



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Alicia Giudice,
Community Development Director
Leslie Mendez, Planning Manager

City Manager Approval:  _____

TOPIC: USE PERMIT REVOCATION FOR NIGHTCLUB AT 842 FOURTH STREET

SUBJECT: RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL (AP23-001) AND AFFIRMING THE PLANNING COMMISSION'S MARCH 28, 2023 ACTION TO REVOKE THE USE PERMIT (UP05-01) ALLOWING THE RE-ESTABLISHMENT OF LIVE ENTERTAINMENT AND A COCKTAIL LOUNGE AS PART OF A NEW RESTAURANT/SUPPER CLUB LOCATED AT 842 FOURTH STREET

EXECUTIVE SUMMARY:

George's Nightclub is located at 842 Fourth Street. The business operates under Use Permit UP05-01, which allows live entertainment and a cocktail lounge as part of a restaurant/supper club. The Use Permit includes conditions of approvals (COAs) designed to address and monitor business operations, site management and security, business license maintenance, hours of operation, and operation as a bona fide eating place (i.e. full-service restaurant). Since re-opening after the pandemic quarantine in April 2021, George's Nightclub has been operating in direct violation of several fundamental conditions of the Use Permit approval resulting in numerous and ongoing incidents of over-intoxication and violence related to club operations. These incidents constitute a public nuisance which is both detrimental to San Rafael Police Department (PD) resources and detrimental to the public health, safety, and welfare of the surrounding community.

Due to the frequent and ongoing disturbances related to the nightclub's operations, staff brought the Use Permit up to the Planning Commission for revocation hearing at the [March 28, 2023 Planning Commission meeting](#). The owner of the business Evolution Nightclub & Restaurant, LCC attended the hearing and responded to staff's presentation. Based on evidence presented by staff and the business owner at the hearing, and documentation presented in the staff report and attachments, the Planning Commission found that the business was operating in non-compliance with Use Permit conditions and represented a public nuisance, and unanimously voted to revoke Use Permit 05-01.

On April 5, 2023, the City received a timely appeal by the business owner of the Planning Commission's March 28, 2023 action (Attachment 2). The appeal asserts numerous arguments alleging that the Planning Commission's revocation was defective, including claims that the Planning Commission was misinformed and that the City has discriminated against the appellant. Pursuant to

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

San Rafael Municipal Code Section 14.28.040.B, staff scheduled the appeal for the next available City Council meeting.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution denying the appeal (AP23-001) and affirming the Planning Commission's March 28, 2023 action to revoke Use Permit 05-01.

BACKGROUND:

On January 10, 2006, the Planning Commission adopted Resolution No. 06-02 approving Use Permit (UP05-01) to allow live entertainment and a cocktail lounge (i.e. nightclub) as part of a restaurant/supper club at 842 Fourth Street. The Use Permit conditions stipulate, among other provisions, that food service and on-site security be provided during all hours of operation of the nightclub use. The Nightclub is owned by Evolution Nightclub & Restaurant, LCC and does business under the name of George's Nightclub.

Throughout the years, PD has received numerous calls to respond to incidents at George's Nightclub. Since the business re-opened in the spring of 2021, PD has received service calls related to incidents at or related to the nightclub with increased frequency. Following the shooting and double homicide that occurred in July 2021 involving people associated with a performance at the club, a Code Enforcement Officer was assigned to conduct inspections to ensure compliance with the terms and conditions as established as a part of the Use Permit. Numerous violations were noted, detailed, and conveyed to Eslly Figueroa, the business operator, in a letter dated September 8, 2021, with a request to correct and comply.

Follow-up inspections since the September 2021 communication indicated that the business had made no movement to correct the identified Use Permit violations and the PD continues to receive and respond to frequent disturbance calls directly related to the club's operations. Given that George's Nightclub continues to operate in non-compliance with fundamental conditions required of the Use Permit and continues to cause frequent and ongoing disturbances requiring PD intervention, staff brought Use Permit 05-01 up for a revocation hearing pursuant to the authority of San Rafael Municipal Code (SRMC) [Section 14.30.070 - Revocation of discretionary permits](#) before the Planning Commission at the March 28, 2023 meeting.

After considering the evidence presented before them, including testimony from Eslly Figueroa, owner of Evolution Nightclub & Restaurant LLC, the Planning Commission voted to revoke Use Permit 05-01 upon finding that the business was operating in non-compliance with Use Permit conditions and that it represented a public nuisance. On April 5, 2023, Ms. Figueroa, Owner of Evolution Nightclub & Restaurant LLC ("Appellant") appealed the Planning Commission decision. Staff's analysis presented below demonstrates that the appeal of the Planning Commission's decision to revoke the use permit has no merit.

ANALYSIS:

Summary of Appeal (AP23-001) and Staff Responses

The following is a list of appeal points submitted by appellant Eslly Figueroa, followed by staff response. The complete appeal letter is included as Attachment 3.

Appeal Point 1 – Inadequate Spanish Interpretation

The appellant alleges that the Spanish interpretation services provided during the hearing were "inadequate, "improper and incomplete."

Staff Response:

The interpretation was sufficient to have afforded the Appellant an adequate opportunity to participate in the Planning Commission hearing.

The Appellant is a native Spanish speaker who understands and speaks English but is more comfortable conversing in Spanish. As a courtesy to Ms. Figueroa, staff provided Spanish/English language interpretation services for the March 28th Planning Commission hearing to ensure that language would not serve as a barrier to the Appellant's participation in the public process. Staff publicly announced at the beginning of the hearing that interpretation was available on the Spanish Interpretation Zoom channel.

During planning staff's presentation to the Planning Commission and throughout the duration of the hearing, the interpreter provided simultaneous translation from English to Spanish on the Spanish Zoom channel. When the Appellant first addressed the Commission in response to the staff report, she spoke in English, she did not ask for an interpreter or imply in any way that she did not understand staff's presentation. She also did not claim that the interpretation that had been provided to her up to that point had been inadequate.

When the Appellant spoke again during public comment period, she requested interpretation services and spoke in Spanish and the interpreter subsequently translated her comments into English. Staff reviewed the video recording of the Planning Commission meeting to analyze the quality of the Spanish to English interpretation. A comparison of a transcript of the Appellant's public comments (translated after the fact into English) with a transcript of the English interpretation provided in real-time during the hearing demonstrates that while the interpretation was not word-for-word, it adequately conveyed all of the points the Appellant made while speaking in Spanish (see Attachment 5). This comparison contradicts the Appellant's claim that she was provided inadequate interpretation.

Appeal Point 2 – Missing Commissioners, Inadequate Review, & Discrepancies

The Appellant notes that some commissioners were absent at the hearing, asserts that those present likely did not appropriately review the documents, and claims that "there are multiple discrepancies between the documents and what was stated during the public meeting by city staff."

Staff Response:

Four Planning Commissioners attended the March 28th Planning Commission hearing. There were two absences and one existing vacancy. Beyond making a cursory claim, the Appellant has not explained how the number of Commissioners present affected the outcome or why a decision by four commissioners would be improper. The *Planning Commission Rules and Procedures of the City of San Rafael* adopted January 24, 2023, state that a quorum consists of four members and that an affirmative vote of a majority of the quorum present (i.e. three Commissioners) is necessary to act on a Use Permit revocation decision. In this case, the four present Commissioners constituted a quorum, and the unanimous vote by all four present Commissioners to revoke the permit exceeded the vote count required for revocation.

Although the Appellant asserts that the Commissioners did not review the hearing packet and that multiple discrepancies existed between the packet documents and what was relayed orally during the hearing, she provides no examples or evidence to support this claim. To the contrary, the questions asked and comments made by the Commissioners during the hearing make it evident

that the Commissioners had read the agenda packet prior to the meeting. This appeal point has no merit.

Appeal Point 3 – July 2021 Shooting Weaponized to Slander the Venue

The Appellant asserts that the George’s Nightclub has been wrongly associated with a shooting and double homicide that occurred in July 2021 and that the shooting incident was repeatedly referred to during the Planning Commission hearing. She alleges the City has weaponized the event to slander the venue.

Staff Response:

The incident referred to by the Appellant represents only one of 24 incidents of violence and disorderly conduct at or around George’s Nightclub involving nightclub patrons during the 19-month period between June 2021 and January 2023. The Planning Commission’s decision to revoke the nightclub permit and find it a public nuisance was based on the entirety of the evidence presented and not on a single incident. The allegation in this appeal is unfounded.

Appeal Point 4 – Wrongful Accusation of Reselling Food

The Appellant states the venue was wrongfully accused of reselling food to a City staff member who conducted an under-cover site visit, and that that staff member should be discredited because she purchased and consumed food and alcohol during the visit.

Staff Response:

As relayed in the Planning Commission staff report, both the nightclub’s Use Permit and ABC License require that the business operate a full-service restaurant and serve food during their regular business hours. The nightclub is approved as a bona fide eating place, which is defined in condition of approval #20:

“Bona fide public eating place” means a place which is regularly used and kept open for the serving of meals to guests for compensation and which has: a) suitable kitchen facilities for the cooking of an assortment of foods which may be required for meals; b) a primary use of a sit down service to patrons; c) adequate seating arrangement for sit down patrons provided on the premises; d) Take-out service that is only incidental to the primary sit-down use; and e) alcoholic beverages all sold or dispensed for consideration for consumption on the premises only, and only when, served at tables or sit down counters by employees of the restaurant. A bona fide eating place does not include a place where food service is incidental to the service of alcoholic beverages, constituting less than 51% of sales.

Code Enforcement Officers conducted an undercover site visit to George’s Nightclub on June 4, 2022. The purpose of the visit was official city business to ascertain whether the venue was operating as a full service/bona fide public eating place compliant with the Use Permit condition. Senior Code Enforcement Officer Ana Santiago reported her experience at the club in a memorandum included as Attachment 11 to the Planning Commission resolution and upon questioning by the Commissioners during the revocation hearing. As reported, she was able to order food with a drink, but there was no menu, food service was not offered before 9:45 p.m., chicken wings were the only food item available and cash payment was required (whereas drinks could be paid for either in cash or with card). Ms. Santiago’s surreptitious visit to observe the kitchen area confirmed inactivity. Ms. Santiago’s visit verified that the business was not operating primarily as a full-service restaurant with incidental alcohol sales.

Neither Ms. Santiago nor planning staff stated or claimed that food was resold, and this was not a basis for the Planning Commission's revocation. The Appellant has not provided any information which could discredit the Code Enforcement report. Regardless, the Code Enforcement report was just one piece of evidence in an extensive record which the Planning Commission considered in finding non-compliance with Use Permit conditions. This appeal point has no merit.

Appeal Point 5 – Wrongful Accusation of Inoperable Kitchen/No Menu/No Permit

The Appellant states the venue is wrongfully accused of not having an operating kitchen, menu, or food preparation license.

Staff Response:

As stated above, George's Nightclub is required to operate as a full-service restaurant/supper club which is regularly used and kept open for the serving of meals to guests for compensation. Evolution Nightclub (dba George's Nightclub) possesses a Limited Food Preparation license from the County of Marin. This license type, however, is restricted; it does not allow the preparation of any food that must be refrigerated or washed and is not valid for the preparation of full-service meals as required for a bona fide eating place as verified by the Senior Environmental Health Specialist at Marin County Environmental Health Service Division (See Attachment 10 to Planning Commission Resolution). Additionally, as documented in Attachment 9 of the Planning Commission resolution, on its [Facebook page](#), [Yelp listing](#), and [Do the Bay listing](#), George's advertises as a night club, and all references to the restaurant, including menus, have been removed from the website and online ordering services. Site visits by both Code Enforcement (see Appeal Point 4 above) and PD have documented that the venue's kitchen cooking facilities are not being used during business hours (see page 5 of [Planning Commission staff report](#)).

Staff has documented that the venue does not regularly operate the kitchen, advertise as a full-service restaurant, provide a regular menu, prepare full-service meals, or even have a valid license to prepare full-service meals as required by the approved Use Permit. The Appeal Point has no merit.

Appeal Point 6 – Holding a Valid Business License

The Appellant states she operates with a valid business license and claims that at some point, she was prevented from bringing it up to date.

Staff Response:

As relayed in the Planning Commission staff report (p.3), the business license for George's Nightclub expired on January 1, 2022, and has not been renewed since. City of San Rafael Finance Department staff (Finance) have verified that the Appellant is able to renew her license at any time. When Finance sends out business license renewal requests each December, any unpaid accounts from the preceding 11 months are marked delinquent in the system. Once an account is deemed delinquent, online renewal is no longer an option; the business owner is required to contact Finance directly to renew the license, submit receipts and to pay delinquent fees. Pursuant to these procedures, Finance marked the Appellant's account as delinquent for failure to renew the business license within 11 months of its expiration; the Appellant, therefore, must contact Finance to renew the business license. This Appeal point has no merit.

Appeal Point 7 – No Communication to Modify the Use Permit

The Appellant states that the purpose of the Planning Commission hearing was to consider revocation or modification of the use permit, but that the City went straight for "the nuclear option" of revocation without considering modification of the Use Permit.

Staff Response:

Staff clearly relayed, both in the staff report and presentation, that the Planning Commission had the option to:

1. Adopt the Resolution revoking the Use Permit
2. Continue the hearing (to a date certain or an undefined date) to allow staff to address any of the Commission's comments or concerns; or
3. Recommend the Use Permit remain in effect as is or with additional conditions.

To begin the hearing, both planning staff and the Appellant were given an opportunity to present to the Planning Commission. Staff presented facts about George's Nightclub and recommended revocation of the Use Permit. When it was Appellant's turn to present, she gave only a very brief statement and made no request for the Planning Commission to modify, rather than revoke, her Use Permit. With the information it had been presented, the Planning Commission then voted to revoke the Use Permit.

The Planning Commission acted within its powers in deciding to revoke, rather than modify, the Use Permit. The Planning Commission relied on the detailed staff report and related attachments, and the presentations by staff and Appellant, in finding that revocation was the appropriate action. George's Nightclub has been operating in direct violation of several fundamental conditions of the Use Permit and numerous incidents of over-intoxication and violence related to club operations have been documented since the venue reopened in April of 2021. In a letter dated September 8, 2021, Use Permit violations were noted, detailed, and conveyed to Ms. Figueroa, the business owner, with a request to correct and comply. Follow-up inspections since the September 2021 communication indicate that the business made no movement to correct the identified Use Permit violations and the PD continues to receive and respond to frequent disturbance calls directly related to the club's operations. Given that George's Nightclub continued to operate in non-compliance with fundamental conditions required of the Use Permit and continued to cause frequent and ongoing disturbances requiring PD intervention, staff brought Use Permit 05-01 up for a revocation hearing. The severity of the incidents, ongoing impacts to patrons, passers-by, and the surrounding neighborhood, and the club's total failure to show correction and improvement led the Planning Commission to concur with the staff recommendation to revoke the Use Permit.

Appeal Point 8 – Biased Decision due to City Staff and Police Department Bias

The Appellant alleges that the Planning Commission decision was biased against Evolution Nightclub due to City staff and Police Department with insinuation that the cause is due to one of race, economic, and legal status. The Appellant further alleges harassment by the Police.

Staff Response:

The Appellant has provided no evidence of bias or harassment by City staff including PD. Police Chief Spiller testified during the Planning Commission hearing that the number of PD responses to incidents at George's Nightclub have been three times greater than those for any other San Rafael venue over an equal time period. Chief Spiller also explained that the police do not selectively monitor certain venues more than others; rather, they respond to incidents as members of the public report them. The high number of police contacts with George's is thus indicative not of bias, but of repeated threats to public safety so concerning that they are reported to the police by third parties.

Likewise, there is no evidence of bias by the Planning Commissioners. In fact, the Commissioners stated during the public hearing that they were reluctant to revoke the permit because George's

Nightclub provides vitality and contributes positively to the diversity of the City, and that they would be saddened at the loss of the positive aspects the venue provides. Ultimately, the Commissioners objectively weighed the positive community benefits with the extensive record of detriments to the health, safety, and welfare of the community as a whole and determined revocation was appropriate.

Appeal Point 9 – Business is not Detrimental to the Community

The Appellant alleges that the nightclub is not detrimental to the public health, safety, or welfare and that she has operated under the impression that she was operating in compliance with Use Permit conditions.

Staff Response:

Staff specifically informed the Planning Commission during the March 28th hearing that a Use Permit may be revoked based on (1) non-compliance with Use Permit conditions or (2) because the Use Permit holder has operated its business in a way that constitutes a public nuisance, meaning an activity that is detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city. As documented, City staff have informed the Appellant of non-compliance with Use Permit conditions on several occasions with no action on her end to address or remediate. Even assuming the Appellant believed she was operating her business in compliance with the Use Permit conditions, the number and severity of incidents requiring PD intervention demonstrate that George’s Nightclub operates as a public nuisance impacting the health, safety and welfare of the community.

COMMUNITY OUTREACH:

Notice of all public hearings on the project, including this City Council appeal hearing, has been conducted in accordance with the public review period and noticing requirements contained in Chapter 29 of the Zoning Ordinance. All notices of public meeting or hearing on the project were mailed to all property owners and occupants within a 300-foot radius of the site and the representing neighborhood groups at least 15 days prior to each meeting or hearing. In addition, notice was sent via certified mail to the business owner and operator, and property owner. Notice of the appeal hearing was published in the Marin Independent Journal on April 21, 2023.

FISCAL IMPACT:

None.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the Resolution denying the appeal and affirming Planning Commission March 28, 2023 decision to revoke the Use Permit
2. Do not adopt the Resolution and uphold the appeal
3. Modify the Planning Commission’s determination

RECOMMENDED ACTION:

Adopt the Resolution denying the appeal and affirming Planning Commission March 28, 2023 decision to revoke the Use Permit

ATTACHMENTS:

1. City Council Resolution
2. Appeal of Planning Commission decision from Esly Figueroa, owner of Evolution Nightclub &

Restaurant LLC, dated Received April 5, 2023

3. [Planning Commission staff report PLAN23-018 Use Permit Revocation, dated March 28, 2023](#)
4. [Planning Commission Resolution 23-001](#)
5. Excerpt of Spanish to English Interpretation from March 28, 2023, Planning Commission meeting
6. Public Comments

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL (AP23-001)
AND AFFIRMING THE PLANNING COMMISSION'S MARCH 28, 2023 ACTION TO REVOKE
THE USE PERMIT (UP05-01) ALLOWING THE RE-ESTABLISHMENT OF LIVE
ENTERTAINMENT AND A COCKTAIL LOUNGE AS PART OF A NEW
RESTAURANT/SUPPER CLUB LOCATED AT 842 4TH STREET
(APN 011-224-14)**

WHEREAS, on January 10, 2006, the San Rafael Planning Commission held a duly-noticed public hearing and adopted Planning Commission Resolution No. 06-02 approving a Use Permit (UP05-01) allowing the re-establishment of live entertainment and a cocktail lounge as part of a new restaurant/supper club located 842 4th Street; and

WHEREAS, Evolution Nightclub & Restaurant, LLC (dba George's Nightclub) took over business operations in September of 2013; and

WHEREAS, the Use Permit includes several conditions of approval and requires that George's Nightclub continually comply with the conditions of approval; and

WHEREAS, a Use Permit may be revoked for the permit holder's failure to comply with the conditions of approval; and

WHEREAS, a Use Permit may also be revoked if the permit holder operates their business in such a way as to constitute a public nuisance; and

WHEREAS, the Community Development Department became aware that George's Nightclub failed to comply with the conditions of its Use Permit and operated its business in such a way that constituted a public nuisance; and

WHEREAS, on September 8, 2021 the City sent a notice of noncompliance via standard mail to Ms. Esly Figueroa, the operator of George's Nightclub, notifying her of the various violations of the conditions of the Use Permit for George's Nightclub and giving the opportunity to correct such violations; and

WHEREAS, Ms. Figueroa did not correct the violations of the conditions of the Use Permit and operated George's Nightclub in a way that was detrimental to the public health, safety, and welfare; and

WHEREAS, on February 27, 2023, the City sent a letter to both Ms. Figueroa and the property owner via certified mail notifying them that a revocation hearing had been set for March 28, 2023; and

WHEREAS, on March 28, 2023, the San Rafael Planning Commission held a duly noticed public hearing on the proposed revocation of Use Permit 05-01, accepting all oral and written public testimony and the written report of the Community Development Department staff; and

WHEREAS, on March 28, 2023, the Commission adopted Resolution No. 23-001 revoking the Use Permit (UP05-01); and

WHEREAS, on April 5, 2023, the City received a timely appeal of the Planning Commission Action filed by Esly Figueroa; and

WHEREAS, on May 1, 2023, the City of San Rafael City Council held a duly noticed public hearing to review and consider the appeal (AP23-001), accepting all oral and written public testimony and the written report by the Community Development Department Planning staff and closed said hearing on that date; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based is the Community Development Department; and

WHEREAS, the City Council finds and determines that the Appeal (AP23-001) cannot be supported for the following reasons.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of San Rafael hereby denies the Appeal (AP23-001) and affirms the Planning Commission's action to revoke the Use Permit (UP05-01) based on the following findings:

A. Findings for Denial of Appeal (AP23-001)

Appeal Point 1 – Inadequate Spanish Interpretation

Whether the Spanish interpretation services provided during the Planning Commission hearing were “inadequate, “improper and incomplete.”

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the interpretation provided during the Planning Commission hearing was adequate.

Appeal Point 2 – Missing Commissioners, Inadequate Review, & Discrepancies

Whether the Planning Commission appropriately reviewed the documents, whether there were discrepancies between the documents and what was presented during the public meeting by City staff, and whether there was quorum and a proper vote to revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the Planning Commission appropriately reviewed the documents, that there were not discrepancies between the documents and what was presented during the public hearing, and that there was a quorum and proper vote to revoke the Use Permit.

Appeal Point 3 – July 2021 Shooting Weaponized to Slander the Venue

Whether George's Nightclub was wrongly associated with a shooting and double homicide that occurred in July 2021 and whether the Planning Commission focused too heavily on that event in making its decision to revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George's Nightclub was not wrongfully associated with a shooting and double homicide in 2021, and that the Planning Commission gave appropriate weight to this event in making its decision to revoke the Use Permit.

Appeal Point 4 – Wrongful Accusation of Reselling Food

Whether the Appellant’s venue was wrongfully accused of reselling food to a City staff member who conducted an undercover site visit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub was not wrongfully accused of reselling food to a City staff member who conducted an undercover site visit.

Appeal Point 5 – Wrongful Accusation of Inoperable Kitchen/No Menu/No Permit

Whether Appellant had an operating kitchen, a menu, and a food preparation license.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub did not have an operating kitchen, a menu, or a valid food preparation license.

Appeal Point 6 – Holding a Valid Business License

Whether Appellant had a valid business license and whether she was prevented from renewing her business license.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George’s Nightclub did not have a valid business license and that its operator was not prevented from renewing the business license.

Appeal Point 7 – No Communication to Modify the Use Permit

Whether the Planning Commission was informed that it had the option to modify, rather than revoke the Use Permit.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that the Planning Commission was informed that it had the option to modify, rather than revoke the Use Permit, and that the Planning Commission exercised appropriate discretion in choosing to revoke rather than modify the Use Permit.

Appeal Point 8 – City Staff and Police Department Bias

Whether the Police Department or the Planning Commission was biased against George’s Nightclub.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that neither the Police Department, its officers, or the Planning Commission was biased against George’s Nightclub.

Appeal Point 9 – Business is not Detrimental to the Community

Whether George’s Nightclub is operated in such a way that it is detrimental to the public health, safety, or welfare.

The City of San Rafael City Council has reviewed, considered and agrees with the staff response to this appeal point presented in the Agenda Report to the City Council dated May 1, 2023, that George's Nightclub is operated in such a way that it is detrimental to the public health, safety, and welfare of the community, and therefore a public nuisance.

B. Findings for Revocation of Use Permit (UP05-01)

1. George's Nightclub has repeatedly violated the conditions of approval contained within its Conditional Use Permit.

2. George's Nightclub is a strain on police department resources, and has repeatedly conducted its business in a way that is detrimental to the public health, safety or welfare, and is materially injurious to properties or improvements in the vicinity or to the general welfare of the city; therefore, George's Nightclub operates as a public nuisance in contravention of San Rafael Municipal Code Section 14.22.080.B.

BE IT FURTHER RESOLVED, that the City Council makes the following findings of fact related to the California Environmental Quality Act (CEQA):

C. California Environmental Quality Act (CEQA) Findings

The revocation of the Use Permit is categorically exempt from CEQA pursuant to Section 15321 of the CEQA Guidelines ("Enforcement Actions by Regulatory Agencies").

BE IT FURTHER RESOLVED, that the City of San Rafael City Council does hereby deny the Appeal (AP23-001) and affirms the Planning Commission's March 28, 2023 action revoking the Use Permit (UP05-01).

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 1st day of May, 2023, by the following vote, to wit:

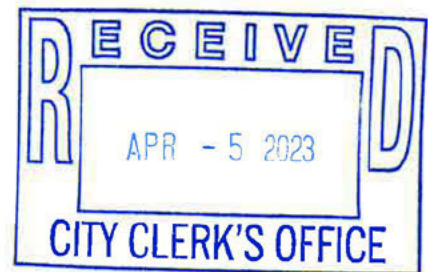
AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

Evolution Nightclub & Restaurant LLC
842 Fourth Street
San Rafael, CA 94901



City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

04/05/2023

RE: Appeal of Use Permit Revocation Project Number: PLAN23-018.

To whom it may concern:

I write this letter as my formal appeal in response to the City of San Rafael Planning Commission's decision for the use permit revocation project number: PLAN23-018. I would like for you to reconsider the decision made on 03/28/2023 for the following reasons:

1. "Simultaneous Spanish translation" was not responsibly provided. Furthermore, inadequate translation was provided by someone in attendance for me and complete lack of counter translation from the staff/commission to me rendered the hearing process to be challenging at best to address concerns raised. Moreover, as a result of improper and incomplete translations, the commission was fully and rightfully communicated what I stated during the agenda item when speaking in Spanish, my native language. There was a staff member who declared she was bilingual and previously had conversations with me in Spanish, who could've made just efforts to acknowledge that the translations provided were not complete. This was a failure on behalf of the city, to provide adequate and reasonable translation services for a community member and business owner who could not fully engage and communicate in English.
2. Multiple commissioners were absent from this public meeting and it appears several who were present likely did not appropriately review the agenda documents that accompanied the staff report. There are multiple discrepancies between the documents and what was stated during the public meeting by city staff in attendance who were seeking to justify the revocation of use permit on the grounds of lack of compliance and public nuisance.
3. Despite the fact that the shooting on 07/2021 was unrelated and stated as unrelated by multiple sources including newspaper articles that quote San Rafael Police Department's Lt. Dan Fink stating "the shooting was not related to the show or the performers", my establishment continues to be treated as if it was. The Police Department has heavily monitored my business since this incident, fueling a narrative to illustrate the establishment as a public nuisance. Throughout the public hearing and discussion, the shooting was continually referenced and unjustly used as the cornerstone rendering the establishment as a public nuisance. It is very tragic that lives were lost, and it's entirely deplorable and reprehensible that the city staff and police department weaponized this tragedy in attempt to slander the venue as an establishment that facilitates criminal activity.
4. My establishment was wrongfully accused of reselling food to one of your colleagues who went "undercover" for hours at my establishment during the public meeting but the "Case File" in the agenda documents from Ana Santiago does not state anything about purchasing wings while "undercover" only inquiring about them, which is in contradiction to what she stated at the public meeting. Additionally, Santiago states that I was in compliance with the number of security guards on duty further proving my point of being in compliance and not negligent. It also brings into question if this was conducted as official city business, as it was made clear that Santiago purchased and consumed alcohol while "undercover." If this was not conducted as official city business, then I do challenge the merits of Santiago's report being included in the agenda packet and her public statements. Otherwise, this is just a random community member who came to venue to consume

alcohol and enjoy a live event until closing. In the written letter, Santiago there is no mention of overcrowding, but in the public meeting makes contradicting statements. These should have been instances, called out by the commissioners for clarification, as Santiago's public statements were not in alignment with the published agenda item document of her "undercover" work. Be it further stated, that Santiago's blatant attempts to illustrate the business in a public meeting as unbecoming venue and fueling intentional public intoxication is detrimental to the image and safety of the venue.

5. My establishment was wrongfully accused of not having an operating kitchen nor a valid permit to operate when in fact, it does. We've had multiple unannounced visits from city employees, including the police, to check for a litany of compliance concerns. Additionally, we have a working food menu at all times. Food is made ready once ordered and I hold a valid permit to operate a food facility through the County of Marin which was also an attachment in the agenda report.
6. I do operate with valid business licenses and I tried to let the committee know but this was completely missed during the public hearing. Additionally, I have tried to bring my city business license up to date but was blocked. The inadequate, incomplete, and improper translations positioned me in a manner in which I could not justly defend myself against any accusations of violations and/or compliance concerns. The commissioners were unable to have a full and entire understanding of my defense against city staff claims.
7. The city provided communication of a public hearing to consider revocation or modification of the use permit but the city went right into a revocation hearing and nothing was communicated about a possible modification to the use permit as an option for the commission. The unfortunate reality is that city staff went straight for the nuclear option of preventing my business from operating based on misleading information.
8. The commissions decision was biased against Evolution due to the police department and city staff illustration of our venue being a rendered unsafe, and continually connecting a shooting incident to us, in which we weren't liable for. The same police department, that is currently being protested against by the minoritized community member who live in the area, like myself. Additional bias from the police department was admitted during the public meeting. Evolution is a Latina owned business that appeals to working class people of color who are the very backbone of this community. This is one of the very few locations in the area where many folks of color feel comfortable at for weekend nightlife entertainment. This uncomfortable truth may not be well received by many, but it is our reality. The police have made countless visits to my establishments and have found me to be full compliance but these visits are missing from the agenda report. Moreover, Police Chief Spiller never made mention of this during the public meeting, nor address the concerns I raised both in English and Spanish (that was not properly translated), regarding biases and harassment. Be it further stated, that city staff acknowledged during the public meeting, that they did not have information readily available about public safety call requests at my venue prior to July 2021. The shooting incident seems to be the calibration point in defining issues of public safety, some of which did not happen in my establishment - nor were associated with us in any capacity. Additionally, the police chief did not have such information as well, which leads to question the credibility of revoking the use permit on the premise of public nuisance.
9. Evolution is not "detrimental to the public health safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city." We have attempted to communicate with city staff, and admittedly have had delays in abilities to connect. However, I have been under the impression that operations were in compliance, as I had assumed appropriate business and food licenses for the location. As well, given the numerous visits by city employees for compliance checks that resulted in no raised concerns, it was assumed there were issues to be challenged. We would welcome the opportunity to work with the police staff in a collaborative manner to address any perceived issues of safety that are within our control. I find it quite damaging to categorize the venue as a threat to public safety, while simultaneously being subjected to city staff implying that

food services are not safe or in compliance. We have no option, but to vigorously defend ourselves from such overreach and misleading information. Thus, You have illustrated a narrative that makes it extremely difficult to fight against. I have successfully ran this business for almost 10 years now. I have made changes to comply that did not make it to the agenda report or brought up during the meeting. I have tried my best and continue to meet compliance standards and meet the demands from the city and police department, having gone as far as no longer hosting hip hop events per your request.

Best,



Esly Figueroa
Owner of Evolution Nightclub & Restaurant LLC
[REDACTED]
San Rafael, CA 94901
[REDACTED]

CERTIFICATE

of

COMPLETION

Francisco Vilela

has successfully completed the training for Food Protection Manager

Name:	Francisco Vilela	Date Completed:	3/30/2021
Name of course:	Food Protection Manager	Instructor Name:	Nick Eastwood
Approved Contact hours:	4	Instructor E-mail:	nick.eastwood@alwaysfoodsafes.com



The Always Food Safe Company
899 Montreal Circle, St. Paul, 55102
www.alwaysfoodsafes.com | 844.312.2011

Attachment 3:

[Planning Commission staff report PLAN23-018 Use Permit Revocation, dated March 28, 2023](#)

<https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2023/03/PC-Staff-Report-3-28-23.pdf>

Attachment 4:

[Planning Commission Resolution 23-001](#)

https://storage.googleapis.com/proudcity/sanrafaelcaemployees/uploads/2023/05/Attachment-4_PC-Resolution-23-01_Use-Permit-Revocation_Georges-Nightclub.pdf

Hearing Transcript Excerpts – Translated

YouTube video:

<https://www.youtube.com/watch?v=OzqXf5P0wiw>

0:30-0:54 – Planning staff mentions that Spanish interpretation will be provided on a Spanish Interpretation zoom channel

5:30 - 16:35 – Planning staff present their recommendation that the Planning Commission revoke the use permit

- The recording does not include a record of what was occurring on the Spanish Interpretation Zoom channel, so it is impossible to evaluate the adequacy of this portion of the interpretation

16:55 – Planning staff says that it is Ms. Figueroa’s turn to present; asks Ms. Figueroa if she wants to speak, present, or respond.

17:05 – Ms. Figueroa says, in English:

- “Hello, my name is Esly, um, I’m the owner of George’s nightclub almost for ten years, and I can hear everything, I was listening to everything they were saying, most of them is not... like, we talked with Leslie before, we had a meeting before this hearing, and some of them are not true, some of them are false, and I believe why... the police is the ones that came over to the club many times, several times, just without a call or anything, and came over to tell me what I had to do. And, no, I’m not okay with this, with everything you’re saying about me, about my club, it’s not true. It’s not what they’re saying. That’s all I can say.”

18:00 – Ms. Figueroa finishes giving her statement, commissioners open up the hearing to discussion among the commissioners, ask staff questions, etc.

38:35 – Commission finishes their questioning and opens up the floor to public comment.

38:38 – Ms. Figueroa speaks up, wants to make a public comment. Ms. Figueroa says, in English:

- “Hello? Yeah, uh, well the only thing I was reading is about.. um.. you say you have interpreter, right, in Spanish? So I think it’s better for me to speak Spanish, I’m Latina, like Mrs. Santiago said”

38:57 – Planning staff says, in English:

- “Great, go ahead.”

38:58 – Chair Suade says, in English:

- “Yes, please proceed.”

39:00: Ms. Figueroa says, in English:

- “In Spanish?”

39:02: Chair Saude and planning staff both say, in English:

- “Yes.”

39:03: Ms. Figueroa begins, in Spanish:

- “So, estaba ley[endo]... estaba viendo uno de los puntos que ellos dijeron fue de la licencia de la comida, que insisten que yo no la tengo y yo tengo la licencia de ah... venta de comida en ah... Evolution Nightclub. No es George’s. George’s es conocido por años, pero es Evolution el club and restaurant así es, entonces está la licencia vigente. El otro punto que habló eh.. han hablado es de los seguridad.. los cuatro seguridad. Que no... que no han tenido su ... ah.. una... la señora Santiago que estaba allí dijo que vio alguien que estaba fumando marihuana, y eso es algo que yo no puedo manejar porque estaba fuera de la hora de trabajar. Entonces, esto no lo podía manejar yo. Son cuatro seguridad los que he tenido todas las noches y tengo cómo probarlo. Ah.. el otro punto que ah.. estaba diciendo la señora Santiago fue de que los chicken wings habían sido cocinados nada más y que ya no vio. Tengo un cocinero a que le pago semanalmente y no solamente está eso. Hay tacos de carne, hay tacos de pollo, eh... también ella.. estaba viendo yo que ella en su reporte, y la tuve enfrente de mí, no pude hablar con ella, ella en el reporte estaba diciendo que una bebida se la cobraron más y no fue así. Yo, um, quiero decir esto – tuve un... tuve un ahm.. ah.. un, una... una fiesta de.. de negros, voy a decir así.. que tenía antes. Desde entonces, han utilizado mi ...”

- o Translation: “So, I was read[ing]... I was seeing some of the points that they said, about the food license, which they insist that I don’t have, and I *have* a license for um... food sales in um... Evolution Nightclub. It’s not George’s. It’s been known as George’s for years, but it’s Evolution, the club and restaurant, that’s how it is, so the license is valid. The other point that they said um... they talked about the security guards, the four security guards. That ... that they didn’t have their.. um .. a... Ms. Santiago, who was there, said that she saw someone who was smoking marijuana, and this is something that I can’t control because it was outside of work hours. So I couldn’t control that. They are four security guards who I have had every night and I have proof of this. Um.. the other point that.. um.. was that Ms. Santiago was saying that the chicken wings had been cooked, nothing else, and that she didn’t see any more. I have a cook who I pay weekly and it’s not just that. There are beef tacos, chicken tacos, um... also she... I was seeing that in her report, she.. and I had it in front of me, I couldn’t talk to her, in her report she was saying that they charged her more for a drink and that wasn’t the case. I, um... I want to say this – I had a... I had a um... ah.. a... um.. a party... a Black party, I’m going to call it that... that I had before. Since then, they have used my...”

41:03 – Eli (counsel for the Planning Commission) asks if there’s a way for some interpretation to be provided to the commission.

41:16 – Interpreter says in English that she’s sorry, that she would begin to interpret

41:21 – Interpreter says, in Spanish:

- “Um, señora Figueroa, le voy a interpretar lo que ha dicho hasta el momento, ok?”

- Translation: “Um, Ms. Figueroa, I’m going to translate what you’ve said up to this point, ok?”

41:25 – Ms. Figueroa says, in Spanish:

- “Sí”
 - Translation: “Yes.”

41:27 – Interpreter says, in English:

- “So I’m gonna interpret what she said so far. She said that she wanted to address a couple of the points. Yes, she does have a license for food, and with respect to the marijuana, it’s something that she can’t control because that person was off shift. When the other lady came, she said that there were only chicken wings, but she did have chicken tacos and other items of food.”

42:00 – Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, señora Figueroa, entonces dijo que desde que tu... la fiesta para negros, desde entonces?”
 - Translation: “Ok, Ms. Figueroa, so you said that since you... the Black party, since then?”

42:09 – Ms. Figueroa says, in Spanish:

- “Siempre tuve eventos de hip hop. Y de toda clase. Bodas, quinceañeras, de toda clase. Porque tenemos la cocina allí. Entonces, esta es... fue un evento de hip hop, desde eso entonces la policía me ha puesto como un target a mí, diciendo que yo traigo mal grupos a San Rafael.”
 - Translation: “I always had hip hop events. And [events] of every kind. Weddings, quinceañeras, all kinds. Because we have a kitchen there. So, this is... it was a hip hop event, since then, then the police have put, like, a target on me, saying that I bring bad groups to San Rafael.”

42: 38 – Interpreter says (to Ms. Figueroa), in Spanish:

- “Permítame un segundito”
 - Translation: “Give me a second”

42:40 – Interpreter says, in English:

- “Ok so she said that uh, she has parties, hip hop parties, all types of parties, weddings, quinceañeras, and since she had a hip hop party one time, uh, she’s been targeted by the police, who say that she brings bad groups to San Rafael.

43:02 – Ms. Figueroa says, in Spanish:

- “Sigo?”
 - Translation: “Should I continue?”

43:03 – Interpreter says, in Spanish:

- “Si, por favor”
 - Translation: “Yes, please.”

43:04 – Ms. Figueroa continues, in Spanish:

- “Entonces, hubo incidente tres blocks de George’s Nightclub esa noche. Sin embargo, ellos vinieron a pelear conmigo, la policía, fue una mujer. Y todos. Y que fueron... que, que, que había sido porque yo había hecho ese evento y un policía me dijo que por qué yo no mejor hacía eventos latinos, y ya no eventos negros, porque ellos eran problemáticos.”
 - o Translation: “So, there was an incident three blocks from George’s Nightclub that night. Nevertheless, they came to fight with me, the police, it was a woman. And everyone. And they were... that, that, that it had been because I had had this event and a police officer said [asked] me why I didn’t instead have Latino events, and no more Black events, because they’re problematic.”

43:35: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, permítame, perdón.”
 - o Translation: “Ok, allow me, sorry”

43:38: Interpreter says, in English:

- “Ah, so, ah, there was an incident three blocks from George’s that night, but the police came to see me, actually it was a woman who came, and said that this had happened because of the event that I had had there. And the police told me why don’t I do parties for Latinos, not for black people, because these cause problems.”

44:00: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, adelante.”
 - o Translation: “Ok, continue.”

44:03: Ms. Figueroa continues, in Spanish:

- “Entonces, este, ella me dijo que no tenía que hacer más de este tipo de eventos sin embargo no hubo nada que comprometiera mi club. Porque hubo investigaciones de parte de la policía, estuvieron hasta personas que venían el [incompreensible], el, ah, los bomberos, vinieron todos, todos a mi club, y yo las entregué las cámaras, yo las entregué todo. después de la investigación, se dio conocer que mi club no tuvo nada que ver con ese evento. Sin embargo, desde esa fecha, me he sentido como un target que es a mí, a que buscan siempre problemas y yo sé que hay más bares alrededor, y no son solo los míos, los clientes que vienen de mí que están borrachos como ellos, la policía, me han dicho.”
 - o Translation: “So, ok, she told me I didn’t have to have any more of these types of events. Nevertheless, there was nothing that compromised my club. Because there were investigations by the police, there were so many people that came, the [incompreensible], the, um, the firefighters, everyone came, everyone to my club, and I gave them the cameras, I gave them everything. After the investigation, it became know that my club didn’t have anything to do with this event. Nevertheless, since this date, I have felt like a target, which is, to me, that they always look for problems and I know that there are more bars around, and it’s not just my patrons who are drunk like they, the police, have told me.”

44:54: Interpreter says, in English:

- “Ok, uh, so the police said I shouldn’t do any more of those parties because it compromises my club, but there was an investigation, I gave them all, everything that they needed, the cameras, they were.. everybody came, the firefighters, everybody. I gave them everything from my cameras and at the end of the day they saw that my club was not involved in this, but I still feel like a target. They look at me when things happen. And there are other clubs around my business that have drunk people as well.”

45:33: Interpreter says (to Ms. Figueroa), in Spanish:

- “Ok, adelante.”
 - o Translation: “Ok, continue.”

45:35: Ms. Figueroa continues, in Spanish:

- “Entonces, ah, desde el después del COVID, que ha sido muy difícil para mí, ah... del COVID, es sin embargo en seguido, adelante. Voy a cumplir casi diez años de estar en Evolution Nightclub, trabajando bien. Y hasta ahora vinieron ellos que me quieren revocar el permiso. Y si yo he hecho las cosas... he tratado de hacer las cosas bien.”
 - o Translation: “So, um, since after COVID, which has been very difficult for me, um... since COVID, it’s in any case onward, forward. I’m going on ten years of being with Evolution Nightclub, working well. And just now they came, they want to revoke my permit. And yes, I have done things – I have tried to do things well.”

46:06: Interpreter says, in English:

- “Ok, um, so after COVID, because this has been hard for me, after COVID I’ve continued, and I’ve been almost ten years with Evolution Nightclub and it’s going well, now they want to revoke my license and all I’m doing is trying to do things correctly.”

46:25-46:30 – there is a pause in the conversation

46:30: Interpreter says (to Ms. Figueroa), in Spanish:

- “Algo más señora?”
 - o Translation: “Anything else, Ms.?”

46:33: Ms. Figueroa says, in Spanish:

- “Ah, sí, lo único que quiero decir es que me siento triste por todo lo que estoy pasando, esto me está enfermando, y yo era la dueña del edificio y el año pasado yo perdí mi edificio de George’s Nightclub, ahora solamente soy la dueña de Evolution Nightclub y Restaurant. Y yo quiero que escuchen mi parte también porque soy una mamá soltera y lo único que quiero es trabajar y hacer las cosas bien y ayudar a la comunidad. Es lo que he hecho. Gracias.”
 - o Translation: “Um, yes, the only thing that I want to say is that I feel sad because of everything I’m going through, it’s making me sick, and I was the owner of the building and last year I lost my building where George’s Nightclub is, now I’m only the owner of Evolution Nightclub and restaurant. And I want them to hear

my side too, because I'm a single mother and the only thing that I want is to work and do things well and help the community. It's what I have done. Thank you."

47:13: Interpreter says, in English:

- "Ok, the last thing I want to say is that, um, I feel this makes me sad what I'm going through, it's making me sick, I was the owner of the building of George's, but last year I lost that and now I'm just the owner of Evolution Nightclub. I want to say, too, that I'm a single mother, I'm just trying to work well and help the community. Thank you."

48:00 – Chair Saude closes the public hearing.

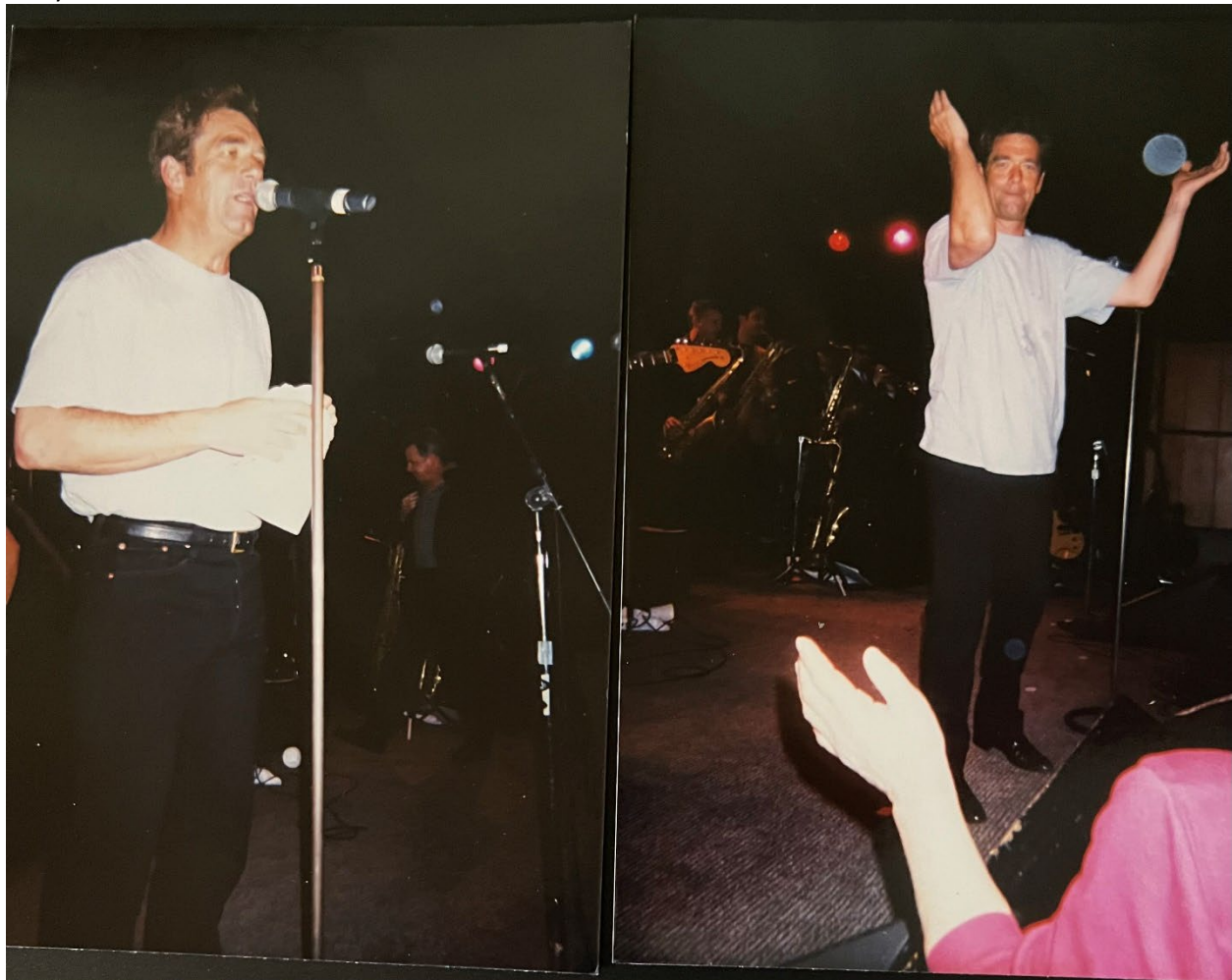
From: Craig Thomas Yates [REDACTED]
Sent: Sunday, April 16, 2023 5:38:00 PM
To: Mayor Kate <kate.colin@cityofsanrafael.org>
Subject: New George's

Hello Kate

Recognized him, he conducted last show at New George's for private invite 250 audience inclusive of myself. His beginning there at New George's, New George's historical landmark for City San Rafael and County of Marin!

We need to restore virtues of New George's as well allow for second story!

Huey Lewis





Sincerely

Craig Yates

Sent from my iPhone

Sent from my iPhone

Sent from my iPhone