

TOWN OF GILL BOARD OF HEALTH
REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF
MARIJUANA ESTABLISHMENTS AND THE SALE OF MARIJUANA

Adopted: DATE TBD

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation of the use and distribution of 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 Marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving 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, local oversight and inspection of 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 had held that ". . . the right to engage in business must yield to the paramount right of government to protect public health by any rational means (*Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).)

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Gill's residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §31, the Board of Health of Gill enacts a Regulation to Ensure the Sanitary and Safe Operations of Marijuana Establishments and the Sale of Marijuana in the Town of Gill as follows.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CRM 500.000 and in General Law. Chapter 94. §1.

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 maintains a valid permit for the retail sale of tobacco products as required to the issued by the Gill Board of Health.

Board of Health: Town of Gill Board of Health and its designated board of health agents.

Board of Heath Agent: The Regional Health Agent, designated by the board of health, which may include board of health staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent An individual who has been designated by the owner or operator of any marijuana establishment to be the manager or otherwise in charge of said establishment or an individual who has been legally authorized to act on the behalf of the owner or operator.

Edible Marijuana Product: A marijuana product that is to be consumed by humans by eating or drinking.

Marijuana: 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; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as described in section 1 of chapter 94C of the General Laws.

"Marijuana" shall not include the mature stalks of the plant, the fiber produced from the stalks, the 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 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 use in ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana Establishment: A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Cannabis Control Commission pursuant to 935 CMR 500.050 as a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent marijuana testing laboratory, storefront marijuana retailer, delivery-only marijuana retailer, marijuana primary social consumption establishment, marijuana mixed-use social consumption establishment, marijuana research facility, 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

Marijuana Retailer: an entity licensed to purchase and transfer cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

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

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

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

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

Self-Service Displays: Any display from which customers may select marijuana or a marijuana 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 marijuana or marijuana products.

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

1. No person shall sell or give marijuana or marijuana products to be sold to a person under the minimum legal sales age. The minimum legal sales age in Gill is 21.
2. Each person selling or distributing marijuana or marijuana products shall verify the age of the purchaser by means of a valid form of 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 unless and until otherwise permitted by law.

D. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana or marijuana products, as defined herein, within the Town without first obtaining a Marijuana Operating Permit issued annually by the Gill Board of Health. Only owners of establishments with a permanent, non-mobile location in Gill are eligible to apply for an operating permit at the specified location in the Town and must meet the following application requirements:
 - a. All applicants shall certify that they are in compliance with all local and state laws, regulations, bylaws and/or ordinances 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 Gill Board of Health.

2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product.
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 marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with this Gill regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales regarding federal, state and local laws regarding the sale of marijuana and this regulation.
5. Each applicant who sells, cultivates, delivers or otherwise distributes marijuana is required to provide proof of a current license issued by the Cannabis Control Commission before a Marijuana Operating Permit can be issued.
6. A separate Marijuana Operating Permit, displayed conspicuously, is required for each marijuana establishment. The permit and inspections fees for a Marijuana Operating Permit shall be determined by the Gill Board of Health.
7. A Marijuana Operating Permit is transferable only under the following circumstances, both of which require (a) a public hearing, (b) verification by the Gill Tax Collector that the local property taxes with respect to the real property currently or prospectively occupied by the Marijuana Establishment have been paid in full, and (c) verification that all outstanding Town of Gill Board of Health penalties or fees incurred by the current permit holder have been paid in full:
 - a. The Gill Board of Health may approve the transfer of a local Marijuana Operating Permit to a new owner if (1) the new owner is bound by a fully-signed purchase and sale agreement for the business and (2) the new owner has obtained all required State licenses from the Cannabis Control Commission pursuant to 935 CMR 500.050, and (3) all required local approvals, such as zoning, have been obtained.
 - b. The Gill Board of Health may approve the transfer of a local Marijuana Operating Permit to a business's new location if that new location complies with all State and local regulations, including zoning.
8. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unannounced, periodic inspection of his/her marijuana establishment, to ensure compliance with this regulation.

9. A Marijuana Operating Permit will 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 an appeal process is underway, the permit holder may continue to operate on a temporary basis until the appeal process is resolved, not to exceed 30 days or as determined by the Gill Board of Health.
10. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold marijuana or a marijuana product to a person under the minimum legal sales age two times within the previous permit year and the time to appeal has expired, without an appeal having been filed. The permit holder may request a hearing pursuant to this regulation prior to non-renewal. The hearing will be held pursuant to Section L of this regulation.
11. No individual under the minimum legal sales age shall be permitted to enter a marijuana establishment with a Marijuana Operating Permit except those individuals in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program if the establishment is co-located with a medical marijuana treatment center.
12. A retail marijuana establishment shall sell primarily marijuana, marijuana products and marijuana accessories. A retail marijuana establishment is prohibited from applying for or otherwise holding a tobacco sales permit. A retail marijuana establishment is also prohibited from holding a liquor license or selling or distributing any alcoholic beverage in any form.
13. The Maximum Number of Marijuana Operating Permits shall be limited to three (3) at any given time. No permit renewal will be denied based on the requirements of this section except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. All Marijuana Operating Permits expire annually on the thirty-first (31st) day of December.

E. Incorporation of 105 CMR 500.00 and 105 CMR 590.000:

The manufacture of all edible marijuana products and food and beverage products containing marijuana shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. Marijuana establishments and agents shall be subject to 105 CMR 500.000, "Good Manufacturing Practices for Food" and 105 CMR 590.000, "Minimum Sanitation Standards for Food Establishments" relative to edible marijuana products.

F. Incorporation of 935 CMR 500.00:

Marijuana establishments and agents shall comply with 935 CMR 500.000 "Adult Use of Marijuana".

G. 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 or dispensing of any edible marijuana product for retail sale.

H. Self-Service Displays:

All self-service displays of marijuana and marijuana products are prohibited.

I. Vending Machines:

All vending machines containing marijuana and marijuana products are prohibited.

J. Marijuana Accessories:

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

K. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana and marijuana products shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, where applicable but not be limited to compliance with food service permit requirements, secondhand smoke regulations, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.
2. In no instance shall a Marijuana Operating permit be issued to any establishment within five hundred (500) feet of a public or private school where children attend classes in kindergarten programs or grades one (1) to twelve (12), inclusive, or any subset thereof. The 500-foot distance shall be measured in a straight line from the nearest point of the facility property in question to the nearest point of the proposed Marijuana Establishment property.
3. The cultivation, processing, manufacturing, delivery, sale and use of marijuana shall not exempt any person or entity from complying with all state and local laws, ordinances, bylaws, regulations and policies. Violation of any other 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.
4. A marijuana establishment shall submit a security plan for review to the Gill Board of Health detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises. The Gill Board of Health may share the security plan and consult with the Gill Police Department during its review.

5. Unless specified by any other state or local requirement or agreement as to the hours of operation of a marijuana establishment, the Gill Board of Health, in consultation with the Gill Police Department, and other Town of Gill officials and departments, may set limitations on the hours of operation of any marijuana establishment.
6. The Gill Board of Health may require the distribution of educational materials in marijuana establishments.

L. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Gill Board of Health, its designees and the Gill Police Department.
2. Compliance inspections shall be conducted at a minimum of two (2) inspections annually.
3. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Gill Board of Health and its designees.
4. It shall be the responsibility of the Marijuana Operating Permit holder and/or business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of these regulations may receive a written warning citation, a fine (commensurate with Tobacco fines 105 CMR 665.045), a Marijuana Operating Permit suspension, or a Marijuana Operating Permit revocation.
5. Any permit holder or any person or entity charged with violation of any provision of this regulation shall receive a written notice of violation from the Gill Board of Health or its designated agent. Unless an appeal of such violation notice is waived by the permit holder or any person or entity charged, the 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 Gill Board of Health shall provide written notice to the permit holder of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a location, time and date for a hearing, the date for which shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Gill Board of Health may suspend or revoke the permit if the Board of Health finds that a violation of this regulation occurred.
7. Alternately, violations of this regulation may be enforced by the non-criminal method of disposition as provided in General Laws Chapter 40, Section 21D and as enabled pursuant to Gill's enabling bylaw.

8. Each day any violation exists shall be deemed to be a separate offense. A violation is assumed to continue until permit holder notifies the Board of Health or Regional Health Agent of correction.

M. Severability:

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

N. Effective Dates:

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

Vote by the Gill Board of Health on this _____ day of _____ 2022.

Jeffery Blomstedt _____

Edward Galipault Jr _____

Erika Heilig _____