

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 APR 15 PM 1:23

To: Office of the City Manager
Attn: Deborah Edgerly
From: Police Department
Date: April 27, 2004

Re: An Annual Information Report from the Chief of Police on the Deemed Approved Program for Calendar Year 2003

SUMMARY

This report outlines the activities of the Alcoholic Beverage Action Team (ABAT) for calendar year 2003. In brief, ABAT personnel:

- Maintained Unit focus on alcohol related issues.
- Conducted 1,156 individual operations.
- Conducted a land-use revocation hearing against a liquor store.

FISCAL IMPACT

Since its inception in 1997, ABC licensed establishments in Oakland who were/are enrolled in the Deemed Approved Program have paid an annual fee of \$600. These funds are used to cover some staff and operating costs. The Police Department General Fund budget assumes all other charges. The Department is reviewing the costs associated with the Deemed Approved program and will propose a fee adjustment recommendation during the Council's Fiscal Year 2004 - 2005 Mid-cycle Budget hearings.

Based on the current assigned staff levels in the Unit (see "*Staffing*" on page 3), and including the salary increase scheduled to take effect (1% for Local 21 on July 1, 2004 and 5% for OPOA on January 1, 2005) the total cost in salary and fringe/retirement benefits is \$712,457 for FY 2004-05. The costs for equipment and vehicles are estimated at \$24,260 for FY 2004-05. Total O&M includes \$6,000 for supplies and materials.

As of January 31, 2004, OPD's Budget & Accounting Division had collected \$201,000 from 335 permitted outlets for program year 2003. This represents a fee collection rate of 72%. Collection from the recalcitrant licensees is being sought through small claims court. Ten (10) re-inspection invoices (\$200 per re-inspection), for failure to correct inspection deficiencies, were issued for program year 2003.

Using the above figures, as an average, the ABAT Unit has been operating with a structural deficit of approximately \$500,000 per year since the program's inception. This deficit will be addressed during the Fiscal Year 05-07 Budget process.

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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 to 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 1999 the program was approved for an authorized staffing level of three Police Officers, two Police Service Technicians, one full time Planner II, and the part-time services of one Deputy City Attorney. 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 allows a greater degree of research and analysis. Sergeant Leonard White was assigned to the ABAT unit as the unit Supervisor in March 2002.

KEY ISSUES AND IMPACTS

ABAT Enforcement Activities in 2003

- Conducted 818 site visits, resulting in 114 formal inspections and 22 compliance re-inspections. Eleven (11) stores were scheduled for re-inspections due to non-compliance. The Special Multi-Agency Response Team (SMART)¹ conducted 11 inspections.
- ABAT personnel issued 35 citations for various offenses.
- Conducted 76 decoy operations, resulting in 13 sales to minors.
- Conducted 110 bar check operations.²
- In conjunction with the City Attorney's Office, imposed operating restrictions on 10 liquor stores, four (4) restaurants, and three (3) bars. The operating restrictions were in response to reports of nuisance activity and 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.

¹ SMART Inspections are 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.

² Bar check operations are defined as undercover law enforcement inspections. Bar check operations differ from site visits in that site visits are limited to liquor stores and restaurants.

- An Administrative Hearing (land-use revocation) was held on December 16, 2003. The property, a liquor store located at 2637 Coolidge Avenue, was considered by the Police Department to be a nuisance property. ABAT staff verified and documented numerous violations and conducted several joint operations with the State Department of Alcoholic Beverage Control (ABC) and the Alameda County Department of Environmental Health. The result of this inter-agency collaboration was a significant reduction in the property's land-use entitlements (i.e., reduced hours of operation, increased level of private security, and the installation of perimeter lighting and surveillance cameras). All property improvements were completed in March 2004, and the operator is maintaining compliance.
- Locations where a Deemed Approved status was revoked and the business closed
 1. 1774 87th Ave. Liquor Store
 2. 10810 Bancroft Ave. Bar
 3. 4822 Telegraph Ave. Bar [Re-opened under Conditional Use Permit (CUP)]
 4. 4309 Telegraph Ave. Bar
 5. 5316 College Ave. Liquor Store
 6. 1943 Fruitvale Ave. Bar

Special Operations

ABAT operations for the past four years:

| Operation Type | 2000 | 2001 | 2002 | 2003 |
|------------------------------|------------|------------|-------------|-------------|
| Site visits | 262 | 655 | 781 | 818 |
| Inspections | 148 | 142 | 151 | 114 |
| SMART Inspections | 17 | 15 | 19 | 3 |
| Re-inspections | 42 | 29 | 10 | 22 |
| Decoy Attempts | 12 | 55 | 53 | 76 |
| Decoy Sales (sale to minors) | 3 | 16 | 22 | 13 |
| Bar Checks | n/a | n/a | n/a | 110 |
| TOTAL | 484 | 912 | 1036 | 1156 |

Staffing

Personnel currently assigned to ABAT: 1 Sergeant of Police, 2 Police Officers, 2 Police Service Technicians, 1 Administrative Analyst II/Planner II, and 1/2 of a Deputy City Attorney's services.

Zoning

During the past year, the Zoning Division received 11 applications related to alcoholic beverage sales activities. The applications were for on and off-site sale operations. All 11 locations were issued Conditional Use Permits (CUP) with conditions of approval to ensure owner/operator compliance. The applications were from two theaters, three bars, two grocery stores and four full service restaurants. These eleven new premises will generate an additional \$6,600 per year for operation of the Deemed Approved Program.

Grant Opportunities

The ABAT Unit continues to actively pursue State and County funds to finance additional compliance operations. In late 2002, ABAT was awarded a \$25,000 grant from the Alameda County Department of Public Health. ABAT used the grant funds to conduct decoy operations aimed at enforcing laws regarding underage possession of tobacco products and conducting bar checks to ensure compliance with non-smoking regulations. In October of 2003, ABAT applied for and was awarded an additional \$37,000 grant from the Alameda County Public Health Department. ABAT will use these funds to conduct similar operations in 2004.

Deemed Approved Participants

The number of alcohol outlets in the program rose from 459 (as of December 2002) to 466 (as of December 31, 2003).

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.

Responsible Operator Pledge

ABAT staff attended the signing of the responsible operator pledge and has committed resources to achieve operator compliance. ABAT has conducted site compliance inspections on 58 of the 100 pledge stores. The Responsible Operator Pledge, a program of the Neighborhood Law Corps, encourages liquor outlets to close by midnight and open no earlier than 7:00 a.m., eliminate the sale of drug paraphernalia and fortified alcohol beverages, and attend community meetings and work with neighborhood leaders to create and maintain healthier and safer neighborhoods.

Education

In March 2003, four ABAT personnel and 6 members from the local ABC attended a joint "Licensee Education on Alcohol and Drugs" (LEAD), 8-hour training seminar, sponsored by the ABC.

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Legislative Changes

There were no significant legislative changes in 2003.

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.

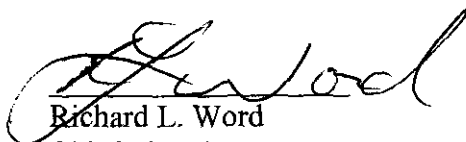
RECOMMENDATION

The Police Department recommends acceptance of this information report,

ACTION REQUESTED OF THE CITY COUNCIL

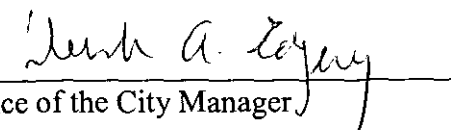
This is an informational report. No further action by Council is required.

Respectfully submitted,


Richard L. Word
Chief of Police

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Admin. Analyst II/Planner II
ABAT Unit, Vice/Narcotic Section
Bureau of Field Operations

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


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