

205 CMR 120.00: PERMITTING REQUIREMENTS

Section

120.01: Permitting Requirements

120.02: Conditions of Licensure

120.01: Permitting Requirements

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

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

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

The applicant shall attach to the chart, and shall index in accordance with the chart, a complete copy of:

- a. any completed application for each permit or approval that was submitted by the applicant to the authority having jurisdiction, including a copy of any exhibits and attachments;
- b. any written comments received by the applicant from a host community, surrounding community or prospective surrounding community, impacted live entertainment venue or prospective impacted live entertainment venue, and/or the permitting agency regarding the applicant's request for the permit or approval; and
- c. any permit, approval or decision issued by the authority having jurisdiction.

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

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

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

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

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

(g) A statement from the host community's zoning officer, town counsel or city solicitor that notwithstanding a site plan approval, the proposed Category 1 or Category 2 gaming establishment is either:

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

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- (h) Any appeal, whether to a municipal or state entity or for judicial review, filed with respect to any permit or approval listed in 205 CMR 120.01(1) along with a current copy of the docket sheet on such appeal and each decision on any appeal; and
- (i) Any other information requested from the applicant by the commission regarding federal, state, or local permits or approvals.

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

120.02: Conditions of Licensure

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

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

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

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

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

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

- 1. the conditions imposed by those permits or approvals will not cause significant and material adverse impacts on a host or surrounding community, or impacted live entertainment venue, that have not been addressed in a host or surrounding community agreement or impacted live entertainment venue agreement; or
- 2. any conditions of federal, state, or local permits or approvals expected to cause significant and material adverse impacts on a host or surrounding community or impacted live entertainment venue that have not been addressed in a host or surrounding community agreement or impacted live entertainment venue agreement have been adequately addressed pursuant to 205 CMR 127.00: *Reopening Mitigation Agreements*.

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

REGULATORY AUTHORITY

205 CMR 120.00: M.G.L. c. 23K, §§ 1, 4(15), 4(37), 5, 13, 15(12), 17 and 18(14).