



AGENDA
SPECIAL MEETING OF THE CITY COUNCIL OF
THE CITY OF WHITE BEAR LAKE, MINNESOTA
WEDNESDAY, DECEMBER 29, 2021
4:00 P.M. IN THE COUNCIL CHAMBERS

1. CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

2. RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF MINNESOTA AND LOCAL GOVERNMENTS AND AUTHORIZING PARTICIPATION IN NATIONAL OPIOID SETTLEMENTS

3. ADJOURNMENT



City of White Bear Lake
City Manager's Office

MEMORANDUM

To: Mayor and Council
From: Rick Juba, Assistant City Manager
Date: December 29, 2021
Subject: **Participation in Minnesota Opioid Settlement**

BACKGROUND

Attached are two separate memos from the Minnesota Attorney General's Office and City Attorney Troy Gilchrist (Attorney Client Privileged Information) regarding the State of Minnesota's Opioid Settlement.

As outlined in the attached memos, the City of White Bear Lake must adopt the attached Resolution in order to opt-in to the settlement. Staff has identified potential uses for any funds received that fit within the approved remediation uses. Those potential uses include, but are not limited to, supporting opioid related counseling efforts at Northeast Youth and Family Services and offsetting City expenses for opioid related staff training and counseling.

The City must opt-in by January 2, 2022. All other related registration has been completed and will be finalized upon the execution of the attached Resolution.

RECOMMENDED COUNCIL ACTION

Adopt the attached Resolution approving the memorandum of agreement between the State of Minnesota and local governments and authorizing participation in national opioid settlements.

ATTACHMENTS

Executive Summary from the Minnesota Attorney General Keith Ellison
Memorandum from City Attorney Troy Gilchrist (Attorney-Client Privileged)
Resolution



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Minnesota Attorney General Keith Ellison
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Minnesota Opioid Settlement Executive Summary

Minnesota has joined a broad multistate coalition in reaching nationwide settlements with the three largest opioid distributors – AmerisourceBergen, Cardinal Health, and McKesson – and opioid manufacturer Johnson & Johnson. The settlements resolve investigations and lawsuits against these companies for their role in the opioid crisis. If the settlements are fully adopted nationally, the distributors will pay \$21 billion over 18 years and Johnson & Johnson will pay \$5 billion over 10 years. Most states have already joined the settlements, but for the agreements to become effective, a critical mass of cities and counties must sign onto the settlements by January 2, 2022.

Settlement Structure

If a critical mass of subdivisions sign on and the settlements become effective:

- Minnesota will be eligible to receive more than \$296 million over 18 years. Up to \$222 million of that will be paid directly to Minnesota cities and counties. The total amount of payments to Minnesota will be determined by the overall degree of participation by cities and counties. The more cities and counties that join, the more money everyone in Minnesota will receive. Distribution within Minnesota will be determined by the state-subdivision agreement (see below).
 - Each state’s share of the funding was determined by agreement among the states using a formula that takes into account the impact of the crisis on the state—the number of overdose deaths, the number of residents with substance use disorder, and the number of opioids prescribed—and the population of the state.
- Payments will begin to flow to the state and cities and counties as soon as April 2022. The Johnson & Johnson settlement provides for payments to be accelerated if cities and counties sign on early.
- The vast majority of the settlement funds must be used to support any of a wide variety of strategies to fight the opioid crisis. The Attorney General’s Office convened an expert panel of local, state, and community providers with experience and expertise in public health and delivery of health care services to determine the best and most effective use of the settlement funds. The panel selected a comprehensive list of future opioid abatement and remediation programs that will benefit all regions of the state.
- In addition to the financial components, the settlements also require the companies to make changes in how opioids are distributed and sold. The companies will be subject to far more oversight and accountability throughout that process to prevent deliveries of opioids to pharmacies where diversion and misuse occur. The distributors will be required to establish and fund a centralized, independent clearinghouse using detailed data analytics to keep close track of opioid distribution throughout the country and raise red flags for

suspicious orders. Johnson & Johnson will be prohibited from selling or promoting opioids for ten years.

Minnesota Framework

Minnesota has been preparing for these settlements and the opportunity they present to deliver substantial funding to needed abatement and remediation programs. In 2019, the Legislature passed the Opiate Epidemic Response bill, creating a special opioid abatement account and the Opioid Epidemic Response Advisory Council, which will oversee the spending of the state's share of settlement funds.

Additionally, a months-long partnership between the state and cities and counties has resulted in a state-subdivision agreement (or "Minnesota Memorandum of Agreement") that is designed to maximize the settlement funds coming to the State of Minnesota and get them to where they are needed most. The state-subdivision agreement details how the settlement money will be allocated within the state and also sets out a structure for the distribution of opioid abatement funds from pending bankruptcy plans with Purdue Pharma and Mallinckrodt. A copy of the state-subdivision agreement can be found on the Attorney General's website at www.ag.state.mn.us/opioids.

Pursuant to the state-subdivision agreement—and assuming maximum payments—approximately \$296 million in funds paid to Minnesota and its cities and counties from the Distributor and Johnson & Johnson settlements, as well as tens of millions of additional dollars from the Purdue Pharma and Mallinckrodt bankruptcies, will be allocated as follows:

- **Local Government Abatement Fund.** Seventy-five percent (75%) of the abatement funds will be paid directly to counties and certain municipalities that participate in the settlement. Local government funds will be directly allocated to all participating counties, and all participating municipalities that: (a) have populations of 30,000 or more, (b) have filed lawsuits against the settling defendants, or (c) have public health departments. To promote efficiency in the use of abatement funds and limit the administratively burdensome disbursements of amounts that are too small to add a meaningful abatement response, smaller, non-litigating municipalities will not receive a direct allocation of settlement funds. The allocation percentages for each county and municipality were determined by counsel for the subdivisions negotiating the national settlement agreements and were calculated using data reflect the impact of the opioid crisis on the subdivision. Tribal nations are conducting separate settlement negotiations with the opioid companies.
- **State Fund.** Twenty-five percent (25) of the abatement funds will be paid directly to the State. Pursuant to state law, these funds will go into the special opioid abatement account to be overseen and distributed by the Opioid Epidemic Response Advisory Council. Under current law, after certain appropriations are made, approximately 50% of the funds paid into the opioid abatement account are distributed to county social service agencies to

provide child protection services to children and families who are affected by addiction. The state-subdivision agreement anticipates a change to this law to allow counties to receive their share of the settlement funds directly. The agreement requires the state and subdivisions to work together to achieve this change in law during the 2022 legislative session, and includes a provision changing the allocation between state and local governments if the statutory change is not accomplished.

Some municipalities in Minnesota retained attorneys on a contingency fee basis to file lawsuits against the opioid companies. The national settlements establish an Attorney Fee Fund for attorneys representing cities and counties that join the settlements. The settlements require attorneys who recover from this fund to waive enforcement of their contingency fee agreements. The state-subdivision agreement includes a Backstop Fund, which will be overseen by a Special Master, that will allow for the payment of reasonable attorney fees to private attorneys to make up for the difference between what they receive from the national fund and their contingency fee agreements, which are capped at 15%. Any funds that remain in the Backstop Fund after payment of reasonable attorney fees will revert to cities and counties for abatement.

Subdivision Participation

It is vital for subdivisions to join the settlements during the initial sign-on period, which ends January 2, 2022. First, very high levels of subdivision participation nationally are necessary for the companies to move forward with the settlements and for everyone to benefit from them. Second, cities or counties cannot receive any portion of the direct settlement funds if they do not sign on to the settlements. Third, in order to maximize the settlement payments that come to Minnesota, full joinder by certain categories of counties and cities is needed. Finally, joinder during the initial sign-on period maximizes the amount of funds available to an individual city or county.

Next Steps

Now: Cities and counties should have received a settlement notice with additional information about the sign on process, which begins by registering on the national settlement website: www.nationalopioidsettlement.com. Registering is a necessary step toward participation in the settlements. The notice each subdivision received by mail and email provides its unique subdivision registration code, which must be used to register. Registering does not mean that the subdivision has accepted the terms of the national settlement agreements or the state-subdivision agreement.

Next: Each subdivision, via its local legislative body, should adopt a resolution that authorizes a representative of the subdivision to execute Minnesota's state-subdivision agreement and *both* subdivision settlement participation forms (Distributors and Johnson & Johnson), which are required to join the settlements. Cities and counties can obtain model resolutions by contacting the Association of Minnesota Counties or the League of Minnesota Cities. The resolutions should be submitted to the subdivisions' legislative body (*i.e.*, county commission or city council) for approval.

By January 2, 2022: After the appropriate resolution is passed by each subdivision, the authorized representative should sign the Minnesota Memorandum of Agreement, the Distributor Agreement, and the Johnson & Johnson Agreement. The Distributor and Johnson & Johnson agreements can be signed electronically via DocuSign. Subdivisions should receive an email with a link to sign electronically upon registering at www.nationalopioidsettlement.com. Subdivisions are encouraged to sign onto the Minnesota Memorandum of Agreement and the settlement agreements as soon as possible to avoid scheduling challenges and to ensure that we meet the national subdivision participation threshold for the settlements to become effective.

Additional information about the settlements and how they are implemented in Minnesota can be found on the Attorney General's website: www.ag.state.mn.us/opioids. Subdivisions that are represented by an attorney with respect to opioid claims should consult with their attorney. Additionally, specific questions for the Attorney General's Office can be emailed to opioids@ag.state.mn.us, or left via voicemail at (612) 429-7126.



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ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

Date: October 7, 2021
To: Ellen Hiniker, City Manager
From: Troy J. Gilchrist, City Attorney
Joshua P. Devaney, Assistant City Attorney
Re: Attorney General Notice Regarding Opioid Settlement

Background

Two nationwide settlement agreements (the “Settlement Agreements”) were reached in the opioid litigation brought by states and political subdivisions – one against pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen, and one against a manufacturer, Janssen Pharmaceuticals, Inc. (the “Settling Parties”). Collectively, the settlements amount to \$22.8 billion payable to state and local subdivisions over the next 18 years. The City of White Bear Lake qualifies to receive a portion of the settlement funds so long as it opts into the settlement agreements.

Settlement Agreements

The Settlement Agreements provide for the allocation of the settlement funds among the states according to an agreed upon formula. That formula is influenced by the number of political subdivisions within that state that opt into the Settlement Agreements. As such, the State of Minnesota (the “State”) is heavily incentivized to encourage political subdivisions to opt in. Additionally, there are a number of potential future events that can reduce the total annual payout. The biggest one being additional suits brought by political subdivisions after the Settlement Agreements were reached. If a political subdivision chooses not to opt into the Settlement Agreements and instead brings its own suit, the total pot for the settling parties is reduced. The states involved in the settlement, then, are even further incentivized to introduce legislation to bar their political subdivisions from bringing claims of their own. A political subdivision that does not opt into the Settlement Agreements will not be eligible for any of the settlement funds, even if they are barred by a legislative action from bringing a claim.

A political subdivision that does opt into the Settlement Agreements will be eligible for the settlement funds. How those funds are allocated within the State depends on what the Attorney General and the legislature do in the coming months. The Settlement Agreements provide for a default allocation, but the State may reach alternate agreements for distribution or pass legislation

that alters the default allocation or assigns the entirety or a portion thereof to a State fund for later allocation. Currently, the amount allocated to the State is roughly \$300 million. The default allocation assigns 15% of this amount to political subdivisions. From there, the percentage allocated by default to the City of White Bear Lake is 0.1136% – or about **\$51,120**.

The funds provided in the Settlement Agreement come with strings attached. At least 85% of the funds must be used for abatement of the opioid epidemic (“Abatement”). A broad range of pre-approved forms of Abatement are provided and fall into categories including intervention, treatment, education, and recovery services. While the remaining 15% of the funds may be used for other purposes, any non-Abatement use must be reported to the Settlement Fund Administrator. Administrative costs reasonably related to Abatement are qualifying expenditures.

Opting Into the Settlement Agreements

If the City wishes to opt into the Settlement Agreements, it must request a copy to execute by going to the following URL and entering the registration code provided on the Attorney General’s letter: <https://settlement-registration.web.app/>. A specific individual will need to be designated as having the authority to execute the documents provided to join the Settlement Agreements. The deadline to opt in is **January 2, 2022**. Ultimately, the City will be provided a Participation Agreement, Release, model Resolution, and instructions on executing the documents using DocuSign.

Analysis and Recommendation

In opting into the Settlement Agreements, the City forfeits its right to bring an individual suit against the Settling Parties. In exchange for forfeiting that right, the City gains eligibility to receive a portion of the settlement funds, as outlined above. Given the incredibly complex nature of this litigation, bringing an individual suit would either be extremely costly and time-consuming or require identifying a capable law firm that would litigate the matter on a contingency fee basis, with likely several years necessary before a resolution. In the interim, it is possible the State might take actions to hinder or fully obstruct efforts by political subdivisions to bring individual suits.

If the City has no interest in proceeding with an individual suit, it should opt into the Settlement Agreements. The work necessary to do so is minor and the City stands to benefit from additional funding to address opioid epidemic-related problems. We recommend that the City proceed with opting into the Settlement Agreements.

RESOLUTION NO.

RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE STATE OF MINNESOTA AND LOCAL GOVERNMENTS AND AUTHORIZING PARTICIPATION IN NATIONAL OPIOID SETTLEMENTS

WHEREAS, the State of Minnesota, Minnesota counties and cities, and their people, have been harmed by misconduct committed by certain entities that engage in the manufacture, marketing, promotion, distribution, or dispensing of opioids; and

WHEREAS, the State of Minnesota and numerous Minnesota cities and counties joined with thousands of local governments across the country to file lawsuits against opioid manufacturer and pharmaceutical distribution companies and hold those companies accountable for their misconduct; and

WHEREAS, representatives of local Minnesota governments, the League of Minnesota Cities, the Association of Minnesota Counties, the Coalition of Greater Minnesota Cities, the State of Minnesota, and the Minnesota Attorney General's Office have negotiated and prepared a Memorandum of Agreement (MOA) to provide for the equitable distribution of proceeds to the State of Minnesota and to individual local governments from recent settlements in the national opioid litigation; and

WHEREAS, by signing onto the MOA, the state and local governments maximize Minnesota's share of opioid settlement funds, demonstrate solidarity in response to the opioid epidemic, and ensure needed resources reach the most impacted communities; and

WHEREAS, it is in the best interests of the State of Minnesota and the residents of the City of White Bear Lake, and the County of Ramsey, that the City participate in the national opioid litigation settlements.

NOW, THEREFORE, be it resolved by the City Council of the City of White Bear Lake, Minnesota:

1. Participation in the opioid litigation settlements promotes the public health, safety, and welfare of the residents of the City of White Bear Lake.
2. The City of White Bear Lake supports and opts-in to the national opioid litigation settlements with the Distributors McKesson, Cardinal Health, and Amerisource Bergen, and with the Manufacturer Johnson & Johnson.
3. The Memorandum of Agreement (MOA) between the State of Minnesota and Local Governments relating to the distribution of settlement funds is hereby approved by the City of White Bear Lake.
4. The City Manager is hereby authorized to take such measures as necessary to sign the MOA and otherwise participate in the national opioid settlements, including executing the Participation Agreement and accompanying Release.

RESOLUTION NO.

Adopted by the City Council December 29, 2021

City Manager

Mayor

Attest:

City Clerk