



TOWN OF FAIRFAX

STAFF REPORT

June 17, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Conduct community forum on Fairfax 6 Cinema's application to the Department of Alcoholic Beverage Control (ABC) for an alcoholic beverage license and discuss/consider options for the Town to pursue

RECOMMENDATION

- 1) Conduct community forum on Fairfax 6 Cinema's application to the Department of Alcoholic Beverage Control (ABC) for an alcoholic beverage license and
- 2) Discuss/consider options and direct staff as appropriate

DISCUSSION

The Fairfax 6 Cinema has submitted an application to ABC to serve alcoholic beverages (i.e., beer and wine) in the Fairfax theater. In response to the pending application, the Town has received over 100 emails from residents expressing their concern and/or opposition to the application. As clarification, the Town does not have any jurisdiction over the ABC application nor does the Town's zoning code prohibit or require a use permit for the sale of alcohol in movie theaters.

Vice Mayor Goddard suggested that given the number of emails received on this matter that a special Council meeting be scheduled to provide an opportunity for the community to share their comments in a public forum. Staff has invited the theater owner to attend the meeting so that he can provide the community with more details regarding the operational concept.

The options available to the Town are limited. The Council can consider: 1) filing an official protest with ABC against the alcohol beverage license, 2) ask the operator to work with the Town to address the concerns of the community, or 3) take no action. The need for this special meeting is to keep Option #1 available to the Council. The Council's next scheduled meeting is July 15th which would be after the end of the protest period.

According to ABC, all protest to this alcohol beverage application must be received by June 24, 2015. Once formal protests are received, ABC reviews the protests to determine if they are valid. If valid, and the protestants do not withdraw based on conditions, then it will go to hearing. An administrative law judge presides and receives all of the protests. Each individual protestant must attend or their protest would be considered withdrawn.

For reference, we have attached to following:

1. A letter from the operator regarding the rationale behind the concept.
2. A copy of the ABC protest form
3. Sample conditions ABC has issued for a similar use in another theater. (Note: ABC advises that this is for a different theater and the situation may be different at this one).

FISCAL IMPACT

None

ATTACHMENTS (see above)

June 5, 2015

Dear Community Member,

I've owned the Fairfax Theatre since 1995 and over the last 20 years we've made countless improvements to the theatre. As a result, our business has remained competitive and successful, continuing the tradition of serving the Ross Valley with first run movies of all types. We care about our customers and our investment in our business reflects that.

As the theatre industry continues to evolve and change, we must evolve and change or face extinction. If we don't offer a better experience than at home or somewhere else, you have no reason to patronize us. Our competitors have found that changing the experience rejuvenates their business and attendance declines are ending. So, we have chosen to pursue more improvements so that we can continue to be successful and exist in our competitive world. All of this is important for you to understand. We'd be happy to not change anything about our theatre ... that's free and easy, but not realistic.

Our plans for the Fairfax Theatre include reducing the number of seats in the auditoriums and installing reclining luxury seats that will be reserved either at our box office or in advance through our website or sites such as Fandango ... more room and leg space for our guests. We'll be serving an improved food and beverage menu, not just popcorn and soda. Movies will be shown in our auditoriums with lighting at a level that allows our servers to assist our customers and monitor activity. Basically, we'll become a nice restaurant where a movie can also be viewed. None of our changes require governmental approval, except for a license to serve beer and wine ... like the other restaurants on our street.

Would most community members prefer viewing a movie in this environment? We think so. But most importantly for us, our nearest competitor, Cinemark, thinks so. As of today, they have dozens of alcohol licenses being processed in California and a number of those are located in Marin. They plan the same improvements for their theatres as we propose for ours. This means that many of our customers may soon drive elsewhere to see movies if our business lacks similar amenities.

Now that I've explained our plans, please let me say that we are completely opposed to youth consumption of alcohol. We would never create or promote an environment where youth consumption of alcohol would occur. We are a well respected business in the community, we value our reputation and we will do nothing to change our reputation.

We look forward to your continued support and thank you for considering this information.

Dave Corkill, Proprietor

PS ... In a couple of weeks our Tiburon Playhouse will begin food and beverage service following its complete remodel and ABC licensing. We invite you to check it.

ATTACHMENT 1





INCLUDEPICTURE "<https://static.ipictheaters.com/2011102509/cache/images/locations/scottsdale4.jpg>"

PROTEST AGAINST ALCOHOLIC BEVERAGE LICENSE APPLICATION

- Refer to Form ABC-510, Information Regarding ABC License Application and Protests (Rev. April 2010), before completing and submitting your protest. The ABC-510 is located at www.abc.ca.gov and in each district office.
- **Please print legibly or type.** Incomplete and/or illegible information will cause the protest to be rejected.
- You will be notified by letter whether or not your protest is accepted.
- If the Department recommends licensure, you will be afforded the opportunity to request a hearing on your protest.
- If a hearing is scheduled as to whether or not a license should be granted, you or your authorized representative will need to attend the hearing to testify and/or present evidence to support your protest, or your protest will be deemed abandoned.
- All protests submitted to the ABC are public records and are open to inspection pursuant to the California Public Records Act (CPRA). (Gov. Code sec. 6254 *et seq.*)
- A copy of all valid and verified protests (ABC-510-A) and Protestant's/Complainant's Declaration (ABC-128) will be provided to the applicant as part of the licensing process.

I hereby protest the issuance of a license under the Alcoholic Beverage Control Act to:

(Name(s) of Applicant(s))

For premises at:

(Exact address of proposed premises)

on the grounds that:

Check here if additional sheets attached

I, _____, declare under penalty of perjury:
PRINT (Name of Protestant)

- (1) That I am the Protestant herein;
- (2) That I have read the above protest and know the contents thereof; and
- (3) That the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe to be true.

PROTESTANT'S SIGNATURE	TELEPHONE NUMBER (Optional & non-public)
SIGNED AT (City and State)	DATE SIGNED
PROTESTANT'S ADDRESS (Full address - Street name & number, Unit or Apt. No., City, State, & Zip Code)	

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF

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████████████████████
████████████████████
████████████████████

} FILE 41 ██████████
}
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} PETITION FOR CONDITIONAL
} LICENSE

For Issuance of an On-Sale Beer And Wine - Eating Place,
On-Sale Beer And Wine - Public Premises - License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the proposed premises operates as a multi-theater movie complex which contains general spectator seating; and,

WHEREAS, the privilege conveyed with the applied-for license requires that the petitioner(s) operate(s) the premises, in good faith, as a Bona Fide Public Eating Place; and,

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare and morals;

NOW, THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

- 1 At all times when the premises is exercising the privileges of their license, the sale of food, in compliance with Section 23038 of the Business and Professions Code, shall be offered and available for purchase.
- 2 All sales and service of alcoholic beverages for consumption in the general spectator seating areas shall be made only from concession stands, portable stands or bars, or fixed bars, and shall not be sold, served, or delivered to customers by individual ambulatory vendors, commonly known as "hawkers".
- 3 Points of sale of alcoholic beverages shall not be maintained within the theater auditoriums.

Initials

- 4 Notwithstanding conditions #2 & #3 above, alcoholic beverages may be sold or served by waiters or waitresses in the general spectator seating areas under the following conditions:
 - a. Only persons occupying seats in the designated theaters shall be permitted to order and be served alcoholic beverages.
 - b. Orders from patrons seated in these theaters must be made to the waiter or waitress serving that area, and the alcoholic beverages must be personally delivered to the patron by the waiter or waitress who took the order.
 - c. The waiter or waitress serving in the theaters shall not carry a supply of unordered alcoholic beverages.
- 5 No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during any transaction.
- 6 Alcoholic beverages shall be served in containers which significantly differ in appearance from those containers utilized for non-alcoholic beverages. Containers for beer shall not exceed 16 ounces. This condition does not preclude the service of alcoholic beverages in their original containers.
- 7 At all times when the premises is exercising the privileges of their license, an employee of the premises shall enter and monitor the activity within the theaters on a regular basis, but no less than once every 30 minutes.
- 8 There shall be no live entertainment of any type, including live music, disc jockey, karaoke, topless dancing, nude dancing, or male or female dancers.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS _____ DAY OF _____, 20_____.

Applicant/Petitioner

Applicant/Petitioner