

S. 195-1. Introduction

Exposure to Environmental Tobacco Smoke ("ETS") otherwise known as second-hand smoke presents a serious and substantial hazard to the public health and safety of citizens of the Town. Of particular concern is the exposure of non-smokers to ETS in Public Places within the Town.

S. 195-2. Purpose

The purpose and intent of this By-Law is to:

- A. protect the public health and welfare by restricting smoking in all Public Places, and
- B. assure smoke-free air for non-smokers, and
- C. recognize that the need to breathe smoke-free air shall have priority over the desire to Smoke in Public Places.

S. 195-3. Authority

This by-law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution and M.G.L. Chapter 43B section 13. The Board of Health is delegated hereby the responsibility and authority to enforce and administer this By-Law, including without limitation, the power to: investigate and respond to complaints, conduct inspections, hold hearings, and assess fines. The Board may re-delegate such aspects of By-Law administration to employees or agents of the Board as it may from time-to-time determine.

S. 195-4. Definitions.

Bar/Lounge. An establishment which is licensed for the sale of alcoholic beverages to the public for consumption by Persons on the premises of the establishment and which may serve food incidental to the consumption of such alcoholic beverages.

Board- The Board of Health of the Town of Easton.

Function Hall/Function Room- A free-standing structure ("Structure" as defined in the Zoning By-Laws) or a separate, enclosed room within a Public Place used for social functions.

Health Care Facility- Any office or institution providing care or treatment of diseases or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Indoor Sports Facility- Those sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys or other similar recreational facilities where individuals assemble either to (i) engage in physical exercise, or (ii) participate in athletic competition or (iii) watch other individuals participate in such competition.

Person- Any natural person and any entity, including without limitation, any corporation, partnership, limited liability company, unincorporated association or trust.

Public Place- Any building or facility owned, leased, operated or occupied by the Town including school buildings; any building or facility opened to the general public including: libraries; museums; theaters; auditoriums; Indoor Sports Facilities; inns, hotels and motels; educational facilities; shopping malls; public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public; licensed child-care facilities; Bars/Lounges; Restaurants; Function Halls/Function Rooms; Health Care Facilities; Retail Food Stores and Retail Stores. The following are specifically excluded from the definition of Public Place:

1. Inn, hotel and motel rooms rented to guests and designated as "Smoking" rooms.
2. Function Halls/Function Rooms when they are being used for a private social function in which the sponsor of the private function chooses the Persons in attendance.

Restaurant- A food service establishment in which food is prepared and intended for individual portion service and including the site at which individual portions are provided to the public. The term includes such place regardless of whether consumption of the food is on or off the premises and regardless of whether there is a charge for the food.

Retail Food Store- Any establishment or section of an establishment where food and food products are offered to the Public and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only, supermarkets, grocery stores, bakeries and convenience stores.

Retail Store- Any establishment whose primary purpose is to sell or offer for sale to consumers (but not for resale) any goods, wares, merchandise, articles or other things, including Retail Food Stores but not Restaurants.

Smoke/Smoking- The lighting of, or having possession of any lighted cigar, cigarette, pipe or similar tobacco product.

Town- The Town of Easton.

S. 195-5. Smoking Prohibited.

No Person shall Smoke in a Public Place and no Person having the care, custody or control of a Public Place shall permit or suffer any Person to Smoke in a Public Place.

S. 195-6. Notice must be posted.

Every Person having the care, custody or control of a Public Place shall cause to be continuously and conspicuously displayed "No Smoking" signs in numbers the Board deems sufficient so that any person who is within a Public Place shall have received reasonable warning that Smoking is prohibited within such Public Place. "No Smoking" signs shall be comparable in size and style to those provided by the Massachusetts Department of Public Health and shall display prominently the international "no Smoking" symbol as well as the words "No Smoking".

S. 195-7. Violations

Each instance of the following shall constitute a violation of this By-Law:

- A. Smoking by any Person within a Public Place.
- B. Any person having care, custody or control of a Public Place:
 - 1. Permitting or suffering any Person to Smoke in a Public Place.
 - 2. Failing to ask any Person who declines to desist from smoking in a Public Place to leave the Public Place.
 - 3. Failing to post and thereafter continuously to maintain "No Smoking" signs as contemplated by this By-Law.
- C. Failure of any Person to comply with this By-Law or with a lawful order of the Board issued pursuant to this By-Law.

Each instance of violation or non-compliance shall constitute a separate offense.

S. 195-8. Penalties.

Any Person who violates this By-Law shall be subject to a fine of one hundred dollars (\$100.00) for a first violation, two hundred dollars (\$200.00) for a second violation and three hundred dollars (\$300.00) for the third and each subsequent violation. The Board is granted the discretion on a case-by-case basis to issue a warning without fine for a first offense. Any person assessed a penalty hereunder, within fifteen days of assessment, in a writing, may request a hearing before the Board to show cause why the assessment of the penalty was without substantial basis in fact or law.

S. 195-9. Appeals.

A Person aggrieved by a decision of the Board under this By-Law may appeal such decision to the appropriate court of competent jurisdiction as provided by the laws of the Commonwealth.

S. 195-10. Severability.

If any clause, section, or other part of this By-Law shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this By-Law shall not be affected thereby but shall remain in full force and effect.