



COUNCIL REPORT

DATE: June 25, 2024
CATEGORY: Consent
DEPT.: City Attorney's Office
TITLE: Kroger Co. National Opioids Settlement

RECOMMENDATION

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

BACKGROUND

National class action lawsuits against manufacturers, distributors, and other entities responsible for causing or contributing to the opioid epidemic have resulted in large-scale settlements, known as the National Opioids Settlement, involving the payment of billions of dollars to eligible entities, including states, counties, and cities. Most of the funds go directly to participating states and their subdivisions and must be used for abatement of the opioid epidemic.

On December 14, 2021, the City Council approved the City of Mountain View's (City) participation in the National Opioids Settlement. Consequently, the City has participated in settlements with large pharmaceutical distributors, manufacturers, and pharmacies, including CVS, Walgreens, and Wal-Mart.

The City was recently notified of a \$1.2 billion settlement with Kroger Co. for its involvement in the opioid crisis. To participate in the settlement, the City must submit participation documents no later than August 12, 2024. Accordingly, staff is bringing this item to Council for action prior to the summer recess.

ANALYSIS

In September 2023, Kroger Co. agreed to settle claims related to its involvement in the opioid crisis. The terms of the settlement are set forth in a settlement agreement dated March 22, 2024. The terms of the settlement are similar to the settlement agreements with other companies and includes payment in varying amounts to states and their subdivisions based on

participation. The \$1.2 billion will be paid out to participating subdivisions over 11 years after the effective date of the settlement agreement.

In previous settlement agreements, cities had the option to receive funds directly or to have their share of the settlement proceeds delivered to their corresponding county. In the previous settlements, the City elected to have its share delivered to Santa Clara County (County) because the eligible opioid abatement activities involve changes to medical treatment and prescriptions, counseling services, and recovery services, which are services provided by the County, not the City.

It is not clear if the Kroger Co. settlement agreement will include the same payment options. However, if it does, staff recommends that the City assign its portion of the settlement proceeds to the County so the funds may be used for eligible services.

It is currently unknown how much the City is eligible to receive from the Kroger Co. settlement. The amount will depend on how many subdivisions in California participate in the settlement. Therefore, staff will not have that information until sometime after the deadline to submit participation documentation expires.

The Kroger Co. settlement agreement also includes terms to prevent this type of crisis from reoccurring. For approximately eight years, Kroger Co. will be subject to oversight. An independent monitor will be assigned to prevent the delivery of pharmaceuticals to areas where diversion and misuse may occur, and to review opioid prescription patterns and report “red flags.”

As noted above, the City must sign and return documentation acknowledging its acceptance of the terms of the Kroger Co. settlement agreement and expressing its desire to participate in the settlement no later than August 12, 2024. If the City fails to meet this deadline, it will be deemed to have opted out of the settlement. If the City opts out of the settlement, it will retain the right to file its own lawsuit against Kroger Co., but such a lawsuit would be cost-prohibitive for a city the size of Mountain View and, therefore, is not recommended.

FISCAL IMPACT

Participating in the Kroger Co. National Opioids Settlement will allow the City to receive funding for eligible opioid abuse abatement activities. The exact amount is unknown at this time and depends on how many subdivisions in California participate in the settlement.

ALTERNATIVES

Do not authorize the City to participate in the National Opioids Settlement with Kroger Co.

PUBLIC NOTICING—Agenda posting.

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