



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: November 16, 2021

TO: Mayor and City Council Members

FROM: Andrea Visveshwara, Interim City Attorney

SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Attorney To Execute National And State Participation Agreements And Take Related Actions To Receive Funding From The National Opioid Settlement Involving Distributors McKesson, Cardinal Health And AmerisourceBergen And Manufacturers Jansen Pharmaceuticals, Inc. And Johnson & Johnson**

RECOMMENDATION

Staff recommends that the City Council adopt the above-entitled resolution.

BACKGROUND

Opioid Crisis

In 2017, the U.S. Health and Human Services Agency declared a nationwide public health emergency regarding the opioid crisis. According to the Centers for Disease Control and Prevention (CDC), in 2016, more than 11.5 million Americans reported misusing prescription opioids within the past year. In 2019, the CDC reports that an average of 38 people died each day from overdoses involving prescription opioids, totalling more than 14,000 deaths.

Over the past few years, almost 4000 state and local governments across the country have filed lawsuits in both federal and state courts against distributors and manufacturers of opioids, seeking damages to mitigate the adverse impacts caused by the opioid crisis. On July 21, 2021, California Attorney General Rob Bonta announced a nationwide settlement that settles the litigation brought by the state and local governments and that would provide funds to bring relief to the people of California and those across the nation that are struggling with opioid addiction.

National Settlement

The proposed nationwide settlement is comprised of two separate settlement agreements ("National Settlement"). The first settlement agreement is with McKesson, Cardinal Health and AmerisourceBergen (collectively referred to as the "Distributors", with the agreement being referred to as the "Distributor Agreement"). The Distributors will collectively pay up to \$21 billion over 18 years. The second settlement agreement is with manufacturer Jansen Pharmaceuticals, Inc. and its parent company, Johnson & Johnson (collectively referred to as "Johnson & Johnson", with the agreement being referred to as the J&J Agreement"). Johnson & Johnson will collectively pay up to \$5 billion, over nine years with up to \$3.7 billion to be paid during the first three years.

The National Settlement is referred to as an opt-in settlement, meaning that state and local governments must take affirmative action to opt-in to the settlement agreements to receive funds. To opt in, local government entities must waive and release any claims they have against the Distributors and Johnson & Johnson arising out of the opioid crisis. If all local governments in California participate in the national settlement, then California will receive a maximum of approximately \$2.34 billion. Of that \$2.34 billion, seventy percent of those funds, referred to as the “Abatement Fund”, are to be used for “Opioid Remediation Uses” as specified in Exhibit E to the Distributor Agreement and to the J&J Agreement. Exhibit E (which is the same for both agreements) is attached hereto as Attachment A. The remaining thirty percent of those funds go to state and local government entities who participated in the litigation.

California Settlement

In addition to the Distributor Agreement and J&J Agreement, the State of California has proposed state-wide agreements to govern the allocation, distribution, and use of the settlement funds made available to the subdivisions under Distributor Agreement (referred to as CA Distributor Agreement) and J&J Agreement (referred to as CA J&J Agreement) (collectively referred to as the “CA Settlement Agreements”). Similar to the National Settlement, the CA Settlement Agreements require the funds received to be used for Opioid Remediation Uses, and in addition, the CA Settlement Agreements require that no less than 50% of the of the funds received by a participating local government be used for one of the following 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.”

Reporting Requirements

Both the National Settlement and the CA Settlement Agreements require any participating governmental agency that directly receives funds to report on the use of the funds. The CA Settlement Agreements have the more stringent reporting requirements. The CA Settlement Agreements require the participating governmental entity to prepare an annual report on a form to be created by the California Department of Health Care Services (DCHS) and to certify annually that the funds received have been used in compliance with the National Settlement and CA Settlement Agreements. A participating entity must

track all deposits and expenditures. The participating entity then must submit this information annually both to DCHS and the National Settlement administrator.

DISCUSSION

If the City elects to participate in the National Settlement, as further implemented by the CA Settlement Agreements, the City will receive .023% of California's Abatement Fund. Assuming that the State receives \$2.34 billion, then City of Emeryville is scheduled to receive .023% of the 70% dedicated to the Abatement Fund, or approximately \$375,000 over eighteen years. (If distributed evenly over that period, the City would receive approximately \$20,000 per year.) In exchange for receiving a portion of the Abatement Funds, the City will need to agree to waive and release its claims against the Distributors and Johnson & Johnson. If the City elects to receive funds directly, then it will need to report on the use of those funds as required by the National Settlement and the CA Settlement Agreements. If the City determines that the reporting requirements are too burdensome, the City may opt to participate but not receive funds directly, in which case the funds will be redirected to the County of Alameda for its use on allowed activities. Following receipt of the settlement funds, staff would return to the City Council to appropriate the funds to an eligible program or expense consistent with the settlement requirements. This would then occur during each successive budget cycle for the eighteen-year term of the agreement.

Staff has registered the City to receive the participation forms, but the City has not received the participation forms as of the publication date of this report. The City must execute the participation forms and return them to the settlement administrator no later than January 2, 2022, if it is to participate in the National Settlement.

FISCAL IMPACT

If the City opts to participate in the settlement, then the City will receive funds as described above. If the City takes no action, there is no fiscal impact to the City. However, the City may still want to opt to participate in the settlement but not receive its funds directly (e.g., the funds default to the County of Alameda). The amount of funds allocated to the State under the National Settlement increases as the number of local entities participate.

STAFF COMMUNICATION WITH THE PUBLIC

The Interim City Attorney has attended a state-wide webinar with some of the legal counsel involved in the matter to learn more about the National Settlement.

CONFLICT OF INTEREST

None.

CONCLUSION

Staff recommends that the City Council adopt the above-entitled resolution.

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**

A handwritten signature in blue ink, appearing to read 'A. Visveshwara', is written above a horizontal line.

Andrea Visveshwara, Interim City Attorney

ATTACHMENTS

- Attachment A – Opioid Remediation Uses
- Attachment B – Sample Participation Form
- Draft Resolution