

# CITY OF OAKLAND

## AGENDA REPORT

**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Police Department  
**Date:** June 13, 2006

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

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### SUMMARY

This report outlines the activities of the Alcoholic Beverage Action Team (ABAT) for the last six months (January 1, 2006 through June 1, 2006), including enforcement activities, staffing, zoning applications, and training.

### BACKGROUND

In August 1993 the City of Oakland passed the Education, Monitoring, and Enforcement Program, also known as *Deemed Approved Program* (Ordinance No. 11624 C.M.S.) The program was designed to improve the operating standards of alcohol outlets, and provide an enforcement program to monitor outlet operations. After affirmation of the ordinance by the California Supreme Court, ABAT launched the program in January 1997.

### FISCAL IMPACT

During the FY 2003-05 mid-cycle budget deliberations, City Council approved the annual fee increase from \$600 to \$1,500 per location. Since the start of this fiscal year, 385 locations have been charged the new annual inspection fee. The fee will generate \$577,500 for general staff costs for the 2006-07 fiscal year. All other operating cost overruns are funded through general fund appropriations.

On May 16, 2006 City Council passed an action requested by the City Attorney's Office to fund a dedicated Deputy City Attorney II on a one year trial period, at a cost of \$152,000.

Additionally, staff was directed to develop a pamphlet on the Deemed Approved Alcohol Outlet Program. Approximately \$14,000 was allocated for this project, which will be completed in October of 2006.

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## KEY ISSUES AND IMPACTS

### *Staffing*

On September 24, 2005 Sergeant Robert Crawford became supervisor of the ABAT Unit, which is now a part of the Strategic Area Command Division. The ABAT Unit is currently staffed with one sergeant, two police officers (one of which is on loan to the Internal Affairs Division for an extended period of two years), two police services technicians, and one administrative analyst II.

On April 15, 2006 Officer J. Cowles was assigned to the Unit in a light duty status to assist with performing administrative tasks, but was medically retired on May 15, 2006. The ABAT Unit is severely impaired without a second full time police officer.

In addition to a dedicated City Attorney to work with the Department, City Council agreed to commit resources to the abatement of problem liquor stores, and declared it a critical priority for the City of Oakland. It will be difficult to achieve objectives related to this priority without full staffing of two full duty police officers to the ABAT Unit. The Department must balance this priority against other priorities which include:

- Providing a timely response to emergency and non-emergency calls for service
- Conducting basic follow-up criminal investigations
- Conducting basic traffic enforcement and collision investigations
- Implementing community policing as outlined in Measure Y
- Maintaining effective foot patrol coverage in the downtown, Jack London Square, and other retail commercial areas

### *Training*

In March 2006 members of the ABAT Unit received training on the *Enforcement of Labor Code Section 6404.5 -Smoking in the Work Place*, which was sponsored by the Alameda County Department of Public Health. The training provided updated information on current tobacco laws, as well as how to accurately determine citation liability. The training also provided an opportunity for staff to network with other law enforcement agencies and acquire ideas for new methods of tobacco enforcement.

Additionally, Problem Solving Officers have been trained in the Deemed Approved process, and are encouraged to work with members of the ABAT Unit to develop solutions to many of these types of problems. It is hoped that in the absence of full staffing, the involvement of Problem Solving Officers will improve the ability of the ABAT Unit to address problem liquor establishments.

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*ABAT Unit Enforcement Activities January 1, through June 1, 2006*

- The ABAT Unit has referred over 70 case binders to the City Attorney's Office to be assessed for an administrative hearing. In May 2006 these case binders were forwarded to the Nuisance Enforcement Unit for assessment of administrative action including declaration of public nuisance.
- One full time City Attorney II will be hired and assigned to work directly with the ABAT Unit for an initial period of one year. The cost-benefit effectiveness of the position will be evaluated at the end of FY 06-07.<sup>1</sup>
- Since the last report, dated November 8, 2005, the number of Oakland alcohol licensees in the Deemed Approved Program has been reduced from 387 to 385.
- The Unit has conducted 250 site visits and has completed 225 annual inspections. Re-inspections are scheduled for June and July of 2006. The Remaining 160 annual inspections will be completed by October 2006.
- 100 decoy operations have been conducted, resulting in 37 sales to a minor (37% sale rate.)
- 20 Bar Check operations have been conducted. No illegal activity was verified during these operations. A Bar Check consists of uniformed and undercover staff entering bars during regular operating hours to monitor occurrences of illegal activity.

During this period, six program participants allowed their Deemed Approved status to lapse. (The land use status will lapse if the business is closed in excess of 90 days) or if they had their status revoked (table 1.)

**Table 1: ABAT Closures**

Address	DBA	Lapse Date	Details
375 9th St.	Liquor Store	Apr-06	ABC license canceled. revoked for non-payment. OPD-ABAT requested and lapsed Deemed Approved (DA) Status.
3446 Market St.	New York Mkt.	Apr-06	ABC license surrendered and no longer in use. OPD-ABAT requested and lapsed DA Status.
1450 8th St.	Market	Mar-06	ABC license revoked for non-payment. OPD-ABAT requested and lapsed DA Status.
2401 23rd Ave.	E&L Liq.	Jan-06	ABC license surrendered and no longer in use. OPD-ABAT Minor Decoy Sale. Neighborhood Law Corps Settlement Agreement. OPD-ABAT requested and lapsed DA Status.
1901 San Pablo Ave.	A&J Liquors	Jan-06	ABC license surrendered and no longer in use. OPD-ABAT requested and lapsed DA Status.
5947 Mac Arthur Blvd.	Mac Arthur Liq.	Jan-06	ABC license surrendered and no longer in use. OPD-ABAT requested and lapsed DA Status.

<sup>1</sup> The Police Department is working with the City Attorney's Office on the preparation of a scope of work statement related to the position.

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

## **PROGRAM DESCRIPTION**

### *Procedure for Assessing Problematic Outlets*

The Goal of the Deemed Approved Program is to provide efficient, effective and lasting resolutions to problematic liquor serving facilities. If a store is identified as problematic, solutions include implementing more restrictive operating conditions, nuisance evictions, or voluntary or forced surrender of Deemed Approved status.

### *General approach*

When a facility has been identified as a possible nuisance, it is brought forward for discussion at a Service Delivery System (SDS) meeting. SDS teams are comprised of a Police Service Area (PSA) Lieutenant, Neighborhood Services Coordinator (NSC), City Council representative, Code Inspector, Fire Inspector, and other City Staff, who meet monthly.

The ABAT Unit along with Code Compliance, and/or Fire Department conducts a diagnostic check on the locations depending on the types of problems reported.

Once the SDS team determines that a facility is a nuisance, the ABAT Unit creates a project and prepares a case binder which contains all written documentation and evidence collected by the Police Department, Fire Department, and Code Compliance Division. The case binder is then forwarded to the Nuisance Enforcement Officer in the City Administrator's Office, who works in conjunction with the City Attorney's Office to determine the best strategy to be carried out against the property owner (e.g. reaching a settlement agreement or revoking their right to operate.)

### *Case Preparation*

Over the past six months the ABAT Unit has prepared 72 active cases for administrative review by the City Attorney's Office. Due to the large number of cases, in May of 2006 the City Attorney began to relinquish cases to the Nuisance Enforcement Unit (NEU.) The Nuisance Enforcement Officer will assess each case to determine if a public nuisance exists. If a public nuisance is declared, the operator/property owner will be fined, and an administrative hearing will follow. If the NEU determines the evidence is insufficient, the case will be returned to ABAT for further documentation.

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*Zoning*

Between January 1 and June 1, 2006 the Zoning Division received five applications for permits related to alcoholic beverage sales activities for both, on and off-site sale operations (three grocery stores, one liquor store, and one full service restaurant.) Three of the locations have been issued Conditional Use Permits which carry conditions of approval (e.g. hours of operation, type of alcoholic beverage to be sold, or size of containers) to ensure owner/operator compliance.

<u>Address</u>	<u>Type</u>	<u>Status</u>
311 Oak Street	Grocery Store	(Approved)
1913 San Pablo Avenue	Grocery Store	(Approved)
4103 Piedmont Avenue	Grocery Store	(PENDING)
1415 35 <sup>th</sup> Avenue	Liquor Store	(PENDING)
4749 International Boulevard	Restaurant	(Approved)

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

*Deemed Approved Participants*

All City of Oakland bars and liquor stores participate in the Deemed Approved program. Since the last report (November 2005) the number of alcohol outlets in the program decreased by two. There are now 385 establishments enrolled in the Deemed Approved program:

310 Liquor Stores  
75 Bars

**SUSTAINABLE OPPORTUNITIES**

***Economic*** – Members of the ABAT Unit perform business inspections to ensure that participating establishments possess current business licenses. Legally functioning retail establishments contribute to the City’s tax revenue base.

***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.

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**RECOMMENDATIONS**


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

Respectfully submitted,

  
Wayne G. Tucker  
Chief of Police

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ABAT Unit, Strategic Area Command  
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APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Administrator