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A BILL FOR AN ORDINANCE

RELATING TO PUBLIC HEALTH.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The Council finds that Section 2-102 of the Charter provides that City powers shall be used to serve and advance the general welfare, health, and safety of its inhabitants. The Council also finds that there is a compelling public health and safety need to protect nonsmoking employees from the hazardous effects of exposure to environmental tobacco smoke (ETS), often called "second-hand smoke," in workplaces, in addition to those areas where smoking already is prohibited pursuant to Chapter 41, Article 21, ROH 1990 and HRS Chapter 328K.

ETS is the complex mixture formed from the escaping smoke of a tobacco product and smoke exhaled by the smoker. In comprehensive reviews published by the U.S. Surgeon General, the U.S. Environmental Protection Agency, and the National Research Council, ETS exposure has been found to be causally associated with a number of adverse health effects including lung cancer, childhood asthma and lower respiratory tract infections.

While State law, HRS Section 328K-2, prohibits smoking in most areas that are open to the public, the Council finds that nonsmokers should have greater protection against ETS in most areas of the City. Accordingly, the purpose of this ordinance is to extend the prohibitions against smoking in Chapter 41, Article 21, ROH 1990, to additional areas of the City.

SECTION 2. Section 41-21.1, Revised Ordinances of Honolulu 1990, is amended by amending the definitions of "Bar" and "Restaurant," deleting the definition of "Nightclub," and adding new definitions of "Incidental," "Food court," "Food court seating area," "Enclosed or partially enclosed food court," and "Separate open air area of a restaurant" to be appropriately inserted and to read as follows:



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"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 [is] 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. "Incidental" means less than one third of gross sales of alcoholic beverages as opposed to food sales.

"Food court" means an area with more than one restaurant and seating that is not subject to the exclusive use or possession of any restaurant, but is made available to the patrons of every restaurant in or other tenant of the area. The definition of "food court" under Section 9-3.5 shall not apply to this Article. "Food court seating area" means the portion of a food court with unreserved seating for patrons of any restaurant or other tenant of the food court. An "enclosed or partially enclosed food court" means a food court that is within an "enclosed or partially enclosed area" as defined under Section 41-21.2(j).

["Nightclub" means a bar in which live entertainment or recorded music is provided and in which facilities for dancing by the patrons are provided.]

"Restaurant" means any retail eating establishment where [meals or] 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 [service] 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



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establishment that is a "restaurant" shall have that status for all hours of operation.

"Separate open air area of a restaurant" means an area, roofed or not, of a restaurant's premises that is both:

- (1) Directly exposed to the outside environment on every side, except a side abutting (A) an indoor area of the restaurant, (B) any building that does not house the restaurant, or (C) any other enclosed or partially enclosed place or area where smoking is prohibited by this Article or HRS Chapter 328K; and
- (2) Entirely separated from any abutting area, building, or place listed under subdivision (1) by either of the following:
 - (A) At least 10 feet of space that is outside the walls of the building housing the restaurant; or
 - (B) A solid wall (i) without any opening or (ii) with either or both of the following, but no other opening: a closable doorway that stays closed except when a person passes through or a closable serving window that stays closed except when food, drink, or eating ware is passed through. A "solid wall" means a wall constructed of rigid material that reaches from floor to ceiling. It may have an unopenable plate glass window. A "serving window" means a window through which food, drink, or eating ware may be passed from one area of a restaurant to another area of the restaurant.

A side of a restaurant area shall be deemed "directly exposed to the outside environment" if the entire side is unenclosed or enclosed only by a barrier of not more than four feet high from the floor. An "indoor area of a restaurant" means the area within the walls of the building housing all or part of a restaurant's premises."



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SECTION 3. Section 41-21.2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 41-21.2 Prohibition of smoking in certain places.

Except as otherwise provided herein, smoking shall be prohibited in the following places within the City and County of Honolulu:

- (a) Elevators in buildings generally open to and used by the public, including elevators in apartment and other multiunit residential buildings.
- (b) 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.
- (c) Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that said room, hall or auditorium is open to the public for such exhibition.
- (d) Museums, libraries and galleries.
- (e) All areas within city-owned or controlled buildings except any dwelling unit or lodging unit, as those terms are defined by Section 21-10.1, when not used as a child care, adult day care or health care facility.
- (f) Except as provided in Section 41-21.3[,] or as limited by this subsection, all areas in business or charitable establishments. For the purposes of this subsection, a "business" means any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes, and "business establishment" includes, but is not limited to, any of the following establishments operated by a business:



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- (1) Any school;
- (2) Any hotel, except individual hotel rooms;
- (3) Any financial institution;
- (4) Any industrial, commercial or wholesale establishment;
- (5) Any utility; [or]
- (6) Any retail establishment where goods or services are sold, leased or otherwise provided to the public or to another business[.];
- (7) Any bar within an enclosed or partially enclosed food court; or
- (8) Any restaurant; except that smoking shall be permitted in a restaurant as follows:
 - (A) Smoking shall be permitted in a separate open air area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking pursuant to subsection (h).
 - (B) Until June 30, 2003, 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 pursuant to subsection (h). 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 of the gross sales of



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alcoholic beverages to patrons for
consumption in the area;

(iii) The area is separately ventilated from any
dining area of the restaurant; and

(iv) The area is totally separated from any dining
area of the restaurant by a floor to ceiling
solid wall (A) without any opening or (B)
with a closable doorway that stays closed
except when a person passes through, but no
other opening. The solid wall may have an
unopenable plate glass window.

From July 1, 2003, this paragraph (B) shall be
invalid and smoking shall be prohibited in any
separate bar area of a restaurant.

- (g) Rest rooms. Any rest room open to the public in places specified in this section.
- (h) Notwithstanding Section 41-21.3, any area of any bar, hotel room, [nightclub,] restaurant, or governmental property which has been designated by the owner, operator, manager or other persons having control of such property as a nonsmoking area and marked with a "no smoking" sign or signs.
- (i) All enclosed or partially enclosed areas within multifamily 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 within multifamily dwellings. For purposes of this subsection, "enclosed or partially enclosed areas" means areas closed in by a roof or overhang and at least one wall. An area commonly described as a lobby or roofed mall shall be deemed enclosed or partially enclosed for purposes of this subsection.



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- (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, including but not limited to common entrance areas, lobbies, malls, food court seating areas, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings. For purposes of this subsection, an enclosed or partially enclosed area is any area for human occupancy that is contained on two or more sides by walls and is covered by a roof, ceiling, or overhang, such that the area of all permanent openings from the space to the open air is less than 50 percent of the combined areas of the walls and ceiling, roof, or overhang. If a wall does not meet the floor or the ceiling, roof or overhang, the calculation shall be based on the vertical projection of the wall to the plane of the floor or the plane of the ceiling, roof or overhang. Permanent openings shall not include doors or windows which are capable of being closed.
- (k) In the event that a building is both a multifamily dwelling and a commercial building as defined in this article, all areas except for private residences.
- (l) All vehicles owned or leased by the city.
- (m) All areas within the following parks, recreation areas or facilities under the maintenance of the department of parks and recreation and the department of enterprise services, except such areas within each site as the department of parks and recreation or the department of enterprise services may designate by appropriate signs as areas within which smoking is permissible:
- (1) Honolulu Zoo;
 - (2) Hanauma Bay Nature Preserve;
 - (3) Koko Crater Botanical Garden; and



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(4) Waikiki Shell."

SECTION 4. Section 41-21.3, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 41-21.3 Exceptions.

Smoking shall not be prohibited in the following places under this article:

- (a) Private residences, except when used as a child care, adult day care or health care facility;
- (b) Any property owned, controlled or leased by state or federal government entities;
- (c) Any hotel room;
- [(c)] (d) Any bar[;] that is not within an enclosed or partially enclosed food court; and
- [(d) Any hotel room;]
- (e) [Any nightclub; and
- (f) Any restaurant.] (1) A separate open air area of a restaurant where smoking is permitted by the business operating the restaurant pursuant to Section 41-21.2(f)(8)(A).
(2) Until June 30, 2003, a separate bar area of a restaurant where smoking is permitted by the business operating the restaurant pursuant to Section 41-21.2(f)(8)(B)."



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SECTION 5. Section 41-21.4 ("Signs"), Revised Ordinances of Honolulu 1990, is amended by amending subsection (a) to read as follows:

"(a) Clearly legible signs which include the words "smoking prohibited by law" with letters of not less than one inch in height shall be conspicuously posted in all places where smoking is prohibited by this article[, by] or the owner, operator, manager or other person having control of such place."

SECTION 6. Section 41-21.6 ("Enforcement "Administration"), Revised Ordinances of Honolulu 1990, is amended by amending subsection (b) to read as follows:

"(b) Enforcement and administration of the provisions of Section 41-21.4 shall be under the jurisdiction of the [building] department of planning and permitting of the City and County of Honolulu, which department shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of Section 41-21.4."

SECTION 7. Section 41-21.9 ("Conflict with HRS Chapter 328K"), Revised Ordinances of Honolulu 1990, is amended by amending subsection (b) to read as follows:

"(b) If any violation of this article also constitutes a violation of HRS Chapter 328K, or any successor statute, [the state statute shall control and] the violator shall be subject to the penalties and procedures set forth [thereunder.] under this article."

SECTION 8. By May 1, 2003, the revisor of ordinances shall submit to the council chair a bill proposing the repeal of provisions in Chapter 41, Article 21, Revised Ordinances of Honolulu 1990 (ROH), that permit smoking in a separate bar area of a restaurant until June 30, 2003. The bill shall be drafted to repeal provisions that will not be operative after June 30, 2003.



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SECTION 9. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.

SECTION 10. This ordinance shall take effect on July 1, 2002.

INTRODUCED BY:

John Henry Felix

Gary Okino

Steve Holmes

Duke Bainum

DATE OF INTRODUCTION:

November 13, 2001
 Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Maui T. Kawana
 Deputy Corporation Counsel

APPROVED this 21st day of February, 2002.

Jeremy Harris
 JEREMY HARRIS, Mayor
 City and County of Honolulu

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CERTIFICATE

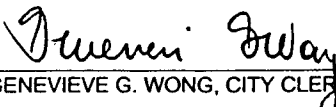
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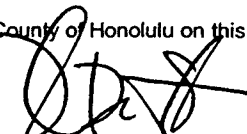
BILL 99 (2001)

INTRODUCTION DATE: NOVEMBER 13, 2001				
INTRODUCED BY: JOHN HENRY FELIX				
		AYE	NO	A/E
1ST READING DATE: 12/12/01 REMARKS: Holmes/DeSoto – Bill passed 1st reading and referred to Planning and Public Safety. – 6. Noes: DeSoto, Mansho. – 2. *Andy Mirikitani retired 12/1/01.	BAINUM	X		
	CACHOLA	X		
	DeSOTO		X	
	FELIX	X		
	HOLMES	X		
	MANSHO		X	
	MIRIKITANI	*		
	OKINO	X		
	YOSHIMURA	X		
	TOTAL	6	2	0
2ND READING DATE: 1/30/02 DRAFT: CD1 COMMITTEE REPORT: PPSCR-9 PUBLIC HEARING DATE: 1/30/02 REMARKS: Felix/Holmes – Bill passed 2nd reading, as amended. – 5. Noes: Mansho. Excused: Cachola, DeSoto. – 2. Public hearing held concurrently, closed and referred to Planning and Public Safety. * Andy Mirikitani retired 12/1/01.	BAINUM	X		
	CACHOLA			E
	DeSOTO			E
	FELIX	X		
	HOLMES	X		
	MANSHO		X	
	MIRIKITANI	*		
	OKINO	X		
	YOSHIMURA	X		
	TOTAL	5	1	2
3RD READING DATE: 2/20/02 DRAFT: CD2, FD1 COMMITTEE REPORT: PPSCR-65 REMARKS: Felix/Okino – PPSCR-65 be adopted and Bill pass 3rd reading, as amended (CD2). Bainum/Okino – Bill be amended to FD1. – 6. Noes: Mansho, DeSoto. – 2. Exc.: Cachola. – 1. Mansho/Cachola – FD1 of Bill failed to be further amended to Mansho's FD1. – 4. Noes: Bainum, Felix, Holmes, Okino, Yoshimura. – 5. 1 objection from 9 members, Council Rule Re 48-hour notice waived.. PPSCR-65 adopted and Bill passed 3rd reading, as amended (CD2, FD1). – 7. Noes: Mansho, DeSoto. – 2.	BAINUM	X		
	CACHOLA	X		
	DeSOTO		X	
	FELIX	X		
	HOLMES	X		
	KOBAYASHI	X		
	MANSHO		X	
	OKINO	X		
	YOSHIMURA	X		
	TOTAL	7	2	0

Referred to: PLANNING AND PUBLIC SAFETY
Reference:

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


GENEVIEVE G. WONG, CITY CLERK


JOHN DeSOTO, CHAIR AND PRESIDING OFFICER