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**CITY OF OAKLAND**  
**AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Ms. Deborah Edgerly  
FROM: Office of the City Administrator, Special Activity Unit  
DATE: June 24, 2008

**Re: Report On Bingo Activities In 2007 And 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, 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) Limit Amount and Quantity of Door Prizes, 13) Add Criteria For Denial, Suspension, Revocation, Or Conditional Approval Of Permits; And**

**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**

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**SUMMARY**

This report provides information regarding the operation of Oakland's permitted bingo establishments during the 2007 calendar year. The report summarizes the receipts, expenditures, and charitable donations made by the bingo game operators, as reported monthly by each

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operator to the Office of the City Administrator. It also addresses the issues of this year's decrease in charitable donations made by Oakland's bingo game operators and the legality of electronic bingo games.

Several amendments to Oakland Municipal Code (OMC) Chapter 5.10, "Bingo", are proposed. The goals of the proposed amendments are 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.

Decrease in Charitable Donations

Following two years of dramatic increases in charitable donations made by Oakland's bingo organizations, 2007 saw a significant decrease.

<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)

**Seven year total donations \$2,427,594**

Previous increases in donations have paralleled increases in gross receipts, so it is troubling that the \$350,428 decrease in 2007 occurred despite a 2007 increase of almost one million dollars in gross receipts, from \$14,626,958 in 2006 to \$15,624,344 in 2007. Community Charities is the only bingo game operator to increase their donations, from \$135,600 in 2006 to \$147,939 an increase of \$12,339, in 2007, with a gross revenue increase of \$377,452.

Based upon the monthly financial reports submitted by the bingo game operators, there appear to be three basic sources that account for the decrease: 1) Increases in prize money disproportionate to the increase in gross income, 2) increases in expenses disproportionate to the increase in gross income, and 3) the tax status of bingo operator BCD&R, which, remaining unresolved, has resulted in BCD&R ceasing charitable donations except for responding to specific requests from the City.

BCD&R's tax status was the primary reason for reduced donations. Of the \$350,428 total reduction, BCD&R's donations alone decreased \$313,550. As the charts in the Issues and Impacts section reveal, despite this decrease, in 2007 BCD&R not only donated the highest amount of the three major bingo game operators, \$248,600, but they were also the most profitable bingo game operator. They were therefore able to donate a much higher percentage of gross revenues. In fact, of the three major bingo game operators, BCD&R had the lowest gross revenues, yet made the highest donations in both 2006 and 2007.

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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. The questions regarding this year's reversal of the prior years' trend are: 1) what has caused the disproportionate increases in prizes and expenses, 2) why is BCD&R so much more profitable than Community Charities and KEDS, and 3) when will BCD & R's tax status be resolved? Staff does not currently have the answers to these questions.

The reversal of the prior years' trend raises questions about the future of bingo in Oakland and of its basic purpose. Without a more in-depth understanding of the finances of the bingo game operators, it is impossible to project their financial contribution to the City.

#### Legality of Electronic Bingo Games

Another issue that surfaced in 2007 is the legality of electronic bingo machines. Last August the California Attorney General's Division of Gambling Control issued a Law Enforcement Advisory on "Electronic Bingo" that raised serious concerns about electronic bingo equipment. Although ostensibly attempting to differentiate legal and illegal electronic games, the vagueness of the criteria only muddied the waters further.

Following the issuance of the Advisory, staff advised Oakland's bingo game operators not to expand beyond their current electronic game capabilities until the City could study the issue and make a determination. Staff was then besieged by electronic bingo game manufacturers seeking to prove that their games were legal.

During 2007 Project YES!, a bingo game operator that operated predominantly with electronic bingo machines, ceased operations, stating as the reason an inability to generate sufficient revenue to meet expenses. During 2007 staff also received an inquiry from a party interested in re-opening the Fruitvale bingo hall that ceased operation in 2005. They stated that they planned to operate predominantly with electronic bingo games. Due to the unresolved issues regarding the legal status of electronic bingo games, staff did not accept an application from this party.

As assessment of electronic bingo games is included in the Key Issues and Impacts Section of this report. Due to a recent cease and desist order against some electronic bingo games, issued by the California Department of Justice, staff proposes an amendment prohibiting the use of electronic games that have been determined to be illegal in California.

#### Proposal of Amendments to Bingo Ordinance

Staff proposes 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 is to increase the charitable benefit of bingo games while ensuring that the activities are conducted legally.

### **FISCAL IMPACTS**

Staff proposes a monthly Law Enforcement and Public Safety fee that would be paid by Bingo Game Operators that gross over \$10,000 per month. With three Bingo Game Operators currently

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functioning at that level, the additional projected revenue to the City would be \$171,180, 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 increasing the Bingo Hall Permit fee to include the portion of police services that are attributable to the Bingo Hall operation and to cover the cost of the City Auditor's review of Bingo Hall Audits. At the current level of two bingo halls, the proposed increase would generate \$45,052 of additional revenue, which will be deposited in the General Purpose Fund (1010), City Administrator's Organization (02111), Police Permits Account (42411).

The fiscal impact of failure to change the ordinance to require permits for all bingo hall operators, regardless of number of charities hosted, would be the loss of \$23,526<sup>1</sup> per year if the proposed Bingo Hall permit fee increases are adopted and if the Bingo Hall manager 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.<sup>2</sup>

## BACKGROUND

California Penal Code Section 326.5 and Oakland Municipal Code (OMC) Chapter 5.10 are the governing regulations for bingo games. These Bingo regulations were implemented by Ordinance No. 9540 C.M.S. on November 22, 1977 and substantially expanded by Ordinance No. 10753, July 8, 1986. Neither at the time of initial implementation or at the time of expansion did a rationale for permitting Bingo accompany the proposed ordinances.

In 1977 many schools, churches, and senior citizen's organizations statewide used bingo as a fund-raising mechanism. All games were played on traditional bingo cards, as there were no electronic machines in use.

Currently the composition of organizations that conduct bingo games and even the nature of the bingo games offered is very different. In the case of Oakland, only the East Oakland Senior Center conducts bingo in its own facility, once a week setting up a room for a traditional bingo session. There are no electronic games at the East Oakland Senior Center.

Oakland's other three bingo game operators are 501(c)(3) organizations whose main activity is the conducting of bingo. Both the Penal Code and the OMC mandate that the profits of bingo games be used only for charitable purposes. As noted above, in 2007 Oakland's three main bingo game operators<sup>3</sup> donated over \$500,000 to Oakland charities and needy individuals referred by the Oaklander's Assistance Office. This is a significant amount that has been

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<sup>1</sup> The current \$1000 fee plus the proposed additional fees of \$22,526.

<sup>2</sup> California Penal Code § 326.5(l)(1)

<sup>3</sup> Project Yes! Bingo went out of business in May of 2007. They had donated \$2,250 to Project Yes! in 2007, prior to ceasing operation.

extremely beneficial to the recipients. A list of the recipients and amounts received is included in Attachment A.

The Special Activity Permit Unit developed forms to be used by the bingo operators to report their monthly activity. The reports are not audited, but operators sign that, to the best of their knowledge, the information provided is true and correct. The information in this report is drawn from the monthly operators' reports.

FINANCIAL SUMMARY

	<u>2005</u>	<u>2006</u>	<u>2007</u>
<b>Gross Receipts</b>	13,413,891.00	14,626,958.00	15,624,344.00
<b>Prizes Awarded</b>	9,584,613.00	10,401,627.00	10,953,287.00
<b>Expenses</b>	3,077,652.00	3,201,586.00	4,083,610.00
<b>Profit</b>	751,626.00	1,023,745.00	587,445.00
<b>Charitable Donations</b>	458,817.00	680,302.00	529,874.00
<b>Residual Percent Donated</b>	61	66 <sup>4</sup>	90

BINGO HALLS AND BINGO GAME OPERATORS

During 2007 the Office of the City Administrator's Administrative Hearing Officer permitted three halls to conduct bingo games; Bay Area Commercial, Cornucopia Ventures, and Wayne Tonkin, dba Fortune Bingo. Wayne Tonkin was the hall manager for the Project Yes! Bingo that ceased doing business in May 2007.

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 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 <sup>5</sup>	Foothill Square/Cornucopia Ventures
• KEDS, Inc. <sup>6</sup>	Foothill Square/Cornucopia Ventures
• Project Yes!	Fortune Bingo/Wayne Tonkin <sup>7</sup>
• East Oakland Senior Center	Not Applicable

<sup>4</sup> Of the \$343,443 difference between Residual and Charitable donations, BCD&R's residual accounts for \$295,915. Both the Charitable Donations and Residual Percent Donated may increase if, after determining their tax liability for past years as well as the current year, BCD&R has residual funds to donate.

<sup>5</sup> Breast Cancer Research and Development Society

<sup>6</sup> Kids Education Development Scholarships, Inc.

<sup>7</sup> Fortune Bingo is located at 337 13<sup>th</sup> St.

## KEY ISSUES AND IMPACTS

### FOLLOW-UP ON COMMITTEE REQUESTS STEMMING FROM 2006 BINGO REPORT

#### 1. Legality of Requirement that the Profits From Bingo Games Go to Charitable Causes in Oakland

In the report on 2006 bingo activities, staff noted that the donations made to Oakland charities and needy individuals had increased significantly, with only one donation going outside of Oakland. The Committee then requested a City Attorney opinion on whether the City could mandate donations be made only to Oakland charities and individuals.

The City Attorney's opinion, submitted as a supporting item on this agenda, is that the City can require bingo profits to remain in Oakland. A proposed amendment to OMC section 5.10.190 would require that 90 percent of profits go to Oakland charitable causes on an annual basis.

In 2007 KEDS donated over 300 percent of that year's profit to charitable causes, with the excess coming from profits retained from 2006 revenues. Community Charities donated 95 percent of their 2007 profits. Only BCD&R, donating 65 percent of their 2007 profits, would not have met the proposed requirement, had the amendment been in effect in 2007.

#### 2. Bingo Hall Rents and Transparency of Bingo Hall Operations

The amount of rent paid by the bingo game operators to the bingo hall operators has been a source of concern since it was first noted in staff's report on 2004 bingo operations. The Public Safety Committee requested staff study this issue further, and, in 2006, staff requested financial statements from bingo hall operators for this purpose. One hall submitted a letter from their attorney stating that, except for the "matters specifically identified in the application consistent with the Oakland ordinance" the other requests were not appropriate. The attorney stated that the information is protected by the hall's right to financial privacy and expressed a concern that Oakland's interest appeared to be related to controlling commercial rents, which, he stated is prohibited by California Civil Code Section 1954.25 et. seq.

Staff subsequently consulted with the City Attorney's Office regarding the auditability of bingo hall permittees. The City Attorney opined that the City may audit the Oakland bingo activities of the bingo halls, but not their other enterprises.

Bingo Hall Operators, unlike Bingo Game Operators, are not required to be non-profit organizations. They may have other business interests unrelated to their relationship with Oakland's Bingo Game Operators. These other interests can not be subject to a City audit of bingo permittees.

Staff then consulted with the City Auditor on the issue of auditing the bingo hall operators; how it could be done, who could do it, and how it could be financed. The City Auditor explained

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that, unless it is codified that the cost of bingo hall audits is borne by the permittee, the City would either bear the cost of auditing the bingo hall permittees at a cost of many thousand dollars per audit, or, more likely, not conduct audits.

Staff therefore proposes an amendment to the Bingo ordinance requiring 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 are intended to ensure the legal and ethical operation of the bingo halls and provide the maximum funds for charitable causes: 1) An amendment that would require bingo halls to provide proof that they are charging fair market rent for facilities leased to bingo game operators, 2) an amendment that would 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, and 3) an amendment that would 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.

**HIGHER REVENUES AND LOWER DONATIONS**

The changes between 2006 and 2007 merit closer analysis of the financial information provided to the City Administrator’s Office by the bingo game operators. 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 2006 and 2007.

<b>Gross Revenue</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	<b>% change</b>
BCD & R	4,149,290	4,350,198	200,908	5
Comm. Char.	5,042,827	5,420,279	377,452	7
KEDS	5,190,488	5,645,819	455,331	9
EOSC	39,579	38,886	(693)	-2

<b>Prizes</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	<b>% change</b>
BCD & R	2,241,290	2,537,429	296,139	13
Comm. Char.	2,655,015	3,408,430	743,415	28
KEDS	4,346,169	4,857,037	510,868	12
EOSC	31,440	32,195	755	2

<b>Expenses</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	<b>% change</b>
BCD & R	1,230,820	1,427,894	197,074	16
Comm. Char.	1,649,915	1,856,649	206,734	12
KEDS	636,727	746,034	109,307	17
EOSC	5,428	5,291	(137)	-3

<b>Profit</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	<b>% change</b>
BCD & R	665,181	384,875	(280,306)	-43
Comm. Char.	146,197	155,200	9,003	6
KEDS	207,591	42,748	(164,843)	-79
EOSC	(300)	1,400	1,700	

<b>Donations</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	<b>% change</b>
BCD & R	562,150	248,600	(313,550)	-36
Comm. Char.	135,600	147,939	12,339	9
KEDS	166,083	131,085	(34,998)	-22
EOSC	3,217	0	(3,217)	

<b>Donations as % Of Gross Rev.</b>	<b>2006</b>	<b>2007</b>	<b>+ or -</b>	
BCD & R	13.5	5.7	-7.8	
Comm. Char.	2.7	2.7	0	
KEDS	3.2	2.3	-.9	
EOSC	8.1	0	-8.1	

This financial information raises the following questions and issues.

1. Gross Revenue - Community Charities is the only tenant at the Durant Square Bingo Hall, and they operate seven days a week. BCD&R and KEDS rent the same facility, Foothill Square, with BCD&R operating five days a week and KEDS operating the other two days a week. How does KEDS generate more revenue in two days of operation than either Community Charities or BCD&R?

Lori Adragna, of KEDS board of directors, questioned whether all of the bingo game operators are reporting the revenue categories in the same manner. She explained to staff that the door prizes alone would not account for the revenue differences but that "Flash tickets" would. Flash tickets are bingo games that are similar to lottery tickets in that the card itself is an instant winner or it is not.<sup>8</sup>

The flash tickets sell for \$1 each and there are 1000 in each box provided by the supplier. \$750.00 is paid out in prizes on each box and the organization retains \$250.00. KEDS sells an average of 15,000 tickets per night. On 15,000 tickets, KEDS reports to the City \$15,000 of revenue. If they reported only the net income of \$3,750.00, KEDS annual income would be reduced \$1,170,000, reducing it to below Community Charities and to the same range as BCD&R.

<sup>8</sup> Ms. Adragna stated that Flash tickets are the category of bingo that the I.R.S. designated as Unrelated Business Income in their recent audits of BCD & R and KEDS.

2. Prizes – Why did Community Charities prizes increase by 28 percent, when revenues increased by seven percent, and why does KEDS pay out a much higher percentage of gross revenues in prizes than either BCD & R or Community Charities? BCD&R pays 58 percent of its gross revenues in prizes, and Community Charities pays 62 percent. KEDS pays a whopping 86 percent of gross revenues in prizes!

Reporting the flash cards differently would account for a large amount of this difference. Ms. Adragna also explained that, due to the competition, KEDS believes it is necessary to offer four “door prizes” and that they do not charge patrons for these games. Door prizes were authorized by the current Administrative Hearing Officer’s predecessor in response to requests from bingo game operators for a vehicle that would make bingo more competitive with Indian gaming by allowing prizes in excess of the \$250 per bingo game maximum imposed by state law.<sup>9</sup> The door prize was to be offered free of charge to all bingo patrons, and the prize maximum was set at \$1,000. Door prizes therefore generate no revenue but pay out four times as much as a regular bingo game. In KEDS case, of the \$10,500 in prizes paid out each bingo session, \$4,000 is in door prizes.

To maintain a level playing field among Oakland’s bingo operators and to increase the amount of profits available for charitable causes, staff is proposing an amendment to codify the door prize maximum and limit the number of door prizes to two per session.

3. Expenses – Why have they increased much more than revenues? While building rental continues to be the largest single expense, equipment rentals, bingo supplies, and security cost each bingo organization hundreds of thousands of dollars per year, according to their reports.

4. Profits – Conversely, how does BCD&R keep their prize and expense totals proportionately so much lower a percentage of gross revenues than Community Charities and KEDS?

How does KEDS keep its expenses at just over half those of BCD&R and 40 percent of Community Charities? Even adjusting for the rent differential of their two-day-per-week operation, their expenses would be only 75 percent of BCD&R’s and 60 percent of Community Charities.

Ray Ables, of Community Charities board of directors, believes that Community Charities profits, and subsequently their donations, will increase dramatically in 2008 due to their recently expanded electronic bingo facilities. During the first three months of 2008, Community Charities has donated \$105,000 to Oakland schools and other charitable causes – over two thirds of the amount of their donations for the entire year of 2007. At that rate, their 2007 donations will exceed \$400,000.

4. BCD&R’s tax situation – When will it be resolved? As the most profitable of the bingo organizations, BCD&R’s withholding of profits pending a final determination of their tax

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<sup>9</sup> According to the KEDS board member, Berkeley bingo game operators also offer \$1000 door prize games.

liability for Unrelated Business Income Tax has significantly decreased their total donations, accounting for over \$313,000 of the \$350,000 reduction in donations.

To their credit, BCD&R has responded to requests for specific emergency needs, most recently donating \$75,000 to assist the victims of the April 1, 2008 apartment fire that displaced approximately 50 people. However, the large amount of retained profits, over \$700,000 from 2006 and 2007 alone, are much needed by Oakland's charitable organizations.

5. Retained profits - How much total retained profit from prior years does each bingo game operator have? By law, non-profit organizations such as the bingo game operators cannot distribute their profits as for-profit corporations do, but must either retain the profits or use them on their charitable purposes. The City's past practice has been to request financial data only on a monthly basis from the bingo game operators. In order to answer the question of total retained profits, balance sheet information would be required. At some point, these monies will exceed the organization's operating expense needs and will have to be donated to charitable causes.

Total donations equaled 90 percent of 2007 total profits, but the number varied dramatically by individual game operator. KEDS, reporting only \$42,748 in profit, made donations of \$131,085, or 300 percent of profit, drawing on their profits from prior years. Community Charities donated \$147,939, 95 percent of their profit. BCD&R's donation of \$248,600 was the largest but accounted for only 64 percent of their profit.

#### The City's Interest in Answering the Questions

Why does the City care about the answers to these questions? This question goes to the heart of the City's purpose in permitting bingo games. There are pros (a local source of social activity) and cons (money spent on bingo can deprive families of basic necessities) about the activity of bingo itself. However, the main benefit to the City of Oakland is the donations made to Oakland charities and needy individuals, that would otherwise have to come from some other source or that would just not exist.

As donations decrease despite increased bingo revenues, it behooves the City to learn more about the cause. It may then be possible to find ways of increasing the profits and donations of the bingo organizations. Otherwise, there is little, if any benefit to the City.

An audit is one appropriate way to determine accurate answers to the City's questions. Additionally, an audit would provide the information needed to establish ongoing reporting requirements and instructions that would ensure that all categories of revenue and expenses were being interpreted and reported in a consistent manner by all of the bingo game permittees. Additionally, an audit is the only mechanism by which the City can be assured that the bingo game operators are operating within the parameters of the law.

Staff proposes inclusion of an annual audit fee as a component of the proposed monthly Law Enforcement and Public Safety Fee, mentioned in the Fiscal Impacts section, which will be collected from the Bingo Game Operators with gross proceeds in excess of \$10,000 per month.

This fee is discussed further under the topic of "Additional Proposed Changes In Oakland's Bingo Ordinance."

### ELECTRONIC BINGO GAMES

In addition to traditional bingo, where numbered balls are randomly selected and announced by a "caller" and multiple players mark papers that are printed with bingo grids, all of the bingo game operators at Foothill Square and Durant Square (BCD&R, Community Charities, and KEDS) offer electronic versions of bingo.<sup>10</sup> Electronic bingo takes two forms:

1) Machines that are used during traditional called bingo. These machines contain a number of "electronic bingo cards." When the caller announces a number, the player keys it into the machine, the machine checks to see whether that number is on any of the cards, and marks the card accordingly. The machine displays cards that are approaching a bingo, and, if the player sees a bingo on an electronic card, the player calls, "Bingo", just as they would if they scored a bingo on a paper card. These machines are very popular with the players who frequent the nightly games at Durant Square and Foothill Square.

2) Stand-alone machines, offering a video version of bingo, that can be played by a single player. No caller is involved. Instead, the bingo pattern is determined by the machine, and the machine then randomly generates numbers for the player. If the generated numbers match the bingo pattern, the player wins. If not, they loose. These machines are available to individuals at Foothill Square and Durant Square during all hours of hall operations. Durant Square is open from noon to 10:30 p.m. every day and Foothill Square is open from 12:30 to midnight Monday through Friday and 11:00 a.m. to midnight on Saturday and Sunday.

Although Oakland's bingo halls have had electronic bingo games of both types for many years, the legality of these games was called into question by a Law Enforcement Advisory dated August 10, 2007, issued by the California Department of Justice, Office of the Attorney General, Division of Gambling Control. The Advisory commences with the warning:

The Division considers electronic systems of bingo that substitute computers with stored bingo matrices, in lieu of paper or cardboard bingo cards, to be unauthorized by Penal Code section 326.5. Such bingo games constitute unlawful lotteries under California law (Pen. Code, § 319) and the conduct of such a game is a misdemeanor (Pen. Code, § 320).

While that statement seems very straight-forward, it is followed by:

The Division, however, does not consider bingo games in which players purchase and receive paper or cardboard bingo cards to be rendered unlawful by the use of an electronic aid that notifies the player of a winning card, where the combined

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<sup>10</sup> The East Oakland Senior Center offers only traditional bingo.

use of the electronic aid and the traditional cards allow the player to meet the requirements of Penal Code section 326.5, subdivision (o).<sup>11</sup>

The August 10, 2007 Law Enforcement Advisory was apparently prompted by the state's concern that millions of dollars in revenue from Indian gaming was threatened by the Indians' claim that electronic bingo machines violate a clause in their gambling agreements that guarantee a monopoly on electronic gaming devices. However, the 2007 Advisory mirrors a formal Attorney General's opinion issued in 1998. [81 Ops. Cal. Atty. Gen 415 (1998)]

Since the issuance of the 1998 opinion, several electronic game manufacturers have developed machines to standards they believe do not run afoul of the law. Some jurisdictions, including Sacramento County and Santa Clara County, have developed standards for electronic bingo. The Sacramento County and Santa Clara County standards are included as Attachment C. City Council members Quan and Reid accompanied staff to Durant Square and Foothill Square to observe the machines in use, with the intent of determining legality.<sup>12</sup> Since then, several bingo game manufacturers have provided staff with the specifications of their machines and their rationale for considering their machines to be legal in California.

Unfortunately, given the minimal guidance of the Attorney General's Opinions and Advisory, there is little clarity on this issue. All of the systems currently in use in Oakland's bingo halls may be capable of meeting the standards outlined by the Attorney General's Advisory and by Sacramento and Santa Clara Counties, even if they do not currently do so. For example, both counties require that the systems require a minimum of two players. The rationale for this requirement is that this prevents it from being a game that is played by a person strictly against a machine. Although Oakland's electronic games are currently played by one individual, playing against one machine, the systems reviewed by staff state that a setting determines whether multiple players are required.

Another requirement of Sacramento and Santa Clara Counties is that "The game must be won by the first player who obtains a pre-designated winning pattern." In traditional called bingo, the prize amount is known in advance<sup>13</sup>, and the caller calls numbers until someone wins. With

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<sup>11</sup> Penal Code Section 326.5(o) reads: As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c, as used in this section, the game of bingo includes cards having numbers or symbols that 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 preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.

<sup>12</sup> These visits occurred coincidentally on August 10, 2007, the same day the Attorney General's Advisory was released. The Council Members and staff were accompanied by Ravi Mehta, who introduced himself as Executive Director of the California Bingo Association and who claimed to be offering to assist us in determining the legality of electronic bingo machines. Staff later learned that Mr. Mehta had previously been on the board of one of the electronic game manufacturers.

<sup>13</sup> Usually \$250.

electronic machines, although the prize amount is known in advance by the player, it depends on how much has been bet by that player, so different players may have different possible prizes even if they are connected together playing the same game.<sup>14</sup> Additionally, in some systems the game may 'continue' over the period of a day, with 24 numbers remaining constant and players receiving different cards which may or may not contain a bingo based upon the 24 numbers.

One manufacturer of a 24 number game has met the Sacramento and Santa Clara Counties' requirement for a winner every game by continuing every game past 24 numbers. However, the winner may win as little as one increment of his wager. (i.e., if each card was a quarter, regardless of the number of cards played, the player would win one quarter.)

In other systems, 24 numbers are not called in advance, and there is a winner in every game, even if only two people are playing together. The amount of the win, however, depends on how many numbers are picked before there is a winner. If more than 60 numbers are selected prior to a win, the win is one free card for the next game.

A manufacturer of the latter type of game supplied staff with an opinion from their counsel that the 24 number games are illegal, particularly those that do not have a winner every game, or even possibly over the period of the entire day that those numbers are used. However, that manufacturer's casing looks very much like a slot machine, in that there are spinning reels that consume the majority of the display, with a small bingo card in the corner.

Early in May, the Department of Justice served the bingo halls of Sacramento with notices that all machines with reel-type displays are illegal and must be removed within 30 days. These machines had been certified according to the standards adopted by Sacramento County. The 24 number machines were not mentioned in the notices. On Thursday, June 5, 2008 a Sacramento district judge issued a restraining order halting the crackdown on these machines. So, at this time no machines have been officially determined to be illegal.

A requirement of both the Attorney General's Advisory and the counties is the paper card. The manufacturers address this requirement by either providing a master stack of all possible cards or by providing print capability that allows printing of a specific winning card by the machine. Neither of these methods, however, seems to mesh with the intent of the Attorney General's Advisory, that implies that players have in hand, in advance of playing the game, the specific paper card that is being played on the machine.

Oakland's bingo halls currently do not utilize the reel-type machines that were the subject of the recent Department of Justice enforcement action. Staff is 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

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<sup>14</sup> The games reviewed by staff offered prize amounts of \$50 to \$250.

bingo machines only to bingo game operators that provide traditional called bingo and only on the days the called bingo occurs. This would prevent the establishment of bingo halls that consisted only of electronic, individually played bingo games.

ADDITIONAL PROPOSED CHANGES IN OAKLAND'S BINGO ORDINANCE

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 OPD but also conduct of public hearings, review and compilation of monthly reports, review and determination of legality of electronic bingo systems, monitoring and compiling the application and financial data submitted by the permittees, to ensure compliance with the law, reporting to the City Council, audits, and 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.

Because not all of the bingo game operators operate the same number of days, the police services attributable to each varies. Staff proposes that the bingo game operator's monthly fee for Law Enforcement and Public Safety consists of two components: 1) a fixed amount for the elements of the fee that do not vary based upon number of days of operation. Annual permit application compliance review, compiling of monthly reports, audit review, and handling complaints are examples of this component. Staff estimates that 10 percent of the time of the Administrative Hearing Officer, the Permit Unit's Administrative Analyst, and the Deputy City Attorney

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Public Safety Committee  
June 24, 2008

assigned to bingo issues is devoted to these functions. 2) an amount that is based upon number of days of operation per month. Police services are currently the sole element of this component. 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.

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 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

Staff estimates that the City provides an average of one hour of police services, including patrol, calls for service, and traffic control, per major bingo hall per day. Both the Bingo Hall Operator and the Bingo Game Operator benefit from the provision of police services. Staff therefore proposes dividing the cost of the police services evenly between the Bingo Hall Operator and the Bingo Game Operator. The halls operate every day except Christmas, and the provision of one half hour of police service 364 days per year costs the City \$18,667.00.

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 proposed annual Bingo Hall Permit fee, therefore, is \$23,526. The fee includes the current \$1000 of permit administration costs, the Bingo Hall's portion of police services costs at \$18,667, 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 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 extend the criteria as bases for suspension, and revocation of the permits. Additional criteria are proposed, and it is clarified whether the criteria applies to Bingo Game Operators, Bingo Hall Operators, or both.

Administrative Citations

Staff 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 **\$529,874** to charitable causes. These contributions provided schools, non-profit organizations, and needy individuals with services and opportunities that otherwise would not have been available to them.

The funds available for charitable causes will decrease by more than \$170,000 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 \$45,052 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 its costs incurred in performing the tasks required to ensure both the safety and the legality of Oakland's bingo operations.

**DISABILITY AND SENIOR CITIZEN ACCESS**

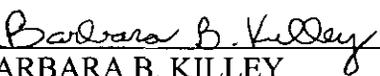
There are no disability and senior citizen access concerns raised in this report.

**ACTION REQUESTED OF THE CITY COUNCIL**

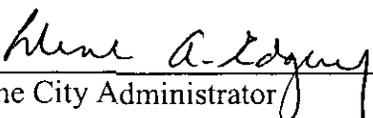
Staff requests that the Council:

1. Accept this informational report on bingo activities in 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

- 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
  - C Sacramento County and Santa Clara County Electronic Bingo Standards

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Public Safety Committee  
June 24, 2008

<b>KEDS Recipients 2007</b>			
			Sub-total
<b>Castlemont High School</b>			
Feb		\$3,000.00	
Mar		\$3,000.00	
Apr		\$2,000.00	
Jul		\$2,500.00	
Aug		\$1,500.00	
Nov		\$2,285.00	
Dec		\$2,000.00	
			\$16,285.00
<b>City of Oakland</b>			
Feb		\$1,000.00	\$1,000.00
<b>Dr. Herbert Guice Christian Academy</b>			
Feb		\$1,000.00	\$1,000.00
<b>Frick Middle School</b>			
Feb		\$4,000.00	
Mar		\$3,000.00	
Apr		\$4,000.00	
Nov		\$2,500.00	
			\$13,500.00
<b>Frick Elementary</b>			
Sep		\$3,000.00	\$3,000.00
<b>Oakland Children's hospital</b>			
Feb		\$6,000.00	
Mar		\$5,000.00	
Apr		\$6,000.00	
Sep	F.A.C.E	\$3,000.00	
			\$20,000.00
<b>Fruitvale Elementary</b>			
Feb		\$4,000.00	
Mar		\$3,000.00	
Apr		\$3,000.00	
Dec		\$3,000.00	
			\$13,000.00
<b>East Oakland Boxing Association</b>			
June		\$50,000.00	
Jul		\$3,500.00	
Aug		\$3,000.00	
Sept		\$3,000.00	
Nov		\$3,000.00	
			\$62,500.00
<b>Taylor Real Estate</b>			
Nov		\$800.00	\$800.00
<b>Annual Total</b>			<b>\$131,085.00</b>

<b>BCD &amp; R Recipients 2007</b>		
		Donations
E. Oakland Youth Development Center		
May		\$50,000.00
Youth Uprising		
May		\$100,000.00
Loveline Foundation		
May		\$50,000.00
EC Reems Community Services		
Sept		\$25,000.00
United Seniors		
Oct		\$600.00
Project Outreach		
Oct		\$10,000.00
BA Womans RE Prof. Foundation		
Oct		\$5,000.00
Community Health Academy		
Oct		\$3,000.00
The Mayor's Toy Drive		
Oct		\$5,000.00
Annual Total		\$248,600.00

<b>Community Charities Recipients 2007</b>	
	Annual donations
Grass Valley Elementary	\$9,000.00
Brookfield Elementary	\$5,500.00
Oakland Police Activities League	\$55,000.00
Oakland Small Schools Foundation	\$10,000.00
Esperanza Elementary	\$6,000.00
New Highland Elementary	\$5,500.00
Elmhurst Community Prep	\$4,000.00
Cypress Lawn Funeral Home	\$4,756.84
Bay Area Charities	\$4,000.00
Metropolitan Junior Golf	\$2,000.00
EC Reems Community Service	\$7,000.00
Thurgood Marshall Elementary	\$10,500.00
Richard Taylor	\$800.00
Sobrante Park Elementary	\$6,500.00
Anass Valley Elementary	\$2,000.00
Brook Figlo Elementary	\$1,500.00
Kappa Community Project	\$5,000.00
Castlemont Community of Small Schools	\$1,000.00
Skyline High School	\$1,000.00
Oakland Technical High School	\$1,000.00
Bishop O'Doud	\$1,000.00
Oakland High School	\$1,000.00
Wilma Rogers	\$1,382.00
Bay Area Women Real Estate Professional Foundation	\$2,500.00
	<b>\$147,938.84</b>

Community Charities Recipients 2007															
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total		
Grass Valley Elementary		\$2,000.00			\$2,000.00				\$1,000.00		\$2,500.00	\$1,500.00	\$9,000.00		
Brookfield Elementary				\$1,000.00	\$2,000.00						\$2,500.00		\$5,500.00		
Oakland Police Activities League	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$8,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$3,000.00	\$2,500.00	\$1,500.00	\$55,000.00		
Oakland Small Schools Foundation	\$1,500.00		\$2,000.00		\$2,000.00		\$2,000.00				\$1,000.00	\$1,500.00	\$10,000.00		
Esperanza Elementary			\$2,000.00		\$2,000.00		\$2,000.00						\$6,000.00		
New Highland Elementary		\$2,000.00			\$2,000.00		\$1,500.00						\$5,500.00		
Elmhurst Community Prep		\$2,000.00			\$2,000.00								\$4,000.00		
Cypress Lawn Funeral Home			\$4,756.84										\$4,756.84		
Bay Area Charities	\$500.00		\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00				\$4,000.00		
Metropolitan Junior Golf			\$2,000.00										\$2,000.00		
EC Reems Community Service	\$5,000.00		\$2,000.00										\$7,000.00		
Thurgood Marshall Elementary		\$1,500.00		\$2,000.00		\$2,000.00			\$1,000.00		\$2,500.00	\$1,500.00	\$10,500.00		
Richard Taylor						\$800.00							\$800.00		
Sobrante Park Elementary		\$2,000.00		\$2,000.00		\$2,000.00			\$500.00				\$6,500.00		
Anass Valley Elementary				\$2,000.00									\$2,000.00		
Brook Figlo Elementary		\$1,500.00											\$1,500.00		
Kappa Community Project							\$5,000.00						\$5,000.00		
Castlemont Community of Small Schools								\$1,000.00					\$1,000.00		
Skyline High School								\$1,000.00					\$1,000.00		
Oakland Technical High School								\$1,000.00					\$1,000.00		
Bishop O'Doud								\$1,000.00					\$1,000.00		
Oakland High School								\$1,000.00					\$1,000.00		
Wilma Rogers												\$1,382.00	\$1,382.00		
Bay Area Women Real Estate Professional Foundation									\$2,500.00				\$2,500.00		
Monthly total donations	\$12,000.00	\$16,000.00	\$18,256.84	\$12,500.00	\$17,500.00	\$13,300.00	\$16,000.00	\$10,500.00	\$10,500.00	\$3,000.00	\$11,000.00	\$7,382.00	\$147,938.84		

**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 <sup>1</sup>	3,859
Administration of annual application and permitting process	1,000

<b>Total Annual Bingo Hall Operator Permit Fee</b>	<b>\$23,526</b>
<b>Anticipated total revenue from 2 current Bingo Hall Operators</b>	<b><u>\$47,052</u></b>

**CALCULATION OF MONTHLY LAW ENFORCEMENT AND PUBLIC SAFETY FEE**

**Bingo Game Operator – fixed components**

Annual audit	\$25,000 ÷ 12	\$2,083/mo <sup>2</sup>
Administrative Hearing Officer	\$17,014 <sup>3</sup> ÷ 12 ÷ 3	473/mo
Administrative Analyst	\$ 9,431 ÷ 12 ÷ 3	262/mo
City Attorney Review	\$21,708 ÷ 12 ÷ 3	603/mo
City Auditor Review	\$ 3,562 <sup>4</sup> ÷ 12	297/mo

<b>Total fixed monthly fee per Bingo Game Operator</b>	<b>\$3,718</b>
<b>Anticipated total annual revenue from 3 current Bingo Game Operators</b>	<b><u>\$133,848</u></b>

**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

<b>Anticipated total annual revenue from operations at 2 bingo halls 364 days per year</b>	<b>\$37,332</b>
<b>Anticipated grand total revenue</b>	<b><u>\$218,232</u></b>

<sup>1</sup> 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)

<sup>2</sup> The items of the fixed component 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 fixed component are additionally divided by 3 because there are currently three major bingo halls to which the work is attributable.

<sup>3</sup> The costs of the Administrative Hearing Officer, Administrative Analyst, and City Attorney are based upon ten percent of their fully loaded cost to the City, including all benefits and overhead, as provided by the Budget Department.

<sup>4</sup> 20 hours for review of annual audit plus 4 hours per game operator for review of reporting processes. (Total of 12 hours per year review of reporting processes)

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Stephen D. Lodge  
Chief of Police

Santa Clara Police Department  
Permits Unit  
601 El Camino Real  
Santa Clara, Ca. 95050

IE: Electronic Bingo Aid Device (Card Minders) and Electronic Bingo Game/Device

California Penal Code Section 326.5 defines a bingo game as follows:

- 1.) A game of chance.
- 2.) Prizes are awarded based on designated numbers or symbols on a card.
- 3.) Numbers or symbols are selected at random.

The Santa Clara Police Department Permits Unit has determined that an electronic bingo aid device or electronic bingo game/device operated in the City of Santa Clara must meet all of the following criteria.

**Electronic Bingo Aid Device:**

1. An electronic bingo aid device shall not allow the play of more than 144 (one hundred forty four) cards per device per game.
2. An electronic bingo aid device shall require the manual entry of numbers as they are called or the manual verification of numbers as they have been electronically transmitted to the device.
3. The transmission of data to electronic bingo aid devices shall be limited to one-way communication to the device and shall consist only of the number called.
4. The electronic bingo aid system shall produce a receipt and a transaction log containing the following:
  - a. Organization name;
  - b. Location of bingo game;
  - c. Sequential transaction or receipt number;
  - d. Number of electronic bingo cards loaded;
  - e. Cost of electronic bingo cards loaded;
  - f. Electronic device number issued to a player; and
  - g. Date and time of each transaction.
5. The system shall produce a summary report identifying the date and time of report, voided transactions, including the date and time of each voided transaction and total gross receipts for each session.
6. The electronic bingo aid device must be certified by an independent testing lab (e.g., GLI, Nick Farley & Associates or BMM Labs) at the manufacturer and/or operator's expense, in order to ensure compliance with the above-listed criteria and California law.

Police Department  
601 El Camino Real  
Santa Clara, CA 95050  
FAX (408) 248-0276  
police@ci.santa-clara.ca.us

Electronic Bingo Game/Device:

1. Electronic player stations must link into a common game on site.
2. The system must allow for and encourage multiple players and require a minimum of two players.
3. The winning pattern or arrangement must be known before the game begins.
4. Players must obtain a card before the numbers are drawn. Additional players may join a game in progress.
5. Electronic cards are permissible but must be readily visible on the screen.
  - A. Each electronic card must measure at least two (2) inches by two (2) inches or four (4) square inches if other than a square card is used. Each individual space on the card must measure at least .4 inches by .4 inches.
  - B. Each card must contain a five (5) by five (5) grid of spaces. Each space will contain a unique number or other designation, which may not appear twice on the same card. The card may contain one "free space" without a specified number or other designation, provided the free space is located identically on every card.
  - C. Cards must indicate when a player has covered a space. Color attributes on the card must permit covered spaces to be readily distinguishable.
6. The numbers are randomly drawn or determined electronically.
7. The numbers are drawn in real time and not stored for later use.
8. Selected numbers are used in the sequence in which they are drawn.
9. The game-winning pattern cannot be achieved in a single ball release, thus requiring that players participate in the contest to be the first to cover the winning pattern.
10. All players must have the same opportunity to cover or daub to reflect their participation in a common game.
11. Prizes must be determined by play of the bingo game, not by any other additional elements of chance.
12. The game must be won by the first player (or group of players) who obtain a pre-designated winning pattern and who "cover" or "daub" the numbers yielding that pattern.
13. Players who fail to daub, "sleep on their winning bingo pattern" (don't call out bingo) -- the game continues and another number is called.

14. Prizes for any game cannot exceed a total of \$250.
15. Consolation, secondary or interim prizes and progressive prizes are permissible if the award of these prizes comports with the California Penal Code for bingo including the requirement for obtaining and daubing a predetermined pattern. Interim prizes cannot exceed \$250. Game winning prizes cannot exceed \$250. Combined prizes can exceed \$250, but never for a single player.
16. Regardless of the buy-in-level, all players must play for the same game pattern.
17. Players must have at their disposal, paper cards that electronic cards represent such that a winning bingo could be verified.
18. A hardcopy of bingo patterns and prize amounts must be available to all players.
19. The electronic bingo game/device shall not have a mechanical reel or pull handles and may not receive or disperse cash or coin. Player buy-ins and prize amounts must be received and dispersed at a point of sale station.
20. The electronic bingo game/device system must have capability so that the Police Department has on demand system access through the use of an authorized user code and password in order to perform its audit and regulatory duties.
21. The electronic bingo game/device must be certified by an independent testing lab (e.g., GLI, Nick Farley & Associates or BMM Labs) at the manufacturer and/or operator's expense, in order to ensure compliance with the above-listed criteria and California law.

STEPHEN D. LODGE, CHIEF OF POLICE  
SANTA CLARA POLICE DEPARTMENT



OFFICER RICH PETERSON  
SANTA CLARA POLICE PERMITS UNIT



LOU BLANAS  
*Sheriff*

September 5, 2006

**Electronic Bingo Device Standards**

California Penal Code section 326.5 defines a bingo game as follows:

- 1) A game of chance.
- 2) Prizes are awarded based on designated numbers or symbols on a card.
- 3) Numbers or symbols are selected at random.

The Sacramento County Sheriff's Department Bingo Compliance Unit has determined that an electronic Bingo game operated in the unincorporated areas of Sacramento County must meet all of the following criteria.

- 1) Electronic player stations must link into a common game.
- 2) The system must allow for and encourage multiple players and require a minimum of two players.
- 3) The winning pattern or arrangement must be known before the game begins.
- 4) Players must obtain a card before the numbers are drawn. Additional players may join a game in progress.
- 5) Electronic cards are permissible but must be readily visible on the screen.
  - a) They must be prominently sized and displayed.
  - b) They must be in a readable font.
  - c) They must have contrasting colors.
- 6) The numbers are randomly drawn or determined electronically; if random number generator is used, it must be certified by an independent testing lab (GLI, Nick Farley & Associates, or BMM International).
- 7) The numbers are drawn in real time and not stored for later use.
- 8) Selected numbers are used in the sequence in which they are drawn.
- 9) The game-winning pattern cannot be achieved in a single ball release, thus requiring that players participate in the contest to be the first to cover the winning pattern.
- 10) All players must have the same opportunity to cover or daub to reflect their participation in a common game.
- 11) Prizes must be determined by play of the bingo game, not by any other additional elements of chance.

- 12) The game must be won by the first player (or group of players) who obtain a pre-designated winning pattern and who "covers" or "daubs" the numbers yielding that pattern.
- 13) Players who fail to daub sleep their winning bingo pattern – and the game continues.
- 14) Consolation, secondary or interim prizes and progressive prizes are permissible if the award of the prize is made on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random and the award of these prizes is based on the play of bingo in the same manner as for the game ending pattern. For the purposes of this provision, a consolation, secondary, interim or progressive prize pattern shall constitute a separate game as that term is used in California Penal Code Section 326.5(n). Interim prizes cannot exceed \$250. Game winning prizes cannot exceed \$250. Combined prizes can exceed \$250, but never for a single player.
- 15) Regardless of the buy-in level, all players must play for the same game ending patterns.
- 16) Prizes for any game cannot exceed a total of \$250.
- 17) Players must have at their disposal paper cards that electronic cards represent such that a winning bingo could be verified on the paper or cardboard card itself.
- 18) Electronic machines may not receive or disperse cash or coin. Player buy-ins and prize amounts must be received and dispersed at a common Point of Sale(s).
- 19) Electronic machines shall not have mechanical reels or pull handles to operate.
- 20) A hardcopy of bingo patterns and prize amounts must be available to all players.
- 21) For "card minder" electronic bingo aids, a maximum of 72 bingo card faces may be programmed into a player operated unit or component as stated in Sacramento County Code 4.26.167(b)(7).

The Sacramento County Sheriff's Department Bingo Compliance Unit may also require the manufacture and/or the operator of an electronic Bingo game to submit to an independent audit of the game/device at the manufacturer's and/or the operator's expense, in order to ensure compliance with this law.

Revised 9/5/06

# 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) Limit Amount and Quantity of Door Prizes, and 13) Add Criteria For Denial, Suspension, Revocation, Or Conditional Approval Of Permits**

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) limit amount and quantity of door prizes, and 13) add criteria for denial, suspension, revocation, or conditional approval of permits

D. Biabasy

City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**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) Limit Amount and Quantity of Door Prizes, and 13) Add Criteria For Denial, Suspension, Revocation, Or Conditional Approval Of Permits**

**WHEREAS**, the City's primary interest in permitting bingo is to foster and protect charitable spending 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**, the Attorney General of the State of California has determined that not all electronic bingo games are legal; 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**, 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 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 city, 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 operator;

(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) in cash or kind, or both for each separate game which is held. Door prizes shall be limited to \$1000. All bingo patrons shall be eligible to win door prizes at no additional charge. No more than two door prizes shall be awarded per session. (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 that is approved 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 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 city 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.

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 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**

This ordinance amends Oakland's Master Fee Schedule by moving the annual bingo hall fee from chapter 5.10 to the master fee schedule, establishing a monthly fee for bingo game operators to offset the city's costs of law enforcement and public safety, and including in the annual bingo hall permit fee that portion of law enforcement and public safety costs attributable to bingo halls.

D. Bialosky  
City Attorney

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

# 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 not only the cost of patrol and calls for the services of the Oakland Police Department, but also 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.** 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:

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: \_\_\_\_\_

**EXHIBIT A**

**CITY ADMINISTRATOR**

**City of Oakland  
Amendment to the Master Fee Schedule**

<b><u>FEE DESCRIPTION</u></b>	<b><u>Fee</u></b>	<b><u>Unit</u></b>
<b>SPECIAL ACTIVITIES</b>		
<b>E. ANNUAL PERMIT TO CONDUCT BINGO GAMES FOR CHARITY</b>	<b>50.00</b>	<b>Year</b>
1. Bingo Hall Permit	<del>1,000.00</del> <b>23,526.00</b>	<b>Permit</b>
2. <u>Bingo Game Operator Law Enforcement And Public Safety Fee</u>		
a. Fixed component	<b>3,718.00</b>	<b>Month</b>
b. Variable component (number of operating days per mo.)	<b>51.28</b>	<b>X Days/Month</b>
c. Late Fee for Payments Received After 15 <sup>th</sup> of Month	<b>10%</b>	<b>of Fee Amount</b>

# **CITY OF OAKLAND**

## **LEGAL OPINION**

TO: JEAN QUAN  
Public Safety Committee

FROM: JOHN A. RUSSO  
City Attorney

DATE: June 4, 2008

RE: **USE OF BINGO PROFITS FOR CHARITABLE PURPOSES  
WITHIN THE CITY OF OAKLAND**

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### **INTRODUCTION**

You asked whether the City can require that bingo game operators use the profits and/or proceeds from bingo games in Oakland for charitable purposes to benefiting individuals and organizations residing in Oakland.

### **QUESTION**

May the City enact an ordinance requiring that proceeds/profits from bingo games be used for charitable purposes within the City of Oakland?

### **SUMMARY CONCLUSION**

Yes. The City can enact an ordinance requiring that profits/proceeds from bingo games be used for charitable purposes within Oakland because the ordinance does not conflict with state law and the requirement is rationally related to the City's objective of protecting and fostering nonprofit and charitable spending in Oakland.

### **BACKGROUND**

In 1976 the electorate approved the addition of Article IV, section 19, subdivision (c), to the California Constitution which provides that "the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes." Pursuant to the constitutional amendment, the legislature enacted section 326.5 of the Penal Code which enables cities to enact ordinances permitting local

charitable organizations, mobile home park associations and senior citizens organizations to conduct bingo games.

### ANALYSIS

Penal Code section 326.5 regulates certain aspects of bingo including the type of organizations that can conduct a bingo game and the uses of the bingo receipts. With regard to bingo receipts, section 326.5 provides that organizations that are exempt from paying taxes by section 23701d of the Revenue and Taxation Code (namely religious, charitable, scientific, testing for public safety, literary, educational, amateur sports or humanitarian corporations) must use *profits* from bingo games only for charitable purposes. (Penal Code section 326.5, subd.(j).) With regard to *other* types of organizations authorized to conduct bingo games under the section, all *proceeds* derived from bingo receipts must be used for charitable purposes. However, certain expenses such as prizes, license fees, rental and overhead may be deducted from the proceeds prior to distribution. (Penal Code section 326.5, subd. (k).)

The City would like to amend its bingo ordinance to require that profits and proceeds from bingo games conducted in Oakland be used primarily for charitable purposes *within Oakland*. Under California Constitution, Art. XI, section 5, subd.(a), charter cities are granted the power to “make and enforce all ordinances and regulations in respect to municipal affairs.” Moreover, Article XI, section 7 of the California Constitution provides: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” The regulation of gaming, including bingo, is generally recognized to be within the purview of local police power. (*Lubavitch Congregation v. City of Long Beach*, 217 Cal.App.3d 1388, 1393 (1990); *In re Hubbard*, 62 Cal.2d 119, 124 (1964), overruled on another point in *Bishop v. City of San Jose*, 1 Cal.3d 56, 63, (1969) fn. 6.) Thus, the City can enact any ordinance regulating bingo that does not conflict with general state law on the matter.

Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law. “If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a ‘municipal affair.’” (*Lancaster v. Municipal Court*, 6 Cal.3d 805, 807-808 (1972).) Home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine). (*Pac. Tel. & Tel. Co. v. City & County of San Francisco*, 51 Cal.2d 766, 768-769 (1959); *Pipoly v. Benson*, 20 Cal.2d 366, 369-370 (1942).)

An ordinance requiring that the profits/proceeds from bingo games conducted in Oakland be used primarily for charitable purposes within Oakland does not conflict with Penal Code section 326.5. Section 326.5 states that bingo profits and proceeds shall be used for charitable purposes. The proposed ordinance does not *contradict*, but rather

augment, the state requirements by adding the proviso that the profits/proceeds be disbursed *within Oakland*. The proposed ordinance does not *duplicate* section 326.5 as it adds an additional requirement that is not addressed in section 326.5. Municipal police power may operate on the same subject matter embraced in state legislation when the local regulations purport only to supplement the general law by additional reasonable requirements, or are in aid and furtherance thereof. (*Pipoly v. Benson*, supra, 20 Cal.2d at 370.)

On the other hand, a city may not enact additional requirements in regard to a *subject matter that has been preempted (fully occupied by general state law)*. The language of section 326.5 does not suggest, however, that its intent and purpose is to occupy the field of bingo to the exclusion of municipal regulation. Indeed, as Article IV, section 19 of the Constitution makes clear, the decision whether to allow bingo in the first place is left to local government entities. "Penal Code section 326.5 does not permit bingo as a matter of state law. Pursuant to the constitution section 326.5 enables cities and counties to enact ordinances permitting local charitable organizations, mobile home park associations and senior citizen organizations to conduct bingo games without incurring the criminal sanctions prescribed for conducting lotteries and other forms of gaming." (*Lubavitch Congregation v. City of Long Beach*, supra, 217 Cal.App.3d at 1394 (citations omitted).) A city may choose not to allow some of the forms of bingo permitted by state law. (*Ibid.*) Because there must be a local enabling ordinance in order for section 326.5 to take effect and because local jurisdictions may choose to allow all, some or no forms of bingo described in section 326.5, the field of bingo has not been preempted by the state.

Another potential argument is that the ordinance violates the Equal Protection Clause of the United States Constitution by discriminating against charities outside of Oakland. However, this argument has been rejected by the California Court of Appeal in an unpublished decision involving the bingo ordinance of the City of Vallejo. The City of Vallejo ordinance requires that at least seventy percent of bingo profits and proceeds be spent on charitable activities in Vallejo. The ordinance was challenged on equal protections grounds. In the unpublished decision, the California Court of Appeal (First Appellate District) found that requiring bingo proceeds to be spent for charitable purposes within the City of Vallejo does not violate the equal protection clause.<sup>1</sup> The court found that the Vallejo's requirement bears a rationale relationship to a legitimate state purpose. The court reasoned that because a bingo gaming operation can require a city to handle increased traffic, greater demand for parking and other problems associated with a gambling enterprise, it is reasonable for a city to require a substantial portion of bingo proceeds to remain in the city to benefit its residents.

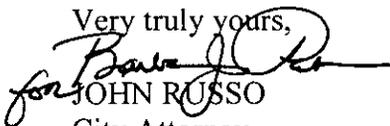
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<sup>1</sup> The court found that another provision of the ordinance restricting bingo licenses to entities that maintained offices within city limits for at least two years and that had provided charitable services to the city for two years did violate the equal protection clause because the provisions were not rationally related to a legitimate city purpose.

While the decision is unreported and cannot be used as authority in any legal challenge, we believe the First Appellate District's reasoning is sound. The City of Oakland is in the First Appellate District.

**CONCLUSION**

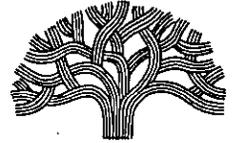
Because the proposed ordinance does not conflict with state law on the subject, the City can enact an ordinance requiring that all profits from tax exempt organizations under section 23701d of the Revenue and Taxation Code and most proceeds (minus legitimate expenses set forth in state law) from other types of organizations authorized to conduct bingo games be used for charitable purposes within Oakland. This requirement is rationally related to the City's objective of protecting and fostering nonprofit and charitable spending in Oakland.

Very truly yours,  
  
JOHN RUSSO  
City Attorney

Attorney Assigned:  
Deborah Bialosky

450699

# CITY OF OAKLAND



CITY HALL • ONE FRANK H. OGAWA PLAZA, 4TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Auditor  
Courtney A. Ruby, CPA  
City Auditor

(510) 238-3378  
FAX (510) 238-7640  
TDD (510) 238-3254  
www.oaklandauditor.com

June 24, 2008

PUBLIC SAFETY COMMITTEE  
OAKLAND CITY COUNCIL  
OAKLAND, CALIFORNIA

**RE: ADDITIONAL FEES FOR ADMINISTRATIVE COSTS RELATED TO BINGO ORDINANCE**

Dear Chairperson Reid and Members of the Committee:

The Office of the City Administrator recently contacted me regarding the issue of auditing bingo game operators and bingo hall operators. In researching other municipalities' practices, I learned that the City of Los Angeles charges the bingo licensees a monthly law enforcement fee to recover the costs of these audits, as well as other costs incurred for law enforcement and public safety.

Upon learning of Los Angeles' law enforcement fee, I requested the Office of the City Attorney determine if the City of Oakland can charge such a fee. The City Attorney issued a legal opinion which concludes that Oakland can charge Bingo Game operators an additional fee for administrative costs incurred by the City for law enforcement and public safety expenses that are directly related to bingo. Accordingly, the Office of the City Administrator is proposing an amendment to the City's Bingo Ordinance to charge Bingo Game operators and Bingo Hall operators a law enforcement fee and requires Bingo Hall operators to have a completed financial audit annually at their own expense. These amendments will provide Oakland with the tools to enforce compliance with the Bingo Ordinance and improve accountability for Bingo Game operators and Bingo Hall operators in Oakland. It is estimated that these fees would generate approximately \$200,000 for the City to fund law enforcement and public safety costs which include the costs associated with monitoring the financial audits by the Office of the City Auditor.

Sincerely,

A handwritten signature in black ink that reads "Courtney A. Ruby". The signature is written in a cursive, flowing style.

COURTNEY A. RUBY, CPA  
City Auditor

Item: \_\_\_\_\_  
Public Safety Committee  
June 24, 2008