

**CITY OF CLEARLAKE**

**ORDINANCE NO. 2011-152**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE  
ADDING CHAPTER 6-8, TO  
THE CLEARLAKE MUNICIPAL CODE RELATING TO  
REMOTE CALLER BINGO GAMES**

**SECTION 1. FINDINGS**

A. The City of Clearlake is authorized to adopt this ordinance to allow for remote caller bingo pursuant to California Constitution Article IV, § 19 and California Penal Code sections 326.3 and 326.4.

B. In addition to the foregoing, the City Council enacts this ordinance under its police power authority granted to cities by Article XI, Section 7 of the California Constitution.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CLEARLAKE, DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 2. AMENDMENTS**

Chapter 6-8 is hereby added to the Clearlake Municipal Code to read as follows:

**6-8 REMOTE CALLER BINGO GAMES.**

**6-8.1 Definitions.** For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

- a. "Authorized organization" or "organization" means an organization authorized to conduct remote caller bingo by State law and this chapter.
- b. "Remote caller bingo license" means a license issued by the City pursuant to this chapter.
- c. "Commission" means the California Gambling Commission or its designee.
- d. "Person" includes a natural person, corporation, limited liability company, partnership, trust, joint venture, association, or any other business organization of any type.
- e. "Remote caller bingo" means the game of bingo as defined by Penal Code section 326.3(u).

**6-8.2 Authorized organizations.** Pursuant to the provisions of this chapter, the following organizations may conduct remote caller bingo within the City:

- a. A mobile home park association that is situated in the City or County;
- b. A senior citizens' organization;

- c. A charitable organization affiliated with a school district; or
- d. Any group, association or corporation exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701w and 23701l of the Revenue and Taxation Code.

**6-8.3 Remote caller bingo authorized.** An organization authorized to conduct remote caller bingo within the City may only conduct remote caller bingo if:

- a. The organization has been issued a remote caller bingo license pursuant to this chapter;
- b. The organization has been incorporated or in existence for three years or more;
- c. The receipts of remote caller bingo games are used only for charitable purposes;
- d. The organization is licensed pursuant to Penal Code Section 326.5 and its agents, officials, bingo callers, operators and volunteers obtain and maintain all State licenses and permits as required by applicable state laws and regulations; and
- e. The operation of remote caller bingo is not the primary purpose for which the organization is organized.

**6-8.4 Compliance with State and local law.** All remote caller bingo games and operations shall comply with the provisions of this chapter and applicable State laws and regulations. To the extent of any inconsistency or conflict between the provisions of this chapter, Penal Code sections 326.3, 326.4, 326.5 and any State regulations adopted to implement those Penal Code sections the provisions of the Penal Code and its implementing regulations shall control.

**6-8.5 Application for licenses; required contents.**

- a. An application for a remote caller bingo license shall be accompanied by a fee established by resolution of the City Council, signed and verified as true and accurate by the applicant, filed in the office of the Director of Finance, and shall set forth the following information:
  - 1. The name and address of the organization to which the license will be issued;
  - 2. The name, address and telephone number of the applicant, who shall be the duly authorized representative of the applying organization;
  - 3. The name, address and telephone number of the president or chief officer of the applying organization;
  - 4. The name, address and telephone number of the person who has custody of the financial records of remote caller bingo games, which records are required by the provisions of this chapter;
  - 5. The location where such remote caller bingo games are to be held and the specific dates upon which such games are to be conducted and the hours thereof;

6. A schedule of fees or charges to be collected from players for each remote caller bingo game or for different varieties of bingo games to be conducted, and the dollar amount or value of the prizes to be awarded for each separate game; and

7. Any other information reasonably necessary to permit the Director of Finance or designee to verify that the applicant is authorized to conduct remote caller bingo games and that the bingo operation and games will be conducted in compliance with this chapter and all applicable State laws and regulations.

b. Each such application shall be accompanied by the following documentation:

1. A written resolution of the governing board or body of the organization, signed by the president or chief officer of said organization, authorizing the application for a remote caller bingo license and stating the authorization for the organization to conduct remote caller bingo games.

2. A certificate issued by the Franchise Tax Board certifying that the applicant is exempt from the payment of the taxes imposed under the Corporation Tax Law pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code.

#### **6-8.6 Investigation of application for license; fees.**

a. The Director of Finance or designee shall, in consultation with the Chief of Police and other City departments as needed, verify that:

1. The organization applying is authorized to conduct remote caller bingo games as set forth in this chapter and by applicable State laws and regulations;

2. The location where remote caller bingo games will be conducted is owned or leased by the organization or donated to it and that the property is used by such organization for an office or for performance of the purposes for which the organization is organized; and

3. The proposed remote caller bingo games will comply with the provisions of this chapter and all applicable State laws and regulations.

4. The conduct of such remote caller bingo games at the times and the place indicated will not disturb the peace of the neighborhood and will not create substantial traffic or parking problems; and

5. Neither the applying organization nor any person listed in the application has violated any laws or regulations of the City regarding building, fire, health or safety, and that the applicant has not knowingly and with intent to deceive made any false, misleading or fraudulent statement of facts in the application, or in any of the documents required in conjunction with the application.

**6-8.7 Remote caller bingo license; term.**

- a. A remote caller bingo license shall be valid until the end of the calendar year in which it is issued, at which time it shall expire.
- b. A new license shall only be obtained upon filing a new application and payment of the license fee.
- c. The fact that a license has been issued to an applicant creates no vested right on the part of the licensee to continue to offer remote caller bingo for play. The City Council expressly reserves the right to amend or repeal this chapter at any time. If this chapter is repealed, all licenses issued pursuant to this chapter shall cease to be effective for any purpose on the effective date of the repealing resolution.

**6-8.8 Issuance or denial of licenses; non-transferable.**

- a. Licenses shall be granted only to authorized organizations as defined in this chapter.
- b. The Director of Finance shall not issue a license to any applicant if the Director of Finance or designee cannot certify any one of the findings required by this chapter to be made, or if it appears from the application that the conduct of such games would be in violation of any of the terms, conditions and requirements of this chapter.
- c. If a license application is denied, the Director of Finance or designee shall send the applicant a written statement of denial including the reasons for denial.

**6-8.9 Conditions of licensure; conduct of remote caller bingo games.** Each license issued pursuant to this chapter shall be subject to the following additional conditions:

- a. Remote caller bingo games shall not be conducted by any licensee on more than two days during any week, except that a licensee may hold one additional game, at its election, in each calendar quarter.
- b. The licensed organization is responsible for ensuring that the conditions of this chapter and Sections 326.3 and 326.4 of the Penal Code are complied with by the organization and its officers and members. A violation of any one or more of those conditions or provisions shall constitute cause for the revocation of the organization's license, in accordance with the provisions of this chapter.
- c. No minors shall be allowed to participate in any remote caller bingo games.
- d. An organization authorized to conduct a remote caller bingo game shall conduct the game only on property owned or leased by it, or the use of which is donated to the organization free of charge and is used by the organization for performance of the purposes for which the organization is organized. Nothing in this chapter shall be construed to require that the property be used or leased exclusively by, or donated exclusively to, such organization.

- e. All remote caller bingo games shall be open to the public and shall not be limited to just the members of the organization.
- f. A remote caller bingo game shall not include any site that is not located in California.
- g. No more than 750 players may participate in a remote caller bingo game in a single location.
- h. A remote caller bingo game shall be operated, staffed, promoted, conducted and supervised only by members of the licensee organization and such members shall receive no profit, wage or salary from any such remote caller bingo game. Subject to the provisions of section 6-8.17(a), this section does not preclude the employment of administrative, managerial, technical, financial, or security personnel who are not members of the authorized organization at a location participating in the remote caller bingo game by the organization conducting the game. Notwithstanding any other provisions of law, exclusive or other agreements between the authorized organization and other entities or persons to provide services in the administration, management, or conduct of the game shall not be considered a violation of the prohibition against holding a legally cognizable financial interest in the conduct of the remote caller bingo game by persons or entities other than the charitable organization, or other entity authorized to conduct the remote caller bingo games, provided that those persons or entities obtain the gambling licenses, the key employee licenses, or the work permits required by, and otherwise comply with, Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code. Fees to be paid under any such agreements shall be reasonable and shall not be determined as a percentage of receipts or other revenues from, or be dependent on the outcome of, the game.
- i. No individual, corporation, partnership or other legal entity except the licensee organization shall hold a financial interest in the conduct or outcome of any remote caller bingo game.
- j. Any organization that conducts a remote caller bingo game shall designate a person having fiduciary responsibility for the game.
- k. An organization authorized to conduct a remote caller bingo game pursuant to this chapter shall not have overhead costs exceeding 20 percent of gross sales, except that the limitations of this section shall not apply to one-time, nonrecurring capital acquisitions. For purposes of this section, "overhead costs" includes, but is not limited to, amounts paid for rent and equipment leasing and the reasonable fees authorized to be paid to administrative, managerial, technical, financial, and security personnel employed by the organization as authorized by this chapter. For the purpose of keeping its overhead costs below 20 percent of gross sales, an authorized organization may elect to deduct all or a portion of the fees paid to financial institutions for the use and processing of credit card sales from the amount of gross revenues awarded for prizes. In that case, the redirected fees for the use and processing of credit card sales shall not be included in "overhead costs" as defined in the California Remote Caller Bingo Act. Additionally, fees paid to financial institutions for the use and processing of credit card sales shall not be deducted from the proceeds retained by the charitable organization.
- l. No person shall be allowed to participate in a remote caller bingo game unless the person is physically present at the time and place where the remote caller bingo game is being conducted.

A person shall be deemed to be physically present at the place where the remote caller bingo game is being conducted if he or she is present at any of the locations participating in the remote caller bingo game in accordance with this section.

m. All proceeds and profits derived from a remote caller bingo game shall be kept, maintained and used in accordance with State law.

n. All remote caller games shall be accessible to persons with disabilities in accordance with all applicable federal and State laws, rules and regulations.

#### **6-8.10 Prizes; refunds for cancelled games.**

a. The value of prizes awarded during the conduct of any remote caller bingo game shall not exceed 37 percent of the gross receipts for that game. When an authorized organization elects to deduct fees paid for the use and processing of credit card sales from the amount of gross revenues for that game awarded for prizes, the maximum amount of gross revenues that may be awarded for prizes shall not exceed 37 percent of the gross receipts for that game, less the amount of redirected fees paid for the use and processing of credit card sales.

b. Every remote caller bingo game shall be played until a winner is declared. Progressive prizes are prohibited.

c. Prizes shall be paid only by check; no cash prizes shall be paid. The declared winner of a remote caller bingo game shall provide his or her identifying information and a mailing address to the onsite manager of the remote caller bingo game. The organization conducting the remote caller bingo game may issue a check to the winner at the time of the game, or may send a check to the declared winner by United States Postal Service certified mail, return receipt requested.

d. All prize money exceeding State and federal exemption limits on prize money shall be subject to income tax reporting and withholding requirements under applicable State and federal laws and regulations and those reports and withholding shall be forwarded, within 10 business days, to the appropriate State or federal agency on behalf of the winner. A report shall accompany the amount withheld identifying the person on whose behalf the money is being sent.

e. Any game interrupted by a transmission failure, electrical outage, or act of God shall be considered void in the location that was affected. A refund for a cancelled game or games shall be provided to the purchasers.

#### **6-8.11 Additional required licensure.**

a. The following persons involved in remote caller bingo for any qualified organization shall all be licensed by the commission in accordance with State law:

1. Any person who conducts a remote caller bingo game pursuant to this chapter, including, but not limited to, an employee, a person having fiduciary responsibility for a remote caller bingo game, a site manager, and a bingo caller; and

2. Any person who directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise provides supplies, devices, services, or other equipment designed for use in the playing of remote caller bingo game by any nonprofit organization.

#### **6-8.12 Co-sponsoring remote caller bingo games.**

a. An organization shall not co-sponsor a remote caller bingo game with one or more other organizations unless one of the following is true:

1. All of the co-sponsors are affiliated under the master charter or articles and bylaws of a single organization; or
2. All of the co-sponsors are affiliated through an authorized organization described in section 6-8.2, and have the same Internal Revenue Service activity code.

b. Notwithstanding paragraph (a), a maximum of 10 unaffiliated organizations otherwise authorized to conduct a remote caller bingo game by this chapter may enter into an agreement to cosponsor a remote caller game, provided the game shall have not more than 10 locations.

c. Before sponsoring or operating any remote caller bingo game authorized under this chapter, each of the co-sponsoring organizations shall have entered into a written agreement, a copy of which shall have been provided to the commission and the Director of Finance or designee, setting forth how the expenses and proceeds of the game are to be allocated among the participating organizations, the bank accounts into which all receipts are to be deposited and from which all prizes are to be paid, and how game records are to be maintained and subjected to annual audit in accordance with State law.

#### **6-8.13 Equipment used for remote caller bingo.**

a. Any equipment used for remote caller bingo that requires licensing or commission approval shall be approved in advance of its use by any organization for a remote caller bingo game.

b. No electronics or video displays shall be used in connection with remote caller bingo games except in accordance with the following:

1. Audio or video technology used to link the facilities including cable, Internet, satellite, broadband, or telephone technology, or any other means of electronic transmission that ensures the secure, accurate, and simultaneous transmission of the announcement of numbers or symbols in the game from the location at which the game is called by a natural person to the remote location or locations at which players may participate in the game; or

2. A card-minder device permitted pursuant to section this chapter.

c. The drawing of each ball bearing a number or symbol by the natural person calling the game shall be visible to all players as the ball is drawn, including through a simultaneous live video feed at remote locations at which players may participate in the game.

d. Except as provided in this chapter, remote caller bingo games shall be played using traditional paper or other tangible bingo cards and dauber. All pre-printed remote caller bingo cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Only a covered or marked tangible card possessed by a remote caller bingo player and presented to a licensee's attendant may be used to claim a prize.

e. This section shall not be construed to authorize any remote caller bingo equipment prohibited by Penal Code Section 326.5(p), the provisions of this chapter, Penal Code Section 326.5 generally, or any other applicable federal, State or local law or regulation.

#### **6-8.14 Card-minder devices**

a. Remote caller bingo players may use hand-held, portable card-minder devices to assist in monitoring the numbers or symbols announced by a live caller as those numbers or symbols are called in a live game. Card-minder devices shall not be used in any game where a bingo card is sold or distributed after the start of that bingo game.

b. All card-minder devices shall do all of the following:

1. Be capable of storing in the memory of the device remote caller bingo faces from tangible cards purchased by a player;
2. Provide a means for remote caller bingo players to manually input each individual number or symbol announced by a live caller;
3. Compare the numbers or symbols entered by the player to the remote caller bingo faces previously stored in memory for the device; and
4. Identify winning remote caller bingo patterns that exist on the stored bingo faces.

c. A card-minder device shall neither perform a function involving the play of the game other than those described in subsection (b) of this section, nor do any of the following:

1. Be capable of accepting or dispensing any coins, currency or other representative of value or on which value has been encoded;
2. Be capable of monitoring any remote caller bingo card face other than the faces of the tangible card or cards purchased by the player using the device for that game;
3. Display or represent the game result through any means including, but not limited to, video or mechanical reels or other slot machine or casino game themes, other than highlighting the winning numbers or symbols marked or covered on the tangible remote caller bingo cards or giving an audio alert that the player's card has a prize winning pattern; or
4. Determine the outcome of any game or be physically or electronically connected to any other remote caller bingo equipment, including, but not limited to, the ball call station, or to any other card minding device. No other player-operated or player-activated



electronic or electromechanical device or equipment is permitted to be used in connection with a remote caller bingo game.

d. Notwithstanding subsections (b) and (c) of this section, only those card-minder devices that comply with applicable State law and regulations and have been approved in advance by the commission may be used in any remote caller bingo game.

e. A person or entity that supplies or services any card-minding devices shall meet all licensing requirements established by the commission.

**6-8.15 Compliance with local zoning and land use laws.** All organizations and remote caller bingo games shall comply with all applicable local zoning and land use laws and regulations. Obtaining a license pursuant to this section does not excuse the licensee from complying with all applicable local zoning and land use laws and regulations.

**6-8.16 Suspension and revocation of license.**

a. Whenever it appears that the licensee:

1. Has made a false statement on the license application;
2. Is conducting a remote caller bingo game in violation of any of the provisions of this chapter; or
3. Is violating any of the provisions of Penal Code Section 326.5 or other applicable State law, rule or regulation, the Chief of Police shall have the authority to summarily suspend the license and order the licensee to immediately cease and desist any further operation of any remote caller bingo game.

b. Any person who continues to conduct a remote caller bingo game after any summary suspension thereof under section (a) shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall, except as otherwise provided by this chapter, be subject to a fine not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

c. The order of summary suspension issued under subsection (a) shall also notify the licensee that it shall have five days from the date of such order to file a written request for a hearing before the City Administrator to determine whether such license shall be revoked or reinstated. Failure to file a request for such hearing within the prescribed five-day period shall result in a revocation of the license.

d. Where a licensee, whose license has been suspended under section (a) timely requests a hearing to determine whether such license shall be revoked, the City Administrator or designee shall provide such hearing within ten days after receipt of the written request for the hearing. Written notice of the time and place of such hearing shall be mailed via certified mail or personally delivered to the licensee, at the address given in the application, at least five days in advance of the hearing. The written notice of hearing shall also set forth a summary of the ground advanced as the basis for the suspension. At the hearing, the suspended licensee or

authorized representative, may present evidence and a written or oral argument why the license should not be revoked.

e. If the City Administrator determines the license should be revoked, written notice of the revocation and the basis therefor shall be provided to the licensee.

f. Any organization whose license is revoked under this section shall not conduct any remote caller bingo game in the City until such time as the City Council, on appeal, determines to overrule the decision of the City Administrator. If no appeal is requested, the decision of the City Administrator shall be final.

#### **6-8.17 Revocation of license; Appeal to City Council.**

a. Any holder of a license whose license is revoked under this chapter shall have the right, within ten days after receiving notice in writing of the revocation, to file a written appeal to the City Council. Such appeal shall set forth the specific ground or grounds on which it is based. The City Council shall hold a hearing on the appeal within thirty days after receipt of the written appeal by the City, or at a time thereafter agreed upon by the City and appellant, and the City Clerk shall give the appellant at least ten days' written notice of such hearing. At the hearing, the appellant or authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of the appeal. The determination of the City Council on the appeal shall be final.

b. Any organization whose license is finally revoked whether on appeal by the City Council or by the City Administrator where no appeal is timely requested may not again apply for a license to conduct remote caller bingo games in the City for a period of one year from the date of such revocation; provided, however, if the ground for revocation is cancellation of the exemption granted under Section 23701d of the California Revenue and Taxation Code, such organization may again apply for the license upon proof of reinstatement of such exemption.

#### **6-8.18 Records; right of inspection; right to observe remote caller bingo games.**

a. Licensees shall keep and maintain full and accurate records and accountings that detail the amount of money obtained from players for each game played, the amount of money or value of prizes given for each game played and the disposition of any funds generated by the conduct of remote caller bingo games.

b. In addition to records required to be kept pursuant to section (a), licensees shall keep, maintain and have audited all records related to the conduct of remote caller bingo games as required by Penal Code section 326.3 and applicable state regulations.

c. The City shall have the right to inspect such records at any reasonable time and the Director of Finance or designee may request said records when the licensee applies to renew its annual license pursuant to section.

d. The City shall have the right to attend or observe any remote caller bingo game to ensure compliance with this chapter and all applicable federal and State laws and regulations.

#### **6-8.19 Violation and enforcement; public nuisance.**

a. Any violation of this chapter or any applicable State law or regulation governing remote caller bingo shall be a misdemeanor and grounds for suspension or revocation of a remote caller bingo license in accordance with this chapter.

b. It shall be a misdemeanor, punishable by a fine not to exceed ten thousand dollars for any person to receive or pay a profit, wage or salary from any remote caller bingo game provided that administrative, managerial, technical, financial, and security personnel employed by the organization conducting the remote caller bingo game may be paid reasonable fees for services rendered from the revenues of remote caller bingo games, as provided in subdivision 6-8.9, except that fees paid under those agreements shall not be determined as a percentage of receipts or other revenues from, or be dependent on the income of, the game.

c. In addition to any other enforcement option or remedy available to the City for a violation of this chapter under State law or this code, any violation of this chapter is declared to be a public nuisance subject to abatement by the City in accordance with State law or this code.

#### **SECTION 3. SEVERABILITY**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

#### **SECTION 4. CEQA**

The City Council hereby finds and determines, that this ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment.

#### **SECTION 5. PUBLICATION**

The City Clerk shall either (a) have this ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the council members who voted for and against its passage.

## **SECTION 6. EFFECTIVE DATE**

This ordinance shall take effect thirty (30) days after its adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Clearlake held on August 11, 2011 and was adopted at a meeting of the City Council held on \_\_\_\_\_, 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Joyce Overton, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Swanson, City Clerk