

CITY OF OAKLAND

AGENDA REPORT

2011 FEB 24 AM 11:37

To: Office of the City Administrator
Attn: Dan Lindheim
From: Police Department
Date: March 8, 2011

Re: Annual Status Report from the Chief of Police on the Activities of the Alcoholic Beverage Action Team (ABAT) Unit and Its Deemed Approved Program and Tobacco Retail Licensing Initiative

SUMMARY

This report outlines activities of the Alcoholic Beverage Action Team (ABAT) Unit, including enforcement activities, staffing, training, and training provided for the direct benefit of program licensees.

FISCAL IMPACT

Since its inception in 1997, licensed California Alcohol Beverage Control (ABC) establishments have been required to enroll in Oakland's Deemed Approved Program and paid the annual fee originally set at \$600 (a portion of which covers some staff and operating costs). The Police Department's General Purpose 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 began assessing the new fee rate the following year. Estimated revenues (with 100% payment compliance) at that point in time were \$699,000; which, in 2004 was comparable to all estimated program costs for vehicles, general operational costs, special operations, and all ABAT Unit personnel. For fiscal year 2010, total gross revenue realized by the ABAT Unit was \$718,629 (figure is inclusive of cash receipts realized during FY 2010 from both the Deemed Approved and Tobacco Retail Licensing Program).

BACKGROUND

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

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KEY ISSUES AND IMPACTS

2010 ABAT Performance Data

Performance Area	Data
Bar Compliance Inspections	27
Annual/Site Visits	1,433
Location Operating Restrictions	31
SMART Inspections	7
Minor Decoy Operations	19
Shoulder Tap Operations	11
EBT/Reverse Stolen Property Operations	9
Tobacco/Drug Paraphernalia Operations	3
Tobacco Seizures and Hearings	22
Tobacco Hearings Funds generated	\$45,000
Citations Issued	221
ABC Administrative Cases	16
City Attorney Case Referral	9
Firearms Recovered	6
Narcotic Recoveries	7
In Custody Bookings	18

2009 ABAT Performance Data

Performance Area	Data
Bar Compliance Inspections	90
Annual/Site Visits	867
Location Operating Restrictions	11
SMART Inspections	3
Minor Decoy Operations	16
Shoulder Tap Operations	6
EBT/Reverse Stolen Property Operations	3
Tobacco/Drug Paraphernalia Operations	3
Tobacco Seizures and Hearings	23
Tobacco Hearings Funds generated	\$22,000
Citations Issued	206
ABC Administrative Cases	10
City Attorney Case Referral	9
Firearms Recovered	6
Narcotic Recoveries	10
In Custody Bookings	30

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ABAT Enforcement Activities in 2010

- ABAT conducted 1,433 site visits / inspections and 7 SMART (Special Multi-Agency Response Team) inspections.
- 27 ROSTF (Retail Operating Standard Task Force) Inspections were conducted at various bars and nightclubs. These inspections were conducted in conjunction with staff from the State of California, Office of Alcohol Beverage Control (ABC).
- 12 Alcohol Minor Decoy Operations which reflected a 10.2% non-compliance rate.
- 7 Tobacco Minor Decoy Operations which reflected a 23.3% non-compliance rate.
- 11 Alcohol Shoulder Tap Operations were conducted resulting in 144 citizen contacts.
- 9 Electronic Benefit Transaction card (food stamp fraud)/Purchase Stolen Goods/Narcotic Operations were conducted in various alcohol/tobacco retail locations.
- 5 L.A.C.E (Loitering and Alcohol Consumption Enforcement) operations were conducted and resulted in 68 misdemeanor citations.
- 3 SCAPE (Single Cigarettes and drug Paraphernalia Enforcement) Operations resulted in 8 tobacco retail violations.
- 2 Warrant Sweep Operations
- Recovered 5 firearms, 1 prohibited weapon and 7 narcotic recoveries.
- During ABAT operations, 221 citations were issued and 18 arrests (bookings) were affected. Additionally, ABC filed accusations against 16 locations as a result of ABAT operations.
- ABAT conducted 22 Tobacco Retail Hearings and/or Seizures.
- ABAT personnel issued 5 H&S code § 11570 Drug Nuisance Letters, a prerequisite to filing lawsuits under the code.
- ABAT identified 25 lapsed Deemed Approved properties.
- ABAT submitted 9 Cases to the Office of City Attorney.
- ABAT imposed operating conditions on 31 retailers.
- ABAT personnel attended 26 NCPC meetings.
- ABAT compiled 4 CPTED (Crime Prevention Through Environmental Design) reports.

Other Notable ABAT Activities

ABAT identified an Imposter Agent who had embezzled approximately \$25,000 from retailers in three separate counties. The investigation (conducted in conjunction with internal Police Department personnel/departments) led to the capture and conviction of this individual.

ABAT identified Khat (a Schedule IV controlled substance) trafficking in Oakland by alcohol/tobacco merchants and has assisted Intel, FBI, DEA, ICE and ABC with the continued investigation. Additionally, ABAT negotiated an agreement with the DEA laboratory in San Francisco to test Khat cases for OPD.

Also in 2010, ABAT proposed a city-wide ban on specific cigarette wraps known as "blunt wrap" which targets the tobacco product ubiquitously used to wrap cigar-sized marijuana joints.

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The City Attorney's Office Neighborhood Law Corps program supports the proposal and is using ABAT's field research to advocate for a state-wide ban on the product.

Additionally, ABAT has a cost reimbursement agreement with the USDA to assist with joint investigations of EBT fraud at alcohol establishments within the City of Oakland.

2010 ABAT Unit Staffing

Personnel currently assigned to the ABAT Unit are: One (1) Sergeant of Police, Two (2) Police Officers, Two (2) Police Service Technicians, One (1) Management Assistant, and One (1) Full Time Deputy City Attorney II from the Office of the City Attorney.

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 streets¹ are also part of the program. The number of alcohol outlets in the program as of December 2010 is:

- Liquor Stores: 368
- Bars: 70
- Restaurants: 28

Training

In July 2010, ABAT personnel attended the State of California, Office of Alcohol Beverage Control's Grant Assistance Program conference held in Sacramento.

In 2010 ABAT staff trained all Problem Solving Officer's regarding the specifications surrounding alcohol control operations.

PROGRAM DESCRIPTION

Alcoholic Beverage Action Team (ABAT) – Operations Overview

The Alcoholic Beverage Action Team (ABAT) unit conducts various types of enforcement operations to ensure compliance with Local, State, and Federal Law. Our enforcement operations data contains historical records from 2009 to the present day. This data is recorded in conjunction with the Grant Assistance Program (GAP) and the implementation of the City of Oakland's Tobacco Retail License (TRL) Program. Historical data prior to 2009 is not available.

¹ "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 Bergado Drive (OMC Ch. 17.156, Section 070).

There are 515 Deemed Approved locations licensed by the Department of Alcoholic Beverage Control (ABC) and 405 TRL locations in Oakland.

Listed below are descriptions of the enforcement operations conducted by ABAT both alone and in conjunction with outside agencies:

Bar Checks – The mission of this operation is to conduct compliance checks of on-sale licensed establishments to determine if the premise conforms to local, state, or federal laws. During a bar check the premise is also inspected for any apparent public safety hazards including over occupancy/over crowding, or blocked fire exits. Additionally the premise is checked for smoking violations as determined by 6404.5 Labor Code.

Loitering Alcohol Consumption Enforcement (LACE) – The mission of this operation is to ensure an opportunity for ABC licensees and citizens to comply with the local and state laws concerning public drinking and loitering. The licensee is encouraged to refuse service to chronic violators and control loiters by refusing service, increased monitoring of the area around the premise, and/or calling the police to report violators.

Minor Decoy Alcohol/Tobacco – The mission of this operation is to ensure ABC and TRL licensees comply with state laws concerning the sales of alcoholic beverages or tobacco products to minors. The goals of this operation is to conduct compliance checks using a decoy to ensure that licensees are: (1) asking for the age and identification of individuals who look under the legal age to purchase alcohol/tobacco; (2) refusing to sell alcohol/tobacco to minors; (3) to discourage the likelihood of minors purchasing alcohol/tobacco in the future at the premise. Letters are sent out to the premises at the conclusion of the operation to inform and educate the business owner(s) of the successful refusal of alcohol/tobacco products to the minor decoy.

Sale/Walk Reverse Stolen Property Operation – The mission of this operation is to conduct site visits of licensed premise of both off-sale liquor establishments (convenience stores) and on sale premises (bars and night clubs) in an attempt to determine if the licensee or employee(s) are involved in purchasing stolen merchandise.

Single Cigarettes And Paraphernalia Enforcement (SCAPE) – The mission of this operation is to ensure TRL locations within the City of Oakland comply with laws concerning the sales of tobacco products by refusing service and/ or calling the police. The goals of SCAPE are to (1) reduce the sales of, and access to single/loose cigarettes not being sold in a 20 pack minimum as required by section 308.2 of the Penal Code; (2) Prevent the sales of drug paraphernalia as required by section 5.91.090(a)(a) of the Oakland Municipal Code; (3) Check for compliance of section 22956 of the Business and Professions Code that mandates ID checks of person(s) who reasonably appear to be under 18 years of age; (4) Expand the involvement of local law enforcement in enforcing tobacco laws and regulations.

Shoulder-Tap Alcohol – The mission of this operation is provide citizen(s) with an opportunity to comply with state law that prohibits minors under the age of 21 from purchasing or possessing

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alcoholic beverages. This operation is conducted in front of off-sale establishments; no enforcement action is taken against the store. The goal of the operation is to educate the community with respect to making purchases of alcoholic beverages on behalf of a minor.

Peace Officers Powers; Inspections

ABAT does not generally obtain search warrants during enforcement operations due to the following listed authority of right of entry and inspection as described by local and state law.

According to section 25755 of the California Business and Professions Code, police officers, sheriff's deputies, and ABC investigators have a legal right to visit and inspect any ABC licensed premise without a search warrant during business hours. The area of inspection includes both public and non-public areas such as the bar, back bar, store room, office, safe, locked cabinets, kitchen or any other area within the licensed premises.

According to Oakland Municipal Code (OMC) section the Tobacco Retailer License (TRL) police officers may enter and inspect any site or structure for the purposes of an investigation as long as it is conducted in a reasonable manner whenever there is a suspected violation of the provisions in the ordinance.

Location Selection Criteria

ABAT conducts enforcement operations at randomly selected locations within the City of Oakland based on the last enforcement effort at the premise. Additional consideration for ABAT operation location selection is based on the following:

- Neighborhood Crime Prevention (NCPC) priorities
- Citizen complaints
- Drug Hotline calls
- ABAT Hotline calls
- Prior violations in regards to the sales/service of alcohol/tobacco to minors
- Problem Solving Officer (PSO) requests
- Intelligence sources
- Recent crime with a direct nexus to the premise
- ABAT Training for Licensees ABC/TRL Licenses*

Every year ABAT offers an annual half day seminar to all ABC/TRL licensees within the Deemed Approved and Tobacco Retail License Program. The seminar is free and provides the business owners education concerning ABAT operations (minor decoys, shoulder taps, bar checks). Additionally, multiple outside agencies such as Oakland Fire Department, Alameda County Health, Bureau of Security & Investigative Service, Alcoholic Beverage Control, and Employment Development Department representatives teach at the seminar to inform business owners about various local and state regulations in relation to their field.

ABAT Enforcement Goals

The goals of ABAT enforcement operations are to (1) decrease criminal and nuisance activity associated with ABC or TRL licensed premises in the city; (2) decrease the sale of alcohol or tobacco products to minors; (3) ensure that all licensed locations are abiding by local, state, and federal laws; (4) educate the public; and (5) bring licensed premises back to productive use through education and enforcement.

SUSTAINABLE OPPORTUNITIES

Economic: When performing site visits, ABAT personnel ensure that participating establishments possess current City of Oakland-issued business licenses. As such, these retail establishments contribute to the City's tax revenue base.

Environmental: There are no environmental opportunities identified with this report.

Social Equity: One of the ABAT Unit's primary functions is to ensure that alcohol retail outlets 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


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

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ACTION REQUESTED OF THE CITY COUNCIL

Council is requested to receive and file this report.

Respectfully submitted,




Anthony W. Batts
Chief of Police

Prepared by:

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Special Operations Division
Alcohol Beverage Action Team Unit
Bureau of Field Operations

**APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:**



Office of the City Administrator

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