Chapter 5.32 - BINGO

[2]

5.32.010 - Short title.
5.32.020 - Authority for enactment.
5.32.030 - Definitions.
5.32.040 - Bingo games authorized; remote caller bingo authorized.
5.32.050 - California Penal Code Section 326.3 incorporated.
5.32.060 - California Penal Code Section 326.4 incorporated.
5.32.070 - California Penal Code Section 326.5 incorporated.
5.32.080 - License required.
5.32.090 - Application for license.
5.32.100 - Contents of licenses.
5.32.110 - License fee.
5.32.120 - Duration of license.
5.32.130 - Investigation by police.
5.32.140 - Change in facts must be reported.
5.32.150 - Posting of license and rules.
5.32.160 - Hours and days of operation.
5.32.170 - Operation and staffing of games.
5.32.180 - Proceeds from games.
5.32.190 - Inspection of premises.
5.32.200 - License revocation.
5.32.210 - Appeal.
5.32.220 - Audit and accounting requirements.
5.32.230 - Civil remedies and criminal penalties.

5.32.010 - Short title.

This chapter may be cited as the "City of Calexico Bingo Ordinance."

(Ord. No. 1106, § 2, 1-19-10)

5.32.020 - Authority for enactment.

This chapter is enacted pursuant to Article IV, Section 19 of the California Constitution as implemented by Sections 326.3 and 326.4 and 326.5 of the California Penal Code.

(Ord. No. 1106, § 2, 1-19-10)

5.32.030 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and give this chapter its most reasonable application:

"Bingo" has the same meaning set forth in Penal Code Section 326.5(o) as it now exists or may hereafter be amended.

"Calendar week" means Monday through Sunday.

"City manager" means the city manager of the city of Calexico or his or her designee.

"Commission" means the California Gambling Control Commission.

"Conduct," "operate," and "staff" all mean persons directly involved in the conduct of a bingo game and include, but are not limited to, calling numbers, distributing cards, and the awarding of prizes.

"Licensee organization" means an organization to which the city manager has issued a license to conduct bingo games under this chapter.

"Premises" means real property within the city on which bingo games are or may be licensed under this chapter and that are: (i) owned or leased by an organization, or property the use of which is donated to the organization, and (ii) which is used by that organization for an office or for performance of the purposes for which the organization is organized. Premises need not be used or leased exclusively by, or donated exclusively to, a licensee organization.

"Remote caller bingo game" has the meaning set forth in Penal Code Section 326.3(u) as it now exists or may hereafter be amended.

"Security personnel" means one or more persons exclusively employed to protect persons and property at bingo games.

(Ord. No. 1106, § 2, 1-19-10)

5.32.040 - Bingo games authorized; remote caller bingo authorized.

1. Nothing in this chapter shall prohibit the holding of any bingo games in compliance with the requirements of this chapter by organizations exempted from payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23791k [23701k], 23701(l) and 23701w, and of the Revenue and Taxation Code, or by a mobile home park association of a mobile home park that is situated in the city, senior citizens organizations, and school districts; provided that the organization conducting the game shall have been incorporated or in existence for three years or more, the operation of bingo is not the primary purpose for which the organization was organized, the organization conducting the game is licensed pursuant to subdivision (l) of 326.5, the receipts of such games are used solely for charitable purposes, and the organization conducting the game determines the disbursement of the net receipts of the game.
2. Bingo games for charitable purposes are authorized pursuant to Section 19, Article IV of the California Constitution, and Penal Code Sections 326.3, 326.4, and 326.5, and in accordance with the provisions of this chapter. Eligible organizations may apply for a license to conduct bingo games in the city under the provisions of Penal Code Section 326.5, and in the case of remote caller bingo, Sections 326.3 and 326.4, and the provisions of this chapter.
3. Remote caller bingo games for charitable purposes are authorized pursuant to Section 19, Article IV of the California Constitution, and Penal Code Section 326.3 and 326.4. Remote caller bingo games shall be conducted in accordance with Penal Code section 326.3 and 326.4 and this chapter and not otherwise, and only by organizations exempted from payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23791k [23701k], 23701(l) and 23701w, and of the Revenue and Taxation Code, or by a mobile home park association of a mobile home park that is situated in the city, senior citizens organizations, and charitable organization affiliated with school districts; provided that:
   a. The organization conducting the game shall have been incorporated or in existence for three years or more,
   b. The operation of bingo is not the primary purpose for which the organization was organized,
   c. The receipts of such games are used solely for charitable purposes,
   d. The organization conducting the game determines the disbursement of the net receipts of the game, and
   e. The organization has a city-issued license to conduct bingo games.

(Ord. No. 1106, § 2, 1-19-10)

5.32.050 - California Penal Code Section 326.3 incorporated.

The provisions of Penal Code Section 326.3 are incorporated herein by this reference and apply along with provisions of this chapter to control remote caller bingo games authorized by this chapter. In the event of any conflict between the provisions of this chapter and Penal Code Section 326.3, section 326.3 shall control.

(Ord. No. 1106, § 2, 1-19-10)

5.32.060 - California Penal Code Section 326.4 incorporated.

The provisions of Penal Code Section 326.4 are incorporated herein by this reference and apply along with provisions of this chapter to control remote caller bingo games authorized by this chapter. In the event of any conflict between the provisions of this chapter and Penal Code Section 326.4, Section 326.4 shall control.

(Ord. No. 1106, § 2, 1-19-10)

5.32.070 - California Penal Code Section 326.5 incorporated.

Notwithstanding the provisions of Penal Code Section 326.5(a), the provisions of Penal Code Section 326.5 are incorporated herein by this reference and apply along with provisions of this chapter to control bingo games authorized by this chapter. In the event of any conflict between the provisions of this chapter and Penal Code Section 326.5, the more restrictive provision shall control.

(Ord. No. 1106, § 2, 1-19-10)

5.32.080 - License required.

No person or organization may conduct or allow another to conduct bingo games in the city without first obtaining a license from the city manager to do so.

(Ord. No. 1106, § 2, 1-19-10)

5.32.090 - Application for license.

A. Applications for a license to conduct bingo games in the city shall be in writing on a form provided by the city manager, accompanied by a nonrefundable filing fee, as set out in Section 5.32.110 of this chapter, and shall contain the following information:

1. Evidence that the applicant is an eligible organization under Section 5.32.040 of this chapter;
2. The legal name of the applicant organization and the address of record of the agent upon whom legal notice may be served;
3. The mailing address of the applicant organization;
4. The names, and addresses and signature of the presiding officer and at least one other officer of the applicant organization;
5. The mailing and street addresses of the premises on which bingo games will be conducted, together with the occupancy load of the room or rooms in which bingo will be played provided by the fire code in effect in the city when the application is made;
6. The proposed day or days of the week and hours during which the applicant organization proposes to conduct bingo games;

[7. Reserved.]

8. A statement setting forth the character, location and extent of the charitable work of the applicant organization;
9. A statement of the charitable use to which the proceeds of bingo games will be put;
10. A statement that the applicant intends or does not intend to conduct remote caller bingo games;
11. In the event the applicant does not intend to conduct remote caller bingo games, the applicant organization shall submit the names of organization members and security personnel who will operate and staff the bingo games to the chief of police for purposes of conducting a background investigation regarding such persons. This requirement may be waived upon presentation, by any person who will operate and staff the bingo games, of a recent background investigation conducted by a law enforcement agency such that it is deemed satisfactory to the chief of police. The cost of conducting these investigations shall be imposed upon the applicant organization in an amount not to exceed the actual costs of conducting the background investigation pursuant to Penal Code Section 326.5(l)(2), and in accordance with Section 5.32.110(A) of this chapter. Results of required background investigations shall be attached to and submitted with the application for a bingo license other than for a remote caller bingo license;
12. If the applicant does intend to conduct remote caller bingo games, the Commission shall regulate remote caller bingo, including, but not limited to, licensure of staff members and the operation of games. The U.S. Department of Justice shall conduct any necessary background investigations and costs of such investigations shall be paid and accounted for in accordance with Business and Professions Code Section 19867, all pursuant to Penal Code Section 326.3 (q)(1) and (2);
13. The following documentation shall be attached to an application for a license for remote caller bingo as follows:
    a. A certificate issued by the franchise tax board certifying that the applicant is exempt from the payment of the bank and corporation tax pursuant to Section 23701(d) of the Revenue and Taxation Code;
    b. Other evidence as the city manager determines is necessary to verify that the applicant is a duly organized mobile home park association of a mobile home park situated in the city;

14. If applicable, a statement that the applicant agrees to conduct remote caller bingo games in strict accordance with the provisions of Penal Code Section 326.3 and 326.4 and this chapter, as they may be amended from time to time, and understands that the city manager may revoke the bingo game license for a violation of any such provision;
15. Such other information as may be required by the city manager;
16. A license shall not be issued until the city manager has verified the facts stated in the application and determined that the applicant is qualified.

B. Any license for remote caller bingo issued pursuant to this chapter shall be subject to the conditions contained in Penal Code Sections 326.3 and 326.4.

C. All applications for a bingo license shall be signed under penalty of perjury by a person or persons with authority to bind the applicant organization.

(Ord. No. 1106, § 2, 1-19-10)

5.32.100 - Contents of licenses.

Upon determining that an applicant is qualified to conduct bingo games in the city, the city manager shall issue a license stating:

A. The name and legal nature of the organization to which the license is issued;
B. The address of the premises on which bingo games may be conducted;
C. The capacity of the room or rooms in which bingo games may be conducted;
D. The date the license expires;
E. The city-issued license number;
F. Any rules for the conduct of bingo games imposed pursuant to state law; and
G. Such other related information as may be necessary or desirable for the enforcement of this chapter.

(Ord. No. 1106, § 2, 1-19-10)

5.32.110 - License fee.

A. Except as provided in subdivision (B), each initial application for an organization and any renewal request related to a bingo license shall be accompanied by a fee of fifty dollars. An additional fee for law enforcement and public safety costs incurred by the city that are directly related to bingo activities may be imposed and shall be collected monthly by the city, however, the fee shall not exceed the actual costs incurred in providing the service. If the applicant for a license is denied or the renewal thereof is denied, one-half of the fifty dollar fee shall be refunded to the applicant.

B. Each initial application and any renewal request for a remote caller bingo license shall be accompanied by a nonrefundable filing fee in an amount determined by resolution of the city council from time to time.

(Ord. No. 1106, § 2, 1-19-10)

5.32.120 - Duration of license.

A license issued pursuant to this chapter shall be valid until the end of the calendar year, at which time the license shall expire. A new license shall only be obtained upon filing a new application and payment of the license fee. 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 bingo for play. The city expressly reserves the right to amend or repeal this chapter at any time by resolution. 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.

(Ord. No. 1106, § 2, 1-19-10)

5.32.130 - Investigation by police.

Upon the filing of an application for a license for the conduct of traditional bingo games, other than remote caller bingo, the city manager shall forward the application to the chief of police for study and investigation. The chief of police shall investigate all persons listed on the application in accordance with Section 5.32.090(A)(11) of this chapter. No person may operate or staff a bingo game who has been convicted of embezzlement, theft, fraud or gambling. Based on the study and investigation, the chief of police shall recommend to the city manager either denial or approval of the license application.

(Ord. No. 1106, § 2, 1-19-10)

5.32.140 - Change in facts must be reported.

A. A licensee organization shall immediately report to the city manager any change in the information provided on an application for a license under this chapter.

B. Prior to conducting remote caller bingo games, a licensee organization shall supplement its license application by providing the city with a statement that the licensee organization agrees to conduct remote caller bingo games in strict accordance with the provisions of Penal Code Section 326.3 and 326.4 and this chapter, as they may be amended from time to time, and understands that the city manager may revoke the bingo game license for a violation of any such provision.

(Ord. No. 1106, § 2, 1-19-10)

5.32.150 - Posting of license and rules.

At all times during which bingo is played, the licensee organization shall post conspicuously at the public entrance to the room or rooms in which bingo is played: the licensee organization license, any rules and regulations established by the city manager for the conduct of bingo games under the license, and the licensee organization's rules of bingo operation. The posted rules shall be legible and accessible to all players.

(Ord. No. 1106, § 2, 1-19-10)

5.32.160 - Hours and days of operation.

A. Except as provided in subsection (B) of this section, traditional bingo games shall be conducted between noon and midnight for a maximum of six hours per day and no more than two days per calendar week by any licensee organization or on any one premises whether or not more than one organization is licensed to conduct bingo games on those premises.

B. Remote caller bingo games shall not be conducted by any licensee organization on more than two days during any week, except that a licensee may hold one additional game, at its election, in each calendar quarter.

(Ord. No. 1106, § 2, 1-19-10)

5.32.170 - Operation and staffing of games.

A. Remote caller bingo and traditional bingo shall be operated and staffed in accordance with state law.

B. All persons who operate or staff bingo games shall wear an identification insignia or badge on the outside of their clothing, no less than two and one-half by three and one-half inches in size, bearing the name of the licensee organization and the name and any title of the staff member.

(Ord. No. 1106, § 2, 1-19-10)

5.32.180 - Proceeds from games.

A. Proceeds from bingo games shall be administered in accordance with state law.

B. If the monthly gross receipts from traditional bingo games of an organization exceed five thousand dollars, a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and the balance shall be used for prizes, rental of property, overhead, administrative expenses, and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in Penal Code Section 326.5(k)(2).

(Ord. No. 1106, § 2, 1-19-10)

5.32.190 - Inspection of premises.

A. No person shall interfere with, prevent or refuse to permit a duly authorized representative of the city manager, the fire department or any peace officer to inspect any place in which bingo games or remote caller bingo games are conducted in the city, whether or not bingo games or remote caller bingo games are being conducted at the time of the inspection.

B. Failure to allow, or interference with, an inspection constitutes a violation and shall be grounds for revocation of a license or denial of a bingo application or license.

(Ord. No. 1106, § 2, 1-19-10)

5.32.200 - License revocation.

A. Whenever it shall be shown or whenever the city manager has knowledge that a licensee, or agent thereof, has violated any of the provisions of this chapter or state law, the city manager shall immediately suspend the license and give the organization written notice, ("Notice of Suspension") by

registered mail to the address of record of the agent upon whom legal notice may be served, of the suspension and a brief statement of the reasons therefor.

B. Upon receipt of the notice of suspension, the organization shall cease from conducting any bingo game or remote caller bingo game, and the failure to do so shall constitute a separate and further violation of this chapter.

(Ord. No. 1106, § 2, 1-19-10)

5.32.210 - Appeal.

A. In the event of any finding or decision of the city manager which is adverse to the application of an organization for a license or renewal thereof under this chapter, or if a license is suspended or revoked, the organization may appeal to the city council, provided, that such appeal is filed with the city clerk within fifteen calendar days from the date of the finding or decision of the city manager. The city manager shall notify the organization of this right to appeal, and such notice shall accompany each and every adverse finding and decision of the city manager. The finding or decision and the notice of this right to appeal shall be mailed by registered mail, to the organization at the address that appears on the application for a license or renewal thereof.

B. Failure of the city manager to receive a timely request for an appeal constitutes a waiver of the right to contest the finding or decision. Unless a timely appeal is filed, a finding or decision of the city manager becomes final and no longer subject to appeal.

C. Within thirty calendar days of the filing date of an appeal, the city council shall conduct a hearing on the appeal. The city shall give the appellant at least five calendar days' mailed notice of the date, time, and location of the hearing at the address(es) specified on the appeal. The failure of any appellant to receive a properly addressed notice of hearing shall not invalidate any action or proceeding by the city pursuant to this chapter.

D. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. Within ten calendar days after conclusion of the hearing, the city council shall render its decision. The decision of the city council shall be a final decision.

E. The failure of any appellant to appear at the hearing without such cause as the city council may deem sufficient to justify a continuance shall constitute a default and the finding or decision of the city manager shall thereupon be final and no longer subject to appeal.

(Ord. No. 1106, § 2, 1-19-10)

5.32.220 - Audit and accounting requirements.

A. Prior to July 31 and prior to January 31 of each year, a licensee organization shall, at its own expense, submit on a form to be provided by the city manager a report of gross revenues, expenses and other information reasonably required by the city manager to enforce this chapter. A licensee organization shall annually submit to the city manager a copy of its federal tax return not later than sixty calendar days after that return is filed with the Internal Revenue Service.

B. A licensee organization shall maintain complete and accurate records of income received from, and prizes and other expenses disbursed in connection with, the operation and staffing of bingo games.

C. The city manager may at any time demand a complete and detailed accounting of the records required under subsection (B) of this section and any other data or information pertaining to the operation of bingo games maintained by a licensed organization. The city manager may subject that accounting and such data and information to, an agreed-upon procedures examination, audit, and/or any other accounting review which may extend to, without limitation: (i) proceeds from the operation of bingo games, (ii) an accounting of the number of players and number of games played over a designated period, (iii) an inspection of bingo cards, funds, equipment or any other records or documentation in connection with the operation of games over a designated period. Such detailed accounting or further data or information shall be provided at the expense of the licensee organization if, in the sole discretion of the city manager, such detailed accounting or further data or information is necessary for the enforcement of this chapter.

D. In the event a licensee organization fails to render an accounting or provide information pursuant to the provisions of this section within sixty calendar days of the city manager's request, the city manager may suspend that organization's license until the requested accounting or information provided.

(Ord. No. 1106, § 2, 1-19-10)

5.32.230 - Civil remedies and criminal penalties.

A. The city attorney may bring an action to enjoin a violation of this chapter.

B. A violation of any provision of this chapter may be prosecuted as a misdemeanor punishable under Section 1.24.110 of this code or pursuant to applicable state law.

C.

If a violation of Penal Code Section 326.3(d) or Section 326.5(b) is filed by a prosecutorial agency, then such violation shall be punishable by a fine not to exceed ten thousand dollars, which fine shall be deposited in the general fund of the city.

(Ord. No. 1106, § 2, 1-19-10)

FOOTNOTE(S):

[2] **Editor's note—** Section 1 of Ord. No. 1106, adopted Jan. 19, 2010, repealed Ch. 5.32 in its entirety and § 2 of said ordinance enacted similar provisions to read as herein set out. Former Ch. 5.32 was comprised of §§ 5.32.010—5.32.120, and derived from Ord. 700 of 1976. (Back)