

Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Surrounding Communities

Dear Commission Members:

On behalf of the Town of Hopkinton, I am submitting the following preliminary comments on the Commission's draft regulations defining "surrounding communities," to be included in regulations to be issued by the Commission later this year:

- (1) Section 109.01(1)a of the draft regulations provides that a city or town will qualify as a surrounding community if it is so identified in an RFA-2 application. This section should be eliminated because it creates a perverse incentive: to limit the number of cities and towns that are discussed in the RFA-2 application. The Commission should not adopt any regulation that discourages applicants from discussing the full range of impacts of their proposals.
- (2) Section 109.01(1)c sets forth the procedure by which cities and towns may request to be designated as surrounding communities. This procedure allows cities and towns only 21 days, from the time that the Commission posts a notice on its website that it has received an RFA-2 application, to submit a request for designation as a surrounding community.

During those 21 days, the city or town must learn of the application; review its contents;¹ consider the applicant's detailed plan of construction; arrange for professional review and evaluation of the application and plans; and assess its proximity to the gaming establishment,² the impact of proposed gaming establishment on its transportation infrastructure,³ the construction impacts of

¹ The minimum contents of an RFA-2 application are specified in *M.G.L. c.23K, §9*.

² According to section 109.01(2)(a), this assessment will need to consider "any shared border between the community and the host community; and the geographic and commuting distance between the community and the host community, between the community and the gaming establishment, and between residential areas in the community and the gaming establishment."

³ According to section 109.01(2)(b), this assessment will need to consider "ready access between the community and the gaming establishment; projected changes in level of service at identified intersections; increased volume of trips on local streets; anticipated degradation of infrastructure from additional trips to and from a gaming establishment; adverse impacts on transit ridership and station parking impacts; significant project vehicle trip generation weekdays and weekend for a twenty-four hour period; and peak vehicle trips generated on state and federal roadways within the community."

the gaming establishment,⁴ the impacts from the operation of the gaming establishment,⁵ and any other impacts it may wish to present to the Commission for consideration.

The 21-day timeframe for completing this work is obviously unrealistic. A more reasonable timeframe for completing the required steps would be 90 days.⁶ In addition, the Commission should reserve the right to extend its submission deadline, upon application, to any city or town that demonstrates a need for additional time to prepare its submission.

- (3) Sections 109.01(2)(b) through (e) make eligibility for designation as a surrounding community dependent, in large part, on a demonstration by the city or town that the impacts of the proposed gaming establishment will be both significant and adverse. This is not appropriate. A principal purpose of surrounding community designation is to focus the Commission's inquiry into gaming establishments' impacts on cities and towns other than the host community. Forcing a city or town to identify and demonstrate the nature, magnitude and significance of these impacts as a threshold for designation creates too great a burden and may render redundant the Commission's inquiry into essentially the same matters.
- (4) As written, section 109.01(2)(d) does not come close to capturing the full range of impacts that a gaming establishment will have on surrounding communities. For example, Hopkinton has a comprehensive master plan in place that it has successfully used as a guiding document for many years. Focused economic and business development is a key component of this master plan and has enabled the Town to become a biotech hub in MetroWest Massachusetts. Hopkinton's strong economic planning has enabled the Town to achieve low unemployment, strong schools and services, a balanced budget and a high credit rating. All of

⁴ According to section 109.01(2)(c), this assessment will need to consider "noise and environmental impacts generated during [the gaming establishment's] construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction."

⁵ According to section 109.01(2)(d), this assessment will need to consider "potential safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to the gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; and demonstrated impact on public education in the community."

⁶ By way of comparison, the Housing Appeals Committee regulations governing the issuance of comprehensive permits, allows 180 days for a Board of Appeals review of an affordable housing project (780 CMR 56.05(3)); the *Expedited Permitting* statute allows 180 days for priority development permit reviews (*M.G.L. c.43D, §5*); and the Federal Communications Commission allows 150 days for local reviews of new wireless telecommunications facilities (*Declaratory Ruling*, WT Docket No. 08-165 (2009)).

these are potentially put at risk by the presence of a gaming establishment nearby. Thus, at a minimum, this section should explicitly require consideration of impacts on community and economic development planning efforts and on the nature and characteristics of the local business environment.

- (5) Section 109.01(2) is particularly troublesome because it defines a community's impacts as "significant and adverse" only if they are "different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment." This definition suggests that, in the absence of an entirely unique impact from the gaming establishment, only the city or town with the greatest impact will be eligible for designation as a surrounding community. Clearly, however, more than one city or town may share significant impacts from a gaming establishment. The regulations should not force these communities into a competition for designation as a surrounding community.
- (6) According to section 109.01(2), the Commission's determination that a city or town does or does not qualify as a surrounding community "shall be final and shall not be subject to further review." Hopkinton finds no authority in the statute for the Commission to shield itself from judicial review of its decision making. The provision that purports to do so should therefore be deleted.
- (7) Rather than being forced to overcome a difficult threshold in order to qualify for designation as a surrounding community, cities and towns that are in close proximity to a proposed gaming establishment should be assured that they will be so designated, and eligible to exercise the rights associated with such status. Therefore, the regulations should be amended so that all cities and towns located in whole or in part within five miles of the gaming establishment are automatically designated as surrounding communities.

Thank you for your attention to these comments. If you have any questions or concerns about the matters discussed, please feel free to contact me.

Respectfully submitted,

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Town of Hopkinton