FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 JAN 15 PM 6:37

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Manager
ATTN: Ms. Deborah Edgerly
FROM: Office of the City Manager
DATE: January 27, 2004

RE: Informational Report from the City Manager on Smoking And Tobacco Ordinances Complaints in 2003

SUMMARY

The Office of the City Manager is the primary enforcement agency for the Smoking Pollution Control Ordinance, which prohibits smoking inside of places of employment and restaurants. Additionally, the Office of the City Manager, with the assistance of the Oakland Police Department, enforces the state law that prohibits smoking inside of bars and bingo halls. The City Manager also has oversight of City ordinances that prohibit the placement of tobacco product vending machines in places accessible to minors, and the nonsale distribution of tobacco products and tobacco accessories.

The number of complaints relating to smoking in places of employment and restaurants decreased from **thirty-two (32) in 2002 to twenty-four (24) in 2003**. Complaints relating to smoking in bars decreased dramatically from **nineteen (19) in 2002 to one (1) in 2003.** An intensive effort was conducted in 2003 to enforce the state ban on smoking in bars. The number of smokefree bars has increased as a result of the public awareness efforts of the City Manager and the Tobacco Control Project of the Alameda County Health Care Services Agency, and enforcement action by the Oakland Police Department.

The Tobacco Control Program of the Alameda County Health Services Agency and the American Lung Association assisted in the oversight of smoking in bars and other regulated places in the City of Oakland in 2003. The Office of the City Manager will continue its partnership with the above agencies in 2004. Additionally, the Office of the City Manager, with the assistance of other City enforcement agencies, will continue to provide oversight and enforcement of smoking laws in 2004.

Item: 6
Public Safety Committee
January 27, 2004

FISCAL IMPACT

As a result of enforcement activities relating to the ban on smoking in places of employment and bars, there will be a slight revenue increase, as a result of fines occurred during 2003. Also, the Oakland Police Department received tobacco grants to cover costs related to the enforcement of the smoking ban in bars.

DISCUSSION

The Smoking Pollution Control Ordinance, adopted on July 29, 1986, prohibits smoking inside of enclosed places in the City of Oakland, including places of employment, restaurants, and businesses. Further the ordinance mandates that smoking outside of regulated buildings occur at a reasonable distance. 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 with ten (10) non-profit organizations conducting bingo games therein.

The Administrative Hearing Officer of the Special Event Unit in the Office of the City Manager processes citizens' complaints or inquiries regarding smoking or other tobacco products ordinances. During the calendar year of 2003, the City Manager's Office responded to over **100 inquiries (50 inquiries less than 2002)** 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 **seventeen (17) in 2002 to fourteen (14) in 2003**. In addition, the number of complaints pertaining to smoking in restaurants decreased from **fifteen (15) in 2002 to zero (0) in 2003**. Further complaints pertaining to smoking at a reasonable distance outside of regulated buildings decreased from **eighteen (18) in 2002 to nine (9) in 2003.**

The City Manager's Office also has oversight and enforcement responsibility over ordinances that prohibit the placement of tobacco product vending machines in places accessible to minors, and the nonsale distribution of tobacco products and tobacco accessories. During 2003, there were no complaints pertaining to violations of these ordinances.

Presented below is summary of enforcement and outreach activities:

Smoking Pollution Control Ordinance

Smoking Complaints: A total of **twenty-four (24) complaints** were filed in 2003 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. However, in a few

cases, citations were issued and fines imposed to bring about compliance after warning notices were provided. While most of the complaints pertained to smoking inside of places of employment, **nine (9) complaints** pertained to the failure of smokers to smoke outside at a reasonable distance from entrances or open windows and air vents. A reasonable distance is usually determined to be twenty-five (25) feet away.

• **Places of Employment**	**14**
• **Hotels/Motels**	**0**
• **Restaurants**	**0**
• **Reasonable Distance**	**9**
• **Multi-unit Complexes**	**1**
TOTAL:	**24**

California Labor Code Section 6404.5 (Smoking in Bars)

One (1) complaint was filed regarding smoking in bars during 2003. Of the 100 inquiries cited above, a majority of these regarded smoking in bars. The Oakland Police Department issued several citations for smoking inside of bars based upon on-site inspections. A smoke free environment has been achieved in bingo halls, and **one (1)** complaint was received in 2003 regarding smoking outside.

Smoking in bars has been substantially reduced in the City of Oakland as a result of the enforcement efforts by this office, the Police Department, and other health agencies. The City Manager with the assistance of Alameda County's Tobacco Control Project and the American Lung Association conducted public outreach to a large number of bars in the City of Oakland, and this effort will continue in 2004.

• **Bars**	**1**
• **Bingo Halls**	**1**
TOTAL:	**2**

The Alcohol Beverage Action Team (ABAT) of the Oakland Police Department was awarded a $25,000.00 grant in the fall of 2002 to off-set costs related to the enforcement of the smoking ban in bars. The results of this grant are reflected by the substantial reduction of smoking complaints in 2003. The Tobacco Control Project of the Alameda County Health Care Services Agency provided training for City of Oakland personnel regarding enforcement of the smoking ban in bars, and other laws relating to tobacco products. The Tobacco Control Project also provided several grants to local non-profit organizations for public awareness of tobacco regulations, including those relating to the sale of tobacco products to minors.

Governmental Agency Cooperation

The Smoking Pollution Control Ordinance requires that the City Manager 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 the 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.

Oakland police officers received training in 2003 regarding the enforcement of California Penal Code Section 308 (a), which prohibits the illegal sale of tobacco to minors. To reduce and prevent the illegal sale of tobacco to minors, the Oakland Police Department, with assistance from the Tobacco Control Project of the Alameda County Health Department, conducted several sting operations in the City of Oakland. This cooperative effort will continue in 2004.

No complaints were received in 2003 regarding violations of the tobacco product vending machine ordinance.

Nonsale Distribution of Tobacco Products and Tobacco Accessories

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 2003 regarding violations of this ordinance.

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. It is expected that grants will be obtained in 2004.

Environmental

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

Social Equity

A clean and healthy environment benefits our entire city.

DISABLITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOGNITION OF CITY AND NON-CITY PARTNERS IN 2003

As noted above, the Oakland Police Department provided outstanding support during 2003 in the enforcement of tobacco laws in the City of Oakland. A major focus was given to the enforcement of the smoking in bars, and special recognition is given to the members of the Alcohol Beverage Action Team (ABAT), City Attorney's Office, Community Health Education Institute, Alameda County Tobacco Control Project, and The American Lung Association for their efforts in educating the public and ensuring compliance with tobacco laws. The achievements in the cessation of smoking in bars and enclosed places in the City of Oakland would not have occurred without their dedicated efforts.

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.

LARRY CARROLL

Prepared by: Larry Carroll
Administrative Hearing Officer
Special Activity Section, CMO

APPROVED AND FORWARDED TO THE PUBLIC SAFETY COMMITTEE.

OFFICE OF THE CITY MANAGER

Item: 10
Public Safety Committee
January 27, 2004