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MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS

Appropriation of Opioid Settlement Funds

January 23, 2023

***This information is provided for educational purposes only and is not to be construed as legal advice.
For legal advice please contact your city or town attorney.***

The Office of the Massachusetts Attorney General and many other Attorneys General have settled lawsuits against opioid manufacturers, distributors, and retailers for their role in contributing to the devastation caused by the opioid crisis in the Commonwealth.¹ The settlements provide that the defendants pay states and municipalities billions of dollars annually, with a current end date of 2038 to supplement and strengthen resources for opioid prevention, harm reduction, treatment, and recovery. Massachusetts is anticipated to receive approximately \$90 million for abatement of the opioid epidemic.²

The settlements are some of a number of settlements reached and anticipated to be reached between Attorneys General and non-bankrupt opioid industry entities. Under the terms of the Commonwealth's approved State-Subdivision Agreement, forty percent (40%) of the funds will be directly allocated to the state's municipalities to be spent on abatement strategies developed with input from the Opioid Recovery and Remediation Fund Advisory Council. Council members include public health experts, municipal and state leaders and families affected by opioid use.³

¹ <https://www.mass.gov/service-details/learn-about-the-ags-statewide-opioid-settlements-with-opioid-industry-defendants#:~:text=On%20November%2023%2C%202022%2C%20AG,recovery%20across%20Massachusetts%2C%20once%20finalized.>

² <https://www.wbur.org/news/2022/07/15/opioid-settlement-money-massachusetts.>

³ For a list of current members, see: <https://mass.gov/service-details/opioid-recovery-and-remediation-fund-advisory-council-members.>

Cities and towns received their first payment on or about July 15, 2022 (FY 23), the second payment in August and September 2022 (FY 23), and an additional payment in November 2022 (FY 23).⁴ In order to “deposit” and therefore have access to these funds for the purposes for which they are intended, they must first be “appropriated” by the legislative body of a municipality. In towns, this body is either Town Meeting or Town Council. In cities, this body is the City Council. In order to appropriate these funds for FY 23 (July 1, 2022 to June 30, 2023) a municipality must do the following:

- Town Meeting, Town Council or City Council can vote to classify the funds as “general fund estimated receipts” and appropriate them by amending the final FY 23 budget to reflect this new source of revenue before a tax rate is set.
- If this is not done, the funds would only reduce the tax levy, but would not be able to be used for the specific purpose of abating the opioid epidemic as required.
- However, if the funds are received prior to March 31, 2023, a municipality can request that the Comptroller (Director of Accounts) update the certified free cash back to the beginning of FY 23 (July 1, 2022) and make them available for appropriation at spring town meeting or at a subsequent regularly scheduled meeting.⁵

After the funds are appropriated, the legislative body of a municipality can create a stabilization fund for the special purpose of holding and spending the opioid settlement proceeds by creating an opioid stabilization fund. In order to create such a fund, a municipality would need to do the following:

- Vote to create the stabilization fund using the language contained in G.L. c. 40, § 5B, paragraph 4.
- A two-thirds majority vote is required to create the fund.

Once created, appropriations into the stabilization fund requires a simple majority vote annually by the legislative body. However, appropriations from the fund requires a two-thirds majority vote annually by the legislative body. The fund will remain in existence until it is terminated.

Sample templates to appropriate the funds received during FY 23 and to create a stabilization fund are attached. ***Please note that these templates are supplied for educational purposes only and are not to be construed as legal advice. For legal advice, please contact your city or town attorney.***

⁴ <https://mass.gov/doc/opioid-payments-to-massachusetts-cities-and-towns-as-of-11422/download>.

⁵ <https://www.mass.gov/doc/ask-dls-treatment-of-opioid-settlement-payments/download>.