RESOLUTION NO. 2021-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING PARTICIPATION IN NATIONWIDE OPIOID SETTLEMENT LITIGATION WITH MCKESSON, CARDINAL HEALTH, AMERISOURCEBERGEN, AND JANSSEN PHARMACEUTICALS, INC.; AND APPOINTING THE CITY MANAGER AS THE CITY'S AUTHORIZED REPRESENTATIVE AND AUTHORIZING THE CITY MANAGER TO TAKE ALL REASONABLE AND NECESSARY ACTIONS.

WHEREAS, local jurisdictions throughout the County, including the City of Marina, have and continue to experience an opioid epidemic as a result of opioid misuse, abuse, dependency, overdoses, and opioid related deaths; and

WHEREAS, according to the Centers for Disease Control, one in four people who are prescribed opioids for chronic pain develop issues with addiction; and

WHEREAS, the opioid epidemic affects our communities, devastates families, and overwhelms our health care, social services, law enforcement, and judicial systems; and

WHEREAS, the effects of the opioid epidemic have disproportionately affected Monterey County, although the number of opioids prescribed in Monterey County is decreasing, due in part to new regulations and the efforts of the Monterey County Prescribe Safe Initiative, a collaborative effort between doctors, hospitals, and law enforcement to address the problem of misuse of prescription medications and to reduce the overall harm from the use of potentially addictive opioid pain medications; and

WHEREAS, state and local subdivisions filed suit against opioid manufacturers and distributors, seeking damages and injunctive relief arising from opioid use and misinformation; and

WHEREAS, representatives of litigating state and local subdivisions reached settlement agreements with distributors McKesson, Cardinal Health, and AmerisourceBergen and with manufacturer Janssen Pharmaceuticals, Inc., a subsidiary of Johnson & Johnson; and

WHEREAS, pursuant to the terms of settlement agreements, state and eligible local subdivisions must "opt in" to the settlement on or before January 2, 2022, by, among other possible actions, executing a Participation Agreement; and

WHEREAS, if the City of Marina elects to participate in the settlements, the City is expected to receive monetary payments over an 18-year period to fund opioid abatement costs, as defined; and

WHEREAS, the City Council finds that receiving the settlement funds is critical to the City's ongoing efforts to provide and maintain intervention, treatment, education, and recovery services necessary to effectively combat the epidemic.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Participation in the Settlement. The City Council hereby approves and elects to "opt in" to the settlement agreements reached with distributors McKesson, Cardinal Health, and AmerisourceBergen and with manufacturer Janssen Pharmaceuticals, Inc., a subsidiary of Johnson & Johnson, relating to the National Multi-District Opioid Litigation, as a full participant.

Section 2. City Manager Appointment. The City Council hereby appoints the City Manager as the City's Authorized Representative and authorizes the City Manager to take all necessary and reasonable actions to effectuate the City's participation in the settlement and sign all necessary agreements, each following review and approval of the City Attorney.

Section 3. Effective Date. This Resolution shall be effective upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 7th day of December 2021, by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado
NOES, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None
ABSTAIN, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

December 1, 2021 Item No. **8f(4)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 7, 2021

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2021-, APPROVING PARTICIPATION IN NATIONWIDE OPIOID SETTLEMENT LITIGATION WITH McKESSON, CARDINAL HEALTH, AMERISOURCEBERGEN AND JANSSEN PHARMACEUTICALS, INC.; AND APPOINTING THE CITY MANAGER AS THE CITY'S AUTHORIZED REPRESENTATIVE AND AUTHORIZING THE CITY MANAGER TO TAKE ALL REASONABLE AND NECESSARY ACTIONS.

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2021-, approving Participation in the Nationwide Opioid Settlement Litigation with McKesson, Cardinal Health, AmerisourceBergen, and Janssen Pharmaceuticals, Inc.; and appointing the City Manager as the City's Authorized Representative and Authorizing the City Manager to Take All Reasonable and Necessary Actions.

INTRODUCTION

After years of negotiations, two proposed nationwide settlement agreements were reached in July 2021 that would resolve the opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors and one manufacturer. The settlement agreements will require these combined defendants to pay up to a total of $26 billion over 18 years to participating states and subdivisions to remediate and abate the impacts of the opioid crisis. The City will receive an allocation of the settlement funds only if it "opts-in" to participate in the litigation settlement no later than January 2, 2022.

BACKGROUND:

The settlement agreements resolve the litigation brought by the states and local political subdivisions against the distributors McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and the manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson ("J&J"). The proposed settlements require the Distributors to pay up to $21 billion over 18 years and J&J up to $5 billion over 9 years, for a total of $26 billion. Of this amount, approximately $22.7 billion is earmarked for use by participating states and subdivisions, of which over $2.2 billion dollars will be distributed to California. In addition to the monetary payments, the agreements also require the Distributors and J&J to implement changes to methods of opioid marketing, sale and distribution practices and further require the Distributors to implement additional safeguards to prevent diversion of prescription opioids. This reform package includes the creation of a clearinghouse through which the Distributors will be required to account not only for their own shipments, but also the shipments of the other distributors, and to detect, stop, and report suspicious opioids orders. In addition, J&J (which ceased marketing opioids in 2015 and ceased selling opioids in 2020) will not market or sell any opioid products in the next ten years and has agreed to cease lobbying efforts concerned with prescription opioids for ten years. J&J also has agreed to make the clinical trial data for its discontinued opioids available for medical research. Initial allocation of the $26 billion to participating states is based on a methodology determined among the state Attorneys General which looks at population and the severity of harm caused by the opioid epidemic in each participating state. According to this allocation formula, California stands to receive approximately 10% of the settlement proceeds, of which (i) approximately 15% of the proceeds will go to the litigating cities and counties for litigation expenses; (ii) approximately 15% of the proceeds will go to the state; and (iii) approximately 70% will be distributed to counties and cities with a population over 10,000 for opioid abatement, including Marina if the City Council takes action to opt-in to the settlement. The funds will be paid over an 18-year period, with a substantial portion of the funds frontloaded. The funds are expected to be released into trust accounts for disbursements beginning or about July 2022. The formula for allocating the settlement funds allocation is still in negotiation. A statewide working group of more than 20 city and county litigants has been coordinating with the office of the California Attorney General for over a year to create an equitable intrastate allocation agreement for the approximate $2.2 billion that will flow to California. An intrastate allocation agreement for the Distributor deal is close to final.

This is not an ordinary "class action" in which a party is subject to settlement unless it affirmatively opts out. Instead a local government entity must opt in and affirmatively approve the settlement which requires the local government to release any claim against the settling opioid distributors and manufacturers.

ANALYSIS:

The funds will be available for a broad range of approved abatement uses designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. The list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services. If the City opts in to the settlement it can elect to: (1) receive settlement funds through direct payment and use the funds for approved abatement or remediation uses; (2) authorize transfer of the funds, and the burden to spent them appropriately and account for them, to Monterey County; or (3) contract with the County for use of the funds. If it elects to receive the funds directly the City will have annual reporting obligations on the use of these funds. Before the funds are released, the settlement agreements are subject to certain milestones, which, if not met, could allow the settling defendants to void the agreements. The principal milestone is that a "critical mass" of both state and local governments opt in and, thereby, participate in the settlement. The extent of this participation will determine whether the settlement agreements take effect. Local jurisdictions opt in by executing a Participation Agreement, the final form of which is not yet available. If the Council adopts Resolution No. 2021-XX, the City will sign up to receive a copy of the Participation Agreement once it is released. As noted above, the deadline for the City to opt in is January 2, 2022. Other litigation remains pending with other manufacturers and distributors that, once resolved, could increase the amount the City could receive in the future for opioid abatement. Staff will continue to monitor the ongoing litigation and will report major developments. Staff will update the Council as more details on the timing, amount, and use of the funds are made available. Staff recommends that the Council adopt Resolution No. 2021-XX. This Resolution approves participation in the settlement and appoints the City Manager as the City's authorized representative to execute all necessary documents, following review and approval by the City Attorney, to receive or make other allocation of the funds as allowed in accordance with City Council's future direction.

FISCAL IMPACT:

Preliminary estimates indicate that the City could receive more than $250,000 over an 18-year period, with a large portion of the funds payable during the initial nine years. The disbursement schedule is not yet available, however. If the City elects to receive funds directly the City will incur staff time to fulfill its annual reporting obligations to demonstrate the proper use of the funds for approved opioid abatement activities. The extent of these reporting obligations is unknown but is not expected to be unduly burdensome.

CONCLUSION:

This request is submitted for City Council consideration and possible adoption of a resolution approving participation in the Nationwide Opioid Settlement Litigation with McKesson, Cardinal Health, AmerisourceBergen, and Janssen Pharmaceuticals, Inc; and appointing the City Manager as the City's authorized representative and authorizing the City Manager to take all reasonable and necessary actions.

Respectfully submitted,

Robert W. Rathie

Robert Rathie
City Attorney's Office
City of Marina

REVIEWED/CONCUR:

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Layne Long
City Manager
City of Marina