



City of Gloucester **Board of Health**

REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF ADULT-USE MARIJUANA ESTABLISHMENTS AND THE SALE OF ADULT-USE MARIJUANA

**Adopted
November 1, 2018**



Public Health
Prevent. Promote. Protect.
Gloucester Health Department

**REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION
OF ADULT-USE MARIJUANA ESTABLISHMENTS AND THE
SALE OF ADULT-USE MARIJUANA**

1. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation and the use and distribution of adult-use marijuana not medically prescribed on November 8, 2016 pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Adult-use marijuana; and

Whereas, the prevention of the illegal use and distribution of marijuana, particularly to youth, is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, Chapter 55 of the Acts of 2017 specifically allows municipalities to “adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments” specifically related to “the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories” provided that such restrictions “are not unreasonably impracticable and are not in conflict” with the state statute or regulations regulating marijuana sales; and

Whereas, local oversight and inspection of adult-use marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas, the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”¹

¹ Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

2. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and General Law Chapter 94G. In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Gloucester Board of Health.

Board of Health: City of Gloucester Board of Health and its designated board of health agents.

Board of Health Agent: The Director of Public Health in the City of Gloucester and any city employee designated by the board of health, which may include board of health and/or health department staff, law enforcement officers, fire officials and code enforcement officers.

Business Agent: An individual who has been designated by the owner or operator of any adult-use marijuana establishment to be the manager or otherwise in charge of said establishment.

Edible Marijuana Products: A marijuana product that is to be consumed by humans by eating or drinking and is sold or made by a facility licensed as a Marijuana Establishment under 935 CMR 500.000.

Marijuana or Marihuana: All parts of any plant of the genus cannabis, not excepted below, and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94G of the General Laws.

“Marijuana” shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any other ingredient combined with adult-use marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Accessories: Equipment, products, devices or materials of any kind that are intended or designed for or may be used to ingest, inhale or otherwise introduce adult-use marijuana into the human body.

Marijuana Establishment: Any type of marijuana-related business licensed by the Cannabis Control Commission (CCC) pursuant to 935 CMR 500.050, including a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer independent testing laboratory, marijuana retailer, marijuana transporter and marijuana micro-business.

Marijuana Products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Minimum Legal Sales Age: The age an individual must be before that individual can be sold a marijuana product in the municipality.

Operating Permit Holder: Any person engaged in the cultivation, sale, distribution or delivery of marijuana who applies for and receives an operating permit from the City of Gloucester, or any person who is required to apply for an operating permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Self-Service Display: Any display from which customers may select marijuana or a marijuana-infused product without assistance from an establishment.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes adult-use marijuana products.

3. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell marijuana or permit marijuana, as defined herein, to be sold to a person under the minimum legal sales age; or give marijuana or marijuana products as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Gloucester is 21 years of age.
2. Each person selling or distributing marijuana or marijuana products as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth and showing that the purchaser is 21 years of age or older.
3. All retail sales of marijuana or marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location. If and when delivery of marijuana is authorized and licensed under state regulation, sales must be in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein.

4. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana or marijuana products, as defined herein, within the City of Gloucester, without first obtaining a Marijuana Operating Permit issued annually by the Gloucester Board of Health. Only owners of establishments with a permanent, non-mobile location in Gloucester are eligible to apply for an operating permit at a specific location in Gloucester and must meet the following application requirements:
 - a. All applicants shall certify that they are compliant with all local and state laws, regulations, ordinances/bylaws, including proof of a current license with the CCC and be prepared to show proof if requested.
 - b. A marijuana delivery-only establishment, if authorized and licensed under state regulation, shall not be required to have a permanent non-mobile location but shall have an in-state permanent business office address and contact information available. Upon request, the establishment must share information about the current location and destination of its employees with the Gloucester Board of Health.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other products.

3. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides marijuana or a marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with Gloucester's regulation(s). Each applicant is required to sign a statement declaring that the applicant has read the regulation(s) and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales about federal, state and local laws regarding the sale of marijuana, including the regulation(s).
5. A separate Marijuana Operating Permit pursuant to this section, displayed conspicuously, is required for each Marijuana Establishment, with fee determined by the Gloucester Board of Health.
6. A Marijuana Operating Permit is non-transferable. Each new owner of a Marijuana Establishment must apply for a new permit.
7. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to periodic inspections of the Marijuana Establishment, including any off-site location where business is conducted relating to the manufacture or sale of marijuana at the Marijuana Establishment.
8. A Marijuana Operating Permit shall not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired without an appeal having been filed and/or the permit holder has not satisfied any outstanding permit suspensions. If a violation was enforced by non-criminal dispositions, any appeal shall be taken pursuant to G.L. c. 40, §21D.
9. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age two (2) times within the previous permit year and either the time to appeal has expired without an appeal having been filed or the appeal(s) was unsuccessful. The permit holder may request a hearing pursuant to this regulation prior to non-renewal. Hearing will be held pursuant to Section L of this regulation.

10. No person under the minimum legal sales age shall be permitted to enter an establishment with a Marijuana Operating Permit unless the establishment is co-located with a medical marijuana treatment center as defined in 935 CMR 500.002, the individual is in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program, and is in compliance with 105 CMR 725.000 (Implementation of the Act for the Humanitarian Medical Use of Marijuana).
11. A retail marijuana establishment shall sell primarily marijuana, edible marijuana products and marijuana accessories. The sale of other products must be merely incidental (less than 10% of total sales). A retail marijuana establishment is prohibited from holding a tobacco sales permit, retail or wholesale food permit or a license that permits the sale or distribution of any alcoholic beverage in any form.
12. In no instance shall a Marijuana Operating Permit be issued to any establishment within five hundred (500) feet of a pre-existing public or private school where children attend classes in kindergarten programs or grades one (1) to twelve (12). Distances shall be calculated by direct measurement from the nearest property line of the land used for purposes described above to the nearest portion of the building in which the marijuana establishment is located using a route of direct pedestrian access.
13. All Marijuana Operating Permits expire annually on June 30th.

5. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:

The manufacture of all edible marijuana products shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable local and state regulations. All Marijuana Establishments, including those that develop or process edible marijuana products, shall comply with the sanitary requirements in 105 CMR 500.000: Good Manufacturing Practices for Food. All edible products shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments. The Gloucester Health Department shall also conduct a bi-annual Retail Food Establishment inspection of recreational marijuana edible products to enforce Good Manufacturing Standards for Food. Retail marijuana establishments must comply with all provisions of 935 CMR 500 pertaining to waste storage and disposal. Additionally, all waste is kept secure and locked at all times.

6. Out-of-Package Sales:

The sale or distribution of edible marijuana products in any form other than an original factory-wrapped package is prohibited, including the repackaging and sale of an edible marijuana product for retail sale.

7. Self-Service Displays:

All self-service displays of marijuana products are prohibited.

8. Vending Machines:

All vending machines containing marijuana products are prohibited.

9. Marijuana Accessories:

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores.

10. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all state and local laws, ordinances, regulations or policies. These shall include, where applicable but not limited to, compliance with Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 935 CMR 500.000, secondhand smoke laws and regulations, electronic cigarette laws and regulations, nuisance laws and regulations and all requirements associated with zoning and other local permitting. Violation of any such law, not including federal laws relating to marijuana, shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.
2. A marijuana establishment shall submit a security plan for review to the Gloucester Police Department and the Gloucester Board of Health detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises.

3. The Gloucester Board of Health, in consultation with the Gloucester Police Department, and other city officials and departments may set limitations on the hours of operation of any marijuana establishment similar to the City's hours of operation for alcohol retailers.
4. The Gloucester Board of Health may require the distribution of additional educational materials in marijuana establishments.

11. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Gloucester Board of Health and/or its designated agent(s) and the Gloucester Police Department.
2. Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement action with the Gloucester Board of Health and/or its designees. The Gloucester Health Department and/or the Gloucester Police Department, or either department's designated agent, shall conduct periodic inspections for compliance.
3. If permissible by local bylaws/ordinances, any fines or fees collected pursuant to this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to this regulation related to the operation of marijuana establishments or the sale and use of marijuana.
4. It shall be the responsibility of the Marijuana Operating Permit holder and business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of this regulation may receive a written warning citation, a fine, a Marijuana Operating Permit suspension, or a Marijuana Operating Permit revocation, consistent with precepts outlined in City of Gloucester tobacco regulations for penalties.
5. Any permit holder or any person or entity charged with the violation of any provision of this regulation shall receive a notice of violation from the Gloucester Board of Health and/or its designated agent. Unless an appeal of such violation notice is waived by the permit holder, or any person or entity charged, the Gloucester Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/or issue a permit revocation order.

6. Prior to issuing any suspension or revocation, the Gloucester Board of Health shall provide notice to the permit holder of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Gloucester Board of Health may suspend or revoke the permit if the Gloucester Board of Health finds that a violation of this regulation occurred.
7. Alternatively, violations of this regulation may be enforced by the non-criminal method of disposition as provided in G.L. c. 40, § 21D and as enabled pursuant to City of Gloucester's enabling ordinance, regulations or bylaw.
8. Each day a violation exists shall be deemed a separate offense.

12. Variances:

1. A variance from this regulation must be requested in writing to the Gloucester Board of Health. A variance may be granted by the Gloucester Board of Health after a hearing at which time the applicant establishes the following:
 - a. Strict enforcement of this regulation would do manifest injustice; and
 - b. The variance shall not impair the public health and safety or the environment.
2. The Gloucester Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

13. Severability:

If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

Effective Date:

This regulation shall take effect immediately upon passage by the Gloucester Board of Health.

Other:

In the event of a discrepancy between this regulation and other City or State regulations, the more restrictive of these will be enforced.

Signed into effect by the Gloucester Board of Health

Dr. Richard Sagall, Chair

Robert Harris, Vice Chair

Fredrick Cowan, Board Member

Joseph J. Rosa, PhD, Board Member

Claudia Schweitzer, MSW, Board Member

Dated: _____