



Massachusetts Gaming Commission

Meeting Minutes

Date/Time: April 28, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 611 8346

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 Bradford Hill
Commissioner Eileen O'Brien
Commissioner Nakisha Skinner

1. [Call to Order](#) (00:04)

Chair Judd-Stein called to order the 378th 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](#) (00:49)

a. December 2, 2021

Commissioner O'Brien moved that the Commission approve the minutes from December 2, 2021, subject to any necessary changes for typographical changes or other non-material matters. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously.

b. January 27, 2022

Commissioner O'Brien moved that the Commission approve the minutes from January 27, 2022, subject to any necessary changes for typographical changes or other non-material matters. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. [Administrative Update](#) (2:10)

a. On-Site Casino Updates

Executive Director Karen Wells introduced Assistant Director of Investigations & Enforcement Bureau and Gaming Agents Division Chief Bruce Band to provide updates on the properties, including updates related to food and beverage amenities as well as Encore Boston Harbor's recent five-star rating from Forbes.

4. [Investigations and Enforcement Bureau](#) (4:10)

a. Status of Poker

Assistant Director Band introduced Sterl Carpenter, Compliance Manager; Andrew Steffen, Senior Gaming Agent at MGM; and Luis Lozano, Senior Gaming Agent at Encore Boston Harbor, to provide the status of poker in the Commonwealth. They provided information regarding pre- and post-pandemic numbers, patron comments and complaints received since the poker rooms closed in 2020, the way in which a poker room makes money, and how nearby northeast gaming jurisdictions are currently managing their poker rooms. A PowerPoint of the presentation is included in the Commissioners' Packet. In addition, Assistant Director Band received notice during the presentation that Encore Boston Harbor would be moving from 13 poker tables to 16 in the near future.

Commissioner Hill expressed his disappointment in the decline in available poker tables post-pandemic and questioned what the Commission could do to see that number rise. General Counsel Grossman stated that the Commission looked at this issue and noted that this issue is tied to representations made in the licensees' RFA-2 application, in which they did make certain representations relative to poker. He stated that it as an issue that staff could revisit. Chair Judd-Stein asked if General Counsel Grossman could provide the specific language from the RFA-2 process at a future date.

Commissioner O'Brien asked if the New Hampshire poker rooms are providing complimentary beverages; Assistant Director Band stated that they are not. Commissioner O'Brien also expressed her disappointment with the drop in poker tables and noted in particular the marked drop from the representations made in Encore Boston Harbor's application. She also expressed concerns with the fact that the Encore poker rooms close at 8pm and asked if Encore had provided any explanation for that decision. Assistant Director Band stated that Encore would need to address that question. Chair Judd-Stein suggested that the Commission ask these questions during the licensees' quarterly report presentations.

Chair Judd-Stein asked about the drop in employee numbers, specifically how many positions have been lost due to the reduction in poker tables. Compliance Manager Carpenter noted that Encore is struggling with staffing; Assistant Director Band noted that MGM is, as well.

The Commission thanked the IEB team for this update.

b. [Review of Casino Non-Compliance Penalties](#) (30:57)

IEB Director Loretta Lillios and Chief Enforcement Counsel Heather Hall presented a review of the IEB's casino non-compliance penalties. Director Lillios provided background on civil administrative penalties issued since 2016, noting that historically fines have only been issued after a written notice of non-compliance is provided to the licensee and they are given an opportunity to rectify the non-compliance. Director Lillios stated that the IEB has developed a process for evaluating non-compliance matters and issuing enforcement measures, including fines, a memorandum of which is included in the Commissioners' Packet along with a draft policy. Director Lillios and Chief Enforcement Counsel Hall walked through the details of this process and sought feedback and guidance from the Commission.

Chair Judd-Stein asked if there should be guidelines with respect to fine amounts and also noted that the IEB team plans to work on the timeline from when an issue is identified to when a fine is issued.

Commissioner O'Brien weighed the pros and cons of having written guidelines for this process. She asked for clarification on the maximum fine that has been issued versus the minimum fine that has been issued, and Director Lillios explained the details of each situation. Commissioner O'Brien questioned if there is a mechanism by which the Commission and/or an individual Commissioner could communicate any concerns relative to a specific situation to each other and to the IEB.

Commissioner Skinner asked if first instance fines might serve as a minimum amount for additional fines. Director Lillios stated that this process is very fact-specific and provided further details on specific fines that have been issued in the past. Commissioner Skinner suggested that the IEB address additional violations issued after an initial fine in the guidelines.

Chair Judd-Stein suggested that the Commission reflect upon the policy as included in the Commissioners' Packet and bring it back at a future meeting for a formal vote. She also asked the Commission to consider whether it wants these types of penalties to be posted publicly.

5. [Community Affairs Division](#) (1:19:12)

a. Community Mitigation Fund Transportation Applications

Community Affairs Division Chief Joe Delaney presented the following transportation planning grants from the Community Mitigation Fund along with the Community Mitigation Fund Team's recommendations with respect to each, the details of which are include in the Commissioners' Packet: the City of Boston, seeking \$200,000 for Rutherford Avenue design; the City of Chelsea, seeking \$167,600 for a study of multimodal improvements to Spruce Street; the City of Everett and City of Boston joint application seeking \$450,000 to complete the formation of the Lower Mystic Transportation Management Association; the City of Malden, seeking \$115,000 for a citywide traffic signal inventory; the City of Malden, seeking \$50,000 for a transit-oriented development opportunities study in the area around the Malden Center MBTA station; and the City of Medford, seeking \$70,000 for a study for a rail trail in the Wellington area.

Regarding the City of Malden's \$115,000 application, Commissioner O'Brien asked the team to provide more guidance to the grantee on the expected scope of work.

Regarding the City of Malden's \$50,000 application, Chief Delaney noted that this type of development might be better suited for a community planning application. Chair Judd-Stein noted that she would be interested in hearing from the City of Malden on this next year with respect to community planning.

With respect to the City of Medford's application, Chief Delaney suggested that the Commission authorize the \$70,000 grant but that the distribution of the award be administratively broken into an initial grant of \$25,000 for legal research and a second grant for the balance, should the research be fruitful.

Commissioner Skinner exited the meeting at 1:25:40.

Commissioner O'Brien moved that the Commission approve the following applications for funding from the Community Mitigation Fund in the amounts specified for the purposes described in the submitted applications and materials that were included in the Commissioners' Packet today and for the reasons described during our discussion here today, and specifically (1) the City of Boston for \$200,000; (2) the City of Chelsea for \$167,600; (3) the Cities of Everett and Boston for \$450,000; and (4) the City of Malden for \$57,500 subject to the further clarification that the monies be focused on the north/south routes in their application, and further that Commission staff be authorized to execute the grant instruments commemorating these awards in accordance with 205 CMR 153.04. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien moved that the Commission defer adjudication of the request from the City of Medford for the rail trail for the reasons discussed here today. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien moved that the Commission deny the application for funding from the Community Mitigation Fund in connection with a transit-oriented development opportunity study presented by the City of Malden as there does not appear to be a clear nexus between the use of the funds requested and the impacts created by the operation of the gaming establishment. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

6. [Finance Division](#) (2:03:32)

a. Quarterly Budget Update

Chair Judd-Stein introduced Chief Financial Officer Derek Lennon. CFAO Lennon introduced other members of the finance team, Agnes Beaulieu, Douglas O'Donnell, Noelle Low, and John Scully. The Finance Team presented the third quarterly budget update for the fiscal year '22 gaming control fund budget. The Commission approved a fiscal year '22 gaming control fund budget of \$33.02 million. This comprised of \$27.12 million in regulatory cost and \$5.9 million in statutory required costs. The fund required an initial assessment of \$29.3 million on licensees. After balancing fiscal year '21 revenues the assessment was reduced to \$27.26 million, and the Commission approved an additional \$5 million assessment.

In the first two quarterly updates, the finance team increased spending projections in the fund by \$54,600 and increased revenue projections by \$338,300. The combination of spending increases and revenue increased resulted in a projected surplus of \$283,600.

The Finance Team also increased revenue projections by \$505,000 to offset the independent monitor expenses. Combination of budget increases of \$170,600 and revenue increases of \$463,000 resulted in the gaming control fund having revised spending projections of \$33.25 million relying on revised revenue projections of \$33.82 million. This represented a projected surplus of \$576,000. The finance team did not recommend change in the assessment, as any unspent amount will be credited to the licensee's next year funds.

Chair Judd-Stein commented that the presentation skipped over a ten-percent increase of spending in indirect costs. While a small percentage, it totaled \$2.26 million of the budget. CFAO Lennon noted

that while there were decreases in some spending categories, they were outpaced by consultant expenditures. The Commission had no further questions, however Chair Judd-Stein wished to circle back regarding the indirect expenses at a later point.

7. [Legal Division](#) (2:13:40)

- a. 205 CMR 133: Voluntary Self-Exclusion – and Small Business Impact Statement, for approval to begin the promulgation process

Deputy General Counsel Carrie Torrisi presented draft amendments to 205 CMR 133 related to Voluntary Self-Exclusion. She noted that Director of Research and Responsible Gaming Mark Vander Linden and his team, in conjunction with the Commission’s IT Department, developed an electronic application that can be used to submit voluntary self-exclusion applications and maintain the self-exclusion list rather than requiring it be done on paper. The proposed changes update the regulation to allow for the use of that app and include language identifying the process for electronic submission and maintenance of the voluntary self-exclusion list.

Commissioner O’Brien asked why the word “harm” was used to replace “problem.” Director Vander Linden clarified that it was a more commonly used term, and it was used to modernize the regulation. Deputy General Counsel Torrisi noted that should the vote pass, the proposed draft will then enter the promulgation process for public comment. Chair Judd-Stein requested the Commission publish the cover sheet in addition to the proposed regulation for public comment, so that a description of the reasoning behind the changes would be included.

Commissioner Hill moved that the Commission approve the small business impact statement and version of 205 CMR 133 as included in the Commissioner’s Packet and authorized staff to take all steps necessary to begin the promulgation process. The motion was seconded by Commissioner O’Brien.

Roll call vote:

Commissioner O’Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

- b. [205 CMR 138.26: Keys for Dual Locks; Gaming Licensee-Controlled Keys and Locks; Notice to the IEB and Surveillance Department upon Malfunction and Repair, Maintenance or Replacement – and Amended Small Business Impact Statement, for approval to finalize the promulgation process](#) (2:18:42)

Deputy General Counsel Torrisi presented draft amendments to 205 CMR 138.26. She stated that Associate General Counsel Judith Young brought the draft of 205 CMR 138.26 to the Commission on March 3rd along with Assistant Director of Investigation and Enforcement Bureau Bruce Band, Senior Supervising Gaming Agent Burke Cain, and Regulatory Compliance Manager Sterl Carpenter. She noted that the Commission voted at the time to begin the promulgation process, and a public hearing was held regarding this regulation on April 28, 2022, presided over by Commissioner Hill. She further noted that there was no public comment

received at the hearing. Deputy General Counsel Torrissi sought to finalize the promulgation process on this regulation.

Commissioner Hill moved that the Commission approve the amended small business impact statement in version of 205 CMR 138.26 as included in the Commissioner's Packet and authorize staff to take all steps necessary to finalize the promulgation process. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: *Aye.*

Commissioner Hill: *Aye.*

Chair Judd-Stein: *Aye.*

The motion passed unanimously.

c. [205 CMR 147.00: Uniform Standards of Rules of the Games – and Amended Small Business Impact Statement, for approval to finalize the promulgation process](#) (2:21:19)

Deputy General Counsel Torrissi presented a draft of 205 CMR 147 related to uniform standards of rules of the game. She noted that the draft was brought before the Commission on March 3rd at which point the Commission voted to begin the promulgation process. A public hearing was held regarding this regulation on April 28, 2022, presided over by Commissioner Hill. Commissioner Hill noted that no public comment was received at the hearing. Deputy General Counsel Torrissi sought to finalize the promulgation process on this regulation.

Commissioner Hill moved that the Commission approve the amended small business impact statement in version of 205 CMR 147 as included in the Commissioner's Packet and authorize staff to take all steps necessary to finalize the promulgation process. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: *Aye.*

Commissioner Hill: *Aye.*

Chair Judd-Stein: *Aye.*

The motion passed unanimously.

8. [Independent Monitor's Report](#) (3:05:24)

Chair Judd-Stein introduced Alejandra Montenegro Almonte, Vice Chair of the International Department at Miller & Chevalier, to present the Independent Monitor's Phase Three Report. Ms. Almonte introduced her team from Miller & Chevalier: Counsel Ann Sultan, Counsel Katherine Pappas, Senior Associate Nicole Gökçebay, Alex Beaulieu, and Counsel Preston Pugh from Crowell & Moring.

Ms. Almonte noted that the goal of phase three was to continue to value the company's implementation of the recommendations made in the prior annual reports.

Ms. Almonte presented the overview of business, focusing on continued change in senior management, and noted that there had been significant turnover in positions relative to human resources. The Independent Monitor Team spoke with the new CEO, Craig Billings, and reported the same level of commitment they had seen with the previous CEO. Ms. Almonte noted that the company had active recruitment efforts in this time.

The Independent Monitor Team presented their phase three report, including topics on compliance and conduct, training and guidance, controls compliance, policies and procedures, third party relationships, internal reporting and investigation, incentives and discipline, risk-based review, monitoring and testing, and authority, oversight, and independence. The Independent Monitor Team's presentation including further details is included in the Commissioners' Packet.

Commissioner O'Brien raised the issue that the driving decision leading to monitorship was how management handled allegations of misconduct, and that it is a concern that management has not undergone specific trainings. Ms. Almonte noted that while they did not receive specific management and supervisor training, all managers had received general training regarding misconduct. Commissioner O'Brien asked whether harassment or misconduct was more likely given an employee's area of employment. Ms. Almonte explained that staff members in client-facing positions, such as cocktail waitresses and housekeeping staff, were more likely to come across potentially problematic interactions with third parties. The issue the Monitor Team hoped to address is the disconnect between management communications with employees and the employee's perception of management response. Commissioner O'Brien noted that she found it disturbing that the issue of management not adequately addressing allegations of misconduct still existed. Commissioner Hill and Chair Judd-Stein echoed Commissioner O'Brien's concerns. Chair Judd-Stein stated that the skill of being a managing supervisor should be more enhanced than other non-managerial roles.

Chair Judd-Stein asked about the differences between implementing Human Resource Compliance Program (HRCP) policies in Boston and Las Vegas, and sought clarification regarding the channels of communication available to employees for the purpose of reporting misconduct. Ms. Almonte stated that Boston has more room for improvement than Las Vegas. Ms. Almonte further explained that there had been both greater use of the employee support line and increased familiarity with the line due to the available QR code link located in company workplaces.

Commissioner Hill asked to circle back at a future date to learn more about the details of the Speakup campaign and how its implemented. He noted that only three of the eight recommendations for training and guidance being satisfied was a red flag.

Chair Judd-Stein asked who oversees the program regarding performance management and the regulation of HRCP compliant behavior. Counsel Pappas stated that the program had not been rolled out yet, but it will likely be the Senior Vice President of HR and the role will oversee both the Las Vegas and Boston locations. However, the specifics to how the program will be executed are not yet known.

Chair Judd-Stein inquired if there is a standard approach for increased vetting during the hiring process. Ms. Almonte stated that there are not enough data points, but the company followed an investigation policy and that there were no current concerns about individuals who have been hired or engaged. Current concerns are regarding the process, and there will be further focus on sustainability and long-term impact. Chair Judd-Stein remarked that culture change cannot occur overnight.

9. [Research and Responsible Gaming](#) (4:51:44)

a. FY23 Research Agenda Proposal

Due to time constraints Director Vander Linden agreed to present his fiscal year 2023 research agenda proposal at the public meeting on May 12th, 2022.

b. Play My Way at MGM Update

Director Vander Linden introduced Long Banh, Program Manager, to present the Play My Way at MGM Update. Mr. Banh introduced Amy Gabrila, Senior GameSense Advisor at the Massachusetts Counsel on Gaming and Health (MACGH), and Daniel Miller, Compliance Director, MGM. The official launch of Play My Way (“PMW”) was on March 31st.

The Research and Responsible Gaming Team presented their update on PMW, including topics on staff training and advertisement design implementation. The Research and Responsible Gaming Team's presentation including further details is included in the Commissioners' Packet.

Compliance Director Miller provided details on the launch, including the current number of enrollees. Chair Judd-Stein asked if MGM was pleased with PMW as another tool. Compliance Director Miller responded that MGM is happy with the continuous growth in number of enrollees, and that few are unenrolling.

Director Vander Linden noted that they are having monthly meetings with Encore Boston Harbor to implement PMW at their casino.

10. [Racing Division](#) (5:16:45)

a. Plainridge Park Casino Request for Capital Improvement Fund Consideration

Director of Racing Dr. Alexandra Lightbown introduced Chad Bourque, Senior Financial Analyst, to present Plainridge Park Casino’s capital improvement request. Mr. Bourque explained that each month funds are deposited into a capital improvement trust fund and that licensees use these funds for repair, maintenance, or improvements to the property where racing activities are conducted. He noted that distributions from the fund are made upon Commission approval of both a request for consideration and subsequent request for reimbursement.

Mr. Bourque presented the initial request for consideration submitted by Plainridge in the amount of \$46,600, plus tax and shipping. Mr. Bourque reviewed the documents, and all statutory requirements were met. Mr. Bourque recommended the document be approved.

Commissioner O'Brien moved that the Commission approve the expenditure of \$46,600 from the Harness Force Capital Improvement Trust Fund for the purpose of the purchase of the track conditioner and track harrow by Plainville Gaming and Redevelopment as described by the materials in the Commissioner's Packet.

Chair Judd-Stein raised the issue of whether "plus tax and shipping" would be considered part of the capital investment and asked whether Commissioner O'Brien had mentioned tax and shipping in her motion. Commissioner O'Brien remarked that tax and shipping had been erroneously omitted from her motion. PPC Director of Racing Steve O'Toole noted that shipping and tax have been included as part of the capital investment in the past. General Counsel Todd Grossman stated that the licensee will have to submit financial statements at the end of year stating they treated this as a capital expenditure in their books. Mr. Bourque stated he will talk with General Counsel Grossman regarding the inclusion of that language in the request for reimbursement to account for any differences in amounts between the request for consideration and request for reimbursement due to the unknown shipping costs.

Commissioner O'Brien amended her prior motion and moved that the Commission approve the expenditure of \$46,600 plus 6.25% sales tax and the yet to be determined shipping from the Harness Force Capital Improvement Trust Fund for the purpose of the purchase of the track conditioner and track harrow by Plainville Gaming and Redevelopment as described by the materials in the Commissioner's Packet". The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

b. [Suffolk Downs Request for Approval of Account Wagering Provider Xpressbet](#)
(5:24:09)

Dr. Lightbown presented the request from Suffolk Downs to approve Xpressbet as an account wagering provider. The Commission had no questions or comments on this item.

Commissioner Hill moved that the Commission approve the Suffolk Downs licensee use of Xpressbet, LLC as an account wagering service provider. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

c. [Plainridge Park Casino Operations Plan Review for Kentucky Derby Day, May 7](#)
(5:25:58)

Dr. Lightbown explained that Plainridge requested to use handheld wagering devices again on Kentucky Derby Day. Dr. Lightbown noted that the Commission approved the use of handheld wagering devices during the August 27th, 2020, meeting. While COVID restrictions had been lifted, the policy was successful and Plainridge asked to approve handheld wagering devices again this year. Executive Director Karen Wells noted that the machines are now hard-wired and not mobile devices, and Chair Judd-Stein asked for clarification to where the bets are made. Mr. O'Toole explained that for convenience bets can be placed at the cashier. Further, signage and detail officers are placed to direct people to the station where they can place their wagers. The outside station used the same hard-wired kiosk features as inside. The Commission determined an executive session will discuss the issue further.

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

Chair Judd-Stein read the following into the record: The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(4) to discuss the deployment of security personnel or devices, or strategies with respect thereto, pertaining to accepting horse racing wagers outdoors at Plainridge Park Casino on May 7, 2022.

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

Roll call vote:

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 April 28, 2022
2. [Commissioners' Packet](#) from the April 28, 2022, meeting (posted on massgaming.com)