

MEMORANDUM

TO: NC local governments receiving opioid settlement funds
FROM: North Carolina Department of Justice (opioidsettlement@ncdoj.gov)
DATE: July 12, 2023
RE: New guidance to local governments on how to authorize the expenditure of opioid settlement funds pursuant to the MOA and state law

This memo provides new guidance on the process that a local government must follow to authorize the expenditure of opioid settlement funds pursuant to both the Memorandum of Agreement (MOA) on opioid settlements and relevant state law. This memo (1) explains that local governments must satisfy both MOA and state law requirements; (2) describes the MOA requirements; (3) describes the state law requirements; and (4) provides relevant resources.

PART ONE:

LOCAL GOVERNMENTS MUST SATISFY BOTH MOA AND STATE LAW REQUIREMENTS

Local governments receiving opioid settlement funds must satisfy both MOA requirements and state law requirements in order to authorize the expenditure of opioid settlement funds.

Section D.1 of the MOA states that every local government receiving opioid settlement funds must create a separate special revenue fund that is designated for the receipt and accounting of opioid settlement funds. Section E.6 of the MOA states that, before spending opioid settlement funds, the local government's governing body must adopt a resolution that includes very specific details (described below) about each strategy they plan to fund.

In addition to complying with the terms of the MOA, a local government must abide by budgeting, preaudit, and other expenditure control requirements in the Local Government Budget and Fiscal Control Act, NCGS Chapter 159, Article 3. NCGS § 159-8 requires that all funds be properly budgeted before they can be expended. Under current budget law, there are two budgeting options: the annual budget ordinance, authorized by NCGS § 159-8, or – for capital projects only – a capital project ordinance authorized by NCGS § 159-13.2.

Local governments must satisfy both the MOA requirements and the state law requirements. The resolution required by the MOA is not sufficient under the Local Government Budget and Fiscal Control Act to authorize the expenditure of the opioid settlement funds. By the same token, a legal budget ordinance – which requires appropriations by department, function, or project – will not include sufficient detail to meet the requirements of the MOA for authorizing the expenditure of opioid settlement funds. For these reasons, a local government must adopt both an authorizing resolution (consistent with the MOA requirements described below) and a formal budget ordinance (consistent with NC law) in order to authorize the expenditure of opioid settlement funds.

PART TWO:
MOA REQUIREMENTS – AUTHORIZING RESOLUTION

A local government’s governing board must adopt a resolution that provides the specific details required by Section E.6 of the MOA. This separate resolution must:

- (i) indicate that it is an authorization for expenditure of opioid settlement funds; and
- (ii) state the specific strategy or strategies the county or municipality intends to fund pursuant to Option A or Option B, using the item letter and/or number in Exhibit A or Exhibit B to identify each funded strategy; and
- (iii) state the amount dedicated to each strategy for a specific period of time.

The North Carolina Association of County Commissioners (NCACC) has created a template that local governments may use to draft a resolution in compliance with these requirements. While NCACC developed the template for counties, it works equally well for municipalities. The NCACC template is available [HERE](#) by scrolling down to the “Recommended Resources” section, clicking on the “Spending Authorization Language” button, and downloading the template.

Reporting to CORE-NC: After a local government passes the resolution authorizing the expenditure of opioid settlement funds, the local government has 90 days to report this information to the Community Opioid Resources Engine for North Carolina (CORE-NC) pursuant to section F.6.c.i of the MOA. A local government may report more than one resolution authorizing the expenditure of opioid settlement funds to CORE-NC. This and other reporting requirements are described in the Reporting Requirements Memo available on the [NC MOA Resource Center](#).

PART THREE:
STATE LAW REQUIREMENTS – BUDGET OPTIONS

In addition to adopting the authorizing resolution that the MOA requires, a local government’s governing board must appropriate the opioid settlement funds through a legal budget ordinance before funds can be obligated and expended. Under current law, there are two budgeting options available to local governments:

- (1) the annual budget ordinance, or an amendment to the annual budget ordinance; or
- (2) a capital project ordinance for capital projects that are consistent with the MOA.¹

The Annual Budget Ordinance: The local government’s governing board may appropriate the opioid settlement funds in the annual budget ordinance or an amendment to the annual budget ordinance. The amount of opioid settlement funds estimated to be expended during the fiscal year is included as revenue and corresponding appropriations are made by department,

¹ Although some local governments have considered a grant project ordinance for opioid settlement funds, NC DOJ does not believe this is a viable option at present (July 2023) – unless and until the General Assembly passes legislation clarifying this option. Please see the endnote to this memo for more on this.

function, or project, in accordance with NCGS § 159-13. The appropriations must be consistent with the authorizing resolution required by the MOA that is described above.

NCGS §§ 159-11 and 159-12 detail the process for adopting the annual budget ordinance. In addition, NCGS § 159-15 authorizes the governing board to amend the budget ordinance to increase or reduce the estimated opioid settlement funds it expects to expend during the fiscal year and/or to change the department, function, and/or project to which the funds are appropriated (consistent with the authorizing resolution required by the MOA). The governing board also may delegate authority to the local government's budget officer to make appropriation changes within a fund. As adopted or amended, the annual budget ordinance must be balanced.

The Capital Project Ordinance. As an alternative, if a local government is expending all or a portion of its opioid settlement funds on a capital project that is permissible under the MOA, it may budget the funds through a capital project ordinance pursuant to NCGS § 159-13.2. A capital project is defined, in relevant part, as a "project involving the construction or acquisition of a capital asset." The project must be permissible under the MOA and it must be consistent with the authorizing resolution required by the MOA (described above). A capital project ordinance is a multi-year budget that authorizes all appropriations necessary for the completion of the capital project. Unlike in the annual budget ordinance, funds need not be reappropriated each fiscal year. NCGS § 159-13.2 specifies the process for adopting and amending the capital project ordinance. And, as adopted or amended, the capital project ordinance must be balanced over the life of the project.

Reporting to CORE-NC: A local government that passes a resolution (or several resolutions) authorizing the expenditure of opioid settlement funds and reports each such resolution to CORE-NC as described in PART TWO above is NOT also required to report its annual budget ordinance or any amendment to its annual budget ordinance or any capital project ordinance to CORE-NC. Reporting the resolution or resolutions required by the MOA, with the level of detail required by the MOA, is sufficient.

PART FOUR: RESOURCES

Further information about the MOA is available on the [NC MOA Resource Center](#). More general information about the opioid settlements is available on NC DOJ's [MorePowerfulNC](#) website and on the Community Opioid Resources Engine for North Carolina ([CORE-NC](#)).

If you have questions or concerns about this memo or other legal matters, please do not hesitate to contact NC DOJ at opioidsettlement@ncdoj.gov.

For technical assistance evaluating or implementing strategies to address the opioid epidemic, you can reach out to opioidsettlement@ncacc.org or opioidsettlement@dhhs.gov.

For assistance submitting reports or other information to CORE-NC, or to report broken links or other issues with the website, you can reach out to the CORE-NC team at opioidsettlement@unc.edu.

ENDNOTE:
GRANT PROJECT ORDINANCE NOT VIABLE OPTION AT THIS TIME

Some local governments have considered a different potential budget ordinance alternative, authorized by NCGS § 159-13.2, known as the grant project ordinance. Despite some ambiguity in the relevant statutory language, NC DOJ does NOT believe that a local government can use a grant project ordinance for opioid settlement funds at this time (July 2023) unless and until the General Assembly enacts legislation clarifying this option for opioid settlement funds.

Here is why NC DOJ does NOT believe that a local government can use a grant project for opioid settlement funds under current law (July 2023):

Before July of 2022, NCGS § 159-13.2 defined “grant project” as follows:

“Grant project” means a project financed in whole or in part by revenues received from the federal and/or State government for operating or capital purposes as defined by the grant contract.

In July of 2022, the NCGS § 159-13.2 definition of grant project was amended to add the underlined words:

“Grant project” means a project financed in whole or in part by revenues received from the federal and/or State government or other grant or settlement funds for operating or capital purposes as defined by the grant contract.”

Although the amended definition of “grant project” now mentions “settlement funds,” it still requires that settlement funds be used for “purposes as defined by the grant contract.” Because there is no “grant contract” associated with opioid settlement funds, NC DOJ does NOT believe that a local government can use a grant project ordinance for opioid settlement funds.