

STATEMENT OF PROPOSAL TO MAKE THE HUTT CITY COUNCIL ALCOHOL FEES BYLAW 2019



APRIL 2019

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1. INTRODUCTION

The Council proposes to make a Hutt City Council Alcohol Fees Bylaw.

This statement of proposal has been prepared in accordance with section 83 of the Local Government Act 2002 ("LGA"). It includes information about the review process and whether it is appropriate for the Council to have an Alcohol Fees Bylaw.

2. BACKGROUND

Since November 2013 Council has had the ability to amend the fees charged for alcohol licensing related functions under the Sale and Supply of Alcohol Act 2012, and the Sale and Supply of Alcohol (Fee-setting Bylaws) Order 2013.

For the past 3 years the cost recovery for licensing functions has only achieved 42% - 52% with the balance being met by rates. The Sale and Supply of Alcohol Act 2012 and associated regulations provide the expectation that alcohol licensing should be 'user pays'. The proposal is to cover 90% of the costs incurred by the Council to administer alcohol licensing. The remainder of costs will be subsidised via rates which is consistent with the Council's other charges for services.

The Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem. If so, Council must determine whether the proposed bylaw is the most appropriate form of bylaw and whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 ("NZBORA"). No bylaw can be inconsistent with the NZBORA.

Under section 145 of the LGA, the Council may make bylaws for its district with the purposes of:

- a. Protecting the public from nuisance;
- b. Protecting, promoting and maintaining public health and safety;
- c. Minimising the potential for offensive behaviour in public places.

Hutt City Council proposes to establish a new funding system for licenced premises for the sale and supply of alcohol. The aim is to ensure that the costs associated with the licensing of on-licences, off-licences, club licences and special licences is funded from the revenue Council receives from licensing fees to align with the way Council charges fees for other areas of its business. The proposed new funding system would be enacted through an 'Alcohol Fees Bylaw.'

One of Council's regulatory prescribed roles is to undertake licensing and monitoring functions in relation to the sale of alcohol. The Sale and Supply of Alcohol Act 2012 (the Act) came into force in December 2012. Since November 2013 Council's fees have been prescribed and charged in accordance with the Sale and Supply of Alcohol (Fees) Regulations 2013 (the Regulations). Council can set fees above those set by the Regulations, where necessary, to recover total costs pursuant to the Sale and Supply of Alcohol (Fee-setting Bylaws) Order 2013. Any such fees must be set through a bylaw.

2.1 THE PERCEIVED PROBLEM

Council has incurred additional costs to meet legislative requirements in relation to alcohol related activities. This includes the new requirements to establish and maintain the District Licensing Committee and paying members of the committee to determine applications as per the Council's fee schedule. The Act also prescribes expanded monitoring and reporting requirements of Licensing Inspectors, adding to staff resourcing costs. While most applications are straightforward and proceed

unopposed, those that are opposed are required to be determined by way of public hearings before a full committee and to date such hearings have ranged from half a day to two days of sitting time. The new regulations have increased Council's cost recovery related income but this has to be balanced against the additional workload required.

For the past 3 years the cost recovery for licensing functions has only achieved 42% - 52% with the balance being met by rates. This is inconsistent with the expectations of the regulation that the costs of licences of selling and supplying alcohol should be met on a 'user pays' basis and results in ratepayers effectively subsidising the sale and consumption of alcohol.

2.2 MOST APPROPRIATE WAY TO ADDRESS PERCEIVED PROBLEM

Legal requirements when setting fees: Any bylaw must be consistent with the Sale and Supply of Alcohol Act and any regulations or orders. The Regulations provide the framework within which Councils are enabled to charge fees for their costs relating to licensing and other matters under the Act. This includes:

- application fees (which cover the cost of the licence application and grant)
- annual fees (which cover the cost of monitoring) for on licences, off licences, and club licences
- fee categories for on, off and club licences. The fees category for any premises is determined by reference to its cost/risk rating, which is arrived at on the basis of 3 factors: type of premises (e.g. class of restaurant, class of club, hotel or grocery store), latest alcohol sales times, and number of recent enforcement actions. There are 5 categories for premises: very low, low, medium, high and very high
- for special licences, the Regulations prescribe a range of licence fees that reflect the number and size of the event(s) to be held in the relevant premises
- Manager's certificates.

The Regulations further provide in regulation 7 that fees set through a bylaw must be set in the context of that framework. The proposed fee structure mirrors this framework and shows a uniform increase in all fee classes.

The Council considers that the proposed bylaw is the most appropriate way to address the perceived problem.

The table shows that the average income (\$220,941) does not cover the average total expenditure (\$464,277) for the 2015/18 financial years.

Income		
Licence Fees (3 year average)		220,941
		220,941
Expenditure - Operational Costs		
Salary and wages		238,293
ACC Levies		2,383
Kiwisaver		7,149
Overtime		8,300
Training		1,300
Insurance		1,991
Fee proportion to ARLA		19,015
DL Committee member fees/payments		36,762
Vehicle costs (2 vehicles - lease + running costs)		13,696
Photocopy costs		8,760
		337,649
Expenditure - Corporate Overheads		
Internal Property/Rent Charge		24,418
Pollution Control Revenue		(6,716)
Financial Services Costs		12,111
Information Technology Costs		42,634
Strategic Development Admin Costs		8,421
GM City Transformation Costs		14,465
Customer Relations Costs		22,660
Corporate Information Costs		5,895
Archives Costs		2,741
		126,629
Total Expenditure		464,277
% of costs recovered.		48%

The Council therefore proposes to increase the fees by the same percentage amount across all categories (excluding manager's certificates) to preserve the relativity of the fee structure of the Regulations and to ensure consistency as required by the Act. The proposal is to cover 90% of the costs incurred by the Council to administer alcohol licensing. The remainder of costs will be subsidised via rates which is consistent with the Council's other charges for services.

2.3 MOST APPROPRIATE FORM OF BYLAW

The proposed bylaw addresses the perceived problem by establishing a new funding system for the sale and supply of alcohol to ensure that the cost of this licencing is recovered in a way that is

consistent with both the expectations of the regulation and consistent with Council's charges for other services.

The proposed bylaw is therefore the most appropriate form of bylaw.

2.4 IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990 ("NZBORA")

Section 155(2)(b) of the LGA requires the Council to determine whether the proposed Bylaw gives rise to implications under the New Zealand Bill of Rights Act 1990. It is the Council's view that no provision in the proposed Bylaw is inconsistent with the Bill of Rights Act 1990.

3. THE PROPOSED BYLAW

This section outlines the outcome of the proposed Bylaw and provides an explanation of the proposed Bylaw.

3.1 EXPLANATION OF THE PROPOSED BYLAW CONTENT

Hutt City Council proposes to establish a new funding system for licenced premises for the sale and supply of alcohol. The following outlines the rationale for the inclusion of each of the clauses in the proposed bylaw.

Proposed clause 1- Title

The purpose of this clause is to give the title by which this bylaw will be known.

Proposed clause 2- Commencement

The purpose of this clause is to outline that the enforcement of this bylaw will come into force at a date to be confirmed by Council.

Proposed clause 3- Application

The purpose of this proposed clause is to outline the geographical area in which this bylaw will be applied to.

Proposed clause 4- Purpose

The purpose of this clause is to ensure the purpose of this bylaw is clear.

Proposed clause 5- Interpretation

This clause is proposed so the meaning of the terms used in the bylaw is clear.

Proposed clause 6- Fees payable

The purpose of this clause is to outline the proposed new fee structure – refer to attached bylaw.

Proposed clause 7- Relevant legislation

The purpose of this clause is to outline the relevant legislation that authorises Council to establish this bylaw.

4. **PROCESS FOR THE DEVELOPMENT OF THE PROPOSED BYLAW**

The special consultative procedure will end at 5:00pm on Friday June 28 2019. Hearings and meetings on the proposed bylaw will be open to the public, and people may speak to their submissions at the relevant committee meeting.

An analysis of all submissions will then be presented to the relevant committee for consideration. The proposed bylaw will then be referred to the Council for consideration and adoption.