

## REPORT TO THE CITY COUNCIL

---



**DATE:** May 2, 2017

**TITLE:** Final Approval of Settlement of Matter of City of Desert Hot Springs v John Van Beek, et al., Riverside Superior Court Case No. PSC1602949

**Prepared by:** Jennifer A. Mizrahi, City Attorney  
Joseph A. Meeks, Deputy City Attorney

---

### **RECOMMENDATION**

**Approve the Settlement Agreement, and authorize execution by the City Manager subject to approval as to form by the City Attorney.**

### **BACKGROUND**

On May 17, 2016, the Desert Hot Springs Police Department visited the property at 14250 Little Morongo Road, Desert Hot Springs ("Little Morongo Property") to investigate a report that illegal marijuana cultivation was taking place. At the conclusion of the investigation, it was discovered that two structures on the Little Morongo Property were being used for the unlicensed and unpermitted cultivation of marijuana.

On May 18, 2016, the City served a Notice of Violation on the Little Morongo Property. The notice ordered that several municipal code violations, including the unpermitted cultivation of medical marijuana, be corrected by Friday, June 17, 2016.

On June 21, 2016, the City filed a civil action to abate the public nuisance created by the unlawful cultivation on the Little Morongo Property. The defendants named by the City were John Van Beek, Bert Gruber, RX DHS Herbery, and RX DHS Manna LLC (collectively, "Defendants").

On June 24, 2016, the Riverside County Superior Court issued a Temporary Restraining Order prohibiting Defendants from cultivating marijuana within the City of Desert Hot Springs ("Temporary Restraining Order"). Additionally, the court issued an Order to Show Cause why a Preliminary Injunction should not issue to restrain Defendants from cultivating marijuana within the City of Desert Hot Springs throughout the entire course of the litigation ("Preliminary Injunction").

On June 28, City staff re-inspected the Little Morongo Property, and was able to confirm that no medical marijuana remained on the Little Morongo Property in either the larger or smaller structures. Additionally, City staff performed a follow-up inspection of the Little Morongo Property on August 16, 2016, and confirmed that no marijuana was being cultivated.

Over the past several months, the City and Defendants have extensively negotiated settlement of the litigation, and a written settlement agreement has finally been tentatively agreed to by the parties.

Defendants have executed the settlement agreement, and a copy is attached hereto. The only remaining step is for the City Council to review, and if it should approve, to authorize execution by the City Manager subject to approval as to form by the City Attorney.

**DISCUSSION**

In brief, the settlement agreement provides that the Defendants will reimburse the City for its attorneys' fees and litigation costs arising out of the litigation. In exchange, the City will dismiss Defendants, subject to the Riverside Superior Court retaining jurisdiction to enforce the terms of the written settlement agreement.

Additionally, the settlement agreement prohibits Defendants from operating a marijuana facility anywhere in the City of Desert Hot Springs without first having complied with all local laws and regulations.

Should Defendants breach the settlement agreement, the settlement agreement provides the City a procedure to have a judgment entered against Defendants containing a permanent injunction prohibiting Defendants from operation of a marijuana dispensary anywhere within the City of Desert Hot Springs. If Defendants were to violate the permanent injunction, the City would have the option to seek contempt of court against the Defendants. Remedies for contempt of court include, but are not limited to, imprisonment, fines, and attorneys' fees.

**EXHIBITS:**

- 1) Settlement Agreement