



## Council Communication File Number: Res 2021-80

**Agenda Date:** 10/18/2021

**Version:** 1

**Status:** ATS Review

**In Control:** City Council

**File Type:** Resolution

### A RESOLUTION APPROVING THE COLORADO OPIOIDS SETTLEMENT MEMORANDUM OF UNDERSTANDING AND RELATED DOCUMENTS TO EFFECTUATE SETTLEMENTS

**Summary and Background Information:** In 2018, the City Council authorized litigation against various manufacturers, wholesalers, and distributors of opioid painkillers. Commerce City ultimately filed a lawsuit in the pending nationwide multidistrict litigation along with dozens of other Colorado local governments, naming several dozen defendants in multiple filings and bankruptcy claims. Several larger defendants have negotiated settlements that depend on broad releases of claims and the agreement by a certain number of state and local jurisdictions (including non-plaintiffs); other settlements are expected to follow. Some settlements are incorporated into bankruptcy plans that are approved (e.g., Purdue) or pending (e.g., Mallinckrodt) and others are independent (e.g. Janssen/Johnson & Johnson and the "Distributor Settlement").

To effectuate the settlements, both state and local governments must sign onto the settlement and agree on terms for the distribution and expenditure of funds. The State of Colorado and a coalition of local governments, of which Commerce City is a part, have negotiated the "Colorado Opioids Settlement Memorandum of Understanding" that will apply to pending and future settlements arising from this litigation. Two nationwide settlements are at a stage that requires local government action to participate.

Effect of Resolution: The resolution would approve the MOU and authorize the Mayor and Clerk to sign and attest the document. The resolution also authorizes the City Manager and City Attorney to execute such other documents and agreements as are necessary to effectuate any settlement, including the Distributor Settlement and Janssen Settlement.

MOU Terms: The MOU includes the following key terms:

- **Distributions:** 20% would go to local governments, 60% would go to "regions," 10% would go to statewide capital infrastructure, and 10% would go to the state.
  - o The City's expected direct percentage would be 4.7314% of the 9.4247% allocated to Adams County governments from the 20% local government share (MOU Section E, Ex. D-E). The local governments in a county can modify these allocations. If a local government does not participate, its share would go to the regional share.

- o The City's region (the boundaries of Adams County) would receive 9.4247% of the 60% regional share (MOU Section F, Ex. F).
  - o Both the overall local government and regional shares will be reduced to account for attorney fees before allocation and distribution.
- **Uses:**
- o Funds can be used only for approved future purposes identified in Exhibit A (not including past expenditures) (linked to remediation purposes in the national settlement agreements).
  - o Funds can be donated to the region or combined with other participating governments.
  - o Regions would establish regional councils to expend funds.
- **Attorney Fees:**
- o Under the MOU, counsel would first have to apply to a national fee fund, if one is created, and then to a statewide attorney fee fund for any shortfall. Because it is funded from portions of the overall local and regional shares, the city would not pay any additional amount. Counsel cannot recover more than 15% of the local government share and 7.5% of the regional share attributable to their clients.
  - o Special counsel has confirmed that they have agreed to the attorney fees provisions in the MOU and will seek compensation only according to its terms. (Note: under the City's retention agreement, special counsel fees are capped at 15%).

Other Documents/Settlement Terms: With this resolution, the City Council would also authorize the City Manager and City Attorney to execute other documents to effectuate settlements. Included at this time are settlements with Janssen (Johnson and Johnson) and various distributors and an escrow agreement to implement those settlements and the MOU in connection with the national settlement. The Colorado Attorney General has requested prompt action to participate in the MOU and these settlements, due to time restrictions in the agreements. Details of these national settlement can be found at: <https://nationalopioidsettlement.com/>.

Each settlement involves substantial payments spread out over several years, allocated to the states based on a variety of factors, and then further allocated according to agreements like the MOU. Settlement payments are intended for future costs of remediation of the opioid epidemic, including care, treatment and other programs to address misuse and abuse of opioid products, treat or mitigate use or related disorders, or mitigate other effects. Funds will be paid through an escrow on an annual basis and then allocated as provided in the state-specific MOU. Settlement payments also create a national attorney fee fund.

In addition to settlement payments, the defendants would be subject to "robust injunctive relief" requiring changes in business practices. This would include increased and improvement measures to identify suspicious orders and pharmacy customers, use of an independent third-party monitor, and use of a clearinghouse that accounts for shipments

by all distributors.

As part of each settlement, the City would release claims against the defendants and related entities arising out of their "Covered Conduct" in connection with the opioids (primarily development, manufacture, distribution, packaging, marketing, sale, dispensing, and reporting and products themselves). The City would also dismiss pending actions against the settling defendants.

The "Distributor Settlement" agreement can be found at:

[https://nationalopioidsettlement.com/wp-content/uploads/2021/09/Final-Distributor-Settlement-Agreement-9.18.21\\_.pdf](https://nationalopioidsettlement.com/wp-content/uploads/2021/09/Final-Distributor-Settlement-Agreement-9.18.21_.pdf).

The "Janssen Settlement" agreement can be found at:

<https://nationalopioidsettlement.com/wp-content/uploads/2021/09/Janssen-7-30-21-updated-20210920.pdf>.

**Staff Responsible (Department Head):** Robert Sheesley, City Attorney

**Staff Member Presenting:** Robert Sheesley, City Attorney

**Financial Impact:** TBD

**Funding Source:** Various settlement funds

**Staff Recommendation:** Approval.

**Suggested Motion:** I move to approve Resolution 2021-80.