

REPORT

Electronic Gaming in North Carolina N-Focus Planning and Design

Electronic Gaming

Electronic gaming operations are businesses using computers or stand-alone machines to provide games of chance with pre-determined or randomly generated outcomes as an accessory or principal business use. Many are referred to as Internet cafes, cyber cafes or sweepstakes. The operations provide the opportunity to win prizes, either monetary or merchandise-based.

Electronic gaming machines are sweeping across the State of North Carolina in all kinds of commercial facilities, such as convenience stores, bowling alleys, fishing shops, golf courses, laundry mats, etc. The State of North Carolina has been passing legislation for years in efforts to ban gambling and curb the use of electronic gaming machines, but the electronic gaming industry has been successful in defeating these bans in lawsuits. The electronic gaming industry currently uses a "sweepstakes" operation that undermines current legislation.

Efforts by the gaming industry to outsmart legislation have been successful thus far, but court proceedings are still ongoing and further interpretation of the State law is required. As of now, local governments across the State of North Carolina are forced to regulate the use of the activity through moratoriums, zoning restrictions, and licensing fees. Because of the uncertainty of state legislation, few local governments prohibit the use of the machines in fear of potential law suites. Overall, the interpretation of the State law on electronic gaming is unclear, and local governments that regulate their use do so under the zoning code authority to maintain the health, wealth, and safety of their communities.

Legality: North Carolina State Statutes

North Carolina banned video gaming machines, effective July 1, 2007, but electronic gaming exists through a loophole in the law. The State law defines

gambling as games of chance in which money is exchanged for the chance to win a prize. Electronic gaming is offered in the form of a "sweepstakes" where no purchase is necessary. Customers usually operate the machines through the use of a pre-paid phone card and avoid a direct purchase. Another method of payment for electronic gaming machines is through the Internet. Businesses sell Internet use to customers, allowing them to use gaming machines as a device to access the Internet.

The General Assembly attempted to ban "server-based electronic game promotions," effective December 2008, but the State and General Assembly became involved in a disagreement over the issue, and there is an injunction barring law-enforcement personnel from closing electronic gaming operations. In December 2008 and June 2009, two different state court judges ruled that such sweepstakes games are legitimate under current statutes, but an appeal is pending. As a result of these rulings, law enforcement and city officials across North Carolina have been unable and/or unwilling to shut down sweepstakes games (Sharp, thepilotnews.com). With continuing court proceedings, the legality of electronic gaming machines is still unclear for North Carolina municipalities.

Land Development Ordinances

With constant news reports upholding the legality of electronic gaming devices, municipalities across the State are acting to manage the electronic gaming explosion. Municipalities use tools such as moratoriums, zoning regulations, and licensing fees to regulate the devices. By setting moratoriums on the use of electronic devices, local governments have given themselves time to research, analyze, and provide appropriate regulations for the installation and use of the devices; some have used moratoriums as a means of delaying their actions until the results of higher court proceedings are available.

Permitting and zoning are the most popular means of regulating electronic gaming. According to the City of Hickory, implementing a permitting process ensures the safety of the remaining community. Standards are set in zoning ordinances across

the State that treat electronic gaming operations as adult establishments. Certain restrictions get applied to the use such as distances to schools and churches, hours of operation, number of machines, and number of occupants at one particular time. The most popular permitting process for electronic gaming involves the purchase of a privilege license and a zoning permit. Conditional use permits, as used by the City of Elizabeth City and other local governments, are the most popular form of regulating the use through zoning. Due to the lack of clarity on the legality of gaming operations, few municipalities use zoning to prohibit the use of electronic gaming.

Privilege Licenses for businesses operating electronic gaming machines have extreme variations in cost and is a highly debated topic. Municipalities that lag behind on the electronic gaming issue are issuing business licenses for \$25 per machine; however, it is now common for local governments to charge up to \$2,000 + \$500 per machine. The City of Lumberton recently proposed a \$7,500 privilege license tax or a \$5,000 privilege license tax plus a 5 percent of gross sales receipts; the option that won out was a \$5,000 privilege license tax plus a \$2,500 fee per computer. News reports claim that despite how high the privilege taxes go, there are few, if any complaints, from business owners. Estimates say that with 330 machines in the City of Lumberton, the taxes would raise \$1.055 million for the City (Hottman, <http://robesonian.com/bookmark/7443505>).

Criminal Activity

State law prohibits money and/or prizes to come directly from a machine. Instead, winners collect money from the counter, which brings in a secondary issue of safety. Large amounts of money in a cash-only operation, such as electronic gaming, create large concerns about security for police departments. Police chiefs across the state are concerned about the operations increasing instances of crime and put a greater strain on limited police forces. Gamblers Anonymous estimates that businesses bring in \$15-\$20,000 per week (Sharp, thepilotnews.com).

Summary

Electronic Gaming is sweeping the State of North Carolina and local governments are figuring out ways to regulate the business activity. While higher courts are deciding on pending cases, the exact legality of electronic gaming is uncertain. Local governments are forced to accept and interpret the law on "sweepstake" operations and set regulations that can control them for the safety and well being of their respective communities. Methods of zoning restrictions, conditional permitting, and privilege licenses are the most effective and common ways of doing so. Along with the high tax revenue local governments can receive from these machines, there is also a price to pay in police enforcement and safety.