



WESTMINSTER

COLORADO

CITY COUNCIL MEETING

JULY 08, 2024 at 7:00 PM

- C. Resolution No. 13 Authorizing the City Attorney to Execute the Settlement Participation Form for Kroger Opioid Settlement Funds



Agenda Memorandum

Agenda Item – 8.C.

City Council Meeting
July 8, 2024

Strategic Priority 3: Community Health and Safety

Invest in innovative and collaborative approaches to provide a continuum of services that preserve, promote, and protect the health, safety, and environment of Westminster

Subject: Resolution No. 13 Authorizing the City Attorney to Execute the Settlement Participation Form for Kroger Opioid Settlement Funds

Prepared By: Mat Munch, Assistant City Attorney II

Recommended City Council Action:

Adopt Resolution No. 13 Authorizing the City Attorney to execute the Settlement Participation Form for Kroger Opioid Settlement Funds.

Summary Statement:

A settlement has been proposed with another of the opioid manufacturers and distributors who are defendants in the ongoing litigation in which the City, and many other local and state governments, are participating as plaintiffs. This proposed settlement would result in an additional approximately \$13,808-\$15,124 per year over eleven years, which can be used to respond to the ongoing opioid crisis. These funds would be in addition to other sources of opioid settlement funds that the City is already receiving.

Fiscal Impact:

Approximately \$13,808 to \$15,124 in revenues and future expenditures annually over eleven years

Source of Funds:

Kroger Opioid Settlement Funds

Policy Issue(s):

Should the City Council approve the Kroger opioid settlement?

Alternative(s):

The City Council could choose not to approve the proposed Kroger opioid settlement. This is not recommended because not approving the settlement may result in reduced, delayed, and/or uncertain receipt of additional needed funds to respond to the opioid crisis.

Background Information:

The City of Westminster is participating, along with several other cities and counties in Colorado and nationwide, in a joint litigation against manufacturers and distributors of opioid medications, seeking to recover resources to help the City deal with the fallout from the ongoing nationwide opioid crisis. City Council previously approved a Memorandum of Understanding (MOU) with the Colorado Attorney General's Office, and many of the most important municipal and county stakeholders in the Colorado, which governs how any resulting settlement funds from the opioid litigation are to be distributed and managed among the state, local, and municipal governments, including the currently proposed Kroger settlement.

Under the currently proposed Kroger settlement the City could expect to receive approximately \$13,808 to \$15,124 per year over 11 years in additional funding which can be used, in accordance with the MOU, to respond to the ongoing opioid crisis. In addition to these funds which would come directly to the City of Westminster, additional funds will be made available to the state and region which will also be used by those entities to respond to the opioid crisis, and thus benefit the citizens of Westminster.

A summary of how all the City's opioid settlement funds are being utilized will be included in the proposed 2025 Budget.

Approving the Kroger settlement supports the City's strategic priority of Community Health and Safety as it will result in funding that can be productively used to help the City respond to the ongoing opioid crisis.

Respectfully submitted,

A handwritten signature in blue ink that reads "Mark A. Freitag". The signature is written in a cursive, flowing style.

Mark A. Freitag
City Manager

Attachments:

Resolution No. 13 Authorizing the City Attorney to Execute the Settlement Participation Form for Kroger Opioid Settlement Funds

Kroger Settlement Participation Form (Exhibit K)

RESOLUTION

RESOLUTION NO. **13**

INTRODUCED BY COUNCILLORS

SERIES OF 2024

A RESOLUTION

AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE SETTLEMENT PARTICPATION
FORM FOR KROGER OPIOID SETTLEMENT FUNDS

WHEREAS the City of Westminster is participating, along with a great many other cities and counties in Colorado, in a joint litigation against manufacturers and distributors of opioid medications seeking to recover resources to help the City deal with the fallout from the ongoing nationwide opioid crisis, which has been highly destructive to the lives and livelihoods of the citizens of Westminster and has taxed City services, particularly burdening the City's already stressed emergency response and recreation services; and

WHEREAS the City Council has previously approved a Memorandum of Understanding ("MOU") with the Colorado Attorney General's Office and many of the most important municipal and county stakeholders in the State of Colorado; and

WHEREAS this MOU set forth a consistent method for governing how any settlement funds from the ongoing opioid litigation are to be distributed and managed among the state, local, and municipal governments to most effectively respond to the ongoing opioid crisis, including several previously approved settlements, and the currently proposed Kroger settlement; and

WHEREAS approving the Kroger settlement in its current form will provide the City with additional and substantial funds which can be used in accordance with the MOU to respond to the opioid crisis and provide desperately needed services to the citizens of the City of Westminster.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. The Kroger Settlement Participation Form, is hereby approved in substantially the same form attached with minor changes as may be approved by the City Attorney, and contingent upon the condition set forth below.

3. The City Attorney is hereby authorized to execute the, Kroger Settlement Participation Form in substantially the same form as attached with minor revisions as may be approved by the City Attorney.

PASSED AND ADOPTED this 8th day of July, 2024.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT K

Subdivision Participation and Release Form

| | |
|----------------------|--------|
| Governmental Entity: | State: |
| Authorized Official: | |
| Address 1: | |
| Address 2: | |
| City, State, Zip: | |
| Phone: | |
| Email: | |

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated March 22, 2024 (“*Kroger Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Kroger Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Kroger Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Kroger Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Kroger Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Kroger Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Kroger Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel

as provided in, and for resolving disputes to the extent otherwise provided in, the Kroger Settlement.

7. The Governmental Entity has the right to enforce the Kroger Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Kroger Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Kroger Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Kroger Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Kroger Settlement.
10. In connection with the releases provided for in the Kroger Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Settlement.

11. Nothing herein is intended to modify in any way the terms of the Kroger Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Settlement in any respect, the Kroger Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____