

NOTICE OF MEETING AND AGENDA

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

Thursday | September 15, 2022 | 10:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 112 818 2918

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 - #393

1. Call to Order

2. Community Affairs Division – Joe Delaney, Chief
 - a. Community Mitigation Fund 2022 Boston Police Grant Reallocation – Mary Thurlow, Senior Program Manager; Lily Wallace, Program Assistant **VOTE**

3. Discussion of Temporary Licensure for Sports Wagering – Karen Wells, Executive Director, Todd Grossman, General Counsel (VOTE)
 - a. Discussion of Requirements for Temporary licensure under G.L. c. 23N, §6(c) **VOTE**
 - b. Other pre-launch considerations **VOTE**
 - c. Discussion regarding potential impacts of temporary licensure:
 - Impacts on mobile/digital sports wagering operators
 - Impacts to the public/consumer protection concerns**VOTE**
 - d. Discussion on simultaneous vs. staggered launch **VOTE**
 - e. Contemporaneous process for full operator licensure, including competitive process **VOTE**

4. MGC Preparations for Matters Related to Sports Wagering - Karen Wells, Executive Director

Legal Division: Todd Grossman, General Counsel; Caitlin Monahan, Deputy General Counsel; Carrie Torrisi, Deputy General Counsel

- a. Update on 205 CMR 238.00: House Rules
- b. Process for Sports Wagering Test Lab Certification

5. Horse Racing Application and Related Issues - Todd Grossman, General Counsel; Caitlin Monahan, Deputy General Counsel; Dr. Alexandra Lightbown, Director of Racing

- a. 205 CMR: new regulation governing the application for a new license for the conduct of horseracing, initial review of draft and Small Business Impact Statement for approval to commence the promulgation process. **VOTE**
- b. Discussion of impact of Massachusetts Sports Wagering Act on prospective new horse racing licensee(s) relative to mobile/digital sports wagering.

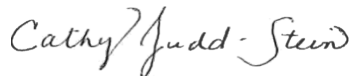
6. Commissioner Updates –

- a. Plan for Sports Wagering Roundtable related to Mobile/Digital Sports Wagering Operators – Cathy Judd-Stein, Chair

7. 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: September 13, 2022, | 10:00 a.m.

September 12, 2022



Cathy Judd-Stein, Chair

*This meeting is open to all interested individuals for viewing.
If there are any questions pertaining to accessibility and/or further assistance is needed, please email
crystal.beauchemin@massgaming.gov.*



TO: Chair Cathy Judd-Stein and Commissioners

FROM: Joseph Delaney, Mary Thurlow

CC: Karen Wells

DATE: September 2, 2022

RE: City of Boston 2022 Public Safety Grant

The City of Boston is requesting a re-allocation of a portion of its 2022 Public Safety Grant to purchase Ballistic Vest Carriers. Attached is a memo from the City of Boston regarding the reallocation of the 2022 Grant funds. In the original CMF application, Boston applied for funds to cover a training that occurred in April 2022. Because the grant was not awarded until after the end of the fiscal year, the City of Boston has indicated that it is not able to reimburse expenses from the previous fiscal year. The proposed budget proposes using \$9,875 from funds set aside for the AGO training and reduces the overtime funds by \$2,125 for the purchase of Ballistic Vest Carriers which cost \$12,000. Boston Police has expressed that these are essential to their Human Trafficking Task Force.

Background:

The City was awarded \$106,000. The funding was broken down:

An undercover vehicle, overtime funding and training funding for the City of Boston's Human Trafficking Unit:	\$81,000
Overtime for additional Boston Police department Patrols in Districts A-1 and A-15.	\$25,000
Total:	\$106,000

As a requirement of the Community Mitigation Fund re-allocations of 10% or \$10,000 must go before the Commission for a vote.

Staff Recommendation:

Based on the above, MGC staff recommends that the Commission approve Boston's request to re-allocate funds to provide \$12,000 for Ballistic vests.



Massachusetts Gaming Commission

Date: August 4, 2022
 To: Mary Thurlow, Senior Program Manager, Mass Gaming Commission (MGC)
 From: Maria Cheevers, Director, Boston Police Department's (BPD) Office of Research and Development (ORD)
RE: 2022 MGC Community Mitigation Fund Budget Revision
 Cc: Supt. Jeffrey Walcott, Chief of Staff, Office of the Police Commissioner

Dear Ms. Thurlow:

I am writing this memo to describe to you the changes made from the original grant-submitted budget of \$232,624, to the awarded \$106,000.

Personnel: The original budget had overtime set aside for 3 BPD Units; Area A1 and A15 patrol officers, Human Trafficking Unit (HTU) Detectives and Accident Reconstruction Detectives, totaling \$95,000. The revised budget has overtime set aside for only Area A1 and A15 patrol officers, and Human Trafficking Unit (HTU) Detectives, totaling \$37,495.16, as the Accident Reconstruction Unit did not receive any funding under this award.

Training: The original budget set aside funding for two HTU trainings (\$15,835), the ICAC training in Dallas, coming up in August, and the AGO Cyber Conference which took place from April 26th through the 28th. In the revised budget I needed to remove the AGO Cyber Conference training line item because we are not able to get reimbursed for an activity that took place before we signed the MGC contract. Given that, in the revised budget, I moved the \$9,875.00 set aside for the AGO training into the Equipment line item for the Ballistic Vest Carriers. The current training budget now only has \$6,504.84 to pay for the ICAC Conference in Dallas.

Equipment: The original budget had \$127,789.00 set aside for equipment for the HTU and the Accident Reconstruction Unit. Due to the award amount the BPD removed all three requested pieces of equipment from the budget, as well as the 2021 Toyota Siena. Now the equipment line item is \$62,000: \$50,000 for a used 2021 Cadillac Crossover – as the quote provided to us by the BPD's vehicle purchasing agent had increased since the original grant submission; and \$12,000 for the Ballistic Vest Carriers (BVC). The BVC are needed for officer safety. The BPD Human Trafficking Unit primarily works in undercover/plain clothes fashion while executing high-risk arrests and search warrants on violent individuals. The requested ballistic carriers will allow BPD, with Mass State Police (MSP), to carry all of our equipment within our vests so that the equipment is readily accessible during time of arrest or search warrants. The Vests also readily identify BPD uniformly - instead of the visual being mismatched vests. It is essential for the task force to be wearing the same equipment and same language on the vests, for the targets to clearly understand who we are.

<https://nelsonuniform.com/guardian-1-5-outer-carrier.html>

The total grant budget is now \$106,000. Please feel free to ask me any further questions that you may have, and thanks so much for your attention to this matter.

Respectfully submitted,

Maria Cheevers
 Director, BPD Office of Research and Development

DATE: September 13, 2022

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

FROM: Todd Grossman, General Counsel
Caitlin Monahan, Deputy General Counsel

RE: Discussion of Temporary Licensure for Sports
Wagering

General Law c. 23N assigns responsibility for regulating and overseeing sports wagering to the Massachusetts Gaming Commission. In doing so, the statute provides the Commission with broad discretion to promulgate rules and regulations necessary for the implementation, administration, and enforcement of c. 23N. Determining whether entities are eligible to hold a sports wagering license is among the Commission's many responsibilities. The Commission also has the discretion to deny or revoke licenses for sports wagering.

Chapter 23N, § 6(c) addresses temporary licenses for sports wagering operations. In determining how to implement a temporary licensing framework, the Commission must consider both the specific requirements set out in the section and the Commission's overarching responsibility to regulate and oversee sports wagering, as discussed above.

Finally, before the holder of a temporary license may engage in sports wagering operations, an initial regulatory framework must be established. For example, regulations governing technology standards, accounting procedures, and internal controls/house rules would need to be in place prior to the start of operations.

We intend to discuss the relevant sections of c. 23N with you at the Commission meeting as well as potential related regulations.



MEMORANDUM

DATE: September 13, 2022

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

FROM: Karen Wells, Executive Director

RE: Potential Impacts of Temporary Licensure as it Applies to a Construct where a Future Competitive Process is Contemplated

There are significant potential impacts from implementing temporary licensure for sports wagering, particularly in the approach of allowing temporary licensure before final determinations are made to award operator licenses for Category 3 licenses that are not tethered to a Category 1 or Category 2 license. Under G.L. c. 23N, §6(b)(3) “the commission shall issue no more than 7 category 3 licenses that are not connected to a category 1 or category 2 license.” There is no such explicit cap under the temporary license language under G.L. c. 23N, §6(c).

This structure poses complications for both the regulator and the temporary licensee and presents consumer protection concerns for the public.

The MGC requested a notice of intent from parties that are interested in a Massachusetts Sports Wagering license. We received responses from entities seeking Category 1, Category 2, and Category 3 licenses. We had a robust response from potential Category 3 applicants which indicated that the competition for the non-tethered Category 3 licenses is expected to be significant.

It is possible that no less than 30 entities will be competing for up to 7 ultimate untethered Category 3 operator licenses. Operators are required to pay one million dollars for a temporary license. For those fortunate applicants who are selected to receive one of the capped number of operators licenses, that \$1M can be credited to the full \$5 M license fee.

For the vast majority, however, the applicants have no mechanism to receive any of that application fee back. And perhaps of greater note, for those companies that do enter the temporary licensee pool as a mobile/digital sports wagering operator but do not advance in the



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competitive selection process, as many as 76% will be required to shut down their operations in Massachusetts once the Commission makes its final determinations.

Further, it is anticipated that the MGC will be working on a parallel track with the temporary licensing process to conduct the competitive selection process for full operator licenses in a swift, responsible fashion, so any temporary license may only be valid for a short period of time, well under one year.

The Commission will need to set up a regulatory process for the shut-down of the operators that do not receive a full operator license. We have concerns about consumer protections during the course of this broad shut-down. Aside from the inevitable confusion in the marketplace that will occur when these platforms cease their operations, we expect a multitude of questions that must be addressed; some examples include:

- What happens to the money in a consumer's account? How can we assure it is properly returned to the consumer?
- What happens to a wager that has been placed for a future bet when the operator must shut down before the event occurs?
- How do companies ensure that their patrons are aware of the risk that their preferred betting platform may be shut down within a short period of time?
- Should companies be required to have some sort of bond or insurance to make sure they can pay off all their wagers in the event of a shut down?
- What happens to the operator's patron list?
- What happens to the financial and personal information of patrons after a shut down?
- What authority, if any, does the regulator have over the operator once the Commission makes a determination that the operator will not receive a full operator license. What recourse does the regulator have to protect customers who have complaints during or after the shut down?

It would be beneficial to hear from the prospective applicants on this issue as the Commission makes decisions on the best way to proceed. Staff is not aware of any other jurisdiction that has dealt with this potential structure. Given the novel landscape in which we find ourselves, we do not have the benefit of the experience of how other jurisdictions navigated this complex issue.¹ We will need to work to anticipate any problems that may arise, particularly that impact the protection of Massachusetts consumers and the public confidence in the integrity of sports wagering in Massachusetts.

¹ The MGC welcomes any information on other jurisdictions that may have dealt with the issue of shutting down a large number of mobile sports wagering operators simultaneously. Any comments may be sent to MGCcomments@massgaming.gov.



MEMORANDUM

DATE: September 13, 2022

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

FROM: Karen Wells, Executive Director

RE: Simultaneous vs. Staggered Launch of Sports Wagering

One of the decisions that the Commission will need to make relative to the implementation of sports wagering in the Commonwealth is the approach to timing of the launch of the different types of sports wagering. Under the statute, there are different categories of sports wagering operators.

- Category 1 – Casino in-person sports wagering: 3 current casino licensees eligible
- Category 2(a) – Simulcast licensee in-person sports wagering: 2 current simulcast licensees eligible
- Category 2(b) – Live racing licensee in-person sports wagering: currently no licensee eligible (Because PPC can't have two licenses under the statute and they would fall under the Category 1 license)
- Category 3(a) – Mobile/Digital operator partnered with a Category 1 casino licensee: Each casino licensee eligible to partner with 2 mobile operators.
- Category 3(b) – Mobile/Digital operator partnered with a Category 2 simulcast licensee: Each simulcast licensee eligible to partner with 1 mobile operator.
- Category 3(c) – Mobile/Digital operator independent from a land-based operation. Up to 7 full licenses. Statute silent on number of temporary licenses.

Other jurisdictions have taken different approaches to their launch strategy. The Commission must also look closely at the Massachusetts Sports Wagering Act to ensure compliance with the law on any approach. Some potential options include:



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1. Require that all potential categories of licenses start at the same time.
2. Allow either brick and mortar facilities to start first or allow mobile operators to start first.
3. Allow or require a staggered approach to launch of operations which can vary by category or sub-category.

The launch approach necessarily ties into the planning for the implementing of temporary licensure and will need to be part of the discussion going forward.

I expect that prospective sports wagering operators will have strong feelings on this issue, and I suggest that the Commission provide an opportunity for public comments on the proper approach to take in Massachusetts before making a decision.

TO:

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

FROM: Judith Young, Associate General Counsel

DATE: September 1, 2022

RE: 205 CMR 238.03: *House Rules*

Pursuant to G.L. c. 23N, §10, a Sports Wagering Operator “shall adopt comprehensive house rules for game play governing sports wagering transactions with the operator’s patrons.” In accordance with G.L. c. 23N, §4, the Massachusetts’s Gaming Commission (“Commission”) will promulgate regulations necessary for the implementation, administration, and enforcement of the chapter. The Legal Division has drafted 205 CMR 238.03 *House Rules*, a regulation detailing House Rules submission to the Commission, the approval and amendment process of House Rules, and addresses what an Operator’s House Rules must contain, at a minimum.

This regulation was modeled, in part, after the Commission’s existing regulation, 205 CMR 138:02 – *Licensee’s System of Internal Controls*, which requires that gaming licensees submit its internal control procedures to the Commission for approval prior to commencing operations. To that end, the processes within 205 CMR 238.03 closely mirror the submission, approval, and amendment processes outlined in 205 CMR 138, and includes what a licensee’s House Rules must include at a minimum to receive approval by the Commission.

The requirements listed within subsection five of 205 CMR 238.03 are inclusive of the requirements within G.L. c. 23N, as well as requirements for operators found in the regulations of other jurisdictions that have authorized sports wagering, including, Michigan, Indiana, Arizona, Colorado, and many others. These provisions govern several aspects of sports wagering including acceptable wagers, protocols governing how wagers are paid out in normal circumstances, as well as how cancelled events or events that are not concluded within an adequate or expected time frame are handled.

205 CMR 238.00: UNIFORM STANDARDS OF ACCOUNTING PROCEDURES AND INTERNAL CONTROLS – SPORTS WAGERING

Section

- 238.01 (Reserved) Definitions
- 238.02: (Reserved) Sports Wagering Licensee's System of Internal Controls
- 238.03: House Rules for Sports Wagering Operators
- 238.04 – 238.55 (Reserved)

238.03 House Rules for Sports Wagering

- (1) Scope. Pursuant to M.G.L. c. 23N, §§ 6(c)(3), and 10(a), prior to commencing operations, a Sports Wagering Operator shall adopt comprehensive House Rules for game play, governing wagering transactions with its patrons. An operator shall not conduct sports wagering until the Commission has approved the House Rules in accordance with 205 CMR 238. An operator shall not conduct sports wagering in a manner inconsistent with its approved house rules.
- (2) Submission. Prior to commencing operations, a Sports Wagering Operator shall submit to the Commission its proposed House Rules accordance with 205 CMR 238.03(3). A Sports Wagering Operator shall not commence operations until its submission is approved in accordance with 205 CMR 238.02(3). The commission or its designee may perform any inspection necessary to determine compliance with the approved House Rules.
- (3) Approval and Amendment Process.
 - (a) The Commission shall refer the proposal submitted in accordance with 205 CMR 238.03(2) to the Executive Director who shall review the submission for compliance with M.G.L. c. 23N, 205 CMR 238.03(5), and other applicable sections of 205 CMR. Upon completion of review, the Executive Director shall either recommend that the Commission approve the submission, or advise the Sports Wagering Operator in writing of any deficiency and may include any other recommendations and/or required changes necessary. A Sports Wagering Operator may either accept a recommendation or required change in writing or advise the Executive Director in writing as to the reason for its disagreement. The Sports Wagering Operator may dispute any determination or recommendation made by the Executive Director to the Commission, which shall resolve the issue. Upon the recommendation of the Executive Director, the Commission shall review the submission for approval at a public meeting.
 - (b) The Commission or the Executive Director may revisit any provision of previously approved House Rules at any time, require adjustment if necessary,

and provide for a 30-day implementation period. Upon approval by the Commission, a Sports Wagering Operator shall be issued a writing evidencing the approval of its House Rules, including any associated conditions.

- (c) Amendments to the House Rules shall be submitted to the Executive Director and approved if they are in compliance with M.G.L. c. 23N, 238.03(4), 238.03(5), and other applicable sections of 205 CMR.
 - (d) The Commission or its designee may perform any inspection necessary to ensure compliance with M.G.L. c. 23N, 238.03(4), 238.03(5), and other applicable sections of 205 CMR.
- (4) Approved House Rules shall be accessible to patrons and prominently displayed within an authorized in-person wagering facility, and prominently featured on a Sports Wagering Operator's wagering platform or mobile application.
- (5) A Sports Wagering Operator's House Rules shall include at minimum, the following:
- (a) Methods for calculation the amounts to be paid on winning wagers.
 - (b) The effect of sports event schedule changes and cancellations.
 - (c) Description of the process for handling incorrectly posted events, odds, wagers, or results, including a method of notifying patrons of odds or proposition changes.
 - (d) Procedures and outcomes relating to pending outcomes of events, or what causes an event to become official if not concluded in the usual time frame.
 - (e) Methods of funding a sports wager, or player wagering account.
 - (f) All accepted sports betting wagers.
 - (g) Acceptance of wagers at other than posted terms.
 - (h) Notice that unclaimed winning tickets/vouchers shall be retained by the operator for one year after the date of sporting event where the wager was won and subsequently deposited into the Sports Wagering Control Fund, in accordance with M.G.L. c. 23N, §13(h), if applicable.
 - (i) A policy guiding how Sports Wagering Operator will resolve lost tickets/vouchers, if applicable.
 - (j) If the sports wagering operator permits a patron to redeem a winning wagering ticket/voucher by mail, patron instructions on how to do so. A sports wagering voucher may not be redeemed by mail.
 - (k) Method of contacting the Sports Wagering Operator with questions and complaints, and for resolving patron disputes.
 - (l) Description of persons prohibited from engaging in sports wagering, in accordance with M.G.L. c. 23 N, §11(a)(i)-(iv).

- (m) Minimum and maximum sports betting wagers. However, such limits shall be established only through limiting the amount wagered and cannot be applied to reduce a winning wager amount.
 - (n) A policy by which the Sports Wagering Operator may cancel sports betting wagers for Obvious Errors pursuant to the Sports Wagering Operator's internal controls, which shall include a definition and procedures for Obvious Errors including instances where there is sufficient evidence suggesting:
 - i. the integrity of the event has been compromised;
 - ii. an event is under investigation for suspicious behavior; or
 - iii. the outcome of the event is subject to further investigation by a sports governing body and/or the Commission.
 - (o) A description of the method for patrons using mobile applications or digital platforms to set self-imposed limitations on sports wagering when joining the mobile application or digital platform, if offered.
 - (p) Notice to Patrons that the Sports Wagering Operator maintains records, in accordance with M.G.L. c. 23N, §11(h), of all wagers placed by patrons including:
 - i. personally identifiable information of a patron who places a sports wager through a mobile application or other digital platform or a patron who places an in-person sports wager that exceeds an amount determined by the Commission;
 - ii. amount and type of the bet;
 - iii. the time the bet was placed;
 - iv. the location of the bet, including the Internet Protocol address if applicable;
 - v. the outcome of the bet; and
 - vi. records of abnormal betting activity for three years after a sporting event occurs and video camera recordings in the case of in-person wagers for at least one year after sport event occurs.
 - (q) Any information the Commission deems necessary pursuant to M.G.L. c. 23N.
- (6) Pursuant to M.G.L. c. 23N, §§ 4(f), and 16(i), a Sports Wagering Operator's license may be conditioned, suspended, or revoked, and/or assessed a civil administrative penalty if it is determined that a licensee has failed to abide by any provision of M.G.L. c. 23N, or 205 CMR.

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 amendments to 205 CMR 238.00: *Uniform Standards of Accounting Procedures and Internal Controls- Sports Wagering*. Specifically, **205 CMR 238.02, Sports Wagering Licensee's System of Internal Controls**, notice of which was filed with the Secretary of the Commonwealth. This new regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth.

This new regulation and the proposed sections therein, govern the submission, approval and amendment of House Rules, which govern the transactions between patrons and Sports Wagering Operators. This regulation is largely governed by G.L. c. 23N, §§ 10, 6(c)(3), 11, 13, and 4 respectively.

When in effect, 205 CMR 238.00 will apply to Sports Wagering Operators who have been licensed and authorized to offer sports wagering within the Commonwealth. The Commission offers the following responses to the statutory questions in accordance with G.L. c. 30A, §2:

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

As a general matter, no small businesses are subject to this regulation, as it will pertain solely to Sports Wagering Operators who have received licensure by the Commission.

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

The Commission does not project any reporting, recordkeeping or other administrative costs required for small businesses to comply with this new regulation or the sections therein.

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

Both performance and design standards are required in this regulation to approve submissions by the licensee, pursuant to 205 CMR 238.00, to ensure the accuracy of transactions between Operators and patrons, as well as the display of the rules themselves.

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:

The Commission is unaware of any conflicting or duplicative regulations of any other agency or department within the Commonwealth in regard to sports wagering.

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

G.L. c. 23N was enacted to create a new industry in the Commonwealth and to allow for the lawful operation of sports wagering and ancillary activities when conducted in accordance with the chapter, and the rules and regulations of the Commission. The enactment of G.L. c. 23N will likely encourage the formation of new businesses seeking to offer services to sports wagering operators, and affiliated businesses.

Massachusetts Gaming Commission

By:

/s/ Judith A. Young

Associate General Counsel

Dated: September 2, 2022

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

FROM: Carrie Torrisi, Deputy General Counsel

DATE: September 14, 2022

RE: Independent Test Laboratory Certification for Sports Wagering

On September 8, 2022, the Commission voted to promulgate by emergency 205 CMR 244.06: *Independent Testing Laboratory Certification*, which would allow the Commission to authorize an entity certified as an independent testing laboratory pursuant to 205 CMR 144 (with respect to gaming devices) to provide testing services of sports wagering devices in Massachusetts. To finalize that authorization, Commission staff recommends that the two existing certified independent testing laboratories, Gaming Laboratories International (GLI) and BMM Testlabs (BMM) submit a petition for authorization to the Commission, which the Commission may review and approve, should it be so inclined, at its public meeting on Monday, September 19th.

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

FROM: Carrie Torrisi, Deputy General Counsel

DATE: September 7, 2022

RE: 205 CMR 244.06: Independent Testing Laboratory Certification

The Commission's existing regulation, 205 CMR 144: *Approval of Slot Machines and Other Electronic Gaming Devices and Testing Laboratories*, requires that an entity be certified by the Commission as an independent testing laboratory prior to being permitted to perform compliance testing of electronic gaming equipment used by gaming licensees. To become a certified independent testing laboratory, an entity must be able to test equipment for compliance with various Gaming Laboratories International (GLI) electronic gaming device standards. An entity applying for certification must also go through a rigorous approval process, which is outlined in detail in 205 CMR 144.06. GLI and BMM Testlabs (BMM) are presently certified by the Commission as independent testing laboratories pursuant to 205 CMR 144.

The adoption of 205 CMR 244.06: *Independent Testing Laboratory Certification* would authorize any entity certified as an independent testing laboratory for electronic gaming-related devices pursuant to 205 CMR 144: *Approval of Slot Machines and Other Electronic Gaming Devices and Testing Laboratories* to be automatically certified as an independent testing laboratory for sports wagering-related devices. This would allow the sports wagering vendors and operators to rely upon GLI and BMM to conduct independent testing and evaluate compliance of sports wagering devices and would allow Commission staff to use the services of GLI and BMM to assist in adopting and amending industry standards related to sports wagering.

205 CMR 244: APPROVAL OF SPORTS WAGERING EQUIPMENT AND TESTING LABORATORIES

244.06: Independent Testing Laboratory Certification

A person certified as an independent testing laboratory pursuant to 205 CMR 144 shall be authorized by the Commission to provide testing services of sports wagering devices in Massachusetts. Such certified independent testing laboratory shall be subject to the same notification requirements and continued obligations outlined in 205 CMR 144.06 as they relate to sports wagering devices as well as the same reporting requirements outlined in 205 CMR 144.04 as they relate to sports wagering device testing.

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 244.06: Independent Testing Laboratory Certification**; notice of which was filed with the Secretary of the Commonwealth.

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 244.06 applies to independent testing laboratories 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:

As a general matter, no small businesses are 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 or the proposed amendment therein.

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

This amendment does not impose any new standards as it will extend existing standards beyond gaming-related testing to sports wagering-related testing.

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:

This amendment is unlikely to have any impact on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrisi
Carrie Torrisi
Deputy General Counsel

Dated: September 8, 2022

MEMORANDUM

TO: Massachusetts Gaming Commission
 FROM: Todd Grossman, General Counsel
 RE: 205 CMR 2.01: Application for license to conduct a racing meeting by a new operator
 DATE: September 15, 2022

The draft 205 CMR 2.01 is before you for the first time and is an entirely new regulation. It is designed to codify in the regulations the contents of the application for a new license to conduct a racing meeting (as opposed to a renewal for which there is a separate application) and to clarify the statute governing the license application.

The application for a license to conduct a horse racing meeting is described in G.L. c. 128A, §2. The draft regulation includes all the information described in section 2, as well as a number of materials and information described elsewhere in chapter 128A (e.g.- municipal approval of the location of a racetrack, ensuring racing competition honestly managed and of good quality, and the financial ability of an applicant to operate a racetrack).

Notably, when it comes to the promulgation of racing regulations, the Commission must be mindful of G.L. c. 128A, §9B. Section 9B requires that prior to any racing regulation taking effect, a copy of the regulation be filed with the clerk of the state senate. The Legislature essentially has 60 days from the filing to vote to disapprove the regulation. If it does not take such action, the regulation takes effect. This means that in addition to the standard 60-90 days that is generally required to promulgate a regulation, in the racing context it takes 120-150 days.

Section 9B also discusses the emergency adoption of racing regulations and specifies as follows:

the commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals; provided, however, that no emergency rule or regulation shall attempt to regulate the dates, manner of wagering, or economic terms or conditions of horse and dog racing within the commonwealth; and provided, further, that such emergency rules and regulations shall expire within ninety days.

Accordingly, unless the Commission determines that the subject regulation is related to the protection of the health or safety of the public, participants or animals, it would not qualify for adoption by emergency under section 9B.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 2.00: HORSE RACING MEETING LICENSING

Section 2.01: Application for license to conduct a racing meeting by a new operator

- (1) Pursuant to M.G.L. c. 128A, §2, any person desiring to hold or conduct a horse racing meeting shall submit a completed application with the commission to do so on a form to be provided by the commission. Such application shall require, but not be limited to, submission of the following:
- a) The name of the applicant;
 - b) A \$300 licensing fee as described in M.G.L. c. 128A, § 4;
 - c) The post office address of the applicant, and if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders;
 - d) The location of the proposed racetrack where it is proposed to hold or conduct such meeting including the ownership of the proposed parcel(s);
 - e) The calendar year in which the applicant anticipates conducting the meeting, and the specific days on which it is intends to hold or conduct such a meeting;
 - f) The hours of each day between which it is intended to hold or conduct racing at such meeting subject to the restrictions described in M.G.L. c. 128A;
 - g) A summary of the project and racing facilities including a description of the proposed financing and source(s) of capital;
 - h) Submission of feasibility, viability, economic impact/development studies including projected revenues, purses, handles, tax payments, attendance, and employment figures;
 - i) Information and documentation of the applicant's receipt of required approvals from groups and entities outside of the commission including, but not limited to, a municipal approval pursuant to M.G.L. c. 128A, § 13A, an affirmative county vote pursuant to M.G.L. c. 128A, § 14, and other state or federal environmental, land use, building, and hospitality-related permits, licenses, or authorizations;
 - j) Information for the evaluation of the suitability of the applicant including all individual and entity qualifiers. A qualifier shall be considered any entity or individual that, in the commission's discretion, maintains an ability to influence or control the operation of the applicant and prospective licensee including any business associates. Suitability shall include, but not be limited to, an evaluation of the integrity, honesty, and good character of each qualifier, an evaluation of the financial stability, integrity, and background of the applicant and each qualifier, and the overall business ability of the applicant to establish and maintain an honestly managed racing meeting;
 - k) Information relative to the public interest and benefits associated with the conduct of the proposed racing meeting including the existence, or plan to execute, a purse agreement with a representative horsemen's organization, any support or opposition to the proposal received from the host and nearby communities, the applicant's plan to attract and employ a diverse workforce in both construction and operational phases of the proposal including use of vendors, and whether the applicant plans on entering into a Project Labor Agreement(s);

- l) Information relative to the proposed wagering plan including the use of pari-mutuel, simulcasting, and advance deposit wagering;
 - m) An attestation signed and sworn to that the applicant will comply, in case such license be issued, with all applicable laws and with all applicable rules and regulations prescribed by the commission, and that the applicant shall have an affirmative obligation to abide by every statement made in the application to the commission should it be awarded a license; and
 - n) Answers to such other questions as the commission may prescribe.
- (2) The application described in 205 CMR 2.01 shall not apply to a renewal of a license awarded the previous year or for a fair license described in M.G.L. c. 128A, §3.

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 2.01: Application for license to conduct a racing meeting by a new operator**; notice of which was filed with the Secretary of the Commonwealth. This regulation was developed in accordance with G.L. c. 128A, §§2 and 9.

The adoption of 205 CMR 2.01 applies to the actual form of the application that must be submitted to the Commission in order to commence the application process for a license to conduct a horse racing meeting. Specifically, this application will only apply to a person who has not previously been licensed by the Commission. Accordingly, this regulation is unlikely to have any significant impact on small businesses other than one which may seek to file an application. 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 new regulation will only apply to any entity, likely to be limited in number, that may seek a racing meeting license from the Commission.

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

There are likely to be measurable administrative and legal costs associated with the filing of an application though this regulation is merely designed to clarify the statutory language governing the application.

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

Applications by their nature must be prescriptive to ensure that the stakeholder understands what will be required in order to apply for a license, so performance standards are not a viable option in this matter.

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 contained in 205 CMR. This regulation is intended to supplement the statutory language contained in G.L. c. 128A, §2.

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

This amendment is designed to encourage the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission
By:

Todd M. Grossman
General Counsel

Dated: September 15, 2022