MASSACHUSETTS GAMING COMMISSION

DRAFT REGULATIONS- new 205 CMR 118.00 through 131.00

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118.01: RFA-2 Application Requirements

(1) An applicant shall be eligible to submit an RFA-2 application only after (a) the issuance of a positive determination of suitability by the commission at the conclusion of the RFA-1 process in accordance with 205 CMR 115.05(3), and (b) payment to the commission of all application fees, additional amounts for community disbursements, and additional fees for investigations required by 205 CMR 114.00: *Fees* arising out of the RFA-1 process.

(2) An RFA-2 application, as described in 205 CMR 119.01, must be filed on or before the applicable deadline established by the commission pursuant to the instructions and process posted by the commission on its website and in the application. The commission may establish different deadlines for submission of RFA-2 applications for a category 1 license, a category 2 license, or for a region or regions. The commission will post on its website the deadline or deadlines for submission of RFA-2 applications.

(3) The commission shall have no obligation to accept or review an application issued a negative determination of administrative completeness in accordance with 205 CMR 118.03(1) submitted by the established deadline or an application submitted after the established deadline.

(4) Upon petition by the applicant to the commission in accordance with 205 CMR 102.03(4), the commission may, in its discretion, extend the time for filing a complete RFA-2 application to provide reasonable additional time for filing in cases in which extraordinary circumstances prevent a timely filing.

118.02: RFA-2 Pre-Application Consultation

(1) Before the applicable deadline for submitting RFA-2 applications, the commission or its designees may conduct one or more consultation meetings to provide guidance on RFA-2 standards and procedures to applicants found qualified pursuant to a determination of suitability at the conclusion of RFA-1 process.
(2) Information provided by the commission or its designees pursuant to 205 CMR 118.02(1)

shall be advisory in nature and shall not be binding. In the event of a conflict with such information, the provisions of M.G.L. c. 23K, 205 CMR, and the application forms and instructions issued or adopted by the commission shall prevail.

118.03: RFA-2 Administrative Completeness Review

(1) The executive director or his or her designee will conduct an administrative completeness review of each RFA-2 application and will send either a positive determination of administrative completeness or a negative determination of administrative completeness to the applicant and to the commission.

    a. Upon the issuance of a positive determination of administrative completeness, the RFA-2 application may proceed to further review under 205 CMR 118.00.
    b. Upon issuance of a negative determination of administrative completeness the RFA-2 application shall not proceed to further review under 205 CMR 118.00.
    c. If an applicant receives a negative determination of administrative completeness the executive director may, at the request of the applicant, allow the applicant to cure the deficiency in a prescribed manner and timeframe, or the applicant may file a petition for appeal, or waiver or variance in accordance with 205 CMR 102.03(4), with the commission.

(2) A positive determination of administrative completeness shall not constitute a finding with respect to the technical suitability, adequacy or accuracy of the information submitted, and shall not bar a request for further information by the commission, the bureau or their agents and employees under 205 CMR 118.04 and/or 205 CMR 112.00: *Required Information and Applicant Cooperation*.

118.04: RFA-2 Review Procedures

(1) Upon a determination that an RFA-2 application is administratively complete, the commission will determine the surrounding communities pursuant to 205 CMR 125.00: *Surrounding Communities*, determine the impacted live entertainment venues pursuant to 205 CMR 126.00: *Impacted Live Entertainment Venues*, and review the merits of the application. In doing so, the commission may, at such times and in such order as the commission deems appropriate, take some or all of the following actions:
    a. Hold one or more open meetings concerning the application;
    b. Refer the RFA-2 application, or any parts thereof, for advice and recommendations, to any or all of the following:
        i. The executive director;
        ii. The bureau;
        iii. Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;
        iv. Any office, agency, board, council, commission, authority, department, instrumentality or division of the host community or any potential surrounding community;
        v. Any consultant retained in accordance with 205 118.04(1)(c).

c. Retain, or authorize the executive director or the deputy director to retain, at the applicant's expense, such professional consultants (including without limitation financial and accounting experts, architects, engineers, environmental professionals, legal experts, gaming experts, contractor investigators, and other qualified professionals) as the commission in its discretion deems necessary and appropriate to review the application and make recommendations;
d. Receive independent evaluations of the application;
e. Require or permit presentations by the applicant and its representatives;
f. Require or permit the applicant to provide additional information and documents pursuant to 205 CMR 112.00: *Required Information and Applicant Cooperation*;
g. Require or permit the executive director, with the assistance of commission's agents and employees, to negotiate with the applicant and its agents and employees concerning potential improvements to the applicant's proposed gaming establishment, its mitigation plans, and its proposals to ensure economic and other benefits to the region and to the commonwealth;
h. Require or permit the applicant to supplement or amend its application as the commission determines to be in the best interests of the host community, one or more surrounding communities or impacted live entertainment venues, the region or the commonwealth;
i. On a regional basis for category 1 applicants or on a state-wide basis for category 2 applicants, (i) screen out and deny one or more applications, and (ii) identify finalists for further consideration;
j. In the commission's discretion, request best and final offers by finalists;

(2) The commission shall retain the discretion to take or not to take any actions under 205 CMR 118.04(1) as it deems appropriate with respect to an RFA-2 application; and the fact that the commission has or has not taken any such action with respect to one or more RFA-2 applications shall not obligate the commission to do so or not to do so with respect to any other RFA-2 application or applications.

118.05: RFA-2 Public Hearing in Host Community

(1) For each administratively complete RFA-2 application, the commission shall conduct a public hearing on the application at an open meeting of the commission pursuant to M.G.L. c. 30A, §20. The commission will send written notice of the public hearing to the applicant for a gaming license and to the city or town clerk of each host and surrounding community at least 30 days before the public hearing. The commission will post the notice of the public hearing on its website. The commission shall hold the public hearing within the host community; provided, however, that the commission may hold the public hearing in another city or town upon written request from the host community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B.

(2) The chair or his or her designee shall preside over the public hearing. The applicant and its agents and representatives shall attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Representatives of the

host community, representatives of the surrounding communities and representatives of the impacted live entertainment venues may attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Others may attend the public hearing and may make a presentation in the discretion of the commission. Prior to the hearing the commission will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of support, opposition or concern from members of a community in the vicinity of the proposed gaming establishment.

(3) For each application, the commission may in its discretion complete the public hearing in one meeting or continue the public hearing over two or more meetings. If the commission adjourns the public hearing, the commission will provide notice of the continued hearing either (a) by announcing before adjourning the date, time and place of the continued public hearing and thereafter posting notice of the continued public hearing on the commission's website, or (b) by sending and posting notice in the manner prescribed in 205 CMR 118.05(1). At the conclusion of the public hearing the commission will vote to close the public hearing.

118.06: RFA-2 License Determinations

(1) Not sooner than 30 days nor later than 90 days after the commission votes to close the public hearing under 205 CMR 118.05(3), the commission shall take action on the application. The commission may:
   a. Grant the application for a gaming license with appropriate conditions in accordance with M.G.L. c.23K, §21 and 205 CMR 120.02;
   b. Deny the application for a gaming license; or
   c. Extend the period for issuing a decision in order to obtain any additional information deemed necessary by the commission for a complete evaluation of the application; provided, however, that the extension shall be no longer than 30 days.

(2) The commission shall issue not more than 3 category 1 licenses throughout the commonwealth, and not more than 1 category 1 license per region. Within any region, if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is proposed to be located and to the commonwealth, no gaming license shall be awarded in that region.
(3) The commission shall issue not more than 1 category 2 license. If the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the commonwealth, no category 2 license shall be awarded.
(4) Upon denial of an application, the commission shall prepare and file the commission's decision and, if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact, pursuant to M.G.L. c. 23K, §17(f).

118.07: RFA-2 Administrative Proceedings – Legislative not Adjudicatory

(1) The commission's RFA-2 administrative proceedings pursuant to 205 CMR 118.01 through 118.06 are administrative and legislative in nature, not adjudicatory.
(2) Each applicant must present all information required by the commission in the RFA-2 application truthfully, fully and under oath; however, unless otherwise required by the commission, RFA-2 administrative proceedings pursuant to 205 CMR 118.01 through 118.06 shall: (a) involve public hearings that are not adversarial in nature; (b) involve no specific charges, legal right or privilege; (c) provide no opportunity for cross-examination of witnesses under oath in a hearing; (d) afford the opportunity for public comments including unsworn statements and letters of support, opposition or concern by persons advocating for or against the application; and (e) involve a final decision to grant or deny a gaming license that rests at all times within the discretion of the commission.

118.08: RFA-2 Costs and Expenses

(1) For each RFA-2 application, all of the commission's costs and expenses of the RFA-2 administrative proceedings pursuant to 205 CMR 118.01 through 118.06 shall be borne by the applicant.
(2) All such costs and expenses shall be assessed to the applicant and collected by the commission pursuant to 205 CMR 114.04: *Additional fees for investigations*.

REGULATORY AUTHORITY

205 CMR 118.00: M.G.L. c. 23K, §§4(28), 4(37); 5; 8; 9; 10; 11; 13; 15(11); 17; 18; 19; 21; 56; and c. 30A.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 119.00: PHASE 2 APPLICATION

Section

119.01: Contents of the application

The RFA-2 application form shall be designed to require applicants to demonstrate that they have thought broadly and creatively about creating an innovative and unique gaming establishment that will create a synergy with, and provide a significant and lasting benefit to, the residents of the host community, the surrounding communities, the region, and the Commonwealth of Massachusetts, and will deliver an overall experience that draws both residents and tourists to the gaming establishment and the Commonwealth of Massachusetts. Further, the RFA-2 application shall require attestation of the applicant under the pains and penalties of perjury as to the truthfulness of the contents of the submission, and shall require, at a minimum, provision of the following information on and in the form prescribed by the commission:

(1) the name of the applicant; and

(2) the mailing address and, if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders; and

(3) an attestation that the qualifiers identified by the commission in accordance with 205 CMR 116.00 and deemed suitable under the RFA-1 process in accordance with 205 CMR 115.00 maintain the association with the applicant previously identified in the RFA-1 process;

(4) a copy of the host community agreement executed by the applicant and the host community that includes provision for a community impact fee; and

(5) information demonstrating how the applicant proposes to address host community impact and mitigation issues as set forth in the host community agreement required under 205 CMR 123.00; and

(6) a listing of the infrastructure costs of the host community incurred in direct relation to the construction and operation of a gaming establishment and a statement to commit to a community mitigation plan for that community; and

(7) a certificate showing that the applicant has received a certified and binding positive vote on a ballot question at an election in the host community in favor of the license; and

(8) a copy of all surrounding community agreements it has executed, if any; and

(9) a list identifying any community it believes to be a surrounding community in accordance with 205 CMR 125.01(1)(a) that it has not executed a surrounding community agreement with, if any; and

(10) information demonstrating how the applicant proposes to address surrounding community impact and mitigation issues as set forth in the surrounding community agreements required under 205 CMR 125.00; and

(11) a listing of the infrastructure costs of the surrounding community incurred in direct relation to the construction and operation of a gaming establishment and a statement committing to a community mitigation plan for those communities; and

(12) a description and documentation of all public outreach efforts it made to local communities; and

(13) a description and any documentation outlining the public support for the application from the host and surrounding communities; and

(14) a description as to how the applicant proposes to promote local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues; and

(15) a copy of all impacted live entertainment venue agreements it has executed, if any; and

(16) a statement as to whether it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and, if so, the nature of such agreements; and

(17) an explanation as to how the applicant proposes to utilize sustainable development principles including, but not limited to:

(i) being certifiable as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council;
(ii) meeting or exceeding the stretch energy code requirements contained in Appendix 120AA of the Massachusetts State Building Code (780 CMR) or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;
(iii) efforts to mitigate vehicle trips;
(iv) efforts to conserve water and manage storm water;

(v) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
(vi) procuring or generating on-site at least10 per cent of its annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A; and
(vii) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems; and

(18) a calculation of the total capital investment in accordance with 205 CMR 122.00 including an agreement that, in accordance with the design plans submitted with the licensee's application to the commission, it will invest not less than the required capital under 205 CMR 122.00 into the gaming establishment; and

(19) how the applicant proposes to realize the maximum capital investment exclusive of land acquisition and infrastructure improvements; and

(20) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years; and

(21) clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers; and

(22) evidence of its ability to pay and a commitment to paying the gaming licensing fee in accordance with 205 CMR 121.00; and

(23) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming establishment; and

(24) a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities; and

(25) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including:

i. maintaining a smoke-free environment within the gaming establishment under M.G.L. c.270, §22;
ii. providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;
iii. prominently displaying information on the signs of problem gambling and how to access assistance;

iv. describing a process for individuals to exclude their names and contact information from a gaming licensee's database or any other list held by the gaming licensee for use in marketing or promotional communications; and
v. instituting other public health strategies as determined by the commission; and

(26) how the applicant proposes to take measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations; and how the applicant proposes to cooperate and support the commission in the development of an annual research agenda as provided in M.G.L. c.23K, §71; and

(27) the designs for the proposed gaming establishment, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes detailed stages of construction for the gaming establishment, non-gaming structures and racecourse, where applicable; and

(28) the number of construction hours estimated to complete the work; and

(29) how the applicant proposes to build a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry; and

(30) the number and a description of the hotels and rooms, restaurants and other ancillary entertainment services and amenities to be located at the proposed gaming establishment and how they measure in quality to other area hotels and amenities; and

(31) the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; and

(32) how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment; and

(33) whether the applicant has prepared, and how the applicant proposes to implement a workforce development plan that: (i) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities; (ii) utilizes the existing labor force in the commonwealth; (iii) estimates the number of construction jobs a gaming establishment will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs; (iv) identifies workforce training programs offered by the gaming establishment; (v) identifies the methods for accessing employment at the gaming establishment; and (vi) addresses workplace safety issues for employees; and

(34) whether the applicant proposes to establish, fund and maintain human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to

promotion opportunities through a workforce training program that: (i) establishes transparent career paths with measurable criteria within the gaming establishment that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion; (ii) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and (iii) establishes an on-site child day-care program; and

(35) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies: (i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors; (ii) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project; (iii) completed studies and reports as required by the commission, which shall include, but need not be limited to, an economic benefit study, both for the commonwealth and the region; and (iv) whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment;

(36) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming establishment's: (i) economic benefits to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment; and

(37) the names of proposed vendors of gaming equipment; and

(38) whether the applicant proposes to contract with local business owners for the provision of goods and services to the gaming establishment, including developing plans designed to assist businesses in the commonwealth in identifying the needs for goods and services to the establishment; and

(39) whether the applicant intends to purchase domestically manufactured slot machines for installation in the gaming establishment; and

(40) the location of the proposed gaming establishment, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past 20 years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission; and

(41) if it does not presently possess an ownership interest in the location, an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than 60 years beyond the term of the gaming license issued under this chapter; and

(42) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment; and

(43) a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments; and

(44) the type and number of games to be conducted at the proposed gaming establishment and the specific location of the games in the proposed gaming establishment; and

(45) a projection as to the number of slot machines it will seek approval for use at the gaming establishment should it be awarded a gaming license; and

(46) a projection as to the number of gaming positions it anticipates at the gaming establishment should it be awarded a gaming license; and

(47) how the applicant proposes to maximize revenues received by the Commonwealth of Massachusetts; and

(48) whether the applicant's proposed gaming establishment is part of a regional or local economic plan; and

(49) how issuance of the license to the applicant will offer the highest and best value to create a secure and robust gaming market in the region and the Commonwealth of Massachusetts; and

(50) A signed agreement to be a licensed state lottery sales agent under M.G.L. c.10 to sell or operate the lottery, multi-jurisdictional and keno games including an agreement that, it would agree to a condition of the issuance of a license to operate a gaming establishment, that it will not create, promote, operate or sell games that are similar to or in direct competition, as determined by the Massachusetts Gaming Commission, with games offered by the state lottery commission, including the lottery instant games or its lotto style games such as keno or its multi-jurisdictional games; and

(51) A written plan demonstrating the manner in which the lottery and keno games shall be made readily accessible to the guests of the gaming establishment; and

(52) Information demonstrating how the applicant proposes to protect the lottery from and mitigate any adverse impacts due to expanded gaming including, but not limited to, developing

cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents; and

(53) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement a marketing program by which the applicant identifies specific goals, expressed as an overall program goal applicable to the total dollar amount of contracts, for utilization of: (i) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment; (ii) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and 0(iii) minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; and

(54) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement an affirmative action program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs; provided, however, that such goals shall be equal to or greater than the goals contained in the executive office for administration and finance Administration Bulletin Number 14; and

(55) identification of all disclosures required in accordance with 205 CMR 108.00: *Community and Political Contributions*.

(56) any additional information that, after release of the RFA-2 application the commission determines would be useful in conducting its evaluation of the RFA-2 applications. Provided, however, that additional information may be requested from the applicant by the commission upon reasonably notice at any time after the submission of the RFA-2 application in accordance with 205 CMR 112.00.

119.02: Completing the Application

Two hard copies and one electronic copy on a compact disc or flash drive of the application and all attachments shall be submitted to the Commission by mail or in hand by the filing deadline. Applications must be neatly prepared and organized and marked in the manner specified on the application form to ensure uniformity of the submissions. To the extent that an applicant identified in the RFA-2 application is a newly formed entity, any information required to be provided in accordance with 205 CMR 119.01 relative to past performance shall, at a minimum, be provided in relation to the primary controlling and/or operating entity of the proposed gaming establishment and/or its significant business units.

119.03: Evaluation of the Application by the Commission

(1) Once a submitted RFA-2 application is deemed administratively complete, the commission shall commence a substantive evaluation of its contents. The commission may utilize any technical assistance it deems necessary to aid in its review.

(2) In determining which applicant will be awarded a Category 1 gaming license in accordance with M.G.L. c.23K, §19, and a Category 2 gaming license in accordance with M.G.L. c.23K, §20, the commission will evaluate the RFA-2 application to determine how the applicant proposes to advance the objectives specified in M.G.L. c.23K, §18. In no particular order and without assigning any particular weights, the commission will evaluate the applicant's response on how it addresses the following categories of information:

(a) Financial criteria including:
  (1) Financial and capital structure
  (2) Maximization of revenues to the Commonwealth
  (3) Realization of maximum capital investment exclusive of land and infrastructure
  (4) Ability to offer the highest and best value to create a secure and robust gaming market

(b) Economic Development criteria including:
  (1) Job creation
  (2) Supporting external business and job growth
  (3) Regional tourism and economic impact

(c) Building and Site Design criteria including:
  (1) Compliance with 780 CMR (State Building Code), 521 CMR (Architectural Access regulations), local ordinances and by-laws, including M.G.L. c.30, §§61-62H
  (2) Demonstration of creativity in design and overall concept excellence
  (3) Proposal to build a gaming establishment of high caliber a with quality amenities in partnership with local facilities
  (4) Compatibility with surroundings
  (5) Utilization of sustainable development principles in the construction and during the life cycle of the facility
  (6) Security measures
  (7) Alternative uses for buildings in the complex

(d) Mitigation criteria including:
  (1) Agreement to be a lottery agent and not run competing games
  (2) Demonstration of plan for mitigation of lottery impact and compulsive gambling problems, community development, and host and surrounding community impact and mitigation issues as set forth in memoranda of understanding
  (3) Identification of the infrastructure costs of the host and surrounding community from the construction and operation of the gaming establishment and commitment to a mitigation plan

(4) Providing a signed host community agreement with a favorable community vote
(5) Providing surrounding community agreements
(6) Providing impacted live entertainment venue agreements
(7) Payment of agreed upon community impact fees
(8) Traffic mitigation

(e) Enhancements and overall uniqueness of the project.

(3) In addition to 205 CMR 119.03(2), in awarding a Category 1 gaming license the commission shall take into consideration the physical distance between the location of Category 1 gaming establishments as they relate to each other and how they maximize benefits to the commonwealth; provided, however, that in determining which gaming applicant shall receive a gaming license in each region, the commission shall also consider the support or opposition to each gaming applicant from the public in the host and surrounding communities as demonstrated by public comment provided by the gaming applicant or directly to the commission pursuant to M.G.L. c.23K, §15 and through oral and written testimony received during the public hearing conducted pursuant to M.G.L. c.23K, §17.

REGULATORY AUTHORITY

205 CMR 119.00: M.G.L. c. 23K, §§4(12); 4(28), 4(37); 5; 9; 15; 18; 19; and 20.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 120.00: PERMITTING REQUIREMENTS

Section

120.01: Permitting Requirements

(1) An RFA-2 application for a category 1 or category 2 license shall include, in addition to those items required by 205 CMR 119.00, the following:

(a) A chart identifying all federal, state, and local permits and approvals required, or potentially required, for the construction and operation of the applicant's proposed category 1 or category 2 gaming establishment that includes:

1. the date on which the applicant submitted, or anticipates that it will submit, its application for each permit or approval;
2. the maximum time period set by statute, regulation, and/or by-law or ordinance that the authority having jurisdiction has to render a decision on an application, if any;
3. the expiration date or maximum effective time period for each permit or approval, if any, set by statute, regulation, and/or by-law or ordinance; and
4. a citation to the statute, regulations, and/or by-law or ordinance governing the issuance of each permit or approval.

The applicant shall attach to the chart, and shall index in accordance with the chart, a complete copy of: (i) any completed application for each permit or approval that was submitted by the applicant to the authority having jurisdiction, including a copy of any exhibits and attachments; (ii) any written comments received by the applicant from a host community, surrounding community or prospective surrounding community, impacted live entertainment venue or prospective impacted live entertainment venue, and/or the permitting agency regarding the applicant's request for the permit or approval; and (iii) any permit, approval or decision issued by the authority having jurisdiction.

(b) A copy of the applicant's environmental notification form (ENF) along with proof of the applicant's submission of the ENF in compliance with G.L. c. 30, §62A and 301 CMR 11.00 in connection with the applicant's proposed category 1 or category 2 gaming establishment;

(c) A copy of the certificate from the secretary of EOEEA after the conclusion of the comment period on the filing of the ENF pursuant to 301 CMR 11.06(7) and a copy of all written comments submitted to the MEPA unit during its review of such ENF.

(d) A copy, if any, of the draft, final, supplemental, or single environmental impact report (EIR), Notice of Project Change, or a request for an Advisory Opinion submitted by the applicant pursuant to G.L. c. 30, §§61-62H and 301 CMR 11.00 in connection with the applicant's proposed category 1 or category 2 gaming establishment;

(e) A copy, if any, of the certificate from the secretary of EOEEA after the conclusion of the comment period on the filing of any such draft, final, supplemental, or single EIR, Notice(s) of Project Change, and in the case of an Advisory Opinion, the decision of either the Secretary or the MEPA Director pursuant to G.L. c. 30, §§61-62H and 301 CMR 11.00, and a copy of all written comments submitted to the MEPA unit during its review of such filing;

(f) A copy of any notice or draft, final, or supplemental environmental assessment, finding of no significant impact, or environmental impact statement prepared by any federal agency in accordance with 42 U.S.C. §4321 in connection with the applicant's proposed category 1 or category 2 gaming establishment;

(g) A statement from each host community's zoning officer, town counsel or city solicitor that the proposed category 1 or category 2 gaming establishment is either:

1. Permitted at its proposed location as of right pursuant to the host community's zoning ordinances or bylaws; or
2. Permitted at its proposed location pursuant to all of the host community's zoning ordinances or bylaws subject only to the applicant's obtaining some or all of the permits and approvals identified in the application pursuant to 205 CMR 120.01(1)(a);

(h) Any appeal, whether to a municipal or state entity or for judicial review, filed with respect to any permit or approval listed in 205 CMR 120.01(1) along with a current copy of the docket sheet on such appeal and each decision on any appeal; and

(i) Any other information requested from the applicant by the commission regarding federal, state, or local permits or approvals.

(2) As long as the RFA-2 application for a category 1 or category 2 license is pending before the commission, and in the event that a conditional or final category 1 or category 2 license is issued, the applicant shall have a continuing duty to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01(1), as well as any updates relative to the MEPA process, such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming establishment.

120.02: Conditions of Licensure

(1) In addition to any conditions imposed in accordance with 205 CMR 119.00, all category 1 and category 2 gaming licenses shall be issued subject to the following conditions unless documentation demonstrating that a particular requirement has been satisfied has been provided as part of the RFA-2 process:

(a) There shall be a determination by the secretary of EOEEA that:

1. No EIR is required; or
2. A single, final or supplemental EIR is adequate.

Following the determination that the EIR is adequate pursuant to G.L. c. 30, §§61-62H, and 301 CMR 11.00, and after 60 days have elapsed following publication of notice of the availability of the single, final, or supplemental EIR in the *Environmental Monitor* in accordance with 301 CMR 11.12(4)(a) and 11.15(2), the Commission shall reconsider the conditional license and shall either affirm, limit, condition, restrict, revoke, suspend or modify the conditional license in the discretion of the commission.

(b) The commission shall issue findings in accordance with G.L. c. 30, §61 and 301 CMR 11.12. Notwithstanding any provision in 205 CMR 120.00 to the contrary, the commission may impose any condition necessary to comply with G.L. c. 30, §§61-62H in its findings pursuant to G.L. c. 30, §61 and 301 CMR 11.12(5).

(c) The applicant shall submit to the commission documentation demonstrating that it has obtained all federal, state, and local permits or approvals necessary for the construction and operation of the proposed category 1 or category 2 gaming establishment (except those required from the commission), and that either:

1. the conditions imposed by those permits or approvals will not cause significant and material adverse impacts on a host or

surrounding community, or impacted live entertainment venue, that have not been addressed in a host or surrounding community agreement or impacted live entertainment venue agreement; or

2. any conditions of federal, state, or local permits or approvals expected to cause significant and material adverse impacts on a host or surrounding community or impacted live entertainment venue that have not been addressed in a host or surrounding community agreement or impacted live entertainment venue agreement have been adequately addressed pursuant to 205 CMR 127.00.

(2) In the event the commission finds that the applicant cannot satisfy, the conditions in 205 CMR 120.02(1), the commission may, pursuant to G.L. c. 23K, §4(15), deny, limit, condition, restrict, revoke or suspend the conditional or final category 1 or category 2 license. In the event that the commission revokes the conditional license or denies or revokes the final license, the commission will reopen the RFA-2 process in accordance with 205 CMR 118.00.

REGULATORY AUTHORITY

205 CMR 120: M.G.L. c.23K, §§1, 4(15), 4(37), 5, 13, 15(12), 17, 18(14).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 121.00: LICENSING FEE

Section

121.01: Licensing Fee

(1) Within 30 days after the award of category 1 license by the commission, the licensee shall pay a non-refundable license fee of $85,000,000 to the Commission.

(2) Within 30 days after the award of a category 2 license by the commission, the licensee shall pay a non-refundable license fee of $25,000,000 to the commission.

(3) Within 30 days after the award of a category 1 or category 2 license by the commission, the licensee shall remit:

a. a license fee, as provided by M.G.L. c.23K, §56(a), of $600 for each slot machine approved by the commission for use by a gaming licensee at a gaming establishment; and
b. a license fee, as provided by M.G.L. c.23K, §56(c), to be determined by the commission upon issuance of the license, to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year; and
c. a license fee, as provided by M.G.L. c.23K, §56(e), to be determined by the commission upon issuance of the license, reflecting the applicant's share of $5,000,000 to be deposited into the Public Health Trust Fund in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year.

121.02: Payment of the fee

(1) All fees shall be submitted in the form of a certified check or secure electronic funds transfer payable to the "Massachusetts Gaming Commission."

(2) In the event that a licensee fails to pay the fee as provided in 205 CMR 121.01, the commission may take any remedial action it deems necessary up to and including revocation of the gaming license.

REGULATORY AUTHORITY

205 CMR 121: M.G.L. c.23K, §§4(26); 4(37); 5; 10(d); 11(b); and 56.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 122.00: CAPITAL INVESTMENT

Section

122.01: Scope and Purpose

205 CMR 122.00 shall govern the calculations of the proposed capital investment for category 1 and category 2 gaming establishments to be included in an applicant's RFA-2 application as set forth in M.G.L. c.23K, §§10(a) and 11(a).

122.02: Minimum Capital Investment

(1) The minimum capital investment for a category 1 gaming establishment license shall be $500,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03, and 122.04.

(2) The minimum capital investment for a category 2 gaming establishment license shall be $125,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03 and 122.04.

122.03: Costs Included in the Calculation of Capital Investment

For purposes of calculating the capital investment for a category 1 or category 2 gaming license, the following costs shall be included:

1) Costs related to the actual construction of the gaming establishment and site including any hotels, gaming areas, and other amenities, including overhead and indirect costs attributable to the construction activities.
2) Costs related to preparation of the site including, clearing, demolition and abatement.
3) Costs related to the design of the project, including building design, interior design, and exterior site design.
4) Costs associated with consulting and due-diligence necessary to fund studies and devise engineering solutions in accordance with M.G.L. c.23 K including traffic studies, environmental studies, and other associated mitigation studies.

5) Costs associated with minimizing the environmental impact of the project including upfront costs aimed at minimizing a carbon footprint or implementing sustainable elements and/or smart growth practices.
6) Costs associated with designing, improving or constructing the infrastructure inside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation. Provided, however, in accordance with M.G.L. c.23K, §11(a), that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation for a category 2 gaming establishment shall not be considered as part of the capital investment in a category 2 gaming establishment license application.
7) Costs associated with the pre-opening purchase of fixtures, equipment, gaming equipment, information technology equipment, and personal property to be used within the gaming establishment and site including those within hotels, restaurants, retail and other service businesses associated with the establishment.
8) Costs associated with applying for federal, state, or municipal permits.
9) Professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the project, and do not represent profits or payout as part of partnership agreements or "home office" overhead (i.e., out of state).
10) Costs associated with the safety, training, quality assurance, or testing incurred during the construction of the gaming establishment and site.

122.04: Costs Excluded from the Calculation of Capital Investment

For purposes of calculating the capital investment for a category 1 or category 2 gaming license, the following costs may not be included:

1) Costs associated with the purchase or lease or optioning of land where the gaming establishment will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land.
2) Carried interest costs and other associated financing costs.
3) Costs associated with mitigating impacts on host and surrounding communities as set forth in Host and Surrounding Community agreements, whether directly attributable to a specific impact or not.
4) Costs associated with designing, improving or constructing the infrastructure outside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of a

host community agreement, a surrounding community agreement, required by any regulatory body or as part of the permitting process.

5) Any and all legal fees.
6) Promotional, communications and marketing costs prior to and attributable to the efforts of a local referendum including all costs associated with local outreach.
7) Fees and costs paid to the commission in accordance with M.G.L. c.23K, §§15(11), 10(d), 11(b), and/or 205 CMR 114.00, and other similar fees and costs paid to municipalities.
8) Licensing costs including any costs payable to the commission to obtain pre-opening licensing of individuals or vendors.
9) Costs associated with marketing, advertising and promotions.
10) Upfront costs designed to implement workforce development plans.
11) Upfront costs designed to implement efforts to combat problem gambling and/or support the efforts of the commission's research agenda.
12) Political contributions and community contributions under 205 CMR 108.00.

122.05: Deposit or bonding of funds

(1) Within 30 days after the award of a category 1 gaming license, the applicant shall either:

(a) Deposit 10 percent of the total investment proposed in the RFA-2 application into an interest bearing escrow account held by the commission in accordance with M.G.L. c.23K, §10(a); or
(b) Secure a deposit bond, in a form and from an institution acceptable to the commission, insuring that 10 percent of the proposed capital investment shall be forfeited to the Commonwealth of Massachusetts if the applicant is unable to complete the gaming establishment, as determined by the commission.

(2) The proposed capital investment figure calculated in accordance with 205 CMR 122.00 shall be used for purposes of calculating 10 percent deposit or bond required by 205 CMR 122.05(1) and M.G.L. c.23K, §10(a).

(3) The commission shall return monies received from the applicant in accordance with 205 CMR 122.05(1)(a) upon written request of the applicant if the commission determines that the project has reached the final stage of construction as detailed in the timeline of construction submitted with the RFA 2 application. In making the determination the commission shall consider whether the amount held in escrow exceeds the amount of capital required to complete the project.

REGULATORY AUTHORITY

205 CMR 122: M.G.L. c.23K, §§ 1(5), 4(37), 5(3), 5(a)(16), 10, 11, 18(3).

205 CMR: MASSACHUSETT GAMING COMMISSION
205 CMR 123.00: HOST COMMUNITIES

Section

123.01: Definition of Host Community
123.02: Host Community Agreement

123.01: Definition of Host Community

In accordance with M.G.L. c.23K, §2, a host community is a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment; provided, however, that if a proposed gaming establishment is situated in 2 or more cities or towns each shall be a host community for purposes of M.G.L. c.23K and 205 CMR.

123.02: Host Community Agreement

(1) An applicant for a gaming establishment license must sign an agreement with the host community setting forth the conditions to have a gaming establishment located within the host community; provided, however, that the agreement shall include a community impact fee for the host community and all stipulations of responsibilities between the host community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.
(2) The signed host community agreement, along with a fair, concise summary, approved by the city solicitor or town counsel of the host community, shall be made public in accordance with 205 CMR 124.04.
(3) Upon requesting a host community election in accordance with 205 CMR 124.02(1), the applicant shall forward the executed host community agreement and summary to the commission. The commission shall promptly post a copy of the agreement and summary on its website. The posting shall outline the process by which any community may request that it be added to a list of prospective surrounding communities to that gaming establishment.

REGULATORY AUTHORITY
205 CMR 123: M.G.L. c.23K, §§ 2; 4(37); 5; 15(8).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 124.00: HOST COMMUNITY ELECTION PROCESS

Section

124.01: Scope and Purpose

205 CMR 124.00 establishes parameters for elections as provided in M.G.L. c.23K, §15(13). In accordance with M.G.L. c.23K, §15(13) an applicant for a gaming license must have received a certified and binding vote on a ballot question at an election in the host community in favor of such license as a prerequisite to filing an RFA-2 application in accordance with 205 CMR 119.00.

124.02: Request for an Election

(1) After a host community and an applicant for a gaming establishment license execute a host community agreement, the applicant shall file a with the governing body of the host community a written request for an election on the question whether the host community shall permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission located at a specified site within the community. The applicant shall send a copy of the request to the commission along with a copy of the executed host community agreement.

(2) Upon receipt of the request, the governing body shall acknowledge receipt of the request by letter. The letter shall state the date that the applicant's request was received by the community. The governing body shall send a copy of the letter to the commission.

(3) In the event that a proposed gaming establishment is to be situated in more than one community, the applicant shall not request an election in either community until it has executed a host community agreement with all of the affected prospective host communities or a joint agreement with each prospective host community.

(4) A host community may not hold an election until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3).

124.03: Call for and Scheduling of the Election

Upon receipt of a request for an election by an applicant in accordance with 205 CMR 124.02(1), the governing body of the municipality shall call for the election to be held not less than 60 days but not more than 90 days from the date that the request was received. The city or town clerk shall then set a date certain for an election. Provided, however, in the event that a municipality has executed a host community agreement with more than one applicant the election on each shall be set for the same date.

124.04: Preparing for the Election

(1) The host community agreement signed by the governing body of the community and the applicant shall be made public by publishing the agreement, along with a fair, concise summary of the agreement, in a periodical of general circulation at the applicant's expense and on the official website of the municipality not later than seven days after the agreement is signed by the parties. The fair, concise summary of the agreement shall be approved by the city solicitor or town counsel prior to publication, and shall outline the contents of the host community agreement.

The agreement and summary shall remain on the municipal website until the election has been certified.

(2) Host communities shall make voting information available to its citizens including deadlines for registering to vote in the election and hours that polling places shall be open.

(3) No notice to or approval by the commission is required prior to engaging in the process set forth in 205 CMR 124.04(1).

(4) For purposes of 205 CMR 124.00, unless a city opts out in accordance with the seventh proviso of G.L. c. 23K, §15(13) by a vote of the local governing body, if the gaming establishment is proposed to be located in a city with a population of at least 125,000 residents as enumerated by the most recent enumerated federal census, "host community" shall mean the ward in which the gaming establishment is to be located for the purpose of receiving a certified and binding vote on a ballot question at an election. If a city opts out, it shall publish notice of such determination in the manner provided by 205 CMR 124.04(1).

124.05: Conduct of the Election

In addition to the applicable provisions of M.G.L. c. 54 and 950 CMR the following shall apply to host community elections:

(1) The polls may be open as early as fifteen minutes before 6 a.m., and shall be open not later than 7 a.m., and shall be kept open at least thirteen hours. The polls shall not be closed before 8 p.m.

(2) The question on the ballot submitted to the voters shall be worded as follows: "Shall the (city/town) of _____ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at _____ [description of site] _____? YES _____ NO _____".
(3) In the event that a host community has entered into a host community agreement with more than one applicant, a separate question, as provided in 205 CMR 124.05(2), shall be posed on the ballot relative to each applicant. The questions shall be preceded with an advisory that the questions are not presented in any particular order and that a voter may vote 'yes' on both questions, 'no' on both questions, or 'yes' on one and 'no' on the other.
(4) The ballot question(s) shall be accompanied on the ballot by a fair, concise summary of the host community agreement as determined by the city solicitor or town counsel.

124.06: Reimbursing the Expenses of the Host Community Election

(1) The applicant shall reimburse the municipality that conducts the election for its reasonable and customary expenses related to the host community election within 30 days after the election, provided, however, that if the election occurs as part of a general election, the applicant shall be responsible only for that portion of the general election expenses that related to the host community election. The expenses may include the costs for staffing and securing all voting locations, printing of the ballots, and all related costs as prescribed by the city or town clerk for conducting elections.
(2) Unless otherwise agreed by the parties, within seven days of the election, the municipality shall provide the applicant with an itemized invoice of the costs for which it seeks reimbursement.
(3) The commission shall deny an application for a gaming license if the applicant has not fully reimbursed the municipality as provided in 205 CMR 124.06(1).
(4) The applicant shall disclose the reimbursement in accordance with 970 CMR 1.19.
(5) If the result of the election is in the negative and the applicant fails or refuses to reimburse the municipality that conducted the election in accordance with 205 CMR 124.06(1) for all or any part of its cost, then in an action by the municipality against the applicant in a court of competent jurisdiction, the municipality shall be entitled to recover treble the disputed costs of the election as determined by the court together with the municipality's reasonable attorney fees and cost of that action. The applicant's request for an election under 205 CMR 124.02 shall constitute its binding agreement to abide by this provision.

124.07: Post-Election

(1) If a majority of the votes cast in a host community in answer to the ballot question is in the affirmative, the host community shall be taken to have voted in favor of the applicant's license.
(2) In accordance with M.G.L. c.23K, §15(13), if a ballot election question is voted in the negative, the applicant shall not submit a new request to the governing body for a new election within 180 days of the last election.
(3) The city or town clerk or election officer shall provide a certified copy of the election results to the license applicant and the applicant shall include the certified copy in its license application to the commission in accordance with 205 CMR 119.00 and M.G.L. c.23K, §15(13).
(4) The commission may refuse to accept the certified election results if the election was conducted in violation of any provision of G.L. c.23K or 205 CMR as determined by the commission or in violation of G.L. c.54 or 950 CMR as determined by the Office of the Secretary of the Commonwealth, and the commission determines that the violation materially affected the outcome of the election.

REGULATORY AUTHORITY

205 CMR 128: M.G.L. c.23K, §§ 4(34); 4(37); 5; 15(13).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 125.00: SURROUNDING COMMUNITIES

Section

125.01: Determination of Surrounding Communities and execution of mitigation agreements

125.01: Determination of Surrounding Communities and execution of mitigation agreements

(1) General. The following communities are determined to be surrounding communities concerning the development and operation of a specific gaming establishment for purposes of M.G.L. c. 23K and 205 CMR:

a. Each community located in the commonwealth that both (i) has been designated as a surrounding community by an applicant for a category 1 or category 2 license in the RFA-2 application, written notice of which designation shall be provided by the applicant to the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, at the time the application is filed with the commission; and (ii) submits to the commission a written assent, signed by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, to the designation within 10 days of its receipt of the notice. Such notice to the community of designation by the applicant shall also include written notice of the requirement that each community must, to obtain final surrounding community designation, assent to such designation in writing within 10 days of the date of the application. Upon receipt of the written assent, the commission shall issue a written notice designating the community as a surrounding community; and

b. Each community located in the commonwealth that has executed a surrounding community agreement with the applicant for a category 1 or category 2 license which agreement was submitted with the RFA-2 application and is determined by the commission to be in compliance with M.G.L. c. 23K, §15(9); and

c. Each community located in the commonwealth that has been designated a surrounding community by the commission under M.G.L. c. 23K, §17(a) and 205 CMR 125.01(2) after the submission of an applicant's RFA-2 application upon written petition by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B for the community to be designated a surrounding community with respect to the specific gaming establishment.

(2) Surrounding Community Determination by Commission.

a. A community seeking to be designated a surrounding community in accordance with 205 CMR 125.01(1)(c) shall submit a written petition to the commission no later than 10 days after receipt by the commission of the RFA-2 application for a gaming establishment for which the community seeks to be designated a surrounding community; provided, the petition must include proof of service of the petition upon the applicant. If an applicant assents in writing to the petition, the commission shall designate the community a surrounding community without further review. The applicant may reply in favor or opposition to the petition in writing within 10 days after receipt by the commission of the petition. The commission will make a determination on the petition at an open meeting, at which it may allow presentations or information from the applicant and the proposed surrounding community, at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, §17(c).

b. In determining whether a community is a surrounding community, the commission will exercise its discretion based on a review of the RFA-2 application, the RFA-2 applicant's detailed plan of construction, any independent evaluations, pertinent information received from the community seeking to be designated as a surrounding community, the RFA-2 applicant, the host community, and the public, and any additional information that the commission determines to be beneficial in making its determination. In exercising its discretion in the determination as to whether a community meets the definition of surrounding community in accordance with M.G.L. c.23K, §2, the commission shall consider factors, pursuant to M.G.L. c. 23K, §§4(33) and 17(a), such as population, infrastructure, distance from the gaming establishment and political boundaries, and will evaluate whether:

i. The community is in proximity to the host community and the gaming establishment included in the RFA-2 Application, taking into account such factors as any shared border between the community and the host community; and the geographic and commuting distance between the community and the host community, between the community and the gaming establishment, and between residential areas in the community and the gaming establishment.

ii. The transportation infrastructure in the community will be significantly and adversely affected by the gaming establishment, taking into account such factors as ready access between the community and the gaming establishment; projected changes in level of service at identified

intersections; increased volume of trips on local streets; anticipated degradation of infrastructure from additional trips to and from a gaming establishment; adverse impacts on transit ridership and station parking impacts; significant projected vehicle trip generation weekdays and weekends for a twenty-four hour period; and peak vehicle trips generated on state and federal roadways within the community.

iii. The community will be significantly and adversely affected by the development of the gaming establishment prior to its opening taking into account such factors as noise and environmental impacts generated during its construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction.

iv. The community will be significantly and adversely affected by the operation of the gaming establishment after its opening taking into account such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; increased social service needs including, but not limited to, those related to problem gambling; and demonstrated impact on public education in the community.

v. The community will be significantly and adversely affected by any other relevant potential impacts that the commission considers appropriate for evaluation based on its review of the entire application for the gaming establishment.

c. In determining whether a potential impact on a community is a significant and adverse impact, the commission may consider whether the impact to be experienced by the community is different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment.

d. The commission may evaluate whether the positive impacts on a community that may result from the development and operation of a gaming establishment are of such a nature so as to outweigh any negative impacts.

(3) Surrounding Community Agreements.

The applicant shall submit to the commission a signed agreement with each surrounding community to its proposed gaming establishment as part of its RFA-2 application in accordance with M.G.L. c.23K, §15(9) or the parties shall follow the procedure outlined in 205 CMR 125.01(6). The agreement may be for any term necessary to satisfy the purposes for which the agreement is required by M.G.L. c.23K.

(4) Availability of Other Impact Funding. Any finding by the commission that a community is not a surrounding community for purposes of the RFA-2 application shall not preclude the community from applying to and receiving funds from the Community Mitigation Fund established by M.G.L. c. 23K, §61, the Transportation Infrastructure and Development Fund established by M.G.L. c. 23K, §62 and the Public Health Trust Fund established by M.G.L. 23K, §59.

(5) Limited Surrounding Community Definition to Encourage Community Disbursements. To encourage applicants to make funds available to communities to evaluate potential impacts and to potentially negotiate a surrounding community agreement prior to the submission of an RFA-2 application and prior to the commission's final designation of the surrounding communities of a proposed gaming establishment pursuant to 205 CMR 125.01(2), an applicant's execution of a letter of authorization pursuant to 205 CMR 114.03 shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 125.01(2); rather, the applicant's execution of a letter of authorization and the community's receipt of funds pursuant to 205 CMR 114.03 shall designate the community as a surrounding community only for the limited purposes of providing funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community agreement.

(6) Negotiation of a Surrounding Community Agreement after the applicant has submitted an RFA-2 application.

a. Participation in Process. In accordance with M.G.L. c.23K, §17(a), 205 CMR 125.01(6) provides the procedure for reaching a fair and reasonable surrounding community agreement between the applicant and the surrounding community. Upon being designated a surrounding community by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2) the community and the applicant shall be bound by this procedure.

1. In the event the applicant shall fail or refuse to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) with any community determined to

be a surrounding community under 205 CMR 125.01(1)(a) or 125.01(2), the commission may deny the applicant's RFA-2 application for a category 1 or category 2 license or condition the issuance of the license on mitigation terms with respect to the proposed surrounding community that the commission determines are appropriate.

2. In the event a community designated a surrounding community fails or refuses to participate in the arbitration process set forth in 205 CMR 125.01(6)(c), the commission may deem the community to have waived its designation as a surrounding community. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or 2 license a community impact fee and any requirements it deems appropriate requirements for mitigation of impacts from the development or operation of a licensed gaming establishment.

3. An applicant or surrounding community may petition the commission for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) and may request a remedy in accordance with 205 CMR 125.01(6)(a)(1) or (2).

b. Negotiated Agreement.

Pursuant to M.G.L. c.23K, §17(a), the applicant shall negotiate a signed agreement with a community within 30 days from the surrounding community determination by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). In the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 125.01(6)(c). The parties may, however, engage in binding arbitration in accordance with 205 CMR 125.01(6)(c) at any time during that 30 day period.

c. Binding Arbitration Procedure.

1.The applicant and surrounding community may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the surrounding community determination is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no surrounding community agreement is filed with the commission within 30 days of the date the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2).

2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
3. No later than 5 days after the passage of 30 days since the surrounding community designation is made by the commission in accordance with 205 125.01(1)(a) or CMR 125.01(2) the parties shall select a neutral, independent arbitrator and submit their best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, §15(9) to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)(3), the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.
5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.
6. Within 20 days after receipt of the parties' submissions under 205 CMR 125.01(6)(c)(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s) may make adjustments to the selected best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K.
7. No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 125.01(6)(c)(6), the parties shall sign a surrounding community agreement and file it with the commission in accordance with M.G.L. c.23K, §15(9) and 205 CMR 125.01(3) or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties.

REGULATORY AUTHORITY

205 CMR 125: M.G.L. c.23K, §§4(37); 5; and 17.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 126.00: IMPACTED LIVE ENTERTAINMENT VENUES

Section

126.01: Determination of Impacted Live Entertainment Venues

126.01: Determination of Impacted Live Entertainment Venues

(1) General. The following shall be an impacted live entertainment venue for purposes of M.G.L. c. 23K and 205 CMR:

a. A venue located in the commonwealth that has executed an impacted live entertainment venue agreement with the applicant for a category 1 or category 2 license which agreement was submitted with the RFA-2 application and is in compliance with M.G.L. c. 23K, §15(10); or

b. A venue located in the commonwealth that has been designated an impacted live entertainment venue by the commission under M.G.L. c. 23K, §17(b), and 205 CMR 110.01(2) after the submission of an applicant's RFA-2 application upon written request by the venue for the venue to be designated an impacted live entertainment venue with respect to the specific gaming establishment.

(2) Impacted Live Entertainment Venue Determination by Commission. A venue seeking to be designated an impacted live entertainment venue in accordance with 205 CMR 110.01(1)(b) shall submit a written request to the commission no later than 10 days after the commission posts notice on its website that it has received the RFA-2 application for a gaming establishment for which the venue seeks to be designated an impacted live entertainment venue. The commission will make a determination on the request at an open meeting at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, §17(c). In determining whether a venue will be designated as an impacted live entertainment venue, the commission shall ensure that the venue meets the definition of *impacted live entertainment venue* as set forth in M.G.L. c.23K, §2, and shall, in accordance with M.G.L. c.23K, §4(39), consider factors including, but not limited to, the venue's distance from the gaming establishment, venue capacity and the type of performances offered by that venue. Further, the commission will consider whether the applicant intends to include a geographic exclusivity clause in the contracts of entertainers at the proposed gaming establishment, or in some other way intends to limit the performance of entertainers within Massachusetts. The commission's determination will be made after a review of the entire RFA-2 application submitted by the applicant for a gaming license as well as any independent evaluations provided by either the venue or otherwise.

(3) Impacted Live Entertainment Venue Agreements. An applicant for a license for a gaming establishment shall negotiate an agreement with each venue determined by the commission to be an impacted live entertainment venue for their proposed gaming establishment. The applicant shall submit to the commission a signed agreement with each impacted live entertainment venue to its proposed gaming establishment either as part of its RFA-2 application in accordance with M.G.L. c.23K, §15(10) or the parties shall follow the protocol and procedure outlined in 205 CMR 126.01(4).

(4) Negotiation of an impacted live entertainment venue Agreement after the applicant has submitted an RFA-2 application.

a. Participation in Process. In accordance with M.G.L. c.23K, §17(b), 205 CMR 126.01(4) provides the protocol and procedure for reaching a fair and reasonable impacted live entertainment venue agreement between the applicant and the venue. Upon being designated an impacted live entertainment venue by the commission in accordance with 205 CMR 126.01(2) the venue and the applicant shall be bound by this procedure.

1. In the event the applicant shall fail or refuse to participate in the arbitration process set forth in 205 CMR 126.01(4)(c) with any venue determined to be an impacted live entertainment venue under 205 CMR 126.01(2), the commission may deny the applicant's RFA-2 application or condition the issuance of the license.

2. In the event a venue designated an impacted live entertainment venue fails or refuses to participate in the arbitration process set forth in 205 CMR 126.01(4)(c), the commission may deem the venue to have waived its designation as an impacted live entertainment venue. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or category 2 license any requirements it deems appropriate for mitigation of negative impacts from the development or operation of a licensed gaming establishment.

3. An applicant or venue may petition the commission at any time for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 126.01(4)(c) and may request a remedy in accordance with 205 CMR 126.01(4)(a)(1) or (2).

b. Negotiated Agreement.

Pursuant to M.G.L. c.23K, §17(b), the applicant shall negotiate a signed agreement with a venue within 30 days from the impacted live entertainment venue designation by the commission in accordance with 205 CMR 126.01(2). In the event that the applicant and venue cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 126.01(4)(c). The parties, however, may engage in binding arbitration in accordance with 205 CMR 126.01(4)(c) at any time during that 30 day period.

c. Binding Arbitration Procedure.

1. The applicant and impacted live entertainment venue may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the impacted live entertainment venue determination is made by the commission in accordance with 205 CMR 126.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no impacted live entertainment venue agreement is filed with the commission within 30 days of the date the designation is made by the commission in accordance with 205 CMR 126.01(2).
2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
3. No later than 5 days after the passage of 30 days since the designation is made by the commission in accordance with 205 126.01(2) the parties shall select a neutral arbitrator and submit their best and final offer for an impacted live entertainment venue agreement pursuant to M.G.L. c. 23K, §15(10) to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 126.01(4)(c)(3), the applicant shall submit a copy of the impacted live entertainment venue agreements, if any, it has executed with other venues concerning the applicant's proposed gaming establishment. Either party may submit executed impacted live entertainment venue agreements from other proposed gaming establishments in the Commonwealth which the party considers relevant.

5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the venue.

6. Within 20 days after receipt of the parties' submissions under 205 CMR 126.01(4)(c)(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the impacted live entertainment venue agreement between the applicant and the venue. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s) may make adjustments to the best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K.

7. No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 126.01(4)(c)(6), the parties shall sign an impacted live entertainment venue agreement and file it with the commission in accordance with M.G.L. c.23K, §15(10) and 205 CMR 126.01(3) or the arbitrator's report shall be deemed to be the impacted live entertainment venue agreement between the parties.

REGULATORY AUTHORITY
205 CMR 126: M.G.L. c.23K, §§4(37); 4(39); 5; and 17

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 127.00: REOPENING MITIGATION AGREEMENTS

Section

127.01: Definitions

As used in 205 CMR 127.00, the following words and phrases shall have the following meaning:

Mitigation agreement or mitigation agreements means a fully executed host community agreement as governed by 205 CMR 123.02, surrounding community agreement as governed by 205 CMR 125.01, or an impacted live entertainment venue agreement as governed by 205 CMR 126.00.

Significant and material adverse impact means a substantial negative affect on a host community, surrounding community, or impacted live entertainment venue from an unforeseen event, act, or circumstance occurring after a mitigation agreement is executed and which directly undermines a basic premise on which the mitigation agreement was made, a principal purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party.

127.02: Reasons for Reopening a Mitigation agreement

The parties to a mitigation agreement may reopen negotiations on a signed mitigation agreement pursuant to any of the following triggering events:

(a) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of the secretary of EOEEA's certificate on the applicant's final, supplemental, or single environmental impact report pursuant to 301 CMR 11.08(8) and 205 CMR 120.02, and the project as so certified and mitigated in accordance with the secretary of EOEEA's certificate would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.

(b) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of a federal, state or local permit or approval, and the permit or approval is either denied or issued in a manner such that the project

would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.

127.03: Negotiations to Reopen a Mitigation Agreement

In the event that a party to a mitigation agreement believes that a triggering event in accordance with 205 CMR 127.02 has occurred, it may take the following actions:

1) Request that the other party voluntarily enter into discussions to supplement or amend the mitigation agreement. A party that receives such a request shall enter into such discussions where it is reasonably clear that one of the triggering events provided in 205 CMR 127.02 has occurred. Supplemental or amended mitigation agreements must be filed with the commission promptly upon execution.

2) Petition the commission to mandate the reopening of the mitigation agreement. The petition shall clearly set forth the facts and circumstances supporting the request, and shall contain either:

   a) A sworn statement by the petitioning party that an impasse has been reached in the discussions referenced in 205 CMR 127.03(1); or

   b) A sworn statement by the petitioning party that the other party has refused to engage in the discussions referenced in 205 CMR 127.03(1).

Petitions under 205 CMR 127.03(2) shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt. Responses shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt not later than fourteen days after delivery of the petition.

127.04: Commission Review of a Petition to Reopen a Mitigation agreement

The commission shall review any petition filed in accordance with 205 CMR 127.03(2) and grant the petition if it finds that a triggering event referenced in 205 CMR 127.02 has occurred.

The commission may convene a hearing on the petition on its own volition or if requested by a party. Upon granting the petition, the commission shall order the parties to re-negotiate any affected provision of the mitigation agreement specified by the commission.

127.05: Renegotiation and Arbitration

If the parties are unable to come to terms on an amended mitigation agreement within 60 days of the commission's order, the parties shall enter into binding arbitration. The arbitration shall be limited to incorporating into the mitigation agreement measures necessary and reasonable to mitigate the significant and material adverse impact(s). The following shall apply to any such arbitration:

1) The parties may, by mutual agreement, engage in this binding arbitration process at any time after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.02; provided, however, the parties must engage in this binding arbitration process if no amended mitigation agreement is filed with the commission within 60 days after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.04; provided further that the parties may execute an amended mitigation agreement at any time during the arbitration process.

2) The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.

3) No later than 5 days after filing with the commission of a notice of intent to arbitrate, the parties shall select a neutral, independent arbitrator and submit their best and final offer relative to amending the mitigation agreement to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.

4) The reasonable fees and expenses of the single arbitrator shall be paid by the applicant/licensee. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the community or venue.

5) Within 45 days after receipt of the parties' submissions under 205 CMR 127.05(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the amended terms of the mitigation agreement between the parties. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s), however, may make any

adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(9) and (10) as applicable, and that it preserves the original mitigation agreement to the maximum extent reasonable.

6) No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 127.05(5), the parties shall either sign an addendum to the original mitigation agreement or an amended mitigation agreement consistent with the arbitrator's report or sign an independently negotiated addendum. In the event that they fail to do so, the arbitrator's report shall be binding on the parties.

7) The parties may, by a mutual agreement in writing filed with the commission, extend any of the timelines set forth in 205 CMR 127.00.

127.06: Voluntary Reopening of a Mitigation Agreement

In addition to the reasons stated in 205 CMR 127.02 the parties to a mitigation agreement may reopen the mitigation agreement for any reason stated in the mitigation agreement itself, provided that in the case of a host community agreement the option to reopen the agreement and the condition under which such agreement may be reopened has been described in the fair, concise summary referenced in M.G.L. c.23K, § 15(13) and 205 CMR 124.05.

REGULATORY AUTHORITY

205 CMR 127: M.G.L. c.23K, §§4(37); 5; and 17

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 128.00: FORM OF THE GAMING LICENSE

Section

128.01: Form of the Gaming License

(1) The commission, after selection of a particular qualified and suitable applicant to receive either a category 1 or category 2 gaming license shall issue a formal license document which shall contain the following information:

(a) A complete identification of the applicant's identity, address and the agent for all service of process by agencies and agents involved in regulating the gaming industry in the commonwealth;

(b) The category and term of the license;

(c) The document shall contain an official commission serial number and be printed on security protected paper material utilized in the financial and securities industries;

(d) A statement that all statutory conditions set forth in M.G.L. c.23K, §21 are incorporated by reference, included as if completely set forth therein and made a part of the issued form of gaming license;

(e) A statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming license;

(f) The form of gaming license shall depict the official seal of the Commonwealth of Massachusetts and be signed by the chair of the commission after receiving a commission resolution authorizing such license issuance and signature execution.

128.02: Posting of the Gaming License

A copy of the gaming license shall be posted in a location continuously conspicuous to the public within the gaming facility at all times.

REGULATORY AUTHORITY
205 CMR 128: M.G.L. c.23K, §§4(37); 5; and 17.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 129.00: TRANSFER OF INTERESTS

Section

129.01: Transfer of Gaming License

(1) The following requirements apply to any proposed transfer of a category 1 or category 2 gaming license, establishment, property or interest:

(a) Without prior notification to and approval of the commission, no gaming licensee shall (i) transfer a gaming license, (ii) transfer any interest in a gaming license, establishment, property or interest, or (iii) enter into an option contract, management contract or other agreement or contract providing for such transfer of a gaming license or any interest in a gaming license, establishment, property or interest in the present or future.

(b) Prior to effectuating any transfer, agreement or contract described in 205 CMR 129.01(1)(a), a gaming licensee shall notify the commission in writing of its intent to do so and shall identify the intended transferee and its qualifiers.

(c) Within thirty (30) days of the written notice under 205 CMR 129.01(1)(b), the intended transferee shall file with the commission an RFA-1 application pursuant to 205 CMR 111.00, including a non-refundable application fee in the amount of $400,000.00 under 205 CMR 114.01, and shall be responsible for the payment of all additional fees for investigations of the intended transferee and its qualifiers under 205 CMR 114.04.

(d) Upon receipt of a RFA-1 application under 205 CMR 129.01(1)(c), the application shall be referred to the bureau which shall conduct an investigation and issue a written report concerning the qualifications and suitability of the intended transferee and its qualifiers pursuant to 205 CMR 115.03.

(e) After the commission has received the bureau's report under 205 CMR 129.01(1)(d), the commission shall provide a copy to the intended transferee and shall initiate a process for a public hearing or adjudicatory proceeding under 205 CMR 115.04.

(f) After the proceedings under 205 CMR 129.01(1)(e), the commission shall issue a written determination of suitability pursuant to 205 CMR 115.05.

(g) The commission shall reject any transfer proposed under 205 CMR 129.01(1)(a) to an unsuitable person. The commission may reject any transfer proposed under 205 CMR 130.01(1)(a) that, in the opinion of the commission, would be disadvantageous to the interests of the commonwealth or which the commission otherwise considers unsuitable.

(h) In the event the commission makes a positive determination concerning any proposed transfer proposed under 205 CMR 129.01(1)(a), the commission may require the transferor, transferee or both to pay to the commission an amount representing the commonwealth's share of the increased value for the transferred licenses, property or interest; provided further, that the commission shall consider as a factor in determining the amount of the payment the market value of the gaming license, property or interest when it was acquired and at the time of the transfer; provided further, that the commission may place additional conditions or restrictions on a transfer that the commission considers suitable.

(i) If approved and finalized, the transfer of a gaming license under 205 CMR 129.01(1)(a)(i) or (iv) shall divest the transferor of all authority, influence, control, rights and benefits associated with the gaming license.

(j) Pursuant to M.L.G. c. 23K, §17(g) the proposed transferor and transferee shall not be entitled to any further review of the commission's determination on the transfer proposed under 205 CMR 129.01(1)(a).

(k) No bona fide banking institution, as defined in M.G.L. c. 167A, §1, or a commercial financial institution which becomes a substantial party of interest with a gaming licensee shall be considered a transferee.

129.02: Disposition of Securities

(1) The proposed sale, assignment, transfer or other disposition of any security issued by a corporation which holds a gaming license in Massachusetts, or any holding or intermediary company, shall be considered a transfer of a direct or indirect interest in a gaming license or a gaming establishment pursuant to 205 CMR 129.01(1)(a)(ii) if the transfer directly or indirectly constitutes more than a 5 per cent interest in the corporation, shall require prior approval of the commission, and shall be ineffective if disapproved by the commission; provided, however, that the commission may waive qualification requirements for prospective purchaser, assignee or transferee of any security under 205 CMR 129.01(1) pursuant to 205 CMR 116.03.

(2) Unless the commission grants such a waiver, the commission shall determine the qualifications and suitability of a prospective purchaser, assignee or transferee of such a security under 205 CMR 129.01(1) prior to any approval of a transaction.

(3) 205 CMR 129.02 shall not apply to the disposition of securities that are publicly traded, unless the transfer directly or indirectly constitutes more than 5 per cent of the common stock of the company or a holding, intermediary or subsidiary company of the licensee or the applicant company.

129.03: Transfer of Gaming Establishment

Without prior notification to and approval of the commission, no gaming licensee shall transfer any direct or indirect interest in a gaming establishment, or transfer any direct or indirect real interest, structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license.

129.04: Waiting Period

Whenever a person contracts to transfer any property relating to an ongoing gaming establishment pursuant to 205 CMR 129.03, including a security holding in a gaming licensee or holding or intermediary company pursuant to 205 CMR 129.02, under circumstances which require that the transferee obtain licensure under M.G.L. c. 23K and 205 CMR, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed application for licensure or qualification, as applicable.

129.05: Restriction of Interest in Multiple Gaming Licenses

(1) No person or affiliate shall be permitted to hold more than one gaming license.

(2) No person or affiliate shall be permitted to hold, directly or indirectly a financial interest in more than one gaming license. For purposes of this section, a financial interest shall not include the interest of an institutional investor as to which the commission has waived licensure or qualification.

REGULATORY AUTHORITY

205 CMR 129: M.G.L. c. 23K, §§ 2, 4(37); 5; 14(c), 19(c), 20(e), 21(b), 21(e), 23(c), 31(e).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 130.00: CONSERVATORS

Section

130.01: Scope

205 CMR 130.01 shall govern the appointment and duties of a conservator.

130.02: Appointment

(1) Upon revocation or suspension of a gaming license or upon the failure or refusal to renew a gaming license, the commission may appoint a conservator to temporarily manage and operate the business of the gaming licensee relating to the gaming establishment.

(2) Prior to appointment, a candidate must submit to the commission a Multi-jurisdictional Personal History Disclosure form in accordance with 205 CMR 111.03 and a Massachusetts Supplement Form in accordance with 205 CMR 111.04. An investigation shall be undertaken and a recommendation made by the bureau in accordance with 205 CMR 115.03. Aall costs incurred by the commission and the bureau for conducting an investigation into any conservator or potential conservator shall be paid from the revenues of the gaming establishment.

(3) The appointment shall be made by vote of the commission by a written instrument which outlines all terms and conditions of the appointment as provided in 205 CMR 130.00 and G.L. c.23K, §34.

(4) Upon appointment, the person shall be designated a temporary key gaming employee and deemed licensed as such in accordance with G.L. c.23K, §30.

130.03: Qualifications of the Conservator

(1) A conservator shall be an individual of similar or greater experience in the field of gaming management to the person they are succeeding.
(2) If the conservator is replacing a gaming licensee they shall have experience operating a gaming establishment of similar caliber in another jurisdiction.
(3) At the time of the appointment, the conservator shall be in good standing in all jurisdictions in which the conservator operates, or has operated, a gaming establishment.

130.04: Insurance

The former or suspended gaming licensee shall purchase liability insurance, in an amount determined by the commission at the time of the appointment of a conservator, to protect a conservator from liability for any acts or omissions of the conservator during the conservator's appointment which are reasonably related to and within the scope of the conservator's duties. A copy of the policy shall be filed with the commission.

130.05: Terms, Conditions, and Duties of Conservator

(1) A conservator shall, before assuming, managerial or operational duties, execute and file a bond for the faithful performance of its duties payable to the commission with such surety and in such form and amount as the commission shall approve at the time of appointment.
(2) The terms of compensation shall be fixed by the commission at the time of appointment of the conservator. The terms shall include a requirement that the conservator submit itemized billings for expenses to the commission on a monthly basis, which billings shall be considered by the commission for reasonableness. Payment of compensation and expenses shall be made from the revenues of the gaming establishment.
(3) The conservator shall file reports with the commission regarding the management and operation of the gaming establishment in the form and at such intervals as the commission may prescribe at the time of appointment.
(4) The conservator shall take possession immediately of all books and records relating to the gaming establishment.
(5) The conservator shall be responsible for ensuring that all taxes relating to the gaming establishment are paid in a timely fashion.
(6) The conservator shall abide by all licensing provisions applicable to the former or suspended gaming licensee upon appointment.
(7) The conservator may, by approval of the commission, appoint any consultants needed to assist in the operation of the gaming establishment; provided, however, that the commission may require any such consultant to submit the completed forms, undergo the investigation, and receive an appointment as a designated temporary key gaming employee in accordance with 205 CMR 130.02(2)-(4) or to undergo such other investigation into the background, integrity, honesty, character, reputation, financial stability, criminal history and responsibility of the consultant as the commission may require. All costs incurred by the commission and the bureau for conducting an investigation into any such consultant or potential consultant shall be paid from the revenues of the gaming establishment.

130.06: Termination of the Conservatorship

The conservatorship shall serve at the pleasure of the commission and shall continue until terminated by the commission:

(1) upon the award of a new gaming license pursuant to 205 CMR 131.02; or

(2) upon the voluntary resignation of the conservator in which case the commission shall appoint a new conservator in accordance with 205 CMR 130.00; or
(3) upon a non-reviewable finding by the commission to appoint a replacement in accordance with this 205 CMR 130.00.

REGULATORY AUTHORITY

205 CMR 130: M.G.L. c. 23K, §§ 4(19); 4(37); 5; 12; 30(i); and 34.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 131.00: AWARDING OF A NEW GAMING LICENSE

Section

131.01: Commencement of Application Process

In the event of a revocation of, or failure to renew a gaming license the commission shall initiate proceedings in accordance with 205 CMR 131.00 to award a new gaming license to a qualified applicant as promptly as possible.

131.02: Application and Award of a New Gaming License

(1) Prior to soliciting applications, the commission shall determine the required minimum capital investment by an applicant into the preexisting gaming establishment. In making the determination the commission shall consider, among other things, the length of time the establishment has been in operation, the amount of the initial capital investment, and reason the previous gaming license was revoked or not renewed.

(2) The new gaming licensee's gaming establishment must be located at the site of the preexisting gaming establishment.

(3) Upon transfer of good, clear, record, marketable title in the gaming establishment to the new licensee, the new licensee shall pay to the prior licensee the fair market value of the gaming establishment. If the new licensee and the prior licensee are unable to come to an agreement on the fair market value within 60 days of the date that the new licensee is approved by the commission, the following arbitration procedure shall apply:

(a) The new licensee and the prior licensee shall select a neutral, independent arbitrator and submit their calculated fair market value to the arbitrator and to the other party along with any supporting materials. If the parties cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within 5 days of the first two arbitrators being selected, the commission or its designee shall select the third neutral, independent arbitrator. The parties shall promptly submit their calculated fair market value for the gaming establishment to the arbitrators and the other party along with any supporting materials. The 3 arbitrators shall preside over the matter and determine the fair market value of the gaming establishment by majority vote.

(b) The reasonable fees and expenses of the single arbitrator shall be paid by the prior licensee. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the prior licensee and one third shall be paid by the new licensee.

(c) Within 30 days after receipt of the parties' submissions under 205 CMR 131.02(3)(a), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the fair market value of the gaming establishment. In reaching the final decision, the arbitrator(s) shall employ procedures customarily accepted by the appraising profession as valid.

(4) The commission shall request applications for the available license in accordance with 205 CMR 110.00. The applications shall be in conformance with 205 CMR 111.00. The applicant shall pay all application fees and additional fees for investigation in conformance with 205 CMR 114.00. The process of review and determination of suitability shall be in conformance with 205 CMR 115.00, 116.00, and 117.00.

(5) Upon a positive determination of suitability, the applicant shall file with the commission an application to operate the gaming establishment on a form prescribed by the commission.

(6) The applicant shall agree to assume and be bound by all obligations imposed upon the original licensee provided in any applicable host community agreement(s), surrounding community agreement(s), and impacted live entertainment venue agreement(s).

(7) Upon award of a new gaming license, the new gaming licensee shall pay the original licensing fee required under M.G.L. c. 23K in the manner prescribed by 205 CMR 121.00.

(8) The commission shall review and award the new license in accordance with 205 CMR 119.00. The new license shall incorporate such terms and conditions as the commission, in its discretions, considers necessary and appropriate.

REGULATORY AUTHORITY

205 CMR 131: M.G.L. c. 23K, §§ 1(9); 4(15, 17, 19, 27, 37); 5; 10; 12; 15; 21; 23(b); 34; and 35(d).