

2008 OCT 16 PM 6:29

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Mr. Dan Lindheim  
FROM: Office of the City Administrator, Special Activity Unit  
DATE: October 28, 2008

- Re:
- A) Supplemental Bingo Report Regarding The Recently Adopted California Statute Outlawing The Use of Electronic Bingo Machines by Charitable Bingo Game Operators;
  - B) Adopt Amendments To Oakland Municipal Code Chapter 5.10 1) Prohibiting Door Prize Bingo Games and 2) Increasing the Maximum Bingo Game Pay-out From \$250 to \$500; and
  - C) Adopt the Following Amendments to Oakland Municipal Code Chapter 5.10, Proposed and Discussed in Staff Report Dated June 24, 2008:
    - 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, And 12) Add Criteria For Denial, Suspension, Revocation, Or Conditional Approval Of Permits.

---

### SUMMARY

At the June 24, 2008 Public Safety Committee meeting, the Committee passed by consensus the proposals listed under Item C above, sending them to the City Council to be heard at the July 1, 2008 Council meeting. The Council returned the proposed amendments to the Public Safety Committee to ensure that all affected parties had adequate notice of the proposals.

Item: \_\_\_\_\_  
Public Safety Committee  
October 28, 2008

Since that time the California State Legislature has passed and the Governor has signed SB 1369, a bill that, among other things, prohibits the use of electronic bingo games by California's charitable bingo game operators. This prohibition becomes effective January 1, 2009. The purpose of this report is to outline the potential impact of this legislation on Oakland.

## **FISCAL IMPACTS**

The City of Oakland currently realizes only \$2,200.00 directly in annual permit fees from bingo permittees. However, as the attached staff report (Legistar No. 07-1233) dated June 24, 2008 documents, in 2007 Oakland's bingo game operators donated over \$500,000 to Oakland schools and charitable organizations. The June 24, 2008 staff report and attached amendment proposals project \$218,232 in additional annual revenues to the City through the establishment of a Law Enforcement and Public Safety Fee. All of these revenues are potentially jeopardized by the state's recent action.

## **KEY ISSUES AND IMPACTS**

### **Evolution of Guidance Regarding the Role of Electronic Bingo Games in Charitable Bingo**

As the staff report dated June 24, 2008 points out (p.12), there has been a dearth of guidance from the state regarding the legality of electronic bingo games. Electronic bingo games were not mentioned at all in the state statutes in effect prior to the adoption of SB 1369. Law Enforcement Advisories issued by the Attorney General, one as recently as August 10, 2007, stated that electronic bingo games were "unauthorized", but the Advisories went on to describe situations in which combinations of electronic and paper games may be considered acceptable.

The ambiguity of the Advisories encouraged both cities and the manufacturers of electronic games to develop standards that they advocated as a method of ensuring the legality of electronic bingo games used by charitable bingo game operators. Staff reviewed several of these standards and the equipment proposed as legal with the hope of establishing a definitive policy for Oakland. Unfortunately, staff determined that both the city and manufacturer standards were self-serving documents intended to justify the use of existing or desired machines. Staff therefore proposed an amendment that prohibits bingo game operators from utilizing electronic bingo games that have been determined to be illegal in California (proposed OMC section 5.10.090A.10).

Earlier this year, the legality of electronic bingo games was called into question by Indian Tribes who claimed that the use of such games violated their contract with the state. There were threats of withholding revenue from Indian Gaming. The legislature responded with Senate Bill 1369. Under Senate Bill 1369 all electronic bingo games, with the exception of "card-minding devices"<sup>1</sup>, are illegal. Governor Schwarzenegger signed the bill on September 30, 2008.

<sup>1</sup> Card-minders are machines that allow a bingo participant who is playing a traditional game called by a human caller to play a large number of cards that are stored in the machine.

Therefore, if the Oakland City Council adopts proposed OMC section 5.10.090A.10, all such games used by Oakland's charitable bingo game operators will be in violation of the law.

**Potential Impact of the Illegality of Electronic Bingo Games**

The state's prohibition of electronic bingo in charitable bingo games has the potential to eliminate all charitable contributions of Oakland's bingo game operators, with the exception of the Oakland Senior Center, which does not employ electronic games. Monthly reports submitted by Oakland's bingo permittees indicate that the three other bingo game operators may have no remaining profits to donate to charitable causes if the revenues from electronic games are eliminated.

**AMOUNTS REPORTED JANUARY 2008 THROUGH AUGUST 2008**

	BCD & R	COMM. CHAR.	KEDS
Elec. Bingo \$	\$200,372	\$1,418,408	\$51,720
Profit/Loss	\$125,688	\$ 251,791	\$37,345

Although the proposed Law Enforcement and Public Safety fees are fixed amounts, not dependent on profit, the magnitude of these fees further reduces the likelihood of residual bingo monies being available to Oakland charities and needy individuals.

While elimination of electronic bingo will likely reduce gross revenues, especially in the case of Community Charities, the proposed amendment changes regarding expenses could increase the profits available for charity. As discussed in the staff report dated June 24, 2008, the rent and other expenses incurred by Oakland's large bingo game operators in 2007 grew at a faster pace than the growth in revenues.

Year to date 2008, the pace of increased expenses and reduced profits relative to revenues has continued for BCD & R. If BCD & R's revenue generation continues at the rate established by the end of August, 2008, their year-end revenues will exceed \$5.75 million, an increase of \$1.4 million or 32 percent over 2007. Their profits, the amount available to contribute to charity will, at the current pace, amount to approximately \$195,000, an almost 50 percent decrease from 2007 profits of \$384,875, and an over 70 percent decrease from their 2006 peak of \$665,181.

Prize payouts appear to be the major culprit in BCD & R's reduced 2008 profits. If prize payouts continue at the pace reported as of August 2008, they will exceed \$4 million by year end, a 67 percent increase over the \$2.5 million prizes reported for 2007.

On the other hand, by August, 2008 Community Charities' \$5,698,291 revenues exceeded their entire 2007 revenues of \$5,420,279, a 59 percent increase, largely due to the increase in the size of their electronic bingo operation. On a percentage basis, their donations to charity have increased more than their revenues. By August their 2008 donations stood at \$261,710, compared to \$147,939 for the entire year of 2007. At that rate their donations would reach almost \$400,000 by year end, a 170 percent increase.

Item: \_\_\_\_\_  
Public Safety Committee  
October 28, 2008

KEDS, the bingo game operator with the lowest electronic game revenue, does not believe that the loss of electronic games will negatively impact their bottom line. They found that to be the case when, earlier this year, due to a dispute with one of the game manufacturers, they stopped using electronic games for a period of time. KEDs Board of Directors has voted to eliminate electronic games immediately.

Although KEDS projects the least electronic bingo game impact, they also continue to generate the least profit on their revenues. Based upon reports submitted through August, their 2008 revenues will exceed \$5.4 million, but their profits available for charity will be only \$56,000.

### **Remote Caller Bingo**

SB1369 contains a provision that allows charities with multiple locations, such as church denominations, to conduct "remote caller bingo", in which a live bingo caller in one location is connected by video feed to other locations. Oakland's bingo game operators are not such organizations and staff does not anticipate this provision will be utilized by them. However, the City may need to consider whether remote bingo locations will be permitted in Oakland, since revenues from those games would not necessarily go to the Oakland branch of that organization. Without an affirmative change to Oakland's ordinance allowing it, remote caller bingo would not be authorized in Oakland

### **Increase in Prize Money From \$250 to \$500 per game**

Prior to the passage of SB1369, bingo prizes were limited to \$250 per game, pursuant to California Penal Code section 326.5(n). Oakland bingo game operators also conducted "door prize games" which paid out \$1000. It is staff's understanding that this was a concession made by the City to allow charitable bingo operators to be more competitive with Indian gaming operators. In the staff report dated June 24, 2008, staff proposed a limitation on "door prize games" to ensure more profits available for charitable purposes.

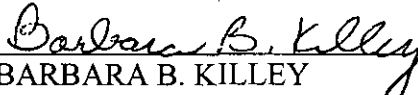
SB1369 attempts to distinguish charitable bingo from Indian gaming bingo by prohibiting charitable bingo from using electronics and increasing the maximum charitable bingo payout to \$500. Staff proposes changing Oakland's Ordinance to allow the higher \$500 payout amount. Additionally, in light of this change, staff also proposes an amendment that clearly prohibits any other payouts (e.g. door prizes) for bingo games, as such payouts are not authorized by law.

**ACTION REQUESTED OF THE CITY COUNCIL**


Staff requests that the Council:

1. Accept this supplemental report on bingo activities in 2007.
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:

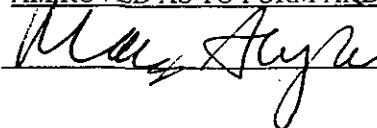
  
Office of the City Administrator

Item: \_\_\_\_\_  
Public Safety Committee  
October 28, 2008

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 OCT 16 PM 6:30

APPROVED AS TO FORM AND LEGALITY

  
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, a bingo operation can require the City to handle more calls for police services, increased traffic, greater demand for parking, and other problems associated with a gambling enterprise; 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 finances of bingo game operators are subject to audit by the City to ensure compliance with state and local laws and the cost of the audit is part of the City's law enforcement costs; 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**, no other payouts, such as door prizes, are authorized for bingo game winners; and

**WHEREAS**, an administrative penalty should be an option available to the City for violations of this Code that do not rise to the level of criminal prosecution, 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:

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 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)

5.10.050 Posting of bingo permit.

A copy of the bingo game operator permit shall be posted at the location of the bingo games.

(Prior code § 3-17.031)

5.10.060 Posting and filing of bingo rules.

The rules for the bingo games conducted by a ~~permitted~~ bingo game operator shall be posted in a conspicuous place at the location of the bingo games. A copy of the rules shall be filed with the City ~~Manager~~ Administrator along with the permit application, and any amendment to the rules shall be filed with the City ~~Manager~~ Administrator within thirty (30) days after the amendment becomes effective. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.032)

5.10.070 Organizations eligible to conduct bingo.

Pursuant to Section 19(c) of Article IV of the California Constitution, California Penal Code Section 326.5 and the provisions of this chapter, no individual, corporation, partnership or legal entity shall be permitted to conduct a bingo game except organizations exempt from the payment of the Bank and Corporation Tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701h of the Revenue and Taxation Code and mobile home park associations and senior citizen organizations; provided that the receipts of such games are used only for charitable purposes.

(Prior code § 3-17.04)

5.10.080 Application for permit.

Eligible organizations desiring to obtain a permit to conduct bingo games or operate bingo halls in the city shall file an application in writing therefor with the City ~~Manager~~ Administrator upon forms to be provided by the City ~~Manager~~ Administrator.

A. Applicants who are nonprofit, charitable organizations, as defined in Section 5.10.070, shall also file with said department, copies of certificates or letters of determination from the State Franchise Board and the United States Internal Revenue Service, respectively, demonstrating that the organization is exempt from the payment of the Bank and Corporation Tax under Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701h of the State Revenue and Taxation Code, and that a contribution or gift to the organization would be a charitable contribution under Section 170(c)(2) of the Internal Revenue Code.

B. Senior citizen organizations and mobile home parks must submit a copy of their charters, constitutions, articles of incorporation or bylaws in order to verify the organization's purpose.

C. All applications for renewal shall be filed with the City ~~Manager~~ Administrator prior to the expiration date of the existing permit. (Ord. 12117 § 1 (part), 1999: prior code § 3-17.05)

5.10.090 Permits—Denial, suspension, revocation, or conditional approval.

A. The City ~~Manager~~ Administrator may refuse to issue a bingo permit or may suspend or revoke an existing permit, pursuant to Chapter 5.02 of this code, for any of the following reasons:

1. Operation of the bingo game would not be in compliance with state or federal law, or with the provisions of this chapter;
2. Operation of the bingo game would constitute a fire, health or safety hazard, or would not be in compliance with building or zoning regulations, requirements and ordinances;
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;
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 15<sup>th</sup> 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 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 Ceity, 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 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, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: \_\_\_\_\_

# Notice & Digest

**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.**

This ordinance amends Oakland's existing Bingo permit ordinance (Oakland Municipal Code Chapter 5.10), which regulates the permitting of both bingo game operators and bingo hall operators. The proposed changes 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 bingo game payout to \$500.00