



MEMORANDUM

TO: City Council

FROM: Whitney McDonald, City Manager

BY: Isaac Rosen, Interim City Attorney

SUBJECT: Consider Opting into Settlement Agreements with Distributors of Opioids; Walgreens Co., Walmart Inc., CVS Health Corporation/CVS Pharmacy Inc., and Opioid Manufacturers Teva Pharmaceuticals Industries LTD and Allergan Finance LLC/Allergan Limited

DATE: April 11, 2023

SUMMARY OF ACTION:

Consideration of opting into settlement agreements with distributors of opioids and opioid manufacturers to provide funding to the City to support opioid-related issues within the City.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

California is to receive approximately \$1.8 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 \$1,800,000,000. The City can opt into these five settlements and potentially receive up to \$302,400 in direct funding. This amount will be disbursed over a period of 15 years, with payments decreasing as each settlement finishes paying out. The first payments are scheduled to occur in the latter half of 2023.

RECOMMENDATION:

1) Opt into settlement agreement with opioid distributor, Walgreens Co., and direct the City Manager to execute any documents necessary to implement the action; 2) Opt into settlement agreement with opioid distributor, Walmart, Inc. and direct the City Manager to execute any documents necessary to implement the action; 3) Opt into settlement agreement with opioid distributor, CVS Health Corporation/CVS Pharmacy, Inc. and direct the City Manager to execute any documents necessary to implement the action; 4) Opt into settlement agreement with opioid manufacturer, Teva Pharmaceutical Industries Ltd., and direct the City Manager to execute any documents necessary to implement the action; 5) Opt into settlement agreement with opioid manufacturer, Allergan Finance, LLC/Allergan Limited and direct the City Manager to execute any documents necessary

Item 9.g.

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to implement the action; and 6) 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. (b)(2)-(3), 15378.)

BACKGROUND:

Last year, 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 and has started receiving payments.

Between November and December 2022, five additional parties (the “New Parties”) have entered into National Opioid Settlements with terms identical to the Distributors/J&J Settlements. The deadline to opt into the settlements with the New Parties is April 18, 2023.

ANALYSIS OF ISSUES:

A. Allocation of Funds

Additional litigation brought by states and cities across the United States against the New Parties has resulted in a proposed settlement totaling approximately \$20.2 billion dollars. The proposed settlement is broken into five separate deals: (1) the Walgreens Settlement (Exhibit A); (2) the Walmart Settlement (Exhibit B); (3) the CVS Settlement (Exhibit C); (4) the Teva Settlement (Exhibit D); and the Allergan Settlement (Exhibit E). The estimated total nationwide payout and payment schedule are outlined below:

<u>Defendant</u>	<u>Estimated Max Payout</u> <u>(100% Participation)</u>	<u>Years</u>
Walgreens	\$5,522,528,766	15 years
Walmart	\$3,011,242,061	Primarily paid within 3 years, but if participation levels are not met until

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		later, payment can extend over 6 years
CVS	\$5,002,083,578	10 years
Teva	\$4,246,567,371.76	6 years
Allergan	\$2,372,972,184.12	7 years

Of the amounts above, California is to receive approximately \$1.8 billion and is to distribute these funds pursuant to intrastate allocation agreements for the new settlements.

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.

The City of Arroyo Grande has been allocated 0.024% of the 70% of the approximate \$1,800,000,000 total settlement amount, which is equal to \$302,400.00. It should be noted that this amount is the maximum amount that the City can receive from these settlements. 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 April 18th deadline when the total participation in the settlements can be determined. This total amount will be disbursed over a period of 15 years, with payments decreasing as each settlement finishes paying out. The first payments are scheduled to occur in the latter half of 2023. After the receipt of these initial payments, further payments will be received annually thereafter.

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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 sixteen years (fifteen years of distribution and an additional year following final distribution).

B. Use of Received Funds

Similar to the Distributor and J&J Settlements, funds received from these additional settlements must be used for future opioid remediation or abatement. For instance, participating subdivisions 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 F) 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:

- (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;

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(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.

C. 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.

D. Opting In

The City must opt into the settlements by April 18, 2023, which requires the City to release its claims against the New Parties. 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 the New Parties.

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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);
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 agreements will provide funding for training, programs, and interventions to avoid drug overdoses and addiction in the City.

DISADVANTAGES:

Approval of the settlement agreements 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. (b)(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
2. Exhibit A – Walgreens Settlement Agreement
3. Exhibit B – Walmart Settlement Agreement
4. Exhibit C – CVS Settlement Agreement
5. Exhibit D – Teva Settlement Agreement
6. Exhibit E – Allergan Settlement Agreement
7. Exhibit F – Sample CA Allocation Agreement
8. Exhibit G – Sample Participation Agreement