



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 7a

Title:

Recommendation to approve A Resolution Authorizing the City of St. Charles to Participate in the National Multistate Opioid Settlement and Authorizing the Execution of Related Settlement Agreements.

Presenter:

Heather McGuire, City Administrator

Meeting: Government Operations Committee

Date: December 6, 2021

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Nationwide settlements have been reached to resolve all Opioids litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors: McKesson, Cardinal Health and AmerisourceBergen (“Distributors”), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, “J&J”). These settlements will provide substantial funds to states and subdivisions for abatement of the Opioids epidemic across the country and will impose transformative changes in the way the settling defendants conduct their business.

The Illinois Attorney General has announced that Illinois will be participating in the settlement, and political subdivisions must decide whether to participate by **January 2, 2022**.

Under the agreement, States are expected to split approximately \$22.7 billion, which will be divided among the participating states (Illinois is expected to receive approximately 3.3% of the settlement proceeds) and their subdivisions. Illinois is likely to adopt its own internal allocation model for distributing those funds between the state and its subdivisions, and within the state. We are still awaiting details from the state on what the distribution model will look like, but expect that an Illinois-specific allocation model will be adopted. Unfortunately, the allocation model does not have to be agreed upon until after your deadline to decide whether to participate. If no Illinois-specific allocation model is adopted, a default model set out in the settlement agreement will control.

Based on information to date, and regardless of the allocation model used, we recommend participating in the settlement. This settlement represents the best solution under the circumstances and considering the risks of pursuing separate litigation against these distributor defendants. It has been mandated that political subdivisions not participating would have to produce detailed financial data and other records to support claims and damages within an extremely limited timeframe. Illinois has also passed legislation specifically dealing with national opioid settlements like this one that gives the Attorney General the power to intervene in cases to dismiss any opioid claims against defendants subject to multistate settlements like the one proposed here. This means if we do not participate in the settlement, there is a serious risk that a case could not proceed in litigation.

Staff recommends accepting the settlement by approving the attached resolution.

Attachments *(please list):*

Notice from Illinois Attorney General’s Office, Resolution

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve A Resolution Authorizing the City of St. Charles to Participate in the National Multistate Opioid Settlement and Authorizing the Execution of Related Settlement Agreements.



NPD

«3of9 barcode»

«BARCODE»

Postal Service: Please do not mark barcode

NPD «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
KWAME RAOUL
ATTORNEY GENERAL

TO LOCAL POLITICAL SUBDIVISIONS: IMPORTANT INFORMATION ABOUT THE NATIONAL OPIOID SETTLEMENT. SUBDIVISIONS MUST SUBMIT SIGNED DOCUMENTATION TO PARTICIPATE. THE DEADLINE FOR PARTICIPATION TO MAXIMIZE SETTLEMENT BENEFITS IS JANUARY 2, 2022.

If your subdivision is represented by an attorney with respect to opioid claims, please immediately contact them.

SETTLEMENT OVERVIEW

After years of negotiations, two proposed nationwide settlement agreements (“Settlements”) have been reached that would resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors, McKesson, Cardinal Health and AmerisourceBergen (“Distributors”), and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson (collectively, “Janssen”).

The proposed Settlements require the Distributors and Janssen to pay billions of dollars to abate the opioid epidemic. Specifically, the Settlements require the Distributors to pay up to \$21 billion over 18 years and Janssen to pay up to \$5 billion over no more than 9 years, for a total of \$26 billion (the “Settlement Amount”). Of the Settlement Amount, approximately \$22.7 billion is earmarked for use by participating states and subdivisions to remediate and abate the impacts of the opioid crisis.

The Settlements also contain injunctive relief provisions governing the opioid marketing, sale and distribution practices at the heart of the states’ and subdivisions’ lawsuits and further require the Distributors to implement additional safeguards to prevent diversion of prescription opioids.

Each of the proposed Settlements has two key participation steps. First, each state decides whether to participate in the Settlements. Illinois has joined both Settlements. Second, the subdivisions within each participating state must then decide whether to participate in the Settlements. Generally, the more subdivisions that participate, the greater the amount of funds that flow to that state and its participating subdivisions. Any subdivision that does not participate cannot directly share in any of the settlement funds, even if the subdivision’s state is settling and other participating subdivisions are sharing in settlement funds.

This letter is part of the formal notice required by the Settlements.

WHY IS YOUR SUBDIVISION RECEIVING THIS NOTICE?

You are receiving this letter because Illinois has elected to participate in both of the two national Settlements against (1) the Distributors, and (2) Janssen, and your subdivision may participate in the Settlement(s) to which your state has agreed. If you are represented by an attorney with respect to opioid claims, please immediately contact them. Please note that there is no need for subdivisions to be represented by an attorney or to have filed a lawsuit to participate in the Settlements.

WHERE CAN YOU FIND MORE INFORMATION?

This letter is intended to provide a brief overview of the Settlements. Detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented. This website will be supplemented as additional documents are created.

HOW DO YOU PARTICIPATE IN THE SETTLEMENTS?

You must go to the national settlement website to register to receive in the coming weeks and months the documentation your subdivision will need to participate in the Settlements (if your subdivision is eligible). All required documentation must be executed and submitted electronically through the website and must be executed using the “DocuSign” service. As part of the registration process, your subdivision will need to identify, and provide the email address for, the individual who will be authorized to sign formal and binding documents on behalf of your subdivision.

Your unique Subdivision Identification Number to use to register is: <<SubdivisionRegistrationCode>>.

HOW WILL SETTLEMENT FUNDS BE ALLOCATED IN EACH STATE?

The settlement funds are first divided among the participating states according to a formula developed by the Attorneys General that considers population and the severity of harm caused by the opioid epidemic in each participating state. Each state’s share of the abatement funds is then further allocated within each state according to agreement between the state and its subdivisions, applicable state allocation legislation, or, in the absence of these, the default provisions in the agreements.

Many states have or are in the process of reaching an agreement on how to allocate abatement funds within the states. The allocation section of the national settlement website will be supplemented as more intra-state allocation arrangements are finalized.

In reviewing allocation information, please note that while all subdivisions may participate in the Settlements, not all subdivisions are eligible to receive direct payments. To promote efficiency in the use of abatement funds and avoid administratively burdensome disbursements that would be too small to add a meaningful abatement response, certain smaller subdivisions do not automatically receive a direct allocation. However, participation by such subdivisions will help maximize the amount of abatement funds being paid in the Settlements, including those going to counties, cities, parishes, and other larger subdivisions in their communities.

You can find more information about your eligibility to receive, directly or indirectly, any of the funds allocated to your state should you elect to participate in the Settlements by visiting <https://nationalopioidsettlement.com/>. Please note that, Illinois may finalize a state-subdivision agreement. Should Illinois finalize such an agreement, your eligibility to receive funds directly or indirectly, and your allocation percentage, would be governed by such state-subdivision agreement and thus may change.

You may be contacted by the Attorney General’s Office with additional information regarding the allocation of settlement funds in Illinois. Subdivisions with representation can expect information from their attorneys as well. We encourage you to review all materials and to follow up with any questions. The terms of these Settlements are complex, and we want to be sure you have all the information you need to make your participation decision.

WHY YOU SHOULD PARTICIPATE

A vast majority of states have joined the Settlements, and attorneys for many subdivisions have already announced support for them. For example, the Plaintiffs’ Executive Committee, charged with leading the litigation on behalf of more than 3,000 cities, counties and others against the opioid industry, and consolidated in the national multi-district litigation (“MDL”) pending before Judge Dan Aaron Polster in the Northern District of Ohio, recommends participation in these Settlements.

Subdivision participation is strongly encouraged, for the following reasons:

First, the amounts to be paid under the Settlements, while insufficient to abate the epidemic fully, will allow state and local governments to commence with meaningful change designed to curb opioid addiction, overdose and death;

Second, time is of the essence. The opioid epidemic continues to devastate communities around the country and it is critical that the funds begin to flow to allow governments to address the epidemic in their communities *as soon as possible*;

Third, if there is not sufficient subdivision participation in these proposed Settlements, the Settlements will not be finalized, the important business practice changes will not be implemented, the billions of dollars in abatement funds will not flow to communities, and more than 3,000 cases may be sent back to their home courts for trial, which will take many years;

Fourth, the extent of participation also will determine how much money each state and its local subdivisions will receive because approximately half of the abatement funds are in the form of “incentive payments,” *i.e.*, the higher the participation of subdivisions in a state, the greater the amount of settlement funds that flow into that state;

Fifth, you know first-hand the effects of the opioid epidemic on your community. Funds from these Settlements will be used to commence abatement of the crisis and provide relief to your citizens while litigation and settlement discussions proceed against numerous other defendants in the opioid industry;

Sixth, because pills do not respect boundaries, the opioid epidemic is a national crisis that needs a national solution.

NEXT STEPS

These Settlements require that you take affirmative steps to “opt in” to the Settlements. If you do not act, you will not receive any settlement funds and you will not contribute to reaching the participation thresholds that will deliver the maximum amount of abatement funds to your state.

First, register your subdivision on the national settlement website so that information and documents required to participate can be sent to you. You will need the email address of the person who will be authorized to sign on behalf of your subdivision. This is the only action item needed at this time.

Second, have your authorizing person(s) or body begin to review the materials on the websites concerning the settlement agreement terms, allocation and other matters. Develop a list of questions for your counsel or the Attorney General's Office. In the very near future, your subdivision will need to begin the process of deciding whether to participate in the proposed Settlements, and subdivisions are encouraged to work through this process well before the January 2, 2022 deadline to be an initial participating subdivision. Again, the Attorney General's Office, your counsel, and other contacts within the state are available to discuss the specifics of the Settlements within your state, and we encourage you to discuss the terms and benefits of the Settlements with them.

Third, monitor your email for further communications, which will include a Participation Agreement, Release, (where applicable) a model Resolution, and instructions on executing using DocuSign.

We urge you to view the national settlement website at your earliest convenience. Information and documents regarding the national Settlements and allocation can be found on the settlement website at <https://nationalopioidsettlement.com/>.

Please feel free to contact the Attorney General's Office via e-mail with any questions or comments at opioidsettlement@ilag.gov.

City of St. Charles
Resolution No. _____

**Authorizing the City of St. Charles to Participate in the
National Multistate Opioid Settlement and Authorizing the
Execution of Related Settlement Agreements**

**Presented & Passed by the
City Council on December _____, 2021**

WHEREAS, the State of Illinois has elected to join the two proposed national multistate opioid settlement agreements that have been reached, in order to resolve all opioid litigation claims brought by states and local political subdivisions against three pharmaceutical distributors (“Distributors”) and one manufacturer (“Janssen”) (collectively, the “Settlement Agreements”); and

WHEREAS, the Illinois General Assembly has enacted Public Act 102-0085, which precludes any unit of local government, on or after July 9, 2021, from filing or becoming a party to any opioid litigation against an opioid defendant that is subject to a national multistate opioid settlement, unless approved by the Attorney General; and

WHEREAS, the City of St. Charles (the “City”), as a unit of local government of the State of Illinois, is authorized to participate in the Settlement Agreements; and

WHEREAS, the corporate authorities of the City find it advisable, necessary and in the best interest of the public that the City opt-in as a participant in the Settlement Agreements.

NOW, THEREFORE, BE IT RESOLVED by the corporate authorities of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

Section 1. The foregoing recital clauses to this Resolution are adopted as the findings of the corporate authorities of the City and are incorporated herein by specific reference.

Section 2. The corporate authorities of the City hereby elect to opt-in to the National Multistate Opioid Settlement Agreements, which shall include the proposed settlement agreement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Janssen Settlement”) and the proposed settlement agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (the “Distributor Settlement”).

Section 3. The corporate authorities of the City hereby authorize the City Administrator to execute the Settlement Participation Form, a copy of which is attached hereto as

Exhibit "A" and made a part hereof, on behalf of the City, in order participate in the Janssen Settlement.

Section 4. The corporate authorities of the City hereby authorize the City Administrator to execute the Settlement Participation Form, a copy of which is attached hereto as Exhibit "B" and made a part hereof, on behalf of the City, in order to participate in the Distributor Settlement.

Section 5. The corporate authorities of the City hereby authorize the City Administrator to execute any agreements, memoranda or other documents and take any other action necessary to effectuate the City's participation in the Settlement Agreements.

Section 6. This Resolution shall be in full force and effect upon its adoption, as provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this _____ day of December, 2020.

PASSED by the City Council of the City of St. Charles, Illinois, this _____ day of December, 2020.

APPROVED by the Mayor of the City of St. Charles, Illinois, this _____ day of December, 2020.

Lora A. Vitek, Mayor

ATTEST:

Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

EXHIBIT "A"

Janssen Settlement

EXHIBIT "B"

Distributor Settlement