



**DATE:** December 14, 2021

**CATEGORY:** Consent

**DEPT.:** City Attorney's Office

**TITLE:** **Authority to Participate in National Opioids Settlements**

### **RECOMMENDATION**

Authorize the City of Mountain View to participate in the National Opioids Settlements and authorize the City Manager or designee to execute related settlement participation forms and agreements, including future agreement(s) with the State or County for use of settlement proceeds without further Council action.

### **BACKGROUND AND ANALYSIS**

On July 21, 2021, a proposed settlement was announced to resolve lawsuits against three large pharmaceutical distributors, McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively "Distributors"), and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutical, Inc. (collectively "Janssen"). The Distributors could pay up to \$21 billion and Janssen could pay up to \$5 billion to resolve lawsuits nationwide if nearly 100% of the eligible counties and cities participate in the settlements ("National Opioids Settlements"). The Distributor payments are spread over 18 years, and the Janssen payments are spread over no more than nine years.

California's share of the \$26 billion settlement is approximately up to \$2.263 billion. Nearly 100% of the 431 eligible counties and cities in California must participate to reach this maximum amount. As participation decreases, so does the total amount. Of the money flowing into California, 15% will go directly to the State of California, 70% is reserved as future abatement funds allocated among all 431 eligible counties and cities that participate, and 15% is further allocated to only the eligible counties and cities that filed lawsuits.

Funds are allocated among and between counties and cities using three nationally accepted opioid metrics: opioid use disorder, opioid overdose deaths, and morphine milligram equivalents within each county. These allocation methods are normalized and

apply across all 431 eligible entities. Assuming 100% participation by eligible entities, the City of Mountain View's maximum allocation is \$643,897 spread over 18 years. If an eligible county or city does not participate in the settlement, it could reduce the overall amount that all California counties and cities will receive, and its allocated portion will go to the State. The amount received by the City would decrease if fewer eligible entities participated in the settlement.

### **Use of Funds**

Counties and cities that receive money from the abatement fund may only spend the funds on eligible abatement activities and related expenditures. The National Opioids Settlements provide a list of eligible abatement activities, which include, in part, expanding training to first responders on opioid overdose reversal drugs (e.g., naloxone), funding for community drug disposal programs, and providing enhanced support for children and family members suffering trauma as a result of addiction in the family.

Additionally, in California, 50% of the funds distributed to counties and cities must be spent on High-Impact Abatement Activities, which are defined as the following:

1. The provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
2. Creating new or expanded Substance Use Disorder ("SUD") treatment infrastructure;
3. Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
4. Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and nonsworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
5. Interventions to prevent drug addiction in vulnerable youth.

Counties and cities receiving funds must also meet reporting requirements under the settlement agreements and the State subdivision agreements, including annual reports to the California Department of Health Care Services.

Cities can elect to receive funds directly or have funds delivered to their corresponding county. This payment election may be made at any time 60 days prior to any payment date. If no election is made, the money will be delivered to the County. Santa Clara County is participating in the National Opioids Settlement, as are other neighboring cities. Most of the abatement activities involve changes to medical treatment and prescriptions, counseling services, recovery services, supportive housing, etc., which are not services directly provided by the City of Mountain View. Therefore, it is likely that the City will, in the future, like most other eligible cities, assign its portion of the settlement proceeds to the County such that the funds may be used for the appropriate services. However, if the City develops eligible programming to address opioid abuse in the future, it can elect to receive direct disbursement.

The settlements also include injunctive relief terms to help prevent this type of crisis from reoccurring. For a period of 10 years, the Distributors will be subject to more oversight and accountability, including an independent monitor, to help prevent deliveries of opioids to pharmacies where diversion and misuse occur. The Distributors will also be required to establish and fund an independent clearinghouse to track opioid distribution nationwide and flag suspicious orders. Janssen will be prohibited from selling and promoting opioids for a period of 10 years.

### **Next Steps**

The City has until January 2, 2022 to sign and return participation forms that effectuate its agreement to the proposed settlement agreements with the Distributors and Janssen. This settlement includes only the three Distributors and Janssen. The settlements do not directly involve or release other defendants, such as the Sackler family. If the City does not act, it will have opted out of the settlement, but it will retain the right to bring an action against the opioid distributors and manufacturers directly, though this is not likely practical for a city of Mountain View's size.

It is expected that the National Opioids Settlements will go into effect in April 2022. The Distributors and Janssen will be required to make their first payments in July 2022.

### **FISCAL IMPACT**

Participating in the National Opioids Settlements will allow the City to receive funding directly or to direct the funding to the County for eligible opioid abuse abatement activities and expenditures. The City of Mountain View's maximum allocation is \$643,897 spread over 18 years. The exact amount to be received depends on participation by eligible California counties and cities.

**ALTERNATIVE**

Do not authorize the City to participate in the National Opioids Settlements.

**PUBLIC NOTICING** – Agenda posting.

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