



Massachusetts Gaming Commission Meeting Minutes

Date/Time: February 10, 2022, 9:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 609 5417

The Commission conducted this public meeting remotely utilizing collaboration technology. 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 Gayle Cameron
Commissioner Bradford Hill
Commissioner Eileen O'Brien

1. [Call to Order](#) (00:02)

Chair Judd-Stein called to order the 370th Public Meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted, and all four commissioners were present for the meeting.

2. [Approval of Meeting Minutes](#) (1:37)

Commissioner O'Brien moved that the Commission approve the May 6, 2021, and November 4, 2021, Public Meeting minutes included in the Commissioners' Packet subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Hill: Abstain.
Chair Judd-Stein: Aye.
The motion passed unanimously.

Commissioner O'Brien moved that the Commission approve the May 6, 2021, and November 4, 2021, Public Meeting minutes included in the Commissioners' Packet subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. [Administrative Update](#) (4:02)

a. On-Site Casino Updates

Executive Director Karen Wells introduced Assistant Director of Investigations & Enforcement Bureau and Gaming Agents Division Chief Bruce Band to give a report about ongoing operations at the gaming establishments. Assistant Director Band reported on MGM's re-opening of Top Golf and Encore's opening of its poker tables. The Commission thanked Assistant Director Band for his updates.

b. [Covid-19 Updates](#) (5:40)

Executive Director Wells stated that the Commission had previously voted to reopen the Boston offices on Monday, February 14th. She provided an update to the Commission on current Covid positivity rates in Suffolk County and Massachusetts at large and noted that while there has been a precipitous drop, the numbers are not quite where they were when the Boston office initially reopened in November. She noted, as well, that the Governor has lifted the school mask mandate as of February 28th. Executive Director Wells suggested, as discussed by the working group, that the office reopening be delayed two weeks and that upon reopening masks be required in common areas but not in individual offices or workstations. She further suggested that during that two-week period, staff could go into the office as desired, but it would not be mandated.

The Commission agreed with these recommendations and deferred to Executive Director Wells to implement.

4. [Commissioner Updates](#) (19:55)

a. Legislative Update

Chief Administrative Officer to the Chair and Special Projects Manager Crystal Howard provided an update on pending legislation that would extend the provisions of the Open Meeting Law allowing for remote technology, as well as updates on existing sports wagering legislation. Commissioner O'Brien asked if the sports wagering legislation addresses overview of slot machines at veterans'

organizations; Ms. Howard said that this is not included as currently drafted. The Commission thanked Ms. Howard for these updates.

b. [Annual Report Progress](#) (27:00)

Ms. Howard updated the Commission on the status of the Commission's Annual Report, noting that it is now moving into the design phase. She noted that she anticipates wrapping up the design edits by the end of February and getting it back to the Commission by early March. The Commission thanked Ms. Howard for her update.

c. [Independent Monitor: Work Plan Update](#) (33:23)

Chair Judd-Stein and Commissioner O'Brien provided an update on the independent monitor's work plan. Commissioner O'Brien explained that the contract with the independent monitor included an overall estimated cost, the first six months cost, and an annual thereafter. She noted that the contract requires the independent monitor to come back to the Commission and alert them if they are going to be greater than 15% over in terms of billing, and that the finance team recently realized that once January and February have been paid it will trigger that requirement. Commissioner O'Brien noted that this would not require any contract amendments but would simply require the independent monitor to report to the Commission as to whether this would change their work plan moving forward.

Chair Judd-Stein noted that the independent monitor is meant to send a notice when they are close to the 15% threshold but that the Commission had not yet received notice. Chair Judd-Stein further noted that they would return to this item before the conclusion of the meeting.

5. [Racing Division](#) (41:25)

a. Suffolk Downs Request for Approval of BetMGM Racing as an Account Wagering Provider

Director of Racing Dr. Alexandra Lightbown introduced Suffolk Downs' request for approval of BetMGM as an account wagering provider and recommended that the request be approved. Bruce Barnett, attorney for Suffolk Downs, offered his comments in support of the request.

Commissioner Cameron moved that the Commission approve Suffolk Downs license use of BetMGM horse racing as an account wagering service provider as discussed today provided, however, that this approval shall be limited solely to provision of horse racing ADW activity and shall not be construed so as to have an effect on any future determinations or approvals that may be required from the Commission. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

6. [Administrative Updates](#) (1:02:06)

Executive Director Wells reported on the departures of Chris Kaczowski from the Gaming Agents team as well as Kate Muxie-Hartigan from the IEB. She also welcomed new additions to the Commission Tom Mills, Chief of Communications Division; John Scully, Finance and Budget Manager; Andrew DiManno, Gaming Agent; and Brittany Costello, IEB Paralegal.

7. [MA Cultural Council Report](#) (1:05:24)

a. Presentation by Director Michael Bobbitt

Chair Judd-Stein introduced Michael Bobbitt, Executive Director of the MA Cultural Council. Director Bobbitt presented an overview on the MA Cultural Council, which receives funding from gaming tax revenues, and presented the Commission with details as to how the funds it has received since January 2020 have been allocated to grantees.

Commissioner O'Brien asked if any grantees were shuttered or closed due to funds from the Council not being continued. Director Bobbitt explained that some organization did not survive the pandemic and closed, and other organizations did not produce and as the Council is a mitigation effort there was therefore nothing to mitigate. Commission O'Brien asked if the Commission could amplify the purpose and existence of the Council and Chief Joe Delaney of the Community Affairs Division agreed that they could collaborate in getting more word out about the Council's programing.

There was further discussion around the work of the Council and the communities that have benefited from its funding. The Commission thanked Director Bobbitt for the Council's excellent work.

8. [Community Affairs Division](#) (1:36:40)

a. Encore Boston Harbor Development Update

Chief of Community Affairs Joe Delaney noted that today's meeting begins the Commission's review of the proposed development across the street from Encore Boston Harbor and explained what the process will look like moving forward in terms of reviewing Encore's application. He then introduced Jacqui Krum, Senior Vice President and General Counsel; Chris Gordon, President of Wynn Development; Tony Starr, Attorney at Mintz Levin; and Katie Hill, Attorney at Mintz Levin to present Encore's application development update. A corresponding PowerPoint is included in the Commissioners' Packet.

Following the presentation, Chief Delaney provided a high-level overview of issues pertinent to the project, including determination as to whether the development is part of the "gaming establishment," the original host community ballot question, the size of the live entertainment venue, the impact on ILEVs, MEPA status, and the proposed pedestrian bridge. A memorandum outlining these issues is included in the Commissioners' Packet.

Commissioner Hill sought clarification on where the point of egress would be for the pedestrian bridge on the Encore side. Ms. Krum noted that the bridge would exit into a non-gaming area on the Encore side at which there would be a check point to either show identification and enter the gaming floor or exit the property. The Encore team noted as well that they are continuing to work out the details of all egress options. There was lengthy discussion regarding this topic and the importance of check points between the new development and the gaming floor as well as the importance of ensuring means of egress from the pedestrian bridge before reaching the gaming floor. There was also further discussion regarding where the “gaming establishment” begins and ends.

Commissioner Hill sought further information on safety and security protocols related to the proposed parking garage, in particular ensuring that minors are not left unattended in vehicles. Ms. Krum confirmed that there will be security in the garage and that Encore will work closely with the Everett Police Department to ensure that the garage is a safe place.

Chair Judd-Stein asked which entity would be the lessor of the property. Mr. Starr confirmed that the lessor would be East Broadway LLC.

The Commission thanked the Encore team for their presentation.

9. [Investigations & Enforcement Bureau](#) (2:52:07)

a. Penn National Disclosure

IEB Director Loretta Lillios provided an update on recent disclosures from Penn National. Specifically, she noted that Penn National alerted the Commission to media articles about the founder of Barstool Sports, Mr. David Portnoy, containing assertions by several women about sexual activity and conduct involving them and Mr. Portnoy. She noted that this is relevant to Penn National as it has an ownership stake in, as well as a marketing arrangement with, Barstool Sports. Director Lillios noted that Barstool Sports is not a qualifier for the Plainridge Park Casino license nor are any of its owners or executives qualifiers. However, Barstool Sports is registered as a non-gaming vendor and the IEB did perform a background check according to its standard protocols for non-gaming vendors. Director Lillios explained that the background check did reveal some derogatory information pertaining to the company’s founder, but nothing that would lead to the denial of the registration under the criteria established for non-gaming vendors by the Commission. Director Lillios stated that the IEB is monitoring and receiving appropriate information and updates from Penn National on this situation.

Commissioner O’Brien acknowledged the distinction regarding the background and qualifier process for non-gaming vendors and recognized that Barstool Sports is not an automatic qualifier under the Commission’s statute. She noted, however, that this is an important issue to continue discussing given that there is a suitability component that encompasses integrity, honesty, and good character, and that Penn National uses Barstool Sports in their quarterly reports and branding.

Chair Judd-Stein sought clarification on when the transaction in which Penn National made its purchase occurred. Director Lillios confirmed that it was January 2020 and that Barstool Sports has been a non-gaming vendor since the spring of 2020.

The Commission thanked Director Lillios for this update and agreed that continuing to monitor this issue is very important.

10. [Finance Division](#) (3:06:25)

a. MGC Mid-Term Finance Review

Chief Financial Officer Derek Lennon presented the FY22 second quarterly budget update, including details related to Gaming Control Fund, the Public Health Trust Fund, litigation costs, and adjustments and savings. A memorandum outlining the specific details is included in the Commissioners' Packet. In addition, Revenue Manager Doug O'Donnell provided an update on the change in assessments on the licensees based on revised gaming positions as of January 1st.

The Commission thanked the finance team for its thorough update.

b. [Encore Boston Harbor Expired Ticket Payment Request](#) (3:17:45)

Revenue Manager O'Donnell presented an expired ticket payment request from Encore Boston Harbor related to unclaimed patron winnings in the amount of \$9,347 from a poker tournament in March 2020. He noted that the patron was from the United Kingdom and left their winnings pending identification, but due to the pandemic's travel restrictions, was unable to return to the property within the required timeframe. Mr. O'Donnell stated that Encore is requesting permission to reduce a future expired gaming fund remittance by \$9,347 to disburse to the patron for his winnings.

Commissioner O'Brien asked if Encore could pay this amount themselves and if they have done so in the past without requiring the Commission's approval. Mr. O'Donnell confirmed that they can pay this amount out of their own funds and do not need Commission approval. John Stanton, Executive Director of Accounting at Encore, stated that Encore has paid out of its own funds in the past but in much smaller denominations. Commissioner O'Brien asked for more clarity on the past amounts and Mr. Stanton estimated \$200 at the most.

Commissioner Cameron stated that she believed the licensee could have done a better job of communicating with the patron and working towards alternative arrangements.

Chair Judd-Stein asked if there were any fiscal implications to this decision. Chief Lennon stated that there are no fiscal implications. There was additional discussion surrounding the specifics of the situation and the time period during which travel restrictions were in place.

General Counsel Grossman questioned whether there was legal authority to approve this request. Chair Judd-Stein agreed that there did not appear to be such legal authority. In addition, Commissioner O'Brien asked if Encore had all of the documentation that it needs in order to proceed, and Mr. Stanton responded that it did not. Commissioner O'Brien noted that this request may be premature. Commissioner Cameron noted again that the licensees did not make meaningful efforts to accommodate this circumstance.

The Commission did not take any action on this item.

11. [Revisiting Item 4\(c\) - Independent Monitor: Work Plan Update](#) (4:19:51)

Chair Judd-Stein noted that the Commission had received from the independent monitor the notice that is required under contract as to when they are approaching a threshold of over \$775,000 plus 15% on billings for the fiscal year. She stated that the monitor is requesting an adjusted estimate of \$1.125 million for the fiscal year. Commissioner O'Brien described the six reasons for the overage presented by the independent monitor. General Counsel Grossman reviewed what is expected under the contract and confirmed that the purpose of this notification is so that the Commission can review the work plan and determine if it should be adjusted.

The Commission did not have any additional questions or concerns.

Executive Director Wells interjected with a brief update on the process regarding live stream equipment for the public meeting room. She noted that the team reviewed several proposals and is moving forward with their top selection.

12. [Community Affairs Division](#) (4:28:00)

a. Encore Boston Harbor Quarterly Report

Chief of Community Affairs Joe Delaney introduced Jacqui Krum, Senior Vice President and General Counsel at Encore Boston Harbor; and Juliana Catanzariti, Executive Director- Legal at Encore Boston Harbor to present Encore Boston Harbor's Quarterly Report. In addition, Ms. Krum introduced Glenda Swain, Vice President of Diversity and Inclusion at Encore Boston Harbor. The report included updates on gaming taxes, revenues, and lottery sales; workforce numbers; diversity operating spend; local operating spend; compliance issues related to minors on the gaming floor; promotions and marketing; and special events and volunteerism. A PowerPoint presentation is included in the Commissioners' Packet.

Commissioner Hill noted that the employment numbers for veterans continue to be low and asked what Encore is doing in terms of outreach. Ms. Krum noted that Encore works closely with veterans groups and reaches out to community partners each time jobs are available, and that it is an area on which they continue to focus.

There was discussion regarding minors on the gaming floor and Chair Judd-Stein noted that perhaps a refresher as to where minors are permitted to travel throughout the property would be beneficial.

The Commission thanked the team from Encore Boston Harbor for their update.

b. [Plainridge Park Casino Quarterly Report](#) (5:12:13)

Chief Delaney introduced North Grounsell, General Manager; Kathy Lucas, VP of Human Resources; and Lisa McKenney, Compliance Manager to present Plainridge Park Casino's quarterly report. The report included updates on gaming revenue and taxes; lottery sales; spend by state and local spend; vendor diversity and diverse spend; compliance issues including minors on the gaming floor; employee diversity; and community. A PowerPoint presentation is included in the Commissioners' Packet.

Commissioner Hill asked what the status is of functions being held at Plainridge Park Casino. Mr. Grounsell noted that hiring in functions has been challenging but is an area in which they are continuing to work.

Chair Judd-Stein asked for clarification on which food and beverage options were currently available; Mr. Grounsell provided details regarding which outlets are open at the property.

Commissioner O'Brien asked what the local spend numbers were in Massachusetts in 2019 and 2020. Mr. Grounsell stated that he would research those numbers and get back to the Commission.

The Commission thanked the team from Plainridge Park Casino for their update.

c. [Executive Session](#) (5:29:41)

Chair Judd-Stein read the following into the record: The Commission anticipates that it will meet in consecutive executive sessions in accordance with G.L. c.30A, §21(a)(7) to comply with G.L. c.23K, §21(a)(7) for the specific purpose of reviewing the proposed multi-year capital expenditure plan described in 205 CMR 139.09, and any corresponding materials, submitted relative to Encore Boston Harbor and Plainridge Park Casino, as discussion of this matter in public would frustrate the purpose of the statute and associated legal authorities. This matter is further governed by 205 CMR 139.02 as the information at issue is covered by a nondisclosure agreement.

Commissioner O'Brien moved that the Commission go into consecutive executive sessions for the reasons and exemptions stated. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated February 10, 2022
2. [Commissioners' Packet](#) from the February 10, 2022, meeting (posted on massgaming.com)