

ORDINANCE NO. 2021- 51A

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

AN EMERGENCY ORDINANCE AUTHORIZING ACCEPTANCE OF THE RECOMMENDATION TO APPROVE THE ONEOHIO OPIOID SETTLEMENT AND ENTER INTO THE PARTICIPATION AGREEMENT WITH OPIOID DISTRIBUTORS AMERISOURCEBERGEN, MCKESSON, AND CARDINAL HEALTH

WHEREAS, opioid distributors AmerisourceBergen, McKesson and Cardinal Health (“the Distributors”) have proposed a joint settlement (“the Settlement”) to the State of Ohio and its political subdivisions pertaining to the Distributors’ share of the distribution of opioids that was a significant cause of the national opioid crisis that led to mass addiction and overdose deaths that affected both the State of Ohio and the Village of Oakwood; and

WHEREAS, under the Settlement, the Distributors will pay up to \$804,865,429 to the State of Ohio and its political subdivisions over 18 years, with most of the money received being restricted in use and earmarked for abatement of the opioid epidemic; and

WHEREAS, 55% of the foregoing sum is guaranteed while the remainder is subject to certain incentive targets including the participation of 85% of litigating subdivisions by population; and

WHEREAS, the Ohio Attorney General and the Ohio Municipal League have recommended that the political subdivisions of the State of Ohio accept the Settlement and enter into the Participation Agreement attached hereto and incorporated herein as Exhibit “A”;

WHEREAS, the Law Director recommends that Council vote to accept the Settlement and enter into the Participation Agreement (“the Agreement”) with the Distributors as described and incorporated by reference herein.

NOW THEREFORE BE IT RESOLVED by the Council of the Village of Oakwood, County of Cuyahoga, State of Ohio, that:

SECTION 1. Council hereby accepts the recommendation of the Attorney General, the Ohio Municipal League and the Law Director and authorizes approval of the Settlement and execution of the Agreement in substantially the form attached hereto and incorporated herein as Exhibit “A” on behalf of the Village on or before the Settlement deadline currently set for August 13, 2021.

SECTION 2. The Mayor and Law Director are hereby authorized to take all steps necessary to resolve these matters in accordance with the terms of the Settlement and the Agreement.

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary

for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village, the reason for the emergency being that it is necessary to enter into the Participation Agreement concerning the said Settlement on or before August 13, 2021 in order to ensure to the extent possible the maximum revenues from the Settlement, therefore, provided it receives two-thirds ($\frac{2}{3}$) of the vote of all members of Council elected thereto, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: August 11, 2021

Johnnie A. Warren
Johnnie Warren, President of Council

Presented to the Mayor: Clayton J. Otloch

Approved: August 11, 2021

I, Dionna Hammett, Interim Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that the foregoing Ordinance No. 2021 - 51 was duly and regularly passed by this Council at the meeting held on the 11 day of August, 2021.

Dionna Hammett
Dionna Hammett, Interim Clerk of Council

POSTING CERTIFICATE

I, Dionna Hammett, Interim Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that Ordinance No. 2021 - 51 was duly posted on the 11 day of August, 2021, and will remain posted for a period of fifteen (15) days thereafter in the Council Chambers in the locations and manner provided in the Village Charter.

Dionna Hammett
Dionna Hammett, Interim Clerk of Council

DATED: August 11, 2021

EXHIBIT "A"

OneOhio Subdivision Participation 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 consistent with the material terms of the National Settlement Agreement dated July 21, 2021 ("*National Distributor Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the material terms of the National Settlement Agreement Distributor Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the National Distributor Settlement, understands that all terms in this Participation Form have the meanings defined therein, and agrees that by signing this Participation Form, the Governmental Entity elects to participate consistent with the material terms of the National Distributor Settlement and become a Participating Subdivision as provided therein pursuant to the terms of the final OneOhio Memorandum of Understanding dated July 28, 2021.
2. The Governmental Entity's election to participate is specifically conditioned on participation by 95% or more of the Litigating Subdivisions in Ohio. Should less than 95% of the Litigating Subdivisions in Ohio participate, this election shall be deemed void and no claims shall be released.
3. The Governmental Entity shall, prior to the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
4. The Governmental Entity agrees to the material terms of the National Distributor Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the material terms of the National Distributor 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.

6. The Governmental Entity agrees to use any monies it receives through the material terms of the National Distributor Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the Madison County Court of Common Pleas where the Consent Judgment is filed for purposes limited to the court's role as provided in, and for resolving disputes to the extent provided in, the material terms of the National Distributor Settlement Agreement. If the National Distributor Settlement is finalized, 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 National Distributor Settlement.
8. The Governmental Entity has the right to enforce the material terms of the National Distributor Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the material terms of the National Distributor Settlement, including, but not limited to, all provisions of Part XI, 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 material terms of the National Distributor 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 material terms of National Distributor Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision consistent with the material terms of the National Distributor Settlement.
11. In connection with the releases provided for in the material terms of the National Distributor 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, and 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 material terms of the National Distributor Settlement.

12. Nothing herein is intended to modify in any way the terms of the material terms of the National Distributor Settlement to which Governmental Entity hereby agrees, with the exception of the requisite Litigating Government participation level. If the National Settlement becomes effective by July 1, 2022 its terms will supersede the terms of the Ohio Settlement Agreement and will control with regard to all provisions except for Dismissal of Claims as set forth in the Ohio Settlement Agreement. If it is not effective by July 1, 2022, the Ohio Specific Distributor Settlement will control. To the extent this Participation Form is interpreted differently from the Ohio Specific Distributor Settlement in any respect, the Ohio Specific Distributor Settlement controls.

I have all necessary power and authorization to execute this Participation Form on behalf of the Governmental Entity and have been afforded the opportunity to review this matter with counsel.

Signature: _____

Name: _____

Title: _____

Date: _____