



## BUSINESS OF THE CITY COUNCIL CITY OF SNOQUALMIE

**AB22-118**  
**September 12, 2022**  
**Committee Report**

### AGENDA BILL INFORMATION

<b>TITLE:</b>	AB22-118: Attorney General's Office Opioid Distributor Settlement	<input type="checkbox"/> Discussion Only
<b>PROPOSED ACTION:</b>	Approve the following documents:	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

<b>REVIEW:</b>	Department Director/Peer	Bob Sterbank	Click or tap to enter a date.
	Finance	n/a	
	Legal	Bob Sterbank	
	City Administrator	Mike Sauerwein	Click or tap to enter a date.

<b>DEPARTMENT:</b>	Legal		
<b>STAFF:</b>	Bob C. Sterbank – City Attorney		
<b>COMMITTEE:</b>	Public Safety	<b>COMMITTEE DATE:</b> September 6, 2022	
<b>MEMBERS:</b>	Ethan Benson	Cara Christensen	Rob Wotton
<b>EXHIBITS:</b>	<ul style="list-style-type: none"><li>AB22-118x1 – Participation Form</li><li>AB22-118x2 – Allocation Agreement</li><li>AB22-118x3 – Memorandum of Understanding</li></ul>		

<b>AMOUNT OF EXPENDITURE</b>	\$ Choose an item.
<b>AMOUNT BUDGETED</b>	\$ Choose an item.
<b>APPROPRIATION REQUESTED</b>	\$ Choose an item.

### SUMMARY

#### INTRODUCTION

This agenda bill concerns settlement of the State of Washington's litigation against three pharmaceutical companies (McKesson Corporation, Cardinal Health, Inc. and AmerisourceBergen Corporation) for their role in the national opioid epidemic. Approval of the agenda bill will approve and authorize the City's participation in **three agreements** which, collectively, allocate settlement funds from the State of Washington litigation between the State and counties, cities and towns, and distribute the funds individually by region among the counties, cities and town. If approved by Snoqualmie and a sufficient number of other local governments, Snoqualmie could receive up to \$127,235.36 over the next 17 years.

The three agreements are:

(1) Distributors Washington Settlement Agreement ("Distributors Washington Agreement") between and among the State of Washington on the one hand and McKesson Cardinal Health and AmerisourceBergen;

- (2) Allocation Agreement among the State of Washington and all participating Washington counties, cities and towns; and
- (3) One Washington Memorandum of Understanding (“MOU”) Between Washington Municipalities (*i.e.*, counties, cities and towns).

## **LEGISLATIVE HISTORY**

N/A. There is no prior City Council action on this matter.

## **BACKGROUND**

In 2019, Washington Attorney General Bob Ferguson filed suit in King County Superior Court against three pharmaceutical companies: McKesson Corp., Cardinal Health Inc. and AmerisourceBergen Drug Corporation. The State’s lawsuit alleged that the pharmaceutical companies had been shipping huge amounts of oxycodone, fentanyl, hydrocodone and other prescription opioids into Washington State, even when the companies knew or should have known those drugs were likely to end up in the hands of drug dealers and those suffering from substance use disorder.

Opioid distributors are legally required to monitor the size and frequency of prescription opioid orders to identify suspicious orders that could be diverted into the illegal drug market. Distributors are required to stop these suspicious shipments and report them to the federal Drug Enforcement Agency (DEA). McKesson, Cardinal Health and AmerisourceBergen faced repeated actions from the DEA for continuously failing to stop and report suspicious opioid shipments, paying hundreds of millions in fines for their failure to follow the rules. The State of Washington’s lawsuit asserted that McKesson, Cardinal Health and AmerisourceBergen violated the law by filling thousands of suspicious orders in Washington state without adequately identifying them or reporting them. Meanwhile, prescriptions and sales of opioids in Washington skyrocketed more than 500% between 1997 and 2011. In 2011, at the peak of overall sales in Washington, more than 112 million daily doses of all prescription opioids were dispensed in the state — enough for a 16-day supply for every woman, man and child in Washington.

Litigation by Washington State and other states and local governments across the country proceeded over the last several years, ultimately culminating in settlements. Initially, the State of Washington rejected a national settlement, and trial commenced in November, 2021. Settlement terms for the Washington litigation were eventually announced in May, 2022, under which the State will receive up to \$518 million in direct payments and attorneys’ fees, paid out over a period of 17 years. Of the \$518 million, up to \$430,249,769.02<sup>1</sup> is for abatement of damages caused by the opioid epidemic (“Abatement Amount”), and must be used to combat the opioid epidemic through a range of approved strategies consistent with the state’s Opioid Response Plan. The remaining \$87,750,230.98 is reserved for payment of the State’s outside and inside legal counsel costs (\$76,829,316.21), as well as legal fees and costs for litigating governmental subdivisions who joined the State’s lawsuit (\$10,920,914.70).

Under the proposed agreements, individual cities within the State that sign onto the settlement would receive a specified percentage of the county/city/town share (50%) of the \$430 million Abatement Amount, *i.e.*, a percentage share of \$215 million. First, however, a maximum of 15% of the approximately \$215 million is to be deposited into a “Government Fee Fund” (“GFF”), designed to ensure that all local government participant who receive a share of the settlement funds contribute to the payment of contingency legal fees and costs incurred in prosecuting claims against the pharmaceutical companies, regardless of whether they are litigating or non-litigating governmental entities. However, while a large percentage of the local governments measured by population filed suit, not all cities and counties were

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<sup>1</sup> The reason “up to” is used is because the Washington and national settlement agreements contain have base and incentive payment structures, that vary based on the numbers of participating, non-litigating jurisdictions.

litigating against the distributors. Thus, the total amount of attorneys' fees paid to those representing the litigating subdivisions will be less than 15% of the \$215 million. Currently, it is estimated by the Attorney General's office that approximately \$196 million will be available to distribution among participating local governments.

The One Washington MOU specifies that City of Snoqualmie's percentage of settlement funds to be received is 0.0649164481%. The estimated amount of total settlement funds Snoqualmie could be eligible to receive under the agreements as follows:

$\$430,249,769.02 \text{ Abatement Amount} \times .50 = \$215,124,884 \text{ county/city/town possible maximum share.}$

$\$215,124,884 - \text{Government Fee Fund contribution} = \text{approximately } \$196 \text{ million.}$

$\$196,000,000 \times .000649164481 \text{ (Snoqualmie percentage)} = \$127,235.36 \text{ (potential City of Snoqualmie share)).}$

If the required documents are approved, the first payments under the Agreements are scheduled to being on December 1, 2022.

## ANALYSIS

The settlement is implemented by three documents, described below.

**Distributors' Washington Settlement Agreement.** The Distributors' Washington Settlement Agreement provides the terms of the settlement between the State and the three pharmaceutical companies. The Distributors' Washington Agreement has several key requirements:

(a) all governmental subdivisions in the State of Washington that filed their own lawsuits against the pharmaceutical companies, and ninety percent (90%) of non-litigating "primary" governmental subdivisions (calculated by population, *i.e.*, entities with populations greater than 10,000) must become Participating Subdivisions by September 23, 2022. A Primary Subdivision becomes a "Participating Subdivision" by executing the Participation Form (Exhibit 1).

This means that all of the 37 local governments in Washington that that filed a lawsuit, as well as 90% of the local governments with a population over 10,000 that did not file a lawsuit, must decide to participate and join in the AG's settlement. If these thresholds are not satisfied, then the Distributors' Washington Settlement is null and void, with further litigation necessary.

(b) Litigating subdivisions must dismiss and release their claims against the pharmaceutical companies, and non-litigating Primary Subdivisions must waive and release all potential future claims and covenant not to bring or file any future claims seeking to establish liability against the pharmaceutical companies; and

(c) Participating Subdivisions (*i.e.*, recipients of the settlement funds) must use them only for some of the five purposes specified in Exhibit A to the One Washington Memorandum. Those purposes can be generally described as follows:

- (i) Improving and expanding treatment for opioid use disorder;
- (ii) Supporting individuals in treatment and recovery, including providing comprehensive wrap-around services to individuals with opioid use disorder, including housing, transportation, education, job placement, job training or childcare;

(iii) Addressing the needs of pregnant women and their families, including those with babies with neonatal disorder;

(iv) Preventing opioid misuse, overprescribing and overdoses through, among other strategies, school-based and youth-focused programs, public education campaigns, increased availability and distribution of naloxone and other drugs that treat overdoses, additional training and enhancements to the prescription drug monitoring program; and

(v) Supporting first responders.

**Allocation Agreement Governing the Allocation of Funds Paid By the Settling Opioid Distributors in Washington State.** The Allocation Agreement divides the settlement proceeds between the State and Washington counties, cities and towns, with 50% of the Abatement Amount going to the State of Washington, and 50% to be allocated to Washington counties/cities/towns, according to the percentage amounts specified in the One Washington MOU (see below).

**One Washington Memorandum of Understanding Between Washington Municipalities (“One WA MOU”).** The One WA MOU provides for the distribution of opioid litigation settlement monies among participating Washington municipalities, according to specified percentages set forth in Exhibit B to the MOU.

The One WA MOU establishes a framework for distributing and sharing in settlement proceeds by establishing a regional structure with nine (9) pre-defined regions, mostly by county. (Snoqualmie’s region is King County). The allocation percentages that are the result of a methodology developed during in the national opioid litigation settlement, which utilizes (1) the amount of opioids shipped to a county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. For allocation within a county, the methodology utilizes federal data showing how counties and the cities within those counties have made opioid epidemic-related expenditures in the past. Under that methodology, King County, as a whole, is receiving 26.05 percent of any settlement funds, with Snoqualmie eligible for approximately 0.0649 percent. The Attorney General’s Office has explained that the formula used, while not perfect, was developed by national experts based on available metrics; the formula was not developed by the litigating local governments or the WA Attorney General.

Under the One WA MOU, jurisdictions within the county regions are to develop an agreement for the handling of settlements funds. As of the date of this agenda bill, all that is available in relationship to this regional agreement is shown in the one-paragraph Exhibit C to the One WA MOU. Exhibit C states only that King County intends to explore coordination with local cities and if an agreement can’t be reached, Section C.4 of the MOU would apply; which is the default distribution structure (Snoqualmie percentage of 0.0649 percent). The Attorney General’s Office believes that regional coordination and distribution is in local governments’ interest because handling settlement distributions individually may be burdensome given the reporting, recording keeping, and tax cooperation requirements of the settlement agreements.

Last, the One WA MOU establishes the manner in which attorneys for the local governments that filed lawsuits will be paid if the distributors and manufacturer do not, in the end, pay the fee (15 percent of any settlement funds be deposited into a Governmental Fee Fund (GFF) before any allocation is made to local government). The One WA MOU also allocates 10 percent of a region’s share of the settlement funds to be used for the administration of the regional agreement, if one is reached in King County.

## **BUDGET IMPACTS**

There are no budget impacts from participating in the Distributors’ Washington Settlement, the Allocation Agreement or the One Washington MOU. Participation will enable the City to receive up to \$127,235.36 over 17 years, to pay for a wide variety of uses, including first responder support. This will likely include possible

funding assistance for the recently-approved Behavioral Health Specialist position, which will assist law enforcement in responding to drug-related calls, among others.

If Snoqualmie doesn't sign the three attachments, Snoqualmie will get no portion of a settlement allocation, although Snoqualmie may still benefit indirectly from funds received by King County and neighboring cities that do sign – but only if a sufficient number of local jurisdictions also agree to participate.

#### **NEXT STEPS**

N/A

#### **PROPOSED ACTION**

Move to approve the:

(1) Distributors Washington Settlement Agreement between and among the State of Washington and McKesson, Cardinal Health and AmerisourceBergen;

(2) Allocation Agreement Governing the Allocation of Funds Paid By the Settling Opioid Distributors in Washington State; and

(3) One Washington Memorandum of Understanding Between Washington Municipalities

and authorize the Mayor to sign the Participation Form, the Allocation Agreement and the One Washington Memorandum of Understanding.