



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** April 8, 2014

**From:** Jim Andersen, Manager      **Item No:** 9  
Code Enforcement

**Subject:** INTRODUCE ORDINANCE NO. 460 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING CHAPTER 5.02 BUSINESS REGULATIONS OF THE APPLE VALLEY MUNICIPAL CODE

**T.M. Approval:** \_\_\_\_\_      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

1. Find that the proposed adoption of Ordinance No. 460 is not subject to and is Exempt from CEQA, based upon findings under CEQA Guidelines, Section 15061 Sub (b)(3) that can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment.
2. Move to waive the reading of Ordinance No. 460 in its entirety and read by title only.
3. Move to Introduce Ordinance No. 460 amending Chapter 5.02 Business Regulations
4. Direct Staff to File a Notice of Exemption.

### SUMMARY:

California Penal Code § 326.3 (c) (1) states: A city, county, or city and county may adopt an ordinance in substantially the following form to authorize remote caller bingo in accordance with the requirements of subdivision (b).

**FISCAL IMPACT:** Fee schedule to be adopted by resolution of the Town Council to offset costs to administer the licensing program.

### BACKGROUND:

The Town does not currently have an ordinance that governs bingo. State law allows for cities to adopt an ordinance to govern bingo and remote caller bingo games. There are organizations in Town that conduct remote caller bingo games and likely

organizations that conduct traditional (onsite caller) bingo games. Having a local ordinance will provide clear direction as to which types of organizations will be allowed to operate bingo games and layout guidelines of how the games must be operated in conformance with the local ordinance and State law. Adopting this ordinance allows for local control to operate a bingo game in the Town of Apple Valley.

**ORDINANCE NO. 460**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING CHAPTER 5.02 BUSINESS REGULATIONS OF THE APPLE VALLEY MUNICIPAL CODE**

**WHEREAS**, the Town of Apple Valley is authorized pursuant to California Constitution Article IV, §19 and Penal Code sections 326.3 and 326.5 to determine whether or not to permit specified charitable organizations to conduct bingo and remote caller bingo games within the Town; and

**WHEREAS**, all local bingo ordinances must comply with the provisions of Penal Code Section 326.5; and

**WHEREAS**, the Town wishes to amend Chapter 5.02 to ensure it complies with Penal Code Section 326.5; and

**WHEREAS**, the Town is authorized by penal code section 326.3 to permit remote caller bingo; and

**WHEREAS**, the Town wishes to allow remote caller bingo.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:**

Section 1. Chapter 5 of the Town of Apple Valley Municipal Code is hereby amended to read in full as set forth as follows:

**“Chapter 5.02”**

**Business Regulations**

**5.02.10. Definitions.**

(q) **Bingo** means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random.

(r) **Charitable organization affiliated with a school district** means an organization formed for the benefit of a school district which has an official name, president, and secretary and which has an address or mailbox.

(s) **Mobile home park association** means an organization formed for the benefit of mobile home park residents which has an official name, president, and secretary and which has an address or mailbox.

- (t) **Remote caller bingo** means bingo as defined in Penal Code § 326.3(b) et seq.
- (u) **Senior citizens organization** means an organization formed for the benefit of senior citizens which has an official name, president, and secretary and which has an address or mailbox.

**5.02.460 Conduct of bingo games.**

Bingo games may be conducted in the town subject and pursuant to the following provisions:

(a) Bingo games shall be conducted only by organizations exempted from the payment of the bank and corporation tax by Revenue and Taxation Code §§ 23701A, 23701B, 23701D, 23701E, 23701F, 23701K, 23701G, 23701L, and 23701W which includes but is not limited to the following: Labor, agricultural, or horticultural organizations, a fraternal order described in section 501(c)(13) or the Internal Revenue Code, a business league, chamber of commerce, real estate board, a veteran's organization as defined by section 501(c)(19) of the Internal Revenue Code, religious or apostolic corporations and by charitable organizations affiliated with a school district, mobile home park associations, and senior citizens organizations, provided that the proceeds of such games are used only for charitable purposes or for reimbursement of reasonable and necessary expenses in operating such games. Security personnel employed by the organization conducting bingo games may be paid from the revenues of bingo games, as provided in subsection (j) of this section.

(b) It is an infraction for any person to receive a profit, wage or salary from any bingo game authorized as provided in article IV, section 19 of the constitution of the state. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games as provided in subsection (j) of this section.

(c) The violations of subsection (b) of this section shall be punishable by an administrative fine not to exceed \$10,000.00 which fine shall be deposited in the general fund of the city. A violation of any provision of this section, other than subsection (b) of this section, is a misdemeanor.

(d) No person under the age of eighteen (18) shall be allowed to operate, work at or participate in any bingo game.

(e) A bingo game shall only be conducted on property owned or leased by an organization authorized by this section to conduct bingo games which has been in

existence in the city at least six consecutive months prior to the filing of an application for a bingo license.

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

(g) A bingo game shall be operated and staffed only by members of the nonprofit, charitable organization, mobile home park association or senior citizens organization which organized it. Such members shall not receive a profit, wage or salary from any bingo game. Only the organization authorized to conduct the bingo game under this article shall operate such game or participate in the promotion, supervision or any other phase of such game.

(h) 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.

(i) All profits 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. The licensee shall keep full and accurate records 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 article. The Town's Finance Department, in conjunction with the police department, shall have the right to examine and audit such records at any reasonable time, and the licensee shall fully cooperate with the city by making such records available. Such proceeds shall be used only for charitable purposes, except as described in subsection (j) of this section.

(j) All proceeds derived from a bingo game pursuant to this section:

(1) May be used for prizes.

(2) A portion of such proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, may be used for rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment and security personnel.

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

(k) No bingo game shall be operated until, and unless, such organization shall have received a license authorizing it to conduct a bingo game. The annual fee for such license shall be set by the Town.

(l) No person shall be allowed to participate in a bingo game pursuant to this section unless the person is physically present at the time and place in which the bingo game is being conducted.

(m) There shall be no more than two bingo games held during any calendar week in any one location wherein a portion of the proceeds are retained by the sponsoring organization unless the proceeds retained are to be used solely to reimburse expenses as defined in subsection (j) of this section.

(n) No organization shall conduct bingo games between the hours of 11:00 p.m. and 10:00 a.m.

(o) The games shall otherwise be conducted in compliance with Penal Code § 326.5.

#### **5.02.470 License.**

(a) It is unlawful for any organization to conduct any bingo game in the town unless such organization has made application for and been issued a license by the Town's Finance Department.

(b) The application for license shall be completed and renewed on a yearly basis.

(c) The fee for a bingo license or renewal thereof, shall follow the fee schedule for a business license and shall accompany the filing for each application.

(d) Licenses are not transferable, and there are no rebates if the bingo operation licensed under this article is discontinued during the period for which the license was issued.

#### **5.02.480 Conduct of remote caller bingo games.**

Remote caller bingo games may be conducted in the town subject and pursuant to the following provisions:

- (a) Remote caller bingo games may be conducted by any organization eligible to receive a bingo license pursuant to 5.02.460 if:
- (1) The organization possesses a valid bingo license issued pursuant to 5.02.470
  - (2) The organization has been incorporated or in existence for three years or more
- (b) Remote caller bingo games shall be conducted in compliance with Penal Code §§ 326.3 and 326.4 and all other applicable local and state laws and regulations.
- (c) 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.
- (d) The licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of remote caller bingo games which are authorized by this article. The Town's finance department, in conjunction with the police department, shall have the right to examine and audit such records at any reasonable time, and the licensee shall fully cooperate with the city by making such records available.
- (e) Except as authorized by Penal Code § 326.3, it is a misdemeanor for any person to receive a profit, wage or salary from any remote caller bingo game authorized as provided in article IV, section 19 of the constitution of the state.
- (f) The violations of subsection (e) of this section shall be punishable by an administrative fine not to exceed \$10,000.00 which fine shall be deposited in the general fund of the city. A violation of any provision of this section, other than subsection (e) of this section, is a misdemeanor.
- (g) No more than 750 players may participate in a remote caller game in a single location.
- (h) The operation of bingo may not be the primary purpose for which the organization is formed.

**5.02.490 Remote caller bingo authorization.**

(a) Organizations wishing to conduct remote caller bingo shall submit a request to do so to the Town Finance Department which shall be submitted at the same time as an application for a bingo license pursuant to 5.02.470. The request shall be accompanied by any information reasonably necessary to permit the chief of police to determine that the proposed remote caller bingo operation and games will be conducted in compliance with this article and all applicable state laws and regulations, expressly including, but not limited to all applicable administrative and management agreements.

(b) Notwithstanding anything to the contrary in subsection (a), any organization possessing a valid bingo license issued pursuant to 5.02.470 may submit a request for authorization to conduct remote caller bingo games at any time. However, such requests shall be accompanied by a nonrefundable filing fee in an amount determined by resolution of the council from time to time. The request shall also be accompanied by any information reasonably necessary to permit the chief of police to determine that the proposed remote caller bingo operation and games will be conducted in compliance with this article and all applicable state laws and regulations.

(c) Approvals to conduct remote caller bingo issued pursuant to this section shall be valid until the end of the calendar year in which they were issued or the expiration of the bingo license that the approval was incorporated into or attached to, whichever is earlier. A new approval shall only be obtained upon filing a new application. The fact that an approval has been granted creates no vested right on the part of the licensee to continue to offer remote caller bingo for play. The town council expressly reserves the right to amend or repeal this article at any time. If this article is repealed, all approvals granted pursuant to this article shall cease to be effective for any purpose on the effective date of the repealing legislation.

(d) In the event an organization only wishes to conduct remote caller bingo games, it must obtain and maintain all necessary state licenses and registrations required by Penal Code § 326.3 and submit copies of such licenses and registrations with its application pursuant to this section.

**5.02.500 Revocation.**

In addition to any other penalty provided by law, any violation of this article shall constitute cause for the revocation of the organization's bingo license or remote caller



bingo approval by the town. Any person objecting to the Town Manager's determination pursuant to this subsection may appeal to the Town Council or designee provided he or she files a notice of appeal with the Town Clerk within ten days of the Town Manager's determination.

Section 2. Except as expressly amended hereby, all other provisions of Title 5 of the Town of Apple Valley Municipal Code shall remain in effect.

Section 3. Invalidation. The amendment by this ordinance of Chapter 5.02 of the Town of Apple Valley Municipal Code as previously in effect shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to either of said Chapters while the same was in effect.

Section 4. Effective Date. This ordinance shall become effective thirty days from and after its adoption.

Section 5. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code.

**APPROVED** and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 8th day of April, 2014.

\_\_\_\_\_  
Art Bishop, Mayor

**ATTEST:**

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La Vonda Pearson, Town Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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John Brown, Town Attorney

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Frank W. Robinson, Town Manager