

2005 FEB -9 PM 12: 27

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: February 22, 2005

**RE: Informational Report on The Smoking and Tobacco Ordinances and
Smoking Complaints in 2004**

SUMMARY

The Office of the City Administrator's Special Activity Unit is the primary enforcement agency for Oakland's Smoking Ordinance, Chapter 8.30 of the Oakland Municipal Code (OMC). This ordinance prohibits smoking inside of all enclosed areas used by the public, including places of employment, businesses patronized by the public, and restaurants. Additionally, the Office of the City Administrator, with the assistance of the Oakland Police Department, enforces the state law that prohibits smoking inside bars and bingo halls. The City Administrator also has oversight of OMC Chapter 8.34 that prohibits the placement of tobacco product vending machines in places accessible to minors, and Chapter 8.32 that prohibits tobacco product and tobacco accessory giveaways.

The total number of complaints received by this office relating to smoking in places of employment, public businesses, and restaurants decreased from **twenty-four (24) in 2003 to fifteen (15) in 2004**. Complaints relating to smoking in bars continued at the 2003 level of **one (1) in 2004**. The 2003 version of this report outlined that year's intensive effort to enforce the state ban on smoking in bars. That effort consisted of a public awareness campaign by the City Administrator, the Tobacco Control Project of the Alameda County Health Care Services Agency, and the American Lung Association, combined with enforcement action by the Oakland Police Department. It continues to bear fruit in the form of smoke-free bars throughout Oakland.

The Office of the City Administrator continued its partnership with the above agencies in 2004. The Office of the City Administrator, with the assistance of other City enforcement agencies, will continue to provide oversight and enforcement of smoking laws in 2005.

FISCAL IMPACT

As this is an informational report, there are no fiscal impacts.

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The Oakland Police Department received tobacco grants that covered costs related to the enforcement of laws regarding underage possession of tobacco products and the prohibition against smoking in bars. In 2004 the grant amount was \$15,000.00, and it is expected that similar grant monies will be obtained in 2005.

BACKGROUND

The Smoking Pollution Control Ordinance, adopted on July 29, 1986, prohibits smoking inside enclosed places in the City of Oakland, including places of employment, restaurants, and businesses. Further the ordinance mandates that smoking outside regulated buildings occur at a reasonable distance from doors and windows. California Labor Code section 6404.5 prohibits smoking in bars and gaming clubs (bingo halls are included under gaming clubs). Although the City of Oakland does not have gaming clubs, it does have four (4) bingo halls. In 2004 several private non-profit organizations plus the East Oakland Senior Center conducted bingo games therein.

The City Administrator's Administrative Hearing Officer processes citizens' complaints or inquiries regarding smoking or other tobacco products ordinances. Barbara Killey succeeded Larry Carroll in this position November 1, 2004. During the months of November and December she responded to **nine (9) inquiries** regarding local or state laws pertaining to smoking in places of employment, bars, hotels, restaurants, bingo halls, and multi-unit complexes. The number of complaints filed regarding smoking in places of employment decreased from **fourteen (14) in 2003 to six (6) in 2004**. In addition, the number of complaints pertaining to smoking in restaurants, which had dropped to **zero (0) in 2003** remained at **zero (0) in 2004**. Complaints pertaining to smoking at a reasonable distance outside of regulated buildings decreased from **nine (9) in 2003 to seven (7) in 2004**. The only category that increased in 2004 was that of vending machines accessible to minors. In **2004 one (1)** complaint was received, compared to **zero (0) in 2003**.

KEY ISSUES

Smoking Pollution Control Ordinance

Smoking Complaints: **Fifteen (15) smoking complaints** were filed in 2004 in the categories reflected below. A majority of these complaints were resolved upon the first or second contact with the offending business owners or managers. **Thirteen (13) of the fifteen (15)** complaints pertained to smoking inside places of employment or the failure of smokers to smoke outside at a reasonable distance from entrances or open windows and air vents. **City of Oakland** Administrative Instruction 4001, issued November 13, 1998 defined reasonable distance as twenty-five (25) feet away from these openings.

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<u>Summary of Complaints</u>	2003	2004
• Places of Employment	14	6
• Reasonable Distance	9	7
• Restaurants	0	0
• Bars	1	1
• Minor Accessible Vending Machines	0	1
<hr/> TOTAL:	24	15

California Labor Code section 6404.5 (Smoking in Bars)

In 2004 the Oakland Police Department Alcohol Beverage Action Team (ABAT) was awarded a \$15,000.00 grant by the Alameda County Department of Public Health. A portion of the grant was used to enforce the laws regarding underage possession of tobacco products. ABAT conducted thirty-seven (37) underage decoy operations. They found substantial compliance among Oakland vendors, as only one (1) of the 37 vendors sold tobacco products to the decoy.

ABAT utilized the balance of the grant to enforce the prohibition against smoking in bars. Because of their expertise on smoking laws and issues, ABAT regularly checks for compliance with smoking laws as part of their ongoing monitoring of Oakland's alcohol outlets, bars, and restaurants. The grant allowed them to conduct twenty-one additional site visits specifically to check for smoking law compliance in bars.

Governmental Agency Cooperation

The Smoking Pollution Control Ordinance requires that the City Administrator make annual requests to other governmental and educational agencies having facilities in the City of Oakland to establish local operating procedures regarding smoking that are consistent with Oakland's smoking ordinance. Due to requests made in prior years, all governmental and educational agencies with facilities in the City of Oakland have smoking policies that are consistent with the City of Oakland's smoking ordinance.

Tobacco Product Vending Machine Ordinance

The Tobacco Product Vending Machine Ordinance prohibits the placement of tobacco product vending machines in places that are accessible to minors. No person is allowed to maintain, use, or permit the placement, maintenance, or use, of any tobacco product vending machine on his or her premises for the purpose of selling or distributing any tobacco products or tobacco accessories when persons under the age of eighteen (18) years have access to the premises. All tobacco product vending machines are located in bars or taverns, which are not accessible to persons under the age of eighteen (18) years. California Labor Code section 6404.5 bans smoking in bars but does not require the removal of such machines.

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As part of its bar check process, ABAT monitors Oakland's bars to insure that tobacco vending machines are not accessible to underage persons. One (1) complaint was received in 2004 regarding violations of the tobacco product vending machine ordinance.

Nonsale Distribution of Tobacco Products and Tobacco Accessories (Giveaways)

This ordinance makes it unlawful for any person to engage in the nonsale distribution of any tobacco product or tobacco accessory within the City of Oakland for any purpose, including but not limited to promotional, marketing, advertising, testing, and consumer research purposes. No complaints were received in 2004 regarding violations of this ordinance.

Current Issues

The following issues came to the attention of this office at the end of the 2004 calendar year:

1. Reasonable Distance - The negative effect on citizen understanding and enforcement efforts due to the City ordinance's lack of a specific number of feet from a building door one must be to smoke outside;
2. Smoking Lounges and Hookah Bars – Whether Oakland establishments that offer these services are in violation of state and/or local laws;
3. Tobacco Store/Smoke Shop Permitting – The potential of a business permit process to control the proliferation of these establishments and fund monitoring and enforcement activity.

The Special Activity Unit is currently working with ABAT and the Alameda County Public Health Department Tobacco Control Program to research these issues and plans to bring information and recommendations to the Council as needed.

SUSTAINABLE OPPORTUNITIES

Economic

The Oakland Police Department successfully obtained grants from the State of California to help cover costs related to the enforcement of the smoking ban in bars and underage possession of tobacco products. It is expected that grants will be obtained in 2005.

Environmental

The enforcement of tobacco laws will help provide a healthier environment for Oakland residents and visitors.

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Social Equity

A clean and healthy environment benefits our entire city.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.


RECOGNITION OF CITY AND NON-CITY PARTNERS IN 2004

As noted above, the Oakland Police Department provided outstanding support during 2004 in the enforcement of tobacco laws in the City of Oakland. Two major areas of focus were the enforcement of laws regarding underage possession of tobacco products and enforcement of the smoking ban in bars. Special recognition is given to the members of the Alcohol Beverage Action Team (ABAT) and the Alameda County Tobacco Control Project, for their cooperative efforts in educating the public and ensuring compliance with tobacco laws.

ACTION REQUESTED OF THE CITY COUNCIL

This report is submitted for informational purposes only, and it is requested that the Public Safety Committee accept this report as submitted.

Respectfully submitted,


BARBARA B. KILLEY

Prepared by: Barbara Killey
Administrative Hearing Officer
Special Activity Unit, CAO

**APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE.**



OFFICE OF THE CITY ADMINISTRATOR

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