



NOTICE OF MEETING and AGENDA
March 25, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

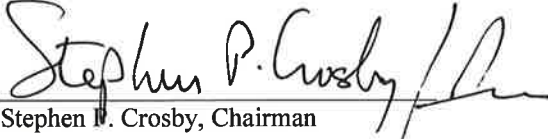
Monday, March 25, 2013
1:00 p.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-G
Boston, Massachusetts

PUBLIC MEETING - #60

1. Call to order
2. Evaluation Criteria Discussion
3. Review Draft Regulations
4. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

3/21/13
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: March 21, 2013 at 1:00 p.m.



Massachusetts Gaming Commission

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CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

Massachusetts Gaming Commission		Minimum requirements under G.L. c. 23K, § 9, 15	YES	NO
Draft Evaluation Criteria		Factors Commission must consider under G.L. c. 23K, § 18		
Update Date: March 8, 2013		Factors Commission originated		
Criteria Grouped by Topic		Required Information		
I	<p>OVERVIEW</p> <p>Since it began operations more than a year ago and throughout its nearly sixty public meetings and eight public educational sessions, the members of the Massachusetts Gaming Commission have tried to articulate a vision, rooted in the expanded gaming legislation, of how we would like to see expanded gaming conceived of and operated in the Commonwealth. The backbone of that vision will be found in considerable detail in the four following sections of the application: Finance, Economic Development, Design, and Mitigation. In addition to this basic structure's, we have tried to articulate our aspirations for something more – something unique, something special, something innovative – in the architecture of the gaming industry in Massachusetts. In this first part of the application, we would like you to respond in detail to the following broad, thematic questions that, in combination, embrace that architecture:</p>			
	How does the project you propose manifest an appreciation for and collaboration with the existing Massachusetts "brand," i.e., our intellectual/knowledge economy; our biomedical, life sciences, educational and financial services economic driver; and our long history of innovation and economic regeneration over the 400 years of our existence?			
	How does the project you propose embrace the Legislature's mandate to present "destination resort casinos" rather than "commercial casinos"?			
	How do you propose to merge a "destination resort casino" with an outward looking physical structure and business strategy that leverages our existing assets, and enhances and coordinates with our existing tourism and other leisure venues?			
	How do you propose to work with affiliated attractions and amenities to broaden the market base of the gaming facility and to meet unmet needs in our array of entertainment, education and leisure resources?			
	How do you intend to market aggressively outside Massachusetts and internationally, perhaps in cooperation with our existing industries, and certainly in collaboration with our existing institutional drivers of economic and international development?			
	Describe your commitment to a diverse workforce and supplier base, and an inclusive approach to marketing, operations and training practices that will take advantage of the broad range of skills and experiences represented in our Commonwealth's evolving demographic profile.			
	What is your overall perspective and strategy for broadening the appeal of each region of our Commonwealth to travelers within and without Massachusetts?			

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

Massachusetts Gaming Commission			
Draft Evaluation Criteria			
Update Date: March 8, 2013			
Criteria Grouped by Topic		Required Information	YES NO
II FINANCIAL			
PREREQUISITES			
(4) (11) Pay license deposit			
(5) Demonstrate ability to pay license fee			
(2) Invest not less than required capital into the gaming establishment			
(3) Own land within 60 days of license issuance			
EVALUATION CRITERIA			
Financial & Capital Structure			
	Provide applicant's audited financial statements for each of the last five years, including 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 5 years. If applicant is comprised of more than one legal entity, provide financial statements for each. Do not include financial statements for individual partners, officers or shareholders.		
	Provide unaudited financial statements and all SEC filings for the current fiscal year through the end of the most recent quarter prior to filing		
	Describe financing structure and plan including all sources of capital. Include current capital commitments as well as plan and timing for meeting future capital needs.		
	Provide a detailed budget of the total project cost. Identify separately construction costs (labor, materials), design costs, consulting fees and all other development costs.		
	Also identify all other pre-opening costs including training, marketing and initial working capital		
	9) Provide a timeline of construction of the facility that includes detailed stages of construction for the gaming establishment, non-gaming structures and any racecourse, where applicable, and provide the number of construction hours estimated to complete the work.		
	10) Provide an enterprise pro-forma with a summary budget and cash-flow. Identify sources and uses of cash on a quarterly basis during the construction period and annually for five years (Category II facility) or 15 years (Category I facility) after opening. Discount cash flows at 4% and estimate the project's internal rate of return.		
	Describe all existing credit arrangements and financial commitments including the identity of each lender and the terms or conditions under which loan proceeds can be obtained		
	Provide a description of any contract, loan agreement or commitment that the applicant has breached or defaulted on during the last 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default.		
	Provide a description of any administrative or judicial proceeding during the last 10 years in which the applicant or any entity that owns a 5% or greater share of the applicant was found to have violated a statute or regulation governing its operations.		
	List any entities owned or controlled by the applicant any entity that owns a 5% or greater share of the applicant that have filed for bankruptcy in the last 10 years.		
(11) Maximize revenues to the Commonwealth			
	Provide projections for gross gaming revenue each year for the first five years of casino operations on a best, average and worst case basis		
	Provide projections for gross non-gaming revenue generated by elements of the casino complex each year for the first five years of operations on a best, average and worst case basis, identifying the source of each element of the non-gaming revenue		
	Provide projections for tax revenue to the Commonwealth each year for the first five years of operations on a best, average and worst case basis, identifying the source of each element of the tax revenue		
	97) Provide a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities, including internal audit's, count room supervision and processes and other internal controls		
	If the applicant or any entity that owns a 5% or greater share of the applicant has an investment in a gaming facility within 300 miles of the applicant's proposed location within the Commonwealth, the plans and methods the applicant intends to use to ensure that revenues are maximized at the Massachusetts facility even if maximizing revenues in Massachusetts requires or leads to reduction of revenues at the out of state facility		
	If the applicant or any entity that owns a 5% or greater share of the applicant has an investment in a gaming facility beyond 300 miles from the applicant's proposed location within the Commonwealth, any plans the applicant has to use those facilities or customers who patronize those to enhance revenues at the applicant's Massachusetts facility.		

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

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Draft Evaluation Criteria					
Update Date: March 8, 2013					
Criteria Grouped by Topic				YES	NO
	Minimum requirements under G.L. c. 23K, § 9, 15				
	Factors Commission must consider under G.L. c. 23K, § 18				
	Factors Commission originated				
	Required information				
	Provide a history of meeting revenue projections over the last ten years with respect to each facility of a size comparable to or larger than the facility you are proposing for Massachusetts				
	(7) Provide a market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments				
	Provide projections for increases in gross revenues for regional businesses as a result of casino operations each year for the first five years of operations on a best, average and worst case basis, identifying and describing the methodology used to produce the projections				
	Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites				
	Describe the assumptions on which each of the projections is based				
	(3) Realize maximum capital investment exclusive of land and infrastructure				
	18(ii) show the total investment in the gaming facility and infrastructure within the property boundaries				
	18(iii) show the total investment in the infrastructure outside the property boundaries				
	Describe all financial commitments and guarantees the applicant is prepared to provide to the Commission and to the host community over and above the deposit or bond required by G.L. c. 23K, § 10(a) to ensure that the project is completed, license conditions are fulfilled and sufficient working capital is available to allow operation in the promised fashion. Include examples of letters of credit, MDUs or other agreements or commitments the applicant is willing to provide.				
	Provide a construction plan and schedule that includes major construction milestones, key dates, and measures the applicant will take to reduce the impact of construction on the local community				
	(13) Offer highest and best value to create a secure and robust gaming market				
	Provide a detailed description of the project's theme and the target marketing segments				
	Provide business plan describing how applicant will meet revenue generation plans in the near term and over time				
	Describe the applicant's anticipated marketing strategy				
	Describe the applicant's strategy for ensuring maximum use of the facilities throughout the calendar year including how that strategy will take account of the seasonal nature of tourism in the Northeast				
	Describe the applicant's plans for maintaining a robust gaming market at its facility if, and as, internet gaming develops				
	Describe the applicant's marketing plan for its Massachusetts facility. If that marketing plan is the same as, or similar to, marketing plans the applicant has used elsewhere, describe how those plans succeeded or failed, including whether the applicant met its financial projections for the facilities where the plans were used. If the marketing plan for a Massachusetts facility differs from the marketing plans used elsewhere, describe the factors that led the applicant to devise its Massachusetts plan.				
	18(iii) Provide a completed study showing the overall economic benefit to the commonwealth and the region from the applicant's proposed facility (other?)				
	Describe the components of the applicant's marketing plan that focus on out of state visitors and the anticipated gaming and non-gaming gross revenues the applicant anticipates from out of state visitors during each of the first five years of the facility's operations on a best, average and worst case scenario				
	Describe the measures the applicant or any entity owning a 5% or greater share of the applicant has taken to ensure a secure and robust gaming market at each other gaming facility it owns or controls				

CATEGORY 1 and CATEGORY 2
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Update Date: March 8, 2013							
III ECONOMIC DEVELOPMENT							
GENERAL							
9(13) Provide completed studies and reports showing the proposed gaming establishment's: (i) economic benefits to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment;							
JOB CREATION							
(4) Implement workforce development plan that utilizes and enhances existing labor force							
Describe any plans the applicant has for working with the Massachusetts Community College Workforce Training Institute or other training organizations as the applicant trains and hires the staff for its facility							
Provide strategy as to how applicant will focus on areas and demographics of high unemployment and underemployment							
Provide documentation to demonstrate how applicant will:							
9(12) State the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees;							
(6) Demonstrate plan for workforce development as set forth in memoranda of understanding							
17 (ii) utilizes the existing labor force in the commonwealth;							
17(iv) identifies the establishment's workforce training programs							
(9) Establish, fund and maintain HR practices that promote development of skilled and diverse workforce							
17(v) Identifies the methods for accessing employment							
(9) (i) Establish transparent career paths							
(9) (ii) Provide means for employee training and education necessary for advancement							
(9) (iii) Provide on-site day care							
(16) formulate affirmative action plan							
17(i) incorporates an affirmative action program that includes people with disabilities							
(18) State whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies: (i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors; (; and (iv) 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;							
(iv) show plans for labor harmony							
17(iii) estimate the number of construction jobs and provide equal employment opportunities for them							
Provide documentation that outlines applicant's employee retention record at other operational sites							
Provide documentation that outlines the ethnic diversity of the applicant's workforce at other locations							
Provide plans that detail collaboration with tourism and other related industries							
SUPPORTING EXTERNAL BUSINESS AND JOB GROWTH							
Supplier development & relations							
(2) Promote local businesses in host and surrounding communities							
Develop and provide plans to assist businesses owners ID needed goods and services							
Provide plans to demonstrate how applicant will promote regional businesses							
Provide documentation detailing outside spending budget for vendor supplied goods and services							
(16) Implement marketing program that IDs specific goals for utilization of							

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	Factors Commission originated		
	Required Information		
	(i) minority, women and veteran businesses as design contractors		
	(ii) minority, women and veteran businesses as building contractors		
	(iii) minority, women and veteran businesses enterprises to participate as vendors for goods and services		
	(10) Contract with local business owners for provision of goods and services		
	(15) Formulate marketing program with percentage of total dollar amount of overall contracts for utilization of:		
	(i) mbe, wbe, vbe as contractors in the design of the gaming establishment		
	(ii) mbe, wbe, vbe as contractors in the construction of the gaming establishment;		
	(iii) mbe, wbe, vbe as vendors for goods and services to gaming establishments and any businesses operated as part of the gaming establishments;		
	(15) Purchase domestic slot machines		
	9(1.4) Provide the names of all proposed vendors of gaming equipment;		
	Provide reports and analysis documenting projections for Third-party revenue impacts		
	REGIONAL TOURISM AND ECONOMIC IMPACT		
	(5) Build a gaming establishment of high caliber with quality amenities in partnership with local facilities		
	Provide local agreements designed to expand casino draw		
	Provide plans that demonstrate how applicant will cross-market with other attractions		
	Provide plans that detail collaboration with tourism and other related industries		
	Provide plans for international marketing efforts		
	Provide plans for planned attractions and amenities beyond hotel, casino, restaurants and in-house entertainment to draw customers		
	Provide additional plans that demonstrate unique business & marketing strategies to draw new customers		
	18(ii) completed economic studies as required by the Commission including economic benefits to the Commonwealth and the region		
	Provide documentation demonstrating inclusion and coordination with regional economic plans		
	Provide documentation of community support and agreement relationships with local organizations		
	Provide plans outlining community enhancements not covered by Section III		
	Provide documentation that outlines applicant's record of success in meeting these objectives at other operational sites		

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	Required Information	YES	NO
Massachusetts Gaming Commission			
Draft Evaluation Criteria			
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IV BUILDING & SITE DESIGN			
PREREQUISITES			
(12) comply with state & local building codes & local ordinances & bylaws, including sections 61 to 62H, inclusive, of chapter 30;			
EVALUATION CRITERIA			
Demonstrate creativity in design and overall concept excellence			
	Describe the overall theme and concept underlying the proposed design of the facility, including how that theme and concept promote attraction of visitors to the facility and interaction by those visitors with the facility's immediate and regional surroundings		
	Describe the relationship, if any, between the proposed facility and the history and culture of its immediate and regional surroundings		
	9(9) Provide the names and addresses of the architects, engineers and designers of the gaming facility		
	Provide a color rendering of the casino and all structures located on the casino site		
	Provide a schematic design as defined/understood by AIA along for each structure within the boundaries of the site showing at least the total and usable floor area, interior and exterior themes and finished, building elevations and perspectives;		
	Provide a site plan showing the proposed landscaping and other site improvements		
	Describe the number, location and accessibility of parking spaces for employees, patrons and buses		
	Describe the plans for tour bus, taxi and valet drop-off and for service vehicle parking, satellite parking and other related transportation infrastructure		
(5) Build a gaming establishment of high caliber with quality amenities in partnership with local facilities			
	Describe the proposed casino, including the square feet of gaming area, the number and types of table games and slot machines It will contain, the number of gaming positions as defined in G.L. c. 23K, § 2, it will contain and the specific location of the games and machines in the proposed gaming establishment;		
	Describe the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the casino site, along with the names of their proposed operators		
	Describe any exhibition space or spaces the applicant plans to include in its facility, including the square footage of the spaces and the amenities they will contain		
	Describe any conference space or spaces the applicant plans to include in its facility, including the square footage of the spaces and the amenities they will contain		
	Describe how the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the casino site will serve the surrounding community		
	Describe the entertainment venues located on the casino site inside or outside the casino proper, the capacity of each and uses to which the venues will be dedicated		
	Describe the convention, meeting and other public spaces located on the casino site inside or outside the casino proper, the capacity of each and uses to which the venues will be dedicated		
	Describe the proposed hotel, including the types of rooms, the numbers of each type, and the number that will be reserved for casino promotions		
	Describe any other facilities or amenities that will be located on the site		
	9(17) State how the hotels, hotel rooms, restaurants and other amenities that are part of the proposed facility measure in quality to other area hotels and amenities		
	Describe any public art that will be located on the casino site		
	Describe the existing or anticipated contracts or agreements between the applicant and local hotels and dining, retail and entertainment facilities designed to ensure that patrons experience that diversified regional tourism industry		
	Describe the existing or anticipated contracts or agreements between non-gaming entities within the boundaries of the casino complex and local hotels and dining, retail and entertainment facilities designed to ensure that patrons experience that diversified regional tourism industry		
Compatibility with surroundings	Describe all adjacent streets, highways, buses, and other public transportation facilities and how they will be utilized for access to and egress from the casino site		

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	Required information				
	Provide an analysis of the adequacy of the existing transportation facilities to deliver patrons to and from the casino site and the measures the applicant will take, including infrastructure and other improvements, to remedy any inadequacy				
	Describe the steps, plans and measures the applicant will take, including infrastructure improvements, to mitigate traffic flow in the vicinity of the casino by stimulating use of public transit				
	Describe the parking facilities and how they will be linked to the casino complex in a manner consistent with other design elements				
	Describe the relationship of the project to adjacent land uses and proposed land uses to ensure compatibility between the casino complex and the adjacent uses				
	Describe applicable zoning requirements and how the applicant proposes to meet them				
	Describe how the facilities for delivery of supplies and trash removal are integrated with the overall project complex				
	Describe the proposed signage and the plans to ensure that it is energy efficient and sensitive to surroundings				
	Describe plans to minimize impact of noise on surroundings areas				
	Describe how the site will be integrated with and provide access to and from surrounding areas restaurants, hotels, bars, entertainment venues and other attractions through multiple entry and exit points				
	Describe how the landscaping and other site improvements will integrate the casino complex with its surroundings				
	Describe how the facility will stimulate retail activity in the immediate vicinity				
	State whether facilities will be available for community use in the event of extreme weather and, if so, describe how				
	(8) Utilize sustainable development principles in the construction and during the life cycle of the facility				
	(i) Describe plans for becoming 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				
	Show how building and site comply with LEED-ND, LEED Existing Building, LEED EBOM Water, USGBC IGCC Standards				
	(ii) Describe plans to meet or exceed the stretch energy code requirements contained in Appendix 120AA of the Massachusetts building energy code or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;				
	(iii) Describe plans for mitigating vehicle trips to and from the site				
	(iv) Describe plans for conservation of water and management of storm water				
	Describe plans, if any, to target use of 40% less water than standard buildings of same size and design & promotes reuse and recharge				
	Describe plans, if any, to use ISI techniques to minimize impact of storm water and maximize its reuse				
	(v) Describe plans for ensuring EnergyStar compliant electrical and HVAC throughout the casino complex				
	Describe plans for ensuring that all gaming equipment conforms to best practices for energy use				
	(vi) Describe plans for procuring or generating on-site 10 per cent of the facility's annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A;				
	Describe plans, if any, for ensuring that 25% generated on site is from renewables and the date by which that goal will be reached				
	Describe plans for obtaining off site power from renewables or with renewable energy credits				
	(vii) Describe plans for developing an ongoing system that will submeter and monitor all major sources of energy consumption and for undertaking regular and sustained efforts throughout the life-cycle of the facility to maintain and improve energy efficiency and reliance on renewable sources of power in all buildings and equipment that are part of the facility				
	Describe plans for use of centralized & efficient heating and cooling systems, e.g., co-generation				
	Describe plans, if any, for operation of one 50m ftz building at net zero energy within 3 years				
	Security				
	Describe the applicant's approach to surveillance within and in the immediate vicinity of the gaming establishment and the types and kinds of security surveillance facility will contain				
	State how the design of the building will support emergency evacuation				

CATEGORY 1 and CATEGORY 2
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Criteria Grouped by Topic							
		Describe all of the applicant's plans for dealing with emergencies, including any and all use with local, state or regional public safety and medical facilities that will be utilized in the event emergencies occur					
		Describe the spaces within the facility that will be provided for regulatory staff, including members of the State Police.					
		Describe the applicant's approach to remote regulatory surveillance, including the facilities and equipment in the establishment that will be available for facilitating surveillance of that type.					
	Other	Describe the design features that will allow other uses of the buildings in the casino complex in the event that the applicant decides to cease gaming operations in the facility at some future date					

CATEGORY 1 and CATEGORY 2
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Massachusetts Gaming Commission				
Draft Evaluation Criteria				
Update Date: March 8, 2013				
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V	MITIGATION			
	PREREQUISITES			
	(1) Agree to be lottery agent and not to run competing games			
	(6) Demonstrate plan for mitigation of lottery impact and compulsive gambling problems, community development and host and surrounding community impact and mitigation issues as set forth in memoranda of understanding			
	(7) Identify the infrastructure costs of the host and surrounding from construction and operation and commit to a mitigation plan			
	(8) (13) provide a signed host community agreement with favorable community vote			
	(9) provide surrounding community agreements			
	(10) provide impacted live entertainment venues agreements			
	(14) Pay agreed upon community impact fee			
	EVALUATION CRITERIA			
	Host community agreement			
		Provide all host community agreements into which the applicant has entered. Provide the summary of the host community agreement provided to the voters and a description of the election at which the agreement was approved by the voters, including the date of the election, the polling procedures, and a certified copy of the election results		
		State the total amount of money the applicant spent on advertising or organizing for a favorable election outcome		
		State the total value of contributions of money or other things of value the applicant or anyone acting on behalf of the applicant or the applicant's casino project have made to any elected or appointed public official or any City or Town or any Massachusetts entity at the request of an elected or appointed public official since November 21, 2011		
		List each request for a contribution of money or other thing of value the applicant or anyone acting on behalf of an applicant has received from any elected or appointed public official or any city or town or any Massachusetts since January 15, 2013		
		(19) Describe in detail the public support for the casino project the applicant has obtained in the host and surrounding communities in addition to that reflected by the host community vote, including the names and affiliations of all individuals, organizations and groups that have given public support to the project		
		Provide evidence of partnerships with or other support for non-profit and community groups in the host community		
	Surrounding community agreements	Provide a copy of all surrounding community agreements into which the applicant has entered		
		List all communities that requested a surrounding community agreement that the applicant declined to enter and the reasons the applicant has declined to enter the agreement and describe the discussions or negotiations the applicant had with the applicant before declining to enter the agreement		
	Impacted live entertainment venue agreements	Provide a copy of all impacted live entertainment venue agreements into which the applicant has entered		
		List all entities that requested an impacted live entertainment venue agreement that the applicant declined to enter and the reasons the applicant has declined to enter the agreement and describe the discussions or negotiations the applicant had with the applicant before declining to enter the agreement		
		List all cross-marketing agreements with impacted live entertainment venues the applicant has entered		
		Describe the applicant's plans for use of exclusivity provisions in contracts it enters with entertainers or entertainment entities it engages to perform at its facility		

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Massachusetts Gaming Commission					
Draft Evaluation Criteria					
Update Date: March 8, 2013					
Criteria Grouped by Topic					
(1) Protect and enhance lottery				YES	NO
	Minimum requirements under G.L. c. 23K, § 9, 15				
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	Factors Commission originated				
	Required information				
	Describe the plans, measures and steps the applicant plans to take to avoid any negative impact on the revenues currently generated by the Massachusetts State Lottery, including cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents				
	Describe the on-site resources that will be available to those affected by gambling-related problems.				
	Describe the signs, alerts and other information that will be available in the casino complex to identify the on-site resources available for those affected by gambling-related problems				
	Describe the self-exclusion policies that will be available for casino patrons, including the process that will be utilized to notify individuals of the availability of self-exclusion and the steps that will be taken to assist those who request exclusion				
	Describe the training that will be used to help casino employees identify those who may have gambling-related problems and assist them to obtain help for those problems				
	Describe the policies the applicant will use to ensure that credit extensions are not being abused by those with gambling-related problems				
	Provide a copy of the code of ethics employees, including senior managers, are required to follow in the process by which the code is promulgated				
	Describe the metrics the applicant will use to measure whether it is succeeding in its efforts to reduce gambling at its facility but by those with gambling-related problems and the use to which those metrics will be put and provide the data those metrics have generated for each of the last five years at each of the applicant's facilities				
	Describe the extent to which responsible gambling messages will be part of the applicant's advertising				
	Describe the plans the applicant has to coordinate with local providers to facilitate assistance and treatment for those with gambling-related problems				
	9(8) Provide the Commission with an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (i) prominently displaying information on the signs of problem gambling and how to access assistance; (iv) 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				
	Traffic				
	Describe the plans for traffic control measures the applicant proposes for the casino complex and the surrounding areas				
	Describe the applicant's plans for accommodating special events and the traffic those events may generate				
	Describe the applicant's snow-removal plans				
	Other				
	9(8) Provide the Commission with an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (i) maintaining a smoke-free environment within the gaming establishment under section 22 of chapter 270; (ii) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission; and (v) instituting other public health strategies as determined by the commission;				
	Provide an assessment of the likely impact on the housing stock in the host and surrounding communities resulting from the new jobs the casino provides				
	Provide an assessment of the likely impact on school populations in the host and surrounding communities resulting from new jobs the casino provides				
	Provide an analysis of available police, fire and emergency medical services available to the casino complex, the adequacy of those resources, the steps the applicant plans to take to remedy any deficiencies; and the agreements the applicant has made with the service providers to ensure that the appropriate levels of protection are available				
	Provide an analysis of existing regional water facilities available to the project and the impact the facilities water usage will have on those who share the same water resources				
	Provide an analysis of existing sewage facilities and their capacity to absorb the effluent from the casino complex during average and peak flows, including an estimate of those flows in gallons per day				

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	Factors Commission originated	
	Required information	NO
	Describe the steps and measures the applicant will take to ensure that minors are excluded from the casino premises	
	Describe the steps and measures that the applicant will take with respect to security and prevention of unlawful behavior on the casino premises and in its immediate vicinity	
	Describe the measures they applicant has utilized with respect to security and prevention of unlawful behavior at other facilities it owns and operates, how well those measures have succeeded and the metrics used to measure their success	

RFA-2 DRAFT REGULATIONS

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205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 118.00: PHASE 2 ADMINISTRATIVE PROCEEDINGS

Section

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118.01: RFA-2 Application Requirements

(1) An applicant shall be eligible to submit an RFA-2 application only after (a) the issuance of a positive determination of suitability by the commission at the conclusion of the RFA-1 process in accordance with 205 CMR 115.05(3), and (b) payment to the commission of all application fees, additional amounts for community disbursements, and additional fees for investigations required by 205 CMR 114.00: *Fees* arising out of the RFA-1 process.

(2) An RFA-2 application, as described in 205 CMR 119.01, must be filed on or before the applicable deadline established by the commission pursuant to the instructions and process posted by the commission on its website and in the application. The commission may establish different deadlines for submission of RFA-2 applications for a category 1 license, a category 2 license, or for a region or regions. The commission will post on its website the deadline or deadlines for submission of RFA-2 applications.

(3) The commission shall have no obligation to accept or review an incomplete application submitted by the established deadline or a late application submitted after the established deadline.

(4) Upon petition by the applicant to the commission in accordance with 205 CMR 102.03(4), the commission may, in its discretion, extend the time for filing a complete RFA-2 application to provide reasonable additional time for filing in cases in which extraordinary circumstances prevented a timely filing.

118.02: RFA-2 Pre-Application Consultation

(1) Before the applicable deadline for submitting RFA-2 applications, the commission or its designees may conduct one or more consultation meetings to provide guidance on RFA-2 standards and procedures to applicants found qualified pursuant to a determination of suitability at the conclusion of RFA-1 process.

(2) Information provided by the commission or its designees pursuant to 205 CMR 118.02(1) shall be advisory in nature and shall not be binding. In the event of a conflict with such

information, the provisions of M.G.L. c. 23K, 205 CMR, and the application forms and instructions issued or adopted by the commission shall prevail.

118.03: RFA-2 Administrative Completeness Review

- (1) The executive director or his or her designee will conduct an administrative completeness review of each RFA-2 application and will send either a positive determination of administrative completeness or a negative determination of administrative completeness to the applicant and to the commission.
 - a. Upon the issuance of a positive determination of administrative completeness, the RFA-2 application may proceed to further review under 205 CMR 118.00.
 - b. Upon issuance of a negative determination of administrative completeness the RFA-2 application shall not proceed to further review under 205 CMR 118.00.
 - c. If an applicant receives a negative determination of administrative completeness the executive director may, at the request of the applicant, allow the applicant to cure the deficiency in a prescribed manner and timeframe, or the applicant may file a petition for appeal, or waiver or variance in accordance with 205 CMR 102.03(4), to the commission.
- (2) A positive determination of administrative completeness shall not constitute a finding with respect to the technical suitability, adequacy or accuracy of the information submitted, and shall not bar a request for further information by the commission, the bureau or their agents and employees under 205 CMR 118.04.

118.04: RFA-2 Review Procedures

- (1) Upon a determination that an RFA-2 application is administratively complete, the commission will determine the surrounding communities pursuant to 205 CMR 125.00: *Surrounding Communities*, determine the impacted live entertainment venues pursuant to 205 CMR 126.00: *Impacted Live Entertainment Venues*, and review the merits of the application. In doing so, the commission may, at such times and in such order as the commissions deems appropriate, take some or all of the following actions:
 - a. Hold one or more open meetings concerning the application;
 - b. Refer the RFA-2 application, or any parts thereof, for advice and recommendations, to any or all of the following:
 - i. The executive director;
 - ii. The bureau;
 - iii. Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;
 - iv. Any office, agency, board, council, commission, authority, department, instrumentality or division of the host community or any potential surrounding community;
 - c. Retain, or authorize the executive director or the deputy director to retain, at the applicant's expense, such professional consultants (including without limitation financial and accounting experts, architects, engineers, environmental professionals,

- legal experts, gaming experts, contractor investigators, and other qualified professionals) as the commission in its discretion deems necessary and appropriate to review the application and make recommendations;
- d. Receive independent evaluations of the application;
 - e. Require or permit presentations by the applicant and its representatives;
 - f. Require or permit the applicant to provide additional information and documents pursuant to 205 CMR 112.00: *Required Information and Applicant Cooperation*;
 - g. Require or permit the executive director, with the assistance of commission's agents and employees, to negotiate with the applicant and its agents and employees concerning potential improvements to the applicant's proposed gaming establishment, its mitigation plans, and its proposals to ensure economic and other benefits to the region and to the commonwealth;
 - h. Require or permit the applicant to supplement or amend its application as the commission determines to be in the best interests of the host community, one or more surrounding communities or impacted live entertainment venues, the region or the commonwealth;
 - i. On a regional basis for category 1 applicants or on a state-wide basis for category 2 applicants, (i) screen out and deny one or more applications, and (ii) identify finalists for further consideration;
 - j. In the commission's discretion, request best and final offers by finalists;
- (2) The commission shall retain the discretion to take or not to take any actions under 205 CMR 118.04(1) as it deems appropriate with respect to an RFA-2 application; and the fact that the commission has or has not taken any such action with respect to one or more RFA-2 applications shall not obligate the commission to do so or not to do so with respect to any other RFA-2 application or applications.

118.05: RFA-2 Public Hearing in Host Community

- (1) For each administratively complete RFA-2 application, the commission shall conduct a public hearing on the application at an open meeting of the commission pursuant to M.G.L. c. 30A, §20. The commission will send written notice of the public hearing to the applicant for a gaming license and to the city or town clerk of each host and surrounding community at least 30 days before the public hearing. The commission will post the notice of the public hearing on its website. The commission shall hold the public hearing within the host community; provided, however, that the commission may hold the public hearing in another city or town upon written request from the host community's chief executive officer as defined in M.G.L. c. 4, §7, cl. Fifth B.
- (2) The chair or his or her designee shall preside over the public hearing. The applicant and its agents and representatives shall attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Representatives of the host community, representatives of the surrounding communities and representatives of the impacted live entertainment venues may attend the public hearing, may make a presentation and respond to questions as directed by the chair or his or her designee. Others may attend

the public hearing and may make a presentation in the discretion of the commission. Prior to the hearing the commission will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of support, opposition or concern from members of a community in the vicinity of the proposed gaming establishment.

- (3) For each application, the commission may in its discretion complete the public hearing in one meeting or continue the public hearing over two or more meetings. If the commission adjourns the public hearing, the commission will provide notice of the continued hearing either (a) by announcing before adjourning the date, time and place of the continued public hearing and thereafter posting notice of the continued public hearing on the commission's website, or (b) by sending and posting notice in the manner prescribed in 205 CMR 118.05(1). At the conclusion of the public hearing the commission will vote to close the public hearing.

118.06: RFA-2 License Determinations

- (1) Not sooner than 30 days nor later than 90 days after the commission votes to close the public hearing under 205 CMR 118.05(3), the commission shall take action on the application. The commission may:
 - a. Grant the application for a gaming license with appropriate conditions in accordance with M.G.L. c.23K, §21 and 205 CMR 120.02;
 - b. Deny the application for a gaming license; or
 - c. Extend the period for issuing a decision in order to obtain any additional information deemed necessary by the commission for a complete evaluation of the application; provided, however, that the extension shall be not longer than 30 days.
- (2) The commission shall issue not more than 3 category 1 licenses throughout the commonwealth, and not more than 1 category 1 license per region. Within any region, if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is proposed to be located and to the commonwealth, no gaming license shall be awarded in that region.
- (3) The commission shall issue not more than 1 category 2 license. If the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the commonwealth, no category 2 license shall be awarded.
- (4) Upon denial of an application, the commission shall prepare and file the commission's decision and, if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact, pursuant to M.G.L. c. 23K, §17(f).

118.07: RFA-2 Administrative Proceedings – Legislative not Adjudicatory

- (1) The commission's RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 are administrative and legislative in nature, not adjudicatory.
- (2) Each applicant must present all information required by the commission in the RFA-2

application truthfully, fully and under oath; however, unless otherwise required by the commission, RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 shall (a) involve public hearings that are not adversarial in nature; (b) involve no specific charges, legal right or privilege; (c) provide no opportunity for cross-examination of witnesses under oath in a hearing; (d) afford the opportunity for public comments including unsworn statements and letters of support, opposition or concern by persons advocating for or against the application; and (e) involve a final decision to grant or deny a gaming license that rests at all times within the discretion of the commission.

118.08: RFA-2 Costs and Expenses

- (1) For each RFA-2 application, all of the commission's costs and expenses of the RFA-2 administrative proceedings pursuant to 205 CMR 118.01-118.06 shall be borne by the applicant.
- (2) All such costs and expenses shall be assessed to the applicant and collected by the commission pursuant to 205 CMR 114.04: *Additional fees for investigations*.

REGULATORY AUTHORITY

205 CMR 118.00: M.G.L. c. 23K, §§3; 4; 5; 8; 9; 10; 11; 13; 17; 18; 21; and c. 30A.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 119.00: PHASE 2 APPLICATION

Section

119.01: Contents of the Application

119.02: Completing the Application

119.03: Evaluation of the Application by the Commission

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 9(a)(1)

(2) the mailing address and, if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders; and 9(a)(2)

(3) an attestation that the qualifiers identified by the commission in accordance with 205 CMR 116.00 and deemed suitable under the RFA-1 process in accordance with 205 CMR 115.00 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 15(8) & 15(14)

(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; and 15(6) & 18(14)

(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 commit to a community mitigation plan for those communities; and 15(7)

(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 15(13)

(8) a copy of all surrounding community agreements it has executed, if any; and 15(9)

(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; and 15(6) & 18(14)

(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 commit to a community mitigation plan for those communities; and 15(7)

(12) a description and documentation of all public outreach efforts it made to local communities; and 15(9)

(13) a description and any documentation outlining the public support for the application from the host and surrounding communities; and 18(19)

(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 18(2)

(15) a copy of all impacted live entertainment venue agreements it has executed, if any; and 15(10)

(16) a list identifying any venue it believes to be an impacted live entertainment venue accordance with 205 CMR 126.01(1)(a) that it has not executed an impacted live entertainment venue agreement with, if any; and

(17) a statement as to whether it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and the nature of such agreements; and

(18) an explanation as to how the applicant proposes to utilize sustainable development principles including, but not limited to:

(i) being certified 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;

- (ii) meeting or exceeding the stretch energy code requirements contained in Appendix 120AA of the Massachusetts State Building Code (780 CMR) or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;
- (iii) efforts to mitigate vehicle trips;
- (iv) efforts to conserve water and manage storm water;
- (v) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
- (vi) procuring or generating on-site 10 per cent of its annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A; and
- (vii) 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(8)

(19) a calculation of the total capital investment in accordance with 205 CMR 122.00 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 into the gaming establishment; and 15(2)

(20) how the applicant proposes to realize the maximum capital investment exclusive of land acquisition and infrastructure improvements; and 18(3)

(21) 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 5 years; and 9(a)(3)

(22) 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 9(a)(5)

(23) evidence of its ability to pay and a commitment to paying the gaming licensing fee in accordance with 205 CMR 121.00; and 15(5)

(24) 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 9(a)(6)

(25) a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities; and 9(a)(7)

(26) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including:

- i. maintaining a smoke-free environment within the gaming establishment under M.G.L. c.270, §22;
- ii. providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;
- iii. prominently displaying information on the signs of problem gambling and how to access assistance;
- iv. 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
- v. instituting other public health strategies as determined by the commission; and 9(a)(8)

(27) 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 15(6) and 18(6)

(28) 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 detailed stages of construction for the gaming establishment, non-gaming structures and racecourse, where applicable; and 9(a)(9)

(29) the number of construction hours estimated to complete the work; and 9(a)(10)

(30) 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 18(5)

(31) 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 9(a)(11) & 9(a)(17)

(32) the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; and 9(a)(12)

(33) how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment; and 18(12)

(34) whether the applicant has prepared, and how the applicant proposes to implement a workforce development plan that: (i) 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; (ii) utilizes the existing labor force in the commonwealth; (iii) 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; (iv) identifies workforce training programs offered by the

gaming establishment; and (v) identifies the methods for accessing employment at the gaming establishment; and 15(6), 18(4), & 18(17)

(35) 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:

- (i) 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;
- (ii) 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
- (iii) establishes an on-site child day-care program; and 18(9)

(36) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:

- (i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors;
- (ii) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project;
- (iii) 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
- (iv) 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; 18(18)

(37) 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: (i) economic benefits to the region and the commonwealth; (ii) local and regional social, environmental, traffic and infrastructure impacts; (iii) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities; (iv) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and (v) the estimated municipal and state tax revenue to be generated by the gaming establishment; and 9(a)(13)

(38) the names of proposed vendors of gaming equipment; and 9(a)(14)

(39) 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 18(10)

(40) whether the applicant intends to purchase domestically manufactured slot machines for installation in the gaming establishment; and 18(15)

(41) the location of the proposed gaming establishment, 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 9(a)(15)

(42) 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 this chapter; and 15(3)

(43) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment; and 9(a)(19)

(44) 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 18(7)

(45) 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 9(a)(16)

(46) 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 56(a)

(47) a projection as to the number of gaming positions it anticipates at the gaming establishment should it be awarded a gaming license; and 56(c) & (e)

(48) how the applicant proposes to maximize revenues received by the Commonwealth of Massachusetts; and 18(11)

(49) whether the applicant's proposed gaming establishment is part of a regional or local economic plan; and 9(a)(18)

(50) 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 18(13)

(51) 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 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 15(1)

(52) 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 15(1)

(53) 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 15(6) and 18(1)

(54) 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:

(i) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment;

(ii) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and

(iii) 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 15(15) & 18(16)

(55) 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 15(16)

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

(57) 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.

119.02: Completing the Application

Ten 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-1 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 how the applicant proposes to advance the objectives specified in M.G.L. c.23K, §18. The commission will evaluate the applicant's response on how it addresses the following categories of information:
 - (a) 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
 - (b) Economic Development criteria including:
 - (1) Job creation
 - (2) Supporting external business and job growth
 - (3) Regional tourism and economic impact
 - (c) Building and Site Design criteria including:
 - (1) Compliance with 780 CMR, local ordinances and by-laws, including M.G.L. c.30, §§61-62H
 - (2) Demonstration of creativity in design and overall concept excellence
 - (3) Proposal to build a gaming establishment of high caliber 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
 - (6) Security measures
 - (7) Alternative uses for buildings in the complex
 - (d) Mitigation criteria including:
 - (1) Agreement to be a lottery agent and not run competing games

- (2) Demonstration of plan for mitigation of lottery impact and compulsive gambling problems, community development, and host and surrounding community impact and mitigation issues as set forth in memoranda of understanding
 - (3) Identification of 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) Providing a signed host community agreement with a favorable community vote
 - (5) Providing surrounding community agreements
 - (6) Providing impacted live entertainment venue agreements
 - (7) Payment of agreed upon community impact fees
 - (8) Traffic mitigation
- (e) Enhancements and overall uniqueness of the project.

(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. 19(d)

205 CMR: MASSACHUSETTS GAMING COMMISSION
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, the following:

(a) A chart identifying all federal, state, and local permits and approvals required, or potentially 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: (i) 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; (ii) 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 (iii) 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 G.L. c. 30, §62A and

301 CMR 11.00 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 G.L. c. 30, §§61-62H and 301 CMR 11.00 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 G.L. c. 30, §§61-62H and 301 CMR 11.00, 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 each host community's zoning officer, town counsel or city solicitor that 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) as permits or approvals required by a host community, or an agency or department of a host community;
 - (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, ~~all category 1 or category 2 gaming licenses shall be conditioned~~ 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 G.L. c. 30, §§61-62H, and 301 CMR 11.00, 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 G.L. c. 30, §61 and 301 CMR 11.12. Notwithstanding any provision in 205 CMR 120.00 to the contrary, the commission may impose any condition necessary to comply with G.L. c. 30, §§61-62H in its findings pursuant to 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, not previously

anticipated and 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 not previously anticipated and addressed in a host or surrounding community agreement or impacted live entertainment venue agreement have been adequately addressed pursuant to 205 CMR 129.00.

- (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 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.

REGULATORY AUTHORITY

205 CMR 120: M.G.L. c.23K, §§1, 4(15), 4(37), 5, 13, 15(12), 17, 18(14).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 121.00: LICENSING FEE

Section

121.01: Licensing Fee

121.02: Payment of the Fee

121.01: Licensing Fee

- (1) Within 30 days after the award of category 1 license by the commission, the licensee shall pay a non-refundable license fee of \$85,000,000 to the Commission.
- (2) Within 30 days after the award of a category 2 license by the commission, the licensee shall pay a non-refundable license fee of \$25,000,000 to the commission.
- (3) Within 30 days after the award of a category 1 or category 2 license by the commission, the licensee shall remit:
 - a. a license fee, as provided by M.G.L. c.23K, §56(a), of \$600 for each slot machine approved by the commission for use by a gaming licensee at a gaming establishment; and
 - b. a license fee, as provided by M.G.L. c.23K, §56(c), to be determined by the commission upon issuance of the license, to cover costs of the commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year; and
 - c. a license fee, as provided by M.G.L. c.23K, §56(e), to be determined by the commission upon issuance of the license, reflecting the applicant's share of \$5,000,000 to be deposited into the Public Health Trust Fund in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year.

121.02: Payment of the fee

(1) All fees shall be submitted in the form of a certified check or secure electronic funds transfer payable to the “Massachusetts Gaming Commission.”

(2) In the event that a licensee fails to pay the fee as provided in 205 CMR 121.01, the commission may take any remedial action it deems necessary up to and including revocation of the gaming license.

REGULATORY AUTHORITY

205 CMR 121: M.G.L. c.23K, §§4(37), 5, 10(d), 11(b), and 56(a)

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 122.00: CAPITAL INVESTMENT

Section

- 122.01: Scope and Purpose
- 122.02: Minimum Capital Investment
- 122.03: Costs Included in the Calculation of Capital Investment
- 122.04: Costs Excluded from the Calculation of Capital Investment
- 122.05: Deposit or Bonding of Funds

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 establishment 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 establishment 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.23 K 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.
- 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.

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) 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) 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), or §11(b) and/or 205 CMR 114.00 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.
- 12) Political contributions and community contributions under 205 CMR 108.00.

122.05: Deposit or bonding of funds

(1) Upon award of a category 1 gaming license, the applicant shall either:

(a) Deposit 10 percent 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 percent 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 percent 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: M.G.L. c.23K, §§ 1(5), 5(3), 5(a)(16), 10, 11, 18(3).

205 CMR: MASSACHUSETT GAMING COMMISSION
205 CMR 123.00: HOST COMMUNITIES

Section

123.01: **Definition** of Host Community

123.02: Host Community Agreement

123.01: **Definition** of Host Community

In accordance with M.G.L. c.23K, §2, a host community is a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment; provided, however, that if a proposed gaming establishment is situated in 2 or more cities or towns each shall be a host community for purposes of M.G.L. c.23K and 205 CMR.

123.02: Host Community Agreement

- (1) An applicant for a gaming establishment license must sign an agreement with the host community setting forth the conditions to have a gaming establishment located within the host community; provided, however, that the agreement shall include a community impact fee for the host community and all stipulations of responsibilities between the host community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.
- (2) The signed host community agreement, along with a fair, concise summary, approved by the city solicitor or town counsel of the host community, shall be made public in accordance with 205 CMR 124.04.
- (3) Upon requesting a host community election in accordance with 205 CMR 124.02(1), the applicant shall forward the executed host community agreement **and summary** to the commission. The commission shall promptly post a copy of the agreement **and summary** on its website. The posting shall outline the process by which any community may request that it be added to a list of prospective surrounding communities to that gaming establishment.

REGULATORY AUTHORITY

205 CMR 123: M.G.L. c.23K, §§ 2, 15(8).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 124.00: HOST COMMUNITY ELECTION PROCESS

Section

124.01: Scope and Purpose

124.02: Request for an Election

124.03: Call for and Scheduling of the Election

124.04: Preparing for the Election

124.05: Conduct of the Election

124.06: Reimbursing the Expenses of the Host Community Election

124.07: Post-Election

124.01: Scope and Purpose

205 CMR 124.00 establishes parameters for elections as provided in M.G.L. c.23K, §15(13). In accordance with M.G.L. c.23K, §15(13) an applicant for a gaming license must have received a certified and binding vote on a ballot question at an election in the host community in favor of such license as a prerequisite to filing an RFA-2 application in accordance with 205 CMR 119.00.

124.02: Request for an Election

(1) After a host community and an applicant for a gaming establishment license execute a host community agreement, the applicant shall file a with the governing body of the host community a written request for an election on the question whether the host community shall permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission located at a specified site within the community. The applicant shall send a copy of the request to the commission along with a copy of the executed host community agreement.

(2) Upon receipt of the request, the governing body shall acknowledge receipt of the request by letter. The letter shall state the date that the applicant's request was received by the community. The governing body shall send a copy of the letter to the commission.

(3) In the event that a proposed gaming establishment is to be situated in more than one community, the applicant shall not request an election in either community until it has executed a host community agreement with all of the affected prospective host communities or a joint agreement with each prospective host community.

(4) A host community may not hold an election in accordance with 205 CMR 124.02(1) until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3).

124.03: Call for and Scheduling of the Election

Upon receipt of a request for an election by an applicant in accordance with 205 CMR 124.02(1), the governing body of the municipality shall call for the election to be held not less than 60 days but not more than 90 days from the date that the request was received. The city or town clerk shall then set a date certain for an election. **Provided, however, in the event that a municipality has executed a host community agreement with more than one applicant the election on each shall be set for the same date.**

124.04: Preparing for the Election

(1) The host community agreement signed by the governing body of the community and the applicant shall be made public by publishing the agreement, along with a fair, concise summary of the agreement, in a periodical of general circulation at the applicant's expense and on the official website of the municipality not later than seven days after the agreement is signed by the parties. The fair, concise summary of the agreement shall be approved by the city solicitor or town counsel prior to publication, and shall outline the contents of the host community agreement.

The agreement and summary shall remain on the municipal website until the election has been certified.

(2) Host communities shall make voting information available to its citizens including deadlines for registering to vote in the election and hours that polling places shall be open.

(3) No notice to or approval by the commission is required prior to engaging in the process set forth in 205 CMR 124.04(1).

(4) For purposes of 205 CMR 124.00, unless a city opts out in accordance with the seventh proviso of G.L. c. 23K, §15(13) by a vote of the local governing body, if the gaming establishment is proposed to be located in a city with a population of at least 125,000 residents as enumerated by the most recent enumerated federal census, "host community" shall mean the ward in which the gaming establishment is to be located for the purpose of receiving a certified and binding vote on a ballot question at an election. If a city opts out, it shall publish notice of such determination in the manner provided by 205 CMR 124.04(1).

124.05: Conduct of the Election

In addition to the applicable provisions of M.G.L. c. 54 and 950 CMR the following shall apply to host community elections:

- (1) The polls may be open as early as fifteen minutes before 6 a.m., and shall be open not later than 7 a.m., and shall be kept open at least thirteen hours. The polls shall not be closed before 8 p.m.

- (2) The question on the ballot submitted to the voters shall be worded as follows: "Shall the (city/town) of _____ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at _____ [description of site] _____ ? YES _____ NO _____".
- (3) In the event that a host community has entered into a host community agreement with more than one applicant, a separate question, as provided in 205 CMR 124.05(2), shall be posed on the ballot relative to each applicant. The questions shall be preceded with an advisory that the questions are not presented in any particular order and that a voter may vote 'yes' on both questions, 'no' on both questions, or 'yes' on one and 'no' on the other.
- (4) The ballot question(s) shall be accompanied by a fair, concise summary of the host community agreement as determined by the city solicitor or town counsel.

124.06: Reimbursing the Expenses of the Host Community Election

- (1) The applicant shall reimburse the municipality that conducts the election for its reasonable and customary expenses related to the host community election within 30 days after the election, provided, however, that if the election occurs as part of a general election, the applicant shall be responsible only for that portion of the general election expenses that related to the host community election. The expenses may include the costs for staffing and securing all voting locations, printing of the ballots, and all related costs as prescribed by the city or town clerk for conducting elections.
- (2) Unless otherwise agreed by the parties, within seven days of the election, the municipality shall provide the applicant with an itemized invoice of the costs for which it seeks reimbursement.
- (3) The commission shall deny an application for a gaming license if the applicant has not fully reimbursed the municipality as provided in 205 CMR 124.06(1).
- (4) The applicant shall disclose the reimbursement in accordance with
- (5) If the result of the election is in the negative and the applicant fails or refuses to reimburse the municipality that conducted the election in accordance with 205 CMR 124.06(1) for all or any part of its cost, then in an action by the municipality against the applicant in a court of competent jurisdiction, the municipality shall be entitled to recover treble the disputed costs of the election as determined by the court together with the municipality's reasonable attorney fees and cost of that action. The applicant's request for an election under 205 CMR 124.02 shall constitute its binding agreement to abide by this provision.

124.07: Post-Election

- (1) If a majority of the votes cast in a host community in answer to the ballot question is in the affirmative, the host community shall be taken to have voted in favor of the applicant's license.
- (2) In accordance with M.G.L. c.23K, §15(13), if a ballot election question is voted in the negative, the applicant shall not submit a new request to the governing body for a new election within 180 days of the last election.
- (3) The city or town clerk or election officer shall provide a certified copy of the election results to the license applicant and the applicant shall include the certified copy in its license application to the commission in accordance with 205 CMR 122.00 and M.G.L. c.23K, §15(13).
- (4) The commission may refuse to accept the certified election results if the election was conducted in violation of any provision of G.L. c.23K or 205 CMR as determined by the commission or in violation of G.L. c.54 or 950 CMR as determined by the Office of the Secretary of the Commonwealth, and the commission determines that the violation materially affected the outcome of the election.

REGULATORY AUTHORITY

205 CMR 128: M.G.L. c.23K, §§ 4(34), 15(13).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 125.00: SURROUNDING COMMUNITIES

Section

125.01: Determination of Surrounding Communities and execution of mitigation agreements

125.01: Determination of Surrounding Communities and execution of mitigation agreements

(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 (i) 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 (ii) submits to the commission a written assent to the designation within 10 days of its receipt of the notice. 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 10 days of the date of the application. Upon receipt of the written assent, the commission shall issue a written notice designating the community as a surrounding community ~~community shall be designated a surrounding community by the commission;~~ 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 for the community to be designated a surrounding community with respect to the specific gaming establishment.

(2) Surrounding Community Determination by Commission.

- 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 10 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 10 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 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:
 - i. 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.
 - ii. 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 twenty-four hour period; and peak vehicle trips generated on state and federal roadways within the community.

- iii. 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.
- iv. 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.
- v. 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 potential impact on a community is a significant and adverse impact, the commission may consider whether the impact to be experienced by the community is different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment.
- d. The commission may evaluate whether the positive impacts on a community that may result from the development and operation of a gaming establishment are of such a nature so as to outweigh any negative impacts to a degree such that a community should not be designated a surrounding community.

(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. 23K, §59.

(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 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 125.01(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 125.01(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 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 125.01(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 5 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 CMR 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. 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 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 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 3 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 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 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), however, may make any adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(9).
7. No later than 5 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 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.

REGULATORY AUTHORITY

205 CMR 125: M.G.L. c.23K, §§

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 126.00: IMPACTED LIVE ENTERTAINMENT VENUES

Section

126.01: Determination of Impacted Live Entertainment Venues

126.01: Determination of Impacted Live Entertainment Venues

- (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 10 days after the commission posts notice on its website that it has received 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.23K, §15(10) or the parties shall follow the protocol and procedure outlined in 205 CMR 110.01(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.

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 5 days after the passage of 30 days since the designation is made by the commission in accordance with 205 126.01(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 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 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 3 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 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), however, may make any adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(10).
7. No later than 5 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: M.G.L. c.23K, §§

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 127.00: REOPENING MITIGATION AGREEMENTS

Section

- 127.01: Definitions
- 127.02: Reasons for Reopening a Mitigation Agreement
- 127.03: Negotiations to Reopen a Mitigation Agreement
- 127.04: Commission Review of a Petition to Reopen a Mitigation Agreement
- 127.05: Renegotiation and Arbitration
- 127.06: Voluntary Reopening of a Mitigation Agreement

127.01: Definitions

As used in 205 CMR 127.00, the following words and phrases shall have the following meaning:

Mitigation agreement or mitigation agreements means a fully executed host community agreement as governed by 205 CMR 123.02, surrounding community agreement as governed by 205 CMR 125.01, or an impacted live entertainment venue agreement as governed by 205 CMR 126.00.

Significant and material adverse impact means a substantial negative affect on a host community, surrounding community, or impacted live entertainment venue from an unforeseen event, act, or circumstance occurring after a mitigation agreement is executed and which directly undermines a basic premise on which the mitigation agreement was made, a principal purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party.

127.02: Reasons for Reopening a Mitigation agreement

The parties to a mitigation agreement may reopen negotiations on a signed mitigation agreement pursuant to any of the following triggering events:

- (a) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of the secretary of EOEEA's certificate on the applicant's final, supplemental, or single environmental impact report pursuant to 301 CMR 11.08(8) and 205 CMR 120.02, and the project as so certified and mitigated in accordance with the secretary of EOEEA's certificate would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.
- (b) In the event that an applicant is granted a conditional gaming establishment license subject to the issuance of a federal, state or local permit or approval, and the permit or approval is either denied or issued in a manner such that the project

would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.

127.03: Negotiations to Reopen a Mitigation Agreement

In the event that a party to a mitigation agreement believes that a triggering event in accordance with 205 CMR 127.02 has occurred, it may take the following actions:

- 1) Request that the other party voluntarily enter into discussions to supplement or amend the mitigation agreement. A party that receives such a request shall enter into such discussions where it is reasonably clear that one of the triggering events provided in 205 CMR 127.02 has occurred. Supplemental or amended mitigation agreements must be filed with the commission promptly upon execution.
- 2) Petition the commission to mandate the reopening of the mitigation agreement. The petition shall clearly set forth the facts and circumstances supporting the request, and shall contain either:
 - a) A sworn statement by the petitioning party that an impasse has been reached in the discussions referenced in 205 CMR 127.03(1); or
 - b) A sworn statement by the petitioning party that the other party has refused to engage in the discussions referenced in 205 CMR 127.03(1).

Petitions under 205 CMR 127.03(2) shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt. Responses shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt not later than fourteen days after delivery of the petition.

127.04: Commission Review of a Petition to Reopen a Mitigation agreement

The commission shall review any petition filed in accordance with 205 CMR 127.03(2) and grant the petition if it finds that a triggering event referenced in 205 CMR 127.02 has occurred.

The commission may convene a hearing on the petition on its own volition or if requested by a party. Upon granting the petition, the commission shall order the parties to re-negotiate any affected provision of the mitigation agreement **specified by the commission.**

127.05: Renegotiation and Arbitration

If the parties are unable to come to terms on an amended mitigation agreement within 60 days of the commission's order, the parties shall enter into binding arbitration. The arbitration shall be limited to incorporating into the mitigation agreement measures necessary and reasonable to mitigate the significant and material adverse impact(s). The following shall apply to any such arbitration:

- 1) The parties may, by mutual agreement, engage in this binding arbitration process at any time after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.02; provided, however, the parties must engage in this binding arbitration process if no amended mitigation agreement is filed with the commission within 60 days after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.04; provided further that the parties may execute an amended mitigation agreement at any time during the arbitration process.
- 2) The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
- 3) No later than 5 days after filing with the commission of a notice of intent to arbitrate, the parties shall select a neutral, independent arbitrator and submit their best and final offer relative to amending the mitigation agreement 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 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
- 4) The reasonable fees and expenses of the single arbitrator shall be paid by the applicant/licensee. In the event that 3 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 community or venue.
- 5) Within 45 days after receipt of the parties' submissions under 205 CMR 127.05(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the amended terms of the mitigation agreement between the parties. 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), however, may make any

adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, §15(9) and (10) as applicable, and that it preserves the original mitigation agreement to the maximum extent reasonable.

- 6) No later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 127.05(5), the parties shall either sign an addendum to the original mitigation agreement or an amended mitigation agreement consistent with the arbitrator's report or sign an independently negotiated addendum. In the event that they fail to do so, the arbitrator's report shall be binding on the parties.
- 7) The parties may, by a mutual agreement in writing filed with the commission, extend any of the timelines set forth in 205 CMR 127.00.

127.06: Voluntary Reopening of a Mitigation Agreement

In addition to the reasons stated in 205 CMR 127.02 the parties to a mitigation agreement may reopen the mitigation agreement for any reason stated in the mitigation agreement itself, provided that in the case of a host community agreement the option to reopen the agreement and the condition under which such agreement may be reopened has been described in the fair, concise summary referenced in M.G.L. c.23K, § 15(13) and 205 CMR 124.05.

REGULATORY AUTHORITY

205 CMR 127: M.G.L. c.23K, §§ [REDACTED]

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 128.00: FORM OF THE GAMING LICENSE

Section

128.01: Form of the Gaming License

128.02: Posting of the Gaming License

128.01: Form of the Gaming License

- (1) The commission, after selection of a particular qualified and suitable applicant to receive either a category 1 or category 2 gaming license shall issue a formal license document which shall contain the following information:
 - (a) A complete identification of the applicant's identity, address and the agent for all service of process by agencies and agents involved in regulating the gaming industry in the commonwealth;
 - (b) The category and term of the license;
 - (c) The document shall contain an official commission serial number and be printed on security protected paper material utilized in the financial and securities industries;
 - (d) A statement that all statutory conditions set forth in M.G.L. c.23K §21 are incorporated by reference, included as if completely set forth therein and made a part of the issued form of gaming license;
 - (e) A statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming license;
 - (f) The form of gaming license shall depict the official seal of the Commonwealth of Massachusetts and be signed by the chair of the commission after receiving a commission resolution authorizing such license issuance and signature execution;

128.02: Posting of the Gaming License

A copy of the gaming license issued in accordance with 205 CMR 128.00 shall be posted in a location continuously conspicuous to the public within the gaming facility at all times.

REGULATORY AUTHORITY

205 CMR 129: M.G.L. c.23K, §§

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 129.00: TRANSFER OF INTERESTS

Section

- 129.01: Transfer of Gaming License, Establishment, Property or Interest
- 129.02: Disposition of Securities
- 129.03: Transfer of Gaming Establishment
- 129.04: Waiting Period
- 129.05: Restriction of Interest in Multiple Gaming Licenses

129.01: Transfer of Gaming License

- (1) The following requirements apply to any proposed transfer of a category 1 or category 2 gaming license, establishment, property or interest:
 - (a) Without prior notification to and approval of the commission, no gaming licensee shall (i) transfer a gaming license, or (ii) enter into an option contract, management contract or other agreement or contract providing for such transfer of a gaming license in the present or future.
 - (b) Prior to effectuating any transfer, agreement or contract described in 205 CMR 130.01(1)(a), a gaming licensee shall notify the commission in writing of its intent to do so and shall identify the intended transferee and its qualifiers.
 - (c) Within thirty (30) days of the written notice under 205 CMR 129.01(1)(b), the intended transferee shall file with the commission an RFA-1 application pursuant to 205 CMR 111, including a non-refundable application fee in the amount of \$400,000.00 under 205 CMR 114.01, and shall be responsible for the payment of all additional fees for investigations of the intended transferee and its qualifiers under 205 CMR 114.04.
 - (d) Upon receipt of a RFA-1 application under 205 CMR 129.01(1)(c), the application shall be referred to the bureau which shall conduct an investigation and issue a written report concerning the qualifications and suitability of the intended transferee and its qualifiers pursuant to 205 CMR 115.03.
 - (e) After the commission has received the bureau's report under 205 CMR 129.01(1)(d), the commission shall provide a copy to the intended transferee and shall initiate a process for a public hearing or adjudicatory proceeding under 205 CMR 115.04.

- (f) After the proceedings under 205 CMR 129.01(1)(e), the commission shall issue a written determination of suitability pursuant to 205 CMR 115.05.
- (g) The commission shall reject any transfer proposed under 205 CMR 129.01(1)(a) to an unsuitable person. The commission may reject any transfer proposed under 205 CMR 130.01(1)(a) that, in the opinion of the commission, would be disadvantageous to the interests of the commonwealth or which the commission otherwise considers unsuitable.
- (h) In the event the commission makes a positive determination concerning any proposed transfer proposed under 205 CMR 129.01(1)(a), the commission may require the transferor, transferee or both to pay to the commission an amount representing the commonwealth's share of the increased value for the transferred licenses, property or interest; provided further, that the commission shall consider as a factor in determining the amount of the payment the market value of the gaming license, property or interest when it was acquired and at the time of the transfer; provided further, that the commission may place additional conditions or restrictions on a transfer that the commission considers suitable.
- (i) If approved and finalized, the transfer of a gaming license under 205 CMR 129.01(1)(a)(i) or (iv) shall divest the transferor of all authority, influence, control, rights and benefits associated with the gaming license.
- (j) Pursuant to M.L.G. c. 23K, §17(g) the proposed transferor and transferee shall not be entitled to any further review of the commission's determination on the transfer proposed under 205 CMR 129.01(1)(a).
- (k) No bona fide banking institution, as defined in M.G.L. c. 167A, §1, or a commercial financial institution which becomes a substantial party of interest with a gaming licensee shall be considered a transferee.

129.02: Disposition of Securities

- (1) The proposed sale, assignment, transfer or other disposition of any security issued by a corporation which holds a gaming license in Massachusetts, or any holding or intermediary company, shall be considered a transfer of a direct or indirect interest in a gaming license or a gaming establishment pursuant to 205 CMR 129.01(1)(a)(ii), shall require prior approval of the commission in accordance with 205 CMR 118.24, and shall be ineffective if disapproved by the commission; provided, however, that the commission may waive qualification requirements for prospective purchaser, assignee or transferee of any security under 205 CMR 129.01(1) pursuant to 205 CMR 116.03.

- (2) Unless the commission grants such a waiver, the commission shall determine the qualifications and suitability of a prospective purchaser, assignee or transferee of such a security under 205 CMR 129.01(1) prior to any approval of a transaction.
- (3) 205 CMR 129.02 shall not apply to the disposition of securities that are publicly traded, unless the transfer directly or indirectly constitutes more than 5 per cent of the common stock of the company or a holding, intermediary or subsidiary company of the licensee or the applicant company.

129.03: Transfer of Gaming Establishment

Without prior notification to and approval of the commission, no gaming licensee shall transfer any direct or indirect interest in a gaming establishment, or transfer any direct or indirect real interest, structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license.

129.04: Waiting Period

Whenever a person contracts to transfer any property relating to an ongoing gaming establishment pursuant to 205 CMR 129.03, including a security holding in a gaming licensee or holding or intermediary company pursuant to 205 CMR 129.02, under circumstances which require that the transferee obtain licensure under M.G.L. c. 23K and 205 CMR, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed application for licensure or qualification, as applicable.

129.05: Restriction of Interest in Multiple Gaming Licenses

- (1) No person or affiliate shall be permitted to hold more than one gaming license.
- (2) No person or affiliate shall be permitted to hold, directly or indirectly a financial interest in more than one gaming license. For purposes of this section, a financial interest shall not include the interest of an institutional investor as to which the commission has waived licensure or qualification.

REGULATORY AUTHORITY

205 CMR 129: M.G.L. c. 23K, §§ 2, 14(c), 19(c), 20(e), 21(b), 21(e), 23(c), 31(e).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 130.00: CONSERVATORS

Section

- 130.01: Scope
- 130.02: Appointment
- 130.03: Qualifications of the Conservator
- 130.04: Insurance
- 130.05: Terms, Conditions, and Duties of Conservator
- 130.06: Termination of the Conservatorship

130.01: Scope

205 CMR 130.01 shall govern the appointment and duties of a conservator.

130.02: Appointment

- (1) Upon revocation or suspension of a gaming license or upon the failure or refusal to renew a gaming license, the commission may appoint a conservator to temporarily manage and operate the business of the gaming licensee relating to the gaming establishment.
- (2) Prior to appointment, a candidate must submit to the commission a Multi-jurisdictional Personal History Disclosure form in accordance with 205 CMR 111.03 and a Massachusetts Supplement Form in accordance with 205 CMR 111.04. An investigation shall be undertaken and a recommendation made by the bureau in accordance with 205 CMR 115.03. All costs incurred by the commission and the bureau for conducting an investigation into any conservator or potential conservator shall be paid from the revenues of the gaming establishment.
- (3) The appointment shall be made by vote of the commission by a written instrument which outlines all terms and conditions of the appointment as provided in 205 CMR 130.00 and G.L. c.23K, §34.
- (4) Upon appointment, the person shall be designated a temporary key gaming employee and deemed licensed as such in accordance with G.L. c.23K, §30.

130.03: Qualifications of the Conservator

- (1) A conservator shall be a person of similar or greater experience in the field of gaming management to the person they are succeeding.
- (2) If the conservator is replacing a gaming licensee they shall have experience operating a gaming establishment of similar caliber in another jurisdiction.
- (3) At the time of the appointment, the conservator shall be in good standing in all jurisdictions in which the conservator operates, or has operated, a gaming establishment.

130.04: Insurance

The former or suspended gaming licensee shall purchase liability insurance, in an amount determined by the commission at the time of the appointment of a conservator, to protect a conservator from liability for any acts or omissions of the conservator during the conservator's appointment which are reasonably related to and within the scope of the conservator's duties. A copy of the policy shall be filed with the commission.

130.05: Terms, Conditions, and Duties of Conservator

- (1) A conservator shall, before assuming, managerial or operational duties, execute and file a bond for the faithful performance of its duties payable to the commission with such surety and in such form and amount as the commission shall approve at the time of appointment.
- (2) The terms of compensation shall be fixed by the commission at the time of appointment of the conservator. The terms shall include a requirement that the conservator submit itemized billings for expenses to the commission on a monthly basis, which billings shall be considered by the commission for reasonableness. Payment of compensation and expenses shall be made from the revenues of the gaming establishment.
- (3) The conservator shall file reports with the commission regarding the management and operation of the gaming establishment in the form and at such intervals as the commission may prescribe at the time of appointment.
- (4) The conservator shall take possession immediately of all books and records relating to the gaming establishment.
- (5) The conservator shall be responsible for ensuring that all taxes relating to the gaming establishment are paid in a timely fashion.
- (6) The conservator shall abide by all licensing provisions applicable to the former or suspended gaming licensee upon appointment.
- (7) The conservator may, by approval of the commission, appoint any consultants needed to assist in the operation of the gaming establishment; provided, however, that the commission may require any such consultant to submit the completed forms, undergo the investigation, and receive an appointment as a designated temporary key gaming employee in accordance with 205 CMR 130.02(2)-(4) or to undergo such other investigation into the background, integrity, honesty, character, reputation, financial stability, criminal history and responsibility of the consultant as the commission may require. All costs incurred by the commission and the bureau for conducting an investigation into any such consultant or potential consultant shall be paid from the revenues of the gaming establishment.

130.06: Termination of the Conservatorship

The conservatorship shall serve at the pleasure of the commission and shall continue until terminated by the commission:

- (1) upon the award of a new gaming license pursuant to 205 CMR 131.02; or
- (2) upon the voluntary resignation of the conservator in which case the commission shall appoint a new conservator in accordance with 205 CMR 130.00; or
- (3) upon a non-reviewable finding by the commission to appoint a replacement in accordance with this 205 CMR 130.00.

REGULATORY AUTHORITY

205 CMR 130: M.G.L. c. 23K, §§ 4(19), 12, 30(i), and 34.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 131.00: AWARDING OF A NEW GAMING LICENSE

Section

131.01: Commencement of Application Process

131.03: Application and Award of a New Gaming License

131.01: Commencement of Application Process

In the event of a revocation of, or failure to renew a gaming license the commission shall initiate proceedings in accordance with 205 CMR 131.00 to award a new gaming license to a qualified applicant as promptly as possible.

131.02: Application and Award of a New Gaming License

(1) Prior to soliciting applications, the commission shall determine the required minimum capital investment by an applicant into the preexisting gaming establishment. In making the determination the commission shall consider, among other things, the length of time the establishment has been in operation, the amount of the initial capital investment, and reason the previous gaming license was revoked or not renewed.

(2) The new gaming licensee's gaming establishment must be located at the site of the preexisting gaming establishment.

(3) Upon transfer of good, clear, record, marketable title in the gaming establishment to the new licensee, the new licensee shall pay to the prior licensee the lesser of the depreciated capital investment in the gaming establishment or the fair market value of the gaming establishment as determined by the commission.

(4) The commission shall request applications for the available license in accordance with 205 CMR 110.00. The applications shall be in conformance with 205 CMR 111.00. The applicant shall pay all application fees and additional fees for investigation in conformance with 205 CMR 114.00. The process of review and determination of suitability shall be in conformance with 205 CMR 115.00, 116.00, and 117.00.

(5) Upon a positive determination of suitability, the applicant shall file with the commission an application to operate the gaming establishment on a form prescribed by the commission.

(6) The applicant shall agree to assume and be bound by all obligations imposed upon the original licensee provided in any applicable host community agreement(s), surrounding community agreement(s), and impacted live entertainment venue agreement(s).

(7) Upon award of a new gaming license, the new gaming licensee shall pay the original licensing fee required under M.G.L. c. 23K in the manner prescribed by 205 CMR 121.00.

(8) The commission shall review and award the new license in accordance with 205 CMR 119.00. The new license shall incorporate such terms and conditions as the commission, in its discretions, considers necessary and appropriate.

REGULATORY AUTHORITY

205 CMR 131: M.G.L. c. 23K, §§ 1(9), 4(15, 17, 19, 27), 10, 12, 15, 21, 23(b), 34, 35(d).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 102.00: CONSTRUCTION AND APPLICATION

102.01: Authority

205 CMR 101.00 through 117.00 *et. seq.* are issued pursuant to M.G.L. c. 23K, §§ 4(37) and 5, unless otherwise specified.

102.02: Definitions

As used in 205 CMR 101.00 through 117.00 *et. seq.*, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

Massachusetts Supplement Form (PHD-MA-SUPP) is defined in 205 CMR 111.04: *Massachusetts Supplemental Form.*

MEPA means the *Massachusetts Environmental Policy Act*

Money means cash or instruments that are convertible to cash in any negotiable currency.

RFA-P1 or RFA-1 Process is defined in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications.*

RFA-2 is defined in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications.*

Secretary means the secretary of the commission.

Secretary of EOEEA means the *Secretary of the Executive Office of Energy and Environmental Affairs.*

Security Protocols means the system for securing and preserving the confidentiality of records in accordance with 205 CMR 103.14: *Security Protocols; Restricted Access.*

102.03: Construction and Amendments

(1) 205 CMR, shall be construed in accordance with generally accepted principles of statutory construction in the Commonwealth of Massachusetts, including those set forth in M.G.L. c. 23K.

(2) 205 CMR shall be liberally construed to permit the commission, the bureau, and their agents and employees to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the commission and the bureau.

(3) Nothing in 205 CMR shall be construed to conflict with any provision of M.G.L. c. 23K.

(4) Waivers and variances.

(a) General. The commission may in its discretion waive or ~~modify~~ grant a variance from any provision or requirement contained in 205 CMR 101.00 through 117.00 *et. seq.*, not specifically required by law, where the commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;

2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;

3. Granting the waiver or variance will not adversely affect the public interest; and

4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine. Any waiver request not acted on by the commission within 60 days of filing shall be deemed denied. ~~There shall be no further review from any determination by the commission or any constructive denial of a waiver request.~~

102.04: Words and Terms: Tense. Number and Gender

In construing 205 CMR 101.00 through 117.00 *et. seq.*, except when otherwise plainly declared or clearly apparent from the context: words in the present tense shall include the future tense; words in the masculine shall include the feminine and neuter genders; and words in the singular shall include the plural and the plural shall include the singular.

102.05: Computation of Time

(1) Unless **specified** otherwise ~~specifically provided by law~~, computation of any time period referred to in 205 CMR 101.00 through 117.00 *et. seq.* shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next business day. When the time period is seven days or less, intervening Saturdays, Sundays, or legal holidays shall be excluded in the computation. When a time period is greater than seven days each intervening calendar day shall be included in the computation.

(2) Whenever a provision of 205 CMR ~~101.00 through 117.00~~ requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday or Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

102.06: Matters Not Provided For

In recognition of the inherent difficulty of drafting a functional code that contemplates every situation that may arise in the regulation of gaming in the Commonwealth, this section provides the Commission, the IEB, and other designated Commission staff, with reasonable discretion to ensure that all issues that may arise in the enforcement of 205 CMR may be appropriately addressed. Matters not specifically provided for in 205 CMR regarding the licensing of a gaming establishment, individual, or vendor, or the operation of a gaming establishment, shall be determined by the Commission or, where applicable, IEB in a manner consistent with the principles set forth in M.G.L. c.23K, §1. If this provision is used, the Commission or IEB shall make written findings outlining the reasons therefor and file them with the Commission for discussion at a public meeting.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 103.00: ACCESS TO AND CONFIDENTIALITY OF COMMISSION RECORDS

103.04: Determinations by the Official Custodian, the General Counsel and the Commission

~~(2) Subject to 205 CMR 103.04(1), and to the Commission's determinations pursuant to 205 CMR 103.11 and 205 CMR 103.12, the official custodian designated in accordance with 205 CMR 103.03 shall determine whether any particular record within his or her jurisdiction is subject to disclosure as a public record or is exempt from disclosure as described in 205 CMR 103.02(1) through (5). Whenever the official custodian has a doubt or question about whether any particular record is subject to disclosure as a public record or exempt from disclosure as described in 205 CMR 103.02(1) through (5), and whenever any confidentiality claimant asserts in writing that any particular record is exempt from disclosure as described in 205 CMR 103.02(1) through (5), the official custodian shall consult the general counsel who shall, subject to 205 CMR 103.04(1), resolve such doubt, question or dispute, and such request shall be granted or denied, only in accordance with a written determination signed by the general counsel; provided further that the general counsel may refer any such doubt, question or dispute to the commission for its resolution.~~

(DELETED)

103.05: Effect of Requests for Confidentiality

~~Whenever a confidentiality claimant requests in writing that particular records be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions*, such records or information shall be treated as confidential and may not be deemed public records until the confidentiality request has been approved or denied pursuant to 205 CMR 103.04, 103.10 and 103.11.~~

(DELETED)

103.06: Postponing Denial of Confidentiality Pending Appeal

Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* or exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect ten days after the date thereof so

that any person aggrieved by said denial may appeal to ~~another State agency with jurisdiction over the subject matter thereof, or to~~ a court of competent jurisdiction. During this ten-day period, the records in question shall be treated as confidential ~~and may not be deemed public records~~ and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a). This ten-day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the general counsel.

103.10: Requests for Protecting Confidential Information

Except as set forth in 205 CMR 103.09, no record shall be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* unless a person **submits a written** requests to the commission ~~in writing to protect to deem~~ the information as confidential information **and accordingly exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a)**. The request shall be made and substantiated as follows:

(1) Each record containing information that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL". To assist the commission in complying with 205 CMR 103.02, persons shall separately submit confidential portions of otherwise non-confidential records. If submitted separately, the record that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" and the record from which confidential information has been redacted shall be clearly marked "REDACTED".

(2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record:

(a) The time period for which confidential treatment is desired.

(b) The reason the record was provided to the commission or the bureau, and the date of submittal.

(c) The basis for the claim that the record contains confidential information and, if applicable, the basis for believing that the criteria in 205 CMR 103.11 are satisfied.

(d) The extent to which the person requesting that the record be kept confidential has disclosed the contents of that record to other persons without a restriction as to confidentiality imposed by agreement or by law.

(e) A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental entity that does not treat the information as confidential or that has denied a request for confidential treatment.

(f) A statement that the information is not required to be disclosed or otherwise made available to the public under any other Federal or state law.

~~(g) How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7), or otherwise cause irreparable harm or damage to the person requesting confidentiality.~~ A statement as to how the record, or portion thereof, meets the definition of *confidential information* as set forth in 205 CMR 102.02

(h) If the record was submitted voluntarily for use in developing governmental policy and upon a promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), and not in compliance with a regulation or order of the commission or a court, whether and if so why making the record a public record would tend to lessen the availability to the commission or the bureau of similar records in the future.

103.11: Procedure for Acting on Requests for Protecting Confidential Information

The commission shall act on a confidentiality request made pursuant to 205 CMR 103.10 subject to the following provisions:

(1) If the commission has received a request to inspect or copy a record which is the subject of a confidentiality request on which the commission has not made a final decision, the commission shall notify:

(a) the person who made the request to inspect or copy the record that:

1. the record in question is the subject of a pending confidentiality request, ~~and therefore not a public record;~~

2. ~~the request to inspect or copy is initially denied;~~ and

3. a final decision will be made when the commission determines whether the record in question is entitled to confidentiality protection.

(b) the confidentiality claimant of the request to inspect or copy the record.

(2) The commission shall determine whether the record, ~~if made public, would divulge~~ **is** confidential information as defined in 205 CMR 102.02: *Definitions*. The Commission shall give notice of its determination(s) to the confidentiality claimant and all persons who requested to inspect or copy the record.

(3) If the commission determines that a record ~~would, if made public, divulge~~ **is** confidential information as defined in 205 CMR 102.02: *Definitions*, the record in question, **or portion thereof**, shall be ~~deemed confidential and may not be deemed a public record~~ **exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a)** for such length of time, and subject to such terms, conditions and limitations, as the commission may include in the determination. The commission shall so notify the person who submitted the record to the commission or the bureau, the confidentiality claimant, and all persons making a request to inspect or copy the record in question.

(4) All notices given pursuant to 205 CMR 103.11(2) and (3) shall be in writing, shall be delivered by hand, by ~~certified~~ **first class** mail, ~~return receipt requested~~, or by electronic mail, and shall include:

(a) the reasons for the determination,

(b) notice that the determination constitutes a final decision of the commission,

(c) notice that the determination may be subject to review by ~~one or more other State agencies~~ **the supervisor of records of the Office of the Secretary of the Commonwealth** or by the courts, **as applicable**,

(d) if the determination is that the record in question, **or portion thereof** ~~if made public, would not divulge~~ **is not** confidential information as defined in 205 CMR 102.02: *Definitions*, notice that the record in question shall become a public record 14 days after the date of the commission's determination unless, a person aggrieved by said determination appeals the determination ~~to another State agency with jurisdiction over the subject matter thereof, or to a court of competent jurisdiction~~. This 14-day period may be extended only in extraordinary situations, and any such extension must be in writing and signed by the commission's general counsel ~~pursuant to 205 CMR 103.04~~.

(5) If pursuant to 205 CMR 103.11, the commission's ~~determination~~ denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may,

within ten days from the date of the commission's notice of such determination, submit to the commission one request to reconsider such determination, which request to reconsider shall set forth any and all supplemental information supporting the claim of confidentiality and further addressing the criteria of 205 CMR 103.10(2). The commission shall act on the request to reconsider following the procedures in 205 CMR 103.11(1) through (4). The request for reconsideration shall stay the effect of the commission's original denial and the 14-day period set forth in 205 CMR 103.11(4) shall run from the date of the commission's notice of its ruling on the request for reconsideration.

(6) If pursuant to 205 CMR 103.11, the commission's ~~determination~~ denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, at any time before the expiration of the applicable 14 day period set forth in 205 CMR 103.11(4), submit a written request to the commission pursuant to 205 CMR 111.05: Withdrawal of Application, to withdraw with prejudice the application to which the information relates and to order the information permanently sealed or returned to the applicant. If the commission allows the request to withdraw the application with prejudice, the commission may order the information permanently sealed or returned to the applicant to the extent permitted by M.G.L. c. 4, § 7, cl. 26, and M.G.L. c. 23K.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 104.00: DELEGATION OF AUTHORITY

104.01: Delegation of Commission Authority

- (1) Subject to M.G.L. chs. 23K and 30A, the commission may, in its discretion, delegate the authority of the commission to perform any of its functions under M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.*, with the exception of final decisions regarding Phase 1 and Phase 2 determinations of qualification for gaming licenses, to a commissioner or commissioners, or to the executive director, the bureau, the deputy director, or any other employee of the commission, on such terms and conditions as the commission may specify. Any action taken and determination made pursuant to such delegation shall not require further approval, ratification or other action by the commission.
- (2) All delegations of commission authority made pursuant to 205 CMR 104.01(1) shall remain in effect until amended, suspended, modified or revoked by the commission.
- (3) The commission may review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.
- (4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.* requires that the commission provide notice of an action taken or determination made, and such action is taken or determination is made pursuant to delegation pursuant to 205 CMR 104.01(1), such notice shall be provided by the individual or entity exercising delegated authority.
- (5) In any delegation to the bureau, pursuant to M.G.L. c. 23K, § 4(32), the commission shall not place any restriction upon the bureau's ability to investigate or prosecute violations of M.G.L. c. 23K or 205 CMR.

104.02: Delegation of Chair's Authority

- (1) The chair may, in his or her discretion, delegate to another commissioner or commissioners or to the executive director the authority of the chair to perform any of his or her duties and responsibilities under M.G.L. c. 23K or 205 CMR.
- (2) All delegations of made pursuant to 205 CMR 104.02(1) shall remain in effect until amended, suspended, modified or revoked by the chair.
- (3) The chair may, on his or her own initiative, review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.
- (4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 *et. seq.* requires that the chair provide notice of an action taken or determination made, and such action is taken or

determination is made pursuant to delegation pursuant to 205 CMR 104.02(1), such notice shall be provided by the individual exercising delegated authority.

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205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 105.00: INVESTIGATIONS AND ENFORCEMENT BUREAU

105.01: Duties and Responsibilities

(1) The bureau shall be the primary enforcement agent for regulatory matters under M.G.L. c. 23K and 205 CMR 101.00 through 117.00 *et. seq.* and shall have all of the powers and duties of the bureau enumerated in St. 2011, c. 194, M.G.L. c. 23K and 205 CMR 101.00 through 117.00 *et. seq.*.

(2) The bureau shall be under the supervision and control of the deputy director who shall be the executive and administrative head of the bureau and shall be responsible for administering and enforcing the laws relative to the bureau and to each administrative unit of the bureau. The duties of the deputy director shall be exercised and discharged subject to the direction, control and supervision of the chair or to the executive director by appropriate delegation of authority pursuant to 205 CMR 104.02: *Delegation of Chair's Authority*.

(3) The bureau shall be a law enforcement agency and its employees shall have such law enforcement powers as necessary to effectuate the purposes of M.G.L. c. 23K, including the power to receive intelligence on an applicant or licensee, and to investigate any suspected violations of M.G.L. c. 23K.

(4) With respect to the investigation and enforcement of gaming establishments and licensees, the bureau may obtain or provide pertinent information regarding applicants or licensees from or to law enforcement entities or gaming authorities and other domestic, Federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit such information to each other electronically or via other secure methods.

(5) The bureau shall conduct investigations into the qualifications and suitability of all applicants, qualifiers and other persons required to be registered or investigated in connection with any form of license or registration pursuant to M.G.L. c. 23K and 205 CMR 101.00 through 117.00 *et. seq.*, including without limitation an investigation of qualifications and suitability to hold a gaming license pursuant to M.G.L. c. 23K.

105.10: Authority to Retain and Utilize Contractor Investigators

(1) The commission may, pursuant to M.G.L. c. 23K, § 4, and any applicable procurement procedures, retain qualified contractor investigators, either directly or pursuant to a contract or contracts with a private investigative business or businesses, to assist the bureau in conducting

initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR ~~101.00 through 117.00~~.

(2) In retaining contractor investigators, the commission may establish minimum qualifications in terms of education, training, and experience in Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters.

(3) Prior to entering a contract with the commission, each prospective contractor investigator and, if applicable, his or her related business shall be subject to an expedited background inquiry by the bureau through the gaming and enforcement unit, which shall include, without limitation, an examination of prior criminal history, financial stability, reputation for integrity, honesty, good character; and education, training, and experience in Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters. If a contractor investigator and, if applicable, his or her business entity is deemed suitable and qualified by the bureau in its discretion based on this expedited background inquiry, then the commission on behalf of the bureau may enter into a contract for the professional services of the contractor investigator in a form and with terms such acceptable to the commission.

(4) Once retained, each contractor investigator shall be provided with the necessary authority and credentials to serve as an official agent of the bureau in conducting initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR ~~101.00 through 117.00~~ *et. seq.*

(5) Immediately on being retained each contractor investigator shall be sworn to the faithful performance of his or her official duties under M.G.L. c. 23K and 205 ~~101.00 through 117.00~~ *et. seq.* Before a contractor investigator can participate in any investigation under M.G.L. c. 23K or 205 CMR ~~101.00 through 117.00~~ *et. seq.*, the investigator shall execute a certification acknowledging his full understanding and acceptance of the authority given, applicable confidentiality provisions, and the limits to such an investigative authority.

(6) Each contractor investigator shall report to the deputy director of the bureau. In the case of an absence or vacancy in the office of the deputy director, each contractor investigator shall report to an interim supervisor designated by the chair to supervise such investigators and investigations.

(7) Any contract entered by the commission for the services of any contractor investigator may be terminated by the commission, without cause, liability or recourse.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 106.00: INFORMATION AND FILINGS

106.02: Communications; Notices

(1) Except as otherwise provided by 205 CMR 101.00 ~~through 117.00~~ *et. seq.* or as specified by the commission on its website, all applications, papers, process or correspondence relating to the commission or the bureau shall be addressed to, submitted to, filed with or served upon the commission or the bureau, respectively, at its main office.

(2) Service of process upon the commission or the bureau shall be made in accordance with Mass. R. Civ. P. 4(d)(3).

(3) Service of all papers, documents, notices and pleadings in adjudicatory proceedings conducted by or on behalf of the commission or the bureau shall be made in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(4) Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the commission when delivered to the main office of the commission or to the chair, a commissioner, or such employee or employees of the commission as may be designated by the chair and posted on the commission's website. Except as set forth in 205 CMR 106.03, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the bureau when delivered to the main office of the bureau or to the deputy director or such employee, employees, or agents of the bureau as may be specified by 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* or as may be designated by the deputy director as posted on the commission's website.

(5) Except as otherwise specifically provided by M.G.L. c. 23K or 205 CMR ~~through 117.00~~ *et. seq.*, the commission or the bureau as applicable:

(a) will send any notice of public hearing and any decision of the commission or the bureau concerning a specific applicant, licensee or registrant to the applicant, licensee or registrant either by in hand delivery, by ~~certified, registered, or express~~ mail, or by electronic mail to the address shown in the most recent application or notice of change of address received from such person; and

(b) may send any other papers, documents, notices, or correspondence by any method specified in 205 CMR 106.02(5)(a) or by first class mail, postage prepaid. Notices from the commission or the bureau shall be deemed to have been received upon the earlier of in hand delivery, electronic mail transmission, or deposit in the United States mail, postage prepaid, and the time specified in any such notice shall commence to run from that date.

~~(6) Applicants, licensee and registrants shall immediately notify the commission and the bureau in writing of any change of address, and shall specifically request that all future notices or other communications be sent by the commission or the bureau to the new address. Any applicant or person or entity holding a license or registration issued by the Commission shall have an ongoing duty to report any change of mailing address, email address, or other contact information to the Commission. The contact information on file at the Commission shall be deemed accurate for purposes of service of any notification required to be provided including that required by 205 CMR, M.G.L. c.30A, and/or M.G.L. c.23K.~~

(7) Any applicant, licensee or registrant who desires to have notices or other communications from the commission or the bureau sent to an address other than that specified in the most recent application or notice of change of address on file with the commission and the bureau shall file with the commission and the bureau a written notice of change of address, and, within a reasonable time after receipt thereof by the commission and the bureau, subsequent notices and other communications from the commission or the bureau will be sent to the applicant, licensee or registrant at such address.

106.03: Electronic Filing by Applicants during RFA-1 and RFA-2 Processes

(1) The commission shall develop and post on its website administrative procedures pursuant to which all applications, papers, documents, correspondence and other information submitted by an applicant to the commission or the bureau during the RFA-1 process pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* and the RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications* must be filed by electronic means as provided therein. Any document required by 205 CMR 101.00 through 117.00 *et. seq.* to be signed or notarized shall be signed or notarized, scanned and submitted in PDF form. All applicants must comply with those administrative procedures.

(2) All such electronic submissions shall be made in PDF format. Subject to technological limitations, all such submissions shall be machine-readable and text searchable.

(3) In accordance with the administrative procedures, electronic submission may be made via the internet or by filing at the main office of the commission or the bureau, as applicable, a disk containing the electronic submission. For electronic submissions via the internet, the commission or the bureau will electronically transmit a Notice of Electronic Filing which will constitute confirmation of the filing of the submission with the commission or the bureau as applicable. In the event the applicant does not receive a Notice of Electronic Filing, it is the applicant's duty to take appropriate measures to confirm timely receipt of the electronic submission by the commission or the bureau as applicable.

(4) Electronic filing via the internet will be generally available 24 hours a day; however, that availability shall not alter any filing deadline, whether set by regulation, commission or bureau

order, or the RFA itself. All electronic submissions of documents must be completed prior to 5:00 P.M. to be considered timely filed that day.

106.04: Petitions for Adoption, Amendment or Repeal of Regulations

(1) Any interested person may file a petition with the commission pursuant to M.G.L. c. 30A, § 4, for the adoption, amendment or repeal of any regulation. Such petition shall be in writing, be signed by the petitioner or petitioner's attorney, be submitted to the commission at its main office, and include the following information:

- (a) The name and address of the petitioner and the petitioner's attorney;
- (b) The substance of the requested adoption, amendment or repeal of a regulation;
- (c) The reasons for the request;
- (d) The specific interest of the petitioner affected by the requested regulation;
- (e) Reference to the statutory authority under which the commission may take the requested action; and
- (f) Such data, views and arguments as the petitioner thinks pertinent to the request.

(2) After receipt of a petition for the adoption, amendment or repeal of a regulation submitted in accordance with 205 CMR 106.04(1), the commission may consider the petition at an open meeting pursuant to M.G.L. c. 30A, § 20, and determine, in its discretion, whether or not to take any action on or as a result of the petition. At the meeting the commission may, but shall not be required to, entertain comments or questions from members of the public pursuant to M.G.L. c. 30A, § 20(f). Within 20 days after the meeting, the commission will notify the petitioner as to its determination, if any, concerning the petition. The commission may, but is not required to, explain the reasons for any determination on a petition.

(3) The submission of a petition for the adoption, amendment or repeal of any regulation pursuant to 205 CMR 106.04(1), and any action, inaction, determination or notice by the commission pursuant to 205 CMR 106.04(2) with respect thereto, shall not constitute a regulation and shall confer no legal rights, duties or privileges whatsoever on the petitioner or any other person.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 107.00: PROFESSIONAL PRACTICE

107.01: General Provisions

No person may practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of the Commonwealth of Massachusetts before the commission in any manner other than in accordance with law, the ethical standards applicable to the particular profession and 205 CMR 101.00 ~~through 117.00~~ *et. seq.* Practice shall include any matter connected with the representation of the interest of a client, including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

107.02: The Practice of Law

(1) No individual, other than a member, in good standing, of the bar of the Commonwealth of Massachusetts, shall practice law before the commission; provided, that a member of the bar, in good standing, of any other state may appear and practice, by permission of the commission, in any particular matter before the commission as set forth in 205 CMR 107.02(2).

(2) Notwithstanding 205 CMR 107.02(1), an attorney who is a member of the bar of the highest court of any state may appear and practice before the commission in a particular matter by leave granted in the discretion of the commission, provided he or she files a certificate that:

(a) he or she is a member of the bar in good standing in every jurisdiction where he or she has been admitted to practice;

(b) there are no disciplinary proceedings pending against him or her as a member of the bar in any jurisdiction; and

(c) he or she has read and is familiar with M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*; and provided further, that his or her application for leave to practice before the commission is on request of a member, in good standing, of the bar of the Commonwealth of Massachusetts, who shall:

1. represent the client concurrently as its local counsel on the same particular matter;

2. appear of record in the particular matter; and

3. be responsible for the conduct of the out-of-state attorney in the particular matter; and provided further that both such attorneys shall sign all papers submitted or filed by counsel with the commission on behalf of their mutual client.

(3) A natural person who is not a member of the bar and to whom 205 CMR 107.02(1) and (2)

are not applicable may appear and practice before the commission only in his or her own behalf.

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 108.00: COMMUNITY AND POLITICAL CONTRIBUTIONS

108.01: Prohibited Political Contributions

(1) As specified in M.G.L. c. 23K, § 46, no applicant for a gaming license, nor any holding, intermediary or subsidiary company thereof, nor any prohibited person, nor any person or agent on behalf of any such applicant, company or prohibited person, shall directly or indirectly, pay or contribute any money or thing of value to:

- (a) an individual who holds a municipal, county or state office;
- (b) any candidate for nomination or election to any public office in the Commonwealth of Massachusetts, including a municipal office; or
- (c) any group, committee or association organized in support of any such candidate; provided, however, that the provisions of 205 CMR 108.01 shall not prohibit an individual who is a candidate for public office from contributing to the candidate's own campaign.

(2) In determining whether a contribution or payment was made by a prohibited person or any entity described in 205 CMR 108.01(1), the commission shall consider all relevant facts and circumstances, including, but not limited to, the following:

- (a) Whether the person making the contribution or payment is a spouse or dependent person with regard to the prohibited person;
- (b) The nature and importance of any economic, business, personal, familial or other relationship between the person making the contribution or payment and the entity or prohibited person that currently exists, that existed at the time the contribution or payment was solicited and made, or that is reasonably anticipated to exist in the foreseeable future;
- (c) The timing and nature of any communications that may have occurred between the person making the contribution or payment and the entity or prohibited person regarding the prohibited person's desire to raise funds for the candidate or political organization that received the contribution or payment;
- (d) The ability or inability of the entity or prohibited person to control or affect the actions of the person making the contribution or payment, and any evidence that any such ability played a role in the decision to make the contribution or payment;
- (e) Any prior contributions or payments to or expressions of support for the candidate or political organization that was the recipient of the contribution or payment by the person making the contribution or payment, and the timing of any such prior contributions or payments or expressions in relation to the establishment of the relationship between the prohibited person and the person making the contribution or payment;

(f) Whether the person making the contribution or payment is a resident of Massachusetts or has significant property or business interests in Massachusetts;

(g) The timing and nature of any communications that may have occurred between the person making the contribution or payment and the recipient of the contribution or payment regarding the entity or prohibited person's solicitations on behalf of or expressions of support for the candidate or political organization;

(h) Whether there is a pattern or regular course of conduct involving contributions or payments to one or more candidates or political organizations by the person making the contribution or payment;

(i) Whether there is a pattern or regular course of conduct involving contributions or payments to one or more candidates or political organizations on the part of a spouse, employees, contractors or other dependent persons of a prohibited person or any affiliated person or entity thereof; and

(j) Whether the entity or prohibited person has, directly or indirectly, reimbursed or offered to reimburse the person making the contribution or payment for all or any portion of the contribution.

108.02: Mandatory Disclosure of Political Contributions and Community Contributions

(1) An applicant or qualifier shall disclose to the commission in the Phase 1 application all political contributions and community contributions from November 22, 2011 through the date the Phase 1 application is filed **and shall disclose in the Phase 2 application all political contributions and community contributions from January 15, 2013 through the date the Phase 2 application is filed.** This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, § 13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may subject the applicant licensee or qualifier to a negative determination of suitability or denial of its application for a gaming license or to a revocation of a gaming license or determination of suitability for licensure, and any other remedial actions by the commission.

(2) All political contributions or contributions in kind made by an applicant for a gaming license to a municipality or a municipal employee, as defined in M.G.L. c. 268A, § 1, of the host community of the applicant's proposed gaming establishment shall be disclosed by the applicant to the commission in accordance with 205 CMR 111.00: *Phase 1 Application Requirements* **and contributions made from January 15, 2013 through the date the Phase 2 application is filed shall be disclosed in the Phase 2 application** and to the city or town clerk of the host community. Applicants shall also fully and completely comply with 970 CMR 1.19: *Contributions from Gaming License Applicants and Persons Holding Such Licenses* (Office of Campaign and Political Finance) so as to enable timely and expeditious public reporting.

(3) The duty to disclose set forth in 205 CMR 108.02(1) and (2) shall not prohibit disbursements to host or surrounding municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.

108.03 Mandatory Disclosure of Requests Any Thing of Value

(1) For purposes of 205 CMR 108.03, a request for any thing of substantial value means a request for compensation, contribution(s), services, gifts, request(s) to do or take or refrain from doing or taking any action with a face value or fair market value of \$1000 or more at the time it was requested. Examples of any thing of value include, but are not limited to, case, food or drink, contributions to a charity or non-profit or tickets to entertainment, cultural or sporting events. To determine the value of attendance at an event, the calculation shall include, if such information is available, the admission fee or ticket price or per person cost to the sponsor or the actual cost of the event may be divided by the number of attendees.

(2) An applicant shall disclose to the commission in the RFA-2 application all requests to an agent or employee of the applicant or any qualifier by persons or persons listed in 108.01(1) for any thing of substantial value from January 15, 2013 through the date the RFA-2 application is filed. This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, §13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may result in the denial of the application for a gaming license or to a revocation of a gaming license or any other remedial actions deemed reasonable by the commission.

(3) The disclosure shall include the name of the person making the request, the date the request was made and the nature of the request.

(4) The duty to disclose set forth in 205 CMR 108.03(1) and (2) shall not include requests for disbursements by municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 112.00: REQUIRED INFORMATION AND APPLICANT COOPERATION

112.01: Additional information

(1) The commission, the bureau or their agents and employees may request additional information and documents from an applicant throughout the application review process including after the application has been deemed administratively complete under 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 128.00 *Evaluation Criteria for RFA-2 Applications*. Failure by the applicant to timely submit the additional information as requested by the commission, the bureau or their agents and employees may be grounds, in the discretion of the commission, for denial of the application.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.* shall comply with all requests of the commission, the bureau and their agents and employees for information and documents as authorized by the M.G.L. c. 23K and 205 CMR 101.00 ~~through 117.00~~ *et. seq.*

112.02: Obligation to Cooperate

(1) Applicants, licensees, registrants and qualifiers shall respond within ten days or within the time specified in an information request by the commission, the bureau and their agents and employees under 205 CMR 112.01 to said information request.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K shall have a continuing duty to provide all information and documents requested by the commission, bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the commission, bureau, and their agents and employees, as authorized by M.G.L. c. 23K. Without limitation, an applicant, licensee, registrant and qualifier shall have a continuing duty to provide updated information to the commission, the bureau and their agents and employees in connection with the Phase 1 investigation by the bureau pursuant to 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau*, the Phase 2 application review conducted in accordance with 205 CMR 119.00: *Phase 2 Application*, and any hearing by the commission or the bureau pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(3) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the commission, bureau, or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the commission, bureau, or their agents and employees, the commission may, with respect to such person:

(a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;

- (b) Suspend the relevant license, registration or qualification; or
- (c) Revoke the relevant license, registration or qualification.

112.03: Obligation to Provide Truthful Information

- (1) No applicant, licensee, registrant or qualifier shall knowingly provide materially false or misleading information to the commission, the bureau, or their agents and employees.
- (2) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly provided materially false or misleading information to the commission, the bureau, or their agents and employees, the commission shall, with respect to such person:
 - (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
 - (b) Suspend, condition or revoke the relevant license, registration or qualification.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 114.00: FEES

114.03: Community Disbursements

(1) Pursuant to M.G.L. c. 23K, § 15(11), not less than \$50,000 of the initial application fee for a gaming license shall be used to reimburse the host and surrounding municipalities in accordance with 205 CMR 114.03 for the cost of determining the impact of a proposed gaming establishment and for negotiating community impact mitigation agreements.

(2) (a) Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial \$50,000 amount, the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.

(b)(i) In addition to the process provided in 205 CMR 114.03(2)(a), 30 days after the Commission has posted a host community agreement to its website in accordance with 205 CMR 127.02(3), any community that believes it may be a surrounding community to the gaming establishment that is the subject of the host community agreement may apply to the Commission for community disbursements without a letter of authorization signed by the applicant. To do so, the community must submit an application on a form provided by the Commission and shall identify all legal, financial and other professional services deemed necessary by the community for the cost of determining the impact of the proposed gaming establishment and for the negotiation and execution of a surrounding community agreement and the attendant costs.

(ii) The Commission may approve the application upon a finding that there is a reasonable likelihood that the community will be designated a surrounding community pursuant to 205 CMR 109.01(2) and that the risk that the community will not be able to properly determine the impacts of a proposed gaming establishment without the requested funds outweighs the burden of the actual financial cost that will be borne by the applicant.

(iii) If the application is approved, the community shall be designated a surrounding community for the limited purpose of receiving funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community

agreement. Such determination, however, shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 109.01(2).

(iv) The Commission shall make the approved community disbursements from available amounts paid by the applicant to the Commission for community disbursements. If the total amount of payments authorized by the Commission exceeds the initial \$50,000 amount, the applicant shall immediately pay to the Commission all such additional authorized amounts for community disbursements. If the applicant fails to pay any such additional amount to the Commission within 10 days after notification from the Commission of insufficient funds, the application shall be rejected.

(3) If 30 days have elapsed after the final issuance, denial or withdrawal of an application for a gaming license and there remains a balance of funds previously paid by the applicant for community disbursements and not previously encumbered or disbursed pursuant to 205 CMR 114.03(2), ~~the commission in its discretion may disburse the remaining balance of such funds to the applicant's host or surrounding municipalities as the commission in its discretion may determine and in accordance with such policies and procedures as the commission may determine~~ the funds shall be distributed as follows:

- a) If the funds represent a remaining balance of the initial \$50,000 portion of the \$400,000 application fee filed in accordance with M.G.L. c.23K, §15(11), the funds shall be deposited in the Community Mitigation Fund established in accordance with M.G.L. c.23K, §61; or
- b) If the funds represent monies paid to the Commission by the applicant in accordance with 205 CMR 114.03(2)(a) or (b)(iv), the monies shall be refunded to the applicant.

(4) The provisions of 205 CMR 114.03 do not prohibit community contributions permitted and reported in accordance with M.G.L. c. 23K, § 47, and 205 CMR 108.02: *Mandatory Disclosure of Political Contributions and Community Contributions*.

114.04: Additional Fees for Investigations

(1) Pursuant to 205 CMR 114.00, the applicant shall be responsible for paying to the Commission all costs incurred by the commission, directly or indirectly, for conducting any investigation into an applicant. As required by the procedure established pursuant to 205 CMR 114.04(5), the applicant shall pay to or reimburse the commission for all such investigation costs that exceed the initial application fee.

(2) For purposes of 205 CMR 114.00, the costs for conducting any investigation into an applicant shall include, without limitation:

(a) All costs for conducting an investigation into an applicant and its qualifiers, the applicant's affiliates and close associates, and any other person subject to the jurisdiction of the commission under M.G.L. c. 23K relating to the application in question; and

(b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the commission, including without limitation all such amounts incurred by the commission to and through the bureau, the division, the gaming enforcement unit, the gaming liquor enforcement unit, and any contractor investigator.

(3) The commission in its discretion shall establish, and, post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the commission to applicants for in-house personnel, services and work of the commission, the bureau, the division, the gaming enforcement unit, and the gaming liquor enforcement unit for conducting investigations into an applicant pursuant to 205 CMR 114.00.

(4) The commission shall assess to the applicant all other costs paid by or for the commission, directly or indirectly, to any other person for conducting an investigation into an applicant plus an appropriate percent for overhead, processing and administrative expenses.

(5) The commission in its discretion shall establish, and post on its website, a procedure by which it will calculate, assess, invoice, collect, require payment for, account for and reconcile payments by applicants to the commission for the costs for conducting any investigation pursuant to 205 CMR 114.00. In the case of a gaming license applicant, this procedure may include, without limitation, the requirement for the applicant to fund in advance a force account held by the commission and to maintain therein and replenish a minimum required balance of at least \$100,000 against which the commission may charge, with interest at 1% per month and late payment penalties, any costs for conducting the investigation not timely paid by the applicant in response to an invoice from the commission.

ACTION	APPLICANT	STAFF	OUTSIDE EXPERTS	MGC	OTHER	OML MEETING	PUBLIC HEARING	ADJUDICATORY	CHAPTER 23K REQUIREMENT
PRE-HEARING STAGE									
RFA-2 Application Submitted	X								8,9, 10, 11
Administrative Completeness Determination		X							
[Supplementation of Application if Materially Incomplete]	X								13
Introductory Presentation to Commission	X	X		X		X			
Identification of Surrounding Communities		X	X	X	A/SC	X			17(a)
Identification of Impacted Live Entertainment Venues		X	X	X	A/LEV	X			17(b)
Retention of Experts to Peer Review Application <ul style="list-style-type: none"> • Financial Experts • Architects • Environmental • Gaming Experts 		X	X	X		X			
Referral for Expert Evaluations and Reports		X	X						
Review of Expert Reports	X	X		X					
SCREENING STAGE									
Update Meeting with Commission	X	X	X	X		X			
[Revisions to Proposals to Address Expert Concerns]	X								
[Review of Revised Proposals]		X	X						
[Updated Expert Reports]			X						
[Update Meeting with Commission]	X	X	X	X		X			
Public Hearing in Host Community	X	X	X	X	Host		X		17(c)(multiple components)
Initial Screening and Narrowing of Field		X		X		X			

Preparation of Denial Decisions for Applicants Screened Out		X							17(f)
Issuance of Denial Decisions				X		X			17(f)
Unsuccessful Applicant(s) Request(s) Statement of Reasons	X								17(f)
Commission Provides Statement of Reasons		X		X		X			17(f)
FINAL PROPOSAL STAGE									
Commission Meeting with Regional Finalists	X	X	X	X		X			
Draft Conditions for Potential License		X	X		Agencies				18
Negotiations with Applicant	X	X							
[BAFO Process][?]	X	X							
SELECTION STAGE									
Final Hearing/Oral Argument re Selection	X	X	X	X		X			
Initial Deliberations				X		[ES]			18
Preparation of Statement of Findings		X	X						18
Final Deliberations		X		X		[ES]			18
Conditional Decision and Statement of Findings re Licensee				X		X			18, 21
Preparation of Denial Decisions for Unsuccessful Applicant		X							17(f)
Issuance of Denial Decision for Unsuccessful Applicant				X		X			17(f)
Unsuccessful Applicant Requests Statement of Reasons	X								17(f)
Commission Provides Statement of Reasons		X		X		[ES]			17(f)