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OFFICE OF THE CITY CLERK  
OAKLAND

2018 JUL -3 AM 10:37

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Anne E. Kirkpatrick  
Chief of Police

**SUBJECT:** Tobacco Law Enforcement Grant

**DATE:** June 11, 2018

City Administrator  
Approval

Date

6/26/18

## RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Allow The Oakland Police Department (OPD) To Enter Into A Memorandum of Understanding (MOU) With The California Department Of Justice (CA DOJ) And To Accept And Appropriate One Hundred Thousand Dollars (\$100,000) For A Two-Year Grant Funded Under The California Healthcare, Research And Prevention Tobacco Tax Act Of 2016, Approved By The Voters As Proposition 56.

## EXECUTIVE SUMMARY

Approval of the resolution accompanying this report will allow OPD and CA DOJ to enter into an MOU in the amount of \$100,000 via funding from California Proposition 56, the Tobacco Tax Increase Initiative, to expand and enhance the ability of OPD's Alcoholic Beverage Action Team (ABAT) to:

- Identify and target problematic retailers of tobacco products who sell to minors;
- Increase enforcement efforts against tobacco establishments that generate tobacco-related violations;
- Promote strategies that reduce marketing of tobacco products to minors in Oakland communities; and
- Educate merchants on the laws with respect to tobacco-related violations.

The grant term is from July 1, 2018 to June 30, 2020.

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July 17, 2018

## **BACKGROUND AND LEGISLATIVE HISTORY**

Cigarette smoking causes more than 480,000 deaths each year in the United States, accounting for nearly one in five deaths nationwide.<sup>1</sup> Nearly 90 percent of adult smokers began smoking by the age of 18.<sup>2</sup> Despite efforts to limit youth access to tobacco, minors are still able to access cigarettes directly from retailers, through vending machines, or by giving money to others to purchase cigarettes for them. Minors consume an estimated 924 million packs of cigarettes each year nationwide.<sup>3</sup>

A 2015 study from the Institute of Medicine estimates that setting the legal smoking age at 21 nationwide would result in nearly a quarter-million fewer premature deaths and 50,000 fewer deaths from lung cancer among people born between 2000 and 2019.<sup>4</sup> In May of 2016, California raised the legal age to smoke from 18 to 21. State law now requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years old.

The California Healthcare, Research and Prevention Tobacco Tax Act (Prop. 56) was approved by 64 percent of California's voters in November 2016 as a combined initiated constitutional amendment and state statute that increased the cigarette tax by \$2.00 per pack, with equivalent increases on other tobacco products and electronic cigarettes, bringing the total tobacco tax up to \$2.87 per pack of cigarettes. In early 2018, the CA DOJ released an RFP soliciting proposals for their Tobacco Law Enforcement Program, and on May 7, OPD learned that its application for a two-year \$100,000 grant had been approved.

## **ANALYSIS AND POLICY ALTERNATIVES**

ABAT focuses on the regulation of both alcohol and tobacco merchants. Strategies such as merchant education and minor decoy operations can help to reduce the use of tobacco by minors.

Other nuisance issues are often associated with stores that vend tobacco products. In 2017, OPD received over 768 calls for service regarding drug dealing in front of and/or around liquor and tobacco stores. If increased enforcement reduces the number of these kinds of calls for service, officers will be freed up to respond to other calls for help. Enforcement on this matter would lead to cleaner neighborhoods and may impact the quality of life for members of the community.

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- 1 *2014 Surgeon General's Report: The Health Consequences of Smoking—50 Years of Progress*, Chapter 12, Smoking-Attributable Morbidity, Mortality, and Economic Costs, p. 659.
  - 2 *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Institute of Medicine of the National Academies Report Brief, March 2015, p. 2.
  - 3 *State and federal revenues from tobacco consumed by minors*, J R DiFranza and J J Librett, *Am J Public Health*. 1999 July; 89(7): 1106–1108, p. 1107.
  - 4 *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, p. 4.

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Oakland averages 5.25 tobacco sale outlets per mile. Per capita, Oakland contains more tobacco retail establishments than most cities in Alameda County and more than the County average. Many of these outlets are concentrated along major commercial districts and commonly exist within one to three blocks of each other; many are directly adjacent to residential areas and near churches, schools, and parks.

The City has attempted to solve problems with tobacco retail premises in the past. In April 2008, the Oakland City Council adopted a Tobacco Retail License program (Ordinance No. 12867 C.M.S.), which was designed to improve enforcement efforts and investigations against problem tobacco retailers through the combined efforts of OPD, the Office of Planning and Building, and the City Attorney's Office. The Tobacco Retailer License requires that retailers pay an annual fee which offsets the expenses incurred by the regular duties of the ABAT team, as well as costs associated with a dedicated City Attorney. The program also requires that merchants adhere to a specific set of performance standards, and provides education, monitoring, and enforcement efforts against licensed premises. While ABAT's efforts have produced some positive results, substantial problem areas still remain.

OPD has noted a substantial amount of illegal sales of tobacco products to minors and has verified that tobacco sales to minors decrease when targeted intervention initiatives, financed through grant funds, can be applied.

All work done for this grant will be folded into the work of ABAT. The grant term is July 1, 2018 to June 30, 2020.

Grant Objectives:

- Conduct 12 minor decoy tobacco operations (six hours each) by June 30, 2020
- Conduct 10 Single Cigarette And Paraphernalia Enforcement (SCAPE) operations (eight hours each) by June 30, 2020
- Host two merchant training seminars at OPD (eight hours each) that will be free of charge to business owners by June 30, 2019
- Conduct or attend no fewer than 10 community meetings (three hours each) to increase involvement with local community groups by June 30, 2019

In addition, OPD will provide the following as an in-kind contribution to help ensure successful Tobacco Law Enforcement Program outcomes:

- Two academy trainings (one per year) to instruct new recruits about tobacco laws and enforcement by June 30, 2020
- Twelve line up trainings (six per year) to instruct patrol officers about tobacco laws and enforcement by June 30, 2020
- 100 STAKE ACT Tobacco Inspections (50 per year) to ensure that merchants who vend tobacco products have the required signage by June 30, 2020
- Distribute eight press releases (four per year) to inform the community of efforts to reduce access of tobacco products to minors by June 30, 2020

**FISCAL IMPACT**

Table 1 below outlines the overtime staffing costs of ABAT's Tobacco Enforcement work during the 2018-19 and 2019-20 fiscal years. Table 2 outlines the operational costs that OPD will assume for the project. Table 3 summarizes all staffing and operational costs for the grant period.

*Table 1: Summary of Staffing Costs*

Item	FY 18-19 Cost	FY 19-20 Cost
Sergeant OT (152 hours over 2 years)	\$7,630	\$7,821
Officer OT (780 hours over 2 years)	\$33,913	\$34,788
Police Services Tech OT (72 hours over 2 years)	\$1,694	\$1,727
Administrative Analyst OT (48 hours over 2 years)	\$1,790	\$1,826
<b>Total</b>	<b>\$45,027</b>	<b>\$46,162</b>

*Table 2: Operational Costs*

Item	FY 18-19 Cost	FY 19-20 Cost
Decoy buy money for 12 operations over 2 years	\$306	\$305
Merchant mass mailings over 2 years	\$500	\$500
Vehicle rentals over 2 years	\$3,600	\$3,600
<b>Total</b>	<b>\$4,406</b>	<b>\$4,405</b>

*Table 3: Summary of All Costs for the Tobacco Enforcement Grant*

Item	FY 18-19 Cost	FY 19-20 Cost
OT Staffing Costs	\$45,027	\$46,162
Operational Costs	\$4,406	\$4,405
Annual Total	\$49,433	\$50,567
<b>Total over 2 years</b>	<b>\$100,000</b>	

Acceptance of this grant requires a contribution of \$14,320 from the General Purpose Fund to cover the associated central services overhead costs of 14.32 percent. These costs are not allowed by the grantor and the grant does not cover them.

All of the CA DOJ Tobacco Enforcement Grant revenues will be allocated to the State of California Fund (2159); Special Operations Division Org (107710); Project (TBD); Special Operations Program (PS13), as illustrated below.

Fund Source	Organization	Account	Project	Program	Amount
2159	107710	TBD	TBD	PS13	\$100,000

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### **PUBLIC OUTREACH / INTEREST**

The work that will be done under this grant program is of strong interest to Oakland's families and communities. Per capita, Oakland contains more tobacco retail establishments than most cities in Alameda County and more than the County average. Since most smokers begin smoking before they are 18, more resources allocated to enforcing tobacco-related violations will help minimize opportunities for youth to access cigarettes and other tobacco products.

### **COORDINATION**

OPD consulted with the Budget Office and the Office of the City Attorney in the development of this report and accompanying resolution.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** This project will support ABAT overtime expenses related to conducting decoy and SCAPE operations, as well as merchant training sessions and community meetings.

***Environmental:*** This project will help enforce anti-smoking laws, which will benefit public health and address nuisance issues often associated with stores that vend tobacco products.

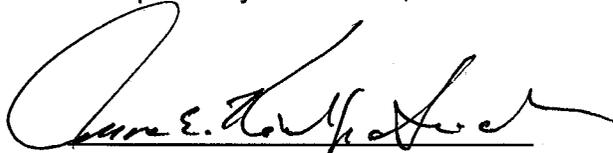
***Social Equity:*** The grant will help further educate both merchants and community members about the dangers of smoking in general. It is specifically targeted to reduce minor access to tobacco products with an overall goal of improving youth and community health.

**ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE**

**Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Allow The Oakland Police Department (OPD) To Enter Into An MOU (Memorandum of Understanding) With The California Department Of Justice (CA DOJ) And To Accept And Appropriate One Hundred Thousand Dollars (\$100,000) For A Two-year Grant Funded Under The California Healthcare, Research And Prevention Tobacco Tax Act Of 2016, Approved By The Voters As Proposition 56.**

For questions regarding this report, please contact Sergeant Andrew McNeil, Special Operations Division (SOD) within the Bureau of Field Operations 2, at (510) 238-3455.

Respectfully submitted,



Anne E. Kirkpatrick  
Chief of Police  
Oakland Police Department

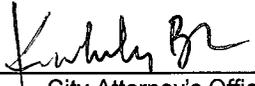
Reviewed by:  
Andrew McNeil  
OPD, SOD, BFO 2

D. Neil Wallington, Fiscal Manager  
OPD, Fiscal Services

Prepared by:  
Molly Giesen-Fields, Grants Coordinator  
OPD, Fiscal Services

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Approved as to Form and Legality

  
City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ALLOW THE OAKLAND POLICE DEPARTMENT (OPD) TO ENTER INTO AN MOU (MEMORANDUM OF UNDERSTANDING) WITH THE CALIFORNIA DEPARTMENT OF JUSTICE (CA DOJ) AND TO ACCEPT AND APPROPRIATE ONE HUNDRED THOUSAND DOLLARS (\$100,000) FOR A TWO-YEAR GRANT FUNDED UNDER THE CALIFORNIA HEALTHCARE, RESEARCH AND PREVENTION TOBACCO TAX ACT OF 2016, APPROVED BY THE VOTERS AS PROPOSITION 56

**WHEREAS**, the CA DOJ serves as the grant administrator of the Tobacco Law Enforcement Program funded by the California Healthcare, Research and Prevention Tobacco Tax Act (Prop 56); and

**WHEREAS**, the OPD has been awarded one hundred thousand dollars (\$100,000) to expand and enhance OPD's Alcoholic Beverage Action Team's (ABAT) ability to identify and target problematic retailers of tobacco products who sell to minors; increase enforcement efforts against tobacco establishments that generate tobacco-related violations, promote strategies that reduce marketing of tobacco products to minors in Oakland communities, and develop and educate merchants on the laws with respect to tobacco-related violations; and

**WHEREAS**, in order to accept the Tobacco Law Enforcement Program grant, the State requires grantees to enter into an MOU with the CA DOJ; and

**WHEREAS**, the Tobacco Law Enforcement Program grant period of performance is from July 1, 2018 through June 30, 2020; and

**WHEREAS**, grant funds will be used to cover overtime costs for ABAT's enforcement operations and operational expenses related to the enforcement, outreach, and education activities; and

**WHEREAS**, the 14.32% Central Service Indirect Overhead Costs in the amount of \$14,320 is not allowed by the grantor; and

**WHEREAS**, Article V, Section 504(l) of the Oakland City Charter requires that the City Council approve all intergovernmental relationships and contracts; now, therefore be it

**RESOLVED**: That the City Council does hereby authorize the City Administrator or designee to accept and appropriate a grant award in the amount not to exceed one hundred thousand dollars (\$100,000) from CA DOJ, which serves as the grant administrator of the Tobacco Law Enforcement Program funded by the California Healthcare, Research and Prevention Tobacco Tax Act (Prop 56); and be it

**FURTHER RESOLVED**: That the CA DOJ Tobacco Enforcement Grant revenues will be allocated to the State of California Fund (2159); Special Operations Division Org (107710); Project (TBD); Special Operations Program (PS13); and be it

**FURTHER RESOLVED**: That the City Council authorizes a contribution of \$14,320 from the general purpose fund to cover the associated central services overhead costs of 14.32 percent which the grant does not cover; and be it

**FURTHER RESOLVED**: That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend, renew and/or amend such an MOU without returning to the City Council; and be it

**FURTHER RESOLVED**: That in accordance with Article IV, Section 401(6) of the City Charter, the MOU authorized by this resolution shall be approved by the City Attorney's Office as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California