

A RESOLUTION DIRECTING THE TOWN ATTORNEY TO EVALUATE THE VIABILITY OF LEGAL CLAIMS AGAINST MANUFACTURERS OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES AND ASSESS WHETHER THE TOWN SHOULD ENGAGE IN LITIGATION AGAINST THE MANUFACTURERS OF SUCH SUBSTANCES AND OTHER POSSIBLE PARTIES TO RECOVER COSTS AND OTHER DAMAGES ASSOCIATED WITH SUCH SUBSTANCES; AND CONSIDER AND, IF ADVISABLE, IDENTIFY LAW FIRMS THAT COULD SERVE AS OUTSIDE COUNSEL, UNDER THE DIRECTION OF THE TOWN ATTORNEY, ON A CONTINGENCY FEE BASIS; AND (III) REPORT BACK TO THE BOARD WITH RECOMMENDATIONS REGARDING POTENTIAL CLAIMS, WHETHER TO JOIN EXISTING LITIGATION, AND, IF LITIGATION IS ADVISABLE, UP TO THREE PROPOSALS TO BE CONSIDERED FOR OUTSIDE COUNSEL

WHEREAS, perfluoroalkyl and polyfluoroalkyl substances (“PFAS”) are a group of man-made chemicals that were used for decades in industrial and household products, such as stain and water-repellant apparel and fabrics, food packaging, cleaning products, non-stick cookware, and aqueous film forming foam (“AFFF”) used to extinguish fires; and

WHEREAS, PFAS chemicals were produced and utilized in products by at least eight major United States companies but have been largely phased out over time; and

WHEREAS, PFAS chemicals accumulate over time, do not break down easily, and remain in and move through the environment for decades, including within groundwater; and

WHEREAS, exposure to PFAS chemicals in humans has been linked to health impacts, such as certain forms of cancer and defects in infants and fetuses; and

WHEREAS, the United States Environmental Protection Agency (“EPA”) currently recommends a health advisory level of 70 parts per trillion (“ppt”) of PFAS in drinking water as a guidance figure but has not yet established a maximum contaminant level or any regulations with regard to these substances; and

WHEREAS, the EPA is currently working on a PFAS action plan; and

WHEREAS, North Carolina has not established a maximum contaminant level or any regulations with regard to PFAS chemicals at the state level and recommends abiding by the EPA health advisory level of 70 ppt of PFAS in drinking water; and

WHEREAS, North Carolina is currently conducting investigations into the prevalence of, and consequences from, exposure to PFAS chemicals within North Carolina, and more particularly, at fire training facilities throughout the state; and

WHEREAS, PFAS chemicals have been detected throughout the United States, including Pittsboro; and

WHEREAS, the Town has formulated and is implementing an action plan to address high levels of PFAS chemicals discovered in the water supply exceeding the EPA health advisory level; and

WHEREAS, throughout 2019 and 2020, the Town investigated the levels of PFAS chemicals in the Town's water supply by performing testing of the water in certain locations throughout the Town; and

WHEREAS, the Town's testing is still ongoing; and

WHEREAS, in states, such as Michigan, New Jersey, Ohio, Pennsylvania, Vermont and South Carolina, litigation has already been initiated against various manufacturers of PFAS chemicals on behalf of, among others, groups of firefighters who were exposed to PFAS through AFFF, water utilities that have found PFAS in their drinking water, and, through the attorney general of several states, the general population of their communities; and

WHEREAS, recognizing that this type of litigation has proven to be considerably expensive and that a favorable outcome for the governmental entities is not assured, a number of outside law firms engaged in this specialized practice area have agreed to represent governmental entities on a contingency fee basis; and

WHEREAS, hiring outside counsel on a contingency fee basis to represent the Town initially would shift the funding of litigation costs from the Town to outside counsel; and

WHEREAS, as this area of the law is an evolving one with unknown outcomes, the Town can mitigate its risk exposure by engaging law firms to consolidate resources and incur the financial burden and all upfront costs without risk of payment if such litigation is unsuccessful; and

WHEREAS, any engagement of outside counsel must include a provision that costs associated with the litigation would be borne by outside counsel and only recoverable if the Town prevails in said litigation within certain limits imposed by the Town; and

WHEREAS, hiring outside counsel may allow the Town to pursue this litigation in conjunction with other counties and cities in North Carolina, or throughout the United States, and present a stronger affirmative case against potential defendants; and

WHEREAS, in light of the possible risks to human health and the environment that exposure to PFAS chemicals could cause and the high costs for remediation efforts and water treatment that would be necessary if it is discovered that the Town has a problem with PFAS chemicals that needs to be addressed, litigation against the manufacturers of PFAS may be appropriate;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF PITTSBORO, as follows:

Section 1. That the Town Attorney shall:

- (i) evaluate the viability of legal claims against manufacturers of PFAS chemicals and other actors or culpable parties as well as possible defenses by the Town; and
- (ii) assess whether the Town should engage in litigation to recover costs and damages associated with PFAS chemicals.

Section 2. That the Town Attorney shall consider and, if advisable, identify law firms that could serve as outside counsel, under the direction of the Town Attorney, for possible litigation related to recovering costs and other damages associated with PFAS chemicals on a contingency fee basis and, if the Town does not prevail, at no cost to the Town.

Section 3. That the Town Attorney shall report back to the Board, within 90 days of the effective date of this resolution, with recommendations regarding: (i) potential claims, (ii) whether the Town should seek to join other ongoing litigation or proceed on its own with a separate lawsuit, and (iii) in the event the recommendation is to proceed with litigation, up to three proposals from which the Board could select outside counsel to proceed with litigation, as may be deemed appropriate.

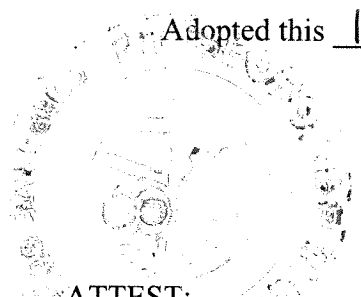
Adopted this 11th day of October, 2021.

TOWN OF PITTSBORO

By:


Mayor

ATTEST:


Cassandra M. Bullock
Town Clerk