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DATE: May 14, 2024

TO: Planning Commission

FROM: Jordan Green, Assistant City Attorney  
Brian Miller, Police Chief

SUBJECT: Recommendation to Conduct a Public Hearing and Consider a Recommendation to Revoke 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

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## **RECOMMENDATION**

It is recommended that the Planning Commission conduct a public hearing and consider a recommendation to revoke the previously approved Conditional Use Permit (“CUP”) authorizing an alcoholic beverage establishment land use at 146 Kentucky Street, which is currently operated by Notato, LLC. Dba Jamison’s Roaring Donkey.

## **EXECUTIVE SUMMARY**

Since 2014, Jamison’s Roaring Donkey has operated as an Alcoholic Beverage Establishment<sup>1</sup> at the subject location pursuant to vested rights granted through a Conditional Use Permit approved in 2004. Due to recurrent non-compliance with CUP conditions of approval and ongoing adverse operating characteristics that endanger the Petaluma community, City staff recommend that the Planning Commission revoke the vested right to operate an Alcoholic Beverage Establishment at the subject location, as doing so would prohibit JRD from operating a business.

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<sup>1</sup> 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.

There have been several physical altercations involving JRD patrons, which have resulted in serious bodily injuries. To ensure patron safety, CUP conditions of approval require the submittal of an adequate security plan for Police review and approval. An approved training plan would provide guidance enabling 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. Despite repeated outreach efforts by City staff, JRD has failed to submit and implement an approved security plan.

Additionally, there is a disproportionate percentage of DUI arrests where the driver last drank at JRD, and the City's public safety staff receive numerous calls for service involving Jamison's Roaring Donkey's customers and staff members. Unfortunately, JRD's security team has escalated disagreements and contributed to the violence rather than de-escalating tension. For example, police recently arrested several JRD security guards for seriously injuring one of JRD's patrons. Below are examples of a few recent events exemplifying how JRD's business practices are creating a danger to the Petaluma community:

- April 20, 2024: At approximately 11:30 PM, PPD officers responded to an assault report in which they established that a male patron had been in a verbal altercation with staff inside the bar. The patron reported being grabbed and assaulted by security inside the bar, dragged outside, and then down the street out of the view of video cameras, where they held him down while all five security guards proceeded to punch and kick them. The victim sustained numerous injuries, including a bruise resembling the shape of a boot on their head. The victim was treated at the scene and later sought additional treatment at the hospital.
- December 31, 2023: On December 31, 2023, two men argued inside JRD. JRD's "security plan" advised that their security team would take fighting parties out of different exits, such as one party out the back door and the other out the front door. It further stated they would assist patrons in obtaining rides out of the area, avoiding further fighting in the street. However, in this case, the security team walked the two groups of men who were fighting out the front door. Almost immediately after exiting the bar, two men were knocked unconscious. Fortunately, the police were in the area, ran over, and broke up the fight to prevent further injuries.

The City's executive, code enforcement, police, and legal teams have met with JRD over the last two years to help them improve their business practices and reduce public safety issues arising from their operations. Despite these repeated efforts, JRD continues to create problems in the City's downtown area. As a result of JRD's failure to prepare and implement an approved security plan, the City issued a 20-day suspension of its CUP, effective Friday, April 26, 2024.

## **PROPERTY OWNERS / ALTERNATIVE RECOMMENDATION**

Ownership of the property is also a consideration as any changes to the conditional use permit would also impact any vested rights a future tenant may have to operate a business at the location. A 2021 Deed to the property shows that it is owned by three trusts. See **Attachment 9 - 2021 Quitclaim Deed**. The property owners' attorney recently contacted the City to discuss this matter. He advised that two of the three trusts own the property and will provide updated information. He also advised that they are in the process of evicting JRD due to the on-going issues. In light of the recent developments, we recommend the following:

- Revoke the CUP, but toll (temporary suspend) that revocation for a minimum of 90 days; and
- Issue a minimum 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 90<sup>th</sup> day without further action of the Planning Commission.

## **ALTERNATIVES**

The Planning Commission's decision to revoke a CUP is discretionary and the Commission could determine that other alternatives short of revocation are warranted. These other alternatives include, but are not limited to:

- Suspension of vested right to operate an Alcoholic Beverage Establishment at the subject location for a period of time to be determined by the Planning Commission;
- New or modified conditions to better mitigate nuisance conditions (shorter hours, more security, training, fewer capacity, etc);
- Combination of suspension and conditions; or
- Take no action which would leave the CUP as is.

## **BACKGROUND**

### **A. 2004 Conditional Use Permit (CUP) issued to Infusions**

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, a business owned by Anexie Inc., dba Infusions ("Infusions"). **Attachment 2 - 2004 CUP**. When Infusions applied for this CUP, they envisioned a wine bar/lounge, which would not create an

“increased burden for Police services” or “Fire services.” **Attachment 2 - 2004 CUP**. The CUP would require amendment if there were any substantial changes to the approved land use, such as expansion of the square footage of the land use or changes to the operational characteristics of the land use. **Attachment 2 - 2004 CUP**.

The Planning Commission also made findings for the requested Determination of Public Convenience or Necessity (PCN) needed for the Alcoholic Beverage Control (ABC) to grant a new Type 48 (on-sale general) license within an area already deemed by the ABC to have an undue concentration of similar license types. The Planning Commission’s approval was based upon the proposed operating conditions and floor plans in the public hearing’s staff report and findings by the Police Department and the Fire Marshal’s Office stating that “given the proposed operating characteristics of the wine bar/lounge” and “based on the details in the submitted application” an increased burden of service was not anticipated. Operational characteristics authorized by the CUP approval, fully described in **Attachment 2 - 2004 CUP, p. 20**, include:

- A stated patron capacity of 130 persons;
- A Floor Plan that depicts most of the space as a seated area;
- A bar/lounge run with “quiet grace” that would “not create any extra burden on the Police or Fire Departments”;
- It would not be an extra burden on police and fire services because they would have their own security and would not attract a young crowd;
- They would have a dress code and create a high-end establishment; and
- Live music from classical to jazz to rock.

JRD’s current business model and operations differ greatly from the business that was initially approved.

## **1. CUP Conditions**

### **a. Security Plan**

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. Specifically, it required the business owner to submit a detailed security plan to the Chief of Police for review and approval, stating that “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.” **Attachment 2 - 2004 CUP**. Not having an approved security plan is a violation of Section 8.074(A)(6) of the Petaluma IZO.

### **b. Maintaining a Clear Sidewalk**

The CUP also required the permittee and/or manager to ensure that the sidewalk is kept clear of patrons during business hours so as not to impede pedestrian traffic. **Attachment 2**, pg. 3 of the staff report.

### **B. 2009 Sale of the Business at 146 Kentucky Street to The Rocks**

Infusions operated under the previously approved CUP until approximately the Fall of 2009, when new owners purchased the business and agreed in writing that they would continue to operate pursuant to the previously approved CUP (stating that they would “meet and follow all” CUP requirements and that the “use of the business” would “remain the same” and attaching the 2004 CUP) under the name The Rocks. This signed agreement follows the 2004 CUP in **Attachment 2**.

### **C. 2014 Sale of the Business at 146 Kentucky Street to Jameson’s Roaring Donkey**

In 2014, Jameson’s Roaring Donkey (“JRD”) acquired the Rock’s business interest when owners Brian Tatko and Kelton McMullen signed for Notato, LLC on March 14, 2014, an agreement addressed to Ellen Hill (Planning Department) which stated that “With the purchase of, ‘The Rocks,’ 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.” It should be noted that Notato, LLC is the licensee of record for the ABC license for JRD. This signed agreement follows the CUP in **Attachment 2**.

## **LEGAL PROCESS FOR REVOCATION**

A Conditional Use Permit (CUP) is a common zoning tool that provides relief from the zoning code to conditionally allow “uses” not otherwise permitted by right in a particular zone. Typically, the use is conditionally permitted, as permitting the use by right without conditions may cause nuisances or other negative externalities to the surrounding community. Approval of a CUP is a quasi-judicial action requiring the reviewing body to ascertain facts in a specific case, to exercise discretion in applying the law to those facts, and to draw conclusions and adopt findings to support those conclusions justifying relief from the zoning ordinance. (See, *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506).

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). The revocation of the CUP must be done through a public hearing. (*Community Development Commission v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124). Section 24.060(G) of the Petaluma Implementing Zoning Ordinance (IZO) addresses the process and findings to revoke a non-alcoholic beverage establishment CUP. However, the process for

revoking a CUP for an alcoholic beverage establishment like Jameson Roaring Donkey is provided in IZO Section 8.074(A)(13).

IZO Section 8.074(A)(13) states:

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.

Section 8.074(A)(13) of the IZO was included in the CUP, thereby putting the business on notice that their CUP could be revoked or modified as described above.<sup>2</sup>

Similarly, 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) For instance, in *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, the City of Santa Rosa's Board of Zoning Adjustment and City Council revoked the use permit of a drive-in restaurant which was operating as a public nuisance and therefore creating a compelling necessity to revoke.

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) There are two types of nuisances: public and private. A public nuisance is one that "affects at the same time an entire community or neighborhood, or any considerable number of persons." (Civil Code Section 3480; Penal Code Section 370) Also, pursuant to Government Code Section 38771, a city ordinance "may declare what constitutes a nuisance." To that end, the Petaluma Municipal Code (PMC) states that any violation of the PMC, including the Implementing Zoning Ordinance, constitutes a public nuisance. (See, PMC Sections 1.10.065 and 1.10.025). Accordingly, a business may be operating as a public nuisance if it is injurious to the public health, is indecent or offensive to the community, or is in violation of the City's Municipal Code.

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<sup>2</sup> There may be some confusion regarding the interplay and overlap between Chapter 8 of the IZO, which authorizes conditional use permits for alcohol establishments and Section 24.060 of the IZO which permits CUP's for other land uses. "A conditional use permit regulates land, not individuals." (*Sounheim v. City of San Dimas* (1996) 47 Cal.App.4th 1181, 1187) Similarly, conditions need to be related to the use of the property and not the particular applicant. A condition specially related to an individual is invalid. (See, *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510). While the attached CUPs state that the permit belongs to JRD and that Section 8.020(I) of the IZO defines permittee as the individual that owns the alcoholic beverage establishment, the CUP runs with the land and its 146 Kentucky Street that has the CUP, not any specific applicant. This means that the current conditions on the CUP are applicable to all subsequent tenants at 146 Kentucky Street who operate the site as an alcoholic establishment. And that If the Planning Commission decides to revoke the CUP, it will mean that not only will JRD be unable to operate an alcoholic establishment, but neither will any future occupants at 146 Kentucky Street. Regardless, both JRD and the property owner are aware of the proposed revocation of the CUP and the City has complied with the process to revoke the CUP under both Chapter 8 and 24.060 of the IZO.

JRD has been operating as a public nuisance for the following reasons:

- Disproportionate number of DUIs where the driver's last drink was at JRD compared to other alcohol establishments in the City.
- Disproportionate number of calls for service for public safety resources associated with JRD compared to other alcohol establishments in the City.
- Repeated overcrowding despite code enforcement action.
- Fights and arrests arising out of JRD's business operations.

As JRD has been operating as a public nuisance, there is a compelling necessity to revoke the CUP. Here, the City is exercising its authority under Subsection 8.074(A)(13) due to the adverse operating characteristics of JRD discussed below, due to the nuisance conditions stated above, and due to JRD's failure to submit an approved security plan is thus seeking revocation from the Planning Commission. The Planning Commission's decision to revoke a CUP is discretionary and could determine that other alternatives short of revocation are warranted. These other alternatives include:

- Suspension
- New or modified conditions (shorter hours, more security, training, fewer capacity, etc)
- Combination of suspension and conditions
- Leave the CUP as is.

## **DISCUSSION**

Pursuant to IZO Chapter 8 – Alcoholic Beverage Establishments, commercial and non-commercial establishments where alcoholic beverages are sold, served, or given away for consumption on the premises, excluding full-service restaurants, are conditional uses allowed only in commercial and mixed-use zones, C1, C2, MU1A, MU1B, and MU2, and in certain P.U.D.s where appropriately designated as identified by the Zoning Ordinance and General Plan. A CUP is required, and an approved CUP can be suspended or revoked (§ 8.050-8.060).

### **Applicable Standards of Review**

The project is subject to the following standards of review:

- Implementing Zoning Ordinance, Section 8.060(A)10 failure to comply with conditions imposed through the conditional use permit
- Implementing Zoning Ordinance, Section 8.074, failure to comply with applicable general requirements for an Alcoholic Beverage Establishment

- Implementing Zoning Ordinance Section 24.060(G), process for revocation of a vested Conditional Use Permit

The proceeding discussion addresses the requirements of these regulations, including the process staff undertook to bring this request for revocation forward to the Planning Commission.

### **1. Maximum Occupancy and Overcrowding / Code Enforcement**

In 2019, the City's downtown bar and nightclub scene presented a public safety challenge due to various factors, such as over-service of alcohol, bars and nightclubs exceeding maximum occupancy, and private security staff operating without proof of required licenses. By November 2019, the City had also experienced fights breaking out amongst large groups of people in the street, jeopardizing the safety of our community and first responders. To help maintain order in the City's downtown area, the City initiated a program to conduct inspections during busy times. As a result of the first inspection, JRD had four violations consisting of blocked exits, compromised exits, and fuel tanks in the facility. On December 4, 2019, Code Enforcement sent JRD a letter notifying them of the violations found, that they were corrected on-site during the inspection, and that any further violations would result in citations. Additionally, since JRD's opening in 2014, the City's fire prevention inspectors have repeatedly found blocked/compromised exits, un-serviced protection equipment/systems, and storage issues.

The COVID pandemic, which began in the spring of 2020, resulted in the closure of bars and nightclubs. However, as the bars reopened, the problems continued.

At the end of the 2022 calendar year, the Petaluma Police Department responded to or generated approximately 96 calls for service related to JRD's business operations. Of those 96 calls for service, 29 were a result of fights or disturbances, 12 were for security checks, extra patrols, or foot patrols, and the remaining 19 were for a variety of other types of calls for service. Due to increased activity at JRD, compared to other alcohol service establishments in Petaluma, Petaluma police officers conducted directed foot patrols to the area around JRD. Just between September 14, 2022, and December 31, 2022, of the 96 calls for service, there were at least 20 alcohol-related incidents attributed to JRD. As a result, on January 11, 2023, Code Enforcement Officer ("CEO") Hearn opened an investigation. Please see **Attachment 3** for a summary of code enforcement actions from 2015 through 2023. As a result of the overcrowding and failure to obey the Fire Marshall's official orders, JRD has been cited for violating CCR Title 19, Division 1, 3.27; Petaluma Municipal Code section 17.20.050 and California Fire Code 104.5.

As a result of the numerous public safety concerns and alcohol-related problems arising out of JRD's business operations, Code enforcement conducted an inspection of JRD on January 12, 2023, and attempted to verify the approved occupancy load. As previously stated, the approved CUP referenced an ABC Application Form, which indicated an occupancy limit of 130 persons. However, JRD's sign showed a maximum occupancy of 275 people. City staff does not know why JRD posted a maximum occupancy sign of 275 people when there is no evidence supporting that number. Thereafter, Inspector Scheumann took measurements of the space, and the Building



Division estimated the occupancy load to be approximately 139 persons. After several discussions between JRD and City staff over the majority of 2023, JRD ultimately chose not to appeal the 139 maximum occupancy and has been overall abiding by that occupancy for the last 6-12 months.

Overall, overcrowding at a bar presents significant risks to public safety, health, and well-being. For example, it increases the risk of fire hazards, as it can impede the safe evacuation of patrons in case of an emergency. In the event of a fire, overcrowding can lead to panic and stampedes, causing injuries or fatalities. It may also facilitate the spread of contagious diseases, especially in situations where people are in close proximity and may not adhere to proper hygiene practices. Crowded environments can escalate tensions and increase the likelihood of conflicts, fights, and violence among patrons. Alcohol consumption further exacerbates these risks, as impaired judgment and inhibition can lead to aggressive behavior. Thus, addressing the occupancy limit at JRD was essential.

As a corrective measure, the City anticipated that a reduction in maximum occupancy would reduce the alcohol-related problems and crimes associated with JRD. Unfortunately, the problems persisted.

## **2. History of alcohol-related problems with Jamison's Roaring Donkey (2018-Present)**

The City (Police, Fire, and Code Enforcement) has responded to several issues and complaints regarding disturbance of the peace, public drunkenness, physical fights, subjects armed with weapons, unruly behavior, and driving under the influence of alcohol impacting the community arising out of JRD's business operations more than the other alcohol-serving establishments in Petaluma. Please see the chart below for statistics.

### **Summary of Impacts to Other Comparable Alcohol Establishments**

Petaluma Police Department staff reviewed calls for service (CFS) and crime reports to analyze alcohol related nuisance activity related to the below listed alcohol establishments between January 1, 2018, to April 23, 2024. The following are the results of that analysis:

<b>Alcohol Establishment</b>	<b>Calls For Service</b>	<b>Crime Reports</b>
The Block	123	12
The Buckhorn	52	7
Gales	130	30
The Hideaway	272	64
Mario & John's	32	6
McNear's	199	31
<b>Jamesons Roaring Donkey</b>	<b>328</b>	<b>57<sup>3</sup></b>

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<sup>3</sup> In October 2023, the City's code enforcement team also met with Hideaway staff and issued a Notice of Violation for alcohol-related problems. Hideaway management improved their business practices and code enforcement closed their case on January 10, 2024.

Petaluma Police Department staff has also compiled data following the arrest of impaired drivers in an attempt to identify the last location in which they were consuming alcohol, which is referred to as the “Place of Last Drink.” The results from this analysis for calendar years 2022, 2023, and early 2024 are provided below:

<b>Place of Last Drink</b>	<b>2022</b>	<b>2023</b>	<b>1/1/24-4/15/24</b>
The Block	2	0	0
The Buckhorn	1	1	2
Gales	0	0	0
The Hideaway	8	2	2
Mario & John’s	1	2	1
McNear’s	5	0	0
<b>Jameson’s Roaring Donkey</b>	<b>35</b>	<b>11</b>	<b>7</b>

(Source: PPD DUI Reports – DUI Form – Question: Where was your last drink?)

Accordingly, in the previous two years and the first 1/3 of this year, JRD has accounted for more than double the last drink DUIs of all the other listed downtown bars combined. Allowing drunk people to drive around the community poses a significant danger as it increases the risk of alcohol-related accidents, injuries, and fatalities. These 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. Not to mention the significant property damage caused by drivers who are under the influence of alcohol. The City’s code enforcement team has issued citations to JRD for violations of Petaluma Municipal Code chapter 10.68.040, which is Petaluma’s Alcohol-related nuisance ordinance. JRD has paid a total of \$8,260 in fines and late fees for violating the City’s Municipal Code.

### **3. Summary of Significant Public Safety Incidents involving Jamison’s Roaring Donkey’s Patrons and/or Staff**

Attached as the second document in **Attachment 3**, please find the Petaluma Police Department’s summary of significant public safety incidents involving JRD from 2021 through April 2024. **Attachment 3** lists specific case numbers and information, while the below summarizes the alcohol-related problems and public safety issues arising out of JRD’s business practices.

Police responded to several fights involving JRD customers and/or staff, including groups as big as 8-10 people in 2021. One victim was punched in the back of the head and needed medical care. Many of them were combative with PPD officers, and several people were arrested for fighting in public, public intoxication, and/or for previously issued warrants.

In 2022, at least four people reported that they believed they were drugged after drinking at JRD. At least one subject overdosed there and was given Narcan and then transported to Petaluma Valley Hospital. Several people reported that the JRD security staff injured them. JRD customers also injured JRD staff in various ways, such as by punching them and spitting in their faces. While

responding to calls for service or on extra patrols, it was not uncommon for police to contact patrons who were extremely intoxicated. In December 2022, during an 8-10-person fight, one suspect punched, kicked, and stomped on two victims, causing serious facial injuries and requiring hospital care.

In 2023, police responded to several fights involving intoxicated JRD customers. One subject bit a security officer, another subject bit off the tip of a finger of another person, one subject pulled a knife on a security officer, and another subject punched a police officer in the face. JRD called to report a subject had threatened to get a gun and return to the bar. When officers responded, the subject appeared to have a broken nose and reported that JRD security punched and stomped on him for being on the sidewalk fronting the bar. At least one reported she was drugged after drinking at JRD.

In 2024, several people complained that they were injured by JRD security team members. However, PPD officers did not arrest any JRD staff members until the most recent incident on April 20<sup>th</sup>, wherein an individual reported that JRD security members seriously injured him. Five security guards were arrested for felony battery.

#### **4. Failure to Submit an Approved Detailed Security Plan**

As part of Code Enforcement's investigation, they discovered that the 2004 CUP required JRD to submit to the Chief of Police a detailed security plan; however, JRD never submitted the required security plan. A detailed security plan should be used by JRD to train its staff to protect the people, the business, and the property. It would help maintain a safe and secure environment both inside and outside of the bar. Despite repeated attempts described below, JRD does not have an approved security plan.

After verbal warnings, on March 20, 2023, the City issued JRD an administrative citation for failing to comply with its CUP by failing to submit a detailed security plan. On March 25, 2023, the City issued JRD a second citation for failing to submit a detailed security plan. Staff received various excuses from JRD for not submitting a detailed security plan. However, there were several other issues that the parties were working on at the time, including determining the appropriate occupancy, and JRD said they would work on the security plan.

On June 8, 2023, City staff, including the Chief of Police and City Attorney, met with JRD to discuss the ongoing issues, including its failure to submit a detailed security plan. JRD advised that they were working to improve their business practices and would submit a security plan.

Three months later, on October 10, City staff sent a letter to JRD, advising it to submit a security plan to the Chief of Police by October 20, 2023, but it did not do so.

On November 1, 2023, the City sent official notice pursuant to IZO section 24.060(G) that the City will suspend JRD's CUP for 20 days, beginning November 22, 2023, if the Chief of Police does not receive and approve a detailed security plan.

On November 9, 2023, JRD submitted a draft security plan. While it was a start in the right direction, it was deficient. On November 16, 2023, then-interim Police Chief Brian Miller sent a response to JRD advising them that their security plan was not approved, the basis for that denial, and an opportunity to cure it. On November 18, 2023, JRD's legal counsel, Patrick Ciocca, emailed an "updated" security plan. As a result of further discussions and to give the City time to review the most recent security plan, JRD's legal counsel sent an 11/21/23 Security Crowd Control Plan for the Thanksgiving holiday on November 21, 2023. The City approved that limited plan for Thanksgiving to enable the business to stay open in a safe manner and allow the parties to continue to work on the security plan and business operations.

Unfortunately, the November 18<sup>th</sup> updated security plan included information from the internet not customized to JRD and complaints about the City's operations. It did not serve as a tool for JRD's staff to manage its business and appropriately address public safety issues.

On December 19, 2023, JRD submitted "Security Plan Additions and Adjustments" to supplement the information they previously provided to the City. This additional information provided helpful tips for their security team to follow in various situations. However, they still failed to submit one holistic security plan, which would enable them to train their team on safety protocols.

On New Year's Eve, 2023, two men were knocked unconscious during an altercation at JRD. During that incident, JRD's team failed to follow the procedures described in their December 19, 2023, "Security Plan Additions and Adjustments."

On January 29, 2024, the City sent JRD a letter denying their updated security plan, explaining the basis of that denial, advising of their failure to follow their own plan on NYE, and advising that the City was scheduling a hearing before its Planning Commission to seek revocation of their CUP in April 2024. The City also reminded JRD that it had plenty of time before the revocation hearing to submit a detailed security plan. See **Attachment 6-Correspondence between the City and JRD**.

The City received no response so it reached out to JRD's legal counsel and advised that we would work with JRD to help them improve their business practices, but we still need a draft security plan. JRD's legal counsel understood the City's position. See **Attachment 6-Correspondence between the City and JRD**.

On April 20<sup>th</sup>, 2024, PPD officers arrested JRD's security staff for felony assault and battery charges, and the City issued a 20-day suspension for failure to submit an approved security plan, effective Friday, April 26, 2024.

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. These actions pose risks to public health and disrupt the community's ability to enjoy their surroundings. Moreover, 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.”

The actions described above would be categorized as "alcohol-related nuisance activity" directly associated with JRD. As such, these violations of the Petaluma Municipal Code constitute public nuisances under PMC Sections 10.68.020, 10.68.040, 1.10.065, and 1.10.025, as creating alcohol-related nuisances is expressly prohibited by the municipal code and defined as public nuisances.

### **OUTREACH EFFORTS**

Beginning in February 2022, Petaluma Police Sergeant Pat Gerke and Code Enforcement Officer Douglas Hearn met with the JRD owners Greg Johnson and Brian Tatko, along with Justin Jones, the Bar Manager, to discuss recent ARNO violations and gave a verbal admonishment to clean up their business practices. Code enforcement and PPD officers continued to meet with JRD to discuss recent issues and how to identify intoxicated unruly customers. They also discussed capacity loads and possibly a reduction in alcohol service hours. Since then, the City’s executive, legal, and code enforcement teams have met with JRD and/or their legal counsel to discuss improvements to JRD’s business practices. Despite meeting in person to discuss improvements, offering additional meetings, providing advice, and checking in, JRD has failed to submit an approved security plan, and its business operations continue to endanger the Petaluma community.

### **CASE STUDIES**

No case studies are associated with this staff report.

### **ENVIRONMENTAL REVIEW**

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.

## **FURTHER RECOMMENDATION**

Please refer to **PROPERTY OWNERS / ALTERNATIVE RECOMMENDATION** and **ALTERNATIVES** sections for staff recommendations.

## **ATTACHMENTS**

- Attachment 1 Draft PC Resolution for CUP Revocation**
- Attachment 2 2004 Conditional Use Permit and other legal instruments** (2004 CUP; 2009 Agreement from the sale of Infusions to The Rocks; 2014 Agreement from the sale of The Rocks to JRD)
- Attachment 3 City Code Enforcement and Police Department Documentation** (Code Enforcement Timeline and Events; Petaluma Police Department Summary of Significant Events)
- Attachment 4 10/10/23 City letter to JRD** (this letter summarizes the June 8<sup>th</sup> mtg, JRD's continued lack of compliance, and the requirement to submit a security plan)
- Attachment 5 11/2/23 City's Notice of Noncompliance with JRD's CUP**
- Attachment 6 Further Correspondence between the City and JRD regarding CUP non-compliance**
  - 11/9/23 JRD security plan to City
  - 11/16/23 PPD's denial of the security plan
  - 11/18/23 JRD's updated security plan
  - 11/21/23 JRD's security crowd control plan re Thanksgiving
  - 11/21/23 City's response to JRD re: Thanksgiving
  - 12/19/23 JRD's Security Plan Additions and Adjustments
  - 1/29/24 City's denial of JRD's security plan and advisement of PC Hearing
  - 2/27/24 City follow-up email to JRD's counsel re: nonresponse to 1/29/24 letter
- Attachment 7 4/25/24 City's Notice of 20-day Suspension**
- Attachment 8 Documents regarding JRD's Occupancy**
  - 4/6/23 Alesia Architecture Code Plan & Analysis
  - Code enforcement officer's drawing re max occupancy
  - 4/30/23 JRD to City re: max occupancy and other matters
  - 5/19/23 City to JRD re: max occupancy
  - Administrative citations for overcrowding
- Attachment 9 2021 Quitclaim Deed for 146-152 Kentucky Street, Petaluma, CA**