

Massachusetts Gaming Commission

Vote Regarding Litigation Release and Surrounding Community Agreement

PROJECT NAME: Wynn Everett
PROJECT LOCATION: 1 Horizon Way in Everett, Massachusetts
PROJECT PROPONENT: Wynn MA LLC (“Wynn”)
MUNICIPALITY: City of Boston (“Boston”)
APPROVAL SOUGHT: Massachusetts Gaming Commission’s Vote Regarding Litigation Release and Surrounding Community Agreement between Wynn MA LLC and the City of Boston

WHEREAS, pursuant to Massachusetts General Laws Chapter 23K, the Massachusetts Gaming Commission (the “Commission”) awarded a conditional Category 1 gaming license (the “License”) to Wynn to develop a gaming establishment (the “Project”) on property in Everett, Massachusetts.

WHEREAS, during the proceedings leading to the License, the Commission determined that Wynn’s proposed gaming establishment is located within Everett; Boston is not a host community to the Project; and Boston was a surrounding community to the Project.

WHEREAS, after Boston declined to participate in the Commission’s binding arbitration process under 205 CMR 125.01, the Commission concluded that Boston had waived its surrounding community status with respect to Wynn’s application for the License.

WHEREAS, in the absence of a surrounding community agreement between Wynn and Boston, the Commission included in the License conditions to mitigate potential impacts of the Project on Boston. See License Conditions Section 3 (Conditions Required to Mitigate Impacts to the City of Boston) and Section 4 (Conditions Required to Mitigate Traffic and Other Impacts Caused by the Construction and Operation of the Gaming Establishment) (collectively “Sections 3 and 4 of the License Conditions”).

WHEREAS, litigation ensued entitled:

- *City of Boston v. Massachusetts Gaming Commission, et al.*, Case No. SUCV2015-00012-BLS2 (the “Licensing Action”),
- *City of Boston v. Wynn MA, LLC*, Case No. SUCV2015-02932-BLS2 (the “Environmental Action”), and
- *Wynn Resorts et al. v. Does 1 through 20*, Case No. SUCV2015-03010-BLS2 (the “Defamation Action”).

WHEREAS, on December 3, 2015, the court granted the Commission's motion to dismiss in the Licensing Action and, on December 8, 2015, the court entered final judgment dismissing the Licensing Action.

WHEREAS, Boston and Wynn have submitted to the Commission a partially executed Settlement Agreement and Release dated January 27, 2016 (the “Release”), in which Boston and

Wynn have agreed to resolve all disputes between them, asserted or unasserted, arising from or relating to the Licensing Action, the Environmental Action, and the Defamation Action, without admission of any liability.

WHEREAS, Paragraphs 2a and 2b of the Release would, upon full execution, provide for the grant of releases to the Commission Releasees and from the Commission Releasers as defined in the Release.

WHEREAS, Boston and Wynn have executed and submitted to the Commission a Surrounding Community Agreement dated as of January 27, 2016 (the “Surrounding Community Agreement”), to address the impacts of the Project on Boston and to facilitate the successful development and operation of the Project.

WHEREAS, Section 11 of the Surrounding Community Agreement provides as follows:

Promptly following the execution of this Agreement, including execution of Exhibit C [the Release], the Parties shall submit this Agreement to the Commission for its approval. If approved by the Commission, the terms of this Agreement will replace all portions of Sections 3 and 4 of the License Conditions related to the City of Boston. The Parties acknowledge and agree that this Agreement is conditioned upon and subject to the approval of the Commission. In the event that the Commission does not approve this Agreement or approves it subject to any modifications, unless otherwise agreed upon by the Parties in writing, this Agreement shall terminate without further action by the Parties, and Sections 3 and 4 of the License Conditions related to the City of Boston will remain in force.

WHEREAS, License Condition Section 2.32 provides that:

At any time prior to the Opening Date, Wynn and the City of Boston may negotiate and enter into a surrounding community agreement to mitigate impacts pursuant to 205 CMR 125.00. In the event that Wynn and the City of Boston enter into a surrounding community agreement, the parties will submit the agreement to the Commission. The Commission will determine if any of the conditions of the License should be amended or modified and if the Commission so determines, the Commission has the authority to make such amendments or modifications to the License conditions.

NOW THEREFORE I move that the Massachusetts Gaming Commission take the following actions:

1. Reinstate the City of Boston as a surrounding community to Wynn MA LLC’s proposed Category 1 gaming establishment in Everett, Massachusetts, subject to and effective upon the submission to the Commission by Wynn MA LLC and the City of Boston of their joint written consent to that reinstatement;
2. Consistent with License Conditions Section 2.32, accept the Surrounding Community Agreement dated as of January 27, 2016, submitted by Wynn MA LLC and the City of

Boston; and determine and approve that the terms of said Surrounding Community Agreement will replace Sections 3 and 4 of the License Conditions related to the City of Boston;

3. Reserve the Commission's discretion and authority to impose additional conditions in its Section 61 Findings for the Project and its final Agency Action regarding the Category 1 Gaming License for Region A, pursuant to G.L. c. 30, § 61 and 301 CMR 11.12(5) and pursuant to G.L. c. 23K and the Commission's regulations including without limitation 205 CMR 120.02(1) and 127.00;
4. Authorize the release to the City of Boston pursuant to Section 2.2 of the Surrounding Community Agreement of Wynn's check held by the Commission, in the amount of One Million Dollars (\$1,000,000); and
5. Authorize its General Counsel and/or the Executive Director to sign (as to Paragraphs 2a and 2b only) the Settlement Agreement and Release between the City of Boston and Wynn MA LLC dated January 27, 2016, on behalf of the Commission Releasers in their official capacity only.

DATED: February 4, 2016
 MOVED BY: Commissioner Cameron
 SECONDED BY: Commissioner Stebbins
 RECORD OF VOTE:

Commissioner	In Favor	Opposed	Abstained	Recused
Stephen Crosby				X
Gayle Cameron	X			
Enrique Zuniga	X			
Bruce Stebbins	X			
Lloyd Macdonald			X	

Attest:

Catherine Blue
 Catherine Blue, Assistant Secretary

Dated: 2/4/16