

THE LATE NIGHT LEVY**COUNCIL****26 JULY 2016****CLASSIFICATION:****OPEN****WARD(S) AFFECTED****All Wards****GROUP DIRECTOR****KIM WRIGHT**

1. INTRODUCTION

- 1.1 The late night levy (“the levy”) is a discretionary power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). This enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority’s area, as a means of raising a contribution towards the costs of policing the late-night economy.
- 1.2 On 4 April 2016 the Licensing Committee considered a report on the powers to introduce the levy. The Licensing Committee recommended that the Council should consult on the introduction of the levy.
- 1.3 On 20 July 2016 the Council resolved to consult on a proposal to introduce the levy following the recommendation of the Licensing Committee. The consultation commenced on 13 February 2017 and concluded on 7 May 2017.
- 1.4 On 21 June 2017 the Licensing Committee considered the outcome of the consultation. Having considered the options and responses, the Licensing Committee made a recommendation for the Council to introduce the levy.

2. RECOMMENDATION

2.1 The Council is asked:

- (i) **to note and consider the contents of the report and appendices.**
- (ii) **to decide whether or not to introduce the Late Night Levy in Hackney on 1 November 2017 .**
- (iii) **to decide, if the Council, is to introduce the Late Night Levy, the following will apply:**
 - **The late night supply period be from 00:01 to 06:00**
 - **That no exemptions categories are to be applied**
 - **That no reduction categories are to be applied**
 - **The proportion of net levy payments to be paid to the Mayor of London’s Office for Policing and Crime (MOPAC) will be 70%.**

2.2 The Council is also asked to:

- (i) **Agree that the Group Director for Neighbourhoods and Housing creates a management board in accordance with paragraph 4.5 of this report and reports back to the Licensing Committee an agreed terms of reference, and**
- (ii) **Delegate to the Director of Legal to carry out and make any necessary constitutional changes that are required to the terms of reference of the Licensing Committee to bring recommendation 2.2(i) above into effect.**

3. BACKGROUND

- 3.1 Established under the Police Reform and Social Responsibility Act 2011, the levy is a provision enabling licensing authorities to charge an additional annual fee to persons who are licensed to sell alcohol in the local area late at night. The revenue raised is then used as a contribution towards the costs of policing the late night economy.
- 3.2 The levy must apply to the whole area covered by the licensing authority. And the decision to introduce it must be made by Full Council.
- 3.3 Section 125(3) of the Police Reform and Social Responsibility Act 2011 makes it a requirement for the licensing authority to consider the desirability of introducing a levy in relation to the matters described. These matters are the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6am.
- 3.4 Hackney Police estimate the cost of policing the night-time economy in the borough to be around £1.4 million annually, of which £890,000 is specifically required to fund the dedicated Night-Time-Economy teams.
- 3.5 Evidence included in the report to the Council on 21 July 2016 suggests that there is a strong correlation between the locations of licensed premises and the level of crime and disorder which warrants this action.
- 3.6 The Council has had discussions with Hackney Police. Following these discussions it was felt to be appropriate to begin the process of introducing the levy in Hackney. The late night supply period would be 00:01 to 06:00.

4. APPLICATION OF THE LEVY

- 4.1 The levy can apply to holders of licences/certificates authorised to sell alcohol on any days during a period (the "late night supply period") beginning at or after midnight and ending at or before 6am. Any such holder will be liable to pay the levy, regardless of whether the holder's premises are actually operating during the period. For example, a supermarket with a 24 hour licence will be required to pay the levy regardless of its actual opening hours.

- 4.2 The levy must be paid annually by each premises licence or club premises certificate holder to the local authority. After deductions for introducing and administering the levy, the rate of the revenue split will be at least 70% to the Mayor of London's Office for Policing and Crime (MOPAC), with the remainder being retained by the Licensing Authority.
- 4.3 The local authority must use its portion of the levy on activities, which must be related to mitigating the impact of the supply of alcohol within the specified hours, namely:
- the reduction or prevention of crime and disorder,
 - the promotion of public safety,
 - the reduction or prevention of public nuisance,
 - the cleaning of any relevant highway or relevant land in its area.
- 4.4 The Home Office recommends that the licensing authority use any existing partnership with the police to discuss the police intentions for its share of the levy revenue. The Home Office also recommends that the police should consider allocating funds raised from the levy back to local commanders to allow the revenue to be spent on tackling alcohol-related crime and disorder in the area in which the levy was raised.
- 4.5 If the Council decides to introduce the levy, a local management board would be established which would be responsible for overseeing how the revenue is spent. Representatives from licensed premises liable to pay the levy would be invited to participate in this arrangement. This would be similar to the arrangements in other authorities that have introduced the levy, such as Newcastle City Council and the London Borough of Islington. The Licensing Committee would oversee the establishment of the Board.
- 4.6 The amount of levy payable is dependent on the non-domestic rateable value of the premises. This is the same as the existing licence fee structure under the Licensing Act 2003 that is set by central government. Table 1 sets this out below:

Rateable Value Bands	A No rateable value to £4300	B £4301 to £33000	C £33001 to £87000	D £87001 to £125000	E £125001 and above	D x 2 *	E x 3 **
Annual Levy Charge	£299	£768	£1,259	£1,365	£1,493	£2,730	£4,440

* Multiplier applies to premises in band D that primarily or exclusively sell alcohol.

** Multiplier applies to premises in band E that primarily or exclusively sell alcohol.

4.7 Table 2 details the number of relevant authorisations that would be required to pay the levy according to records held by the Licensing and Technical Support Service at the time of writing this report

Band	Number of premises	Band Fee	Estimated Maximum Income
A	15	£299	£4,485
B	285	£768	£218,880
C	80	£1,259	£100,720
D	14	£1,365	£19,110
E	35	£1,493	£52,255
Total	429		£395,450

4.8 There are 429 premises that are authorised to sell alcohol between 00:01 and 06:00. Data shows that these premises are spread across the borough and that the majority are in fee Band B. The maximum income would be £395,450.

4.9 The Licensing and Technical Support Service estimates that the cost of administering the levy in the first year would be in the region of £10-£15,000. This figure is expected to be able to be reduced in future years.

4.10 Any levy introduced would apply indefinitely until the Council decides that the levy will cease to apply. Such a step would require further consultation.

EXEMPTIONS AND REDUCTIONS

4.11 The Council has the power to exempt certain premises from paying the levy. The premises, which are prescribed in regulations, are as follows:

- Premises with overnight accommodation:
- Theatres and cinemas:
- Bingo halls:
- Community Amateur Sports Clubs (“CASCs”):
- Community premises:
- Country village pubs
- Premises which are only have a relevant late-night authorisation on New Year’s Eve:
- Premises that participate in Business Improvement Districts (“BIDs”):

4.12 In addition to the above, a licensing authority may also offer a reduction of up to 30% to:

- Premises that are in receipt of Small Business Rate Relief and have a rateable value of £12,000 or less. The reduction is only available to premises that supply alcohol for consumption on the premises; and

- Operators who hold membership of a suitable best practice scheme designed to reduce alcohol related crime and disorder.
- 4.13 It should be noted that in the event of a levy being implemented, operators would be able to apply for a free minor variation to reduce their hours for the sale of alcohol to take them outside the late night supply. The cost of this process is deducted from any revenue raised.

VOLUNTARY LEVY

- 4.14 Members are reminded that the Council's Regeneration Delivery team has in place a commitment with a number of operators of licensed premises in the Dalston and Shoreditch areas to fund the overtime costs of six wardens on Friday and Saturday nights.
- 4.15 There are currently around 40 businesses that participate in the scheme, contributing around £56,000 per annum. The process for collection is managed by an officer in the Regeneration Delivery Team.
- 4.16 It has been well received by local residents and business and has been pivotal in addressing numerous anti-social behaviour related impacts of the NTE such as street urination and illegal street trading. However, opportunities to expand this scheme are limited.
- 4.17 The late night levy provides an opportunity to raise a significant amount of revenue above that collected by the voluntary scheme. Therefore, it is expected that the voluntary levy would not continue if the late night levy were introduced.

5. CONSULTATION ON THE INTRODUCTION OF THE LEVY

- 5.1 Before any levy is introduced, and in addition to the requirements set out in Section 125(3) of the Police Reform and Social Responsibility Act 2011, the Council must consult with holders of relevant authorisations and the Chief Officer of Police. The Council may also consult more widely than this, for example, with residents, trade bodies and other local businesses.
- 5.2 The consultation commenced on 13 February 2017 and concluded on 7 May 2017. A total of 1,124 letters were sent to relevant persons. Also enclosed with the letter was the statutory notice of the consultation, some background information and details of the online consultation. A statutory notice appeared in the Hackney Gazette on 23 February 2017. A summary document was also prepared and paper copies of the consultation questions were made available. Copies are appended to this report.
- 5.3 A total of 71 responses were received during the consultation period. This consisted at 62 survey responses and 9 open-ended submissions

sent direct to Licensing and Technical Support. A report with analysis of the consultation is appended to this document.

RESPONSE TO THE CONSULTATION

- 5.4 On 21 June 2017 the Licensing Committee considered the outcome of the consultation. Having regard to the responses and having considered the options, the Licensing Committee made a recommendation for the Council to introduce the levy, with no exemptions or reductions at this stage. The responses were also noted from some of the large operators. However there was a distinct lack of response from smaller independent operators.
- 5.5 Full Council is asked to consider the consultation report and the responses received so as to decide whether they wish to adopt the recommendation of the Licensing Committee. If the Council decides to introduce the levy, it will commence on 1 November 2017. Prior to this, the Licensing Committee will receive a report on the terms of reference and the set-up of the Board. The Board will be required to provide a reporting mechanism for the Licensing Committee on all relevant matters relating to the levy and how it is being used.
- 5.6 In addition to this, a full response to the consultation will be prepared and considered by the Licensing Committee at its next meeting, currently scheduled for September 2017.

6. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 6.1 This report seeks the Council to decide whether or not to introduce the Late Night Levy in Hackney. The amount of the Late Night Levy is set at National Level and will be collected alongside the annual licence fee.
- 6.2 The Licensing and Technical Support Service estimate that the existing 429 premises that are authorised to sell alcohol between midnight and 6am, would generate a maximum gross income of £395,450 from a late night levy. The potential income, in the event of a levy being implemented, may reduce if operators apply to vary their hours to operate outside the levy period.
- 6.3 The Council would be entitled to retain up to 30% of income receipts after deducting administration costs and exemptions. The eventual percentage allocation and the use of the Police's income share will be agreed in negotiations with the Chief Police Officer and MOPAC.
- 6.4 The current cost of the Night Time Economy (NTE) is managed within the existing Council service budgets. If the Late Night Levy is adopted by the Council, the Licensing and Technical Support service expects the administration costs will be up to £15k in the first year with reductions in

future years. A local management board would be established which would be responsible for overseeing how the additional income is spent (see paragraph 4.5).

- 6.5 The management board will ensure that any new resources employed by the Council in policing and administration of the NTE does not exceed the additional income generated.

7. COMMENTS OF THE DIRECTOR OF LEGAL

- 7.1 The introduction of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) allowed the Council to raise revenue to tackle the problems of crime and disorder that are caused by the night time economy by imposing a Late Night Levy (“the Levy”) on those premises that are licensed for alcohol sales between midnight and 6.00 am. The powers to introduce the Levy come specifically within the 2011 Act and not by way of an amendment to the Licensing Act 2003.
- 7.2 Any levy imposed currently applies to all those in the borough that hold a licence to supply alcohol for the hours that the Levy will operate from. However, Local authorities do have a discretion as to the hours when the Levy can start and finish, which is restricted to those hours specified above.
- 7.3 The legislation states that no less than 70% of the revenue raised must be given to the local policing body for the purpose of reducing or preventing crime and disorder. The accompanying regulations stipulate that the revenue retained by the Local Authority, which can be no more than 30%, must be used on matters relating to crime and disorder, public safety, public nuisance and the cleaning of any relevant land or highway as a result of the NTE.
- 7.4 As set-out within paragraph 4.4 of the report, the 2011 Act does not prohibit the Local Authority and Police agreeing a separate agreement relating to the funds raised for the Police.
- 7.5 The regulations governing the application and administration of the Levy sets out the recoverable revenue, which is determined by the rateable value of the premises as set out in the fee band within the table at paragraph 4.7. Following the initial payment the Levy is paid on an annual basis. There are certain occasions when the level of payment is adjusted, for example when a licence lapses due to insolvency or death. The Local Authority also has discretion on whether to adjust a payment if a licence is surrendered.
- 7.6 The exemptions and reductions regulations sets out what types of premises the Local Authority has the discretion to exclude from the Levy or to apply a reduction.

- 7.7 The application and administration regulations state that should any Local Authority decide to introduce a Levy, following the prerequisite consultation procedure, those holding an alcohol licence for the relevant hours can decide to opt out of the Levy by varying their licence before the Levy takes effect. No application fee will be payable for those making any such variation application.
- 7.8 The Policing and Crime Act 2017 has also amended the provisions relating to the Levy with regards to not necessarily needing to be for the Borough as whole and that it can apply to those that are just providing late night refreshment, for example. However these changes have not taken effect as yet and will require secondary legislation to do so. If these changes are introduced and the Council decides that they wish to amend any approved Levy following the consultation that concluded on 7th May 2017 the Local Authority will need to re-consult and follow the same procedural requirements that are required for introducing the Levy.
- 7.9 The Council's consultation has been carried out in line with the statutory provisions relating to the introduction of the Levy and in accordance to the guidance produced by the Government's Cabinet Office Consultation Principles. These principles do not displace the general principles derived from case law as to how consultations should be conducted. Those principles, known as the "Gunning principles", are as follows;
- Consultation should occur when proposals are at a formative stage;
 - Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
 - Consultations should allow adequate time for consideration and response;
- 7.10 Following the consultation coming to an end the Local Authority must conscientiously consider the consultation responses, or a summary of them, before taking its decision.
- 7.11 If the Levy is to be introduced it must be approved by Full Council pursuant to Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 7.12 Should the Council decide to introduce the Levy the local authority must comply with the following procedural requirements;
- placing a notice of the relevant decision along with the necessary details as to the proposed levy on the website and in the local newspaper with a copy of the decision (with the necessary details) also being sent to police and affected licensees

APPENDICES

Appendix 1 – Consultation material

Appendix 2 – Report on the Consultation.

Appendix 3 – Table of open ended responses received.

EXEMPT

Not applicable.

BACKGROUND PAPERS

None

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