

MEMORANDUM

TO: Mayor and City Council

FROM: Jake Boone, Assistant to the City Manager

SUBJECT: OPIOID LITIGATION SETTLEMENT *(UPDATES AND ADDITIONS AS PER INFORMATION FROM THE CITY ATTORNEY)*

DATE: December 13, 2021

Background

This summer, litigating parties reached a settlement in nation-wide litigation against four defendants involved in the distribution and manufacture of opioids. The four defendants are McKesson, AmerisourceBergen, Cardinal Health and Johnson & Johnson/Janssen. (Pending claims remain against other defendants related to the national opioid crisis that are not addressed by the proposed settlement.)

The settlement reached this summer is unique, in that it requires litigating and non-litigating government entities to “opt in” to the settlement rather than the more traditional “opt out” settlement. The settlement also requires that a “critical mass” of both state and local governments opt in over a six-month period. The extent of government entity participation will determine whether the settlement agreement takes effect and how much money the defendants contribute over time to the government entities. The defendants on the one hand, and the states and subdivisions on the other, each have options to walk away if they are not satisfied with the levels of participation. Participation levels affect how much money settling parties will receive because about half of the funds paid by defendants are in the form of “incentive payments” and certain other settlement provisions also provide incentives for higher levels of participation.

Broadly speaking, there are three main phases after the agreement was reached this past summer. Phase 1 provided 30 days to determine “state participation.” This phase has already occurred with 42 states electing to participate. Oregon was one of the 42. The defendants had previously indicated that they required 44 states to participate, but at this point the defendants have allowed the settlement process to continue, indicating that the current 42 state participants is sufficient.

We are currently in Phase 2, which is the “subdivision participation” phase. During this current phase, political subdivisions in each of the 42 settling states have 120 days to decide whether to participate in the settlement. The clock on this current phase runs through January 2, 2022. After the deadline for Phase 2, the defendants will then have 30 days to again decide whether there is enough “critical mass” to proceed with the respective settlement.

Phase 3 is a 60-day phase that will require each settling state to execute a consent judgment to implement releases and injunctive relief under the terms of the settlement agreement. No settlement funds will be disbursed to a settling State unless a consent judgment has been entered.

If enough Oregon local government entities “opt in” to the national settlement, then Oregon has the best chance of maximizing its payments from the defendants. A reason to not opt in to the settlement would be if a local government entity wants to pursue its own litigation against these defendants for the harm caused within its borders by the opioid crisis. Due to related costs, harm incurred, and associated evidentiary issues, there appears to be little reason for Cottage Grove to pursue litigation individually or as part of a future action.

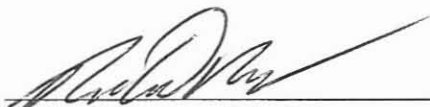
As noted above, the State of Oregon has signed on to the settlement. As part of the settlement process, many other states have negotiated intra-state agreements outlining how settlement proceeds will be distributed within the state. Oregon is in the process of negotiating such an agreement, primarily with the litigating entities in Oregon (several counties and the City of Portland). Once finalized, it will be critical for the City to sign on as a party to ensure its receipt of a portion of the settlement proceeds.

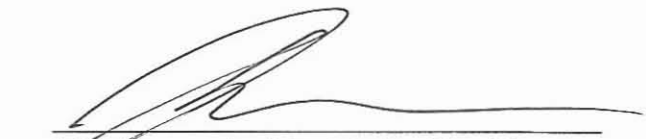
Recommendation

Staff recommends approval of the City of Cottage Grove’s participation in both the National Opioid Settlement Agreements and State of Oregon Allocation Agreements, and authorization of the City Manager to sign such Agreements and other associated documents, once finalized and distributed, prior to January 2nd, 2022.

Cost

No cost to the City.


Richard Meyers, City Manager


Jake Boone, Assistant to the City Manager