



**DATE:** March 28, 2023

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Adopt a Resolution Approving Participation in the National Opioid Settlement with Teva, Allergan, CVS, Walmart and Walgreens, Accepting the Terms of the California Allocation Agreement, and Authorizing the City Manager to Execute and Submit all Necessary Settlement Participation Documents on Behalf of the City of Hayward

## **RECOMMENDATION**

That the Council adopts a resolution (Attachment II) approving participation in the National Opioid Settlement with Teva, Allergan, CVS, Walmart and Walgreens, accepting the terms of the California Allocation Agreement for each party, and authorizing the City Manager to execute and submit all necessary settlement participation documents on behalf of the City of Hayward.

## **SUMMARY**

In November and December 2022, Teva, Allergan, Walmart, Walgreens and CVS entered into National Opioid Settlements arising out of coordinated national lawsuits against various responsible entities filed by various state attorneys general and various local subdivisions. On December 14, 2021, the City Council previously approved participation in settlements involving the three largest pharmaceutical opioid distributors: McKesson, Cardinal Health and AmerisourceBergen (“Distributors”), and opioid manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, “J&J”). All of the settlements will provide substantial funds to states and subdivisions for abatement of the Opioids epidemic across the country and will impose transformative changes in the way the settling defendants conduct their business.<sup>1</sup>

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<sup>1</sup> Refer to national settlement website at [National Opioid Settlement](#)

## BACKGROUND

The settlement would resolve the claims of both states and local governments across the country, including the nearly 4,000 that have filed lawsuits in federal and state courts. Settlement approval is contingent on a critical mass of states and local governments participating. States and their local governments will receive maximum payments if each state and its local governments join together in support of the agreement. As part of the proposed settlement, California stands to receive a maximum of nearly \$1.8 billion if all California local governments sign on. This is in addition to the approximately \$2.2 billion received by California pursuant to the Distributor and Manufacturer settlement agreement previously approved by the City Council.

Under the terms of the settlement:

- Teva to pay up to \$3.34 billion over 13 years and to provide either \$1.2 billion of its generic version of the drug Narcan over 10 years or \$240 million of cash in lieu of product, as each state may elect;
- Allergan to pay up to \$2.02 billion over 7 years;
- CVS to pay up to \$4.90 billion over 10 years;
- Walgreens to pay up to \$5.52 billion over 15 years; and
- Walmart to pay up to \$2.74 billion within 6 years.
- The total funding distributed will be determined by the overall degree of participation by both litigating and non-litigating state and local governments;
- The substantial majority of the money is to be spent on opioid treatment and prevention; and
- Each state's share of the funding has been determined by agreement among the states using a formula that considers the impact of the opioid crisis on the state – the number of overdose deaths, the number of residents with substance use disorder, and the number of opioids prescribed – and the population of the state.
- Teva and Allergan have agreed to strict limitations on their marketing, promotion, sale, and distribution of opioids, including a ban on : (1) promoting and lobbying; (2) rewarding or disciplining employees based on volume of opioid sales; and (3) funding or grants to third parties;
- Walmart, CVS, and Walgreens are required to implement changes in how they handle opioids, including requirements addressing their compliance structures, pharmacist judgement, diversion prevention, suspicious order monitoring, and reporting on red-flag processes, as well as blocked and potentially problematic prescribers;

The settlement also includes injunctive relief terms to help prevent this type of crisis from reoccurring.

The State of California, and counsel representing a group of cities and counties, have reached agreement on a proposed allocation of recoveries that California may receive

pursuant to the respective settlements with Teva, Allergan, CVS, Walmart and Walgreens (“Allocation Agreements.”). Acceptance of the Allocation Agreement is a condition of a city or county joining the settlements. Cities wishing to participate in the settlements must submit participation forms signed by an authorized representative by April 18, 2023.<sup>2</sup>

## **DISCUSSION**

Pursuant to the terms of the settlements, up to 9.9 % of the funds from each settlement is allocated to California and eligible subdivisions within California. Pursuant to the terms of the Allocation Agreement, California’s settlement is divided among three funds:

- State Fund – 15% of settlement goes to State.
- Subdivision Fund – 15% to litigating subdivisions.
- Abatement Fund – 70% to eligible subdivisions (including Hayward) identified in the respective settlement agreements. Also includes litigating subdivisions.

Pursuant to the Allocation Agreement, Hayward is entitled to receive .117% of California’s Abatement Fund. Hayward could receive estimated annual payments as follows:

- Teva – up to \$26,000/year for 13 years
- Allergan – up to \$29,000/year for 7 years
- CVS – up to \$28,000 - \$56,000/year for 10 years
- Walmart – up to \$46,000/year for 6 years
- Walgreens – up to \$28,000 - \$42,000/year for 15 years

The settlement funds must be used on opioid remediation programs that are specifically described in the settlement agreements. Hayward may elect to receive direct payments in any given payment year of the settlement. If Hayward chooses not to receive a direct payment in any given payment year, the funds will go to the County, which is not required to spend the funds in Hayward. Payments into state settlement funds are scheduled to be received once annually. The initial payments from the respective settling entities are scheduled to be made from June 30, 2023 through August 16, 2023.

In order to participate in the settlement, the City must submit a participation form that includes a release of claims against Teva, Allergan, CVS, Walmart and Walgreens. If authorized by the Council, the City Manager will submit the necessary forms by the April 18, 2023 participation deadline.

## **FISCAL IMPACT**

If the City chooses to receive funds directly from the settlement, the funds will be used to fund care, treatment, or other programs and expenditures designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders,

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<sup>2</sup> For more information, please refer to the California Attorney General’s FAQ regarding these settlements, [Frequently Asked Questions | State of California - Department of Justice - Office of the Attorney General](#)

or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic, including reasonably related administrative expenses. The City can use these funds to offset or supplement future expenses of existing programs, to expand or enhance existing programs, or to fund new programs. The funds cannot be used to reimburse past program expenses.

**STRATEGIC ROADMAP**

This item does not relate to any of the specific projects outlined in the Council’s Strategic Roadmap.

**NEXT STEPS**

Adoption of the resolution will allow the City Manager to submit the required forms for participation in the settlements. The participation forms must be submitted to the national settlement administrator by April 18, 2023.

*Prepared and Recommended by:* Michael S. Lawson, City Attorney  
Michael G. Vigilia, Senior Assistant City Attorney

Approved by:



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Kelly McAdoo, City Manager