

ORDINANCE NO. 3078

BILL NO. 45 (2002)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.20,
MAUI COUNTY CODE, RELATING TO SMOKING IN RESTAURANTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this ordinance is to protect and promote public health by banning smoking in restaurants, subject to limited exceptions. The Council finds that this ordinance is more stringent than Part I, Chapter 328K, Hawaii Revised Statutes.

SECTION 2. Section 8.20.010, Maui County Code, is amended to read as follows:

"8.20.010 Purpose. Because smoking of tobacco or any other plant is a positive danger to health and a cause of material annoyance, inconvenience, discomfort and a health hazard to those [county] County employees and members of the public who are present in confined places; and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco or any other plant in certain areas in the County. The terms of this chapter shall be liberally construed to effectuate the purpose stated in this section, and shall be read in conjunction with applicable state laws regarding smoking in the workplace and public places."

SECTION 3. Section 8.20.020, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Bar", for a July 1 to June 30 period, means a place that was devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food was only incidental to the consumption of such beverages during the previous July 1 to June 30 period, whether or not the place was open for business during that entire period. When the preceding sentence does not apply to a place because it was not open for business in the previous July 1 to June 30

period, the place may choose to be a "bar" from the date it first opens for business until the next June 30 if, during that time, the place is devoted to the serving of alcoholic beverages for on-site consumption by patrons and the service of food in the place is only incidental to the consumption of such beverages. The service of food is "incidental" if gross sales of food are less than one third of gross sales of alcoholic beverages. Notwithstanding the foregoing, a place is a "bar" only if it provides records necessary to establish gross sales of food and alcoholic beverages to the department of finance, which shall maintain a current, publicly available list of all "bars" in the County and which shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of this section."

"Restaurant" means 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 food establishment, including any private food 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 chapter. An establishment that is a "restaurant" shall have that status for all hours of operation."

SECTION 4. Section 8.20.030, Maui County Code, is amended to read as follows:

"8.20.030 Prohibitions in certain areas. No person shall smoke in the following areas:

A. 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 multifamily dwellings;

B. Elevators in buildings generally open to and used by the public, including elevators in apartments and other multi-unit residential buildings;

C. Patient rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including but not limited to, hospitals, clinics, and physician and dental offices;

D. Rooms, halls, or auditoriums that are primarily used for exhibiting motion pictures, stage dramas, dance, musical performances or other similar performances during the time that such rooms, halls or auditoriums are open to the public for such exhibition;

E. Museums, libraries, and galleries;

F. All areas open to the public in the following business establishments:

1. Food and grocery stores and supermarkets,
2. Drug stores,
3. Banks, savings and loan associations, financial services loan companies, and credit unions,
4. Day care nurseries during business hours, and
5. Retail stores, except for retail tobacco stores;

G. Any restrooms open to the public in places specified in this section;

H. Any areas of any business or charitable establishment that have been designated by the owner, operator, manager or other persons having control of such establishment as a no-smoking area and marked with signs described in section 8.20.035;

I. 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, hallways, corridors, stairways, waiting areas and recreation areas;

J. 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, other than bars, [and restaurants,] including but not limited to common entrance areas, lobbies, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings;

K. All of the areas set forth in subsections I and J in the event a building is both a multifamily dwelling and a commercial building;

L. All enclosed or partially enclosed areas within hotels that are open to the common use of the public, hotel guests, or hotel employees, other than [restaurants or] bars, including but not limited to, lobbies, hallways, corridors, stairways, waiting areas, recreation areas, banquet halls, banquet rooms, and ballrooms;

M. All of the areas set forth in subsections J and L in the event a building is both a commercial building and a hotel;

N. All vehicles owned or leased by the County;
[and]

O. Any taxicab designated as a no-smoking taxicab by its owner or driver, provided that the no-smoking taxicab displays the international "no-smoking" symbol in the following locations:

1. Inside the taxicab on the glove compartment so that it is visible to any person seated in the

front passenger seat area and on the back of the front seat so that it is visible to any passenger seated in the rear of the taxicab; and

2. Outside the taxicab below each of the passenger door handles or affixed to the upper part of the windows of each passenger door. Such exterior symbols may be decals, magnetic or painted directly on the vehicle doors or windows; and [.]

P. Any restaurant, including a bar area within a restaurant's premises."

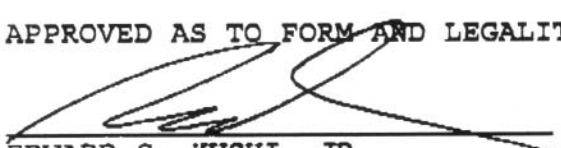
SECTION 5. Section 8.20.040, Maui County Code, is amended to read as follows:

"8.20.040 Violation--~~[Penalty]~~ penalty. Any person violating any of the provisions of this chapter shall be fined not less than [\$10] \$25 and not more than [~~\$25~~] \$50."

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect on January 1, 2003.

APPROVED AS TO FORM AND LEGALITY


EDWARD S. KUSHI, JR.
Deputy Corporation Counsel

S:\CLERICAL\FJK\ORDS\NOSMOKRest. ram. wpd

WE HEREBY CERTIFY that the foregoing BILL NO. 45 (2002)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of August, 2002, by the following votes:

Dain P. BANE Acting Chair	Evan M. ARAKAWA	Robert CARROLL	G. Rini HOKAMA	Jo Anne JOHNSON	Dennis A. MATEO	Michael J. MOLINA	Wayne N. NISHIKI	Charmaine TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of August, 2002.

DATED AT WAILUKU, MAUI, HAWAII, this 21st day of August, 2002.

RECEIVED
AUG 21 8 17
MAYOR



DAIN P. BANE, ACTING CHAIR
Council of the County of Maui



ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 23rd DAY OF August, 2002.



JAMES H. APANA JR., MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3078 of the County of Maui, State of Hawaii.



ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on August 2, 2002.
Effective date of Ordinance January 1, 2003.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3078, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

RECEIVED
AUG 23 11 11 20
COUNTY CLERK

County Clerk, County of Maui