

LISH Bulletin on the Honolulu Restaurant Smoking Ban

Revised Ordinances of the
City and County of Honolulu 1990

ORDINANCE 02-06
A BILL FOR AN ORDINANCE
Effective July 1, 2002

Editor's Note: The Ordinance has been edited to exclude prohibitions other than restaurants, to allow easier reading and understanding of the Ordinance. A full and complete copy of the Ordinance is available upon request. We have included the underlined new materials, but have left out deleted language. For this reason, you will notice missing numbered materials.

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:

(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 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, 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.

(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.

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;

(d) Any bar that is not within an enclosed or partially enclosed food court; and

(e) (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)."

"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. "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).

"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 Article. An 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."

Section 41-21.4 ("Signs):

(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 or the owner, operator, manager or other person having control of such place.

Section 41-21.6 ("Enforcement "Administration):

(b) Enforcement and administration of the provisions of Section 41-21.4 shall be under the jurisdiction of the 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 41-21.9 ("Conflict with HRS Chapter 328K):

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

This ordinance shall take effect on July 1, 2002.

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