

**Council Meeting: December 10, 2013****SUBJECT: Discussion and Possible Action to Introduce an Ordinance to Amend Sunnyvale Municipal Code Chapter 9.37 Related to Bingo Games****BACKGROUND**

The Department of Finance is proposing an amendment to the Sunnyvale Municipal Code Chapter 9.37 related to bingo games. The proposed changes will revise the Municipal Code to clarify that the City's Municipal Code supplements State regulations and will eliminate Category B Bingo licenses from the Sunnyvale Municipal Code.

The Municipal Code describes two types of licenses, Category A and Category B. Category A licenses have constraints regarding the number of days games can be operated as well as restrictions on the prize value. These licenses are issued by the Department of Finance and organizations are required to renew their license on an annual basis. Category B licenses allow for more frequent games and fewer restrictions on prizes and game operations. These licenses must be issued by Council, and are also subject to additional zoning restrictions.

Currently, organizations that wish to obtain either category of bingo license must submit an application along with the application fee of \$50, which is set by the State. Finance reviews the information provided by the applicant to ensure compliance with the Municipal Code and the Penal Code. Organizations that wish to renew their bingo license must submit a \$50 renewal fee along with a renewal statement which provides details on their bingo activity over the past year including a report of income and expenses resulting from bingo games.

The City has issued four active Category A licenses for calendar year 2013; two mobile home parks, one school and the Sunnyvale Elks Lodge currently hold a Bingo license. There are no active Category B licenses, and no application for a Category B license has been received for at least 14 years.

**EXISTING POLICY**

California Penal Code Section 326.5 stipulates that bingo games are allowed only when certain conditions are met. One of those conditions is that there must be a local ordinance in effect authorizing such games. Chapter 9.37 of the Sunnyvale Municipal Code authorizes bingo games to be conducted by eligible organizations once a City bingo license has been issued. Eligible organizations are defined in the Penal Code as: mobile home parks, senior citizen's organizations, charitable organizations affiliated with a school district and organizations exempt from the payment of bank and corporation tax per certain sections of the California Revenue and Taxation Code.

All bingo games must be open to the public. Some of the proceeds of bingo games may be used for expenses such as rent, overhead, bingo equipment, security personnel, security equipment and administrative expenses. However, the majority of the proceeds of bingo games must be used for charitable purposes.

### **CEQA REVIEW**

N/A

### **DISCUSSION**

Currently, there are references to State code sections that have changed or no longer exist and the prize limitations and exemption criteria in the Municipal Code are no longer consistent with the Penal Code.

In addition, there is some outdated language in the Municipal Code relating to the zoning restrictions listed for Category B licenses. The Department of Finance worked with the Community Development Department to determine how changes to zoning regulations over the years may impact bingo games. During these discussions, it was determined that there are land use issues such as traffic, noise, and parking related to Category B licenses due to the frequency of bingo games allowed for this type of license. Category B licenses are allowed up to four days per week, while Category A licenses are restricted to two days per week. Therefore, staff recommends that Category B licenses not be allowed.

The proposed changes to the ordinance would remove all references to Category A and Category B licenses. Finance will route any new or renewal bingo applications to the Planning division for zoning review. There would only be one class of bingo license and the requirements to obtain or renew a license would be consistent with the current Category A classification and State law. The requirements are as follows:

- No more than two games may be held per week.
- All games must be held between the hours of noon and midnight.
- Prizes shall be consistent with the California Penal Code.
- Operator must keep a full and accurate record of income and expenses. A full accounting of bingo operations must be provided to City staff each year in order to renew the bingo license.

The proposed changes will also update the Code to specifically refer to the California Penal Code throughout the chapter. This would help to minimize future changes to Chapter 9.37, as the Municipal Code would not require an update anytime the Penal Code is changed.

In addition, staff recommends that the ordinance be amended to require that the income and expense report and the application renewal fee be submitted together and that applicants may renew their license anytime. The Municipal Code currently requires that the report be submitted on or before October 31 (prior to the next calendar year) while the renewal fee is due on or before November 30. There is no provision for renewing after that time period. This change will provide more flexibility to organizations that initially decide to not renew their license but decide later in the year that they want to resume conducting bingo games.

**FISCAL IMPACT**

There is no fiscal impact to these changes.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

**ALTERNATIVES**

1. Introduce an ordinance to amend Sunnyvale Municipal Code Chapter 9.37.
2. Make no changes.

**RECOMMENDATION**

Staff recommends Alternative 1, Introduce an ordinance to amend Sunnyvale Municipal Code Chapter 9.37.

Reviewed by:

Grace K. Leung, Director of Finance  
Prepared by: Therese Balbo, Finance Manager

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

- A. Proposed Ordinance

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CERTAIN SECTIONS OF CHAPTER 9.37 (BINGO GAMES) OF TITLE 9 (PUBLIC PEACE, SAFETY, OR WELFARE)**

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

SECTION 1. SECTION 9.37.030 AMENDED. Section 9.37.030 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.030. License required.**

It shall be unlawful for any person to conduct or operate any bingo game without first obtaining and maintaining in effect a license. ~~Bingo games may be conducted or operated under either of the following licenses:~~

~~(a) Category A licenses shall be issued by the director of finance subject to regulations set forth herein.~~

~~(b) Category B licenses shall be issued by the city council subject to regulations set forth herein. No more than five such licenses shall be outstanding at any one time. Only one Category B license shall be issued to an organization falling within a class of organizations organized for any one particular purpose, such as a swim club, soccer league or other type of organization, the foregoing terms being by way of description and not of limitation.~~

SECTION 2. SECTION 9.37.040 AMENDED. Section 9.37.040 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.040. Application for license.**

Every organization which proposes to conduct or operate a bingo game shall make written application to the director of finance for a license for the conduct and operation of bingo games. The application shall include the following:

(a) – (e) [Text unchanged]

(f) Proof that the applicant is an organization authorized to conduct bingo games pursuant to Section 326.5(a) of the Penal Code as it may be amended from time to time, holds a Certificate of Determination of Exemption under Section 23701 d of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the State Franchise Tax Board showing exemption under Sections 23701 a, 23701 b, 23701 d, 23701 e, 23701 f, 23701 g, or 23701 i of the Revenue and Taxation Code, if so exempt;

~~(g) In addition to the foregoing requirements, every organization applying for a Category B license shall provide the following information for review by the city council in evaluating the community benefit provided by the organization:~~

~~(1) A statement of the services provided by the organization to the city. This means that the primary purpose of the organization is to contribute directly to the health, safety or general welfare of the city of Sunnyvale or to a readily identifiable group or class of persons within the city in addition to the members of the organization;~~

~~(2) A statement that activities conducted by the group are open to the public;~~

~~(3) A statement that membership in the organization does not exclude nor is used in any way to exclude persons:~~

~~(A) On the basis of race, religion or place of national origin;~~

~~(B) On the basis of a vote of less than the majority of members authorized to transact the business of the organization at any duly authorized meeting of the general membership;~~

~~(C) On the basis of a quota or percentage system;~~

~~(4) A list of members of the organization showing the percentage of membership consisting of city of Sunnyvale residents;~~

~~(5) A statement that the organization has a need for revenues such that without a substantial new revenue source operations will have to be severely restricted or terminated. Applicant shall submit a financial report and a management letter prepared by a certified public accountant containing said accountant's opinion as to the organization's current financial status, including adequacy of internal control. Said report shall contain information concerning fund raising sources, and the percentage of support generated by fees charged to participants;~~

~~(6) A statement showing the period of time the organization has provided the service described in (1) above.~~

SECTION 3. SECTION 9.37.050 AMENDED. Section 9.37.050 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.050. License application fee.**

A fee ~~of fifty dollars in the amount authorized by Penal Code Section 326.5~~ shall accompany the license application. The application fee shall be used to defray the costs of investigation. If an application for a license is denied, one-half of the license fee paid shall be refunded.

SECTION 4. SECTION 9.37.070 AMENDED. Section 9.37.070 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.070. Issuance of license.**

Upon being satisfied that the applicant is fully qualified, under the law, to conduct bingo games in the city, the issuing authority shall issue a license to said applicant, which shall contain the following information:

- (a) [Text unchanged]
- ~~(b) The category of the license;~~
- (c) – (g) [Renumbered; text unchanged]

SECTION 5. SECTION 9.37.080 AMENDED. Section 9.37.080 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.080. Expiration—Renewal.**

Each license issued under this chapter shall expire at the conclusion of the calendar year of its issuance, unless sooner revoked. An unrevoked license may be renewed for one year upon written application to the issuing authority and payment of a fee in the amount authorized by Penal Code Section 326.5 of fifty dollars, at least one month before the expiration date. ~~Application for renewal of a Category B license must be accompanied by a financial statement and a management letter prepared by a certified public accountant containing said accountant's opinion as to the organization's current financial status, including adequacy of internal control.~~

SECTION 6. SECTION 9.37.100 AMENDED. Section 9.37.100 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows:

**9.37.100. Bingo games facilities and operations requirements.**

The conduct and operation of all bingo games shall be in compliance with the following requirements:

- (a) Times of Operation.
  - (1) Bingo games ~~conducted pursuant to a Category A license~~ shall not be conducted before noon or after midnight of any day and shall not be conducted on more than two days in any seven-day period.
  - ~~(2) Bingo games conducted pursuant to a Category B license shall not be conducted on more than four days in any seven-day period.~~
- ~~Bingo games conducted pursuant to a Category B license shall not be conducted before noon or after midnight of any day. This requirement may be waived or modified by the city council upon a showing that such waiver or modification is in the interest of and will not adversely affect the public safety, morals and general welfare of the city. Nothing herein shall be interpreted or construed to limit the jurisdiction of the city council from establishing hours of operation more restrictive than the maximum number of hours described herein.~~
- (b) [Text unchanged]
- (c) Prizes—Limitation of Value. The total value of prizes awarded during the conduct of any ~~Category A bingo game shall not exceed two hundred fifty dollars in cash or kind, or both, for each separate game which is held.~~ The total value of prizes awarded during the conduct of any Category B bingo game shall not exceed two hundred fifty dollars in cash or kind, or both, the amount authorized by Penal Code Section 326.5 for each separate game which is held.

(d) Record of Income and Expenses. The license holder shall keep a full and accurate record 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 this chapter. The city, by and through its authorized officers, shall have the right to examine and audit such record at any reasonable time, and the license holder shall fully cooperate with the city by making such record available. ~~Not later than October 31st of each calendar year, each~~ Each licensee shall file ~~a-an annual~~ report with the director of finance containing the following information:

(1)-(3) [Text unchanged]

(4) The net profit or loss for the previous fiscal year of the licensee and for each monthly which, and at each location within the city at which, a bingo game was conducted by the licensee during that fiscal year. ~~Category A licensees Licensees~~ shall use the report form prepared by the director of finance and shall make such report under penalty of perjury. ~~Category B licensees, in the event such information is contained in the report submitted in compliance with Section 9.37.080, shall be deemed in compliance with the requirements of this subsection d.~~

(e) [Text unchanged]

SECTION 7. SECTION 9.37.105 DELETED. Section 9.37.105 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby deleted.

~~**9.37.105. Location of Category B bingo games.**~~

~~(a) Category B bingo games shall be conducted only:~~

~~(1) Within the M-S zoning district, in accordance with the terms of a use permit issued pursuant to the procedures set forth in Chapter 19.98 of this code; or~~

~~(2) Within the P-F zoning district, in accordance with the terms of a use permit issued pursuant to the procedures set forth in Chapter 19.52 of this code.~~

~~(b) Each location of Category B bingo games shall meet each of the following criteria:~~

~~(1) The location must have adequate parking to support the anticipated rking generated by the bingo game; at a minimum, one parking space for each three seats, plus one parking space for each additional twenty-one square feet of open floor area designed or normally usable for seating purposes, plus one parking space for each additional four hundred square feet of floor area. This minimum requirement may be waived or modified by the city council on a finding that alternate standards will provide adequate parking.~~

~~(2) Each location must have direct access to its parking area from a street right-of-way of at least eighty-six feet in width.~~

~~(3) — Each location must have adequate lighting in its parking area. A minimum of 0.5 footcandles per square foot of parking lot area shall be required unless this requirement is waived or modified by the city council upon a finding of special circumstances rendering the requirement unnecessary or that security and other needs are being met by alternative means.~~

~~Any use permit authorizing conduct of a Category B bingo game shall be effective only in conjunction with a Category B bingo license, issued by the city council. The city council shall consider applications for use permits for the location of Category B bingo games in accordance with that procedure set forth in Title 19, along with applications for Category B bingo licenses.~~

SECTION 8. SECTION 9.37.110 AMENDED. Section 9.37.110 of Chapter 9.37 (Bingo Games) of the Sunnyvale Municipal Code is hereby amended as follows.

**9.37.110. Receipt of profit, wage or salary by a person a misdemeanor under state law.**

It is a misdemeanor under Section 326.5(b) of the Penal Code of the state of California for any person to receive a profit, wage, or salary from any bingo game authorized under this chapter, a violation of which is punishable by a fine not to exceed ~~ten thousand dollars~~ the amount specified in Penal Code 326.6(c), which fine shall be deposited in the general fund of the city of Sunnyvale.

SECTION 9. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 10. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 11. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 12. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on December 10, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2013, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_  
SEAL

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Rebecca Moon, City Attorney