



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 21

Section Name: {{section.name}}

Account Number: 10-1711

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TO: City Council
FROM: Prasanna W. Rasiah, City Attorney
PREPARED BY: City Attorney's Office
MEETING DATE: July 15, 2024
SUBJECT:
Kroger Opioid Settlement – Agreement

RECOMMENDATION:

Approve the City's participation in a no-cost opioid settlement agreement with Kroger, and authorize the City Attorney to execute documents confirming the City's participation, directing the City's share of settlement funds be provided to the City of San Mateo, and redirecting previously approved settlement funds back to the City of San Mateo.

BACKGROUND:

Over the last several years, a number of nationwide litigation matters have been filed against manufacturers, distributors, and retailers of opioids. The allegations in these lawsuits have generally been that the defendants were complicit in the increasing problem of opioid addiction in the United States, and that they knew or should have known that the products they made or sold were being misused.

On December 6, 2021, the City Council authorized the City Attorney to take all necessary steps and execute appropriate documents to participate in opioid settlement agreements with three opioid distributors – Cardinal Health, McKesson, and AmerisourceBergen (hereinafter, the "Distributors") and the opioid manufacturer Janssen Pharmaceuticals, Inc., which is owned by Johnson and Johnson (collectively, "J&J"), and agree to implementing agreements. The City later joined settlement agreements involving Teva, Allergan, Walmart, CVS, and Walgreens.

On August 15, 2022, the City Council authorized the City Manager and City Attorney to direct settlement funds from the Opioid Settlement Agreements with Distributors and J&J to San Mateo County for the duration of both agreements, in the approximate amount of \$820,000, and confirm staff action to direct the first-year payment of Distributor settlement funds in the amount of \$28,464.21 to the County.

Last year, Attorney General Bonta announced a proposed multistate settlement with chain pharmacy Kroger for up to \$1.37 billion. California stands to receive up to \$122 million in abatement funding from this settlement. Like the Janssen/J&J, Distributors, Teva, Allergan, Walmart, CVS, and Walgreens settlements, local government support and sign-on is required to maximize the amount coming to our communities and eligible cities may elect to receive direct payment or have their allocated share go to the county in which they are located.

Signing the participation agreement involving Kroger will help direct settlement funds towards opioid mitigation efforts locally. If the City opts into the settlements, it must release its claims against Kroger. The State of California and San Mateo County have both joined the settlements. The deadline to join the settlement is August 12, 2024.

If the City does not sign the participation agreement, then the funds will go to the State, but the total amount the State receives may be reduced since it is based on participating cities and counties. By not opting in, the City preserves the

ability to litigate against the opioid distributors and manufacturers.

These funds will go to the City if it joins the settlements and opts for direct payment. If the City joins the settlements but does not opt for direct payment, those funds will go to San Mateo County.

Redirecting funds from San Mateo County back to the City of San Mateo will enable the use of additional opioid settlement funds locally. Funds going directly to participating states and subdivisions must be used for pre-approved purposes designed to help abate the opioid epidemic. These include a wide range of intervention, treatment, education, and recovery services. If the City receives direct payment it is obligated to report on the use of the funds, which must be used primarily for opioid abatement.

BUDGET IMPACT:

There is no budget impact for taking this action as it involves a decision whether to participate in settlement agreements. Staff will return to the Council later for direction as to whether the City should receive direct payments or authorize payment of the settlement funds to San Mateo County.

ENVIRONMENTAL DETERMINATION:

This proposed action is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

None

STAFF CONTACT

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