

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

30 JANUARY 2013

Meeting Status: **Public**

Purpose of Report: For Decision

**SALE AND SUPPLY OF ALCOHOL (FEES) REGULATIONS
2013 - FEE CATEGORIES FOR CERTAIN LICENSED
PREMISES AND SPECIAL LICENCES**

PURPOSE OF REPORT

- 1 The Sale and Supply of Alcohol (Fees) Regulations 2013 (the Regulations) set the fees to be charged for licences issued under the Sale and Supply of Alcohol Act 2012 (the Act). There are three areas where the Regulations allow the Council to resolve to lower or suspend temporarily some of the fees associated with alcohol licensing including:
 - lowering the fee category for certain licensed premises;
 - lowering the fee category for certain classes of special licence applications; and
 - in the case of existing licensed premises, suspending the requirement for licensed premises to pay annual licensing fees if the anniversary of their licence issue is between 18 December 2013 and 30 July 2014.
- 2 This report is to seek a decision from the Committee as to whether the Council wants to reduce the fees payable for licensed premises or special licences and whether the Council wants to suspend the payment of annual fees up until 1 July 2014.

SIGNIFICANCE OF DECISION

- 3 This report does not trigger the Council's significance policy.

BACKGROUND

- 4 On 18 December 2013 the Sale and Supply of Alcohol Act 2012 (the Act) was fully enacted. In addition the Sale and Supply of Alcohol (Fees) Regulations 2013 also came into force.
- 5 The Ministry of Justice found during the review of the Sale of Liquor Act 1989 that the fees set by legislation were not covering the costs associated with administration and enforcement of the Act, and that ratepayers were covering the shortfall. The review recommended the fee regime be reviewed to ensure a user pays risk based system was introduced.
- 6 The Sale of Liquor Act 1989 (old Act) required that all licensed premises paid the same fee, which was \$793.24 paid for an initial one year licence and \$793.24 for every renewal which lasted three years. In addition the old Act had only one fee for a special licence application (\$64.40) regardless of the size, scope or number of events pertaining to the application.

Fee Regime

7 The Regulations introduced a new risk based fee regime for all licensed premises which consists of:

- application fees being payable at the time of any application for a licence or for the renewal of a licence;
- annual fees being payable each year on the anniversary date on which the licence was issued with these fees being subject to change each year, dependent on whether enforcement actions have been taken against the premises;
- a risk based fee structure which assigns a weighting and therefore a fee category to each type of premises, which is influenced by the type of premises, the latest trading hours and the number of enforcement actions that have been taken against the premises in the previous 18 months
- further explanation on the way in which fee categories are calculated is included at Attachment 1.

8 The fees categories are outlined below:

Licensed Premises Fees		
Fee Category	Application fee	Annual fee
Very low	\$368.00	\$161.00
Low	\$609.50	\$391.00
Medium	\$816.50	\$632.50
High	\$1,023.50	\$1035.00
Very high	\$1,207.50	\$1,437.50

9 In terms of special licences a three tier classification system was introduced to more accurately assign fees based on the number and size of the events that were applied for. Further explanation on the way in which fee categories are calculated is attached at Attachment 1.

Special Licence Fees	
Special Licence Class	Fee
Class 1 1 large event or More than 3 medium events or More than 12 small events	\$575.00
Class 2 1 to 3 medium events or 3 to 12 small events	\$207.00
Class 3 1 or 2 small events	\$63.25

Discretion to vary fees

10 Regulation 6(4) of the Regulations allows the following with regard to licensed premises fees:

- *A territorial authority(TA) may, in its discretion and in response to particular circumstances, assign a fees category to premises that is 1 level lower than the fee category determined under sub clause (1) but no premises can be assigned a category lower than very low*
- 11 Regulation 10(2) of the Regulations allows the following with regard to special licence application fees:
- *A territorial authority may, in its discretion and in response to particular circumstances, charge a fee for a special licence that is 1 class below the class of the licence that is issued, except that no fee may be less than the fee payable for a class 3 special licence*
- 12 Regulation 16(4) of the Regulations allows the following with regard to the payment of annual fees for those premises whose licence anniversary occurs between 18 December 2013 and 1 July 2014:
- *the licensee is not obliged to pay the annual fee payable for an existing licence if the TA to which it is payable has resolved that it will not collect the annual fees payable between 18 December 2013 and a date to be specified by the TA (which must be on or before 1 July 2014)*
- 13 The only other opportunity for the Council to change the fee structure (by either lowering or increasing the fees) is if the Council undertakes a special consultative process and adopts a bylaw in relation to fee setting for licensed premises.
- 14 The Regulations also require that each year the Council must prepare and make publically available a report showing its income from licensing fees payable and its costs incurred in:
- the performance of the functions of its licensing committee; and
 - the performance of the functions of its inspectors; and
 - undertaking enforcement activities under the Act.
- 15 Until such time as the first report is due in July 2015 it is unlikely that Council will be able to clearly demonstrate whether lowering the fees in certain categories of premises or special licences is reasonable and is not impacting the ratepayer. It is anticipated Council will only understand the actual costs, after one to two years operating under the new system, and a bylaw if necessary, could be considered then.

CONSIDERATIONS

Impacts on Clubs

- 16 There are three types of clubs within the new fee structure:
- class 1 club – a club with at least 1,000 members of purchase age and in the opinion of the TA, operates any part of the premises in the nature of a tavern at any time
 - class 2 club – means a club that is not a class 1 or class 3 club
 - class 3 club – means a club that has fewer than 250 members and in the opinion of the TA operates a bar for no more than 40 hours each week

- 17 It is unlikely there are any clubs in the district that fit the criteria for a class 1 club. Our larger clubs (such as the Paraparaumu RSA, Kapiti Club, Paraparaumu Golf Club, Waikanae Chartered Club etc) would generally fit the criteria for a class 2 club (low fee category) provided they do not operate in the nature of a tavern at any time. The majority of the smaller clubs would fit into the criteria of a class 3 club thereby falling into the very low fee category and the fees can not be lowered any more for those in this category.
- 18 The changes to the fees will mean that a small club will pay an overall (application plus annual) fee of approximately \$850 for 3 years, a slight increase on the current fee (793.24).
- 19 The changes to the fees will mean that a medium sized club will pay an overall (application plus annual) fee of approximately \$1780 for 3 years, an increase of almost \$1,000 on the current fees.
- 20 These fees are based on the fact that the premises concerned will not sell alcohol on the premises after 2 am and will not have had any enforcement actions taken against them.
- 21 It is considered that these fees are appropriate for clubs and therefore the fees do not need to be lowered. However it is anticipated some small clubs may be just outside the criteria (either just over 250 members or just over the 40 hours per week operating the bar on occasion), putting them into the higher fee category.
- 22 It is recommended that the Committee resolves to delegate to the Chief Executive (with authority to sub-delegate to appropriate staff) the authority on application; and on a case by case basis; to lower the fee one fee category (from medium to low or from low to very low) for any club that:
 - is just outside the membership numbers or bar operational hours (although each application would be considered on a case by case basis a reasonable upper limit might be set at less than 15%); and
 - has not failed a controlled purchase operation; and
 - has not had an enforcement action taken against them.

Impacts on other licensees (on and off licences)

- 23 A risk based fee structure ensures premises that have a greater risk of contributing to alcohol related harm, such as taverns, bottle stores, grocery stores and supermarkets, are paying higher fees to cover the time that will need to be spent in administration, reporting, inspection, compliance and decision making around these types of premises. It is not recommended that Council considers lowering the fees categories associated with these types of premises.
- 24 However it is believed that the change in the fee structure will affect some small cafés and restaurants who sell limited alcohol for limited hours as part of the service expectations of their diners.
- 25 There are three classes of café or restaurant categories:
 - Class 1 restaurant – a restaurant that has a significant separate bar area and operates that bar area at least one night per week in the manner of a tavern;

- Class 2 restaurant – a restaurant that has a separate bar and does not operate that bar area in the manner of a tavern at any time – medium fee category;
 - Class 3 restaurant – a restaurant that only serves alcohol to the table and does not have a separate bar area – low fee category.
- 26 It is unlikely any of the district's restaurants are a Class 1 restaurant, a few restaurants may be a Class 2 restaurant and the majority will be a class 3 restaurant.
- 27 It is recommended that the Committee resolves to delegate to the Chief Executive (with authority to sub-delegate to appropriate staff) the authority on application; and on a case by case basis; to lower the fee category (from low to very low) for any café/restaurant that:
- is not open in the evening (latest alcohol sales prior to 5 pm) and applies for a variation to their current licensed hours to limit alcohol sales between 8am and 5pm any day; and
 - has not failed a controlled purchase operation; and
 - has not had an enforcement action taken against them.

Impacts on applicants for special licences

- 28 Fees associated with special licences will increase significantly for applicants who apply for a number of events throughout the year. This is because the new fees regime is based on the number of events per special licence application and the size of those events (based on expected patronage per event). However, the fees have not increased for a person or group applying for a special licence for one or two events only.
- 29 The fee changes will affect licensed clubs, especially those that apply for a large number of special licences in order to allow sales of alcohol to non members, i.e. the general public, on occasions throughout the year. The fee change does not seem unreasonable in this instance. A club that often wants to serve alcohol to non members is in effect acting as a tavern for that period of time. The majority of clubs are in a significantly lower fee category than tavern style premises.
- 30 The fee changes will also affect unlicensed clubs such as some sporting clubs or retirement village residents' associations. These clubs and associations often apply for special licences to sell alcohol to members and/or visitors on a semi regular basis well in excess of 12 small events per year. These groups will need to consider whether operating under a substantive licence may be a more practical option for them as it is clear that both the old and the new Act discourage the issue of special licences as a replacement for a substantive licence.
- 31 The Council issues approximately 200 special licences each year, many of which cover a number of events on each licence application. Processing and reporting on special licence applications has become more onerous under the new Act but, even in the past at \$64.40 per application, the fee for special licences has never covered the processing costs and has effectively been subsidised by the general rates.
- 32 It is not recommended that the Council lowers the fees categories for special licence applications at this stage.

Impacts of Annual Fee Charges being implemented between 18 December 2013 and 30 June 2014

- 33 The Act now requires that alcohol fees are split into application fees (payable on lodging an application for a licence or renewal of a licence) and annual fees payable each year on the date of the anniversary of issue of the licence.
- 34 It is understood that application fees are to cover the cost involved in the processing, reporting and decision making in relation to the issue of licences and annual fees should cover the cost of inspection, monitoring and enforcement in relation to the ongoing operation of licensed premises.
- 35 The Act allows the Council to resolve to suspend the collection of annual fees for the period from 18 December 2013 to 30 June 2013. This leeway will enable TA's to choose to minimise the immediate impact of increased fees on licensees in their area.
- 36 There are approximately 70 of 151 licensed premises that have the anniversary of their licence between 18 December 2013 and 30 June 2014. These premises cover the range of licensed premises and include cafes, restaurants, clubs, taverns, supermarkets, bottle stores and grocery stores.
- 37 The income for Council from annual fees for these 70 premises will equate to approximately \$29,000 which is based on an initial risk ranking of all licensed premises.
- 38 The other 81 licensed premises that have the anniversary of their licence between 1 July and 17 December will have to pay the annual fees as payment can not be suspended after July.
- 39 Costs associated with the implementation of the Act from 18 December 2013 until 30 June 2014 are being met from existing operating budgets. In addition to maintaining the existing licensing regime, since June of 2013 there have been administration costs associated with updating computer systems and developing new application forms and certificates, costs for legal advice, increased resourcing and training costs for staff working on alcohol licensing and recruitment, training and implementation costs for the District Licensing Committee (DLC).
- 40 In addition to the inherent unfairness of suspending fees for almost half the licensed premises in the district, income from application fees and annual fees is unlikely to cover the costs of implementation. It is recommended the Committee resolves that annual fees are invoiced and collected from licensees who have anniversary dates for the issue of their licence from 18 December 2013 to 30 June 2014.

Financial Considerations

- 41 Financial considerations are included in the body of the report.

Legal Considerations

- 42 The territorial authority can make these decisions pursuant to Regulation 6(4), 10(2) and 16 (4) of the Sale and Supply of Alcohol (Fees) Regulations 2013.

Delegation

- 43 The committee has authority to make these decisions under section B of the Governance Structure approved on 7 November 2013. (7.14 - Authority to exercise all of the Council's functions, duties and powers under the Sale and Supply of Alcohol Act 2012).

Consultation

- 44 No consultation is required or has been undertaken.

Policy Implications

- 45 There are no policy implications in relation to these matters.

Tāngata Whenua Considerations

- 46 There are no Tāngata Whenua considerations in relation to these matters.

Publicity Considerations

- 47 Licensees in the district will be notified of these decisions in the next "licensing update" which will be posted to them and uploaded to the website. In addition any unlicensed clubs or associations that apply for either a large number of special licences or a series of events on a regular basis will be notified of the changes by mail. The new fee structure is already on the website.

RECOMMENDATIONS

- 48 That the Committee resolves to delegate to the Chief Executive (with authority to sub-delegate to appropriate staff) the authority on application; and on a case by case basis; to lower the premises licence fee category (from medium to low or from low to very low) for any club that:
- is just outside the membership numbers or bar operational hours; and
 - has not failed a controlled purchase operation; and
 - has not had an enforcement action taken against them.
- 49 That the Committee resolves to delegate to the Chief Executive (with authority to sub-delegate to appropriate staff) the authority on application; and on a case by case basis; to lower the premises licence fee category (from low to very low) for any café/restaurant that:
- is not open in the evening (latest alcohol sales prior to 5 pm) and applies for a variation to their current licensed hours to limit alcohol sales between 8am and 5pm any day; and
 - has not failed a controlled purchase operation; and
 - has not had an enforcement action taken against them.

50 The Council resolves that annual fees will be payable by all licensed premises whose issue of licence or anniversary of licence issue occurs between 18 December 2013 and 30 June 2014.

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ATTACHMENTS:

Attachment 1: Alcohol licensing fees