



## MEMORANDUM

**TO:** City Council

**FROM:** Matthew Downing, City Manager

**BY:** Nicole Valentine, Administrative Services Director

**SUBJECT:** Opting into Settlement Agreements with Distributors of Opioids;  
Kroger National Opioid Settlement

**DATE:** July 23, 2024

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### **RECOMMENDATION:**

1) Opt into settlement agreement with opioid distributor, Kroger Co., and direct the City Manager to execute any documents necessary to implement the action; and

2) Make findings that adopting the Resolution opting-into the settlement agreements is not a project subject to the California Environmental Quality Act ("CEQA") because the adoption in itself has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.)

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

California is to receive approximately \$1.2 billion from the settlements and is required to distribute these funds pursuant to intrastate allocation agreements for the new settlements. The City of Arroyo Grande has been allocated 0.024% of the 70% of the approximate \$122,000,000. The City can opt into these five settlements and potentially receive up to \$20,496 in direct funding. This amount will be disbursed over a period of eleven years, with payments decreasing as each settlement finishes paying out. The first payments are scheduled to occur in the latter half of 2024.

### **BACKGROUND:**

The national opioid crisis created by opioid manufacturers, distributors, and dispensers has been well-documented over the last decade as communities have struggled to address its devastating impacts. Since 2018, numerous jurisdictions across the country have been engaged in a multi-jurisdictional lawsuit against some of the principal parties responsible for creating the crisis. After years of Court-supervised negotiations, the parties reached a resolution of the case against several defendants.

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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”), resulted in two proposed settlements totaling approximately \$26 billion dollars. The City has previously opted into the Distributors and the J&J Settlements on [December 14, 2021](#), and has started receiving payments. Between November and December 2022, five additional parties; Walgreens, Walmart, CVS, Teva, and Allergan entered into National Opioid Settlements with terms identical to the Distributors/J&J Settlements. The City opted into the settlements with the these parties on [April 11, 2023](#).

In 2024, Kroger Co. reached a tentative settlement regarding its outstanding opioid distribution claims. A copy of the settlement agreement can be found at <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>.

In March 2024, the State of California entered into a Subdivision Agreement Regarding Distribution and Use of Settle Funds with Kroger National Opioid Settlement with terms identical to the previous opioid settlements. The deadline to opt into the settlements with the New Parties is August 12, 2024.

#### **ANALYSIS OF ISSUES:**

##### **Allocation of Funds**

Additional litigation brought by states and cities across the United States against Kroger National Opioid Settlement has resulted in a proposed settlement totaling approximately \$1.2 billion dollars.

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 (70% of the total allocated to the State). Essentially, this means that the City of Arroyo Grande, if it chooses to opt into the settlement, is entitled to receive a percentage share from the California Abatement Accounts Fund. Of the amounts above, California is to receive approximately \$122 million and is to distribute these funds pursuant to intrastate allocation agreements for the new settlement.

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The City of Arroyo Grande has been allocated 0.024% of the 70% of the approximate \$122,000,000 total settlement amount, which is equal to \$20,496.00. It should be noted that this amount is the maximum amount that the City can receive from this settlement. In order to encourage maximum participation, the amount of funds to be paid to each government entity is tied to the overall amount of government entities that opt into the settlements. The more government entities opt in, the higher the amount that the City will receive. The final amount to be received by the City will be finalized after the August 12th deadline when the total participation in the settlement can be determined. This total amount will be disbursed over a period of eleven years, with payments decreasing as each settlement finishes paying out.

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 twelve years, which includes eleven years of distribution and an additional year following final distribution.

**Use of Received Funds**

Similar to the Distributor and previous Settlements, funds received from this additional settlement must be used for future opioid remediation or abatement. For instance, participating agencies 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.

The Intrastate Allocation Agreements (Exhibit B) also provide spending limitations in addition to those provided in the settlement agreements. Under the Intrastate Allocation Agreements, no less than 50% of the funds received in each calendar year must be used for one or more of the following High Impact Abatement Activities:

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- 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.

#### **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.

#### **Opting In**

The City must opt into the settlements by August 12, 2024, which requires the City to release its claims against Kroger Co. 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 Kroger Co.

#### **ALTERNATIVES:**

The following alternatives are provided for the Council’s consideration:

1. Opt into the settlements and elect to receive the payments directly (subject to the use and reporting requirements);

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2. Opt into the settlements, but allow the County to receive the payments (City would not be responsible for any use/reporting requirements and the money would stay within the County); Provide other direction to staff;
3. Do not opt-into the settlements; or
4. Provide other direction to staff.

**ADVANTAGES:**

Approval of the settlement agreement will provide funding for training, programs, and interventions to avoid drug overdoses and addiction in the City.

**DISADVANTAGES:**

Approval of the settlement agreement will increase reporting requirements for the City elects to retain the funding rather than allocate it to the County. However, should reporting requirements prove to become too onerous, the City may allocate its funding to the County to support its addiction programs.

**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item. Adopting the Resolution opting-into the settlement agreements is not a project subject to the California Environmental Quality Act ("CEQA") because the adoption in itself has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.)

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

**ATTACHMENTS:**

1. Proposed Resolution