

205 CMR 119.00: PHASE 2 APPLICATION

Section

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119.01: Contents of the Application

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

- (1) the name of the applicant; and
- (2) the mailing address and, if a business entity, the name of the state under the laws of which it is incorporated, organized, formed, or registered, the location of its principal place of business and the names and addresses of its owners, members, partners, directors and/or stockholders; and
- (3) an attestation that the qualifiers identified by the commission in accordance with 205 CMR 116.00: *Persons Required to Be Licensed or Qualified* and deemed suitable under the RFA-1 process in accordance with 205 CMR 115.00: *Phase 1 Suitability Determination, Standards and Procedures* maintain the association with the applicant previously identified in the RFA-1 process;
- (4) a copy of the host community agreement executed by the applicant and the host community that includes provision for a community impact fee; and
- (5) information demonstrating how the applicant proposes to address host community impact and mitigation issues as set forth in the host community agreement required under 205 CMR 123.00: *Host Communities* during both the construction and operation of the proposed gaming establishment; and
- (6) a listing of the infrastructure costs of the host community incurred in direct relation to the construction and operation of a gaming establishment and a statement to commit to a community mitigation plan for that community; and
- (7) a certificate showing that the applicant has received a certified and binding positive vote on a ballot question at an election in the host community in favor of the license; and
- (8) a copy of all surrounding community agreements it has executed, if any; and
- (9) a list identifying any community it believes to be a surrounding community in accordance with 205 CMR 125.01(1)(a) that it has not executed a surrounding community agreement with, if any; and
- (10) information demonstrating how the applicant proposes to address surrounding community impact and mitigation issues as set forth in the surrounding community agreements required under 205 CMR 125.00: *Surrounding Communities* during both the construction and operation of the proposed gaming establishment; and
- (11) a listing of the infrastructure costs of the surrounding community incurred in direct relation to the construction and operation of a gaming establishment and a statement committing to a community mitigation plan for those communities; and

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- (12) a description and documentation of all public outreach efforts it made to local communities; and
- (13) a description and any documentation outlining the public support for the application from the host and surrounding communities; and
- (14) a description as to how the applicant proposes to promote local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues; and
- (15) a copy of all impacted live entertainment venue agreements it has executed, if any; and
- (16) a statement as to whether it intends to incorporate a geographic exclusivity clause into agreements with its entertainers engaged to perform at a venue within its proposed Massachusetts gaming establishment, or it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and, if so, the nature of such agreements; and
- (17) an explanation as to how the applicant proposes to utilize sustainable development principles including, but not limited to:
 - (a) being certifiable as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council;
 - (b) meeting or exceeding the stretch energy code requirements contained in 780 CMR: *Appendix 120AA* or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;
 - (c) efforts to mitigate vehicle trips;
 - (d) efforts to conserve water and manage storm water;
 - (e) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
 - (f) procuring or generating on-site at least 10% of its annual electricity consumption from renewable sources qualified by the department of energy resources under M.G.L. c. 28A, § 11F; and
 - (g) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems; and
- (18) a calculation of the total capital investment in accordance with 205 CMR 122.00: *Capital Investment* including an agreement that, in accordance with the design plans submitted with the licensee's application to the commission, it will invest not less than the required capital under 205 CMR 122.00: *Capital Investment* into the gaming establishment; and
- (19) how the applicant proposes to realize the maximum capital investment exclusive of land acquisition and infrastructure improvements; and
- (20) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years; and
- (21)
 - (a) if deemed necessary by the commission to supplement the documentation considered in making its positive determination of suitability, clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers; and
 - (b) a description and documentation of the financial and capital structure of the applicant and the proposed project; and
- (22) if deemed necessary by the commission to supplement the documentation considered in making its positive determination of suitability, evidence of its ability to pay and a commitment to paying the gaming licensing fee in accordance with 205 CMR 121.00: *Licensing Fee*; and

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- (23) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming establishment; and
- (24) a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities; and
- (25) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, and the construction of a gaming establishment, including:
 - (a) maintaining a smoke-free environment within the gaming establishment under M.G.L. c. 270, § 22;
 - (b) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;
 - (c) prominently displaying information on the signs of problem gambling and how to access assistance;
 - (d) describing a process for individuals to exclude their names and contact information from a gaming licensee's database or any other list held by the gaming licensee for use in marketing or promotional communications; and
 - (e) instituting other public health strategies as determined by the commission; and
- (26) how the applicant proposes to take measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations; and how the applicant proposes to cooperate and support the commission in the development of an annual research agenda as provided in M.G.L. c. 23K, § 71; and
- (27) the designs for the proposed gaming establishment, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes:
 - (a) detailed stages of construction for the gaming establishment, non-gaming structures, and racecourse, where applicable;
 - (b) the deadline by which the stages and overall construction and any infrastructure improvements will be completed; and
 - (c) a projected date that it will begin gaming operations; and
- (28) the number of construction hours estimated to complete the work; and
- (29) how the applicant proposes to build a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry; and
- (30) the number and a description of the hotels and rooms, restaurants and other ancillary entertainment services and amenities to be located at the proposed gaming establishment and how they measure in quality to other area hotels and amenities; and
- (31) the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; and
- (32) how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment; and
- (33) whether the applicant has prepared, and how the applicant proposes to implement a workforce development plan that:
 - (a) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;
 - (b) utilizes the existing labor force in the commonwealth;

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- (c) estimates the number of construction jobs a gaming establishment will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;
 - (d) identifies workforce training programs offered by the gaming establishment;
 - (e) identifies the methods for accessing employment at the gaming establishment; and
 - (f) addresses workplace safety issues for employees; and
- (34) whether the applicant proposes to establish, fund and maintain human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:
- (a) establishes transparent career paths with measurable criteria within the gaming establishment that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
 - (b) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
 - (c) establishes an on-site child day-care program; and
- (35) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:
- (a) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors;
 - (b) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project;
 - (c) completed studies and reports as required by the commission, which shall include, but need not be limited to, an economic benefit study, both for the commonwealth and the region; and
 - (d) whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment;
- (36) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming establishment's:
- (a) economic benefits to the region and the commonwealth;
 - (b) local and regional social, environmental, traffic and infrastructure impacts;
 - (c) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities;
 - (d) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and
 - (e) the estimated municipal and state tax revenue to be generated by the gaming establishment; and
- (37) the names of proposed vendors of gaming equipment; and
- (38) whether the applicant proposes to contract with local business owners for the provision of goods and services to the gaming establishment, including developing plans designed to assist businesses in the commonwealth in identifying the needs for goods and services to the establishment; and
- (39) whether the applicant intends to purchase domestically manufactured slot machines for installation in the gaming establishment; and
- (40) the location of the proposed gaming establishment, including all amenities and significant structures, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past 20 years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission; and

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- (41) if it does not presently possess an ownership interest in the location, an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than 60 years beyond the term of the gaming license issued under 205 CMR 119.00; and
- (42) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment; and
- (43) a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments; and
- (44) the type and number of games to be conducted at the proposed gaming establishment and the specific location of the games in the proposed gaming establishment; and
- (45) a projection as to the number of slot machines it will seek approval for use at the gaming establishment should it be awarded a gaming license; and
- (46) a projection as to the number of gaming positions it anticipates at the gaming establishment should it be awarded a gaming license; and
- (47) how the applicant proposes to maximize revenues received by the Commonwealth of Massachusetts; and
- (48) whether the applicant's proposed gaming establishment is part of a regional or local economic plan; and
- (49) how issuance of the license to the applicant will offer the highest and best value to create a secure and robust gaming market in the region and the Commonwealth of Massachusetts; and
- (50) A signed agreement to be a licensed state lottery sales agent under M.G.L. c. 10 to sell or operate the lottery, multi-jurisdictional and keno games including an agreement that, it would agree to a condition of the issuance of a license to operate a gaming establishment, that it will not create, promote, operate or sell games that are similar to or in direct competition, as determined by the Massachusetts Gaming Commission, with games offered by the state lottery commission, including the lottery instant games or its lotto style games such as keno or its multi-jurisdictional games; and
- (51) A written plan demonstrating the manner in which the lottery and keno games shall be made readily accessible to the guests of the gaming establishment; and
- (52) Information demonstrating how the applicant proposes to protect the lottery from and mitigate any adverse impacts due to expanded gaming including, but not limited to, developing cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents; and
- (53) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement a marketing program by which the applicant identifies specific goals, expressed as an overall program goal applicable to the total dollar amount of contracts, for utilization of:
 - (a) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment;
 - (b) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and
 - (c) minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; and

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

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

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

119.02: Completing the Application

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

119.03: Evaluation of the Application by the Commission

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

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

- (a) Overview of project.
- (b) Financial criteria including:
 1. Financial and capital structure
 2. Maximization of revenues to the Commonwealth
 3. Realization of maximum capital investment exclusive of land and infrastructure
 4. Ability to offer the highest and best value to create a secure and robust gaming market
- (c) Economic Development criteria including:
 1. Job creation
 2. Supporting external business and job growth
 3. Regional tourism and attractions
- (d) Building and Site Design criteria including:
 1. Compliance with 780 CMR: *State Board of Building Regulations and Standards*, 521 CMR: *Architectural Access Board*, local ordinances and by-laws, including M.G.L. c. 30, §§ 61 through 62H as provided in 205 CMR 120.01: *Permitting Requirements*
 2. Demonstration of creativity in design and overall concept excellence
 3. Proposal to build a gaming establishment of high caliber a with quality amenities in partnership with local facilities
 4. Compatibility with surroundings
 5. Utilization of sustainable development principles in the construction and during the life cycle of the facility

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6. Security measures
7. Alternative uses for buildings in the complex
- (e) Mitigation criteria including:
 1. Agreement to be a lottery agent, not run competing games, and to protect and enhance the lottery
 2. Demonstration of plan for mitigation of lottery impact and compulsive gambling problems, community development, and host and surrounding community impact and mitigation issues
 3. Addressing the infrastructure costs of the host and surrounding community from the construction and operation of the gaming establishment and commitment to a mitigation plan
 4. Quality of signed host community agreement and a certified and binding vote on a ballot question at an election in the host community in favor of such license
 5. Quality of surrounding community agreements
 6. Quality of impacted live entertainment venue agreements
 7. Traffic mitigation
 8. Measures to address problem gambling
 9. Addressing mitigation of local and regional impact on housing, social services, and utilities

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

REGULATORY AUTHORITY

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

NON-TEXT PAGE