



MEMORANDUM

Council Agenda
Item No. XI. R
3/12/2024

The City of OKLAHOMA CITY

TO: Mayor and City Council

FROM: Craig Freeman, City Manager

1. Joint Resolution with the Oklahoma City Water Utilities Trust authorizing the participation in the settlement of Multi-District Litigation for drinking water supply claims related to per- and polyfluoroalkyl substances and/or aqueous film forming foams and related chemicals and pollution;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor to receive confidential communications from its attorneys regarding settlement of this case, as authorized by 25 O.S. (2023 Supp.) §307(B)(4), because disclosure would seriously impair the ability of the public body to process the claim or conduct a pending investigation or proceeding in the public interest.

Background:

Multi-District Litigation (MDL) cases are pending in the United States District Court of South Carolina and other jurisdictions against the manufacturers of per- and polyfluoroalkyl substances (PFAS) and aqueous film forming foam (AFFF), which include various causes of action such as damages and expenses resulting from the use of PFAS and AFFF. The City of Oklahoma City (City) and the Oklahoma City Water Utilities Trust (OCWUT) have related, as well as separate and distinct interests regarding PFAS and AFFF contamination.

On October 24, 2023, the City and OCWUT adopted a Joint Resolution for participation in litigation, class actions, and settlements that require execution of documents and authorized the OCWUT General Manager or his designee, as well as the Municipal Counselor for the City authority to respectively execute.

On November 7, 2023, the City engaged outside legal counsel, McAfee & Taft A Professional Corporation and Fulmer & Sill PLLC, to participate in litigation, class actions, and settlements related to the Oklahoma City water, wastewater, and solid waste systems as well as the City's non-OCWUT related interests at the appropriate time. Currently, certain defendants in the MDL have received preliminary approval of their respective settlement agreements to resolve claims for PFAS contamination in public water systems' drinking water. These settlements apply to plaintiffs as well as potential plaintiffs such as OCWUT and the City that could join in the litigation.

Outside Legal Counsel previously recommended OCWUT and the City opt-out and not participate in the settlement. Since opting out, certain concerns with the release language were clarified by class counsel for the Defendants and a joint interpretative guidance document has been provided to clarify settlement terms.

Outside Legal Counsel now recommends that OCWUT and the City withdraw their objection and participate in the drinking water supply settlements. The Municipal Counselor's Office concurs with their recommendation.

Recommendation: Joint Resolution be adopted and/or enter into executive session.