



Agenda Report

Fullerton City Council

MEETING DATE: AUGUST 2, 2022

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: ERIC J. LEVITT, CITY MANAGER

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SUBJECT: OPIOID LITIGATION UPDATE

SUMMARY

Staff requests City Council provide direction regarding whether to have a certain portion of the settlement funds from the national settlement with the opioid distributors McKesson, AmerisourceBergen and Cardinal ("Distributors") and Janssen (an opioid manufacturer) come directly to the City for opioid abatement uses or to have the money default to the County of Orange for opioid abatement uses for this first of 18 yearly payments. The City may change its decision at least 60 days prior to the next payment distribution.

RECOMMENDATION

City Council must make this election by August 5, 2022. Staff recommends directing the first-year default to the County to evaluate how recipients expend the funds. City Council can then decide if it wants to elect to have the City receive the funds in the next distribution cycle.

CITY MANAGER DISCUSSION

The City Manager recommends to default the funds to the County in the first year and to evaluate for the future whether to utilize the restricted funds in the City. This will allow a broader regional use of the funds collectively in the initial year.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement:

- Fiscal and Organizational Stability.

FISCAL IMPACT

Depending on City Council direction, the initial \$75,506.85 Abatement Fund distribution of settlement funds can either come directly to the City or default to the County. The funds have restrictions in nature to their use. The City can change its decision each year at least 60 days prior to the next payment distribution. Thus, if the City elects to have this first Abatement Fund payment go to the County, it can change its election for next year.

DISCUSSION

Overview

The Distributors and Janssen reached settlements in the national litigation to provide funds for the abatement of the opioid epidemic in California and throughout the United States. The parties reached this settlement on a national level with all qualifying public entities and others. The settlement, however, allocated additional funds to litigating cities, such as Fullerton.

The Distributors national settlement amount totals \$21 billion and Janssen's amount totals \$5 billion, for a combined total of about \$26 billion. The Attorneys Generals of each State worked out the allocation of the \$26 billion among the states. That allocation earmarks approximately 9.9% of the funds for California and its counties and cities. California has signed onto the settlements, along with around 45 other States.

California's share totals about \$2.5 billion. The terms of the allocation agreements divide funds between the State of California and its cities and counties with 15% to the State and the remaining 85% going to counties and cities (70% to cities and counties, with an additional 15% going to litigating cities and counties).

The City's Settlement Allocation

The estimated allocation to the City totals approximately \$3,122,379 paid over the course of 18 years. An Abatement Fund and a Subdivision Fund will provide the funding. The first-year payment to the City from the Abatement Fund from the Distributor settlement equals \$75,506.85 (we do not yet have the allocated amount for the Janssen settlement or for the Subdivision Fund payments). This first \$75,506.85 payment can either come directly to the City or default to the County, but either way, recipients can only use funds for opioid abatement. The City should consider whether direct receipt makes sense considering the amount of funds and stringent reporting requirements required for the cities that receive the funds directly. As mentioned, the City can change its decision each year at least 60 days prior to the next payment distribution. Thus, if the City elects to have this first Abatement Fund payment go to the County, it can change its election for next year.

Abatement Fund Uses

Recipients may only use funds received from the Abatement Funds for approved abatement uses, including for example, naloxone training, opioid abuse treatment services, services for opioid addicted pregnant people, treatment for neonatal abstinence syndrome, prevention programs, treatment for incarcerated people, data collection and research.

Recipients must use at least 50% of the money from the Abatement Funds for "High Impact Abatement Activities" which include:

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 have a disproportionate impact 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

5. interventions to prevent drug addiction in vulnerable youth.

Receive Abatement Funds Directly or Have the Funds Go to the County?

Factors to consider in deciding whether to have the Abatement Fund monies go directly to the City or default to the County include:

1. Does the amount of the settlement justify the administrative costs and time required to accept the direct payment?
2. Does the City offer the services and/or have the infrastructure to spend the money in accordance with the prescribed uses? If the City does not offer those uses, the City may find it difficult or impossible to spend the settlement funds properly. In that case, the City may find it better to direct the City's Abatement Funds to the County for the first payment.
3. Does the City have the ability and/or infrastructure to undertake the reporting requirements required under the settlement? If the City receives the funds, it must create and submit annual reports regarding the use of these funds.

Subdivision Fund – Additional Funds for the City as a Litigating City

The City is also entitled to an allocation from the Subdivision Funds for future opioid remediation and to reimburse past opioid related expenses and to pay the reasonable fees and expenses of the Special Master administering the settlement. These Subdivision Funds do not default to the County, but instead will automatically go to the City and the City will not have to make a specific election to receive it.