

ORDINANCE NO. 03 112

AN ORDINANCE AMENDING CHAPTER 14 (GENERAL WELFARE) OF THE HAWAII COUNTY CODE 1983 (1995 EDITION), AS AMENDED, RELATING TO SMOKING IN CERTAIN PLACES IN THE COUNTY OF HAWAII.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Purpose. The County Council finds that there are compelling public health and safety reasons to protect nonsmoking employees and the general public from the hazardous effects of environmental tobacco smoke (ETS), more commonly known as "second-hand smoke." ETS has been determined to cause a number of adverse health effects, including lung cancer, childhood asthma, and lower respiratory tract infections, according to studies by the U.S. Surgeon General, Environmental Protection Agency, and the National Research Council.

The purpose of this measure is to prohibit the smoking of tobacco or any other plant in certain areas of the County.

Terms of this article shall be liberally construed to effectuate the purpose stated in this section, and shall be read in conjunction with applicable state laws governing smoking in the workplace and public places. The Council recognizes that this ordinance is more stringent than Part 1, Chapter 328K, Hawai'i Revised Statutes.

SECTION 2. Chapter 14, Article 4, of the Hawai'i County Code, relating to smoking in public places, is amended to read and be appropriately numbered as follows:

"Article 4. Prohibition of Smoking in [Public] Certain Places.

Section 14-20. Definitions.

- (a) As used in this article, unless the context requires otherwise:
- [5](1) "Bar" means an establishment [in which the sale and consumption of intoxicating liquor on the premises is authorized under a license issued by the department of liquor control.] that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. "Incidental" means that for the prior calendar year, gross sales of food are less than one-third (1/3) of gross sales of alcoholic beverages. A "bar" is authorized under a license issued by the department of liquor control.
 - (2) "Bowling alley" means a building where people go to bowl.
 - (3) "Building" means any area enclosed by a roof and at least three walls.
 - (4) ["Small businesses" means those business establishments having no more than five employees working on the business premises per established work

- shift.] "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (5) "Commercial building" means a building occupied by two or more commercial tenants.
- (6) "Enclosed or partially enclosed area(s)" means area(s) closed in by a roof or overhang and at least two walls.
- (7) "Hotel" means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units.
- (8) "Multifamily dwelling" means a building containing more than two dwelling units.
- (9) "Nightclub" means a bar in which live entertainment is provided and in which facilities for dancing by patrons either by live entertainment or recorded music are provided.
- [(2)](10) "Open to the public" means areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities.
- [(6)](11) "Restaurant" means [a] any retail eating establishment where food is served or provided for on-site consumption by seated patrons that is authorized by the State department of health to operate as a [restaurant.] food establishment, including any private food service establishment or club in which only members or their guests are permitted, but excluding a "bar." If a restaurant includes an area devoted to the serving of alcoholic beverages, that area shall be deemed part of the "restaurant," not a separate "bar," for this article. An establishment that is a "restaurant" shall have that status for all hours of operation.
- [(1)](12) "Smoke" or "smoking" means [and includes] inhaling or exhaling [upon, burning] the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material; the personal habit commonly known as smoking [.] , including smoking cigarettes, cigars, or pipes.

Section 14-21. Prohibition [in certain places open to the] of smoking in [public.] certain places.

- (a) Except as otherwise provided [herein,] in this article, smoking shall be prohibited in [the following places within the County:] all enclosed places within the County, including but not limited to, the following places:
- [(1)] Elevators in buildings generally open to and used by the public, including elevators in apartment and other multi-unit residential buildings.]
- [(2)](1) [Private and semiprivate] Patient rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and physicians' and dentists' offices.
- [(A)] Nothing in this section shall prevent a facility from establishing waiting areas where smoking is permitted where smoking areas comprise no more than fifty percent of the waiting area space in the facility if the smoking areas are physically separated by walls so that smoke does not permeate into nonsmoking areas.]

- (3) Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that the room, hall, or auditorium is open to the public for such exhibition.
- (4) Museums, libraries and galleries, provided that smoking may be permitted in a designated portion of the reading area in a library if the smoking area comprises no more than twenty percent of the reading area in the library and is physically separated by walls or partitions from the remainder of the library so that smoke does not permeate into nonsmoking areas.]
- [(5)](2) [Restaurants with a seating capacity of more than forty patrons.
 - (A) Nothing in this section shall prevent a restaurant of more than forty patrons from providing smoking areas which are reasonably proportionate to the preference of its users.
 - (B) Where an establishment is both a restaurant and a bar, the establishment shall be deemed as the type of enterprise from which the major source of income is derived, provided that if the restaurant services are provided in one section and the bar services are provided in another section, the restaurant section itself shall be subject to this section.]

Restaurants and bowling alleys, except as outlined in Sections 14-21(a)(2)(A) and 14-21(a)(2)(B) below. If a restaurant or bowling alley contains an outdoor, open air or partially enclosed seating area where food and beverages are served, smoking is prohibited in this area of the establishment.

(A) Through August 31, 2004, smoking shall be permitted in a separate bar area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking. A "separate bar area of a restaurant" means an indoor area of a restaurant that is in compliance with all of the following:

- (i) The area is devoted primarily to the serving of alcoholic beverages for consumption by patrons in the area.
- (ii) On a monthly basis, the gross sales of food to patrons for consumption in the area are less than one-third (1/3) of the gross sales of alcoholic beverages to patrons for consumption in the area.

(B) Beginning September 1, 2004, a restaurant may continue to operate a separate bar area, as defined above, provided that:

- (i) There is a physical separation (consisting of solid walls with no door or window opening into the restaurant area) between the separate bar area and restaurant;
- (ii) The entrance into the bar area is totally separate and at least 15 feet from the entrance into the restaurant; and
- (iii) The restaurant and separate bar area have separate ventilation systems.

[(6)](3) [The following facilities or areas in County-owned or controlled buildings:

- (A) Meeting or conference rooms;
- (B) Auditorium or sports areas that are enclosed;
- (C) Community centers where persons may gather for meetings, parties, or any other purpose where the area is enclosed;

- (D) All areas open to the public, including service counters and reception or waiting areas, but excluding hallways, corridors or other passageways and private, enclosed offices not generally open to the public for the transaction of business.]
- Any enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except for residential dwelling units which shall be regulated herein as multi-family dwellings.
- [(7) Except as otherwise provided in this section and subject to the exceptions in section 14-22, all areas open to the public in the following business establishments:
- (A) Food and grocery stores;
 - (B) Drug stores;
 - (C) Supermarkets;
 - (D) Banks;
 - (E) Savings and loan associations and industrial loan companies;
 - (F) Retail stores;
 - (G) Credit unions.
- (8) Restrooms. Any restroom open to the public in places specified in this section.]
- ~~[(9)]~~[(4)] [Notwithstanding the exceptions stated in section 14-22, any area of any business, governmental, or charitable establishment which has been designated by the owner, operator, manager, or other persons having control of such establishment as a nonsmoking area and marked with a "no smoking" sign or signs.] Except as provided in Section 14-22, all business and not-for-profit establishments, including but not limited to auditoriums, theaters, halls, museums, libraries, galleries, classrooms, private offices, conference or meeting rooms and all other enclosed facilities. This also includes common areas, including but not limited to, work areas, elevators, hallways, cafeterias, employee lounges, stairs, and restrooms.
- ~~(5)~~ All enclosed or partially enclosed areas within multi-family dwellings that are open to the common use of all unit owners or residents, including but not limited to lobbies, elevators, restrooms, hallways, corridors, stairways, waiting areas and recreation areas.
- ~~(6)~~ All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers, including but not limited to common entrance areas, restrooms, lobbies, elevators, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings.
- ~~(7)~~ In the event a building is both a multi-family dwelling and a commercial building, as defined in this article, all common use areas except for private residences.
- ~~(8)~~ All enclosed or partially enclosed areas within hotels that are open to the common use of the public, hotel guests, or hotel employees, including but not limited to, restrooms, lobbies, elevators, hallways, corridors, stairways, waiting areas, recreation areas, banquet halls, banquet rooms, and ballrooms.
- ~~(9)~~ In the event a building is both a commercial building and a hotel, all common use areas except for hotel rooms rented to guests and designated as smoking rooms.

- (10) All vehicles owned or leased by the County.
- (11) Taxicabs.
- (12) Private residences, during hours of operation, when used as a licensed child care, adult day care or health care facility, except in residences where the care facility is physically detached from the residence or is separated from the owner's area.
- (13) Smoking is prohibited within a reasonable distance from any entrance to, exit from, or any fresh air intake of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the enclosed area through entrances, windows, ventilation systems, or other means.
- (14) Areas within private residences, during hours of operation, that are used for the care of patients or clients in licensed residential care homes, except in residences where the care facility is physically detached from the residence or is completely separated by a solid wall with no other openings except closable doors or windows, which shall remain closed during hours of operation from the owner's area where clients or patients are not allowed.

Section 14-22. Exceptions.

- (a) [Smoking may be allowed hereunder in the following places subject to section 14-21.] Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt:
 - (1) [Small businesses.] Private residences, except as prohibited in Sections 14-21(a)(12) and 14-21(a)(14).
 - (2) [A restaurant with a seating capacity of forty or fewer patrons.] Individual hotel and motel rooms that are rented to guests and are designated as smoking rooms.
 - (3) [A restaurant while it is being used solely for private parties or e parties or gatherings.] Bars.
 - [(4) An enclosed room of a restaurant, or a banquet room used solely for private parties or gatherings.
 - (5) A private restaurant or club to which only members or their guests are permitted.
 - (6) Any seating area completely outside the building housing the restaurant.
 - (7) Bars.
 - (8) Any property owned, controlled, or leased by State or Federal government entities.]

Section 14-23. [Signs.] Posting of signs.

- (a) [Clearly legible signs which include the words "Smoking Prohibited by Law" with letters of not less than one inch in height] "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in [all places generally open to the] every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person having control of such place.
- (b) Alternate means of notification [(individual place cards, film clips, etc.)] may be employed provided the effect thereof is equivalent to the notice given by signs [detailed in this section.] described in subsection (a).
- (c) [All signs required by this section shall be posted by April 30, 1987.] Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (d) Any person violating any of the provisions of this section shall be issued a notice of violation and shall comply with the provisions of this section within ten days. Thereafter, the violation

shall carry a fine [of not more than \$25.] as provided in Section 14-24(b) and/or 14-24(c). Each violation cited shall constitute a separate offense.

Section 14-24. Violations and penalties.

- (a) It is unlawful for any person to smoke in a place within the County where smoking is prohibited.
- (b) [Except as otherwise provided, any] Any person violating any of the provisions of this article shall be [punished by a fine of \$5 for each violation.] fined not less than \$25 and not more than \$50.
- (c) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:
 - (1) A fine not exceeding \$100 for a first violation;
 - (2) A fine not exceeding \$200 for a second violation within one year of the date of the first violation; and
 - (3) A fine not exceeding \$500 for each additional violation within one year of the date of the preceding violation.

Section 14-24.1. Enforcement and administration.

- (a) Summons or Citation.
 - (1) There shall be provided for use by an officer or employee of the County duly authorized to issue a summons or citation, or any police officer a form of summons or citation for use in citing violators of this article which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and regulations of the State and the County.
 - (2) In every case, when a citation is issued, the original of the same shall be given to the violator[;], provided that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be numbered, and each carbon copy shall bear the same number as its original.
- (b) Enforcement and administration of the provisions of section 14-23 shall be under the jurisdiction of the department of public works of the County, which department shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of section 14-23.
- (c) Except as provided in section 14-24.1(b), enforcement of this ordinance shall be under the jurisdiction of the County police department.
- (d) In addition to the foregoing, any police officer or other officer or employee of the County duly authorized to issue a summons or citation may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been requested by the police officer or other duly authorized officer or employee to stop smoking.

Section 14-24.2. Fire Code.

Nothing in this article shall be construed as superseding applicable fire code provisions. Where a conflict between the provisions of this article and the fire code arises, the fire code provisions will prevail."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the brackets and bracketed material need not be included.

SECTION 4. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall take effect six months after approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I


COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i
Date of Introduction: June 18, 2003
Date of 1st Reading: June 18, 2003
Date 2nd Reading: July 23, 2003
Effective Date: February 1, 2004
REFERENCE: Comm. 13,292

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(Draft 5)

RECEIVED

03 AUG 1 PM 12 11

Introduced By: Fred C. Holschuh
 Date Introduced: June 18, 2003
 First Reading: June 18, 2003
 Published: June 29, 2003

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki		X		
Chung		X		
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	7	2	0	0

(Draft 9)

Second Reading: July 23, 2003
 To Mayor: July 25, 2003
 Returned: August 1, 2003
 Effective: February 1, 2004
 Published: August 10, 2003

REMARKS: July 2, 2003: Held over
for Second Reading due to substantive
amendments (Bill 260, Draft 8).

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Leithead-Todd	X			
Reynolds	X			
Safarik	X			
Tyler	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date JUL 29 2003

COUNCIL CHAIRMAN

COUNTY CLERK

Bill No.: 260 (Draft 9)

Reference: C-13.292/HSEDC-3

Ord No.: 03 112

Approved/Disapproved this 1st day

of August, 2003

MAYOR, COUNTY OF HAWAII