



MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #304

June 4, 2020  
10:00 a.m.

**Via Conference Call Number: 1-646-741-5293**  
**Meeting I.D. Number: 111 017 1641**



Massachusetts Gaming Commission



**NOTICE OF MEETING and AGENDA**  
**June 4, 2020 – 10:00 a.m.**

**PLEASE NOTE:** Given the unprecedented circumstances resulting from the global Coronavirus pandemic, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of individuals interested in attending public meetings. In keeping with the guidance provided, the Commission will conduct a public meeting utilizing remote collaboration technology. If there is any technical problem with our remote connection, an alternative conference line will be noticed immediately on our website: MassGaming.com.

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, June 4, 2020**  
**10:00 a.m.**

**Massachusetts Gaming Commission**  
VIA CONFERENCE CALL NUMBER: 1-646-741-5293  
PARTICIPANT CODE: 111 017 1641

All documents and presentations related to this agenda will be available for your review on the morning of June 4, 2020 by [clicking here](#).

**PUBLIC MEETING - 304**

1. Call to order
2. Approval of Minutes
  - a. May 14, 2020
  - b. May 21, 2020
3. Workforce, Supplier and Diversity Development – Jill Griffin
  - a. MA Cultural Council Gaming Mitigation and Safe Harbors Programs – Anita Walker, Executive Director, MA Cultural Council
4. Administrative Update – Karen Wells, Interim Executive Director
  - a. MGC – Office Status Review – Karen Wells, Interim Executive Director
  - b. Plainridge Park License Renewal Update – Joe Delaney, Construction Project Oversight Manager



Massachusetts Gaming Commission

5. Licensee Sexual Harassment Policy and Regulation –
  - a. Licensee Sexual Harassment Policies Discussion; **205 CMR 138.72: Policies and Procedures for Ensuring a Workplace Free from Unlawful Discrimination, Harassment and Retaliation**, requiring a system of internal controls for a licensee that includes policies and procedures to ensure a workplace free from unlawful discrimination, harassment, and retaliation – Commissioner Gayle Cameron; Commissioner Eileen O’Brien; Loretta Lillios, Chief Enforcement Counsel/Deputy Director; Carrie Torrisi, Associate General Counsel; Trupti Banda, Dir. of Human Resource ; Maura McLaughlin, Attorney, Morgan Brown & Joy - **VOTE**
6. Racing/Legal – Dr. Alex Lightbown, Director of Racing; Todd Grossman, Interim General Counsel
  - a. Horse Racing Opening Status Review and Discussion – Dr. Alex Lightbown, Director of Racing
  - b. **205 CMR 149.04: Race Horse Development Fund: Distributions; Escrow Accounts**, to allow the Horse Race Committee and the Commission flexibility to perform the split in a manner to ensure precise distribution of funds; and Small Business Impact Statement – **VOTE** to begin the promulgation process
7. Investigations and Enforcement Bureau – Karen Wells, Interim Executive Director/Director of IEB
  - a. MGM Suitability Qualifier – Katherine Hartigan, Enforcement Counsel **VOTE**
8. Finance – Derek Lennon, Chief Financial and Accounting Officer
  - a. Budget Discussion/Incremental Costs Year 2021 – Derek Lennon, CFA; Commissioner Enrique Zuniga; Agnes Beaulieu, Finance and Budget Manager; Doug O’Donnell, Revenue Manager
9. Commissioners Update
10. 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](http://www.massgaming.com) and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us).

June 2, 2020

*Cathy/Judd-Stein*, Chair

**Date Posted to Website:** June 2, 2020 at 10:00 a.m.



Massachusetts Gaming Commission



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** May 14, 2020 – 2:00 p.m.

**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5293  
MEETING ID: 112 771 1475

**Present:** Chair Cathy Judd-Stein  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner Bruce Stebbins  
Commissioner Eileen O'Brien

**Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.**

### Call to Order

2:00 p.m. Chair Cathy Judd-Stein called to order public meeting #302 of the Massachusetts Gaming Commission (“Commission”).

*The Chair confirmed a quorum for the meeting with a Roll-Call Vote.*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

### Administrative Update

2:01 p.m. Interim Executive Director Karen Wells stated that the MGC telecommuting work is continuing and effective. She reported that the Investigations and Enforcement Bureau (IEB) has engaged a working group to determine internal (Commission) as well as external (casino reopening) best practices. The teams are fully engaged

and meeting effectively. Ms. Wells encourages the Commission to direct any questions or concerns to her.

## Round Table Discussion

### 2:03 p.m. **Preliminary Discussion with Licensees about their Recently Submitted Draft Health and Safety Proposals regarding Casino Reopening Protocols and Procedures**

The Chair gave remarks, expressing gratitude and appreciation for the medical personnel and first responders. She also thanked all staff from Encore Boston Harbor (Encore), MGM Springfield (MGM), and Plainridge Park Casino (PPC) for their shared commitment to health and safety of patrons, and for attending to start a discussion about reopening protocols. This discussion marks the beginning of the process to open gaming establishments. The Chair noted that the preliminary health and sanitation plans that have been submitted by the licensees are available on the Commission's [website](#).

The goal of this discussion today is to ensure that the Commission is updated throughout the process and that licensees address the commissioners' questions. There will be no definitive decisions or votes today.

The Chair then outlined four categories that will frame today's discussion:

1. Physical and Social Distancing
2. Hygiene, Cleaning, and Sanitation Protocols
3. Staffing and Operations
4. Screening and Occupancy

2:09 p.m. The licensees all introduced their teams and made remarks. First, Encore President Brian Gullbrants described the ongoing development of plans for the reopening plan for the resort. With him was Encore Senior Vice President and General Counsel, Jacqui Krum. He highlighted specifics about the plan, including temperature checks of all patrons and the furnishing of masks to all patrons. Social distancing will be enforced via extra security personnel.

2:14 p.m. Vice President and General Counsel Seth Stratton outlined a seven-point plan that MGM will follow:

1. Screening and Temperature Checks / Employee Training
2. Use of Masks / PPE
3. Physical Distancing
4. Handwashing and Enhanced Sanitization
5. HVAC Controls and Air Quality
6. Incident Response Protocols
7. Digital Innovations

Mr. Stratton stated that Senior Vice President of Government Affairs for MGM Resorts International, Ayesha Molino, and Senior Vice President and Legal

Counsel for MGM Resorts International, Patrick Madamba, primarily collaborated on this plan and would answer any inquiries on it from the Commission.

- [2:18 p.m.](#) Plainridge Park Casino (PPC) Vice President and General Manager Lance George noted that on the call with him are Director of Customer Service, Security, and Risk Management Greg DeMarco, Vice President of Finance Dana Fortney, Vice President of Human Resources Kathy Lucas. Mr. George stated that as PPC is not on a scale with MGM and Encore, there will be significant differences in the challenges that PPC will face in comparison (such as table games and hotel accommodations).
- [2:20 p.m.](#) Next, Mr. Demarco briefly outlined PPC's COVID-19 protocol, to include social distancing, guidelines for the front and back of the house, hygiene and sanitation protocols, PPE, screening of team members, training of team members. PPC continues to monitor state and local guidelines, and are in contact with their sister properties as they reopen and gather further best practices.
- [2:22 p.m.](#) The Chair opened the discussion with the first question regarding physical and social distancing. She asked Mr. George to describe his plans regarding physical distancing for slot machines and players. Mr. George anticipates reopening with less than 50% of gaming positions while acknowledging that this is absent a governor's order and will most likely change. Mr. DeMarco explicitly stated that there will be signage to encourage social distancing in lines. He described how the slots floor and player services will also be managed in a way that promotes and enforces social distancing.
- [2:24 p.m.](#) Commissioner Cameron asked how PPC intends to enforce social distancing respectfully, and what their de-escalation strategy may be. Mr. Demarco stated that he will employ strong customer service skills and have staff lead by example. He also noted that patrons might be asked to leave who do not comply with social distancing.
- [2:25 p.m.](#) Mr. Gullbrants offered that Encore will also employ the same PPC strategies and added that Encore staff will sanitize their gaming machines every hour.
- [2:27 p.m.](#) Mr. Madamba commented that MGM's plan is ongoing, and he is aware that their properties in other states will open before MGM. He stated that they have engaged health experts to advise them on the reopening process, and described a distancing protocol is in line with those of Wynn Resorts and Penn National.
- [2:31 p.m.](#) Commissioner O'Brien asked the licensees what would be possible in the context of controlling the flow of foot traffic on the gaming floors. Mr. Gullbrants stated that to reduce cross-traffic, the staff has mapped a route through the casino that includes signage for patrons. Mr. George noted that PPC would designate only

one entry point and one exit point. Mr. Madamba stated that MGM is looking at limiting the number of entrances and which entrances to keep open.

[2:34 p.m.](#) Next, Commissioner O'Brien asked if there would be any technology such as a mobile app that could alert patrons when their table is ready, to avoid congregation. Mr. Gullbrants answered that Encore will be using technology in a few different ways. Specifically, [IGT's Mobile Responder app](#) will alert staff as to which machines need service. This technology will also be utilized at every restaurant. Patrons will receive a text when their table is ready to eliminate any congregation.

[2:37 p.m.](#) Mr. George also described how PPC intends to control capacity at the door to monitor the number of patrons inside the facility. They also have technology in place at the game level that will enable people to call an attendant to have their machine wiped down, and disinfectant wipes will be placed at every gaming machine.

[2:37 p.m.](#) Mr. Madamba stated that MGM is implementing several technological innovations in their facilities concerning virtual cueing, and they are willing to extend that into the gaming space. MGM is also presently considering staff placing a physical indicator at the area on the gaming table after a person leaves until it is cleaned.

[2:38 p.m.](#) Commissioner Zuniga asked if the licensees had considered employing any additional resources to address issues that may arise concerning the enforcement of social distancing among the patrons. Mr. Gullbrants replied that as customer service is paramount in the gaming industry, health and safety will need to trump this standard for these circumstances. Encore staff will be trained to address any lack of compliance among patrons to ensure a safe, fun environment. PPC and MGM are also aligned with Mr. Gullbrants' statement.

[2:42 p.m.](#) Commissioner Stebbins asked what the communications plan is to promote these protocols to patrons and the community publicly prior to opening. Mr. Gullbrants will post a plan publicly and record a series of videos for employees and the public. Mr. DiMarco and Mr. George confirmed that PPC will be taking similar measures. Mr. Madamba made similar remarks regarding MGM.

[2:48 p.m.](#) Commissioner Cameron asked if any of the licensees are having difficulty obtaining PPE, as there are shortages nationwide. Each licensee reported on amounts of PPE secured.

[2:52 p.m.](#) The Chair asked if the back of house will have the same accommodations for sanitation and hygiene as the front of house. The licensees confirmed that they are employing the same parameters in the in both locations.



- [2:54 p.m.](#) Commissioner O'Brien asked Mr. Gullbrants to describe the [EMist](#) electrostatic disinfectant system that will be installed at Encore. Mr. Gullbrants provided a summary of the functionality of the machine and system.
- [2:55 p.m.](#) Commissioner Zuniga asked what enhancements the casinos might be considering concerning HVAC systems. Mr. Gullbrants pointed out that as Encore is a new structure, they will not need new systems, but they will replace the filtration system more often. PPC and MGM are also new, and they are also taking measures to enhance their air quality.
- [2:59 p.m.](#) Commissioner Stebbins asked what plans independent restaurant owners and ancillary businesses have for hygiene and sanitation. Encore has provided the restaurants and businesses with a copy of their plan and has offered them any assistance they may need. Mr. George stated that PPC has been in communication with their businesses, and they have procedures in place. Racing is currently formulating a plan. Mr. Stratton reflected the same sentiment for MGM and described scenarios for the ancillary businesses on that property.
- [3:02 p.m.](#) The Chair asked the licensees to address the topic of opportunities for any touchless options for patrons. Encore is using Amazon Alexa units in all of the guest rooms, as well as Apple Pay, Google Pay, disposable menus, and anything possible to reduce touching is being implemented. PPC is also using Apple Pay, Google Pay, single-use menus, and using e-mail instead of paper mail. MGM will have digital menus, virtual cues for dining reservations, self-service key dispensers, and other measures in place.
- [3:05 p.m.](#) **Staffing and Operations**  
Commissioner Cameron asked Mr. George what he is anticipating regarding reopening racing. Mr. George offered that racing may be allowed to open without spectators and utilize the barns instead of the paddocks to distance the horses and horsemen.
- [3:08 p.m.](#) Commissioner O'Brien asked Mr. Gullbrants to elaborate on how Encore's bar areas will be staffed. Encore will have employees use one station at a time, and be sanitized before another person can use it. Barstools will be in groups of two with sufficient space in between. Casino service bars will continue to be utilized in the back of the house. They will be disinfected between each server's use.
- [3:12 p.m.](#) Commissioner Zuniga asked if the casinos will have an initial restriction on hours of operation, and how staffing may be impacted. Encore has been exploring a four-day operations option as opposed to a seven-day format; however, this is only in the consideration phase. MGM is going to consider data gathered from their other properties before considering the strategy for the reopening of the Springfield location. PPC will do the same with data accumulated from Penn.



- [3:15 p.m.](#) Commissioner Stebbins asked the licensees how they are preparing their staff to handle the types of potential disputes on the gaming floor that may derive from the new COVID procedures. Encore plans to retrain their staff, and Mr. Gullbrants referenced certification videos. The licensees will all need 10 to 14 days of lead time to implement this training before reopening.
- [3:17 p.m.](#) The Chair noted that there will be cross-training to complete with the Commission employees at the casinos as well.
- Mr. Gullbrants stated that Encore will have several measures to detect any symptoms in employees and ensure that they are not permitted to work if they are experiencing symptoms. PPC and MGM also have means in place for detecting symptoms employees.
- [3:22 p.m.](#) **Screening and Occupancy**  
Commissioner Cameron asked Encore and MGM if lessons learned from the two-week closure in Macau can apply to their properties here in the United States. Mr. Gullbrants stated that business levels in China are quite low. Encore has learned about thermal imaging and sanitation from observing the location in Macau. MGM has consulted with the General Counsel for their Macau property. They concurred that business levels are very low and have learned about sanitation protocols as well. Mr. Madamba stated that the operations of the Macau property are very different from the United States' locations.
- [3:24 p.m.](#) Commissioner Zuniga asked what the protocols will be regarding physical distancing, sanitization, and numbers of positions for the table games for Encore and MGM. Mr. Gullbrants described a scenario to include plexiglass barriers and a limit to the number of seats at the tables. Concerning MGM, Mr. Madamba echoed Mr. Gullbrants' comments. Should these licensees use plexiglass, they will report to the Commission to be afforded extra lead-time to install before opening.
- [3:29 p.m.](#) Commissioner Stebbins asked what occupancy guidelines can be established for each casino and plans for patrons waiting to access the gaming floor. PPC will use technology at podiums to assess and help manage the occupancy level. Encore and MGM will do the same, and all will create checkpoints throughout to direct the flow of foot traffic. There will also be a focus on the garages to limit traffic flow and avoid the congregation there.
- [3:33 p.m.](#) The Chair asked the licensees how they will address minors with masks attempting to enter the gaming floor and consume alcohol in these new conditions, as masks may hinder the casino staff's ability to identify individuals. PPC, Encore, and MGM are still able to card people and ask patrons to lower their masks to obtain an identification.
- [3:38 p.m.](#) The licensees and the Chair made closing remarks.

## Executive Staff Update

[3:42 p.m.](#)

### **Operational Status of Gaming Licensees in light of the Coronavirus**

Ms. Wells addressed the governor's public four-phase structured plan for businesses in Massachusetts to reopen on June 1, 2020. Staff recommends that the Commission continue the ongoing casino shut-down until at least June 1, 2020. This will enable the Commission to incorporate the governor's forthcoming guidance and/or orders regarding this phased reopening of businesses in the Commonwealth into casino reopening plans. The Commission will also consider the submissions of the licensees, as well as federal state and local guidance, as well as evidence of best practices from other industries in other states.

[3:44 p.m.](#)

*Commissioner O'Brien moved that the Commission extend the existing temporary closures of the gaming establishments through at least June 1, 2020, in light of the current situation and the governor's forthcoming advisory board.*

*Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye*

*Commissioner O'Brien: Aye*

*Commissioner Zuniga: Aye*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

[3:45 p.m.](#)

*With no further business, Commissioner Cameron moved to adjourn.*

*Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

### **List of Documents and Other Items Used**

1. Notice of Meeting and Agenda dated May 14, 2020
2. MGC Roundtable Discussion Points dated May 14, 2020
3. Encore Boston Harbor Health & Sanitation Program
4. MGM Resorts Seven-Point Safety Plan dated May 12, 2020
5. Fact Sheet: MGM Resorts' Seven-Point Safety Program
6. Plainridge Park Casino Phase One Base Reopening Guidelines
7. Penn National Gaming, Inc. Reopening Protocols for Penn Properties

/s/ Bruce Stebbins

Secretary



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** May 21, 2020 – 10:00 a.m.

**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
MEETING ID: 111 606 1798

**Present:** Chair Cathy Judd-Stein  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner Bruce Stebbins  
Commissioner Eileen O'Brien

**Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.**

### Call to Order

10:00 a.m. Chair Cathy Judd-Stein called to order public meeting #303 of the Massachusetts Gaming Commission (Commission).

*The Chair confirmed a quorum for the meeting with a Roll-Call Vote.*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

The Chair expressed condolences on behalf of the Commission to all of the families affected by COVID-19, and to all of those who have been working to provide care.

## Approval of Commission Meeting Minutes

10:02 a.m. *Commissioner Stebbins moved to approve the minutes from the Commission meeting of April 29, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Cameron seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

*Commissioner Stebbins further moved to approve the minutes from the Commission meeting of May 1, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner O'Brien seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

*Commissioner Stebbins then moved to approve the minutes from the Commission meeting of May 7, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Cameron requested an edit to the update regarding the rescheduling of the International Masters of Gaming Law (IMGL) joint conference. Commissioner O'Brien seconded the motion, pending the edit.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously.*

## Administrative Update

10:05 a.m. Interim Executive Director Karen Wells provided a preliminary update on Commission offices reopening and casino reopening plans. The governor issued substantial guidance on business reopening in Boston and across the Commonwealth, and Ms. Wells stated that telework operations will remain in place for the present time. The Restart Working Group is creating protocols consistent with the governor's directives for Commission staff that will need to

report to the property once the casinos open. Commission offices will then be opened with an incremental approach. The Restart Working Group will provide these guidelines to the Commission for discussion.

[10:09 a.m.](#) Commissioner Zuniga noted that there might be some incremental costs that will come with reopening the Commission's offices, and stated that the Commission will need to convene to discuss updates as necessary.

Ms. Wells stated that the Commission will be guiding the licensees using the governor's mandates, other state and federal requirements, expert public health guidance, and lessons learned from other jurisdictions that reopened before Massachusetts.

### **Legal/IEB/Licensing Divisions**

#### [10:12 a.m.](#) **Plainridge Park Casino (PPC) License Renewal Status Update**

Ms. Wells, with Todd Grossman, Interim General Counsel; Loretta Lillios, Chief Enforcement Counsel/Deputy Director; Joe Delaney, Construction Project Oversight Manager; and Bill Curtis, Licensing Manager provided an update to the Commission on the status of the renewal of PPC's license.

[10:13 a.m.](#) Ms. Lillios reported on the status of the renewal process for PPC's Category 2 license renewal. She reported that all suitability application materials have been submitted. The IEB has completed the suitability review, and PPC has satisfied all submission requirements. Once the reports are finalized, the matter will be brought to the Commission for a vote. Ms. Lillios expects to provide completed suitability reports to the Commission before the due date of June 24.

[10:18 a.m.](#) Mr. Delaney stated that he has been in contact with PPC regarding information that is needed to fulfill the application's requirements. He explained some of the staffing challenges that PPC is currently working with PPC's Compliance Manager Lisa McKenney has a schedule in place to complete and submit the remaining required information to the Commission in two batches; first by June 1, and the second on June 15. Mr. Delaney then stated that once all is received, the Commission may then implement a schedule for conducting the public hearing and other related matters. Should PPC begin reopening the casino during this time, this may cause a delay in the process; however, it will not affect the license status.

PPC will seek temporary relief from payment of the renewal fee before the license is issued. Ms. Lillios affirmed that the Commission had set the fee, and it is not a statutory or regulatory requirement. Ms. Lillios then suggested that this relief is considered at the June 4<sup>th</sup> Commission meeting. Commissioner Zuniga clarified that the fee is deposited into the Gaming Revenue Fund.

[10:28 a.m.](#) Commissioner Zuniga stated that he would like the Commission to be flexible and accept an affidavit, certification, or a statement from PPC that reflects the completion of their application.

### **Ombudsman Division**

#### [10:31 a.m.](#) **Community Mitigation Fund Summary**

Mr. Delaney and Program Manager Mary Thurlow provided an update on the status of the 2020 Community Mitigation Fund applications (CMF). Included in this update are the comment letters received through MGC comments, MassDOT and Plainridge Park. The Review Team provided an extension of time for the licensees to comment on the applications until May 22, 2020, due to COVID-19.

Mr. Delaney summarized that 37 grant applications were received totaling \$13.4M, which amounts to more than the \$11.5M available for grants. Over the next few weeks, the Review Team will meet several times to evaluate and develop the recommendations to the Commission.

The Commission is currently scheduled to review the applications at the Commission meetings on June 18 and June 25.

[10:39 a.m.](#) Commissioner Zuniga remarked that even if the Commission met the targets that Mr. Delaney described, next year the casino's targets will be less as there have been no funds going into the CMF due to closure. Commissioner Zuniga then confirmed for the Chair that the dollar amount that applications come in under target, those amounts will carry over to the following year.

[10:42 a.m.](#) Commissioner Stebbins thanked Mr. Delaney and Ms. Thurlow for all of their work and remarked that Mr. Delaney consistently providing feedback from the applicants during this crisis has proven to be helpful. Commissioner Stebbins then raised some questions that the Commission may want to consider this fall for the CMF.

### **Commissioners' Update**

#### [10:47 a.m.](#) **Wynn Independent Monitor 6-Month Baseline Report**

Miller & Chevalier Chartered independent monitor members Alejandra Montenegro Alamonte, Preston Pugh, and Ann Sultan presented this report to the Commission.

The Chair thanked the independent monitor for the comprehensive and constructive baseline assessment, and stated that the report has been posted on the Commission's website. She acknowledged colleagues from Wynn, who are not present today, but their response is also posted on the Commission's [website](#).

- [10:49 a.m.](#) Ms. Montenegro introduced her team as well as other participants in the project who collaborated on the baseline report's production and outlined the baseline assessment goals for the Commission.
- Next, Ms. Montenegro described overall observations concerning harassment and discrimination compliance. She noted that the monitor team observed a sincere commitment already present in the Human Resource Division's compliance program.
- [10:54 a.m.](#) Ms. Sultan provided a summary of the review and testing activities that were conducted to include documentation, interviews, and Focus Groups.
- [11:02 a.m.](#) Mr. Pugh reviewed Wynn's risk profile with the Commission, in the context of the Equal Employment Opportunity Commission (EEOC) risk factors and company-specific risk factors upon beginning the monitorship. This risk profile helped inform the monitor's assessment of the effectiveness of the program.
- [11:09 a.m.](#) Commissioner Zuniga asked how the Commission should contextualize what Wynn is experiencing compared to other companies. Ms. Montenegro stated that it is not uncommon, and is similar to other companies. She then noted Wynn's investment in critical positions and significant investment in training in Human Resources programs. There is also increased transparency in reporting by Wynn. All allegations of sexual harassment are now elevated to the general counsel in Las Vegas, as well as to a compliance committee for review. The monitor is ensuring that the company implements a program that can be sustained long-term.
- [11:21 a.m.](#) The Chair asked Ms. Montenegro to elaborate on Wynn's development of plans to monitor and track data that they collect from their investigations to help inform their policies on patron activity. Is that data analysis unique or expected? Ms. Montenegro replied that this analysis is expected and that the premise is to test the effectiveness of Human Resources compliance programs.
- [11:25 a.m.](#) Commissioner Cameron noted that hiring credible leadership is critical to ensure that the values are upheld that are put forth by the monitorship. Ms. Montenegro described how they would make sure the values would live on, should leadership change in the company.
- [11:35 a.m.](#) Commissioner O'Brien asked about a comment in the report that states the Corporate Governance Compliance Officer (CGCO) is currently not licensed to work in Massachusetts, and that Encore Boston Harbor's general counsel has been temporarily fulfilling the role of Compliance Officer for the property while the Wynn awaits his license. Commissioner O'Brien inquired where this understanding originated, as she believes that it is not entirely accurate. Ms. Montenegro replied that it came primarily through interviews with personnel, and found that the CGCO is not able to engage as closely with the Boston operation as expected. The Chair requested that Ms. Montenegro collaborate with Ms. Lillios



to ensure that this accurately reflects the Commission's regulatory structure and amend the report accordingly.

- [11:37 a.m.](#) The team then described updated policies and procedures regarding sexual harassment and discrimination, noting what Wynn had already done to comply before the monitor arrived, and added current opportunities that they have to enhance their efforts.
- [11:40 a.m.](#) Next, Ms. Montenegro described third party relationships with patrons, vendors and service providers, and external counsel in the context of the employees' perception of the Wynn's particular focus on customer service. Commissioner O'Brien stated there is a heightened tension for Wynn in this area as opposed to other casinos because they are so focused on their brand with 5-star service. Ms. Montenegro concurred.
- [11:50 a.m.](#) The Chair asked for examples offered to Wynn from the monitor to address the tension mentioned by Commissioner O'Brien. Ms. Montenegro provided examples, such as patron standards of behavior that have been provided to Wynn to use on their website.
- [11:59 a.m.](#) The Chair asked about the policy on conflicts and asked about who keeps records of these conflicts. She noted that the gaming legal community is small, and no single person should be in charge of keeping records. Ms. Montenegro stated there is a need for dual approval in the payment of external counsel invoices. She recommends that the general counsel and chief financial officer oversee these records, as well as where there are decisions and review procedures that would require a second look. This will be a strong focus in the next phase.
- [12:04 p.m.](#) Mr. Pugh reviewed a slide with the Commission that described training and guidance as essential to ensure the program's effectiveness and provided further details about the training initiative.
- [12:13 a.m.](#) Next, Ms. Montenegro identified areas where they have recommended additional training as internal reporting and investigation. She described the various reporting channels available for employees and third parties to report suspected violations of the Human Resource Compliance Program (HRCP) as well as describing an investigation protocol.
- [12:24 p.m.](#) Commissioner Zuniga suggested perhaps taking steps to handle sensitive issues before launching a formal investigation would be beneficial to all involved, as the term "investigation" can be perceived as presumptive escalation, designating an offender. Ms. Montenegro commented on the impacts of overcorrection and undercorrection and how communication plays a vital role.
- [12:28 p.m.](#) The Chair asked if the multitude of reports they have received from employees has been consistent with the industry norms, concerning risk for the entity. Ms.

Montenegro responded that the number and nature of the allegations are consistent with what they would expect to see in this type of company and industry.

[12:31 p.m.](#) Next, Mr. Pugh reviewed a slide that described incentives and discipline measures that Wynn has in place to discipline employees who violate the business' personal codes of conduct and Human Resources policies. He stated that the monitor team has seen evidence of such discipline, including in senior personnel. There are current opportunities to enhance formal performance-management procedures, goal-setting, and evaluation.

[12:38 p.m.](#) The concept of risk-based review was then discussed. Ms. Montenegro described it as ongoing risk-based assessments to identify where particular risks exist. Internal audits are also part of the risk-assessment plan.

[12:42 p.m.](#) Ms. Sultan reviewed the company's monitoring and testing aspects of the program, which is critical for long-term success. She noted observations in this module and provided examples of what they have seen so far.

[12:53 p.m.](#) Commissioner Zuniga provided three insights about the general concept of changing culture, and then asked Ms. Montenegro to speak to them. She made remarks, also stating that it is critical to continually communicate to managers and supervisors as to what is expected of them, and make it clear that they will be held accountable if they fail to do so.

[1:01 p.m.](#) Commissioner Stebbins asked if the monitor is making recommendations to Wynn to reduce contention between the concepts of core values vs. core behaviors. Ms. Montenegro replied affirmatively and described current efforts in place.

[1:12 p.m.](#) The Chair made closing remarks and commended Wynn and Encore Boston Harbor team for their collaborative process.

### **Commissioners' Update**

[1:17 p.m.](#) Commissioner Zuniga will be returning with a further update on next week's Public Health Trust Fund to discuss their budget, which will have implications for the Commission's budget.

[1:18 p.m.](#) *With no further business, Commissioner Cameron moved to adjourn.  
Commissioner Stebbins seconded the motion.*

*Roll Call Vote:*

*Commissioner Cameron: Aye.*

*Commissioner O'Brien: Aye.*

*Commissioner Zuniga: Aye.*

*Commissioner Stebbins: Aye.*

*Chair Judd-Stein:*                      *Aye.*  
*The motion passed unanimously.*

**List of Documents and Other Items Used**

1. Notice of Meeting and Agenda dated May 19, 2020
2. Draft Commission Meeting Minutes dated April 29, 2020
3. Draft Commission Meeting Minutes dated May 1, 2020
4. Draft Commission Meeting Minutes dated May 7, 2020
5. Memorandum re: 2020 Community Mitigation Fund Update dated May 21, 2020
6. Wynn Resorts Ltd. & Wynn MA, LLC Independent Compliance Monitor Baseline Assessment Report dated May 8, 2020

/s/ Bruce Stebbins  
Secretary

DRAFT



TO: Chair Judd-Stein, Commissioners Cameron, O'Brien, Stebbins, and Zuniga,  
FROM: Jill Griffin, Director of Workforce, Supplier and Diversity Development  
CC: Karen Wells, Acting Interim Executive Director  
DATE: March 12, 2020  
RE: Mass Cultural Council Mitigation Program Overview

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Mass Cultural Council partners with communities across the Commonwealth to expand access, improve education, promote diversity, and encourage excellence in the arts, humanities, and sciences. Anita Walker, Executive Director of Mass Cultural Council has been invited to provide information to the Commission about the Gaming Mitigation Program, established by MGL Section 59 chapter 23K to support not-for-profit and municipally-owned performing arts centers impacted as a result of the operation of gaming facilities. The Gaming Mitigation Program is intended to level the playing field for non-profit and municipal performing arts centers in Massachusetts by providing capital to preserve their ability to compete in a new marketplace due to the presence of casinos in Massachusetts. . According to Mass Cultural Council \$3.4 million is expected to be awarded by this program in 2020.

Director Walker will also review Safe Harbors COVID-19 Initiative for Cultural Organizations, funded by one quarter of the Gaming Mitigation funds the Mass Cultural Council receives. The other three fourths of the funds Mass Cultural Council receives are directed, by statute, to the Gaming Mitigation grant program.

The Expanded Gaming Law created a twenty-five percent tax on gross gaming revenue (GGR) for Class 1 resort casinos prescribed under section 59: which included requirements that:

*(a) 2 per cent of revenues to the Massachusetts Cultural Council of which one-quarter of the revenues received shall be dedicated to the organization support program of the Massachusetts cultural council and three-quarters of revenues shall be dedicated to support not-for-profit and municipally-owned performing arts centers impacted as a result of the operation of gaming facilities; provided, however, that funds dedicated to such performing arts centers shall be to subsidize fees paid to touring shows or artists; and provided further, that funding shall be appropriated through a competitive grant process to be developed and administered by the Massachusetts cultural council.*

Attachments: MA Cultural Council- Gaming Mitigation Program, Safe Harbors COVID-19 Initiative for Cultural Organizations

# Gaming Mitigation Program

The Gaming Mitigation Program, established by MGL Section 59 chapter 23K, aims to mitigate a direct threat to the sustainability of non-profit and municipal performing arts centers in Massachusetts by providing capital to preserve their ability to compete in a new, unbalanced marketplace.

This is important because performing arts centers:

- Are economic engines for communities
- Ensure access to the arts across the Commonwealth
- Are centers of community gathering and place making
- Provide young people creative learning opportunities

\$3.34 million will be awarded by this program in 2020.

## ELIGIBILITY

To be eligible, applicants must meet **all three** of the following:

1. Applicants must be a performing arts center
2. Applicants must present touring shows or artists.
3. Applicants must be a Massachusetts non-profit OR a Massachusetts municipality

## FUNDING

**Not all eligible applicants are guaranteed funding.** Funding decisions are made primarily through a formula that considers the following factors, which have equal weight:

1. Percent of Performances Impacted
2. Total fees paid to touring shows or artists for the eligible performances.

## GRANT AMOUNTS AND USE OF FUNDS

The maximum and minimum grant amounts needed to qualify for funding will be determined after the applications are submitted. Any caps or minimums that are set will be determined depending on the amount of funding available, the number of applicants in the pool, and the need to target funding to those most directly impacted by the operation of resort-style casinos. Grant funds must be spent on fees paid to touring shows or artists which can include:

- Payments to the show/artist including bonuses and percentages
- Housing costs for the touring show/artist
- Travel costs for the show/artist

## APPLICATION REVIEW PROCESS

Applications are first reviewed by staff to confirm eligibility. Eligible applications are then reviewed to confirm formula components are correct. The formula is applied to the applications remaining in the pool and awards and/or funding amounts are finalized by Mass Cultural Council staff.

## TIMELINE

- **February 5, 2020:** Guidelines and application available
- **April 30, 2020:** Applications due 11:59 PM EST
- **May 21, 2020:** Email award notifications sent to grantees
- **March 24, 2021:** Final Report Due/Application for next cycle of funding

Learn more:

[www.massculturalcouncil.org/organizations/gaming-mitigation/](http://www.massculturalcouncil.org/organizations/gaming-mitigation/)

## Safe Harbors COVID-19 Initiative for Cultural Organizations

[Mass Cultural Council's Safe Harbors Initiative](#) is a three-pronged package of support for cultural nonprofits to encourage access to COVID-19 assistance offered through the federal government and help organizations understand their current financial challenges and craft a responsible strategy forward.

The federal [Families First Coronavirus Response Act](#) creates new workplace obligations for employers and expanded support for individuals affected by the COVID-19 pandemic, while the federal [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) authorizes more than \$2 trillion in spending to inject cash into the nation's economy, businesses, and nonprofits.

Mass Cultural Council is partnering with the [Nonprofit Finance Fund](#) to provide a powerful assortment of webinars and online resources, coupled with capacity-building coaching services, to assist leaders of cultural nonprofits in preparing plans and making decisions. Additionally, a financial supplement to operating support grants will be paid to existing Mass Cultural Council CIP [Portfolio and Gateway](#) grantees to take part in the Safe Harbors Initiative.





*Legal Division*

TO: Cathy Judd-Stein, Chair  
Gayle Cameron, Commissioner  
Eileen O'Brien, Commissioner  
Bruce Stebbins, Commissioner  
Enrique Zuniga, Commissioner

FROM: Carrie Torrisi, Associate General Counsel

CC: Loretta Lillios, Chief Enforcement Counsel/Deputy Director - IEB  
Elaine Driscoll, Director of Communications  
Trupti Banda, Human Resources Manager

DATE: June 4, 2020

RE: Working Group on Anti-Harassment Internal Control Regulations

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In mid-2018, the Commission requested that staff conduct an internal analysis regarding best practices relative to the handling of casino employee complaints of discrimination, sexual harassment, and other employment-related issues. A working group consisting of Commissioners Cameron and O'Brien, along with members from the legal department, the IEB, the human resources department, and the communications department, was assembled to study the issue.

Over the course of several months, the working group met to discuss whether and how to codify best practices into a regulation. The group reviewed existing and proposed state and agency regulations on this topic from several jurisdictions. Early this year, the working group reached out to the Commission's outside labor and employment counsel to gain valuable insight into best practices from someone with extensive knowledge and expertise in the area of employment law. These discussions resulted in the draft of 205 CMR 138.72 that you have in your packet. While we recognize that the gaming licensees have existing corporate policies to address these types of issues, this regulation is designed to ensure standardized compliance and enforcement.

In summary, this regulation requires a gaming licensee to have a system of internal controls that includes policies and procedures relative to ensuring a workplace free from unlawful discrimination, harassment, and retaliation. Key points include (but are not limited to):

- A requirement that such policies incorporate all elements of the Massachusetts Commission Against Discrimination (MCAD) Model Sexual Harassment Policy;
- A requirement that such policies include written procedures outlining how concerns or allegations regarding unlawful discrimination, harassment, and retaliation are to be reported, including multiple reporting options;



Massachusetts Gaming Commission

- A requirement that training on unlawful discrimination, harassment, and retaliation be provided by the gaming licensee to all employees within 90 days of the date of hire and every two years thereafter;
- A requirement that the gaming licensee review its policies and procedures every two years to ensure compliance with all federal, state, and local laws relating to unlawful discrimination, harassment, and retaliation;
- A requirement that the gaming licensee maintain detailed information related to each concern, allegation, or claim of unlawful discrimination, harassment, or retaliation reported to the gaming licensee for the previous calendar year;
- A provision authorizing the Commission to review any records pertaining to these policies and procedures.

In February, the working group met with representatives from each licensee to discuss, receive input on, and address concerns related to the proposed draft 205 CMR 138.72, and received positive feedback from all. We now seek guidance from the Commission at large regarding the draft 205 CMR 138.72.



*Legal Division*

## **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 regulation **205 CMR 138.72: Policies and Procedures for Ensuring a Workplace Free from Unlawful Discrimination, Harassment and Retaliation** notice of which was filed this day with the Secretary of the Commonwealth. The proposed regulation requires a system of internal controls for a licensee that includes policies and procedures to ensure a workplace free from unlawful discrimination, harassment, and retaliation. This regulation is largely governed by MGL c. 23K, §§ 4(37), and 5.

This regulation applies to gaming licensees, their corporate parent qualifying entity, and their respective employees. Accordingly, this amendment is not anticipated to have an impact on small businesses. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

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

As this regulation applies to gaming licensees, their corporate parent qualifying entity, and their respective employees, no small businesses are subject to the proposed regulation.

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

There will be reporting, recordkeeping, and administrative costs created by this regulation that will affect the parties to which it applies; however, there are none that would affect small businesses.

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

A performance standard is appropriate to facilitate the adoption of specific written policies in compliance with all applicable federal, state and local laws relating to unlawful discrimination, harassment and retaliation.

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:



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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:

The intent of this regulation is to ensure a workplace free from unlawful discrimination, harassment, and retaliation, and will not deter or encourage the formation of small businesses.

Massachusetts Gaming Commission  
By:

\_\_\_\_\_  
Shara Bedard  
Paralegal  
Legal Division

Dated: \_\_\_\_\_



Massachusetts Gaming Commission

## Regulation Review Checklist

Agency Contacts for This Specific Regulation		
Name	Email	Phone
Commissioner Gayle Cameron; Commissioner Eileen O'Brien; Loretta Lillios, IEB Chief Enforcement Counsel; Carrie Torrisi, Associate General Counsel; Trupti Banda, Human Resources Manager		
Overview		
<b>CMR Number</b>	205 CMR 138.72	
<b>Regulation Title</b>	Policies and Procedures for Ensuring a Workplace Free from Unlawful Discrimination, Harassment and Retaliation	
<input checked="" type="checkbox"/> <b>Draft Regulation</b>		<input type="checkbox"/> <b>Final Regulation</b>
Type of Proposed Action		
<input checked="" type="checkbox"/> Please check all that apply		
<input type="checkbox"/> Retain the regulation in current form.		
<input checked="" type="checkbox"/> New regulation (Please provide statutory cite requiring regulation): M.G.L. c. 151B § 3A		
<input type="checkbox"/> Emergency regulation (Please indicate the date regulation must be adopted):		
<input type="checkbox"/> Amended regulation (Please indicate the date regulation was last revised):		
<input type="checkbox"/> Technical correction		
<input type="checkbox"/> Other Explain:		

Summary of Proposed Action
The proposed regulation requires a system of internal controls for a licensee that includes policies and procedures to ensure a workplace free from unlawful discrimination, harassment, and retaliation.
Nature of and Reason for the Proposed Action
This regulation was created to codify best practices relative to the handling of casino employee complaints of discrimination, sexual harassment, and other employment-related issues.

## Regulation Review Checklist

<b>Additional Comments or Issues Not Earlier Addressed by this Review</b>	
<b>Required Attachments</b>	
<b>✓ Please check all that apply</b>	
<input type="checkbox"/> Redlined version of proposed amendment to regulation, including repeals	<input checked="" type="checkbox"/> Clean copy of the regulation if it is a new chapter or if there is a recommendation to retain as is
<input checked="" type="checkbox"/> Text of statute or other legal basis for regulation: M.G.L. c. 151B § 3A: Employers' policies against sexual harassment; preparation of model policy; education and training programs. (a) All employers, employment agencies and labor organizations shall promote a workplace free of sexual harassment.  (b) Every employer shall:  (1) adopt a policy against sexual harassment which shall include:  (i) a statement that sexual harassment in the workplace is unlawful;  (ii) a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;  (iii) a description and examples of sexual harassment;  (iv) a statement of the range of consequences for employees who are found to have committed sexual harassment;  (v) a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and	

## Regulation Review Checklist

(vi) the identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact such agencies.

(2) provide annually to all employees an individual written copy of the employer's policy against sexual harassment; provided, however, that a new employee shall be provided such a copy at the time of his employment.

(c) The commission shall prepare and provide to employers subject to this section a model policy and poster consistent with federal and state statutes and regulations, which may be used by employers for the purposes of this section.

(d) An employer's failure to provide the information required to be provided by this section shall not, in and of itself, result in the liability of said employer to any current or former employee or applicant in any action alleging sexual harassment. An employer's compliance with the notice requirements of this section shall not, in and of itself, protect the employer from liability for sexual harassment of any current or former employee or applicant.

(e) Employers and labor organizations are encouraged to conduct an education and training program for new employees and members, within one year of commencement of employment or membership, which includes at a minimum the information set forth in this section.

Employers are encouraged to conduct additional training for new supervisory and managerial employees and members within one year of commencement of employment or membership, which shall include at a minimum the information set forth in subsection (b), the specific responsibilities of supervisory and managerial employees and the methods that such employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Employers, labor organizations and appropriate state agencies are encouraged to cooperate in making such training available.

Small Business Impact Statement (SBIS)

Amended SBIS



205 CMR 138.00: UNIFORM STANDARDS OF ACCOUNTING PROCEDURES AND  
INTERNAL CONTROLS

138.72: Policies and Procedures for Ensuring a Workplace Free from Unlawful Discrimination, Harassment and Retaliation

(1) A system of internal controls submitted by a gaming licensee in accordance with 205 CMR 138.02 shall include policies and procedures relative to ensuring a workplace free from unlawful discrimination, harassment and retaliation. These policies and procedures shall comply with all federal, state, and local laws relating to unlawful discrimination, harassment, and retaliation, and shall include, at a minimum:

- (a) Specific written policies prohibiting unlawful discrimination, harassment and retaliation in the workforce, as well as a statement that the gaming licensee complies with all applicable federal, state and local laws relating to unlawful discrimination, harassment and retaliation. Without limiting any of the below, such policies shall at a minimum incorporate all elements of the Massachusetts Commission Against Discrimination (MCAD) Model Sexual Harassment Policy;
- (b) Specific written procedures outlining how concerns, allegations or claims regarding unlawful discrimination, harassment and retaliation are to be reported, including multiple reporting options such as reporting to: an employee's direct supervisor or another supervisor within the organization; any member of the human resources staff; the general manager or president of the property where the employee works; a reporting hotline; and/or any member of the gaming licensee's legal department. The procedures shall identify by name and/or title, address and telephone number at least two individuals to whom concerns of discrimination, harassment or retaliation may be reported; provided, further, that any employee with supervisory powers shall report complaints, concerns or other matters arising or reported under these policies and procedures to the representatives of the organization so identified, and shall be trained on the obligation to ensure immediate and appropriate corrective action in addressing harassment complaints. The licensee shall ensure and shall inform employees that individuals of different genders are available for reporting of complaints. The licensee's procedures may suggest, but need not require, a specific reporting process;
- (c) The identification of a specific position at the property or corporate level (or both) that is responsible for overseeing and enforcing the policies and procedures;
- d) A requirement that each employee receive a copy of the policies and procedures as part of the gaming licensee's onboarding process;

(e) A requirement that training on unlawful discrimination, harassment and retaliation be provided by the gaming licensee to all employees within ninety (90) days of the date of hire and every two years thereafter;

(f) A personal relationships policy that identifies prohibited personal relationships as well as the disclosure requirements for personal relationships;

(g) A statement in the policies and procedures that all concerns, allegations or claims will be investigated promptly and that all concerns, allegations or claims will be handled in a confidential manner to the extent possible to ensure a thorough and complete investigation of the concern, allegation or claim;

(h) A listing of the federal and state agencies located in the Commonwealth that enforce the unlawful discrimination, harassment and retaliation laws, including names and addresses of each location within the Commonwealth of the offices of such agencies.

(2) A gaming licensee shall create a process and procedure to track that all employees attend training as required.

(3) A gaming licensee shall review its policies and procedures every two years to ensure that such policies and procedures comply with all federal, state and local laws relating to unlawful discrimination, harassment and retaliation.

(4) A gaming licensee and its corporate parent qualifying entity (as designated by the Bureau) shall each maintain the following information for the previous calendar year regarding their respective employees:

(a) each concern, allegation or claim of unlawful discrimination, harassment or retaliation reported to the gaming licensee and/or to the corporate parent qualifying entity and the method used to report such concerns, allegations or claims.

(b) for each concern, allegation or claim identified in paragraph 4(a):

(i) the identity, by name or title, of the representative of the licensee or corporate parent qualifying entity who investigated the concerns, allegations or claims;

(ii) the manner in which the concerns, allegations or claims were investigated; and

(iii) the ultimate resolution of the concern, allegation or claim, such as whether the concern, allegation or claim was resolved internally (by agreement, disciplinary action up to and including termination, or settlement and/or separation agreement) and/or filed with the appropriate federal, state or local authority; provided further, if the matter was resolved by settlement or separation agreement, the licensee or corporate parent qualifying entity shall maintain a copy of such agreement;

- (c) a general description of the concerns, allegations or claims, i.e., sexual harassment, unlawful discrimination, retaliation;
- (d) a listing of the number of concerns, allegations or claims awaiting investigation or resolution and an explanation of why such concerns, allegations or claims have not been investigated and resolved;
- (e) a breakdown of the concerns, allegations or claims by the type of concern, allegation or claim and by the level of employee, member of the public/patron or vendor against whom the concern, allegation or claim was made;
- (f) the gaming licensee's policies and procedures with any changes made to the policies and procedures within the last year highlighted;
- (g) information relating to the training required by paragraph 1(e), above, including a listing of the training sessions provided and the number of employees trained by position records of the dates of training; names of participants/sign-in sheets; the identity and qualifications of the trainers; and a brief description of the training; and
- (h) a statement signed by the gaming licensee's head of human resources at the gaming licensee's corporate level that the gaming licensee and the corporate parent qualifying entity have complied with their policies and procedures and that the information compiled as required in this section is true and correct to the best of such representatives' knowledge and belief.

The Commission shall have the right to review such information upon reasonable notice to the licensee. When providing information identified in sub-paragraphs (a) - (d), inclusive, for review, the licensee and the corporate parent qualifying entity may produce such information in a format that does not include: names of the individual(s) reporting the concern, allegation or claim; the names of witnesses; and specific details of the concern, allegation or claim which could be used to identify the individuals involved in the underlying incident(s).

(5) The gaming licensee shall ensure that any concerns, allegations or claims relating to unlawful discrimination, harassment or retaliation are investigated and resolved in accordance with these regulations and all other applicable laws and regulations.

(6) The commission shall have the right, upon request and notice to the gaming licensee, to review any gaming licensee records pertaining to the policies and procedures outlined in 205 CMR 138.72.



*Legal Division*

## **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 to **205 CMR 149.04: Race Horse Development Fund: Distributions; Escrow Accounts**, notice of which was filed this day with the Secretary of the Commonwealth. The amendment would allow the Horse Race Committee and the Commission flexibility to set the distribution percentage of monies from the Race Horse Development Fund in a manner to ensure more precise distribution of funds. This regulation is largely governed by MGL c. 23K, §§ 4(37), and 5.

This amendment applies directly to all members of the Standardbred and Thoroughbred racing industry. Accordingly, this amendment will likely have an impact on small businesses. However, the proposed amendments themselves will not require any small business to take any administrative action. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

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

The horsemen and breeders participating in the industry in Massachusetts may see positive impacts from the proposed amendments. There are approximately 500 owners and breeders.

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

There are no projected reporting, recordkeeping, or administrative costs created directly by these regulations that would affect small businesses as the proposed amendments are procedural in nature.

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

There are no performance or design standards imposed by the proposed amendment to this regulation. The proposed amendments simply address the manner in which the Horse Race Committee and Commission may establish the distribution percentage.

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:



Massachusetts Gaming Commission

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:

This amendment updates the method to distribute funds from the Race Horse Development Fund to the Standardbred and Thoroughbred racing industries. The proposed changes are designed to encourage the formation of small businesses by allowing the Committee and Commission a greater ability to direct monies from the Fund with greater precision based on need.

Massachusetts Gaming Commission

By:

\_\_\_\_\_  
Shara Bedard  
Paralegal  
Legal Division

Dated: \_\_\_\_\_



Massachusetts Gaming Commission

## Regulation Review Checklist

Agency Contacts for This Specific Regulation		
Name	Email	Phone
Todd Grossman		
Overview		
<b>CMR Number</b>	205 CMR 149.04(4)	
<b>Regulation Title</b>	Race Horse Development Fund: Distributions; Escrow Accounts	
<input checked="" type="checkbox"/> <b>Draft Regulation</b>		<input type="checkbox"/> <b>Final Regulation</b>
Type of Proposed Action		
✓ Please check all that apply		
<input type="checkbox"/> Retain the regulation in current form.		
<input type="checkbox"/> New regulation (Please provide statutory cite requiring regulation):		
<input checked="" type="checkbox"/> Emergency regulation (Please indicate the date regulation must be adopted):		
<input checked="" type="checkbox"/> Amended regulation (Please indicate the date regulation was last revised):		
<input type="checkbox"/> Technical correction		
<input type="checkbox"/> Other Explain:		

Summary of Proposed Action
<p><u>Overview.</u> The proposed amendments to 205 CMR 149.04(4) represent technical adjustments to the process outlined in the Commission’s regulations governing the distribution of funds from the Race Horse Development Fund (“the Fund”). The Fund was established by G.L. c.23K, §60. The regulations largely mirror the statute, but also contain language, though intended to clarify the statute, that presents an impediment to a new approach to distributing monies from the Fund that the Horse Racing Committee (“Committee”) is interested in pursuing. If adopted, the updated version of the regulations would modify that language, bring the regulations in harmony with the statute, and allow the Committee to pursue the new approach to its statutory work.</p> <p><u>Background.</u> The Fund was established by G.L. c.23K, §60 and is comprised of monies received from a number of different sources, but primarily from the daily assessments based on the gross gaming revenues from the gaming licensees. See G.L. c.23K, §55(c) (“a category 2 licensee shall pay a daily assessment of 9 per cent of its gross gaming revenue to the Race Horse Development Fund established in section 60.”), and G.L. c.23K, §59(2)(l) (“100 per cent of the revenue received from a category 1 licensee shall be transferred as follows: ... (l) 2.5 per cent to the Race</p>

## Regulation Review Checklist

Horse Development Fund established in section 60.”). The Commission is charged with administering the Fund. The monies in the Fund are intended to be distributed between the two breeds: thoroughbred and standardbred. Pursuant to §60(c), the funds must be distributed in the following percentages for the following essential purposes:

- 80% to fund purses for live races;
- 16% into the respective breeds’ breeding programs approved by the Commission; and
- 4% to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at a horse racing facility for the benefit of the organization's members, their families, employees and others.

In accordance with §60, “[t]he horse racing committee shall make recommendations on how the funds [] shall be distributed between thoroughbred and standardbred racing facilities to support the thoroughbred and standardbred horse racing industries under this section. ... The committee shall submit distribution recommendations to the clerks of the senate and house of representatives not later than 30 days before submitting the recommendations to the commission for final approval.” The distribution percentage has come to be known colloquially as “the split.” Notably, when it comes to adjusting the established split, the statute provides that “[t]he commission shall only change the distribution percentage upon a recommendation by the committee.” See G.L. c.23K, §60(b).

Past practice and the present regulation. To date, when determining the split, the Committee has recommended one overall percentage by which all of the available monies in the Fund would be split. The split is presently set at 65% to the standardbred interests and 35% to the thoroughbred. So, for example, if there were \$10 million available for distribution in the Fund, \$6.5 million would go towards the standardbreds and \$3.5 million to the thoroughbreds. From there, in accordance with the percentages established in §60(c), as set out for reference in the bullet points above, the monies are further broken into the three categories for distribution. In the example, then, the \$6.5 million and \$3.5 million amounts would each be broken down into the 80%/16%/4% categories for distribution.

The present language contained in 205 CMR 149.04(4) directs that the distributions be conducted in accordance with this method. This is an entirely appropriate approach and consistent with the language of the statute. However, with the benefit of a number of years of experience, and given the present circumstances confronting the horse racing industry, the Committee has expressed an interest in determining the distribution percentage in a similar, but alternative, method which is also consistent with §60. Where the regulation only permits distribution in accordance with the present method though, a modification of the regulations by the Commission is required if this new approach, as described below, is to be employed.

The new approach. Under the new approach, instead of determining one overall percentage by

## Regulation Review Checklist

which all available funds will be split, the Committee would make individual split recommendations by category. So, for example, there would be one percentage for the purse category, one for the breeding category, and one for the health and pension benefit category. By untethering the individual categories from one another, this approach will afford the Committee, and ultimately the Commission, a greater ability to direct funds to the respective breeds based upon specific factors with increased precision. Importantly, under this new approach, the exact same number of actual dollars in the aggregate will be distributed within each of the three categories. That is, 80% will still go to purses, 16% will still go to the breeders programs, and 4% will still go to health and pension benefits. However, the amount distributed to a particular breed within a category may be adjusted based upon specific considerations related to that category.

Conclusion. While the proposed amendments would not themselves result in any the change to the existing 65%/35% split, if adopted the Committee would be able to make recommendations as to the distribution percentages to the Commission in accordance with the new approach.

### Nature of and Reason for the Proposed Action

As discussed above, the proposed amendments to the regulations would allow the Committee, and ultimately the Commission, to direct available monies in the Fund by breed with greater precision based upon specific facts and circumstances.

### Additional Comments or Issues Not Earlier Addressed by this Review

The Committee is scheduled to review the draft amendments at its meeting on June 3, 2020. The particulars of the new approach were the subject of a public comment session, and follow-up discussion, by the Committee on May 14, 2020.

### Required Attachments

✓ Please check all that apply

Redlined version of proposed amendment to regulation, including repeals

Clean copy of the regulation if it is a new chapter or if there is a recommendation to retain as is

Text of statute or other legal basis for regulation



## Regulation Review Checklist

<input checked="" type="checkbox"/> Small Business Impact Statement (SBIS)	<input type="checkbox"/> Amended SBIS
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205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 149.00: RACE HORSE DEVELOPMENT FUND

149.04: Race Horse Development Fund: Distributions; Escrow Accounts

(4) (a) The commission shall make distributions from the race horse development fund, or from a race horse development fund escrow account created under 205 CMR 149.03, **in the distribution percentage(s) approved by the commission upon a recommendation of the horse racing committee** ~~because of a harness racing association~~ **between thoroughbred and standardbred racing** as follows, in accordance with M.G.L. c. 23K, § 60 and 205 CMR 149.00:

1. 80% of the funds approved by the commission shall be paid weekly ~~into a harness racing association~~ **separate, interest bearing purse accounts in accordance with M.G.L. c. 23K, § 60(c)(i)**. If there is more than one ~~harness racing association~~ **within a particular breed**, ~~such~~ **the funds allocated to that breed** shall be divided between the ~~harness racing~~ associations at the discretion of the commission. ~~Such funds shall be paid into a separate, interest bearing purse account to be established by the harness racing association for the benefit of the harness racing horsemen.~~ The earned interest on this account shall be credited to the purse account and shall be combined with revenues from existing purse agreements to fund purses for live ~~harness~~ races consistent with those agreements, with the advice and consent of the harness racing horsemen.
2. 16% of the funds approved by the commission shall be deposited by the Commission **in accordance with M.G.L. c. 23K, § 60(c)(ii)** ~~into an account~~ for the benefit of the ~~Massachusetts Standardbred Breeding Program~~ **respective breeding programs** authorized by the commission.
3. **4% of the funds approved by the commission** shall be used to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at ~~the harness~~ **a horse racing association's race track facility** for the benefit of the organization's members, their families, employees and others under the rules and eligibility requirements of the organization, as approved by the commission **in accordance with M.G.L. c. 23K, § 60(c)(iii)**, provided, however, that if there is more than one horsemen's organization **within a particular breed, the funds allocated to that breed shall be divided at the discretion of the commission**, ~~the commission shall divide the amount available under 205 CMR 149.04 evenly between the horsemen's organizations.~~ This amount shall be deposited by the Commission within five business days of the end of each month into a separate account to be established by each respective horsemen's organization at a banking institution of its choice. Of this amount, the commission shall determine how much shall be paid annually by the horsemen's organization to the **thoroughbred jockeys or standardbred drivers'** organization at the ~~harness~~ **horse racing associations race track facility** for health insurance, life and/or accident insurance or other benefits to active and disabled **thoroughbred jockeys or standardbred drivers** under the rules and eligibility requirements of that organization.

(b) ~~The commission shall make distributions from the race horse development fund or a race horse development fund escrow account created under 205 CMR 149.03 because of a horse racing association as follows, in accordance with M.G.L. c. 23K, § 60 and 205 CMR 149.00:~~

- ~~1. 80% of the funds approved by the commission shall be paid weekly to a horse racing association. If there is more than one horse racing association such funds shall be divided between the horse racing associations at the discretion of the commission. Such funds shall be paid into a separate, interest-bearing purse account to be established by the horse racing association for the benefit of the horse racing horsemen. The earned interest on this account shall be credited to the purse account and shall be combined with revenues from existing purse agreements to fund purses for live horse races consistent with those agreements, with the advice and consent of the horse racing horsemen.~~
- ~~2. 16% of the funds approved by the commission shall be deposited by the Commission into an account for the benefit of the Massachusetts Thoroughbred Breeding Program authorized by the commission.~~
- ~~3. 4% shall be used to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at the horse racing association's race track for the benefit of the organization's members, their families, employees and others under the rules and eligibility requirements of the organization, as approved by the commission provided, however, that if there is more than one horsemen's organization, the commission shall divide the amount available under 205 CMR 149.04 evenly between the horsemen's organizations. This amount shall be deposited by the Commission within five business days of the end of each month into a separate account to be established by each respective horsemen's organization at a banking institution of its choice. Of this amount the commission shall determine how much shall be paid annually by the horsemen's organization to the standardbred drivers' organization at the horse racing association's race track for health insurance, life and/or accident insurance or other benefits to active and disabled standardbred jockeys under the rules and eligibility requirements of that organization. **RESERVED**~~

(c) The commission may 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. 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 **distribution percentage recommendation** determination of the race horse racing committee ~~regarding allocation between harness racing and horse racing.~~