

205 CMR 126.00: IMPACTED LIVE ENTERTAINMENT VENUES

Section

126.01: Determination of Impacted Live Entertainment Venues

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(1) General. The following shall be an impacted live entertainment venue for purposes of M.G.L. c. 23K and 205 CMR:

(a) A venue located in the commonwealth that has executed an impacted live entertainment venue agreement with the applicant for a Category 1 or Category 2 license which agreement was submitted with the RFA-2 application and is in compliance with M.G.L. c. 23K, § 15(10); or

(b) A venue located in the commonwealth that has been designated an impacted live entertainment venue by the commission under M.G.L. c. 23K, § 17(b), and 205 CMR 110.01(2) after the submission of an applicant's RFA-2 application upon written request by the venue for the venue to be designated an impacted live entertainment venue with respect to the specific gaming establishment.

(2) Impacted Live Entertainment Venue Determination by Commission. A venue seeking to be designated an impacted live entertainment venue in accordance with 205 CMR 110.01(1)(b) shall submit a written request 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 venue seeks to be designated an impacted live entertainment venue. The commission will make a determination on the request at an open meeting at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, § 17(c). In determining whether a venue will be designated as an impacted live entertainment venue, the commission shall ensure that the venue meets the definition of impacted live entertainment venue as set forth in M.G.L. c. 23K, § 2, and shall, in accordance with M.G.L. c. 23K, § 4(39), consider factors including, but not limited to, the venue's distance from the gaming establishment, venue capacity and the type of performances offered by that venue. Further, the commission will consider whether the applicant intends to include a geographic exclusivity clause in the contracts of entertainers at the proposed gaming establishment, or in some other way intends to limit the performance of entertainers within Massachusetts. The commission's determination will be made after a review of the entire RFA-2 application submitted by the applicant for a gaming license as well as any independent evaluations provided by either the venue or otherwise.

(3) Impacted Live Entertainment Venue Agreements. An applicant for a license for a gaming establishment shall negotiate an agreement with each venue determined by the commission to be an impacted live entertainment venue for their proposed gaming establishment. The applicant shall submit to the commission a signed agreement with each impacted live entertainment venue to its proposed gaming establishment either as part of its RFA-2 application in accordance with M.G.L. c. 3K, § 5(10) or the parties shall follow the protocol and procedure outlined in 205 CMR 126.01(4).

(4) Negotiation of an impacted live entertainment venue Agreement after the applicant has submitted an RFA-2 application.

(a) Participation in Process. In accordance with M.G.L. c. 23K, § 17(b), 205 CMR 126.01(4) provides the protocol and procedure for reaching a fair and reasonable impacted live entertainment venue agreement between the applicant and the venue. Upon being designated an impacted live entertainment venue by the commission in accordance with 205 CMR 126.01(2) the venue 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 126.01(4)(c) with any venue determined to be an impacted live entertainment venue under 205 CMR 126.01(2), the commission may deny the applicant's RFA-2 application or condition the issuance of the license.

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2. In the event a venue designated an impacted live entertainment venue fails or refuses to participate in the arbitration process set forth in 205 CMR 126.01(4)(c), the commission may deem the venue to have waived its designation as an impacted live entertainment venue. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or Category 2 license any requirements it deems appropriate for mitigation of negative impacts from the development or operation of a licensed gaming establishment.
  3. An applicant or venue may petition the commission at any time for a finding that the other party has failed or refused to participate in the arbitration process set forth in 205 CMR 126.01(4)(c) and may request a remedy in accordance with 205 CMR 126.01(4)(a)1. or 2.
- (b) Negotiated Agreement. Pursuant to M.G.L. c. 23K, § 17(b), the applicant shall negotiate a signed agreement with a venue within 30 days from the impacted live entertainment venue designation by the commission in accordance with 205 CMR 126.01(2). In the event that the applicant and venue cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 126.01(4)(c). The parties, however, may engage in binding arbitration in accordance with 205 CMR 126.01(4)(c) at any time during that 30 day period.
- (c) Binding Arbitration Procedure.
1. The applicant and impacted live entertainment venue may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the impacted live entertainment venue determination is made by the commission in accordance with 205 CMR 126.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no impacted live entertainment venue agreement is filed with the commission within 30 days of the date the designation is made by the commission in accordance with 205 CMR 126.01(2).
  2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
  3. No later than five days after the passage of 30 days since the designation is made by the commission in accordance with 205 CMR 126.01(2) the parties shall select a neutral arbitrator and submit their best and final offer for an impacted live entertainment venue agreement pursuant to M.G.L. c. 23K, § 15(10) to the arbitrator and to the other party. 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 126.01(4)(c)3., the applicant shall submit a copy of the impacted live entertainment venue agreements, if any, it has executed with other venues concerning the applicant's proposed gaming establishment. Either party may submit executed impacted live entertainment venue 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  $\frac{1}{3}$  shall be paid by the venue.
  6. Within 20 days after receipt of the parties' submissions under 205 CMR 126.01(4)(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 impacted live entertainment venue agreement between the applicant and the venue. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s) may make adjustments to the best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K.

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7. No later than five days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 126.01(4)(c)6., the parties shall sign an impacted live entertainment venue agreement and file it with the commission in accordance with M.G.L. c. 23K, § 15(10) and 205 CMR 126.01(3) or the arbitrator's report shall be deemed to be the impacted live entertainment venue agreement between the parties.

REGULATORY AUTHORITY

205 CMR 126.00: M.G.L. c.23K, §§ 4(37), 4(39), 5, and 17.

NON-TEXT PAGE