



DATE: March 5, 2024

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager or her Designee to Accept and Appropriate an Amount Not to Exceed the 18-year Estimate of \$1,349,312 in Funding Associated with the Distributor Settlement Agreement for Opioid Remediation and to Allocate the Funds in Accordance with Eligible Uses Specified in the Distributor Settlement Agreement

RECOMMENDATION

That the City Council adopts a resolution (Attachment II) authorizing the City Manager or her designee to accept and appropriate \$1,349,312 in funding associated with the Distributor Settlement Agreement for Opioid Remediation and to allocate the funds in accordance with eligible uses specified in the Distributor Settlement Agreement.

SUMMARY

On December 14, 2021, and March 28, 2023, Council approved the City's participation in National Opioid Settlement litigation and authorized the City Manager to accept the terms of the California Allocation Agreement and to execute and submit all necessary settlement participation documents on behalf of the City. Beginning in June 2023, the City began receiving payments through this settlement agreement, receiving \$186,656 to date. Staff estimate that the City will receive an additional \$1,159,656 via annual installment payments through July 2038, bringing the total received to approximately \$1,349,312.

The use of funds is restricted by the settlement agreement. Staff recommend that Council accept and appropriate the funds to be allocated to community-based non-profits for the following eligible uses, as specified in the Distributor Settlement Agreement:

- Opioid use prevention programs and services
- Support the treatment of opioid use disorder and any co-occurring substance use disorder or mental health conditions
- Support people in treatment and recovery from opioid use disorder and any co-occurring substance use disorder or mental health conditions, including wrap-around services like housing, transportation, education, job placement, job training, peer

support, counseling, community navigators, case management, legal services, and connections to community-based services

- Provide connections to care for people who have or are at risk of developing opioid use disorder and any co-occurring substance use disorder or mental health conditions
- Support efforts to discourage or prevent misuse of opioids
- Support efforts to prevent or reduce overdose deaths or other opioid-related harms

BACKGROUND

On July 21, 2021, the National Prescription Opiate Litigation MDL Plaintiffs' Executive Committee, several State Attorneys General, and four major defendants announced agreement on terms of proposed nationwide settlements to resolve all Opioids litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors: McKesson; Cardinal Health and AmerisourceBergen ("Distributors"); and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J"). 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. Collectively, these settlements provide substantial funds to states and local subdivisions for abatement of the national opioid epidemic and will impose transformative changes in the way the settling defendants conduct their business.¹

On December 14, 2021, Council adopted Resolution Number 21-247, approving participation in the National Opioid Settlement litigation, 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.² On March 28, 2023, Council subsequently adopted Resolution Number 23-067, approving participation in the National Opioid Settlement litigation 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.³

The settlements resolve the claims of both state 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. Across the two settlements Council has authorized the City to participate in, California stands to receive a maximum of approximately \$4 billion.

¹ Refer to national settlement website at [National Opioid Settlement](#)

² December 14, 2021, City Council Staff Report and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=5357661&GUID=EA7FE236-03F6-4186-9950-9C8E558DA9BC&Options=&Search=>

³ March 28, 2023, City Council Staff Report and Materials:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=6105684&GUID=E37E2256-CAEF-4C2F-B45D-B277122D5961&Options=&Search=>

DISCUSSION

Pursuant to the terms of the settlements, 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 the 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 agreements for each settlement, Hayward is entitled to receive .117% of California's Abatement Fund. To date, the City has received \$189,656 from the settlements. Across all settlements, the City anticipates receiving the following payments through July 2038:

Installment	Date	Amount
Received payments 1-3	To date	\$189,656.00
Projected payment 4	July 2024	\$72,344.07
Projected payment 5	July 2025	\$72,344.07
Projected payment 6	July 2026	\$73,002.05
Projected payment 7	July 2027	\$73,002.05
Projected payment 8	July 2028	\$89,269.06
Projected payment 9	July 2029	\$89,269.06
Projected payment 10	July 2030	\$89,269.06
Projected payment 11	July 2031	\$75,144.53
Projected payment 12	July 2032	\$75,144.53
Projected payment 13	July 2033	\$75,144.53
Projected payment 14	July 2034	\$75,144.53
Projected payment 15	July 2035	\$75,144.53
Projected payment 16	July 2036	\$75,144.53
Projected payment 17	July 2037	\$75,144.53
Projected payment 18	July 2038	\$75,144.53
TOTAL ANTICIPATED FUNDING		\$1,349,311.66

The settlement funds must be used on opioid remediation programs that are specifically described in the settlement agreements. Staff recommends that the funding be used to support community-based nonprofit organizations that meet the eligibility criteria established in the settlement agreement. This includes agencies that do the following:

- Opioid use prevention programs and services
- Support the treatment of opioid use disorder and any co-occurring substance use disorder or mental health conditions
- Support people in treatment and recovery from opioid use disorder and any co-occurring substance use disorder or mental health conditions, including wrap-around services like housing, transportation, education, job placement, job training, peer support, counseling, community navigators, case management, legal services, and connections to community-based services

- Provide connections to care for people who have or are at risk of developing opioid use disorder and any co-occurring substance use disorder or mental health conditions
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STRATEGIC ROADMAP

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

FISCAL IMPACT

There is a positive fiscal impact associated with this item, as it brings in an additional \$1.16 million in revenue to the City to support individuals affected by the opioid epidemic. 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.

PUBLIC CONTACT

Any portion of this funding set aside to allocate via the Community Agency Funding Process will be part of a community-driven funding process in which members of the Community Services Commission review funding applications and make recommendations for funding which are made available for multiple public comment periods.

NEXT STEPS

Adoption of this resolution will allow staff to accept and appropriate an estimated \$1,159,656 in funding. It will also enable staff to allocate an additional \$100,000 through the FY25 Community Agency Funding process, which will be brought for Council review and approval in April 2024.

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Recommended by: Nicole Gonzales, Finance Director
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Approved by:



Kelly McAdoo, City Manager