

Protest over Fairfax theater liquor license triggers court hearing



*The owner of the Fairfax Theatre 6 is hoping to sell beer and wine to moviegoers.
Alan Dep — Marin Independent Journal*

By Richard Halstead

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Due to objections from the town next door, it appears certain a hearing before an administrative law judge will be held to determine whether the downtown Fairfax movie theater will be allowed to sell alcohol.

The San Anselmo Town Council voted 3-2 Tuesday to maintain its protest of a license allowing the sale of alcoholic beverages during movie showings at the theater, known as Fairfax Theatre 6. Four people — including San Anselmo Councilman Tom McInerney and White Hill Middle School Principal David Finnane — also have filed formal protests with the Department of Alcoholic Beverage Control, which oversees liquor licenses.

ABC officials notified the town of San Anselmo on Sept. 15 that they had completed their investigation of the license request and were recommending approval under certain operating conditions. ABC asked the town if it wanted to continue its protest after receiving this news.

All those who protested received the same letter. ABC spokesman John Carr said he didn't know if any of the other filers had decided to withdraw their protests. A single valid protest is required to trigger a hearing, Carr said. The hearing must be held within about 60 days.

The conditions require Fairfax Theatre 6 to offer food whenever selling alcohol; to sell alcohol from concession stands or bars outside theater auditoriums; limit customers to purchasing two alcoholic beverages at a time; require that alcoholic beverages be served in containers that differ significantly in appearance from containers for non-alcoholic drinks; and require that a theater employee monitor the activity within movie auditoriums where alcohol is sold no less than once every 30 minutes.

The ABC conditions allow theater employees to take drink orders and deliver them to customers in their seats, but waiters and waitresses are not allowed to carry a supply of unordered alcoholic beverages.

McInerney, who voted along with council members Doug Kelly and Kay Coleman to maintain the town's protest, said it is unlikely that ABC will deny the license request

"My concern is with the conditions," McInerney said. "I don't believe they are adequate."

He said one additional condition he would like to see is a restriction on selling alcohol to customers who are attending kids' movies.

"The Fairfax theater has always been a place where kids congregate," Coleman said. "We're trying to build a healthy community and combat this huge increase in alcohol and drug abuse."

Marin health officials say that excessive use of alcohol is one of Marin's biggest health challenges. According to the 2013-14 California Healthy Kids survey, 41 percent of Marin's 11th-graders reported consuming alcohol within the past month, and 30 percent reported binge drinking.

A report issued in July by Alcohol Justice, an advocacy group based in San Rafael, stated that Marin County has too many places selling alcohol — 924 licensed sales outlets including 488 restaurants and 83 bars, pubs or clubs — and recommended limiting new alcohol licenses. There are 33 businesses with licenses to sell alcohol in Fairfax alone, which has about 7,500 residents.

Central Marin Police Authority Chief Todd Cusimano voiced several concerns about the liquor license when the same three San Anselmo council members voted to file the protest on June 23. Those concerns included an over-concentration of existing alcohol licenses in the area surrounding the Fairfax Theatre 6, a high number of alcohol-related crimes in this area, and difficulty preventing minors from accessing alcohol in a theater setting due to dim lighting and crowded conditions.

ABC said the theater's owner, Dave Corkill, has promised to ensure that lighting within the auditoriums where liquor is sold will be adequate to make the conduct of all patrons easily discernible.

Corkill has said he needs the alcohol license to remain competitive. He told the Fairfax Town Council that his sales dropped \$100,000 last year, about 8 percent. In addition to selling beer and wine, he plans to install more comfortable, reclining seats and add an expanded food menu.

Councilman Ford Greene, who voted together with Councilman John Wright to withdraw San Anselmo's protest, said, "I think it (the protest) sets a really bad precedent. I don't think it is any of our business to interfere with Fairfax's policy and business decisions about how to run their own community."

The Fairfax Town Council voted unanimously in June not to file its own protest.

Wright said he doubted the protest would be effective in imposing conditions on the theater that would limit minors' access to alcohol significantly.

"I think we've done enough," he said.



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