



## Ohio Administrative Code

### Rule 3701-52-04 Areas where smoking is not regulated.

Effective: November 16, 2023

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(A) All areas set forth in section 3794.03 of the Revised Code are exempt from the provisions of Chapter 3794. of the Revised Code and this chapter.

(B) A private residence, except during the hours of operation as a child care facility for compensation, is not subject to Chapter 3794. of the Revised Code or this chapter:

(1) During the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present; or

(2) In which an individual is employed only on an intermittent basis. This includes, but is not limited to, situations where individuals perform services for the owner of the residence or individuals residing in the residence such as those services performed by plumbers, electricians, remodelers, and housekeepers.

(C) A family owned place of employment, in which contractors or third parties not under the direction and control of the family owned place of employment are intermittently present, is not subject to Chapter 3794. of the Revised Code or this chapter.

(D) A private residence or portion of a private residence that is licensed or certified by the state or federal government to provide overnight accommodations and supervision or personal care services to unrelated individuals is not subject to Chapter 3794. of the Revised Code or this chapter. Notwithstanding this paragraph, smoking may be prohibited by other applicable laws or rules.

(E) Only to the extent necessary to comply with division (A)(18) of section 3721.13 of the Revised Code, an institution, residence or facility that provides for a period of more than twenty-four hours, whether for profit or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, is not subject to Chapter 3794. of the Revised Code and this chapter.



This includes:

- (1) A nursing home as defined in section 3721.01 of the Revised Code;
  - (2) A residential care facility as defined in section 3721.01 of the Revised Code;
  - (3) The Ohio veteran's home;
  - (4) Any facility or part of a facility that is defined as a skilled nursing facility under Title XVIII of the "Social Security Act" 79 Stat. 286 (1965). 42 U.S.C.A. 1395 and 1396;
  - (5) Any facility defined as a nursing facility as defined in section 5165.01 of the Revised Code; or
  - (6) A county home or district home operated pursuant to Chapter 5155. of the Revised Code
- (F) In accordance with section 3794. of the Revised Code, rule 3701-17-20 of the Administrative Code, and paragraph (E) of this rule: A designated indoor smoking area, that is separately enclosed and separately ventilated, may be provided for the exclusive use of residents during specific times when the indoor area may be used for smoking. No employees will be required to accompany a resident into a designated indoor smoking area or perform services in such an area when being used for smoking, unless they have volunteered to do so.
- (G) If portions of an institution, residence, or facility are private residences, such as apartments, those private residential portions are governed by rules in this chapter applicable to private residences, unless otherwise prohibited by applicable laws or rules.
- (H) Outdoor smoking by residents of institutions, residences or facilities specified in paragraph (E) of this rule is permitted to the extent necessary to comply with division (A)(18) of section 3721.13 of the Revised Code.
- (I) Outdoor patios, as defined in paragraph (N) of rule 3701-52-01 of the Administrative Code and meet the requirements of paragraph (C) of rule 3701-52-02 of the Administrative Code, that are open to the air.



(J) An enclosed space in a laboratory facility at an accredited college or university, when used solely and exclusively for clinical research activities by a person, organization, or other entity conducting institutional review board-approved scientific or medical research related to the health effects of smoking or the use of tobacco products. The enclosed space will not be open to the public and will be designed to minimize exposure of nonsmokers to smoke. The program administrator will annually file a notice of new research with the department of health on a form prescribed by the department.