

ORDINANCE NO. _____

BE IT ORDAINED by the City Council of Moody, St. Clair County, Alabama

In order to promote the health and welfare of its citizens, and in an effort to encourage and stimulate economic development, and to update any present ordinances in light of recent developments in the operation of bingo games nationwide, within the State of Alabama, and specifically within St. Clair County, the City Council of Moody (“Council”) hereby deems it necessary to enact the following Ordinance. By enacting the present Ordinance, the Council bases its intent, desire and decision to enact the present Ordinance upon careful review and thorough consideration of the following factors related to the present state of bingo gaming in the State of Alabama, to wit:

I. That the City of Moody, Alabama (“Moody”), in order to promote the health and welfare of its citizens and encourage and stimulate economic development for Moody, and in light of a recent decision by the Circuit Court of St. Clair County, desires to ensure that all forms of bingo which are lawful in Moody pursuant to Amendment Number 542 to the Constitution of Alabama of 1901, ratified by the 1988 Legislative Special Session (and designated in the official recompiled Constitution of Alabama of 1901 as Local Amendments to the Constitution of Alabama of 1901) (“Amendment 542”), are regulated according to law;

II. That Amendment 542 was adopted by the Alabama Legislature, approved by a vote of the people, and is thereby a valid constitutional amendment providing that Charitable Bingo *“shall be legal in St. Clair County, subject to the provisions of any resolution or ordinance by the county governing body or the governing bodies of the respective cities and towns within their respective jurisdictions as provided by law regulating such operation;”*

III. That Alabama Attorney General Opinion Number 97-072 held that once a valid constitutional amendment makes Charitable Bingo legal within the limits of a city or county, the city or county *“does not have the authority to decline to permit bingo operations by qualified organizations, but that its power is limited to the authority to regulate bingo operation;”*

IV. That the Circuit Court of St. Clair County, Alabama, in the case of *City of Ashville, et al. v. Sheriff Terry Surlis, et al.*, Civil Action Number 2008-382, has ruled that bingo may be conducted in St. Clair County on electronic devices or machines so long as certain elements are present and as a result, it is the intent of the Council to recognize that all forms of the game known as “bingo,” including, but not limited to, electronic or machine forms of bingo shall be subject to licensure and regulation by the City of Moody;

V. That Alabama Attorney General Opinion Number 2008-135 allows Charitable Bingo Organizations to pay compensation to a developer or its affiliates under a Development and License Agreement and/or Trademark License Agreement (as opposed to a real property, premises and/or facility lease agreement) in the form of a percentage of bingo revenue;

NOW, THEREFORE, AND BASED ON THE FOREGOING CONSIDERATIONS, BE IT ORDAINED as follows:

The following Rules and Regulations for the licensing, permitting and/or operation of Bingo Games within the City of Moody, St. Clair County, Alabama (hereinafter sometimes referred to as “Rules”, “Regulations” or “Rules and Regulations”) are hereby promulgated by the Council to regulate the issuance or permits for, and the operation of Bingo Games by, Nonprofit Organizations pursuant to Amendment 542.

Section 1 - Definitions:

As used herein the following words shall have the following meanings unless the context clearly indicates otherwise:

(a) “Bingo” or “Bingo Games” shall mean any game of chance known as bingo, including any game defined as such by state or federal law (whether or not machine, electronic, computer or other technologic aids are used in connection therewith); provided, however, that each machine, electronic device, and software which constitutes the bingo system, must facilitate the playing of the game of bingo and incorporate the following elements:

- (i) a game played on a card containing a grid of five (5) rows intersecting five (5) columns, each such row and column consisting of five (5) squares, containing a series of numbers or symbols in each square, with no two cards containing the same pattern of numbers or symbols in any one game;
- (ii) numbers or symbols are generated at random from a finite pool which corresponds to the pool of numbers or symbols contained on the cards;
- (iii) the numbers or symbols generated are covered on the cards;
- (iv) the game must be played by two or more individuals competing against one another; and
- (v) the winner(s), either by game-ending patterns or interim patterns, are those card holders being the first to match specific predetermined patterns.

To the extent that the foregoing elements are present in the game of bingo, it can be played with different kinds of equipment covering the spectrum from the technologically primitive, where cards display the grids and tokens or markings made by players are used to cover the designated squares, to the technologically advanced where electronic devices perform the operations of the game using computers or micro-processors and the interaction with human players is accomplished by means of an electronic console. If the game of bingo is played on electronic devices which determine and signal the winner, then such devices shall be electronically linked (not all electronic devices must be linked together, but electronic devices from the same vendor may be linked together) to ensure that multiple players are competing against each other. The prizes or evidence thereof for winning bingo games may be disbursed by the electronic devices or electronic consoles used in playing such games at the time each game is won or on different schedules that reflect a record of wins and losses involving multiple games.

The entertaining capabilities of electronic devices and consoles used in playing bingo may be enhanced by spinning reels and other video or mechanical displays, but such displays and the apparatus used to produce them may not affect the play or outcome of the game. Bingo Games includes Bingo Equipment.

(b) “Bingo Equipment” shall mean, without limitation, any electronic or mechanical equipment, machine, device, computer, or other technological hardware, software, or device

- (i) which is installed, or is to be installed at a Machine Bingo Facility and
- (ii) which is used, or can be used, to play Bingo Games.

Bingo Equipment includes any paraphernalia, machine, device or hardware that assists a player or the playing of Bingo Games and broadens the participation levels in a common game. Examples of the components of Bingo Equipment include, but are not limited to, dispensers, readers, player consoles, video displays, computers, computer servers, software utilized by computers or servers to conduct Bingo Games (including proprietary software, random number generators, or other processing or gameplay capabilities) on remote player terminals or consoles, electronic consoles capable of providing game results in different display modes, cards or sheets (whether tangible or virtual), telephones and telephone circuits, televisions, cables and other telecommunication circuits, and satellites and related transmitting and receiving equipment. Bingo Equipment shall not be deemed to be for any purpose a “gambling device” or “slot machine” within the meaning of the Code of Alabama 1975, Sections 13A-12-20(5) and (10), or any other provision of law, whether now in effect or hereafter enacted.

(c) “Bingo Expenses” shall mean all expenses incurred in connection with the holding, operating, and conducting of Bingo Games in accordance with Amendment 542 including, but not limited to, the following expenses: rental of Bingo Equipment, the payment of services necessary for the repair of Bingo Equipment, payment of prizes, rental for the Bingo Facility, money paid to workers and employees whether directly paid or paid to an employee leasing company, utilities, janitorial services, security services, banking services, permit fees, taxes and license fees, insurance premiums, professional services and maintenance, and other payments required by this Ordinance.

(d) “Bingo Session” shall mean, for each Machine Bingo Facility, a consecutive period of time up to five (5) hours during which Bingo is played in any calendar day, not to exceed three (3) calendar days in any calendar week. With respect to a Machine Bingo Facility, a Permit Holder shall not be limited in the number of Bingo Sessions it allows during any twenty-four (24) hour period, and Bingo Sessions may be conducted at any such facility seven (7) days a week.

(e) “Location” shall mean a building, hall, enclosure, room, premises, grounds and/or outdoor area within the city limits of Moody and which complies with all federal, state and local laws and applicable building and fire codes.

(f) “Machine Bingo Games” shall mean any and all forms of Bingo, including Bingo played on Bingo Equipment.

(g) “Machine Bingo Permit” shall mean a permit issued to a Nonprofit Organization that desires to operate any and all games of Bingo, including Bingo played on Bingo Equipment at a Machine Bingo Facility.

(h) “Machine Bingo Facility” shall mean a Location which has been inspected and approved by the City of Moody for the conduct of Machine Bingo Games and other lawful activities and for which a Machine Bingo Facility Permit has been granted. No Machine Bingo Facility may be built or licensed within five (5) miles of another Machine Bingo Facility.

(i) “Machine Bingo Facility Permit” shall mean a permit issued to a Person who desires to construct and/or maintain a facility offering Machine Bingo at a Machine Bingo Facility pursuant to the qualifications and requirements set forth under this Ordinance.

(j) “Machine Malfunction” shall mean any time that an electronic Bingo Game does not operate in the manner in which it was designed to operate including, without limitation, (i) the irregular operation of hardware or software (including the server or back office system required to support any electronic Bingo Game and/or any individual machine) that directly or indirectly causes a payout that is inconsistent with the displayable pay-tables associated with the bingo game; and (ii) any form of player fraud or misuse, power surge, communication error, data processing error, or other factors or conditions that cause irregular operations of hardware and/or software that operate Bingo Equipment.

(k) “Nonprofit Organization” shall mean (i) a bona fide organization that exists for charitable, educational, or other lawful purposes which operates without profit to its members (if any) or which has been classified by the Internal Revenue Service as a tax-exempt organization and (ii) which has been in existence for at least twenty-four (24) months immediately prior to the issuance of any permit or license authorized herein.

(l) “Permit Holder” shall mean any holder of a Machine Bingo Facility Permit or a Temporary Machine Bingo Facility Permit.

(m) “Permit” shall mean a Machine Bingo Facility Permit or a Temporary Machine Bingo Facility Permit, as applicable.

(n) “Person” shall mean an individual, sole proprietorship, corporation, partnership (whether a limited liability partnership, general partnership, or limited partnership), limited liability company, business organization, association or other legal entity of any kind whatsoever.

(o) “Player Patron” shall mean any individual who plays Bingo Games at a Machine Bingo Facility pursuant to the provisions of this Ordinance.

(p) “Sheriff” shall mean the Sheriff of St. Clair County, Alabama.

(q) “Temporary Machine Bingo Facility Permit” shall mean a Permit issued in accordance with the provisions of Section 7 below.

Section 2 - Bingo Permit Required:

No Nonprofit Organization shall be allowed to operate Machine Bingo Games unless the City of Moody first issues a Permit to said Nonprofit Organization authorizing it to do so. The Permits described herein shall be in a form designated by the City of Moody. Each Permit issued hereunder shall be issued to a specific Nonprofit Organization to conduct Bingo Games only at a particular Machine Bingo Facility. A Permit is not assignable or transferable without the express written consent of the City of Moody and shall become automatically void upon the dissolution of the Permit Holder. If a Nonprofit Organization changes its name, the City of Moody shall issue an amended permit bearing such name and such Nonprofit Organization shall be required to comply with the permit amendment provisions set forth herein. A separate Permit shall be issued for each Location or Facility at which the Permit Holder conducts Bingo Games.

Section 3 - Application for Permit: Submission; Form; Content:

(a) Any Nonprofit Organization desiring to obtain a Permit hereunder shall make application to the City of Moody on forms prescribed by the City of Moody and shall pay an annual permit fee of Fifty Dollars (\$50.00). Such Permits shall be valid for a period of up to twenty (20) years. Renewal applications shall be filed with the City of Moody at least 45 days prior to expiration of any Permit. Permits being renewed shall be valid for a period of twenty (20) years.

The City of Moody shall refuse to grant a Permit or renewal to any Person qualified hereunder unless and until the applicant fully provides the information required hereunder, such being provided in a form and in sufficient detail, to satisfy the City of Moody of its validity and sufficiency. The City of Moody may require any reasonable documentation as to any information required hereunder and shall have a reasonable time to check or confirm by any available method the accuracy or validity of any information provided hereunder.

(b) Each application for a Permit or renewal thereof shall contain the following information and exhibits:

(i) The date of incorporation (or other evidence of inception) showing the existence of the Nonprofit Organization, a copy of the tax-exempt determination letter from the Internal Revenue Service, a copy of the application for such status, or evidence of the City of Moody's determination that it would qualify for such status, or such other proof deemed acceptable by the City of Moody;

(ii) A certified copy of the charter, articles of incorporation, articles of organization, or other evidence of legal existence of the Nonprofit Organization;

(iii) The names and resident addresses of each of the officers and directors of the Nonprofit Organization as well as the names and resident addresses of the individuals working for the Nonprofit Organization who are responsible for the operation of Bingo Games by the Nonprofit Organization.

Section 4 - Issuance of Permit:

Upon receipt of a fully completed and documented application for a Permit meeting all the requirements set out herein, the City of Moody shall make such investigation as the City of

Moody may deem necessary or proper of the qualifications of each applicant as required herein and of the truth and veracity of the information contained or attached to the application. After making such investigation and after being satisfied that all qualifications and requirements as set out herein have been fulfilled, and after the required Fifty Dollar (\$50.00) permit fee has been paid, the City of Moody shall issue such Permit to said applicant upon the terms and conditions herein set forth.

Section 5 - Contents and Display of Permits:

Each Permit shall contain the name and address of the Permit Holder, the Location at which the Permit Holder is permitted to conduct Bingo Games and the date on which the permit was issued and upon which it expires. The Permit Holder shall display the Permit conspicuously at the Location where Bingo Games are being conducted. The Permits shall be on display at all times that Bingo Games are conducted.

Section 6 - Machine Bingo Facility Permit:

(a) Any Nonprofit Organization desiring to obtain a permit for a Machine Bingo Facility shall make application to the City of Moody on forms prescribed by the City of Moody and shall pay an annual permit fee of Twenty-Five Thousand Dollars (\$25,000.00) per year [each year being a consecutive twelve (12) month period commencing on the date (or anniversary, as the case may be) on which the Permit has been issued], with such permit fee to be paid in one lump sum in advance. The initial annual permit fee shall be due and payable at the time of the issuance of the Machine Bingo Facility Permit. Any successive annual permit fee shall be due and payable on the anniversary of the date on which the Machine Bingo Facility Permit was issued. An initial Machine Bingo Facility Permit shall be valid for a period of up to twenty years (20) years, provided that the annual permit fee is paid and such Machine Bingo Facility Permit is renewed as provided herein. Renewal applications shall be filed with the City of Moody at least 45 days prior to expiration of any Machine Bingo Facility Permit. Notwithstanding anything the contrary in this Section 6 or otherwise in this Ordinance, the annual permit fees identified herein shall be considered "Bingo Expenses".

(b) The City of Moody shall refuse to grant a Machine Bingo Facility Permit or renewal to any Nonprofit Organization until such applicant fully provides the information required hereunder, such being provided in a form and in sufficient detail to satisfy the City of Moody of its validity and sufficiency. The City of Moody may require any reasonable documentation as to any information required hereunder and shall have a reasonable time to check or confirm by any available method the accuracy or validity of any information provided hereunder.

(c) Prior to issuing a Machine Bingo Facility Permit or renewal thereof, the City of Moody shall investigate and make a determination that at least the following requirements are met:

(i) the names and resident addresses of each of the officers and directors of the applicant, as well as a statement showing the convictions for criminal offenses, other than minor traffic offenses, for each of such individuals;

(ii) that the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located will meet all requirements of the City of Moody's building code, zoning ordinances and all other applicable city ordinances;

(iii) that the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located, initially will consist of at least forty thousand (40,000) square feet; provided, however, the proposed building, structure or premises in which the Machine Bingo Facility proposes to be located, shall, after the completion of all phases, consist of a minimum of at least seventy-five thousand (75,000) square feet, it being understood and agreed that the 75,000 square feet minimum requirement shall be achieved within twenty-four (24) months from the date on which construction of the Machine Bingo Facility is commenced;

(iv) that the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located, is or will be part of a planned retail, shopping center development, and/or entertainment complex, which is comprised of at least one hundred (100) acres in size, and will be within walking distance and/or in sight of an existing motel or hotel (or, if the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located is not within walking distance or in sight of an existing motel or hotel, the Machine Bingo Facility being proposed must be part of a master plan or mixed-use development or project that will, upon completion of all aspects of the development or project, include the construction and development of a motel or hotel);

(v) that the minimum distance between the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located, and any church or school, will be 1,000 feet, with such distance being measured from the closest point of each building;

(vi) that the proposed building, structure and/or premises in which a Machine Bingo Facility proposes to be located will include no less than one thousand five hundred (1,500) Machine Bingo Games (five hundred (500) Machine Bingo Games in the case of a Temporary Machine Bingo Permit);

(vii) that the proposed Machine Bingo Facility is situated within an entertainment/retail development which has been approved by City Council, and that the facility is located at least five (5) miles from any other Machine Bingo Facility; and

(viii) that all Machine Bingo Games in the proposed Machine Bingo Facility will be submitted to an independent gaming laboratory for analysis and examination of the hardware and software and certification that the game being played is bingo and incorporates the elements described in Section 1(a)(i) through (v) of this Ordinance. Such certification shall be in writing, identifying the entity making such analysis, and setting out its qualifications, which certification shall be submitted to the City prior to the public opening of such facility. The certification must also state that all such Machine Bingo Games are able to provide an accurate count of the number of bingo cards sold in a

readily available and understandable format to provide a mechanism to collect the tax on the said bingo cards levied pursuant to Amendment 542.

(d) With respect to any Machine Bingo Facility, the following additional restrictions shall apply:

(i) The Machine Bingo Facility must have a minimum of (aa) one (1) full service restaurant; and (bb) one (1) hot/cold sandwich/beverage/deli facility;

(ii) Any proposed building and/or structure in which the Machine Bingo Facility is to be located, shall be constructed of stone, masonry or decorative concrete.

(iii) Parking areas for the Machine Bingo Facility shall be reasonably landscaped and shall be well-lighted;

(iv) Restaurants and other retail operations within the building in which the Machine Bingo Facility is located, (aa) shall be required to obtain a separate operating license in accordance with existing ordinances pertaining to their specific operation; (bb) shall be required (to the extent that the sale of alcohol is desired by the applicable restaurant) to obtain a separate alcohol permit, subject to all applicable city ordinances and any other permits and/or ordinances which may be applicable; and (cc) shall conform to any existing smoking ordinances which may be in effect from time to time;

(v) The Machine Bingo Facility (aa) shall designate smoking and non-smoking areas within the facility, with both areas being properly identified for its customers and Player Patrons, and (bb) shall conform to the smoking ordinance that is in effect as of the date on which this Ordinance is enacted;

(vi) To the extent that a motel or hotel is contemplated in connection with the development, construction and operation of a Machine Bingo Facility, any such motel or hotel shall be subject to such applicable city ordinances and any other permits and/or ordinances which may be applicable; and

(vii) Any desired signage at the Location in which the Machine Bingo Facility is to be located, shall be in accordance with any applicable signage ordinances which are in effect from time to time.

Section 7 – Temporary Machine Bingo Facility Permit

(a) Applications for a Temporary Machine Bingo Permit shall be made to the City of Moody on forms prescribed by the City and applicants shall pay a permit/license fee of Two Hundred, Fifty Dollars (\$250.00). Such applications must include a fully executed release from liability and indemnity agreement in favor of the City of Moody (the form of which shall be provided by the City to the applicant). A Temporary Machine Bingo Facility Permit shall be valid for a period of twelve (12) months; provided, however, any such Temporary Machine Bingo Facility Permit may be extended for such additional period of time as may be necessary in order to allow for the completion of the Machine Bingo Facility so long as the Permit Holder provides the City Council with reasonably sufficient information and documentation evidencing

measurable progress toward the completion of the permanent Machine Bingo Facility. Except in the case of a Force Majeure Event (as hereinafter defined), the Temporary Machine Bingo Facility Permit shall not be extended so as to result in the Temporary Machine Bingo Facility Permit being in existence for a period greater than thirty-six (36) months. Only Nonprofit Organizations which have met the qualifications of Section 6 above and which have been granted and/or issued a Machine Bingo Facility Permit by the City can apply for a “Temporary Machine Bingo Facility Permit”. For purposes of this Ordinance, the term “Force Majeure Events” shall be defined as strikes, lockouts, sitdowns, material or labor restrictions by any governmental authority, riots, floods, severe weather, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of the Permit Holder (or such other party that is responsible for constructing and developing the Machine Bingo Facility) and which by the exercise of due diligence the Permit Holder (or such other party that is responsible for constructing and developing the Machine Bingo Facility) is unable, wholly or in part, to prevent or overcome.

(b) The City of Moody shall refuse to grant a Temporary Machine Bingo Facility Permit to any Nonprofit Organization otherwise qualified hereunder unless and until such Nonprofit Organization fully provides detailed information sufficient to satisfy the City that such Nonprofit Organization has secured real estate adequate to construct and develop a Machine Bingo Facility. Should the City be satisfied with the information provided by the Nonprofit Organization, the issuance of a Temporary Machine Bingo Facility permit can be made to the Nonprofit Organization so that Bingo Games can be played temporarily during the construction process of the proposed planned, multi-use facility.

(c) Any Permit Holder of a Temporary Machine Bingo Facility Permit must comply with the following:

(i) upon issuance of a Temporary Machine Bingo Facility Permit, the Permit Holder must submit to the City of Moody proof of ownership of real estate upon which the permanent Machine Bingo Facility will be constructed. A preliminary plat, site and building plans, and a construction schedule for the permanent facility will be submitted within 30 days after temporary operations begin.

(ii) within ninety (90) days of the approval of the preliminary plat and site and building plans, the Permit Holder must submit final plat, site and building plans; and

(iii) within thirty (30) days of final approval of the plat, site and building plans, the Permit Holder shall commence construction on the permanent Machine Bingo Facility; provided, however, and upon good cause shown, the time for commencement of construction may be extended for such additional period of time as may be necessary in order to allow for the commencement of construction so long as the Permit Holder provides the City Council with reasonably sufficient information and documentation evidencing measurable progress toward commencement of construction of the permanent Machine Bingo Facility.

(d) The Permit Holder shall provide quarterly progress reports to the City Council or its designated representative. Failure to comply with the provisions of this Section 7(d) or with the construction schedule without justification submitted to the City may result in termination of the Temporary Machine Bingo Facility Permit.

Section 8 – Bingo Equipment Agreements:

Any contract for the provision of Bingo Equipment to a Machine Bingo Permit Holder is not valid unless such contract is in compliance with Amendment 542 and this Ordinance.

Section 9 – Bingo Tax:

A Permit Holder licensed under this Ordinance shall pay a Bingo tax equal to the sum of One Hundred Dollars (\$100.00) per month, per piece of Bingo Equipment located and operated within a Machine Bingo Facility (the “Bingo Tax”), with such Bingo Tax to be payable within thirty (30) days after the completion of each quarter within each calendar year (i.e., within thirty (30) days after March 31, June 30, September 30, and December 31) during which the Permit is in effect.

Section 10 – Payments to Charitable Organizations:

The net proceeds from the operation of Bingo Games at a Machine Bingo Facility, but not less than Fifty Thousand Dollars (\$50,000.00) per month, shall be paid by the Permit Holder to Nonprofit Organizations. For purposes hereof, “net proceeds” shall mean the amounts received from Player Patrons for playing Bingo Games less Bingo Expenses.

Section 11 – Educational Tax

It is the intent of the City Council by and through this Ordinance to create a specific provision and provide for a distribution of the net proceeds derived by the Permit Holder from the operation of Bingo Games at Machine Bingo Facilities to be used for educational purposes. Accordingly, from the net proceeds of the operation of Bingo Games at a Machine Bingo Facility pursuant to this Ordinance, three percent (3%) of the net proceeds shall be itemized and paid by the Permit Holder to the City of Moody on a monthly basis to be disbursed to the St. Clair County Board of Education for the use and benefit of the public schools located in the corporate limits of the City of Moody. The funds shall be held by the City of Moody in a specific account until a quarterly disbursement is made to the St. Clair County Board of Education. In the event the City of Moody forms a city school system the funds shall be paid to the city school system instead of the St. Clair County Board of Education. In addition, from the net proceeds of the operation of Bingo Games at a Machine Bingo Facility pursuant to this Ordinance, two percent (2%) of the net proceeds shall be itemized and paid by the Permit Holder to the City of Moody on a monthly basis and placed in a specific account for use for educational purposes as determined by the City Council. For purposes hereof, “net proceeds” shall mean the amounts received from Player Patrons for playing Bingo Games less Bingo Expenses.

Section 12 – Tax to be paid to Police Department:

Because the Council believes that the size of the operation of a Machine Bingo Facility will result in the need for additional security at the location in which a Machine Bingo Facility will be operated, the Permit Holder will be charged an amount equal to six thousand dollars (\$6,000.00) per month (the "Police Tax"), it being understood and agreed that said Police Tax shall be payable monthly in arrears, to the City of Moody Police Department (the "Police Department"). The Permit Holder shall also be required to purchase a new police vehicle within thirty (30) days of the date on which the Permit is issued, and in addition, shall be required to provide the Police Department with an amount necessary to enable the Police Department to replace such vehicle every three (3) years; provided, however, in no event shall the Permit Holder's obligation with respect to such purchases be greater than the sum of thirty thousand dollars (\$30,000.00) in any three (3) year period. Notwithstanding anything the contrary in this Section 12, the Police Tax and such other payments required by this Section 12 shall be considered "Bingo Expenses".

Section 13 - General Regulations; Prizes:

(a) The holder of a Permit shall be authorized to conduct Bingo Games and pay Bingo Expenses in accordance with these Rules and Regulations, Amendment Number 542, and applicable law.

(b) No Person under the age of nineteen (19) years shall be permitted to play any Bingo Games, nor shall any person under the age of nineteen (19) years be permitted to conduct or assist in the operation of any Bingo Games.

(c) No Permit shall be issued to any Nonprofit Organization unless the organization shall have been in existence at least (twenty-four) 24 months immediately prior to the issuance of the Permit.

(d) Bingo Games may be operated only at Machine Bingo Facilities owned or leased by the Nonprofit Organization operating the Bingo Games. The Nonprofit Organization may lease the Machine Bingo Facilities from any Person, provided the rate of rental for such Facilities shall not be calculated based on a percentage of receipts or profits earned by the operation of Bingo Games. A Nonprofit Organization may lease Bingo Equipment for a Machine Bingo Facility for a rental based on a percentage of revenue generated by said Bingo Equipment as set forth in Alabama Attorney General Opinion 2008-135.

(e) A Nonprofit Organization may not enter into any contact with any Person to have such Person operate Bingo Games or concessions on behalf of the Nonprofit Organization. A Nonprofit Organization may not pay consulting fees, compensation, or salary, to any Person for any services performed in relation to the operation or conduct of Bingo Games except that nothing herein contained shall prevent a Nonprofit Organization from using its *bona fide* employees to operate Bingo Games.

(f) A Nonprofit Organization may not lend its name or allow its identity to be used by another Person in the operating or advertising of Bingo Games in which the Nonprofit Organization is not directly and solely operating the Bingo Games.

(g) Prizes given by any Nonprofit Organization for the playing of Bingo Games shall not exceed the cash amount or gifts of equivalent value set by the Alabama Legislature for Bingo and these Rules and Regulations. For the purposes of these Rules and Regulations, prizes given by a Nonprofit Organization for the playing of Bingo Games shall not be less than 50 percent of the gross receipts in a cash or equivalent value during any Bingo Game.

(h) No Person shall take any expense for the operation of the Machine Bingo Games except as permitted by Amendment No.542 and the Rules and Regulations set forth herein.

(i) Money may be collected from the players of Bingo for the opportunity to participate in the game, and such monetary amounts may vary to reflect the value of the prize for winning a particular game, whether for participation in the whole game or a particular phase thereof, and other factors reflecting the interplay of the amount collected from each player, the size of the prize and the probability of winning.

(j) The prizes for winning the game can be money or anything of value.

Section 14 – Machine Malfunction Procedure:

(a) Any and all payouts that result, directly or indirectly, from one or more Machine Malfunction shall be void and not actionable. A Machine Malfunction, however, does not void the Player Patron's credits that had accumulated on a particular electronic Bingo Game prior to occurrence of the Machine Malfunction. If personnel of the applicable Nonprofit Organization determine that a Machine Malfunction has occurred, they shall restore the Player Patron's account to the credit amount in the Player Patron's account prior to occurrence of the Machine Malfunction. Player Patrons shall notify personnel of the Nonprofit Organization in the event of any suspected Machine Malfunction of a particular electronic Bingo Game at which the Player Patron is playing.

(b) In order for the Qualified Organization to refuse a payout on the basis of Machine Malfunction, the particular electronic Bingo Game alleged to have malfunctioned must have displayed on the particular electronic Bingo Game or other signage the following, or a substantially similar, statement: "Malfunction voids all pays and plays"; provided, however, that, in no cases shall the Qualified Organization, or any other party, be liable for, or required to pay, any prize or award that is in excess of the payout tables displayable on an allegedly malfunctioning electronic Bingo Game for the individual Bingo Game in play at, or immediately prior to, the Machine Malfunction.

The Qualified Organization shall report to the Council all Machine Malfunction that results in a voided payout of Five Hundred and No/100 Dollars (\$500.00) or more.

Section 15 - Records and Accounting:

Each holder of a Machine Bingo Permit shall keep and maintain the following records and accounts (or such records and accounts may be maintained for the Permit Holder by the Machine Bingo Facility) pertaining to each Bingo Game for at least three (3) years from the date of each operation of said Bingo Game:

(a) An itemized list of all gross receipts for such Bingo Games, operating times, and Nonprofit Organization names, which shall include all receipts derived from the separate operation of each Bingo Game, entrance fees, donations, or from any other source whatsoever pertaining to the operation of such Bingo Games.

(b) An itemized list of all Bingo Expenses, cost, and disbursements, other than prizes paid or given as a result of the operation of any Bingo Game, together with a name and address of each person to whom said Bingo Expenses, disbursements or consideration was paid or given; a receipt or invoice for all items purchased and for all services rendered; and such other records as will adequately reflect the amount and nature of such expenses, costs and disbursements.

With respect to the records that are to be maintained by a Permit Holder, the Council shall have the right to review and inspect such records (but shall have no right to copy any records), it being understood and agreed, however, that any such review and inspection shall take place at the offices of the Permit Holder where its books and records are located, at a mutually convenient time during regular business hours. Any review and inspection of the records required to be maintained by the Permit Holder shall be kept strictly confidential by the Council and shall not be disclosed only to an independent certified public accountant designated by the Council. Prior to the Permit Holder's obligation to make available its records as contemplated in this Section 15, the Permit Holder may require that the Council execute a confidentiality and non-disclosure agreement.

Section 16 - Revocation of Permits. Appeal:

The City of Moody may revoke any permit issued pursuant hereto if the Permit Holder violates any of the Rules and Regulations herein promulgated, or as such Rules and Regulations may hereafter be amended, supplemented or replaced, and all applicable laws, including but not limited to, Amendment 542; provided, however, that no permit may be revoked without complying with the following procedures:

(a) the City of Moody must first provide written notice to the Permit Holder or the Permit Holder's agent notifying the Permit Holder of the alleged violation(s) and further notifying the Permit Holder of the following:

(i) that the City of Moody intends to revoke Permit Holder's permit and the grounds therefor;

(ii) that Permit Holder may cure any alleged violation(s) within ten (10) days from the date of service of the written notice;

(iii) that Permit Holder has ten (10) days from the date of service of the written notice to request a hearing before the City Council to show cause why the permit should not be revoked;

(iv) that the Permit Holder may present written and/or oral evidence to the City Council in defending the alleged violations contained in the written notice;

(v) that the Permit Holder has the right to have an attorney or other representative of Permit Holder's choosing present at the hearing;

(vi) that, if Permit Holder fails to cure any alleged violation or request a hearing within ten (10) days from the date of service of the written notice, it will be assumed that Permit Holder does not intend to dispute the allegations contained in the written notice and the permit will be revoked on the eleventh (11th) day following service of the written notice.

(b) In curing any alleged violation, the City of Moody may require a Permit Holder to post a bond for an amount which will ensure that additional violation will not occur.

(c) If the Permit Holder fails to cure the alleged violation as provided for above or, in the event the City Council determines after a hearing that the Permit Holder has failed to cure a violation, the permit shall be revoked.

(d) The Permit Holder may appeal any adverse decision by the City Council by filing a notice of appeal in the Circuit Court of St. Clair County, Alabama, within fifteen (15) days of the adverse decision. The Circuit Court may, at the request of the Permit Holder, stay the revocation and set a reasonable bond pending a final hearing.

Section 17 – Effect of Revocation:

A Permit Holder whose permit is revoked as herein set out shall return such permit to the City of Moody on or before the effective date of such revocation and whether returned or not such permit shall be void and not valid beyond the effective date of revocation. A Permit Holder whose Permit is revoked in consequence of any violation of any Rule or Regulation promulgated herein, or as such Rules and Regulations may hereafter be amended, supplemented or replaced, and all applicable laws, including but not limited to, Amendment 542, shall be ineligible to apply for, or have issued to it another permit hereunder for a period of three (3) months after the effective date of such revocation. Nor shall any permit be issued to any Person which is directed or controlled by Persons listed in the application for permit filed pursuant to Section 3 hereof in regard to the revoked Permit or to any Person that is substantially the same as any person, entity or organization whose Permit has been revoked hereunder, for a period of three (3) months after the effective date of revocation.

Section 18 – Amendments to Ordinances:

If the Council should make any amendments to this Ordinance, such amendments shall not be applicable to any Permit Holder for the term of such Permit, unless the Permit Holder should voluntarily choose to be subject to such amendment by submission of a written notification to the City of Moody.

Section 19 – Severability:

The provisions hereto and the Regulations promulgated hereunder are severable. If any part hereof shall be declared invalid or unconstitutional, such declaration shall not affect any parts hereof which shall remain.

ORDAINED and **ADOPTED** this the _____ day _____, 2009.

THE CITY OF MOODY, ALABAMA

Joe Lee, Mayor

ATTEST:

Patsy Beard, City Clerk