

205 CMR 125.00: SURROUNDING COMMUNITIES

Section

125.01: Determination of Surrounding Communities and Execution of Mitigation Agreements

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(1) General. The following communities are determined to be surrounding communities concerning the development and operation of a specific gaming establishment for purposes of M.G.L. c. 23K and 205 CMR:

(a) Each community located in the commonwealth that both:

1. has been designated as a surrounding community by an applicant for a Category 1 or Category 2 license in the RFA-2 application, written notice of which designation shall be provided by the applicant to the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, at the time the application is filed with the commission; and
2. submits to the commission a written assent, signed by the community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B, or their designee, to the designation within ten days of receipt of the application by the commission. Such notice to the community of designation by the applicant shall also include written notice of the requirement that each community must, to obtain final surrounding community designation, assent to such designation in writing within ten days of the date of the receipt of the application by the commission. Upon receipt of the written assent, the commission shall issue a written notice designating the community as a surrounding community; and

(b) Each community located in the commonwealth that has executed a surrounding community agreement with the applicant for a Category 1 or Category 2 license which agreement was submitted with the RFA-2 application and is determined by the commission to be in compliance with M.G.L. c. 23K, § 15(9); and

(c) Each community located in the commonwealth that has been designated a surrounding community by the commission under M.G.L. c. 23K, § 17(a) and 205 CMR 125.01(2) after the submission of an applicant's RFA-2 application upon written petition by the community's chief executive officer as defined in M.G.L. c. 4, § 7, cl. Fifth B, or their designee, for the community to be designated a surrounding community with respect to the specific gaming establishment.

(2) Designation of Surrounding Communities Pursuant to 205 CMR 125.01(1)(c).

(a) A community seeking to be designated a surrounding community in accordance with 205 CMR 125.01(1)(c) shall submit a written petition to the commission no later than ten days after receipt by the commission of the RFA-2 application for a gaming establishment for which the community seeks to be designated a surrounding community; provided, the petition must include proof of service of the petition upon the applicant. If an applicant assents in writing to the petition, the commission shall designate the community a surrounding community without further review. The applicant may reply in favor or opposition to the petition in writing within ten days after receipt by the commission of the petition. The commission will make a determination on the petition at an open meeting, at which it may allow presentations or information from the applicant and the proposed surrounding community, at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, § 17(c).

(b) In determining whether a community is a surrounding community, the commission will exercise its discretion based on a review of the RFA-2 application, the RFA-2 applicant's

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detailed plan of construction, any independent evaluations, pertinent information received from the community seeking to be designated as a surrounding community, the RFA-2 applicant, the host community, and the public, and any additional information that the commission determines to be beneficial in making its determination. In exercising its discretion in the determination as to whether a community meets the definition of surrounding community in accordance with M.G.L. c. 23K, § 2, the commission shall consider factors, pursuant to M.G.L. c. 23K, §§ 4(33) and 17(a), such as population, infrastructure, distance from the gaming establishment and political boundaries, and will evaluate whether:

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1. The community is in proximity to the host community and the gaming establishment included in the RFA-2 Application, taking into account such factors as any shared border between the community and the host community; and the geographic and commuting distance between the community and the host community, between the community and the gaming establishment, and between residential areas in the community and the gaming establishment.
 2. The transportation infrastructure in the community will be significantly and adversely affected by the gaming establishment, taking into account such factors as ready access between the community and the gaming establishment; projected changes in level of service at identified intersections; increased volume of trips on local streets; anticipated degradation of infrastructure from additional trips to and from a gaming establishment; adverse impacts on transit ridership and station parking impacts; significant projected vehicle trip generation weekdays and weekends for a 24 hour period; and peak vehicle trips generated on state and federal roadways within the community.
 3. The community will be significantly and adversely affected by the development of the gaming establishment prior to its opening taking into account such factors as noise and environmental impacts generated during its construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction.
 4. The community will be significantly and adversely affected by the operation of the gaming establishment after its opening taking into account such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; increased social service needs including, but not limited to, those related to problem gambling; and demonstrated impact on public education in the community.
 5. The community will be significantly and adversely affected by any other relevant potential impacts that the commission considers appropriate for evaluation based on its review of the entire application for the gaming establishment.
- (c) In determining whether a community is a surrounding community the commission may consider any positive impacts on a community that may result from the development and operation of a gaming establishment.

(3) Surrounding Community Agreements. The applicant shall submit to the commission a signed agreement with each surrounding community to its proposed gaming establishment as part of its RFA-2 application in accordance with M.G.L. c. 23K, § 15(9) or the parties shall follow the procedure outlined in 205 CMR 125.01(6). The agreement may be for any term necessary to satisfy the purposes for which the agreement is required by M.G.L. c. 23K.

(4) Availability of Other Impact Funding. Any finding by the commission that a community is not a surrounding community for purposes of the RFA-2 application shall not preclude the community from applying to and receiving funds from the Community Mitigation Fund established by M.G.L. c. 23K, § 61, the Transportation Infrastructure and Development Fund established by M.G.L. c. 23K, § 62 and the Public Health Trust Fund established by M.G.L. c. 23K, § 59.

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(5) Limited Surrounding Community Definition to Encourage Community Disbursements. To encourage applicants to make funds available to communities to evaluate potential impacts and to potentially negotiate a surrounding community agreement prior to the submission of an RFA-2 application and prior to the commission's final designation of the surrounding communities of a proposed gaming establishment pursuant to 205 CMR 125.01(2), an applicant's execution of a letter of authorization pursuant to 205 CMR 114.03 shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 125.01(2); rather, the applicant's execution of a letter of authorization and the community's receipt of funds pursuant to 205 CMR 114.03: *Community Disbursements* shall designate the community as a surrounding community only for the limited purposes of providing funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community agreement.

(6) Negotiation of a Surrounding Community Agreement after the Applicant has Submitted an RFA-2 Application.

(a) Participation in Process. In accordance with M.G.L. c. 23K, § 17(a), 205 CMR 125.01(6) provides the procedure for reaching a fair and reasonable surrounding community agreement between the applicant and the surrounding community. Upon being designated a surrounding community by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2) the community and the applicant shall be bound by this procedure.

1. In the event the applicant shall fail or refuse to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) with any community determined to be a surrounding community under 205 CMR 125.01(1)(a) or (2), the commission may deny the applicant's RFA-2 application for a Category 1 or Category 2 license or condition the issuance of the license on mitigation terms with respect to the proposed surrounding community that the commission determines are appropriate.

2. In the event a community designated a surrounding community fails or refuses to participate in the arbitration process set forth in 205 CMR 125.01(6)(c), the commission may deem the community to have waived its designation as a surrounding community. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or 2 license a community impact fee and any requirements it deems appropriate requirements for mitigation of impacts from the development or operation of a licensed gaming establishment.

3. An applicant or surrounding community may petition the commission for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 125.01(6)(c) and may request a remedy in accordance with 205 CMR 125.01(6)(a)1. or 2.

(b) Negotiated Agreement. Pursuant to M.G.L. c. 23K, § 17(a), the applicant shall negotiate a signed agreement with a community within 30 days from the surrounding community determination by the commission in accordance with 205 CMR 125.01(1)(a) or (2). In the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 125.01(6)(c). The parties may, however, engage in binding arbitration in accordance with 205 CMR 125.01(6)(c) at any time during that 30 day period.

(c) Binding Arbitration Procedure.

1. The applicant and surrounding community may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the surrounding community determination is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). Provided, however, the parties must engage in this binding arbitration

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procedure if no surrounding community agreement is filed with the commission within 30 days of the date the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1)(a) or (2).

2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.

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3. No later than five days after the passage of 30 days since the surrounding community designation is made by the commission in accordance with 205 125.01(1)(a) or 125.01(2) the parties shall select a neutral, independent arbitrator and submit their best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, § 15(9) to the arbitrator and to the other party. The best and final offer shall be in the form of an executable surrounding community agreement. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the five day period, the commission or its designee shall select the third neutral, independent arbitrator. The three arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.

4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)3., the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.

5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that three arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.

6. Within five days of the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)3. if a party (the "objecting party") believes that the best and final offer submitted by the other party contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K, the objecting party shall file with the commission and contemporaneously serve on the other party a petition that includes the best and final offer submitted by each party, a list of all of the terms that the objecting party believes are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K, the reason that the objecting party believes such terms are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K, any evidence supporting the objecting party's position, and a request that if the other party's best and final offer is selected by the arbitrator the commission hold a hearing to review whether the term or terms listed by the objecting party are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K. Upon receipt of the petition, the commission shall schedule a hearing at a public meeting to be held no later than three days after the arbitrator issues its report pursuant to 205 CMR 125.01(6)(c)7.

If a petition is filed with the commission pursuant to 205 CMR 125.01(6)(c)6., both parties shall contemporaneously file with the commission a copy of all documents filed with the arbitrator during the arbitration.

7. Within 20 days after receipt of the parties' submissions under 205 CMR 125.01(6)(c)3., the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community. In reaching its decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report.

8. If neither party requested a hearing pursuant to 205 CMR 125.01(6)(c)6., then no later than five days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 125.01(6)(c)6., the parties shall sign a surrounding community agreement and

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file it with the commission in accordance with M.G.L. c. 23K, § 15(9) and 205 CMR 125.01(3) or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties. If a hearing has been requested pursuant to 205 CMR 125.01(6)(c)6., the decision of the arbitrator shall become final in accordance with the provisions of 205 CMR 125.01(6)(c)11.

9. In accordance with 205 CMR 125.01(6)(c)6., the commission shall hold a public hearing on the objecting party's petition. At the hearing the commission shall review the submissions of each party and take testimony from the parties in the commission's discretion. At the conclusion of the public hearing the commission may:

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- a. determine that the terms of the best and final offer selected by the arbitrator are consistent with M.G.L. c. 23K and that the arbitrator's decision shall be the surrounding community agreement between the parties; or
- b. determine that the best and final offer selected by the arbitrator contains a terms or terms that are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K

10. If the commission determines that the best and final offer selected by the arbitrator contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K, the commission shall modify, cause to be modified or remove the terms that are fundamentally inconsistent with a provision or with the purposes of M.G.L. c. 23K. No later than five days after the commission's decision the parties shall sign the surrounding community agreement and file it with the commission in accordance with M.G.L. c. 23K, § 15(9) and 205 CMR 125.01(3) or the arbitrator's report, as modified by the commission, shall be deemed to be the surrounding community agreement between the parties.

11. The arbitrator's decision shall be deemed final once the commission makes its determination pursuant to 205 CMR 125.01(6)(c)9. or 10.

12. In the absence of an objection filed in accordance with 205 CMR 125.01(6)(c)6., the decision of the arbitrator shall be final and binding and shall not be subject to further review. If an objection has been filed in accordance with 205 CMR 125.01(6)(c)6., the decision of the arbitrator shall become final in accordance with 205 CMR 125.01(6)(c)11. and shall not be entitled to further review.

REGULATORY AUTHORITY

205 CMR 125.00: M.G.L. c. 23K, §§ 4(37), 5 and 17.

NON-TEXT PAGE