

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

- (A) All areas set forth in section 3794.03 of the Revised Code shall be exempt from the provisions of Chapter 3794. of the Revised Code and this chapter.
- (B) In accordance with division (A) of section 3794.03 of the Revised Code, a private residence in which an individual is employed only on an intermittent basis is not subject to Chapter 3794. of the Revised Code or this chapter. 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) In accordance with division (C) of section 3794.03 of the Revised Code, 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) 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, including a nursing home, residential care facility, the Ohio veteran's home, 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, or as a nursing facility as defined in section 5111.20 of the Revised Code, and a county home or district home operated pursuant to Chapter 5155. of the Revised Code are not subject to Chapter 3794. of the Revised Code and this chapter, only to the extent necessary to comply with division (A)(18) of section 3721.13 of the Revised Code.
 - (1) 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 shall 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.
 - (2) 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.
 - (3) Outdoor smoking by residents of institutions, residences or facilities specified in paragraph (D) of this rule is permitted to the extent necessary to comply with division (A)(18) of section 3721.13 of the Revised Code.
- (F) Outdoor patios 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 this rule, 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.

- (1) When smoking is permitted, the outdoor patio shall be open to the air. "Open to the air" shall mean the patio has thorough, unobstructed circulation of outside air to all parts of the outdoor patio.
 - (2) Any 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. 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.
 - (3) For purposes of division (F) of section 3794.03 of the Revised Code and this paragraph, 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. For the purposes of division (F) of section 3794.03 and this rule, 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.
- (G) Private clubs shall be exempt from the provisions of Chapter 3794. of the Revised Code and Chapter 3701-52 of the Administrative Code provided all of the following apply: the club has no employees; the club is organized as a not for profit entity; only members of the club are present in the club's building; no persons under the age of eighteen are present in the club's building; the club is located in a freestanding structure occupied solely by the club; smoke from the club does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter; and, if the club serves alcohol, it holds a valid D4 liquor permit.

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Certification

07/15/2013

Date

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