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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: July 10, 2007

RE: **Annual Report on Bingo Activities in 2006, A Request for Additional Direction From Council on Obtaining Greater Transparency from Bingo Operations, and a Proposed Ordinance Amending Oakland Municipal Code Chapter 5.10 to Require a Bingo Hall Permit When the Bingo Hall Operator is a Separate Entity from the Bingo Game Operator and to specify that the Annual Bingo Hall Fee is Established by the Master Fee Schedule (Ordinance No. 12744 C.M.S.)**

### SUMMARY

This report provides information regarding the operation of Oakland's permitted bingo establishments during the 2006 calendar year. The report summarizes the receipts, expenditures, and charitable donations made by the bingo game operators, as reported monthly by each operator to the Office of the City Administrator.

In 2006, Oakland's bingo game operators continued the trend, begun in 2005, of dramatically increasing donations to charitable causes as shown below.

<u>Year</u>	<u>Charitable Donations</u>	<u>\$ Increase Over Prior Year</u>	<u>% Increase Over Prior Year</u>
2001	\$184,644		
2002	57,788	(126,856)	
2003	117,294	59,509	202
2004	199,125	81,831	102
2005	458,817	259,692	230
2006	880,052	421,235	192

**Six year total donations \$1,897,720**

These increases parallel the increases in gross receipts that have occurred since 2004 and the stabilization of expenses, resulting in higher profit amounts available for donation to charity. For example, gross revenues increased \$1,213,067 from 2005 to 2006, while expenses increased only \$120,928. Additional prize money paid on these gross revenues was \$817,014, resulting in over \$275,000 more available for charity. More detail on these results is under the Financial Summary subsection of the Background section of this report.

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007

Follow-up on Concerns From 2005 Bingo Report

One of the concerns in the 2005 Bingo Report was that a significant portion of donations were being made to groups outside of Oakland and, in some cases, it was difficult to determine whether the recipients were actually charitable organizations. Council expressed its intent that Oakland's permitted bingo operations ensure funding of Oakland organizations, and staff clarified this to the Bingo Game operators. Since then, only one donation was made outside of Oakland.<sup>1</sup> The bingo operator explained that it was an oversight, and that they would tighten their procedures to ensure that henceforth only Oakland organizations would receive donations.

A second concern raised in the 2005 report was the amount of rent being paid to the Bingo Hall operators by the Bingo Game operators. Upon acceptance of the 2005 report, the Public Safety Committee requested staff to research this issue further. Staff therefore requested Bingo Hall operators to submit lease and expense information with their annual permit applications. Because of disclosure concerns on the part of some bingo hall operators, staff was unable to obtain all of the information requested by the Public Safety Committee.

Although comprehensive changes to Oakland's bingo ordinance are needed to improve transparency of the bingo operations, these may not be possible without guarantees to both the Bingo Game operators and Bingo Hall operators of immunity from prosecution. Oakland has adopted the California law regarding bingo (Penal Code Section 326.5), which is based upon a mode of operation that, in Oakland, is followed only by the East Oakland Senior Center. The pertinent sections of the Penal Code and their possible affect on the request for information is discussed in the Transparency of Bingo Operations subsection of the Key Issues and Impacts section of this report. Staff requests guidance on how the Committee wishes to proceed regarding this information.

New Concern

BCD&R and KEDS have recently advised staff that an IRS audit determined that portions of their gross revenues, such as sales of "Pull Tabs", were not considered bingo revenues, but rather would be classified as unrelated business income, which is taxable. BCD&R has not yet determined their liability for prior years but KEDS reported their back tax liability, including both federal and state taxes, has been calculated as:

2004 - \$10,692

2005 - \$38,910

2006 - \$49,019

They additionally incurred \$5,300 of bookkeeping expenses in the process for a total of \$103,921.

KEDS plans to reserve \$4,000 per month to cover this tax liability in 2007. This reserve is approximately seven percent of their 2006 amount available for donations, after deducting prizes

<sup>1</sup> BCD&R Society donated \$10,000 to Hopehouse Sports, Inc. in Hayward.

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007

and expenses. In 2006 the total available for charitable donations from all of Oakland's bingo halls was \$1,023,745, or seven percent of the gross revenues of \$14,626,958. If all halls experience a tax liability similar to KEDS (seven percent of the amount available for donations), the result would be almost \$72,000 less available for the organizations currently benefited by Oakland's bingo operators.

#### Recommended Ordinance Amendments

Prior to determining the parameters of more comprehensive changes, staff recommends two minor changes to Oakland Municipal Code (OMC) Chapter 5.10. The current ordinance prohibits operation, without a permit, of a Bingo Hall that has two or more Bingo Game operators. With the exception of the East Oakland Senior Center, all of Oakland's Bingo Halls are separate businesses from the non-profit Bingo Game operators, and all have Bingo Hall permits, regardless of the number of Bingo Game operators hosted by the Hall. Staff requests that the ordinance require a Bingo Hall permit for all businesses that facilitate any number of Bingo Game operators through their hall rentals and provision of other services.

The second proposed ordinance change would reflect the reality that the Bingo Hall fee is maintained in the Master Fee Schedule and therefore subject to change as required to cover the costs of administering the bingo program. The Bingo Hall permit fee was increased to \$1,000 in 2005, but OMC Section 5.10.110 still specifies a Bingo Hall permit fee of \$500.00. The proposed ordinance changes are submitted with this report.

#### Error Correction

Staff wishes to acknowledge errors in the 2004 and 2005 Bingo Reports. A calculation error resulted in staff reporting that BCD & R Society paid \$1,348,850.00 in rent in 2004. In a December, 2006 letter, BCD & R pointed out that the actual amount of rent paid was \$656,100.00. Staff apologizes to BCD & R for this significant error. Additionally, the rent paid by BCD&R Society in 2005 was \$572,050.00, \$10,000 less than stated in the 2005 Bingo Report. The amount was calculated from the monthly reports submitted by BCD&R in 2005. In May, 2006, BCD&R submitted an amended report correcting the rent paid for June, 2005. Unfortunately, staff did not receive the amended report until after the publication of the 2005 Bingo Report in April, 2006.

#### **FISCAL IMPACTS**

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 \$2,000 per year if the two Bingo Hall operators that host only one charitable Bingo Game operator did not pay 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>

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

The Master Fee Schedule lists the Bingo Hall annual permit fee as \$1,000, but OMC Section 5.10.110 specifies it at \$500. Therefore, failure to change the ordinance to specify that the bingo hall operator permit fee is contained in the Master Fee Schedule would currently result in a loss of \$1,500 per year, as there are three bingo hall operators. Additionally there could be no future increases. The fee defrays the costs of compilation of monthly financial information submitted by the bingo game operators and administration of hearings on complaints lodged by bingo players.

**BACKGROUND**

California Penal Code Section 326.5 and Oakland Municipal Code Chapter 5.10 are the governing regulations for bingo games. The Special Activity Permit Unit of the City Administrator's Office is the oversight agency for bingo games in the City of Oakland.

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>2004</u>	<u>2005</u>	<u>2006</u>
Gross Receipts	12,759,312.00	13,413,891.00	14,626,958.00
Prizes Awarded	9,413,438.00	9,584,613.00	10,404,737.00
Expenses	3,131,559.00	3,077,652.00	3,191,831.00
Residual	214,315.00	751,626.00	1,030,390.00
Charitable Donations	199,125.00	458,817.00	880,052.00
Residual Percent Donated	93	61	85

BINGO HALLS AND BINGO GAME OPERATORS

During 2006 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.

Other than the East Oakland Senior Center, which conducted bingo in its own facility, Oakland's five Bingo Game Operators, which are required by law to be non-profit, charitable organizations, leased space from the Bingo Hall Operators.

BINGO GAME OPERATOR  
 (Non-profit organization)

- Community Charities

BINGO HALL OPERATOR/LESSOR

Durant Square/Bay Area Commercial

Item: \_\_\_\_\_  
 Public Safety Committee  
 July 10, 2007

- |                                |   |
|--------------------------------|---|
| • BCD & R Society <sup>3</sup> | Foothill Square/Cornucopia Ventures     |
| • KEDS, Inc. <sup>4</sup>      | Foothill Square/Cornucopia Ventures     |
| • Project Yes!                 | Fortune Bingo/Wayne Tonkin <sup>5</sup> |
| • East Oakland Senior Center   | Not Applicable                          |

## KEY ISSUES AND IMPACTS

### WHERE IS THE MONEY GOING?

With the exception of the East Oakland Senior Center, the bingo profits are not used to fund the activities of the Bingo Game Operators, but are donated to other non-profit organizations and needy individuals. Since 2003, donations made by Oakland's Bingo Game Operators have increased by almost 100 percent per year. The donations provide much needed funding for Oakland schools and other charitable organizations in Oakland. A list of the donations made by each Bingo Game Operator is included as Attachment A.

Last year and in several recent years staff named Community Charities the Bingo Organization of the Year for their consistent focus on Oakland schools and needy families. Community Charities continues to make outstanding contributions. But staff would also like to acknowledge that in 2006, to a greater extent than ever before, all of Oakland's bingo operations made substantial contributions and, following the request to focus on Oakland organizations, virtually all donations stayed in Oakland.

The increased donations have expanded the number of recipients that have benefited from bingo. Oakland's elementary and middle schools have always been a favored recipient of the donations made by Community Charities, which continued that tradition in 2006. Community Charities also made significant donations to the Oakland Police Activities League

Increasing their donations to more than six times their 2005 level, KEDS bingo made generous donations to additional elementary schools, to Castlemont High School, and to the East Oakland Boxing Association/SmartMoves. KEDS has also committed to donate \$5000 per month to the Oakland Alliance for Community Partnership (OACP), a 501c3 established as a public/private partnership by the City through the Mayor's office.

BCD&R Society expanded the emphasis on the education of Oakland Youth through significant contributions to the Oral Lee Brown Foundation. BCD&R also donated \$200,000 to the Summer Jobs Program, for a grand total of 2006 donations of \$562,150.<sup>6</sup>

<sup>3</sup> Breast Cancer Research and Development Society

<sup>4</sup> Kids Education Development Scholarships, Inc.

<sup>5</sup> Fortune Bingo is located at 337 13<sup>th</sup> St.

<sup>6</sup> \$150,000 of this amount was from 2005 residuals. This amount was presented to the beneficiary organizations at the May 9, 2006 presentation of the 2005 bingo report. It was not included in the 2005 report, so it is being credited in this report, along with the donations from 2006 residuals that were actually made in 2007.

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007

The 2006 charitable donations of all Bingo Game Operators and a comparison with 2005 donations is shown below:

<u>BINGO GAME OPERATOR</u>	<u>2005 DONATIONS</u>	<u>2006 DONATIONS</u>
• BCD & R Society	\$282,517.00	\$562,150.00
• Community Charities	138,400.00	135,600.00
• Community Soc. Svcs. Of E. Bay	1,900.00	No longer operating
• KEDS, Inc.	26,000.00	166,085.00
• East Oakland Senior Center	5,000.00	3,217.00
• Project YES! <sup>7</sup>	<u>5,000.00</u>	<u>13,000.00</u>
	\$458,817.00	\$880,052.00

Last year the Bingo Hall/Bingo Game operators expressed their belief that they could make substantially more donations if the number of bingo halls was limited. The Fruitvale Bingo Hall had operated for several years, through the first quarter of 2005, generally breaking even and doing little in the way of donations. The Bingo Hall/Bingo Game operators forecasted that charitable donations would increase if the Fruitvale Hall was not re-permitted, due to the high rent/overhead associated with the Bingo Halls and the limited pool of bingo players. Their prediction appears to have been correct for both the last three quarters of 2005 and the entire year of 2006, a period in which there was one less major bingo hall than previously.

EXPENSE OF OPERATING BINGO GAMES

As a condition of permitting, the Bingo Game Operators provide monthly reports of income and expenses. On an annual basis they also provide proof of tax exempt status, copies of their leases, proof of liability insurance coverage, their projected budget, and lists of their managers and volunteers.

The largest expense of bingo operations is the cost of prizes. In 2006, as in 2005, 71 percent of the gross receipts, or \$10,401,627 was paid out in prizes. As was noted in the 2005 bingo report, bingo hall rentals and overhead expenses consume the gross profits of Oakland bingo game operators in amounts not anticipated by the state lawmakers who drafted the bingo legislation. Equipment rental and bingo supplies account for the majority of overhead expenses, which totaled \$1,742,926.

In 2006, rent paid by Oakland's bingo game operators totaled \$1,448,905. The information presented by the bingo game operators and bingo hall operators indicated that BCD&R and KEDS, the bingo game operators at Foothill Square rent 24,750 square feet and pay \$2.79 per square foot to Cornucopia Ventures, the bingo hall operator, who in turn pays \$.97 per square foot to Jay-Phares Corporation, the lessor of Foothill Square properties. Community Charities,

<sup>7</sup> Project YES! is the non-profit established to fund Youth Uprising.

Item: \_\_\_\_\_  
 Public Safety Committee  
 July 10, 2007

the bingo game operator at Durant Square, rents 15,000 square feet and pays \$3.32 per square foot to Bay Area Commercial, the bingo hall operator and property manager for Durant Square.

### TRANSPARENCY OF BINGO HALL OPERATIONS

The City has previously not requested financial information from the Bingo Hall Operators. Based upon the request of the Public Safety Committee during the presentation of the 2005 Annual Report, staff requested that the Bingo Hall Operators provide their financial statements and rental agreements with their annual permit applications.

The responses were quite varied and are summarized as follows:

**Wayne Tonkin, dba Fortune Bingo**, who provided the bingo hall for **Project YES!** in 2006, provided a copy of a lease indicating a monthly rental amount of \$2,500 or \$30,000 per year. Fortune Bingo is located on the second floor of 337 13<sup>th</sup> Street. Although the lease does not specify the Lessor's name, Mr. Tonkin's Bingo Hall permit application states that the premises are owned by Judy Chu and Alex Hahn. According to Project YES!'s monthly statements, they paid \$22,375 in rent in 2006. Mr. Tonkin also submitted a letter explaining that Fortune Bingo was a simple business and that his two years in business had been an "uphill climb" with a priority of raising funds for Oakland charity. He submitted a four-line income statement showing a Jan. to Nov. 2006 loss of \$6,625.00, but said that the loss was actually much greater, as it did not include wages paid. The monthly bingo reporting forms do not include a category for wages, and operators would be reluctant to provide such information, as the state law requires bingo games to be staffed completely by volunteers.

**Bay Area Commercial, Inc.**, which provides the bingo hall for **Community Charities**, submitted a detailed Income Statement titled Durant Bingo. It listed base rent income as \$630,000 and expenses of \$368,588, including such items as property taxes, landscaping, personnel costs, and security. The net income stated by Bay Area Commercial, Inc. is \$262,012. Community Charities rents 15,000 square feet directly from Bay Area Commercial, which is the property manager for Durant Square. Their portion of the rent reported by Bay Area Commercial was \$596,700 or \$3.32 per square foot in 2006. Bay Area Commercial also receives rent from the food concessionaire.

**Cornucopia Ventures 2001 L.P.**, which is the bingo hall operator for **BCD&R Society and K.E.D.S.** submitted a copy of their lease of the premises and a list of expenses associated with Foothill Square Bingo. The list of services did not indicate amounts expended but did state that "Cornucopia's obligation for base rent and CAM [Common Area Maintenance] charges pursuant to said lease totals in excess of \$3,000,000.00. They also 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 explained that the information is protected by Cornucopia's right to financial privacy and expressed a concern that Oakland's interest appeared to be related to controlling commercial rents, which is prohibited by California Civil Code Section 1954.25 et. seq. This letter is Attachment B.

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007

A letter provided by Cornucopia Ventures indicates that during 2006 they paid \$283,496 to Jay-Phares Corporation, the property manager for Foothill Square, to rent the bingo hall. The lease states that the premises consist of 24,750 square feet, which would equate to \$.95 per square foot. BCD&R and KEDS rent from Cornucopia Ventures, not directly from Jay-Phares Corporation. During 2006 Cornucopia Ventures received \$828,830 in rent from BCD&R Society and K.E.D.S., or \$2.79 per square foot. While Cornucopia's statement of expenses did not list amounts, it included such items as janitorial labor and supplies, pest control contract, utilities, and legal, accounting, and management fees.

Because, the information requested and received from the Bingo Hall operators is incomplete, it raises the issue of whether the City should control the Bingo Halls by ordinance, as the Bingo Game operators are currently controlled by both state and local law. The attorney for Cornucopia Ventures correctly states that there is no ordinance authorizing audit of the Bingo Halls and there is no commercial rent control in California. The Bingo Hall operators have expressed their belief that it is only because the halls are conducted as businesses that they are able to accumulate funds and donate to Oakland charities.

Lack of disclosure may also be based upon fear of prosecution. Penal Code Section 326.5 requires that all bingo workers be unpaid volunteers of the nonprofit organization conducting the games. The East Oakland Senior Center, which conducts bingo games only 1 night per week is able to staff its games with volunteers. Oakland's other bingo game operators, 3 of which operate seven days and nights per week and one of which operates two days and nights per week would have difficulty staffing their games without remunerating workers in some form. Under the current reporting system, this remuneration is either not reported by operators or is buried in some other category of expenses.

The bingo operators are reluctant to share what they feel the actual requirements for conducting bingo are, as these requirements may expose practices that are currently illegal. Yet, without this information, it is difficult, if not impossible, to determine what changes to the ordinance would provide transparency of operations while encouraging the continuance of charitable bingo for the contributions that it provides to the City.

#### PROPOSED CHANGES IN OAKLAND'S BINGO ORDINANCE

OMC section 5.10.040 states in pertinent part, "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 operator 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. Reducing the number of bingo game operators has decreased expenses and therefore greatly increased the amount of residual funds available for charitable purposes. It is therefore likely to continue as the preferred model. The proposed amendment would state, "No owner or manager shall operate a bingo hall without a valid bingo hall permit from the City Administrator if the owner or manager is a separate entity from the charitable bingo game operator."

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007



Staff also recommends that OMC section 5.10.110 be modified. 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."

### **SUSTAINABLE OPPORTUNITIES**

In 2006 bingo operators contributed **\$880,052** to charitable causes. In contrast to previous years, virtually all of these donations were made to organizations in Oakland. The Bingo Operators have committed to continuing to donate to Oakland organizations.

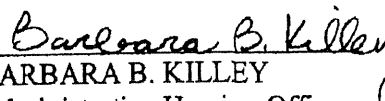
### **DISABILITY AND SENIOR CITIZEN ACCESS**

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

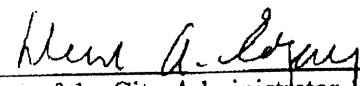
### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the Council accept this report on bingo activities in 2006. Staff also requests that the Council provide further advise on how to proceed with obtaining greater transparency of bingo operations. Finally, staff requests that Council adopt the ordinance amending OMC Chapter 5.10.

Respectfully submitted,

  
BARBARA B. KILLEY  
Administrative Hearing Officer

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Administrator

Attachments

Item: \_\_\_\_\_  
Public Safety Committee  
July 10, 2007

# ATTACHMENT A

## 2006 DONATIONS BY BINGO GAME OPERATOR

### BCD&R SOCIETY

Mayor's Toy Drive	\$ 5,000	
Oral Lee Brown Foundation	102,500	
Wal-Mart (coats)	10,000	
Hopehouse Sports, Inc.	10,000	
Friends of Faith, Inc.	12,000	
Lovelif Foundation	50,000	Given in 2006 from 2005 residual
Youth Uprising	50,000	Given in 2006 from 2005 residual
East Oakland Boxing Assoc/Smartmoves	50,000	Given in 2006 from 2005 residual
St. George???	2,500	
San Leandro High School	5,150	
Elmhurst Food Pantry	15,000	
S.F. Aids Foundation	5,000	
Project Outreach	5,000	
Project YES!	5,000	
Lend A Hand	5,000	
Kadify Foundation	5,000	
East Oakland Seniors	5,000	
Bishop O'Dowd High School	10,000	
Oakland's Potter House	10,000	
East Oakland Youth Development	50,000	For Summer Jobs Program
		Given in 2007 from 2006 residual
Youth Uprising	100,000	For Summer Jobs Program
		Given in 2007 from 2006 residual
Lovelif Foundation	<u>50,000</u>	Given in 2007 from 2006 residual
<b>Total</b>	<b>\$ 562,150</b>	

### COMMUNITY CHARITIES

Bay Area Charities	\$ 10,600
Oakland Police Activity League	47,500
Woodland Elementary	7,000
Brookfield Elementary	6,500
Elmhurst Middle School	6,500
E. Morris Cox Elementary	1,500
Monterra Middle School	6,500
Thurgood Marshall Elementary	6,500
Highland Elementary	8,000
Bishop O'Dowd High School	6,000
Grass Valley Elementary	9,000
Stonehurst Elementary	5,500
Sobrante Park Elementary	8,500
Metropolitan Jr. Golf	2,500
New Highland Academy	1,500

Oakland Small Schools Foundation		1,000
Elmhurst Community Prep		<u>1,000</u>
<b>Total</b>	<b>\$</b>	<b>135,600</b>

<b><u>East Oakland Senior Center</u></b>	<b>\$</b>	<b>3,217</b>
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<b><u>K.E.D.S</u></b>		
Castlemont High School	\$	14,000
Oakland Assistance Center		785
Oakland Children's Hospital		41,000
Frick Elementary		10,000
Fruitvale Elementary		40,000
Scott Memorial Fund		2,500
Reeds		800
Alpha Omega Foundation		4,000
Leola Meneese		1,000
Roots of Unique Awareness		1,000
N. Oakland Missionary Baptist		1,000
East Oakland Boxing Association		<u>50,000</u>
<b>Total</b>	<b>\$</b>	<b>166,085</b>

Given in 2007 from 2006 funds

<b><u>Project YES!</u></b>	<b>\$</b>	<b>13,000</b>
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<b>TOTAL</b>	<b>\$</b>	<b>880,052</b>
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# ATTACHMENT B