



## Ohio Administrative Code Rule 3701-52-01 Definitions.

Effective: November 16, 2023

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(A) "Ashtray" means any receptacle that is used for disposing of smoking materials including ash, butts, 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) "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. "Electronic smoking device" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "Electronic smoking device" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(G) "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.



(H) "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.

(I) "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. For purposes of this chapter, a "roof or other overhead covering" includes any structure or arrangement above and area, including an outdoor patio, including substantial coverage by umbrellas or awnings, that may impede the flow of air into the area, 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 on an outdoor patio that is otherwise open to the air.

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

(K) "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.

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

(M) "Migrate" or "migration" means the transit or movement of tobacco smoke from one place to another, regardless of cause, including the movement of tobacco smoke induced or caused by changes in air flow.

(N) "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.

(O) "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 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.

(P) "Private residence" means a dwelling or area of a dwelling used as an individual's private residence where there is a reasonable expectation of privacy, including employer-provided housing. "Private residence" does not mean a dwelling or area of a dwelling used as an individual's residence during the hours in which the dwelling or area of the dwelling is operated as a childcare facility for compensation, as described in paragraph (B) of rule 3701-52-04 of the Administrative Code.

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

(R) "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.

(S) "Retail tobacco store" means a retail establishment that derives more than eighty per cent of its gross revenue from the sale of lighted or heated tobacco products 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 of any restaurant.

(T) "Retail vapor store" means a retail establishment that derives more than eighty per cent of its gross revenue from the sale of vapor products, electronic smoking devices, or other electronic smoking product accessories and for which the sale of other products is merely incidental. "Retail vapor store" does not include a section of a larger commercial establishment or of an establishment with a liquor license or that is a restaurant.



(U) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or any plant product intended for inhalation in any manner or in any form. Smoking includes the use of an electronic smoking device and a vapor product. "Smoking" does not include the burning of incense in a religious ceremony.

(V) "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 purpose.

(W) "Tobacco product" means any product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquid used in electronic smoking devices whether or not they contain nicotine. "Tobacco product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(X) "Vapor product" means a product, other than a cigarette or other tobacco product as defined in Chapter 5743. of the Revised Code, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. "Vapor product" includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. "Vapor product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g). "Vapor product" includes any product containing nicotine, regardless of concentration.

(Y) "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 part of a business motor pool and shared by non-smoking employees;

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