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A BILL FOR AN ORDINANCE

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RELATING TO SMOKING.

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

SECTION 1. Purpose. The purpose of this ordinance is to amend the prohibition of smoking in certain places.

SECTION 2. Section 41-21.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by adding new definitions of "bus stop" and "public place" to read as follows:

""Bus stop" means "official bus stop" or "designated bus stop" as those terms are used in chapter 15, and any "courtesy bus stop" where the department of transportation services has posted a bus stop sign along a street right of way."

""Public place" means the same as defined by Section 29-1.1."

SECTION 3. Section 41-21.2, Revised Ordinances of Honolulu 1990, as amended, 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.



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- (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:
- (1) Any school;
  - (2) Any hotel, except individual hotel rooms;
  - (3) Any financial institution;
  - (4) Any industrial, commercial or wholesale establishment;
  - (5) Any utility;
  - (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;



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- (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



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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 or 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;
  - (4) Waikiki Shell;
  - (5) Duke Paoa Kahanamoku Beach Park;
  - (6) Kapiolani Beach Park;
  - (7) Kapiolani Park Beach Center;
  - (8) Kapiolani Park;
  - (9) Kuhio Beach Park; and
  - (10) Sandy Beach Park.
- (n) All sandy beach areas of Ala Moana Regional Park under the maintenance of the department of parks and recreation.
- (o) Any city bus stop. For the purposes of this subsection, the boundary of a bus stop is defined as a rectangle that at minimum includes that portion of any sidewalk and adjacent public place that includes the bus stop sign and extends



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perpendicularly from the roadway edge no more than 20 feet and parallel to the roadway for that length as demarcated by:

- (1) Any red curbing;
- (2) Any concrete pad in the roadway adjacent to the bus stop sign;
- (3) Any pair of city signs prohibiting parking at the bus stop; or
- (4) In the absence of any of the above, by a distance of 50 feet before the bus stop sign continuing through 50 feet after the bus stop sign, both distances measured in the direction of the traffic lane adjacent to the bus stop.

If the above physical indicators lead to a conflicting interpretation of the bus stop boundary, the interpretation resulting in the largest area of protection to nonsmokers shall be favored. The city may further physically demarcate the boundary of any bus stop for the purposes of this section by rule adopted pursuant to HRS Chapter 91."

SECTION 4. Section 41-21.3, Revised Ordinances of Honolulu 1990, as amended, is amended by amending subsection (b) 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;] Where the prohibition is preempted by state or federal law;
- (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)."



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SECTION 5. Section 41-21.9, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

**"Sec. 41-21.9      Conflict with HRS Chapter [328K.] 328J.**

- (a) If any provision of this article conflicts with any provision of HRS [Part I,] Chapter [328K,] 328J, or any successor statute, the more stringent provision shall control.
- (b) If any violation of this article also constitutes a violation of HRS Chapter [328K,] 328J, or any successor statute, the violator shall be subject to the penalties and procedures set forth under this article.
- (c) This section shall not be deemed to limit the powers granted to the city under HRS [subsection 328K-5(g)] Chapter 328J, or any successor statute, to enforce, administer, and adopt rules necessary to carry out HRS [Section 328K-4,] Chapter 328J, or any successor statute."

SECTION 6. 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 7. The Council is aware that at the time this bill is considered for final approval by the Council, there may be other bills that were given final approval by the Council but not enacted as an ordinance that amend the same provisions in the Revised Ordinances of Honolulu that this bill amends. If this bill is enacted as an ordinance, the Revisor of Ordinances shall give maximum effect to all amendments to the revised ordinances made in this bill and made in any other bill situated as described above. The absence in this bill of amendments made in those other bills shall not be construed as a repeal of the amendments made in those other bills.



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SECTION 8. This ordinance shall take effect 120 days after its approval.

INTRODUCED BY:

Ron Muro

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DATE OF INTRODUCTION:

APR 22 2013  
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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KIRK CALDWELL, Mayor  
City and County of Honolulu