

# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** August 3, 2021

**DEPARTMENT:** City Attorney

**TITLE:**

Resolution No. 46-2021 – authorizing City of Lake Worth Beach to join with the State of Florida and other local governmental units as a participant in the Florida Memorandum of Understanding and Formal Agreements implementing a Unified Plan

**SUMMARY:**

Resolution No. 46-2021 authorizes the City to enter into a Memorandum of Understanding with the State of Florida and other local governmental units to implement a Unified Plan governing the allocation among the parties of proceeds anticipated from the settlement of litigation against companies engaged in the manufacture, marketing, promotion, distribution and dispensing of opioids.

**BACKGROUND AND JUSTIFICATION:**

The State of Florida and many of its local governments have been engaged in litigation against those entities that have profited from the recent opioid epidemic, seeking to recover compensation for the devastating social and fiscal impacts of opioid addiction. The State Attorney General and the PEC (Plaintiffs' Executive Committee for the Opioid Multi District Litigation Panel) have proposed that the State and its local governments enter into a Memorandum of Understanding ("MOU") regarding the allocation of the anticipated settlement proceeds from the litigation. The MOU is a non-binding preliminary agreement to participate in an agreement governing the distribution of proceeds from anticipated settlements with Cardinal Health, Inc., McKesson Corp. and AmerisourceBergen Corp. (collectively known as "the Distributors") and Johnson & Johnson, as well as the Purdue Pharma and Mallinckrodt bankruptcies.

Based upon information provided by the Attorney General, the proposed allocation plan appears to provide greater potential benefits to local governments than the default allocations that have already been negotiated in the bankruptcy cases and are underway in other cases. Those default plans will be applied unless a different agreement is reached beforehand. Under the proposed MOU, there are separate City/County and Regional Funds, in addition to the State fund. Under the default plans, there is no separate City/County fund and all the money flows through regional Managing Entities, with no funds flowing directly to municipalities.

The proposed MOU allocates 15% of total settlement amounts to the City/County fund; a sliding scale of 30-40% to the Regional Fund; and the remaining 45-55% to the State. According to the State, these percentages are more favorable to the cities and counties than a *pro rata* allocation based on the proofs of claims filed in the bankruptcy cases, where the State's claim was four to five times the aggregate amount of the city and county claims.

Recipients of the proceeds must use the funds for abatement activities that address the public health crisis of opioid addiction in the community, such as first responder training and prevention programs for youth. This restriction serves to maximize available funds because it affords

certain tax benefits to the defendants and also avoids federal clawback/recoupment of substantial portions of the settlement proceeds.

Since the total amount of the settlement proceeds is not yet known, it is impossible to predict the amount of money each municipality will receive. The length of the payout period is unknown but could range from seven to ten or more years, based on the bankruptcy settlements. As stated in the Attorney General's letter, "[o]ur current best guess based on projections and assuming total participation, is \$120-\$140M a year for the first few years, \$90-110M a year for the middle years, and then \$60-\$70M a year for the later years of the deal for the State and its subdivisions." Under this hypothetical scenario, the City of Lake Worth's share would be .1171%, or anywhere from \$12,300 to \$22,843 annually.

**MOTION:**

Move to approve/disapprove Resolution No. 46-2021 – authorizing City of Lake Worth Beach to join with the State of Florida and other local governmental units as a participant in the Florida Memorandum of Understanding and Formal Agreements implementing a Unified Plan.

**ATTACHMENT(S):**

Key Points

Proposed Memorandum of Understanding & exhibits

Resolution 46-2021

Letter to Mayor Resch from John M. Guard, Chief Deputy Attorney General

Letter from City Attorney Glen J. Torcivia to Interim City Manager Juan Ruiz