

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 114.00: FEES

Section

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114.01: Application Fees

Pursuant to M.G.L. c. 23K, § 15(11), each applicant for a gaming license shall pay to the commission a nonrefundable application fee of \$400,000 to defray the costs associated with the processing of the application and investigation of the applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within 30 days after notification of insufficient fees or the application shall be rejected.

114.02: Payment of Application Fees

For a gaming license, the applicant shall pay the initial non-refundable application fee of \$400,000 by certified check or secure electronic funds transfer made payable to the "Massachusetts Gaming Commission." The applicant shall submit this initial non-refundable application fee with its initial application and response to the RFA-1 process set forth in 205 CMR 110:00: *Issuance of Request for Category 1 and Category 2 License Applications*; provided, however, that an applicant for a gaming license may submit the initial non-refundable application fee before the submission of the initial application and response to the RFA-1 process provided that such early submission shall be accompanied by a certification in a form required by the commission confirming the applicant's intention to apply for a gaming license pursuant to M.G.L. c. 23K and the applicant's acknowledgement that the fee is non-refundable.

114.03: Community Disbursements

(1) Pursuant to M.G.L. c. 23K, § 15(11), not less than \$50,000 of the initial application fee for a gaming license shall be used to reimburse the host and surrounding municipalities in accordance with 205 CMR 114.03 for the cost of determining the impact of a proposed gaming establishment and for negotiating community impact mitigation agreements.

(2) (a) Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality or by an applicant and a regional planning agency, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality or regional planning agency from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial \$50,000 amount, the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.

(b) 1. In addition to the process provided in 205 CMR 114.03(2)(a), 21 days after the execution of the host community agreement, or, in the case of a prospective surrounding community to a Category 1 gaming establishment, at any time within 90 days prior to the deadline for submission by an applicant of an RFA-2 application for a Category 1 gaming license, or, in the case of a prospective surrounding community to a Category 2 gaming establishment, at any time within 60 days prior to the deadline for submission by an applicant of an RFA-2 application for a Category 2 license, any community that believes it may be a surrounding community to the gaming establishment that is the subject of the host community agreement may apply to the Commission for community disbursements without a letter of authorization signed by the applicant. To do so, the community must submit an application on a form provided by the Commission and shall identify all legal,

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financial and other professional services deemed necessary by the community for the cost of determining the impact of the proposed gaming establishment and for the negotiation and execution of a host or surrounding community agreement and the attendant costs. Further, the application shall include a statement from the community attesting that a request for the subject funds was made directly to the applicant and denied, and that a copy of the application was served upon the applicant prior to being filed with the Commission. An applicant may file a response to the request for funds no later than seven days after service of the application by the community. The Commission may take action on the application either upon administrative review of the filings or it may convene a hearing on the application at which it may allow presentations from the community and applicant.

2. The Commission may approve the application upon a finding that there is a reasonable likelihood that the community will be designated a surrounding community pursuant to 205 CMR 125.01, that the request is reasonable in scope and that the risk that the community will not be able to properly determine the impacts of a proposed gaming establishment without the requested funds outweighs the burden of the actual financial cost that will be borne by the applicant.

3. If the application is approved, the community shall be designated a surrounding community for the limited purpose of receiving funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a surrounding community agreement. Such determination, however, shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 125.01.

4. The Commission shall make the approved community disbursements from available amounts paid by the applicant to the Commission for community disbursements. If the total amount of payments authorized by the Commission exceeds the initial \$50,000 amount, the applicant shall immediately pay to the Commission all such additional authorized amounts for community disbursements. If the applicant fails to pay any such additional amount to the Commission within 30 days after notification from the Commission of insufficient funds, the application shall be rejected.

(3) If 30 days have elapsed after the final issuance, denial or withdrawal of an application for a gaming license and there remains a balance of funds previously paid by the applicant for community disbursements and not previously encumbered or disbursed pursuant to 205 CMR 114.03(2), the funds shall be distributed as follows:

- (a) If the funds represent a remaining balance of the initial \$50,000 portion of the \$400,000 application fee filed in accordance with M.G.L. c. 23K, § 15(11), the funds shall be deposited in the Community Mitigation Fund established in accordance with M.G.L. c. 23K, § 61; or
- (b) If the funds represent monies paid to the Commission by the applicant in accordance with 205 CMR 114.03(2)(a) or (b)4., the monies shall be refunded to the applicant.

(4) The provisions of 205 CMR 114.03 do not prohibit community contributions permitted and reported in accordance with M.G.L. c. 23K, § 47, and 205 CMR 108.02: *Mandatory Disclosure of Political Contributions and Community Contributions*.

114.04: Additional Fees for Investigations

(1) Pursuant to 205 CMR 114.00, the applicant shall be responsible for paying to the Commission all costs incurred by the commission, directly or indirectly, for conducting any investigation into an applicant. As required by the procedure established pursuant to 205 CMR 114.04(5), the applicant shall pay to or reimburse the commission for all such investigation costs that exceed the initial application fee.

(2) For purposes of 205 CMR 114.00, the costs for conducting any investigation into an applicant shall include, without limitation:

- (a) All costs for conducting an investigation into an applicant and its qualifiers, the applicant's affiliates and close associates, and any other person subject to the jurisdiction of the commission under M.G.L. c. 23K relating to the application in question; and

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(b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the commission, including without limitation all such amounts incurred by the commission to and through the bureau, the division, the gaming enforcement unit, the gaming liquor enforcement unit, and any contractor investigator.

(3) The commission in its discretion shall establish, and, post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the commission to applicants for in-house personnel, services and work of the commission, the bureau, the division, the gaming enforcement unit, and the gaming liquor enforcement unit for conducting investigations into an applicant pursuant to 205 CMR 114.00.

(4) The commission shall assess to the applicant all other costs paid by or for the commission, directly or indirectly, to any other person for conducting an investigation into an applicant plus an appropriate percent for overhead, processing and administrative expenses.

(5) The commission in its discretion shall establish, and post on its website, a procedure by which it will calculate, assess, invoice, collect, require payment for, account for and reconcile payments by applicants to the commission for the costs for conducting any investigation pursuant to 205 CMR 114.00. In the case of a gaming license applicant, this procedure may include, without limitation, the requirement for the applicant to fund in advance a force account held by the commission and to maintain therein and replenish a minimum required balance of at least \$100,000 against which the commission may charge, with interest at 1% per month and late payment penalties, any costs for conducting the investigation not timely paid by the applicant in response to an invoice from the commission.

114.05: Non-refundable Application Fees

(1) All required application fees and community disbursements pursuant to 205 CMR 114.00 shall be non-refundable, due and payable notwithstanding the withdrawal or abandonment of any application.

(2) In connection with an application for a gaming license, the applicant, its affiliates, and each party to any agreement to purchase or lease the land for a gaming establishment, to own the gaming establishment, or to manage the gaming establishment shall be jointly and severally liable for any amounts chargeable to the applicant pursuant to 205 CMR 114.00.

REGULATORY AUTHORITY

205 CMR 114.00: M.G.L. c. 23K, §§ 4(26), (37), 5, 10(d), 15(11), 19(b), 20(f), 21(b), 22, 26, 30, 31, and 47.

NON-TEXT PAGE