



Ohio Administrative Code

Rule 3701-52-02 Responsibilities of proprietor.

Effective: November 16, 2023

(A) Except as permitted in section 3794.03 of the Revised Code, no proprietor will permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.

(B) In addition to the requirements of paragraph (A) of this rule, a proprietor will take reasonable steps including requesting individuals to cease smoking, to ensure that tobacco smoke, in an area directly or indirectly under the control of the proprietor, does not enter any area in which smoking is prohibited under Chapter 3794. of the Revised Code and this chapter through entrances, windows, ventilation systems, or other means.

(C) For a public place or place of employment that includes an "outdoor patio" as defined in paragraph (N) of rule 3701-52-01 of the Administrative Code, the "outdoor patio":

(1) May be located immediately adjacent to locations of ingress or egress to the public place or place of employment, but will be physically separated from any enclosed area. Notwithstanding rule 3701-52-04 of the Administrative Code, a proprietor will 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 will 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 will 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 barrier or obstruction, permanent or



temporary, that divides or encloses an area; and

(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, will be regarded as an enclosed area when the walls or coverings are in place and smoking will not be permitted.

(D) A proprietor will not be deemed in violation of Chapter 3794. of the Revised Code and this chapter if any smoke inadvertently enters the public place or place of employment, including entry through entrances, windows, ventilation systems, or other means, from an area that is not under the proprietors direct or indirect control.

(E) A proprietor will post "No Smoking" signs or the international "No Smoking" symbol in accordance with the requirements of Chapter 3794. of the Revised Code and rule 3701-52-07 of the Administrative Code.

(F) A proprietor will identify himself or herself upon the request of the department.

(G) A proprietor will remove ashtrays and other receptacles used for disposing of smoking materials pursuant to Chapter 3794. of the Revised Code and this chapter. If ashtrays and other receptacles used for disposing of smoking materials are of historic or architectural value and were affixed to real property prior to December 7, 2006, such ashtrays and other receptacles may remain if they are not used for disposal of smoking materials. Division (B) of section 3794.06 of the Revised Code and this rule will not apply to ashtrays and other receptacles that are part of a vehicle if they are not used for the disposal of smoking materials.

(1) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials in areas where smoking is not prohibited under Chapter 3794. of the Revised Code and this chapter.

(2) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials solely for the purpose of disposing smoking materials prior to entering a place of employment or public place.

(3) A proprietor may store empty and clean ashtrays and other receptacles used for disposing of



smoking materials in a location within an area where smoking is prohibited if the:

(a) Location has no public access;

(b) Location is used primarily for storage purposes;

(c) Location is not in an area where food or beverages are prepared or dispensed; and

(d) Ashtrays or other receptacles are used in accordance with paragraphs (G)(1) and (G)(2) of this rule.

(H) A proprietor, during hours of operation and at times when the the public place or place of employment is occupied by the owner, proprietor, or any employee, will, upon request, provide the department or its authorized designee with immediate access to the following:

(1) The premises;

(2) All parts of the facilities and premises therein;

(3) Staff; and

(4) Pertinent records upon request.

(I) A proprietor's failure to allow access to facilities, staff, and records in accordance with paragraph (H) of this rule, may result in the imposition of civil penalties and fines in accordance with paragraphs (A) and (F) of rule 3701-52-10 of the Administrative Code.

(J) No person will discharge, refuse to hire, or in any manner retaliate against any individual for exercising any right, including reporting a violation, or performing any obligation under Chapter 3794. of the Revised Code or this chapter.