

205 CMR 118.00: PHASE 2 ADMINISTRATIVE PROCEEDINGS

Section

- 118.01: RFA-2 Application Requirements
- 118.02: RFA-2 Pre-application Consultation
- 118.03: RFA-2 Administrative Completeness Review
- 118.04: RFA-2 Review Procedures
- 118.05: RFA-2 Public Hearing in Host Community
- 118.06: RFA-2 License Determinations
- 118.07: RFA-2 Administrative Proceedings - Legislative not Adjudicatory
- 118.08: RFA-2 Costs and Expenses

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: *Contents of the Application*, 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.
- (5) Either contemporaneous with or prior to submitting an RFA-2 application, the applicant shall forward a copy of the completed studies and reports referenced in 205 CMR 119.01(36) and further identified in the RFA-2 application form to each of the communities on the list of prospective surrounding communities referenced in 205 CMR 123.02(3). An RFA-2 application shall not be issued a positive determination of administrative completeness in accordance with 205 CMR 118.03 until this provision is satisfied.

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.

205 CMR: MASSACHUSETTS GAMING COMMISSION

(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.

118.03: continued

- (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 executive director or his or her designee will notify the applicant of the negative determination by email and the RFA-2 application shall not proceed to further review under 205 CMR 118.00 unless the deficiency is cured in accordance with 205 CMR 118.03(1)(c).
- (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 no later than:
 - 1. seven days from the date of filing of the email notice described in 205 CMR 118.03(1)(b) if either:
 - a. The application omits a requirement set forth in M.G.L. c. 23K, § 15; or
 - b. The executive director or his or her designee determines that the application is otherwise deficient in a material respect;
 - 2. 14 days from the date of the email notice described in 205 CMR 118.03(1)(b) if the executive director or his or her designee determines that the deficiency is non-material;
- (d) If the applicant fails to remedy a non-material deficiency in the application, the executive director or his or her designee may, on the applicant's request, issue a positive determination and allow the application to proceed, in which event the commission will take the deficiency into account in its overall evaluation process.
- (e) The applicant may file a petition for appeal, or waiver or variance in accordance with 205 CMR 102.03(4), with the commission relative to a decision made by the executive director or his or her designee in accordance with 205 CMR 118.03.

(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:
 - 1. The executive director;
 - 2. The bureau;
 - 3. Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;
 - 4. Any office, agency, board, council, commission, authority, department, instrumentality or division of the host community or any potential surrounding community;
 - 5. Any consultant retained in accordance with 205 CMR 118.04(1)(c);
 - 6. Commission staff.

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (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*;

118.04: continued

- (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:
 - 1. screen out and deny one or more applications; and
 - 2. 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, accompanied by a statement of reasons, 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 shall attend the public hearing, may make a presentation and respond to questions or public comments as directed by the chair or his or her designee. The applicant shall have at least one individual available who, based on actual knowledge, is prepared to respond on behalf of the applicant to such questions or public comments that can reasonably be anticipated relative to the contents of its RFA-2 application, including the scope and quality of the proposed gaming area and amenities, the integration of the proposed gaming establishment into the host and surrounding communities and the extent of required mitigation plans. 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.

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (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: *Conditions of Licensure*;
 - (b) Deny the application for a gaming license;
 - (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
 - (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.
- (2) The commission shall issue not more than three Category 1 licenses throughout the commonwealth, and not more than one 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 one 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).
- (5) For purposes of 205 CMR and M.G.L. c. 23K, notwithstanding any conditions included in accordance with M.G.L. c. 23K, § 21 and/or 205 CMR, the award of a gaming license shall be deemed to have occurred immediately upon a majority vote by the commission to issue a license to an applicant.

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

205 CMR: MASSACHUSETTS GAMING COMMISSION

(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.