



## NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law (G.L. c. 30A, §§ 18-25), St. 2022, c. 107, and St. 2023, c. 2, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

**Thursday | April 13, 2023 | 9:00 a.m.**

**VIA REMOTE ACCESS: 1-646-741-5292**

**MEETING ID/ PARTICIPANT CODE: 112-121-5333**

**All meetings are streamed live at [www.massgaming.com](http://www.massgaming.com).**

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public. If there is any technical problem with the Commission's remote connection, an alternative conference line will be noticed immediately on [www.massgaming.com](http://www.massgaming.com).

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

### **PUBLIC MEETING - #448**

1. Call to Order – Cathy Judd-Stein, Chair
  
2. Minutes from Commission Agenda Setting Meetings **VOTE**
  - a. November 14, 2022
  
3. Legal – Todd Grossman, General Counsel; Caitlin Monahan, Deputy General Counsel
  - a. 205 CMR 222: Capital Investment and Monitoring of Project Construction **VOTE**
  - b. 205 CMR 219: Temporary Licensing Procedures (Amendments) **VOTE**
  - c. 205 CMR 231: Renewal of a Sports Wagering License **VOTE**
  
4. Commissioners – Executive Director Annual Review and Setting of Compensation **VOTE**
  
5. Commissioner Updates



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6. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that 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). Posted to Website: April 11, 2023 | 9:00 a.m. EST

April 11, 2023

*Cathy Judd-Stein*

*Cathy Judd-Stein, Chair*

*If there are any questions pertaining to accessibility and/or further assistance is needed,  
please email [Grace.Robinson@massgaming.gov](mailto:Grace.Robinson@massgaming.gov).*



Massachusetts Gaming Commission



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** November 14, 2022, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 477 4177

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

### **Commissioners Present:**

Chair Cathy Judd-Stein  
Commissioner Eileen O'Brien  
Commissioner Bradford Hill  
Commissioner Nakisha Skinner  
Commissioner Jordan Maynard

1. [Call to Order](#) (00:11)

Chair Judd-Stein called to order the 401<sup>st</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted. All five commissioners were present for the meeting.

2. [Welcome and Opening Remarks](#) (00:57)

Chair Judd-Stein provided opening remarks for the advertising roundtable, stating that the discussion was to address media and advertising issues related to sports wagering, and take note of specific concerns held by relevant stakeholders. She stated that Commission's legal counsel, the law firm of Anderson and Krieger, would provide guidance on the constitutional limits related to restricting advertising speech.

3. [Commissioners' Round Table related to Sports Wagering Advertising and Media](#) (3:37)

a. Participant Introductions

Chair Judd-Stein introduced Casey Clark, Senior Vice President of Strategic Communications from the American Gaming Association ("AGA"). Mr. Clark stated that his experience focused on the development of public service campaigns related to responsible gaming and research focused on sports wagering.

Chair Judd-Stein introduced Jordan Walton, the Executive Director of the Massachusetts Broadcasting Association. Mr. Walton stated his experience was with advocacy work and regulatory work in Boston, and that he was happy to discuss how gaming and advertising affected broadcasters.

Chair Judd-Stein introduced Sean McGrail, President and CEO of New England Sports Network (“NESN”). Mr. McGrail stated that NESN had a cooperative relationship with AGA.

Chair Judd-Stein introduced Cosmina Schulman, Senior Vice President of Strategic Broadcast and Digital Partnerships with NESN. Ms. Schulman stated that she had a background in advertising and regularly worked with regional sports networks.

Chair Judd-Stein introduced Marquest Meeks, Vice President and Deputy General Counsel with Major League Baseball (“MLB”). Mr. Meeks stated that he was responsible for state and government relations as well as domestic compliance. He stated he oversaw the MLB’s internal integrity initiatives. He stated that the MLB had experience with sports wagering in other jurisdictions and that the organizations wanted to ensure fans engage in sports wagering responsibly. He stated that fans that demonstrate problematic wagering behavior are referred to the National Council on Problem Gambling (“NCPG”) or other resources. He expressed an interest in discussing initiatives the MLB had taken to highlight their focus on sports wagering advertisements.

Chair Judd-Stein introduced Todd Brown, Vice President and General Manager at Boston 25 News. Mr. Brown stated that he had experience with local television stations, and that he had previously worked for a station in Las Vegas.

b. [Anderson & Kreiger: Setting the Stage- High- level guidance on constitutional limits, restricting advertising](#) (9:20)

Chair Judd-Stein stated that the Commission’s outside counsel would present on the limits upon restricting marketing in respect to constitutional limitations due to the First Amendment.

Chair Judd-Stein introduced Mina Makarious and Christina Marshall from Anderson and Krieger. Mr. Makarious stated that beyond his work for the Commission, he had experience with the First Amendment issues related to advertising for public entities, and that he was well acquainted with First Amendment jurisprudence. Ms. Marshall stated that Mr. Makarious would present the general outline of considerations and that she would discuss issues related to the First Amendment in the Communications Decency Act.

Mr. Makarious stated that the Sports Wagering Act tasked the Commission with regulating five categories in General Law Chapter 23N Section 4(c)(3). He stated that the five categories regulated were advertising, marketing, branding that is false, deceptive, or misleading; the use of unsolicited pop-ups or text messages directed at those on the Voluntary Self Exclusion (“VSE”)

list; advertising or branding the Commission deems unacceptable or disruptive to the viewer experience at sports events; advertising or marketing branding deemed to appeal directly to a person under twenty-one years old; and advertising on billboards or public signage that fails to comply with federal, state, or local laws.

Ms. Marshall stated that restrictions on advertising qualify as commercial speech, and were governed by the Supreme Court decision in *Central Hudson v. Public Service Commission*, 447 U.S. 557 (1980). She stated that the case found the government may restrict commercial speech if the interest served by the restriction is substantial, and the regulation must pass the balancing test of advancing governmental interest while not being more extensive than necessary to serve the public interest.

Ms. Marshall stated that under the unconstitutional-conditions doctrine the restrictions imposed in a government contract or permit are subject to the same First Amendment scrutiny. She stated that the government has an interest in preventing sports wagering by minors, and that the Supreme Court had accepted the government's substantial interest in reducing social costs of problem gambling, especially if it stems from pathological or compulsive gambling.

Ms. Marshall stated that the Communications Decency Act of 1996 ("CDA") allowed for some immunity to websites whose content at issue was based on information provided from another source. She stated that the trend in courts was to limit the availability of this immunity. She stated that the Supreme Judicial Court of Massachusetts found in *Massachusetts Port Authority v. Turo* that to the extent companies benefit from things published on their website the immunity can be limited, and that scrutiny would be applied by the courts.

Ms. Marshall stated that there was a pending case in the Supreme Court as to whether the Communications Decency Act applied to websites that utilize algorithms to make targeted marketing recommendations. She stated that the Supreme Court would hear the case in 2023, and estimated that the decision would be released sometime in June.

c. [Roundtable Framework](#) (19:31)

Next, Chair Judd-Stein asked the advertisement experts how sports wagering would affect national, regional, and local media markets. Mr. McGrail stated that the national level had already adjusted to sports wagering as it was legal in other jurisdictions. He stated that there may be an issue at the regional level, as the laws and standards differ between states. He explained that the broadcasters tended to treat advertising restrictions on a universal scale and implement them across the board.

Mr. McGrail stated that prior to sports wagering being approved in Massachusetts, his network engaged in campaigns related to gaming education and responsible gaming and had partnered with the AGA. He stated that the network ran over 4,000 responsible gaming advertisements in Connecticut in the past year, and that the same approach would be used in Massachusetts. He added that standards were set by the network to mitigate excessive sports wagering advertisements. Additionally, both the networks and the leagues had limitations on the number of sports wagering advertisements before, during, and after sports events. He stated that national

broadcasters had similar campaigns, and that 87 and 89 percent of the network's viewing audience was over twenty-one years old.

Chair Judd-Stein asked if there was an overlap of national, regional, and local networks and how they coincided. Mr. Meeks stated that the MLB and other sports organizations applied restrictions on the national level, and that affiliated clubs distributed the restrictions at a regional level. Mr. Brown stated that his network was at the local level in the Boston area, and that the top rule was to protect the broadcast license, so the station was mindful of content related to gaming, sports wagering, and alcohol. He stated that the leagues also limited what could be aired during broadcasts.

Mr. Walton stated that the relationship between local broadcasters and networks was unique, and that the local networks had little to no say over what was in the broadcast feed for sports events. He stated that the local broadcaster's affiliate networks had more control than the local networks.

Commissioner O'Brien asked what would occur if an advertisement sent nationally ran afoul of Massachusetts regulations. Mr. Brown stated that it would be hard to say at the local network level, as the local network could not override the affiliation agreement with Fox. Commissioner Hill expressed concern that a national feed with an advertisement that does not comply with Massachusetts regulations could get the advertisement through in the broadcast. Mr. Brown explained that local networks were essentially franchisees, and that the content of advertisements was not under the local affiliates' control.

Chair Judd-Stein asked for feedback on how the Commission could properly reconcile national and regional advertising campaigns for sports wagering. Mr. Clark stated that operators could buy available advertising inventory, and that standards were set by the leagues regarding the content of advertising. He expressed concern that there were not as many limitations placed on the times before and after the sporting event was active.

Commissioner Hill inquired if the MLB had run into this issue in any other jurisdictions. Mr. Meeks stated that the MLB had set internal guidelines for advertisements and broadcast partners, and they also must comply with the laws of their jurisdiction. He explained that there was a significant overlap in restrictions put in place by many authorities, so the league had not run into problems with this issue. He stated that the Commission's restriction on advertisements deemed to be "unacceptable" or "disruptive to the viewing experience" was unique, so the Commission likely would not have guidance from other jurisdictions. Chair Judd-Stein clarified the provision was for advertisements that were unacceptable or disruptive to patrons at a sporting event, not television viewers.

Ms. Schulman stated that restrictions on advertising already existed in regional sports networks and that sports leagues self-regulate very well. She shared that the National Basketball Association, National Hockey Association and National Football Association had restrictions similar to the MLB.

Commissioner Hill asked if a national commercial that would be limited by regulation could be replaced by a local commercial. Ms. Schulman stated that the regional network did not have the

same affiliation contracts as Fox 25, and that Mr. Brown would be more suited to answer this question. Mr. Brown stated that the local networks did not have the ability in the broadcast chain to run an advertisement “on top of” the national broadcast.

Mr. Clark added that the industry had worked together to set voluntary standards and restrictions for advertisements as well. Mr. McGrail stated that most regulations were ubiquitous across platforms, and that regional networks could respond and implement on a state-by-state basis. He stated that advertisements were reviewed at different levels and a process was in place to flag questionable advertisements.

Chair Judd-Stein stated that a national broadcast representative was not available today but confirmed that they had been asked to submit feedback to the Commission.

Mr. Meeks stated that the MLB guidelines did not permit sports wagering advertisements that feature people under the legal age to sports bet. Commissioner Maynard asked if that rule included athletes under the age of twenty-one. Mr. Meeks stated it had been a complete ban on those under the age of twenty-one, but within their collective bargaining agreement, players had certain rights to negotiate deals with sportsbooks. He stated that there had not been an issue with underage players to date, but it would be prohibited unless a rule change occurred to permit it.

Chair Judd-Stein noted that the Commission had expressed concern related to the frequency and intensity of advertisements and market saturation. Mr. McGrail stated that the sports leagues and broadcast partners were cognizant of the issue as well, and that only six advertisement slots were available during a three-hour baseball game. Mr. Walton stated that most broadcasters had internal rules, as they do not want to deter or lose potential viewers by inundating them with advertisements for a single industry.

Mr. Meeks agreed, stating that a balance must be maintained between fan engagement and saturation of advertisements. He added that the MLB allowed two additional sports wagering advertisements, if they contained responsible gaming messages. He noted that only legal sports wagering operators responded to investigation requests and explained that it was in the MLB’s interest to draw consumers to legal sports wagering operators.

Commissioner O’Brien sought clarification as to what qualified as a responsible gaming message. Mr. Meeks explained that no parameters had been set forward, but explained that the MLB reviewed the responsible gaming messages. Commissioner O’Brien asked how the advertisement was vetted. Mr. Meeks stated that the advertisements were reviewed through the league front office including the compliance team, business team, and legal team. Mr. Clark agreed that every sports wagering advertisement disseminated nationally should include responsible gaming messages and helpline resources.

Commissioner Hill asked how the networks would comply with not showing multiple sports wagering advertisements in a row with the potential of fifteen companies operating sports wagering business in Massachusetts. Mr. McGrail explained that advertisement inventory was offered to four operators per broadcast, and ads were evenly distributed throughout the

broadcast. He stated that NESN included at least one responsible gaming message in every professional sports broadcast.

Ms. Schulman stated that the network did not have enough inventory to allow all fifteen operators to advertise. Mr. Brown stated that news stories would cover responsible gaming when sports wagering was legalized as well.

Mr. Meeks reiterated that the MLB wanted to shift consumers away from the illegal market, and that MLB also had in-venue restrictions on advertisements. Mr. Clark acknowledged that illegal markets had a multi-decade head start, with no consumer protections or responsible gaming provisions.

Chair Judd-Stein asked if there had been innovations related to restrictions on advertisements from other sports leagues, and if there was collaboration amongst leagues on this issue. Mr. Meeks stated that the MLB was the first major sports league to partner with the NCPG and AGA. He stated that the various leagues collaborated, but approaches to advertising differ due to the difference in game length between the NBA and the MLB.

Chair Judd-Stein asked if there were innovations from other jurisdictions the Commission could implement. Mr. Clark stated that there was not always a technological solution to the issues, but that collaboration and education of consumers did work well. He stated there was an opportunity to use advertisement spots to disseminate responsible gaming messaging.

Commissioner O'Brien inquired about how to approach minors seeing online advertisements as opposed to traditional broadcasting commercials. Mr. Clark stated that operators held themselves accountable for all media, including digital ads. He further explained that targeted advertisements online made it easier to carve out minor and college-owned media assets. He stated that digital advertisements were included in the existing self-regulation in the industry.

Mr. McGrail stated that the NESN website had a rigorous signup process required for targeted digital advertisement. Chair Judd-Stein asked what percentage of advertisements were digital. Mr. McGrail stated that NESN ran multiple platforms in New England and all platforms were widely used. He stated that the guidelines and standards related to advertising were the same for each platform.

Commissioner Hill asked how the MLB and other sports leagues approached advertising on Facebook and other social media sites. Mr. Meeks stated that the restriction requirements applied across the board to all advertising media controlled by the MLB or affiliated clubs. He added that the MLB must approve partnerships between clubs and sportsbooks.

Commissioner O'Brien asked how networks planned to mitigate advertisement outside of sporting events broadcast runtime. Mr. Brown stated that the issue was self-regulated in broadcasting, but advertisements such as billboards or bus-boards could pose an issue. Commissioner O'Brien sought suggestions of groups the Commission could reach out to for further information. Mr. Brown suggested the Mass DOT Office of Outdoor Advertising and



Signage, but noted that there were a lot of advertising categories at play, and it could be difficult to find a regulatory body that addresses each of the aforementioned categories.

Commissioner Hill asked if there was a member of Fox from New York that could discuss the Commission's concerns related to advertisement. Mr. Brown offered to provide contact information for a member of the New York office of Fox. Ms. Schulman added that regional networks were committed to their regions and mindful of circulating responsible gaming messages.

Commissioner O'Brien suggested starting a dialogue with Mass DOT's Office of Outdoor Advertising and Signage. Chair Judd-Stein noted that the Massachusetts Department of Transportation had regulatory authority over billboards on the highway, and that they were currently addressing the issue of advertisements for other states' casinos, not inclusive of responsible gaming messages as required by Massachusetts.

The Chair and Commissioners thanked the roundtable participants for their time and contributions.

#### 4. [Other Business](#) (1:42:00)

Hearing no other business, Chair Judd-Stein asked for a motion to adjourn.

Commissioner Hill moved to adjourn. Commissioner O'Brien seconded.

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously. Meeting Adjourned.*

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

1. Notice of Meeting and Agenda dated November 9, 2022, revised on November 11, 2022
2. [Commissioners' Packet](#) from the November 14, 2022, meeting (posted on [massgaming.com](http://massgaming.com))



TO: Chair Cathy Judd-Stein  
Commissioner Brad Hill  
Commissioner Jordan Maynard  
Commissioner Eileen O'Brien  
Commissioner Nakisha Skinner

FROM: Caitlin Monahan, Deputy General Counsel  
Mina Makarious, Esq., Anderson & Kreiger

CC: Karen Wells, Executive Director

DATE: April 10, 2023

RE: 205 CMR 231 and Amended 205 CMR 219

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Enclosed for the Commission's review is a proposed amended 205 CMR 219 and 205 CMR 231. Together, these two regulations address the renewal of temporary and full Sports Wagering Licenses. These regulations are being proposed for emergency adoption to ensure that the regulatory environment with respect to renewals, and particularly renewals of temporary licenses, is clear to operators.

205 CMR 219.03-04 govern the renewal of temporary sports wagering licenses for up to five years. 205 CMR 231 governs renewals of temporary and full sports wagering licenses after five years.

Two practical points bear noting before reviewing the substance of the regulations. First, it will be nearly four years before any operator may submit a renewal request in accordance with 205 CMR 231. Accordingly, there will be time to fine-tune process details. Second, the temporary license renewal protocols in 205 CMR 231 may never be needed. These were developed at the Commission's request to address the unlikely event that an operator is unable to graduate from a temporary to a full license within five years, and the Commission, rather than the Operator, is at fault.

The renewal of full licenses is governed by G.L. c. 23N, § 6(f), which provides that a full license "may be renewed for 5-year periods upon payment of a \$5,000,000 renewal fee; provided, that the operator shall continue to meet all requirements under this chapter and the rules and regulations of the commission." G.L. c. 23N, § 6(f). Accordingly, when a full operator applies for renewal, the Bureau prepares a report on the operator's compliance history, and any other topic the Commission directs the Bureau to address. The Commission then may grant or deny the renewal. If the Commission grants the renewal, the operator pays a \$5,000,000 fee and has its license renewed for five years.



Massachusetts Gaming Commission

The process for temporary licensees is somewhat more intricate, because it must meet a variety of objectives. The Commission adopted 205 CMR 219.03-04 to ensure that a temporary licensee could operate for up to five years if necessary, but to ensure that the licensee was subject to a midstream reevaluation of its suitability. Originally, the plan was to terminate temporary licenses after five years. However, operators expressed concerns that they might be penalized through no fault of their own if there were Commission operational issues that prevented the Commission from promptly assessing their suitability. Accordingly, the Commission directed the development of a regulation that would allow temporary licensees to continue operating under temporary licenses after five years if the Commission was at fault.

However, allowing a temporary licensee to operate under a temporary license for more than five years creates a fairness problem. A temporary license costs \$1,000,000. If temporary licenses lasted five years, temporary licensees would be paying one-fifth as much as full operators for a comparable license. Accordingly, these amended regulations allow the Commission to issue a series of one-year renewals, each of which comes with a \$1,000,000 renewal fee. 205 CMR 231.01(9). In assessing whether to issue the renewal, the Commission must consider whether any delays in assessing the operator's suitability are attributable to the Commission or to the operator. 205 CMR 231.01(8). Because it may not be practical or useful for the Commission to fully reassess the temporary licensee's suitability annually, 205 CMR 231.01(5)(b) lets the Commission set an appropriate scope for the Bureau's investigation and report.

There are only two proposed changes to 205 CMR 219. First, the mandatory rule that operators may not operate under a temporary license for more than two years is replaced with a rule that, after five years, the operator may operate as long as is permitted by 205 CMR 231. *See* 205 CMR 219.03(c). Second, language giving the Commission maximum flexibility in reviewing renewal applications has been added. *See* 205 CMR 219.04(5).



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## **205 CMR 219: TEMPORARY LICENSING PROCEDURES**

219.01 Eligibility to Request a Temporary License

219.02 Temporary License Request Process

### 219.01 Eligibility to Request a Temporary License

- (1) A Person shall be eligible to request a Temporary License if:
  - (a) The Commission deems it eligible in accordance with 205 CMR 218.07(1)(a); or
  - (b) The Commission awards it a Sports Wagering License in accordance with 205 CMR 218.07(1)(b).

### 219.02 Temporary License Request Process

- (1) Any Person who is eligible to request a Temporary License may submit a request for a Temporary License to the Executive Director on a form to be approved by the Commission. Such request shall be accompanied by an initial licensing fee of \$1,000,000 payable to the Commission.
- (2) Upon receiving a request for a Temporary License, the Executive Director or their designee shall within fourteen days determine whether the requestor is eligible to request a Temporary License and has paid the initial licensing fee as described in 205 CMR 219.02, and make a written recommendation to the Commission as follows:
  - (a) If the Executive Director determines that the requestor is eligible and has paid the initial licensing fee, they shall recommend to the Commission that the Commission issue the requested Temporary License.
  - (b) If the Executive Director determines that the requestor is not eligible or has not paid the initial licensing fee, they shall recommend to the Commission that the Commission deny the requested Temporary License.
- (3) Upon receiving a recommendation from the Executive Director in accordance with 205 CMR 219.02(2), the Commission shall, at an open public meeting held within fourteen days, either issue or deny the requested Temporary License.
  - (a) The Commission shall send written notice of the public meeting to the requestor at least seven days in advance of the meeting.
  - (b) The Commission may in its discretion receive comment or presentations from representatives of the requestor or from the public.
- (4) Any Temporary License shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.

### 219.03 Temporary License Expiration

- (1) The Temporary License shall expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or one year, whichever is longer; provided, that if the Commission has not made a supplemental determination of suitability within one year, the Temporary License shall:
  - (a) expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or after three years, whichever is shorter, if the Operator does not request a renewal in accordance with 205 CMR 219.04;
  - (b) expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or after five years, whichever is shorter, if the Operator timely requests and is granted a renewal in accordance with 205 CMR 219.04; or
  - (c) expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or in accordance with 205 CMR 231.01, whichever is shorter, if the Operator timely requests and is granted a renewal or renewals in accordance with 205 CMR 231.01.

### 219.04 Temporary License Renewal Process

- (1) An Operator may submit a renewal request in accordance with this 205 CMR 219.04 between twenty-one months and twenty-four months after the date the Temporary License issued.
- (2) Renewal requests shall be submitted to the Executive Director on a form approved by the Commission.
- (3) Before the Commission may consider the renewal request, the Bureau shall conduct an investigation into the qualifications and continued suitability of the licensee and its Qualifiers, and submit a written report to the Commission, in accordance with 205 CMR 215.01(2)(b).
- (4) Upon receiving a report from the Bureau in accordance with 205 CMR 219.03(2), the Commission shall, at an open public meeting, either grant or deny the requested renewal. The Commission shall send written notice of the public meeting to the requestor at least fourteen days in advance of the meeting.
- (5) In reviewing the renewal request, the Commission may, at such times and in such order as the Commission deems appropriate, take any of the actions listed in 205 CMR 218.04(1).

- (6) If the Commission denies a request for renewal of a Temporary License, the Temporary License shall expire no sooner than two weeks after the date on which the Commission denies the renewal.
- (7) Renewal application and licensing fees.
  - (a) Application fee.
    - (i) Any renewal request shall be accompanied by a nonrefundable application fee of \$50,000 to defray the costs associated with the processing of the renewal request and investigation of the licensee. Except for the dollar amount of the fee, said fee shall be subject to the provisions of 205 CMR 214.01 and 205 CMR 214.02.
    - (ii) The Executive Director shall deny, without prejudice, any renewal request not accompanied by the required application fee.
  - (b) Renewal licensing fee.
    - (i) Within 30 days after the renewal of a Temporary License pursuant to 205 CMR 219.04(4), the licensee shall pay a non-refundable license fee of \$1,000,000 in accordance with 205 CMR 221.01(2).



## **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 proposed amendments to **205 CMR 219 TEMPORARY LICENSING PROCEDURES**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 219 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under 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:

This regulation is unlikely to have an impact on small businesses.

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.

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

No standards are set forth in this regulation.

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:



Massachusetts Gaming Commission

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission

By:

/s/ Caitlin Monahan  
Caitlin Monahan, Deputy General Counsel

Dated: April 10, 2023



Massachusetts Gaming Commission

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## 205 CMR 231: RENEWAL OF A SPORTS WAGERING LICENSE

231.01 License Renewal Process

231.01 License Renewal Process

- (1) An Operator may submit a renewal request in accordance with this 205 CMR 231 on a form approved by the Commission between nine and twelve months before:
  - (a) for a Sports Wagering License other than a Temporary License, the date on which the Operator's Sports Wagering License is scheduled to expire;
  - (b) or, for a Temporary License for which the Operator has already received a renewal in accordance with 205 CMR 219.04, the date on which the Temporary License is scheduled to expire.
- (2) The Commission may, in its discretion, extend the time for filing a complete renewal request to enable an Operator to cure a deficiency in its request, provided that the renewal request was submitted before the established deadlines, or to provide a reasonable additional time for filing in cases where extraordinary circumstances prevented a timely filing.
- (3) Administrative sufficiency review.
  - (a) The Commission's Division of Licensing will review each renewal request for administrative sufficiency.
  - (b) When determining whether a request is administratively sufficient, the Division of Licensing shall review only the form required by 205 CMR 231.01(1), and only determine whether all information or materials required to be provided in response to each question or request has been submitted.
  - (c) If a request is determined to be insufficient:
    - (i) The Division shall notify the Operator by email. The notification shall specifically identify the deficiencies.
    - (ii) The Operator shall have the right to submit supplemental or corrected information to cure the deficiencies within one month.
    - (iii) For each deficient request component, the one-month period established in 205 CMR 231.01(3)(c)(ii) shall begin the day after:
      - (a) The deadline established by 205 CMR 231.01(1), if that deadline has not passed; or

- (b) The date on which the notification sent pursuant to 205 CMR 231.01(3)(c)(i) was sent, if the deadline established by 205 CMR 231.01(1) has passed.
  - (d) A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted, and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the request.
- (4) Non-expiration of licenses while timely renewal request is pending.
  - (a) In accordance with G.L. c. 30A, § 13, if an Operator has submitted a timely renewal request, the Operator's Sports Wagering License shall not expire until:
    - (i) the request has been finally determined by the Commission; or
    - (ii) the operator fails to cure a deficiency within the time permitted by 205 CMR 231.01(3)(c).
  - (b) A renewal request shall be considered timely if it has been submitted within the time permitted, as applicable, by 205 CMR 231.01(1), 205 CMR 231.01(2), or 205 CMR 231.01(3)(c).
- (5) Before the Commission may consider the renewal request, the Bureau shall conduct an investigation and submit a written report to the Commission.
  - (a) For the renewal of a Sports Wagering License other than a Temporary License, the Bureau's investigation and written report shall address:
    - (i) The topics listed in 205 CMR 215.01(2)(b);
    - (ii) The Operator's history of compliance with M.G.L. c. 23N and 205 CMR 200 *et seq.*; and
    - (iii) Any other topic as directed by the Commission.
  - (b) For the renewal of a Temporary License:
    - (i) Within one month of a positive determination of administrative sufficiency, the Commission shall determine the scope of the investigation and the contents of the report, and may determine that no investigation and report is necessary.
    - (ii) If the Commission does not direct the Bureau as to the scope of the investigation and contents of the report, the Bureau's investigation and written report shall conform to 205 CMR 215.01(2)(b).

- (6) Upon receiving a report from the Bureau in accordance with 205 CMR 231.01(5), the Commission shall, at an open public meeting, either grant or deny the requested renewal.
- (7) In reviewing the renewal request, the Commission may, at such times and in such order as the Commission deems appropriate, take any of the actions listed in 205 CMR 218.04(1).
- (8) Evaluating the renewal request.
  - (a) If the Operator holds a Sports Wagering License other than a Temporary License, and continues to meet all requirements of M.G.L. c. 23N and the rules and regulations of the Commission, the Commission shall grant the requested renewal.
  - (b) If the Operator holds a Temporary License, and continues to meet all requirements of M.G.L. c. 23N and the rules and regulations of the Commission, and any delays in making a supplemental determination of suitability are primarily attributable to:
    - (i) the Commission and its staff rather than the Operator or its Qualifiers, the Commission shall grant the requested renewal; or
    - (ii) the Operator or its Qualifiers rather than the Commission and its staff, the Commission may, in its sole discretion, grant or deny the requested renewal.
  - (c) If the Operator has violated any requirements of M.G.L. c. 23N or the rules and regulation of the Commission:
    - (i) The Commission may, in its sole discretion, grant or deny the requested renewal.
    - (ii) In deciding whether to grant or deny the requested renewal, the Commission may consider, in addition to any other factor, the seriousness and duration of the Operator's violation or violations; the Operator's mitigation or remediation efforts; and the Operator's overall history of compliance with M.G.L. c. 23N and 205 CMR.
- (9) If the Commission grants the requested renewal:
  - (i) Within 30 days, the Operator shall pay a non-refundable license fee of \$5,000,000 (for a renewed Sports Wagering License other than a Temporary License) or \$1,000,000 (for a renewed Temporary License). The payment shall be made in accordance with 205 CMR 221.02.

- (ii) The term of the license shall be extended for five years (for a renewed Sports Wagering License other than a Temporary License) or one year (for a renewed Temporary License), subject to further renewals. The determination of the License's new expiration date shall exclude any automatic extension provided for by 205 CMR 231.01(4).
- (10) If the Commission denies the requested renewal, the License shall expire no sooner than two weeks after the date on which the Commission denies the renewal.

DRAFT



## **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 **205 CMR 231: RENEWAL OF A SPORTS WAGERING LICENSE**.

This regulation is being promulgated as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N. It sets out processes for renewing sports wagering licenses.

The proposed 205 CMR 231 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under 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:

This regulation is unlikely to have an impact on small businesses.

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. This regulation governs sports wagering operators and gaming licensees.

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

The regulation sets out processes and compliance requirements, akin to performance standards.

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:



Massachusetts Gaming Commission

This regulation will have no effect on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission

By:

/s/ Caitlin Monahan

Caitlin Monahan, Deputy General Counsel

Dated: April 10, 2023



Massachusetts Gaming Commission

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TO: Chair Cathy Judd-Stein  
Commissioner Brad Hill  
Commissioner Jordan Maynard  
Commissioner Eileen O'Brien  
Commissioner Nakisha Skinner

FROM: Caitlin Monahan, Deputy General Counsel  
Mina Makarious, Esq., Anderson & Kreiger

CC: Karen Wells, Executive Director

DATE: April 10, 2023

RE: 205 CMR 222

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Enclosed for the Commission's review is a proposed 205 CMR 222, *Capital Investment and Monitoring of Project Construction*. This regulation sets out how the Commission will oversee the construction of retail Category 2 operations. It also sets out how the Commission assesses whether Category 2 operators have made the full \$7.5M investment required by G.L. c. 23N, § 3.

This regulation is based on 205 CMR 122, *Capital Investment*, and 205 CMR 135, *Monitoring of Project Construction and Licensee Requirements*. The sections of 205 CMR 222 correspond to 100-series provisions as follows:

<u>222</u>	<u>122/135</u>
222.01	135.01
222.02	135.02
222.03	135.03
222.04	135.04
222.05	135.05
222.06	135.06
222.07(1)	122.02
222.07(2)(a)	122.03



Massachusetts Gaming Commission

222.07(2)(b)	122.04
222.08	122.05

The process for an initial approval is unified compared to the parallel processes in the 100-series regulations. G.L. c. 23K and the 100 series contemplate three distinct sets of information to be reviewed and approved at different times: (1) specific MBWVE commitments made during the licensing phase and incorporated into the license conditions; then (2) a “project schedule” (205 CMR 135.02); then (3) a separate design review of a project conceptual design. Under G.L. c. 23N, the operators have not been required to provide equally specific and separate MBWVE commitments or facility plans in their licensing applications. To account for these differences, 205 CMR 222 rolls all three initial approvals into an approval process for a “project plan,” 205 CMR 222.02(2).

We have been asked whether Category 2 operators can count design and construction costs that they have already incurred into the \$7.5M minimum capital investment. The statute requires that the capital outlays be made “within 3 years *after* receiving a sports wagering license.” G.L. c. 23N, § 3. This regulation builds on that requirement by providing that all countable capital expenditures must be made “in accordance with the project plan approved pursuant to 205 CMR 222.02(2) or (4).” 205 CMR 222.06(1), 222.07(1).



Massachusetts Gaming Commission



205 CMR 222: CAPITAL INVESTMENT AND MONITORING OF PROJECT CONSTRUCTION

Section

- 222.01: Definitions
- 222.02: Project Plans and Reporting
- 222.03: Design Review Process
- 222.04: Inspection of Construction and Related Records
- 222.05: Certification of Final Stage of Construction
- 222.06: Failure to Meet Expenditure Requirements or Adhere to Project Plan
- 222.07: Capital Investment
- 222.08: Deposit or Bonding of Funds

222.01: Definitions

Minority Business Enterprise (MBE). A minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.

Project. Construction of or on the Category 2 Sports Wagering Facility in order to meet the required capital investment, as approved by the Commission and defined in the Sports Wagering License awarded by the Commission. For purposes of 205 CMR 222.00, Project may also include construction of or on off-site infrastructure necessary for the operation of the Sports Wagering Facility as required by the Commission.

Small Business. An entity, including all of its affiliates combined that:

- (a) Has its principal place of business in Massachusetts;
- (b) Employs a combined total at all locations of 50 or fewer full-time employees;
- (c) Has been in business at least one year; and
- (d) Has gross revenues of \$15 million or less based on a three-year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

Veteran's Business Enterprise (VBE). A Veteran Business Enterprise shall have the same meaning as the term "Veteran-owned small business concern" as defined by 38 CFR 74.1, whose-status can be verified by Vendor Information Pages on the U.S. Department of Veterans Affairs Office of Small & Disadvantaged Business Utilization website or by the Licensing Division of the Massachusetts Gaming Commission. Veteran's Business Enterprise is inclusive of the Service-disabled veteran-owned business as defined in 15 USC § 632. Additionally, the term VBE shall include any entity certified as a VBE, as defined by M.G.L. c. 7, § 58, by the supplier diversity office within the operational

services division pursuant to regulations promulgated in accordance with M.G.L. c. 7, § 61(a).

Notwithstanding the foregoing, for purposes of 205 CMR 239.03(1)(b), effective upon the issuance of an Operation Certificate to a Sports Wagering Licensee, the term VBE shall only include those entities certified as such by the supplier diversity office, or verified with the U.S. Department of Veterans Affairs. (Note: vendors, registrants, or subcontractors previously verified by the Licensing Division will continue to be recognized until the end of their existing contract.)

Women's Business Enterprise (WBE). A women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.

#### 222.02: Project Plans and Reporting

- (1) The Commission may create guidelines under 205 CMR 222.00 to aid the Commission in its review and monitoring of each project. Such guidelines will be shared with the Category 2 Sports Wagering Licensees and may be amended as necessary by the Commission.
- (2) The Commission shall approve for each Category 2 Sports Wagering Licensee, a project plan for the Licensee's capital investment in its Sports Wagering Facility and related infrastructure. The project plan shall include:
  - (a) A project schedule which includes all major stages of design and construction; including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems;
  - (b) An affirmative action program of equal opportunity whereby the licensee establishes specific goals for the utilization of minorities, women and veterans on construction jobs and for contracting with minority, women or veteran owned businesses during either design or construction; provided, however that such goals shall be equal to or greater than the goals contained in Executive Office of Administration and Finance Administrative Bulletin Number 14, and consistent with or greater than any representations made to the Commission while the licensee was applying for a Sports Wagering License; and
  - (c) A narrative describing the project, stipulating the basis for the design, and including both a pictorial representation of the project design concept and a narrative description of the project.
- (3) If unforeseen or changed circumstances necessitate a change to a project plan approved pursuant to 205 CMR 222.02(2) which will affect the completion date

or requires a major change in the method or progress of construction, the Sports Wagering Licensee may submit to the Commission for its approval a revised project plan, with a detailed statement of the unforeseen changed circumstances which justify the revised project plan. If the Commission approves such revised project plan, it shall substitute and supersede the previously approved project plan.

- (4) To ensure adherence to the project plan approved pursuant to 205 CMR 222.02(2) or (3), the Sports Wagering Licensee shall submit to the Commission in a media, format and level of detail acceptable to the Commission, quarterly a status report including:
  - (a) the total estimated cost of construction of the project and related infrastructure improvements, including a sworn certification regarding costs incurred pursuant to 205 CMR 222.07(1), and separately identifying detailed costs for design, land acquisition, site preparation and construction and off-site improvements;
  - (b) a sworn certification regarding the capitalization of the Sports Wagering Licensee, sufficient for the Commission to determine that the Sports Wagering Licensee has adequate funds to complete the required capital investment in its Sports Wagering Facility;
  - (c) a copy of all design and construction contracts executed within the prior quarter by the Sports Wagering Licensee with respect to the project;
  - (d) a status report reflecting the progress of construction and certifying compliance with the approved project plan for major stages of construction. In the event that the progress of construction does not comply with the project plan approved pursuant to 205 CMR 222.02, the Licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved project plan or submit a request for a revised project plan pursuant to 205 CMR 222.02(4); and
  - (e) a detailed statistical report on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the gaming establishment and related infrastructure, and a comparison of this report with the goals established by the Sports Wagering Licensee and Commission pursuant to 205 CMR 222.02(b). In the event the hiring of the aforementioned persons does not comply with the goals established, the Licensee shall submit within 20 days of a request by the Commission a response as to why the goals have not been achieved, identify any good faith efforts that have been undertaken to achieve those goals, and provide a plan to bring the hiring into compliance with the goals.

- (f) a report describing the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the Sports Wagering Licensee and Commission pursuant to 205 CMR 222.02(b). In the event the Licensee's hiring of the aforementioned entities does not comply with the goals established the Licensee shall submit within 20 days of a request by the Commission a response as to why the goals have not been achieved, identify any good faith efforts that have been undertaken to achieve those goals, and provide a plan to bring the dollar amount contracted and spent into compliance with the goals.
- (g) The Licensee shall have a continuing obligation to timely provide to the Commission all documents and information listed in 205 CMR 120.01(1), as applicable, such that the Commission is continuously apprised of all material developments with respect to all permits and approvals required for the project. Consistent with 205 CMR 120.01(1)(h), the Licensee shall provide to the Commission copies of any appeal within 20 days of filing, whether to a municipal or state entity or for judicial review, filed with respect to any permit of approval listed in 205 CMR 120.01(1), along with a copy of the docket sheet and each decision on any appeal.
- (h) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the Licensee shall send and provide a copy to the Commission, and to each labor union or representative of workers with which the Licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Licensee's commitments pursuant to 205 CMR 222.02(b).

#### 222.03: Design Review Process

- (1) The Commission or its representative may participate in any design review process for the design of the project. This process may run in parallel to the local, state and federal review process and may include all elements of the project, including but not limited to the gaming establishment and any amenities approved by the Commission, whether constructed together or in phases, as well as any off-site improvements. The Commission or its representative may participate in the key milestones of the design review process as follows:
  - (a) When the licensee has completed the schematic design phase, the Commission or its representative may request that the licensee submit the schematic design for review. Such schematic design may include descriptions of the external facade of any structures that are part of the

project, all the major systems, a floor plan and any off site infrastructure improvements planned by licensee. The Commission or its representative may request, where available, examples of materials to be used in the building facade.

- (b) The Commission or its representative may request for review and approval the final site plan and architectural design package. Such final design package shall be in the form ready for licensee's use in creating construction bid packages. Where available, the Commission or its representative may request examples of materials to be used on the exterior or in the interior of the project as well as examples of the furniture and fixtures to be used in the project.
- (c) The Commission or its representative may request construction packages for review prior to putting such construction packages out for bid.

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

- (1) At all times the Commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the Sports Wagering Licensee's compliance with the approved design, project plan, the terms and conditions of the license, M.G.L. c. 23N, or 205 CMR.
- (2) The Commission or its representative may request or have access to, at any time, plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the project or related infrastructure. The licensee shall provide the requested materials to the Commission or its representative within ten days of the Commission's request for such documents.
- (3) Following an inspection of construction pursuant to 205 CMR 222.04(1) or review of records pursuant to 205 CMR 222.04(2), the Commission or its representative may notify the Sports Wagering Licensee of any non-compliance with the terms of the license, including non-compliance with an approved design or project plan pursuant to 205 CMR 222.02(2) or (4). Upon receipt of such notification, the Sports Wagering Licensee shall present a plan to the Commission to address such non-compliance to the satisfaction of the Commission.

#### 222.05: Certification of Final Stage of Construction

- (1) The Sports Wagering Licensee shall certify to the Commission that it has reached the final stage of construction as described in the approved project schedule or revised project schedule pursuant to 205 CMR 222.02(2) or (4).
- (2) Upon receipt of such certification, the Commission or its representative may inspect the construction pursuant to 205 CMR 222.04(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 222.04(2).

- (3) The Commission may either approve or disapprove the Sports Wagering Licensee's certification pursuant to 205 CMR 222.05(1) that the Sports Wagering Licensee has reached the final stage of construction. If the Commission approves the Licensee's certification, it shall return to the gaming licensee the deposit bond described in 205 CMR 222.08, and permit the Sports Wagering Licensee to apply the deposit to the cost of the final stage of construction. If the Commission disapproves the Licensee's certification, the Commission will notify the Licensee of the reasons for such disapproval, and the Licensee shall proceed diligently to cure the reasons for the disapproval.

#### 222.06: Failure to Meet Expenditure Requirements or Adhere to Project Plan

- (4) Pursuant to M.G.L. c. 23N, § 3, a Category 2 Sports Wagering Licensee who fails to make a capital investment in its project of at least \$7,500,000, and in accordance with the project plan approved pursuant to 205 CMR 222.02(2) or (4), within three years after receiving a Sports Wagering License shall be subject to suspension or revocation of its Sports Wagering License by the Commission, as well as other discipline in accordance with 205 CMR 232.00.
- (5) The Commission or Bureau may discipline a Category 2 Sports Wagering Licensee in accordance with 205 CMR 232.00 for, without limitation:
  - (a) failing to comply with an approved design or construction project plan pursuant to 205 CMR 222.02(2) or (4);
  - (b) failing to submit an adequate quarterly report as required by 205 CMR 222.02(5);
  - (c) failing to make the minimum capital investment required by 205 CMR 222.07(1) within three years after receiving a Sports Wagering License; or
  - (d) any other violation of or failing with respect to this 205 CMR 222.05.

#### 222.07: Capital Investment

- (1) Pursuant to M.G.L. c. 23N, § 3, the minimum capital investment for a Category 2 Sports Wagering License to make on a project in accordance with a project plan approved pursuant to 205 CMR 222.02(2) or (3) shall be \$7,500,000. The capital investment shall be calculated in accordance with 205 CMR 222.07(2).
- (2) For purposes of calculating the capital investment for a Category 2 Sports Wagering License, all costs that, if incurred for the development of a gaming establishment:
  - (a) could be included in the capital investment for a gaming license in accordance with 205 CMR 122.03(1)-(10), shall be included; and

- (b) would be excluded from the capital investment for a gaming license in accordance with 205 CMR 122.04, shall be excluded.

222.08: Deposit or Bonding of Funds

Within 30 days after the award of a Category 2 Sports Wagering License, the Licensee shall secure a deposit bond, in a form and from an institution acceptable to the Commission, insuring that \$750,000 shall be forfeited to the Commonwealth of Massachusetts if the applicant is unable to complete the project, as determined by the Commission.

DRAFT



## **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 adoption of **205 CMR 222, CAPITAL INVESTMENT AND MONITORING OF PROJECT CONSTRUCTION.**

This regulation is being promulgated as part of the process of promulgating regulations governing sports wagering in the Commonwealth. It sets forth the required disclosure and reporting obligations for Category 2 sports wagering operators as they construct sports wagering facilities.

The proposed 205 CMR 222 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under 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:

Small business are unlikely to be subject to this regulation.

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. This regulation governs sports wagering operators and gaming licensees.

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

The standards set forth are compliance requirements, akin to performance standards.

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:



Massachusetts Gaming Commission



This regulation, which gives the Commission oversight over and the chance to weigh in on how sports wagering operators are procuring design and construction services for capital projects, will support the formation of small businesses in the Commonwealth.

Massachusetts Gaming Commission

By:

/s/ Caitlin Monahan  
Caitlin Monahan, Deputy General Counsel

Dated: April 10, 2023



Massachusetts Gaming Commission



**April 12, 2023**

***Via Email***

Chair Cathy Judd-Stein  
Commissioner Brad Hill  
Commissioner Jordan Maynard  
Commissioner Eileen O'Brien  
Commissioner Nakisha Skinner

***Re: 205 CMR 222: Capital Investment and Monitoring of Project Construction***

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Dear Chair and Commissioners:

I write on behalf of Massasoit Greyhound Association, Inc. ("MGA"), an applicant for a Category 2 Sports Wagering License, regarding a proposed regulation, 205 CMR 222, *Capital Investment and Monitoring of Project Construction* (the "Draft Regulation") and request that it be withdrawn from the April 13, 2023 Public Meeting Agenda where it is scheduled for a vote for promulgation. As further set forth below, several of the Draft Regulation's provisions lack statutory authority under the Massachusetts Sports Wagering Act, Chapter 23N, but rather are imported from the Massachusetts Gaming Act, Chapter 23K, which does not apply to Category 2 Sports Wagering Applicants or Licensees. While MGA is committed to working with the Commission on a regulation pertaining to the accounting of its capital requirements under the statute as well as the policy goals set forth for employment in the Sports Wagering Application and its corresponding regulations, MGA should not be subject to construction oversight and reporting as applied to Chapter 23K Gaming Establishments.

According to the Staff Memorandum accompanying the Draft Regulation, the Draft Regulation is "is based on 205 CMR 122, *Capital Investment*, and 205 CMR 135, *Monitoring of Project Construction and Licensee Requirements*. More specifically, the Staff Memorandum States:

G.L. c. 23K and the 100 series contemplate three distinct sets of information to be reviewed and approved at different times: (1) specific MBWVE commitments made during the licensing phase and incorporated into the license conditions; then (2) a "project schedule" (205 CMR 135.02); then (3) a separate design review of a project conceptual design. *Under G.L. c. 23N, the operators have not been required to provide equally specific and separate MBWVE commitments or facility plans in their licensing applications.* To account for these differences, 205 CMR 222 rolls all three initial approvals into an approval process for a "project plan,"

205 CMR 222.02(2). (Emphasis added.)

The requirements for design and construction and for minority business enterprises, women business enterprises, and veteran business enterprises (MBWVE) commitments are derived from Chapter 23K's statutory provisions specifically setting forth such requirements, which are absent from Chapter 23N. The entire statutory and regulatory construction oversight paradigm that the Commission seeks to impose on Category 2 Sports Wagering Licensees was statutorily required for Gaming Licensees under Chapter 23K to ensure that the much larger development projects comprising the casino facilities were built and designed to generate tens of millions of dollars in tax revenue as well as host community payments and surrounding community benefits, opened on time, and were built as promised in the competitive license application process. The Gaming Act, unlike the Sports Wagering Act, had a dual purpose, licensing commercial gaming *and* economic development. *See* G.L. c. 23K, § 1(5). As such, the Gaming Act contained specific construction and employment requirements for Category 1 and Category 2 Gaming Establishments. The Sports Wagering Act contains no such policy objective nor the significant statutory requirements for review and approval of construction plans or employment mandates for a Sports Wagering facility.

There are specific statutory provisions under Chapter 23K that support 220 CMR 122 and 220 CMR 135, the regulations upon which the Draft Regulation is based, that are neither express nor implied in any of the Commission's statutory authority under Chapter 23N. These very specific statutory requirements should not be imported into the regulations governing Category 2 Sport Wagering facilities as the Staff Memorandum proposes. These include:

- G.L. c. 23K, § 1(5) (policy goals of 23K include new employment opportunities and new construction through capital investment)
- G.L. c. 23K, § 10 (establishes required amenities; establishes construction bond requirement of 10%; establishes required timeline for construction and opening; requires capital investment to be submitted as part of application, including stages of construction; requires commission approval that gaming area and ancillary entertainment services and non-gaming amenities are of superior quality prior to opening)
- G.L. c. 23K, § 15 (15) (required marketing program for utilization of: (i) MBWVE to participate as contractors in the design of the gaming establishment; (ii) to participate as contractors in the construction of the gaming establishment; . . .)
- G.L. c. 23K, § 15 (16) (required affirmative program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs equal to or greater than the goals contained in the executive office for administration and finance Administration Bulletin Number 14)<sup>1</sup>
- G.L. c. 23K, § 21(21) (required license condition for the utilization of MBWVE: (i) to participate as contractors in the design of the gaming establishment; (ii) to participate as contractors in the construction of the gaming establishment; . . .)

205 CMR 135 was promulgated to implement these statutory requirements and to oversee the construction of gaming establishments and plans that were approved as part of the discretionary

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<sup>1</sup> It should be noted that 205 CMR 222.02(2)(b) copies a majority of G.L. c. 23K, § 15(16) almost verbatim.

license award process that required a minimum of \$500 million and \$125 million capital investment for Category 1 and Category 2 Gaming Establishments, respectively. The requirements in section 135 for MBWVE construction workforce goals, reporting and tracking also were statutory requirements for receiving a Category 1 or 2 Gaming License pursuant to Chapter 23K. Chapter 23N has no equivalent provisions. It states only that “a category 2 licensee shall make a capital investment of not less than \$7,500,00 within 3 years after receiving a sports wagering license.”

MGA supports the principle of inclusion of MBWVE businesses, as stated in MGA’s license application. However, “regardless of the merits of particular regulations, an administrative body has no inherent authority to issue regulations . . . or promulgate rules or regulations that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created.” *Massachusetts Hosp. Ass’n, Inc. v. Dep’t of Med. Sec.*, 412 Mass. 340, 342 (1992) (internal citation and quotation marks omitted). Here, the Commission is clearly charged with regulating the conduct of sports wagering operations and activities under chapter 23N and has authority to promulgate rules and regulations necessary for the implementation, administration, and enforcement of Chapter 23N. G.L. c. 23N, §§ 4(a) and (b). Although Section 4 of Chapter 23N enumerates specific matters related to the conduct of sports wagering for which the Commission is authorized or required to promulgate regulations, it does not enumerate authority to promulgate regulations to oversee the construction of a Category 2 Sports Wagering facility. Nor may the Commission rely upon its broad authority to “promulgate rules and regulations necessary for the implementation, administration and enforcement of *this chapter*,” because there are no provisions concerning the regulation of construction of a Category 2 Sports Wagering facility in Chapter 23N. G.L. c. 23N, § 4(b) (emphasis added).

At the time the Sports Wagering Act was passed, it must be assumed that the Legislature was aware of the construction and workforce requirements it mandated in the Gaming Act. “When the Legislature enacts legislation “[w]e assume ... that [it is] aware of existing statutes,” *Charland v. Muzi Motors, Inc.*, supra at 580, 582, 631 N.E.2d 555, quoting *Mathewson v. Contributory Retirement Board*, 335 Mass. 610, 614, 141 N.E.2d 522 (1957). If the Legislature wanted a Chapter 23N Category 2 Sports Wagering facility to be treated the same as a Category 1 or Category 2 Gaming Establishment as the Draft Regulation purports to do, it would have provided the Commission with such specific authority to require and enforce such conformity with Chapter 23K.

MGA is happy to work with Commission Staff on a regulation consistent with ensuring that a Category 2 Gaming Licensee has met its \$7.5 million capital contribution consistent with the authority conferred upon the Commission under Chapter 23N as well as the policy goals for Diversity Equity Inclusion included in the Sports Wagering Application and Evaluation Regulations. MGA urges Commission Staff to work with the Category 2 eligible licensees to help formulate a reasonable regulation rather than proceed with the current Draft Regulation.<sup>2</sup> In the

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<sup>2</sup> In addition, the proposed regulations improperly define “Small Business” based on a uniform maximum gross revenue of \$15 million. What constitutes a “small business” under the Small Business Administration’s small business size regulation varies by economic activity as classified under the North American Industry Classification System (NAICS) code. 13 CFR Part 121. A business in “Other Gambling Industries” other than casinos is deemed to be a small business if it has maximum annual revenues of \$40 million. 13 CFR § 121.201 (NAICS code 713290).

case of MGA, this Regulation could cause it to incur major delay and economic harm in completing its permanent sports wagering facility due to the substantial investments in time, effort, and capital already made over the course of the past year in reliance upon the provisions of Chapter 23N, including the absence of such construction design, planning and management requirements, as well as the Commission's requirements for granting a Category 2 Sports Wagering License, internal control requirements, and requirements for obtaining an operations certificate. *See* 205 CMR 218, 205 CMR 239 and 205 CMR 251.

Best regards,

**Womble Bond Dickinson (US) LLP**



Jed M. Nosal  
Partner

JMN/dlw

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MGA is a small business that will be harmed by the proposed regulations. The Small Business Impact Statement should be revisited and the factors analyzed as to the impact on MGA as set forth in G.L. c. 30A, § 5.



**TO:** Chair Judd-Stein  
Commissioner O'Brien  
Commissioner Hill  
Commissioner Skinner  
Commissioner Maynard

**FROM:** Trupti Banda, Human Resources Manager

**DATE:** April 10, 2023

**Re:** Executive Director Compensation

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Commissioners,

Below is comparative information regarding Executive Director Compensation in Massachusetts and other gaming jurisdictions.

MGC Executive Director Salary: \$207,400

POST Commission, Executive Director Salary: \$198,550

Cannabis Control Commission, Executive Director Salary: \$201,880

In December of 2022, the MGC provided employees with a pay increase of 3% retroactive to the start of the fiscal year. Executive Director Wells did not receive the 3% pay increase.

The Commissioners could consider an increase in salary, whether that be the 3% cost of living increase that was previously awarded to MGC staff or another salary increase. Commissioners could also consider awarding a merit bonus in addition to or in place of a salary increase. When considering a merit increase only, it should be noted that it could impact Executive Director Wells' pension.

NOTE: Bonuses have been awarded to staff, including the Executive Director, in the past.

Below please find Executive Director Salaries from a sampling of other Gaming Jurisdictions and Sports Wagering:

<b>CA</b>	\$217,176 (2021) - Gaming
<b>IN</b>	\$137,145 (2021) - Gaming and Sports Wagering
<b>ME</b>	\$91,242 (2021) - Gaming and Sports Wagering
<b>MI</b>	\$151,284 (2020) - Gaming and Sports Wagering
<b>MD</b>	\$137,000 (2020) - Gaming and Sports Wagering
<b>MO</b>	\$113,000 (2021) - Gaming
<b>MS</b>	\$120,539 (2020) - Gaming and Sports Wagering
<b>NV</b>	\$274,000+ (2020 – ED left in November NEW ED started on 11/18/20) - Gaming and Sports Wagering

**NY** \$197,040 (2021) -Gaming and Sports Wagering  
**OH** \$162,471 (2020) - Gaming and Sports Wagering  
**PA** \$237,576 (2023) - Gaming and Sports Wagering