

2009 MAY 28 PM 2:29
CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Office of the City Administrator, Special Activity Unit
DATE: June 9, 2009

RE: **A. Informtional Report On Bingo Activities In 2008 And
B. Supplemental Report on Amended Proposals To Adopt:**

**1) An Ordinance Amending Oakland Municipal Code Chapter 5.10, "Bingo"
To: 1) Require A Bingo Hall Permit When The Bingo Hall Operator Is A
Separate Entity From The Bingo Game Operator, 2) Specify Application
Requirements For Bingo Halls, 3) Prohibit Bingo Hall Operators From
Charging Bingo Game Operators More Than Fair Market Value For The
Facilities, Goods And Services Provided By The Halls, 4) Prohibit Bingo Hall
Operators From Transactions With Bingo Game Operators When Specified
Familial And/Or Business Relationships Exist Between The Two Entities, 5)
Subject Bingo Hall Operators To Audit Of Their Oakland Bingo Activities, 6)
Specify That The Annual Bingo Hall Permit Fee, Including The Fee For Law
Enforcement And Public Safety Costs, ~~Audit Fee, And Police Services Fee Are~~
Is Established By The Master Fee Schedule, 7) Establish That The Bingo Game
Operators' Fee For Law Enforcement And Public Safety Costs Is Established By
The Master Fee Schedule, 8) Require That Most Profits Or Proceeds Be Donated
To Oakland Charitable Causes Annually, 9) Require Bingo Game Permittees To
Conduct Traditional Called Bingo Every Day That Electronic Bingo Is
Available, 10) Prohibit Use Of Illegal Bingo Machines, 11) Provide For
Administrative Penalty For Violations, 12) ~~Limit Amount and Quantity of Door
Prizes,~~ 13) Add Criteria For Denial, Suspension, Revocation, Or Conditional
Approval Of Permits; And 14) Increase The Maximum Game Pay-Out From
\$250 To \$500.**

**2) An Ordinance Amending Ordinance Number 12809 C.M.S. (Master Fee
Schedule), As Amended, To Move The Annual Bingo Hall Fee From Chapter
5.10 To The Master Fee Schedule, To Establish A Monthly Fee For Bingo Game
Operators To Offset The City's Costs Of ~~Law Enforcement And Public Safety,~~
And To Include In The Annual Bingo Hall Permit Fee That Portion Of ~~Law
Enforcement And Public Safety Costs~~ Attributable To Bingo Halls**

Item: _____
Public Safety Committee
June 9, 2009

SUMMARY

This report provides information regarding the operation of Oakland's permitted bingo establishments during the 2008 calendar year. The report summarizes the receipts, expenditures, and charitable donations made by the bingo game operators, as reported monthly by each operator to the Office of the City Administrator. It also addresses the status of the legality of electronic bingo games.

A year ago staff proposed several amendments to Oakland Municipal Code (OMC) Chapter 5.10, "Bingo". The goals of the proposed amendments were 1) to advance the City's interest in promoting the charitable and social aspects of gambling, 2) ensure the legality of the operations, 3) clarify the requirements for and the relationships between bingo game operators and bingo hall operators, and 4) recoup City costs of law enforcement and public safety incurred due to the operation of bingo in Oakland.

The bingo game operators and bingo hall operators objected to several of the proposed amendments. The Public Safety Committee requested some modifications to the amendments and also requested staff to work with the bingo permittees to address their concerns. The strikethroughs in the title of the proposed amendments indicate the changes resulting from the Committee's request and staff's meetings with the permittees.

Charitable Donations

2007's report documented a dramatic decrease in charitable donations made by Oakland's bingo game operators. Staff is pleased to report that in 2008 charitable donations not only increased by over \$62,000 but bingo game operators also donated 95 percent of their residual profits, the highest percentage since staff has maintained these statistics.

<u>Year</u>	<u>Charitable Donations</u>	<u>\$ Increase Over Prior Year</u>	<u>% Change from Prior Year</u>
2001	\$184,644		
2002	57,788	(126,856)	(69)
2003	117,294	59,509	202
2004	199,125	81,831	102
2005	458,817	259,692	230
2006	880,302	421,235	192
2007	529,874	(350,428)	(40)
2008	591,984	62,110	112

Eight year total donations \$3,019,578

The specific charities receiving donations in 2008 are listed in *Attachment A*

While the increased donations are certainly good news, the increase was almost completely attributable to Community Charities, the only Oakland bingo game operator that continues to use electronic bingo machines. Community Charities 2008 donations totaled \$345,710, an increase of nearly \$200,000 over their 2007 donations and one which they believe is largely based on the increased number of electronic bingo machines they installed in mid 2007.

Item: _____
Public Safety Committee
June 9, 2009

For the second year in a row, the donations made by the other two major bingo game operators declined in 2008. In the case of KEDS, however, the decrease is somewhat misleading in regard to their overall situation. In 2007 KEDS drew on prior years profits to donate \$131,085 despite having a profit of only \$42,748. In 2008, their profits were up to \$79,526, and they donated \$74,474 of that amount.

For 2008, donations did not keep pace with revenues, which increased from \$15,624,344 in 2007 to \$20,541,230 in 2008, a 131 percent increase, compared to the 112 percent increase in donations.

Prize monies paid out are always the largest expense of bingo game operators, and, on a percentage basis, they are increasing at a much faster pace than revenues. In 2007 seventy percent of gross revenues were paid out in prizes totaling \$10,953,287. In 2008 prizes were up to \$14,884,722, or seventy-two percent.

A significant amount of this is the payment of "door prize" games which pay \$1,000 per game. Penal Code section 326.5(n) prohibits individual game payments greater than \$500, but the bingo game operators have offered \$1,000 door prize games for many years and claim that they need to do so to compete with the Gilman Bingo Hall in Berkeley, which offers up to eight \$1,000 door prize games per daily session.

In Berkley the bingo halls are overseen by the code enforcement staff. Staff contacted these Berkeley employees and explained the illegality of the door prize games and asked them to investigate. Oakland's bingo game operators report that the Gilman door prize games continue unabated. Staff has withdrawn a proposed amendment outlawing door prize bingo games. It is unnecessary due to the state prohibition on bingo prizes in excess of \$500 per game, an increase from the previous maximum of \$250 per game. The \$500 prize limit became effective January 1, 2009 pursuant to California Penal Code section 326.5(n), and it is adopted in proposed amended OMC section 5.10.170.

The 2007 report also expressed concern that, in addition to disproportionate growth of prize monies, other expenses grew faster than revenues, from twenty-two percent of gross revenues in 2006 to twenty-six percent in 2007. In 2008 expenses returned to the level of twenty-two percent of gross revenues.

The 2007 report noted that bingo game operator BCD&R's unresolved tax liability to the IRS was one factor in the reduction of their donations from a high of \$562,150 in 2006. The situation remains unresolved, and their donations again decreased, from \$248,600 in 2007 to \$ 170,000 in 2008.

The detail of this year's results and the comparison with last year is under the Financial Summary subsection of the Background section of this report.

Legality of Electronic Bingo Games

Senate Bill 1369 designated all electronic bingo machines as illegal for charitable bingo organizations. It was scheduled to take effect January 31, 2009, but a preliminary injunction allowed the electronic games to continue. On March 27, 2009 a three-judge panel of the Ninth

Item: _____
Public Safety Committee
June 9, 2009

Circuit Court of Appeals overturned the injunction, ruling that the machines went beyond “reasonable modifications” that would allow them protection under the ADA. However, on April 14, 2009, U.S. District Court Judge John A. Mendez in Sacramento issued another injunction, so the legality of the electronic games is still in question. A hearing that may settle the issue is scheduled for June.

The East Oakland Senior Center has never used electronic bingo machines, and both BCD&R and KEDS eliminated their machines last year in advance of the projected effective date of SB 1369. Community Charities is the only Oakland bingo game operator that still utilizes electronic bingo machines. As noted above Community Charities’ donations constitute the largest share of donations made by Oakland’s bingo game operators. Although revenue from electronic games composes only 18 percent of Community Charities total revenue, it is a crucial component of their profits. Community Charities believes their charitable donations would be drastically reduced if electronic bingo is ultimately outlawed.

Proposal of Amendments to Bingo Ordinance

In 2008 staff proposed several changes to the Bingo ordinance to clarify existing aspects of the ordinance and to increase the City’s ability to audit and to control both the bingo game operators and the bingo hall operators. The overall goal of the amendments to the bingo ordinance was to increase the charitable benefit of bingo games while ensuring that the activities are conducted legally and transparently, and to recoup the costs of permitting bingo that are incurred by the City.

California Penal Code section 326.5 authorizes cities to charge bingo operators a monthly fee to offset the City’s costs of law enforcement and public safety. In 2008 staff proposed a Law Enforcement and Public Safety Fee that included a component for a share of the City’s cost of regular police staffing. The Public Safety Committee recommended removing this component, as there is no precedent for charging for regular police services not specifically related to calls for service or special events.

Another component of the proposed fee was the cost of an annual financial audit of the bingo game operators. The City Auditor estimated this cost to be \$25,000 per bingo game operator. The three major bingo game operators that would be subject to the audit objected that this cost would reduce their donations to charities by a total of \$75,000. In meetings subsequent to the initial proposal, the bingo game operators explained that their expenditures were relatively few and were all done by check. They proposed submitting copies of the checks with their monthly reports to the City, so that the City could balance the reports and have access to the detail of their transactions.

The bingo game operators began submitting the checks with their bank statements for the March 2009 reports. Processing details, such as accounting for checks that don’t clear and calendar month reporting periods vs. bank statement periods, are still being worked out, but staff is hopeful that this process will provide the transparency desired by the City, without the cost of the originally proposed audits, thereby freeing up to \$75,000 for Oakland charities.

Item: _____
Public Safety Committee
June 9, 2009

FISCAL IMPACTS

As noted above, the originally proposed audit fee and fee for regular police services have been removed from the currently proposed Law Enforcement and Public Safety fee. The remaining components of the monthly Law Enforcement and Public Safety fee are the costs of the bingo-related portions of permit staff work and the costs of reviews by the City Attorney and City Auditor.

The fee, which would be paid monthly by Bingo Game Operators that gross over \$10,000 per month, is \$1,085.98 per operator. With three Bingo Game Operators currently functioning at that level, the additional projected annual revenue to the City would be \$39,095, which will be deposited in the General Purpose Fund (1010), City Administrator's Organization (02111), Police Permits Account (42411). The calculations are shown on **Attachment B**.

Staff also proposes to increase the Bingo Hall Permit fee to include the cost of the City Auditor's review of the proposed Bingo Hall Audits. At the current level of two bingo halls, the proposed increase would generate \$9,718.00 of additional revenue, which will be deposited in the General Purpose Fund (1010), City Administrator's Organization (02111), Police Permits Account (42411).

Failure to amend the ordinance to require permits for all bingo hall operators, regardless of number of charities hosted, would be the loss of \$4,859¹ per year if the proposed Bingo Hall permit fee increases are adopted and if the Bingo Hall that hosts only one charitable Bingo Game operator is not subject to the Bingo Hall permit fee. These fees can not be moved to the Bingo Game operators as state law limits the annual Bingo Game operator permit fee to \$50.00.²

BACKGROUND

The information in this report is drawn from the monthly reports submitted by the bingo game operators.

FINANCIAL SUMMARY³

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Gross Receipts	14,626,958	15,624,344	20,561,230
Prizes Awarded	10,401,627	10,953,287	14,884,722
Expenses	3,201,586	4,083,610	4,556,054
Profit	1,023,745	587,445	623,651
Charitable Donations	680,302	529,874	591,984
Residual Percent Donated	66	90	95

¹ The current \$1000 fee plus the proposed additional audit review fee of \$3859.

² California Penal Code § 326.5(l)(1)

³ Not included in this report is the data from St. Jarlath Church, which obtained a permit to conduct bingo at their site twice in 2008. They grossed a total of \$7,149.00, awarded prizes of \$2,000.00, expenses of \$1,454.00, and made a donation of \$2,600.00 to the St. Jarlath Building Fund.

Item: _____
Public Safety Committee
June 9, 2009

BINGO HALLS AND BINGO GAME OPERATORS

During 2008 the Office of the City Administrator’s Administrative Hearing Officer permitted two halls to conduct bingo games; Bay Area Commercial and Cornucopia Ventures. Other than the East Oakland Senior Center, which conducted bingo in its own facility, Oakland’s Bingo Game Operators, which are required by law to be non-profit, charitable organizations, leased space from the two Bingo Hall Operators.

<u>BINGO GAME OPERATOR</u> (Non-profit organization)	<u>BINGO HALL OPERATOR/LESSOR</u>
• Community Charities	Durant Square/Bay Area Commercial
• BCD & R Society ⁴	Foothill Square/Cornucopia Ventures
• KEDS, Inc. ⁵	Foothill Square/Cornucopia Ventures
• East Oakland Senior Center	Not Applicable

KEY ISSUES AND IMPACTS

1. Bingo Hall Rents and Transparency of Bingo Hall Operations

California Penal Code section 326.5(k)(2) continues to limit the amount that bingo game operators can pay for rental of property, overhead, administrative expenses and security to a total of \$2,000 per month. Although this limit has been widely ignored, the amount of rent paid by the three major bingo game operators to the bingo hall operators, ranging from a low of \$18,800 to a high of \$58,000, is far from the \$2,000 limit, and it is higher than other general commercial rents. It has therefore been a source of concern since it was first noted in staff’s report on 2004 bingo operations. Additionally, bingo game operators rent equipment, another substantial monthly cost, in one case from the bingo hall operator and in another case from a for-profit company in which the bingo game operator, a non-profit entity, holds an interest.

Regarding the latter situation, it is illegal conflict of interest for individuals with an interest in a non-profit to divert the non-profit’s funds to their private benefit. In the first situation, it is not illegal for a non-interested for-profit entity to charge a non-profit entity for goods and services. However, without the visibility of the costs incurred and profits obtained by the for-profit entity, it is impossible for the City to determine whether such an inordinate amount of bingo proceeds accrues to private gain as to outweigh the benefits to charities, which is the Council’s primary purpose in permitting bingo.

Staff therefore proposes amending the Bingo ordinance to require bingo hall permittees to annually submit to the City a complete financial audit, conducted at the expense of the hall, of its bingo related operations. Several other proposed amendments included herein are intended to ensure the legal and ethical operation of the bingo halls and provide the maximum funds for charitable causes:

⁴ Breast Cancer Research and Development Society

⁵ Kids Education Development Scholarships, Inc.

- 1) Require bingo halls to provide proof that they are charging fair market rent for facilities leased to bingo game operators,
- 2) Require bingo hall applicants to list on their applications the suppliers and costs of the facilities, goods and services that they plan to provide the bingo game operators,
- 3) Require bingo hall applicants to agree that they will not provide facilities or services to a bingo game operator in cases of specified familial and/or business relationships between the two entities.

2007 – 2008 FINANCIAL DATA

The following charts show the breakdown of the major financial categories by individual bingo game operator for those operators that conducted bingo games the entire years of 2007 and 2008.

Gross Revenue	2007	2008	+ or -	% change
BCD & R	4,350,198	6,296,330	1,946,132	44
Comm. Char.	5,420,279	8,788,451	3,368,171	62
KEDS	5,645,819	5,411,986	-233,833	-4
EOSC	38,886	44,493	5,607	14

Prizes	2007	2008	+ or -	% change
BCD & R	2,537,429	4,809,669	2,272,240	90
Comm. Char.	3,408,430	5,467,729	2,059,299	60
KEDS	4,857,037	4,571,484	-285,553	-5
EOSC	32,195	35,840	3,645	11

Expenses	2007	2008	+ or -	% change
BCD & R	1,427,894	1,317,373	-110,521	-.7
Comm. Char.	1,856,649	2,586,888	730,239	39
KEDS	746,034	644,776	-101,258	-13
EOSC	5,291	7,016	1,725	32

Profit	2007	2008	+ or -	% change
BCD & R	384,875	169,258	215,617	-56
Comm. Char.	155,200	373,230	218,030	140
KEDS	42,748	79,526	36,778	86
EOSC	1,400	1,637	237	16

Donations	2007	2008	+ or -	% change
BCD & R	248,600	170,000	-78,600	-32
Comm. Char.	147,939	345,710	197,771	134
KEDS	131,085	74,473	-56,612	-43
EOSC	0	1,800	1,800	infinity

Donations as % Of Gross Rev.	2007	2008	+ or -	
BCD & R	5.7	2.7	-3.0	
Comm. Char.	2.7	3.9	1.2	
KEDS	2.3	1.4	-.9	
EOSC	0	4.0	4.0	

PROPOSED CHANGES IN OAKLAND'S BINGO ORDINANCE

◦ Audit

Because the bingo game operators agree that their operations should be transparent to the City and have proposed a method of presenting that transparency, staff removed the proposed amendment requiring the annual audit of the bingo game operators. Although the parties are still working out the details of this method, staff is hopeful that it will accomplish the goals of an audit without the expense of an audit and corresponding reduction in donations by the bingo game operators.

The bingo hall operators have proposed no similar method of providing the City with information regarding their bingo-related finances. Staff therefore continues to propose an amendment requiring the bingo halls to present an audited report of their bingo-related financial transactions. Although the bingo hall operators are private, for-profit businesses, the City Attorney has opined that, as permittees in a business that is regulated by the City, their bingo-related operations are subject to audit by the City.

Electronic Bingo Games

Although the fate of electronic bingo games has not been finally determined, it is important that Oakland's bingo operators function within the law in this regard. Staff therefore proposes an amendment that prohibits bingo game operators from utilizing electronic bingo games that have been determined to be illegal in California.

Additionally, to ensure that bingo game operators provide the social benefits that have been cited as one of the justifications for bingo in Oakland, staff proposes an amendment that would restrict bingo machines only to bingo game operators that provide traditional called bingo and only on the days that called bingo occurs. This will prevent the establishment of bingo halls that consist only of electronic, individually played bingo games.

Bingo Hall Permit Applicable to Hall, Regardless of Number of Bingo Game Operators Served

OMC section 5.10.040 states, in pertinent part, that: "No owner or manager shall operate a bingo hall that has two or more bingo operators without a valid bingo hall permit from the City Manager." The bingo hall manager provides significant services and/or business acumen, regardless of the number of bingo game operators housed by the hall. This section may have been adopted when all of the bingo halls, except the East Oakland Senior Center, housed multiple bingo game operators.

A reduction in the number of bingo game operators has decreased duplicative overhead and expenses and therefore increased the amount of residual funds available for charitable purposes. The result is that Durant Square Bingo Hall houses only one bingo game operator and Foothill Square serves two. For the purposes of regulating the halls, the number of bingo game operators served by a hall is irrelevant to the City. The proposed amendment states, "No individual, corporation, partnership or legal entity shall operate a bingo hall if such operator is a separate entity from the charitable bingo game operator without a valid Bingo Hall Operator permit from the City Administrator."

Establishment of Law Enforcement and Public Safety Fee

Oakland's City Auditor researched and located cities that require bingo operators to pay a monthly fee to the City. The City Attorney confirmed that Penal Code section 326.5 authorizes cities to charge bingo operators a monthly fee to offset the City's costs of law enforcement and public safety.

Elements of law enforcement and public safety that apply to bingo game operators include not only general monitoring and response to calls for service by police but also those staff who conduct public hearings, review and compile the monthly reports, review and determine the legality of electronic bingo systems, monitor and compile the application and financial data submitted by the permittees, to ensure compliance with the law, report to the City Council, and conduct audit review. This fee will be a monthly fee to the bingo game operators that have monthly gross revenues in excess of \$10,000. Three Bingo Game Operators currently function at this level.

Staff proposes that the bingo game operator's monthly fee for Law Enforcement and Public Safety consists of a fixed amount for the elements of the fee described above. Staff estimates that 10 percent of the time of the Administrative Hearing Officer, the Permit Unit's Administrative Analyst, and the Deputy City Attorney assigned to bingo issues is devoted to these functions. The calculation of the proposed fees is included as **Attachment B**.

Bingo Hall Permit Fee Specified in Master Fee Schedule

The Master Fee Schedule (MFS) and the OMC are currently in conflict regarding the cost of Bingo Hall Operator permits, with the MFS listing the Bingo Hall annual permit fee as \$1,000, and OMC Section 5.10.110 specifying it at \$500. The MFS takes precedence, but a confusing situation is generated by this difference in the fee.

Item: _____
Public Safety Committee
June 9, 2009

Staff recommends that OMC section 5.10.110 be modified to clarify that the fee is established by the Master Fee Schedule. In pertinent part it currently reads “The initial fee for a bingo hall permit shall be five hundred dollars (\$500.00) annually.” The current bingo hall fee in the Master Fee Schedule is \$1,000. The proposed amendment would state, “The initial and annual fee for a bingo hall permit is specified in the Master Fee Schedule.”

Increase in Bingo Hall Permit Fee

As discussed above, under the topic of “Bingo Hall Rents and Transparency of Bingo Hall Operations,” staff is proposing an amendment that will require bingo halls to annually submit to the City, at the bingo hall’s expense, an audit conducted by a firm approved by the City. When the audits are submitted to the City, they will be reviewed by the City Auditor, at an estimated cost to the City of \$2,969. The City Auditor also projects 24 hours per year to review the bingo reporting processes. Staff proposes dividing this cost among the bingo hall operators and bingo game operators. Six hours, or \$890, would be assigned to each Bingo Hall permittee. The total cost of the City Auditor’s services would be \$3,859 per bingo hall.

The total proposed annual Bingo Hall Permit fee, therefore, is \$4,859. The fee includes the current \$1000 permit fee and the cost of the City Auditor’s audit review at \$3,859. The calculation of this fee is included as *Attachment B*.

Application Requirements for Bingo Halls

Currently the ordinance controlling bingo mentions bingo halls only in the section that requires halls to have a permit and the section that establishes a price for the permit. Because of the significant role played by bingo halls in the overall operation of bingo in Oakland, and their impact on the amount of charitable donations, staff proposes, as Section 5.10.135, amendments that specify application requirements for bingo hall operators.

Additional criteria for denial, suspension, and revocation of permits

The current ordinance lists several criteria for denial or conditional approval of bingo permits. Proposed amended section 5.10.090 extends the criteria as bases for suspension, and revocation of the permits and proposes additional criteria:

- 1) A Bingo Hall Operator charges more than fair market value for the facilities, supplies, and services provided to a Bingo Game Operator;
- 2) The annual permit fee and/or the monthly law enforcement and public safety fee has not been paid within 30 days of its due date;
- 3) Traditional bingo, utilizing paper bingo cards and numbers called by a volunteer of the Bingo Game Operator, is not played every day that electronic bingo machines are available for play;
- 4) The Bingo Hall Operator provides and/or the Bingo Game Operator utilizes electronic bingo machines that have been determined to be illegal in the State of California.

Administrative Citations

Amended Section 5.10.370 proposes to add administrative citations as one of the options for violations of the ordinance. Currently, there is no effective method for penalizing violations that do not rise to the level of District Attorney prosecution. Violation of the hall's own operating rules in a way that harms a patron or volunteer is an example of the type of violation that would be subject to an administrative citation.

Ministerial Amendments

Finally, there are proposed ministerial amendments; added definitions and changing all references of "City Manager" to "City Administrator" and references of "Vice Control" to "Criminal Investigations."

SUSTAINABLE OPPORTUNITIES

In 2007 bingo operators contributed **\$591,984** to charitable causes. These contributions provided schools, non-profit organizations, and needy individuals with much-needed services and opportunities that otherwise would not have been available to them.

If bingo income and expenses remain the same, passage of the proposed amendment will decrease the funds available for charitable causes will decrease by \$39,095 due to the monthly Law Enforcement and Public Safety Fee that will be paid by the Bingo Game Operators to the City. It will also decrease an additional \$9,718 due to the increase in the cost of Bingo Hall Operator Permit, if the Bingo Hall Operator passes this cost along to the Bingo Game Operator. However, the City is justified in recouping costs incurred in the performance of tasks required to ensure the safe and legal actions of Oakland's bingo operations.

DISABILITY AND SENIOR CITIZEN ACCESS

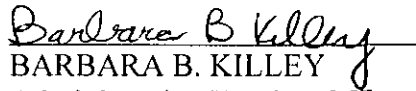
There are no disability and senior citizen access concerns raised in this report.

ACTION REQUESTED OF THE CITY COUNCIL

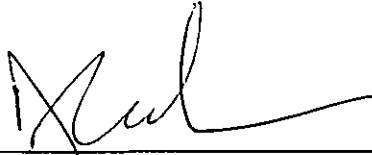
Staff requests that the Council:

1. Accept this informational report on bingo activities in 2008.
2. Adopt the proposed amendments to the bingo ordinance and the Master Fee Schedule.

Respectfully submitted,


BARBARA B. KILLEY
Administrative Hearing Officer

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Attachments: A Charitable Recipients of Funds Dispersed by Bingo Game Operators
B Calculation of Bingo Hall Permit Fee and Bingo Game Operators' Monthly
Law Enforcement and Public Safety Fee

Item: _____
Public Safety Committee
June 9, 2009

Community Charities 2008						
	JAN	FEB	MAR	APR	MAY	JUN
RECIPIENT						
Oakland Police Activities League	\$ 4,000.00	\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 3,000.00	\$ 2,500.00
Grass Valley Elementary	\$ 5,000.00	\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
Thurgood Marshall Elementary	\$ 5,000.00	\$ 4,000.00	\$ 2,000.00	\$ 2,200.00		\$ 2,500.00
Brookfield Elementary	\$ 5,000.00	\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
Oakland Small Schools Foundation	\$ 5,000.00		\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
Acorn Woodland Elementary		\$ 4,000.00	\$ 2,000.00	\$ 2,200.00		\$ 2,500.00
Howard Elementary		\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
Parker Elementary		\$ 4,000.00	\$ 2,000.00	\$ 2,200.00		\$ 2,500.00
James Madison Middle School		\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
East Oakland Youth Development		\$ 4,000.00	\$ 2,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
New Highland Academy			\$ 2,000.00	\$ 2,200.00		\$ 2,000.00
Fred Korematsu Discovery Academy			\$ 2,000.00			
Esperanza Academy			\$ 2,000.00	\$ 2,200.00		
East Oakland Pride			\$ 2,000.00			\$ 2,000.00
Reach Academy			\$ 2,000.00			\$ 2,500.00
CPS			\$ 2,000.00			
Parker Elementary			\$ 5,000.00		\$ 2,500.00	
Stonehurst Elementary			\$ 2,000.00			
Alliance Academy			\$ 1,000.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00
Elmhurst Community Prep			\$ 1,000.00			\$ 2,500.00
Sobrante Park Elementary			\$ 2,000.00	\$ 2,200.00		
Encompass Academy			\$ 2,000.00			
Bay Area Charities Inc.					\$ 500.00	\$ 500.00
Catholic Charities of East Bay					\$ 2,500.00	\$ 37,000.00
Oakland Babe Ruth All Star Team					\$ 3,600.00	
Celebration Christian Center					\$ 550.00	
Oaklanders Assistance Office (Community Realty)					\$ 1,300.00	
West Coast Sporting Goods (for Brookfield Graduation)					\$ 960.00	
Oakland Turf Education Invitational						
Oakland A's Community Foundation						
Time Banking (Larry Reid requested)						
Ella Baker Center						
United Way Bay Area						
Project Outreach						
California Charity Bingo Association						
TOTALS:	\$ 24,000.00	\$ 36,000.00	\$ 45,000.00	\$ 30,800.00	\$ 32,410.00	\$ 37,000.00

Community Charities 2008

(continued)

	JUL	AUG	SEP	OCT	NOV	DEC	
RECIPIENT							
Oakland Police Activities League	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00		\$ 1,500.00	
Grass Valley Elementary	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00		\$ 1,500.00	
Thurgood Marshall Elementary	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00		\$ 1,500.00	
Brookfield Elementary	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	
Oakland Small Schools Foundation	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00		\$ 1,500.00	
Acorn Woodland Elementary	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	
Howard Elementary	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00		\$ 1,500.00	
Parker Elementary			\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	
James Madison Middle School	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	
East Oakland Youth Development	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00			\$ 1,500.00	
New Highland Academy		\$ 2,000.00	\$ 1,500.00			\$ 1,500.00	
Fred Korematsu Discovery Academy							
Esperanza Academy							
East Oakland Pride	\$ 1,500.00	\$ 2,000.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	
Reach Academy		\$ 2,000.00	\$ 1,500.00			\$ 1,500.00	
CPS							
Parker Elementary	\$ 1,500.00	\$ 2,000.00					
Stonehurst Elementary	\$ 1,500.00	\$ 2,000.00					
Alliance Academy						\$ 1,500.00	
Elmhurst Community Prep						\$ 2,000.00	
Sobrante Park Elementary	\$ 1,500.00	\$ 2,000.00					
Encompass Academy							
Bay Area Charities Inc.	\$ 500.00	\$ 500.00					
Catholic Charities of East Bay							
Oakland Babe Ruth All Star Team							
Celebration Christian Center							
Oaklanders Assistance Office (Community Realty)							
West Coast Sporting Goods (for Brookfield Graduation)							
Oakland Turf Education Invitational	\$ 5,000.00						
Oakland A's Community Foundation	\$ 1,000.00						
Time Banking (Larry Reid requested)			\$ 1,500.00				
Ella Baker Center					\$ 5,000.00		
United Way Bay Area					\$ 5,000.00		
Project Outreach					\$ 5,000.00		
California Charity Bingo Association					\$ 10,000.00		
TOTALS:	\$ 26,000.00	\$ 30,500.00	\$ 21,000.00	\$ 10,000.00	\$ 30,000.00	\$ 23,000.00	\$ 345,710.00

ATTACHMENT B

CALCULATION OF BINGO HALL ANNUAL PERMIT FEE

½ hour per day average of police officer patrol and assistance as needed at \$102.56/hour = 51.28 per day X 364 days =	\$18,667
Review of independent audit and reporting processes by City Auditor	\$148.43/hour X 26 hours ¹ 3,859
Administration of annual application and permitting process	1,000
Total Annual Bingo Hall Operator Permit Fee	\$4,859
Anticipated total revenue from 2 current Bingo Hall Operators	<u>\$9,718</u>

CALCULATION OF MONTHLY LAW ENFORCEMENT AND PUBLIC SAFETY FEE

Bingo Game Operator – fixed components

Annual audit	\$25,000 ÷ 12	\$2,083/mo ²
Administrative Hearing Officer	\$17,014 ³ ÷ 12 ÷ 3	473/mo
Administrative Analyst	\$ 9,431 ÷ 12 ÷ 3	262/mo
City Attorney Review	\$10,854 ÷ 12 ÷ 3	301.50/mo
City Auditor Review	\$ 3,562 ⁴ ÷ 12	297/mo
City Auditor review of reporting	\$ 593.72 ÷ 12	49.48/mo
Total fixed monthly fee per Bingo Game Operator		\$1,085.98
Anticipated total annual revenue from 3 current Bingo Game Operators		<u>\$39,095.00</u>

Bingo Game Operator – variable component

½ hour per day average of police officer patrol and assistance as needed at \$102.56/hour = 51.28 per day X days of operation per month	
Anticipated total annual revenue from operations at 2 bingo halls 364 days per year	\$37,332
Anticipated grand total revenue	<u>\$48,813</u>

¹ 20 hours for review of annual audit plus 6 hours per hall operator for review of reporting processes. (Total of 12 hours per year review of reporting processes)
² The proposed charges are annual amounts that are divided by 12 to calculate a monthly charge. Except for the cost of the audit and the City Auditor's costs, which are a specified number of hours, the other items that compose the bingo game operator's Monthly Law Enforcement and Public Safety Fee are additionally divided by 3 because there are currently three major bingo game operators to which the work is attributable.
³ The costs of the Administrative Hearing Officer and Administrative Analyst are based upon ten percent and the City Attorney five percent of their fully loaded cost to the City, including all benefits and overhead, as provided by the Budget Department.
⁴ 4 hours per game operator for review of monthly reporting processes. Hourly rate \$148.43

2009 MAY 28 PM 2:23

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.10, "BINGO" TO: 1) REQUIRE A BINGO HALL PERMIT WHEN THE BINGO HALL OPERATOR IS A SEPARATE ENTITY FROM THE BINGO GAME OPERATOR, 2) SPECIFY APPLICATION REQUIREMENTS FOR BINGO HALLS, 3) PROHIBIT BINGO HALL OPERATORS FROM CHARGING BINGO GAME OPERATORS MORE THAN FAIR MARKET VALUE FOR THE FACILITIES, GOODS AND SERVICES PROVIDED BY THE HALLS, 4) PROHIBIT BINGO HALL OPERATORS FROM TRANSACTIONS WITH BINGO GAME OPERATORS WHEN SPECIFIED FAMILIAL AND/OR BUSINESS RELATIONSHIPS EXIST BETWEEN THE TWO ENTITIES, 5) SUBJECT BINGO HALL OPERATORS TO AUDIT OF THEIR OAKLAND BINGO ACTIVITIES, 6) SPECIFY THAT THE ANNUAL BINGO HALL PERMIT FEE, AUDIT FEE, AND POLICE SERVICES FEE ARE ESTABLISHED BY THE MASTER FEE SCHEDULE, 7) ESTABLISH THAT THE BINGO GAME OPERATORS' FEE FOR LAW ENFORCEMENT AND PUBLIC SAFETY COSTS IS ESTABLISHED BY THE MASTER FEE SCHEDULE, 8) REQUIRE THAT MOST PROFITS OR PROCEEDS BE DONATED TO OAKLAND CHARITABLE CAUSES ANNUALLY, 9) REQUIRE BINGO GAME PERMITTEES TO CONDUCT TRADITIONAL CALLED BINGO EVERY DAY THAT ELECTRONIC BINGO IS AVAILABLE, 10) PROHIBIT USE OF ILLEGAL BINGO MACHINES, 11) PROVIDE FOR ADMINISTRATIVE PENALTY FOR VIOLATIONS, 12) PROHIBIT DOOR PRIZE BINGO GAMES, 13) ADD CRITERIA FOR DENIAL, SUSPENSION, REVOCATION, OR CONDITIONAL APPROVAL OF PERMITS, AND 14) INCREASE THE MAXIMUM GAME PAY-OUT FROM \$250 TO \$500.

WHEREAS, the City's primary interest in permitting bingo is to foster and protect charitable causes in the City of Oakland; and

WHEREAS, the City's interest and the increased costs associated with permitting bingo in the City justify requiring that the bingo game operators use most bingo profits or proceeds for charitable purposes in the City of Oakland; and

WHEREAS, a secondary interest of the City in permitting charitable bingo is the social activity it provides for the participants; and

WHEREAS, electronic bingo games that are designed for individual play do not offer any social activity but are merely a form of individual gambling; and

WHEREAS, by the passage of SB1369, the State of California has outlawed electronic bingo games for charitable bingo operators; and

WHEREAS, some Oakland bingo game operators do not have their own bingo facilities; and

WHEREAS, a bingo hall operator is the entity that provides facilities and services for non-profit bingo game operators to conduct bingo games; and

WHEREAS, Oakland Municipal Code Chapter 5.10 requires bingo hall operators to obtain a permit from the City Administrator; and

WHEREAS, the purpose of the bingo hall permit is to ensure that all entities associated with bingo are properly regulated; and

WHEREAS, the cost of bingo hall permits helps to defray the costs of administering bingo hall permits and monitoring bingo hall compliance; and

WHEREAS, if bingo hall operators charge excessive fees for facilities and other services provided to bingo game operators, profits available for charitable spending are reduced; and

WHEREAS, the finances of bingo hall operators associated with fees charged and services provided to bingo game operators are subject to audit by the City to ensure compliance with state and local laws; and

WHEREAS, the cost of auditing the bingo-related finances of a bingo hall should not be borne by the City; and

WHEREAS, under California Penal Code section 326.5 the City may charge bingo game operators a monthly fee for law enforcement and public safety costs incurred by the City; and

WHEREAS, the costs associated with regulation of bingo game and bingo hall operators increase annually and are therefore more appropriately stipulated by the Master Fee Schedule; and

WHEREAS, by the passage of SB1369, the State of California has recently increased the maximum bingo game payout from \$250 to \$500 effective January 1, 2009; and

WHEREAS, an administrative penalty should be an option available to the City for violations that do not rise to the level of criminal prosecution of either this Code or other local, state, or federal laws, now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. It is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by providing for the permitting and oversight of Oakland's bingo operations.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 3. The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

SECTION 4. Oakland Municipal Code Chapter 5.10 is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed; portions of the regulations that are both underscored and struck through are deletions of previously proposed amendments:

Chapter 5.10 BINGO

5.10.010 Limited authorization.

5.10.020 Bingo defined.

5.10.030 Penal Code Section 326.5 incorporated.

5.10.040 Permit required.

5.10.050 Posting of bingo permit.

5.10.060 Posting and filing of bingo rules.

5.10.070 Organizations eligible to conduct bingo.

5.10.080 Application for permit.

5.10.090 Permits--Denial or conditional approval.

5.10.100 Appeal from denial and conditional issuance of permits.

5.10.110 Term of permit.

- 5.10.115 Law enforcement and public safety fee.
- 5.10.120 Applicant must be qualified.
- 5.10.130 Contents of Bingo Game Operator application.
- 5.10.135 Contents of Bingo Hall Operator application.
- 5.10.140 Investigation of applicant.
- 5.10.150 Contents of permit.
- 5.10.160 Inspection.
- 5.10.170 Maximum amount of prize.
- 5.10.180 Profits--Separate fund or account.
- 5.10.190 Use of profits.
- 5.10.200 Monthly reports.
- 5.10.210 Financial interest--Permittee only.
- 5.10.220 Exclusive operation by Permittee.
- 5.10.230 Bingo games open to public.
- 5.10.240 Attendance limited to occupancy capacity.
- 5.10.250 Bingo games conducted on property utilized by permittee for its charitable purposes.
- 5.10.260 Transfer of permits.
- 5.10.270 Minors not to participate.
- 5.10.280 No participation in bingo games by intoxicated persons.
- 5.10.290 Alcoholic beverages.
- 5.10.300 Number of games--Notice to police department.
- 5.10.310 Hours of operation.
- 5.10.320 *Participant must be present.*

5.10.330 Summary suspension of permit.

5.10.340 Suspension/revocation of permit--Hearing.

5.10.350 Effect of suspension or revocation of a permit.

5.10.360 City may enjoin violation.

5.10.370 Violation--Penalty.

5.10.010 Limited authorization.

Notwithstanding any other provision of this code, bingo games are allowed pursuant to and as restricted by Section 19(c) of Article IV of the California Constitution, California Penal Code Section 326.5 (including future amendments thereto), and the provisions of this chapter. (Prior code § 3-17.01)

5.10.020 ~~Bingo defined.~~ Definitions

As used in this ~~section~~ chapter,

“Bingo” means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. Notwithstanding Penal Code Section 330c, as used in this section the game of bingo shall include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All such preprinted cards shall bear the legend, “for sale or use only in a bingo game authorized under California law and pursuant to local ordinance.”

“Bingo Game Operator” means an organization that meets the criteria specified in Section 5.10.070 and that conducts bingo games with a valid permit.

“Bingo Hall Operator” means an individual, corporation, partnership or legal entity that has obtained a bingo hall permit and that provides facilities and other services to Bingo Game Operators for a fee.

“(Prior code § 3-17.011)

5.10.030 Penal Code Section 326.5 incorporated.

The provisions of Penal Code Section 326.5 (including future amendments) are incorporated herein by reference. (Prior code § 3-17.02)

5.10.040 Permit required.

No organization, individual, or other entity shall conduct a bingo game without a valid Bingo Game Operator permit as provided for by this chapter. ~~No owner or manager shall operate a bingo hall that has two or more bingo operators without a valid bingo hall permit from the City Manager.~~ No individual, corporation, partnership or legal entity shall operate a bingo hall if such operator is a separate entity from the charitable bingo game operator without a valid Bingo Hall Operator permit from the City Administrator.

(Ord. 12117 § 1 (part), 1999; prior code § 3-17.03)

3. That any officer of the Bingo Game or Bingo Hall applicant's organization or person operating in a bingo game has been convicted within the past five years of a crime involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud or similar crimes involving moral turpitude;
 4. That there has been a willful misstatement of fact in an application or report filed hereunder;
 5. That there has been a negligent failure to file any report required hereunder;
 6. That there has been any other violation of any provision of this chapter;
 - ~~7. That there has been a violation of section 5.10.135, subdivision (G) or section 5.10.210.~~
 8. That a Bingo Hall Operator charges more than fair market value for the facilities, supplies, and services provided to a Bingo Game Operator;
 9. The annual permit fee and/or the monthly law enforcement and public safety fee has not been paid within 30 days of its due date;
 10. Traditional bingo, utilizing paper bingo cards and numbers called by a volunteer of the Bingo Game Operator, is not played every day that electronic bingo machines are available for play;
 11. The Bingo Hall Operator provides and/or the Bingo Game Operator utilizes electronic bingo machines that have been determined to be illegal in the State of California.
- B. The City ~~Manager~~ Administrator may conditionally approve the issuance of a permit for a term of six months to any applicant whose prior permit was suspended and/or revoked as provided for in this chapter or for any other violations of subsection A of this section. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.051)

5.10.100 Appeal from denial and conditional issuance of permits.

- A. There shall be no appeal from the denial or conditional issuance of permits as the decision of the City ~~Manager~~ Administrator or his or her designee is final.
- B. Deleted. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.052)

5.10.110 Term of permit.

All permits issued shall be for a term of one year from January 1st until December 31st of the same year, or for such shorter term as the City ~~Manager~~ Administrator may deem necessary, subject to renewal and annual fees. All fees shall be fixed by the City Council. ~~The initial fee for a bingo hall permit shall be five hundred dollars (\$500.00) annually. The initial and annual fee for a bingo hall permit is specified in the Master Fee Schedule. It shall include, in addition to any administrative and audit costs incurred by the City for the permitting of bingo halls, the costs for law enforcement and public safety attributable to the presence of bingo halls.~~

Nothing in this section shall be construed to require any refund of license fees paid in the event a bingo permit is revoked pursuant to the provisions of this chapter. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.06)

5.10.115 Law enforcement and public safety fee

Bingo Game Operators with monthly gross proceeds in excess of \$10,000 shall pay a monthly fee to offset the City's costs of law enforcement and maintenance of public safety. The fee shall be due the 10th of each month with the Bingo Game Operator's monthly report, pursuant to section 5.10.200. Any fee not paid by the 15th of the month shall be subject to late fees. The monthly fee and the late fee shall be specified in the Master Fee Schedule.

5.10.120 Applicant must be qualified.

No Bingo Game Operator permit shall be issued to any organization unless such applicant is an eligible organization as defined by Section 5.10.070, ~~and its~~ No permit shall be issued unless the application conforms to the requirements, terms and conditions of these regulations. (Prior code § 3-17.07)

5.10.130 Contents of Bingo Game Operator application.

Said application for a permit shall contain the following:

- A. The name of the applicant organization and a statement that the applicant is an eligible organization as defined by Section 5.10.070;
- B. The name and signature of at least two officers, including the presiding officer, of the organization;
- C. A list of all members of the organization who will operate or assist in operating the bingo games;
- D. The particular property within the eCity, including the street number, owned or leased by the applicant, used by such applicant for the performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;
- E. Proposed days of week and hours of day for conduct of bingo games;
- F. A statement that the applicant agreed to conduct bingo games in strict accordance with the provisions of Section 326.5 of the California Penal Code, this chapter, and the same as they may be amended from time to time;
- G. A statement that the applicant agrees to five days' prior notice to the ~~Vice Control~~ Criminal Investigations Division of the Oakland Police Department before conducting any bingo game;
- H. A statement that the applicant's state and federal nonprofit exemption status are currently in effect;
- I. Said application shall be signed by the applicant under penalty of perjury;
- J. The applicable permit or renewal fee shall accompany the application;
- K. Such other information as is required by the City ~~Manager~~ Administrator and which is necessary for enforcement of this chapter. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.08)

5.10.135 Contents of Bingo Hall Operator application.

Said application for a permit shall contain the following:

- A. The name of the applicant;
- B. The name and signature of at least two officers, including the presiding officer, of the corporation, partnership, or other legal entity, if applicable;
- C. The particular property within the city, including the street number, owned or leased by the applicant, on which property bingo games will be conducted, together with the occupancy capacity of such place;
- D. Proposed days of week and hours of day for conduct of bingo games;
- E. A list of the facilities, goods, and services that applicant will provide to Bingo Game Operators, the name and address of the supplier, and the fee to be charged to Bingo Game Operators;
- F. Proof that applicant is charging fair market rent for any facilities, goods, or services leased or rented to Bingo Game Operators for a fee. Proof of fair market rent may be provided by any

generally accepted method in the real estate industry including, but not limited to, evidence of a comparable rentals study from a qualified appraiser or Real Estate broker performed within three months of the application date;

G. A statement that applicant will not participate in any transaction for the provision of facilities, goods or services to a bingo game operator if either of the following applies:

(1) Applicant is a director, officer, partner, trustee, employee or holds any position of management in the bingo game operation;

(2) A member of applicant's immediate family, including spouse, child, domestic partner, or other person cohabitating with applicant, is a director, officer, partner, trustee, employee or holds any position of management in the bingo game operator.

For the purposes of this section, applicant includes an individual or the presiding directors, officers, partners, trustees or managers of any corporation, partnership, or other legal entity, if applicable;

H. Said application shall be signed by the applicant under penalty of perjury;

I. The applicable permit or renewal fee shall accompany the application;

J. Such other information as is required by the City Administrator and which is necessary for enforcement of this chapter.

5.10.140 Investigation of applicant.

Upon receipt of the completed application and the fee, the ~~City Manager~~ Administrator shall refer the application to the Fire Marshal for investigation as to whether or not the property of the applicant qualifies and the extent to which it qualifies as property on which bingo games may lawfully be conducted, as to fire, occupancy, and other applicable restrictions. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.09)

5.10.150 Contents of permit.

Upon being satisfied that the applicant is fully qualified, under the law, to conduct bingo games or to operate a bingo hall in the City, the ~~City Manager~~ Administrator shall issue a permit; ~~the permittee shall notify the Vice to said applicant, which shall contain~~ and shall notify the Criminal Investigations Division of the Oakland Police Department of the following information:

A. The name and nature of the organization to whom the permit is issued;

B. The address where bingo games are authorized to be conducted;

C. The occupancy capacity of the room in which bingo games are to be conducted;

D. The date of the expiration of such permit;

E. Such other information as may be necessary or desirable for the enforcement of the provisions of these regulations. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.10)

5.10.160 Inspection.

Any peace officer of the city shall have free access to any bingo game authorized under these regulations. The permittee shall have the bingo permit, and the list of approved staff available for inspection at all times. It is unlawful for any person to interfere, block doorways, or otherwise impede the efforts of a peace officer to make such inspections. (Prior code § 3-17.11)

5.10.170 Maximum amount of prize.

The total value of prizes awarded during the conduct of any bingo game shall not exceed ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) in cash or kind, or both for each

separate game which is held. ~~No additional amounts may be paid as prizes for bingo games. If door prizes or other prizes are to be offered, they may not be awarded on the basis of winning a bingo game, and they are subject to all other prohibitions and controls on gambling.~~ (Ord. 12469 § 1 (part), 2003; Ord. 12117 § 1 (part), 1999: prior code § 3-17.12)

5.10.180 Profits or Proceeds--Separate fund or account.

A. With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code , all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account.

B. With respect to all other organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account.

C. The permittee Bingo Game Operator shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by these regulations. The city, by and through its authorized officers, including the City Manager Administrator, shall have the right to examine and audit such record at any reasonable time and permittee shall fully cooperate with the city by making such records available.

D. The Bingo Hall Operator shall keep full and accurate records of the income and expense associated with its business relationship with the Bingo Game Operator. The City, by and through its authorized officers, including the City Administrator, shall have the right to examine and audit such record at any reasonable time and permittee shall fully cooperate with the city by making such records available. The Bingo Hall operator agrees to have a complete financial audit annually of all bingo related operations at its own expense. The annual audit must be conducted by a Certified Public Accountant who is approved in advance by the City Auditor. Upon completion of the annual financial audit, copies must be submitted to the City Administrator and the City Auditor no later than 90 days after the close of the Bingo Hall operator's fiscal year.

(Ord. 12117 § 1 (part), 1999: prior code § 3-17.13)

5.10.190 Use of profits or proceeds.

A. With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be used only for charitable purposes. At least ninety percent of bingo profits from bingo games conducted in Oakland must be used annually for charitable purposes within the City of Oakland.

B. With respect to all other organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5, all proceeds shall be used in accordance with Penal Code Section 326.5. At least seventy percent of the proceeds from bingo games conducted in Oakland must be used annually for charitable purposes within the City of Oakland.

C. Organizations applying for a new Bingo Game Operator Permit must provide a statement that they will meet the requirements of this section at the time of application. Permitted Bingo Game Operators must provide verification that they have met and will continue to meet the requirements of this section with their annual application for renewal.

(Prior code § 3-17.14)

5.10.200 Monthly reports.

The permittee shall, on a monthly basis, provide the City Manager Administrator with complete and correct written reports of all expenses and income related to activities conducted pursuant to this chapter. The reports shall be due on the last tenth day of each the month following the month for which activity is being reported. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.15)

5.10.210 Financial interest--Permittee only.

No individual, corporation, partnership, or other legal entity except the permittee shall hold a financial interest in the conduct of such bingo game. (Prior code § 3-17.16)

5.10.220 Exclusive operation by permittee.

A bingo game shall be operated and staffed only by members of the permittee organization. Such members shall not receive a profit, wage, or salary from any bingo game. Only the permittee shall operate such game, or participate in the promotion, supervision or any other phase of such game. (Prior code § 3-17.17)

5.10.230 Bingo games open to public.

All bingo games shall be open to the public. (Prior code § 3-17.18)

5.10.240 Attendance limited to occupancy capacity.

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the Fire Marshal of the City in accordance with applicable laws and regulations. Permittee shall not reserve seats or space for any person. (Prior code § 3-17.19)

5.10.250 Bingo games conducted on property utilized by permittee for its charitable purposes.

A permittee shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office or for the performance of the purposes for which the organization is organized. The permit issued hereunder shall authorize the holder thereof to conduct bingo games only on such property, the address of which is stated in the application. In the event the described property ceases to be used as the organization's office or as a place for the performance of the purposes for which the permittee is organized, the permit shall have no further force or effect. A new permit may be obtained by an eligible organization, upon application under these regulations, when it again owns or leases property used by it for the performance of the purposes for which the organization is organized. (Prior code § 3-17.20)

5.10.260 Transfer of permits.

No permits are transferable. (Prior code § 3-17.21)

5.10.270 Minors not to participate.

No person under the age of eighteen (18) years of age shall enter or remain or be permitted to enter or remain in any place while bingo games are being played in any place where bingo games are authorized. (Prior code § 3-17.22)

5.10.280 No participation in bingo games by intoxicated persons.
No person who is obviously intoxicated shall be allowed to participate in any bingo games.
(Prior code § 3-17.221)

5.10.290 Alcoholic beverages.
No alcoholic beverages shall be consumed, sold, or given away, served or delivered to any person within the place where any bingo games are being conducted, nor shall any bingo game be conducted on any premises licensed to serve alcoholic beverages. (Prior code § 3-17.222)

5.10.300 Number of games--Notice to police department.
At least five days before any bingo game is to be conducted, the permittee shall notify the ~~Vice Control~~ Criminal Investigations Division of the Oakland Police Department of the time and place of said game. (Ord. 12469 § 1 (part), 2003; prior code § 3-17.23)

5.10.310 Hours of operation.
No bingo game shall be conducted between the hours of two a.m. and ten a.m. (Prior code § 3-17.24)

5.10.320 Participant must be present.
No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. (Prior code § 3-17.25)

5.10.330 Summary suspension of permit.
A. Whenever it appears to the Chief of Police or his or her representative that the permittee is conducting a bingo game in violation of any of these provisions, said Chief of Police or his or her representative shall have the authority to summarily suspend the permit for a period not to exceed five days and to order the permittee to immediately cease and desist any further operations of any bingo games for a period not to exceed five days. After a permit has been summarily suspended, the Chief of Police or his or her representative shall refer the matter to the City Manager Administrator for an investigation.
B. Any person who continues to conduct a bingo game after any summary suspension thereof under subsection A of this section shall be deemed guilty of an infraction.
C. Access to Criminal History Information. The Chief of Police or his or her representative shall have the authority to obtain criminal history information for each officer of the permittee organization and each person operating or assisting in the operation of a bingo game for purposes of determining those who have been convicted within the past five years of crimes involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud, or similar crimes involving moral turpitude, and to provide such information to the City Manager Administrator for his or her use in granting, denying and suspending or revoking bingo permits. (Ord. 12117 § 1 (part), 1999; prior code § 3-17.26)

5.10.340 Suspension/revocation of permit--Hearing.
A. Whenever it appears to the City Manager Administrator that the permittee has been or is conducting bingo games or operating a bingo hall in violation of California Penal Code Section

326.5 or any of these provisions, or that the permit was obtained by fraudulent representation, the permit may be suspended or revoked.

~~B. No permit shall be suspended or revoked unless written notice shall have first been given at least five days before the hearing thereof by depositing in the United States mail or by personally delivering a notice directed to the permittee at the address given in the application. The notice shall set forth a summary of the ground(s) advanced as the basis of the suspension or revocation and the date, time and place set for the hearing.~~

~~C. At the hearing before the City Manager, the permittee or its authorized representative shall have the right to present evidence and a written or oral argument, or both.~~

~~D. The City Manager shall not be bound in the conduct of such hearing by the common law or statutory rules of evidence and procedure, but inquiry shall be made in such a manner to ascertain the substantial rights of the public and the permittee.~~

~~E. No decision shall be invalidated because of the admission into the record and the use as any proof of any fact in dispute of any evidence not admissible under the common law or statutory rules of evidence.~~

B. Hearings on suspensions and revocations shall be noticed and conducted pursuant to Chapter 5.02 of this Code, except that ~~W~~within twenty (20) days after close of hearing the City Manager Administrator shall render his or her decision based upon the record and present and notify the permittee in writing of such decision. The decision of the City Manager Administrator shall be final.

C. Judicial review may be had by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure. ~~Any such petition shall be filed within thirty (30) days after the day the decision of the City Manager becomes final.~~

D. Within seven days after written notification of the City Manager's Administrator's decision, the permittee must surrender its permit to the City Manager's Administrator's Office. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.27)

5.10.350 Effect of suspension or revocation of a permit.

When the City Manager Administrator has suspended or revoked a permit pursuant to the provisions of this chapter and his or her decision has become final, no application for a bingo permit shall be accepted from the applicant for a period of one year from the date of the City Manager's Administrator's final decision suspending or revoking the permit unless a shorter period is allowed in the decision. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.271)

5.10.360 City may enjoin violation.

The Ccity may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the California Penal Code or of these regulations. (Prior code § 3-17.28)

5.10.370 Violation--Penalty.

A. It is a misdemeanor under Section 326.5 of the California Penal Code for any person to receive a profit, wage, or salary from any bingo game authorized hereunder, a violation of which is punishable by a fine not to exceed ten thousand dollars (\$10,000.00), which fine shall be deposited in the general fund of the city.

B. Except as provided in subsection A of this section, a violation of any provision of this chapter is an infraction and shall be punishable by (1) a fine not exceeding fifty dollars (\$50.00) for a first violation; (2) a fine not exceeding one hundred dollars (\$100.00) for a second violation

within one year; (3) a fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within one year.

C. If the City Administrator or his/her designee determines that a violation of this Chapter has occurred, he/she may issue an administrative citation, pursuant to Oakland Municipal Code Chapter 1.12. Such citation may be issued in addition to any other applicable legal, injunctive, or equitable remedies.

D. The recipient of an administrative citation may request an administrative hearing to adjudicate any penalties issued under this chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this chapter. Any determination from the administrative hearing on penalties issued under this chapter will be final and conclusive.

SECTION 5. With the exception of Section 5.10.170, "Maximum amount of prize," which becomes effective January 1, 2009, pursuant to State law, this Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

SECTION 6. If any article, section, subsection sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions, which shall remain in full force and effect.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

DRAFT

APPROVED AS TO FORM AND LEGALITY

FILED
OFFICE OF THE CITY CLERK
OAKLAND

City Attorney

2009 MAY 28 PM 2:29 **OAKLAND CITY COUNCIL**

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NUMBER 12809 C.M.S. (MASTER FEE SCHEDULE), AS AMENDED, TO MOVE THE ANNUAL BINGO HALL FEE FROM CHAPTER 5.10 TO THE MASTER FEE SCHEDULE, TO ESTABLISH A MONTHLY FEE FOR BINGO GAME OPERATORS TO OFFSET THE CITY'S COSTS OF LAW ENFORCEMENT AND PUBLIC SAFETY, AND TO INCLUDE IN THE ANNUAL BINGO HALL PERMIT FEE THAT PORTION OF LAW ENFORCEMENT AND PUBLIC SAFETY COSTS ATTRIBUTABLE TO BINGO HALLS

WHEREAS, the City charges an annual fee to permit the operation of bingo halls in Oakland; and

WHEREAS, that fee may increase with inflation and may vary with other factors; and

WHEREAS, the appropriate ordinance for variable fees is the Master Fee Schedule, which the City of Oakland periodically updates to account for cost of living increases and program changes or other costs; and

WHEREAS, the City incurs law enforcement and public safety costs due to the operation of bingo; and

WHEREAS, those costs include the administrative costs of conducting complaint hearings and of reviewing, compiling, and auditing the financial information submitted by the bingo operators to ensure compliance with the law; and

WHEREAS, Penal Code section 326.5(1)(2) authorizes cities to impose and collect a monthly fee from bingo game operators for law enforcement and public safety costs incurred by the City that are directly related to bingo activities; and

WHEREAS, some costs of law enforcement and public safety related to bingo are attributable to the bingo hall operator as well as the bingo game operator; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Master Fee Schedule as set forth in Ordinance Number 12809 C.M.S., as amended, is hereby amended to establish an annual permit fee for bingo hall operator permits and a monthly fee for law enforcement and public safety for bingo game operators as set forth in Exhibit A, attached hereto and made a part hereof.

SECTION 2. All revenues generated through the adoption of these fees will continue to be deposited in General Purpose Fund (1010), City Administrator Organization (02111), Police Permits Account (42411).

SECTION 3. This ordinance shall be effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 4. The Master Fee Schedule is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

EXHIBIT A

City of Oakland
Amendment to the Master Fee Schedule – Revised 06/09/09

<u>FEE DESCRIPTION</u>	<u>Fee</u>	<u>Unit</u>
SPECIAL ACTIVITIES		
E. ANNUAL PERMIT TO CONDUCT BINGO GAMES FOR CHARITY	50.00	Year
1. Bingo Hall Permit	1,000.00	Permit
<u>2. Bingo Game Operator Law Enforcement And Public Safety Fee</u>	<u>4,859.00</u>	
a. Monthly Fee	1,085.98	Month
b. Late Fee for Payments Received After 15 th of Month	10% of Fee Amount	