

PLANNING COMMISSION RESOLUTION NO. 2024-

**RESOLUTION OF THE CITY OF PETALUMA PLANNING COMMISSION
REVOKING A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT
AUTHORIZING AN ALCOHOLIC BEVERAGE ESTABLISHMENT LAND USE AT 146
KENTUCKY ST., CURRENTLY OPERATED BY NOTATO, LLC, DBA “JAMISON’S
ROARING DONKEY” LOCATED AT 146 KENTUCKY ST., APN 006-281-007**

WHEREAS, on May 11, 2004, the City of Petaluma Planning Commission conducted a public hearing and approved a Conditional Use Permit (“CUP”) for 146 Kentucky Street, APN 006-281-007, which then had a business owned by Anexie Inc., dba Infusions; and

WHEREAS, the CUP was conditioned to ensure that the Alcoholic Beverage Establishment business, as described in project information, would not constitute a nuisance or be detrimental to the public welfare of the community; and

WHEREAS, since 2014, Jamison’s Roaring Donkey (JRD) has operated as an Alcoholic Beverage Establishment¹ at the subject location pursuant to vested rights granted through the Conditional Use Permit approved in 2004; and

WHEREAS, on March 14, 2014, an agreement addressed between JRD and the City stated that “With the purchase of [the business] at 146 Kentucky Street, Petaluma, Notato LLC will meet and follow all conditional use permit requirements. All current conditions and use of the business will remain the same”; and

WHEREAS, the CUP required JRD to create a thorough security plan for Petaluma Police Department approval, stating, “The plan shall include, but not be limited to, the periods of time and staffing levels for security personnel, duties, responsibilities and qualifications of security staff; and

WHEREAS, despite multiple attempts by City staff to engage JRD, the establishment has yet to submit and implement an approved security plan aimed at training its staff in de-escalation techniques and security measures to mitigate crime and violence associated with its business operations; and

WHEREAS, pursuant to IZO Section 8.074(A)(13), “A conditional use permit for an alcoholic beverage establishment may be recalled to the Planning Commission for review at any time due to complaints regarding lack of compliance with conditions of approval, traffic congestion, noise generation, or other adverse operating characteristics. At such time, the Commission may revoke the conditional use permit or add/modify conditions of approval”; and

¹ IZO [Section 8.020.A: Alcoholic Beverage Establishment](#). A commercial and non-commercial establishment wherein alcoholic beverages are sold, served, or given away for consumption on the premises, excluding full-service [restaurants](#). Typical [alcoholic beverage establishments](#) include but are not limited to the following recognized types of establishments: [bars](#), cocktail lounges, ballrooms, dance [bars](#), piano [bars](#), billiard or game parlors, bowling [alleys](#) and nightclubs.

WHEREAS, Chapter 10.68 of the Petaluma Municipal Code, titled the “Alcohol-Related Nuisance Ordinance” defines “Alcohol-related nuisance activity” as nuisance activity, “attributable to an alcoholic beverage sales establishment” means nuisance activities that occur on or near an alcoholic beverage sales establishment or that involve a call for service where a law enforcement officer determines that the alcoholic beverage sales establishment provided alcohol to a person involved in the nuisance activity within the preceding three hours, where the nuisance activities are attributable to the operations of an alcoholic beverage sales establishment subject to this chapter and could be abated by reasonable steps by the establishment pursuant to this chapter”; and

WHEREAS, pursuant to Petaluma Municipal Code Section 10.68.020(A), “Providing alcoholic beverages to persons in a manner that leads to over-consumption of alcohol and related nuisances is a threat to public health and safety, quiet enjoyment of both commercial and residential property, and the general welfare of the city and its residents”; and

WHEREAS, pursuant to Petaluma Municipal Code Section 10.68.020(G), “Providing alcoholic beverages to persons who subsequently engage in alcohol-related nuisance activities such as littering, loitering, public drunkenness, public urination, vandalism, graffiti, unruly behavior, and escalated noise levels within the city is a threat to the public peace, health, safety and general welfare, and a public nuisance as it affects at the same time the entire Petaluma community as well as the neighborhoods in which they occur”; and

WHEREAS, Petaluma Police Department officers and the City’s code enforcement team has met with JRD several times to discuss ways to identify intoxicated customers, over-service of alcohol, and similar related alcohol problems; and the City continued to see problems associated with alcohol and JRD and the City ultimately issued two citations for violating Petaluma Municipal Code Section 10.68.040A; and JRD has paid a total of \$8,260.00 for citations and late fees; and

WHEREAS, pursuant to IZO Section 8.074(A)(6), “A security plan shall be prepared including, but not limited to, the periods of time and staffing levels for security personnel, duties, responsibilities and qualifications of security staff for review and approval by the Chief of Police within 14 days of this Conditional Use Permit approval”; and

WHEREAS, a security plan which would enable JRD to better train its staff in de-escalation techniques, establish security measures to reduce crime and violence arising out of business practices, and train and support staff in the proper service of alcoholic beverages; and

WHEREAS, despite repeated outreach efforts by City staff, JRD has failed to submit and implement an approved security plan, which is a violation of IZO Section 8.074(A)(6); and

WHEREAS, a disproportionate percentage of DUI arrests in Petaluma involved drivers whose last drink was at JRD, and there was a disproportionate number of calls for service involving Jamison’s Roaring Donkey’s customers and staff members to our public safety departments compared to other alcohol establishments; and

WHEREAS, individuals impaired by alcohol are more likely to cause traffic collisions,

endangering not only their own lives but also the lives of other motorists, pedestrians, and bystanders and such incidents can lead to property damage; and

WHEREAS, the police report documents and code enforcement reports, provided in Attachment B to the concurrent staff report, show a repeated occurrence of JRD customers who were intoxicated, unruly and engaging in disturbances on Kentucky Street; and show several instances where people engaged in physical altercations with each other and JRD staff, ultimately resulting in injuries; and

WHEREAS, a nuisance is "[a]nything which is injurious to health ... or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property" (Civil Code Section 3479); and

WHEREAS, in 2023, JRD had a problem of overcrowding and operating above its occupancy limits in violation of the Petaluma Building Code, see Attachment G to the concurrent staff report; and

WHEREAS, exceeding occupancy limits can impede swift evacuation in case of emergencies, jeopardizing the safety of patrons and staff and help the transmission of germs and diseases; and

WHEREAS, IZO Section 24.060(G) provides the process to revoke CUPs; and

WHEREAS, in accordance with IZO Section 24.060(G) on November 2, 2023, the City sent a certified letter to JRD stating that they were in violation of the CUP as they had not provided a security plan and that not providing a security plan may result in a 20-day suspension; and

WHEREAS, in accordance with IZO Section 24.060(G) on January 29, 2024, the City sent a letter to JRD stating that they were in violation of the CUP as they had not provided a security plan and that not providing a security plan may result in their revocation; see Attachment E to the concurrent staff report; and

WHEREAS, on April 20, 2024, Petaluma Police Officers arrested JRD's security staff for felony assault and battery charges, see Attachment B to the concurrent staff report; and

WHEREAS, in accordance with IZO Section 24.060(G), on April 26, 2024, the City sent a second letter to JRD stating that JRD was suspended for 20-days for failing to submit a security plan as stated in the January 29, 2024 letter; and

WHEREAS, as CUPs are granted during a public hearing when the reviewing body makes specific findings, CUPs conversely may be revoked upon similar findings that the "permittee fails to comply with reasonable terms or conditions expressed in the permit granted... or if there is a compelling necessity warranting the revocation." (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 158); and

WHEREAS, case law allows a public entity to revoke a CUP if the permittee is operating

as a public nuisance or negatively impacting the community, as a city exercising its police power can prohibit and enjoin nuisances (*Jones v. City of Los Angeles* (1930) 211 Cal. 304); and

WHEREAS, because of the repeated and significant offenses that have transpired at JRD over the past few years, the establishment's operation constitutes a public nuisance as these actions pose risks to public health and disrupt the community's ability to enjoy their surroundings; and

WHEREAS, pursuant to IZO Section 8.074(A)(4), "The Planning Commission and City Council shall have the right to impose conditions upon the conditional use permit as are necessary for the protection of the peace, health, welfare, and safety of those persons living or working in the vicinity or neighborhood"; and

WHEREAS, public notice of the May 14, 2024, Planning Commission hearing was published in the Petaluma Argus-Courier and mailed to residents and occupants within 1000 feet of the Project site; and

WHEREAS, at its May 14, 2024, meeting, the Planning Commission held a duly noticed public hearing to consider revocation of the subject previously approved Conditional Use Permit, at which time all interested parties had the opportunity to be heard, and the Planning Commission considered the Staff Report dated May 14, 2024, and all public testimony provided prior to and at the public hearing;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF PETALUMA AS FOLLOWS:

1. Finds that the foregoing recitals are true and correct and incorporated herein by reference.
2. Based on its review of the entire record herein, the Planning Commission finds as follows:
 - a. The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies), which exempts actions by regulatory agencies to enforce or revoke a permit or other entitlement for use issued. Additionally, this action is exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts permitting of existing structures.
 - b. Due to recurrent and substantial offenses observed at 146 Kentucky Street, Petaluma, over recent years, the business situated at that address has adverse operating characteristics to the community and it is deemed to operate as a public nuisance, thereby violating its Conditional Use Permit, and the Petaluma Municipal Code, as evidenced in the attached staff report and accompanying attachments.
 - c. The business at 146 Kentucky Street, Petaluma, violated the terms of the conditional use permit for that property by failing to have and implement an approved security plan.

- d. That the City complied with the noticing provisions of Implementing Zoning Ordinance Sections 8.074 and 24.060.
3. Based on its review of the entire record herein, the Planning Commission revokes the conditional use permit for the property at 146 Kentucky Street, Petaluma in accordance with IZO Sections 8.074(A)(13) and 24.060(G). However, it is tolling that revocation for 90 days and issuing a 90-day suspension of the CUP. If, within 90 days, staff return to the Planning Commission and recommends the Planning Commission approves an amended CUP for the business the revocation shall expire. If within 90 days, staff does not return to the Planning Commission to recommend and/or the Planning Commission an amended CUP for the property then the revocation shall take effect and the CUP shall cease to be valid on the 90th day without further action of the Planning Commission.

ADOPTED this 14th day of May 2024, by following vote:

Commission Member	Aye	No	Absent	Abstain
Bauer				
Chair Hooper				
McErlane				
Vice Chair Racusen				
Whisman				
Vice Mayor Cader Thompson				
Mozes				

Blake Hooper, Chair

ATTEST:

APPROVED AS TO FORM:

Andrew Trippel, Planning Manager

Dylan Brady, Assistant City Attorney