



MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #241

April 26, 2018

1:00 PM

MassMutual Center

1277 Main Street, Rooms 1 & 2
Springfield, MA



Massachusetts Gaming Commission



**NOTICE OF MEETING and AGENDA
April 26, 2018**

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:

**Thursday, April 26, 2018
1:00 p.m.
MassMutual Center
1277 Main Street, Rooms 1 & 2
Springfield, MA**

PUBLIC MEETING - #241

1. Call to order
2. Approval of Minutes
 - a. April 12, 2018 – VOTE
3. Administrative Update – Ed Bedrosian, Executive Director
 - a. General Update
 - b. MGM - Opening Update
 - c. City of Springfield Presentation – Kevin Kennedy, Chief Development Officer
4. Ombudsman – John Ziemba
 - a. Designation of MGM Springfield Gaming Floor– MGM Executives – VOTE
 - b. Designation of MGM Springfield Gaming Establishment – VOTE
5. Workforce, Supplier and Diversity Development – Jill Griffin, Director
 - a. MGM Springfield Plan to Identify Local Vendors – MGM Executives – VOTE
 - b. Expanding Economic Access Grants:
 - i. Hampden County Sheriff's Office
 - ii. Quaboag Valley Community Development Corporation
6. Legal Division – Catherine Blue, General Counsel
 - a. Amendments to 205 CMR 101.00 and 115.00 et al. and Small Business Impact Statement – Adjudicatory Hearings / Phase 1 and New Qualifier Suitability Determination, Standards and Procedures – VOTE to Begin Promulgation Process
7. Racing Division – Alex Lightbown, Director and Chief Veterinarian
 - a. Suffolk Downs Racecourse Purse Request – VOTE



Massachusetts Gaming Commission

8. Commissioner's Updates

9. 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 "Massachusetts Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

4/23/18
Date


Stephen P. Crosby, Chairman

Date Posted to Website: April 24, 2018 at 1:00 p.m.



Massachusetts Gaming Commission

101 Federal Street, 12th Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

DRAFT



Massachusetts Gaming Commission Meeting Minutes

Date/Time: April 12, 2018 – 10:30 a.m.

Place: Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Present: Chairman Stephen P. Crosby
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga
Commissioner Gayle Cameron
Commissioner Eileen O'Brien

**Time entries are linked to
corresponding section in
Commission meeting video**

Call to Order

See transcript page 2

[10:30 a.m.](#) Chairman Crosby called to order the 240th Commission meeting.

Approval of Minutes

See transcript pages 2 – 4

*Commissioner Stebbins moved to approve the minutes of the meeting of March 29, 2018, subject to correction for typographical errors and other nonmaterial matters. Commissioner Cameron seconded the motion. Commissioner Zuniga asked that a summary of the issue that was raised concerning the New England Horsemen's Benevolent Association be added, to better frame the documented conclusion that was reached.
The motion was approved as amended, 4 – 0 with Commissioner O'Brien abstaining.*

DRAFT

Administrative Update

See transcript pages 5 – 19

10:33 a.m. **MGM – Opening Update.**

Executive Director Edward Bedrosian reported that the MGC staff met with representatives from the City of Springfield, to include their Casino Liaison, Department of Public Works, and Law Department. The teams worked collaboratively, sharing ideas and potentially making some substantive determinations about the area of the gaming floor and the area of the gaming property. Director Bedrosian noted that MGM is preparing for a major hiring process to commence in June. They also toured the property and observed the progress of construction. Director Bedrosian stated that he would be conducting a tour of the facility for the Commissioners on April 26th.

10:38 a.m. **Process and Scheduling of Requests RE: Wynn’s Qualifier Status**

Executive Director Bedrosian addressed requests received by Commission staff regarding the status of Steve Wynn individually as a qualifier as part of the Wynn Mass, LLC, region A, category one gaming license .

Director Bedrosian summarized the process of determining Qualifier status, as prescribed in 205 CMR 116. He reported that in 2013, Steve Wynn was deemed a qualifier based upon, but not limited to his role as a CEO of Wynn Resorts, Ltd., the parent company of Wynn Mass, LLC, the applicant for the Region A, Category 1 license, and his significant holdings in Wynn Resorts. At that time, he was found suitable.

Commission staff recommended that a hearing take place to consider the legal question as to whether Steve Wynn is a qualifier under MGL c.23K and the Commission’s regulations. Director Bedrosian stated that the appropriate time for scheduling this hearing would be for the first week in May, and that he would provide the Commissioners with a date at the next Commission meeting.

10:49 a.m. The Commission took a break for media inquiries.

10:57 a.m. The Commission reconvened.

Licensing Division

See transcript pages 20 - 88

10:57 a.m. **MGM Service Employee Exemption Request**

DRAFT

Licensing Director Paul Connelly presented with Seth Stratton, Vice President and Legal Counsel for MGM Springfield, Greg Skowronski, Executive Director of Hotel Operations, Mary Kate Murren, Vice President of Human Resources, Chris Judd, Director of Roca in Springfield MA, and Louis Feliz, Director of Workforce Development and Strategic Partnerships for the New England Farm Workers Counsel.

Director Connelly requested that the Commission consider the potential exemption of the Casino and Utility Porter positions from the registration process. It was recommended that the Commission consider the exemptions based on three factors:

1. These positions perform work on the gaming floor, which is the area of greatest concern/interest;
2. They have similar registration requirements and comparable jurisdictions; and
3. The exemption process has been approached with the goal of faithfully fulfilling the intent of the statutory amendment.

[11:03 a.m.](#) Counsel Stratton stated that his team was there to respectfully suggest that the two additional positions before the Commission for exemption, which represent just under 150 additional MGM Springfield jobs were not materially different from the other 65 positions already exempted. He added that due to the nature of these two positions and the volume of potential employees impacted, doing so again would go a long way to continuing the progressive movement toward ensuring that as many barriers to entry for career opportunities in the community are removed. He noted a concern in the community that individuals would self-select out of applying due to a mandatory registration process.

[11:10 a.m.](#) Director Skowronski outlined the job descriptions of Casino and Utility Porters and any impact that they could have on the gaming floor. He presented a letter from Mr. Mathis that described MGM's surveillance records of incident reports reflected the percentage of the job function of Porters on the gaming floor. Mr. Skowronski described the process he has witnessed where individuals have developed careers and advanced professionally by starting out as porters.

[11:18 a.m.](#) Director Judd described Roca as an organization that works with 17 to 24 year old young men and 16 to 24 year old women, young mothers who have either adjudicated youth or might be an adult offender. Referrals to Roca come from police, probation, Department of Corrections, House of Corrections, etc. She further described that Roca offers a four-year program, comprised of two years of intensive case management where there is a transitional employment component that teaches them how to work.

DRAFT

Ms. Judd stated that under the current statute, not all of the individuals serviced through Roca are eligible for employment at MGM Springfield. Ms. Judd stated that there was concern that individuals would opt-out of applying for employment because there is a registration process that includes a background check.

11:30 a.m. Director Feliz of the New England Farm Workers' Council described his organization as one that provides training and educational services to low-income families in Springfield. He expanded on this by also describing the Council as cartographers who help these families chart a career trajectory and imagine possibilities for themselves. He stated that he came before the Commission to entreat them to create pathways for folks that have made mistakes, enabling them to start a career.

11:40 a.m. Commissioner Cameron explained to the panel that the registration process afforded the Commission the opportunity to assess risk on the casino floor. Once the Commission is able to assess that risk, anything can be changed in the future if little or no risk is observed.

There was further discussion, with the interest of encouraging potential candidates to apply for positions at MGM Springfield, of experiences in other jurisdictions. Counsel Stratton outlined that MGM Springfield also had a criminal background process. There was continued mention of concern about certain individuals self-excluding from applying for positions that require registration. Counsel Stratton emphasized the need for clarification at this time for these positions as to whether or not they will be exempt, so they can try to budget for analysis and timing if the answer is not to exempt.

11:50 a.m. Commissioner Zuniga stated to Counsel Stratton that he is sensitive to the topic of self-excluding from applying for positions that require registration, but that there are already 800+ exempt positions. Commissioner Zuniga expressed that he would like to see more effort made to communicate the existence of these jobs to the community as well. He recognized that the category and type of work of a porter is a critical stepping stone, but was leaning toward a middle ground with his position. Ultimately, Commissioner Zuniga stated that he would be in favor of allowing the positions to be exempt, in the interest of scheduling for MGM.

Director Bedrosian noted that the MGC's Frequently Asked Questions section of its website has been updated to reflect the exemption issue. He further stated that the Commission agrees that it's incredibly important, not only to get the message out about those jobs that have been exempted and those opportunities that they represent, but also about the registration licensing process itself.

DRAFT

[12:08 p.m.](#) *Commissioner Cameron moved to accept the recommendation of staff and that the two categories of porters will, at this time, be required to be registered. Commissioner Stebbins seconded. The motion passed 3 – 2, with Commissioners Stebbins, Cameron, and O’Brien in favor and Commissioner Zuniga and Chairman Crosby dissenting.*

The Commission determined to take the racing matters item ahead of schedule, to accommodate the guests waiting for the Racing item.

Racing Division

See transcript pages 89 - 129

[12:11 p.m.](#) **Standardbred Breeders of Massachusetts (SOM) Representation Request**
Director of Racing Alex Lightbown presented the annual request for Standardbred owners of Massachusetts to be recognized as the group that represents the breeders of Massachusetts. Presenting with her was Ed Nowak, President of the Standardbred Owners of Massachusetts (SOM).

Projected revenue and contributions to the Racehorse Development Fund were discussed.

[12:22 p.m.](#) *Commissioner Cameron recommended that the Commission approve the request to the Standardbred Owners of Massachusetts, Inc. to be recognized as the group to represent Standardbred breeders to administer the Massachusetts Standardbred breeding program and the Sire Stakes races for 2018. Commissioner Zuniga seconded. Motion passed 5 – 0.*

Reimbursement of 2016 Unclaimed Tickets

Director Lightbown addressed the request to reimburse the 2016 unclaimed tickets for Sterling Suffolk Downs, Plainridge Racecourse, Wonderland, and Raynham/Taunton. Senior Financial Analyst Doug O’Donnell gave totals for all locations, and requested approval from the Commission to reimburse the funds back to the tracks.

[12:27 p.m.](#) *Commissioner Cameron moved to approve the 2016 reimbursement of unclaimed tickets for the horse tracks as outlined in the memo dated April 12, 2018. Commissioner Zuniga seconded. Motion passed 5 – 0.*

Commissioner Cameron further moved to approve the 2016 reimbursement of unclaimed tickets for dog tracks as outlined in a separate memo on April 12, 2018. Commissioner Zuniga seconded. Motion approved 5 – 0.

DRAFT

Quarterly Local Aid Payments

Director Lightbown requested approval of distribution of the local aid for the end of the quarter, March 31st, for handles July, August, and September of 2017 for all four track locations in Massachusetts.

12:31 p.m. *Commissioner Stebbins moved to approve the local aid quarterly payment for the period of July, August, September, 2017 as provided in the packet. Commissioner Cameron seconded.
Motion passed 5 – 0.*

Suffolk Downs Request for Capital Improvement Fund Consideration and Payment

Director Lightbown requested that the Commission approve \$31,534.19 for reimbursement for the purchase of stone dust and sand to improve the race track. She also requested approval for the promo funds that are set up. A firm has been hired to verify that the work has been done, and the funds need to go back to the track.

12:33 p.m. *Commissioner Stebbins moved to approve the request for consideration for the Suffolk Downs Capital Improvement Trust Fund for Item No. 2012-12 purchase of stone dust and sand as included in the packet. Commissioner Cameron seconded.
Motion passed 5 – 0.*

*Commissioner Stebbins further moved to approve the request for reimbursement for the Suffolk Downs Capital Improvement Trust Fund, again, for item 2012-12, purchase for stone dust and sand for the racetrack as proposed in the packet.
Commissioner Cameron seconded.
Motion passed 5 – 0.*

Suffolk Downs Request for Reimbursement

Director Lightbown requested approval for the reimbursement of \$28,168.15 for a sprinkler repair and control panel repair. She stated that all documentation was submitted, reviewed and approved by the architect.

12:36 p.m. *Commissioner Cameron moved to approve the request for reimbursement, Suffolk Downs Capital Improvement Trust Fund for 2012-11, the sprinkler repair and control panel repair. Commissioner Stebbins seconded.
Motion approved 5 – 0.*

Plainridge Racecourse Request for Capital Improvement Fund Consideration

Mr. O'Donnell presented a request for consideration for project No. 2018-1, re-roofing, surveillance system, stall matting, and stall gates, which would total \$315,543.41.

DRAFT

[12:37 p.m.](#) *Commissioner Cameron moved to approve the request for consideration for Plainridge Racehorse Capital Improvement Trust Fund, HHFITF 2018-1, the roofing, the surveillance, the stall mats, and the stall gates. Motion passed 5 – 0.*

Plainridge Racecourse Request for Waiver of 205 CMR 3:12(6) – Qualifying Race Requirement

Steve O'Toole, Director of Racing presented on this request. He requested to change the 30 day requirement for a horse to be in a qualifying race to 45 days, for this season only. The change is being proposed to avoid unnecessary shipping of horses to the track to qualify instead of simply racing them, as they are seen as fit to race by their horsemen for up to 45 days. There are many other states that have adopted the 45 day rule. If this change works out well, Director O'Toole will ask again next year, and on a seasonal basis. Should the Commission grant the waiver, Director Lightbown asked that it go into effect for the April 19th racing card.

[12:48 p.m.](#) *Commissioner Zuniga moved that the Commission approve the request from Plainridge Park Casino to waive the rule relative to the qualifying time that is 205 CMR 3.12 from 30 days to 45 days. Commissioner Cameron seconded. Motion passed 5 – 0.*

12:49 p.m. The Commission adjourned for a lunch break

1:30 p.m. The Commission reconvened.

Ombudsman

See transcript pages 129 – 195

[1:32 p.m.](#) MGM Construction Schedule

Ombudsman John Ziembra presented the MGM construction schedule with Construction Project Oversight Manager Joe Delaney and MGM Springfield Counsel Seth Stratton.

Ombudsman Ziembra noted that the Commission still needed to approve a detailed construction schedule for the MGM Springfield project. He reviewed that to date, the Commission has approved an opening date, but the construction schedule that notes major items of construction remains to be approved. He stated that now that there has been significant progress in the construction of the facility, he believed that it was time to approve that schedule. Specifically, he was asking for approval of four different items:

1. Offsite residential units completion for 31 Elm Street; recommending an earlier March 1, 2019 deadline for MGM to notify the Commission that it will proceed with the independent residential development for March, 2020.

DRAFT

2. Project change for construction of the Armory to exclude the restaurant; asking for approval for an August 15th 2018 deadline.
3. Dave's retail corner of main and union streets MGM plans to delay the construction of a shell to ensure that any exterior construction meets the needs of desirable tenants. MGM has provided a conservative date of July, 2019 for approval.
4. MGM requested that 101 State Street be removed from the boundaries of the gaming facility. The staff recommends now that the Commission defers on acting on the schedule for completion of the plan used for the first floor of this building on State and Main until the gaming establishment issue is discussed.

There was a discussion around implementing a security mechanism to ensure the residential units get constructed, such as an escrow agreement where the Commission would receive the funds prior to MGM's opening to ensure that there is no capital expenditure requirement after opening. This item is still in discussion.

[2:03 p.m.](#)

Commissioner Zuniga moved to approve the construction schedule provided in the April 9, 2018 memorandum from Ombudsman Ziemba and Project Oversight Manager Delaney that is included in the packet and be approved subject to the following conditions:

1. *MGM Springfield shall provide the quarterly reports to the Commission under the requirement that the project includes no less than 54 newly developed market rate units within one-half mile of the casino;*
2. *MGM Springfield shall by March 1, 2019 provide a final commitment and documentation for the 31 Elm Street project, along with a realistic construction time line from the city;*
3. *If MGM Springfield cannot meet condition #2 by March 1, 2019, MGM Springfield shall proceed with an independent residential development requirement within the time line set forth in the host community agreement to be completed by March, 2020;*
4. *MGM Springfield shall inform the Commission of any material event that will significantly alter the potential that MGM Springfield will proceed with the City's plan to rehabilitate 31 Elm Street in Springfield with assistance provided by MGM Springfield;*
5. *MGM Springfield will provide a construction security mechanism, bond or escrow agreement satisfactory to the Commission for the construction of an off-site residential units and Dave's Retail building on the corner of Main Street and Union Street;*
6. *MGM Springfield shall provide at least quarterly reports identifying the proposed activation of the Armory space for the subsequent three-month period subsequent to each quarterly report;*

DRAFT

7. *MGM Springfield shall report to the Commission during the quarterly reports on the efforts used to identify a suitable tenant for the Armory space for its original intended use;*
8. *The Commission reserves its ability to set a construction schedule and deadline for the original intended use of the Armory building;*
9. *The Commission's approval of any post opening dates for the construction of facilities included but not limited to the Dave's Retail building is contingent upon MGM Springfield's compliance with any applicable provisions of its host community agreement with the City of Springfield;*
10. *This schedule approval does not yet include an approval of a schedule for the completion of work at 101 State Street; and*
11. *Nothing in the approval of this MGM Springfield schedule shall be construed to otherwise impact or impair the Commission Section 61 findings issued in relation to the MGM Springfield project.*

Commissioner Cameron seconded.

Motion passed 5 – 0.

Community Mitigation Fund Grant Applications

1. Hampden County Sheriff

Ombudsman Ziemba requested funds for lease assistance for the Hampden County Sheriff's Department. The request was initially reviewed in 2016 and the deadline has passed, and the Commission allowed the sheriff's office to apply for two years' worth of assistance for FY 2018 and FY 2019. The sheriff's office is still in need of these funds. The review team recommends that the Commission authorize \$372,000 for FY 2018 lease costs and \$400,000 for FY 2019 lease costs.

[2:12 p.m.](#)

Commissioner Zuniga moved that the Commission approve the request from the Hampden County Sheriff relative to the lease assistant for fiscal year 2018 in the amount of \$372,000, and for fiscal year 2019 in the amount of \$400,000 as included in the packet. Commissioner Cameron seconded.

Motion passed 5 – 0.

2. MA State Police

The Commission received an application by the MA State Police for approximately 2.5 million in planned spending under the 20189 Mitigation Fund. Ombudsman Ziemba and his review team recommended that the Commission grant an award to the MA State Police of \$1,814,544 which represents 31/43rds of the state police's request for police training needs that will occur prior to the opening of the MGM Springfield and Wynn Boston Harbor facilities. The remainder would need to be paid through the Commission's budget process.

A \$1.8 million Community Mitigation Fund Grant recommendation resulted from the review team's review of current needs versus those expected back in

DRAFT

June, 2017. The \$1.8 million award would require a waiver of the \$500,000 limit for specific impact grants included in the Commission's guidelines.

[2:27 p.m.](#) *Commissioner Zuniga moved to approve the waiver requested by the Massachusetts State Police in its 2018 Community Mitigation Fund application. The state Police request a waiver of the \$500,000 grant limit for specific impact grants under the 2018 Community Mitigation Fund guidelines. In approving this waiver, the commission finds that granting the waiver or variance is consistent with the purposes of MGL c.23K to granting this waiver or variance will not interfere with the ability of the commission to fulfill its duties, granting the waiver or variance will not adversely affect the public interest, and, finally, not granted the waiver or variance would cause a substantial hardship to the community, governmental entity or person requesting the waiver or variance, in this case the Massachusetts State Police. Commissioner Cameron Seconded. Motion passed 5 – 0.*

Commissioner Zuniga further moved to approve the request from the Massachusetts State Police relative to a specific impact grant application in the amount of \$1,814,544 as included in the packet and recommended by staff. Commissioner Cameron seconded. Motion approved 5 – 0.

Springfield Police Department

Ombudsman Ziemba's review team received a request from the Springfield Police Department for training costs. Specifically, they requested a waiver of a provision in the 2018 Community Mitigation fund guidelines. The review team recommended that the Commission provide \$137,388.32 to pay for a 24 week training period.

[2:38 p.m.](#) *Commissioner Cameron moved that the commission approve the waiver requested by the City of Springfield / Springfield Police Department in its 2018 Community Mitigation Fund application. Springfield requests a waiver of a provision in the 2018 Community Mitigation Fund guidelines that place a limit on funding by stating that mitigation funding may be used for police training costs that occur prior to the opening of the Category 1 facilities. In approving this waiver, the Commission finds that granting the waiver or variance is consistent with the purposes of MGL c.23K. Granting the waiver or variance will not interfere with the ability of the commission to fulfill its duties. Granting the waiver or variance will not adversely affect the public interest, and not granting the waiver or variance would cause a substantial hardship to the community, governmental entity or person requesting waiver or variance. Commissioner Zuniga seconded the motion. Motion approved 5 – 0.*

DRAFT

*Commissioner Cameron moved that the Commission award the grant for the Springfield Police Department in the amount of \$160,498.32 requested by the Springfield Police Department. Commissioner Zuniga seconded.
Motion approved 5 – 0.*

Legal Division

See transcript pages 195 - 229

[2:44 p.m.](#)

Amendments to 205 CMR 101.00 and 115.00 et al.

General Counsel Catherine Blue presented on amendments to the Adjudicatory Hearing Process. These items have come to the Commission before, and decisions were made to make changes. The discussion was put on hold in order to have a full Commission present.

Deputy Counsel Todd Grossman explained that Both 205 CMR 101 and 205 CMR 115 are designed to work hand in hand to achieve a fluid process. He summarized that these items are best practice regulations being put forth in an effort to ensure that every situation is covered. There was discussion around the standard of review.

Commissioners agreed with the de novo standard for the Commissioner's review and asked to see the re-drafting of both the hearing officer and the Commissioner review before bringing it back for a vote. Counsel Blue requested guidance from the Commission for re-drafting.

New Draft Versions of 205 CMR 138.62, 143.02, and 146.63 with Small Business Impact Statements

Assistant Counsel Carrie Torrisi and Gaming Agents Division Chief Bruce Band presented table game regulations that govern technical guidelines set forth in internal controls. Counsel Torrisi asked that the Commission approve these regulations to begin the promulgation process.

[3:09 p.m.](#)

*Commissioner Zuniga moved that the Commission approve the Small Business Impact Statement for 205 CMR 138.62 with a payment of table game progressive payout wagers, supplement wagers not paid from the table inventory as included in the packet. Commissioner Stebbins seconded.
Motion passed 5 – 0.*

*Commissioner Zuniga further moved that the Commission approve the version of 205 CMR 138.62, Payment of Table Game Progressive Payout Waters, Supplement Wagers Not Paid from the Table Inventory as included in the packet, and authorize staff to take all steps necessary to begin the regulation promulgation process. Commissioner Cameron seconded.
Motion passed 5 – 0.*

DRAFT

Commissioner Stebbins moved that the Commission approve the Small Business Impact Statement for 205 CMR 143.02 Progressive Gaming Devices as included in the packet. Commissioner Zuniga seconded.

Motion passed 5 – 0.

Commissioner Stebbins further moved that the Commission approve the version of 205 CMR 143.02 Progressive Gaming Devices as included in the packet and authorize the staff to take all steps necessary to begin the regulation promulgation process. Commissioner Zuniga seconded.

Motion passed 5 – 0.

Commissioner Cameron moved that the Commission approve the Small Business Impact Statement for 205 CMR 146.63 Table Games, Progressive Equipment as included in the packet. Commissioner Zuniga seconded.

Motion passed 5 – 0.

Commissioner Cameron further moved that the Commission approve the version of 205 CMR 146.63 Table Games, Progressive Equipment as included in the packet and authorize staff to take all steps necessary to begin the regulation promulgation process. Commissioner Stebbins seconded.

Motion passed 5 – 0.

Amendments to 205 CMR 146.58, New Draft Version of 146.59 and Small Business Impact Statement

Counsel Torrisi presented two sections of 205 CMR 146, which are equipment regulations. One item was the addition of the physical characteristics for one of the tables. The second was a site correction in a section.

3:20 p.m.

Commissioner Cameron moved that the Commission approve the Small Business Impact Statement for 205 CMR 146.58 and 205 CMR 146.59, Crazy Four Table and Criss-Cross poker Table, Physical Characteristics as included in the packet. Commissioner Zuniga seconded.

Motion passed 5 – 0.

Commissioner Cameron further moved that the Commission approve the version of 205 CMR 146.58 and 205 CMR 146.59 Crazy Four Table and Criss-Cross Poker Table Physical Characteristics as included in the packet and authorize the staff to take all steps necessary to begin the regulation promulgation process.

Commissioner Zuniga seconded.

Motion passed 5 – 0.

Final Draft Version of 205 CMR 138.10 and Amended Small Business Impact Statement

General Counsel Blue summarized this regulation amendment as the Commission conforming to the change in the statute that addresses what positions are subject to the registration process.

DRAFT

[3:26 p.m.](#) *Commissioner Stebbins moved that the Commission approve the Amended Small Business Impact Statement for 205 CMR 138.10 Jobs Compendium Submission as included in the packet. Commissioner Zuniga seconded. Motion passed 5 – 0.*

Commissioner Stebbins further moved that the Commission approve the version of 205 CMR 138.10 Jobs Compendium Submission as included in the packet and authorize the staff to take all steps necessary to finalize the regulation promulgation process. Commissioner Cameron seconded. Motion passed 5 – 0.

Administration and Finance

See transcript pages 229 – 238

[3:32 p.m.](#) **MGC Quarterly Budget Update**
Chief Financial and Accounting Officer Derek Lennon presented a memo outlining the Gaming Control Fund budget and staffing needs of the Commission. Mr. Lennon explained that this MGC Quarterly Update revises revenue projections upward by \$182,000 reducing the prior deficit to \$261,000. Mr. Lennon requested approval of two additional full-time equivalents in the Office of Information and Technology, which are afforded through attrition and missed hire dates and other additions. Other costs incurred were discussed.

[3:55 p.m.](#) *Commissioner Zuniga moved that the Commission approve the additional FTEs for the Technology Division discussed, and increase the FY 2018 assessment on licensees by \$363,113 as discussed and included in the packet. Commissioner Cameron seconded. Motion passed 5 – 0.*

Commissioners' Updates

See transcript pages 238 - 245

[4:00 p.m.](#) **Annual Election of Massachusetts Gaming commission Secretary and Treasurer**
Commissioner Cameron stated moved to nominate Commissioner Zuniga for the position of Treasurer. Commissioner Stebbins seconded the nomination. Motion passed unanimously.

Commissioner Zuniga moved to nominate Commissioner Stebbins to be the Secretary of the Commission for the current term. Commissioner Cameron seconded the nomination. Motion passed unanimously.

DRAFT

4:10 p.m. **Legislative Update**

Chairman Crosby gave an update on several current legislative issues. He also announced that Commissioner Zuniga will be succeeding him as the co-chair of the Public Health Trust Fund.

4:20 p.m. *Having no further business, a motion to adjourn was made by Commissioner Cameron. Commissioner Zuniga seconded the motion. Motion passed unanimously.*

List of Documents and Other Items Used

1. Notice of Meeting and Agenda, dated April 12, 2018
2. Commission Meeting Minutes Draft dated March 29, 2018
3. Letter to Edward Bedrosian regarding Steve Wynn
4. Commission Letter regarding Wynn Resorts, Wynn MA
5. Porter Exemption Memo from Paul Connelly, Director of Licensing
6. MGM Springfield's Request for Exemption of Porter EVS Positions from Registration
7. MGM Memo for Porter Position Exemption to the MGC
8. Utility Porter Job Position Description
9. Public Comment from Bishop Talbert re: Commission Decision
10. Small Business Impact Statement for 205 CMR 101.00
11. Draft 205 CMR 115.00 et al.
12. Draft 205 CMR 101.00
13. Draft 205 CMR 138.62
14. Draft 205 CMR 146.59
15. Draft 205 CMR 146.63
16. Draft 205 CMR 143.02
17. Draft 205 CMR 138.10
18. Amended Small Business Impact Statement for 205 CMR 138.10
19. SOM Recognition Request
20. SOM Presentation
21. 2016 "Outs" Reimbursement Packet, dated April 12, 2018
22. Memo to MGC/Racing Division from Doug O'Donnell, Senior Financial Analyst re: Local Aid Distribution
23. Suffolk Cap RFR packet dated April 12, 2018
24. Suffolk Cap RFC packet dated April 12, 2018
25. Plainridge Cap RFC packet dated April 12, 2018
26. MGC Request Waiver 45 day - Plainridge
27. MGM Schedule Memo
28. MGM Armory Follow-Up Memo
29. Hampden County Sheriff's Community Mitigation Fund Application 2018
30. MA State Police Specific 2018
31. Springfield Police Department Specific Impact Analysis
32. Memo on Public Safety Analysis

DRAFT

- 33. FY18 Third Budget Update Report
- 34. Appendix A FY18 Actuals Spending and Revenue as of April 1, 2018
- 35. Appendix B QUY – Step 05A Expense Budget form

/s/ Catherine Blue
Assistant Secretary

The New Springfield

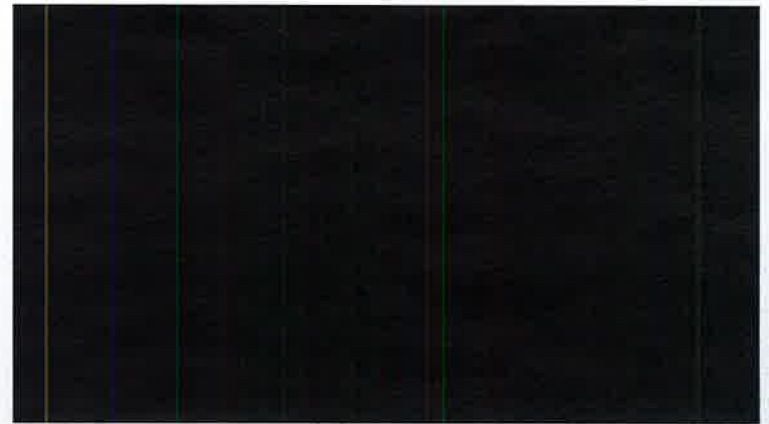


City of Springfield
Economic Development
Project Updates

Now Arriving!

Kevin Kennedy
Chief Development Officer

The New Springfield



Now Arriving!

The New Springfield

Transformative Projects



Now Arriving!

The New Springfield



Now Arriving!

Union Station



New Arriving!

Total Project Cost: \$94M

- Opened June 2017 (closed for 40+ years)
- Home to PVTA, Peter Pan, Greyhound, Amtrak and soon to Connecticut Rail
- Multi-tenants including Dietz & Company Architects, Peter Pan Corporate Office, Subway, Dunkin Donuts and other retail/office operations



The New Springfield

The New Springfield



SPRINGFIELD MUSEUMS™
ART • HISTORY • SCIENCE • SEUSS IN SPRINGFIELD



The Amazing World of Dr. Seuss Museum

Now Arriving!

The Amazing World of Dr. Seuss



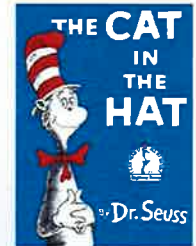
Now Arriving!

Total Project Cost: \$7M

- Opened June 2017
- The **ONLY** museum devoted specifically to Springfield native Theodore Geisel, a.k.a. Dr. Seuss
- Family friendly interactive exhibits providing opportunities to experiment with new sounds and vocabulary

*"Today you are You, that is truer than true.
There is no one alive who is Youer than
You."*

*"You're on your own. And you know
what you know. And YOU are the one
who'll decide where to go ..."*



*"A person's a person,
no matter how small."*

*"Unless someone like you
cares a whole awful lot,
nothing is going to get
better. It's not."*

The New Springfield

The Amazing World of Dr. Seuss



Now Arriving!

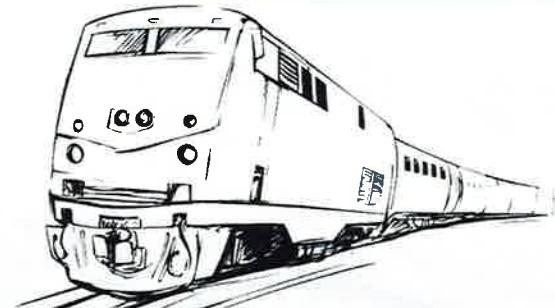
Visitation:

- Attendance was **DOUBLE** from that of attendance during 2016
- Visitors have come from **EVERY** state in America and 17 countries around the world
- Massachusetts visitation has risen 37%



The New Springfield

The Amazing World of Dr. Seuss



Now Arriving!

Recognition:

- The new Museum was extensively covered by national, regional and local media outlets (Boston Globe, MassLive, Reader's Digest, Washington Post, etc.)
- With the addition of the Dr. Seuss Museum, the Museums have a **\$16M** economic impact on the City of Springfield **every year!**
- **Free** admission for Springfield residents



The New Springfield

The New Springfield



Now Arriving!



New Arriving!

Total Project Cost: Over \$30M

- Goal is to update and refurbish the museum with new interactive displays and new technology

Naismith Basketball Hall of Fame



The New Springfield



Now Arriving!

Total Project Cost: Over \$30M

- Goal is to update and refurbish the museum with new interactive displays and new technology

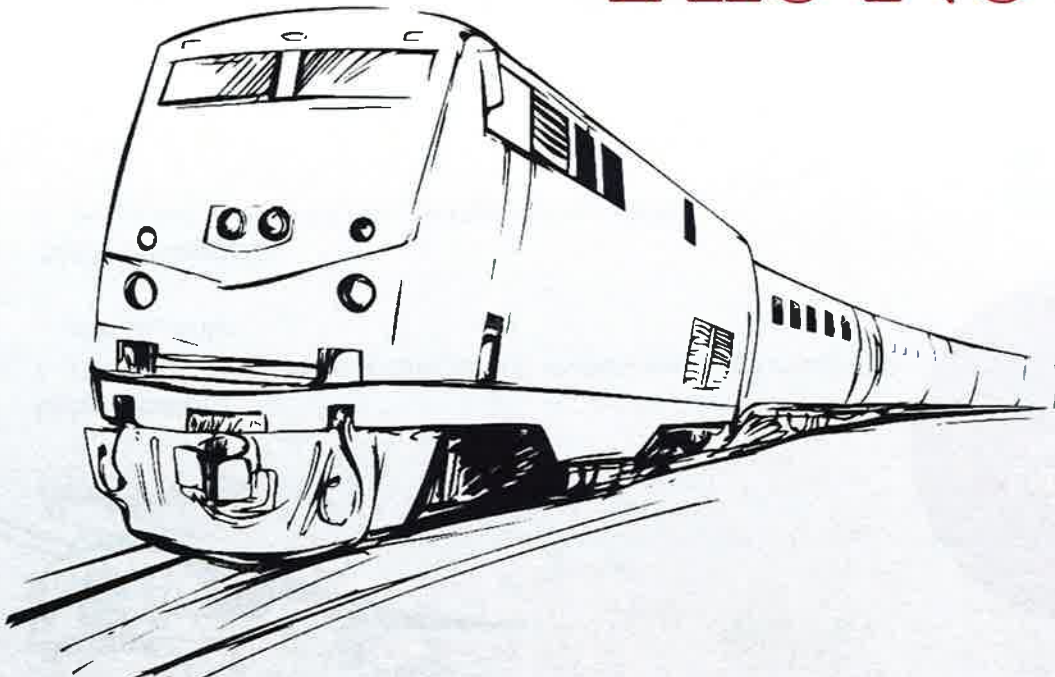
Naismith Basketball Hall of Fame



Naismith Memorial Basketball Hall of Fame PHASE 1 - PLAYERS LOCKERS

The New Springfield

The New Springfield



**Downtown
Enhancements**

Now Arriving!

Tourism



Now Arriving!

Union Station:

- Currently has approximately 19,000 visitors moving through the station daily

MGM Springfield:

- Projected to have 10,000 average visitors daily

Union Station
Avg. 19,000
Daily Visitors

MGM
Springfield
Avg. 10,000
Daily Visitors

The New Springfield

Tourism



Now Arriving!

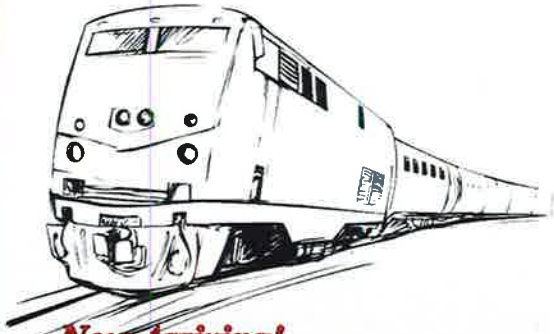
Approximately
10.5 Million
Visitors per Year

Equivalent to more than the population of
Springfield visiting each week

Or

Each week, three times the number of
people who attended this
year's Super Bowl!

The New Springfield



New Arriving!

Total Project Cost: \$6.9M

Project Highlights:

- Re-paving of Main Street, Lyman Street, Taylor Street, Worthington Street, Union Street and Central Street

Main Street Re-Fresh



The New Springfield

Main Street Re-Fresh



Now Arriving!

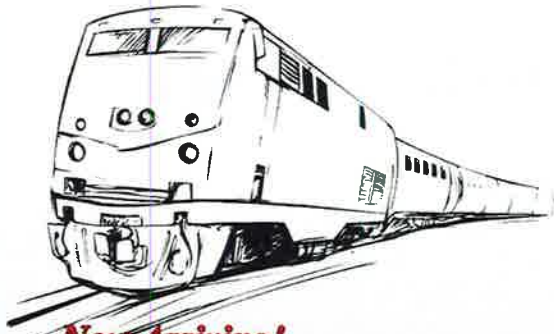
Total Project Cost: \$6.9M

Project Highlights:

- Landscaping and site improvements to Cross Street



The New Springfield



New Arriving!

Total Project Cost: \$6.9M

Project Highlights:

- Numerous crosswalk and sidewalk improvements, including street trees and new tree wells

Main Street Re-Fresh



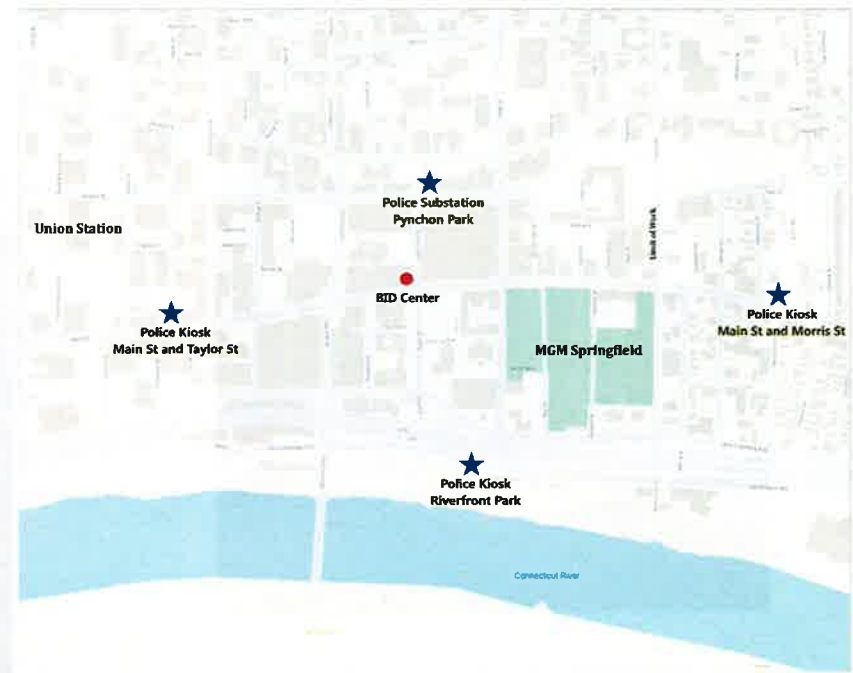
The New Springfield

Police Kiosks



Proposed Locations:

- Police kiosk on the corner of Main Street/Taylor Street
- Police kiosk on the corner of Main Street/Morris Street
- Police kiosk at Riverfront Park
- Police Substation adjacent to Pynchon Park
- Additional Police presence to be located in the new BID Welcome Center to be located at the corner of Main Street and Bruce Landon Way



The New Springfield



Police Kiosks

Total Project Cost: \$1.5M annually

Project Highlights:

- Dedicated unit assigned to the Downtown staffed with 41 officers and supervisors
- Increased walking patrols particularly in the evenings and weekends
- Includes new police equipment, including cruisers
- New surveillance equipment



The New Springfield

Police Kiosks



Total Project Cost: \$1.5M annually

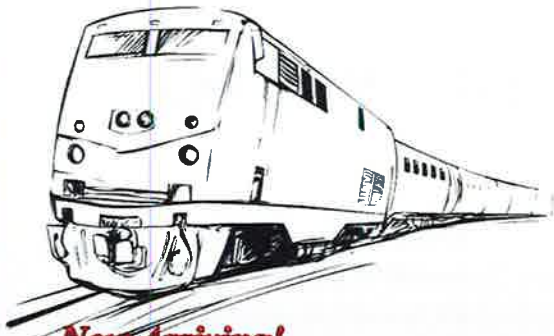
Project Highlights:

- Dedicated unit assigned to the Downtown staffed with 41 officers and supervisors
- Increased walking patrols particularly in the evenings and weekends
- Includes new police equipment, including cruisers
- New surveillance equipment



The New Springfield

Pedestrian Wayfinding

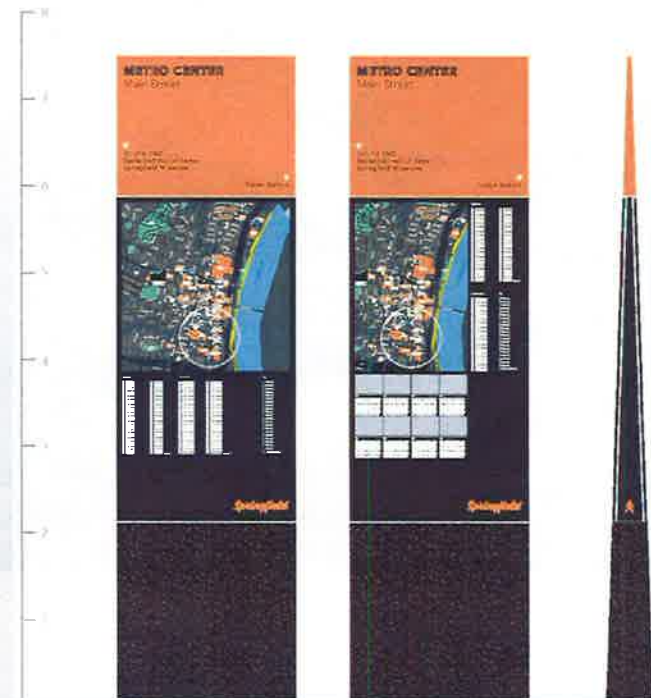


Now Arriving!

Project Highlights:

- Project funded through a public health grant from the Springfield Department of Health & Human Services
- The designer, Applied Wayfinding, has designed systems for other large cities including Cleveland, Vancouver and London
- System includes 51, 2-sided wayfinding signs
- To be located throughout the downtown
- Installed spring 2018

The New Springfield





Now Arriving!

Project Highlights:

- Project funded through a public health grant from the Springfield Department of Health & Human Services
- The designer, Applied Wayfinding, has designed systems for other large cities including Cleveland, Vancouver and London
- System includes 51, 2-sided wayfinding signs
- To be located throughout the downtown
- Installed spring 2018

Pedestrian Wayfinding



The New Springfield

Pedestrian Wayfinding



The New Springfield

Pedestrian Wayfinding



The New Springfield

Pedestrian Wayfinding



The New Springfield



Now Arriving!

Project Highlights:

- Regional bike share program called Valley Bike
- Partners include: Springfield, Holyoke, Northampton, Amherst and South Hadley
- Springfield to have 14 stations, located throughout the downtown, with 140 “electric assist” smart bicycles
- Each bike has built in GPS technology
- Target Start Date: July 2018

The New Springfield

Valley Bike



Downtown Dining District



- New fund created to add more restaurants to longtime district anchors like Theodores, The Fort, and Adolfo's, and join new privately financed restaurants like Art-e-Pizza
- \$1.5M loan fund to attract new full-service restaurants
- The City is currently in the process of reviewing applications
- Loans up to \$200K each



The New Springfield



New Arriving!

Total Project Cost: \$41M

- Currently closing on City/HUD loan of \$3.65 million
- Project will include preservation and reuse of historic theater
- Will also include development of new boutique hotel
- Preservation work on roof and façade slated to begin this year

Paramount Theater



The New Springfield

31 Elm Street



New Arriving!

Total Project Cost: \$45M

- Proposed development of 60 residential units and 35,000 s.f. of commercial space
- Development partners: OPAL Development and Winn Residential
- SRA has added new roof and new lighting to highlight and help preserve the building



The New Springfield



31 Elm Street

Now Arriving!

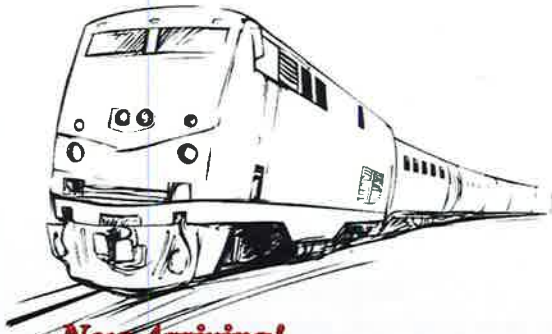
Total Project Cost: \$45M

- Proposed development of 60 residential units and 35,000 s.f. of commercial space
- Development partners: OPAL Development and Winn Residential
- SRA has added new roof and new lighting to highlight and help preserve the building



The New Springfield

Implementation Blueprint

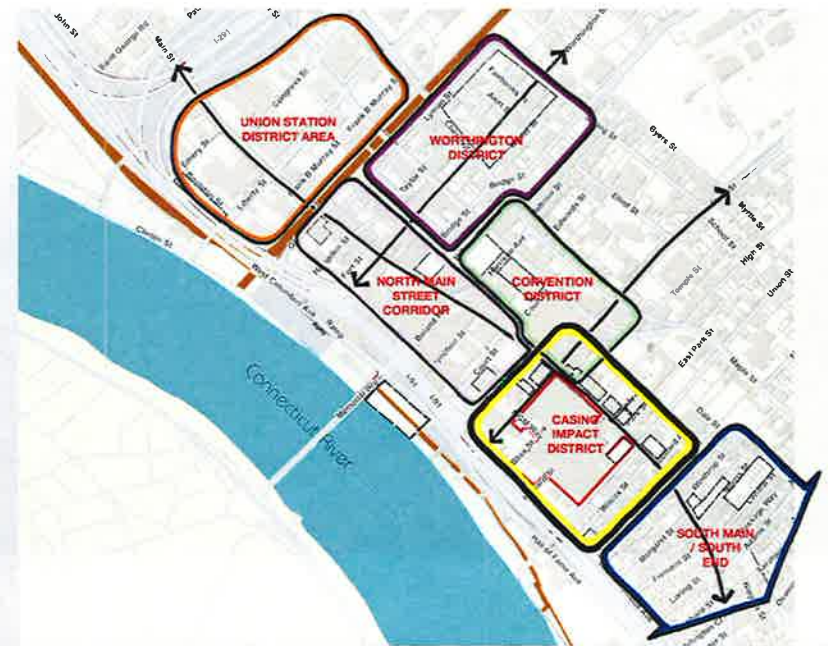


New Arriving!

- The Implementation Blueprint continues the City's commitment to ensuring a high quality urban environment and positive collaboration with MGM Springfield as noted in the Host Community Agreement

Project Highlights:

- Facilitate collateral development opportunities throughout the downtown
- Work to solidify Springfield as the center of the region's *Convention, Meeting and Entertainment Business*
- Facilitate opportunities for new downtown Market Rate Housing development
- Attract new business and employment opportunities to Springfield
- Promote other supporting activities such as Springfield's marketing/rebranding effort



The New Springfield

Implementation Blueprint



Now Arriving!

- The Implementation Blueprint continues the City's commitment to ensuring a high quality urban environment and positive collaboration with MGM Springfield as noted in the Host Community Agreement

Project Highlights:

- Facilitate collateral development opportunities throughout the downtown
- Work to solidify Springfield as the center of the region's *Convention, Meeting and Entertainment Business*
- Facilitate opportunities for new downtown Market Rate Housing development
- Attract new business and employment opportunities to Springfield
- Promote other supporting activities such as Springfield's marketing/rebranding effort

The New Springfield

IMPLEMENTATION BLUEPRINT



*An Economic Development Strategy for
The Renaissance of a Great American Downtown:
Springfield, MA*

Prepared in consultation with The City of Springfield 11.16.10/11 Revised
by The Chicago Consultants Studio, Inc.

The New Springfield



**Downtown
Parks**

Now Arriving!

Riverfront Park

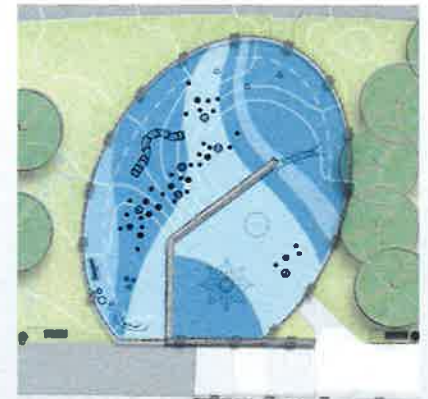


New Arriving!

Total Project Cost: \$2.5M

Project Highlights:

- Construction starting April 1, 2018
- Improvements to include re-grading of park, new event lighting, new lawn area for events, new pedestrian walkways and landscaping
- Improvements will also include playground equipment, splash pad and re-designed plaza
- Location of 9/11 Memorial



The New Springfield

Riverfront Park/9-11 Memorial



Now Arriving!

Total Project Cost: \$300K – Spirit of Springfield Coordinating fundraising

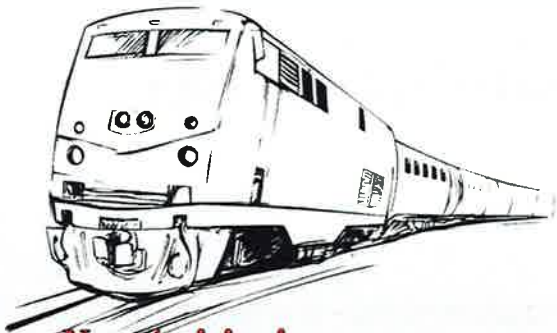
Project Highlights:

- Design will integrate a salvaged piece of steel from the Twin Towers
- Feature a circular metal memorial which will list the names of New York City's first responders
- Names are listed in two (2) large columns with a gap in between
- At night the gap is filled with two (2) memorial shadows, created using the silhouette of the artifact
- Names remain lit for viewing



The New Springfield

Riverfront Park/9-11 Memorial

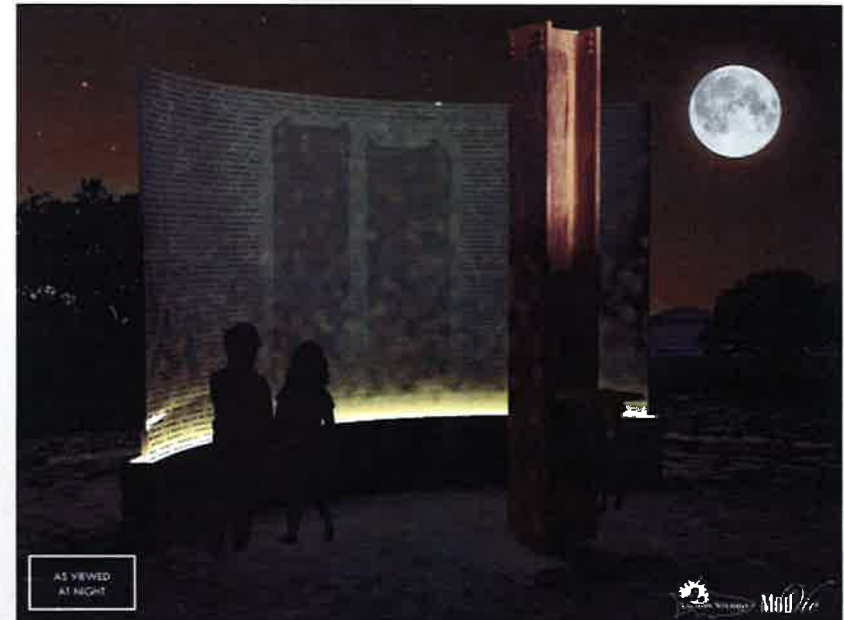


New Arriving!

Total Project Cost: \$300K – Spirit of Springfield Coordinating fundraising

Project Highlights:

- Design will integrate a salvaged piece of steel from the Twin Towers
- Feature a circular metal memorial which will list the names of New York City's first responders
- Names are listed in two (2) large columns with a gap in between
- At night the gap is filled with two (2) memorial shadows, created using the silhouette of the artifact
- Names remain lit for viewing



The New Springfield



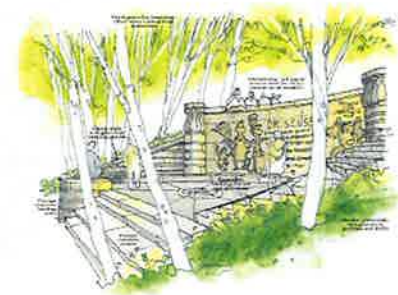
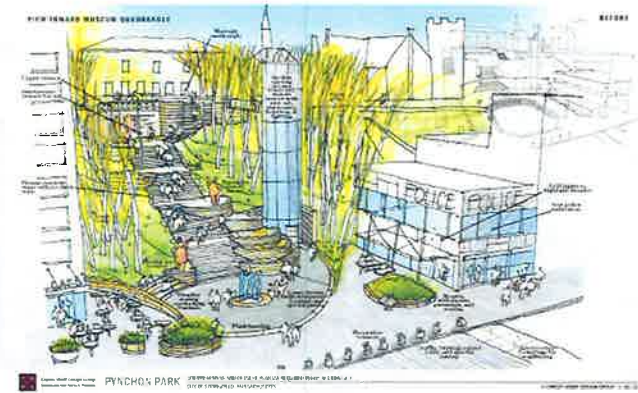
New Arriving!

Total Project Cost: \$3.5M

Project Highlights:

- Full re-design of Pynchon Park to bring back the connection from Downtown to the Quadrangle
- Designer selected – Copley Wolff Design Group, Boston
- Start Date: Fall 2018

Pynchon Park



The New Springfield

Stearns Square

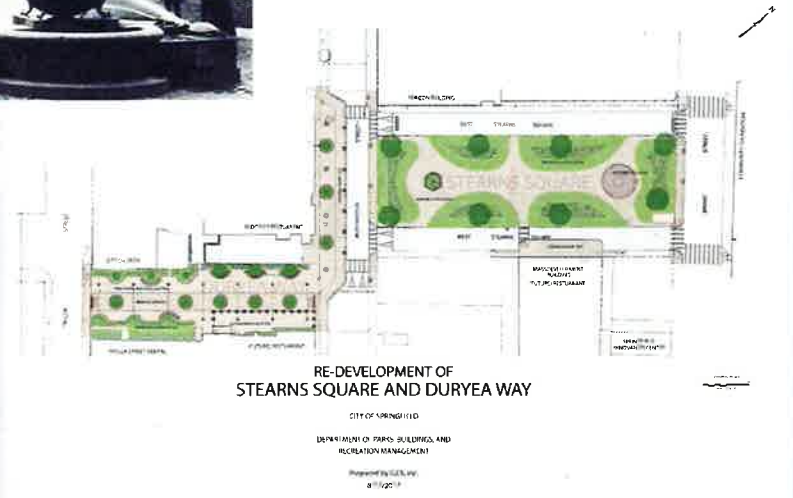


Now Arriving!

Total Project Cost: \$1.8M

Project Highlights:

- Full renovation of Stearns Square and Duryea Way
- Includes new landscaping and paving
- Project also includes sidewalk “bump-outs” to accommodate outside dining
- Start Date: Spring 2018



The New Springfield

The New Springfield



**Innovation/Cultural
Economy**

Now Arriving!

Springfield Central Cultural District



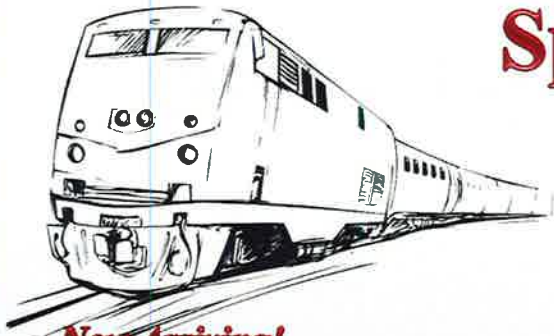
Now Arriving!

- \$50M in direct economic impact by arts and cultural institutions supporting over 1,800 jobs
- Over 500,000 visitors come to Springfield exclusively for arts-related events
- Springfield is in the top 10 cities for employing creative workers in New England
- In the past two years, we have added over 30 public art installations in downtown



The New Springfield

Springfield Central Cultural District



New Arriving!

- \$50M in direct economic impact by arts and cultural institutions supporting over 1,800 jobs
- Over 500,000 visitors come to Springfield exclusively for arts-related events
- Springfield is in the top 10 cities for employing creative workers in New England
- In the past two years, we have added over 30 public art installations in downtown



Mural by: Kim Carlino

The New Springfield

Springfield Thunderbirds



Now Arriving!

- Attracted the 2019 AHL All Star Classic, set for January 27-28, 2019
- Through new marketing efforts the Thunderbirds have substantially increased attendance numbers
- Hosted dozens of promotional events including David Ortiz night this past November



The New Springfield



New Arriving!

Total Project Cost: \$6M

Project Highlights:

- Opening 2018
- Home to Valley Venture Mentors
- Partnership between MassDevelopment and DevelopSpringfield
- MassMutual a major contributor

Innovation Center



The New Springfield

Transformative Development Initiative



New Arriving!

- TDI is a focused approach on planning and redevelopment through a partnership with MassDevelopment
- Springfield's downtown TDI district has had a very successful three-year term, and the City has recently made a request to extend the term of the district with all of the positive activity coming online



The New Springfield



MASSDEVELOPMENT

The New Springfield



**Housing
Initiatives**

Now Arriving!

Chestnut Park Towers



Now Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab



Chestnut Park Apartments

Exterior Perspective View

tat

The New Springfield



Now Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab

Chestnut Park Towers



Chestnut Park, Square 01

Exterior Perspective View

tat

The New Springfield



Now Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab

Chestnut Park Towers



Chestnut Park Apartments

Amenity Perspective View

tat

The New Springfield



Now Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab

Chestnut Park Towers



Chestnut Park Apartments

Amenity Perspective View

tat

The New Springfield

Chestnut Park Towers



New Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab



Chestnut Park Apartments

Unit Perspective View

tat

The New Springfield



Now Arriving!

Total Project Cost: \$40M

Project Highlights:

- Renovation of 489 units, located within 4 buildings
- All new windows
- Amenities to include a fitness center, resident community space, workforce development training center, children's play room and computer lab

Chestnut Park Towers



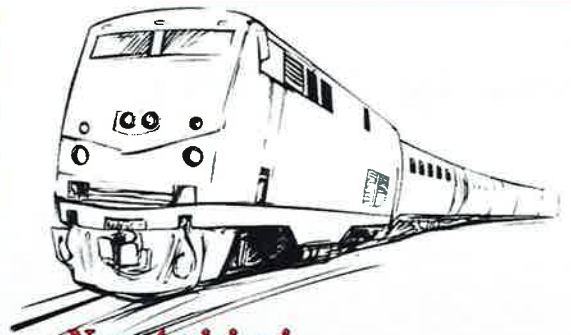
©2014 Park Towers

Unit Perspective View

tat

The New Springfield

Indian Motorcycle



New Arriving!

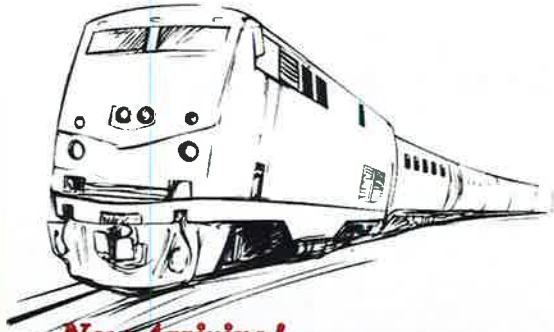
Total Project Cost: \$20M

Project Highlights:

- 60 new residential units
- Remediation efforts underway
- Starting fall 2018



The New Springfield



New Arriving!

Total Project Cost: \$11M

Project Highlights:

- Historic former YMCA Building, built in 1915
- Planning for the rehabilitation of 99 existing units and development of 15 new units

Silverbrick Square



The New Springfield



Now Arriving!

Total Project Cost: \$9M

Project Highlights:

- Proposed 60 market-rate units
- Currently in planning phase

Willys Overland Building

St. Louis Willys Overland



St. Louis Willys Overland



Detroit 'After' Photo



Detroit 'Before' Photo



Detroit Interior



View from Worthington Street



View from Worthington Street



Looking at West Facade from Chestnut Street

151
Chestnut

151 Chestnut Street Historic Photos

Conner Design

DAVENPORT
COMPANIES

The New Springfield



The New Springfield

TOTAL DEVELOPMENT
INVESTMENT:

\$3.76B

The New Springfield

The New Springfield



Questions?

Now Arriving!



MEMORANDUM

TO: Massachusetts Gaming Commission

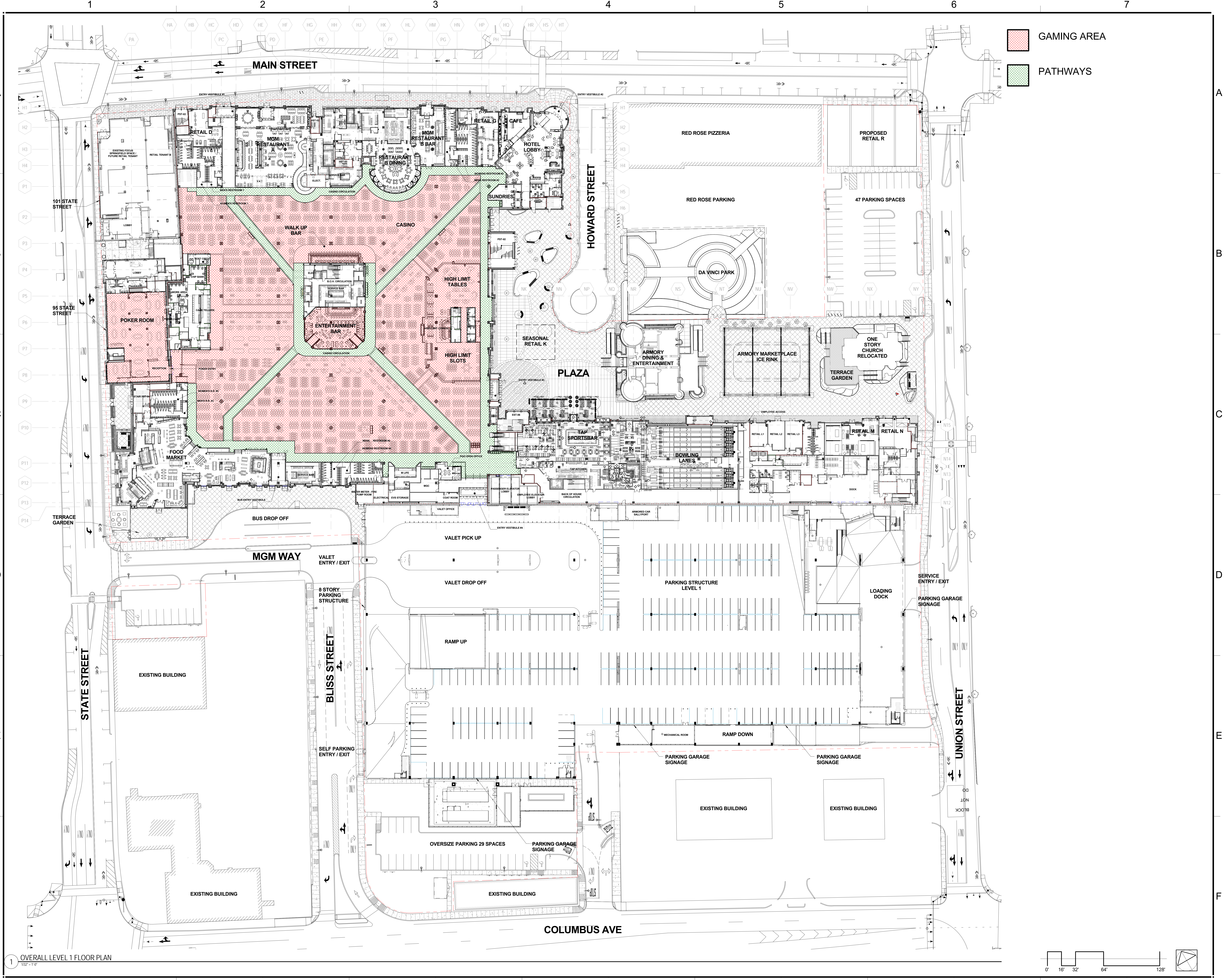
FROM: Carrie Torrisi, Associate Counsel

RE: Underage Persons on the Gaming Floor

DATE: April 26, 2018

The question has been raised as to whether underage persons may be permitted to walk across the gaming floor at the MGM Springfield facility if they are doing so only to access nongaming portions of the gaming establishment and if such pathways within the gaming area are distinguished from the areas of the floor on which gaming is conducted. Below is a brief summary of the Massachusetts Gaming Commission's (Commission) relevant statute and regulations on this issue.

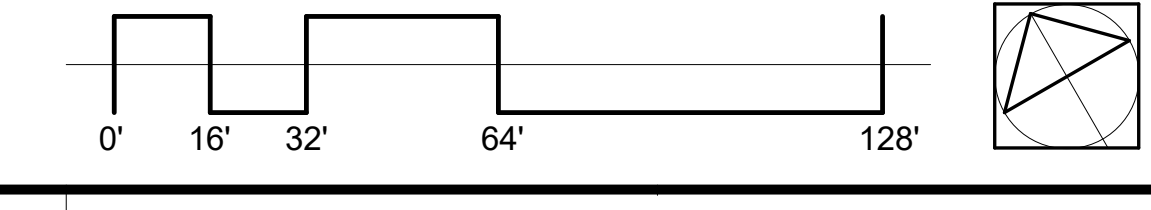
G.L. c. 23K, § 25(h) states that "No person under the age of 21 shall be permitted to wager or be in a gaming area." Pursuant to that statute, the Commission's regulations impose several requirements on the gaming licensees to ensure that minors are not permitted on the gaming floor. First, 205 CMR 150.01 requires each gaming licensee to "implement policies, procedures, and practices designed to prevent persons younger than 21 years old...from entering a gaming area." Those policies and procedures include, among other things, personnel training emphasizing the responsibility of personnel to identify and prevent such activity. Second, 205 CMR 150.02 requires each gaming licensee to "establish policies, security procedures, and security practices...including but not limited to monitoring the premises of the gaming establishment for unattended minors." Finally, 205 CMR 150.05 outlines the licensee's reporting requirements with respect to minors and underage persons, and requires each licensee to report to the IEB the number of people under the age of 21 found in the game area, gaming at tables, or gaming at slot machines or other electronic gaming devices, as well as the number of people under the age of 21 escorted from the gaming area.



GAMING AREA

PATHWAYS

1 OVERALL LEVEL 1 FLOOR PLAN
11/27-17-C



<p>DATE: _____</p> <p>DESCRIPTION: _____</p>												
<p>FRIEDMUTTER GROUP ARCHITECTURE / INTERIOR DESIGN / FINANCIAL STUDIOS SPECIALIZING IN MULTIFAMILY PROJECTS</p>												
<p>PROJECT NAME: _____</p>												
<p>MGM SPRINGFIELD</p>												
<p>NEW PLAN</p> <table border="1"> <tr><td>A</td><td>B</td></tr> <tr><td>C</td><td>D</td></tr> <tr><td>E</td><td>F</td></tr> <tr><td>G</td><td>H</td></tr> <tr><td>I</td><td>J</td></tr> <tr><td>K</td><td>L</td></tr> </table>	A	B	C	D	E	F	G	H	I	J	K	L
A	B											
C	D											
E	F											
G	H											
I	J											
K	L											
<p>PROJ. NO.: 0144001</p> <p>DATE: MAR. 02, 2018</p> <p>OVERALL LEVEL 1 FLOOR PLAN</p>												
<p>SHEET NUMBER: Z210</p>												

C:\Local\Revit\0144001 Springfield Padum Arch FD Central_08.rvt
4/2/2018 3:14:48 PM



TO: The MGC Commissioners

FROM: John S. Ziemba
Joe Delaney

CC: Ed Bedrosian

DATE: April 23, 2018

RE: MGM Springfield Gaming Establishment Boundary

At the Commission’s March 15th meeting, MGM Springfield requested an update of the current boundary of the MGM Springfield gaming establishment (see [Attachment 1](#)). This boundary has not been updated since it was established when MGM Springfield was issued its Category 1 license in 2014. Since that time, there have been significant changes to the MGM Springfield Project (“Project”), including, but not limited to, the elimination of the hotel tower on State Street, the move of the hotel to Main Street, and a determination that residential units may be placed off-site. Commission staff agree that the gaming establishment boundary should be updated to reflect the current Project. Attached please see a site plan that depicts a proposed new gaming establishment border for the Project (see [Attachment 2](#)). This new proposed boundary resulted from conversations between Commission staff and Project representatives since the March 15th meeting. Commission staff and MGM Springfield representatives recommend that the Commission approve of this new proposed boundary for the gaming establishment, provided that the Commission agrees to review the boundary again within the first two quarters after the Project opens. With the approved opening date of September 5, 2018, Commission staff and MGM Springfield representatives recommend that the Commission again review the proposed gaming establishment boundary no later than the end of the first quarter of 2019 (March 31, 2019).¹ By that date, it is likely that the Commission will have significant new information about MGM Springfield’s plans for the facility, including but not limited to, its plans for 101 State Street.

Brief Summary of Statutory Provisions Involving the Gaming Establishment. M.G.L. c. 23K, § 2 defines the “Gaming establishment” as “the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.” It also sets out the definition of a “Gaming license” as “a license issued by the commission that permits the

¹ As explained in the recent review of the Project’s schedule, although the approved opening date of September 5, 2018 was established in 2015, MGM Springfield’s actual opening date may occur earlier, provided that MGM Springfield receives the requisite approvals from the Commission. Despite any potential opening prior to September 5, Commission staff and MGM Springfield representatives agree that the March 31, 2019 date for a further review of the boundary should remain.



Massachusetts Gaming Commission

licensee to operate a gaming establishment.” M.G.L. c. 23K also states that “[o]fficers and employees of the gaming enforcement unit of the state police assigned to the commission under section 70 of chapter 22C shall work with employees of the bureau, under the direction of the deputy director, to investigate violations of this chapter by a licensee or to investigate any activity taking place on the premises of a gaming establishment.” M.G.L. c. 23K also has provisions: that “regulate and control the distribution of alcoholic beverages in a gaming establishment,” that limit the types of live entertainment venues that can be operated at a gaming establishment, that prohibit certain tax incentives that could otherwise be used in connection with gaming establishment property, that require a minimum capital investment in a gaming establishment, that guide gaming establishment property transfers, and that specify that community mitigation funds may be used to offset costs related to the construction and operation of a gaming establishment.

In a prior decision the Commission outlined the analysis to determine precisely what is included in the premises of a gaming establishment. It stated that “[u]nder G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment. Beyond that, though, by use of the term ‘may’ in the definition of ‘gaming establishment,’ it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee.” *Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC*, May 15, 2015, at page 4. “When viewed as a whole, the law sets out essentially a four part analysis to determine what features proposed by the applicant [other than the gaming area] will be part of a gaming establishment. That is, whether the feature: (1) is a non-gaming structure, (2) is related to the gaming area, (3) is under common ownership and control of the gaming applicant, and (4) the Commission has a regulatory interest in including it as part of the gaming establishment. Part 4 only comes into play though, where the first three parts are satisfied. The control element of part 3 is implicit in the statute’s licensing and registration requirement, see G.L. c. 23K, §§30 through 32, the requirement for the licensee to own or control all land on which the gaming establishment is located, G.L. c. 23K, §15(3), and the statute’s general structure which places control of the licensee at the heart of the Commission’s regulatory authority.” *Id* at page 7.

It is clear that the application of the gaming establishment boundary has far reaching implications to the Commission’s regulatory authority.

Description of the Proposed Gaming Establishment Boundary. As noted by MGM Springfield in correspondence to the Commission prior to the March 15th meeting, MGM proposes “amending the boundary to include floors two and above of the Main Street portion of the Project that was formerly proposed to be residential apartments, but will now house the new hotel.” Unlike the original gaming establishment boundary which showed a different boundary by floor, with the exception of 101 State Street (see discussion below), the new proposed boundary would apply equally to all levels of the Project “from ground to sky.” As noted by MGM Springfield, “[w]ith these changes, the footprint of the Gaming Establishment could be consistent throughout all levels with no need to distinguish boundaries by floor level as previously required.”



Massachusetts Gaming Commission

Continued Inclusion of First Floor of 101 State Street and Lot Across from MGM Way. As discussed in the March 15th meeting, MGM Springfield continues to determine its plans for the first floor of 101 State Street. This floor has been designated for retail purposes in the City of Springfield's Site Plan approval for the Project and the Commission's subsequent Project design approval in May 2016. However, as noted by MGM Springfield, Focus Springfield's lease of the floor runs through September 2019 with a mutual early termination right effective November 2018. The City of Springfield has expressed that the future use of this space is important to the Project. By March 31, 2019 (the proposed outside date for a further Commission review of the gaming establishment boundary), there is a significant possibility that more will be known about the future plans for this first floor. The remainder of 101 State Street is currently planned to be used by tenants for office space. As noted by MGM Springfield, "[t]he back of house functions originally proposed for 101 State St., including MGM's executive and operations offices, were integrated into 95 State St., leaving only the first floor as part of the Project consisting of retail space the office space for the Commission. The first floor of 101 State St. was connected to the casino podium through the then-proposed Commission offices. As part of the subsequent modifications, the Commission offices were moved and 101 State St. was no longer connected to the casino podium." Because of the importance of the gaming establishment boundary to the Commission's jurisdiction and because more will likely be known relatively soon about the future of 101 State Street, Commission staff recommend that the Commission take no action at this time to remove the first floor of 101 State from the boundary of the gaming establishment. Instead, the Commission could further review the boundary as it relates to 101 State Street by March 31, 2019.

Similarly, Commission staff recommend that the Commission take no action at this time on a proposal to remove a lot across from MGM Way from the gaming establishment. MGM Springfield notes that this lot will be used as a taxi and ride share waiting area. By March 31, 2019, months after the opening of MGM Springfield, it will be much more apparent whether Commission jurisdiction over this parcel would be important.

Removal of Floors 2-8 of 101 State Street from Gaming Establishment. Because floors 2-8 of 101 State Street will no longer be used for gaming related purposes, the need for Commission jurisdiction over such floors becomes more tenuous. As noted previously, the gaming establishment boundary is important to numerous aspects of the Commission's jurisdiction. However, it is not clear that many of these aspects apply here. For example, no gaming or gaming related alcohol sales are planned for these floors. As such, and in recognition of the four factor gaming establishment analysis mentioned above, the newly proposed gaming establishment boundary excludes floors 2-8 of 101 State Street.

99 Union Street.

MGM Springfield also recommends that its property at 99 Union Street in Springfield should not be added to the gaming establishment. It notes that this building has never been part of the Project under the Host Community Agreement with Springfield, is outside the Casino Overlay District and is physically separated from the rest of the Project by Union Street. The intended



Massachusetts Gaming Commission

use of 99 Union Street is for a facilities/engineering workshop and a kennel for K-9s. 99 Union Street has not been part of the gaming establishment boundary to date.

Applicability of LEED Gold Standard. M.G.L. c. 23K, § 18(8) requires that the Project “be 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.” In its letter to MGM Springfield prior to the March 15, 2018 meeting, Commission staff indicated that further Commission action would be necessary on 101 State Street because it will not achieve LEED Gold status by the opening date (as no major reconstruction is anticipated at that building prior to opening). We recommend the Commission make determinations regarding any deadlines or requirements for LEED Gold on the 101 State Street building when it reviews any potential changes to the Commission’s MGM Springfield Section 61 Findings in short order. As such, we recommend that nothing in this gaming establishment boundary approval should be construed to otherwise impact or impair the Commission’s Section 61 Findings issued in relation to the MGM Springfield project. To the degree any impact or impairment becomes apparent, we recommend that the Commission address any such impact or impairment.

Clarification Regarding Residential Units - The Commission’s construction oversight regulation, 205 CMR 135.00 defines “Project” as “[t]he gaming *establishment* as approved by the commission and defined in the gaming license awarded by the commission. For purposes of 205 CMR 135.00, Project may also include such off site infrastructure necessary for the operation of the gaming establishment as required by the commission.” (*Italics* and underlining added) The planned residential units were not included in the original gaming establishment boundary. As such, they were not part of the gaming establishment for the purposes of the construction oversight regulation. The new proposed gaming establishment boundary also does not include the residential units, as they are planned to be off-site, at a location not yet finalized. Although these units have not and will not, under the proposed boundary, be part of the gaming establishment, Commission staff recommend that the Commission clarify that the residential units are considered part of the Project for the purposes of the construction oversight regulation, which, among other items, specifies that the Commission may establish a construction schedule for major portions of the Project. The Commission recently approved a new deadline for construction of such units by March 2020, with a new notification date of March 2019, under which MGM Springfield is required to finalize plans for the location of such units.

Recommendation. We recommend that the Commission approve the attached new boundary for the MGM Springfield gaming establishment and agree to review the boundary again within the first two quarters after the Project opens. We further recommend that the Commission clarify that the residential units are considered part of the Project for the purposes of the construction oversight regulation. Finally, we recommend that nothing in this approval shall be construed to otherwise impact or impair the Commission’s Section 61 Findings issued in relation to the MGM Springfield project.



Massachusetts Gaming Commission



Attachment 1

Blue Tarp reDevelopment (MGM Springfield) gaming establishment

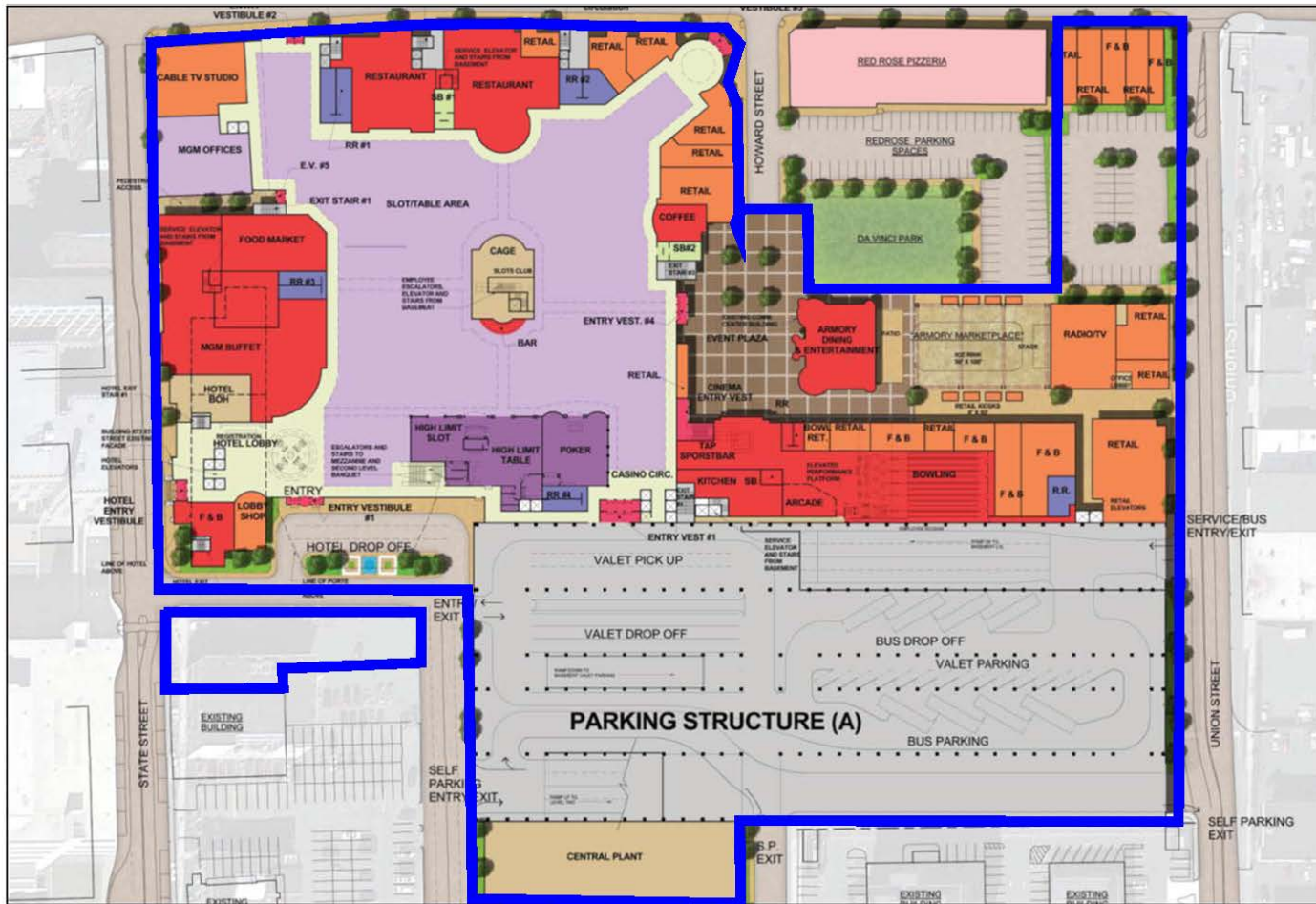


EXHIBIT B

(BOUNDARY INCLUDES ALL VERTICAL SPACE ABOVE AND BELOW)

Blue Tarp reDevelopment (MGM Springfield) gaming establishment

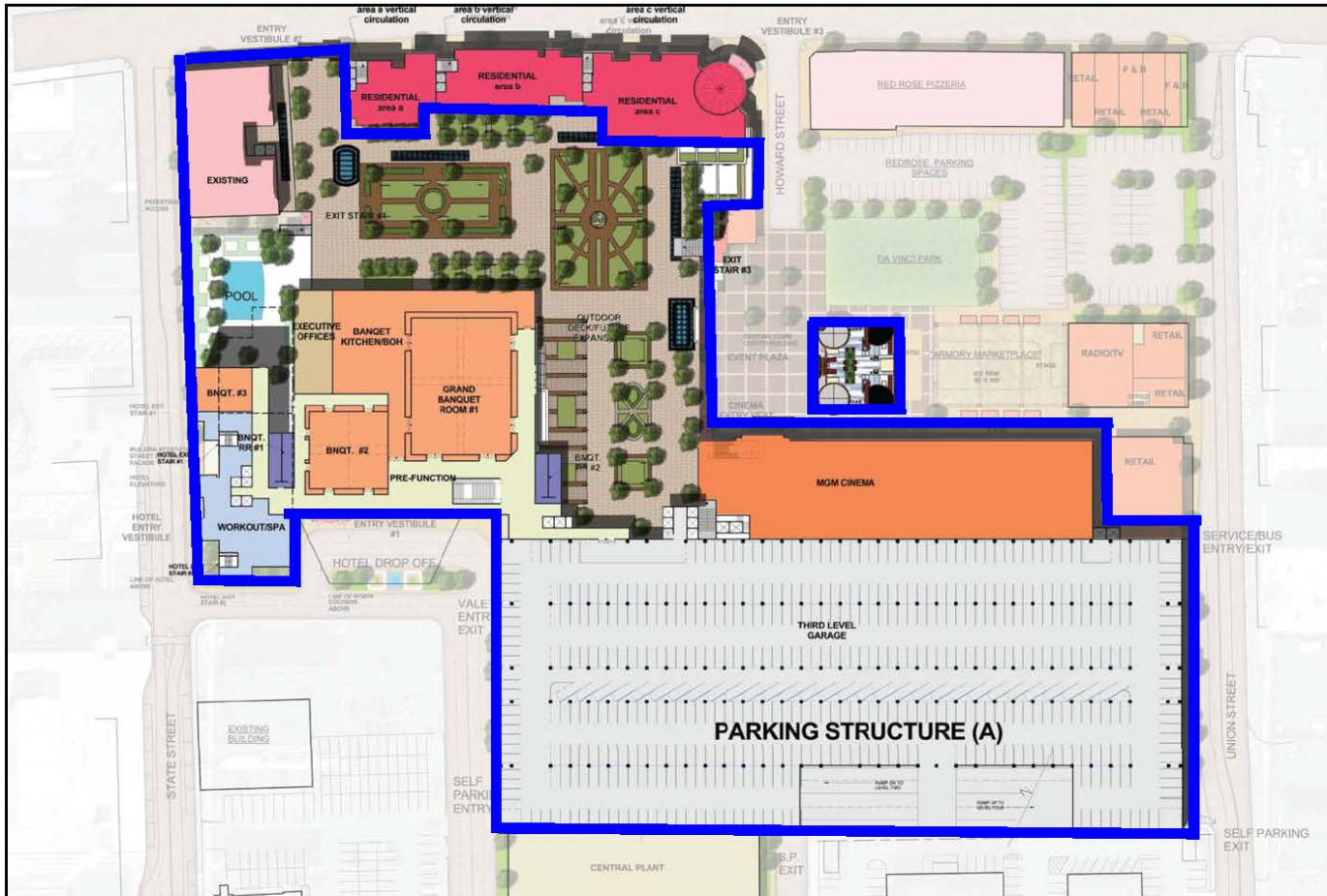


EXHIBIT B
(BOUNDARY INCLUDES ALL VERTICAL SPACE ABOVE AND BELOW)



TO: Chairman Crosby, Commissioners

FROM: Jill Griffin, Director of Workforce, Supplier and Diversity Development

CC: Ed Bedrosian, Executive Director; Catherine Blue, General Counsel

DATE: April 19, 2018

RE: MGM SPRINGFIELD Procurement Diversity and Local Business Plan

As referenced by Massachusetts Gaming Commission Agreement to Award a Category 1 License to Blue Tarp Redevelopment-Condition 17, MGM-Springfield is required to submit a plan to identify local vendors. As discussed at the January 19, 2018 MGC / MGM - Senior Staff Monthly Pre-opening Status Meeting in SPRINGFIELD, the local vendor plan was due to the Commission by Thursday, March 15, 2018. Commission staff received the MGM SPRINGFIELD Procurement Diversity and Local Business Plan via email on March 15, 2018.

Condition 17: *In conjunction with the MA Gaming Commission's Vendor Advisory Team and any local grant awardee create a plan within 90 days of the Commission's request after the effective date for Commission's review and approval to assess Designated Licensee requirements and to identify potential local vendors.*

Commission staff also requested in a February 6, 2018 letter to MGM that the above referenced plan whenever possible should include plans intended to satisfy the local business and vendor commitments made by MGM-Springfield in their RFA-2 Application, including the following:

3-06-01 *developer shall exercise its best efforts to ensure that at least fifty Million Dollars (\$50,000,000) of its annual biddable goods and services are prioritized for local procurement, meaning principally Springfield, but including the immediately surrounding Greater Springfield Area...*

14.102 Economic Development-Local Suppliers: *MGM Springfield is dedicated to maximizing the participation of the region's existing workforce and businesses in the development of the Project. MGM Springfield will proactively educate regional and local businesses on the opportunities presented by the Company, and assist them in identifying strategies to fully participate in the economic development opportunities provided by the company*



Massachusetts Gaming Commission

14.103 *Prior to the launch, MGMS would identify potential suppliers for upcoming bid opportunities with the help of the local business community and Chamber(s) of Commerce. We would also review MGM Resorts' supplier database for potential suppliers.*

14.106 *outlines MGMS process for working with local vendors*

14.109 *We will strive to maintain a diverse supply base, identify contractor opportunities, mentor, coach and facilitate introductions, host and attend diversity related expositions and tradeshow, track and report all procurement spend with diverse businesses and refer suppliers. Our construction diversity for goods and services post opening are Minority Owned Businesses-10%, WBE 15%, VBE-4%*

14.146 *Through national known celebrity chefs, local restaurateurs and locally sourced materials, we hope to help Springfield stand out as a destination for superior quality dining that will compel visitors to stay longer and dine. MGMS intends to serve the surrounding community by organizing events that promote regional businesses and artists in the Projects Outdoor Plaza. We hope to host events such as vendor showcases, farmers' markets, food/beer/wine festivals, arts and crafts fairs and live music from local artists.*

14.151 *MGMS food and beverage program will introduce some of the area's best known restaurateurs to a wider audience and attract celebrity chefs to the Project. MGMS will feature locally known food and beverage favorites, who will benefit from the expected ...MGM will endeavor to highlight locally sourced products and, when possible, actively feature these items on the menu..*

14.1666 *...As part of our "no Business Left Behind " approach, we will seek to partner with local retail businesses in terms of our own procurement activities, as well as the provision of retail services to MGM Springfield employees and guests. In addition, we will promote our neighboring businesses by placing local visitor and business guides, such as the GSCVA Visitors Guide, in our hotel rooms and in public areas.*

On Wednesday, April 11, 2018, MGM Springfield - Operations Controller Ryan Geary presented the plan to the MGC/MGM Vendor Advisory Team. The group who meets with MGM monthly, generally voiced support and identified no issues with the plan.

Staff Recommendation

Staff believes MGM SPRINGFIELD Procurement Diversity and Local Business Plan "...to assess Designated Licensee requirements and to identify potential local vendors...." satisfies license condition 17, and therefore recommend that the Commission vote to approve the plan.



Massachusetts Gaming Commission



MGM SPRINGFIELD

Procurement Diversity and Local Business Plan

March 15, 2018

Massachusetts Gaming Commission

Plan Components

- Diversity & Local Spend Goals
- Project Team
- The Local Procurement Team
- Community Outreach Plan
- Advertising Plan
- Outreach Events & Activities
- Supplier/Vendor Meetings & Site Visits
- Timeline
- Sample Reporting & Tracking



Diversity & Local Spend Goals

MGM Springfield is committed to utilizing Best Efforts to ensure the following goals are met in providing opportunities for diverse and local companies:

Diversity Goals:

Diversity Classification	Goal
Women Owned Business (WBE)	15%
Minority Owned Business (MBE)	10%
Veteran Owned Business (VBE)	2%

Local Spend Goals:

MGM will exercise its best efforts to ensure that at least Fifty Million Dollars (\$50,000,000) of its annual goods and services are prioritized for local procurement, meaning principally Springfield, but including the surrounding Greater Springfield Area, meaning Hampden, Hampshire, Franklin and Berkshire Counties. Such local businesses shall not be guaranteed any awards but shall be given preferential consideration if all other aspects of the respective bid responses are competitive with non-local businesses.

Project Team – Roles & Responsibilities

Steering Committee

- Mike Mathis
- Alex Dixon
- Courtney Wenleder
- Seth Stratton
- Stacey Taylor

- Offer feedback on Diversity reporting and strategy
- Review Diversity reports prior to distribution
- Help guide outreach strategy to meet HCA commitments
- Assist with risk mitigation as necessary

Project Team

- Ryan Geary
- Chelan Brown
- Kenyatta Lewis
- Jack Stone
- Mohamad Reda Bajah

- Develop and drive Diversity strategy
- Compile and distribute diversity reports
- Make award decisions
- Escalate risks to Steering Committee

Functional Leaders

- Jeffery Lynes
- Eddie Estrella
- Daphne Sligh
- Adi Bhardwaj
- Dalen Madina
- Davis Talley

- Conduct targeted vendor outreach
- Issue RFPs / solicit bids
- Document best efforts
- Issue project awards
- Escalate award decisions to Project Team

MGM Springfield Procurement Operations

Meet The Team...

The Local Procurement Team is now onboard and being deployed in the local market. Their main focus is to drive local supplier identification and outreach in order to support upcoming bid opportunities.



Ryan Geary
Operations Controller



Jeffrey Lynes
Manager
Strategic Sourcing



Eddie Estrella
Assistant Manager
Strategic Sourcing

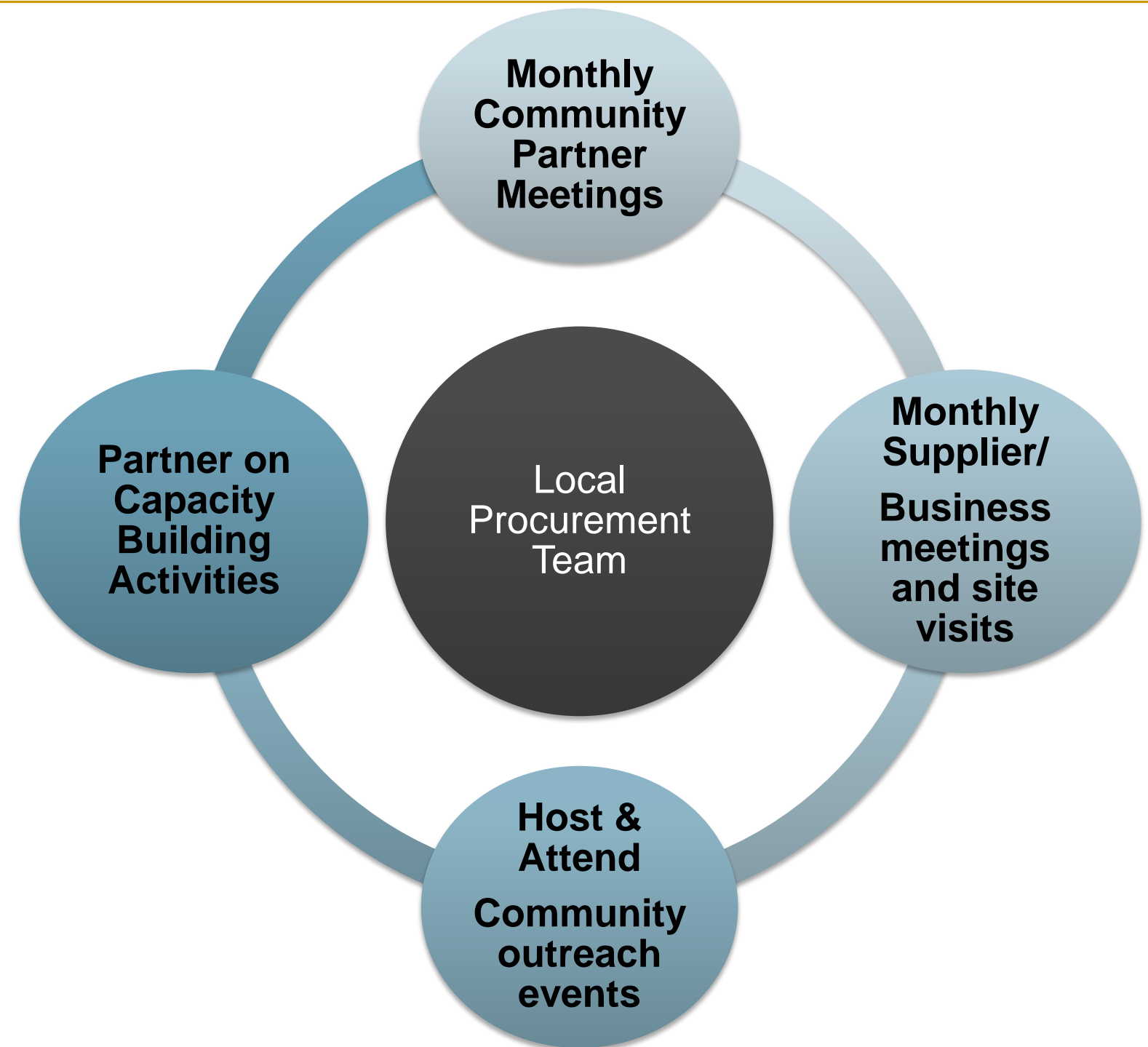


Chelan Brown
Assistant Manager
Procurement Operations

Community Outreach Plan

Overview:

- Enhanced Outreach Plan to be coordinated by the local procurement team members with quarterly participation by corporate procurement
- Outreach events will also be coordinated in partnership with local chambers of commerce and other business development entities
- Outreach activities and success stories will be reported out as part of MGM's on-going reporting to MGC



Advertising Plan

MGM launched a formal advertising campaign in March aimed at helping the local business community become more aware of upcoming procurement opportunities and how to register with MGM.

Targeted Outlets:

- Local Newspapers
- Local Radio Stations

Upcoming opportunities are also being distributed via our local business development network.



ROAR WITH US, NEW ENGLAND.



Are you a local, woman-owned, veteran-owned, or minority-owned company?

If so, we want to meet you!

A SAMPLE OF OUR MANY SUPPLIER CATEGORIES:

Horticulture Supplies	Snow Removal
Surveillance Supplies	Window Cleaning
Housekeeping Supplies	Guest Room Appliances
Spa & Salon Supplies	Water Testing
Banquet Equipment	Bellman Carts
Chinaware	Arcade Games
Glassware	Preventative Repair

...just to name a few!

Learn about upcoming Supplier Outreach events and register your company with us at:
mgmspringfield.com/suppliers/outreach-events.aspx

On-Going Monthly Outreach Activities

The local procurement team will coordinate on-going outreach activities including the following:

- Attend meetings with local chambers, community lenders, Vendor Advisory Task Force, and other business development groups as needed
- On-going local advertising campaign
- Feature procurement information in MGM Newsletter to be distributed to the business community and will include information on present & upcoming procurement opportunities, and local & diverse success stories
- Conduct meetings and site visits with local businesses
- Attend procurement opportunities information sessions
- Other outreach events as appropriate

Community Partners Network (Business Development Team)

CPN Objectives:

The MGM Local Procurement Team and the CPN Business Development Team will meet once a month and work with local business development partners to conduct the following:

- Awareness/Education on the MGM Procurement Process and Timeline
- Networking and engagement opportunities for business development entities and local/diverse businesses
- Assistance in capacity building and technical assistance for local/diverse businesses
- Local Business Mentorship Program

CPN invited Entities include:

- Springfield Regional Chamber of Commerce
- Latino Chamber of Commerce
- Minority Business Alliance
- NAACP Business Development Committee
- MGC Vendor Advisory Task Force
- West of the River Chamber of Commerce
- Hispanic American Institute
- African American Business Development Network
- Others as identified



Visiting with Local and Diverse Businesses

Individual Meetings with Businesses:

The local procurement team has begun meeting and visiting with local and diverse businesses in order to better understand what is available in the market and connect local suppliers with procurement opportunities. These meetings generally cover the following:

- Introductions of the local procurement team members
- Team members share the procurement process, timeline, upcoming opportunities and answer any questions that businesses may have about the process
- An overview of the diversity certification process (if applicable) and MGC registration is discussed
- Capacity challenges and referral to CPN partners to assist business in addressing challenges



*MGC Regional Commercial Lenders Network
March 5th, 2018*

Visiting with Local and Diverse Businesses

Site Visits:

In addition to meeting with local and diverse businesses on site, the local procurement team is now being deployed off site to visit the establishments of local and diverse businesses in the area.

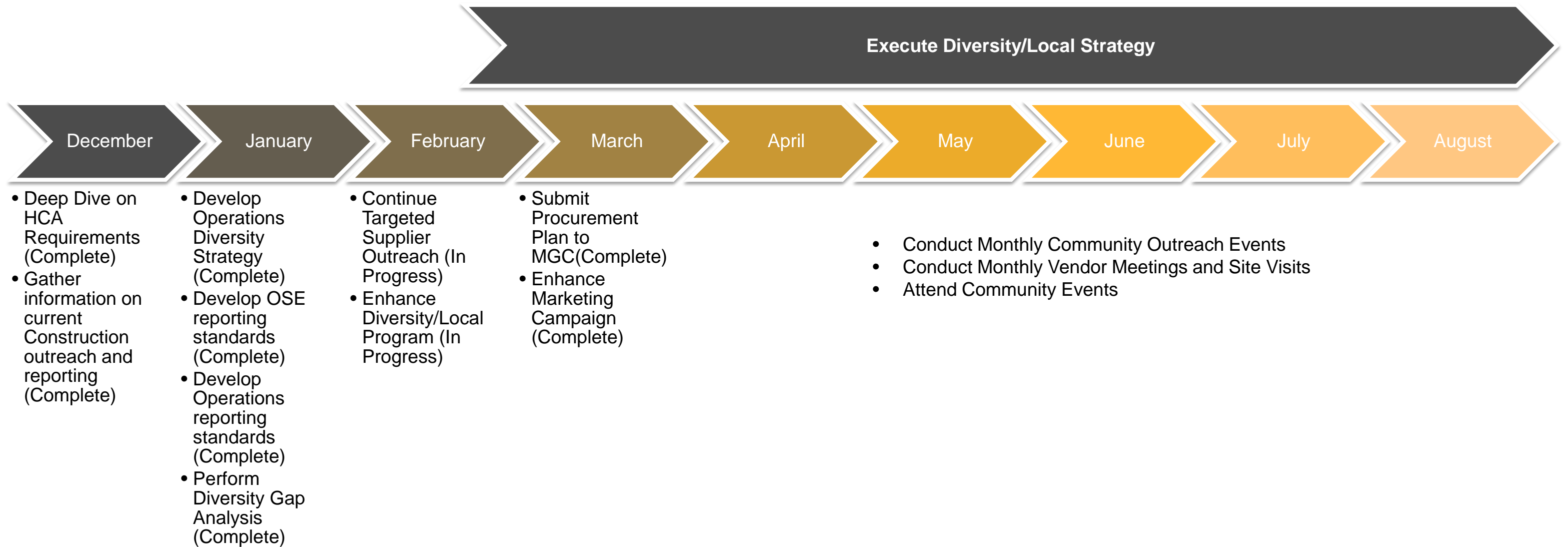


Visiting with Local and Diverse Businesses

MGC Vendor Advisory Task Force



Timeline & Milestones



Sample Reporting & Tracking

Sample Reporting & Tracking

Objective:

As part of MGM's Procurement Diversity and Local Spend Plan, the company intends to use the following sample reports and metrics to identify opportunities/gaps, and create additional strategies to advance the goals set forth in our RFA/HCA.



Outreach Events

Global Procurement Quarterly Visit to Springfield: March 5-9, 2018

The local procurement team partnered with corporate procurement to attend and present at scheduled outreach events including:

March 6th:

West of the River Chamber of Commerce Business Members Meeting
Mayors of Agawam and West Springfield attending

March 5th:

Procurement Info. Night w/Minority Business Alliance (MBA)

March 5th:

MGC Regional Commercial Lenders Network

March 5th:

MGC Vendor Advisory Task Force Meeting

* Throughout the week:

Team members visited local businesses



ROAR WITH US, NEW ENGLAND.

MGM Springfield & the Minority Business Alliance invites you to join us on March 5th from 6pm-8pm to learn more about the process for acquiring minority business certifications including woman, veteran, and minority-owned businesses.

MGM Springfield y la alianza de empresas minoritarias los invita a acompañarnos el 5 de marzo de 6 p.m. a 8 p.m. para obtener más información sobre certificaciones para negocios minoritarios, incluso para mujeres y veteranos.

March 5, 2018 • 6:00pm—8:00pm
Scibelli Enterprise Center
1 Federal Street, 3rd Floor
Springfield, MA 01105

INVITED ORGANIZATIONS: PANEL PRESENTATION
ORGANIZACIONES INVITADAS: PRESENTACIONES DEL PANEL

Massachusetts Office of Supplier Diversity
Center for Woman & Enterprise
Greater New England Minority Supplier Development Council
Massachusetts Gaming Commission
MGM Procurement Team
Hispanic American Institute

SPONSORED BY



Dashboard - Local/Diverse Outreach

OSE:

Ref	Company	Location	Diversity Status
1	DiLaura Naturals Personal Care Products	Springfield, Ma.	WBE
2	Pop's Biscotti & Chocolates	Wilbraham, Ma.	WBE
3	First Light Trading Company	Framingham, Ma.	MBE
4	Kittredge Equipment Co.	Agawam, Ma.	WBE
5	C&D Electronics	Holyoke, Ma.	M/WBE

Professional Services:

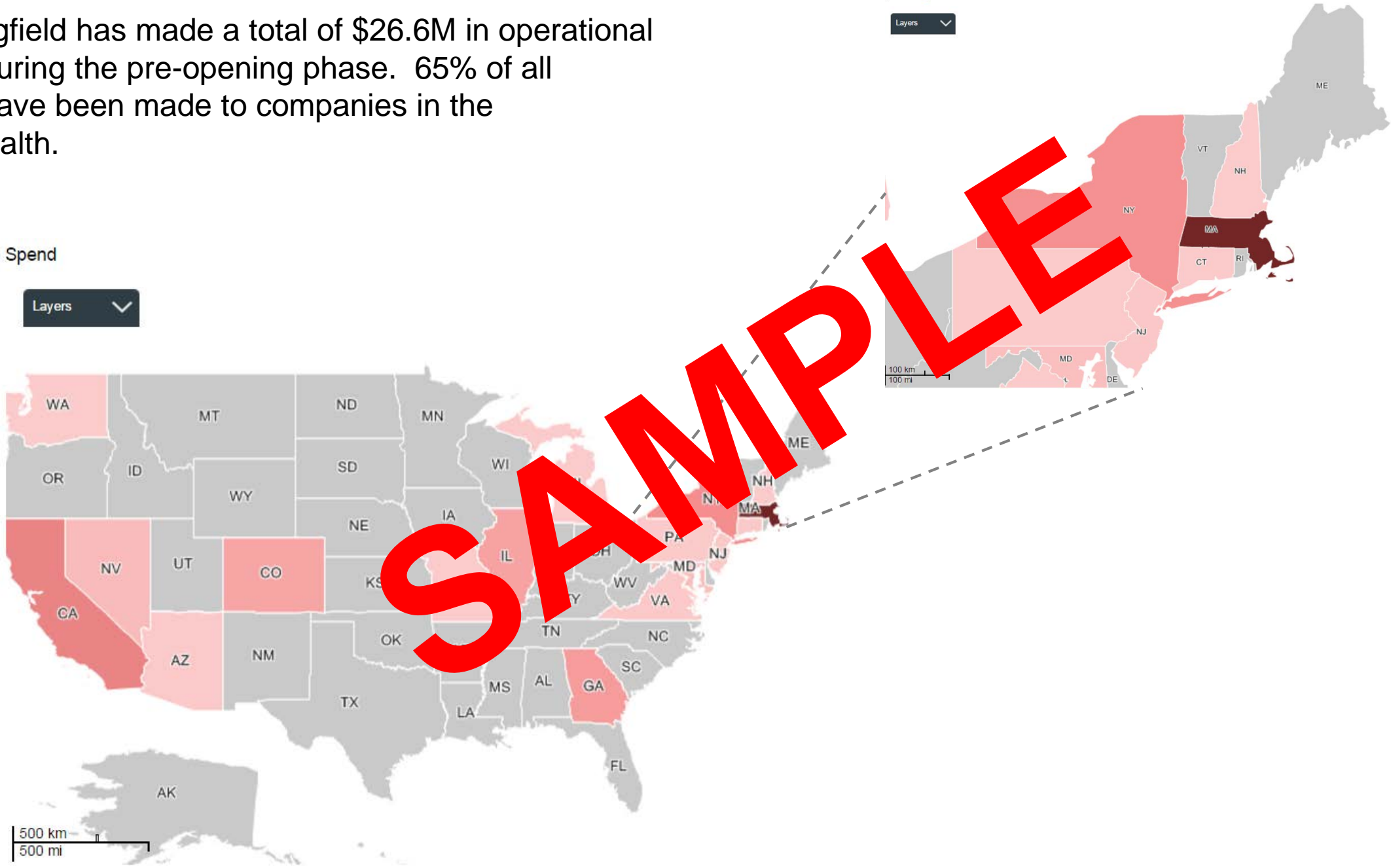
Ref	Company	Location	Diversity Status
1	TSM Design	Springfield, Ma.	WBE
2	White Glove Cleaning Services & Supplies	Springfield, Ma.	MBE

Dashboard - Nationwide Actuals

MGM Springfield has made a total of \$26.6M in operational payments during the pre-opening phase. 65% of all payments have been made to companies in the Commonwealth.

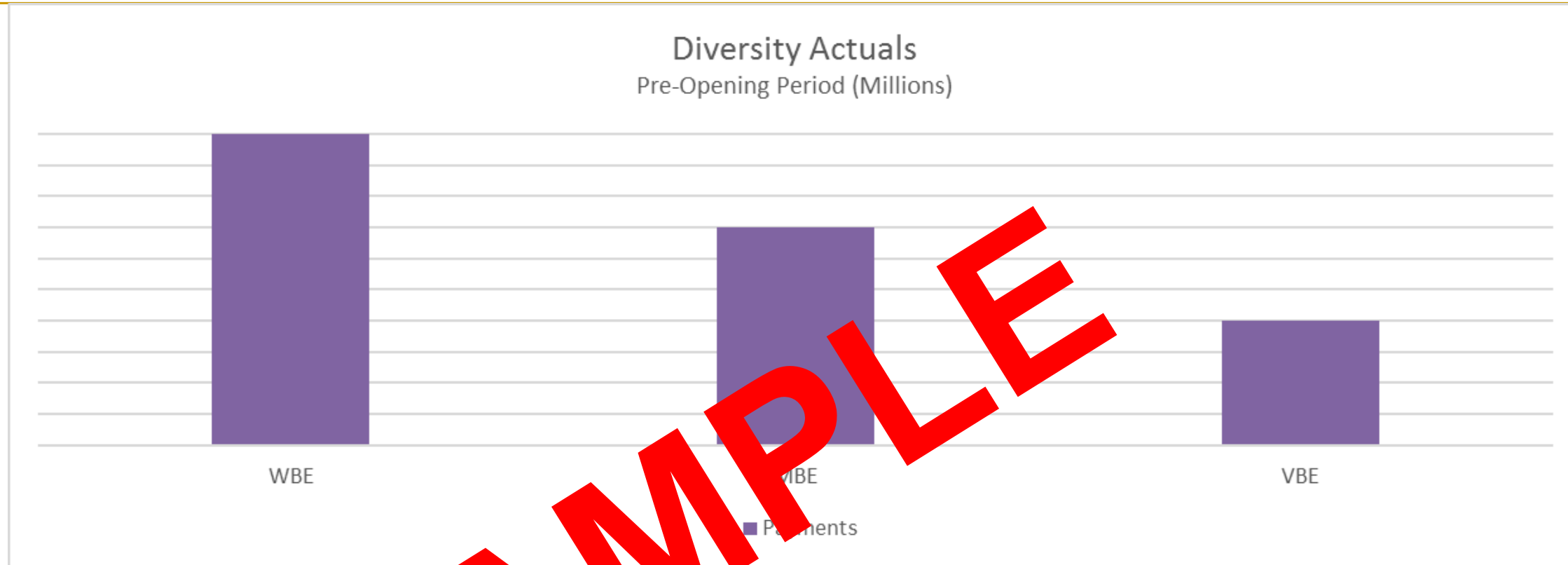
Nationwide Biddable Spend

- Color by:
 TotalBiddableS...
 Layers
- Max (\$9M)
 - Average (\$757k)
 - Min (\$265)



State	Payments
MA	17,150,877
CA	2,025,728
IL	1,998,251
CO	1,980,553
NY	768,657
MD	727,977
NJ	720,394
GA	529,227
NV	500,404
AZ	59,353
CT	56,145
VA	22,888
PA	19,868
NC	17,237
LA	16,410
TX	12,492
OH	10,724
WA	5,190
NH	3,357
MI	2,790
NE	2,216
MO	94
TN	16

Dashboard - Diversity Spend



Group	Payments	Project Goal	Actual	Variance
WBE	-	15%	-	-
MBE	-	10%	-	-
VBE	-	2%	-	-

Dashboard – Local Payments



Group	Payments
Commonwealth	-
Western MA	-
Surrounding Communities	-
Springfield	-
Total	-



TO: Chairman Crosby, Commissioners

FROM: Jill Griffin, Director of Workforce, Supplier and Diversity Development

CC: Ed Bedrosian, Executive Director; Catherine Blue, General Counsel

DATE: April 24, 2018

RE: RFP: Expanding Economic Access in the Commonwealth's New Casino Industry

RFP Overview

The Massachusetts Gaming Commission (MGC) sought proposals in March to aid in advancement of economic development within the state's emerging casino industry with a goal of maximizing equity and inclusion for licensee employees and vendors. We aim to ensure an adequate pool of available, qualified, diverse and prepared applicants for the gaming and hospitality jobs. Proposals were intended to enable access to these emerging casino careers and business opportunities. The RFP sought to inspire collaborative coalitions, partnerships, grassroots organizations and non-profits to aid in providing programs, outreach, and resources to achieve at least one of the following goals:

- 1) Promote awareness of job opportunities and assist with interview/skill preparation for potential job candidates within the Host and Surrounding Communities of one of the casino properties.
- 2) Remove road blocks for the unemployed, underemployed and/or candidates with employment challenges.
- 3) Increase net job gain via initiatives benefiting minorities, women and veterans.
- 4) Strategies for maximizing contracting opportunities for vendors/suppliers with the licensee

Grant Awardees and Descriptions

| Western, MA |

Hampden County Sheriff Department

The Sheriff's Department has been granted funding to train current custodial inmates and a recently released population for certification in the Customer Service Gold program from the American Hotel and Lodging Educational Institute. ESOL and adult education will be offered for students in the program, as well. Education will also be provided on MGM's SkillSmart software and on the available casino opportunities. All students will also receive instruction on how to seal their criminal record to increase eligibility for employment with MGM. **\$12,715.99 awarded**

Quaboag Valley Community Development Corporation (QVDC)

Through direct network outreach, advertising (such as on the Quaboag Connector vehicles) and their connections within the local community, the QVDC will promote awareness of both vendor opportunities and job openings. The grant will also support culinary ServSafe courses and Job Readiness Skills courses for under and unemployed job seekers aspiring to work with MGM Springfield. To remove road blocks for those interested in the courses and opportunities at MGM, QVDC will purchase travel vouchers for the Quaboag Connector to ensure dependable transportation. ***\$7,722 awarded***

| Eastern, MA |

Asian American Civic Association (AACA)

The AACA will offer program enhancements that increase minority access to the casino industry, working with members of the Asian American, immigrant and economically disadvantaged populations in Greater Boston to ensure awareness of job opportunities, and increased placement success. The AACA will do this through direct preparation of interested candidates via pre-screening resumes and qualifications and offering mock interviews; as well as referrals to English language courses and social service and benefits programs (such as housing assistance and child care services.) ***\$15,000 awarded***

BEST Hospitality Training (BEST)

With the grant funds provided, BEST will work to create a hospitality training pipeline focused on casino careers by meeting with industry stakeholders in the Boston area to develop a marketing strategy, informational sessions for diverse candidates looking to enter the hospitality industry, determining a qualified community organization to offer BEST's English for Hospitality curriculum and identifying a local partner to host the Wynn Model Hotel Guest Room in the Everett area for training purposes. ***\$15,000 awarded***

Chelsea Collaborative and La Comunidad

The Chelsea Collaborative and La Comunidad will collaborate to support a workforce pipeline initiative to bridge the unemployment and income gap for Chelsea and Everett-area residents. Their grant-funded work will consist of expansion of adult education (ESOL and computer proficiency courses) individualized career development case management (including industry "fit" assessment and application completion,) and creation of a data-tracking pipeline for continued follow-up with interested residents. ***\$12,260 awarded***

| Statewide |

Hispanic American Institute (HAI)

The funding provided to the HAI will support the development of local resource partners for the casinos, promotion of vendor opportunities and technical assistance for minority-owned businesses. These goals will be obtained via workshops, networking events and educational forums with Chelsea Chamber of Commerce, North Shore Latino Business Association and La Comunidad, Inc. and the ongoing Quarterly Small Business Breakfast at Wynn Boston Harbor. The grant also allows for marketing and social media promotion, as well as planning for events and expanding partnerships in Western MA. ***\$12,000 awarded***



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed amendment of **205 CMR 101.00: Adjudicatory Proceedings**; notice of which was filed with the Secretary of the Commonwealth. This regulation was developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth.

This regulation and the proposed amendments therein, govern the adjudicatory proceedings of the Commission, to include hearings before the Commission and hearing officer, orders, review process and decisions. This regulation is largely governed by G.L. c.23K, §4(28), 5, and G.L. c.30A.

205 CMR 101.00 applies to gaming and racing licensees, vendors, employees, gaming establishments, and individuals subject to placement on the Massachusetts Gaming Commission’s Excluded Persons List. Accordingly, these regulations are unlikely to have an impact on small businesses, unless a vendor to the gaming establishment elects to pursue a hearing as further described below. In accordance with G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

To the extent that vendors are small businesses, they may be impacted by these amendments. There would not be any negative impact, however, as this regulation merely sets out a process to appeal certain decisions. It is designed to ensure that any party, including a small business, is provided with a fair process prior to certain decisions being made or made final.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping or other administrative costs required for small businesses to comply with this regulation or the proposed amendments therein.

3. State the appropriateness of performance standards versus design standards:

As a general matter, a design standard is necessary as hearing procedures must be prescriptive in nature to provide uniform process to all.



Massachusetts Gaming Commission

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses. The proposed amendments to this regulation are designed to help effectuate those intentions and growth.

Massachusetts Gaming Commission

By:

Shara Bedard
Paralegal

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 101.00: M.G.L. C.23K ADJUDICATORY PROCEEDINGS

101.01: Hearings Before the Commission

101.02: ~~Orders Issued by the Bureau or the Racing Division~~ **Review of Orders or Civil Administrative Penalties/Forfeitures Issued by the Bureau, Commission Staff, or the Racing Division**

101.03: ~~Review of Orders Issued by the Bureau or the Racing Division~~ **Review by the Commission of Decisions of the Hearing Officer**

101.04: ~~Review by the Commission of Decisions of the Hearing Officer~~ **Informal Disposition of an Adjudicatory Proceeding**

101.05: ~~Review of a Commission Decision~~

101.01: Hearings Before the Commission

(1) Hearings held before the full commission pursuant to 205 CMR 101.01 shall be adjudicatory proceedings ~~conducted pursuant to 801 CMR 1.01 Formal Rules~~ **in accordance with M.G.L. c. 30A, §§ 10 and 11. All hearings shall be further held under 205 CMR 101.00, as applicable, and 801 CMR 1.02: *Informal/Fair Hearing Rules* unless the applicant/petitioner makes a written request for a hearing under 801 CMR 1.01: *Formal Rules*. In that event, the commission shall determine based on the facts and circumstances of the matter whether 801 CMR 1.01 or 1.02 will apply in order to ensure a fair outcome. Such determination shall be based on such factors as the complexity of the issues presented, whether all parties are represented by counsel, and similar considerations. Conflicts between 801 CMR 1.01 or 1.02 and 205 CMR 101.00 shall be resolved in favor of 205 CMR 101.00. If the commission grants a request for a hearing to be held pursuant to 801 CMR 1.01: *Formal Rules*, the provisions of 801 CMR 1.01 (1), (2), (3), (5), (6), (11) and (14) shall not apply.**

(2) The following types of adjudicatory hearings shall be held **directly, in the first instance**, by the commission:

(a) Suitability hearings before the commission pursuant to M.G.L. c. 23K, § 17(f), concerning any findings of fact, recommendations and/or recommended conditions by the ~~B~~**B**ureau relative to the suitability of the applicant for an initial gaming license or renewal of a gaming license, including without limitation, recommendations and recommended conditions resulting from the RFA-1 or new qualifier process pursuant to 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determinations, Standards and Procedures*.

(b) Hearings regarding the failure of a gaming licensee or qualifier to maintain adequate suitability as set forth in 205 CMR 115.01(4) and any adverse action taken against a gaming licensee or qualifier as a result of said failure.

~~(b)~~ (c) Hearings regarding the termination, revocation or suspension of a category 1 or category 2 gaming license issued by the commission pursuant to M.G.L. c. 23K, and/or the addition or modification of a condition thereto, or the termination, revocation or suspension of a license to conduct a horse racing meeting pursuant to M.G.L. c. 128A.

~~(e)~~ (d) Hearings regarding the transfer of a category 1 or category 2 gaming license or the transfer of a license to conduct a racing meeting or related to the transfer of interest in a category 1 or category 2 gaming license or gaming establishment in accordance with 205 CMR 116.08 through 116.10;

(e) Hearings regarding the assessment of a civil administrative penalty pursuant to M.G.L. c. 23K, § 36, against a category 1 or category 2 gaming licensee or a racing meeting licensee.

(f) Hearings regarding the approval or amendment of the gaming licensee's Operation Certificate as discussed in 205 CMR 151.00: *Requirements For the Operations and Conduct of Gaming at a Gaming Establishment*;

(g) For purposes of reviewing a petition to reopen a mitigation agreement in accordance with 205 CMR 127.04.

(h) Any challenge to the certification or denial of certification of an independent testing laboratory in accordance with 205 CMR 144.06.

(i) Any challenge to the certification or denial of certification as a gaming school in accordance with 205 CMR 137.01(4).

(j) Review of an application for a gaming beverage license, or request to amend, alter, or add a licensed area, pursuant to 205 CMR 136.03(4).

(3) Any request for such a hearing shall be filed with the clerk of the commission on a form provided by the clerk. Such a request shall not operate as a stay of the underlying action unless specifically allowed by the commission upon motion of the aggrieved party. A request for a stay may be allowed at the commission's discretion if one or both of the following two circumstances are demonstrated by the aggrieved party:

a.

- (1) there is a likelihood that the party seeking the stay will prevail on the merits of the case; and
- (2) there is a likelihood that the moving party will be harmed irreparably absent a stay.

b.

- (1) the consequences of the decision(s) to be made in the case are far-reaching;
 - (2) the immediate impact upon the parties in a novel and complex case is substantial;
- or

(3) a significant legal issue(s) is involved.

(4) In order to be considered by the commission, a request for a hearing must be filed no later than 30 days from the date the complained of action was taken, except in the event of civil administrative penalties. The request for review of a civil administrative penalty issued by the Bureau pursuant to M.G.L. c.23K, §36 shall be filed no later than 21 days after the date of the Bureau's notice of issuance of the civil administrative penalty and such a request must comply with the provisions of M.G.L. c. 23K, §36(e). In the case of a temporary suspension of a license by the Bureau in accordance with M.G.L. c. 23K, §35(e), a gaming licensee shall be entitled to a hearing before the Commission within 7 days after the suspension was issued.

(5) The request for a hearing shall include:

- a. the contact information of the party requesting the hearing;
- b. the contact information of counsel representing the party requesting the hearing, if any, and
- c. a brief description of the basis for the request for the hearing. In the event that a temporary suspension has been issued in accordance with M.G.L. c.23K, § 35(e), at its election the licensee may include a request that the hearing be scheduled within 7 days of the date of the issuance of the suspension. If the matter involves a civil administrative penalty, the request shall include a written statement denying the occurrence of any of the acts or omissions alleged by the Bureau in the notice, or assert that the amount of the proposed civil administrative penalty is excessive.

(6) The failure of a party to provide a specific description of the basis for the request for hearing may result in the dismissal of the request per the discretion of the commission.

~~(3) Standing: No person other than an aggrieved applicant and/or gaming licensee shall have standing to challenge Phase 1 or new qualifier findings of fact and recommendations or a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license.~~

~~(4) Only the aggrieved applicant and the gaming licensee or the horse racing meeting licensee shall have the right to participate in the hearing under 205 CMR 101.01 (2) (a), (b) or unless otherwise ordered by the commission.~~

(7) Any adjudicatory hearing conducted under 205 CMR 101.01 may be closed to the public at the request of either party, or on the commission's own initiative, in order to protect the privacy interests of either party or other individual, to protect proprietary or sensitive technical information including but not limited to software, algorithms and trade secrets, or for other good cause shown. Such a determination rests in the sole discretion of the commission.

(8) ~~(5)~~ Pursuant to M.G.L. c. 23K, § 3(h), the chair may direct that all of the commissioners participate in the hearing and decision of the matter before the commission. In the alternative,

pursuant to M.G.L. c. 23K, § 3(h), the chair with the concurrence of one other commissioner may appoint a ~~presiding officer~~ **single commissioner** to preside over the hearing. The notice scheduling the time and place for the ~~pre-hearing conference~~ shall specify whether the commission or a designated individual shall act as presiding officer in the particular case.

(9) ~~(6)~~ Burden of Proof.

(a) The applicant shall have the affirmative obligation to establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure.

(b) In the case of a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license, or a license to conduct a ~~horse~~-racing meeting, the bureau or the racing division, as appropriate, shall have the affirmative obligation to establish by substantial evidence ~~why~~ **grounds upon which** the commission should terminate, revoke or suspend the licensee's category 1 or category 2 gaming license or the licensee's license to conduct a ~~horse~~ racing meeting.

(c) In the case of an adverse action taken against a gaming licensee or qualifier for failure to maintain their suitability pursuant to 205 CMR 115.01(4) the Bureau or the racing division, as appropriate, shall have the affirmative obligation to establish by substantial evidence the lack of clear and convincing evidence that the gaming licensee or qualifier remains suitable.

(d) In the case of a transfer of interest, the gaming licensee shall have the affirmative obligation to establish by clear and convincing evidence its compliance with 205 CMR 116.09 et seq.

(e) In the case of a civil administrative penalty, the Bureau shall have the obligation to prove the occurrence of each act or omission by a preponderance of the evidence.

(10) ~~(7)~~ Decisions. Upon completion of the hearing, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the commission shall be the final decision of the commission.

(11) ~~(8) No-Appeal From Commission's Determination of Suitability.~~ Pursuant to M.G.L. c. 23K, § 17(g), the applicant and/or the gaming licensee shall not be entitled to any further review from the commission's determination of suitability. **~~(9) Decisions by the commission concerning the matters set forth in 205 CMR 101.01(2)(b) et seq. termination, revocation or suspension of a category 1 or category 2 gaming license or the termination, revocation or suspension of a license to conduct a horse racing meeting may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A.~~**

101.02: Orders Issued by the Bureau or the Racing Division

(1) Pursuant to M.G.L. c. 23K the bureau may issue orders or fines, or may revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 23K except for category 1 or category 2 gaming. Such orders or fines are subject to commission review pursuant to 205 CMR 101.03 and 101.04 and include, but are not limited to:

- (a) an order to cease any activity which violates the provisions of M.G.L. c. 23K, 205 CMR 101.00 or any other law related to gaming;
- (b) an order for the imposition of civil administrative penalties in support of an order to cease and desist, or as part of an order to deny, revoke, suspend or terminate a license or as a penalty for failure to comply with any provision of M.G.L. c. 23K, 205 CMR 101.00 or any law related to gaming;
- (c) an order requiring the placement of a person on the exclusion list;
- (d) an order denying, revoking, suspending or conditioning a key gaming employee license; a gaming employee standard license; a gaming employee license; a gaming service employee license; gaming employee registration; a gaming vendor license; or a gaming vendor qualifier or other similar license issued under 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*;
- (e) an order denying, revoking, suspending or conditioning a gaming beverage license or an order denying the transfer of a gaming beverage license.
- (f) any other order or fine as may be issued pursuant to M.G.L. c. 23K or 205 CMR 101.00.

(2) Pursuant to M.G.L. c. 128A and 128C judges or stewards may issue orders or fines, or may deny, revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 128A or 128C except for a license to conduct a horse racing meeting. Such orders or fines include, but are not limited to:

- (a) an order or fine issued for violation of the rules and regulations of racing as provided in 205 CMR 3.00 through 14.00;
- (b) an order denying, revoking, suspending, terminating or conditioning an occupational license.
- (c) an order ejecting an individual from the grounds of the race meeting.
- (d) any other order or fine as may be provided pursuant to M.G.L. c. 128A, c. 128C or 205 CMR 3.00 through 14.00.

(3) Each order or fine issued by the bureau or by the judges or stewards of the racing division shall be in writing and shall include a description of the basis for the order or fine, including the time, date and place of the activity which constitutes the basis for the order or fine, the statutory basis for the issuance of the order or fine, the amount of the fine or penalty assessed and any other the remedial action required. Each order shall further state in clear and concise language that the party subject to the order or the fine may request review of the order or fine and the

process for requesting such review. The order shall also state that the review of the order shall be held pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and 205 CMR 101.03 and 101.04.

101.023: Review of Orders Issued by the Bureau or the Racing Division Review of Orders or Civil Administrative Penalties/Forfeitures Issued by the Bureau, Commission Staff, or the Racing Division

(1) An aggrieved party may file a request for review of an order, decision, or fine civil administrative penalty issued by the Bureau, where applicable, relative to the interpretation or application of a statute, regulation, or other applicable authority, or order, decision, or forfeiture issued by the racing judges or stewards, other than those enumerated in 205 CMR 101.01(2), shall be filed with the clerk of the commission on a form provided by the clerk. A request for review shall not operate as a stay of the order, decision, or fine civil administrative penalty/forfeiture issued by the bureau or the judges or stewards, unless the request for review includes a request for a stay and such stay is granted by the hearing officer unless specifically allowed by the hearing officer upon motion of the aggrieved party. A request for a stay may be allowed at the hearing officer's discretion if one or both of the following two circumstances are present:

- a.
 - (1) there is a likelihood that the party seeking the stay will prevail on the merits of the case; and
 - (2) there is a likelihood that the moving party will be harmed irreparably absent a stay.
- b.
 - (1) the consequences of the decision(s) to be made in the case are far-reaching;
 - (2) the immediate impact upon the parties in a novel and complex case is substantial;
 - or
 - (3) a significant legal issue(s) is involved.

(2) The request for review of a civil administrative penalty issued by the bureau pursuant to M.G.L. c.23K §36 shall be filed not later than 21 days after the date of the bureau's notice of issuance of the civil administrative penalty. All other requests for review, aside from those for civil administrative penalties, must be filed not later than 30 days from the date of the order or decision or fine issued by the bureau or the judges or stewards. Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the hearing officer for review.

The request for review of a civil administrative penalty issued by the Bureau pursuant to M.G.L. c.23K §36 shall be filed not later than within 21 days after the date of the Bureau's notice of issuance of the civil administrative penalty and such a request must comply with the provisions of M.G.L. c. 23K, §36(e).

In the case of the temporary suspension of a license by the Bureau in accordance with M.G.L. c. 23K, §35(e), a licensee shall be entitled to a hearing before a hearing officer within 7 days after the suspension was issued.

(3) The request for review shall include:

- (a) ~~the name, address and contact information, including telephone number and email, if any,~~ of the party requesting review;
- (b) **contact information** of counsel representing the party requesting review, if any, ~~and~~
- (c) **a brief specific** description of the basis for the request for review. **In the event that a temporary suspension has been issued in accordance with M.G.L. c.23K, §35(e), at its election the licensee may include a request that the hearing be scheduled within 7 days of the date of the issuance of the suspension. If the matter involves a civil administrative penalty, the request shall include a written statement denying the occurrence of any of the acts or omissions alleged by the Bureau in the notice, or assert that the amount of the proposed civil administrative penalty is excessive; and**
- (d) a copy of the order or fine that is the subject of the request for review.

(4) **The failure of a party to provide a specific description of the basis for the request for review in accordance with 205 CMR 101.03(3)(c) shall be grounds for dismissal of the request per the discretion of the hearing officer.**

(5) ~~When the request for review is received by the clerk, the clerk will docket the request for review. Upon receipt, the clerk shall assign the request for review to a hearing officer and schedule the hearing on the request for review. Such hearing shall not occur sooner than 30 days after the request for review is filed with the clerk, unless upon the request of a party and for good cause shown the hearing officer orders an accelerated hearing. Mailing of notice to the address on record with the commission, or emailing the notice to the email address provided by the licensee or registrant on their application for licensure or registration shall be deemed satisfactory notice. The notice of hearing shall contain:~~

- a. The name of the petitioner; and
- b. The date, time and place of the hearing

(6) ~~The clerk shall request each party to file a brief stating why the order or fine should or should not be upheld and the relief requested. Such brief shall be no longer than 10 pages and shall be due no later than 10 days prior to the date of the hearing.~~

Any adjudicatory hearing conducted under 205 CMR 101.02 may be closed to the public at the request of either party in order to protect the privacy interests of either party or other individual, to protect proprietary technical information including but not limited to software, algorithms and

trade secrets, or for other good cause shown. Any such request may be opposed by the other party. The final determination rests in the sole discretion of the hearing officer.

(7) (a) Upon receipt of the appeal, the hearing officer shall, within ten (10) days, schedule a telephone status conference with all parties. During the status conference the hearing officer shall:

(1) Address any argument that the proceeding should proceed under the Formal Rules, 801 CMR 1.01 et seq.;

(2) Establish a briefing schedule including deadlines for the filing of the petitioner's brief and providing for a reasonable amount of time for the respondent to file a reply brief;

(3) Establish deadlines for the filing of a witness list and exhibit list a reasonable amount of time before the hearing date;

(4) Establish a briefing schedule with respect to any anticipated motions including deadlines for the filing of the movant's brief and providing for a reasonable amount of time for the respondent to file a reply brief;

(5) After completion of the status conference the hearing officer shall issue a written order memorializing all deadlines and provide it to all parties.

(b) After the initial status conference, either party may file a brief explaining how they believe the matter should be decided including the specific relief requested. No late briefs shall be accepted without express permission of the hearing officer. No sur-reply briefs shall be accepted without express permission of the hearing officer. No brief shall be longer than 15 double-spaced pages without express permission of the hearing officer.

A party may request permission to file a brief longer than ~~10~~ 15 pages. Such request shall be filed with the clerk who will forward it to the hearing officer for review. The request must be in writing and state the number of additional pages requested. It shall be up to the discretion of the hearing officer as to whether to grant such request. If the hearing officer grants a request for additional pages, the clerk shall forward the order of the hearing officer to all parties and all parties shall **have** the right to file such additional number of pages. ~~Along with the submission of the brief, each party shall submit a copy of all written evidence to be considered by the hearing officer as well as a list of witnesses that the party wishes to present at the hearing.~~

(8) With or without the submission of a brief, each party shall submit a copy of all written documentary evidence they intend to offer for consideration by the hearing officer as well as a list of all witnesses that the party intends to present at the hearing. The documentary evidence and witness lists shall be provided on or before the date determined by the Hearing Officer during the initial status conference. Failure to submit a brief shall not preclude a party from submitting written evidence or calling witnesses to be considered by the hearing officer. Upon

request, the petitioner shall be provided an opportunity in advance of the hearing to examine and copy the entire content of their case file and all other documents to be used by the commission, bureau, or racing division. All materials submitted to the clerk/hearing officer, including, but not limited to, briefs, evidence and witnesses lists, shall be contemporaneously provided to the all other parties and their counsel via first-class mail or email. Evidence or witnesses that are filed without providing reasonable notice to the opposing party may be precluded at the hearing officer's discretion.

~~(9)(8)~~ All requests for extensions of time to file a brief or to reschedule a hearing date shall be made in writing and filed with the clerk. ~~No request for extension of time to file a brief or to reschedule a hearing shall be considered unless it is made at least seven (7) days prior to the hearing date or briefing deadline. The clerk of the commission may issue orders on procedural and scheduling matters consistent with G.L. c. 23K and 205 CMR in order to further the efficient administration of the commission's hearings process. The clerk shall forward the request for extension of time or to reschedule the hearing date to the hearing officer and the hearing officer may provide an extension of time to file a brief or reschedule a hearing date in the hearing officer's clerk's discretion and for good cause shown. The clerk shall send the hearing officer's order granting an extension of time to file a brief or the rescheduling of a hearing date to all the parties. Any order shall include the number amount of days granted for the extension of time or the new date for the rescheduled hearing. Absent extenuating circumstances no hearing shall be rescheduled more than once.~~

In the event of the appeal of a decision by the Racing judges or stewards, if the petitioner fails to appear at the hearing, the Hearing Officer, after determining that the petitioner received proper notice of the hearing shall dismiss the matter. In the event of a matter before the hearing officer concerning an action taken by the bureau, the bureau may proceed with a hearing before the Hearing Officer even in the absence of the petitioner after determining that the petitioner received proper notice of the hearing.

~~(10)(9)~~ All hearings shall be heard by a hearing officer appointed by the commission. All hearings under 205 CMR 101.03 and 101.04 shall be adjudicatory proceedings held pursuant to 801 CMR 1.02: Informal/Fair Hearing Rules and 205 CMR 101.03 through 101.05 unless a party to the hearing requests that the hearing be held pursuant to 801 CMR 1.01 Formal Rules and the hearing officer, after review of the request, grants the request to hold the hearing pursuant to 801 CMR 1.01. Hearings held before the hearing officer pursuant to 205 CMR 101.02 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 10 and 11. All hearings shall be further held under 205 CMR 101.00, as applicable, and 801 CMR 1.02: *Informal/Fair Hearing Rules* unless the applicant/petitioner makes a written request for a hearing under 801 CMR 1.01: *Formal Rules*. In that event, the hearing officer shall determine based on the facts and circumstances of the matter whether 801 CMR 1.01 or 1.02 will apply in order to ensure a fair outcome. Such determination shall be based on such factors as the complexity of the issues presented, whether all parties are represented by counsel, and similar considerations.

Conflicts between 801 CMR 1.01 or 1.02 and 205 CMR 101.00 shall be resolved in favor of 205 CMR 101.00. If the hearing officer grants a request that a hearing be held pursuant to 801 CMR 1.01 Formal Rules, the provisions of 801 CMR 1.01 (1), (2), (3), (5), (6), ~~(7), (8)~~, (11) and (14) shall not apply and the provisions of 205 CMR 101.03 through 101.05 shall govern.

~~(11)(10)~~ There shall be no motions or **formal** discovery allowed in hearings under this 205 CMR 101.03 and 101.04 unless upon the request of a party and for good cause shown, the hearing officer ~~orders~~ **allows** such motions or **formal** discovery **request to be served**. **In the event that motions or formal discovery are allowed by the hearing officer, the hearing officer shall also set forth a reasonable schedule for responding to such motions or discovery requests.**

~~(12)(11)~~ A written transcript or **electronic record** of each hearing shall be created and all witnesses presenting testimony shall be sworn to testify under oath.

~~(13)(12)~~ In addition to the duties and powers of the hearing officer under 801 CMR 1.02 (10)(f), the hearing officer shall **make all factual and legal findings necessary to reach a decision, including evaluating the credibility of all witnesses and evidence presented.** ~~determine if the party requesting review has standing to request review.~~ The hearing officer may ask questions of a party or a witness at the hearing. ~~The hearing officer shall determine the credibility of all witnesses providing testimony at the hearing.~~ The hearing officer can request additional information from any party and may recess or continue the hearing to a later date. **Any party to such a hearing shall be entitled to issue subpoenas as approved by the hearing officer in compliance with 205 CMR 101.02(11) and in accordance with M.G.L. c. 30A, § 12(3).** The hearing officer may request a post-hearing brief from the parties and shall determine the page limit for such brief and the time by which it must be submitted. **The parties may request leave of the hearing officer to submit a post-hearing brief as long as such a request is made within (ten) 10 days of the hearing.**

~~(14)(13)~~ The standard of review of an order or fine issued by the bureau or the racing division shall be the substantial evidence standard unless a different standard is required by c. 23K or c. 128A or c.128C. **The hearing officer shall conduct a review of the matter, making findings of fact and conclusions of law to render a decision. The hearing officer shall affirm the order issued by the bureau or the racing division if there is substantial evidence to support it.** ~~The hearing officer shall determine whether the order or fine issued by the bureau or the racing division is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.~~

~~(15)(14)~~ The hearing officer shall issue a written decision as soon as administratively feasible after the close of the hearing. The written decision shall include findings of fact and conclusions of law and shall clearly state the basis for the hearing officer's decision. The hearing officer shall file its decision with the clerk. The decision of the hearing officer shall be the final decision of the commission unless a request for **appeal** ~~review by~~ **to** the commission is filed by a

party to the proceeding within 30 days of the date of the hearing officer's decision. **In the event of a timely filed appeal of a civil administrative penalty to the commission, payment of any such penalty shall be stayed through the final decision by the commission.**

~~(15)~~ (16) The clerk shall send a copy of the decision to all parties and shall include with the decision a letter stating that a party may request **appeal review** of the hearing officer's decision ~~to~~ **by** the commission and describing the process for requesting an **appeal review** by the commission.

(17) The hearing officer is authorized to certify any matter directly to the commission. The exercise of such authority will generally be reserved for matters of first impression or those which present extraordinary or unique circumstances. Either party may also request that the hearing officer certify such a matter for commission review. The commission may accept and review the matter or may remand the matter to the hearing officer. In the event that the commission accepts the matter such hearings will be conducted in accordance with 205 CMR 101.02 in which the commission will perform the hearing officer's functions. Appeals of such decisions may be taken in accordance with M.G.L. c.30A in lieu of 205 CMR 101.03.

101.043: Review by the Commission of Decisions of the Hearing Officer

(1) **Any decision issued by a hearing officer in accordance with 205 CMR 101.02 may be appealed to the commission for review. An appeal request for review of the decision issued by a hearing officer shall be filed with the clerk of the commission on a form provided by the clerk. An appeal request for review shall not operate as a stay of the decision of the hearing officer; unless, along with the filing of a request for review, the party requesting review includes a request for a stay of the decision and such stay is granted by the commission unless specifically allowed by the commission upon motion of the appellant. A request for a stay may be allowed at the commission's discretion if one or both of the following two circumstances are present:**

- (a)
 - (1) there is a likelihood that the party seeking the stay will prevail on the merits of the case; and
 - (2) there is a likelihood that the moving party will be harmed irreparably absent a stay.
- (b)
 - (1) the consequences of the decision(s) to be made in the case are far-reaching;
 - (2) the immediate impact upon the parties in a novel and complex case is substantial;
 - or
 - (3) a significant legal issue(s) is involved.

(2) **In order to be considered by the commission, the appeal request for review must be filed not later than 30 days from the date of the decision issued by the hearing officer was served by the**

clerk in accordance with 205 CMR 101.02(16). Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the commission for review. Orders regarding requests for review filed later than 30 days from the date of the order or fine issued by the judges may be issued by a single commissioner appointed by the chairman to issue such orders.

(3) The appeal request for review shall include:

- a. ~~the name, address and contact information, including telephone number and email, if any, of the party requesting~~ the appeal review;
- b. ~~the name and address of counsel representing the party requesting~~ the appeal review, if any, and
- c. a brief description of the basis for the appeal request for review.; and
- d. ~~(4)~~ a copy of the decision of the hearing officer that is the basis for the appeal.

~~(4)~~ Each request for review shall include a copy of the order or fine that is the subject of the request for review.

~~(4)~~~~(5)~~ Upon receipt of the appeal request for review by the commission, the clerk shall docket the request and request a copy of the written record of the hearing from the hearing officer. The hearing officer shall provide a copy of the written record to the clerk no later than 10 days after the clerk's request. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The clerk shall provide a copy of the written administrative record to all parties involved in the matter to be reviewed by the commission. The record may be provided electronically or via other similar means. The record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript or audio recording of the adjudicatory hearing before the hearing officer. The record may only be expanded by the commission upon petition by a party and a showing of good cause as to why the evidence was not included as part of the hearing record below.

~~(5)~~~~(6)~~ The clerk shall schedule a date for review by the commission. The clerk shall request that each party file a brief stating why the decision of the hearing officer should be affirmed, vacated or modified and the relief requested. Issues not raised before the hearing officer shall not be raised in a brief to the commission. The briefing schedule shall be set by the commission and shall be staggered to provide the appellee adequate time to address the matters raised in the appellant's brief prior to the scheduled hearing before the commission. No brief shall be no longer than 10 15 pages and shall be due no later than 15 days prior to the date of review by the

~~commission.~~ The briefs shall be filed with the clerk. Each party shall serve a copy of its brief on the other party (ies) to the hearing.

~~(6)(7)~~ The clerk shall provide copies of the briefs and a copy of the written record to the commission.

~~(7)(8)~~ A party may request permission to file a brief longer than ~~10~~ 15 pages. Such request must be in writing. The clerk shall forward the request to the commission. It shall be up to the discretion of the commission as to whether to grant such a request. If the commission grants a request for additional pages, the clerk shall forward a copy of the commission's order to all parties to the hearing and all parties shall have the right to file such additional number of pages. Requests to file a brief longer than ~~10~~ 15 pages may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

~~(8)(9)~~ All requests for extensions of time to file a brief shall be made in writing to the clerk. The clerk shall forward the request for an extension of time to file a brief to the commission. It shall be up to the discretion of the commission as to whether to grant the request for an extension of time to file a brief. If the commission grants the request for an extension of time to file a brief, the clerk shall forward a copy of the commission's order to the parties and all parties shall have the extension of time to file a brief. Requests for an extension of time to file a brief may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

~~(9)(10)~~ The commission's review of the decision of the hearing officer shall be on the ~~written~~ administrative record submitted by the parties of the hearing conducted by the hearing officer. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The commission, in its sole discretion and upon its own motion, may request oral argument on the request to review the decision of the hearing officer.

~~(10)(11)~~ Issues not raised before the hearing officer shall not be raised in the briefs to the commission or otherwise considered by the commission. The commission shall not accept as part of the request for review additional or new evidence not submitted to the hearing officer and not already included in the written record.

~~(11)(12)~~ The standard of review of a decision by the hearing officer shall be a substantial evidence standard. When reviewing a decision from the hearing officer, the commission's determination shall be supported by substantial evidence unless a different standard is required by M.G.L. c. 23K or c. 128A or c.128C. The commission shall determine whether the decision of the hearing officer is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.

(12)(13) The commission shall conduct a **de novo** review of the decision of the hearing officer based upon the **entire administrative** record submitted to the hearing officer, provided however, that findings made by the hearing officer regarding credibility of witnesses shall **be entitled to substantial deference** ~~not be reviewed~~ by the commission. **As provided by M.G.L. c.30A, § 10, such appeal shall comply with M.G.L. c. 30A, § 11(8). The procedures described in M.G.L. c. 30A, § 11(7) shall only apply if, where applicable, a party makes written request to the commission in advance for a tentative or proposed decision.**

(13)(14) The commission may, **in whole or part**, affirm the decision of the hearing officer, **reverse** ~~vacate~~ the decision of the hearing officer, modify the decision of the hearing officer or remand the matter ~~back~~ to the hearing officer for further action in accordance with the commission's decision. ~~The commission may affirm, vacate or modify the decision of the hearing officer in whole or in part.~~ **Further, the commission may add any condition reasonably calculated to ensure a person's compliance or faithful performance, to penalize for the violations, and/or to deter future violation, including but not limited to fines.** In making its decision, the commission may rely on any evidence contained in the **administrative** record and is not limited to the evidence cited by the hearing officer in support of hearing officer's decision.

(14)(15) The Commission shall issue a written decision as soon as administratively feasible and file it with the clerk. **The decision shall advise the parties of their rights to review in accordance with M.G.L c.23K and 30A, as applicable.** The clerk will provide a copy of the commission's decision to all parties.

101.054: Review of a Commission Decision

Decisions by the commission pursuant to 205 CMR 101 may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A and M.G.L. c.23K;

Informal Disposition of an Adjudicatory Proceeding

At any time during an adjudicatory proceeding before a hearing officer or the Commission, the parties may make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement or consent order. Upon such a disposition, the parties are obligated to notify the hearing officer or commission through a joint filing indicating that the matter has been resolved and that is signed by all parties and/or their representatives.



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed regulations and amendments for **205 CMR 115.00: Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures; 205 CMR 132.01: Discipline of a Gaming License; 205 CMR 133.00: Voluntary Self-Exclusion; 205 CMR 134.00: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations; 205 CMR 136.00 Sale and Distribution of Alcoholic Beverages at Gaming Establishments; 205 CMR 138.07: Internal Controls A: (Reserved); 205 CMR 152.00: Individuals Excluded From a Gaming Establishment**; notice of which was filed with the Secretary of the Commonwealth. These proposed regulations and amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth.

The proposed regulations and amendments clarify authority and ensure that all decisions in adjudicatory proceedings made by the Commission, hearing officer, and internal divisions have clear processes. These regulations are largely governed by G.L. c.23K, §4(28), 5, and G.L. c.30A.

These regulations and amendments generally apply to the gaming/racing licensees, employees, vendors, related parties, and gaming establishments. Accordingly, these regulations and amendments are unlikely to have an impact on small businesses, unless a vendor to the gaming establishment elects to pursue a hearing as further described below. In accordance with G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

As a general matter, no small businesses will be impacted by these regulations or amendments unless they elect to pursue a hearing. These regulations and amendments are designed to ensure that any party, including a small business, is provided with a fair process prior to certain decisions being made or made final.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping or other administrative costs required for small businesses to comply with these regulations or the amendments therein.

3. State the appropriateness of performance standards versus design standards:



Massachusetts Gaming Commission

As a general matter, a design standard is necessary as hearing procedures must be prescriptive in nature to provide uniform process to all.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses. The proposed amendments to this regulation are designed to help effectuate those intentions and growth.

Massachusetts Gaming Commission
By:

Shara Bedard
Paralegal

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 115.00: PHASE 1 AND NEW QUALIFIER SUITABILITY DETERMINATION,
STANDARDS, AND PROCEDURES

115.03: Phase 1 and New Qualifier Investigation and Recommendations by the Bureau

(1) The bureau shall conduct an investigation into the qualifications and suitability of all applicants and qualifiers, as provided for in M.G.L. c. 23K, §§ 12 and 16. The bureau may conduct the investigation, in whole or in part, with the assistance of one or more contractor investigators pursuant to 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*. **Additionally, such an investigation may be conducted at any time after a qualifier is granted a positive determination of suitability to ensure that they continue to meet the suitability standards.**

(2) At the completion of the bureau's investigation, it shall submit a written report to the commission. At a minimum, this report will include: recommendations pursuant to M.G.L. c. 23K, §§ 12, 14(i) and 16 and findings of fact pursuant to M.G.L. c. 23K, § 17(f), as required, relative to the suitability of the applicant for a gaming license and/or of any new qualifiers **or existing qualifiers.**

115.04: Phase 1 and New Qualifier Proceedings by the Commission

(1) After the commission has received the bureau's report under 205 CMR 115.03(2) it shall provide a copy to the applicant or ~~new~~ qualifier and the commission shall determine whether it shall initiate a process for a public hearing or adjudicatory proceeding. However, the commission may only utilize the public hearing process with the qualifier's consent.

(2) Adjudicatory Proceeding. If the commission determines that an adjudicatory proceeding shall be held, the commission shall conduct an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* on the report by the bureau concerning the applicant **or qualifier** pursuant to 205 CMR 115.03(2). ~~The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing.~~

(3) Public Hearing. If the commission determines that a public hearing should be held, the commission shall review the bureau's suitability report in a public hearing, subject to redaction of confidential and exempt information described in 205 CMR 103.02(1) through (5). The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the commission will receive public comments.

115.05: Phase 1 and New Qualifier Determination by the Commission

(1) After the proceedings under 205 CMR 115.04, the commission shall issue a written determination of suitability pursuant to M.G.L. c. 23K, §§ 4(15), 12 and 17.

(2) Negative Determination. If the commission finds that an applicant or new qualifier **or existing qualifier** failed to meet its burden of demonstrating compliance with the suitability standards in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a negative determination of suitability.

(3) Positive Determination. If the commission finds that an applicant or new qualifier **or existing qualifier** has met its burden of demonstrating compliance with the suitability in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a positive determination of suitability which may include conditions and restrictions.

...

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 132.00: DISCIPLINE OF A GAMING LICENSEE

132.01: Discipline of a Gaming License

- (1) Grounds for Action. In addition to the reasons specifically provided for throughout 205 CMR, a gaming license or racing meeting license may be conditioned, suspended, or revoked, and/or the licensee assessed a civil administrative penalty if it is determined that:
- (a) A licensee engaged in an act or practice that caused irreparable harm to the security and integrity of the gaming establishment or the interests of the Commonwealth in ensuring the security and integrity of gaming;
 - (b) Circumstances have arisen that render the licensee unsuitable under M.G.L. c.23K, §§12 and 16;
 - (c) A licensee failed to comply with its approved system of internal controls in accordance with 205 CMR 138.02;
 - (d) A licensee refused or was unable to separate itself from an unsuitable qualifier;
 - (e) As provided in M.G.L. c.23K, §23(b): a licensee: (i) has committed a criminal or civil offense under M.G.L. c.23K or under any other laws of the commonwealth; (ii) is not in compliance with 205 CMR or is under criminal investigation in another jurisdiction; (iii) has breached a condition of licensure; (iv) has affiliates, close associates or employees that are not qualified or licensed under M.G.L. c.23K and 205 CMR with whom the gaming licensee continues to conduct business or employ; (v) is no longer capable of maintaining operations at a gaming establishment; or (vi) whose business practice, upon a determination by the commission, is injurious to the policy objectives of M.G.L. c.23K; or
 - (f) A licensee failed to abide by any provision of M.G.L. c.23K, 205 CMR, condition of gaming license, or order of the commission.
- (2) Finding and Decision. If the bureau finds that a gaming licensee has violated a provision of 205 CMR 132.01(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said licensee. Either in conjunction with or in lieu of such a recommendation, the bureau may assess a civil administrative penalty upon said licensee in accordance with M.G.L. c.23K, §36. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision. The bureau may alternatively issue an order temporarily suspending the license in accordance with M.G.L. c.23K, §35(e).

- (3) Civil administrative penalties. The bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 133.07(1).
- (4) Review of Decision. A recommendation made by the bureau to the commission that a gaming license be suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01. If the gaming licensee is aggrieved by a decision made by the bureau to assess a civil administrative penalty in accordance with 205 CMR 133.07(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings.*

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 133.00: VOLUNTARY SELF-EXCLUSION

133.06: Responsibilities of the Gaming Licensees

A gaming licensee shall have the following responsibilities relative to the administration of the voluntary self-exclusion list:

(7) (a) A gaming licensee shall not pay any winnings derived from gaming to an individual who is prohibited from gaming in a gaming establishment by virtue of having placed their name on the voluntary self-exclusion list in accordance with 205 CMR 133.00. Winnings derived from gaming shall include, but not be limited to, such things as proceeds derived from play on a slot machine/electronic gaming device and a wager, or series of wagers, placed at a table game. Where reasonably possible, the gaming licensee shall confiscate from the individual in a lawful manner, or shall notify a commission agent who shall confiscate, or shall refuse to pay any such winnings derived from gaming or any money or thing of value that the individual has converted or attempted to convert into a wagering instrument whether actually wagered or not. A wagering instrument shall include, but not be limited to, chips, tokens, prizes, non-complimentary pay vouchers, electronic credits on a slot machine/electronic gaming device, and vouchers representing electronic credits/TITO slips. The monetary value of the confiscated winnings and/or wagering instrument shall be paid to the commission for deposit into the Gaming Revenue Fund within 45 days.

(b) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. A hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings* to determine whether the subject funds were properly forfeited in accordance with 205 CMR 133.06.(7)(a);

133.07: Sanctions Against a Gaming Licensee

~~The commission may revoke, limit, condition, suspend or fine a gaming licensee in accordance with 205 CMR if the establishment knowingly or recklessly fails to exclude or eject from its premises any individual placed on the list of self-excluded persons. It shall not be deemed a knowing or reckless failure if an individual on the voluntary self-exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment. Further, a gaming licensee shall be deemed to have marketed to an individual on the self-~~

~~exclusion list only if marketing materials are sent directly to an address, email address, telephone number, or other contact identified by the individual on their application.~~

- (1) Grounds for Action. A gaming license may be conditioned, suspended, or revoked, and/or the gaming licensee assessed a civil administrative penalty if it is determined that a gaming licensee has:
 - a) knowingly or recklessly failed to exclude or eject from its premises any individual placed on the list of self-excluded persons. Provided, it shall not be deemed a knowing or reckless failure if an individual on the voluntary self-exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment; or
 - b) failed to abide by any provision of 205 CMR 133.00: *Voluntary Self-Exclusion*, M.G.L. c.23K, §45, the gaming licensee's approved written policy for compliance with the voluntary self-exclusion program pursuant to 205 CMR 133.06(9), or any law related to the voluntary self-exclusion of patrons in a gaming establishment. Provided, a gaming licensee shall be deemed to have marketed to an individual on the self-exclusion list only if marketing materials are sent directly to an address, email address, telephone number, or other contact identified by the individual on their application.
- (2) Finding and Decision. If the bureau finds that a gaming licensee has violated a provision of 205 CMR 133.07(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in lieu of such a recommendation, the bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision.
- (3) Civil administrative penalties. The bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 133.07(1).
- (4) Review of Decision. A recommendation made by the bureau to the commission that a gaming license be suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01. If the gaming licensee is aggrieved by a decision made by the bureau to assess a civil administrative penalty in accordance with 205 CMR 133.07(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings*.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 134.00: LICENSING AND REGISTRATION OF EMPLOYEES, VENDORS,
JUNKET ENTERPRISES AND REPRESENTATIVES, AND LABOR ORGANIZATIONS

134.04: Vendors

(1) Gaming Vendors.

(a) Gaming Vendors- Primary. A person who conducts business with a gaming applicant or gaming licensee on a regular or continuing basis for provision of goods or services which directly relates to gaming, as defined by M.G.L. c. 23K, § 2, including, but not limited to a person who does any of the following, shall be designated as a gaming vendor-primary:

1. Manufactures, sells, leases, supplies, or distributes devices, machines, equipment (except gaming table layouts), accessories, or items that meet at least one of the following conditions:
 - a) are designed for use in a gaming area as defined by M.G.L. c. 23K, § 2;
 - b) are designed for use in a simulcast wagering area;
 - c) are used in connection with a game in the gaming area;
 - d) have the capacity to affect the calculation, storage, collection, electronic security, or control of the gaming revenues from a gaming establishment.
2. provides maintenance services or repairs gaming or simulcast wagering equipment, including slot machines;
3. acts as a junket enterprise; or
4. provides items or services that the ~~Commission~~ **bureau** has determined are used in or are incidental to gaming or to an activity of a gaming facility.

Exception. Any person, by submission of a written petition, may request a determination from the ~~commission~~ **bureau** that ~~the person providing goods or services deemed by the Bureau to~~ **despite** meeting a description contained in 205 CMR 134.04(1)(a) **they** need not be licensed as a Gaming Vendor-primary on the grounds that they are not providing services on a regular or continuing basis or that they do not directly relate to gaming.

(8) Review of Decision. Any person aggrieved by a decision made by the bureau in accordance with 205 CMR 134.04 may request review of said decision in accordance with 205 CMR 101.00: M.G.L. c.23K Adjudicatory Proceedings.

134.09; Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors

(1) Upon receipt of an application for a key gaming employee license in accordance with 205 CMR 134.01, a gaming employee license in accordance with 205 CMR 134.02, a gaming service employee registration in accordance with 205 CMR 134.03, a gaming vendor license in accordance with 205 CMR 134.04(1), a non-gaming vendor registration in accordance with 205 CMR 134.04(4), a gaming vendor qualifier license in accordance with 205 CMR 134.04(4), or a Labor Organization in accordance with 205 CMR 134.05 the Division of Licensing shall conduct a review of each application for administrative completeness and then forward the application to the Bureau which shall conduct an investigation of the applicant. In the event an application is deemed incomplete, the Division of Licensing may either request supplemental information from the applicant or forward the application to the commission with a recommendation that it be denied. For individuals, the investigation shall include obtaining and reviewing criminal offender record information from the Department of Criminal Justice Information Services (DCJIS) and exchanging fingerprint data and criminal history with the Massachusetts Department of State Police and the United States Federal Bureau of Investigation. The investigation shall be conducted for purposes of determining whether the applicant is suitable to be issued a license or registration in accordance with 205 CMR 134.10 and 134.11.

In determining the weight to be afforded any information bearing on suitability in accordance with 205 CMR 134.10 and 134.11, the Division of Licensing, Bureau, or commission, as applicable, shall consider: the relevance of the information to employment in a gaming establishment or doing business with a gaming establishment in general, whether there is a pattern evident in the information, and whether the applicant is likely to be involved in gaming related activity. Further, the information will be considered in the light most favorable to the applicant unless the information cannot be so viewed pursuant to M.G.L. c. 23K or the information obtained does not otherwise support such view. For purposes of 205 CMR 134.00 and M.G.L. c. 23K, § 16 an adjudication of delinquency shall not be considered a conviction. Such a finding may, however, be considered for purposes of determining the suitability of an applicant. Records of criminal appearances, criminal dispositions, and/or any information concerning acts of delinquency that have been sealed shall not be considered for purposes of making a suitability determination in accordance with 205 CMR 134.00 and M.G.L. c. 23K.

- a) Keys Gaming Employee- Executive, Key Gaming Employee- Standard, and Gaming Employees. Upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) the Bureau shall either approve or deny the application for a key gaming employee- executive license, key gaming employee-standard license or a gaming employee license pursuant to 205 CMR 134.10. If the application for a Key Gaming Employee-standard license or Gaming Employee license is approved, the Bureau shall forward a written approval to the Division of Licensing which shall issue a license to the applicant on behalf of the Commission. If the Bureau approves the application for a Key

Gaming Employee-executive, the decision shall be forwarded to the Commission as a recommendation along with the application materials for review and issuance of the license. If the application is denied, the Bureau shall forward the recommendation for denial and reasons therefor to the Division of Licensing which shall issue a written decision to the applicant explaining the reasons for the denial. The decision shall include an advisory to the applicant that they may appeal the decision ~~to the Bureau~~ in accordance with 205 CMR ~~134.09(2)~~ **101.00: M.G.L. c.23K *Adjudatory Proceedings***. If the denial is based upon information contained in the individual's criminal record the decision shall also include an advisory that the individual will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.

- b) Gaming Service Employees. The Division of Licensing shall issue a gaming service employee registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1). In the event that the Bureau determines upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) that the applicant should be disqualified from holding a registration or is otherwise unsuitable in accordance with 205 CMR 134.11, it shall forward the results of the investigation to the Division of Licensing which shall issue a written notice to the registrant revoking the registration. The notice shall include an advisory to the applicant that they shall immediately cease employment at the gaming establishment and may request an appeal hearing ~~before the Bureau~~ in accordance with ~~134.09(2)~~ **101.00: M.G.L. c.23K *Adjudatory Proceedings***. If the denial is based upon information contained in the individual's criminal record the decision shall also include an advisory that the individual will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The notice may be served via first class mail or via email to the addresses provided by the applicant on the application.
- c) Gaming Vendors and Gaming Vendor Qualifiers. Upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) the Bureau shall either approve or deny the application for a gaming vendor license pursuant to 205 CMR 134.10. If the Bureau approves the application for a Gaming Vendor license and any associated applications for Gaming Vendor qualifier licenses, the decisions shall be forwarded to the Commission as a recommendation along with the application materials for review and issuance of the license. If an application for a Gaming vendor qualifier license is approved by the Bureau subsequent to the issuance of the Gaming Vendor license by the commission, the Bureau shall forward a written approval to the Division of Licensing which shall issue a license to the applicant on behalf of the Commission. If the application is denied, the Bureau shall forward the recommendation for denial and reasons therefor to the Division of Licensing which shall issue a written decision to the

applicant explaining the reasons for the denial. The decision shall include an advisory to the applicant that they may appeal the decision to the Bureau in accordance with 205 CMR ~~134.09(2)~~ **101.00: M.G.L. c.23K *Adjudicatory Proceedings***. If the denial is based upon information contained in a person's criminal record the decision shall also include an advisory that the person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.

- d) Non-gaming Vendors. The Division of Licensing shall issue a non-gaming vendor registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1). In the event that the Bureau determines upon completion of the investigation conducted in accordance with 205 CMR 134.09(1) that the applicant should be disqualified from holding a registration or is otherwise unsuitable in accordance with 205 CMR 134.11, it shall forward the results of the investigation to the Division of Licensing which shall issue a written notice to the registrant revoking the registration. The notice shall include an advisory to the applicant that they shall immediately cease doing business with the gaming establishment and may request an appeal hearing before the Bureau in accordance with 205 CMR ~~134.09(2)~~ **101.00: M.G.L. c.23K *Adjudicatory Proceedings***. If the denial is based upon information contained in the person's criminal record the decision shall also include an advisory that the person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The notice may be served via first class mail or via email to the addresses provided by the applicant on the application.
- e) Labor Organizations. The Bureau shall issue a Labor Organization registration to the applicant on behalf of the Commission in accordance with 205 CMR 134.11(1).

~~(2) If an application for a key gaming employee license, gaming employee license, gaming service employee registration, gaming vendor license, non-gaming vendor registration, or gaming vendor qualifier license is denied or revoked in accordance with 205 CMR 134.09(1) the applicant may appeal the decision and request a hearing before the Bureau within 30 days of service of the decision. The request for an appeal hearing must be in writing on a form provided by the Bureau and contain an explanation of the basis for the appeal.~~

~~(3) The Bureau shall appoint a hearing officer to preside over the appeal hearing requested by an applicant in accordance with 205 CMR 134.09(2). The hearing will be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.02: *Informal/Fair Hearing Rules*. An audio recording of the hearing shall be taken. The hearing officer shall issue a written decision to the applicant. The hearing officer may affirm the denial of the application or revocation of the registration, reverse the decision and recommend that the license or registration be issued, or recommend that the~~

~~license or registration be issued with conditions. The hearing officer may recommend any condition that is reasonably calculated to ensure faithful performance of the employee's duties or vendor's obligations. The decision shall include an advisory to the applicant that they may appeal the decision to the commission in accordance with 205 CMR 134.09(5). The decision may be served via first class mail or via email to the addresses provided by the applicant on the application.~~

~~(4) After a hearing conducted in accordance with 205 CMR 134.09(3) the following shall apply:~~

- ~~a) If the hearing officer recommends that a Key Gaming Employee standard license, Gaming Employee license, gaming service employee registration, Gaming vendor qualifier, or non gaming vendor registration be issued, the Division of Licensing shall issue a license or registration to the applicant on behalf of the Commission.~~
- ~~b) If the hearing officer recommends that the application for a Key Gaming Employee executive or Gaming vendor license be issued, the decision shall be forwarded to the Commission as a recommendation along with the application and appeal materials for review and issuance of the license.~~

~~(5) If an application for a key gaming employee license, gaming employee license, gaming service employee registration, gaming vendor license, non gaming vendor registration, or gaming vendor qualifier is denied or approved with conditions in accordance with 205 CMR 134.09(3) the applicant may appeal the decision and request a hearing before the commission within 30 days of service of the decision. The request for an appeal hearing must be in writing on a form provided by the commission and contain an explanation of the basis for the appeal. The hearing will be conducted at a public meeting solely on the record of the administrative proceedings conducted by the Bureau in accordance with 205 CMR 134.09(3). The Bureau shall forward a copy of the administrative record of the proceeding to the commission promptly upon receipt of the notice of appeal.~~

~~(6) After the hearing conducted in accordance with 205 CMR 134.09(5) the commission shall issue a written decision to the applicant. The commission may affirm the denial of the application or revocation of the registration, reverse the decision and order that the license or registration be issued, order that the license or registration be issued with conditions or remand the matter to the Bureau for further proceedings. The commission may impose any condition that is reasonably calculated to ensure faithful performance of the employee's duties or vendor's obligations.~~

~~(7) In reviewing the Bureau's decision in accordance with 205 CMR 134.09(6), the commission may consider whether the decision or any condition imposed is:~~

- ~~a) In excess of the statutory or regulatory authority or jurisdiction of the commission; or~~
- ~~b) Based upon an error of law; or~~

- e) ~~Made upon unlawful procedure; or~~
- d) ~~Unsupported by substantial evidence; or~~
- e) ~~Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.~~

~~(8) The decision of the commission made in accordance with 205 CMR 134.09(6) and (7) shall be final and an applicant shall not be entitled to further review.~~

134.10: Affirmative License Standards for the Licensing of Employees and Vendors of the Gaming Establishment

(4) Rehabilitation.

- a. An applicant for a Key gaming employee license, gaming employee license or a gaming vendor qualifier license may provide proof of rehabilitation from a criminal conviction as part of the application for licensure.
- b. An applicant for a Key gaming employee license may not appeal a decision made by the Bureau ~~to the Commission in accordance with 205 CMR 134.09(6)~~ that was based upon a disqualifying prior conviction in accordance with 205 CMR 134.10(3)(a) on the basis that they wish to demonstrate rehabilitation.
- c. An applicant for a Gaming employee license or gaming vendor qualifier license may appeal a decision made by the Bureau based upon a disqualifying prior conviction in accordance with 205 CM R 134.10(3)(a) on the basis that they wish to demonstrate rehabilitation only if the conviction occurred before the ten year period immediately preceding the date of submission of the application for licensure or registration.
- d. ~~In its discretion, the Bureau and/or Commission may issue a~~ **A** Gaming employee license or Gaming vendor qualifier license **may be issued** to an applicant who can affirmatively demonstrate ~~the applicant's~~ rehabilitation. In considering the rehabilitation of an applicant, ~~the Bureau and Commission shall consider~~ the following **shall be considered**:
 - 1. the nature and duties of the position of the applicant;
 - 2. the nature and seriousness of the offense or conduct;
 - 3. the circumstances under which the offense or conduct occurred;
 - 4. the date of the offense or conduct;
 - 5. the age of the applicant when the offense or conduct was committed;

6. whether the offense or conduct was an isolated or repeated incident;
7. any social conditions which may have contributed to the offense or conduct; and
8. any evidence of rehabilitation, including recommendations and references of persons supervising the applicant since the offense or conduct was committed.

(e) Any applicant may appeal a decision made by the Bureau based upon a conviction for a crime of moral turpitude as set forth in 205 CMR 134.10(2)(f). ~~In its discretion, the Bureau and Commission may issue a~~ A Key gaming employee license, Gaming employee license, or gaming vendor qualifier license **may be issued** to an applicant who can affirmatively demonstrate ~~the applicant's~~ rehabilitation. In considering the rehabilitation of an applicant, ~~the Bureau and Commission shall consider~~ the factors outlined in 205 CMR 134.10(4)(d) **shall be considered**.

(f) An applicant for a license or registration shall be at least 18 years of age at the time of application.

134.11: Affirmative Registration Standards for the Registration of Employees and Vendors of the Gaming Establishment and Labor Organizations

(4) Rehabilitation.

- a) The holder of a Gaming service employee registration or non-gaming vendor registration may appeal a decision made by the Bureau based upon a disqualifying prior conviction in accordance with 205 CMR 134.11(2) on the basis that they wish to demonstrate rehabilitation only if the conviction occurred before the ten year period immediately preceding application for licensure or registration.
- b) ~~In its discretion, the Bureau and/or Commission may issue a~~ A Gaming service employee registration or a non-gaming vendor registration **may be issued** to an applicant who can affirmatively demonstrate ~~the applicant's~~ rehabilitation. In considering the rehabilitation of an applicant ~~the Bureau and Commission shall consider~~ the following **shall be considered**:

- 1.the nature and duties of the position of the applicant;
- 2.the nature and seriousness of the offense or conduct;
- 3.the circumstances under which the offense or conduct occurred;
- 4.the date of the offense or conduct;
- 5.the age of the applicant when the offense or conduct was committed;
- 6.whether the offense or conduct was an isolated or repeated incident;
- 7.any social conditions which may have contributed to the offense or conduct; and

8.any evidence of rehabilitation, including recommendations and references of persons supervising the applicant since the offense or conduct was committed.

- c) Any applicant may appeal a decision made by the Bureau based upon a conviction for a crime of moral turpitude as set forth in 205 CMR 134.11(3). ~~In its discretion, the Bureau and Commission may issue a~~ A Gaming service employee registration or non-gaming vendor registration **may be issued** to an applicant who can affirmatively demonstrate ~~the applicant's~~ rehabilitation. In considering the rehabilitation of an applicant, ~~the Bureau and Commission shall consider~~ the factors outlined in 205 CMR 134.11(4)(b) **shall be considered**.

(5) An applicant for a registration shall be at least 18 years of age or older at the time of application.

(6) The Bureau may deny an application for registration as a non-gaming vendor if it determines that the applicant formed the applicant entity for the sole purpose of circumventing 205 CMR 134.04(1)(b).

134.16: Term of Licenses

(1) Licenses and registrations issued in accordance with 205 CMR 134.00 shall be valid for the following terms:

(e) Non-gaming Vendors. Non-gaming vendor registration shall be for an initial term of five years. The initial term of a Non-gaming vendor license shall expire and be renewable on the last day of the month on the fifth anniversary of the issuance date. Non-gaming vendor registration renewals shall be for a term of ~~five~~ **three** years.

134.19: Disciplinary Action

(1) Grounds for Disciplinary Action. Any **employee or vendor** license or registration issued under 205 CMR 134.00 may be conditioned, suspended, or revoked, **or a civil administrative penalty assessed**, if the ~~commission~~ **Bureau** finds that a licensee or registrant has:

- a) ~~(1)~~ been arrested or convicted of a crime while employed by a gaming establishment and failed to report the charges or the conviction to the commission;
- b) ~~(2)~~ failed to comply with M.G.L. c. 23K, § 13; or

- c) ~~(3)~~ failed to comply with any provision of M.G.L. c. 23K or 205 CMR pertaining to licensees and registrants **including failure to act in conformance with an applicable provision of the gaming licensee's system of internal controls approved in accordance with 205 CMR 138.02.**

~~(2) Complaints. Any person may file a complaint against any person licensed or registered in accordance with 205 CMR 134.00. All complaints relative to a licensee or registrant must be in writing on a form provided by the Commission. All complaints must be received by the Commission within one year of the date of the alleged wrongdoing. The Commission or Bureau may itself initiate a complaint at any time notwithstanding the date of the alleged wrongdoing.~~

Finding and Decision. If the Bureau finds that a licensee or registrant has violated a provision of 205 CMR 134.19(1) it may issue a written notice of its intent to reprimand, suspend, or revoke said license or registration. Such notice shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the action. It shall further advise the licensee or registrant of their right to a hearing and their responsibility to request a hearing in accordance with 205 CMR 134.19(4), if they so choose, and that failure to do so may result in the decision automatically being imposed. Mailing of the notice to the address on record with the Commission, or emailing the notice to the address provided to the Commission by the licensee/registrant shall be deemed satisfactory service of the notice. The Bureau may alternatively issue an order temporarily suspending a license in accordance with M.G.L. c.23K, §35(e).

~~(3) Basis of Complaint. A complaint must allege wrongdoing by a licensee or registrant in the form of a violation of 205 CMR 134.19(1) and/or M.G.L. c. 23K.~~

Civil administrative penalties. The Bureau may assess a civil administrative penalty on a licensee or registrant in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 134.19(1).

~~(4) Review and Investigation of Complaints. Every complaint filed shall be reviewed by the commission or its designee. A hearing may be convened, the complaint may be forwarded to the Bureau, or the complaint may be dismissed in the discretion of the commission or its designee. The Bureau may, if it elects, investigate a complaint prior to scheduling a hearing. In its discretion, the Bureau may resolve informal patron complaints without formal investigation, notification of parties, or convening a hearing. Failure of a complainant to cooperate in the investigation may be grounds for dismissal of a complaint.~~

Review of Decision. Any person aggrieved by a decision made by the Bureau in accordance with 205 CMR 134.19(2) or (3) may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings*. Failure to request such review may result in the decision automatically being imposed.

~~(5) Notice of Hearing. If the Bureau determines that a hearing shall be held to resolve a complaint, reasonable notice shall be provided to the complainant and the licensee or registrant. Mailing of notice to the address on record with the Commission, or emailing the notice to the address provided by the licensee or registrant on their application for licensure or registration, shall be deemed satisfactory notice. The notice of hearing shall contain:~~

- ~~(a) The name of the complainant;~~
- ~~(b) The date, time and place of said hearing;~~
- ~~(c) The location of the incident giving rise to the complaint.~~

~~(6) Hearing. Hearings convened pursuant to 205 CMR 134.19 shall be conducted pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The Bureau may question any witness and include any records kept by the commission as exhibits. The Bureau may conclude the hearing at any time and issue a decision based on the evidence presented.~~

~~If a licensee or registrant does not appear for the hearing, the Bureau may conduct a hearing in his or her absence and render a decision based upon the evidence presented, but only after making a finding that the licensee was provided notice as required by 205 CMR 134.19(5). The Bureau may designate a hearing officer to convene a hearing and either make a recommendation or issue a decision on its behalf.~~

~~(7) Subpoenas. The Bureau may issue a subpoena in accordance with M.G.L. c. 30A, § 12 requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.~~

~~(8) Decisions and Discipline of License and Registration Holders. The Bureau shall issue a written decision after the hearing. Decisions shall be issued in a reasonably prompt manner. The Bureau may suspend a license or registration for a fixed period of time, revoke a license or registration permanently, or issue a reprimand the licensee or registrant. In conjunction with or in lieu of these disciplinary measures, the Bureau may assess a fine pursuant to M.G.L. c. 23K, § 36, and recoup the costs of investigation. Any license or registration that is suspended or revoked shall be forwarded to the Bureau immediately. A person whose license is revoked may apply in writing to the commission for reinstatement no sooner than five years from the date of the revocation.~~

~~(9) Appeals.~~

~~(a) Any person aggrieved by a decision of the hearing officer may, in writing, request review of said decision by the commission. The filing of such a petition shall not serve to stay any disciplinary action taken by the hearing officer.~~

~~(b) The commission may review such decision at its discretion. Such review is an administrative review that shall be based solely on the administrative record and is not to be construed as a second hearing on the same complaint(s). After review, the commission may either deny the petition or remand the matter to the hearings officer for further proceedings as directed. The~~

~~filing of an appeal with the commission shall serve to toll the timing provisions of M.G.L. c. 30A, § 14 until such time as a final decision is rendered by the commission.~~

~~(c) Any person aggrieved by a decision of the hearings officer or the commission may appeal such decision in conformance with M.G.L. c. 30A, § 14.~~

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 136.00: SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES AT
GAMING ESTABLISHMENTS

136.03: Issuance of License and Permit

(1) Authority. Pursuant to M.G.L. c. 23K, § 26, the commission may grant a gaming beverage license to a gaming licensee for purposes of allowing the sale and distribution of alcoholic beverages within all licensed areas of the gaming establishment as identified and defined in the license subject to 205 CMR 136.00 to be drunk on the premises of the gaming establishment, subject to any restrictions imposed on the license.

(2) Hearings and Additional Information. After reviewing a gaming beverage license application submitted pursuant to 205 CMR 136.04(1), an application to amend a licensed area, or an application for a special event beverage permit submitted pursuant to 205 CMR 136.04(3), and prior to taking action on the application the commission or the commission's Division of Licensing may request additional information from the applicant to complete or supplement the application, **or** may request that the applicant modify the application in the interests of the integrity of gaming and/or public health, welfare, or safety, ~~or may schedule a hearing for the applicant to address any issues that relate to the application.~~

(3) Gaming Beverage License and Licensed Areas. Applications for licensure shall be submitted to the commission's Division of Licensing. Upon receipt of a complete application for a gaming beverage license, a complete application to amend, alter, or add a licensed area, and the fees required by 205 CMR 136.05, the Division of Licensing shall review the application to determine whether it contains all of the elements required in accordance with 205 CMR 136.04. If the Division of Licensing is satisfied that the application meets the requirements of 205 CMR 136.04 and M.G.L. c. 23K, § 26, and that any modifications requested in accordance with 205 CMR 136.03(2) have been satisfactorily addressed, it shall forward the application to the commission with a recommendation that it be approved. If it is not satisfied that the application meets the requirements of 205 CMR 136.04, or that a modification requested in accordance with 205 CMR 136.03(2) has been satisfactorily addressed, it shall engage in the process outlined in 205 CMR 136.03(2) or deny the application and advise the applicant that it may appeal the decision **directly** to the commission **in accordance with 205 CMR 101.01**.

(4) The commission shall review the application **at a hearing conducted in accordance with 205 CMR 101.01** upon receipt from the Division of Licensing and may approve the application, or parts thereof, and issue the gaming beverage license if it meets all of the requirements of 205 CMR 136.00 and M.G.L. c. 23K, § 26, or deny or condition the gaming beverage license, or parts thereof, if it determines that the application does not meet all of the requirements of 205

CMR 136.00 and M.G.L. c. 23K, § 26 or ~~would~~ **may** in some way compromise the integrity of gaming and/or public health, welfare, or safety.

136.09: Administrative Action

- (1) Grounds for Action. A gaming beverage license issued under 205 CMR 136.03 may be suspended, revoked, conditioned and/or assessed a civil administrative penalty if the Bureau finds that a licensee has:
 - c) failed to comply with any provision of 205 CMR 136.00
 - d) failed to comply with any provision of M.G.L. c. 23K or 205 CMR pertaining to the sale and distribution of alcoholic beverages in the gaming establishment; or
 - e) failed to act in conformance with a provision of the gaming licensee's approved system of internal controls related to the service of alcoholic beverages.
- (2) Finding and Decision. If the Bureau finds that a gaming beverage licensee has violated a provision of 205 CMR 136.09(1), it may issue a written notice of decision reprimanding, suspending, or revoking the license and/or issuing a civil administrative penalty to said licensee. Such notice shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision. It shall further advise the licensee of its right to a hearing, and their responsibility to request a hearing in accordance with 136.09(4) if they so choose, and that failure to do so may result in the decision automatically being imposed.
- (3) Civil administrative penalties. The Bureau may assess a civil administrative penalty on a gaming beverage licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 136.09(1).
- (4) Review of Decision. If the gaming beverage licensee is aggrieved by a decision made in accordance with 205 CMR 136.09(2) or (3) it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings*. Failure of the licensee to request review may result in the decision automatically being imposed.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 137.00: GAMING SCHOOLS

137.06: Discipline

(1) Concurrent Obligations. Any school approved in accordance with 205 CMR 137.00 shall continue to be subject to all applicable laws and regulations enforced by its approving entity in accordance with 205 CMR 137.01(3)(e) including the Division of Professional Licensure and Board of Higher Education.

(2) Notice of Action. Any gaming school certified in accordance with 205 CMR 137.00 must report any disciplinary action commenced by its approving entity, accreditor, any other governing agency, identified in accordance with 205 CMR 137.01(3)(e), the Office of the Attorney General, or any other law enforcement agency to the commission within ten days of such notice being received and shall have an affirmative obligation to advise the commission as to the outcome promptly upon determination.

(3) Any certification issued in accordance with 205 CMR 137.00 may be suspended or revoked, or the school reprimanded **or a civil administrative penalty assessed**, for any of the following reasons:

- a) failure to abide by any provision of 205 CMR 137.00;
- b) failure to provide updated information relative to its application in accordance with 205 CMR 137.01(6);
- c) disciplinary action has been taken or pursued against the school by its governing agency or entity as identified in 205 CMR 137.01(3)(e), the Office of the Attorney General, or any other law enforcement agency;
- d) the school is unable to provide the proper education required to prepare individuals for employment at a gaming establishment or facility as a dealer, slot machine technician, or surveillance personnel or is otherwise unsuitable in accordance with M.G.L. c. 23K, § 12;

~~(4) Complaints. Any person may file a complaint with the commission against any school certified in accordance with 205 CMR 137.00. All complaints must be in writing on a form provided by the commission. All complaints must be received by the commission within one year of the date of the alleged wrongdoing. The commission or Bureau may itself initiate a complaint at any time notwithstanding the date of the alleged wrongdoing.~~

Finding and Decision. If the Bureau finds that a gaming school licensee has violated a provision of 205 CMR 137.06(3), it may issue a written notice of decision reprimanding, suspending, or revoking the license or assessing a civil administrative penalty upon said licensee. Such notice shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision. It shall further advise the licensee of its right to a hearing and its responsibility to request a hearing in accordance with 137.06(6) if they so choose, and that failure to do so may result in the decision automatically being imposed. Mailing of the notice to the address on record with the

Commission, or emailing the notice to the address provided to the commission by the licensee shall be deemed satisfactory notice of the decision.

~~(5) Basis of Complaint. A complaint must allege wrongdoing by the school in the form of a violation of 205 CMR 137.06(3) and/or M.G.L. c. 23K.~~

Civil administrative penalties. The Bureau may assess a civil administrative penalty on a gaming school licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 137.06(3).

~~(6) Review and Investigation of Complaints. Every complaint filed shall be reviewed by the commission's Division of Licensing. A hearing may be convened, the complaint may be forwarded to the Bureau, or the complaint may be dismissed in the discretion of the Division of Licensing. Failure of a complainant to cooperate in the investigation may be grounds for dismissal of a complaint~~

Review of Decision. If a gaming school licensee is aggrieved by a decision made in accordance with 205 CMR 137.06(4) or (5) it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings*. Failure of the licensee to request review may result in the decision automatically being imposed.

~~(7) Notice of Hearing. If the commission's Division of Licensing determines that a hearing shall be held to resolve a complaint, reasonable notice shall be provided to the complainant and the school. Mailing of notice to the address on record with the commission, or emailing the notice to the address provided by the school on their application for licensure or registration, shall be deemed satisfactory notice. The notice of hearing shall contain:~~

- ~~a) The name of the complainant;~~
- ~~b) The date, time and place of said hearing;~~
- ~~c) A description, including the location, of the incident giving rise to the complaint~~

~~(8) Hearing. Hearings convened pursuant to 205 CMR. 137.00 shall be conducted pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L.c. 30 A. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The commission's Division of Licensing may question any witness and include any records kept by the commission as exhibits. The Division of Licensing may conclude the hearing at any time and issue a decision based on the evidence presented.~~

~~If a school does not appear for the hearing, the commissions Division of Licensing may conduct a hearing in its absence and render a decision based upon the evidence presented, but only after making a finding that the school was provided notice as required by 205 CMR 137.06(7).~~

~~The commission's Division of Licensing may designate a hearing officer to convene a hearing and either make a recommendation or issue a decision on its behalf.~~

~~(9) Subpoenas. The commission's Division of Licensing may issue a subpoena in accordance with M.G.L. c. 30A, § 12 requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.~~

~~(10) Decisions and Discipline of License and Registration Holders. The commission's Division of Licensing shall issue a written decision after the hearing. Decisions shall be issued in a reasonably prompt manner. The Division of Licensing may suspend the certification of a school for a fixed period of time, revoke a certification permanently, or issue a reprimand to the school. In conjunction with or in *Lieu* of these disciplinary measures, the Division of Licensing may assess a fine pursuant to M.G.L. c. 23K, § 4(15), and recoup the costs of investigation. A school that has its certification revoked may apply in writing to the commission for reinstatement no sooner than five years from the date of the revocation.~~

~~(11) Appeals.~~

- ~~a) Any person aggrieved by a decision of the commission's Division of Licensing may, in writing, request review of said decision by the commission. The filing of such a petition shall not serve to stay any disciplinary action taken by the Division of Licensing.~~
- ~~b) Upon the filing of a petition in accordance with 205 CMR 137.06(11)(a) the commission may review such decision at its discretion. Such review is an administrative review that shall be based solely on the administrative record and is not to be construed as a second hearing on the same complaint(S). After review, the commission may either deny the petition or remand the matter to the commission's Division of Licensing for further proceedings as directed. The filing of an appeal with the commission shall serve to toll the timing provisions of M.G.L. c. 30A, § 14 until such time as a final decision is rendered by the commission.~~
- ~~c) Any person aggrieved by a decision of the commission's Division of Licensing or the commission may appeal such decision in conformance with M.G.L. c. 30A, § 14.~~

TITLE 205: MASSACHUSETTS GAMING COMMISSION
CHAPTER 138.00: UNIFORM STANDARDS OF ACCOUNTING PROCEDURES AND
INTERNAL CONTROLS

138.07: ~~Internal Controls A: (Reserved)~~ Administrative Action

(1) Grounds for Action. A gaming licensee may be conditioned, suspended, or revoked, or a civil administrative penalty assessed, if it is determined that the gaming licensee has:

- a) failed to abide by any provision of 205 CMR 138.00: *Uniform Standards of Accounting Procedures and Internal Controls*;
- b) failed to abide by any provision of M.G.L. c.23K related to internal controls;
- c) failed to abide by any provision of the gaming licensee's system of internal controls approved in accordance with 205 CMR 138.02.

(2) Finding and Decision. If the Bureau finds that a gaming licensee has violated a provision of 205 CMR 138.07(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in lieu of such a recommendation, the Bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision.

(3) Civil administrative penalties. The Bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 138.07(1).

(4) Review of Decision. A recommendation made by the Bureau to the commission that a gaming license be conditioned, suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01. If the gaming licensee is aggrieved by a decision made by the Bureau to assess a civil administrative penalty in accordance with 205 CMR 138.07(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: M.G.L. c.23K: *Adjudicatory Proceedings*.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 152.00: INDIVIDUALS EXCLUDED FROM A GAMING ESTABLISHMENT

152.04: Investigation and Initial Placement of Names on the List

(4) If a request for a hearing is received from the individual, a hearing shall be scheduled before a hearing officer and notice of such, including the date, time, and issue to be presented, shall be sent to the individual. The hearing shall be conducted in accordance with 205 CMR 101.02: *Review of Orders or Civil Administrative Penalties/Forfeitures Issued by the Bureau, Commission Staff, or the Racing Division*. If the hearing officer finds that the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 the individual's name shall be placed on the exclusion list. If the hearing officer finds that the individual does not meet any criterion for inclusion on the list, the individual's name shall not be placed on the list and the matter closed.

152.06: Duty of Gaming Licensee

~~(6) The commission may revoke, limit, condition, suspend or fine a gaming licensee if it knowingly or recklessly fails to exclude or eject from its gaming establishment any individual placed by the commission on the list of excluded persons.~~

152.07: Petition to Remove Name from Exclusion List

(1) An individual who has been placed on the list in accordance with 205 CMR 152.00 may petition the commission in writing to request that their name be removed from the list. Except in extraordinary circumstances, such a petition may not be filed sooner than five years from the date an individual's name is initially placed on the list.

(2) The individual shall state with particularity in the petition the reason why the individual believes they no longer satisfy one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

(3) The commission shall schedule a hearing on any properly filed petitions ~~and provide written notice to the petitioner identifying the time and place of the hearing. Such a hearing shall be conducted~~ in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

152.08: Forfeiture of Winnings

(3) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. ~~The commission shall schedule a hearing on such request and provide notice to the petitioner.~~ A hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings* to determine whether the subject funds were properly forfeited in accordance with 205 CMR 152.08.

152.09: Sanctions Against a Gaming Licensee

- (1) Grounds for Action. A gaming license may be conditioned, suspended, or revoked, and/or the gaming licensee assessed a civil administrative penalty if the Bureau finds that a gaming licensee has:
 - a) knowingly or recklessly fails to exclude or eject from its premises any individual placed on the list of excluded persons. Provided, it shall not be deemed a knowing or reckless failure if an individual on the exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment; or
 - b) failed to abide by any provision of 205 CMR 152.00: *Individuals Excluded from a Gaming Establishment*, M.G.L. c.23K, §45, the gaming licensee's approved written policy for compliance with the exclusion list program pursuant to 205 CMR 152.06(5), or any law related to the exclusion of patrons in a gaming establishment.
- (2) Finding and Decision. If the Bureau finds that a gaming licensee has violated a provision of 205 CMR 152.09(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in lieu of such a recommendation, the Bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision.
- (3) Civil administrative penalties. The Bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c.23K, §36 for a violation of 205 CMR 152.09(1).
- (4) Review of Decision. A recommendation made by the Bureau to the commission that a gaming license be conditioned, suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01. If the gaming licensee is

aggrieved by a decision made by the Bureau to assess a civil administrative penalty in accordance with 205 CMR 152.09(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c.23K Adjudicatory Proceedings*.

DRAFT

Dooley, Maryann (MGC)

From: Hannah, ED <Ed.Hannah@stronachgroup.com>
Sent: Monday, April 23, 2018 6:26 PM
To: Lightbown, Alexandra (MGC)
Cc: Stronach, Belinda; Ritvo, Tim; Rogers, Mike; Campo, PJ; Freeman, Brian
Subject: April 26, 2018---Request from Suffolk Downs Racecourse for a Purse Distribution--Email to Dr. Alexandra Lightbown, Director of Racing, Massachusetts Gaming Commission
Attachments: TSG Massachusetts Business Plan.docx

Dear Dr. Lightbown:

It is the understanding of The Stronach Group that the Massachusetts Gaming Commission will be considering on April 26, 2018 a request from Suffolk Downs Racecourse for a purse distribution from the Race Horse Development Fund.

The Stronach Group believes that any such distribution would be premature. We have a business plan to establish a thoroughbred racetrack in Massachusetts that will hopefully commence racing in the summer of 2019. Attached to this email is a summary of our business plan.

I am the Executive Vice-Chairman of The Stronach Group and I confirm our commitment to this business plan. It has the full endorsement of our entire management team, including Belinda Stronach, Acting CEO, Chairman and President of The Stronach Group; Tim Ritvo, Chief Operating Officer, Racing and Gaming and Mike Rogers, Executive Vice-President, Operations and Industry Relationships. Another senior executive, PJ Campo, and Brian Freeman, our General Counsel, Racing and Gaming, have been dedicated by our management team to ambitiously pursue this business plan.

In the near future, we plan to make members of our management team much more active in Massachusetts as we implement this business plan.

We fully respect and appreciate the tradition of thoroughbred racing in Massachusetts and we will work hard to ensure it endures.

Respectfully,

Ed Hannah
Executive Vice-Chairman
The Stronach Group

This e-mail, and any documents or data attached hereto, is intended for the intended recipients only. It may contain confidential and/or privileged information and no rights have been waived by the sender. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering

THE STRONACH GROUP

MASSACHUSETTS THOROUGHBRED INDUSTRY BUSINESS PLAN

Who We Are

As one of the world's preeminent horse racetrack owners and operators, The Stronach Group is committed to the long-term success of the thoroughbred horse racing industry. Our racetracks include Santa Anita Park, the site of multiple Breeders' Cup Championships; Pimlico Race Course, home of the Preakness Stakes; and Gulfstream Park, the host of the world's richest horse race, the Pegasus World Cup Invitational.

The Stronach Group is also a leading supplier of pari-mutuel wagering technology. Our key brands include AmTote—a premier global provider of pari-mutuel systems and services that has installed totalizator equipment in more than 800 international racing and wagering locations—and Xpressbet, one of the top advanced deposit wagering companies in the United States.

Finally, it is important to recognize the vital role played by The Stronach Group in the life cycle of the horse. We own Adena Springs, the winner of numerous national and international awards for excellence in breeding, as well as Palm Meadows, a world-class training center situated in Florida. Moreover, our renowned Adena Retirement Program re-trains and rehabilitates horses after the end of their thoroughbred racing careers.

Our Goal

The recent challenges facing the Massachusetts thoroughbred horse racing industry are well-documented. In 2001, thoroughbred horse racetrack operators in the state conducted 1,526 races over 179 racing days. In 2016, only 63 races were staged over six racing days and in 2017 only eight racing days were hosted. The adverse economic impacts of this decline in live racing have been compounded by the sparring factions within the Massachusetts thoroughbred horse racing community.

The Stronach Group desires to reverse these trends. Building on our success in creating thriving thoroughbred horse racing industries in such states as Maryland and Florida, The Stronach Group has put together a plan to revitalize and unite the Massachusetts thoroughbred horse racing industry.

Our Plan

The Stronach Group has entered into preliminary discussions with Massasoit Greyhound Association, the owner of the former greyhound track in Raynham. Our plan is to redevelop this property, including the construction of a new 7/8 mile thoroughbred horse racing track. Failing successful negotiations with Massasoit Greyhound Association, The Stronach Group has also examined the availability for purchase of other land on which such a thoroughbred horse racing track could be built.

We are willing to assume responsibility for all capital expenditures required to initially undertake this project – without using any of the existing funds in the Race Horse Development Fund – and we are also willing to commit to conducting not less than 30 racing days each year.

Our Economic Proposal

In order for our plan to be commercially viable, we require the following economic structure to be put in place by the legislature:

- Funds in the Race Horse Development Fund allocated to the thoroughbred industry shall be distributed as follows: 70% to purses for live thoroughbred racing, 16% to the Massachusetts Thoroughbred Breeding Program, 4% to horsemen health and pension benefits, and 10% to racetrack capital improvements;¹
- 10% of simulcast wagers received on in-state and out-of-state thoroughbred races shall be allocated to the horse racing track(s) conducting live thoroughbred horse racing in Massachusetts, with the amount contributed to the purse account determined by the contract entered into between the recognized Massachusetts thoroughbred horsemen’s group (the “Recognized Horsemen’s Group”) and The Stronach Group (the “Horsemen’s Contract”);²
- Payment by advanced deposit wagering companies of a state-wide 6% source market fee to the operator of live thoroughbred racing for each wager placed by a Massachusetts resident on any thoroughbred horse race, with the amount contributed to the purse account determined by the Horsemen’s Contract;³ and
- Authorization for the operator of live thoroughbred horse racing in Massachusetts to open up to 7 new off-track wagering locations, subject to none being within a 25-mile radius of Plainridge Park (without the consent of Plainridge Park) or within a 5-mile radius of an existing casino (provided such casino conducts simulcast operations). All

¹ Currently the funds in the Race Horse Development Fund allocated to the thoroughbred industry are distributed 80% to purses, 16% to the Massachusetts Thoroughbred Breeding Program and 4% to fund horsemen health and pension benefits. The Stronach Group would agree to only use the proposed 10% allocation to racetrack capital improvements for future improvements and maintenance to the newly constructed thoroughbred racetrack.

² Currently 10% of simulcast wagers received are allocated to the Race Horse Development Fund, distributed as set out above.

³ Currently Massachusetts law does not make provision for payment of any source market fee.

new off-track wagering locations would be subject to all applicable municipal zoning and other requirements.⁴

Further, the willingness of The Stronach Group to undertake this development – including our incurrence of the full capital cost of constructing a new thoroughbred horse racing track – and to support the distribution of 70% of the Race Horse Development Fund to purses (the “RDHF Purse Contribution”) is dependent on a long-term agreement by the Recognized Horsemen’s Group in the Horsemen’s Contract that the RDHF Purse Contribution would be the only contribution to purse funds, and that none of the proceeds from simulcast wagers or advanced deposit wagering would be allocated to the purse account.

The implementation of our plan would create a vibrant thoroughbred horse racing industry in Massachusetts, and would also result in significant positive spillover effects for the broader Massachusetts economy. We look forward to working with you to make this happen.

⁴ Currently simulcasting is restricted to casinos and former pari-mutuel facilities. The Stronach Group would also support authorization for Plainridge Park to open new off-track wagering locations on similar terms.



Neil D. Raphael
617.542.7999
nraphael@
raphaelllc.com

RAPHAEL LLC
Counselors at Law
Ten Post Office Square
8th Floor South, PMB 312
Boston, MA 02109
T: 617.542.7900
F: 617.307.4486

April 19, 2018

VIA HAND DELIVERY

Chairman Stephen Crosby
Massachusetts Gaming Commission
101 Federal Street
12th Floor
Boston, MA 02110

Re: *Depositing of Funds from Race Horse Development Fund into Interest-Bearing Purse Account Pursuant to M.G.L. c. 23K, § 60(c)(i)*

Dear Chairman Crosby:

This firm represents the New England Horsemen's Benevolent and Protective Association, Inc. ("NEHBPA"). We are writing this letter to follow up on the legal issues raised during the Commission's March 29, 2018 hearing regarding the Commission's interpretation of M.G.L. c. 23K, § 60(c)(i).

As set forth in our letter to the Commission on March 26, 2018, we reiterate the position of the NEHBPA with respect to the request of Suffolk Downs to disburse to the purse account all accumulated funds in the Race Horse Development Fund that are allocated to thoroughbred racing purses. We continue to support this request. As stated in our March 26, 2018 letter, M.G.L. c. 23K, § 60(c)(i) requires, in part, that: "80 per cent of the funds [received from the Race Horse Development Fund] approved by the commission shall be deposited weekly into a separate, interest-bearing purse account to be established by and for the benefit of the horsemen . . ." M.G.L. c. 23K, § 60(c)(i). The Commission has not deposited the funds received from the Race Horse Development Fund weekly into a separate, interest-bearing purse account as required by this provision. Rather, the Commission has held these funds in the Race Horse Development Fund. However, the Race Horse Development Fund is not an interest-bearing account nor is it an escrow account.

During the March 29, 2018 hearing, Catherine Blue, Esq. stated that our interpretation of M.G.L. c. 23K, § 60(c)(i) did not take into account the existence of 205 C.M.R. 149.04(4)(c), which, according to Ms. Blue, "gives the commission the ability to award, in its sole discretion, less than the full amount" to a purse account. (Mar. 29, 2018 Transcript, at 146:18-22). That regulation provides: "The commission may distribute less than the entire amount of the funds in 205 CMR 149.04(a)(1). and (b)1. if the commission determines in its sole discretion that such distribution shall be beneficial or if a lesser amount is requested by the harness racing association or the horse racing association. Funds under 205 CMR 149.04(4)(a)1. or (b)1. that remain after payment by the commission under 205 CMR 149.04 shall remain in the race horse development fund and shall be available for payment in future years in the commission's discretion, after

applying the determination of race horse committee regarding allocation between harness racing and horse racing.”

Respectfully, it is our position that Ms. Blue’s interpretation is incorrect under the law. M.G.L. c. 23K, § 60(c)(i) is plain on its terms – it requires weekly deposit of the Race Horse Development Funds into a separate, interest-bearing purse account. The Commission is not permitted to enact a regulation in direct conflict with this statute. *See Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 221-22 (2014) (“Nor may regulations validly be promulgated where they are in conflict with the statutes or exceed the authority conferred by the statutes by which such agency was created.”) (internal quotation and citations omitted); *Mass. Mun. Wholesale Elec. Co. v. Mass. Energy Facilities Siting Council*, 411 Mass. 183, 194 (1991) (“[A]n administrative agency has no authority to promulgate rules or regulations that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created.”).

Further, during the March 29, 2018 hearing, the Commission questioned whether the horsemen objected to the enactment of this regulation. (Mar. 29, 2018 Transcript, at 171:4-13). At the April 7, 2016 hearing regarding the enactment of 205 C.M.R. 149, multiple members of the NEHBPA and the National HBPA testified that the regulation was deficient and need to be further studied.

Also, even if 205 C.M.R. 149.04(4)(c) is a permissible regulation and somehow supersedes M.G.L. c. 23K, § 60(c)(i), NEHBPA submits that 205 C.M.R. 149.03(2) governs here. 205 C.M.R. 149.03(2)(a)(1) provides that either “[u]pon receipt of a written notice of intent pursuant to 205 CMR 149.03(1), **or** upon learning that the harness racing association or horse racing association has failed to timely notify the commission pursuant thereto **or that any event described in 205 CMR 149.03(1)(a) through (f) has occurred or will occur**, the commission may take one or more of the following actions: (a) Hold a public hearing to determine: (1) whether monies from the race horse development fund which the harness racing association or horse racing association would have received pursuant to M.G.L. c. 23K, § 60, should be placed in a racing escrow account for distribution pursuant to 205 CMR 149.04 . . .” 205 C.M.R. 149.03(2)(a)(1) (emphasis added). At the March 29, 2018 hearing, the Commission appeared to question whether the Commission had received “a request to escrow monies” and Ms. Blue further commented that the Commission had “not seen those triggering requests” set forth in 205 C.M.R. 149.03(1) “that would result in a request to the commission.” (Mar. 29, 2018 Transcript at 169:10-18). We submit that there is no written notice requirement or a requirement of a request to escrow the funds, as is made plain in the text of 205 C.M.R. 149.03(2). Rather, the Commission’s **knowledge of any of the events or that the events described in 205 C.M.R. 149.03(1)(a) through (f) will occur** allows the Commission to hold a public hearing under 205 C.M.R. 149.03(2)(a)(1). The Commission has the requisite knowledge in this case, as the Commission has knowledge of Suffolk Downs’ transfer to another entity. The Commission approved the sale of Suffolk Downs in 2017. After that sale, Attorney Blue stated:

“The purchaser has no interest in live racing and will not continue live racing at the property,” Gaming Commission General Counsel Catherine Blue said. “The transfer will have an impact on racing in the commonwealth in that it will result in



the closure of the only thoroughbred track in the commonwealth at this time”
(emphasis added).

Such events are triggering events under 205 C.M.R. 149.03(1)(c) (“to close a race track used for harness races or horse races”) and (f) (“to transfer a race track to any other entity”). Therefore, at the very least, the Commission should hold a hearing to determine whether the monies in the Race Horse Development Fund should be placed in an escrow account pursuant to 205 C.M.R. 149.04(1).

Finally, as shown in our March 26, 2018 letter to the Commission, by allowing the funds to remain in the Race Horse Development Fund, there is a legislative risk that the funds could be redistributed at any time out of the Race Horse Development Fund to the thoroughbred horsemen’s detriment. Indeed, Chairman Crosby acknowledged this risk in a letter to the Massachusetts legislature dated June 7, 2017 (attached hereto as Exhibit A). In that letter, Chairman Crosby acknowledged “pending legislation to divert monies from the Race Horse Development Fund to other worthy causes” and urged the legislature to not divert the funds, explaining: “It is the Commission’s belief that with a reorganized regulatory structure, and empowering the Gaming Commission to strategically manage all the thoroughbred revenue streams – including the Race Horse Development Fund, that there is a legitimate chance of designing a sustainable strategy, for thoroughbred racing in Massachusetts . . . it would be unfortunate to divert significant portions of the Race Horse Development Fund before the full legislative strategy to sustain horse racing has been implemented and tested . . .” Thus, the Commission acknowledges the risk in leaving the funds in the Race Horse Development Fund. Such risk weighs heavily in favor of distributing the funds as required into a separate, interest-bearing purse account on a weekly basis as required by M.G.L. c. 23K, § 60(c)(i), or, at the very least, into an escrow account pursuant to 205 C.M.R. 149.04(1).

Thus, for the reasons stated herein and in the NEHBPA’s previous letter to the Commission dated March 26, 2018, the NEHBPA respectfully requests that the Commission approve Suffolk Downs’ request and disburse to the purse account all accumulated funds in the Race Horse Development Fund that are allocated to thoroughbred racing purses. Further, the NEHBPA requests that going forward, the Commission deposit the funds from the Race Horse Development fund into the separate, interest-bearing purse account on a weekly basis as required by M.G.L. c. 23K, § 60(c)(i). Further, in the alternative and at the very least, the Commission should hold a hearing and then place the monies from the Race Horse Development Fund into an escrow account pursuant to 205 C.M.R. 149.03(2)(a)(1) and 149.04(1).

Very Truly Yours,



Neil D. Raphael

Cc: Catherine Blue, Esq.
Commissioner Gayle Cameron
Commissioner Eileen O’Brien
Commissioner Enrique Zuniga



Commissioner Bruce Stebbins
Joseph F. Savage, Jr., Esq. (NEHBPA HRC Delegate)

Exhibit A



June 7, 2017

To the Leadership and Members of the Massachusetts State Senate and House of Representatives:

At its public meeting on Thursday, May 25, 2017, the Massachusetts Gaming Commission voted unanimously to express to the Legislature our opinion about pending legislation to divert monies from the Race Horse Development Fund to other worthy causes.

As you know, the Gaming Commission generally does not take positions on public policy questions, unless specifically requested by the Legislature. As we have repeatedly said, "the Legislature makes law; the Gaming Commission implements it." However, in this case, the Gaming Commission has taken a series of steps, pursuant to legislative mandates, that put it clearly on the record in support of a comprehensive strategy designed by the Legislature to support its long standing public policy decision: that is, to enhance and strengthen the horse racing industry in Massachusetts, because of its contribution to jobs, economic development, open space and agriculture. As stewards of that legislative strategy embodied in the Expanded Gaming Act, we believe it is appropriate to register our thoughts with you on this important issue.

The Expanded Gaming Act, Chapter 194 of the Acts of 2011, set out a strategy to enhance and strengthen the horse racing industry in Massachusetts – both its thoroughbred and standardbred (harness racing) divisions. That strategy consisted of three key elements. The legislation:

1. Moved regulatory authority for the racing industry from the Racing Commission to the Massachusetts Gaming Commission (Section 2 of Chapter 23K);
2. Sunset the existing racing regulations (MGL Chapters 128 A and C) at July 31, 2014, and directed the Gaming Commission to file recommendations and new legislation for regulation of horse racing by January 2014 (Section 104 of Chapter 194);
3. Established the Race Horse Development Fund for the principal purpose of augmenting purses for thoroughbred and standardbred races, as a means of building and strengthening the horse racing industry in Massachusetts (Section 60 of Chapter 23K).

As directed, the Gaming Commission took over regulation of the racing industry in 2013, and in March 2014 the Gaming Commission filed comprehensive reform legislation with the Legislature.

The reform legislative package submitted to the Legislature in 2014 was not passed by the Legislature and the sunset provision has twice been extended. Subsequently, at the urging of legislators in both the House and Senate, the Gaming Commission filed a second regulatory reform package in 2015 and again in 2016. This latter regulatory reform package was based on the 4-5 year experience of the Gaming Commission and its staff, including working with all the constituents of the horse racing industry. As was anticipated by the Legislature in 2011, the need for regulatory reform for the racing industry is a critical element of the strategy to sustain horse racing, which the Legislature embodied in law.



Massachusetts Gaming Commission

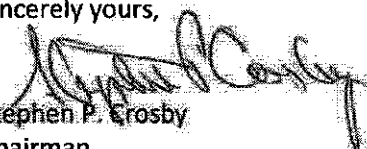
Beginning with the operation of Plainridge Park Casino (PPC), the Gaming Commission accepted the assessment of 9% of PPC gross gaming revenue for purse and other uses from the Race Horse Development Fund, a total of nearly \$30M. Subsequent events have demonstrated conclusively that the Race Horse Development Fund can act as a principal means of enhancing and strengthening standardbred racing; the standardbred track at Plainridge Park Casino is now running 125 racing days, up from 80; purses have increased from \$2.6M in 2014 to \$7.4M in 2017; live racing handle has more than doubled from \$7.6M to \$18M; and annual registered yearlings (1 year old Standardbred horses) have increased from 36-51.

Similarly, though thoroughbred racing is in the process of losing its one operative race track with its minimal number of racing days, there is reason to believe that the thoroughbred industry in Massachusetts can be resurrected, if all of the strategic tools the Legislature envisioned are put into play. It is the Commission's belief that with a reorganized regulatory structure, and empowering the Gaming Commission to strategically manage all the thoroughbred revenue streams – including the Race Horse Development Fund, that there is a legitimate chance of designing a sustainable strategy, for thoroughbred racing in Massachusetts.

In any event, unless the Legislature decides to change its long standing policy commitment in support of sustaining thoroughbred and standardbred racing in Massachusetts, it would be unfortunate to divert significant portions of the Race Horse Development Fund before the full legislative strategy to sustain horse racing has been implemented and tested—notwithstanding that we fully appreciate that these are very difficult fiscal times.

If the Legislature continues its public policy commitment to sustaining the horse racing industry, the Gaming Commission stands ready to work with the Legislature and with all the horse racing constituents to design and implement a sustainable strategy for re-generating and maintaining this important and exciting industry.

Sincerely yours,



Stephen P. Crosby
Chairman



Massachusetts Gaming Commission



DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110-1447
www.dlapiper.com

Bruce S. Barnett
bruce.barnett@dlapiper.com
T 617.406.6002
F 617.406.6102

April 23, 2018

ELECTRONIC MAIL

Catherine Blue, Esq.
General Counsel
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110
catherine.blue@state.ma.us

Dear General Counsel Blue:

I write in further support of the request of Sterling Suffolk Racecourse, LLC (“Sterling Suffolk”) that the Commission make an immediate distribution of the thoroughbred purse funds that have accrued through the Race Horse Development Fund (“RHDF”) but have not yet been deposited into the Sterling Suffolk purse account and then, going forward, make weekly deposits of the thoroughbred purse portion of future funds received into the RHDF, all as required by General Laws chapter 23K, section 60 and by the Commission’s regulations at 205 CMR 149.04(b)(1).

The Commission cannot justify failing to make the required deposits by relying on its regulation at 205 CMR 149.04(c) (“Section 149.04(c)”), which purports to give the Commission discretionary authority to “distribute less than the entire amount of the funds in 205 CMR 149.04(4)(a)1. and (b)1. if the commission determines in its sole discretion that such distribution shall be beneficial or if a lesser amount is requested by the harness racing association or the horse racing association.” Respectfully, the Legislature precluded the Commission from assuming that authority and exercising that discretion when it used the mandatory words that the purse funds “**shall be deposited weekly**” into the licensees’ purse accounts. G.L. c. 23K, § 60.

Section 149.04(c) fails at the first stage of assessing the validity of a regulation, which is to inquire “whether the Legislature has spoken with certainty on the topic in question.” Goldberg v. Board of Health of Granby, 444 Mass. 627, 632-633 (2005). The Legislature has spoken clearly with respect to disbursements from the RHDF, and Section 149.04(c) is invalid because the Commission “has no authority to promulgate rules or regulations that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created.” Mass. Municipal Wholesale Elec. Co. v. Mass. Energy Facilities Siting Council, 411 Mass. 183, 194 (1991).



Catherine Blue, Esq.
April 23, 2018
Page Two

The regulation, and the Commission's failure to deposit the funds into the Sterling Suffolk purse account, conflict with three express statutory requirements: (1) that the Commission deposit the funds into the purse account on a weekly basis; (2) that the funds be held in a purse account for the benefit of the horsemen; and (3) that the funds earn interest that is credited to the purse account.

Commissioner Zuniga's point at the March 29 Commission meeting—that, because the Commission has left the funds sitting the RHDF, the money is under the Commonwealth's control, with any interest accrued going to the Commonwealth's benefit and subject to a legislative "scooping" for other purposes—does not support Section 149.04(c) or the Commission's practice; it simply proves the inconsistency with the statute. The Legislature has already made the determination that the funds are not to remain subject to the future scooping—they are to be deposited weekly into the purse account to avoid that very result. The Legislature has already determined that the funds are not to be invested by the Comptroller with interest to be taken for the benefit of the Commonwealth—they are to be secured for the benefit of the horsemen with interest accumulating within the purse account.

The Commission's regulations and its practice also run afoul of the black-letter principle that "where a subject has been fully regulated by statute, it cannot be further regulated by an administrative officer or board." Druzik v. Board of Health of Haverhill, 324 Mass. 129, 133 (1949). The Legislature has made clear that the Commission has no discretionary role to play with respect to the Race Horse Development Fund. As noted, it has used mandatory language dictating the weekly deposit of the purse funds. G.L. c. 23K, § 60(c). Moreover, while the Legislature did not decide the split of RHDF funds between thoroughbred and harness industries, this issue was not committed to the Commission but rather to the statutorily structured Horse Racing Committee. G.L. c. 23K, § 60(b). Where the Legislature has fully regulated the dispersal of RHDF funds to racing licensees, the Commission cannot "further regulate [that topic] by the adoption of a regulation which is repugnant to the statute." Mass. Hosp. Ass'n, Inc. v. Dep't of Medical Svcs., 412 Mass. 340, 347 (1992) (alteration in original) (quoting Comm. v. Johnson Wholesale Perfume Co., 304 Mass. 452, 457 (1939)) (invalidating regulation that attempted to impose non-statutory, qualitative condition on hospitals' entitlement to distribution of funds).¹

¹ I misspoke at the March 29 meeting when I agreed with Commissioner Zuniga's statement that the Commissioners are "trustees" of the RHDF. In fact, the Legislature has directed the Commission to "administer" the fund, but it has not made the Commissioners trustees, as it did with various other funds. G.L. c. 23K, § 60. The limited role of fund "administration" is consistent with the Legislature's determination that the Commission does not have discretionary authority over the RHDF.



Catherine Blue, Esq.
April 23, 2018
Page Three

The Commission's ultra vires regulation cannot be saved with an argument that present circumstances with respect to the number of racing days differ from those contemplated by the Legislature when it enacted chapter 23K, for at least two reasons. First, the language of the statute is mandatory, and arguments regarding changed circumstances should be made to the Legislature. Second, relying on the beliefs of the Commissioners and their staff as to the Legislature's assumptions in 2011 in light of the racing statutes at the time ignores that the Legislature has acted three separate times since 2014 to extend Sterling Suffolk as a racing licensee with no expectation of more than a single day of racing and yet it has not acted to alter the mandatory nature of chapter 23K, section 60 or to otherwise give the Commission the authority it has claimed. When the Legislature acts, it is presumed to do so with full knowledge of all existing laws. Mamaril v. Keller, 83 Mass. App. Ct. 1119, 2013 WL 1004188 at *3 (2013) (citing Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board, 457 Mass. 663, 673 (2010) ("We presume that the Legislature acts with full knowledge of existing laws")). The Legislature knew each time it extended Sterling Suffolk's license that it was extending Sterling Suffolk's right to receive, weekly, the RHDF purse funds.

At the March 29 Commission meeting, in an attempt to support the changed-circumstances argument, you stated that there is some other payment required by Chapter 128A that the Commission no longer makes because the need and the use no longer exist. To the extent your reference was to the Racing Stabilization Fund, it would not be accurate to say that the Commission has assumed the discretion to withhold a required payment. Rather, payments from that fund have ceased because the Commission has followed the command of the Legislature, which re-enacted the Racing Stabilization Fund with ceilings and limits on payments by the Commission, including an express prohibition that "no such payments shall be made after June 30, 2014." St. 2011, c. 194, § 87. The case of the RHDF is exactly the opposite—the Legislature has mandated that the payment be made.

Finally, I would like to address the suggestion that the escrow provisions of 205 CMR 149.03 ("Section 149.03") could be invoked so that the Commission would escrow the funds rather than deposit them into the Sterling Suffolk purse account.

As an initial matter, Section 149.03 is invalid for the same reasons that Section 149.04(c) is invalid—the Commission's assumption of authority to escrow funds is, at least while there is a thoroughbred racing licensee, in direct conflict with the requirement that the funds be deposited in the licensee's purse account weekly.



Catherine Blue, Esq.
April 23, 2018
Page Four

Even if Section 149.03 were valid, none of the regulation's conditions has been triggered such that consideration of an escrow is justified. Section 149.03 would be triggered if Sterling Suffolk gave the required 30-day's notice of its intent to do one of the following:

- (a) Discontinue horse races for the remainder of its meet;
- (b) Permanently discontinue horse races;
- (c) Close a race track used for horse races;
- (d) Abandon or relinquish its license;
- (e) Not apply for the renewal of its license; or
- (f) Transfer a race track to any other entity.

Sterling Suffolk has not given a notice under Section 149.03 because it does not intend to take any of the listed actions, whether within the next 30 days or, with the potential exception of item (c), at any point in the foreseeable future.

Sterling Suffolk has no intention of (a) discontinuing races for the remainder of its 2018 meet; (b) permanently discontinuing horse races; (d) abandoning or relinquishing its license; or (e) not applying for renewal of its license. As the Commission knows, it sold the Suffolk Downs property in May 2017 (item (f)), but leased back the racetrack for meets in 2017, 2018 and, potentially, 2019. As Chip Tuttle described at the March 29 meeting, to prepare for the fact that Suffolk Downs will almost certainly eventually close, Sterling Suffolk, the NEHBPA and the Massachusetts Thoroughbred Breeders' Association have been working hard this year to find a location to develop a new track to host thoroughbred races into the future. Thus, even if Section 149.03 were valid, the likely ultimate closure of Suffolk Downs does not trigger the regulation. As both Mr. Tuttle and NEHBPA President Anthony Spadea said at the March 29 hearing, in the event the funds cannot be used by Sterling Suffolk for purses or other uses that may become available through legislative action, Sterling Suffolk would return the funds to the Commission.

We look forward to the Commission taking up Sterling Suffolk's request again at its meeting in Springfield on Thursday. I understand it will be on the afternoon portion of the agenda, and we will plan our travel accordingly.

Sincerely,

A handwritten signature in blue ink that reads 'Bruce S. Barnett'.

Bruce S. Barnett



Catherine Blue, Esq.
April 23, 2018
Page Five

cc: Mr. Edward Bedrosian, MGC Executive Director
Dr. Alexandra Lightbown, MGC Director of Racing
Mr. Chip Tuttle

Massachusetts Thoroughbred Horsemen's
Association, Inc.

189 Squire Road, #251
Revere, Ma. 02151

April 23, 2018

Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Ma. 02110

Commissioners,

MassTHA opposes any attempt by Suffolk Downs and the New England HBPA to sweep all monies from the Race Horse Development Fund.

The fund by statute is clearly intended to be used for horsemen's purses at a specific race meet. The New England HBPA does not represent all horsemen. The NEHBPA has failed to run a scheduled, mandatory election this past November, and their board members terms have expired. This has led to an even further disconnect with horsemen.

Suffolk Downs is a defunct racetrack, the brick and mortar facility has been sold. Neither Suffolk Downs or the NEHBPA have any standing. Suffolk downs has done a great job to grandfather themselves in, in regards to the

future of thoroughbred racing in Massachusetts. Now after four years and a total of 17 days of racing, they say they have a new plan. We welcome new plans and ideas, however, speculation and what might be, does not allow any entity to remove monies from the Race Horse Development Fund.

MassTHA represents hundreds of horsemen who were the foundation for our last full-time race meet in 2014. We believe that the fund will be instrumental in bringing in the new investor that will return full-time racing to the Commonwealth and utilize the monies for their intended purpose, purses, and only purses.

If that new investor is Suffolk Downs in conjunction with the NEHBA and their plans move forward with something concrete, we will fully support them. Until that time, we support an open and fair process to allow whatever investor is best for the horsemen and the Commonwealth a fair chance.

Sincerely,

William Lagorio

President, MassTHA