

**ORDINANCE NO. 53-2012**

**TITLE: AMEND BARBERTON CODIFIED ORDINANCES  
“AMUSEMENT DEVICES, SKILL-BASED AMUSEMENT  
MACHINES, AND ARCADES”**

**AN ORDINANCE AMENDING SECTION 836.04(A) OF THE BARBERTON CODIFIED ORDINANCES, “LICENSE FEE; TRANSFER AND DISPLAY” OF AMUSEMENT DEVICES, SKILL-BASED AMUSEMENT MACHINES, AND ARCADES (ORD. NO. 182-2010), AND DECLARING AN EMERGENCY.**

**WHEREAS**, the operation of slot machine and gambling devices is unlawful in the State of Ohio and various persons and businesses from within and without the State of Ohio have shown a willingness to create games with prizes that simulate slot machines and gambling and operate said schemes in the City of Barberton; and

**WHEREAS**, the Barberton Police Department expends resources attempting to investigate the gaming businesses and prevent the operation of illegal slot machines and schemes of chance; and

**WHEREAS**, many of the businesses which operate slot machines, gambling devices or simulations of the same have closed their doors to the general public in an attempt to thwart the efforts of the police to investigate the operation of the games and enforce the State of Ohio’s gambling laws; and

**WHEREAS**, the police have developed information that some of the gaming businesses give non-cash prizes to some customers and give cash prizes to regular and known customers in contravention of the gambling laws of the State of Ohio; and

**WHEREAS**, while the State lottery publishes the odds of winning its games and the State Racing Commission regulates the wagering at race tracks, there is no gaming commission in Ohio to regulate the operation of other gaming activity with prizes, to protect the public from the illicit operation of games and to assure fair play; and

**WHEREAS**, while the State of Ohio operates a lottery with profits directed to the benefit of education and charitable organizations are permitted to run bingo games and games of chance with proceeds directed to charitable purposes, revenues from the gaming industry are not directed to the benefit of education or charitable purposes and the gaming industry’s activity diminishes the revenue of the State lottery and charitable games.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Barberton, State of Ohio:

**SECTION 1.** That Section 836.04 (a) of the Barberton Codified Ordinances, “License Fee; Transfer and Display,” of Amusement Devices, Skill-Based Amusement Machines, and Arcades (Ord. No. 182-2010) be amended by showing additions in **bold print** and the deleted wording shown in ~~strike through~~.

**CHAPTER 836**

**AMUSEMENT DEVICES, SKILL-BASED AMUSEMENT MACHINES, AND ARCADES**

**836.01 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) "Entertainment device arcade." Any business, establishment, room, or place where four or more entertainment devices are kept for use by the public or by persons other than the owner of the devices, where persons give anything of value to access the use of the entertainment devices or the premises, and the person may be given anything of value by the operator, whether the giving occurs on or off the premises or at the same time or a later time.

(b) "Entertainment devices." Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a person, for the purpose of playing a game, viewing a video display, hearing an audio transmission or reading entries or outcomes from any other kind of device. "Entertainment device" does not include any juke box, audio book, video player or any device that gives anything of value where the only value given, directly or indirectly, is a video or audio transmission.

(c) "Anything of value." Cash, cash equivalents, tangible objects, credits to play, and any other tangibles or intangibles, no matter how slight. Anything of value includes playing a game, viewing a video display, hearing an audio transmission, and reading entries or outcomes from any other kind of device. A person who gives anything of value for a product or service, whether tangible or intangible, in any way, directly or indirectly, in association with being given access to the use of an entertainment device, is deemed to have given value for the access to the entertainment device.

(d) "Operator." Any person or organization that owns, controls, operates, promotes or maintains or knowingly engages in conduct that facilitates the operation of an entertainment device arcade or the entertainment devices in an entertainment device arcade.

### **836.02 LICENSE APPLICATION; REQUIREMENTS.**

(a) No person, partnership, corporation, or other entity shall operate or conduct an entertainment device arcade without first obtaining a license therefor from the Director of Public Safety. Every person, partnership, corporation, organization or other entity shall make an application in writing to the Director of Public Safety, which application shall set forth:

- (1) The name under which the business is to be conducted;
- (2) The location where the business is conducted, with a description of the premises, including a scaled diagram;
- (3) The name and address of any manager, supervisor, and all other employees;
- (4) The name and address of the owner or owners of the entertainment devices;
- (5) The name, address, and principal occupation of every person with an interest in the business. If the business is conducted by:
  - A. A sole proprietorship, the name, home address, and principal occupation of that individual;
  - B. A firm or partnership, the names, home addresses, and principal occupations of each member of the firm or partnership; and
  - C. A corporation, the names, home addresses, and principal occupations of all officers and shareholders and the statutory agent;
- (6) The name, description, model number and serial number of each entertainment device on the premises and any other device on the premises that is necessary to the operation of the entertainment device;
- (7)
  - A. A list of each separate prize that may be given out and each separate dollar amount that may be given; and
  - B. The odds of winning any offered prize or dollar amount awarded for the participation in any game, activity, program, scheme or play, use or participation in any way in an entertainment device or participating in any other activity or promotion in the entertainment device arcade, whether or not the determination of the giving of the thing of value or the delivery of the thing of value occurs totally within the confines of the premises or requires some event, occurrence or happening at another location;
- (8) The name and address of any and all persons, businesses or organizations that provide games, computer software, equipment, or services or operate devices linked to the licensee's entertainment devices or to devices necessary to operate the entertainment devices, whether any such provisions are sold, leased or licensed; and
- (9) Make application with the City of Barberton Income Tax Division.

(b) The person, partnership, corporation, or other entity operating or conducting the business shall have a continuing duty to inform the Director of Public Safety as to changes in the information required in this section. No person, partnership, corporation, or other entity shall

operate or conduct an entertainment device arcade at any time unless the information on file with the Director of Public Safety is current and accurately reports the licensing information at the time of operation.

(c) If an application is not approved, the Director of Public Safety shall notify the applicant in writing, with reasons for rejection.

(d) The Director of Public Safety shall not issue a license to any person, partnership, corporation, or other entity if any of the persons with an interest in the business or if any of the employees of the business have been convicted of a violation of a Federal or State statute or of any local ordinance pertaining to gambling or other crime of moral turpitude within five years preceding the application. Also, as a prerequisite to the issuance of such license, an inspection shall be made of the premises by the Fire Division to seek and obtain the approval of said agency.

(e) The entertainment device arcade shall be open to inspection and viewing of operations by law enforcement officers and Fire Department personnel at all times that the arcade is open for business. No operator shall fail to immediately permit entry to any such City officials.

(f) Failure to register or pay a license fee for an entertainment device shall be grounds for suspension or revocation of the license for the entertainment device arcade and said device shall be seized and forfeited to the City.

### **836.03 LOCATION.**

(a) No license shall be granted to an entertainment device arcade that will conduct its *business at a location that is within 1,000 feet from the boundaries of a parcel of real estate* having situated on it a school, public library, public playground, or any establishment that has been issued a liquor permit by the State of Ohio.

(b) This section shall not apply to any entertainment device arcade locations in existence at the time of the passage of this chapter, and shall not apply to any duly licensed entertainment device arcade locations in existence at the time a school, public library, public playground, or any establishment that has been issued a liquor permit by the State of Ohio moves within 1,000 feet of said entertainment device arcade. However, any change in ownership of the entertainment device arcade or change in location will remove said entertainment device arcade from this exception. "Change in ownership" in the case of a partnership or corporation for the purpose of this section means more than fifty percent (50%) change in partners or shareholders from the partners or shareholders owning the partnership or corporation as of the date the school, public library, or public playground moves within 1,000 feet of said entertainment device arcade.

### **836.04 LICENSE FEE; TRANSFER AND DISPLAY.**

(a) The **non-refundable annual** license fee, payable to the Director of Public Safety at the time of **initial or annual** application, shall be one thousand dollars (\$1,000) for each business location for the year or any part thereof ending on December 31 of each year. **Additionally, a semi-annual non-refundable license fee of two hundred dollars (\$200.00) shall be paid to the Director of Public Safety for each entertainment device on the premises during the following semi-annual period.** ~~for each year or any part thereof ending on the last day of each year. The fees, which are paid at the time of application, are not refundable in any case.~~ **The semi-annual license fee for each entertainment device shall be paid upon preliminary approval of the initial or annual application and no later than June 1<sup>st</sup> of each calendar year, or, if the entertainment device is brought to the premises following the payment of the semi-annual license fee, prior to such time as the entertainment device is brought to or operating on the premises.** ~~The license fee shall be paid for each entertainment device brought to the facility before the device is put into use.~~ For purposes of determining licensing fees, each device that is operable by one or more persons is a separate device.

(b) Licenses issued under this chapter shall not be transferable to any other person, partnership, corporation, or other entity and the business may be conducted only at the location for which the license is issued. The license must be so placed as to be made conspicuously visible and shall list each entertainment device with serial number.

(c) Failure to register any entertainment device before placement on the premises is an unclassified misdemeanor and the operators shall each be liable for a mandatory fine of one hundred dollars (\$100.00) for each day the machine is not registered, and said fine shall not be reduced or suspended.

**836.05 REVOCATION; HEARING PROCEDURE.**

(a) The license may be suspended or revoked at any time by the Director of Public Safety on satisfactory proof that violation of the laws of the State, ordinances of the City, or of this chapter occur on the premises. In addition to any license suspension, the Director of Public Safety may assess the licensee a penalty fee of not less than five hundred dollars (\$500.00) nor more than one thousand, five hundred dollars (\$1,500) for any violation of this chapter. Each day a continuing violation exists shall constitute a separate violation for purpose of assessing penalty fees. Suspensions, revocations and assessments of penalty fees by the Director of Public Safety is in addition to and separate from any criminal liability and does not preclude criminal prosecution for any violation of this chapter or other City, State or Federal laws.

(b) Any resident of the City may submit a written notice of complaint to the Director of Public Safety in regard to any entertainment device arcade location. The notice of complaint will include the name and address of the resident, the address of the location, and the specific reasons why the resident is complaining. The Director of Public Safety or a designee from law enforcement shall regularly inspect the premises, the operation, the entertainment devices and the licensee's records and may issue a notice of complaint to the licensee for any violations.

(c) The Director of Public Safety or a designee from law enforcement shall meet with the complainant and inquire as to the specific reasons for the complaint. The Director of Public Safety or a designee may dismiss the complaint if it is determined that:

(1) The specific reasons listed in the complaint are not proper grounds for suspension or revocation of the license.

(2) There are not substantial credible facts to support the complaint by the resident.

(d) No appeal shall lie from the decision of the Director of Public Safety to dismiss a complaint.

(e) If the complaint is not dismissed by the Director of Public Safety, the Director of Public Safety will then notify the licensee and the owner of the devices on the premises, as listed on the license application, that a complaint has been filed and will set a date for a fact-finding conference on the matter. Extensions will be granted and necessary investigations will be conducted at the discretion of the Director of Public Safety and the Director of Public Safety may request the assistance of any person in law enforcement to assist in the investigation. The Director of Public Safety and a designee and any law enforcement officer shall have access to the premises and the records of the licensee during all times that the entertainment devices are available for play.

(f) At the time of the conference, the resident, the licensee, and the owner of the devices will meet and attempt to amicably resolve the situation. If the resident, licensee, and the owner can reach an amicable solution, the Director of Public Safety will direct the licensee to comply with the solution in his notice of reconciliation.

(g) If the parties cannot agree upon an amicable solution to the problem, the Director of Public Safety will transmit the complaint, together with its recommendation thereon, to the Entertainment Device Arcade License Review Commission. The Director of Public Safety's recommendation may be for dismissal of the complaint, suspension of the license and assessment of penalty fees, or revocation of the license.

(h) The Commission shall consist of the Law Director or his/her designated representative, the Director of Public Service or his/her designated representative, and the Building Commissioner or his/her designated representative.

(i) The Commission may accept, reject, or modify the recommendation of the Director of Public Safety. The resident, the licensee and the owner of the devices, as listed on the license application, shall be notified in advance by certified mail of the day on which the Commission is to consider the complaint; and they may, if they so choose, be present during consideration of the complaint. Consideration of the complaint before the Commission shall be a public hearing which shall be held within thirty days after said notice is given. The licensee shall have the right to be represented by counsel, and have the right to examine and cross-examine witnesses. The Commission shall enter its decision the day of hearing. In the event of a decision and ruling adverse to the licensee, the licensee shall have the right to appeal such decision and ruling to a court of competent jurisdiction under authority of and pursuant to the provisions of Ohio R.C. Chapter 2506.

(j) This complaint process is separate and distinct from any law enforcement action taken to enforce the laws of the State or the City and this chapter, and is not a condition precedent or otherwise an impediment to enforcement of said laws by criminal prosecution

### **836.06 CLOSING HOURS.**

No operator of an entertainment device arcade shall permit the same to be or remain open between the hours of 11:00 p.m. and 10:00 a.m. of the next day. No operator shall permit any person to operate any entertainment device between the hours of 11:00 p.m. and 10:00 a.m. of the next day.

### **836.07 MISCELLANEOUS OPERATING REQUIREMENTS.**

- (a) Any entertainment device arcade shall have an adult who is twenty-one years of age or over on the premises and supervising at all times the entertainment devices during all hours of operation.
- (b) The interior of the entertainment device arcade shall provide a minimum area of thirty square feet per entertainment device in each room in which entertainment devices are located.
- (c) No operator shall permit the sale, possession or consumption of alcoholic beverages on the premises of an entertainment device arcade.
- (d) No operator shall fail to maintain order and quiet on the premises so as not to violate the public peace.
- (e) No persons under the age of eighteen years shall be permitted on the premises of any entertainment device arcade where any prize valued at greater than ten dollars (\$10.00) may be awarded.
- (f) The operator shall require a photo identification of every person to whom any thing of value is given in connection with the entertainment device arcade and shall record the person's name and home address and a description of the thing given, a stated dollar value of the thing given, the date and time of the giving and, if an entertainment device is involved in the circumstances of the giving, the serial number or other identifying description of the device. If the dollar value of the thing given to a person is more than ten dollars (\$10.00), the operator shall include in the record a copy of the photo identification and the person's Social Security number. By the second Tuesday of each month the operator shall cause to be delivered to the City Income Tax Division a copy of the record of things given to persons together with the above required information given during the preceding month. The operator and the Income Tax Division shall not disclose the Social Security number of any person to anyone except as required by the laws of the State of Ohio and the United States government.
- (g) The operator shall post in a conspicuous place on the premises in the room where the entertainment devices are located in no less than twenty point type:
  - (1) Each separate prize that may be given and each separate dollar amount that might be given.
  - (2) The odds as stated in the filing with the Director of Public Safety, as required in Section [836.02\(a\)\(7\)B](#).
  - (3) A complete statement of the rules and conditions pertaining to the giving of any prizes or anything of value to any person, whether or not the determination of the giving of the thing of value or the delivery of the thing of value occurs totally within the confines of the premises or requires some event, occurrence or happening at another location.
- (h) The operator shall keep a complete set of all records of the operations at the premises at all times, including all Federal, State and local tax records, all records of payments and receipts, all records of expenses and revenues of the operation, all banking records, all contracts, leases and agreements affecting the premises, equipment and operation, all personnel records and all other records pertaining to the business. Records more than ten years old are excepted from this requirement.
- (i) No applicant shall make a false or incorrect statement in an application for an entertainment device arcade license and no operator shall fail to update the information supplied to the Director of Public Safety to reflect existing operations as required in Section [836.02\(a\)](#) and (b).
- (j) Failure to apply with the City of Barberton Income Tax Division shall be cause for suspension of the entertainment device arcade license. The operating license may be revoked by the Director of Public Safety for failure by the licensee to remain current in the filing of required tax documents, for failure to remain current in the required payment of taxes, and for failure to comply with Section [836.02\(a\)\(9\)](#).

(k) It is the intent of this chapter that operators are strictly liable for any violations of this chapter.

**836.08 COLLECTION AT SOURCE.**

An individual, association, C Corporation, or other entity engaged in the business of operating an entertainment device arcade as defined in this chapter in the City of Barberton shall comply with Section [836.07\(j\)](#).

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

**SECTION 3.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, and in order to implement the amendments to the Barberton Codified Ordinances as soon as possible, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed \_\_\_\_\_ 2012

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
President of Council

Approved \_\_\_\_\_ 2012

\_\_\_\_\_  
Mayor