

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JEFF BERK, ACTING CHIEF ASSISTANT CITY ATTORNEY
CITY ATTORNEY'S OFFICE
SUBJECT: NATIONAL OPIOIDS SETTLEMENTS WITH NEW SETTLING
DEFENDANTS TEVA, ALLERGAN, CVS, WALGREENS, AND
WALMART; AUTHORIZING THE CITY MANAGER TO ENTER
INTO ANY FUTURE SETTLEMENT AGREEMENTS WITH ANY
ADDITIONAL SETTLING DEFENDANTS UNDER THE NATIONAL
OPIOID SETTLEMENTS AND DIRECTING USE OF
SETTLEMENT PROCEEDS WITHIN ANY PERMISSIBLE USE
PROVIDED

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney's Office that the Council, by resolution: 1) authorize the City Manager to execute a Subdivision and Special District Settlement Participation Form and Proposed California State-Subdivision Agreement regarding Distribution and Use of Settlement Funds (Allocation Agreement) for each of the following settling entities as part of the National Opioid Settlements: Teva, Allergan, CVS, Walgreens, and Walmart, subject to approval as to form by the City Attorney; 2) authorize the Chief Financial Officer to appropriate the funds from the National Opioid Settlement fund to the Opioid Settlement Fund project keys; 3) authorize the City Manager to enter into any future settlement agreements with additional settling defendants and/or bankruptcy plans related to the National Opioid Settlement; and 4) authorize the City Manager to direct use of all settlement proceeds within any permissible use as provided for in the settlement agreements.

EXECUTIVE SUMMARY

A \$26.5 billion dollar settlement was reached in a nationwide opioid litigation case brought by states and local governments throughout the United States against with Johnson & Johnson/Janssen or the three Distributors (Cardinal, AmerisourceBergen, and McKesson). In December 2021, the City of Santa Rosa opted in to receive a portion of the proceeds to use for specified allowable uses for abatement measures with strict annual reporting to the state.

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On February 10, 2023, the City received notification that it was eligible to opt in to participate in one or more new proposed settlements totalling about \$20 billion with new settling defendants Teva, Allergan, CVS, Walgreens, and Walmart. The deadline to return the required documentation to opt in to this settlement is April 18, 2023.

BACKGROUND

There was a \$26.5 billion dollar settlement in a nationwide opioid litigation case brought by states and local governments throughout the United States. The County of Sonoma was a party to the action and has notified all the cities in the County that the cities can opt into the settlement and receive a portion of the proceeds, but must use those proceeds certain specificd uses with strict annual reporting to the state. The terms of the agreement and formula used to determine the amount each city can get are already established as part of the settlement agreement and cannot be changed.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

Similar to the previous settlement, proposed nationwide settlement agreements (“Settlements”) have been reached that would resolve opioid litigation brought by states, local political subdivisions, and special districts against two pharmaceutical manufacturers, Teva and Allergan (“Manufacturers”), and three pharmacies, CVS, Walgreens, and Walmart (“Pharmacies”) jointly (“Settling Defendants”).

The Settlements require the settling defendants to pay about \$20 billion to abate the opioid epidemic. Of this amount, approximately \$17 billion will be used by participating states and subdivisions to remediate and abate the impacts of the opioid crisis.

Depending on participation by states and subdivisions, the Settlements require:

- Teva to pay up to \$3.34 billion over 13 years and to provide either \$1.2 billion of its generic version of the drug Narcan over 10 years or an agreed upon cash equivalent over 13 years;
- Allergan to pay up to \$2.02 billion over 7 years;
- CVS to pay up to \$4.90 billion over 10 years;
- Walgreens to pay up to \$5.52 billion over 15 years; and
- Walmart to pay up to \$2.74 billion in 2023, and all payments to be made within 6 years.

As provided under the Agreements, these figures are net of amounts attributable to prior settlements between the Defendants and certain states/subdivisions, and include amounts for attorneys’ fees and costs. The final settlement of this second round of litigation, as in the first, is contingent on enough cities and counties opting in so that the

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defendants gain some comfort that there will not be further lawsuits brought. In the first round of agreements with settling parties, about 90% of the public agencies opted in and it is expected to be about the same this time.

The amount the City will receive is dependent upon the number of cities and counties that take formal action to opt in, but it is expected to be about 70-80% of what the received is receiving under the first settlement.

Just like the original settlement with the distributors, there are specific permitted uses for the settlement proceeds and reporting requirements. The proceeds cannot be spent on anything that is not encompassed within these uses. It is anticipated that the permitted uses in the new settlements will be similar to the first round of litigation.

FISCAL IMPACT

Approval of this action does not have a direct fiscal impact on the General Fund. If Council elects to accept settlement funds, those funds can be used for specific permitted uses and may offset general fund spending.

ENVIRONMENTAL IMPACT

This action is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and no further environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 – National Opioid Settlement Overview
- Resolution
- Exhibit A – Settlement Participation Forms with Settling Defendants
- Exhibit B - Proposed California State-Subdivision Agreement regarding Distribution and Use of Settlement Funds with Settling Defendants

PRESENTER

Jeff Berk, Chief Assistant City Attorney, jberk@srcity.org