

RESOLUTION NO. 2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO THE SETTLEMENT AGREEMENT WITH KROGER CO., AGREE TO THE TERMS OF THE STATE SUBDIVISION AGREEMENT, AND AUTHORIZE THE CITY MANAGER TO EXECUTE FUTURE PROPOSED OPIOID SETTLEMENT AGREEMENTS

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death, forcing the State of California and California counties and cities to spend billions of dollars each year to address the direct consequences of this crisis; and,

WHEREAS, pending in the U.S. District Court for the Northern District of Ohio is a multidistrict litigation (“MDL”) being pursued by numerous public entity plaintiffs against the manufacturers and distributors of various opioids based on the allegation that the defendants’ unlawful conduct caused the opioid epidemic; and,

WHEREAS on or about March 22, 2024, the State of California reached a proposed multistate tentative settlement was reached between the plaintiffs in the MDL and Kroger Co. (“Kroger”), and,

WHEREAS, as part of the settlement with Kroger, local subdivisions, including certain cities, that are not plaintiffs in the MDL may participate in the settlements in exchange for a release of Kroger; and,

WHEREAS, copies of the proposed terms of the proposed nationwide settlement have been set forth in the Kroger Settlement Agreement; and,

WHEREAS, the CA Kroger Allocation Agreement allocates the California Opioid Funds as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. All funds allocated to California from the Settlement shall be combined pursuant to the CA Kroger Allocation Agreement, and 15% of total from the settlement shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund”), and 15% to the California Subdivision Fund (“CA Subdivision Fund”); and,

WHEREAS, the Kroger Settlement Agreement provides, among other things, for the payment of a certain sum to settling government entities in California including to the State of California and Participating Subdivisions upon occurrence of certain events as defined in the Kroger Settlement Agreement (“California Opioid Funds”); and,

WHEREAS, California local governments in the MDL have engaged in extensive discussions with the State Attorney General's Office ("AGO") as to how the California Opioid Funds will be allocated, resulting in the Proposed California State Subdivision Agreement Regarding Distribution and Use of Settlement Funds ("CA Kroger Allocation Agreement") from the settlement with Kroger; and,

WHEREAS, under the Kroger Settlement Agreement, certain local subdivisions that did not file a lawsuit against Kroger may qualify to participate in the settlement and obtain funds from the Abatement Account Fund; and,

WHEREAS, the City of Palm Desert is eligible to participate in the Settlement and become a CA Participating Subdivision; and,

WHEREAS, the funds in the CA Abatement Accounts Fund (the 70% allocation) will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision (those above 10,000 in population). The City's share of the CA Abatement Accounts Fund will be a product of the total in the CA Abatement Accounts Fund multiplied by the City's percentage set forth in Appendix 1 of the CA Kroger Allocation Agreements (the "Local Allocation"); and,

WHEREAS, a CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, unless the city elects to take a direct election of the settlement funds, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date; and,

WHEREAS, it the intent of this Resolution is to authorize the City to enter into the Kroger Settlement Agreement with Kroger by executing the Participation Form and to enter into the CA Kroger Allocation Agreement by executing the signature pages to those agreements.

NOW, THEREFORE, BE IT RESOLVED by the City of Palm Desert City Council as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Manager is authorized to settle and release the City's claims against Kroger in exchange for the consideration set forth in the Kroger

Settlement Agreement and CA Kroger Allocation Agreement, including taking the following measures:

1. The execution of the Participation Form with Kroger and any and all documents ancillary thereto.
2. The execution of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds with Kroger by executing the signature page to that CA Kroger Allocation Agreement.
3. Notify the Settlement Fund Administrator that the City requests a direct payment under the CA Kroger Allocation Agreement at least 60 days prior to the Payment Date in the Kroger Settlement Agreement.

SECTION 3. The City Manager is authorized to, without further City Council review or approval, settle and release the City's claims against any other manufacturers and/or distributors of various opioids based on the allegation that the defendants' unlawful conduct caused the opioid epidemic ("Future Settling Defendants"), in exchange for consideration set forth in agreements substantially similar to the Kroger Settlement Agreement and CA Kroger Allocation Agreement. This authorization includes the authority to:

1. Execute any Participation Agreements or Forms with any Future Settling Defendants, and any and all documents ancillary thereto; and
2. Execute the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds with any Future Settling Defendants by executing the signature pages to those Allocation Agreements; and
3. Notify the Settlement Fund Administrator that the City requests a direct payment under the Allocation Agreements at least 60 days prior to the payment date in any settlement agreements with Future Settling Defendants.

SECTION 4. CEQA. That the City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Resolution are declared to be severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately.

SECTION 7. Certification. The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original Resolutions.

ADOPTED ON _____, 2024.

KARINA QUINTANILLA
MAYOR

ATTEST:

ANTHONY J. MEJIA
CITY CLERK

I, Anthony J. Mejia, City Clerk of the City of Palm Desert, hereby certify that Resolution No. 2024-__ is a full, true, and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Desert on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Desert, California, on _____.

ANTHONY J. MEJIA
CITY CLERK