



DATE: December 14, 2021

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Adopt a Resolution Approving Participation in the National Opioid Settlement, 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, 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.

SUMMARY

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"). These settlements, if agreed and adopted, will provide substantial funds to states and local subdivisions for abatement of the Opioids epidemic across the country and will impose transformative changes in the way the settling defendants conduct their business.¹

BACKGROUND

The settlement would resolve the claims of both states and local governments across the country regarding opioids, 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.

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

As part of the proposed settlement, California stands to receive a maximum of nearly \$2.34 billion if all California local governments sign on.

Under the terms of the settlement:

- The three distributors will collectively pay up to \$21 billion over 18 years;
- Johnson & Johnson will pay up to \$5 billion over nine years, with up to \$3.7 billion to be paid during the first three 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.

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 Distributors and J&J settlements (“Allocation Agreement”). Acceptance of the Allocation Agreement is a condition of a city or county joining either or both of the Distributor and/or J&J settlements. Cities wishing to participate in the settlement must submit participation forms signed by an authorized representative by January 2, 2022.²

DISCUSSION

Pursuant to the terms of the Distributor and J&J settlements, 9.9% of the funds from each settlement is allocated to state 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 0.117% of California's Abatement Fund. Hayward could receive annual payments of estimated to be between \$50,000 and \$100,000, each year for 18 years from the settlement. 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

² Refer to California Attorney General Opioid Settlement Webpage, [NATIONAL OPIOIDS SETTLEMENTS – INFORMATION FOR CALIFORNIA CITIES AND COUNTIES | State of California - Department of Justice - Office of the Attorney General](#)

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, beginning July 2022.

In order to participate in the settlement, the City must submit a participation form that includes a release of claims against the distributors and Johnson & Johnson. If authorized by the Council, the City Manager will submit the necessary forms by the January 2, 2022 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, 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 January 2, 2022.

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

Approved by:



Kelly McAdoo, City Manager