11, 2014. The Calendar Ordinance was subsequently withdrawn on March 12, 2015.

**B. What is the existing language of the Comprehensive Zoning Ordinance?**

The Comprehensive Zoning Ordinance does not currently contain a definition for “Cigar Bar”. It does, however, contain a definition for bars, which refers to as “cocktail lounges.” That definition, contained in **Article 2, Section 2.2.47** of the Comprehensive Zoning Ordinance, defines cocktail lounges as follows:

**Article 2, Section 2.2 Definitions**

[...]

47. *Cocktail Lounge*. A place for service or consumption of alcoholic beverages but not including live entertainment.

This definition does not make distinctions between different types of bars. It makes no distinction between bars that identify themselves as “cigar bars” and bars where smoking is not allowed, just as it makes no distinction between bars that identify themselves as “pubs” or “beer gardens” or “sports bars”. The only specialized type of establishment that is highly similar to a cocktail lounge but is defined separately is that of “wine bar and wine shop”. That definition, contained in **Article 2, Section 2.2.195** of the Comprehensive Zoning Ordinance, refers to establishments that derive at least 75% of their revenues from the sale of wine for on- or off-premises consumption.

**C. What is the proposed language for amendment?**

This City Council motion proposes creating a new definition for “Cigar Bar,” which would be based on the language proposed for the City Code. That new definition would be contained in **Article 2, Section 2.2.44A** of the Comprehensive Zoning Ordinance. New language shown in underlined, bold text:

Article 2, Section 2.2 *Definitions*

[...]

**44A. Cigar Bar. An establishment that is either:**

- (1) **A cocktail lounge, as defined in this ordinance, legally in operation, that generated ten (10) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines, for the calendar year ending December 31, 2014 and every year thereafter; or**
- (2) **An entity that has a pending application to operate a Cigar Bar as of March 6, 2015, and after approval of the application by the City Council by ordinance, generates ten (10) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines for the first year of operation and every year thereafter.**  
**A cigar bar does not permit the smoking of cigarettes and shall not knowingly sell to or permit entrance to any person less than 21 years of age.**

Substantively, this is the same definition as is proposed for the City Code. The staff has made minor technical changes, however, including replacing “[a] bar, as defined in this Section” with “[a] cocktail lounge, as defined in this ordinance” to reflect the fact that the zoning ordinance refers to bars as “cocktail lounges” and to otherwise be consistent with the language used in the zoning ordinance.

The motion also proposes for cigar bars to be classified as conditional uses in the VCC-2 District, as follows:

Article 8, Section 8.5.5 *Conditional Uses.*

[...]

**7. Cigar bars.**

- D. Does the text amendment adequately answer the problem that is being addressed; if not, are other modifications necessary?**

As noted above in Section A, the problem identified by the City Council motion is that the Comprehensive Zoning Ordinance does not distinguish between cigar bars and other types of cocktail lounges. Further, because it does not allow new cocktail lounges (including cigar bars) at all in the VCC-2 District, either as permitted or conditional uses, it does not allow a cigar bar to be legally established at 533 Toulouse Street. The City Council would address this by creating a definition in the zoning ordinance for cigar bars

that is based on a definition proposed for the City Code. The proposed definition would carve out an exception to the normal prohibition on new cigar bars in the VCC-2 District by allowing a cigar bar to be established at 533 Toulouse Street as a conditional use.

The staff does not believe that the problems identified by the City Council motion are actually problems. In general, the zoning ordinance defines uses differently when there are in fact significant differences between the uses. For example, the zoning ordinance makes a distinction between cocktail lounges (which derive over 50% of their income from alcohol sales) from restaurants selling alcoholic beverages (which derive no more than 50% of their income from alcohol sales) because the fact that cocktail lounges are primarily oriented towards alcohol sales causes them to operate differently from restaurants, which are primarily oriented toward the sale of food, not alcoholic beverages. In contrast, the zoning ordinance does not have separate definitions for different types of cocktail lounges, such as sports bars or pubs, because they operate in essentially the same manner, as they are oriented primarily toward the sale of alcoholic beverages for on-premises consumption.

Given this logic, the fact that the zoning ordinance does not distinguish between cigar bars and other types of cocktail lounges is not problematic because there is no significant distinction between them, based on the definition of "Cigar Bar" in the City Code. While bars/cocktail lounges are permitted to derive up to 100% of their income from the sale of alcoholic beverages for on-premises consumption (based on the definitions in the zoning ordinance and City Code), cigar bars are permitted to derive up to 90% of their income from the sale of alcoholic beverages for on-premises consumption, with as little as 10% of their income coming from the on-site sale of cigars and the rental of humidors (based on the definition in the City Code).

From a zoning perspective, there is not a meaningful distinction between a bar that derives 100% of its income from alcoholic beverage sales and one that derives only 90% of its income from alcoholic beverage sales and the rest from cigar sales and humidor rentals. In general, bars, regardless of the exact percentage of their income derived from alcoholic beverage sales, have similar operational characteristics in terms of their generally late hours of operation and the levels of traffic, parking demand, noise, and types and levels of activity that they generate. Of course, individual cocktail lounges are managed differently and can have differing impacts on surrounding properties as a result, but in general they operate similarly.

Given that bars generally operate similarly, they should be treated similarly for zoning purposes. There is no need to distinguish between cocktail lounges which are cigar bars and those which are not and so there is no need to add a definition for cigar bars. The existing language of the Comprehensive Zoning Ordinance should remain as it is.

The staff believes that, even if it were advisable to create a cigar bar definition to distinguish between cigar bars and other cocktail lounges, there is no reason for that cigar bar definition to include language which would allow a new cigar bar to be established at

533 Toulouse Street. The adopted definition for “Cigar Bar” in the City Code defines them so as to include only legally-established cigar bars in operation as of the end of 2014 and to not include new establishments. Given this purpose of including only existing, legally-established cigar bars, the staff sees no reason to carve out an exception to allow a cigar bar to be established at 533 Toulouse Street. The La Habana Hemingway Cigar Bar which has operated there is licensed as a standard restaurant and was not legally established as a cigar bar and there is no reason to allow it to become a cigar bar but to allow no other property in the VCC-2 District to have a new cigar bar, as would be the effect of this definition. Doing so would arbitrarily grant 533 Toulouse Street preferential treatment which is not also granted to other similar properties in the VCC-2 District. It would essentially have the effect of unjustifiably spot-zoning this property, just through a text amendment, rather than a zoning change.

Since there is no need for a new definition to be created to distinguish between cigar bars and other types of cocktail lounges and no need to allow a new cigar bar to be established at 533 Toulouse Street while not allowing new cigar bars to be established elsewhere in the VCC-2 District, there is no need to classify cigar bars as conditional uses in the VCC-2 District. No changes to the text of the Comprehensive Zoning Ordinance should be made.

**III. Are the proposed actions supported by or in conflict with the policies and strategies of the *Plan for the 21<sup>st</sup> Century*?**

In accordance with the Home Rule Charter of the City of New Orleans, a land use action is consistent with the *Plan for the 21<sup>st</sup> Century* (commonly referred to as the Master Plan) if it furthers, or at least does not interfere with, the goals, policies, and guidelines, including design guidelines, in the Land Use Element of the Master Plan and is compatible with the proposed future uses, densities, and intensities designated in the Land Use Element of the Plan.

The proposed text amendment would create a use definition for “Cigar Bars” and classify them as conditional uses in the VCC-2 District. The areas where the VCC-2 District is applied are designated by Chapter 14 of the Master Plan (the Land Use Plan) as “Mixed-Use Historic Core.” The goal, range of uses, and development character for that designation are reproduced below:

**MIXED-USE HISTORIC CORE**

**Goal:** Increase convenience and walkability for neighborhood residents and visitors within and along edges of historic core neighborhoods.

**Range of Uses:** A mixture of residential, neighborhood business, and visitor-oriented businesses. Uses may be combined horizontally or vertically, and some structures may require ground floor retail with residence or offices on upper floors. In some areas where current or former industrial use is verified, existing buildings may be appropriate for craft and value added industry.

**Development Character:** The density, height, and mass of new development will be consistent with the character and tout ensemble of the surrounding historic neighborhood. Appropriate transitions will be provided to surrounding residential areas.

As it would be a type of cocktail lounge, the proposed “Cigar Bar” use would be similar to other cocktail lounges in that it would provide a service to both neighborhood residents and visitors. This sort of use is allowable under the “range of uses” identified for the Mixed-Use Historic Core designation, which include neighborhood- and visitor-oriented businesses. Due to this consistency with the allowable range of uses, the staff believes the proposal is **consistent** with the *Plan for the 21st Century*.

While the Master Plan determines the range of uses that are allowable under a particular future land use designation, not all of those uses will be allowed in every zoning district that is consistent with that land use designation. In accordance with the differing purposes of individual zoning districts, many zoning districts will allow a more limited range of uses than the full range of uses that are consistent with their Master Plan designation. In particular, the VCC-2 District allows as permitted and conditional uses a more limited range of uses than is consistent with the Mixed-Use Historic Core designation. For example, cocktail lounges are currently prohibited outright in the VCC-2 District even though they are consistent with the purpose of the Mixed-Use Historic Core designation to allow neighborhood- and visitor-oriented businesses. Given that cocktail lounges are currently prohibited in the VCC-2 District and given the similarity between cocktail lounges and cigar bars under the proposed definition, as is discussed in this report, the staff believes that cigar bars should similarly not be allowed in the VCC-2 District.

#### IV. SUMMARY

Zoning Docket 031/15 considers a text amendment to the Comprehensive Zoning Ordinance to create a definition for “Cigar Bar” and to classify cigar bars as conditional uses in the VCC-2 Vieux Carré Commercial District. This text amendment, which is related to a similar proposal to modify the cigar bar definition in the City Code, would define cigar bars to not only include legally-established cocktail lounges operating as of December 31, 2014 which derive at least 10% of their annual gross income from the on-site sale of cigars and the rental of humidors, but also to include a new proposed cigar bar at 533 Toulouse Street. The business at 533 Toulouse Street, La Habana Hemingway Cigar Bar, has operated as a de facto cigar bar despite being licensed as a standard restaurant. It has an application pending with the City Planning Commission for a



conditional use to allow it to be legally established as a cigar bar, which is premised upon this text amendment.

The staff believes that these changes to the text of the Comprehensive Zoning Ordinance are not advisable. Based on the definitions in the City Code and the zoning ordinance, there is not a meaningful distinction between cigar bars and other sorts of cocktail lounges which warrants creating a new definition for cigar bars.

Even if it were advisable to create a cigar bar definition, it is not appropriate to define cigar bars in a way that would allow a new cigar bar to be established at 533 Toulouse Street since new cigar bars would not be allowed elsewhere in the VCC-2 District. Such a definition would essentially be a spot zoning of 533 Toulouse Street by text amendment, as it would arbitrarily grant that property preferential treatment which is not also granted to other, similar properties in the VCC-2 District. For these reasons, the staff believes that the proposed changes to the text of the Comprehensive Zoning Ordinance are not advisable and that no changes should be made.

## V. PRELIMINARY STAFF RECOMMENDATION<sup>3</sup>

The staff recommends **denial** of Zoning Docket 031/15. However, since this proposal is linked to the changes to the City Code that are proposed under Calendar Ordinance No. 30,611, if the City Council does not act on Calendar Ordinance No. 30,611 to its April 9, 2015 meeting, the staff would recommend deferral of this matter until its April 24, 2015. If it is deferred to April 24, 2015, the Commission would consider it at the same meeting as the related conditional use application to allow a cigar bar at 533 Toulouse Street.

## VI. REASON FOR RECOMMENDATION

1. There is no need to create in the zoning ordinance a cigar bar definition which distinguishes cigar bars from other types of cocktail lounges. Based on the definitions in the City Code and proposed for the zoning ordinance, cocktail lounges are permitted to derive 100% of their income from the sale of alcoholic beverages for on-premises consumption, while those cocktail lounges designated as cigar bars could potentially derive up to 90% of their income from the sale of alcoholic beverages for on-premises consumption, with as little as 10% of its income coming from the on-site sale of cigars and the rental of humidors. Given such similar characteristics, there would generally be no meaningful differences between cigar bars and other cocktail lounges in their operational characteristics or impacts on other properties, and so they should be defined and treated similarly for zoning purposes.
2. The proposed cigar bar definition would allow a new cigar bar to be established at 533 Toulouse Street but does not allow for new cigar bars to be established

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<sup>3</sup> Subject to modification by the City Planning Commission

elsewhere in the VCC-2 District. There is no justification for granting 533 Toulouse Street such preferential treatment which is not granted to other, similar properties in the VCC-2 District.

ZD 031/15

**MOTION**

**NO. M-15-85**

**CITY HALL: February 26, 2015**

**BY: COUNCILMEMBER RAMSEY**

**SECONDED BY:**

**BE IT MOVED BY THE CITY COUNCIL OF THE CITY OF NEW ORLEANS,** That the City Planning Commission is directed to conduct a public hearing to consider an amendment to the text of Article 2, Section 2.2 of the Comprehensive Zoning Ordinance No. 4264 M.C.S., as amended, to create a new definition of Cigar Bar, and to consider an amendment to Article 8, Section 8.5.5 to provide that a Cigar Bar is a Conditional Use in VCC-2, of the Comprehensive Zoning Ordinance No. 4264 M.C.S., as amended, and the designation of such on the corresponding zoning base maps of the City of New Orleans.

**BE IT FURTHER MOVED BY THE CITY COUNCIL OF THE CITY OF NEW ORLEANS,** That in the process of studying and reviewing this request, that the City Planning Commission staff is directed and granted the flexibility to make all appropriate changes to the proposed regulations and any existing corresponding regulations in the Comprehensive Zoning Ordinance No. 4264 M.C.S.; as amended, to establish consistency and continuity with the format of the existing zoning code, to add references wherever references are customary, needed and/or appropriate, to make the appropriate adjustments to clarify any ambiguities or mistakes, and to make adjustments deemed necessary in light of public testimony resulting from this study and review.

**THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION OF THEREOF AND RESULTED AS FOLLOWS:**

**YEAS:**

**NAYS:**

**ABSENT:**

**AND THE MOTION WAS ADOPTED.**

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: February 26, 2015

CALENDAR NO. 30,611

NO. \_\_\_\_\_ MAYOR COUNCIL SERIES

BY: <sup>NMR</sup> COUNCILMEMBER RAMSEY

AN ORDINANCE to amend and reordain Section 66-36 of the Code of the City of New Orleans, relative to the definition of a Cigar Bar in the Smoke Free Air Act; and otherwise to provide with respect thereto;

1 SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY  
2 ORDAINS, that Section 66-36 of the Code of the City of New Orleans is hereby amended and  
3 reordained to read as follows:

4 "Section 66-36 - Definitions.

5 \* \* \*

6 Cigar Bar means either

- 7 (1) A bar, as defined in this Section, legally in operation, that generated ten (10)  
8 percent or more of its total annual gross income from the on-site sale of cigars  
9 and the rental of humidors, not including sales from vending machines, for the  
10 calendar year ending December 31, 2014 and every year thereafter; or
- 11 (2) An entity that has a pending application to operate a Cigar Bar as of March 6,  
12 2015, and after approval of the application by the City Council by ordinance,  
13 generates ten (10) percent or more of its total annual gross income from the

14 on-site sale of cigars and the rental of humidors, not including sales from  
15 vending machines for the first year of operation and every year thereafter.

16 A cigar bar does not permit the smoking of cigarettes and shall not knowingly sell to or  
17 permit entrance to any person less than 21 years of age.”

18 \* \* \*

1 SECTION 2. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY  
2 ORDAINS that this ordinance shall become effective on April 22, 2015, contemporaneously  
3 with the effectiveness of Ordinance No. 26,201 M.C.S., adopted by the City Council on January  
4 22, 2015.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON \_\_\_\_\_

APPROVED: \_\_\_\_\_  
DISAPPROVED: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

RETURNED BY THE MAYOR ON \_\_\_\_\_ AT \_\_\_\_\_

\_\_\_\_\_  
CLERK OF COUNCIL

ROLL CALL VOTE:  
YEAS:  
NAYS:  
ABSENT:

## Stephen Kroll

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**From:** Christopher J. Kane <Christopher.Kane@arlaw.com>  
**Sent:** Wednesday, April 01, 2015 4:53 PM  
**To:** Robert D. Rivers; Stephen Kroll  
**Cc:** David Coons; Sergio (sergiocigars@yahoo.com); Aylin Maklansky; Ron Sholes  
**Subject:** Considerations for Text Amendment to Section 2.2 and Section 8.5.5  
**Attachments:** Nebraska cigar bar legislation.pdf; Oregon Smoke Shop and Cigar Bar Certification.pdf

Dear Mr. Rivers and Mr. Kroll:

As I believe you are aware, our firm represents Mr. Sergio Cabrera. I appreciate that the CPC's report regarding the City Council's request to consider a text amendment change to Sections 2.2 and 8.5.5 to add a definition for a conditional use for a "Cigar Bar" will be finalized on Tuesday. I also appreciate that we will have the opportunity to meet to discuss this issue on Tuesday afternoon. For timing sake, and to ensure that our analysis and input is considered for the report and in advance our discussion, I take this opportunity to outline our thoughts and suggestions.

From the outset, it is our position that similar less impactful ABO related conditional uses, such as "Brew Pub" (Section 2.2 (23)) and "Wine Bar" (Section 2.2 (195)), and even to an extent "Restaurants" (Section 2.2 (153)), can provide good guidance and structure for drafting a proposed conditional use definition for a "Cigar Bar."

As for the details and specifics of the text amendment, we believe that the initial proposed amendment is a good starting point for structure and substance. We would suggest looking at model legislation from Oregon and Nebraska, where recent legislative action has caused Cigar Bar related definitions to be created for similar purposes. To be clear, we do not advocate adopting either form of legislation, but do believe it can be instructive on how best to ensure the "Cigar Bar" designation is as less impactful and representative of the types of conditional uses that are appropriate for Vieux Carre Commercial District 2. Along those lines, we would suggest the specific inclusions or changes to the proposed definition:

- ❖ Increase the % of cigar related product gross sale revenues to be in excess of at least 50% of total revenues of the establishment (at the absolute very least cigar related revenues should exceed alcohol related revenues)
- ❖ Require onsite humidor equipment (such as minimum humidor locker requirements);
- ❖ Require membership or humidor rental programs related to the conditional use (monthly membership programs similar to gyms);
- ❖ Require a minimum level of ventilation systems;
- ❖ Exclude cigarettes from being sold or consumed on site;
- ❖ Set a minimum inventory level of \$10,000 of cigar related products;
- ❖ Set a maximum square footage level of 3,000 square feet; and
- ❖ Restrictive permitted hours of operation to include Sunday-Thursday 11:00 a.m. to 10:00 p.m. and Friday-Saturday 11:00 a.m. to 12:00 a.m.

Furthermore, at today's VCC Public Meeting, there was discussion of a "Cigar Bar" being a sub-set of a cocktail lounge. We do not believe that a "Cigar Bar" should be included or listed as a "sub-category" of a "Cocktail Lounge" – it should have no relationship to a cocktail lounge as is the case with Wine Bar and Brew Pub. The inclusion of the word "bar" should not lend to an misunderstanding that a cocktail lounge will be the primary use, or even secondary use of the facility. In layman's terms, the use of the word "bar" in "Cigar Bar" is akin to the use of the word "bar" in terms such as salad bar, fruit bar, smoothie bar, oxygen bar and the like.

We look forward to meaningful discussion on Tuesday, and we ask that you consider these points, precedence and legislative examples as the City works on this issue.

We remain,

Very truly yours,

**Christopher J. Kane**

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LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 118**

FINAL READING

Introduced by Larson, 40; Coash, 27; Kintner, 2; Bloomfield, 17.  
Read first time January 09, 2015

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 53-103.08,  
2 53-1,120.01, 71-5716, and 71-5717, Reissue Revised Statutes of  
3 Nebraska, and sections 28-1429.03, 53-101, 53-131, and 71-5730,  
4 Revised Statutes Cumulative Supplement, 2014; to define cigar shop;  
5 to permit certain sales as prescribed; to provide for a  
6 nonrefundable application fee; to provide and change requirements  
7 for cigar shops; to state and restate intent; to preempt county  
8 resolutions and city ordinances relating to smoking in cigar shops;  
9 to exempt tobacco retail outlets and cigar shops from the Nebraska  
10 Clean Indoor Air Act; to provide requirements for tobacco retail  
11 outlets; to harmonize provisions; to provide severability; to repeal  
12 the original sections; and to declare an emergency.

13 Be it enacted by the people of the State of Nebraska,



1 Section 1. Section 28-1429.03, Revised Statutes Cumulative  
2 Supplement, 2014, is amended to read:

3 28-1429.03 (1) Except as provided in subsection (2) of this section  
4 and section 28-1429.02, it shall be unlawful to sell or distribute  
5 cigarettes, cigars, vapor products, alternative nicotine products, or  
6 tobacco in any form whatever through a self-service display. Any person  
7 violating this section is guilty of a Class III misdemeanor. In addition,  
8 upon conviction for a second or subsequent offense within a twelve-month  
9 period, the court shall order a six-month suspension of the license  
10 issued under section 28-1421.

11 (2) Cigarettes, cigars, vapor products, alternative nicotine  
12 products, or tobacco in any form whatever may be sold or distributed in a  
13 self-service display that is located in a tobacco specialty store or  
14 cigar shop ~~bar~~ as defined in section 53-103.08.

15 Sec. 2. Section 53-101, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

17 53-101 Sections 53-101 to 53-1,122 and sections 5 and 6 of this act  
18 shall be known and may be cited as the Nebraska Liquor Control Act.

19 Sec. 3. Section 53-103.08, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 53-103.08 Cigar shop ~~bar~~ means an establishment operated by a holder  
22 of a Class C liquor license which:

23 (1) Does not sell food;

24 (2) In addition to selling alcohol, annually receives ten percent or  
25 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco  
26 products, ~~and~~ tobacco-related products, except from the sale of  
27 cigarettes as defined in section 69-2702. A cigar shop ~~bar~~ shall not  
28 discount alcohol if sold in combination with cigars or other tobacco  
29 products and tobacco-related products;

30 (3) Has a walk-in humidor on the premises; and

31 (4) Does not permit the smoking of cigarettes.

1           Sec. 4. Section 53-131, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3           53-131 (1) Any person desiring to obtain a new license to sell  
4 alcoholic liquor at retail, a craft brewery license, or a microdistillery  
5 license shall file with the commission:

6           (a) An application in triplicate original upon forms prescribed by  
7 the commission—~~prescribes~~, including the information required by  
8 subsection (3) of this section for an application to operate a cigar shop  
9 ~~bar~~;

10           (b) The license fee if under sections 53-124 and 53-124.01 such fee  
11 is payable to the commission, which fee shall be returned to the  
12 applicant if the application is denied; and

13           (c) The nonrefundable application fee in the sum of four hundred  
14 dollars, except that the nonrefundable application fee for an application  
15 for a cigar shop ~~bar~~ shall be one thousand dollars.

16           (2) The commission shall notify the clerk of the city or village in  
17 which such license is sought or, if the license sought is not sought  
18 within a city or village, the county clerk of the county in which such  
19 license is sought, of the receipt of the application and shall include  
20 one copy of the application with the notice. No such license shall be  
21 issued or denied by the commission until the expiration of the time  
22 allowed for the receipt of a recommendation of denial or an objection  
23 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.  
24 During the period of forty-five days after the date of receipt by mail or  
25 electronic delivery of such application from the commission, the local  
26 governing body of such city, village, or county may make and submit to  
27 the commission recommendations relative to the granting or refusal to  
28 grant such license to the applicant.

29           (3) For an application to operate a cigar shop ~~bar~~, the application  
30 shall include proof of the cigar shop's ~~bar's~~ annual gross revenue as  
31 requested by the commission and such other information as requested by

1 the commission to establish the intent to operate as a cigar shop ~~bar~~.  
2 The commission may adopt and promulgate rules and regulations to regulate  
3 cigar shops. The rules and regulations existing on August 1, 2014,  
4 applicable to cigar bars shall apply to cigar shops until amended or  
5 repealed by the commission ~~bars~~.

6 (4) For renewal of a license under this section, a licensee shall  
7 file with the commission an application, the license fee as provided in  
8 subdivision (1)(b) of this section, and a renewal fee of forty-five  
9 dollars.

10 Sec. 5. (1) The Legislature finds that allowing smoking in cigar  
11 shops as a limited exception to the Nebraska Clean Indoor Air Act does  
12 not interfere with the original intent that the general public and  
13 employees not be unwillingly subjected to second-hand smoke. This  
14 exception poses a de minimis restriction on the public and employees  
15 given the limited number of cigar shops compared to other businesses that  
16 sell alcohol, cigars, and pipe tobacco, and any member of the public  
17 should reasonably expect that there would be second-hand smoke in a cigar  
18 shop given the nature of the business and could choose to avoid such  
19 exposure.

20 (2) The Legislature finds that (a) cigars and pipe tobacco have  
21 different characteristics than other forms of tobacco such as cigarettes,  
22 (b) cigars are customarily paired with various spirits such as cognac,  
23 single malt whisky, bourbon, rum, rye, port, and others, and (c) unlike  
24 cigarette smokers, cigar and pipe smokers may take an hour or longer to  
25 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for  
26 delivering nicotine. Cigars paired with selected liquor creates a synergy  
27 unique to the particular pairing similar to wine paired with particular  
28 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that  
29 is typically not inhaled in order to enjoy the taste of the smoke, unlike  
30 cigarettes that tend to be processed with additives and wrapped in paper  
31 and are inhaled. Cigars have a different taste and smell than cigarettes

1 due to the fermentation process cigars go through during production.  
2 Cigars tend to cost considerably more than cigarettes, and their quality  
3 and characteristics vary depending on the type of tobacco plant, the  
4 geography and climate where the tobacco was grown, and the overall  
5 quality of the manufacturing process. Not only does the customized  
6 blending of the tobacco influence the smoking experience, so does the  
7 freshness of the cigars, which is dependent on how the cigars were stored  
8 and displayed. These variables are similar to fine wines, which can also  
9 be very expensive to purchase. It is all of these variables that warrant  
10 a customer wanting to sample the product before making such a substantial  
11 purchase.

12 (3) The Legislature finds that exposure to second-hand smoke is  
13 inherent in the selling and sampling of cigars and pipe tobacco and that  
14 this exposure is inextricably connected to the nature of selling this  
15 legal product, similar to other inherent hazards in other professions and  
16 employment.

17 (4) It is the intent of the Legislature to allow cigar and pipe  
18 smoking in cigar shops that meet specific statutory criteria not  
19 inconsistent with the fundamental nature of the business. This exception  
20 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance  
21 with the intent of the act to protect public places and places of  
22 employment.

23 Sec. 6. (1) The holder of a cigar shop license shall not allow a  
24 person under twenty-one years of age to smoke or purchase any product in  
25 the cigar shop.

26 (2) The licensee shall post a sign on all entrances to the cigar  
27 shop, on the outside of each door, in a conspicuous location slightly  
28 above or next to the door, with the following statement: SMOKING OF  
29 CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES  
30 IS NOT ALLOWED.

31 (3) Beginning November 1, 2015, the licensee shall provide to the

1 commission a copy of a waiver signed prior to employment by each employee  
2 on a form prescribed by the commission. The waiver shall expressly notify  
3 the employee that he or she will be exposed to second-hand smoke, and the  
4 employee shall acknowledge that he or she understands the risks of  
5 exposure to second-hand smoke.

6 Sec. 7. Section 53-1,120.01, Reissue Revised Statutes of Nebraska,  
7 is amended to read:

8 53-1,120.01 No county resolution or city ordinance that prohibits  
9 smoking in indoor areas shall apply to cigar shops ~~bars~~.

10 Sec. 8. Section 71-5716, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 71-5716 Sections 71-5716 to 71-5734 and section 11 of this act shall  
13 be known and may be cited as the Nebraska Clean Indoor Air Act.

14 Sec. 9. Section 71-5717, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to  
17 protect the public health and welfare by prohibiting smoking in public  
18 places and places of employment with limited exceptions for guestrooms  
19 and suites, research, tobacco retail outlets, and cigar shops. The  
20 limited exceptions permit smoking in public places where the public would  
21 reasonably expect to find persons smoking, including guestrooms and  
22 suites which are subject to expectations of privacy like private  
23 residences, institutions engaged in research related to smoking, and  
24 tobacco retail outlets and cigar shops which provide the public legal  
25 retail outlets to sample, use, and purchase tobacco products and products  
26 related to smoking. The act shall not be construed to prohibit or  
27 otherwise restrict smoking in outdoor areas. The act shall not be  
28 construed to permit smoking where it is prohibited or otherwise  
29 restricted by other applicable law, ordinance, or resolution. The act  
30 shall be liberally construed to further its purpose.

31 Sec. 10. Section 71-5730, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 71-5730 (1) The following indoor areas are exempt from section  
3 71-5729:

4 (a 1) Guestrooms and suites that are rented to guests and that are  
5 designated as smoking rooms, except that not more than twenty percent of  
6 rooms rented to guests in an establishment may be designated as smoking  
7 rooms. All smoking rooms on the same floor shall be contiguous, and smoke  
8 from such rooms shall not infiltrate into areas where smoking is  
9 prohibited under the Nebraska Clean Indoor Air Act;

10 (b 2) Indoor areas used in connection with a research study on the  
11 health effects of smoking conducted in a scientific or analytical  
12 laboratory under state or federal law or at a college or university  
13 approved by the Coordinating Commission for Postsecondary Education;

14 (c 3) Tobacco retail outlets; and

15 (d 4) Cigar shops ~~bars~~ as defined in section 53-103.08.

16 (2)(a) The Legislature finds that allowing smoking in tobacco retail  
17 outlets as a limited exception to the Nebraska Clean Indoor Air Act does  
18 not interfere with the original intent that the general public and  
19 employees not be unwillingly subjected to second-hand smoke since the  
20 general public does not frequent tobacco retail outlets and should  
21 reasonably expect that there would be second-hand smoke in tobacco retail  
22 outlets and could choose to avoid such exposure. The products that  
23 tobacco retail outlets sell are legal for customers who meet the age  
24 requirement. Customers should be able to try them within the tobacco  
25 retail outlet, especially given the way that tobacco customization may  
26 occur in how tobacco is blended and cigars are produced. The Legislature  
27 finds that exposure to second-hand smoke is inherent in the selling and  
28 sampling of cigars and pipe tobacco and that this exposure is  
29 inextricably connected to the nature of selling this legal product,  
30 similar to other inherent hazards in other professions and employment.

31 (b) It is the intent of the Legislature to allow cigar and pipe

1 smoking in tobacco retail outlets that meet specific statutory criteria  
2 not inconsistent with the fundamental nature of the business. This  
3 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in  
4 accordance with the intent of the act to protect public places and places  
5 of employment.

6 (3)(a) The Legislature finds that allowing smoking in cigar shops as  
7 a limited exception to the Nebraska Clean Indoor Air Act does not  
8 interfere with the original intent that the general public and employees  
9 not be unwillingly subjected to second-hand smoke. This exception poses a  
10 de minimis restriction on the public and employees given the limited  
11 number of cigar shops compared to other businesses that sell alcohol,  
12 cigars, and pipe tobacco, and any member of the public should reasonably  
13 expect that there would be second-hand smoke in a cigar shop given the  
14 nature of the business and could choose to avoid such exposure.

15 (b) The Legislature finds that (i) cigars and pipe tobacco have  
16 different characteristics than other forms of tobacco such as cigarettes,  
17 (ii) cigars are customarily paired with various spirits such as cognac,  
18 single malt whisky, bourbon, rum, rye, port, and others, and (iii) unlike  
19 cigarette smokers, cigar and pipe smokers may take an hour or longer to  
20 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for  
21 delivering nicotine. Cigars paired with selected liquor creates a synergy  
22 unique to the particular pairing similar to wine paired with particular  
23 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that  
24 is typically not inhaled in order to enjoy the taste of the smoke, unlike  
25 cigarettes that tend to be processed with additives and wrapped in paper  
26 and are inhaled. Cigars have a different taste and smell than cigarettes  
27 due to the fermentation process cigars go through during production.  
28 Cigars tend to cost considerably more than cigarettes, and their quality  
29 and characteristics vary depending on the type of tobacco plant, the  
30 geography and climate where the tobacco was grown, and the overall  
31 quality of the manufacturing process. Not only does the customized

1 blending of the tobacco influence the smoking experience, so does the  
2 freshness of the cigars, which is dependent on how the cigars were stored  
3 and displayed. These variables are similar to fine wines, which can also  
4 be very expensive to purchase. It is all of these variables that warrant  
5 a customer wanting to sample the product before making such a substantial  
6 purchase.

7 (c) The Legislature finds that exposure to second-hand smoke is  
8 inherent in the selling and sampling of cigars and pipe tobacco and that  
9 this exposure is inextricably connected to the nature of selling this  
10 legal product, similar to other inherent hazards in other professions and  
11 employment.

12 (d) It is the intent of the Legislature to allow cigar and pipe  
13 smoking in cigar shops that meet specific statutory criteria not  
14 inconsistent with the fundamental nature of the business. This exception  
15 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance  
16 with the intent of the act to protect public places and places of  
17 employment.

18 Sec. 11. (1) The owner of a tobacco retail outlet shall post a sign  
19 on all entrances to the tobacco retail outlet, on the outside of each  
20 door, in a conspicuous location slightly above or next to the door, with  
21 the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE  
22 THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

23 (2) Beginning November 1, 2015, the owner shall provide to the  
24 Division of Public Health a copy of a waiver signed prior to employment  
25 by each employee on a form prescribed by the division. The waiver shall  
26 expressly notify the employee that he or she will be exposed to second-  
27 hand smoke, and the employee shall acknowledge that he or she understands  
28 the risks of exposure to second-hand smoke.

29 (3) The owner shall not allow cigarette smoking in the tobacco  
30 retail outlet.

31 Sec. 12. If any section in this act or any part of any section is



1 declared invalid or unconstitutional, the declaration shall not affect  
2 the validity or constitutionality of the remaining portions.

3       Sec. 13. Original sections 53-103.08, 53-1,120.01, 71-5716, and  
4 71-5717, Reissue Revised Statutes of Nebraska, and sections 28-1429.03,  
5 53-101, 53-131, and 71-5730, Revised Statutes Cumulative Supplement,  
6 2014, are repealed.

7       Sec. 14. Since an emergency exists, this act takes effect when  
8 passed and approved according to law.


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## Smoke Shop and Cigar Bar Certification

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### Smoke Shop Certification

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#### Applying for Smoke Shop Certification

All smoke shops must be certified by the Oregon Health Authority (OHA) and abide by specific requirements before permitting smoking on the premises. Establishments that sell tobacco products must also comply with [federal law and regulations](#) restricting the sale, distribution and marketing of cigarettes and smokeless tobacco products.

There are three sets of smoke shop certification criteria. Select the appropriate category below.

1. [New Smoke Shop Certification Requirements](#)
2. [Alternative Smoke Shop Certification Requirements for Businesses Existing on December 31, 2008](#)
3. [Grandfathered Smoke Shop Certification Requirements for Businesses that Applied Prior to June 30, 2011](#)

#### New Smoke Shop Certification Requirements

[ORS 433.847(2)(a) and OAR 333-015-0068(5)(a)]

A business may qualify for smoke shop certification if it:

- Is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, with at least 75 percent of the gross revenue of the business resulting from such sales.
- Prohibits persons under 18 years of age from entering the premises.
- Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises.
- Does not sell, offer or allow on-premises consumption of food or beverages, including alcoholic beverages.
- Is a stand-alone business with no other businesses or residential property attached to the premises.
- Has a maximum seating capacity of four persons.
- Would allow smoking only for the purpose of sampling tobacco products for making retail purchase decisions, in a manner that complies with ORS 180.486 and 431.840.

To maintain smoke shop certification under these requirements, a certified smoke shop must comply with these ongoing obligations:

- Continuously meet the criteria under which the smoke shop was certified. The Oregon Health Authority (OHA) may revoke certification if the smoke shop ceases to meet the certification criteria.
- Allow OHA to make unannounced inspections of the business to determine compliance with the ICAA.
- Submit a completed [Annual Financial Documentation Form](#) every year, within 30 days of the calendar date on which certification was originally granted, to demonstrate that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments.
- Post signs at each entrance and exit clearly stating that smoking is allowed on all or part of the premises and that anyone under the age of 18 is prohibited from entering the premises.
- Prohibit smoking, ashtrays, and outdoor smoking areas within 10 feet of entrances, exits, windows that open, ventilation intakes, and accessibility ramps leading to and from an entrance or exit. Outdoor seating and dining areas within 10 feet must be clearly marked as non-smoking.
- Maintain up-to-date contact information with OHA. If OHA is unable to contact a smoke shop because the smoke shop's contact information on file is out of date, then the smoke shop's certification may be suspended until up-to-date contact information is provided. Use the [Contact Information Update Form](#) to submit updates.
- To transfer certification or change locations, refer to the procedures in OAR 333-015-0068(9) and (10).

**Smoke shop certification may be revoked if:**

- The smoke shop goes out of business. A smoke shop owner must notify OHA within 30 days if the smoke shop ceases operation because it has gone out of business.
- The smoke shop commits any violation of the ICAA [ORS 433.835 to 433.990(5)] or related rules [OAR 333-015-0025 to 333-015-0090].

**Alternative Smoke Shop Certification Requirements for Businesses Existing on December 31, 2008**

[OAR 333-015-0068(5)(b)]

**To qualify for this type of smoke shop certification, a smoke shop must, on December 31, 2008, and presently, have met/meet the following requirements:**

- Be primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, with at least 75 percent of the gross revenues of the business resulting from such sales.
- Prohibit persons under 18 years of age from entering the premises.
- Not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises.
- Not sell, offer or allow on-premises consumption of food or beverages, including alcoholic beverages.
- Either:
  - Be a stand-alone business with no other businesses or residential property attached; or
  - Have a ventilation system that exhausted/exhausts smoke from the business and was/is designed and terminated in accordance with the state building code standards for the occupancy classification in use.

**To maintain certification under the alternative smoke shop certification requirements for businesses existing on December 31, 2008 a certified smoke shop must comply with these ongoing obligations:**

- Continuously meet the criteria under which the smoke shop was certified. The Oregon Health Authority (OHA) may revoke certification if the smoke shop ceases to meet the certification criteria.
- Allow OHA to make unannounced inspections of the business to determine compliance with the ICAA.
- Submit a completed Annual Financial Documentation Form every year, within 30 days of the calendar date on which certification was originally granted, to demonstrate that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments intended for off-premises consumption or use.
- The spreadsheet must include the total revenue from cigarette sales if the smoke shop permits cigarette smoking on the premises.
- Post signs at each entrance and exit clearly stating that smoking is allowed on all or part of the premises, anyone under the age of 18 is prohibited from entering the premises, and, in smoke shops not authorized by OHA to permit cigarette smoking, cigarette smoking is prohibited on the premises.
- Prohibit cigarette smoking on the premises unless at least 75 percent of its gross revenue, as reflected in financial documentation submitted to OHA, is derived from the sale of cigarettes.
- Prohibit smoking, ashtrays, and outside smoking areas within 10 feet of entrances, exits, windows that open, ventilation intakes, and accessibility ramps leading to and from an entrance or exit. Outdoor seating and dining areas within 10 feet must be clearly marked as non-smoking.
- Maintain up-to-date contact information with OHA. If OHA is unable to contact a smoke shop because the smoke shop's contact information on file is out of date, then the smoke shop's certification may be suspended until up-to-date contact information is provided. Use the Contact Information Update Form to submit updates.
- Renew its certification every five years from the date of original certification, pursuant to OAR 333-015-0068(8).
- To transfer certification or change locations, refer to the procedures in OAR 333-015-0068(9) and (10). Use the Smoke Shop B Application for Transfer of Smoke Shop Certification with Ownership to transfer certification to a new owner of the smoke shop.

**Smoke shop certification may be revoked if:**

- The smoke shop goes out of business. A smoke shop owner must notify OHA within 30 days if the smoke shop ceases operation because it has gone out of business.
- The smoke shop commits any violation of the ICAA [ORS 433.835 to 433.990(5)] or related rules [OAR 333-015-0025 to 333-015-0090].

**Grandfathered Smoke Shop Certification Requirements for Businesses that Applied Prior to June 30, 2011**

[OAR 333-015-0068(5)(c)]

To qualify for this type of smoke shop certification, a business must have applied to OHA for smoke shop certification prior to June 30, 2011, and:

- Be certified by the Oregon Health Authority (OHA) as a smoke shop on or before December 31, 2012, under ORS 433.835(5) as in effect immediately before June 30, 2011.
- Be primarily engaged in the sale of tobacco products and smoking instruments, with at least 75 percent of the gross revenues of the business resulting from such sales.
- Prohibit persons under 18 years of age from entering the premises.
- Not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises.
- Not sell or offer on-premises consumption of alcoholic beverages.
- Be a stand-alone business with no other businesses or residential property attached to the premises.
- Not allow smoking of cigarettes, unless at least 75 percent of the gross revenue of the business results from the sale of cigarettes.

To maintain smoke shop certification under these requirements, a certified smoke shop must comply with these ongoing obligations:

- Continuously meet the criteria under which the smoke shop was certified. OHA may revoke certification if the smoke shop ceases to meet the certification criteria.
- Allow OHA to make unannounced inspections of the business to determine compliance with the ICAA.
- Submit a completed Annual Financial Documentation Form every year, within 30 days of the calendar date on which certification was originally granted, to demonstrate that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments.
- The spreadsheet must include the total revenue from cigarette sales if the smoke shop permits cigarette smoking on the premises.
- Post signs at each entrance and exit clearly stating that smoking is allowed on all or part of the premises, anyone under the age of 18 is prohibited from entering the premises, and in smoke shops not authorized by OHA to permit cigarette smoking, cigarette smoking is prohibited on the premises.
- Prohibit cigarette smoking on the premises unless at least 75 percent of its gross revenue, as reflected in financial documentation submitted to OHA, is derived from the sale of cigarettes.
- Prohibit smoking, ashtrays, and outdoor smoking areas within 10 feet of entrances, exits, windows that open, ventilation intakes, and accessibility ramps leading to and from an entrance or exit. Outdoor seating and dining areas within 10 feet must be clearly marked as non-smoking.
- Maintain up-to-date contact information with OHA. If OHA is unable to contact a smoke shop because the smoke shop's contact information on file is out of date, then the smoke shop's certification may be suspended until up-to-date contact information is provided. Use the Contact Information Update Form to submit changes.
- Renew its certification every five years from the date of original certification, pursuant to OAR 333-015-0068(8).
- To transfer certification or change locations, refer to the procedures in OAR 333-015-0068(9) and (10). Use the Smoke Shop C Application for Transfer of Smoke Shop Certification with Ownership to transfer certification to a new owner of the smoke shop.

Smoke shop certification may be revoked if:

- The smoke shop goes out of business. A smoke shop owner must notify OHA within 30 days if the smoke shop ceases operation because it has gone out of business.
- The smoke shop commits any violation of the ICAA [ORS 433.835 to 433.990(5)] or related rules [OAR 333-015-0025 to 333-015-0090].

### Smoke Shop Applications and Forms

*Smoke Shops Certified before June 30, 2011: Please use forms under "Smoke Shop C" below.*

#### Smoke Shop A

New Certification Requirements [OAR 333-015-0068(5)(a)]

- Smoke Shop Certification Application (doc) - Use this form for new smoke shop application only.
- Certified Smoke Shop Contact Information Update Form (doc)
- Certified Smoke Shop "A" Annual Financial Documentation Form (doc)

#### Smoke Shop B

Alternative Certification Requirements for Businesses Existing on December 31, 2008 and applying for certification after June 30, 2011 [OAR 333-015-0068(5)(b)]

- Smoke Shop Certification Application, 2008 (doc)

- [Certified Smoke Shop Contact Information Update Form \(doc\)](#)
- [Certified Smoke Shop "B" Annual Financial Documentation Form \(doc\)](#)
- [Smoke Shop "B" Application for Transfer of Smoke Shop Certification with Ownership \(doc\)](#)
- [Smoke Shop "B" Post-Transfer Financials Form \(doc\)](#) - To be submitted within 120 days after the certification is transferred to a new owner.)
- [Smoke Shop "B" Application for Change of Certified Smoke Shop Location \(doc\)](#)

### Smoke Shop C

Certification Requirements for Businesses that Applied Prior to June 30, 2011 [OAR 333-015-0068(5)(c)] d

- [Smoke Shop "C" Application for Renewal of Smoke Shop Certification \(doc\)](#) - A certified smoke shop must renew its certification every five years within 30 days of the calendar date on which certification was originally granted. To continue to qualify for smoke shop certification, a business that filed an application with OHA prior to June 30, 2011, must submit this application packet to OHA.
- [Certified Smoke Shop Contact Information Update Form \(doc\)](#)
- [Certified Smoke Shop "C" Annual Financial Documentation Form \(doc\)](#)
- [Smoke Shop "C" Application for Transfer of Smoke Shop Certification with Ownership \(doc\)](#) - To be submitted within 120 days after the certification is transferred to a new owner.
- [Smoke Shop "C" Post-Transfer Financials Form \(doc\)](#) - To be submitted within 120 days after the certification is transferred to a new owner.
- [Smoke Shop "C" Application for Change of Certified Smoke Shop Location \(doc\)](#)

Mail all completed applications and forms to:

Tobacco Prevention and Education Program  
 Attn: ICAA Smoke Shop Certification  
 Oregon Health Authority, Public Health Division  
 800 NE Oregon St., Ste. 730  
 Portland, OR 97232

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## Cigar Bar Certification

### [Certification Requirements](#)

### [Application and Forms](#)

### Smoking of cigars in certified cigar bars

Cigar bars must be certified by the Oregon Health Authority (OHA) and abide by specific requirements before permitting cigar smoking on the premises.

To qualify as a cigar bar, a business must:

- Apply to the Oregon Health Authority and receive certification before allowing cigar smoking on the premises.
- Have on-site sales of cigars.
- Have generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.
- Operate under a full on-premises liquor sales license issued by the Oregon Liquor Control Commission.
- Have a humidor on the premises.
- Prohibit the smoking of all tobacco products other than cigars.
- Prohibit persons under 21 years of age from entering the premises and post notice of the prohibition at each entrance and exit.
- Post signs at each entrance and exit stating that smoking is allowed on all or part of the premises.
- Not offer video lottery games.
- Have a maximum seating capacity of 40 persons.
- Have a ventilation system that exhausts smoke from the business and that is designed and terminated in accordance with the state building code standards for the occupancy classification in use.
- Require all employees to read and sign a form published by the Public Health Division ([Certified Cigar Bar Secondhand Smoke Form](#)) that explains the dangers of exposure to secondhand smoke.

### Applying for Cigar Bar Certification

All cigar bars must receive certification from the Oregon Health Authority (OHA) before permitting cigar smoking on the premises. All required documentation must be included for OHA to consider the cigar bar for certification. Please include a separate application packet for each cigar bar and keep a copy of all application materials for your records.

1. To apply for certification, submit the following documentation to OHA in one packet:
2. A completed [OHA Application for Cigar Bar Certification](#).
3. A copy of the business's full on-premises liquor sales license issued by the Oregon Liquor Control Commission under ORS 471.175.
4. A copy of the floor plan submitted to the Oregon Liquor Control Commission for the business's full on-premises liquor sales license. The floor plan must include a detailed seating chart denoting a maximum seating capacity of no more than 40 persons.
5. A copy of the business's certificate of occupancy and official documentation from the building authority with jurisdiction showing that the business was approved as a smoking lounge.
6. A completed and signed [Certified Cigar Bar Secondhand Smoke Document](#), which explains the dangers of exposure to secondhand smoke, for each employee. You may call the Tobacco Prevention and Education Program at (971) 673-0984 to have one mailed to you.
7. Documentation demonstrating that the cigar bar generated on-site retail sales of cigars of at least \$5,000 in the calendar year 2006. Documentation may include cash register tapes, inventory receipts, and purchase orders.

**To maintain cigar bar certification, a certified cigar bar must:**

- Provide any missing information or documentation required under OAR 333-015-0025 - 333-015-0085 upon request by OHA.
- Meet the definition of a cigar bar, as defined in ORS 433.835 and OAR 333-015-0030, at all times. OHA may revoke cigar bar certification if the business no longer meets the definition of a cigar bar.
- Submit a completed [Certified Cigar Bar Secondhand Smoke Form](#) to OHA by December 31 of each calendar year for every new employee hired during that year.
- Post signs at each entrance and exit clearly stating that smoking is allowed on all or part of the premises and that anyone under the age of 21 is prohibited from entering the premises.
- Prohibit smoking of non-cigar tobacco products on the premises.
- Prohibit smoking, ashtrays, and outdoor smoking areas within 10 feet of entrances, exits, windows that open, ventilation intakes, and accessibility ramps leading to and from an entrance or exit. Outdoor seating and dining areas within 10 feet must be clearly marked as non-smoking.

**Cigar Bar Application and Forms**

- [Cigar Bar Certification Application \(doc\)](#)
- [Cigar Bar Secondhand Smoke Form \(pdf\)](#)
- [Certified Cigar Bar Contact Information Update Form \(doc\)](#)

**Mail all completed applications and forms to:**

Tobacco Prevention and Education Program  
Attn: ICAA Cigar Bar Certification  
Oregon Health Authority, Public Health Division  
800 NE Oregon St., Ste. 730  
Portland, OR 97232

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