

ORDINANCE NO. 4142

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA
AMENDING CHAPTERS 30 AND 50 OF THE POMONA CITY CODE
REGARDING BINGO GAMES**

WHEREAS, non-profit organizations provide important and essential educational, philanthropic, and social services to the community of the City of Pomona ("City");

WHEREAS, many such services would not be available if non-profit organizations did not provide them;

WHEREAS, there is a need to provide methods of fundraising to non-profit organizations to enable them to provide these essential services;

WHEREAS, historically, non-profit organizations in the City have used charitable bingo games as one of their key fundraising strategies to promote the mission of the organization;

WHEREAS, the California Legislature recently amended state law regarding "traditional" bingo games;

WHEREAS, the California Legislature also amended state law to authorize local agencies to allow "remote caller bingo games" within the agency's jurisdiction so long as the agency adopts an ordinance pursuant to Section 19, Article IV of the California Constitution; and

WHEREAS, the City Council desires to amend the Pomona City Code to reflect the recent changes regarding traditional bingo, and to permit remote caller bingo games in the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Pomona as follows:

SECTION 1. Chapter 30, Article V ("Bingo"), Divisions 1 and 2 of the Pomona City Code, are hereby amended to read as follows:

Sec. 30-291. Conditions and requirements.

(a) Pursuant to Section 19, Article IV of the State Constitution and Penal Code §§ 326.3 and 326.5, the game of bingo may be played within the city, but only under the conditions set forth in the Penal Code and this chapter, to the extent it is consistent with State Law. The term "bingo," as used in this article, shall be as defined in Penal Code § 326.5 (o), and shall include "remote caller bingo games," as defined and authorized pursuant to Section 30-324 of this Code, unless otherwise stated.

(b) The game may be conducted only by an organization that is exempted from the payment of bank and corporation taxes by Revenue and Taxation Code §§ 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l or 23701w, a

mobile home park association, a senior citizen organization, or a charitable organization affiliated with a school district, provided that the proceeds of such games be used only for charitable purposes, and must be in possession of a valid bingo license issued by the business license division.

(c) No minors under the age of 18 shall be allowed to participate in any bingo game.

(d) An organization shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subsection shall be construed to require that the property be used or leased exclusively by, or donated exclusively to, such organization; provided, however, that only one organization licensed to play bingo shall use the property to conduct bingo games.

(e) All bingo games shall be open to the public, not just to the members of an authorized organization.

(f) A bingo game shall be operated and staffed only by members of the authorized organization which organized it. Such members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such game or participate in the promotion, supervision or any other phase of such game. This subsection does not preclude the employment of security personnel who are not members of the authorized organization at a bingo game by the organization conducting the game.

(g) No individual, corporation, partnership, or other legal entity, except the organization authorized to conduct a bingo game, shall hold a financial interest in the conduct of such bingo game.

(h) With respect to organizations exempt from payment of the bank and corporation tax by Revenue and Taxation Code § 23701d, all profits derived from a bingo game shall be kept in a special fund or account of the charitable nonprofit corporation and shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes. With respect to other organizations authorized to conduct bingo games pursuant to this section, 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. Such proceeds shall be used only for charitable purposes, except as follows:

(1) Such proceeds may be used for prizes.

(2) A portion of such proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes or \$2,000.00 per month, whichever is less, may be used for rental of property; overhead, including the purchase of bingo equipment and administrative expenses; and the hiring of security personnel.

(3) Such proceeds may be used to pay license fees.

(i) Each bingo game shall be conducted by a manager who shall be responsible for the operation of the bingo game. The manager shall be present at all times during the playing of any bingo game and he or she and all of his or her staff shall be identified by a distinctive insignia or badge indicating the organization and his name and title.

(j) 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.

(k) The total value of prizes awarded during the conduct of any bingo games shall not exceed the total value permitted by State Law in cash or kind or both for each separate game which is held.

(l) No organization authorized by this article to play bingo shall conduct bingo games more often than two days per calendar week.

(m) No organization authorized by this article to play bingo shall conduct bingo games between the hours of 10:30 p.m. and 7:00 a.m.

(n) The city manager may promulgate additional rules and regulations for the conduct of bingo by licensees in furtherance of the regulation of bingo games set forth in this article.

Sec. 30-292. Senior citizen organizations.

(a) The sections of this article regulating the playing of bingo in the city shall apply to the playing of bingo by any senior citizen organization, except as follows:

(1) All senior citizen organizations playing bingo for recreational purposes shall be exempt from the payment of bingo license fees.

(2) Senior citizen organizations playing bingo in public recreational facilities for recreational purposes may be granted bingo licenses for periods up to one year. Such organizations shall conduct bingo only between 9:00 a.m. and 9:00 p.m. and shall not conduct bingo more than one day per week, nor shall any bingo session exceed six continuous hours.

(b) The following definitions shall apply to senior citizen organizations playing bingo for recreational purposes only:

Recreational purposes means the playing of bingo where no bingo card shall exceed the cost of \$0.25, no person may purchase more than six bingo cards during any bingo session, no person may play more than six bingo cards during any game, all prizes shall be limited to goods only, and no prize awarded during any bingo game shall exceed the retail cash value of \$5.00.

“Senior citizen organization” means any organization whose members are at least 50 years of age.

Secs. 30-293 – 30-315. Reserved.

Sec. 30-316. Application required.

Any nonprofit charitable organization, mobile home park association, senior citizen organization or charitable organization affiliated with a school district, desiring to obtain a license to play bingo shall make application to the business license division.

Sec. 30-317. Information required on application.

(a) All applicants for a bingo license shall submit the following information under penalty of perjury:

(1) The name of the organization, its address specifically showing any fee or leasehold interest in the premises, the names and addresses of its officers and directors, proof that the organization is an organization authorized to play bingo pursuant to Penal Code §§ 326.3 and 326.5, and the name and address and title of each member of such organization who will operate and staff the bingo games.

(2) A statement that each of the members of such organization who will operate and staff the bingo games has had no criminal convictions or, alternatively, setting forth each criminal conviction incurred by each such member, except for minor traffic violations.

(b) The business license division may add additional requirements to the application form which in its opinion are necessary to adequately investigate the applicant.

Sec. 30-318. Denial and appeal.

The business license division shall refuse to issue a license to play bingo to any nonprofit charitable organization, mobile home park association, senior citizen organization or charitable organization affiliated with a school district, which does not completely fill out the application form. The business license division shall also refuse to issue such license if the application, on its face, shows a noncompliance with Penal Code §§ 326.3 and 326.5 or if any member of the organization or association who will operate and staff the bingo game has been convicted of any crime relating to gambling or any crime of moral turpitude. Such refusal may be appealed by the organization or association to the city manager within ten days after notice of such refusal is mailed to the organization or association by the business license division.

Sec. 30-319. Term; renewal.

Each license to play bingo shall automatically expire one year after its issuance unless the organization or association submits a new application to play bingo within 30 days prior to the expiration date of the license, which shall be subject to the same scrutiny by the business license division as a new license application.

Sec. 30-320. Fee.

An annual license fee of \$50.00 shall be imposed on each organization or association which the city authorizes to conduct bingo games. If an application for a new license or renewal license is denied, one-half of such fee paid shall be refunded to the organization or association.

Sec. 30-321. Revocation.

The license authorizing any organization or association to play bingo may be revoked for cause after a ten-day notice is given and after a hearing is held before the city manager. A conviction of any person who is a member of the organization

or association for violation of any provision of Penal Code §§ 326.3 and 326.5 or any person who is convicted of a crime of moral turpitude while operating a bingo game of the organization or association shall be sufficient but not the exclusive cause to revoke the license of the organization or association.

Sec. 30-322. Warning required.

Such license issued to a organization or association to play bingo shall bear the warning in boldface type substantially as follows:

"THIS BINGO LICENSE IS ISSUED PURSUANT TO SECTIONS 326.3 AND/OR 326.5, PENAL CODE. CARE SHOULD BE TAKEN BY THE LICENSEE TO CONFORM TO EACH PROVISION OF SAID CODE SECTIONS UNDER PAIN OF CRIMINAL PROSECUTION AND/OR INJUNCTION. THIS LICENSE MAY BE REVOKED FOR CAUSE, PURSUANT TO CODE CHAPTER 30, ARTICLE V. THIS LICENSE SHALL BE REVOKED WITHOUT CAUSE IF THE CITY REPEALS CODE CHAPTER 30, ARTICLE V."

Sec. 30-323. Audit and inspection; report of proceeds required.

By the acceptance of a license to play bingo in the city, each or association agrees to allow a representative of the city to audit and inspect the financial books, records and receipts of each such organization or association at any reasonable time without prior notice, and it shall also report all proceeds of bingo games to the city on the forms and in the manner required by the business license division.

Sec. 30-324. Remote caller bingo games authorized.

(a) "Remote caller bingo games," as defined in Penal Code § 326.3(u)(1), may be lawfully played in the city pursuant to the provisions of Penal Code §§ 326.3 and 326.4, and this chapter, and not otherwise. In addition, remote caller bingo games shall be subject to the provisions of this Chapter to the extent such provisions are consistent with State Law.

(b) Those organizations listed in Section 30-291 of this Code are eligible to apply to the city for a permit to conduct remote caller bingo games in the city, provided that (i) the organization has been incorporated or in existence for three years or more, (ii) the receipts of the game shall be used only for charitable purposes, and (iii) the operation of bingo is not the primary purpose for which the organization is organized.

(c) The application for a remote caller bingo game permit shall be in a form similar to the application for a traditional bingo permit pursuant to Section 30-317 of this Code. The application shall be accompanied by satisfactory evidence that the applicant organization meets the eligibility requirements of Sections 30-291 and subdivision (b) of this Section. The application shall include a statement that the applicant organization agrees to conduct remote caller bingo games in strict accordance with the provisions of Penal Code §§ 326.3 and 326.4 and this chapter, and acknowledges that the permit to conduct remote caller bingo games may be revoked upon violation of any such provisions.

Sec. 30-325. Additional conditions for remote caller bingo game permits.

Notwithstanding any provisions of this chapter to the contrary, each remote caller bingo game permit issued pursuant to this chapter shall be subject to the following additional conditions:

(a) Remote caller bingo games shall not be conducted by any organization more than two days during any week.

(b) The organization is responsible for ensuring that the conditions of this chapter and Penal Code §§ 326.3 and 326.4 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 permit pursuant to Section 30-321 of this Code.

Secs. 30-326 – 30-355. Reserved.

SECTION 2. Chapter 50, Article VIII ("Business License Tax"), Division 3 of the Pomona City Code, is hereby amended as follows:

Sec. 50-412. Business providing entertainment; amusement machines, etc.

Every person transacting or carrying on the business herein enumerated shall pay a license tax as follows:

...

~~(26) Organizations authorized to conduct bingo games: License fee of \$64.75 shall be imposed annually on each nonprofit charitable organization which the city authorizes to conduct bingo games. If an application for a license is denied, one-half of said fee paid shall be refunded to the organization.~~

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SECTION 3. If any part of this Ordinance, or its application to any individual, entity, or circumstance, is held to be invalid, the remainder of the Ordinance, including the application or provision to other persons or circumstances, shall be not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 4. The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

PASSED, APPROVED AND ADOPTED THIS 7TH DAY OF MARCH, 2011.

ATTEST:

CITY OF POMONA:

Marie Michel Macias, City Clerk

Elliott Rothman, Mayor

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, MARIE MICHEL MACIAS, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading on February 28, 2011 and adopted at second reading at a regular meeting of the City Council of the City of Pomona held on the 7th day of March, 2011 by the following vote:

AYES: COUNCILMEMBERS: Soto, Rodriguez, Carrizosa, Lantz, Escobar, Atchley, Rothman
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None

Marie Michel Macias, City Clerk