

ORDINANCE NO. 935

AN ORDINANCE OF THE BOROUGH OF NORTH EAST, ERIE COUNTY, PENNSYLVANIA REGULATING GAMEROOMS AND AMUSEMENT GAMES TO INCLUDE SKILL-BASED GAMING DEVICES, INCLUDING LICENSING FEES, REQUIREMENTS, LIMITS ON THE NUMBER OF DEVICES AND INSPECTIONS.

WHEREAS, the Borough of North East seeks to regulate skill-based gaming devices in establishments within the Borough to ensure the health, safety and welfare of the community through proper gaming oversight and transparency; and

WHEREAS, Pennsylvania courts have ruled that certain skill-based gaming devices, including those produced by Pace-O-Matic, Inc., are not gambling devices per se due to the predominant role of skill over chance; and

WHEREAS, under such rulings these skill-based gaming devices are therefore not prohibited or regulated under Section 5513 of the Crimes Code or the Gaming Act;

WHEREAS, the Borough of North East is authorized to enact regulations of any business not otherwise preemptively regulated under the law pursuant to 8 Pa.C.S. § 1202(20)(ii) to preserve and maintain the public, health, safety and welfare;

WHEREAS, the Borough of North East has determined that the unregulated proliferation of such skill-based gaming devices may lead to illegal gambling devices being disguised as legal skill-based gaming devices and may serve to incite criminal behavior or otherwise undermine the health, safety, and welfare of the Borough of North East;

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of North East, Erie County, Pennsylvania, that this Ordinance shall be known and may be cited as the Slot Machine Ordinance.

ARTICLE I. DEFINITIONS

SECTION 1: **Amusement Game:** Any mechanical, electric, or electronic device used or designed to be operated for entertainment or as a game by the insertion of money, coin, token, or other article, which rewards players with free games, non-monetary prizes, or points. Such devices do not include any machine or device classified as a Skill-Based Gaming Device.

SECTION 2: **Skill-Based Gaming Device:** Any device which offers cash payouts or monetary rewards, directly or indirectly, and where such rewards are predominantly determined by skill rather than chance. Skill-Based Gaming Devices have been defined herein in accordance with Pennsylvania case law, including the Pace-O-Matic v. Pennsylvania Bureau of Liquor Control Enforcement (2014) ruling.

SECTION 3: **Sticker:** An official marking issued only by the Borough to display that a license has been obtained. The sticker remains the property of the Borough.

SECTION 4: **Person:** Any individual, sole proprietorship, partnership, corporation (profit or non-profit), facility, owner, or other entity.

ARTICLE II. LICENSING OF SKILL-BASED GAMING DEVICES

SECTION 1: **Proscription Against Skill-Based Gaming Devices:** No person may possess, use or employ a Skill-Based Gaming Device anywhere within the territorial boundaries of the Borough of North East except in accordance with this Ordinance

SECTION 2: **License Requirement-New Business:** No person that does not operate a Skill-Based Gaming Device on the effective date of this Ordinance in the Borough of North East shall be permitted to operate or allow the operation of a Skill-Based Gaming Device.

SECTION 3: **License Requirement-Existing Business:** Any person that currently operates or allows the operation of a Skill-Based Gaming Device must obtain a Skill-Based Gaming Device License from the Borough of North East within ninety (90) days of the date of the enactment of this Ordinance. License applications must be submitted to the Borough Secretary on a form prescribed by the Borough of North East, accompanied by the applicable fee. The initial license shall be issued for a one-year term. In order to be eligible to apply for a license to operate a Skill-Based Gaming Device, the applicant must possess a Small Games of Chance license issued by the Pennsylvania Department of Revenue.

SECTION 4: **License Application:** The form prepared by the Borough of North East shall require, at a minimum, that the following information be provided:

- A. The name, business address and phone number of the applicant;
- B. The name, residential address and phone number of the person filling out the form for the applicant;
- C. The location where the Skill-Based Gaming Device(s) are to be installed, described by both the location's postal address and the Erie County parcel identification number for such location;
- D. A site map providing the location of the Skill-Based Gaming Device relative to the overall lot;
- E. The manufacturer, model and make of any and all Skill-Based Gaming Devices to be permitted under the license;

- F. A description of how the Skill-Based Gaming Device shall be monitored to comply with the provisions of this Ordinance. Such description as required by this subpart include an averment made under penalty of 18 Pa. C.S.A. §4904 (relating to unsworn falsification to authorities) that the device to be licensed shall not be used, played with or manipulated by any person under the age of eighteen or any person who is noticeably under the influence of any drug or alcohol.
- G. A description of each device to be licensed explaining how skill predominates over chance when determining the success of the person playing or otherwise using the device. Such description shall include an averment made under penalty of 18 Pa. C.S.A. §4904 (relating to unsworn falsification to authorities) that the device to be licensed (a) does not award cash prizes through a wholly randomized system irrespective of skill, (b) does not award cash prizes through a system with pre-planned or pre-programmed ratios of wins and losses, and (c) provides an essential skill component as part of its design that is more determinative of wins than random chance alone.

SECTION 5: **Qualifications for License:** A license shall be issued to an applicant for a Skill-Based Gaming Device only if:

- A. The Skill-Based Gaming Device does not award cash prizes through a wholly randomized system irrespective of skill;
- B. The Skill-Based Gaming Device does not award cash prizes through a system with pre-planned or pre-programmed ratios of wins and losses;
- C. The Skill-Based Gaming Device provides an essential skill component as part of its design that is more determinative of wins than random chance alone;
- D. The Skill-Based Gaming Device is not to be located within five feet of any portion of the location where alcoholic beverages are poured or sold, including but not limited to any beer coolers, bar stands, liquor cabinets, wine racks, or any other display or arrangement of alcoholic beverages;
- E. The Skill-Based Gaming Device is not to be used at any time by persons under eighteen (18) years of age;
- F. The Skill-Based Gaming Device is not to be used at any time by persons who are noticeably under the influence of drugs or alcohol;
- G. The Skill-Based Gaming Device shall be monitored at all times by security cameras or directly by personnel working for the applicant during all hours in which such Skill-Based Gaming Devices may be in use;
- H. The Skill-Based Gaming Device may not be altered or tampered with by any person after the date of its installation. This provision shall exclude software updates from the device's manufacturer only.

- I. The applicant possesses and maintains a valid Small Games of Chance License issued by the Pennsylvania Department of Revenue.

SECTION 6: **License Fee:** The initial license fee and any annual renewal fee thereafter for each Skill-Based Gaming Device shall be \$100 per facility, payable at the time of application or renewal.

SECTION 7: **Limit on Number of Devices:** No establishment shall operate more than three (3) Skill-Based Gaming Devices at any one location.

SECTION 8: **Transferability of License:** Borough issued licenses for Skill-Based Gaming Devices are non-transferable and any new owner or any new operator of an establishment where such skill-based gaming devices are available must pursue a reapplication. Licenses are granted only for the particular devices licensed according to the make, model and manufacture of such devices provided in the application and may not be transferred to substitute or alternative devices.

ARTICLE III. STICKER TO BE AFFIXED TO DEVICE

Upon issuance of any gaming license herein required, the Borough shall issue a sticker or other identifying mark, showing the issuance of such license and the date thereof and such sticker or identifying mark shall at all times be attached or affixed to the gaming table and device or other amusement device in a conspicuously exposed place on such gaming table and device or other amusement device. Failure to display such a sticker or identifying mark shall be a violation of this Ordinance. Upon application, a new sticker shall be issued to the owner, vendor, and/or vendee each year. All owners shall immediately report the delivery of any Skill-Based Gaming Device that does not have affixed to it the sticker(s) required by this Ordinance. No owner shall allow the use of any Skill-Based Gaming Device without first having a license affixed. The Borough shall be required to investigate the applicant and the location where such a Skill-Based Gaming Device is to be maintained and determine whether the location used for the purpose requested will create a fire or health hazard or nuisance before affixing the license. The location must be able to be supervised by the employees of the location to avoid the use by minors. If the location creates any such issue or does not meet these requirements, the license shall be denied and monies returned to the applicant. All owners shall immediately report the repair or replacement of any Skill-Based Gaming Device to the Borough and pay the fee for the required replacement sticker. Any Skill-Based Gaming Device without a current sticker displayed shall be a violation of this Ordinance.

ARTICLE IV. REMOVAL OF UNIDENTIFIED OR UNLICENSED GAMING TABLE AND DEVICE OR OTHER AMUSEMENT

The owner shall remove from their premises any Skill-Based Gaming Device that does not display a current license five days after being notified by the Borough. Failure to remove the Skill-Based Gaming Device shall be a violation of this Ordinance by the owner. Each subsequent day the Skill-Based Gaming Device remains shall be an additional violation. Any Skill-Based Gaming Device may be confiscated by the Borough anytime that the Skill-Based Gaming Device is found to be unlicensed or unidentified and held as property of the Borough until said time that the owner is compliant with this Ordinance and all associated fees and fines are paid. The owner may claim

said property after all associated fees and fines are paid in relation to the conditions it was removed including the removal fee and storage fees. Any confiscated Skill-Based Gaming Device may be discarded or sold after 90 days remaining in the Borough's control and possession, and any proceeds received therefrom shall be paid unto the Borough to satisfy all fees and penalties due. Any remaining proceeds shall be forfeited and retained by the Borough.

ARTICLE V. INSPECTION FOR COMPLIANCE

Any person, or their employees, shall allow immediate access to their premises by Borough representatives, upon request to inspect for compliance of this Ordinance, to affix stickers to the devices or tables, and shall accurately provide any information requested during the time of the inspection. Providing false or misleading information or to deny or delay entry to the premises is a violation of this Ordinance and further shall result in denial of licensure to the person, vendor, and/or vendee of any device or table at the premises for a period of one year.

ARTICLE VI. PENALTIES FOR NON-COMPLIANCE

SECTION 1: Unlicensed Devices: Any person who operates an unlicensed Skill-Based Gaming Device shall, in addition to the penalties provided for under Section 2 of this Article, be subject to the following penalties:

- A. Any person who is cited for three (3) violations within a twelve (12) month period shall automatically have revoked any license such person may possess from the Borough of North East for any Skill-Based Gaming Device.
- B. Any person who has been granted a license who is cited for more than three (3) violations within a twelve (12) month period shall be precluded from obtaining a license for twenty-four (24) months on any Skill-Based Gaming Device.

SECTION 2: Violations and Penalties: Any person who violates any provision of this Ordinance shall be fined not less than \$500 for each violation, together with costs, and/or imprisonment for not more than 90 days, if the amount of such judgement and costs are not paid. Nothing in this section shall be construed to limit or deny the right of the Borough or any person to equitable relief or other remedies as may otherwise be available, with or without process of law.

ARTICLE VII. SEVERABILITY

If any section, clause, sentence, or part of this Ordinance is found to be unconstitutional, illegal, or invalid, such findings shall not affect the remaining parts of this Ordinance, and the remainder shall remain in full force and effect.

ARTICLE VIII. EFFECTIVE DATE:

This Ordinance shall take effect immediately upon adoption by the Borough Council.

ENACTED INTO AN ORDINANCE THIS 19th DAY OF MAY 2025

BOROUGH OF NORTH EAST

AMBER BELSON
President of Borough Council

ATTEST:

PATRICK J. GEHRLEIN
Borough Manager

APPROVED THIS 19th DAY OF MAY 2025

BOBBI JO MOREY
Mayor