



Ohio Administrative Code Rule 3701-52-01 Definitions.

Effective: July 16, 2018

As used in this chapter:

(A) "Ashtray" means any receptacle that is used for disposing of smoking materials including but not limited to ash and filters.

(B) "Club" as set forth in division (B)(13) of section 4301.01 of the Revised Code means a corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part of a permanent building operated solely for the purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

(C) "Department" means the Ohio department of health or its authorized designee, unless otherwise specified.

(D) "Directly or indirectly under the control" means the ability to exercise authority over an area based upon property rights set forth under a real estate lease, title, or deed.

(E) "Director" means the director of health or the director's authorized representative.

(F) "Employee" means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.

(G) "Employer" means the state or any individual, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.

(H) "Enclosed area" means an area with a roof or other overhead covering of any kind and walls or



side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

(I) "Enter" as used in division (B) of section 3794.02 of the Revised Code and paragraph (B) of rule 3701-52-02 of the Administrative Code means any physical movement of tobacco smoke into any area in which smoking is prohibited under Chapter 3794. of the Revised Code through entrances, windows, ventilation systems, or other means.

(J) "Entrance" means a doorway through which pedestrians, including the public or employees, enter a public place or place of employment. Entrance does not mean doorways through which vehicles pass or through which the loading or unloading of materials including but not limited to cargo or goods takes place.

(K) "Hotel or motel" for the purposes of the exemption in division (B) of section 3794.03 of the Revised Code shall have the same meaning as set forth in section 3731.01 of the Revised Code.

(L) "Migrate" or "migration" means the transit or movement of tobacco smoke from one place to another, regardless of cause, including but not limited to, movement of tobacco smoke induced or caused by changes in air flow.

(M) "Outdoor patio" as defined in division (I) of section 3794.01 of the Revised Code, means an area that is either enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides or has no roof or other overhead covering regardless of the number of walls or other side coverings. Outdoor patios:

(1) May be located immediately adjacent to locations of ingress or egress to the public place or place of employment, but shall be physically separated from any enclosed area. Notwithstanding rule 3701-52-04 of the Administrative Code, a proprietor shall comply with divisions (A) and (B) of section 3794.02 of the Revised Code and paragraphs (A) and (B) of rule 3701-52-02 of the Administrative Code;

(2) When smoking is permitted, the outdoor patio shall be open to the air. For the purpose of this chapter, "open to the air" means the patio has thorough, unobstructed circulation of outside air to all



parts of the outdoor patio.

(a) An outdoor patio shall be presumed to be open to the air when not more than fifty per cent of the combined surface area of an outdoor patio's sides is covered by walls or side coverings. For purposes of division (F) of section 3794.03 of the Revised Code, in accordance with division (I) of section 3794.01 of the Revised Code, "walls or side coverings" means any partition, permanent or temporary, that is used to divide or enclose an area.

(b) An outdoor patio that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or side coverings, shall be regarded as an enclosed area when the walls or coverings are in place and smoking shall not be allowed; and

(c) The presence of tobacco smoke in one or more areas of the outdoor patio shall not be the sole factor in determining compliance with this chapter.

(3) For purposes of division (F) of section 3794.03 of the Revised Code, division (I) of section 3794.01 of the Revised Code, and this chapter, a "roof or other overhead covering" shall include any structure or arrangement above the outdoor patio, including substantial coverage by umbrellas or awnings, that may impede the flow of air into the patio, regardless of the type or nature of roof or other overhead covering. A roof or other overhead covering does not include materials provided by a proprietor to ensure security in a confined residential setting when the outdoor patio is otherwise open to the air.

(N) "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees.

(O) "Private residence" means, except as otherwise provided by division (A) of section 3794.03 of the Revised Code, a dwelling or area of a dwelling where there is a reasonable expectation of privacy and used as an individual's residence, including employer-provided housing.



(P) "Proprietor" means an employer, owner, manager, operator, liquor permit holder, or person in charge or control of a public place or place of employment.

(Q) "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.

(R) "Retail tobacco store" means a retail establishment that derives more than eighty percent of its gross revenue from the sale of cigars, cigarettes, pipes, or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or of any establishment with a liquor permit or any restaurant.

(S) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

(T) "Smoking device" means any lighted cigar, cigarette, pipe or other device designed for burning tobacco or any plant for the purposes of inhaling smoke. Smoking device does not mean devices designed and primarily used for the burning of any plant for cooking, heating, or illumination purposes and specifically excludes wood-fired ovens, smokers, grills, fireplaces, wood-burning stoves and candles.

(U) "Vehicle" means any of the following:

(1) An enclosed motor vehicle registered by the Ohio bureau of motor vehicles while used for business purposes when it is occupied by one or more non-smoking persons;

(2) A motor vehicle registered by the Ohio bureau of motor vehicles that is part of a business motor pool and shared by non-smoking employees;

(3) A motor vehicle registered by the Ohio bureau of motor vehicles that is used for public mass transit; or



(4) Tourist or scenic railcars operated exclusively in Ohio.