

Marijuana Licensing Authority October 25, 2021 Rehearing Request	Applicant: Discrete Greens, LLC d/b/a Discrete Greens
	Location: 12170 Claude Ct.
	License Type: Retail Marijuana Store

Request Summary:

Discrete Greens, LLC has filed an application for a rehearing on the new retail marijuana store license for the proposed development at 12170 Claude Court.

Administrative Findings:

City Council, acting as the Marijuana Licensing Authority, held a public hearing on the new retail marijuana store license application filed by Discrete Greens, LLC on September 27, 2021. Following the public hearing, the Authority directed the City Attorney to draft a resolution to deny the retail marijuana license. Resolution No. 21-108, which made findings of fact in support of the decision to deny a new retail marijuana store license to Discrete Greens, was approved at the October 11, 2021 meeting.

Section 3-7-12 of the Municipal Code authorizes an application for rehearing to be made within 10 days after a decision on a quasi-judicial matter. A letter from the applicant’s legal counsel requesting a rehearing was received by the City Clerk’s Office on October 20, 2021. Therefore, the request for a rehearing is timely.

Notice of the rehearing will be posted in a conspicuous place on the proposed licensed premises at least 10 days prior to the rehearing, published in a newspaper of general circulation in the City at least 10 days prior to the rehearing, and mailed to all Northglenn landowners within a one-half mile radius of the proposed licensed premises at least 7 days, but no earlier than fourteen 14 days, prior to the date of the rehearing consistent with the requirements in Section 18-14-7(f) of the Municipal Code. Information regarding the rehearing process will be provided to the Authority closer to the date of the rehearing.

Action Needed:

The Authority must set a date for the rehearing.

After considering the timing of the notice requirements and the upcoming City Council meeting schedule, the City Attorney proposed January 10, 2022 or January 24, 2022 to the applicant’s legal counsel for the rehearing date. Section 3-7-5(a) of the Municipal Code states the hearing date shall be fixed while considering the convenience and necessity of the parties and their representatives.

CR-119 has been drafted to set the rehearing for a date in January 2022. Once the applicant’s legal counsel agrees to a date, it will be inserted in the resolution prior to consideration by the Authority.

Sample Language for Motions:

- “I move to approve CR-119.”

Attachments:

- Request for rehearing dated October 20, 2021
- CR-119 – Request for Rehearing on New Retail Marijuana License Application filed by Discrete Greens, LLC

PADILLA & PADILLA, PLLC

RECEIVED

OCT 20 2021

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NORTHGLENN CITY CLERK

J Small
3:18 p.m.

October 20, 2021

VIA HAND-DELIVERY

City of Northglenn Retail Marijuana
Local Licensing Authority
11701 Community Center Dr.
Northglenn, Colorado 80233

VIA HAND-DELIVERY

Johanna Small, CMC
City Clerk
City of Northglenn
11701 Community Center Dr.
Northglenn, Colorado 80233

VIA HAND-DELIVERY

City Council of the City of Northglenn
Acting as the City's Retail Marijuana
Local Licensing Authority
11701 Community Center Dr.
Northglenn, Colorado 80233

Re: Application for Rehearing of Applicant Discrete Greens, LLC for Retail Marijuana Store License, or in the alternative, Notice of Appeal of Resolution No. 21-108.

To Whom It May Concern:

This law firm represents Discrete Greens, LLC (hereinafter "Discrete Greens") with regard to its application for a rehearing, or in the alternative, notice of appeal. As Discrete Greens' attorneys, we request that all communications, both oral and written, between the City of Northglenn/the City of Northglenn Retail Marijuana Local Licensing Authority (collectively the "Licensing Authority") and Discrete Greens regarding its application for a rehearing, or in the alternative, its notice of appeal, be directed to me at this law firm.

Please be advised that pursuant to §3-7-12(a)(2) of the Municipal Code of the City of Northglenn, Colorado (hereinafter the "Code"), Discrete Greens respectfully requests a rehearing on its Application for a Retail Marijuana Store License to be located at 12170 Claude Court, Northglenn, Colorado 80241. Pursuant to §3-7-5(a) of the Code, Discrete Greens respectfully requests that the hearing be held on a mutually convenient date and time for the Licensing Authority, the parties, and counsel. In this regard, I ask that you please contact me so that a mutually convenient date and time can be scheduled for the hearing. Pursuant to §3-7-12(a)(2) of the Code, Discrete Greens' application for rehearing is both timely and authorized.

In the alternative, Discrete Greens hereby provides notice of appeal, pursuant to §3-7-12(b)(2) and appeals the October 11, 2021 Resolution No. 21-108 of the Licensing Authority denying the application of Discrete Greens. Although unnecessary to establish for purposes of requesting a rehearing pursuant to §3-7-12(a)(2) of the Code, for purposes of its notice of appeal, Discrete Greens advises of the following:

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Johanna Small, CMC
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*The Licensing Authority has committed an error of law¹, by among other things, not basing its decision on substantial evidence in the record before it, applying an improper legal standard, and the record of the proceedings demonstrates that the decision to deny the license (Resolution No. 21-108) was arbitrary and capricious as it was unsupported by substantial evidence in the record. In addition, the October 11, 2021 “Findings of Fact” and statements contained therein, are based upon findings of fact that are clearly erroneous on the whole record, and unsupported by substantial evidence when the record is considered as a whole. See *Ross v. Fire & Police Pension Ass’n*, 713 P.2d 1304, 1309 (Colo. 1986). At the September 27, 2021 hearing, there was not one scintilla of evidence introduced in opposition to the subject application. Additionally, Resolution No. 21-108 contains purported “findings of fact”, however, those “findings of fact” are unsupported by the record.*

Also, at the September 27, 2021 hearing, the Licensing Authority had before it Preliminary Findings entered August 23, 2021 purporting to have been issued by the “City of Northglenn Marijuana Licensing Authority” and signed by the City Clerk, Johanna Small. However, based upon the record of the September 27, 2021 hearing, the Licensing Authority failed to consider, in contravention to §18-16-7(h), its own preliminary findings and it was evident that certain members of the Licensing Authority did not even know of the existence of those preliminary findings, thereby further demonstrating the arbitrariness and capriciousness of its decision.

Section 3-7-9 of the Code states, in pertinent part, as follows: “Every party to a hearing **shall** have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required **for a full and true disclosure of the facts.**” (emphasis supplied) See Code §3-7-9(a). However, at the September 27, 2021 hearing, the Applicant, Discrete Greens, was prohibited from presenting evidence in support of the application for a retail marijuana establishment, in contravention of §3-7-9(a) of the Code, when its representative, Dr. Shad Sutton, was deliberately interrupted by the Licensing Authority’s attorney, Corey Hoffman. During Discrete Greens’ presentation of evidence, Mr. Hoffman instructed Dr. Sutton to proceed to another subject although the explanation and subject matter which Dr. Sutton was attempting to address and the evidence he was attempting to present at that particular moment was directly relevant to addressing the issue of the number, type, and availability of existing facilities, which was one of the issues squarely before the Licensing Authority for its consideration. See Code at §18-16-7(h) and (h)4).

Dr. Sutton was attempting to present evidence regarding how unfortunately due to the overuse of opioids in the City of Northglenn and the surrounding communities, the need for a retail marijuana store in the community is necessary because the existing marijuana establishments within

¹ The following is not an exhaustive list of all of the errors of law made by the Licensing Authority in this matter.

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the City of Northglenn, the closet of which is more than a mile away, are insufficient to serve the needs of the community. Dr. Sutton was attempting to present evidence through empirical medical studies and make the correlation between how a retail marijuana establishment at 12170 Claude Court will not only service the needs of the community seeking to use recreational marijuana, but also those persons who would otherwise be seeking opioids and can instead use recreational marijuana as a healthier choice. Dr. Sutton was also seeking to present this evidence to address how there would be a demonstrable positive impact caused by a new retail marijuana establishment, such as Discrete Greens, in the community. This factor was also squarely before the Licensing Authority for its consideration. *See* Code at §18-16-7(h)(4) (providing that the “local licensing authority shall consider other demonstrable negative impacts caused by the new retail marijuana establishment.”

Mr. Hoffman, respectfully, did not have authority to interrupt the proceeding in this matter, nor to prohibit the introduction of this evidence, nor to instruct Discrete Green’s representative to abandon what evidence he was providing and to move onto another subject, as he (Mr. Hoffman) is neither a member of the licensing authority nor was he presiding over the September 27, 2021 proceeding. Dr. Sutton should not have been prohibited from presenting evidence regarding the “need” for the final designated location for a retail marijuana establishment within the City of Northglenn. *See Rocky Mt. Retail Mgmt., LLC v. City of Northglenn*, 393 P.3d 533, 542 (Colo. 2017).

Additionally, based upon the record of the September 27, 2021 proceeding, several council members acting as members of the Licensing Authority, failed to consider the evidence before them, and instead based their decision(s) on “personal views” and one particular council member made a rather unprofessional statement during the hearing that the “presentation was so poor” that she was confused about what criteria the City of Northglenn Licensing Authority had already established in order to consider Discrete Green’s application. While this particular council member may have been “confused” as she stated and clearly did not care for the presentation of evidence as shown by the video record, this had nothing to do with this particular council member’s, respectfully, abundantly clear confusion of the law, here the City of Northglenn Code, which incidentally as the Mayor, she has taken an oath to uphold and apply. Consequently, this additional record further demonstrates how Resolution 21-108 is arbitrary and capricious and not based upon the applicable law nor the substantial evidence in the record.

Based upon the foregoing, Discrete Greens respectfully requests, in the alternative, and pursuant to §3-7-5(a) of the Code, that the Licensing Authority grant its appeal and order a new hearing to be set on a mutually convenient date and time for the Licensing Authority, the parties, and counsel.

City of Northglenn Retail Marijuana
Local Licensing Authority

Johanna Small, CMC
Northglenn City Clerk

City Council of the City of Northglenn

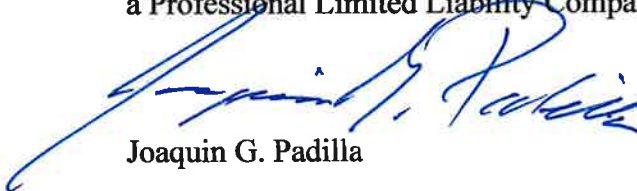
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Please contact me if you should have any questions concerning the contents of this letter.

Very truly yours,

PADILLA & PADILLA, PLLC
a Professional Limited Liability Company

A handwritten signature in blue ink, appearing to read "Joaquin G. Padilla", is written over the typed name.

Joaquin G. Padilla

c: Corey Y. Hoffman, Northglenn City Attorney (via email only- choffman@hpwclaw.com)
Dr. Shad Sutton, Discrete Greens, LLC (via email only)

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-119
Series of 2021

Series of 2021

A RESOLUTION SETTING THE REQUEST FOR A RETAIL MARIJUANA STORE LICENSE BY DISCRETE GREENS, LLC d/b/a DISCRETE GREENS FOR A REHEARING ON JANUARY 24, 2022

WHEREAS, the City Council of the City of Northglenn acting as the City’s Retail Marijuana Local Licensing Authority conducted a hearing on the request by Applicant Discrete Greens, LLC d/b/a Discrete Greens (“Applicant”) for a new Retail Marijuana Store License to be located at 12170 Claude Court, Northglenn, Colorado 80241, on September 27, 2021, pursuant to C.R.S. § 44-10-303(3) and Article 16 of Chapter 18 of the Northglenn Municipal Code;

WHEREAS, the City Council at the September 27, 2021 hearing took evidence and heard arguments regarding the qualifications of the Applicant, and the criteria set forth in Section 18-6-7(h) of the Northglenn Municipal Code;

WHEREAS, after hearing the evidence, hearing arguments, and deliberating on the evidence, the City Council directed in accordance with Section 3-7-11 of the Northglenn Municipal Code that findings of fact be drafted to deny a Retail Marijuana Store License to Applicant, and by Resolution No. 21-108, Series of 2021, dated October 11, 2021, the City Council adopted findings of fact denying the Retail Marijuana Store License;

WHEREAS, the Applicant filed a request for a rehearing pursuant to Section 3-7-12 of the Northglenn Municipal Code;

WHEREAS, such request was filed within ten (10) days of the City Council’s final determination, and is thus timely; and

WHEREAS, the City Council therefore desires to cause public notice to be provided to allow for a rehearing on Applicant’s request for a Retail Marijuana Store License in accordance with Section 3-7-12 of the Northglenn Municipal Code and the City of Northglenn Retail Marijuana Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The recitals set forth above are hereby incorporated herein by this reference.

Section 2. Pursuant to Section 3-7-12 of the Northglenn Municipal Code, the rehearing on Applicant’s request for a Retail Marijuana Store License is hereby set for January 24, 2022, at 7:00 p.m., or as soon thereafter as the matter may be heard.

Section 3. The City Clerk is directed to cause notice of the rehearing to be posted in a conspicuous place on the proposed licensed premises not less than ten (10) days prior to said rehearing, published in a newspaper of general circulation in the City not less than ten (10) days prior to said rehearing, and mailed to all Northglenn landowners within a one-half mile radius of the proposed licensed premises at least seven (7) days, but no earlier than fourteen (14) days, prior to the date of the rehearing consistent with the requirements in Section 18-14-7(f) of the Northglenn Municipal Code.

DATED at Northglenn, Colorado, this _____ day of _____, 2021.

JENNY WILLFORD
Mayor Pro Tem

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney