



STAFF REPORT
12/8/2021

TO: Honorable Mayor and City Council Members

FROM: Best Best & Krieger LLP, City Attorney

SUBJECT: Resolution No. 2021-76, Consider opting into Settlement Agreements with Distributors of opioids, Amerisource Bergan, Cardinal Health, and Mckesson, and Opioid Manufacturer Janssen (Owned By Johnson & Johnson)

STAFF RECOMMENDATION

Staff recommends that the City Council adopt Resolution 2021-76 authorizing the City Manager to:

1. Opt into settlement agreement with opioid distributors, Amerisource Bergen, Cardinal Health, and McKesson, and direct the City Manager to execute any documents necessary to implement the action.
2. Opt into settlement agreement with opioid manufacturer, Janssen (owned by Johnson & Johnson), and direct the City Manager to execute any documents necessary to implement the action.

EXECUTIVE SUMMARY

Litigation brought by states and cities across the United States 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) (“J&J”), has resulted in two proposed settlements totaling approximately \$26 billion dollars.

The City can opt into the settlements, thereby releasing its claims against the Distributors and J&J, in order to receive at most **\$343,980 paid out over a period of next 18 years**. The funds are restricted to certain opioid abatement/remediation uses. The City can either allow the funds to be used by the County of Riverside or elect to use the funds itself subject to reporting requirements to the state. Alternatively, the City can take no action, thereby opting out of the settlements, while maintaining its right to pursue litigation against the Distributors and J&J.

BACKGROUND/ DISCUSSION

A. Allocation of Funds

Litigation brought by states and cities across the United States against the Distributors and J&J has resulted in a proposed settlement totaling approximately \$26 billion dollars. The proposed settlement is broken into two separate deals: (1) the Distributors Settlement (Exhibit A); and (2) the J&J Settlement (Exhibit B.) The Distributors will pay \$21 billion over 18 years and J&J will pay \$5 billion over 7 years.

California is to receive between \$2.269 and \$2.34 billion and is to distribute these funds pursuant to intrastate allocation agreements for both the Distributors Settlement and the J&J Settlement. (Exhibit C and Exhibit D.) As outlined in the Intrastate Allocation Agreements, Settlement Fund payments due to the State of California are allocated as follows: 15% to the State Fund; 70% to the California Abatement Accounts Fund; and 15% to the California Subdivision Fund. This results in the State receiving 15% of the payments allocated to California and local subdivisions receiving the remaining 85%. The percentages paid out to the California Subdivision Fund is reserved for entities that participated in the litigation of the claims giving rise to the settlement agreements. The percentages paid out to local subdivisions that did not litigate, but choose to opt into the settlements comes from the share of the settlement proceeds that are placed in the California Abatement Accounts Fund. Essentially, this means that the City of Coachella, if it chooses to opt into the settlement, is entitled receive a percentage share from the California Abatement Accounts Fund.

The City of Coachella has been allocated 0.021% of the 70% of the approximate \$2,340,000,000 (i.e., best case scenario), which is equal to **\$343,980**. This total amount will be disbursed over 18 years, which totals approximately **\$19,110 per year**. The first payments are scheduled to occur in the first quarter of 2022 and July 2022. After the receipt of these initial payments, further payments will be received annually thereafter. As stated above, the definite amount is not yet known because of the bonus structure built into the agreements.

The default distribution of funds in the settlement agreements provides that the funds will go directly to the county in which a city is located. A city can elect to have its funds delivered directly to the city by providing notice in the settlement agreements. Additionally, a city within a county may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the settlement fund administrators at least sixty days prior to a payment date.

In deciding whether to allow a city's funds to go directly to the county in which a city is located, a city should consider the following: (1) whether the amount of money is substantial enough for the city to handle it on its own; (2) whether the city offers the services and has the employees to spend the money in accordance with its prescribed uses; and (3) whether the city wants to engage in the reporting requirements over the course of the next nineteen years (eighteen years of distribution and an additional year following final distribution).

B. Use of Received Funds

As outlined by the Distributor and J&J Settlements, funds received from the California Abatement Accounts Fund must be **used for future opioid remediation or abatement**. Exhibit "E" of both

the Distribution and J&J Settlements contain a non-exhaustive list of potential uses for received abatement funds. For instance, participating subdivisions may use funds for areas such as services to treat opioid use disorder; support people in treatment and recovery; connect people to care; address needs of criminal justice-involved persons; address the needs of pregnant or parenting women and their families, including babies with neonatal abstinence syndrome; prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids; prevent misuse of opioids; prevent overdose deaths and other harms; provide leadership, planning, and coordination of programs; provide training; and conduct research. (See Exhibit A, E-1 – E-15 for allowed uses; see Exhibit B, pp. 63-77 for allowed uses.)

The Intrastate Allocation Agreements also provide spending limitations in addition to those provided by the Distributor and J&J Settlements. Under the Intrastate Allocation Agreements, no less than 50% of the funds received in each calendar year will be used for 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.

In addition to these requirements, there is also a time limit on the spending of received funds. If funds are not expended or encumbered within **five years of receipt** and in accordance with the settlement agreements and the Intrastate Allocation Agreements, the funds are required to be transferred back to the State.

C. Management of Funds

Each county and city that receives payment of funds from the settlements must prepare written reports at least annually regarding the use of those funds until the funds are fully expended and for one year thereafter. Each county and city will need to track all deposits and expenditures. These reports will also include a certification that all funds received have been used in compliance with the allocation agreements. The California Department of Healthcare and Services (“DHCS”) may review these reports in order to determine compliance with the settlement agreements and the Intrastate Allocation Agreement.

If the DHCS determines that a participating subdivision's use of abatement funds is inconsistent with the settlement agreements or Intrastate Allocation Agreements, the parties are required to meet and confer. If the meet and confer process does not provide a resolution, the DHCS may conduct an audit, which can lead to a court action if the matter is still not resolved after an audit.

D. Opting In

The City must opt into the settlements by **January 2, 2022**, which requires the City to release its claims against the Distributors and J&J. If the City takes no action, it will have opted out of the settlements and its designated funds will flow to the State. The City would still have the opportunity to bring its own action against the Distributors and J&J.

CONCLUSION:

Unless the City intends to pursue its own litigation against the Distributors and J&J, it is recommended that the City opt into the settlement and elect to receive payments directly.

FISCAL IMPACT

Opting into the settlements would have a net positive fiscal impact to the City by allowing the City to receive approximately \$19,110 per year to fund opioid abatement.

ALTERNATIVE(S)

Given the amount of funds and the reporting requirements, the City may also accept the default distribution and allow its funds to deposit with the County.

ATTACHMENTS

1. Exhibit A – Distributor Settlement Agreement
2. Exhibit B – J&J Settlement Agreement
3. Exhibit C – CA Distributors Allocation Agreement
4. Exhibit D – CA J&J Allocation Agreement
5. Exhibit E – Participation Agreement Distributor Settlement
6. Exhibit F – Participation Agreement J&J Settlement