

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 OCT 13 PM 5:16

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: October 26, 2004

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) for the first six months of 2004, including enforcement activities, staffing, zoning applications, and staff training.

FISCAL IMPACT

Since its inception in 1997, licensed California Alcohol Beverage Control (ABC) establishments enrolled in Oakland's Deemed Approved Program paid an annual fee of \$600. The funds received were used to cover some staff and operating costs. The Police Department General Fund budget assumed all other charges. During the FY 2003-05 mid-cycle budget deliberations, City Council approved increasing the annual fee to \$1,500 per location in order to make the program cost covering. ABAT will begin assessing the new fee rate in the coming year. Estimated revenues (with 100% payment compliance) are \$699,000, which is comparable to estimated program costs for personnel, vehicles, O&M, and special operations:

1.0	Sergeant of Police	2.0	Police Officer
2.0	Police Service Technician	1.0	Administrative Analyst II / Planner II
0.5	Deputy City Attorney	0.5	Administrative Hearing Officer

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 and provide an enforcement program to monitor the operation. After affirmation of the ordinance by the California Supreme Court, ABAT launched the program in January 1997.

In July 2001 all full-time positions and funding were shifted from the Community and Economic Development Agency (CEDA) to the Police Department, resulting in the conversion of the Planner II position to an Administrative Analyst II / Planner II. This transfer created a more centralized unit and allowed a greater degree of research and analysis.

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KEY ISSUES AND IMPACTS

ABAT Enforcement Activities in 2004

- Conducted 515 site visits, resulting in 75 formal inspections and 16 compliance re-inspections. Eleven (11) stores were scheduled for re-inspections due to non-compliance. The Special Multi-Agency Response Team (SMART)¹ conducted 2 inspections.
- ABAT personnel issued 15 citations for various offences including violation of the CA Business & Professional Code Section 5658 - "Selling alcohol to a minor," CA Penal Code § 308 - "Selling Tobacco to a minor," and CA Penal Code § 308.2 - "Selling Single cigarettes."
- Conducted 54 decoy operations, resulting in 3 alcohol sales to minors (5% sale rate).
- Conducted 65 Bar Check operations. Bar Checks involve uniformed and undercover staff who enter bars during regular operating hours to see if illegal activities are occurring.
- ABAT imposed operating restrictions on 19 restaurants. The operating restrictions were instituted in response to nuisance activity. These restrictions act as an alternative to an Administrative Hearing, i.e., ABAT and City Attorney staff meet with the operator and mutually agree on specific operating restrictions. The restrictions are binding and ABAT issues citations for any violations.
- Four program participants allowed their Deemed Approved status to lapse. (a legal-non conforming use status will "lapse" if the business is closed in excess of 90 days):

- | | | |
|----|------------------------------|--------------|
| 1. | 3151 98 th Avenue | Liquor Store |
| 2. | 5756 Adeline Street | Liquor Store |
| 3. | 3932 MacArthur Boulevard | Bar |
| 4. | 3917 Telegraph Avenue | Bar |

These establishments are now required to go through the planning process and acquire a Conditional Use Permit (CUP) in order to re-open.

Staffing

Personnel currently assigned to ABAT: 1 Sergeant of Police, 2 Police Officers, 2 Police Service Technicians, 1 Administrative Analyst II/Planner II.

¹ SMART Inspections are conducted by a coordinated group of public agency representatives who enforce civil law statutes and regulatory rules to clean up problem sites. Representatives from the Oakland Housing Authority, the Fire Department, Alameda County Vector Control, and PG&E often join ABAT and Beat Health personnel to conduct these code enforcement activities.

Zoning

Between January 1 and July 1, 2004, the Zoning Division received 5 applications related to alcoholic beverage sales activities. The applications were for on and off-site sale operations. All 5 locations were issued Conditional Use Permits (CUP) with conditions of approval to ensure owner/operator compliance. The applications were from three bars and two full service restaurants:

- 4301 Telegraph Avenue Bar
- 3917 Telegraph Avenue Bar
- 579 Fifth Street Bar
- 3010 Foothill Boulevard Restaurant
- 3851 International Boulevard Restaurant

These five new premises (if approved by the Planning Commission) will generate an additional \$7,500 (5 x \$1,500) per year for operation of the Deemed Approved Program.

Deemed Approved Participants

All of Oakland's bars and liquor stores participate in the Deemed Approved program. In addition, full-service restaurants located on certain restricted streets² are also part of the program. The number of alcohol outlets in the program remained unchanged from 2003 - with 466 establishments enrolled:

- 368 Liquor Stores
- 70 Bars
- 28 Restaurants

Deemed Approved Advisory Committee (DAAC)

The DAAC continues meeting on a monthly basis to identify problems and share ideas about controlling nuisance, loitering and criminal activities in and around liquor establishments.

Education

In April 2004 ABAT personnel attended a joint "Enforcement Tools Training" sponsored by Alameda County Department of Public Health.

² "Restricted street" means that area applied to a depth of two hundred (200) feet on each side of and including the following streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard (E. 14th Street); Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying north of 16th Street; that portion of Edes Avenue lying between Clara Street and Bergedo Drive (OMC Ch. 17.156, Section 070).

In August 2004 ABAT staff attended a training seminar on Penal Code Section 308 (Selling of tobacco products to minors) and how to conduct enforcement operations.

SUSTAINABLE OPPORTUNITIES

Economic - When performing site visits, ABAT personnel check to ensure that participating establishments possess current business licenses. As retail establishments, they contribute to the City's tax revenue base.

Environmental - No environmental opportunities were identified.

Social Equity - One of ABAT's main functions is to work with certain alcohol beverage establishments to ensure that they do not negatively impact the quality of life in local neighborhoods.

DISABILITY AND SENIOR CITIZEN ACCESS

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

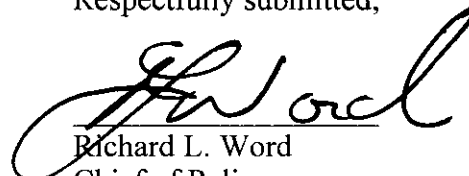
RECOMMENDATION(S) AND RATIONALE

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

ACTION REQUESTED OF THE CITY COUNCIL

Receive this status report on the ABAT Deemed Approved program.

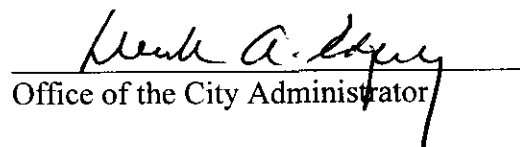
Respectfully submitted,



Richard L. Word
Chief of Police

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ABAT Unit, Vice/Narcotic Section
Bureau of Field Operations

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



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