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high and they do not have water available, they will not sell to Norman. Councilmember Kovach said based on the fact that OKC will not sell Norman water from the Atoka pipeline, Council can assume OKC may not have the 2% available and that is something Council should discuss and plan for.

Councilmember Kovach asked if Midwest City is interested in selling their unused allocated water to Norman and Mr. Steve Lewis, City Manager, said Del City has been the primary City willing to sell their water.

Councilmember Castleberry asked if the City has anywhere to store water other than Lake Thunderbird and Mr. Komiske said no. Mayor Rosenthal said part of the Strategic Water Supply Plan update includes looking at alternative storage.

Mayor Rosenthal said she is pleased a contract has been negotiated and wants to place the item on an agenda as soon as possible.

Items submitted for the record

1. Memorandum dated February 14, 2013, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Honorable Mayor and Councilmembers
2. Letter dated February 8, 2013, from Randy Worden, General Manager, Central Oklahoma Master Conservancy District, to Steven D. Lewis, City Manager
3. Agreement for Purchase of Surplus Municipal Water

Participants in discussion

1. Mr. Ken Komiske, Director of Utilities
2. Ms. Kathryn Walker, Assistant City Attorney

Item 3, being:

FOLLOW-UP DISCUSSION REGARDING THE CURBSIDE RECYCLING PROGRAM.

Mr. Bryant said at the February 5, 2013, Study Session regarding recycling, Councilmember Kovach expressed concern that a change in service from weekly to bi-weekly would require an election since voters approved weekly curbside recycling. He said the ballot language used to approve the curbside recycling measure imposed a mandatory \$3.00 assessment to all residential customers and after reviewing that language and constitutional provisions for the State of Oklahoma, it is Staff's legal opinion that changing the frequency of collection does not require voter approval. He said a Charter provision allows voters to weigh in on a change in rates, but the rates will not change, only the frequency of collection. Mayor Rosenthal asked Mr. Bryant to elaborate on the legal opinion for the public in attendance because he cited a number of prior instances where there was a change of service without an election and the opinion draws a clear distinction between voters' approval of a tax versus an Enterprise Fund.

Mr. Bryant said the provision most often quoted regarding an initiative, referendum, or ballot language requiring usage in accordance to language in the ballot is the section of the Constitution that deals with imposition of a tax. That section clearly states that any tax imposed will be used only for the purposes for which it is imposed and although that section is quoted most often for imposition of a tax it does not apply to this situation. He said this situation is imposition of a rate. The Constitution also states that municipalities are given the right to operate and administer utilities so there is more latitude for a municipality to operate a public utility as a business. He said under the Oklahoma Constitution, public utilities are normally allowed to set their rates without voter approval; however, Norman changed the Charter in 1975 and has to get voter approval for a utility rate increase. He said that makes it a little more challenging to operate a utility in Norman so while Norman cannot adjust the rate, they

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can adjust the operation of the utility. Mr. Bryant highlighted examples of changes to utility operations in Norman over the years that was done by resolution or ordinance and a vote of the citizens was not used. He said if you tie up the ability to raise rates and tie up the ability to operate the utility, it puts a public utility in an impossible situation to manage that utility.

Councilmember Kovach asked what date notification would have to be made to the Cleveland County Election Board for a May election and Ms. Hall said Council would have to have a First Reading ordinance by February 26, 2013, with Second Reading on March 12, 2013, in order to meet the sixty day notification requirement for a May 14, 2013, election.

Councilmember Kovach asked if the Sanitation Division charges by volume or frequency and Mr. Komiske said on the commercial side, it is based on how many times the dumpster is serviced. Councilmember Kovach said rate is a ratio and will be determined by either the volume or frequency in regards to solid waste. He said the City does not charge by volume, which he supports, but by frequency and if you change the frequency you are, by definition, changing the rate. He said the Oklahoma Corporation Commission sets rates with a formula and part of the formula for allowing rate changes is the operating expense of the utility so the frequency of service, if part of the operating expense goes to setting the rate. He said while discussing whether or not to pick up glass, the Mayor said not picking up glass would be a change in service that would affect the rate. He said *Quinn vs. The City of Tulsa* talks about a specific cost for a specific purpose and when you specify weekly curbside service that is pretty specific. He said Norman's Charter states that an increase in utility rates within the control of the City of Norman shall be submitted for the legal vote of the City. He said changing from a bin to a polycart is an administrative change, but if you read the ballot language and asked citizens what the language means, they would say it means weekly curbside service. He said he does not want the City to get into a situation like *Quinn vs. City of Tulsa*.

Councilmember Griffith said he would not support taking the issue to voters because the City is doubling what users can recycle and the cost is not going up even if frequency is changing. He said if 95% of citizens were participating in curbside recycling there might be an issue, but when 20% or 30% participate he does not see the need to take it to a vote of the people. He said the City is also adding cardboard to the list of material that can be recycled so service is increasing for the same rate; therefore, the customer is getting a greater value for their money.

Councilmember Gallagher said a vast majority of the City pays the \$3.00 without participating so there is quite a bit of money the City receives without putting out the effort. He said when yard waste pick-up was cut to once a month instead of weekly during the winter season, services were reduced and money was saved so he understands Councilmember Kovach's reasoning. He said going to the voters would be the safe thing to do instead of just changing the service.

Mayor Rosenthal said the City is being more efficient by providing a 95 gallon container and elections do not proceed without cost. She asked what the goal is if the City is not changing the rate and would make a strong case that the City is improving the service.

Councilmember Williams said he interprets Councilmember Kovach's statements as saying he wants to make sure the City is protected against liability such as in the *Quinn vs. City of Tulsa* case. He said Councilmember Kovach is looking at the situation from a different perspective and to look at it through a one eyed glass is not the correct way to do it. Mayor Rosenthal asked Mr. Bryant if there is any vulnerability based on the *Tulsa versus Quinn* case and Mr. Bryant said *Quinn versus Tulsa*, Case No. 777P.2D1331, is a case challenging language on a bond election in the City of Tulsa so it does not apply to Norman's situation. He is comfortable with moving forward without an election.

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Councilmember Lockett said Council has to make some hard decisions and cannot send every decision to a vote of the people.

Councilmember Castleberry said careful thought is put into ballot language and asked the thought process behind using the word “required” in the language and Ms. Walker said, at that time, there were people asking if they had to participate if they paid the rate. She said the City could not meet the rate quoted from Waste Management without charging the fee to everyone whether they participated or not. Councilmember Castleberry said he was concerned that the word “required” is directly in front of the word “weekly” because it shows intent to provide service weekly, but he is not sure the City is bound by it, he just wants to understand it. Mr. Bryant said the question was whether the rate would be required or optional so it was decided participation would be optional, but paying the rate would be required and that is what the ballot language intended to capture although it may not have been well drafted. Mayor Rosenthal said the rate was based on a revenue stream that was going to be predictable and that meant it had to be required. Councilmember Kovach said a required rate for weekly curbside service would have made the language more clear. He said his point is that Council has good intentions to do the best they can with the program in front of them and the easiest thing to do is make the decision unilaterally and move on, but there are a lot of people who take ballot language very seriously whether Council can legally explain themselves or not. He asked Councilmembers to think about that as Council is looking forward to hundreds of millions of dollars in future spending on wastewater and water rate increases will be needed to fund projects. He said Norman has a history of citizens turning down proposals because they do not trust the City and this is an opportunity to go to the people on the same day there is another proposal to vote on so there is no extra cost. Mayor Rosenthal said there could be a cost to the City as there is no guarantee of an election in May and could cost \$28,000 to \$30,000 for a citywide election. He asked if Council is afraid to go to the public and ask them to just call it curbside service. He said the worst that could happen is the City will be forced to provide weekly service. He was surprised there was no bid on weekly service because many citizens have told him bi-weekly service will be confusing.

Councilmember Griffith said he finds it hard to believe people will be up in arms about recycling twice a month when they can use a larger container with a lid and wheels making it easier to get to the curb with less chance of materials being blown into the yard plus having cardboard recycling convenience. Councilmember Kovach said citizens will not be up in arms about the service, they will be up in arms about not being asked to change the language because when the City cut back on winter yard waste removal he received numerous complaints. Councilmember Griffith said it will be tough to justify spending \$28,000 for a single item on a ballot if an election is called and there is no run-off especially when the City is just changing weekly service to bi-weekly service and giving the customers extra benefits.

Councilmember Castleberry said he campaigned over the weekend and recycling was talked about at almost every house. He asked people about the bi-weekly proposal and a majority of complaints were about when the service would be provided and keeping track of sanitation days, yard waste days, recycling days, watering days, etc. He did not get a lot of complaints about service being cut in half for the same price. He said most people want more people to recycle and believe anything the City can do to increase recycling is good. Mayor Rosenthal said it will be a challenge to communicate information on the service and she is more concerned about letting people know so they can plan for it.

Councilmember Gallagher did not think it was a matter of money or frequency, but a matter of the public perceiving what Council does and when Council changes things without the public knowing that perception changes. He said with as many things that are coming down the pike for major expenditures Council does not want to get on the wrong side of the public. He said Council wants to show the public an open, transparent government. Mayor Rosenthal asked if a new election would pre-empt the prior election and could the worse possible case be no recycling service. Mr. Bryant said it would depend on how the ballot language is drafted.

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Councilmember Kovach said the City has precedence in changing ballot language because they had to go back and change the definition of a previous ballot word in the sewer sales tax so the City could use the money not only on the sewer collection system, but on the wastewater treatment facilities and it did not change the underlying tax authority. He said this is an opportunity to educate the public about recycling and respect the voters.

Councilmember Castleberry asked if Council is going to have people vote on everything they have to do because, if that is the case, there is no point in having a Council and Councilmembers Griffith and Lockett agreed. He said if this were a major policy change, affected the citizens pocketbook, or was a controversial issue it would be different, but going from weekly to bi-weekly service with the same rate does not require an election. He said it is unfortunate the way the ballot language was written because it is confusing, but he is not convinced this is voter worthy. He said most people will wonder why they even elect representatives if they have to vote on something they will probably think is trivial. He said it is Council's responsibility to meet with constituents to keep them aware of what is going on in the City.

Councilmember Kovach said it is an untrue characterization to continually go back to the idea that he is advocating for voting on everything in public because he is not. He said this is ballot language and it is not that Council does not want to make that call, but that Council does not have the right to make that call without asking permission. Would it have been better if the language was written a different way? Sure it would and Council would not be having this discussion but the point is the language is there and sometimes in life you deal with it and follow the rules whether you like it or not and there are consequences if you do not.

Mr. Bryant said whether there was an election or not there would need to be an ordinance change because the word "weekly" is in the current ordinance.

Ms. Hampton said if Council decides to put the change to a vote of the people, would they also allow an option to pay more if service is continued weekly? Councilmember Kovach said if there is a vote than that makes sense because there are some people who would pay extra money to have that option. Mayor Rosenthal said there are also people who are not using the service that would strenuously object to paying more.

Mayor Rosenthal said Councilmember Jungman asked her to convey that he would not support an election.

Mayor Rosenthal asked Mr. Komiske what delays there would be for a new contractor in getting the bi-weekly recycling service started if there is an election and Mr. Komiske said both contractors have a lag time of four to six months so that would be pushed further out. Mayor Rosenthal asked if there has been discussion with Waste Management about continuing the service during the interim period in terms of cost and Mr. Komiske said Waste Management said they would be willing to extend service for at least one month and review the rates after that, which will probably increase. He did not believe Waste Management would walk away from providing service during the interim period. Ms. Walker said over the last five years the contract has provided a 10% rate increase every year so the City can expect at the least a 10% increase. Councilmember Castleberry said that places the City in the red and Mr. Komiske agreed. Mayor Rosenthal said the City would need to factor in the cost of an election as well.

Mr. Lewis said Republic stated that once the contract is executed they could begin service within four months and Mr. Komiske said the City is planning to purchase polycarts, but that would not happen until a contract is signed.

Councilmember Williams asked the monthly rate bid by Republic if they provided polycarts and Mr. Komiske said the rate was \$2.50 and Republic would reduce the rate by seventy cents if the City purchased the polycarts.

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Items submitted for the record

1. Memorandum dated February 15, 2013, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Honorable Mayor and Councilmembers
2. PowerPoint presentation entitled, "Agreement for Purchase of Water," City Council Study Session, February 19, 2013

Participants in discussion

1. Mr. Jeff Bryant, City Attorney
2. Ms. Kathryn Walker, Assistant City Attorney

The meeting adjourned at 6:47 p.m.

ATTEST:

City Clerk

Mayor