



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.

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.

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
 - b. November 16, 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 and emailed to 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.*



Massachusetts Gaming Commission



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

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).



Massachusetts Gaming Commission

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

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

101 Federal Street, 12th Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.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 222

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



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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