



## City Council Agenda Item

**City Council Meeting Date:** April 4, 2023

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Jeff Malawy, City Attorney  
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**SUBJECT:** Approval of Additional National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS; Adoption of Resolution No. 6569(23) Authorizing the City Manager to Execute the Settlement Documents

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### **Recommendation:**

Staff recommends the City Council:

- 1) Approve Settlement Agreements and Participation Forms for the City's participation in the National Opioid Settlement Agreements with Teva, Allergan, Walmart, Walgreens, and CVS (Attachments 1 and 2); and
- 2) Approve the California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds relating to the National Opioid Settlement Agreements with Teva, Allergan, Walmart, Walgreens, and CVS (Attachment 3); and
- 3) Adopt Resolution 6569(23) approving and authorizing the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS, including signing necessary documents and transmittal thereof as necessary (Attachment 4).
- 4) Choose whether Lompoc's share of the settlement funds should be received directly by Lompoc, or instead allocated to the County of Santa Barbara, to be spent on eligible opioid remediation uses.

### **Background:**

In December 2021, the City entered into settlement agreements with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation. (collectively, the Distributors) and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-

Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the Manufacturer) (together, the 2021 Settling Defendants). The 2021 settlement agreement related to litigation by various states, cities, and counties relating to the above corporations' manufacture and distribution of opioids and, in particular, the impact of such activities upon the national opioid epidemic (2021 Settlement Agreements). The 2021 Settlement Agreements required that a "critical mass" of public agencies participate in order for it to become effective, which was achieved in 2022.

In December 2021, the City Council elected to directly receive funds from the 2021 Settlement Agreements rather than allocate its funds to the County of Santa Barbara. To date, the City has received two years of payments (totaling \$88,532). Staff is continuing efforts to determine the most practical eligible use for the funds within Lompoc. The City must spend the funds within 5 years after receipt, or they will be transferred to the State. Total payments to Lompoc under the 2021 Settlement Agreements will be approximately \$749,295 total, paid over 18 years.

All eligible cities in the county elected to send their 2021 Settlement Agreements funds to the County, except Lompoc and the City of Santa Barbara. The County is estimated to receive in the tens of millions of dollars from the 2021 Settlement Agreements, that can presumably be used for a coordinated countywide opioid remediation use.

### **Discussion:**

At this time, new additional settlement agreements (2023 Settlement Agreements) are proposed with Teva, Allergan, Walmart, Walgreens, and CVS, who are additional defendants that are retailers and manufacturers of opioids (2023 Settling Defendants).

The terms of the 2023 Settlement Agreements are similar to the 2021 Settlement Agreements, which include the requirement that a critical mass of participation is required, provides for a broad release of the 2023 Settling Defendants from liability relating to opioids, and includes direct or indirect payment of settlement funds to the various local agencies agreeing to participate. Additional information about those settlements can be found at [www.nationalopioidsettlement.com](http://www.nationalopioidsettlement.com)

The 2023 Settlement Agreements could provide up to approximately \$1.8 billion to California state, counties, and cities. That amount assumes maximum participation. Similar to the 2021 Settlement Agreements, the more local agencies that participate, the more funds will be available to California.

A rough estimate of Lompoc's share of this maximum amount would be approximately \$600,000, which would be distributed over a 5 to 15 year period (the period is different for each corporation's settlement agreement). It must be emphasized that this amount is an estimate of what the City may receive and assumes a best-case scenario where all local agencies participate. The exact actual amount will not be known until the process has completed.

Similar to the 2021 Settlement Agreements, the use of the funds is restricted to opioid remediation purposes (see Attachment 5 for an example list of eligible uses).

The deadline for the City Council to approve participation in the 2023 Settlement Agreements is April 18, 2023.

#### Choice to Allocate Funds to County or Directly to Lompoc

Just like the 2021 Settlement Agreements, by default Lompoc's share of the settlement funds would be automatically sent to the County of Santa Barbara, presumably for a coordinated countywide opioid remediation use, unless Lompoc elects to directly receive the funds.

Direct receipt by Lompoc would require complying with strict accounting and reporting requirements, including annual written reports regarding use of the funds and tracking of all deposits and expenditures, and state audits. These requirements only apply to the City if it elects to directly receive the funds and does not apply to the City if the funds go to the County. In terms of enforcement, the State enforces the expenditure requirements.

Each year, Lompoc can choose whether that year's payment will go to the County or to Lompoc. The choice must be made at least 60 days prior to the payment date. The City must spend the funds within 5 years after receipt, or they will be transferred to the State.

Staff seeks Council direction on whether to elect direct payments to Lompoc for the 2023 Settlement Agreements, or to allow the payments to automatically go to the County. City staff is working to determine the most practical eligible uses for Lompoc's directly received funds. Per the minutes of the December 2021 meeting, the City Council directed staff to return within one year after receiving the funds (that is, by November 15, 2023) to report on potential eligible uses in Lompoc. Staff will return with that report by November 15.

#### **Fiscal Impact:**

By participating in the 2023 National Opioid Settlements, the City may receive an estimated \$600,000, 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 elects to receive the funds directly.

#### **Conclusion:**

Staff recommends the City Council participate in the 2023 Settlement Agreements by approving the forms and agreements at Attachments 1 through 3 and adopting Resolution No. 6569(23) (Attachment 4). Staff recommends the City Council decide whether to elect direct payments to Lompoc for the 2023 Settlement Agreements, or to allow the payments to automatically go to the County.

Respectfully submitted,



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Jeff Malawy, City Attorney

- Attachments:
- 1) Settlement Participation Forms for the City's participation in the National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS.
  - 2) 2023 Settlement Agreements with Teva, Allergan, Walmart, Walgreens, and CVS (due to the length of each agreement, these documents are posted on the City website with the agenda materials for this meeting).
  - 3) Proposed California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds in the Teva, Allergan, Walmart, Walgreens, and CVS Settlement Agreements.
  - 4) Resolution 6569(23) approving and authorizing the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS, including signing necessary documents and transmittal thereof as necessary.
  - 5) List of Eligible Uses