



CITY OF TUALATIN

Staff Report

TO: Honorable Mayor and Members of the City Council
THROUGH: Sherilyn Lombos, City Manager
FROM: Sean Brady, City Attorney
DATE: December 13, 2021

SUBJECT:

Consideration of Resolution No. 5589-21, Authorizing the City Manager to Execute Settlement Documents Related to the National Opioid Litigation.

RECOMMENDATION:

Staff recommends Council adopt the resolution.

EXECUTIVE SUMMARY:

Resolution No. 5589-21 authorizes the City Manager to execute settlement documents related to the National Opioid Litigation. Signing the documents will allow the State of Oregon to receive up to a maximum of \$330 million, of which the City of Tualatin could receive up to a total maximum of \$227,613, to be distributed over approximately 18 years. Use of the funds is restricted to opioid abatement programs to provide intervention, treatment, education, and recovery services.

The resolution authorizes the City Manager to sign documents related to two separate settlements:

- McKesson, Cardinal Health and AmerisourceBergen (“Distributors”); and
- Janssen Pharmaceuticals, Inc., a manufacturer, and its parent company Johnson & Johnson (collectively “J&J”)

The settlement participation documents are attached as *Attachment A* (Distributors Participation Form) and *Attachment B* (J&J Participation Form).

The deadline for signing the settlement documents is January 2, 2022. If the settlement documents are not signed before that date, the City of Tualatin cannot participate in the National Settlement and the State of Oregon could receive reduced settlement funds.

In addition, an Allocation Agreement is being negotiated between the State of Oregon and all Oregon local governments to govern the distribution of Oregon’s portion of the National Settlement funds. Resolution No. 5589-21 also authorizes the City Manager to sign the

Allocation Agreement. The Allocation Agreement is still being negotiated, but the updated terms sheet is attached as *Attachment C* (Allocation Agreement Terms Sheet).

Below is a more detailed summary of the National Opioid Litigation, the terms and conditions of the National Settlement and State Allocation Agreement, the estimated settlement amount anticipated to be received, and the types of opioid abatement programs for which the funds can be used. Copies of all settlement documents, as well as additional information regarding the National Opioid Litigation, can be found at: <https://nationalopioidsettlement.com/>

1. National Opioid Litigation.

Ten Oregon counties, including Washington County, and the City of Portland joined state and local governments throughout the United States to sue 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”). The various lawsuits throughout the nation were consolidated, and ultimately a National Settlement framework was negotiated.

The City of Tualatin is not a plaintiff in the national opioid litigation. However, the structure of the National Settlement framework allows for the City of Tualatin to participate and receive settlement funds. Furthermore, participation by the City of Tualatin enables the State of Oregon to receive more settlement funds than if the City of Tualatin did not participate.

2. National Settlement Terms.

The total amount to be paid to all states and local governments nationally is \$26 billion. Under the National Settlement, the Distributors agreed to pay \$21 billion over 18 years to all state and local governments and J&J agreed to pay \$5 billion over no more than nine years.

Under the National Settlement framework, each state must agree to the settlement terms and pass legislation to prohibit the local governments within its jurisdiction from filing future opioid-related lawsuits against the Distributors and J&J. In addition, in order for a state to receive the full value of the settlement funds, both litigating and non-litigating local governments in the state must agree to the settlement.

3. State of Oregon’s Share of the National Settlement.

The State of Oregon’s share of the National Settlement is \$330 million. However, in order to receive the full value of the settlement amount, the litigating local governments and non-litigating local governments must also agree to the settlement. To receive the full \$330 million, the incentive structure is as follows:

- Oregon receives a maximum of \$330 million
- All Litigating Entities must agree to the settlement
 - Up to a 25% reduction in settlement funds can occur if all Litigating Entities do not agree

- All Cities and Counties with a population greater than 30,000 must agree to the settlement
 - Up to a 15% reduction in the settlement funds can occur if all Cities and Counties with a population greater than 30,000 do not agree
- All Cities and Counties with a Population of less than 30,000 must agree to the settlement
 - Up to a 5% reduction in settlement funds can occur if all Cities and Counties with a population of less than 30,000 do not agree

4. Oregon Allocation Agreement.

Once Oregon receives the National Settlement funds, the next question is how to distribute the funds among the State, counties, and cities. To ensure local governments receive the funds directly, the litigating Oregon local governments have been negotiating with the State of Oregon on the terms of an Allocation Agreement for the disbursement of the National Settlement funds. The final terms and conditions are still being negotiated, but the general outline of the terms of the Allocation Agreement are as follows:

- 45% will be distributed to the State of Oregon
 - State will establish a Fund Distribution Board
 - State and local governments will have equal representation and voting on the Board
- 55% will be distributed directly to Local Governments
 - Must be used for opioid abatement consistent with the National Settlement terms and conditions
 - Amount disbursed to each local government will be based upon the allocation percentages in the National Settlement
 - Cities can choose to decline the money and elect that the money be directed to the county
- Allocation percentage (45% to the State of Oregon; 55% to Local Governments) will apply to future multistate opioid settlements with distributors, manufacturers, and pharmacies, and subject to other terms of the settlement
 - Allocation for the Purdue bankruptcy will only apply to Oregon's share under the plan confirmed by the judge and not apply to any increased amount paid to Oregon that may result from Oregon's appeal
- Allocation Agreement will not apply to other litigation brought by the State of Oregon as an individual state.
- Local Governments commit to cooperating in drafting and promoting passage of legislature to effectuate the agreement

A copy of the most recent Allocation Agreement Terms Sheet is attached as *Attachment C* (Allocation Agreement Terms Sheet).

5. Estimate of Future Funds Received by Tualatin.

Based on the National Settlement framework, it is estimated the City of Tualatin will receive a best-case scenario, maximum dollar amount of \$273,613. This is an estimated number only and would require all of the 81 eligible entities in Oregon to participate in the National Settlement. Additionally, the payments made by the Distributors will be made over 18 years and the payments made by J&J will be made over 9 years. Due to these uncertainties, the estimated dollar amount should not be relied upon to make decisions about use of funds or for future budget purposes.

6. Use of Opioid Settlement Funds.

The use of National Settlement funds is restricted to opioid abatement programs to provide intervention, treatment, education, and recovery services. The specific uses are outlined in the National Settlement documents and include the following categories:

- Naloxone or other FDA-approved drug to reverse opioid overdoses
- Medication-assisted treatment (“mat”) Distribution and other opioid-related treatment
- Assisting pregnant & postpartum women
- Expanding treatment for neonatal abstinence syndrome (“nas”)
- Expansion of warm hand-off programs (coordinated care) and recovery services
- Treatment for incarcerated population
- Drug Prevention programs
- Expanding syringe service programs
- Evidence-based data collection and research analyzing the effectiveness of the abatement strategies within the state

ATTACHMENTS:

- Resolution No. 5589-21
- Attachment A (Distributors Participation Form) and
- Attachment B (J&J Participation Form)
- Attachment C (Allocation Agreement Terms Sheet).