



City Council Agenda Item

City Council Meeting Date: December 21, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Jeff Malawy, City Attorney
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SUBJECT: Participation in Nationwide Opioids Settlements; Adoption of Resolution No. 6468(21) Authorizing the Mayor to Execute Settlement Documents in Nationwide Litigation with Opioids Manufacturers Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., and Opioids Distributors McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation

Recommendation:

Staff recommends the City Council:

- 1) Approve Settlement Participation Form for the City's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (Distributors) (Attachment 1);
- 2) Approve Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (Manufacturers) (Attachment 2);
- 3) Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement (Attachment 3);
- 4) Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Janssen Settlement (Attachment 4);
- 5) Adopt Resolution No. 6468(21) authorizing the Mayor to execute the documents identified in Recommendation Nos. 1 through 4 (Attachment 5);
- 6) Authorize the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements, including, but not limited to, the transmittal of the executed documents in Recommendation Nos. 1 through 4 (as necessary and applicable).

Background:

Various states, counties, and cities have been in litigation with opioids manufacturers and distributors. The litigation concerns the distribution and manufacture of opioids that have contributed to the opioid addiction epidemic in the United States. Two tentative settlements have been reached, with the distributors and manufacturers agreeing to pay a total of \$26 billion. (See Attachments 6 and 7 posted on the City's website.)

Lompoc is entitled to receive an estimated \$749,295 from the settlements, paid in installments over 18 years, or approximately \$42,000/year. Use of the funds is restricted to certain opioid remediation or related uses, and comes with annual reporting and potential auditing compliance costs described further below. Lompoc must decide whether to participate in the settlements by January 2, 2022.

If the City Council opts not to participate in the settlements, then the overall settlement amount to be paid by the corporations will be reduced, and Lompoc's share will go to the State of California. If the City Council opts to participate in the settlements, then Lompoc's share will be sent to the County of Santa Barbara for eligible opioid or related uses, which will avoid Lompoc having to incur annual reporting and audit compliance costs. In any year Lompoc has a qualifying opioid-related use for the funds, Lompoc may elect to receive payment directly, and comply with annual reporting and auditing, in that year. Staff will evaluate potential eligible uses for the funds, and seek City Council direction to receive the funds directly in any year Lompoc may have a qualifying opioid-related use for the funds.

In order for the settlement to take effect, a "critical mass" of participation by states, cities and counties must be achieved. This critical mass is determined by the Distributors and Manufacturers in their sole discretion. The first step is to achieve a critical mass of states. The second step is to achieve a critical mass of cities and counties. If a critical mass is not achieved, then the National Opioids Settlements do not proceed and the litigation continues. At this stage, a critical mass of states has already occurred.

Discussion:

Assuming there is a critical mass to proceed, the payout amounts under the settlements is contingent upon various factors, including the number of states, cities, and counties participating, with a maximum payout of \$21 billion over the course of 18 years by the Distributors and \$5 billion over no more than nine years by the Manufacturers. A fraction of that amount will be received by California, its counties, and cities. The actual amount for Lompoc is dependent on a number of variables, including, but not limited to, i) the number of California cities and counties participating, ii) certain actions that may be taken by the State of California, iii) the prevalence of opioid use disorder in Lompoc, iv) the number of opioid deaths in Lompoc, and v) opioid dosage in Lompoc.

It is estimated Lompoc is entitled to approximately \$749,295 from the settlements, paid in installments over 18 years. This amount is higher than the average city of Lompoc's

population size, due in part to the level of opioid use and overdoses in the area. (See Attachment 9.)

If Lompoc participates in the settlements, the funds will automatically be allocated to the County of Santa Barbara unless, in any given year, the City has a qualifying use for the funds and opts to receive the funds directly; however, there are certain reporting and tracking requirements if the City receives the funds directly (see below).

By participating in the settlements, the City would be agreeing to a release of claims the City may have against the Distributors and Manufacturers relating in any way to opioids, which includes both known and unknown claims.

Use of the settlement funds is restricted to certain opioid abatement or related uses, including a range of intervention, treatment, education, and recovery services. (List of allowed uses is found in Attachment 8.) Additionally, 50% of the funds each city or county receives must be used for any of the following “high impact abatement activities”:

- (1) the provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program; or
- (2) creating new or expanded Substance Use Disorder (SUD) treatment infrastructure; or
- (3) addressing the needs of communities of color and vulnerable populations (including homeless populations) that are disproportionately impacted by SUD; or
- (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 non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; or
- (5) interventions to prevent drug addiction in vulnerable youth.

(See page 4 of Attachments 3 and 4.)

There are also significant public reporting and tracking requirements on the expenditures of such funds, which may make County receipt and expenditure of such funds, rather than City, more desirable. For example, receiving funds from the settlement with the Manufacturers would require the following reporting and tracking:

- Preparation of annual written reports regarding the use of the funds. This report must include a certification that all funds received have been used in compliance with the Manufacturer settlement agreements. This report must be in a form that is approved by the California Department of Health Care Services (DHCS).
- The City would be required to track all deposits and expenditures.

- Funds not used for a permitted purpose must be identified and included in the annual report (including any attorneys' fees, investigation costs, or litigation costs). This information must also be reported to the Manufacturers and the settlement fund administrator.

In terms of enforcement, if DHCS believes that the use of settlement funds is inconsistent with the requirements, then it must meet and confer with the city or county, and if not resolved, DHCS may perform an audit. If the issue is not resolved, then DHCS can bring a motion or action in court to resolve the concern or to enforce the terms of the settlement agreement/state-allocation agreement. There are also time limits on expenditure where money not expended or encumbered within 5 years of receipt must be transferred to the State. Again, these requirements only apply to the City if it elects to receive direct distribution, and do not apply to the City if the funds go to the County.

The National Opioids Settlements also require the Distributors to track and report their shipments in order to detect, stop, and report suspicious opioids orders. In addition, the Manufacturers (which ceased marketing opioids in 2015 and ceased selling opioids in 2020) agreed not to market or sell any opioid products in the next ten years and not to lobby regarding prescription opioids for ten years.

Approval of Recommendation Nos. 1 and 2 would authorize the City to participate in the National Opioid Settlements with the Distributors and Manufacturers on the terms and conditions of those settlement agreements. (Attachments 1 and 2.)

Approval of Recommendation Nos. 3 and 4 would approve agreements with the State of California on the distribution and use of settlement funds, consistent with the National Settlement Agreements. (Attachments 3 and 4.)

Approval of Recommendation No. 5 would authorize the Mayor to execute all documentation necessary to participate in the National Opioid Settlements. (Attachment 5.)

Approval of Recommendation No. 6 would authorize the City Manager to carry out all necessary acts to allow the City to participate in the National Opioid Settlements, including the transmittal of the above-mentioned executed documents.

City Council approval and submission of all required documents must be completed by January 2, 2022.

Fiscal Impact:

By participating in the National Opioid Settlements, the City may receive an estimated \$749,295 the use of which is restricted to certain opioid abatement or related uses. The funds will go to the County to avoid annual reporting and auditing compliance costs unless, in any given year, the City has a qualifying use for the funds and elects to receive the funds directly in that year.

Conclusion:

Staff recommends the City Council participate in the settlements by approving Attachments 1 through 5. Lompoc's share of the settlement funds will be sent to the County of Santa Barbara for County's opioid abatement and related uses, to avoid annual reporting and audit compliance costs. In any year Lompoc has a qualifying opioid-related use for the funds, Lompoc may elect to receive payment directly, and comply with annual reporting and auditing, in that year.

Respectfully submitted,



Jeff Malawy, City Attorney

- Attachments:
- 1) Settlement Participation Form for the City's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation
 - 2) Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
 - 3) Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement
 - 4) Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement
 - 5) Resolution No. 6468(21)
 - 6) Distributor Settlement Agreement (posted on City agenda website)
 - 7) Manufacturer Settlement Agreement (posted on City agenda website)
 - 8) List of Eligible Uses (posted on City agenda website)
 - 9) County Department of Public Health Opioid Overdose Snapshot (posted on City agenda website)