

Smoke-Free

Restaurants & Bars

PRIVATE CLUB EXEMPTION

§130A-496:

Smoking is prohibited in all enclosed areas of restaurants and bars.

Exemptions:

1. **Designated smoking room in a lodging establishment**

2. **Cigar bar:** gross revenue from alcohol and cigars; humididor required; 21 and over only; smoke must not migrate into areas where smoking is banned by state or local law; must be freestanding structure; gross income reporting requirement

3. **Private clubs:** must maintain selective membership; must be operated by the members; restricted service only to members or members' guests; nonprofit status

What factors are used to define a private club?

- ✓ the genuine selectivity in the admission of its members;
- ✓ the membership's control over the operations of the club;
- ✓ the history of the organization;
- ✓ the use of the facility by nonmembers;
- ✓ the purpose of the club's existence;
- ✓ whether the club advertises for members;
- ✓ whether the club is for profit or nonprofit; and
- ✓ the formalities observed by the club, such as bylaws, meeting, membership cards, etc.



What do the courts say?

There is no single definition of "private club." Each factor is considered and either tips the balance in favor of or against private club status. "Genuine selectivity" is the most important factor.



Enforcement

Ultimately, businesses that are not following the smoke-free restaurants and bars law may be issued warnings and/or fines by the local health director. [§130A-497](#)

How do the food sanitation and smoke-free laws intersect?

Laws regarding food sanitation inspection/enforcement are separate from the smoke-free restaurants and bars law and do not impact the local health director's and his/her designee's ability to enforce the smoke-free law.

