



Massachusetts Gaming Commission Meeting Minutes

Date/Time: December 22, 2020 – 4:00 p.m.

Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
MEETING ID: 112 546 0042

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.

00:00:11 **Call to Order**

Chair Cathy Judd-Stein called to order emergency public meeting #331 of the Massachusetts Gaming Commission. This meeting was held in light of a new COVID-19 Order issued by Governor Baker.

Executive Director Karen Wells explained that on this day, Governor Baker and Lt. Governor Polito held a press conference regarding COVID-19 Order #59. This Order imposed further restrictions on occupancy levels at venues in Massachusetts. Investigations and Enforcement Bureau (IEB) Interim Director/Chief Enforcement Counsel Loretta Lillios was present to provide recommendations for casinos and simulcast facilities regarding maintaining compliance with the new Order.

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

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

Maximum occupancy and capacity levels at regulated facilities

00:02:45 Interim Director Lillios explained that COVID-19 Order #59 is a temporary order which addresses a period of reduced capacity limits in establishments such as restaurants, retail businesses, and casinos. Order #59 specifies that capacity limits should not exceed 25% and allows for the Commission to reissue capacity restrictions as necessary. Before this Order was issued, capacity at the casino properties was based on building code capacities and available gaming positions, which ranged around 40% capacity for each facility. Interim Director Lillios recommended that the facilities continue to abide by the original formula when setting 25% capacity limits and suggested that staff be excluded from the count for the gaming area. Order #59 is scheduled to go into effect at 12:01 on December 26th, 2020 and remain in effect through January 10th, 2021, unless further extended.

Commissioner Cameron inquired about the process for determining capacity at the properties. Interim Director Lillios stated that the IEB had worked with each property to assess capacity numbers in June and July and that she will confirm with the licensees that they are working with 25% of that number.

The Chair sought clarification around whether employees and workers were part of the capacity number count, as the current formula included gaming establishment and amenities employees. She pointed out that the new Order excluded employees for specific industries but not specifically casinos.

Interim Director Lillios explained that the Order allows the Commission to discuss and consider including or excluding employees in the gaming area from the capacity count.

00:10:14 Commissioner O'Brien directed the Commission's attention to the timeline for the new capacity restrictions, which will mimic the Governor's timeline and end unless further extended. Commissioner O'Brien suggested that more specific language be used to allow the Commission to extend the restrictions even if the Governor does not. This would allow for the Order to auto-extend without requiring another meeting and suggested using language such as "unless further extended by order of the Governor or the Commission."

The Chair revisited the employee counting issue and voiced concern about not counting employees because it could mean more than 25% of people on the floor.

Director Wells noted that the formula initially used to reduce capacity varied by property and the number of available gaming positions. This new reduction in numbers would decrease capacity, but not beyond what we have seen in business operations. Director Wells explained that this methodology would not incentivize casinos to let employees go in order to allow for more patrons.

00:15:41

The Chair stated that we have included employees as bodies on the gaming floor to achieve proper social distancing in the past and stressed that there should not be a differentiation between employees and patrons when thinking about numbers. The recommendation by Interim Director Lillios would be a shift in the Commissions thinking by excluding employees.

Commissioner Zuniga suggested determining the current breakdown of employees vs. patrons.

Interim Director Lillios explained that she was not strongly advocating for including or excluding employees, but recommended exclusion to maintain consistency with the Governor's Order regarding the restaurant and amenities sectors.

The Chair commented that the existing formula is based on the number of employees needed to attend to patrons. She inquired as to the other industries listed in the Order and whether exclusion is implied or explicitly stated.

Commissioner Zuniga stated that if employees were exempted in other industries and the Commission is trying to follow the parallel, that would be one reason to exempt employees. The Chair responded that she was not sure the Governor exempted employees in all industries. Interim Director Lillios provided the Commissioners with the wording pertaining to employee exclusions in other industries.

The Chair noted that because there were notes in the Order instructing specific industries to exclude employees, a lack of notes could imply employees must be included. Commissioner O'Brien suggested that it could harken back to the original Order, which specified whether staff and employees were included in capacity numbers for that particular industry. The Chair asserted that she did not want to create an incentive for layoffs but emphasized that a 25% capacity limit is a function of public health considerations, and a fire code talks about bodies without differentiating between patrons and employees.

00:24:57

Commissioner Zuniga provided an example that suggested excluding employees would still result in a reduction of capacity. The Chair explained that she would rather be conservative and called for input from other Commissioners

Commissioner Cameron also noted that she did not want to incentivize layoffs and felt that cutting back to 25% capacity gave the Commission something to consider with regard to public health issues. Commissioner Zuniga pointed out that these are new facilities with new air exchanges, plexiglass partitions, disabled slot machines, and table reductions that have already been discussed.

Commissioner O'Brien discussed the current capacity formula and its application to the entire gaming establishment, not just the gaming floor. With a more

contained space, she inquired whether an employee would physically have to be on the floor to be included in an employee count. Commissioner Zuniga agreed and felt that someone like a cocktail server going back and forth to the serving area and gaming area would have less exposure.

00:29:58

Commissioner O'Brien felt that a 25% capacity limit would allow these employees to still be on the floor without worrying about breaching a cap. Commissioner Stebbins agreed with Commissioner O'Brien and noted that certain restrictions might start to tip the ability to monitor the performance of the games. Commissioner Zuniga believed this is a reason to exclude employees from the count to avoid incentives for layoffs or affect the day-to-day operations.

Commissioner O'Brien suggested a lower percentage, such as 20% and excluding employees but noted she thought numbers would still be reasonable at 25% excluding employees. Interim Director Lillios pointed out the complexities around employee types, such as surveillance vs. servers and the cage. Commissioner Stebbins relayed concerns about when a facility reaches the occupancy level cap and how the licensee would communicate that to patrons. Interim Director Lillios reported having had discussions with the licensees about this matter and said they have sophisticated communication plans surrounding Covid, including real-time messaging.

Commissioner Zuniga suggested another aspect to consider is that it would become infeasible to run the operation at some point. He also noted it was important to consider this as further limiting capacity may make it not worth continuing for the properties.

The Chair requested that the Executive Order be shared with the Commissioners to ensure the Commission be fair in light of what the Governor contemplated for all industries.

00:41:45

Commissioner Zuniga and the Chair discussed other restrictions in other industries. Commissioner O'Brien brought the Commission's attention to the second to last paragraph on page four of the Order and suggested that other industries may be aware that their employees are exempt or part of the count.

Commissioner O'Brien also stated that 25% with or without employees would not functionally make a difference for the properties. The Chair agreed with this assessment. Commissioner O'Brien reiterated that she did not want to see layoffs or risk going over the cap and suggested a lower percentage of 23% and not include employees.

The Chair called on licensee representatives present at the meeting, General Manager of Plainridge Park Casino (PPC) North Grounsell, and Encore Boston Harbor (EBH) General Counsel Jacqui Krum about the licensee's abilities to comply with a 25% capacity cap. Ms. Krum stated that EBH would comply with

25% capacity and added that employees have always been included with the count because they have been counted as a person entering the casino. The Chair clarified with Ms. Krum that EBH would feel comfortable that their facility was so large that they could continue counting and not reach 25% occupancy.

The Chair then specifically addressed PPC because their facility may be impacted differently. She queried whether PPC was currently counting employees. Mr. Grounsell reported that employees were not considered before, and it is a little more challenging to track team members coming and going. He explained that PPC had followed a 25% fire-code capacity in each room, such as the cage and surveillance rooms. Changing these capacity limits could put PPC in a position of not meeting staffing requirements for surveillance.

Commissioner Zuniga pointed out that 25% capacity was not intended to apply to every room and is an overall cap to have a low-density operation with the understanding that there will be movement. Mr. Grounsell explained that PPC was looking at it from the office space requirements and was happy to receive any clarification from the Commission.

The Chair added that she thought this new Order was being misinterpreted and suggested taking a five-minute break for Interim Director Lillios to call the Governor's Office to clarify whether the Commission was intended to exclude employees.

Commissioner Zuniga queried why a restaurant would be different than a casino. The Chair stated that there is enough in the Order to suggest if employees were to be excluded that the Commission would not be meeting the Governor's expectations and that there may be reasons for the exclusion that are unknown.

Commissioner O'Brien suggested lowering the capacity percentage to include a buffer for employees.

Ms. Krum informed the Commission that EBH is counting everyone, and there would be no way to distinguish between employees and guests. Commissioner Cameron agreed with the Chair that Interim Director Lillios should make a call for clarification.

[00:53:51](#)

The Chair called for a five-minute break so Interim Director Lillios could contact the Governor's Office for more clarification. This meeting was scheduled to resume at 5:05 p.m.

As a result of Interim Director Lillios' conversation with the Governor's Legal Department, she recommended that the staff and employees be counted in the interest of continued public safety. She explained that the exemption on the chart was limited to smaller venues.

The Chair concluded that this would be 25% capacity of all bodies counted on the gaming floor, and if the property wanted to include amenities, they could do so.

Director Wells commented that follow-up with Governor was helpful and that she agreed that the Commission should follow the Governor's Legal Department recommendation. Commissioner Cameron agreed.

The Chair sought Commissioner Stebbins's thoughts. He stated he was glad for the clarification and agreed that the feedback and input from the Governor's Legal Department should be followed. Commissioner Zuniga agreed.

Commissioner O'Brien questioned how this would impact PPC and if Mr. Grounsell had concerns. Mr. Grounsell stated he had no concerns and that PPC would comply with this Order.

The Chair asked what the next steps were regarding this item. Director Wells stated that they would need to address simulcast facilities with Dr. Lightbown and suggested a vote before moving on to that item. General Counsel Todd Grossman agreed that a motion was appropriate to adopt the 25% capacity limit, including employees.

[1:01:24](#)

Commissioner O'Brien moved that the Commission should incorporate the four supplemental requirements described in the document and included in the Commissioners Packet today and the previously adopted requirement, as amended, and discussed today relative to paragraphs to 1, 3, and 4. Commissioner Cameron seconded the motion.

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

Dr. Lightbown provided an update on the three simulcast facilities and reported that they were aware of the Governor's new Order. The facilities will limit occupancy to no more than 25% from December 26th, 2020, through January 10th, 2021. The original COVID-19 occupancy restrictions by PPC and Raynham had been based on social distancing, while Suffolk Downs had limited occupancy to less than 50%. Dr. Lightbown checked with each facility regarding the inclusion of employees in occupancy numbers at facilities and confirmed that it would not impact their ability to comply with the Order.

General Counsel Grossman recommended a vote by the Commission.

Commissioner Cameron moved that notwithstanding any provision of an approved simulcasting guideline to the contrary, the maximum occupancy at the simulcast facilities at Suffolk Downs, Raynham Park, and Plainridge Park be limited to 25% of the authorized capacity consistent with Governor Baker's COVID-19 Order #59 dated December 22nd, 2020 and further that the limit becomes effective at 12:01 a.m. on December 26th and shall remain in effect until 12 noon January 10th, 2021 unless further extended. Commissioner O'Brien seconded the motion.

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 Commissioners thanked everyone for their excellent work

The Chair asked Commissioner Stebbins to make a motion to adjourn. Commissioner Stebbins made a motion to adjourn, which was seconded by Commissioner Zuniga.

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*

List of Documents and Other Items Used

1. Requirements to Ensure Compliance with COVID-19 Order No. 59, Temporarily Applying Further Capacity Restrictions to Statewide COVID-19 Safety Rules
2. PPC Memorandum RE: Protocols to conduct Racing and Simulcasting under COVID-19, dated December 22nd, 2020.
3. Raynham Park Simulcast Center Memorandum RE: Capacity Restriction, dated December 22nd, 2020.
4. Suffolk Downs letter to Dr. Lightbown RE: Intention to comply with Governor Baker's recent Order, dated December 22nd, 2020.