

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 122.00: CAPITAL INVESTMENT

Section

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122.01: Scope and Purpose

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

122.02: Minimum Capital Investment

- (1) The minimum capital investment for a category 1 gaming license shall be \$500,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03 and 122.04.
- (2) The minimum capital investment for a category 2 gaming license shall be \$125,000,000. The capital investment shall be calculated in accordance with 205 CMR 122.03 and 122.04.

122.03: Costs Included in the Calculation of Capital Investment

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

- (1) Costs related to the actual construction of the gaming establishment and site including any hotels, gaming areas, and other amenities, including overhead and indirect costs attributable to the construction activities.
- (2) Costs related to preparation of the site including, clearing, demolition and abatement.
- (3) Costs related to the design of the project, including building design, interior design, and exterior site design.
- (4) Costs associated with consulting and due-diligence necessary to fund studies and devise engineering solutions in accordance with M.G.L. c. 23K including traffic studies, environmental studies, and other associated mitigation studies.
- (5) Costs associated with minimizing the environmental impact of the project including upfront costs aimed at minimizing a carbon footprint or implementing sustainable elements and/or smart growth practices.
- (6) Costs associated with designing, improving or constructing the infrastructure inside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation. Provided, however, in accordance with M.G.L. c. 23K, § 11(a), that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation for a category 2 gaming establishment shall not be considered as part of the capital investment in a category 2 gaming establishment license application.
- (7) Costs associated with the pre-opening purchase of fixtures, equipment, gaming equipment, information technology equipment, and personal property to be used within the gaming establishment and site including those within hotels, restaurants, retail and other service businesses associated with the establishment.

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- (8) Costs associated with applying for federal, state, or municipal permits.
- (9) Professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the project, and do not represent profits or payout as part of partnership agreements or "home office" overhead (*i.e.*, out of state).
- (10) Costs associated with the safety, training, quality assurance, or testing incurred during the construction of the gaming establishment and site.
- (11) (For Region C applicants) Capitalized interest.
- (12) (For Region C applicants) Costs associated with designing, improving or constructing the infrastructure outside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of a host community agreement, a surrounding community agreement, required by any regulatory body or as part of the permitting process.

122.04: Costs Excluded from the Calculation of Capital Investment

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

- (1) Costs associated with the purchase or lease or optioning of land where the gaming establishment will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land.
- (2) (Subject to 205 CMR 122.03(11)) Carried interest costs and other associated financing costs.
- (3) Costs associated with mitigating impacts on host and surrounding communities as set forth in Host and Surrounding Community agreements, whether directly attributable to a specific impact or not.
- (4) (For Region A and B applicants) Costs associated with designing, improving or constructing the infrastructure outside the property boundaries of the site of the gaming establishment including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of a host community agreement, a surrounding community agreement, required by any regulatory body or as part of the permitting process.
- (5) Any and all legal fees.
- (6) Promotional, communications and marketing costs prior to and attributable to the efforts of a local referendum including all costs associated with local outreach.
- (7) Fees and costs paid to the commission in accordance with M.G.L. c. 23K, §§ 15(11), 10(d), 11(b), and/or 205 CMR 114.00: *Fees*, and other similar fees and costs paid to municipalities.
- (8) Licensing costs including any costs payable to the commission to obtain pre-opening licensing of individuals or vendors.
- (9) Costs associated with marketing, advertising and promotions.
- (10) Upfront costs designed to implement workforce development plans.
- (11) Upfront costs designed to implement efforts to combat problem gambling and/or support the efforts of the commission's research agenda.

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122.04: continued

(12) Political contributions and community contributions under 205 CMR 108.00: *Community and Political Contributions*.

122.05: Deposit or Bonding of Funds

- (1) Within 30 days after the award of a category 1 gaming license, the applicant shall either:
 - (a) Deposit 10% of the total investment proposed in the RFA-2 application into an interest bearing escrow account held by the commission in accordance with M.G.L. c. 23K, § 10(a);
 - or
 - (b) Secure a deposit bond, in a form and from an institution acceptable to the commission, insuring that 10% of the proposed capital investment shall be forfeited to the Commonwealth of Massachusetts if the applicant is unable to complete the gaming establishment, as determined by the commission.

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

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

REGULATORY AUTHORITY

205 CMR 122.00: M.G.L. c. 23K, §§ 1(5), 4(37), 5(3), 5(a)(16), 10, 11 and 18(3).