



Massachusetts Gaming Commission Meeting Minutes

Date/Time: December 17, 2020 – 10:00 a.m.

Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
MEETING ID: 112 738 6776

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

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

[Call to Order](#)

Chair Cathy Judd-Stein called to Order public meeting #330 of the Massachusetts Gaming Commission (Commission).

The Chair confirmed a quorum for the meeting with a Roll Call. The following Commissioners were present:

*Commissioner Cameron
Commissioner O'Brien
Commissioner Zuniga
Commissioner Stebbins
Chair Judd-Stein*

The Chair made remarks regarding the year with COVID-19. She also announced that this was the final scheduled meeting for Commissioner Stebbins. The Commissioners provided their sentiments about Commissioner Stebbins's departure.

Approval of Meeting Minutes

Commissioner Stebbins moved to approve the minutes from the Commission meeting of November 3, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Cameron seconded the motion. No edits were recommended.

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Zuniga: Aye.
Commissioner Stebbins: Aye.
Chair Judd-Stein: Aye.
The motion passed 5-0*

The Chair also remarked on the departure of Paralegal Shara Bedard.

Administrative Update

Staffing Update

Executive Director (ED) Karen Wells recognized Commissioner Stebbins and Paralegal Shara Bedard's departure from the office. General Counsel Todd Grossman offered a farewell message to Shara as well.

ED Wells commented on COVID-19 Order #57 issued by Governor Baker and reported that Massachusetts SJC recently upheld the Governor's use of emergency powers in Desrosiers v. Governor of Massachusetts.

On-Site Casino Updates (21:51)

Investigations and Enforcement Bureau (IEB) Interim Director/Chief Enforcement Counsel (ID) Loretta Lillios, with IEB Assistant Director/Gaming Agents Division Chief (AD) Bruce Band, reported on current casino operations to the Commission.

Per Ms. Lillios, the three casino properties and their patrons continued to comply with COVID-19 health and safety measures. Ms. Lillios reported her observations while on-site at Encore Boston Harbor (EBH) on December 11, 2020, and believed they are consistent with the properties' reports.

Mr. Band reported the Gaming Agents' observations over the past few weeks and noted that the three properties had not exceeded capacity limits. Mr. Band commended the efforts of all the casino properties to uphold COVID-19 protocols.

Ms. Lillios provided an update on the positive COVID-19 cases reported by the licensees and provided a brief overview of the protocols followed when positive cases are reported. Since June 23, 2020, the IEB has received notification of 80 positive cases across the three properties. Ms. Lillios noted that many employees believed they contracted COVID-19 from a household member, and there are no concerning trends in employee outbreaks in any particular area of the casinos. The Chair, Commissioner Cameron, and Commissioner O'Brien provided remarks.

Ms. Lillios also provided information on a Notice of Non-Compliance issued by the IEB to EBH on December 4, 2020. The Notice addressed over-service of alcoholic beverages to patrons on three instances that occurred August 2, 2020, August 29, 2020, September 4, 2020. All three incidents had similar fact patterns, and each patron exhibited observable signs of intoxication. Notice of Non-Compliance is a prerequisite to a monetary penalty, and any future incidents will result in a fine.

Mr. Band and Senior Enforcement Counsel (SEC) Katherine Hartigan further addressed the steps that EBH will take to prevent alcohol over-service in the future. Recommendations to ensure compliance fall into four categories: training, enhanced communication, physical improvements, and employee discipline. Commissioners Cameron made inquiries regarding the licensee's responsiveness to corrective actions, and Commissioner O'Brien made additional suggestions regarding enhanced communication amongst employees. Mr. Band is reviewing submissions to determine whether approved internal controls memorialized a communication protocol between dealers at the end of their shift.

EBH Senior Vice President and General Counsel (SVP) Jacqui Krum informed the Commission that they share their concern over this issue, and overservice is not acceptable.

Ms. Lillios described an incident that occurred at Mystique inside EBH, on December 6, 2020. In identifying the COVID-19 compliance issues, management closed the restaurant early, and on December 14, 2020, Mystique management ultimately decided to close the restaurant until 2021. Due to management's decision, the IEB will not need to take any corrective action. According to Ms. Lillios, management was cooperative with GEU and the Gaming Agents. The 2021 reopening of Mystique will be subject to IEB approval. Commissioners O'Brien and Cameron provided remarks regarding floor configuration and training, and the Chair clarified that management decided to close and it was not the result of an IEB investigation.

Research and Responsible Gaming

Encore Construction Report (1:10:45)

Director Mark Vander Linden, Principal Investigator Dr. Rachel Volberg, and Senior Research Manager Rod Motamedi from the UMass Donahue Institute were present to provide an overview of the Encore Construction Report. As directed by Section 71 of Chapter 23K, MGC develops an annual research agenda to understand gambling's social and economic effects in Commonwealth. The Encore Construction Report is an analysis of \$1.6 billion direct costs associated with building the casino. It measures the economic ripple effect across the state and reports on critical aspects of the construction workforce.

Mr. Motamedi provided a presentation regarding the key points of the report. The objective study focused on \$1.6 billion of construction, not the total investment of EBH, which was \$2.1 billion. This report did not focus on license application fees, land purchase, preopening expenses, furniture fixtures & equipment. The data provided was current at the time of the delivery; however, they may have slight modifications due to the conclusion of construction.

Key findings included the following: almost 75% of construction spending went to Massachusetts businesses, firms meeting a least one diversity criteria received 13% of the expenditures, \$1.6 billion created \$2.6 billion of total economic activity, the average worker received \$36,500 in compensation for the project with a \$47.89/hour wage, and Massachusetts has a 30% or higher wage than the national average for construction workers.

Mr. Motamedi also reported that workers on this project as a whole were more diverse than other Massachusetts construction sites; 75% of the workforce was white, 7% were women, and 6% were veterans.

Commissioner Zuniga inquired about costs that had been excluded from the analysis, such as licensing fees and land purchase. Commissioner Cameron made additional comments about the female workforce percentage. SVP Krum provided comments and expressed gratitude for the valuable data this project revealed. Commissioner Stebbins remarked on the data and inquired about the 4% overseas costs. SVP Krum confirmed that these costs are from unique items made overseas.

Racing Division (2:14:45)

Suffolk Downs Request for 2020 Premium Free Period

Dr. Alex Lightbown presented Suffolk Downs' request for a premium free period from October 10, 2020, through December 31, 2020 as described in G.L. c. 128C.

Commissioner Cameron moved that the Commission approve Suffolk Downs' request for a premium free period from October 10, 2020, through and including December 31, 2020. Commissioner Stebbins seconded the motion.

Commissioner Zuniga asked for clarification on this request. Dr. Lightbown explained that due to a lack of new racing legislation, they wanted to record what this year would have been like, and the 2021 season will be addressed at a later date.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Suffolk Downs Request for Approval of Simulcast Import Location

Dr. Lightbown presented the simulcast locations that Suffolk Downs would like to use in 2021 and recommends that the Commission approve the request.

The Chair inquired about the timing of this request and simulcast legislation. Dr. Lightbown explained that until Suffolk Downs is not allowed to simulcast, they would use the specified locations for simulcast.

Commissioner Stebbins moved that the Commission approve the simulcast import locations requested by Suffolk Downs and identified in the attachment to its November 2020 letter. Commissioner Cameron seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Suffolk Downs Request for Approval of Account Wagering Providers

Dr. Lightbown presented the account wagering providers request from Suffolk Downs and noted that the Commission had approved these providers in the past. Additionally, she stated that due to the rebranding of Xpressbet, that name and 1/ST Bet are included in the request to avoid future confusion. Dr. Lightbown recommended approval of this request.

Commissioner Zuniga moved that the Commission approve the Suffolk Downs request for approval of Xpressbet also known as 1/ST Bet, TVG, Twinspires, NYRA Bets, and FanDuel Racing as their account wagering providers.

Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Suffolk Downs Request for Approval of Mbet

Dr. Lightbown presented another request from Suffolk Downs to the Commission. This request pertained to the use of Mbet, a web-based mobile betting platform. Senior Financial Analyst Chad Bourque and COO of Suffolk Downs Chip Tuttle were also present to discuss this request. Dr. Lightbown explained the Mbet application, which would allow a patron to access the MTote system from wherever they are inside Suffolk Downs. Mbet provides convenience for patrons and allows for a primarily touchless experience that is helpful due to COVID-19.

Mr. Bourque further explained MBet and reported that the MBet application would only be accessible via Suffolk Downs Wi-Fi network to keep wagering within the property's confines.

Commissioner Cameron inquired about the reach of Wi-Fi network into the facility's parking lot. Mr. Tuttle stated that the Wi-Fi would work on the apron but not out in the parking lot; however, he offered to run additional tests if the Commission requested. Commissioner Cameron did not feel that was necessary.

Commissioner Stebbins sought clarification on the availability of funds if a patron forgot to cash out their account before leaving the facility. COO Tuttle explained that a ticket is provided to a patron when using MBet, and redeemed in the same way as a regular ticket.

Commissioner O'Brien queried what would happen if a patron did not spend all of the money they initially deposited with the cashier and what difference if any, there was between the money spent and money not used. COO Tuttle stated that the balance would remain on the patron's ticket, like a regular ticket, and reports there is no distinction between the funds that remain on the ticket.

Dr. Lightbown described the ticket claim process that the patron would have to complete. Mr. Tuttle added that this not like an ADW account and is essentially turning one's mobile device into a self-service betting terminal for the day.

Commissioner Cameron moved that the Commission approve the use of MBet by Suffolk Downs as discussed at the meeting. Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

2019 Annual Racing Report

Dr. Lightbown presented the 2019 Annual Racing Report, which included milestones such as the last year for live racing at Suffolk Downs, and Chief Commission Steward Susan Walsh's receipt of the Peterson Outstanding Steward Award from the Racing Officials Accreditation Program. Dr. Lightbown reported that the PPC racing statistics were similar to the year before, and Suffolk Downs statistics were based on six days of racing versus eight days of racing in 2018. It also notes that the Commission adjudicated two appeals, a hearing officer denied one appeal, one appeal request was withdrawn, one waiver was granted, and one matter is ongoing.

Mr. Bourque reviewed the report's financial information with the Commission and made a note of two adjustments. The first adjustment was to the amount distributed to the Thoroughbred Accounts from the Racehorse Development Fund. The amount will be \$4,427,000, bringing total disbursements to \$15,421,154. The second adjustment is the Suffolk Downs Capital Improvement Fund, which will be \$1,062,000, and that RFR payments will be \$101,000, bringing the ending balance to \$2,590,000. These adjustments will be reflected in the report and posted to the Commission's website.

Legal Division (3:05:58)

Associate General Counsel Carrie Torrisi presented three regulations to the Commission for a final vote to complete the promulgation process.

205 CMR 146.13: Blackjack Table; Card Reader Device, Physical Characteristics; Inspections

The first regulation presented was 205 CMR 146.13, which addresses table characteristics for the blackjack tables. It clarifies that the blackjack table layout is required to read that the game pays at odds of 3:2 or 6:5 depending on what odds are being offered at that particular table. The Commission voted on October 8, 2020, to begin the promulgation process for this regulation. A public hearing was held on December 17, 2020, and presided over by Commissioner Stebbins. No comments were received at the public hearing, and no written comments were submitted. Attorney Torrisi sought a Commission vote on the amended Small Business Impact Statement and the regulation to finalize the promulgation process.

Commissioner Stebbins moved that the Commission approve the amended Small Business Impact Statement for 205 CMR 146.13: Blackjack Table; Card Reader device; Physical Characteristics; Inspections as included in the Commissioners' packet. Commissioner Cameron seconded the motion.

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.*

Commissioner Stebbins further moved that the Commission adopt the final draft of 205 CMR 146.13: Blackjack Table; Card Reader device; Physical Characteristics; Inspections as included in the Commissioners' packet, and authorize the staff to take all steps necessary to finalize the regulation promulgation process. Commissioner Cameron seconded the motion.

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.*

Adoption of 205 CMR 153.00: Community Mitigation Fund

This new regulation codifies the procedures and guidelines for the administration of and distributions from the Community Mitigation Fund, including an annual review of the guidelines, a procedure for entities seeking emergency appropriations, minimum requirements for the execution of the grant instrument, and the assessment of reasonable administrative costs to the Fund. The Commission voted on October 22, 2020, to begin the promulgation process. A public hearing for this regulation was also held on December 17, 2020, and was

also presided over by Commissioner Stebbins. Again, no verbal or written comments were received.

Commissioner Stebbins added that the regulation changes were brought before the Local Community Mitigation Advisory Committees and the Subcommittee on Community Mitigation. At all three meetings, there was support expressed by the committee members for the changes.

Commissioner Zuniga moved that the Commission approve the amended Small Business Impact Statement for 205 CMR 153: Community Mitigation Fund as included in the Commissioners' packet. Commissioner Cameron seconded the motion.

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.*

Commissioner Zuniga further moved that the Commission approve the final draft of 205 CMR 153: Community Mitigation Fund as included in the Commissioners' packet and authorize the step to finalize the regulation promulgation process. Commissioner Cameron seconded the motion.

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously*

Amendments to 205 CMR 133.00: Voluntary Self-Exclusion

Several administrative changes were proposed to this regulation to ensure uniformity in managing and maintaining the voluntary self-exclusion list. These changes included specifying who may be deemed a designated agent and have access to the list, clarifying the application's contents, and refining the qualification requirements for the providers of services offered by the voluntary self-exclusion program. This regulation was initially before the Commission on October 22, 2020. At that meeting, the Commission voted to begin the promulgation process. This regulation was also part of the public hearing held on December 17, 2020. No verbal or written comments about the proposed changes were received. Attorney Torrisi requested a vote by the Commission on the

amended Small Business Impact Statement and amendments to the regulation included in the Commissioners packet.

Commissioner O'Brien moved that the Commission approve the amended Small Business Impact Statement for 205 CMR 133: Voluntary Self-Exclusion as included in the Commissioners' packet. Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien further moved that the Commission approve the final draft of 205 CMR 133: Voluntary Self-Exclusion as included in the Commissioners' packet and authorize staff to finalize the regulation promulgation process.

Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously

Ms. Torrisi also informed the Commission that the Voluntary Self-Exclusion and petition for removal forms were edited to align with these changes to the regulations. No formal action was required regarding these changes.

[Review of Proposed Comprehensive Amendments to the Enhanced Code of Ethics for adoption as part of an update Third Edition \(3:16\)](#)

Mr. Grossman provided a review of the proposed revisions to the Enhanced Code of Ethics. The Chair, Commissioner Stebbins, and Mr. Grossman worked in collaboration to review the Code and propose edits. The edits generally clarify/update existing language, remove any unnecessary language, and reorganize the presentation of information.

The Commissioners and Mr. Grossman had an in-depth discussion regarding the proposed amendments as reflected in the document in the Commissioners' packet. There was specific discussion about the language in Section 7, "Definitions" pertaining to "an individual's interests in less than one percent of publicly traded companies" Mr. Grossman proposed possibly removing the language as

superfluous, as there is already existing law that prohibits certain stock ownership. Commissioner Zuniga sought clarification on the language's intent, as he interprets this to apply to all publicly traded companies. Mr. Grossman suggested discussing this matter at a later date as it is not an urgent matter.

Extensive discussion took place relative to conflicts of interest and specifically when certain disclosures are/will be required. In Section 9, "Conflicts of Interest," a noteworthy edit was made that required Commissioners to file any disclosures with their appointing authority rather than with the executive director. Under the amendment, Commissioners would be required to publicly announce that a disclosure was filed. All the Commissioners agreed with the changes.

Additionally, in reference to Section 11, "Gifts," the Chair reiterated the need for Commissioners to file a disclosure in advance of receiving any outside travel related funding or waiver of fees.

While reviewing Section 24, "Violations," Commissioners discussed the duty to report certain matters pertaining to another Commissioner to the Governor. The Commissioners agreed with the changes as presented in the Commission meeting materials.

Commissioner O'Brien moved that the Commission vote to adopt the proposed comprehensive amendments to the Enhanced Code of Ethics. Commissioner Zuniga seconded the motion and noted that there will be a future discussion about the publicly traded company's matter.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner Updates

[Discussion of Executive Director Evaluation Form and Process \(4:34:05\)](#)

Commissioner O'Brien led the discussion on the Executive Director Evaluation Form and evaluation process. She explained that the form was changed to reflect the calendar year 2020 and proposed adding three new sections to this year's evaluation. Commissioner Stebbins added that the additional sections would allow the Commission to understand where the ED wants to improve professionally and what goals she intends to set for the agency.

The Chair inquired about the change from fiscal to calendar year review. Further discussion was recommended for January 14, 2021, regarding the review cycle

and whether it will change back to a fiscal cycle in the future. Commissioner Zuniga believes that the cycle type is a matter of preference.

Commissioner O'Brien recommended individual assessments from each Commissioner rather than just one summarized review. Commissioner Zuniga inquired whether there would still be a compilation of reviews from HR. Commissioner O'Brien explained that having a numerical scoring system plus comments from each Commissioner would be more helpful than having someone in HR trying to decide how to merge everyone's comments subjectively.

The Chair asked Commissioner O'Brien to provide further input on the forms during the January 14, 2021 Commission meeting and to discuss timing and next steps at the next agenda setting meeting. Commissioner O'Brien stated that she would also like to get input from ED Wells on how long it would take to complete her self-evaluation.

[Commissioner Stebbins offered farewell remarks.](#) (4:49:45)

3:28 p.m. *With no further business, Commissioner Stebbins moved to adjourn. Commissioner Zuniga seconded the motion.*

Roll Call Vote:

Commissioner Stebbins: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated December 17, 2020
2. Draft Commission Meeting Minutes November 3, 2020
3. PowerPoint Presentation: The Construction of Encore Boston Harbor: Spending, Employment, and Economic Impacts dated December 17, 2020
4. The Construction of Encore Boston Harbor: Spending, Employment, and Economic Impacts Report dated November 17, 2020
5. Memorandum Re: Suffolk Downs Request for Premium Free Period dated December 17, 2020
6. Memorandum Re: Suffolk Downs Request for Approval of Simulcast Import Locations dated December 17, 2020
7. Memorandum Re: Suffolk Downs Request for Approval of Account Deposit Wagering Providers dated December 17, 2020
8. Memorandum Re: Suffolk Downs Request for Approval of MBet dated December 17, 2020
9. Division of Racing 2019 Annual Report Year Ending December 31, 2019

10. Amended Small Business Impact Statement relative to the amendment to 205 CMR 146:00: Gaming Equipment in its Section 13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections
11. 205 CMR 146:00: Gaming Equipment in its Section 13: Blackjack Table; Card Reader Device; Physical Characteristics; Inspections and Regulation Review Checklist
12. Amended Small Business Impact Statement relative to the amendment to 205 CMR 153:00: Community Mitigation Fund
13. 205 CMR 153:00: Community Mitigation Fund and Regulation Review Checklist
14. Amended Small Business Impact Statement relative to 205 CMR 133.00: Voluntary Self-Exclusion
15. 205 CMR 133.00: Voluntary Self- Exclusion
16. Massachusetts Voluntary Self-Exclusion Enrollment Form
17. Massachusetts Voluntary Self-Exclusion Petition for Removal
18. Enhanced Code of Ethics, Third Edition dated December 17, 2020