



CITY OF MANHATTAN BEACH

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STAFF REPORT

Agenda Date: 12/7/2021

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Quinn Barrow, City Attorney

George Gabriel, Assistant to the City Manager

SUBJECT:

Consideration of a Resolution Opting In and Authorizing Settlement Agreements with Distributors of Opioids, AmerisourceBergan, Cardinal Health, and McKesson, and Opioid Manufacturer Janssen, Owned By Johnson & Johnson (City Attorney Barrow).

ADOPT RESOLUTION NO. 21-0114

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 21-0114 authorizing the City Manager to execute all necessary documents to approve the proposed settlements prior to the January 2, 2022 deadline. The City can decide at a later date as to whether to retain the funds or let Los Angeles County use them. If the Council adopts the Resolution, staff will explore whether it can forward the funds to the Beach Cities Health District.

FISCAL IMPACT:

Assuming there is 100% participation from cities and counties, the amount Manhattan Beach could receive is estimated at \$497,952 - \$507,118, distributed over several years, based upon a complicated allocation formula. Such funds can only be used for specified uses limited to the treatment of opioid abusers and prevention of opioid abuse.

BACKGROUND:

National Opioid Litigation

Between 2017 and 2020, the State of California, 51 of 58 California counties and approximately 28 California cities filed lawsuits against opioid manufactures and distributors seeking to abate the opioid crisis. Similar lawsuits were filed by almost all states and many cities and local governments within those states. These lawsuits were consolidated into one lawsuit in the Federal Court for the Northern District of Ohio. The Court converted the consolidated lawsuits

into a class action lawsuit with the Plaintiff's Class consisting of all states and local governments in the United States. As a result, the City of Manhattan Beach is a Plaintiff in these lawsuits although the City is not required to pay any attorney fees or litigation costs.

The Court appointed a group of 30 attorneys representing state, county and city governments to serve as the Plaintiffs' Executive Committee to control the litigation on behalf of the Plaintiffs and, if possible, negotiate a settlement.

Settlements

Nationwide settlements have been proposed 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 will provide substantial funds to states and local political subdivisions for abatement of the opioid epidemic across the country and will impose transformative changes in the way the settling defendants conduct their business.

Settlement Basic Terms:

- Distributors will pay a maximum of \$21 billion over 18 years.
- J&J will pay a maximum of \$5 billion over no more than nine years.
- Of this potential \$26 Billion, approximately \$22.8 billion in settlement proceeds will be payable to state and local subdivisions.
- Based on the allocations formula for the States, the maximum amount California will receive will be approximately \$2,263,923,602 with \$339,538,340 being retained by the State and \$1,924,335,342 being allocated to counties and cities within the State.
- Assuming there is 100% participation from cities and counties, the amount Manhattan Beach could receive is estimated at \$497,952 - \$507,118, distributed over several years, based upon a complicated allocation formula.
- If the City Council decides to approve the proposed settlement, the settlement proceeds are limited to the uses permitted by the settlement (e.g., the treatment of persons addicted to opioids and prevention of opioid abuse.) The settlement proceeds to be paid to the states and local political subdivision will be in proportion to the number of states and local political subdivisions that approve the Settlements.
- Of the funds going directly to participating states and subdivisions, at least 85% must be used for abatement of the opioid epidemic.
- The settlements allow for a broad range of approved uses by state and local governments to abate the opioid epidemic. A list of approved uses is found at Exhibit E of the Master Settlement Agreements.
- Agreements also provide for injunctive relief that requires important changes to the Distributors' and J&J's conduct to better protect our nation's health and welfare.
 - Creation of a groundbreaking clearinghouse through which the Distributors will be required to account not only for their own shipments, but also the shipments of the other distributors, in order to detect, stop, and report suspicious Opioids orders.
 - J&J (which ceased marketing Opioids in 2015 and ceased selling Opioids in 2020) will not market or sell any Opioid products in the next ten years and has agreed to cease lobbying concerning prescription opioids for ten years.
 - J&J also has agreed to make the clinical trial data for its discontinued Opioids available for medical research.

California Allocation Terms:

- The National Settlements allot a certain amount of money to California to be allocated between the State and local governments. That amount is divided between State and California local governments by agreement (the “Allocation Agreements”). The Allocation Agreements split the dollars coming into California as follows:
 1. 15% to a State Fund;
 2. 70% to local governments in an Abatement Accounts Fund; and
 3. 15% to litigating local governments in a Subdivision Fund.
- The Settlement Agreements and the Allocation Agreements require that the money in the Abatement Accounts Fund must be spent on remediation with no less than 50% of each local government’s allocation in each calendar year spent on one or more 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;
 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 non-sworn) 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.
- The funds in the CA Abatement Accounts Fund will be divided according to an allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804). The percentage from the CA Abatement Accounts Fund allocated to each eligible local government (any county or city above 10,000 in population) is set forth in Appendix 1 to each Allocation Agreement.
- Eligible Local Government’s share of the CA Abatement Accounts Fund is a product of the total in the CA Abatement Accounts Fund multiplied by the City’s percentage (the “Local Allocation”).
 - A City that is an Eligible Local Government will be allocated its Local Allocation only when it becomes a Participating Subdivision by signing the Participation Agreements to the Settlements.
 - The Local Allocation for a city that is a Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date as defined in the Settlement Agreements.
 - If the City wishes, it can elect a direct payment. It must then follow the use and reporting requirements in the Allocation Agreements and Settlement Agreements. Staff will explore whether the City can opt in, and then transfer the funds to the Beach Cities Health District. It appears Hermosa Beach is exploring this option as well with respect to its allocation.

- The State agreements are available on-line at <https://oag.ca.gov/opioids>.

Why Should City Sign On?

- This proposal is a product of years of litigation and years of settlement negotiations.
- Negotiators have put forward this deal because they believe it is the best deal to be had.
- Money is critical to addressing the opioid epidemic at this time.
- Litigation has real risk.
- Further insolvencies and bankruptcies of defendants are a real risk.
- Even if a city does not want to handle the reporting requirements or the use requirements in the settlement, by signing on the County in which they reside gets money to combat the opioid epidemic.

When is the Deadline for Participating?

January 2, 2022.

CONCLUSION:

Staff recommends that the City Council adopt the Resolution authorizing the City Manager to execute all necessary documents to approve the proposed settlements prior to the January 2, 2022 deadline. The City can decide at a later date as to whether to retain the funds or give them to Los Angeles County. If the Council adopts the Resolution, staff will explore whether it can forward the funds to Beach Cities Health District.

ATTACHMENT:

1. Resolution No. 21-0114

RESOLUTION NO. 21-0114

A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL AUTHORIZING THE CITY TO ENTER INTO SETTLEMENT AGREEMENTS WITH MCKESSON CORPORATION, CARDINAL HEALTH, INC., AMERISOURCEBERGEN CORPORATION, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., AND JANSSEN PHARMACEUTICA, INC., AGREE TO THE TERMS OF THE MEMORANDUM OF UNDERSTANDING ALLOCATING SETTLEMENT PROCEEDS, AND AUTHORIZE ENTRY INTO THE MEMORANDUM OF UNDERSTANDING WITH THE ATTORNEY GENERAL AND AUTHORIZE THE CITY ATTORNEY AND CITY MANAGER TO TAKE ALL ACTIONS NECESSARY AND CONVENIENT TO IMPLEMENT THE SETTLEMENTS

RECITALS

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death. The State of California and California local governments spend billions of dollars each year to address the direct consequences of this crisis;

WHEREAS, since 2017, state and local governments in California and around the United States have been pursuing litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the City of Temecula ("the City") and resources necessary to combat the opioid epidemic;

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the "Settling Defendants") have been ongoing for several years;

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims to settle the Litigation;

WHEREAS, the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively "Settlement Agreements") available for review on-line at <https://nationalopioidsettlement.com/>;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in California including to the

State of California and Participating Subdivisions upon occurrence of certain events as defined in the Settlement Agreements (“California Opioid Funds”);

WHEREAS, California local governments as well as the attorneys representing those local governments have engaged in extensive discussions with the State Attorney General’s Office (“AGO”) as to how the California Opioid Funds will be allocated, which has resulted in the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement and the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement (collectively the “Allocation Agreements”) which are agreements between all of the entities identified in the Allocation Agreements;

WHEREAS, copies of the State Allocation Agreements are available on-line at <https://oag.ca.gov/opioids> ;

WHEREAS, the Allocation Agreements propose to allocate the California Opioid Funds 15% to a State Fund; 70% to local governments in an Abatement Accounts Fund; and 15% to litigating local governments in a Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements will be combined pursuant to Allocation Agreements, and 15% of that total shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund Allocation”), and 15% to the California Subdivision Fund (“CA Subdivision Fund Allocation”);

WHEREAS, the funds in the CA Abatement Accounts Fund (the California Abatement Accounts Fund Allocation) will be allocated based on an allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804). The percentage from the CA Abatement Accounts Fund allocated to each eligible local government (any county or city above 10,000 in population) “Eligible Local Government”) is set forth in Appendix 1 to each Allocation Agreement. The City’s share of the CA Abatement Accounts Fund is a product of the total in the CA Abatement Accounts Fund multiplied by the City’s percentage set forth in Appendix 1 (the “Local Allocation”); and

WHEREAS, any city that is an Eligible Local Government will be allocated its Local Allocation share only when it becomes a Participating Subdivision by signing the Participation Agreements to the Settlements. The Local Allocation share for a city that is a Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date as defined in the Settlement Agreements.

THEREFORE, THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The City Council hereby approves and authorizes the City Manager and City Attorney to settle and release the City's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements and Allocation Agreements, including taking the following measures:

- A. The execution on behalf of the City of the Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.
- B. The execution on behalf of the City of the Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.
- C. The execution on behalf of the City of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement.
- D. The execution on behalf of the City of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement Allocation Agreements.

SECTION 2. The City Council authorizes and directs the City Manager and City Attorney to take all actions necessary or convenient on behalf of the City to implement and effectuate the agreements approved by this Resolution.

SECTION 3. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on December 7, 2021.

AYES:
NOES:
ABSENT:
ABSTAIN:

HILDY STERN
Mayor

ATTEST:

LIZA TAMURA
City Clerk