



City of Rialto

Legislation Text

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For City Council Meeting [December 14, 2021]

TO: Honorable Mayor and City Council

FROM: Marcus Fuller, City Manager

Eric S. Vail, City Attorney

Request City Council Consider and Approve **Resolution No. 7812** Opting-In to the National Opioid Settlements, Approve Direct Receipt of Funds, and Authorize the City Manager to Execute all Necessary Documents.

BACKGROUND

Since 2018, numerous states, counties, and cities across the country have been engaged in a lawsuit (In re: National Prescription Opiate Litigation, U.S.D.C. Case No. 1:17-CV- 2804) against opioid distributors AmerisourceBergen, Cardinal Health and McKesson (collectively the "Distributors") and one of the manufacturers, Janssen Pharmaceuticals, Inc. and its parent company, Johnson & Johnson (collectively "J&J").

After years of Court-supervised negotiations, the parties reached a resolution of the case against the Distributors and J&J. The settlements require the Distributors to pay up to \$21 billion and J&J to pay up to \$5 billion. Roughly \$2.6 billion of the two settlements are expected to be directed to California and its subdivisions. Although the settlements were reached in July 2021, each participating state had to then reach an intrastate allocation agreement to determine how to apportion and distribute the settlement funds among the various entities. After several months of negotiating the allocation agreements were reached by all states at the end of October.

However, the settlements are contingent upon a sufficient number of jurisdictions executing the Settlement Agreements. All participants must execute the Settlement Agreements by January 2, 2022. Cities may either "opt-in" to the settlement or "opt-out." If a City opts-in then it is eligible to receive a percentage of the settlement proceeds either directly or to refer those to the County for administrative use. If a City opts-out then its share goes directly to the State.

The City of Rialto may receive up to approximately **\$1,160,771** over the next 18 years. The funds must be directed towards eligible abatement activities. If the Settlement Agreements are approved, settlement funds could begin to flow to jurisdictions as early as April of 2022.

ANALYSIS/DISCUSSION

The City Council, in a duly listed closed session, directed the City Attorney to register the City with the National Opioid Settlement and to "opt-in" to the settlements. The City Attorney subsequently registered the City and that step is completed.

By opting-in to the settlement, and assuming enough parties join the settlements, the City could receive approximately \$1,160,771 over an 18 year period. This amount is only an estimate and is subject to change based on a number of factors including how many jurisdictions join the settlement and opt-in or opt-out.

The Settlement Agreements are highly complex, spanning more than 700 pages. Copies of the agreements, as well as helpful flowcharts and FAQs, can be accessed at the following website: www.nationalopioidsettlement.com. The lawsuit is referred to as *In re: National Prescription Opiate Litigation* (U.S.D.C. Case No. 1:17-CV-2804).

The general structure for the intrastate allocation agreement for distributing the roughly \$2.6 billion coming to California is as follows:

- 15% will be given to the State;
- 70% will be made available to Cities and Counties (that have greater than 10,000 in population). This is referred to as the “Abatement Fund.” These funds can be paid directly to the local agencies, *if* the agency elects. The default is that the money will be directed to the County, unless an entity elects for the direct payment. Local subdivisions have the ability to change their election regarding the direct payments; and
- 15% will be given to the litigating entities to defray costs they have expended in the litigation to this point. It was noted in the webinar that this group of litigating entities is rather large by representation. It reportedly includes agencies which represent 86% of the population of the state.

The settlement money from the distributors will be paid over 18 years, and the settlement money from J&J is to be paid over 7-9 years.

Under the Settlement Agreements, all of the proceeds received by non-litigating entities including the City of Rialto must be spent on activities to abate the impacts of the opioid crisis, such as:

- providing matching funds for operating costs for substance use disorder (SUD) facilities;
- creating new or expanded SUD treatment infrastructure;
- addressing the needs of communities of color and vulnerable populations that are disproportionately impacted by SUD;
- preventing addiction in vulnerable youth; and among other things;
- dispensing Narcan.

The City’s allocated amount will be delivered to the City on a yearly basis. By receiving funds, the City will be agreeing to comply with specific reporting requirements and the filing of annual reports with the State documenting how the money is spent. The City will have to certify that all funds

received through the settlement have been used in compliance with the Settlement Agreements. The report will be in a form determined by the California Department of Health Care Services ("DHCS"). The forms have not been specified at this time. However, at a minimum, the City will have to track all deposits and expenditures which are otherwise subject to the normal budgetary and expenditure process.

Instead of accepting direct payment, participating entities can choose to have their funds directed to the County for abatement purposes. Based on the language in the Settlement Agreements, it also appears that the City could change its mind even after it has made an election. For example, the City could elect to have its funds directed to the County for the first five years, but then elect to receive direct payment thereafter so long as the City is able to meet the funding requirements.

The next step to finalize participation in the Settlements is to adopt a resolution confirming that the City is opting-in to the Settlements and to authorize the City Manager to complete and execute that State participation agreements for both settlements. The City will need to complete the participation agreements and timely submit it prior to the January 2, 2022 deadline.

Once the Settlements are confirmed finalized, the City Council will have another discussion and give direction to the City Manager as to how to best utilize the annual funding either subject to the requirement imposed under the Settlement Agreements and allocation agreement or by deciding to enter into an agreement with the County to administer the funds. We would anticipate this meeting to occur in February or March of 2022.

ENVIRONMENTAL IMPACT

The proposed actions do not constitute a "project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(b), a project does not include organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment

GENERAL PLAN CONSISTENCY

This action is consistent with Guiding Principle 3A of the General Plan: Our City government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.

LEGAL REVIEW

The City Attorney has prepared and recommends this staff report and resolution.

FINANCIAL IMPACT

The recommended action would provide restricted funding to the City in the amount of approximately \$1,160,771 over an 18 year period commencing in approximately April of 2022. The exact amount of the payment and the exact annual payment amounts the City will receive cannot yet be precisely calculated.

RECOMMENDATION

Staff recommends that the City Council consider and approve a Resolution Opting-In to the National Opioid Settlements, approve direct receipt of funds, and authorize the City Manager to execute the all necessary documents.