

STAFF REPORT

Date: December 6, 2017

To: Mayor and City Council

Thru: Sabra Newby, City Manager

Subject: **J.9. Staff Report (For Possible Action): Presentation, discussion and potential direction to staff to enter into a special counsel agreement with Wetherall Group, Ltd., et al., to pursue City of Reno legal claims against the manufacturers and distributors of prescription opioids.**

From: Scott Gilles, Legislative Relations Program Manager

Summary: Council has been presented with an offer to enter a special counsel agreement with Wetherall Group, Ltd., et al., (the “Firm”) to pursue City of Reno legal claims against the manufacturers and distributors of prescription opioids.

Background: The abuse of opioids is a widespread problem in Nevada as well as the City of Reno specifically. Currently, there is no city-specific study that staff can point to which identifies the quantifiable harm affecting the City of Reno; however, statistical evidence published to date by other agencies provides significant evidence of the adverse affect of the opioid crisis in our communities.

In 2016, for example, the DEA ranked Nevada as the sixth highest state for the number of milligrams of opioids distributed per adult. Furthermore, according to data from the Nevada Division of Public and Behavioral Health, the total number of opioid-related hospitalizations in Nevada nearly doubled from 2010 to 2015. In 2010, the number of opioid-related emergency room hospitalizations in Nevada totaled approximately 4,518 patients. By 2015, the number of visits increased to 7,035 visits that year.

On November 8, 2017, at the Reno City Council meeting, Peter Wetherall, Esq., on behalf of the Firm, presented his proposal to represent the City of Reno in litigation that would attempt to recover monetary damages for the negative impacts of opioids on the City of Reno and its resources. This item brings this issue in front of the Reno City Council for further discussion and potential action to enter into an agreement for legal services from the Firm.

Discussion: Attached to this staff report is a proposed “Engagement to Represent” offer to enter into a contingency fee agreement between the City of Reno and special counsel, the Firm, to

provide specialized legal services relating to potential legal claims by the City of Reno against the manufacturers and distributors of prescription opioids. The agreement states that the Firm will “pursue all civil remedies against the manufacturers of prescription opiates and those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is harming” the City of Reno. The agreement also authorizes the Firm to associate with additional firms which are listed in the attachment.

The terms of the proposed agreement require the City of Reno to pay no costs or attorneys’ fees for the representation, but it would require the City of Reno to pay 30 percent of the total gross recovery in favor of the City of Reno. The agreement explicitly notes: “There is no fee if there is no recovery, and CLIENT need not reimburse the FIRM its expenses if there is no recovery.”

City staff expects that successful prosecution of the lawsuit will require some level of staff resources to support the Firm during the litigation. It is unknown at this time what that the extent that effort will entail for staff. A representative of the Firm will be present at the Council meeting to address this and other questions.

Financial Implications: None at this time. In the event of a loss, the City may be liable for the opposing party’s attorney’s fees, and will be liable for the opposing party’s costs as required by law. The Firm, however, agrees to indemnify the City for costs and attorney’s fees in the event of an adverse judgment.

Legal Implications: Under Reno City Charter, Art. III, § 3.070, the City Council may, by six-sevenths vote, retain the services of attorneys to perform any civil duty of the City Attorney. Such attorneys are responsible only to the City Council. The City Attorney shall have no responsibility or authority concerning the services of such attorneys.

Recommendation: Council review the proposed engagement agreement and direct staff on how to proceed.

Proposed Motion: I move to accept the staff report and approve the Engagement to Represent.