

RESOLUTION NO. 5743-23

A RESOLUTION AUTHORIZING THE CITY MANAGER TO OPT THE CITY OUT OF DUPONT AND 3M CLASS-ACTION SETTLEMENTS RELATED TO DRINKING WATER CONTAMINATION

WHEREAS, per- and polyfluoroalkyl substances (“PFAS”) are a large group of human-made chemicals, components of which break down very slowly over time and may be linked to harmful effects in humans, animals and the environment; and

WHEREAS, thousands of lawsuits relating to PFAS have been combined into multi-district litigation in the U.S. District Court for the District of South Carolina *In re Aqueous Film-Forming Foams Products Liability Litigation* (No. 2:18-mn-02873) (“MDL”); and

WHEREAS, hundreds of the cases in the MDL were brought by U.S. drinking water providers alleging that PFAS manufacturers, including DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company, contaminated the drinking water of those providers; and

WHEREAS, the U.S. District Court for the District of South Carolina has given preliminary approval to separate class-action settlements for MDL defendants DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company for drinking water claims (“the DuPont and 3M Settlements”); and

WHEREAS, the City of Tualatin is a member of the proposed classes in the DuPont and 3M Settlements because it is a “Public Water System” under the terms of the DuPont and 3M Settlements; and

WHEREAS, the terms of the DuPont and 3M Settlements require class members who do not wish to participate in the settlements to actively opt out to avoid being bound by the terms of the settlements; and

WHEREAS, members of the proposed classes of water providers have until December 4, 2023 to opt out of the DuPont Settlement and until December 11, 2023 to opt out of the 3M Settlement; and

WHEREAS, the DuPont and 3M Settlements include broad releases of future PFAS-related claims; and

WHEREAS, it is speculative as to whether the DuPont and 3M Settlement payments to qualifying class members will adequately compensate the City in the event that its Public Water System is contaminated with PFAS in the future; and

WHEREAS, the City of Tualatin Charter of 1967 Section 20a(c)(5) grants the City Manager the authority to supervise the operation of all public utilities owned and operated by the City, including its Public Water System;

WHEREAS, the City Public Works Department Water Division has sampled for PFAS in its Aquifer Storage and Recovery Well (ASR) in compliance with Oregon Health Authority requirements and, to date, has not detected PFAS at or above the minimum reporting limits in

that source; and

WHEREAS, the City Public Works Department Water Division plans to sample its active drinking water sources in 2024 in accordance with federally-proposed drinking water standards; and

WHEREAS, the City may incur costs associated with PFAS impacts in the future and more time is needed for the City to gain a better understanding of the scope of future legal, financial, and operational impacts of PFAS; and

WHEREAS, it is in the public interest for the City to preserve any PFAS-related claims the City may have against DuPont, 3M, and other potential defendants until the risks and impacts of PFAS are better understood.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF TUALATIN, that:

Section 1. The City Manager, or designee, is authorized to opt out of the DuPont and 3M Settlements.

Section 2. This resolution is effective upon adoption.

ADOPTED by the City Council this 27th day of November, 2023.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder

APPROVED AS TO FORM

BY _____
City Attorney