



MASSACHUSETTS GAMING COMMISSION MEETING

February 20, 2014

9:30 a.m.

Boston Convention and Exhibitions Center

415 Summer Street, Room 102

Boston, MA



Massachusetts Gaming Commission



NOTICE OF MEETING and AGENDA

February 20, 2014

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, February 20, 2014

9:30 a.m.

Boston Convention and Exhibition Center

415 Summer Street, Room 102

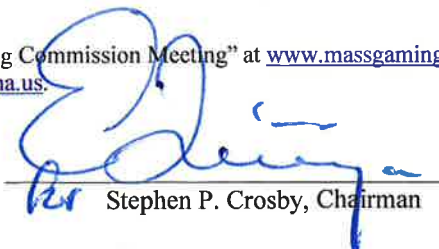
Boston, MA

PUBLIC MEETING #108

1. Call to order
2. Approval of Minutes
 - a. February 6, 2014
3. Administration – Rick Day, Executive Director
 - a. General Update
 - b. Licensing Fee Distribution Plan - Derek Lennon, CFAO
 - c. Cost Assessment Regulation – Derek Lennon, CFAO; Catherine Blue, General Counsel and Todd Grossman, Deputy General Counsel – VOTE
 - d. Gambling Credit Discussion - Catherine Blue, General Counsel
 - e. Regulation Development Schedule
4. Legal Division – Catherine Blue, General Counsel
 - a. Draft License Award with Conditions – Todd Grossman, Deputy General Counsel
 - b. Monitoring and Preopening Regulations - Todd Grossman, Deputy General Counsel
 - c. Draft Alcohol Beverage Licensing and Distribution Regulations – David Acosta, Director of Licensing
5. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

2/14/14
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: February 18, 2014 at 9:30 a.m.



Massachusetts Gaming Commission

**SECTION 1 – NO DOCUMENTS FOR
REVIEW**

**SECTION 2 – NO DOCUMENTS FOR
REVIEW**

**SECTION 2A – NO DOCUMENTS FOR
REVIEW**

**SECTION 3 – NO DOCUMENTS FOR
REVIEW**

**SECTION 3A – NO DOCUMENTS FOR
REVIEW**



MASSACHUSETTS GAMING COMMISSION

MEMORANDUM

To: Chairman Crosby and Commissioners Cameron, McHugh, Stebbins and Zuniga
From: Catherine Blue, General Counsel and Derek Lennon, CFAO
CC: Rick Day, Executive Director
Date: February 20, 2014
Re: Disposition of Licensing Fees

Executive Summary:

As discussed at prior Commission meetings, the Commission has reviewed various options for funding the operating gap of ~\$5M in FY14 and for assessing licensees for the FY15 operating costs. This memo details an option that may be used by the Commission. A plain reading of the Expanded Gaming Act, Ch. 194 of the Acts of 2011, and c. 23K, allows the Commission to retain license fees in the Gaming Control Fund to finance operational activities of the Commission. Under this plan, the Commission may use up to \$17.5M of the \$195M in license fees to temporarily fund its FY14 and/or FY15 operations. The plan would allocate the full share of dollars anticipated to each fund listed in the Act, with the exception of the Community Mitigation Fund (CMF); the Commission is the trustee and does not anticipate making grants from the CMF until gaming establishments are fully operational. The Community Mitigation fund would receive its share of the license fees in its entirety before the licensing fund expires.

Ability to Retain Licensing Fees:

Section 93 of Chapter 194 of the Acts of 2011 creates the Gaming Licensing fund. The Gaming Licensing fund is a temporary fund established to receive the category 1 or category 2 license fees from licensee(s); it is set to expire on December 31, 2015. The Commission is designated as the trustee of the fund and is responsible for transferring money to nine separate and distinct funds, as well as transferring \$20M to the Commonwealth Stabilization fund to repay appropriations to the Commission and the Governor's office to implement the Expanded Gaming Act. Section 93(a) in part specifically states:

“There shall be established and set up on the books of the commonwealth a Gaming Licensing Fund which **shall receive all category 1 or category 2 licensing**



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fees, with the exception of initial application fees, collected from applicants in receipt of a category 1 or category 2 license under chapter 23K of the General Laws...”

The clause “...shall receive all category 1 or category 2 licensing fees...” (*emphasis mine*) uses the word “or”. “Or” is a word used to link two or more alternatives. This clause provides the Commission with an option to deposit all of the category 1 or all of the category 2 licensing fees into the Licensing fund. It does not require the Commission to deposit all of both the category 1 and category 2 licensing fees into the fund.

MGL Ch. 23K § 57(a) creates the Massachusetts Gaming Control Fund. The Commission is the trustee of the fund. the Commission can expend from the fund to finance operational activities of the Commission, the fund can be credited with legislative authorizations, assessments on licensees, initial application fees for licenses, and “...such additional funds as are subject to the direction and control of the commission...”, and requires the Commission to use the state’s accounting system. The Commission would deposit up to \$17.5M of the category 2 licensing fees into this fund. The language below, specifically the section highlighted allows the Commission to deposit funds without a pre-determined destination into the Gaming Control fund. MGL Ch. 23K §57(a) in part states:

“There shall be established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Gaming Control Fund. The commission shall be the trustee of the fund and shall expend monies to finance operational activities of the commission. The fund shall be credited any appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited thereto, the proceeds of the assessments levied under section 56, initial application fees for licenses issued under this chapter **and such additional funds as are subject to the direction and control of the commission...**”

MGL Ch. 23K § 4 grants to the Commission “...all powers necessary or convenient to carry out and effectuate its purposes...” The extraordinarily broad powers granted to the Commission through §4, combined with the language of the Expanded Gaming act and c. 23K provide the Commission with the authority to retain licensing fees to finance the operational activities of the Commission.

The legislature foresaw a scenario where the initial \$15M loan from the stabilization fund would not be sufficient to cover the “start-up” costs of the Commission and



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provided a solution for the Commission to exercise at its discretion. The legislation included broad authority granted to the Commission, provided the option of depositing one set of licensing fees to be determined by the Commission to the licensing fund, the ability of the Gaming Control fund to accept a wide array of funding sources, and the difficulty other state's Gaming Commissions/Control Boards have encountered implementing expanded gaming.

Distribution of Funding:

The Commission is expecting to receive \$195M in licensing fees, composed of one category 2 license fee of \$25M, and two category 1 license fees of \$85M each, before June 30, 2014. Section 93(a)(1)-(9) requires that nine separate funds receive a specific percentage share of licensing fees. Section 94(c) requires that once sufficient licensing funds are received from the licensees, the commission shall repay the stabilization fund \$20M. Section 93(b) requires that two specific funds (the Community Mitigation fund—CMF-- and the Transportation Infrastructure Development fund--TIDF) cannot receive their percentage share of any licensing fees until the stabilization fund is reimbursed. The Commission is the trustee of the CMF and the Secretary of Transportation is the trustee of the TIDF. No other requirements for timing of transfers of license fees are identified in section 93. Section 93(a), in part, and section 93(b) of Ch. 194 of the Acts of 2011 are included below:

“...The commission shall be the trustee of the fund and shall transfer monies in the fund as follows;

- (1) 10 per cent to the Community Mitigation Fund established in section 61 of chapter 23K of the General Laws;
- (2) 14.5 per cent to the Transportation Infrastructure and Development Fund established in section 62 of chapter 23K of the General Laws;
- (3) 11 per cent to the Local Capital Projects Fund established in section 2EEEE of chapter 29 of the General Laws;
- (4) 13 per cent to the Manufacturing Fund established in section 98;
- (5) 17 per cent to the Community College Fund established in section 99;
- (6) 1.5 per cent to the Massachusetts Tourism Fund established in section 35J of chapter 10 of the General Laws;
- (7) 23 per cent to the Healthcare Payment Reform Fund established in section 100;
- (8) 5 per cent shall be remitted to the comptroller for deposit into the Local Aid Stabilization Fund established in section 2CCCC of chapter 29 of the General Laws; and



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(9) 5 per cent shall be remitted to the Race Horse Development Fund established in section 60 of chapter 23K of the General Laws.”

“(b) Upon receipt by the Massachusetts gaming commission of license fees from licensees, interim transfers and payments shall be made on a pro rata basis from the Gaming Licensing Fund as provided in clauses (1) and (2) of subsection (a); provided, however, that no transfer or payment under said clauses (1) and (2) of said subsection (a) shall occur until the fund reimburses \$20,000,000 to the Commonwealth Stabilization Fund as required by subsection (c) of section 94.”

Not taking into account which licensing fees would be deposited into the licensing fund vs. the gaming control fund, if all \$195M were deposited in the licensing fund and were allocated based on the percentages in section 93(a), and the stabilization fund \$20M as required by section 93(b), the allocation to each fund would be as follows:

No Licensing Fees Retained By Gaming Control Fund		
Category 1 License Fees	170,000,000.00	
Category 2 License Fees	25,000,000.00	
Total License Fees	195,000,000.00	
Transfer to Gaming Control Fund	-	
Transfer to Stabilization Fund	(20,000,000.00)	
Transfer to Licensing Fund	(175,000,000.00)	
Balance of License Fees	-	
	Licensing Fund Licensing Fees:	175,000,000.00
Funds	Section 93 %	Distribution of Licensing Fund
Local Capital Projects Fund	11.0%	19,250,000.00
Manufacturing Fund	13.0%	22,750,000.00
Community College Fund	17.0%	29,750,000.00
Tourism Fund	1.5%	2,625,000.00
Healthcare Reform Fund	23.0%	40,250,000.00
Local Aid Stabilization Fund	5.0%	8,750,000.00
Race Horse Development Fund	5.0%	8,750,000.00
Subtotal	75.5%	132,125,000.00
Funds	Section 93 %	Distribution of Licensing Fund
Transportation and Infrastructure Development Fund	14.5%	25,375,000.00
Community Mitigation Fund	10.0%	17,500,000.00
Subtotal	24.5%	42,875,000.00
Totals	100.0%	175,000,000.00

The Commission will time transfers and determine ways to ensure that the funds listed above are impacted in the most minimal way by any action the Commission may take in exercising its authority to utilize licensing fees for the operations of the agency. A plan



was presented on 1/23/14 in the Commission's public meeting. The plan funded the top seven funds, and the stabilization fund however, it did have an initial impact on the CMF and the TIDF. The two funds would be temporarily impacted because the Commission would time repayment to the stabilization fund after the top seven funds in the chart above were paid. Since the CMF and the TIDF can only be allocated their pro rata share of the licensing fees after the stabilization fund is repaid, this plan would have delayed TIDF and CMF from receiving ~47% of their share of licensing fees. Commission staff reported on 1/23/14 that the Commission anticipates needing ~\$5M of the licensing fees for operational costs in FY14 and intends on using the cost assessment regulations to fund FY15, but could use some of the \$20M to fund FY15 operating costs until the assessment process was working smoothly. Therefore, the Commission would deliver the full shares outstanding to the two funds within 18 months through a combination of any unspent balances of the \$20M and by building a repayment schedule for the licensing fees needed to close out FY14 and open FY15 into its annual budget.

The Commission has modified this plan slightly to fund all funds, including the TIDF, except the Community Mitigation fund, for which the Commission is the trustee and therefore impacts funds explicitly within its control. The Community Mitigation fund provides grants to surrounding and host communities. The Commission does not anticipate making awards from this fund until gaming establishments are fully operational and as of yet unforeseeable impacts to host and surrounding communities are known. By alternating timing and moving of funds, the Commission can provide full payment to all other funds as shown in the table titled "No Licensing Fees Retained by Gaming Control Fund". Under this plan the Commission would only retain \$17.5M in licensing fees and through a combination of unspent balances of the \$17.5M and a repayment schedule built into the annual budget and assessed on licensees, the Commission would pay the Community Mitigation fund its entire share within 18 months. The table immediately below illustrates the timing and payments to each fund.



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MGC Current Plan		
Category 1 License Fees	170,000,000.00	
Category 2 License Fees	25,000,000.00	
Total License Fees	195,000,000.00	
Transfer to Gaming Control Fund	(17,500,000.00)	
Transfer to Stabilization Fund	-	
Transfer to Licensing Fund	(175,000,000.00)	
Balance of License Fees	2,500,000.00	
	Licensing Fund Licensing Fees	175,000,000.00
Funds	Section 93 %	Distribution of Licensing Fund
Local Capital Projects Fund	11.0%	19,250,000.00
Manufacturing Fund	13.0%	22,750,000.00
Community College Fund	17.0%	29,750,000.00
Tourism Fund	1.5%	2,625,000.00
Healthcare Reform Fund	23.0%	40,250,000.00
Local Aid Stabilization Fund	5.0%	8,750,000.00
Race Horse Development Fund	5.0%	8,750,000.00
Subtotal	75.5%	132,125,000.00
Subtotal Transfer to Stabilization Fund		20,000,000.00
Move Balance of Licensing Fees to Licensing Fund		2,500,000.00
Remaining Balance in Licensing Fund		25,375,000.00
Funds	Section 93 %	Distribution of Licensing Fund
Transportation and Infrastructure Development Fund	14.5%	25,375,000.00
Community Mitigation Fund	10.0%	-
Subtotal	24.5%	25,375,000.00
Totals	100.0%	177,500,000.00

Recommendation:

Staff recommends that the Commission adopt the plan outlined in this memorandum. The plan allows the Commission to meet its funding obligations in the most practical manner while complying with the requirements of the Act and c. 23K.



Massachusetts Gaming Commission

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

Section

- 121.01: Licensing and Assessment Fees
- 121.02: Payment of Fees
- 121.03: Commission Fiscal Year
- 121.04: Commission Annual Budget
- 121.05: Annual Reconciliation of Commission Budget

121.01: Licensing and Assessment Fees

- (1) Within 30 days after the award of a category 1 license by the commission, the licensee shall pay a 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 license fee of \$25,000,000 to the commission.
- (3) The following fees are due and payable to the commission for each gaming establishment:
 - a. An annual license fee, as provided by M.G.L. c.23K, §56(a), of \$600 for each slot machine approved by the commission for operation at a gaming establishment (the “Slot Fee”) ; and
 - b. An annual assessment, (“Annual Assessment”) as provided by M.G.L. c.23K, §56(c), to be determined by the commission and calculated in accordance with c. 23K §56(c) to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions approved by the commission at 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 the actual number of positions at a gaming establishment, and accordingly, the payment of additional funds may be required or a credit may be issued towards the payment due the following year; and
 - c. An annual fee, as provided by M.G.L. c.23K, §56(e) reflecting each gaming establishment’s share of at least \$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 the actual number of gaming positions at a gaming establishment, and accordingly, the payment of additional funds may be required or a credit may be issued towards the payment due the following year; and

- d. any other such license fees required under M.G.L. c. 23K as now in effect or as hereafter amended and required to be assessed by the commission.

121.02: Payment of Fees

(1) All license fees due and payable under 205 CMR 121.01(1) and 121.01(2) shall be due and payable to the commission within 30 days of an award. As a pre-condition of any award, the commission may provide that such license fees be paid on an installment basis before the award is made and the license issued.

(2) The Slot Fee will be assessed on or about July 1 of each fiscal year based upon the number of approved slot machines as of July 1 of said year and shall be assessed on a pro rata basis for any additional slot machines added during the fiscal year.

(3) Except in the case of an assessment for the fourth (4th) quarter of fiscal year 2014, the Annual Assessment due under 205 CMR 121.01(3) (b) shall be assessed on or about 30 days prior to the start of the commission fiscal year. The Annual Assessment for each gaming establishment shall be the difference between the commission's projected costs minus the Slot Fee and any other revenues anticipated to be received by the commission and assessed as provided in 205 CMR 121.01(3)(b). The commission may assess the Annual Assessment on a pro rata basis commencing with the fourth (4th) quarter of fiscal year 2014 and will make such assessment each fiscal year thereafter. The commission, in its sole discretion, may allow the Annual Assessment to be paid in one or more installments during the fiscal year.

(4) The fee required under 205 CMR 121.01 (3) (c) shall be assessed on or about 30 days prior to the start of the commission fiscal year. The commission will assess this fee commencing with fiscal year 2016.

(5) All license fees and assessments due to the commission shall be due and payable within 30 days of receipt of an invoice from the commission.

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

(7) In the event that a licensee fails to pay any fees or assessments 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.

121.03: Commission Fiscal Year

(1) The commission fiscal year shall commence on July 1 and end on June 30.

121.04: Commission Annual Budget

- (1) The commission shall develop and approve an annual budget prior to the beginning of each fiscal year. The budget is an estimated budget and shall include cost projections for the subsequent fiscal year and anticipated revenues to the commission. For fiscal year 2015 and thereafter as necessary, the budget shall also include as part of cost projections an amount sufficient to make the transfers pursuant to §93 of chapter 194 of the Acts of 2011. Such amount shall be assessed on each licensee on a proportional basis using the number of gaming positions approved for each gaming establishment.
- (2) The commission will monitor the budget on a quarterly basis and issue a report outlining actual costs/revenues against the estimated budget.
- (3) If at any time during the fiscal year the commission determines that actual costs will exceed the projected costs and projected revenue in the budget the commission will revise the Annual Assessment assessed to each gaming establishment and invoice each gaming establishment for its proportional share of such costs.

121.05: Annual Reconciliation of Commission Budget

- (1) Within 90 days of the close of each fiscal year the commission will reconcile its actual costs to actual revenues. In no case will the commission end a fiscal year on a negative basis. No commitment or expense shall cause the Gaming Control Fund to end the fiscal year with a negative cash balance.
- (2) In the event that actual revenues exceed actual costs for a given fiscal year, the commission, in its sole discretion may either return any excess revenue (“Excess Assessment”) in the same manner in which Excess Assessment was assessed or the commission may credit such Excess Assessment to the Annual Assessment due for the next fiscal year.
- (3) In the event that actual revenues are less than actual costs for a given fiscal year, the commission will assess each gaming establishment for its share of the excess costs (“Excess Cost Assessment”) in the same manner in which the commission assessed the Annual Assessment. Such Excess Cost Assessment shall be due and payable as part of the Annual Assessment due for the next fiscal year.

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 121.00: LICENSING FEE

Section

- 121.01: Licensing ~~Fee~~ and Assessment Fees
- 121.02: ~~Payment of the Fee~~ Fees
- 121.03: Commission Fiscal Year
- 121.04: Commission Annual Budget
- 121.05: Annual Reconciliation of Commission Budget

121.01: Licensing ~~Fee~~ and Assessment Fees

- (1) Within 30 days after the award of a category 1 license by the commission, the licensee shall pay a ~~non-refundable~~ license fee of \$85,000,000 to the ~~Commission~~ 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 following fees are due and payable to the commission, ~~the licensee shall remit for each gaming establishment:~~
 - a. ~~A~~ An annual license fee, as provided by M.G.L. c.23K, §56(a), of \$600 for each slot machine ~~referenced in 205 CMR 119.01(45) and~~ approved by the commission for use by a gaming licensee operation at a gaming establishment (the "Slot Fee"); and
 - b. ~~A license fee,~~ An annual assessment, ("Annual Assessment") as provided by M.G.L. c.23K, §56(c), to be determined by the commission ~~upon issuance of the license, and calculated in accordance with c. 23K §56(c)~~ to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions ~~projected for~~ approved by the commission at 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~~ the actual share number of positions at a gaming establishment, and accordingly, the ~~license may be required to remit~~ payment of additional funds may be required or a credit may be issued towards the payment due the following year; and
 - c. ~~a license~~ An annual 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~~ each gaming establishment's share of at least \$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~~ the actual share number of gaming positions at a gaming establishment, and

accordingly, ~~the license may be required to remit~~ the payment of additional funds may be required or a credit may be issued towards the payment due the following year—; and

d. any other such license fees required under M.G.L. c. 23K as now in effect or as hereafter amended and required to be assessed by the commission.

121.02: Payment of ~~the fee~~Fees

~~(1) All fees~~(1) All license fees due and payable under 205 CMR 121.01(1) and 121.01(2) shall be due and payable to the commission within 30 days of an award. As a pre-condition of any award, the commission may provide that such license fees be paid on an installment basis before the award is made and the license issued.

(2) The Slot Fee will be assessed on or about July 1 of each fiscal year based upon the number of approved slot machines as of July 1 of said year and shall be assessed on a pro rata basis for any additional slot machines added during the fiscal year.

(3) Except in the case of an assessment for the fourth (4th) quarter of fiscal year 2014, the Annual Assessment due under 205 CMR 121.01(3) (b) shall be assessed on or about 30 days prior to the start of the commission fiscal year. The Annual Assessment for each gaming establishment shall be the difference between the commission's projected costs minus the Slot Fee and any other revenues anticipated to be received by the commission and assessed as provided in 205 CMR 121.01(3)(b). The commission may assess the Annual Assessment on a pro rata basis commencing with the fourth (4th) quarter of fiscal year 2014 and will make such assessment each fiscal year thereafter. The commission, in its sole discretion, may allow the Annual Assessment to be paid in one or more installments during the fiscal year.

(4) The fee required under 205 CMR 121.01 (3) (c) shall be assessed on or about 30 days prior to the start of the commission fiscal year. The commission will assess this fee commencing with fiscal year 2016.

(5) All license fees and assessments due to the commission shall be due and payable within 30 days of receipt of an invoice from the commission.

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

(27) In the event that a licensee fails to pay ~~the fee~~any fees or assessments 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.

121.03: Commission Fiscal Year

(1) The commission fiscal year shall commence on July 1 and end on June 30.

121.04: Commission Annual Budget

(1) The commission shall develop and approve an annual budget prior to the beginning of each fiscal year. The budget is an estimated budget and shall include cost projections for the subsequent fiscal year and anticipated revenues to the commission. For fiscal year 2015 and thereafter as necessary, the budget shall also include as part of cost projections an amount sufficient to make the transfers pursuant to §93 of chapter 194 of the Acts of 2011. Such amount shall be assessed on each licensee on a proportional basis using the number of gaming positions approved for each gaming establishment.

(2) The commission will monitor the budget on a quarterly basis and issue a report outlining actual costs/revenues against the estimated budget.

(3) If at any time during the fiscal year the commission determines that actual costs will exceed the projected costs and projected revenue in the budget the commission will revise the Annual Assessment assessed to each gaming establishment and invoice each gaming establishment for its proportional share of such costs.

121.05: Annual Reconciliation of Commission Budget

(1) Within 90 days of the close of each fiscal year the commission will reconcile its actual costs to actual revenues. In no case will the commission end a fiscal year on a negative basis. No commitment or expense shall cause the Gaming Control Fund to end the fiscal year with a negative cash balance.

(2) In the event that actual revenues exceed actual costs for a given fiscal year, the commission, in its sole discretion may either return any excess revenue (“Excess Assessment”) in the same manner in which Excess Assessment was assessed or the commission may credit such Excess Assessment to the Annual Assessment due for the next fiscal year.

(3) In the event that actual revenues are less than actual costs for a given fiscal year, the commission will assess each gaming establishment for its share of the excess costs (“Excess Cost Assessment”) in the same manner in which the commission assessed the Annual Assessment. Such Excess Cost Assessment shall be due and payable as part of the Annual Assessment due for the next fiscal year.

REGULATORY AUTHORITY

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

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: *Conditions of Licensure*;
- 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; ~~or~~
- ~~e.d.~~ Issue a decision on the application for a gaming license that provides that a license shall be awarded effective as of a date to be determined by the commission.

REPEAL THE CASINO DEAL



Honorable Therese Murray
President of the Senate
State House, Room 332
Boston, MA 02133

Honorable Robert A. DeLeo
Speaker of the House
State House, Room 356
Boston, MA 02133

Stephen Crosby
Chairman, Massachusetts Gaming Commission
84 State St., 10th floor
Boston, MA 02109

February 10, 2014

Madame President, Mr. Speaker and Mr. Chairman,

We take the unusual step of writing to you collectively given the unique role each of your entities has in the future of our Commonwealth in ensuring that casino gambling and its predatory practices do not overwhelm the taxpayers and businesses you each are sworn to represent.

As you no doubt saw, *The Boston Sunday Globe* yesterday featured a searing expose bringing into sharp focus the true nature of the casinos poised to possibly usher in a new era of legalized casino gambling in Massachusetts. The article, "Conn. Casinos Employ Hardball Tactic to Collect Debts," showcases one way these casino companies lead their competitors – in handing out easy cash to those who can least afford it and, after they can't repay the debts, going after house and home to collect the debt.

We call on you to immediately host oversight hearings on this deeply troubling practice.

The Gaming Commission must have all the facts behind these clearly unscrupulous practices before issuing licenses – not only by those detailed in this report but the practices of other applicants. Members of the Legislature, which will have the opportunity to repeal the flawed law, should demand answers and determine whether changes to the law are necessary before casinos open their doors.

Of the many disturbing and unusual practices highlighted in the article, two in particular stand out:

- The access to easy credit availed to those who least need it and can least afford it and
- The tactics, incredibly aggressive even for an industry built on greed and sleight of hand, to collect that debt from Massachusetts homeowners.

"It's extremely hard-core predatory behavior," Tom Coates, who runs Iowa's largest credit counseling service, told the newspaper.

Many of those signing here worked hard to showcase this and many other issues to the Legislature before it voted in 2011, suddenly reversing course after years of opposition, to make the historic decision to welcome this casino culture to Massachusetts. The Legislature did so analyzing only the potential benefits of the law, accepting as gospel the industry-supportive data on limited “costs” to the Commonwealth and its residents.

This is a shining example of the many facets the Legislature overlooked but which can’t be ignored or swept under the rug – even at this late date in the process. Each of you will occupy your chair for only so much longer. You are no doubt conscious that casinos and the culture they carry with them, will be a key facet of your legacy.

It’s become abundantly clear that your promises of “destination resort casinos” have yielded to casinos of convenience in downtrodden, storm- and recession-damaged cities and a polluted chemical site seen unfit to build on for many years. Please help us ensure the damage to our state and its people is not compounded.

We look forward to the opportunity to be heard at these oversight hearings and, as always, would welcome the opportunity to discuss these issues with you in public or private.

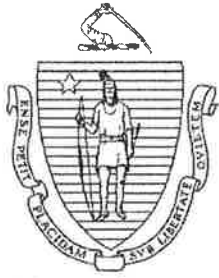
Sincerely,

John Ribeiro
Chairman
Repeal the Casino Deal Committee

Scott Harshbarger
Former Massachusetts Attorney General
Former President & CEO, Common Cause

Les Bernal
National Director
Stop Predatory Gambling

David D’Allesandro
Former Chairman & CEO
John Hancock Financial Services



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
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February 10, 2014

Stephen Crosby, Chair
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Chairman Crosby:

As the Massachusetts Gaming Commission nears licensing decisions for Category 1 (resort-casino) and Category 2 (slot machine) establishments, I write with an issue for your consideration as you establish regulations concerning the issuance of credit by gaming licensees, pursuant to your authority under G.L. c. 23K, § 27.

As you are likely aware, a report in this weekend's *Boston Globe* highlighted some concerning lending practices and aggressive debt collection methods employed by several gaming operators, including the attachment of liens on customers' homes. This story highlights the need for a robust set of consumer protection regulations before these establishments begin operations.

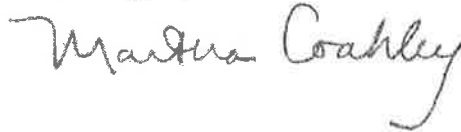
Our experience in the mortgage lending context has shown us that effective regulations are critical to prevent predatory lending practices and protect consumers. The bedrock protection against predatory lending in the mortgage lending world is that a creditor must *reasonably assess a borrower's ability to repay the loan according to its terms*. This is reflected in the Attorney General's G.L. c. 93A mortgage lending regulations since 2008, *see* 940 CMR 8.06, and was later incorporated into federal regulations by the Federal Reserve and the Consumer Finance Protection Bureau.

Protecting against predatory lending and overly aggressive debt collection in the gaming industry is critical because the odds are stacked against the patron being able to earn back the value of the loan. That is why the practice of casinos placing liens on the homes of customers is deeply concerning. This practice by the gaming industry in which customers' homes are put at risk should not be allowed.

Our office has expertise crafting consumer protection regulations in various areas, including the aforementioned mortgage lending regulations, and debt collection regulations. As you begin the

process of establishing regulations pursuant to your authority under § 27, our office is available to work with you and your staff to share with your our experience in crafting regulations that effectively protect consumers, while allowing businesses to operate fairly in the marketplace.

Cordially,

A handwritten signature in cursive script that reads "Martha Coakley". The signature is written in black ink and is positioned to the right of the typed name.

Martha Coakley
Attorney General

cc: Massachusetts Gaming Commission
Rick Day, Executive Director
Catherine Blue, General Counsel

REGULATION DEVELOPMENT CHECKLIST

23k Section 5(a) The commission shall promulgate regulations for the implementation, administration and enforcement of this chapter including, without limitation, regulations that:

X	(1)	Prescribe the method and form of application which an applicant for licensure shall follow and complete before consideration by the commission; <i>Complete</i>
X	(2)	Prescribe the information to be furnished by an applicant or licensee concerning an applicant or licensee’s antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present; <i>Completed</i>
X	(3)	Prescribe the information to be furnished by a gaming licensee relating to the licensee’s gaming employees; <i>Completed</i>
X	(4)	Require fingerprinting of an applicant for a gaming license, a gaming licensee and employees of gaming licensee or other methods of identification; <i>Completed</i>
X	(5)	Prescribe the manner and method of collection and payment of assessments and fees and issuance of licenses; <i>Completed</i>
X	(6)	Prescribe grounds and procedures for the revocation or suspension of a license or registration; <i>Completed</i>
X	(7)	Establish licensure and work permits for employees working at the gaming establishment and minimum training requirements; <i>Completed</i>
X	(8)	Minimum requirements for reciprocal licensing for out-of-state gaming employees; <i>Completed</i>
1/9/14	(9)	<i>Requirements for cost assessments to licensees; Pending</i>
1/9/14	(10)	<i>Self-exclusion and Responsible Gaming; Pending</i>
2/20/14	(11)	Develop standards for monitoring and enforcing a gaming licensee’s agreement with impacted live entertainment venues; <i>Pending</i>
2/20/14	(12)	Establish procedures and ensure compliance with the timelines for making the capital investments required under this chapter; <i>Pending</i>
2/20/14	(13)	<i>Monitoring project development following award of license including construction timetable, project expenditure, and compliance with permitting requirement, filing and following emergency plan, workforce commitments, SC and Host Community commitments; pre-opening inspection and approval to operate. Pending</i>
3/20/14	(14)	The commission may establish certification procedures for any training schools; Requirements for training schools, license or registration and curriculum; <i>Pending</i>
3/20/14	(15)	Require that all gaming establishment employees be properly trained in their respective professions; <i>Pending</i>
2/20/14	(16)	<i>Alcohol beverage licensing distribution and regulation;</i>
3/6/14	(17)	Require the posting of payback statistics of slot machines played in a gaming establishment; <i>Pending</i>
3/6/14	(18)	<i>Requirements approval for electronic gaming equipment and testing standards like minimum payout; Pending</i>
4/3/14	(19)	<i>Responsible Gaming Framework including under age & intoxicated persons restrictions, prevention programs & penalties; Pending</i>
4/17/14	(20)	Provide for a minimum uniform standard of accounting procedures; <i>Pending</i>
4/17/14	(21)	Require quarterly financial reports and an annual audit prepared by a certified public

		accountant attesting to the financial condition of a gaming licensee and disclosing whether the accounts, records and control procedures examined are maintained by the gaming licensee as required by this chapter and the regulations promulgated by the commission; Pending
4/17/14	(22)	<i>Financial reporting and access to information required to support a central automated system for accounting, tax liability, monitoring gaming activity; Pending</i>
4/17/14	(23)	(Internal Controls) Prescribe the minimum procedures for effective control over the internal fiscal affairs of a gaming licensee, including provisions for the debt to income ratio, safeguarding of assets and revenues, count rooms and cages, the recording of cash and evidence of indebtedness issuing credit and acceptance of checks and the maintenance of reliable records, accounts and reports of transactions, operation and events, including reports by the commission; Pending
4/17/14	(24)	<i>Requirement for surveillance systems and remote access; Pending</i>
5/15/14	(25)	<i>Requirements for search, inspection and enforcement; Pending</i>
5/15/14	(26)	Establish security procedures for ensuring the safety of minors on the premises of a gaming establishment; Pending
5/15/14	(27)	<i>Exclusion list development, update and related due process; Pending</i>
5/15/14	(28)	<i>General regulatory requirements including access to records and facilities and employees and licensees cooperation required; casino reporting to commission; compliance with federal & state laws and local ordinances; grounds necessary for sanctions of a casino; Pending</i>
2/25/15	(29)	Prescribe the conduct of junkets and conditions of junket agreements between gaming licensees and junket representatives and the information to be provided by junket licensees and representatives; Pending
2/25/15	(30)	Provide for the interim authorization of a gaming establishment under this chapter; Transfer & Bankruptcy;
3/25/15	(31)	<i>Table Game approval, procedures and accepting tips and gratuities; Pending</i>
X	(32)	Prescribe the criteria for evaluation of the application for a gaming license including, with regard to the proposed gaming establishment, an evaluation of architectural design and concept excellence, integration of the establishment into its surroundings, potential access to multi-modal means of transportation, tourism appeal, level of capital investment committed, financial strength of the applicant and the applicant's financial plan; Completed

Rev. 2/10/14

2014-02-07 MGC Regulations Schedule

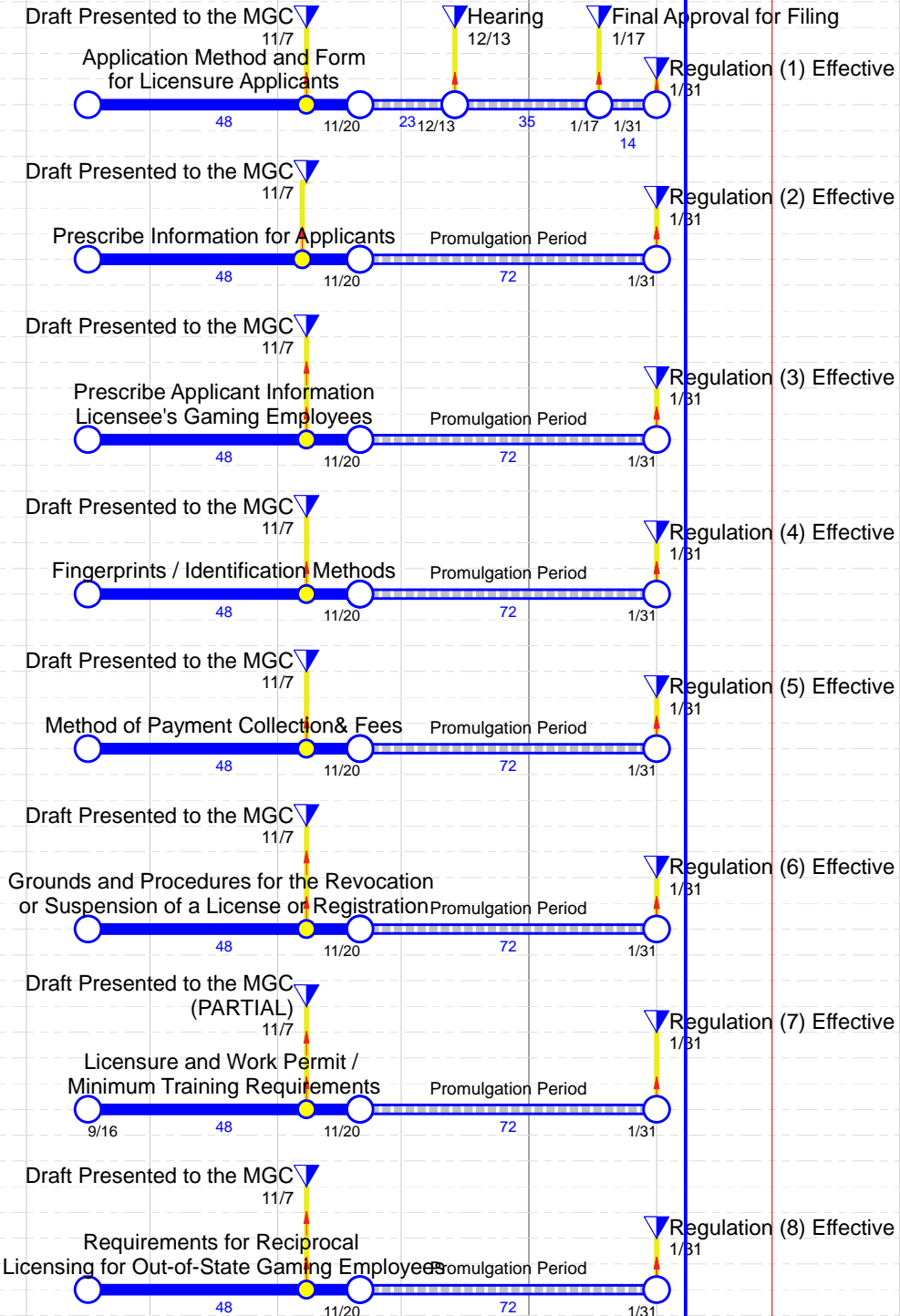
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▼ Award of C2 License
2/28

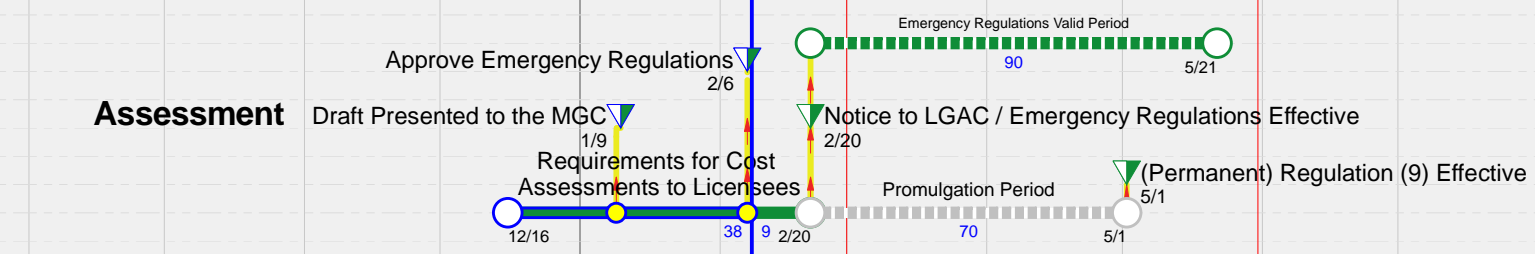
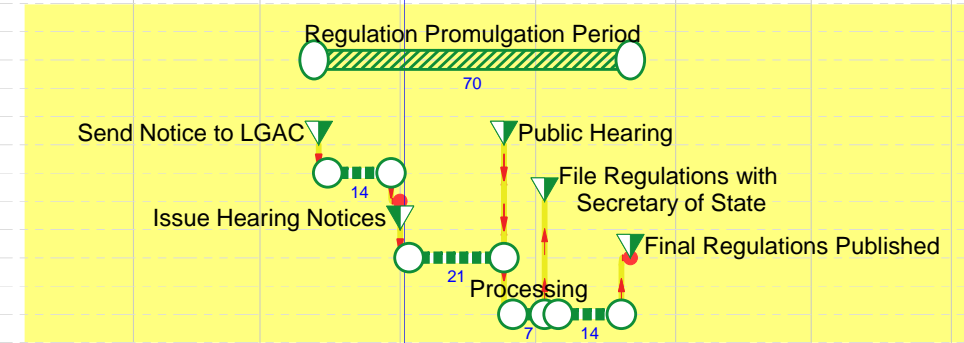
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5/30

▼ Award of C1 License / Region C
10/16

☐ Opening Slot Parlor
4/6



Licensing

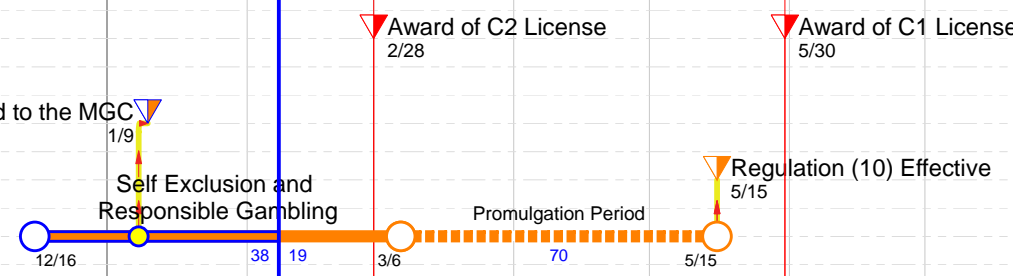


LEGEND

- ACT DESCRIPTION: Start Date - End Date
- SUMMARY ACTIVITY: Start Date - End Date

Problem Gambling

Draft Presented to the MGC 1/9



Award of C2 License 2/28

Award of C1 Licenses / Regions A & B 5/30

Award of C1 License / Region C 10/16

Opening Slot Parlor 4/6

Temp Opening Slot Parlor 10/2

Draft Presented to the MGC 2/20



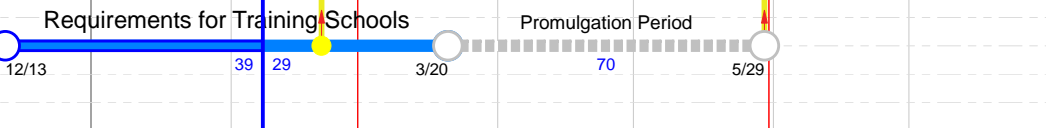
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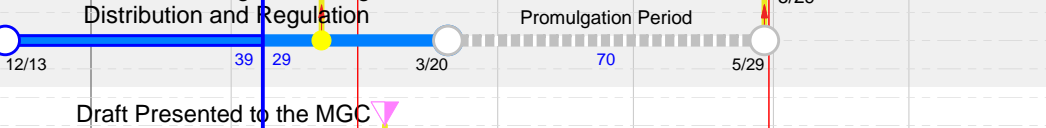
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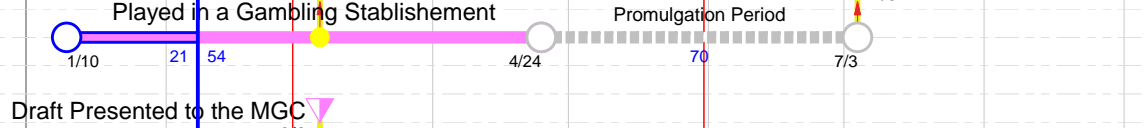
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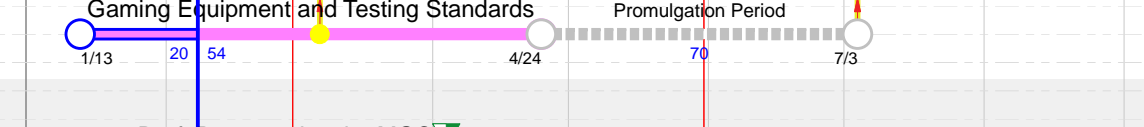
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Draft Presented to the MGC 4/3



Responsible Gaming

LEGEND

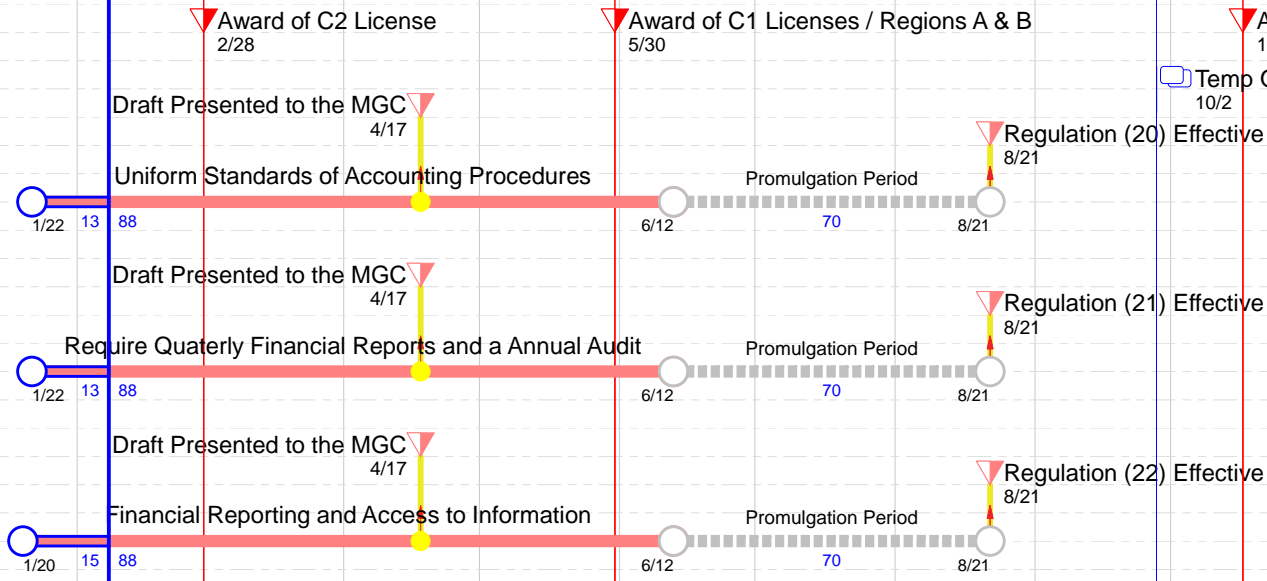
ACT DESCRIPTION

Start Date End Date

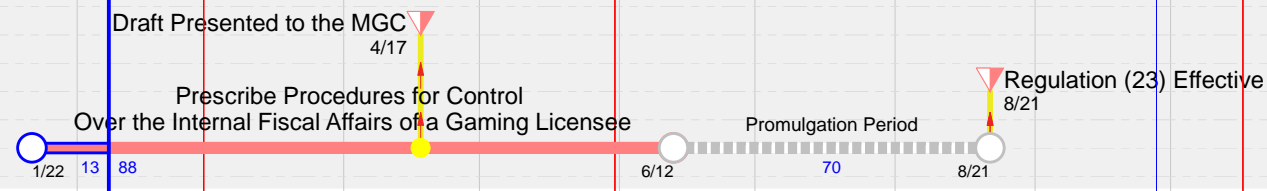
SUMMARY ACTIVITY

Start Date End Date

Financial



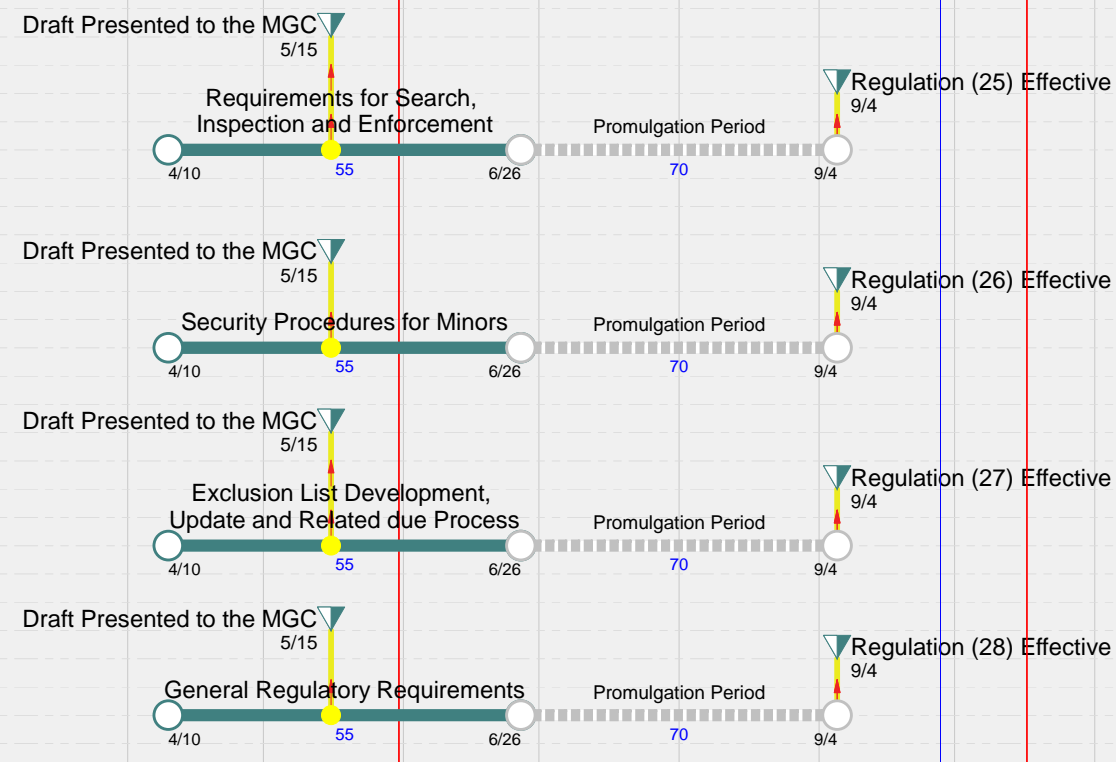
Internal Controls



Surveillance



General

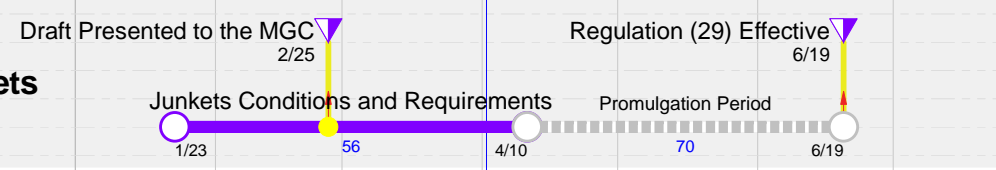


Award of C1 License / Region C 10/16

Temp Opening Slot Parlor 10/2

Opening Slot Parlor 4/6

Junkets



Interim

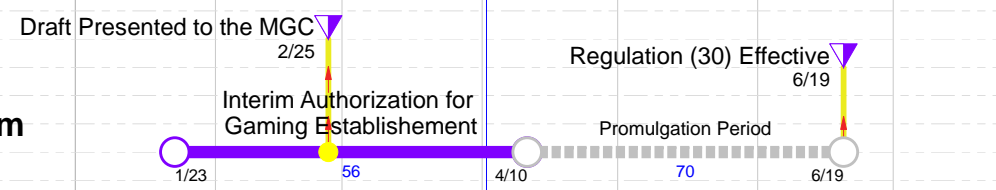


Table Games



LEGEND

ACT DESCRIPTION: Start Date - End Date

SUMMARY ACTIVITY: Start Date - End Date

**SECTION 4 – NO DOCUMENTS FOR
REVIEW**



On this ___th day of _____, 2014, the Massachusetts Gaming Commission, pursuant to the power and authority granted to it by Chapter 23K of the General Laws, hereby awards a Category _ Gaming License to _____ to operate a _____ on the premises of the Gaming Establishment described in the Order of the Commission granting the License dated _____, as posted on the web site of the Commission.

This License is subject to the Licensee's compliance with Chapter 23K of the General Laws, the regulations of the Commission promulgated thereunder, the Conditions contained in the Order of the Commission granting the License, all other applicable legal requirements.

The term of this License expires on _____, 20__.

Responses to Request for Proposed Revisions to the Form of the Gaming License:

WYNN

- Paragraph 2 Deletion of debt to equity ratio requirement
- Paragraph 5 Exception to requirement to own or acquire land where the Gaming Establishment will be constructed within 60 days of award of license until resolution of ballot initiative
- Paragraph 6 Exception to non-refundable licensing fee within 30 days of award of license until after the resolution of the ballot initiative
- Paragraph 7 & 8 Daily assessment fees to be paid on monthly basis
- Paragraph 12 Biweekly updates on progress of construction and how the licensee is meeting the goals in its construction timeline to be made on a monthly or quarterly basis
- Paragraph 13 Limited to requirements in the Gaming Act, §10(b), licensee is required to begin gaming operations within one year after the date specified in its construction timeline. This section should also consider the effect of the ballot initiative
- Paragraph 17 3.5% annual requirement be replaced with a “qualitative standard” per Wynn’s previous discussions with the Commission
- Paragraph 24 Reference should be to G.L. c. 23K, §21(a)(12)
- Paragraph 26 Quarterly reporting to commission on number, gender, and race of individuals hired to perform labor as part of the construction of the Gaming Establishment limited to initial construction period
- Paragraph 27 Deletion of requirement of licensee to provide to the Commission aggregate demographic information with respect to licensee’s customers – due to the difficulty in obtaining and the proprietary nature of the information
- Paragraph 42 Elimination of (statutory) requirement of licensee to provide complimentary onsite space for independent substance abuse, compulsive gambling and mental health counseling services, and establishing a program to train gaming employees to identify and intervene with customers exhibiting problem gaming behavior

PNG

Paragraph 6 Limited exception to the prohibition on refundability of the deposit until after the ballot resolution

Paragraph 7 & 8

Paragraph 9 Clarification on how the initial partial year will be treated when machine fees are assessed

Paragraph 22- typo revision (“provide”)

M&C

Overall Do not include statutory and regulatory requirements as “conditions”

Overall Conditions used to append unique and special aspects of a particular license, those the Commission deemed essential to its approval

Overall Conditions be in separate document from License Certificate itself (Consultants M&C)

Overall Proposed language: On this 28th day of February, 2014, the Massachusetts Gaming Commission, pursuant to the power and authority granted to it by Chapter 23K of the General Laws, hereby awards a Category 2 Gaming License to _____ to operate a slots parlor on the premises of the Gaming Establishment described in the Order of the Commission granting the License dated _____, Docket Number _____ as posted on the web site of the Commission.

This License is subject to the Licensee's compliance with Chapter 23K of the General Laws, the regulations of the Commission promulgated thereunder, the Conditions contained in the Order of the Commission granting the License, all other applicable legal requirements.

The term of this License expires on February 28, 2019.

Somerville

- Paragraph 22 First sentence revised to read “the Licensee shall provide to the Commission, with a copy to the subject Host or Surrounding Community or venue evidence of....”
- Paragraph 47 Licensee should be required to provide, at least on a quarterly basis, documentation to the Commission evidencing its performance of its commitments
- Paragraph 48 Revising the wording of the final paragraph to say: “this license shall be subject to the Commission’s reconsideration pursuant to 205 CMR 120.02, which reconsideration will review the matters set out in this Condition 48 and the factors specified in M.G.L. Chapter 23K, Sections (8) and (14). Following such reconsideration, the Commission will either affirm, deny, limit, condition, restrict, revoke, suspend or modify the license as applicable in the discretion of the Commission as set forth therein.

This is to ensure that the condition specifically addresses the statutory requirements that the Commission take into consideration the MEPA process and EIRs from the applicants, which may not be completed and adequately reviewed before the license award.

- Paragraph 49 A licensee should be required to timely report to the Commission any notice of non-compliance or violation with respect to all obtained federal, state, and local permits or approvals necessary for the construction and operation of the proposed Gaming Establishment.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 135.00: COMPLIANCE WITH APPROVED SCHEDULE FOR CONSTRUCTION OF GAMING ESTABLISHMENTS AND RELATED INFRASTRUCTURE

Section

135.01: Definitions

135.02: Construction Schedules and Reporting

135.03: Inspection of Construction and Related Records

135.04: Certification of Final Stage of Construction: Category 1 Gaming Establishments

135.05: Determination that Gaming Establishment May Open for Business

135.01: Definitions

- (1) Minority: (MBE) a minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.
- (2) Women's Business Enterprise: (WBE) a women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.
- (3) Veteran's Business Enterprise: (VBE) A Veteran Owned business shall have the same meaning as the term "small business concern owned and controlled by veteran(s)" as defined by the US Dept. of Veterans Affairs (38 CFR 74), whose status can be verified by Vendor Information Pages Verification Program located at www.VetBiz.gov or the successor vendor information and verification system established by or in contract with the federal government or by the Licensing Division of the MA Gaming Commission through submissions of "Key Qualifier's" DD2 14 form. The definition is inclusive of the **Service-disabled veteran-owned business** as defined in 15 USC §632.
- (4) Small Business: A Small Business shall be defined as an entity, including all of its affiliates combined that,
 - (a) Has its principal place of business in Massachusetts;
 - (b) Employs a combined total at all locations of 50 or fewer full-time employees;
 - (c) Has been in business at least one year; and
 - (d) Has gross revenues of \$15 million or less based on a three year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

135.02: Construction Schedules and Reporting

- (1) The commission shall, in accordance with M.G.L. c. 23K, §§ 10 and 11 approve for each gaming licensee, a schedule for the gaming licensee's capital investment in its gaming establishment and related infrastructure which includes:
 - (a) a timeline for stages of construction; including site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, insulation, interior finish and furnishings and landscaping.
 - (b) For a category 1 gaming establishment, a timeline for commencement of the final stage of construction pursuant to M.G.L. c. 23K, § 10(a); and
 - (c) a timeline for the stage of construction at which the gaming licensee shall be approved to open for business or operate a slot machine pursuant to M.G.L. c. 23K, §§ 10(c) and 11(a).
- (2) Prior to the commencement of construction, the licensee shall provide to the commission for commission approval an affirmative action program of equal opportunity whereby the licensee 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 executive office of administration and finance administration Bulletin Number 14.
- (3) If unforeseen changed circumstances make a schedule approved pursuant to 205 CMR 135.01(1) infeasible, the gaming licensee may submit to the commission for its approval a revised schedule, with a detailed statement of the unforeseen changed circumstances which justify the revised schedule. If the commission approves such revised schedule, it shall substitute and supersede the previously approved schedule.
- (4) To ensure adherence to the schedule approved pursuant to 205 CMR 132.01(1) or (3), the gaming licensee shall submit to the commission quarterly or more frequently upon the commission's request a status report including:
 - (a) the total estimated cost of construction of the gaming establishment and related infrastructure improvements, including a sworn certification regarding costs incurred pursuant to 205 CMR 122.03: Costs Included in the Calculation of Capital Investment, and separately identifying costs for design, land acquisition, site preparation and construction;
 - (b) a sworn certification regarding the capitalization of the gaming licensee, sufficient for the commission to determine, pursuant to M.G.L. c. 23K, §§ 10(e) or 11(c), that the gaming licensee has adequate funds to complete the gaming establishment and related infrastructure improvements;

(c) a copy of all design and construction contracts executed within the prior quarter by the gaming licensee to construct the gaming establishment and related infrastructure improvements;

(d) a status report reflecting the progress of construction and certifying compliance with the approved schedule for stages of construction. In the event that the progress of construction does not comply with the schedule approved pursuant to 205 CMR 135.01, the licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved schedule or submit a request for a revised schedule pursuant to 205 CMR 135.01(3).; and

(e) a detailed statistical report pursuant to M.G.L. c. 23K, § 21(a) (23) on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the gaming establishment and related infrastructure, and a comparison of this report with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a) (22).

(5) The licensee shall have a continuing obligation, pursuant to 205 CMR 120.01 (2) to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01, as well as any updates 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. Pursuant to 205 CMR 120.01 (h) the licensee shall provide to the commission copies of any appeal within 20 days of filing, whether to a municipal or state entity or for judicial review, filed with respect to any permit of approval listed in 205 CMR 120.01(1) along with a copy of the docket sheet and each decision on any appeal.

(6) Pursuant to M.G.L. c. 23K, § 21(a)(24), the gaming licensee shall report to the commission annually or more frequently upon the commission's request the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(21).

(7) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall send to each labor union or representative of workers with which the licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the licensee's commitments pursuant to M.G.L. c. 23K (15) and (22).

(8) Prior to the gaming establishment opening for business, in furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall provide to the commission an affirmative marketing plan in which the licensee identifies specific goals, expressed as an overall program goal applicable to the total dollar value of contracts entered into, for the utilization of 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; provided, however, that the specific goals for the utilization of such minority business enterprises, women business enterprises and veteran business enterprises shall be based on the availability of such minority business enterprises, women business enterprises and veteran business enterprises engaged in the type of work to be contracted by the gaming licensee.

135.03: Inspection of Construction and Related Records

- (1) At all times prior to the commission's determination that the gaming licensee may open the gaming establishment for business or operate a slot machine, the commission may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the gaming licensee's compliance with the approved schedule, the terms and conditions of the license, G.L. c. 23K, or 205 CMR.
- (2) The gaming licensee shall provide relevant plans, contracts, financing documents or other records concerning the construction of the gaming establishment or related infrastructure within ten days of the commission's request for such documents.
- (3) Following an inspection of construction pursuant to 205 CMR 135.03(1) or review of records pursuant to 205 CMR 135.03(2), the commission shall notify the gaming licensee of any non-compliance with the terms of the license, including non-compliance with an approved schedule pursuant to 205 CMR 135.02(1) and (3). Upon receipt of such notification, the gaming licensee shall promptly undertake and proceed diligently to cure any such non-compliance to the satisfaction of the commission.

135.04: Certification of Final Stage of Construction: Category 1 Gaming Establishments

- (1) Pursuant to G.L. c. 23K, § 10(a), the gaming licensee shall certify to the commission that it has reached the final stage of construction as described in the approved schedule pursuant to 205 CMR 135.02(1), or an approved revised schedule pursuant to 205 CMR 135.02(3).
- (2) Upon receipt of such certification, the commission may inspect the construction pursuant to 205 CMR 135.03(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 135.03(3).
- (3) If the commission approves the gaming licensee's certification pursuant to 205 CMR 135.04(1) that the gaming licensee has reached the final stage of construction, it shall return to the gaming licensee the deposit or release the deposit bond described in M.G.L. c. 23K, § 10(a), and permit the gaming licensee to apply the deposit to the cost of the final stage of construction.
- (4) If the commission disapproves the gaming licensee's certification pursuant to 205 CMR 135.04(1), the commission will notify the gaming licensee of the reasons for such

disapproval, and the gaming licensee shall proceed diligently to cure the reasons for the disapproval.

135.05 Determination that Gaming Establishment May Open for Business

(1) The commission may not approve a category 2 gaming establishment to open for business, begin gaming operations or operate a slot machine at a gaming establishment until the commission has:

(a) had an adequate opportunity to physically inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:

1. the terms of the license;
2. G.L. c. 23K, and 205 CMR;
3. host and surrounding community agreements pursuant to G.L. c. 23K, §§ 15 and 17;
4. impacted live entertainment venue agreements pursuant to G.L. c. 23K, § 17; and
5. permits and approvals issued in connection with the gaming establishment.

(b) issued an operations certificate for the gaming establishment pursuant to G.L. c. 23K, § 25.

(2) Pursuant to M.G.L. c. 23K, § 10(c), the commission shall not make a determination that a category 1 gaming establishment is approved to open for business until the gaming licensee has:

(a) complied with the conditions in 205 CMR 134.04(1);

(b) completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;

(c) completed all infrastructure improvements onsite and around the vicinity of the gaming establishment, including projects to account for traffic mitigation required by a license or approval obtained by the gaming licensee in connection with the gaming establishment.

(3) Pursuant to G.L. c. 23K, § 10(b), a category 1 gaming licensee who fails to receive approval from the commission to open its gaming establishment for business within one year after the date specified in its approved schedule pursuant to 205 CMR 135.02(1) or its revised, approved schedule pursuant to 205 CMR 135.02(3) shall be subject to suspension or revocation of its gaming license by the commission and may, if the commission determines that the gaming licensee acted in bad faith in its application, be assessed a fine of \$50,000,000 or less.

(4) The commission may find that a category 1 or category 2 gaming licensee who fails to comply with an approved construction schedule pursuant to 205 CMR 135.02(1) and (3):

(a) has breached a condition of licensure pursuant to G.L. c. 23K, § 23(b) (iii);

(b) is no longer capable of maintaining operations at a gaming establishment pursuant to G.L. c. 23K, § 23(b) (v);

(c) or is maintaining a business practice that is injurious to the policy objectives of G.L. c. 23K pursuant to G.L. c. 23K, § 23(b) (vi).

(5) The commission may condition, suspend or revoke a gaming license upon making a finding pursuant to 205 CMR 135.04(4) or G.L. c. 23K, § 23(b).

REGULATORY AUTHORITY

205 CMR 135: M.G.L. c. 23K, §§ 4, 5 10, 11, 15, 17, 18, 21, 23, and 25.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 136.00: SALE AND DISTRIBUTION OF
ALCOHOLIC BEVERAGES AT GAMING ESTABLISHMENTS

Section

- 136.01: Definitions
- 136.02: Gaming Beverage Licenses: General Provisions and Transfers
- 136.03: Gaming Beverage License Applications and Fees
- 136.04: Form of the Gaming Beverage License
- 136.05: Required Posting
- 136.06: Distribution of Alcohol Free of Charge
- 136.07: Prohibited Distribution
- 136.08: Forms of Identification
- 136.09: Employee Policies

136.01: Definitions.

As used in 205 CMR 136.00, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

Gaming Beverage License means a license for the sale and distribution of alcoholic beverages to be drunk on the premises of a gaming establishment pursuant to G.L. c. 23K, § 26.

Jointly Responsible Person means a non-gaming vendor responsible for the sale and distribution of alcoholic beverages within a licensed area.

Licensed Area means an area within a gaming establishment within which the sale or distribution of alcoholic beverages to be drunk on premises is permitted pursuant to a gaming beverage license.

Manager or Other Principal Representative means a person or persons to whom the gaming beverage licensee or jointly responsible person has delegated full authority and control of the licensed area and of the conduct of all business relative to alcoholic beverages in the licensed area.

136.02: Gaming Beverage Licenses: General Provisions and Transfers.

(1) Pursuant to G.L. c. 23K, § 26, the commission may grant a gaming beverage license for gaming areas and for hotels, restaurants, and other amenities within the gaming establishment.

(2) Except as otherwise provided in 205 CMR 136.00, gaming beverage licensees shall be responsible for compliance in all licensed areas, and jointly responsible persons shall be responsible for compliance in the licensed area under their control, with 205 CMR

136, G.L. c. 138, 204 CMR 2.00: Regulations of the Alcoholic Beverages Control Commission, 204 CMR 4.00: Prohibition of Certain Practices, and the requirements contained in the gaming beverage license.

(3) After notice and an opportunity for hearing, the commission may limit, condition, restrict, revoke, suspend, refuse to renew or refuse to transfer a gaming beverage license, or remove or suspend the designation of any licensed area within the gaming beverage license, for violations of 205 CMR 136, G.L. c. 138, 204 CMR 2.00: Regulations of the Alcoholic Beverages Control Commission, 204 CMR 4.00: Prohibition of Certain Practices, and the requirements contained in the gaming beverage license.

(4) The commission may assess a civil administrative penalty pursuant to G.L. c. 23K, § 36 on a gaming beverage licensee or jointly responsible person for a violation of 205 CMR 136, G.L. c. 138, 204 CMR 2.00: Regulations of the Alcoholic Beverages Control Commission, 204 CMR 4.00: Prohibition of Certain Practices, and the requirements contained in the gaming beverage license.

(5) It shall not be a defense in any proceeding under 205 CMR 136.02(3) and (4) that the gaming beverage licensee's or jointly responsible person's agent, servant or employee acted contrary to the gaming beverage licensee's or jointly responsible person's instructions or policies.

(6) A gaming beverage licensee shall not transfer a gaming beverage license, transfer control of a licensed area to a new jointly responsible person, or add, delete or materially the size, configuration or use of a licensed area without the commission's prior written approval.

136.03: Gaming Beverage License Applications and Fees.

(1) An applicant for a gaming license or a gaming licensee may apply to the commission for a gaming beverage license on the form prescribed by the commission.

(2) The application fee for the gaming beverage license shall be X, plus Y for each licensed area included in the application.

(3) The initial fee for a gaming beverage license and a renewal of any such license shall be A, plus B for each licensed area included in the license.

(4) An application for a gaming beverage license may request the following information:

(a) A description of each licensed area of the gaming establishment, including the gaming area, restaurants, hotels and bars where the licensee intends to sell or distribute alcoholic beverages to be drunk on premises.

(b) The identity of the jointly responsible person for each licensed area who will sell or distribute alcoholic beverages for consumption in the licensed area.

- (c) All information required for a license or permit pursuant to 204 C.M.R. 2.01: Licenses and Permits.
- (d) Documentation identifying the manager or other principal representative of the jointly responsible person for each licensed area.
- (e) Evidence satisfactory to the commission that the gaming licensee maintains at all times the legal authority to:
1. monitor each jointly responsible person's compliance with the conditions of the gaming beverage license, 205 CMR 136.00, G.L. c. 138, 204 CMR 2.00: Regulations of the Alcoholic Beverages Control Commission, and 204 CMR 4.00: Prohibition of Certain Practices; and
 2. remove a jointly responsible person from the gaming establishment for material violations of the gaming beverage license,
- (5) Upon receipt of a complete application for a gaming beverage license pursuant to 205 CMR 136.03(4) and the fees required by 205 CMR 136.03(2), the commission may grant or deny the application for each licensed area, request additional information from the applicant, or schedule a hearing for the applicant to address issues which relate to the application.

136.04: Form of the Gaming Beverage License

The commission, after granting a gaming beverage license application for one or more licensed areas in a gaming establishment shall issue a formal license document printed on security protected paper material utilized in the financial and securities industries that contains the following:

- (1) 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 and alcohol beverage industries in the Commonwealth of Massachusetts;
- (2) The term of the license;
- (3) An official commission serial number;
- (4) A statement that all conditions set forth in M.G.L. c. 23K and 205 CMR; G.L. c. 138 204 CMR 2.00: Regulations of the Alcoholic Beverages Control Commission; and 204 CMR 4.00: Prohibition of Certain Practices, are incorporated by reference, included as if completely set forth therein and made a part of the issued form of the gaming beverage license;
- (5) 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;

- (6) The official seal of the Commonwealth of Massachusetts;
- (7) The signature of the chair or his designee after receiving a commission resolution authorizing such license issuance and signature execution;
- (8) A condition that the alcohol may not be sold or distributed at the gaming establishment between 2:00 A.M. and 8:00 P.M.;
- (9) Such other conditions, limitations, or restrictions on the sale or distribution of alcohol at the gaming establishment as determined by the commission; and
- (10) The location of all licensed areas covered by the gaming beverage license and the jointly responsible person or persons for each licensed area.

136.05: Required Posting.

There shall be posted in a location continuously conspicuous to the public within each licensed area:

- (1) a copy of the gaming beverage license;
- (2) evidence in a form satisfactory to the commission that the licensed area is included within the gaming beverage license;
- (3) any conditions, restrictions or limitations which apply to the licensed area;
- (4) the identity of the jointly responsible person for the licensed area, and
- (5) a summary of G.L. c. 90, § 24 prohibiting driving while intoxicated and the maximum penalties provided therefore.

136.06: Distribution of Alcohol Free of Charge.

- (1) Pursuant to G.L. c. 23K, § 26(c), a gaming beverage licensee may distribute alcohol free of charge for on-premises consumption to patrons in the gaming area, or as a complimentary service or item in other areas of the gaming establishment.
- (2) A jointly responsible person shall not distribute alcohol free of charge for on-premises consumption to patrons of the gaming area, or as a complimentary service or item in the gaming establishment.

136.07: Prohibited Distribution.

A gaming beverage licensee or jointly responsible person:

- (1) may not offer or deliver an alcoholic beverage to any person unless so requested by such person;
- (2) may not offer or deliver more than two drinks to one person at a time;

- (3) may not offer or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
- (4) may not encourage or permit any game or contest which involves drinking or the awarding of drinks as prizes;
- (5) may not serve any person who is intoxicated; and
- (6) may not serve any person who is under age 21.

136.08 Forms of Identification.

The licensee or jointly responsible person shall require suitable identification which may include a Massachusetts driver's license, an official Massachusetts Registry of Motor Vehicles drinking age identification card, a driver's license or age identification card issued by another United States jurisdiction, United States passport, foreign passport military identification card, or other form of identification and proof of age recognized by G.L. c. 138, § 34B and approved by the commission.

136.09 Employee Policies

- (1) The gaming beverage licensee and each jointly responsible person must appoint in writing one or more managers or other principal representatives for each licensed area.
- (2) At least one manager or principal representative shall be present in the licensed area and shall be available to the division of gaming liquor enforcement of the alcoholic beverage control commission, the bureau, the division, and the gaming enforcement unit at all times during which alcoholic beverages are sold or distributed.
- (3) Before beginning employment, managers or other principal representatives must provide the gaming beverage licensee and jointly responsible person proof of successful completion of an accredited alcoholic beverage server training program, such as Training for Intervention Procedures (TIPS), and all other employees involved in the delivery of alcohol must complete such program within thirty days of hire.
- (4) No gaming beverage licensee or jointly responsible person may take any adverse employment action against an employee for declining to serve, or refusing to allow another to serve, a patron whom he or she believes, in good faith, is under the age of 21, intoxicated, engaged in illegal activity, or causing a disturbance.

REGULATORY AUTHORITY

205 CMR 135: M.G.L. c. 23K, §§ 4, 5, 26, 36; M.G.L. c. 138, § 34B.