

CITY OF OAKLAND

AGENDA REPORT

650 18-111:24
To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: January 9, 2006

Re: Semi-Annual Status Report from the Chief of Police on the Activities of the Alcoholic Beverage Action Team (ABAT) Deemed Approved Program

SUMMARY

This report outlines the activities of the Alcoholic Beverage Action Team (ABAT), which includes enforcement activities, staffing, and zoning applications since the last report, dated June 13, 2006.

FISCAL IMPACT

Since this report is informational only, there are no fiscal impacts associated with acceptance of this report.

- Fees collected for FY 05-06: \$621,296.00
- Fees received since the last reporting period: \$31,848.20.

During the FY 2003-05 mid-cycle budget deliberations, City Council approved the increase of the annual fee from \$600 to \$1,500 per location. For fiscal year 2005/2006, 385 locations were invoiced the annual inspection fee. Additionally, 27 locations paid delinquent fees through collections in FY 04-05. Each of the 27 locations was invoiced \$1,650. No locations were delinquent for FY 05-06.

On August 1, 2006 the Department transferred \$152,000 in unspent carry forward funds to cover the salary and benefits of a dedicated Deputy City Attorney II for a one year trial period.

BACKGROUND

In August 1993 the City of Oakland passed the Education, Monitoring, and Enforcement Program, a.k.a. "Deemed Approved" Program (Ordinance No. 11624 C.M.S.), in an effort to improve the operating standards of alcohol outlets (bars and off sale liquor stores) and provide an enforcement program to monitor their operation. After affirmation of the Ordinance by the California Supreme Court, ABAT launched the program in January 1997.

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KEY ISSUES AND IMPACTS

Staffing

Personnel currently assigned to ABAT: 1 Sergeant of Police, 2 Police Officers (1 Officer is on loan to the Internal Affairs Division), 2 Police Services Technicians, 1 Administrative Analyst II / Planner II. On August 1, 2006, Laura Blair was hired as the full time ABAT Deputy City Attorney for a period of one year.

Case Preparation and Administrative Action

The ABAT Unit has prepared and submitted four additional cases for administrative review by the City Attorney's Office. The results of each case follow:

On April 24, 2006 and June 1, 2006 the operators of **Midtown Foods** at 2941 Coolidge Avenue, and **Pennysaver** at 4800 Foothill Blvd. sold alcoholic beverages to a minor. As a result of these violations administrative action was taken by ABAT in an effort to reduce the public nuisance stemming from the stores' violations. On June 8, 2006 the City Attorney and Nuisance Enforcement Officer (Mr. Arturo Sanchez) entered into a stipulated agreement with the store operator of Midtown Foods and its property owner allowing the store to remain in operation in lieu of an administrative hearing. The stipulated agreement resulted in 20 operating conditions being placed on the property in order to reduce nuisance activity. The new conditions are currently in place and the store is being monitored for compliance by staff. The last site visit was conducted on October 9, 2006.

On August 11, 2006 the City Attorney and Nuisance Enforcement Officer entered into a stipulated agreement with the store operator and property owner of Pennysaver. The agreement allowed the store to remain in operation in lieu of an administrative hearing. The stipulated agreement resulted in 22 operating conditions being placed on the property in order to reduce nuisance activity. The new conditions are currently in place and the store is being monitored by staff for compliance. The last site visit was on August 27, 2006.

On August 30, 2006 ABAT staff attended an administrative hearing for the implementation of land use restrictions for **Gallagher's Liquor Store** located at 3849 Martin Luther King Jr. Way. On October 2, 2006 the independent hearing officer ruled in favor of the City of Oakland and placed 27 operating conditions on the property in order to reduce nuisance activity. The ruling was appealed by the store owner on October 12, 2006. This item will be heard by the City Planning Commission in January 2007; however the new conditions are currently in place.

On February 18, 2006 and May 5, 2006 the operator of **One Stop Market** at 6001 Mac Arthur Blvd. sold alcoholic beverages to a minor. On September 21, 2006 ABAT staff attended an administrative hearing for the revocation of the land use entitlement for the property. Over 30 citizens and Councilmember Desley Brooks spoke at the hearing in favor of the City. On October

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24, 2006 the independent hearing officer ruled in favor of the store operator and property owner. In lieu of revocation, the hearing officer allowed the store to continue operation with its existing operating conditions. The conditions are currently in place and the store is being monitored by staff for compliance. On October 19, 2006 the operator was again found in violation when he sold alcohol to a minor. This case has been forwarded to the State Department of Alcoholic Beverage Control for revocation of the alcohol license.

ABAT Enforcement Activities from June 1 to December 1, 2006

- ABAT conducted over 200 site visits, 160 remaining Annual Inspections and 69 re-inspections.
- ABAT conducted 71 decoy operations, resulting in 21 sales to a minor, a sale rate of 30%.
- Two Deemed Approved locations have lapsed (A legal-non-conforming use status will “lapse” if the business is closed in excess of 90 days) or had their status revoked (Table 2).

Calendar Year 2006 Minor Decoy Operations

- 134 Attempts made in 2006
- 57 Citations were issued for Sales to a Minor
- Probability of a minor purchasing alcohol in the City of Oakland is 43% (buy rate)

Table 1: Decoy Operations

Year	Decoy Attempts	Citations of Sale	Average % of Sale	ABC Citations (HO/DA)	ABC Citations (ABC)	Buy Rate
2006	134	57	43%	12 of 57 or 21%	18 of 57 or 32%	23%
2005	65	9	14%			
2004	35	5	15%			

Table 2: ABAT Closures

Address	DBA	Lapse Date	Details
9422 Edes	Liquor Store	Apr-06	ABC license canceled. Revoked for non-payment. OPD-ABAT requested and lapsed DA Status.
3145 West St	Quality Market	Apr-06	ABC license surrendered and no longer in use. OPD-ABAT requested and lapsed DA Status.

Before these establishments can reopen, they will be required to go through the planning process and acquire a Conditional Use Permit (CUP).

ABAT Staff regularly meets with investigators from the State Department of Alcoholic Beverage Control (ABC). These meetings are held to discuss enforcement activities and to develop strategies for regulating problematic establishments.

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Zoning

Between June 1 and December 1, 2006 the Zoning Division received three applications related to alcoholic beverage sales activities. The applications are for on and off-site sale operations. One location has been issued a Conditional Use Permit (CUP) with conditions of approval to ensure owner/operator compliance. The application was for a revision to an existing liquor store. The two pending applications are for a new liquor store and a full service restaurant:

<u>Address</u>	<u>Type</u>	
2036 Market St	Liquor Store	(Approved)
4184 Piedmont Avenue	Liquor Store	(Pending)
4610 International Boulevard	Restaurant	(Pending)

If approved by the Planning Commission, these new businesses will be enrolled as participants in the Deemed Approved Program.

PROGRAM DESCRIPTION

Deemed Approved Participants

All Oakland bars and liquor stores participate in the Deemed Approved program. (Full Service Restaurants are not included in the Deemed Approved Programs and are not assessed the Annual Inspection Fee). Since the last report, two liquor stores have had their deemed approved status lapse. The number of alcohol outlets enrolled in the program is now 383 establishments:

308 Liquor Stores
75 Bars

- Since June 2006, ABAT staff has submitted four additional cases for administrative review by the City Attorney's Office. These cases have resulted in the implementation of land use restrictions on four problem properties.
- On August 1, 2006, Laura Blair was hired as the full time ABAT Deputy City Attorney for a period of one year. Funds in the amount of \$152,000 were transferred from the ABAT general operating fund to the City Attorney's operational budget to cover salary and benefit costs.
- Since the last report, the number of Oakland alcohol licensees in the Deemed Approved Program has been reduced from 385 to 383.

SUSTAINABLE OPPORTUNITIES

Economic: ABAT has begun research into Retail Tobacco Sales licensing. The City of Oakland has roughly 500 unregulated tobacco selling establishments. Tobacco licensing will generate revenue for additional staff with the responsibility of regulating operators and limiting tobacco products from reaching minors. Other cities in the state currently charge a similar licensing

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fee to tobacco retailers. Staff will complete a tobacco licensing ordinance for council approval in 2007.

Environmental: Blight issues are often associated with problematic liquor stores. By eliminating these properties environmental issues surrounding litter pollution are addressed and the community is improved.

Social Equity: By working with alcohol beverage establishments, ABAT can help ensure that the quality of life is not negatively impacted by the presence of legally operated liquor stores.


DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen access issues contained in this report.

RECOMMENDATION(S) AND RATIONALE

Staff recommends acceptance of this status report on the activities of the ABAT Unit's Deemed Approved Program.

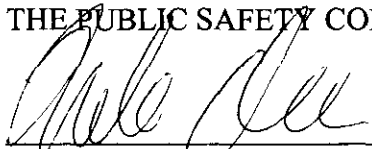
Respectfully submitted,


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APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



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