

DELIVERED AUG 05 2021

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2021-**57**

Introduced By: Mayor Matthew Castelli

**A RESOLUTION
ACCEPTING THE MATERIAL TERMS OF THE OneOhio SUBDIVISION
SETTLEMENT PURSUANT TO THE OneOhio MEMORANDUM OF
UNDERSTANDING AND CONSISTENT WITH THE TERMS OF THE
JULY 21, 2021 NATIONAL OPIOID SETTLEMENT AGREEMENT
AND DECLARING AN EMERGENCY**

WHEREAS the City of Middleburg Heights, Ohio (herein "Municipality") is a municipal entity formed and organized pursuant to the Constitution and laws of the State of Ohio; and

WHEREAS the people of the State of Ohio and its communities have been harmed by misfeasance, nonfeasance and malfeasance committed by certain entities within the Opioid Pharmaceutical Supply Chain; and

WHEREAS the State of Ohio, through its Attorney General, and certain Local Governments, through their elected representatives and counsel, are separately engaged in litigation seeking to hold Opioid Pharmaceutical Supply Chain Participants accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance; and

WHEREAS the State of Ohio, through its Governor and Attorney General, and its Local Governments share a common desire to abate and alleviate the impacts of that misfeasance, nonfeasance, and malfeasance throughout the State of Ohio; and

WHEREAS the State and its Local Governments, subject to completing formal documents effectuating the Parties Agreements, have drafted and the City of Middleburg Heights has adopted, and hereby reaffirms its adoption of, a OneOhio Memorandum of Understanding ("MOU") relating to the allocation and the use of the proceeds of any potential settlements described; and

WHEREAS the MOU has been collaboratively drafted to maintain all individual claims while allowing the State and Local Governments to cooperate in exploring all possible means of resolution; and

WHEREAS the Council of the City of Middleburg Heights understands that an additional purpose of the MOU is to create an effective means of distributing any potential settlement funds obtained under the MOU between the State of Ohio and Local Governments in a

manner and means that would promote an effective and meaningful use of the funds in abating the opioid epidemic throughout Ohio, as well as to permit collaboration and explore potentially effectuation earlier resolution of the Opioid Litigation against Opioid Pharmaceutical Supply Chain Participants; and

WHEREAS nothing in the MOU binds any party to a specific outcome, but rather, any resolution under the MOU requires acceptance by the State of Ohio and the Local Governments; and

WHEREAS a settlement proposal is being presented to the State of Ohio and Local Governments by distributors AmerisourceBergen, Cardinal, and McKesson (collectively the "Settling Distributors") to resolve governmental entity claims in the State of Ohio using the structure of the OneOhio MOU and consistent with the material terms of the July 21, 2021, proposed National Opioid Distributor Settlement Agreement; and

WHEREAS Council of the City of Middleburg Heights wishes to agree to the material terms of the proposed National Opioid Distributor Settlement Agreement with the Settling Distributors (the "Proposed Settlement").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to execute the Participation Agreement for the OneOhio Subdivision Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation ("Settling Disbributors") pursuant to the OneOhio Memorandum of Understanding regarding the pursuit and use of potential opioid litigation settlement funds and consistent with the material terms of the July 21, 2021 proposed National Opioid Distributor Settlement Agreement.

Section 2: That the Mayor is hereby authorized to accept the Proposed Settlement on behalf of the City of Middleburg Heights, pursuant to the terms of the OneOhio MOU.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 4: That this Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and welfare of said City. The reason for the emergency is to ensure prompt pursuit of funds to assist in abating the opioid epidemic throughout Ohio. Wherefore, provided this Ordinance receives the affirmative vote of at least two-thirds (2/3) of the members of

Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 8/10/21

David Bortolotto
President of Council

Presented to Mayor: 8/10/21

Matthew Costello
Mayor

Attest: M Meola
Clerk of Council

Approved On: 8-10-2021

	Yea	Nay
Bortolotto	<u>X</u>	_____
Ali	<u>X</u>	_____
Sage	<u>X</u>	_____
Meany	<u>X</u>	_____
McGregor	<u>X</u>	_____
Ference	<u>X</u>	_____
Grech	<u>X</u>	_____

I, MaryAnn Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2021-57 adopted by the Council of the City of Middleburg Hts., on 8/10/21 was posted for a period of fifteen days, beginning 8/10/21 and remained so posted for fifteen days at the two posting places as designated by Charter.

MaryAnn Meola
Clerk

CERTIFICATE

I, MaryAnn Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2021-57 passed on the 10th day of August 2021 by said Council.

MaryAnn Meola
Clerk of Council

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: Matthew Castelli
Name: Matthew Castelli
Title: Mayor
Date: 8-10-21