

# CITY OF OAKLAND

## AGENDA REPORT

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**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Police Department  
**Date:** April 26, 2005

**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 (October 2004 – March 2005), including enforcement activities, staffing, zoning applications, and staff training.

### FISCAL IMPACT

During the FY 2003-05 mid-cycle budget deliberations, City Council approved increasing the annual fee from \$600 to \$1,500 per location in order to make the program cost neutral. ABAT began assessing the new fee rate on January 1, 2005. Estimated revenues (with 100% payment compliance) are \$669,000. As of April 1, 2005, 250 locations have paid their fees for Fiscal year 2005 (\$375,000). The remaining 196 locations have been forwarded to City Collection for payment.

### 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 provide an enforcement program to monitor their operation. After affirmation of the ordinance by the California Supreme Court, ABAT launched the program in January 1997.

### KEY ISSUES AND IMPACTS

#### **ABAT Enforcement Activities in 2005**

- Conducted 352 site visits, resulting in 60 formal inspections. Two businesses received SMART<sup>1</sup> inspections (Table 1) - plus re-inspections, with an additional four (4) stores receiving re-inspections due to non-compliance (Table 2).

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<sup>1</sup> 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.

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**Table 1: Special Multi-Agency Response Team (SMART) inspections**

Business	Incident Date	Street Number	Street Name	Details
E & L Liquors	09-Feb-05	2401	23rd Avenue	Response to community complaints. Public Works and Waste Management came to site and cleaned up debris and garbage.
Williams Market & Liquor	09-Feb-05	5830	Telegraph Avenue	Litter, graffiti, and required signage not posted

**Table 2: Re-inspections**

Business	Re-Inspect Date	Street Number	Street Name	Details
Four Bells	06-Oct-04	1065	98th Avenue	Re-Inspect okay
Jax Liquors	21-Jan-05	502	Foothill Boulevard	Graffiti was painted out. The outside was fairly clean, no litter.
Williams Market & Liquor	16-Feb-05	5830	Telegraph Avenue	Re-Inspection Fee Notice issued for Non-Compliance
E & L Market	16-Feb-05	2401	23rd Avenue	Issued a re-inspection fee for failure to abate the nuisance.
E & L Liquor	30-Mar-05	2401	23rd Avenue	Alameda County Environmental Health gave 20 additional days to complete work.
Food King	06-Oct-04	8824	East 14th Street	Re-inspect okay

- ABAT personnel issued 8 citations for violation of the CA Business & Professional Code Section 25658 - "Selling alcohol to a minor," and 2 citations for CA Penal Code § 308.2 - "Selling Single cigarettes."
- Conducted 38 decoy operations, resulting in 8 sales of alcohol to minors (22% sale rate).
- Conducted 35 Bar Check operations. Bar Checks involve uniformed and undercover staff entering bars during regular operating hours to see if illegal activities are occurring. No illegal activity was verified during these operations.
- ABAT imposed operating restrictions on nine (9) locations (Table 3). The operating restrictions were instituted in response to nuisance activity. These restrictions act as an alternative to an Administrative Hearing (i.e., ABAT and City Attorney staff meet with

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the operator and mutually agree on specific operating restrictions). The restrictions are binding and ABAT issues citations for any violations.

**Table 3:** Operating Restrictions imposed

Business	Incident Date	Location Type	Street Number	Street Name
Ocean Restaurant	08-Feb-05	Restaurant	4301	Telegraph Avenue
Bistro Investors LLC	22-Oct-04	Restaurant	5199	Telegraph Avenue
Sui Sui K	21-Oct-04	Restaurant	417	7th Street
San Pablo Liquor	17-Feb-05	Liquor Store	2363	San Pablo Avenue
Crown Wok	02-Feb-05	Restaurant	1019	Clay Street
Tea House China Bistro	02-Feb-05	Restaurant	200	Broadway
T & K Market	02-Feb-05	Liquor Store	6342	Shattuck Avenue
Ya Ma Japanese Restaurant	01-Mar-05	Restaurant	351	12th Street
Bistro Investors, LLC	22-Oct-04	Restaurant	5179	Telegraph Avenue

- Three program participants allowed their Deemed Approved status to lapse (a legal-non conforming use status will “lapse” if the business is closed in excess of 90 days):

2637 Coolidge Ave.	Liquor Store
1334 Peralta	Liquor Store
1943 Fruitvale Ave	Bar

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

### **Staffing**

Personnel currently assigned to ABAT: 1 Sergeant of Police, 2 Police Officers, 2 Police Service Technicians, 1 Administrative Analyst II/Planner II.

### **Zoning**

Between July 1 and December 31, 2004, the Zoning Division received 3 applications related to alcoholic beverage sales activities. The applications are for on and off-site sale operations. All 3

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locations have pending Conditional Use Permits (CUP) with conditions of approval to ensure owner/operator compliance. The applications are for two bars and one full service restaurant:

Address	Type	Planning Commission Hearing
1928 Telegraph Avenue	Bar	April 20, 2005
492 Ninth Street	Bar	April 20, 2005
3848 International Boulevard	Restaurant	To be announced

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

### **Deemed Approved Participants**

All Oakland bars and liquor stores participate in the Deemed Approved program. In addition, full-service restaurants located on certain restricted streets<sup>2</sup>, operating with a CUP, are also part of the program. The number of alcohol outlets in the program remained unchanged from 2003 with 446 establishments enrolled:

368	Liquor Stores
70	Bars
8	Restaurants

### **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.

### **Education**

In March 2005 ABAT personnel attended a joint "Enforcement of Labor Code Section 6404.5 - Smoking in the Work Place," sponsored by Alameda County Department of Public Health.

## **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.

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<sup>2</sup> "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).

**Environmental** - No environmental opportunities were identified.

**Social Equity** - One of ABAT's main functions is to work with 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.

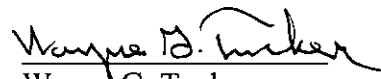
#### **RECOMMENDATION(S) AND RATIONALE**

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

#### **ACTION REQUESTED OF THE CITY COUNCIL**

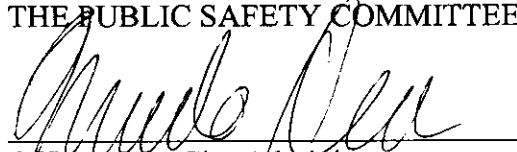
Receive this status report on the ABAT Deemed Approved program.

Respectfully submitted,

  
Wayne G. Tucker  
Chief of Police

Prepared by: Jacob Graef, MPA  
Admin. Analyst II/Planner II  
ABAT Unit, Vice/Narcotic Section  
Bureau of Field Operations

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Administrator

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