



AGENDA

SPECIAL MEETING OF
THE GOVERNING BODY
DECEMBER 28, 2021
12:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR SPECIAL GOVERNING BODY MEETING

Attendance: In response to the State's declaration of a Public Health Emergency, the Mayor's Proclamation of Emergency, and the ban on public gatherings in excess of those permitted in the current Public Health Order, the Special Governing Body meeting will be conducted virtually.

Viewing: Members of the public may view the meeting through the Government Channel on Comcast Channel 28 and Comcast HD928 or may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this and all past meetings of the Governing Body will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded Governing Body meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Radio Broadcast: The meeting can be heard on radio station KSFR 101.1.

Agenda: The agenda for the meeting will be posted at <https://www.santafenm.gov>.

Written Comments: The public may submit written comments on any of the legislative items to be considered on the *Discussion Agenda* through 1:00 p.m. the day of the meeting, via the virtual comment "button" at <https://santafe.primegov.com/public/portal>.

To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm-gov.zoom.us/j/96957167092?pwd=aWF1cEt6NW5QNFowdTk2MUZld01qZz09>. **Passcode: 173781**

Attendees should use the "Raise Hand" function to be recognized by the Mayor to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 969 5716 7092 - Passcode: 173781**



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Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Mayor to speak at the appropriate time.

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

Councilwoman Villarreal

3. **SALUTE TO THE NEW MEXICO FLAG**

Councilor Lindell

4. **INVOCATION**

Councilor Garcia

5. **ROLL CALL**

6. **APPROVAL OF AGENDA**

7. **CONSENT AGENDA**

- a. Request for Approval of a Budget Adjustment Resolution (BAR) in the Parks Division of the Public Works Department in the Amount of \$242,804 to Fund Parks Capital and Operating Expenses. (Melissa McDonald, Acting Parks and MRC Director: mamcdonald@santafenm.gov, 505-955-6840)

Committee Review:

Finance Committee: 11/29/2021

Quality of Life Committee: 12/01/2021

Governing Body Special Meeting: 12/28/2021

- b. Request for Approval of a Budget Adjustment Resolution (BAR) in the Municipal Recreation Complex Division of the Public Works Department in the Amount of \$204,334 to Fund Existing Unfunded MRC Parks Superintendent Position and to Fund MRC Operations and Repairs. (Melissa McDonald, Acting Parks and MRC Director: mamcdonald@santafenm.gov, 505-955-6840)

Committee Review:



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**SPECIAL MEETING OF
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Finance Committee: 11/29/2021
Quality of Life Committee: 12/01/2021
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8. MATTERS FROM THE CITY ATTORNEY

a. EXECUTIVE SESSION

In Accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, Part (H)(7), Attorney-Client Privileged Discussion of Litigation, Specifically *City of Santa Fe v. Purdue Pharma, et al.*, DNM No. 1:19-CV-01105. (Erin K. McSherry, City Attorney: ekmcsberry@santafenm.gov, 955-6512)

9. EXECUTIVE SESSION ACTION ITEMS

- a. Approval of the Master Settlement Agreement as Updated on October 22, 2021 to Settle the City's Legal Disputes with the Opioid Distributors, McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation as Raised in *City of Santa Fe v. Purdue Pharma, et al.* DNM No. 1:19-CV-01105."

10. ADJOURN

**Governing Body
SUMMARY INDEX
December 28, 2021**

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3. Salute to the State Flag	Led by Councilor Villarreal	1
4. Invocation	Led by Councilor Garcia	1
5. Roll Call	Quorum Present	1-2
6. Approval of Agenda	Approved as presented	2
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a) Parks Capital & Operations BAR		
b) MRC Supt Position BAR		
8. Matters from the City Attorney	Comments	3
a) Executive Session	Not considered	3
9. Executive Session Action Items		
a) Master Settlement Agreement	Approved	3-7
10. Adjournment	Adjourned at 12:34 p.m.	8

**Minutes of the
Special Meeting of the Governing Body
Tuesday, December 28, 2021
Virtual Meeting**

1. CALL TO ORDER

A special meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Alan Webber, on Tuesday, December 28, 2021, at approximately 12:02 p.m., at the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico as a virtual meeting.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Councilor Villarreal.

3. SALUTE TO THE NEW MEXICO FLAG

The Salute to the New Mexico Flag was led by Councilor Lindell.

4. INVOCATION

The Invocation was led by Councilor Garcia.

Councilor Garcia remembered Andrew (Andy) Lopez, Deacon at St. John's Church and offered condolences to his family and parishioners.

Mayor Webber said thoughts are with those struggling with COVID as it continues to flare. They should not take good health for granted. He reminded everyone to look after one another and those who are ill and to get through this with healing.

The Governing Body observed a moment of silence for those who have recently passed and their grieving families.

5. ROLL CALL

Roll call indicated the presence of a quorum remotely, as follows:

Members Present
Mayor Alan Webber

Councilor Jamie Cassutt
Councilor Michael J. Garcia
Councilor Signe Lindell
Councilor Christopher M. Rivera
Councilor Carol Romero-Wirth
Councilor Renee D. Villarreal

Members Excused

Councilor Roman "Tiger" Abeyta
Councilor JoAnne Vigil Coppler

Other Participants Attending Remotely

Erin McSherry, City Attorney
Kristine Bustos-Mihelcic, City Clerk
Melissa McDonald, Acting Parks and MRC Director
Matthew McCarley, Attorney for the Master Settlement with Opioid Distributors
Carl Boaz, Council Stenographer

6. APPROVAL OF AGENDA

MOTION: Councilor Garcia moved, seconded by Councilor Lindell, to approve the agenda as published.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Webber, Councilor Cassutt, Councilor Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None

7. CONSENT CALENDAR

MOTION: Councilor Lindell moved, seconded by Councilor Garcia, to approve the Consent Calendar as published.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Webber, Councilor, Councilor Cassutt, Councilor Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None

8. MATTERS FROM THE CITY ATTORNEY

Ms. McSherry recognized the presence of Matthew McCarley, the outside counsel in the negotiation and settlement agreement.

Ms. McSherry had no matters to convey other than the Master Settlement Agreement.

Mayor Webber asked if anyone felt the need to go into executive session.

No one offered to move to go into executive session.

a. EXECUTIVE SESSION

In Accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, Part (H)(7), Attorney-Client Privileged Discussion of Litigation, Specifically, DNM No. 1:19-CV-01105. (Erin K. McSherry, City Attorney: ekmcsherry@santafenm.gov, 955-6512)

The Governing Body chose not to go into executive session and proceeded to the action item.

9. EXECUTIVE SESSION ACTION ITEMS

- a. Approval of the Master Settlement Agreement as Updated on October 22, 2021 to Settle the City's Legal Disputes with the Opioid Distributors, McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation as Raised in DNM No. 1:19-CV-01105."

Ms. Bustos-Mihelcic read the caption for the agenda item.

Ms. McSherry introduced the action item to the Governing Body.

She said the State Attorney General (AG) has announced he will be joining in the lawsuit with the three global distributors who have a \$21 billion settlement. The settlement has standard language that is nonnegotiable. The City needs to accept this settlement to be able to participate in the State's agreement of approximately \$220 million.

She said Mr. McCarley was available for questions about the agreement and that could be done in open session. Otherwise, she recommended the Council go into executive session. Santa Fe County and the City of Albuquerque have both joined

in the settlement this week. They also anticipate a few other local governments in New Mexico will be voting before the 2nd of January. This special session was needed now to be included in the primary group of settling parties.

Mayor Webber asked Ms. McSherry to guide them if the Council's discussion led into an area where an executive session was warranted. The agenda included an action item if they chose to do that.

Ms. McSherry recommended approving the action item and stood for questions.

Mayor Webber said he understood the executive session was only for discussing the details of the proposed settlement and the specifics of the agreement.

Ms. McSherry agreed.

Councilor Lindell said a couple of weeks ago she read an article in the New York Times. It reported that the Southern District of New York says the Sackler family's \$4.5 billion contribution does not protect them. She asked if that had potential to change the amount of the settlement or what should be received.

Mr. McCarley explained it did not impact this settlement before the Council, which is the settlement of the three distributors. Purdue is one of the manufacturers. He believed there was a lot of work to get a settlement with Purdue and the Sackler family. The hope is this means the Sacklers will have to put up more money to get this settled. That is separate from the settlement being discussed here.

Councilor Lindell asked if the City would be involved in that subsequent settlement.

Mr. McCarley said yes, of course. The City has sued McKesson, Cardinal Health Inc., and AmerisourceBergen, the three distributors, and several national pharmacies, and Johnson & Johnson, as one of the manufacturers. They are continuing to pursue a remedy with those defendants with the hope of getting a resolution from each of them.

Mayor Webber asked Mr. McCarley to provide a picture of the settlement before them; its boundaries, what it does and does not include, and the pros and cons for the City to join with Albuquerque and Santa Fe County.

Mr. McCarley noted his appreciation for allowing him to come and discuss this. He explained the background of the agreement between the three distributors and Johnson & Johnson that had been worked on for a year and a half.

The State Attorney General disagreed with the allocation to New Mexico and said the State would not participate. However, because the divisions would have no way to participate if the AG did not participate, the Attorney General changed his

mind. He felt that counties and municipalities should receive money to address the problem.

Secondly, the likelihood was low that terms would be better in a carve-out negotiation with the distributor. The distributor had stated they were unable to pay a large amount out front. Therefore, the agreement with the three distributors is spread out over 18 years. Not only the State, but most of the counties and municipalities for New Mexico, must participate to receive the money designated in the agreement.

The Attorney General is continuing to negotiate better terms with Johnson & Johnson for New Mexico than what most of the Attorneys General have agreed to in the global settlement. The reason permission to participate in the distributor settlement is requested is because New Mexico's AG has not agreed.

The pros are to get the maximum dollars to the State and the City as soon as possible. The cons are that the agreement has contingencies we don't like and there is no ability to remove them. In addition, we don't like the 18-year payout and prefer something shorter. Also, they would have to litigate against the defendants at trial and there is an ongoing trial date with the County. We believe that would make it more difficult having those defendants.

Mayor Webber asked to confirm that they know the amount of money on the table but do not completely know its distribution.

Mr. McCarley said that was correct. There is ongoing negotiation between the State and subdivisions on the allocations of money set aside for the State. Currently, 60% is proposed to subdivisions and 40% to the State and there is no abatement fund. Some states have agreed to a 15/70/15 split; 15% in cash to the municipalities and subdivisions, 15% cash payment to the state, and 70% placed in an abatement fund to be used for abatement programs. He agrees with the State, who feels currently they do not have enough time to develop an abatement model. They are willing to agree to a straight split of the money of 60/40 but there is no agreement yet. All indications are there will be a favorable outcome.

Mr. McCarley said he could not say how much money the City will receive because it is dependent on the in-State allocation agreement. Under the 15/70/15 model it would be about \$1 million from the three defendants. They are also pursuing other defendants. He thought if it was a 60/40 agreement, they would receive more than that amount.

Mayor Webber clarified the proposal was to agree to participate in the settlement. He asked the path they would be choosing if participation wasn't adopted.

Mr. McCarley explained they would have to continue pursuing them in litigation. Because the AG elected to participate, experts would have to be presented to the

defendants for deposition and an expert report. We have not been able to present any discovery because it has been stayed in the MDL, which makes it bad if they don't participate. Our hands would be tied behind our back severely.

Mayor Webber asked if the Council members needed anything further before questions.

Ms. McSherry had nothing further.

Mr. McCarley said he had nothing other than to recommend the City participate in the settlement. If elected, they will register the City and that generates a participation document that will be filled out and the City would be considered a participant in the settlement. They just need Council's consent to participate.

Mayor Webber clarified that the \$1 million mentioned was an estimate if the City did as the other jurisdictions and agreed on a 15/70/15 settlement. The 60/40 allocation would be different. They don't know the actual amount, but it is more than \$1 million and there are more litigation efforts. This is not the end of the opioid litigation.

Councilor Lindell clarified whether the million dollars previously mentioned was a payout over 18-20 years.

Mr. McCarley explained he was saying the 15/70/15 model was not being adopted by the State, that 15% of that was approximately \$1 million and it would be paid out over 18-20 years. But as Mayor Webber pointed out, the number would be more than \$1 million under the 40/60 settlement.

He said they got a carve-out agreement with J&J in Texas, to give them all the money this year. He thought that is what the Attorney General is trying to do with Johnson & Johnson and if an agreement is reached, the payout time with J&J will be less. The distributors are large companies and claim they have small revenue margins and that they need that time to pay out for the whole country, approximately \$21 billion.

Councilor Lindell asked Ms. McSherry the total legal costs involved to pursue the settlement.

Ms. McSherry replied they have a contingency fee agreement and a separate agreement for legal fees, which will require modifications. She asked Mr. McCarley to address the question.

Mr. McCarley explained the attorney fees under the distributor agreement is to forfeit the contract with the City for a contingency fee with a maximum amount of 15 percent. They must request attorneys' fees from the MDL Judge and the maximum they can recover is 4 percent.

Mr. McCarley said this is a great deal for the City. They also must apply to a separate fund to cover their costs. The City will not pay one penny of its allocated funds in attorney fees for this settlement. The numbers provided are net to the City.

Councilor Lindell asked who pays the City's attorney fees.

Mr. McCarley explained the fees were taken off the top and a fund was created by the MDL judge. Because there are many jurisdictions throughout the country that did not pursue the litigation, they did not want them to receive a windfall for not hiring attorneys. And they did not want a city, i.e., Santa Fe, to be punished for hiring attorneys. He said, "We believe it is fair."

Councilor Rivera asked if the agreement stipulates how the money could be spent.

Mr. McCarley said the money must be spent on the abatement of the epidemic. Most states placed requirements on the 15/70/15 abatement fund. Restrictions in the agreement are to be used to abate the epidemic, but it is not as restricted as other models. They could look at that, it is an exhibit in the agreement. Ms. McSherry has a copy she could share.

Ms. McSherry noted the agreement is available for review and is on the agenda.

Mayor Webber said it was good to stipulate where the funds are directed.

Mr. McCarley said the 70% abatement fund under 15/70/15, must be applied for every year. With this, the funds automatically come to the City each year.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Rivera, to approve the updated Master Settlement Agreement as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Webber, Councilor Cassutt, Councilor Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None

Ms. McSherry said they will provide further updates on the litigation as it occurs.

Mayor Webber thanked Ms. McSherry and Mr. McCarley. He asked that the Council be kept informed as this goes forward.

10. ADJOURN

Having completed the agenda and with no further business to come before the Governing Body, the meeting was adjourned at 12:34 p.m.

Approved by:

Mayor Alan Webber

ATTESTED TO:

Kristine Bustos Mihelcic, City Clerk

Respectfully submitted by:



Carl G. Boaz, Council Stenographer