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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: HOWARD A. JORDAN
CHIEF OF POLICE

SUBJECT: Annual ABAT Status Report

DATE: April 11, 2012

City Administrator
Approval

Deanna J. Santana

Date

5/7/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Status Report from the Chief of Police on the 2011 activities of the Alcoholic Beverage Action Team (ABAT) Unit and its Deemed Approved Program and Tobacco Retail Licensing Initiative.

Staff recommends that the Public Safety Committee approve and accept this annual status report.

EXECUTIVE SUMMARY

The ABAT unit is responsible for licensing, inspecting, and conducting enforcement operations at all alcohol and tobacco establishments within the City of Oakland. The unit also responds to citizen complaints regarding nuisance bars and stores. ABAT currently has 343 alcohol establishments (most of which also sell cigarettes) and 210 tobacco-only establishments in the Deemed Approved & Tobacco Retailer programs. Additionally, ABAT monitors 136 restaurants within the City of Oakland that have full service bars. A total of 689 locations were monitored in 2011. ABAT also conducts investigations of unlicensed premises, cabaret violations, and any other premises that sell alcoholic beverages that are determined to be a nuisance to the community.

For fiscal year 2011, total gross revenue realized by the ABAT Unit was \$948,364.

OUTCOME

This report outlines activities of the ABAT Unit for calendar year 2011, including enforcement, staffing, and training both within the Department and for the direct benefit of program licensees.

BACKGROUND/LEGISLATIVE HISTORY

ABAT conducts various types of enforcement operations to ensure compliance with local, state, and federal law. Our enforcement operations data contain historical records from 2009 to the present day. This data is recorded in conjunction with the Grant Assistance Program (GAP), through the Department of Alcoholic Beverage Control, and the implementation of the City of Oakland's Tobacco Retail License (TRL) Program.

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. Since then, Oakland's Deemed Approved (DA) Program has required licensed California Alcohol Beverage Control (ABC) establishments to enroll in the program and pay an annual fee.

During the FY 2003-05 mid-cycle budget deliberations, City Council approved increasing the annual DA fee from \$600 to \$1,500 per location in order to make the program cost-covering. ABAT began assessing the new fee rate on January 1, 2005. It was estimated that with 100% payment compliance, annual revenues would be \$699,000, comparable to estimated program costs for vehicles, general operational costs, special operations, and all ABAT Unit personnel at the time the increase was approved.

In March 2008, the City of Oakland passed the TRL Program (Ordinance No. 12867 C.M.S.) to cover license administration and enforcement. A Tobacco Retail License is required for businesses that possess a Board of Equalization license and sell tobacco products. The yearly TRL Fee is \$1,550.00 which includes a \$50 application fee.

Businesses that sell both alcohol and tobacco (possessing a Board of Equalization license and an ABC license type 20, 21, 40, or 48) are exempt from double billing per Oakland Municipal Code 5.91.080 (D) (Ordinance No. 12867 C.M.S.). Such businesses pay \$1,550.

For fiscal year 2011, total gross revenue realized by the ABAT Unit was \$948,364 (figure is inclusive of cash receipts realized during FY 2011 from both the Deemed Approved and Tobacco Retail Licensing Programs).

ABAT Enforcement Operations

Descriptions of the enforcement operations conducted by ABAT both alone and in conjunction with outside agencies are listed below.

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- *Bar Checks* – The mission of this operation is to conduct compliance checks of on-sale licensed establishments to determine if the premises conform to local, state, or federal laws. During a bar check, the premises are also inspected for any apparent public safety hazards (e.g., over-occupancy / over-crowding, blocked fire exits). Additionally, the premises are checked for smoking violations as determined by Section 6404.5 of the 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 to control loitering by refusing service, increased monitoring of the area around the premises, and/or calling the police to report violators.
- *Minor Decoy Alcohol/Tobacco* – The mission of this operation is to ensure that ABC and TRL licensees comply with state laws concerning the sales of alcoholic beverages or tobacco products to minors. The goal 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) discouraging the likelihood of minors purchasing alcohol/tobacco in the future at the premises. 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 in the minor decoy.
- *Sale/Walk Reverse Stolen Property Operation* – The mission of this operation is to conduct site visits to licensed premises 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 that Tobacco Retailer License locations within the City of Oakland comply with laws concerning the sale of tobacco products by refusing service and/or calling the police. The goals of SCAPE are to (1) reduce the sale of, and access to, single/loose cigarettes (per Section 308.2 of the California Penal Code, sale of cigarettes other than in a sealed and properly labeled package is an infraction); (2) prevent the sale of drug paraphernalia as required by Section 5.91.090(A)(3) of the Oakland Municipal Code; (3) check for compliance to Section 22956 of the Business and Professions Code that mandates ID checks of persons who reasonably appear to be under 18 years of age; and (4) expand the involvement of local law enforcement in enforcing tobacco laws and regulations.
- *Shoulder-Tap Alcohol* – The mission of this operation is to provide citizens with an opportunity to comply with state law that prohibits minors under the age of 21 from

purchasing or possessing alcoholic beverages. This operation is conducted in front of off-sale establishments; no enforcement action is taken against the stores. 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: Inspection

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 Section 5.91.140(C), police officers may enter and inspect any TRL site or structure for the purposes of an investigation whenever there is a suspected violation of the provisions in the ordinance, provided they do so in a reasonable manner.

Location Selection Criteria

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

- Neighborhood Crime Prevention Council priorities
- Citizen complaints
- Drug hotline calls
- ABAT hotline calls
- Prior violations in regards to the sale/service of alcohol/tobacco to minors
- Problem-solving officer requests
- Intelligence sources
- Recent crime with a direct nexus to the premises.

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 TRL Program. The seminar is free and educates business owners about ABAT operations (minor decoys, shoulder taps, bar checks). Additionally, multiple outside agencies, such as the 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 fields.

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.

ABAT Unit Staffing

Personnel currently assigned to the ABAT Unit include: one Sergeant of Police, two Police Officers, two Police Service Technicians, and one Administrative Analyst II. A Deputy City Attorney from the Office of the City Attorney serves in a half-time capacity (half FTE – salary only). In August 2011, the ABAT management assistant was transferred from ABAT to the CEDA Information Technology Department. That position remained vacant through the end of February 2012.

ANALYSIS

The table below presents an overview of ABAT enforcement activities for 2011.

ABAT Enforcement Activities in 2011

Performance Area	Data
Alcohol & Tobacco Merchant Education	43 Merchants
Annual Store Site Visits/Inspections	946
Anti-Loitering Operations (LACE)	7
Bar Compliance Inspections	183
Citations Issued	166
Community Outreach/Meetings	7
CPTED (Crime Prevention Through Environmental Design) Reports/Assessments	7
EBT/Reverse Stolen Property Operations	8
Minor Decoy Operations	61 attempts/17 buys
Operating Restrictions Letters	35
Shoulder Tap Operations	125 attempts/16 buys
Tobacco Hearings - Funds Generated	\$26,000
Tobacco Seizures and Hearings	24
Tobacco/Drug Paraphernalia Operations	9

Other successful activities and operations for 2011 are listed below.

- 1,129 site visits / inspections (946 annual site visits and 183 bar compliance inspections) and 3 SMART (Special Multi-Agency Response Team) inspections.
- 27 ROSTF (Retail Operating Standard Task Force) Inspections at various bars and nightclubs in conjunction with staff from ABC.
- 5 Minor Decoy Operations with a non-compliance rate of 27.87% (17 buys out of 61 attempts).
- 6 Alcohol Shoulder Tap Operations, resulting in 125 citizen contacts.
- 1 Warrant Sweep operation.
- 6 firearms and 10 narcotic recoveries.
- 10 Health and Safety Code § 11570 Drug Nuisance Letters submitted (a prerequisite to filing lawsuits under the code).
- 9 cases submitted to the Office of the City Attorney.
- 35 retailers had operating conditions imposed.
- 25 new Problem Solving Officers trained regarding ABC law and khat trafficking (how to identify nuisance activity around ABC licensed establishments and how to develop an action plan to combat and mitigate such activity).

In 2011, ABAT had a cost reimbursement agreement with the United States Department of Agriculture to assist with joint investigations of EBT (Electronic Benefit Transfer, specifically in regards to Food Stamps) fraud at alcohol establishments within the City of Oakland.

The City Attorney's Office attended meetings with ABAT officers to monitor the progress of businesses in complying with operating conditions and to update ABAT officers on the progress of cases handled by the City Attorney's Office and City Administrator's Office. Furthermore, members of the City Attorney's Office attended Neighborhood Crime Prevention Council meetings in North, West, Central, and East Oakland to update community members on the progress of ABAT activities and cases. Members of the City Attorney's Office visited the Downtown YMCA to discuss alcohol laws with Oakland teenagers. Alcohol issues were also discussed with members of the Art Murmur Board and local businesses. Finally, attorneys and ABAT officers met with a nuisance club owner and unattended lot owner and got both parties to agree to operating conditions. As a result, complaints regarding the nuisance activity have decreased.

Additionally, the City Attorney's Office was active in the following matters pertaining to ABAT:

- Attended two mediations for open civil ABAT cases
- Settled an ABAT nuisance case prior to civil trial
- Instructed an alcohol nuisance seminar for the Mayor's 100 Block weekend training
- Wrote Penal Code § 11200 letters to inform property owners and business owners that alcoholic beverages were sold to minors on their premises
- Reviewed H&S Code § 11570 letters for nuisance properties

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- Attended case management conferences for ABAT cases
- Discussed the Deemed Approved Ordinance with liquor licensees
- Assisted with site investigations with ABAT, ABC, OFD, and other law enforcement agencies.

PUBLIC OUTREACH/INTEREST

No public outreach was necessary at this time.

COORDINATION

In preparation of this report, the City Attorney's Office was consulted.

COST SUMMARY/IMPLICATIONS

There is no fiscal impact at this time. The program is intended to be self-funded. Funding is provided by the Deemed Approved, TRL, and Deemed Approved/TRL licenses and fees. Other funding comes from re-inspection fee charges and TRL hearing violation fines. In 2011, an additional source of funding (\$70,000) came from the ABC Grant Assistance Program (GAP).

SUSTAINABLE OPPORTUNITIES

Economic: When performing site visits, ABAT personnel ensure that participating establishments possess current City of Oakland 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.

For further information regarding this report, please contact Lieutenant Michael Poirier at 510-777-8601.

Respectfully submitted,



Howard A. Jordan
Chief of Police

Prepared by:
Sylvia McDaniel
Administrative Analyst II
ABAT Unit

Sgt. Pedro Espinoza
Special Operations Division
Alcohol Beverage Action Team Unit
Bureau of Field Operations