

# Capitola City Council

## Agenda Report



**Meeting:** July 25, 2024

**From:** City Manager Department

**Subject:** Opioid Settlement Funding

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**Recommended Action:** Authorize the City to participate in the National Opioid Settlement with The Kroger Company ("Kroger") and release all claims against Kroger in exchange for a portion of the settlement funds that will flow to the City through the State of California; authorize the City Manager and City Attorney to sign all relevant documents related to joining the settlement and executing the release of claims; and authorize the allocation of funding to the County of Santa Cruz pursuant to the City's previously adopted Memorandum of Understanding.

**Background:** States and cities across the United States previously brought litigation against the three largest pharmaceutical distributors of opioid painkillers, Amerisource Bergen, Cardinal Health, and McKesson (the "Distributors"), and the opioid painkiller manufacturer, Janssen (owned by Johnson & Johnson) ("Janssen"), which has resulted in a settlement agreement. On February 24, 2022, the City Council voted to participate in a settlement of National Opioid Settlements with distributors and manufacturers of opioid painkillers. In addition, the City agreed to assign opioid settlement funds to the County of Santa Cruz as the more appropriate agency to provide programs to address the opioid crisis which programs were a requirement of the settlement. In March 2024, a new proposed national opioids settlement was reached between the plaintiffs and Kroger Co ("Kroger"), resulting in a proposed settlement of \$1.2 billion dollars. Like the previous National Opioid Settlements, local entities need to release all claims against Kroger and agree to use the funds on opioid remediation to receive settlement funds. City Council authorization is requested to opt into the Kroger Settlement. Any funds received will be covered by the assignment agreement with the County of Santa Cruz.

**Discussion:** The national opioid crisis has been well-documented over the last decade as communities have struggled to address its devastating impacts. The crisis has spurred litigation against opioid manufacturers and distributors alleging that they falsely marketed and unlawfully promoted and dispensed opioids in ways that the industry knew to be dangerous, addictive, and prone to abuse.

Recently, a new \$1.2 billion settlement was announced with Kroger, one of the opioid retailers that was sued by many of the government plaintiffs. Under this settlement, the State of California will receive a maximum amount of roughly \$122 million over the next eleven years. These funds will be split between the State and local subdivisions who participate in the settlement, based on the same metrics that were used to split the monies in the earlier settlement (15% to the State, 70% to the Abatement Fund, and 15% to Litigating Local Entities). The City is eligible to participate in the Kroger settlement and receive funds if it agrees to release all claims against Kroger and spend any funds it receives the same way it is spending other opioid settlement funds.

Because the total amount of settlement funds depends on the amount of local subdivision participation and other metrics identified in the settlement documents, it is difficult to determine with precision how much money the City will be allocated from this settlement.

The City had previously entered into a Memorandum of Understanding (MOU) with the County of Santa Cruz to utilize the opioid settlement agreement funding. The County has formed a steering committee to meet with cities to discuss the use of funding to best meet the needs of the community. Staff recommends allocating any funding awarded through the Kroger settlement agreement to the previously adopted MOU.

Staff recommends that the City Council authorize the City to join this settlement and release any opioid-related claims it could otherwise file against Kroger in exchange for these funds. In addition, the funds received will be transferred to the County in accordance with the previously executed assignment agreement. The County will join the funds with the other opioid remediation funds it is currently expending. Similar to the other national opioid settlements, the documents for the Kroger settlement constitute hundreds of pages and are extremely complicated. The documents are available for review at [www.nationalopioidsettlement.com](http://www.nationalopioidsettlement.com) by navigating down from the Kroger button that appears at the top of the home page. For purposes of efficiency, and similar to the procedure used with regard to the previous settlements, staff requests that the City authorize the City Manager and City Attorney to sign all documents required to effectuate the City's release of claims and inclusion in the Kroger settlement.

Fiscal Impact: By joining the Kroger settlement, the City is eligible to receive some percentage of the funds ultimately provided to California over the next eleven years and devoted to opioid crisis remediation efforts. Pursuant to the existing MOU with Santa Cruz County, the City will allocate those funds to regional efforts to remediate the opioid crisis.

Report Prepared By: Jamie Goldstein, City Manager

Reviewed By: Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager