



## 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:

**Wednesday | August 30, 2023 | 11:00 a.m.**  
**VIA REMOTE ACCESS: 1-646-741-5292**  
**MEETING ID/ PARTICIPANT CODE: 112 132 8870**  
**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 - #475**

1. Call to Order – Cathy Judd-Stein, Chair
  
2. Meeting Minutes
  - a. February 2, 2023 **VOTE**
  
3. Administrative Update – Todd Grossman, Interim Executive Director & General Counsel
  
4. Racing – Dr. Alexandra Lightbown, Director of Racing and Chief Veterinarian
  - a. Review of Racing License Application for Opening a New Racetrack –  
Judith Young, Associate General Counsel **VOTE**
  
5. Investigations and Enforcement Bureau – Heather Hall, Interim Director of Investigations and Enforcement Bureau and Chief Enforcement Counsel; Detective Lieutenant Michael Leo, Unit Commander, Gaming Enforcement Unit (GEU); Lieutenant Sean O'Brien, GEU
  - a. Review of Letter to MGM Resorts International re MGM Springfield Safety and Security **VOTE**
    - I. Executive Session **VOTE**



Massachusetts Gaming Commission

The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(4), to discuss the use and deployment of security personnel or devices, or strategies with respect thereto at gaming establishments.

6. Legal – Todd Grossman, Interim Executive Director & General Counsel; Caitlin Monahan, Deputy General Counsel; Carrie Torrisi, Deputy General Counsel
  - a. *Gattineri v. Wynn MA, LLC, et al.*

- I. Executive Session

**VOTE**

The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(3) to discuss strategy with respect to *Gattineri v. Wynn MA, LLC*, as discussion at an open meeting may have a detrimental effect on the litigating position of the Commission.

7. Commissioner Updates

8. 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: August 28, 2023 | 11:00 a.m. EST

August 28, 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:** February 2, 2023, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 723 8569

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](#) (00:00)

Chair Judd-Stein called to order the 432<sup>nd</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

### 2. [Administrative Update](#) (00:55)

Executive Director Karen Wells provided a brief report that the launch of the category one sports wagering in the Commonwealth had been successful. She stated that the Commission staff would continue to monitor for issues and update the Commissioners as necessary.

### 3. [Legal](#) (2:04)

#### a. Sports Wagering Regulations:

- i. 205 CMR 105: IEB: Regulation and Amended Small Business Impact Statement for final review and possible adoption.

Associate General Counsel Judith Young provided a brief overview that 205 CMR 105 was an existing regulation, and that amendments were brought before the Commission on November 10, 2022, to extend the authority of the Investigations and Enforcement Bureau (“IEB”) to include sports wagering authorized by General Law Chapter 23N. She stated that a public hearing was held on January 31, 2023, presided over by Commissioner O’Brien. She explained that no public comments were received at the hearing, but that written comments were received in advance of the hearing.

Attorney Mina Makarios, outside counsel from the law firm Anderson and Krieger, outlined the changes to 205 CMR 105. He stated that the legal team did not recommend that adoption of any suggestions within the public comments. The *Draft 205 CMR 105, Amended Small Business Impact Statements, and Public Comments* were included in the Commissioner’s Packet on pages 3 through 16.

Mr. Makarios presented a comment from BetMGM, suggesting a change to 205 CMR 105.01(4) that would require notice to operators whose information was shared with third parties including law enforcement. He noted that this could compromise an investigation and recommended against adopting this suggestion.

Mr. Makarios presented a comment from BetMGM, suggesting a change to 205 CMR 105.01(4) that would require any information shared with federal agencies to be done through secure methods. He noted that the IEB and Commission already place a high importance on confidentiality and security and stated that he did not recommend the change.

Mr. Makarios presented an additional comment from BetMGM, suggesting a change to the language in 205 CMR 105.04 to create a reasonableness standard. He stated that the language was misconstrued and that the purpose of the language was to suggest that the Commission may have other sources of authority. He recommended against making this change as well.

Mr. Makarios explained that two comments were received regarding the management of confidential or sensitive information by the IEB’s contract investigators. He stated that the suggested changes could unduly tie the hands of the Commission or investigators regarding the retention of information for the purposes of assisting law enforcement. He recommended against making this change.

With that, Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 105 as included in the Commissioner’s Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner Skinner seconded the motion.

*Roll call vote:*

*Commissioner O’Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*  
*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

ii. [205 CMR 243](#): Sports Wagering Equipment - Regulation and Amended Small Business Impact Statement for final review and possible adoption. (13:27)

Associate General Counsel Ying Wang explained that 205 CMR 243, related to the technical standards for sports wagering equipment, was voted to be promulgated by emergency on November 17, 2022. She stated that a public hearing was held on January 31, 2023, presided over by Commissioner O'Brien. The *Draft 205 CMR 243, The Amended Small Business Impact Statement, and Public Comments* were included in the Commissioner's Packet on pages 21 through 41.

Attorney Paul Kominers from Anderson and Krieger explained that 205 CMR 243 adopts the GLI 33 technical standards modified to conform with Massachusetts' statutes and industry best practices. He explained that the first edit was based on the comment from GeoComply to shorten the time between location checks to 20 minutes.

Mr. Kominers stated that DraftKings had submitted a comment that the provision preventing a sports wagering operator's employees from placing wagers with any sports wagering operator was more restrictive than the requirement within General Law Chapter 23N. He stated that GLI recommended a change so that the sports wagering operator employees would be prevented from placing bets with their employer and any operator tethered to their employer.

Chair Judd-Stein sought clarification regarding the language of the exception of private pools in this provision. Mr. Kominers stated that it corresponded to integrity concerns that an employee may have greater access to private information, but that the same integrity concerns do not occur when the betting was in a private pool.

Mr. Kominers explained that BetMGM suggested language to further clarify the provision requiring operators to forward independent security audits. He recommended the adoption of this comment.

Mr. Kominers presented BetMGM's suggestion that the Commission narrow the obligation to provide a remediation plan. He stated that the language offered would undermine the Commission's authority over security issues and concerns. He recommended that the language be partially adopted; with a new provision that retained the Commission's authority to order operators to take corrective action with respect to any item identified by the independent technical experts.

Mr. Kominers stated that GLI 33 required operators to obtain prior Commission approval for all wager cancellations, even those made within approved house rules and internal controls. He

explained that this requirement was inconsistent with 205 CMR 238.35. He presented edits that would conform to the regulation and streamline appropriate wager cancellations.

Mr. Kominers explained that DraftKings had noted the difference between sports wagering regulations and daily fantasy sports regulations regarding the minimum time period before players who set deposit limits could change or extend them. He noted that the sports wagering regulation had a time period of 24 hours, while daily fantasy sports had a time period of 90 days before the extension could be made. He noted that DraftKings wanted the time periods to be uniform, as they were required to conform with the daily fantasy sports law due to their shared platform for both types of wagering. He recommended this change not be adopted, and suggested DraftKings could request that the Attorney General's Office amend their regulation regarding daily fantasy sports.

Mr. Kominers stated that DraftKings had requested a change to multi-factor authentication requirements. He noted that GLI expressed the multi-factor authentication requirements were industry standard, that DraftKings complied with in other jurisdictions. Chair Judd-Stein asked if this was related to multifactor authentication being required for login purposes. Mr. Kominers clarified that the change was for transactions that required multi-factor authentication.

Commissioner O'Brien sought clarification regarding DraftKings comment regarding the time period for extending deposit limits. Chair Judd-Stein stated that because DraftKings has a shared wallet for daily fantasy sports and sports wagering, the Commission's sports wagering regulation would compete with the Attorney General's regulations on daily fantasy sports. Commissioner O'Brien stated that there was a big difference between the 24 hours for sports wagering and 90 days for daily fantasy sports.

Commissioner O'Brien asked if other jurisdictions had competing regulations where shared wallets were a concern. Mr. Kominers stated that he had yet to research this issue in other jurisdictions. Chair Judd-Stein expressed an interest in researching the other jurisdictions and having a conversation with the Attorney General's Office to learn their perspective on the issue.

Commissioner Maynard expressed that it was rare for an operator to request more restrictive regulations, and he wondered if there could be a technological challenge for companies that present both products.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and the draft of 205 CMR 243 as included in the Commissioner's Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner Hill seconded the motion.

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously, 5-0.*

iii. [205 CMR 244](#): Approval of Sports Wagering Equipment and Testing Laboratories - Regulation and Amended Small Business Impact Statement for final review and possible adoption. (37:18)

Associate General Counsel Wang presented 205 CMR 244 related to the approval of sports wagering equipment and testing laboratories. She explained that the regulation was promulgated by emergency on November 17, 2022, and that a public hearing was held on January 31, 2023, presided over by Commissioner O'Brien. The *Draft 205 CMR 244, The Amended Small Business Impact Statement, and Public Comments* were included in the Commissioner's Packet on pages 42 through 53.

Attorney Annie Lee from Anderson and Krieger stated that she did not recommend adopting changes from any of the public comments that were submitted to the Commission. She noted that Penn Entertainment and Kambi had sought clarification regarding 205 CMR 244.03, and whether vendors could submit information to the Commission. She suggested the language be clarified to clarify that in accordance with GLI's change management program, the operator was responsible for change management even if a vendor was submitting the information to the Commission. Ms. Lee also clarified that with respect to 205 CMR 244.04(6), both laboratories must be certified by the Commission and that one laboratory must accept the others results for the provision to apply.

Ms. Lee presented two suggested changes from BetMGM. She explained that the first suggested change was to 205 CMR 244.026 to replace "promptly" with "within 48 hours". She noted that some serious issues require reporting as soon as the operator is aware and recommended against adopting this suggested amendment.

Ms. Lee stated that the second suggestion was to add a provision to 205 CMR 244.044 that logs communications submitted by the operator to the Commission should be made confidential. She noted that the Commission does not have authority over what is considered a public record, and that logs were not considered from public records withholding exceptions in the sports wagering act. She recommended against adopting this change.

With that, Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and the draft of 205 CMR 244 as included in the Commissioner's Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner Hill seconded the motion.

*Roll call vote:*  
*Commissioner O'Brien: Aye.*  
*Commissioner Hill: Aye.*  
*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously, 5-0.*

iv. [205 CMR 143](#): Gaming Devices and Electronic Gaming Equipment - Regulation and Amended Small Business Impact Statement for Final Review and Possible Adoption. (48:15)

Deputy General Counsel Caitlin Monahan presented the draft 205 CMR 143, which was amended to require sports wagering operators and vendors to adhere to the technical standards of GLI 20. She stated that the regulation was promulgated by emergency on November 17, 2022, and had a public hearing on January 31, 2023 presided over by Commissioner O'Brien. She noted that there had been no changes or comments since the November 17, 2022, meeting. The *Draft 205 CMR 143 and Amended Small Business Impact Statement* were included in the Commissioner's Packet on pages 17 through 20.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and the draft of 205 CMR 143 as included in the Commissioner's Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner Skinner seconded the motion.

*Roll call vote:*  
*Commissioner O'Brien: Aye.*  
*Commissioner Hill: Aye.*  
*Commissioner Skinner: Aye.*  
*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously, 5-0.*

4. [Commissioner Updates](#) (51:07)

The Commissioners had no updates to discuss or address.

5. [Other Business](#) (51:24)

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

Commissioner Hill moved to adjourn. The motion was seconded by Commissioner Skinner.

*Roll call vote:*  
*Commissioner O'Brien: Aye.*  
*Commissioner Hill: Aye.*  
*Commissioner Skinner: Aye.*  
*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*



*The motion passed unanimously, 5-0.*

**List of Documents and Other Items Used**

1. [Notice of Meeting and Agenda](#) dated January 27, 2023
2. [Commissioner's Packet](#) from the February 2, 2023, meeting (posted on massgaming.com)



*Legal Division*

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

FROM Judith Young, Associate General Counsel  
Dr. Alexandra Lightbown, Director of the Racing Division

RE: Updates to the Application for License to Hold or Conduct a New Racing Meeting, for Calendar Year 2024

DATE: August 30, 2023

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## Overview

The Division of Racing, working collaboratively with the Legal Division, have made updates to the 2024 version of the Application for a License to Conduct a Racing Meeting, and are requesting a vote of final approval from the Commission. A draft of the application came before the Commission on July 27, 2023, and was posted for public comment on the Commission's website. The comment period ended on August 22, 2023. Comments have been included in the Commissioner's Packet.

This application will be utilized by prospective applicants who are seeking licensure by the Commission, in accordance with relevant portions of G. L. c. 128A and 128C, to hold or conduct a racing meeting in the Commonwealth. This application is not intended for use by existing racing licensees.

The Application consists of nine sections. We have provided a brief overview of each section, and explanation of how they have been updated, if applicable:

### Section 1 – Background Information (No changes were made to the contents of this section.)

This section is intended to seek the background information from the Applicant, including: their organizational structure, mailing address, business address, as well as the proposed location of the racetrack and the county it is, or will be located in.

### Section 2 – Project Summary and Financing

This section seeks information from the Applicant regarding the broader project as well as the racetrack, clubhouse, grandstand, parimutuel kiosks, and parking areas. Applicants may submit any blueprints or renderings that they have designed as a supplement to the application. Applicants are also asked to provide information detailing the project's budget, the anticipated capital investment, as well as any feasibility studies they have conducted or will conduct pertaining to the project.



Massachusetts Gaming Commission

- In addition to grammatical corrections, this section has been updated to request information about the size of the proposed racetrack as well a detailed description of the track; inclusive of the types of grounds the horses will race upon in question 2.3(a). It also requires submission of a traffic study on the surrounding area for the proposed project in question 2.6.

### Section 3 – Schedule of Proposed Races

This section of the application is intended for the Applicant to inform the Commission when they expect to commence their racing program, by seeking the calendar year the Applicant expects to conduct a racing meeting, and their proposed number of racing days.

- This section has been updated to include reference to the 2024 calendar year.

### Section 4 – Non-Commission Approvals

Section four of the racing application covers the approvals the Applicant must acquire by entities other than the Commission in advance of the Commission’s decision relative to licensure. Most significantly, an Applicant must have already received approval for their proposed facility and premises by local authorities pursuant to G. L. c. 128A, § 13A. This is inclusive of any petitions, or special elections contemplated by the section as well. The county where the Applicant proposes to conduct racing must have also approved horse racing by vote in accordance with G.L. c. 128A, § 14.

- This section has been updated to inform Applicants that they must obtain all necessary approvals in accordance with G. L. c. 128A, §§ 13A and 14, prior to submission. It further states that any applications received without these required approvals will be rejected for lack of administrative completeness.
- This section has also been updated to request that the applicant provide a statement that informs the Commission of any support or opposition to the proposed project expressed by the surrounding body, governing officials or surrounding community.

### Section 5 – Qualifiers and Suitability

Section five of the application asks for information pertaining to the suitability of an Applicant, and requests that they provide information regarding all Qualifiers using the factors enumerated in question 5.1. Additionally, this section attempts to gain the necessary information regarding an Applicant’s financial ability to operate a racetrack.

- The language in question 5.1 has been reformatted to note that the Applicant may seek certain waivers of Qualifier status. Question 5.19 has been expanded to include any liability insurance that would cover animals on the premises.

### Section 6 – Public Interest (No changes were made to the contents of this section.)

This section details the Commission’s consideration of “the interest of members of the public in racing competition honestly managed and of good quality.” G. L. c. 128A, §3(i). The questions in this section require an Applicant to submit or explain the associated benefits of the project on the greater community,

as well as their plans for working with Horseman's associations, their surrounding community, as well as any plans to attract and employ a diverse workforce (women, minority, and veteran).

### Section 7 – Facilities and Equipment

Section seven of the application seeks information regarding the real property upon which the racing facility will be constructed including the ownership and control of the land, the equipment expected to be used at the facility or a plan for how they will procure the equipment the Applicant does not currently possess. Additionally, the application requests information as to the Applicant's anticipated security measures for the care and protection of patrons, employees, licensees, horses, and roadways leading to and from the premises.

- Question 7.3 has been expanded to request additional information from Applicants based on their answer to the question regarding the proposed premises. Question 7.6 has been expanded to include leasing of premises to third parties for simulcasting, or sports book operations.

### Section 8 – Wagering and Simulcasting

Section eight requires Applicants to state whether they intend to offer account deposit wagering ("ADW"), and if so, the applicant is asked to provide a description of the system, and any service providers they anticipate using. Additionally, Applicants are asked if they intend to simulcast pursuant to G.L. c. 128C, and if they intend to race for at least the minimum number of race days required by statute.

- Question 8.1 has been updated to require information on how Applicant will handle abandoned or dormant patron accounts, for account deposit wagering.

### Section 9 – General Conditions, Attestation and Signatures (This section has not been updated)

Section nine of the application contains conditions and provisions that must be acknowledged by the Applicant before submitting their application. The attestations include the affirmative obligation by the Applicant to abide by the statements made in their application to the Commission, as well as all relevant state, local and federal laws.

**From:** [MGC Website](#)  
**To:** [MGCcomments](#)  
**Subject:** Contact the Commissioner Form Submission  
**Date:** Tuesday, August 15, 2023 9:41:45 AM

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**Name**

Virginia Lynch

**Email**

[vhlynch1964@gmail.com](mailto:vhlynch1964@gmail.com)

**Phone**

(617) 593-5736

**Subject**

Future of Thoroughbred Racing in Massachusetts

**Questions or Comments**

The rule of mandating 100 racing days to a fledgling race track is contrary to the business model of the only state to successfully resurrect racing. Colonial Downs has brought racing back to Virginia. It began with a short race meet and has added more dates yearly. Don't sabotage a legitimate effort.

**From:** [Lightbown, Alexandra](#)  
**To:** [MGCcomments](#)  
**Subject:** FW: Horse Racing application  
**Date:** Monday, August 14, 2023 6:36:49 PM

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Please see below comments from Patricia Reardon, Executive Director of the MasTHA. She was having difficulty submitting it to mgccomments.

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**From:** paddy reardon <bodababie@gmail.com>  
**Sent:** Monday, August 14, 2023 5:25 PM  
**To:** Lightbown, Alexandra <alexandra.lightbown@massgaming.gov>  
**Subject:** Racing application

MGC , the rules for having a new track built in the state should be very encouraging for the first years, there should be no mandate on seating an number of days. If you have visited Plainridge an with the new apps people do not have to show up at the track in order to participate in the racing experience.

There is interest in holding thoroughbred racing in the state an that needs to be encouraged with the full support of the commission. Number of days of racing will take time also because of the availability of horse that will increase as time goes on an the experience of the track owner to recurting horses. Also the failure of the breeding program in the state needs a complete revamp as to have prime breeding stock come to the state. That can only be accomplished with the reality of a competent track operator, which we haven't had in this state for years.

Our organization consists of 100's of Massachusetts horsemen,trainers, breeders, owners and back stretch workers of the former Suffolk Downs. We are the Massachusetts Thoroughbred Horsemen's Association an have been verified by a federal court case as the horseman's group of Massachusetts. Please if there is anything that our organization can advise the commission on it would be our pleasure.

Patricia Reardon  
Executive Director of the MasTHA

**From:** [MGC Website](#)  
**To:** [MGCcomments](#)  
**Subject:** Contact the Commissioner Form Submission  
**Date:** Tuesday, August 15, 2023 9:41:28 AM

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**Name**

lee loebelenz

**Email**

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**Phone**

(774) 407-3163

**Subject**

racing rules

**Questions or Comments**

the number of days of racing to attract a legitimate racing industry the number of days should be logical for the situation. The thoroughbred industry in Ma needs to be rebuilt and the breeding industry increased. Race days should reflect that.

**From:** [MGC Website](#)  
**To:** [MGCcomments](#)  
**Subject:** Contact the Commissioner Form Submission  
**Date:** Wednesday, August 16, 2023 4:11:58 PM

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**Name**

Dale Salim

**Email**

[aslm444@aol.com](mailto:aslm444@aol.com)

**Subject**

thoroughbred racing

**Questions or Comments**

the application to build race track in MA states that 100 days of racing is required, this is not achievable for the first few years, it is near impossible to attract the required number of horses (minimum 1000) stabled at the track to run such a meet. Initially, at most 30 days of racing can be achievable as this require coordination with the closing of other tracks and attracting their stock. As a TB breeder and farm owner in the state, bringing TB racing back to MA will revive over 100 farms, benefit so many businesses and create hundreds of jobs.



**From:** [MGC Website](#)  
**To:** [MGCcomments](#)  
**Subject:** Contact the Commissioner Form Submission  
**Date:** Sunday, August 20, 2023 5:33:35 PM

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**Name**

Paddy Reardon

**Email**

[bodababie@yahoo.com](mailto:bodababie@yahoo.com)

**Phone**

(781) 336-3475

**Subject**

Racing application

**Questions or Comments**

Anyone coming into the state to build a track or racing facility must have a 3 to 4 week period of training opened up and stabling before the first race to all Massachusetts horsemen otherwise this will be just a place where our of staters will come in Mass take the money an go back to the real tracks they have in their states. This is what happy to the big give away in the past at Suffolk Downs as we said it would. Must be open for stabling and training 3 to 4 weeks ahead of the first race and train there after at the track everyday after until the last race.



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617.832.1000 main  
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Kevin C. Conroy  
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August 22, 2023

By Email

Cathy Judd-Stein, Chair  
Bradford Hill, Commissioner  
Jordan Maynard, Commissioner  
Eileen O'Brien, Commissioner  
Nakisha Skinner, Commissioner  
Massachusetts Gaming Commission  
101 Federal St., 12<sup>th</sup> Floor  
Boston, MA 02110  
mgccomments@state.ma.us

Re: Horse Racing Application

Dear Chair and Commissioners,

We are writing on behalf of our client, Baystate Racing LLC (“Baystate”), in response to the Commission’s request for public comments on the Draft Application to Hold or Conduct a New Racing Meeting in 2024 (the “Draft Application”). Baystate intends to file a horse racing application in the near future and welcomes this opportunity to share its thoughts with the Commission on the Draft Application.

Baystate appreciates the deliberative process undertaken by the Commission to develop the Draft Application and believes that effort accords with the renewed interest in horse racing in Massachusetts on the part of potential operators, the Commission, and the public. The Commonwealth stands to benefit from robust competition within the racing industry, including by new entrants such as Baystate.

In view of that interest and the potential benefit to the Commonwealth, it is important in finalizing the Draft Application that the Commission avoid creating unnecessary barriers to potential applicants while at the same time preserving the Commission’s ability meaningfully to evaluate applicants and ensure all legal requirements are satisfied. With that in mind, Baystate is concerned that language that was added to Section 4.1 of the Draft Application that specifies that an applicant’s approvals required by G.L. c. 128A, § 13A are not “deemed final” until “there [has] been an opportunity for the petitions or special elections set out in § 13A to have taken place” is vague and requests that the Commission define what

is the appropriate “opportunity for the petitions or special elections set out in § 13A to have taken place.”

Baystate appreciates that part of the rationale underlying the proposed change is a highly-understandable desire on the part of the Commission not to review an application and award a license before the local approval process required by G.L. c. 128A, § 13A is completed. Although we agree that *Berkshire Downs, Inc. v. State Racing Commission*, 350 Mass. 695 (1966), which is cited in the Draft Application, holds that an applicant must obtain the approvals required by § 13A prior to submission of a complete application, *Berkshire Downs* does not purport to reach the question of what “an opportunity for the petitions or special elections set out in § 13A to have taken place” means in this context.

Moreover, G.L. c. 128A, § 13A must be read in tandem with the overall statutory scheme of which it is a part, including the explicit application deadline and related requirement for the Commission to act upon completed applications not later than November 15 if an application is filed on or before October 1. As the SJC observed in *Berkshire*, “[t]he explicit provision in § 2 fixing a time within which the commission must act on the application reveals to us the intention of the Legislature that there should be a final decision by that date.” *Id.* at 700. Finality is important not only to the Legislature but also to potential applicants and therefore the Commission should provide clear guidelines on when it will deem an application to be final.

G.L. c. 128A, § 13A provides that a local approval for a race track “shall be deemed to be a measure within the provisions of section forty-two of chapter forty-three.” G.L. c. 43, § 42 provides that in order for there to be a Referendum Petition on a measure passed by the City Council, “a petition signed by registered voters of the city, equal in number to at least twelve percent of the total number of registered voters” must be filed within 20 days of passage of the measure by the City Council.<sup>1</sup> Accordingly, the Draft Application should clearly state that if a petition challenging the municipal body’s approval is not filed within 20 days of the municipal body’s approval, the Commission will find the § 13A approval to be “final.” Likewise, the Draft Application should clearly state that if the petition is filed within 20 days of the municipal body’s approval, then the Commission will not find the § 13A approval to be “final” until the election has taken place and the voters have approved the site for a racetrack.

Making these timelines clear in the Draft Application does not amount to interference by the Commission with what is fundamentally a local approval process, but rather a clear signpost so that potential applicants, municipal governments, and residents are aware of the timeline on which the Commission will consider the § 13A approval to be “final” and an application complete.

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<sup>1</sup> While Bay State appreciates that G.L. c. 43, § 42 applies only to the referendum of a city and not necessarily to a referendum of a town, there is no good reason that the Commission should create a separate standard for when a § 13A approval is “final” in a city or a town.

Page 3

Again, Baystate much appreciates the opportunity to comment on the development of the Application. Please do not hesitate to reach out with any questions the Commission may have.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Conroy', is positioned above the printed name.

Kevin C. Conroy

cc: Dr. Alex Lightbown, Director of Racing

**From:** [Barbara Kellogg](#)  
**To:** [Young, Judith](#)  
**Cc:** [Barbara Kellogg](#); [MGCcomments](#)  
**Subject:** Comments on Horse Racing Application  
**Date:** Tuesday, August 29, 2023 11:00:00 AM

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Dear Attorney Young:

I would again like to ask if you could please confirm for me that you received and forwarded to the Commissioners my comments (copied below) related to the Horse Racing Application which is on the agenda for tomorrow's meeting. Thank you very much for your cooperation. (It appears that perhaps the notice the Commission posted for comments had an old email address for "mgccomments" such that my comments sent before your deadline were bounced back to me, necessitating me to forward them to you August 26th).

Sincerely,  
Barbara Kellogg

Thank you for the opportunity to again present comments on this matter.

I would first like to thank the Commission for including some of my suggestions from July of 2022 in the new Application. And I am happy to see that after last year's Hardwick debacle that the current draft now includes the requirement of final local approval PRIOR to an application being submitted.

However, I continue to believe that there are certain other application requirements that must be included in an original application for a new operator license. Although there are many details that will obviously need to be worked out later as any new license will likely be for a clean slate site, the Commission cannot adequately make a decision in the short time given to it

without requiring certain necessary information and plans to be included in the original application.

At a bare minimum, engineered plans showing the needed grading as well as the composition, shape, and size of the track itself at the actual planned location is a must (Exhibit 2.3). Looking back at prior attempts, it is clear that the required track is often an afterthought. It's no secret that gambling is the main event. In Great Barrington, the plan was to race at an old fair racetrack that was substantially shorter than the statutory minimum of 1 mile. In Sturbridge, the plan originally submitted to the Town had to be pared down from two tracks to one because at the last minute the developers realized that it was physically impossible to have both, although still planning to conduct necessary and extensive cutting and filling of varied wetland terrain to hope to maybe fit the one. In Hardwick, they planned to race on land permanently protected by a State Agricultural Preservation Restriction; claiming all they had to do was mow, whereas their own plans laid out on topographical maps showed a significant area, including a stream, that would require extensive fill to be close to level and to prevent horses from falling off the track. Even as I write this, these same/related developers are hoping to "build" a track in the City of Gardner on protected mountainous terrain, which site includes wetlands and abuts the City watershed. The physical possibility or impossibility of building an actual race track should be the Commission's main initial focus, as it certainly is not that of the applicants.

Additional requirements must be an independent traffic study (Exhibit 2.6); an actual parking plan for horse trailers and workers and patrons onsite (Exhibit 2.2); details of onsite water and sewer and other utilities (Exhibit 2.2); and an economic impact study (Exhibit 2.10). These should necessarily be part of what any city or town would require for any development. The fact that a municipality would consider granting a forever authority to build and operate a race track that will be regulated and overseen by unknown state actors without requiring such minimal studies and information is merely one indication that the

high paid PR folks and lobbyists may actually be worth their inflated salaries.

Regarding identification of the promises and incentives given to the city or town which will be directly impacted by a track and gambling operation, if one of the promises to the host community is a "Host Community Agreement" (and especially if the proponents state or infer that a Host Community Agreement will be required by State law), this Commission should require that such an agreement must be negotiated and signed prior to the local approval required by chapter 128A. We are in a third-year third-municipality go-round of related developers claiming that they will negotiate an HCA AFTER all approvals and the racing license applied for. Unlike gaming establishments and cannabis, not only is there no required HCA, but no required mitigation. Being certain that the city or town is going into this forever situation with its eyes open should be something the Commission should insist on. Fairness and full transparency should be the requirement from day one and there should be some mechanism for Gaming Commission assistance to guide municipalities through the process if needed.

Additionally, the application should require a study and evidence of the availability of thoroughbreds to actually race at the proposed location. The Town of Hardwick was told that because there just weren't enough horses available to race, it would take years for the track to have more than a few race days per year as they would have to actually breed the horses on site in order to start a full field. If there are not enough horses - obviously because this IS in fact a dying industry - the Commission should not be a party to the charade. Clearly the bottom line is the desire for the simulcasting and sports wagering licenses. If the proponents do not have viable plans for an actual track or enough horses to race, they should sit back and wait for the Commission to finalize its study of adding additional retail sports wagering sites and look to do just that somewhere else on a smaller site without needlessly butchering 50-70 acres of precious open space pretending to make a go of the impossible.

Perhaps it is past time for the Gaming Commission to suggest to the legislature that the MGC commission an independent study of the actual costs and benefits, to the Commonwealth and the host and surrounding communities, of encouraging and propping up the dead or dying industry of thoroughbred horse racing. We have had folks feverishly canvassing the Commonwealth for years to find space and a gullible local government administration to locate a race track so that they can race four or six days per year in order to get their lucrative gambling licenses. It is patently absurd to put our cities and towns through this yearly saga of being promised the moon and the citizens having to step in and stop a really bad idea.

This has happened over and over in our communities. That we know of? Off the top of my head and knowing some are missed: Rowley, Lancaster, Great Barrington, Sturbridge, Wareham, Plymouth, Hardwick. Today the City of Gardner is the unlucky target. Your current application revision discussion may not seem the appropriate time to discuss this underlying ongoing problem, but when is? The defunct TB horse race track at Suffolk Downs has been granted its final wish - they have the ability to have retail and online sports wagering with no need to worry about having to lose money on every single race. That should be the end of this story. Further, whereas the legislature understood decades ago that gaming establishments would have necessary and sometimes unknowable negative impacts on our communities, and provides for some mitigation for the host and surrounding communities of gaming establishments, there is no mitigation whatsoever for horse racing and none for sports wagering. Those industries will have at least as much or more of an impact and this should be recognized and addressed up front.

Thank you for your time.

Barbara Kellogg





*Division of Racing*

**APPLICATION FOR LICENSE TO  
HOLD OR CONDUCT A NEW RACING MEETING**

NAME OF APPLICANT: \_\_\_\_\_

TO HOLD OR CONDUCT A RACING MEETING AT: \_\_\_\_\_

IN THE CALEDAR YEAR OF: \_\_\_\_\_

DATE SUBMITTED: \_\_\_\_\_

Pursuant to the provisions of G.L. c. 128A and 128C, the Applicant hereby applies for license to hold or conduct the following type of racing meeting:

\_\_\_ thoroughbred      \_\_\_ standardbred

**APPLICATION FEE AND SURETY REQUIRED:**

Please enclose a certified check or bank draft payable to the Massachusetts Gaming Commission in the sum of \$300 in accordance with G.L. c. 128A, §4.

Please enclose a surety bond issued by a surety qualified to do business in the Commonwealth of Massachusetts and approved by the Commission in the amount of \$125,000 which is conditioned upon the payment of all sums which may become payable to the Commission under G.L. c. 128A in accordance with G.L. c. 128A, §3(o).

**NOTICE:** The Commission, in its authority under G.L. c. 128A, may reject an application for lack of administrative completeness, or in its discretion, grant leave to an applicant to provide supplemental or corrective information.

**SECTION 1: BACKGROUND INFORMATION**

**1.1.** Applicant's name: \_\_\_\_\_

**1.2.** Applicant is (check one):

- \_\_\_\_\_ An individual
- \_\_\_\_\_ A limited partnership (LP)
- \_\_\_\_\_ An unincorporated association
- \_\_\_\_\_ A general partnership
- \_\_\_\_\_ A trust
- \_\_\_\_\_ A corporation
- \_\_\_\_\_ A limited liability company (LLC)
- \_\_\_\_\_ Other (specify: \_\_\_\_\_)

**1.3.** Name and contact information (including email) for the individual who will serve as the primary contact for the Applicant:  
\_\_\_\_\_

**1.4.** Trade name or d/b/a (if applicable):  
\_\_\_\_\_

**1.5.** Address of principal office:  
\_\_\_\_\_

**1.6.** Mailing address (if different):  
\_\_\_\_\_

**1.7.** Location of the proposed racetrack (include address if available):  
\_\_\_\_\_

**1.8.** County in which proposed racetrack is located: \_\_\_\_\_

**1.9.** Contact Information for Applicant's lead attorney:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Board of Bar Overseers number: \_\_\_\_\_

**1.10.** Is Applicant incorporated, organized, or otherwise in Massachusetts?

\_\_\_ YES  
\_\_\_ NO

If the answer to this question is yes, please attach as **Exhibit 1.10** certified copies of all organizational documents filed with the Secretary of the Commonwealth or otherwise.

If the answer to this question is no, submit as **Exhibit 1.10** a statement providing the state of incorporation or organization, the entity's qualification to do business in Massachusetts, and the name and address of the registered agent for service of process in Massachusetts.

*If Applicant is an individual, skip this question.*

**In completing sections 2 through 5, please consider the following. As described in G.L. c. 128A, § 3(i), in reviewing this application, the Commission will take into consideration, in addition to any other appropriate and pertinent factors, the following: the financial ability of an applicant to operate a racetrack; the maximization of state revenues; the suitability of racing facilities for operation at the time of the year for which racing dates are assigned; the circumstance that large groups of spectators require safe and convenient facilities; the interest of members of the public in racing competition honestly managed and of good quality; the necessity of having and maintaining proper physical facilities for racing meetings and the necessity of according fair treatment to the economic interest and investments of those who in good faith have provided and maintain such facilities.**

## SECTION 2: PROJECT SUMMARY AND FINANCING

**2.1.** Please attach as **Exhibit 2.1** a complete description of the proposed premises and facilities, including any accompanying amenities and/or attractions. Please also attach any renderings or photographs depicting the area and/or vision for the proposed project.

**2.2.** Submit as **Exhibit 2.2** as much of the following information related to the proposal as is available.

(a) Grandstand:

- (1) Seating capacity, including box seats, reserved seats, general admission, and total seating capacity.
- (2) Will the Grandstand be enclosed?
- (3) Will the Grandstand be heated?
- (4) Will any portion of Grandstand be air conditioned?
- (5) Type of construction of Grandstand.
- (6) Ground area covered by the Grandstand.

(b) Club House

- (1) Seating capacity, including box seats, reserved seats, general admission, and total seating capacity.
- (2) Will the Club House be enclosed?
- (3) Will the Club House be heated?
- (4) Will any portion of the Club House be air conditioned?
- (5) Type of construction of Club House
- (6) Ground area covered by the Club House

- (c) Bleachers
  - (1) Seating Capacity
  - (2) Type of construction of Bleachers
  - (3) Ground area covered by the Bleachers
- (d) Parking Space:
  - (1) Area
  - (2) Automobile capacity
  - (3) Will parking area be lighted?
  - (4) Is parking area treated? If so, how?
  - (5) Is parking area numbered?
  - (6) Is charge made for parking? If so, how much?
  - (7) Are the parking area and walkways cleared of snow and ice?
- (e) Number of pari-mutuel ticket windows/kiosks anticipated and approximate locations.
- (f) Description of anticipated restrooms for patrons in Grandstand, Club House and/or other locations.
- (g) Description of anticipated system of sewerage disposal. If not connected to public sewer, give details of system used.
- (h) Description of anticipated number of outlets for fresh, pure drinking water for patrons in grandstand, clubhouse and/or other locations.

*Please note: the Commission may condition any license award on Applicant completely and satisfactorily answering this question.*

**2.3.** Submit as **Exhibit 2.3** as much of the following information as is available:

- (a) Size of track and detailed description of track, including description of racing surface
- (b) Number of chutes
- (c) Number of stables
- (d) Number of stalls
- (e) Number of tack rooms
- (f) Number of tack rooms heated
- (g) Number of shower baths in stable area
- (h) Toilet facilities in stable area
- (i) Fire protection in stable area including, number of sprinklers, number of fire alarm boxes, and other fire protective measures in stable area
- (j) Recreation room
- (k) Track kitchen, including seating capacity
- (l) Size of jockey or driver's room and equipment available including number of shower baths, toilets, hot-boxes, etc.
- (m) List of other accommodations, facilities or services in stable area.

*Please note: the Commission may condition any license award on Applicant completely and satisfactorily answering this question.*

2.4. List any other planned accommodations, amenities, facilities, or services to be offered. You may attach your response as **Exhibit 2.4** if more space is required.

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2.5. Submit as **Exhibit 2.5** a proposed construction timeline, and the name of Applicant’s general contractor, if known.

2.6. Submit as **Exhibit 2.6** a traffic study performed for the proposed project.

2.7. Submit as **Exhibit 2.7** a statement of the total capital investment anticipated for the project, including the method used to calculate the figure, as well as any supporting documentation, analysis, or studies.

2.8. Describe and attach as **Exhibit 2.8** the financing structure and plan for the proposed project including identifying all sources of capital. Include current capital commitments as well as plan and timing for meeting future capital needs.

2.9. Submit as **Exhibit 2.9** a detailed budget of the total project cost. Identify separately construction costs (e.g.- labor, materials), design costs, legal and professional fees, consulting fees and all other development costs.

2.10. Submit as **Exhibit 2.10** any feasibility, viability, economic impact, or economic development studies performed relating to the proposed project.

### SECTION 3: SCHEDULE OF PROPOSED RACES

3.1. Is this application for a license to hold or conduct a racing meeting in calendar year 2024? (check one)

YES  
 NO

If no, in what calendar year does the Applicant propose to hold or conduct racing meetings?

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Additionally, if no, submit as **Exhibit 3.1** a detailed explanation of the Applicant’s anticipated timeline for completing the infrastructure needed for the commencement of live racing, including but not limited to an explanation of how the Applicant has arrived at the various dates on the timeline.

3.2. Pursuant to G.L. c. 128A, §§ 2(4)-(5) and 3, an application must state “the days on which it is intended to hold or conduct” a racing meeting, and “[t]he hours of each day between which it is intended to hold or conduct” racing.

Submit as **Exhibit 3.2** a statement of the date or dates on which Applicant intends to conduct a racing meeting or racing meetings, and the hours of each such day during which Applicant intends to hold races. (Please note that a future licensee may file supplementary materials or amendments for new or additional license dates in accordance with G.L. c. 128A, § 2.)

## SECTION 4: NON-COMMISSION APPROVALS

- 4.1. Has Applicant obtained the required approval of the location of the racetrack in accordance with G.L. c. 128A, § 13A?

YES  
 NO

Submit as **Exhibit 4.1** documentation of the Applicant's approvals.

*Please Note: Applicant must receive all necessary final approvals in accordance with G.L. c. 128A, § 13A prior to submitting its application. In order for an approval to be deemed final, there must have been an opportunity for the petitions or special elections set out in § 13A to have taken place, and any such petitions or special elections must be complete. See *Berkshire Downs, Inc. v. State Racing Commission*, 350 Mass. 695 at 699 (1966). Applications received without the required approvals will be rejected for lack of administrative completeness.*

- 4.2. Have there been any votes as categorized within G.L. c. 128A, § 13A, or otherwise taken concerning the proposed project by any governmental entity or the voters of any governmental entity, including but not limited to the host and surrounding/nearby communities in which the proposed project is to be located?

YES  
 NO

If yes, submit as Exhibit 4.2 a description of the circumstances surrounding the votes taken, the dates of said votes, and their outcome.

- 4.3. Has Applicant ever been denied approval for the proposed project under G.L. c. 128A, § 13A?

YES  
 NO

If yes, submit as Exhibit 4.3 an explanation of the circumstances of the denial.

- 4.4. Has horse racing been approved by vote in the county in which Applicant proposes to hold or conduct racing meetings, in accordance with G.L. c. 128A, § 14?

YES  
 NO

Submit as **Exhibit 4.4** documentation of such county vote and an averment that said vote has not been rescinded.

*Please Note: Applicant must receive all necessary approvals in accordance with G.L. c. 128A, § 14 prior to submitting its application. Applications received without the required approvals will be rejected for lack of administrative completeness.*

- 4.5. Submit as **Exhibit 4.5** a statement describing any support or opposition to the proposed project expressed by the surrounding community, governing body, government officials of the host and surrounding/nearby communities, including evidence of support or opposition, in writing.
- 4.6. Submit as **Exhibit 4.6** a schedule of any other state, municipal, or Federal environmental, land use, hospitality-related, or other permits, licenses, or approvals required for the Applicant to construct and operate its facility. For each, please also describe the approval's relevance to Applicant's facility; documentation of any such approvals that have already been obtained; and, for any such approvals that have not yet been obtained, the Applicant's progress towards and plans for acquiring them, including a detailed timeline.

*Please note: the Commission may reject an application for lack of completeness or impose a license condition requiring that the Applicant acquire all needed approvals outlined in Section 4.6 before they are permitted to operate.*

## **SECTION 5: QUALIFIERS AND SUITABILITY**

**In evaluating this application, the Commission will consider whether the Applicants are persons likely to conduct racing in accordance with approved practices and in a manner consistent with the public safety, health, morals, and welfare. See Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Comm'n, 342 Mass. 694, 699–700 (1961). Further, in accordance with G.L. c. 128A, § 3(i) the Commission must consider “the interest of members of the public in racing competition honestly managed . . . .”**

**With the above principles in mind, please respond to the following questions.**

- 5.1. For purposes of completing this section, the term “Qualifier” shall mean the following, respectively:
  - (1) Each officer of the Applicant;
  - (2) Each director of the Applicant;
  - (3) Any person owning more than 10% of the Applicant, or a holding, intermediary or subsidiary company of such Applicant;
  - (4) Any person who has the ability to control the activities of the Applicant; and
  - (5) In the judgment of the Division of Licensing after consultation with the Investigations and Enforcement Bureau (“Bureau”), any person with significant and substantial responsibility for the Applicant's business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant's operations in the Commonwealth.
  - (6) The Division of Licensing, after consultation with the Bureau, may, at its discretion, require other persons that have a business association of any kind with the Applicant to be subject to the qualification requirements as a qualifier. These persons include, but are not limited to, an affiliate or holding, intermediary or subsidiary company of the Applicant.

The Applicant may seek a waiver for any person on the above list who lacks the ability to control the activities of the Applicant or has no significant responsibility or substantial ability to exercise influence over Applicant's operations.

- 5.2. Submit as **Exhibit 5.2** a list of all of Applicant's Qualifiers.
- 5.3. If Applicant is a corporation, submit as **Exhibit 5.3** a statement showing:
  - (a) Class(es) of stock issued or to be issued;
  - (b) Par value;
  - (c) Votes per share;
  - (d) Number of shares of each class authorized;
  - (e) Number of shares of each class issued;
  - (f) Number of shares of each class subscribed; and
  - (g) Total number of shares of each class and the percentage of shares owned by the largest 10 shareholders.
- 5.4. If Applicant is an LLC or other organized entity that does not issue stock, submit as **Exhibit 5.4** a schedule of ownership listing all members/managers and percentage of entity held. List beneficial owners, even if beneficial owners are not Qualifiers.
- 5.5. If business entity is a partnership or other organized entity, submit as **Exhibit 5.5** a schedule listing the partners or others holding an interest and the percentage of the entity held. List beneficial owners, even if beneficial owners are not Qualifiers.
- 5.6. Submit as **Exhibit 5.6** the following information for each of the Applicant's Qualifiers.
  - (a) For each individual Qualifier, provide the name place of birth, date of birth and legal residence of the Qualifier.
  - (b) For each entity Qualifier, provide the name and the details required for entity applicants by Questions 5.4-5.6.
- 5.7. Please submit as **Exhibit 5.7** a document that identifies any existing racetrack or gaming facility which the Applicant and/or any of its Qualifiers presently owns, operates, or has, or had, a financial or other interest. Additionally, please indicate whether any of the Applicant's Qualifiers are presently qualifiers (or the equivalent) at any other racetrack or gaming facility.
- 5.8. Has Applicant or any of its Qualifiers ever had a financial or other interest in a racetrack?  
 YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.8** a thorough explanation of the interest(s) held.

- 5.9. Has Applicant or any of its Qualifiers ever had a racing license or gaming license revoked or suspended?  
 YES  
 NO



If the answer to this question is yes, submit as **Exhibit 5.9** a thorough explanation of the circumstances of the revocation or suspension.

- 5.10. Has Applicant or any of its Qualifiers ever had an application for a racing license or gaming license that was denied?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.10** a thorough explanation of the circumstances of the denial.

- 5.11. Has the Applicant or any of its Qualifiers ever had an application for a racing license or gaming license that was withdrawn?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.11** a thorough explanation of the circumstances of the withdrawal.

- 5.12. Has Applicant or any of its Qualifiers ever conducted or participated in any racing meeting or pari-mutuel wagering in a location where such racing or wagering was not authorized by law?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.12** a thorough explanation of the circumstances of the unauthorized racing or wagering.

- 5.13. Have voluntary proceedings in bankruptcy been instituted by, or have involuntary proceedings in bankruptcy ever been brought against the Applicant or any of its Qualifiers?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.13** a list describing the name of the person or entity filing for bankruptcy, the type of petition filed in bankruptcy, the date of the filing, the court in which bankruptcy was filed and the date of final discharge, or if ongoing, indicate the expected date of final discharge.

- 5.14. Are there outstanding any unsatisfied judgments or decrees against, or tax delinquencies to the Commonwealth of Massachusetts or its political subdivisions, by the Applicant or any of its Qualifiers?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 5.14** a list describing, for judgments or decrees, the type of the judgment, the court or other body entering the judgment, the date of the judgment, the person against whom the judgment is entered, the amount of the judgment and the

reason why the judgment is unsatisfied; and for tax delinquencies, all delinquencies, the reason for such delinquencies, and when each delinquency will be cured.

- 5.15.** Has Applicant or any of its Qualifiers ever been accused of, charged with, or settled any matter relating to harassment or discrimination, or are there any restraining orders against Applicant or any of its Qualifiers?

\_\_\_\_ YES

\_\_\_\_ NO

If the answer to this question is yes, submit as **Exhibit 5.15** a list of all accusations, charges, and settlements including the date of each incident and a thorough explanation of the circumstances.

- 5.16.** Submit as **Exhibit 5.16** all of the following that are available:

- (a) A copy of Applicant's employee handbook
- (b) A copy of all of Applicant's policies and procedures regarding internal controls including but not limited to those policies that deal with the handling and protection of money, the placing of wagers both in person and via account deposits, security and surveillance, and method of accounting. Alternatively, a plan for establishing such internal controls.
- (c) A copy of Applicant's audit committee and compliance committee charters as well as a list of the audit and compliance committee members and their relationship to the Applicant.
- (d) Any other policies that demonstrate the Applicant's proficiency in general industry standards for business and financial practices, procedures, and controls.

*Please note: the Commission may condition any license award on Applicant supplying complete and satisfactory information relative to its internal controls and associated practices.*

- 5.17.** Submit as **Exhibit 5.17** the following documents: a copy of the Applicant's most recent audited financial statements, most recent audited or unaudited quarterly financial statement, and an audited profit and loss statement for the Applicant's most recent fiscal year. Please include a description of any interest held by Applicant or any of its Qualifiers in any concessionaire. In the event that the Applicant does not have the requested document, please attach a statement explaining why not.

*Please note: the Commission may condition any license award on Applicant supplying complete and satisfactory financial statements.*

- 5.18.** Submit as **Exhibit 5.18** a list of which, if any of the Applicant's Qualifiers will be involved in funding the proposed project. For each such Qualifier, explain the amount and form of funding the Qualifier intends to provide for the project, and documentation supporting the Qualifier's capacity to provide that funding.

- 5.19.** Submit as **Exhibit 5.19** copies of all policies of insurance carried by Applicant as well as a statement setting forth all other types of insurance carried, or anticipated to be carried, for the protection of employees, animals, and patrons.

*Please note: the Commission may impose a license condition requiring Applicant to obtain satisfactory worker's compensation insurance, public liability insurance, jockey insurance, and driver's insurance.*

- 5.20.** Applicant may submit as **Exhibit 5.20** a statement explaining any other information relevant to its capacity to hold or conduct honestly managed racing meetings.

*Please note: if awarded a license, the licensee will be required to maintain its suitability on an ongoing basis.*

- 5.21.** Applicant may submit as **Exhibit 5.21** a statement explaining any other information relevant to “the financial ability of an Applicant to operate a racetrack” and “the necessity of according fair treatment to the economic interest and investments of those who in good faith have provided and maintain such facilities.”

*Please note: if awarded a license, the licensee’s continued ability to demonstrate the financial ability to successfully operate a racetrack will be part of the Commission’s ongoing suitability review.*

## SECTION 6: PUBLIC INTEREST

**In evaluating this application, the Commission will consider “the interest of members of the public in racing competition honestly managed and of good quality.” G.L. c. 128A, § 3(i).**

- 6.1.** Submit as **Exhibit 6.1** a statement setting forth the reasons why the Applicant believes that its proposal will be beneficial to the public at large, the Commonwealth, the Applicant, and racing stakeholders.
- 6.2.** Submit as **Exhibit 6.2** a copy of all executed agreements with representative horsemen’s organizations. If the Applicant has not yet executed any such agreement, explain Applicant’s plans for executing such.

*Please note: an executed ‘purse agreement’ will be required in advance of the commencement of any racing operations.*

- 6.3.** Submit as **Exhibit 6.3** the following information, as well as any supporting documentation, analysis, or studies:
- (a) Projected purses to be paid for the first three years of operation;
  - (b) Projected handle for the first three years of operation;
  - (c) Projected tax revenue and other revenues to be paid to the Commonwealth in the first three years of operation;
  - (d) Projected pari-mutuel revenue to be generated and paid to the Commonwealth in the first three years of operation;
  - (e) Projected attendance for the first three years of operation; and
  - (f) Projections of how many individuals Applicant will employ in the first three years of operation.

*Please note: the Commission may impose a license condition requiring the Applicant to submit satisfactorily updated projections.*

- 6.4.** Submit as **Exhibit 6.4** a statement describing any support or opposition to the proposed project expressed by the governing body or other government officials of the host and surrounding/nearby communities, including evidence of support or opposition, in writing.

- 6.5. Submit as **Exhibit 6.5** a description of the Applicant’s plan to attract and employ a diverse workforce (minority, women, veteran) in both the construction and operational phases of the proposal. Similarly, please describe the Applicant’s plan to make use of minority, women, and veteran’s business enterprises as vendors in the construction and operational phases.
- 6.6. Submit as **Exhibit 6.6** a statement describing the Applicant’s plans for ensuring labor harmony during the construction and operational phases of the project, including whether the Applicant plans to enter into any Project Labor Agreements or agreements governing labor harmony in the project’s permanent job positions. If the Applicant does not intend to enter into any such agreements, please explain.
- 6.7. Submit as **Exhibit 6.7** a statement describing all promises, rewards, or inducements made by the Applicant to third parties concerning the proposed project, including but not limited to affirmative representations, promises, rewards, or inducements made to the governing body or other government officials of the host and surrounding/nearby communities, made to local organizations or community groups, and any mitigation agreements, formal or informal.

## SECTION 7: FACILITIES AND EQUIPMENT

**In evaluating this application, the Commission “must consider the circumstance that large groups of spectators require safe and convenient facilities;” and “the necessity of having and maintaining proper physical facilities for racing meetings.” G.L. c. 128A, § 3(i).**

- 7.1. How does Applicant control the real property on which the racetrack is proposed to be located (check all that apply):

- Fee Simple Ownership
- Lease
- Easement
- Other Interest

Submit as **Exhibit 7.1** documentation of all Applicant’s fee simple, leasehold, easement, or other interests in the real property on which the racetrack and facilities are proposed to be located.

If Applicant does not control the real property on which the racetrack is intended to be located by fee simple ownership, include the name and address of the fee simple owner or lessor of the real property. If the fee simple owner or lessor is a corporation, LLC, partnership or other business entity, also include a list of the officers, directors, managers, members or other persons with an interest in the fee simple owner or lessor.

- 7.2. Does Applicant need to acquire any additional real property interests for the purposes of establishing or operating Applicant’s proposed facility?

- YES
- NO

If the answer to this question is yes, submit as **Exhibit 7.2** a statement explaining the interests still to be acquired, their relevance to Applicant’s proposed project, and the Applicant’s progress towards and plans for acquiring them.

*Please note: the Commission may impose a license condition requiring that the Applicant acquire all needed real property interests.*

- 7.3. Are the premises on which the horse racing meeting is to be held owned by the commonwealth or any political subdivision thereof?

YES  
 NO

If the answer to this question is yes, submit as **Exhibit 7.3** a statement explaining said ownership.

- 7.4. Submit as **Exhibit 7.4** the exact property description, by metes and bounds, including the number of acres in premises, and a plot plan showing the entire proposed premises.

*Please note: the Commission may impose a license condition requiring that the Applicant provide complete and satisfactory information in response to this question.*

- 7.5. Submit as **Exhibit 7.5** as much information as is available about equipment planned to be used at the proposed facility and premises, including: the trade name of the equipment; the date of purchase or the date of present contract or lease and expiration date of said contract; or an explanation as to how Applicant will procure any equipment not yet procured:

- (a) Pari-Mutuel Equipment;
- (b) Starting Gate;
- (c) Photo Finish Camera;
- (d) Film Patrol;
- (e) Timing Devices;
- (f) Inter-communication system;
- (g) Public Address System;
- (h) Closed Circuit Television System;
- (i) Horse Shoe Board; and
- (j) Scales.

*Please note: the Commission may impose a license condition requiring that the Applicant provide complete and satisfactory information on equipment to be used at the proposed facility and premises.*

- 7.6. Does the Applicant anticipate leasing or renting any part of the proposed premises to a third-party vendor, or allowing an entity other than the licensee to operate any parts of the proposed premises (i.e.- restaurants, entertainment, simulcasting operations, sportsbook, etc.)?

If yes, please submit as **Exhibit 7.6** a list describing all such agreements, and all executed agreements.

*Please note: the Commission may impose a license condition requiring that the Applicant provide complete and satisfactory information relative to this issue.*

- 7.7. Submit as **Exhibit 7.7** as much information as is available relative to security measures which will be employed for the protection of patrons, employees, occupational licensees, and horses, and the control of traffic within the premises and on roads leading to and from the said premises. This statement should include but not be confined to:

- (a) Number of uniformed police officers projected to be on duty each day inside the track;
- (b) Whether such police officers will be regular police officers or special officers;

- (c) Number of uniformed police officers detailed to traffic within the premises and on roads leading to and from the premises before, during and after racing hours;
- (d) Number of plain clothes officers or detectives assigned within the track proper;
- (e) System to be used for the detection and suppression of illegal gambling within the premises;
- (f) Name of person who will be in charge of security within the track proper;
- (g) Name of person who will have supervision of traffic control within the premises of the Applicant and will act as liaison between the Applicant and local police authorities in the control of traffic outside of the premises of the Applicant;
- (h) Name of police authority that has been consulted in setting up security measures within the track and the control of traffic within and outside of the premises of the Applicant.
- (i) A detailed statement of measures which will be employed in the policing of the stable area. This statement should include but not be confined to:
- (j) Is stable area enclosed? If so, describe:
  - (1) Method of enclosure;
  - (2) Number of gates to enclosure, where located and method of control;
  - (3) System of passes to be issued to persons employed in stable area;
  - (4) Method to be followed in allowing persons in and out of stable area;
  - (5) Number of uniformed police officers to be assigned to the stable area indicating the number in daytime hours and nights;
  - (6) Number of plain clothes officers or detectives to be assigned to the stable area, days and nights; and
  - (7) Name of person who will oversee policing in the stable area.

7.8. Submit as **Exhibit 7.8** the Applicant’s plans to ensure the welfare of horses on site and their after care.

## SECTION 8: WAGERING AND SIMULCASTING

8.1. Does Applicant intend to offer account deposit wagering?

YES  
 NO

If the answer is yes, submit as **Exhibit 8.1** a general proposal for account deposit wagering, including any service providers Applicant intends to use for the Applicant’s account wagering operations, and the process for handling abandoned or dormant patron accounts.

*Please note: the Commission may condition any license award on Applicant providing a complete and satisfactory proposal for account deposit wagering in accordance with 205 CMR 6.20.*

8.2. In accordance with G.L. c. 128C, § 5, “no racing meeting licensee shall simulcast live races in *any racing season unless the racing meeting licensee is licensed to and actually conducts at least 900 live races over the course of not less than 100 calendar days during that racing season with no fewer than 7 races completed on any of those 100 calendar days.*”

Further, G.L. c. 128C, § 9, which went into effect on August 10, 2023, states that “[n]otwithstanding sections 1 to 8, inclusive, or any other general or special law to the contrary...a running horse racing meeting licensee shall conduct not less than 20 live racing days at a thoroughbred horse racing track, provided, the commission may waive this requirement as

necessary and appropriate to ensure the financial ability of the licensee to develop and operate a track.”

Does Applicant intend to simulcast?

YES

NO

**8.3.** Does the Applicant anticipate meeting the statutory minimum number of live races and race days in order to simulcast?

YES

NO

*Please note: the Commission may condition any license award on Applicant providing additional, satisfactory information on proposed simulcast imports and exports in accordance with G.L. c. 128C.*

## SECTION 9: GENERAL CONDITIONS, ATTESTATION, AND SIGNATURES

Applicant understands and agrees that approval of a race meeting by the Commission does not establish the Commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

By submitting this application, Applicant agrees to indemnify, save, and hold harmless the Commission and its staff, in their professional and personal capacities, from any and all liability arising from either unsafe conditions at the Applicant's premises, or any default in the payment of purses.

Applicant agrees to comply with all federal, state, or local laws, rules, regulations or ordinances, now in effect or hereafter adopted applicable to Applicant's activities allowed under a license granted by the Commission.

Applicant shall maintain, in an approved depository, those amounts deducted from the pari-mutuel handle for distribution for the purposes specified in G.L. c. 128A, 128C, and Commission rules.

Applicant and its managing officers shall be jointly and severally responsible to ensure that the amounts retained from the pari-mutuel handle are distributed according to G.L. c. 128A, 128C, and Commission regulations.

Applicant and its managing officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with G.L. c. 128A, and Commission regulations.

Applicant agrees that if a license is granted, it will become the duty of Applicant, as long as the license shall remain in effect, to file with the Massachusetts Gaming Commission such reports as may be required by G.L. c. 128A and 128C now in effect or as hereafter amended and such rules and regulations as it has adopted or may hereafter adopt, and to make such payments as may be required by law, and for failure so to do, the licensee shall incur the penalties set forth in G.L. c. 128A and 128C, or in such rules and regulations as said Massachusetts Gaming Commission has adopted or may hereafter adopt.

Applicant agrees that any construction on the premises covered by this application shall be subject to the inspection by employees of the Commission, and to that end further agrees that the Commission, its agents, representatives or employees, shall have access to the same during construction, and further agrees to so construct in strict accordance with such plans and specifications as may hereafter be approved by the Commission and to pay for the cost and expense incurred for the study and approval of the plans and specifications and inspection of the construction by the Massachusetts Gaming Commission. Applicant further agrees that all buildings erected or to be erected on the premises here involved may be inspected by the Massachusetts Gaming Commission and their duly authorized agents, representatives, or employees at any time, with or without prior notice to Applicant.

Applicant agrees that all exhibits, statements, plans reports, papers, etc. submitted with the application are made a part hereof and are incorporated into this application as if set forth herein in full. Further, the applicant agrees that it shall have an affirmative obligation to abide by every statement made in this application to the Commission should it be awarded a license.

Applicant states under penalty of perjury that the answers provided in this application are true and correct to the best of its knowledge and understanding. Applicant agrees that any license which may hereafter be granted is predicated upon statements and answers herein contained and that if the Commission determines that any information provided herein is false or misleading said license may be revoked.



Applicant: \_\_\_\_\_

By (print name): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**AFFIDAVIT BY INDIVIDUAL APPLICANT**

Commonwealth of Massachusetts, County of \_\_\_\_\_.

\_\_\_\_\_, being duly sworn, upon \_\_\_\_\_ oath  
deposes and says that: The answers, statements and declarations made in the foregoing application are  
true.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_ Signature of Affiant

\_\_\_\_\_ Signature of officer administering oath

\_\_\_\_\_ Title of officer

**AFFIDAVIT BY CORPORATE APPLICANT**

Commonwealth of Massachusetts, County of \_\_\_\_\_.

\_\_\_\_\_, being duly sworn, upon \_\_\_\_\_ oath deposes and says that:

1. \_\_\_\_\_ is the \_\_\_\_\_ of the corporation named as the Applicant and signed the foregoing application.
2. \_\_\_\_\_ was duly authorized by the Board of Directors of said corporation to sign said application in its name and in its behalf.
3. \_\_\_\_\_ has read and fully understands all of the questions pertaining to such Applicant and that all of the foregoing answers, statements and declarations made thereto are true.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Officer administering oath

\_\_\_\_\_  
Title of officer

**AFFIDAVIT BY PARTNERSHIP APPLICANT**

Commonwealth of Massachusetts, County of \_\_\_\_\_.

\_\_\_\_\_, being duly sworn, upon \_\_\_\_ oath deposes and says that:

1. \_\_\_\_\_ is a partner of the partnership named as the Applicant in the foregoing application.
2. \_\_\_\_\_ is duly authorized to sign said application in its name and on its behalf.
3. \_\_\_\_\_ has read and fully understands all of the questions pertaining to such Applicant and that all of the foregoing answers, statements and declarations made thereto are true.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_ Signature of Affiant

\_\_\_\_\_ Title

\_\_\_\_\_ Signature of Officer administering oath

\_\_\_\_\_ Title of officer

**AFFIDAVIT BY LIMITED LIABILITY COMPANY APPLICANT**

Commonwealth of Massachusetts, County of\_\_\_\_\_.

\_\_\_\_\_, being duly sworn, upon  
\_\_\_\_ oath deposes and says that:

1. \_\_\_\_\_ is the \_\_\_\_\_ of the  
Limited Liability Company named as the Applicant and signed the foregoing application.
2. \_\_\_\_\_ was duly authorized to sign said application in its name and in its behalf.
3. \_\_\_\_\_ has read and fully understands all of the questions pertaining to such Applicant and  
that all of the foregoing answers, statements and declarations made thereto are true.

Subscribed and sworn to before me this \_\_\_\_\_ day of\_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Officer administering oath

\_\_\_\_\_  
Title of such Officer