

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 135.00: COMPLIANCE WITH APPROVED SCHEDULE FOR CONSTRUCTION OF GAMING ESTABLISHMENTS AND RELATED INFRASTRUCTURE

Section

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135.01: Definitions

- (1) Minority: (MBE) a minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.
- (2) Women's Business Enterprise: (WBE) a women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.
- (3) Veteran's Business Enterprise: (VBE) A Veteran Owned business shall have the same meaning as the term "small business concern owned and controlled by veteran(s)" as defined by the US Dept. of Veterans Affairs (38 CFR 74), whose status can be verified by Vendor Information Pages Verification Program located at [www.VetBiz.gov](http://www.VetBiz.gov) or the successor vendor information and verification system established by or in contract with the federal government or by the Licensing Division of the MA Gaming Commission through submissions of "Key Qualifier's" DD2 14 form. The definition is inclusive of the **Service-disabled veteran-owned business** as defined in 15 USC §632.
- (4) Small Business: A Small Business shall be defined as an entity, including all of its affiliates combined that,
  - (a) Has its principal place of business in Massachusetts;
  - (b) Employs a combined total at all locations of 50 or fewer full-time employees;
  - (c) Has been in business at least one year; and
  - (d) Has gross revenues of \$15 million or less based on a three year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

## 135.02: Construction Schedules and Reporting

- (1) The commission shall, in accordance with M.G.L. c. 23K, §§ 10 and 11 approve for each gaming licensee, a schedule for the gaming licensee's capital investment in its gaming establishment and related infrastructure which includes:
  - (a) a timeline for stages of construction; including site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, insulation, interior finish and furnishings and landscaping.
  - (b) For a category 1 gaming establishment, a timeline for commencement of the final stage of construction pursuant to M.G.L. c. 23K, § 10(a); and
  - (c) a timeline for the stage of construction at which the gaming licensee shall be approved to open for business or operate a slot machine pursuant to M.G.L. c. 23K, §§ 10(c) and 11(a).
- (2) Prior to the commencement of construction, the licensee shall provide to the commission for commission approval an affirmative action program of equal opportunity whereby the licensee 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 executive office of administration and finance administration Bulletin Number 14.
- (3) If unforeseen changed circumstances make a schedule approved pursuant to 205 CMR 135.01(1) infeasible, the gaming licensee may submit to the commission for its approval a revised schedule, with a detailed statement of the unforeseen changed circumstances which justify the revised schedule. If the commission approves such revised schedule, it shall substitute and supersede the previously approved schedule.
- (4) To ensure adherence to the schedule approved pursuant to 205 CMR 132.01(1) or (3), the gaming licensee shall submit to the commission quarterly or more frequently upon the commission's request a status report including:
  - (a) the total estimated cost of construction of the gaming establishment and related infrastructure improvements, including a sworn certification regarding costs incurred pursuant to 205 CMR 122.03: Costs Included in the Calculation of Capital Investment, and separately identifying costs for design, land acquisition, site preparation and construction;
  - (b) a sworn certification regarding the capitalization of the gaming licensee, sufficient for the commission to determine, pursuant to M.G.L. c. 23K, §§ 10(e) or 11(c), that the gaming licensee has adequate funds to complete the gaming establishment and related infrastructure improvements;

(c) a copy of all design and construction contracts executed within the prior quarter by the gaming licensee to construct the gaming establishment and related infrastructure improvements;

(d) a status report reflecting the progress of construction and certifying compliance with the approved schedule for stages of construction. In the event that the progress of construction does not comply with the schedule approved pursuant to 205 CMR 135.01, the licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved schedule or submit a request for a revised schedule pursuant to 205 CMR 135.01(3).; and

(e) a detailed statistical report pursuant to M.G.L. c. 23K, § 21(a) (23) on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the gaming establishment and related infrastructure, and a comparison of this report with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a) (22).

(5) The licensee shall have a continuing obligation, pursuant to 205 CMR 120.01 (2) to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01, as well as any updates 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. Pursuant to 205 CMR 120.01 (h) the licensee shall provide to the commission copies of any appeal within 20 days of filing, whether to a municipal or state entity or for judicial review, filed with respect to any permit of approval listed in 205 CMR 120.01(1) along with a copy of the docket sheet and each decision on any appeal.

(6) Pursuant to M.G.L. c. 23K, § 21(a)(24), the gaming licensee shall report to the commission annually or more frequently upon the commission's request the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(21).

(7) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall send to each labor union or representative of workers with which the licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the licensee's commitments pursuant to M.G.L. c. 23K (15) and (22).

(8) Prior to the gaming establishment opening for business, in furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall provide to the commission an affirmative marketing plan in which the licensee identifies specific goals, expressed as an overall program goal applicable to the total dollar value of contracts entered into, for the utilization of 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; provided, however, that the specific goals for the utilization of such minority business enterprises, women business enterprises and veteran business enterprises shall be based on the availability of such minority business enterprises, women business enterprises and veteran business enterprises engaged in the type of work to be contracted by the gaming licensee.

#### 135.03: Inspection of Construction and Related Records

- (1) At all times prior to the commission's determination that the gaming licensee may open the gaming establishment for business or operate a slot machine, the commission may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the gaming licensee's compliance with the approved schedule, the terms and conditions of the license, G.L. c. 23K, or 205 CMR.
- (2) The gaming licensee shall provide relevant plans, contracts, financing documents or other records concerning the construction of the gaming establishment or related infrastructure within ten days of the commission's request for such documents.
- (3) Following an inspection of construction pursuant to 205 CMR 135.03(1) or review of records pursuant to 205 CMR 135.03(2), the commission shall notify the gaming licensee of any non-compliance with the terms of the license, including non-compliance with an approved schedule pursuant to 205 CMR 135.02(1) and (3). Upon receipt of such notification, the gaming licensee shall promptly undertake and proceed diligently to cure any such non-compliance to the satisfaction of the commission.

#### 135.04: Certification of Final Stage of Construction: Category 1 Gaming Establishments

- (1) Pursuant to G.L. c. 23K, § 10(a), the gaming licensee shall certify to the commission that it has reached the final stage of construction as described in the approved schedule pursuant to 205 CMR 135.02(1), or an approved revised schedule pursuant to 205 CMR 135.02(3).
- (2) Upon receipt of such certification, the commission may inspect the construction pursuant to 205 CMR 135.03(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 135.03(3).
- (3) If the commission approves the gaming licensee's certification pursuant to 205 CMR 135.04(1) that the gaming licensee has reached the final stage of construction, it shall return to the gaming licensee the deposit or release the deposit bond described in M.G.L. c. 23K, § 10(a), and permit the gaming licensee to apply the deposit to the cost of the final stage of construction.
- (4) If the commission disapproves the gaming licensee's certification pursuant to 205 CMR 135.04(1), the commission will notify the gaming licensee of the reasons for such

disapproval, and the gaming licensee shall proceed diligently to cure the reasons for the disapproval.

135.05 Determination that Gaming Establishment May Open for Business

(1) The commission may not approve a category 2 gaming establishment to open for business, begin gaming operations or operate a slot machine at a gaming establishment until the commission has:

(a) had an adequate opportunity to physically inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:

1. the terms of the license;
2. G.L. c. 23K, and 205 CMR;
3. host and surrounding community agreements pursuant to G.L. c. 23K, §§ 15 and 17;
4. impacted live entertainment venue agreements pursuant to G.L. c. 23K, § 17; and
5. permits and approvals issued in connection with the gaming establishment.

(b) issued an operations certificate for the gaming establishment pursuant to G.L. c. 23K, § 25.

(2) Pursuant to M.G.L. c. 23K, § 10(c), the commission shall not make a determination that a category 1 gaming establishment is approved to open for business until the gaming licensee has:

(a) complied with the conditions in 205 CMR 134.04(1);

(b) completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;

(c) completed all infrastructure improvements onsite and around the vicinity of the gaming establishment, including projects to account for traffic mitigation required by a license or approval obtained by the gaming licensee in connection with the gaming establishment.

(3) Pursuant to G.L. c. 23K, § 10(b), a category 1 gaming licensee who fails to receive approval from the commission to open its gaming establishment for business within one year after the date specified in its approved schedule pursuant to 205 CMR 135.02(1) or its revised, approved schedule pursuant to 205 CMR 135.02(3) shall be subject to suspension or revocation of its gaming license by the commission and may, if the commission determines that the gaming licensee acted in bad faith in its application, be assessed a fine of \$50,000,000 or less.

(4) The commission may find that a category 1 or category 2 gaming licensee who fails to comply with an approved construction schedule pursuant to 205 CMR 135.02(1) and (3):

(a) has breached a condition of licensure pursuant to G.L. c. 23K, § 23(b) (iii);

(b) is no longer capable of maintaining operations at a gaming establishment pursuant to G.L. c. 23K, § 23(b) (v);

(c) or is maintaining a business practice that is injurious to the policy objectives of G.L. c. 23K pursuant to G.L. c. 23K, § 23(b) (vi).

(5) The commission may condition, suspend or revoke a gaming license upon making a finding pursuant to 205 CMR 135.04(4) or G.L. c. 23K, § 23(b).

#### REGULATORY AUTHORITY

205 CMR 135: M.G.L. c. 23K, §§ 4, 5 10, 11, 15, 17, 18, 21, 23, and 25.