

**MASS CULTURAL COUNCIL  
EXECUTIVE COMMITTEE**

TUESDAY, JANUARY 7, 2020: 10:00 – 11:30 AM

**MASS CULTURAL COUNCIL OFFICE  
10 SAINT JAMES AVE-3D FLOOR, BOSTON MA**

**AGENDA**

	<u>VOTE</u>
1. Chair and Executive Director's Report	
2. Minutes- August 13, 2019 Meeting	<b>X</b>
3. Retreat Follow-up/ Engagement Task Force	
4. Legislative Report	
a. Advocacy Committee Update	
b. FY21 Budget Request	
c. Supplemental Budget	
5. Use of Chapter 23K (Gaming) Funds	<b>X</b>
a. Description of Gaming Mitigation Program	
6. Open Meeting Law Update	
7. Update on Revisions to Financial Policies (Ethics/Comptroller Comments )	
8. Draft Agenda January 28, 2020 Council Meeting	<b>X</b>



*Power of culture*

## MASS CULTURAL COUNCIL EXECUTIVE COMMITTEE

TUESDAY, JANUARY 7, 2020: 10:00 – 11:30 AM

**MASS CULTURAL COUNCIL OFFICE**  
10 SAINT JAMES AVE-3D FLOOR, BOSTON MA

### RESOLUTIONS

#### Section 2

RESOLVED: that the Executive Committee approves the minutes of the August 13, 2019 Executive Committee Meeting in the form presented to the Executive Committee at its January 7, 2020 Meeting.

#### Section 5

WHEREAS, pursuant to Chapter 23K of the Massachusetts General Laws, as most recently amended by sections 3 and 4 of Chapter 142 of the Acts of 2019, provides that Mass Cultural Council will receive 2% of the Commonwealth's gross gaming tax revenue from casinos into the Massachusetts Cultural and Performing Arts Mitigation Trust Fund (the "Fund") to be managed by Mass Cultural Council;

WHEREAS, staff of Mass Cultural Council have presented a plan (the "Plan") for usage of Fund revenues by memoranda to the Committee on January 7, 2020 pursuant to which Mass Cultural Council will upon receipt of access to said Fund, dedicate 7% of the assets therein as of such date to the administrative and operational expenses of managing the Fund (and programs associated with it), and dedicate the remainder as follows- 75% to grants under the Gaming Mitigation Program and 25% to payments under the Culture Rx "social prescription" program in each case pursuant to guidelines reviewed by the Mass Cultural Council Grants Committee and approved by the full Council, with the understanding that any additional revenues received by the Fund thereafter shall (including interest earned thereon) will accumulate until the following

December 31, at which point, the Fund shall be allocated in the same manner.

NOW THEREFORE, it is hereby

RESOLVED: that the Executive Committee recommends that the Council approve the Plan presented to the Executive Committee at its January 7, 2020 Meeting.

### **Section 8**

RESOLVED: that the Executive Committee approve the draft January 28, 2020 Mass Cultural Council Agenda presented to the Executive Committee at its January 7, 2020 Meeting.



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**UNOFFICIAL DRAFT SUBJECT TO APPROVAL BY THE COMMITTEE AT ITS NEXT MEETING**

**MINUTES OF THE MEETING  
OF  
MASS CULTURAL COUNCIL  
EXECUTIVE COMMITTEE**

**TUESDAY, AUGUST 13, 2019**

**MASS CULTURAL COUNCIL OFFICE  
10 ST JAMES AVENUE-3D FLOOR  
BOSTON, MASSACHUSETTS**

Chair Nina Fialkow called the meeting to order at 10 AM

**Committee Members Present**

Nina Fialkow, Chair of Executive Committee and Mass Cultural Council  
Victoria Marsh, Chair of Grants Committee  
Troy Siebels, Co-chair of Advocacy Committee  
Jo-Ann Davis, Member At Large

**Other Council Members Present**

Karen Barry

**Staff members present** were

Anita Walker, Executive Director  
David Slatery, Deputy Director  
Greg Liakos, External Relations Director  
Jen Lawless, Operations Director

Nina Fialkow opened the meeting by reading the following

I, Nina Fialkow as chair of Mass Cultural Council's Executive Committee, hereby call this meeting to order.

Prepared on 9/11/19

Please note that this meeting is an open meeting of a public body subject to the Massachusetts Open Meeting Law. A notice of this meeting together with the agenda was posted on Mass Cultural Council's website 48 or more hours ago (excluding weekends and holidays).

This meeting shall be open and accessible to all members of the public except at such times when this body has voted to go into closed executive session under the Open Meeting Law.

Please note that this body has invited Mass Cultural Council's Executive Director and senior staff to participate in today's meeting

Mass Cultural Council welcomes members of the public to attend its meetings. Under the Open Meeting Law, however, this is not a public hearing and public testimony will not be taken. Individuals may not address the meeting without permission of the chair.

Draft minutes of the open session of this meeting shall be kept and shall be posted on Mass Cultural Council's website no later than 30 days after the meeting provided that such minutes shall not be considered official until they have been approved by this body in open session. Individuals asserting a violation of the Open Meeting Law may file a complaint with this body within 30 days or with the Attorney General's office thereafter.

Nina then asked Executive Director Anita Walker for her report. Anita reported that we had been selected for an audit by the National Endowment for the Arts (NEA) and that a federal auditor had been onsite in the past week. Anita reminded the Committee that we receive around \$900,000 in annual funding from the NEA. She further related how in the past few years, the NEA had been begun auditing its state partnership programs (in addition to individual project grants) and the state arts agencies and regional arts organizations receiving larger amounts had been audited. Anita asked Dave to report on his meeting with auditor. Dave reported that he and the fiscal staff had met with the auditor at an exit meeting on the previous Friday. Dave reported that while the auditor had found certain reportable items, the findings were somewhat "light" and the auditor further noted the high degree of professionalism and

dedication of the staff to their work and reported that the grantees she spoke with also held the agency in high regard.

Anita next floated a suggestion as to moving Council meetings next year from Tuesdays to Thursdays (which they had been previously until moved to accommodate a now-departed member's schedule) and changing the start time from Noon to 1:00 pm. The Committee Members were in general agreement with changing the start time but thought changing the meeting day might be more of a problem with existing schedules.

Nina then called for a vote on the minutes of the July 22, 2019 Executive Committee meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED:** that the Executive Committee approves the minutes of the July 22, 2019 Executive Committee Meeting in the form presented to the Executive Committee at its August 13, 2019 Meeting.

At this point Nina asked Anita to make a presentation on the proposed FY20 Budget and Spending Plan. Anita indicated that this presentation and plan had been developed internally with staff and was today presented as a draft to the Executive Committee. Anita then proceeded with a 45 minute PowerPoint presentation, copies of which are available upon request.

At the end of the presentation, the Committee members offered the following comments on a revised presentation for the full Council on August 27

- Please spell out all acronyms or provide a list of frequently- used ones for Members who are not as familiar with them;
- Explain in detail what the “grants management system” will consist of;
- Please provide further data showing the amount and impact of the Cultural Facilities Fund;
- Describe the Hireculture.org jobs board that the agency maintains in greater detail
- Generally condense and streamline the presentation as there is a great deal to cover.

At this point Nina asked Deputy Director Dave Slatery to summarize the detailed financial report for FY 20 included with the meeting materials. Dave referred to the memo and attached spreadsheet contained in the materials and asked if there were any questions.

Jo-Ann Davis indicated that she thought today's presentations and reports were very helpful. Nina indicated that she found the financial plans for FY20 to be sound and noted the breadth of work being done and believed the staff to behave been strategic about deploying the financial resources in support of the Council's mission and appropriately maintaining its operations. Jo-Ann echoed these sentiments and stated the efforts were innovative and visionary. Victoria Marsh added that she believed it was very impressive.

At this point, Nina asked for a vote to recommend the presented FY20 Budget and Spending Plan to the full Council. Upon motion duly made and seconded, it was unanimously held

**WHEREAS,** the General Court of the Massachusetts State Legislature has appropriated a budget of \$18,180,000 to the Mass Cultural Council for FY20;

**WHEREAS,** Mass Cultural Council staff has presented a recommended FY20 Budget and Spending Plan (the "Plan") to the Executive Committee at its August 13, 2019 Meeting,

**NOW THEREFORE,** it is hereby

**RESOLVED:** that the Executive Committee recommends that the Council approve the Plan presented to the Executive Committee at its August 13, 2019 Meeting

Nina then asked for a vote to approve the agenda submitted for the August 27 Council Meeting. Upon motion duly made and seconded, it was unanimously held

**RESOLVED:** that the Executive Committee approve the draft August 27, 2019 Mass Cultural Council Agenda presented to the Executive Committee at its August 13, 2019 Meeting.

Nina then asked Council Member Karen Barry who had been attending the meeting as an observer if she had any questions or comments she wished to make. Karen had previously asked Nina for the opportunity to meet with the Committee and ask questions. Karen indicated she was concerned that with language that was contained in the Council's state budget line item this year and that it indicated a closer scrutiny of the Council's spending and its reputation. Karen was concerned about implementation of a 2% across-the-board adjustment of manager salaries which was referenced in the FY 20 plan presented and whether said increase should apply to the Executive Director. Karen referred to language in the Council's Enabling Act regarding annual compensation approval and referring to the Council's practice of following Executive Branch action on manager salaries and stated that the most recent Executive Branch action did not include Secretaries and Agency-heads so she felt that the 2% increase should not apply to the Executive Director. In a general conversation that followed, staff (Anita and Dave) indicated that 1) the Council had always voted on across the board adjustments for all managers including the Executive Director thus following the language in the Enabling Act and 2) that the Council had a practice of following or being guided by Executive Branch practice in terms of across-the-board manager salary adjustments but not all aspects of their program (because they did not apply) and 3) the Executive Branch agency-heads and secretaries who did not participate in the recent 2% adjustment had received a 5% raise last December in which the Council's Executive Director did not participate- the Council's Executive Director had over the years since 2009 simply received the same adjustment as all managers.

There being no more business to come before the Council, Nina as Chair adjourned the meeting.



## Council Engagement Task Force

**Background:** We had a very productive and well received retreat on October 15. Ten Council Members were able to attend and six of them were able to take some time to provide feedback about the retreat. All six said they were “very satisfied” with the retreat. When asked what worked well, some comments included:

“Got to get to know other council members better, had time to talk about issues.”

“Gaining a deeper understanding of the current Strategic Plan, and the discussion around its elements and potential for enhancing. And I really enjoyed the interaction and conversation with my fellow Council Members and the staff”

“The brainstorming session as well as listening to council members share their knowledge of topics.”

Two of the main themes that emerged from the day were that Council members wanted more opportunities to:

- Connect with each other
- Connect with the work that the Mass Cultural Council is doing in their community/region.

In order to respond to the themes that emerged, the Council Chair and Vice-Chair recommend the formation of the Council Engagement Task Force.

**Task Force Goals:**

The task force will be council led with the following goals:

1. Identify the ways council members want to engage with each other and in the Mass Cultural Council work that happens in their city/town and/or region.
2. Identify information that council members would find helpful in both new council member orientation and a Council Handbook for use by all members.
3. Identify the areas of expertise that current council members have.

**Details and Timeline:**

The task force can accommodate all interested council members but would work well with at least 3 members. Most of the work of the task force can be focused on having one-on-one discussions with other members and participation can be done remotely. The group can decide if they would like any in-person meetings.

The task force would begin work in January and report on their recommendations to the executive committee in May.

To: Mass Cultural Council Executive Committee  
From: Anita Walker, David Slatery, Jen Lawless  
Date: January 7, 2020  
Re: Chapter 23K "Gaming" Monies

On December 13, 2019, Governor Baker signed into [Chapter 142 of Acts of 2019](#) which, in sections 3 and 4 thereof, provided a technical fix to the Casino Gaming Law (MGL Chapter 23K) which provides a workable mechanism for 2% of the Commonwealth's gross gaming tax revenues to be transferred to a special statutory fund called the Massachusetts Cultural and Performing Arts Mitigation Trust Fund (herein, the "Fund").

This Fund will be managed by Mass Cultural Council for administration and implementation of 1) a Gaming Mitigation Program ( "*to support not-for-profit and municipally-owned performing arts centers impacted as a result of the operation of gaming facilities*") (75%) and 2) to a Mass Cultural Council program for organizational support (25%). The statute also permits Mass Cultural Council to use up to 7% of the Fund in any year for administrative and operational expenses.

The Council and the field have been awaiting this fix since the first Massachusetts casino opened in August 2018 and are ready to move forward with the programs required under the law. Staff has been working with the State Comptroller and the Executive Office for Administration and Finance to put the proper accounts and transfer protocols in place,

Staff is requesting that the Executive Committee recommend the following course of action by approval by the full Council at its January 28, 2020 meeting:

Upon initial receipt of the monies into the Fund

1. **Expenses.** Seven percent (7%) of the assets of Fund be set aside and used to pay expenses of administering and operating the Fund.
2. **Gaming Mitigation.** Of the remaining funds, seventy-five percent of which be used to immediately implement the Gaming Mitigation

Program (as described in a separate memo to the Committee subject to the approval of the particulars of the program by the Mass Cultural Council Grants Committee at its meeting immediately following this meeting.

3. **Organizational Support/CultureRx.** The remaining funds (25% of the amount available for grants), after application of steps 1 and 2 above, be set aside and used to fund an organizational support portion of our program known as CultureRx- an initiative designed to advance the role of culture as a protective factor for the health of everyone in the Commonwealth. These funds would be dedicated to a new program to support the social prescription of cultural experiences for residents of the Commonwealth under which we will reimburse participating organizations for the full admission price or class/workshop fee of patients/clients that are referred to the organization by a professional care provider so the patient/clients can attend for free. Such program is still being refined and finalized and will be brought back the Executive and Grants Committees and the Council in March. We propose to hold such funds until such program is finally approved
4. **Future Revenues.** Any further revenues contributed to the Fund after the initial deposit will accumulate until December 31, 2020 (including any interest earned on the Fund which is contemplated by the statute) at which point it will be divided as set forth in steps 1-3 above again and then again until the next December 31 and so on and so forth,

A draft resolution has been included with the Committee materials which staff requests the Committee to adopt.,

Note- Based on our most recent information, there should be approximately \$2.975 million available for the Fund (calculation as of November 30, 2019).

To: Mass Cultural Council Executive Committee  
From: : Anita Walker, Dave Slatery, Jen Lawless, Sara Glidden  
Date: January 7, 2020  
Re: Gaming Mitigation Program

Mass Cultural Council is prepared to launch the Gaming Mitigation Program as established by MGL Chapter 23K, Section 59 (2)(a). This program aims to mitigate a direct threat posed by casino entertainment and its pricing structures to the sustainability of non-profit performing arts centers in Massachusetts by providing capital to preserve their ability to compete in a new, unbalanced marketplace.

The program was developed over a two-year period with the input of the affected performing arts centers and included:

- Surveys
- Three focus group meetings
- A kaizen that included representatives from five organizations
- Numerous conversations with stakeholders by phone and email
- 8-month period of feedback on posted draft guidelines

We are seeking approval of the process by which staff will allocate the funds to be granted under the program. Under the proposed process, applicants must meet a set of eligibility requirements, and then funding would be determined primarily by a formula that considers two factors equally:

1. The percent of performances impacted -the total number of an applicant's eligible performances divided by the total number of performances. ("Eligible" would mean performances that are available to the general public and feature touring arts show/artists.)
2. Total fees paid to touring shows or artists for the eligible performances.

The formula would allocate more funds to performing arts centers that have a higher percent of impacted performances and that spend more money on touring shows or artists because organizations whose business model relies more heavily on these types of shows/artists will be the most impacted by competition with casinos.

Not all eligible grantees will necessarily receive funding. The maximum grant amount and the minimum grant size needed to qualify for funding will be determined by the Executive Director with input from staff after the applications are all submitted. Any caps or minimums that are set will be determined depending on the amount of funding available, the number of applicants to the pool, and the need to target funding to those most directly impacted by the operation of resort style casinos. Because this is the first time the Council will run the formula, we need the application data in hand to make these kinds of determinations.

For information and illustrative purposes is a copy of guidelines developed by staff to implement the program described above. (Please note that staff would retain the ability to modify the guidelines consistent with the parameters described in this memo which is consistent with how guidelines are treated in each of the other Mass Cultural Council grant programs)

# DRAFT GUIDELINES- GAMING MITIGATION PROGRAM

## Program Description

The Gaming Mitigation Program, established by MGL Section 59 chapter 23K, aims to mitigate a direct threat to the sustainability of non-profit performing arts centers in Massachusetts by providing capital to preserve their ability to compete in a new, unbalanced marketplace.

This is important because performing arts centers:

- Are economic engines for communities
- Ensure access to the arts across the Commonwealth
- Are centers of community gathering and place making
- Provide young people creative learning opportunities

Grants will be awarded to using a formula as the primary factor. However not all eligible grantees will receive funding. The maximum grant amount and the minimum grant size needed to qualify for funding will be determined after the applications are submitted. Any caps or minimums that are set will be determined depending on the amount of funding available, the number of applicants to the pool, and the need to target funding to those most directly impacted by the operation of resort style casinos. Because this is the first time the agency will run the formula, we cannot tell applicants if they will be funded or what level they might be funded at.

## Eligibility

To be eligible, applicants must meet **all three** the following characteristics described in depth below:

1. Applicants must be a performing arts center
2. Applicants must be non-profit OR municipally owned
3. Applicants must present touring shows or artists

### 1. Applicants must be a performing arts center:

- Performing arts centers are defined as organizations that commit 50% or more of their operating expenses to the performing arts.
- Performing arts are types of art that are presented live for an audience; examples include dance, music, opera, musical theater, theater, folk/traditional dance and/or music.

### 2. Applicants must be non-profit OR municipally owned:

- **Non-profit performing arts centers** include fully cultural performing art centers and cultural affiliates as defined below that meet the relevant requirements for each:
  - **Fully cultural non-profit performing arts center:** A legally recognized 501(c)3 performing art center in good standing in the Commonwealth of Massachusetts. This

includes non-profit performing arts centers managed by separate non-profit managing organizations.

- **Cultural affiliate performing arts center:** A semi-independent performing art center that operates under a non-cultural parent organization, such as a university or social service organization. This type of performing art center must meet additional eligibility requirements defined below.
- **Detailed eligibility requirements for all non-profit performing arts centers:** To be eligible all non-profit performing arts centers applying must:
  - Have a 501(c)3 designation with the Internal Revenue Service which is currently active and has not been revoked.
  - Complete all required filings as a public charity with the Massachusetts Attorney General's Office.
  - Complete all Annual Report filings as a nonprofit corporation with the Massachusetts Secretary of the Commonwealth.
  - In addition, any organization incorporated outside of Massachusetts must have a current certificate of registration from the Secretary of the Commonwealth to operate as foreign corporation within the Commonwealth of Massachusetts.
  - An organization managing a non-profit performing arts center must have a long term (at least 5 years) contract, lease, or deed articulating their management responsibilities.
- **Detailed requirements for cultural affiliate performing arts centers:** In addition to the above eligibility requirements of all non-profit performing arts centers, to be eligible performing arts centers that are cultural affiliates must also
  - Manage their own budget.
  - Have at least one full-time (min. 30 hours per week) compensated administrative staff position dedicated solely to operation of the performing art center.
  - Have its own advisory board that meets regularly to discuss policy, strategic direction, and resource development plans to ensure long-term sustainability.
- **Municipally owned performing art centers** include:
  - Municipally owned performing arts centers managed by the municipality itself.
  - Municipally owned performing arts centers managed by an eligible managing organization:
    - The managing organization must have a long term (at least 5 years) contract, lease, or deed articulating their management responsibilities.
    - Eligible managing organizations include:
      - a legally recognized 501(c)3 non-profit
      - a for-profit managing company
    - Ineligible managing organizations include:



- Resort-style or slot parlor casinos
- For profit managing companies that operate under the direction of resort-style or slot parlor casinos

**3. Applicants must present touring shows or artists:** Touring shows or artists are shows or artists that appear on Pollstar or another similar touring performing arts roster.

## Funding

**Not all eligible applicants are guaranteed funding.** Funding decisions are made primarily through a formula that considers the following factors, which have equal weight:

### 1. Percent of Performances Impacted

The percent of performance impacted is the **Total number of eligible performances** divided by the **Total number of performances**

For example, if a performing arts center presents 100 performances a year and 30 of them are eligible performances, then 30% of the performing arts center's performances would be considered impacted because the eligible performances are those that compete most directly with casinos. The formula allocates more funds to those performing arts centers that have a higher percent of impacted performances.

### 2. Total fees paid to touring shows or artists for the eligible performances.

The formula allocates more funds to those performing arts centers that spend more money on touring shows or artists because organizations whose business model relies more heavily on these types of shows/artists will be the most impacted by competition with casinos.

Definitions related to funding:

**Total Performances:** To calculate the total number of performances the organization should count the number of performances that are:

- **Live presentations of performing arts for an audience:** For organizations that present multidisciplinary events, they do not have to count every gallery opening, yoga workshop, and craft fair. The focus is on the number of performing arts events for live audiences.

- **Presented by the organization or presented by a producer renting the organization's venue**

**Total Eligible Performances:** To calculate the total number of eligible performances the organization should review the list of Total Performances already identified and should count the number of performances that are:

- **Available to the general public by free or paid admissions**

**AND**

- **Feature touring arts show/artists.**

Performances only open to university students, K-12 school groups, or other limited audiences are not considered open to the general public.

**Total Fees Paid to Touring Shows or Artists:** To calculate the total fees paid to touring shows or artists, review the list of Total Eligible Performances already identified and calculate the sum of all the actual cash expenses paid by the organization to touring shows or artists for the eligible performances. Can include:

- Payments to the show/artist including bonuses and percentages
- Housing costs for the touring show/artist
- Travel costs for the show/artist

Fees cannot include in-kind figures. Fees cannot include any show or artist fees that were not included in the Total Eligible Performances.

However, if a contract package/agreement with a touring show or artists includes both eligible and ineligible performances (such as matinees for school groups) the applicant can include the full amount they paid the touring show/artist for all the performances in the Total Fees Paid to Touring Shows or Artists. If a touring show or artists contract package/agreement only included ineligible performances, than none of the fees paid to that artist can be included in the Total Fees Paid to Touring Shows Artists.

## **Grant Amounts and Use of Funds**

The maximum grant amount and the minimum grant size needed to qualify for funding will be determined after the applications are submitted. Any caps or minimums that are set will be determined depending on the amount of funding available, the number of applicants to the pool, and the need to target funding to those most directly impacted by the operation of resort style casinos. **Not all eligible applicants are guaranteed funding.**

Grant funds must be spent on fees paid to touring shows or artists.

**If the grantee is a of Non-profit Performing Arts Center:**

The grant will be made to the Performing Arts Center with the following exceptions:

- In the case of fully cultural non-profit performing arts centers with a non-profit managing entity, the payment will be made to the organization responsible for paying the touring shows/artists, which is typically the managing entity.
- In the case of cultural affiliate performing arts centers, the payment can be made to the non-cultural parent organization, but the funds must be used to subsidize fees paid to touring shows or artists at the performing arts center.

**If the grantee is a Municipally Owned Performing Arts Center:**

The grant will be made to the municipality that owns the performing arts center with the requirement that the funds must be used to subsidize fees paid to touring shows or artists at the municipally owned performing arts center.

**Application**

At the time of application, the applicant will be asked to provide the following information. The information should be from the applicant's most recently completed fiscal year. Applicants that have audits should only submit information from the completed audit.

Used to confirm eligibility and to run formula:

1. Total cash operating expenses
2. Total cash operating expenses associated with performing arts
3. Attachment: Budget information showing how the applicant calculated amount spent on performing arts.
4. Total number of all performances.
5. Total number of performances by eligible touring show/artist
6. Tell us which roster or rosters you used to identify your eligible touring shows/artists.
7. If a show/artist is not listed on a roster, please tell us the name of the touring show/artist and explain why you consider them an eligible touring show/artist.
8. Attachment: Spreadsheet or list of all performances of the year identified.
9. Total fees paid to eligible shows/artists (payment to show/artist, cost of show/artist housing, cost of show/artist travel)

Used to measure impact and to advocate for the mitigation program:

10. Total earned revenue from all performances
11. Total earned revenue from performances by eligible shows/artists
12. Total ticket revenue from performances by eligible shows/artists
13. Total # free tickets for performances by eligible shows/artists
14. Total # paid tickets for performances by eligible shows/artists
15. What shows/artists did you lose to casinos or could not afford because of competition with casinos?

**Application Review**

Applications are first reviewed by staff to confirm eligibility:

- Ineligible applicants are notified
- Eligible applicants stay in pool

Eligible applications are then reviewed by staff to confirm formula components are correct:

- Staff will contact applicants that need to correct or edit their submission if any problems are discovered. The applicant will be given a deadline to resubmit the corrected application. If the applicant fails to do so, the applicant will not be moved forward.
- Applications without issue and corrected applications will then be moved into formula consideration

The formula is applied to the applications remaining in the pool and awards and/or funding amounts are finalized by Mass Cultural Council staff.

## **Grant Requirements**

The Mass Cultural Council may apply a contract hold, penalty, or restriction if the grantee is not in compliance with necessary grant requirements. Grantees that do not meet annual requirements may not be eligible in subsequent grant years. Grant requirements include:

- Grantees must submit a Final Report.
- Acknowledgement of Funding: Grant recipients are required to credit the Mass Cultural Council for funding. Refer to your Contract Package or the online [Credit and Publicity Kit](#) for more details.
- Accessibility: The Mass Cultural Council and its grantees are contractually committed to abide by state and federal regulations which bar discrimination on the basis of race, gender, religious creed, color, national origin, ancestry, disability, age, gender identity, or sexual orientation, and which require accessibility for persons with disabilities. The Mass Cultural Council's grantees sign a contract certifying that they will comply with ADA and Section 504. The Mass Cultural Council aims to help grantees understand their obligations and recognize the opportunities that increasing access can provide for both the public and the grantee. Resources and additional [information about accessibility](#) are available on the Mass Cultural Council's website.

Additionally, the MCC has the right to withhold, reduce, discontinue funding, or apply restrictions to the use of grant funds if a grantee:

- Intentionally misrepresents its finances, programming, or other eligibility requirements
- Does not notify the MCC of significant organizational changes
- Cannot carry out stated mission
- Demonstrates inadequate financial management and oversight.

In cases where a grantee experiences serious organizational capacity issues, the MCC will attempt to work with that organization to address the challenge.

## **Reconsideration Policy**

An applicant may request reconsideration of a Mass Cultural Council decision if the applicant can

demonstrate that the Mass Cultural Council did not follow published guidelines and procedures. Dissatisfaction with the denial of an award or the award amount does not constitute grounds for reconsideration. A written request must be sent to the Mass Cultural Council's Executive Director within 30 days of the date of notification of the decision. Such requests will be reviewed by the Mass Cultural Council Grants Committee and the Council.

## **Timeline**

**January 29:** Public Launch of Program – guidelines and info sessions and webinars announced, application live on GOSmart

**February and March:** info sessions, webinar, staff fielding questions and providing guidance

**March 25:** Applications due 11:59 EST

**April 22:** Staff completes review and correction period and can run formula and begin decision process with senior staff.

**April 30:** Final award amounts determined.

**May 5:** Decision emails sent.

**May 19:** Contracts mailed to grantees

**January 20-something, 2021:** Mass Cultural Council votes to approve process at January Council meeting

**March 24, 2021:** Final Report/Application for next cycle of funding deadline

To: Mass Cultural Council Executive Committee  
From: : David Slatery  
Date: January 7, 2020  
Re: Open Meeting Law

This item is presented for information purposes to facilitate a Committee discussion.

At the Council Retreat last October, there was some discussion as to the application of the State's Open Meeting Law and to the ability to participate remotely in meetings.

Attached please find a memo concerning Mass Cultural Council's current policy adopted in May 2012. Set forth below is the vote actually taken by the Council.

VOTED: To allow remote participation in future MCC board and committee meetings in accordance with the requirements of new state regulations issued by the Attorney General in November 2011 (940 CMR 29.10). Under these regulations, members must request and be granted permission from the MCC board chair to participate in a meeting by telephone or teleconference, and such permission will only be granted **in cases of unusual hardship due to personal illness, personal disability, emergency, military service, or geographic distance.** The policy will be reviewed again by the MCC Executive Committee after one year.

Traditionally, the chair has not permitted remote participation at full Council meetings as the reliability of the technology at the different cultural organizations is usually unknown and would often be inconvenient to confirm in advance. On the other hand remote participation has been freely permitted at Committee meetings as these tend to occur in Mass Cultural Offices where we have conference phones available (though we recently learned that not all rooms and handsets work well for this purpose, depending on the number of persons participating)

The review of the policy "after one year" contemplated by the vote has not occurred (until now). The Open Meeting Law regulations referred to in the vote have been amended since 2012 although they are mainly the

same. The new regulations delete the five specified reasons for participating remotely (see highlighted language above) and now merely say permission can be granted if a member's attendance would be "unreasonably difficult."

The Council could amend its policy by making a corresponding change to its policy and substituting the new standard.

Staff will continue to investigate better technology to facilitate remote participation. The regulations provide as follows

940CMR 29.10

...

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

- telephone, internet, or satellite enabled audio or video conferencing;
- any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

...

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

...

To: MCC Board  
Fr: Anita Walker, Charlie McDermott, Greg Liakos  
Dt: May 18, 2012  
Re: Policy for Remote Participation in Future MCC Board and Committee Meetings

On May 8, the MCC's Executive Committee met to discuss new state regulations that give public bodies in Massachusetts the authority to adopt new policies pertaining to remote participation in public meetings.

The new regulations identify five specific circumstances under which the chairman of a body may grant permission for a member to participate in a meeting by telephone or teleconference: **personal illness, personal disability, emergency, military service, or geographic distance.**

It's clear from the language of the new regulations that remote participation is to be granted only in unusual circumstances. According to the preamble of the new regulations, "the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible." The regulations also maintain a requirement that a quorum of the public body be physically present at the meeting location – further underscoring the importance of such in-person attendance.

After some discussion, the Executive Committee agreed that the MCC board should vote to allow remote participation in accordance with the requirements of the new regulations. The Committee further agreed that the new policy should be adopted only on a trial basis for one year. The policy will be reviewed again by the Executive Committee next year at this time.

Following this cover memo you will find the full text of the new regulations. We have highlighted several sections in yellow, and provide additional notes below.

- Section 1: This includes the note that the Attorney General still strongly recommends physical attendance whenever possible.
- Section 2: This stipulates that a procedural vote is required from the MCC board to allow remote participation in future board and committee meetings.
- Section 4: This stipulates that a quorum of the body must still be physically present at the meeting location.
- Section 5: This lays out five permissible reasons for remote participation: personal illness; personal disability; emergency; military service; geographic distance. It also gives the chair the responsibility of determining whether any of these factors make the member's physical attendance unreasonably difficult.
- Section 7: Paragraph a) specifies that any member who wishes to participate remotely must notify the chair ASAP before the meeting and document the reasons why. Paragraph c) further stipulates that all votes taken during any meeting in which a member participates remotely shall be taken by roll call.



## **New State Regulations Pertaining to Remote Participation in Public Meetings: 940 CMR 29.10**

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating these regulations, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in [M.G.L. c. 4, sec. 7](#), must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to [M.G.L. c. 32, sec. 20](#) or [M.G.L. c. 34B, § 19](#) must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other;

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by [M.G.L. c. 30A, sec 20\(d\)](#);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of [M.G.L. c. 39, sec. 23D](#).

(5) Permissible Reasons for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), if the chair or, in the chair's absence, the person chairing the meeting, determines that one or more of the following factors makes the member's physical attendance unreasonably difficult:

(a) Personal illness;

(b) Personal disability;

(c) Emergency;

(d) Military service; or

(e) Geographic distance.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

(i) telephone, internet, or satellite enabled audio or video conferencing;

(ii) any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

#### **(7) Procedures for Remote Participation.**

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with [M.G.L. c. 30A, sec. 22](#).

(8) Effect on Bylaws or Policies. These regulations do not prohibit any municipality or public body from adopting bylaws or policies that prohibit or further restrict the use of remote participation by public bodies within its jurisdiction.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

**DRAFT**  
**ONE HUNDRED AND FORTY-FIFTH MEETING  
OF MASS CULTURAL COUNCIL**

TUESDAY, JANUARY 28, 2020: 1:00 TO 4:00 PM

**VILLAGE HALL ON THE COMMON  
2 OAK STREET  
FRAMINGHAM, MASSACHUSETTS**

**LIGHT LUNCH: 12:30  
COUNCIL MEETING: 1:00 to 4:00 P.M.  
RECEPTION: 4:00 P.M.**

<b>AGENDA</b>	<b>VOTE</b>
1. Welcomes	
2. Call to Order, Welcomes, Lunch and Reports	
a) Minutes of 144 <sup>th</sup> Council Meeting and 2019 Council Retreat	<b>X</b>
b) Chair Report	
i. 2020 Council Meeting Dates,	
ii. Committee Memberships	
iii. Open Meeting Law Policy	<b>X</b>
c) Executive Director's Report	
d) Advocacy Committee Report-FY21 State Budget Request	
3. FY20 Financial Update	
a) Comments to Financial Policies	
4. Grants Committee Report	
a) FY 20 Artists Fellowship Program: Round 1 Recommendations (Drawing & Printmaking, Poetry and Traditional Arts)	<b>X</b>

- b) Gaming Mitigation Program **X**
- 5. Retreat Report- Engagement Task Force
- 6. Framingham Cultural District Designation **X**