



Context: This model ordinance authorizing public access to private property for the sole purpose of replacing a lead service line (LSL) was drafted from several sources, including the existing law enacted by the City of Newark, NJ. It is meant to convey some of the key elements that should be considered for such an ordinance, which is integral to the efficiency of any LSL replacement program.

ORDINANCE AMENDING GENERAL WATER REGULATIONS OF THE community name MUNICIPAL CODE, BY ADDING “MANDATORY REPLACEMENT OF LEAD SERVICE LINES” PROVISIONS TO SECURE “ACCESS TO PREMISES”

WHEREAS, name of water utility, owned and operated by the City City (“City”) provides drinking water to approximately customers with approximately metered accounts and utilizes approximately miles of distribution mains in communities served; and

WHEREAS, the United States Environmental Protection Agency (the “USEPA”) adopted regulations to control lead and copper in drinking water, and, in 1986, Congress passed the Safe Drinking Water Act Amendments, banning the use of lead solder on pipes in the construction of new homes; and

WHEREAS, there exist approximately estimated number privately-owned properties serviced by obsolete lead service lines (“LSLs”) within the City of community; and

WHEREAS, these LSLs connect to community’s water distribution system, but are owned by the property owner; and

WHEREAS, on January 9, 2020, Governor Murphy signed New Jersey Senate Bill 4110, which finds and declares that lead in drinking water poses a serious health and safety risk to the public, particularly to infants and children; and

WHEREAS, Senate Bill 4110 clarifies that New Jersey municipalities may enact ordinances in order to enter properties to perform LSL replacements as part of their powers to protect the health, safety and welfare of residents pursuant to N.J.S.A. 40:48-2 and N.J.S.A. 40:48-2.12(a), and

WHEREAS, Senate Bill 4110 specifically states that a municipality may enter a property in order to perform the LSL replacement, as long as the owner and any residents of the property have been given at least 72 hours notice; and

WHEREAS, the City believes that the provision of clean, lead free drinking water to its residents and customers is a public purpose beneficial to the City as a whole and any benefit to any private land owner in accomplishing this purpose is incidental and subordinate to this primary public and governmental purpose; and

WHEREAS, the City envisioned a LSL Replacement Program, in order to protect families that may be exposed to lead in the water due to obsolete LSLs on their property; and

Optional (as applicable) - WHEREAS, as part of its comprehensive plan to protect residents and customers from exposure to lead, the City implemented a corrosion control system to reduce the lead levels in the water by inhibiting the corrosion of LSLs; and

WHEREAS, the City has created a ____-year, comprehensive, \$ _____ Lead Service Line Replacement Program which includes the replacement of existing LSLs on private property; and

WHEREAS, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, N.J.S.A. 40:48-2.12(a) authorizes the Governing Body of any municipality to make, amend, repeal and enforce ordinances to regulate buildings and structures and their use and occupation to prevent and abate conditions therein harmful to the health and safety of the occupants of said buildings and structures and the general public in the municipality; and

WHEREAS, for the health, safety and welfare of its residents and customers, the City Council desires to require all property owners serviced by a LSL to replace that service line through the program established by the City; and

WHEREAS, timely access to private property to replace customer-owned LSLs is essential to maximizing the efficiency of the program; and

WHEREAS, due to the hazard that lead in the drinking water poses to the health and safety of customers, permission from the owner of the property to replace the LSL is not required.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, NEW JERSEY, THAT: (Note: Additions are shown in bold and underlined).

Chapter local citation Access to premises.

The officers, agents, and employees of the Department of _____ shall have free access at all reasonable times, and in the event of an emergency at any time, to any premises solely for the purpose of examining and /or replacing the water service. They shall have the power to reject all pipes and fixtures considered unsuitable for that purpose.

local citation **Mandatory Replacement of Lead Service Lines.**

Definitions:

City shall mean City of _____.

Contractor shall mean a licensed vendor which contracts with the City of _____ to replace LSLs.

Dwelling shall mean a building or structure or part thereof containing one (1) or more dwelling units. Dwelling shall also apply to buildings and structures that are not used for residential purposes.

Dwelling unit shall mean any room or groups of rooms or any part thereof located within a building and forming a single habitable unit with facilities that are used or designed to be used for living, sleeping, cooking, eating or bathing.

Department shall mean the Department of _____ of the City of _____, New Jersey.

Lead safe shall mean any condition that does not allow access or exposure to lead, in any form, to the extent that adverse human health effects are possible.

Lead service line (LSL) shall mean the water line on private property that leads to the structure or building that is connected to the main City of _____ water line.

Occupant shall mean a person or persons in actual possession of and living in the building or dwelling unit.

Owner shall mean any person who has legal title to any dwelling, with or without accompanying actual possession thereof; or, who has equitable title and is either in actual possession or collects rents therefrom; or, who is executor, executrix, trustee, guardian, or receiver of the estate of the owner, or as mortgagee or as vendee in possession either by virtue of a court order or by agreement or voluntary surrender of the premises by the person holding the legal title, or as collector of rents has charge, care or control of any dwelling or rooming house.

_____ **local citation** _____. It is hereby established that the existence of LSLs is prohibited in the City of _____.

_____ **local citation** _____. A property owner may be excluded from the mandatory replacement of its LSL by providing the Department of _____, within ninety (90) days of the effective date of this ordinance, with written proof from a licensed and certified plumber that a LSL does not exist on the property and/or that the LSL was previously replaced.

_____ **local citation** _____ **Mandatory Replacement of Lead Service Lines**

i. The owner of any dwelling, building or structure serviced by a LSL is required to replace the LSL on their property. The replacement of the LSL must be completed within _____ days of the effective date of this ordinance. ¹²An extension of time may be granted where the owner can demonstrate, to the Department of _____ designee, that a good faith effort has been made to comply with the ordinance.

Replacement of customer-side lead pipes that are connected to a water utility-side lead service line must be completed at the time the water utility-side service line is replaced. Scheduling of all such replacements for customer-side lead pipes must be coordinated between the homeowner's contractor and the water utility within 30 days of receipt of notice that the water utility-side water service lines are scheduled to be replaced. ³

ii. The owner of the any dwelling, building or structure shall replace their LSL by either of the following methods:

1

² Newark's deadline for LSL replacement was 90 days from the date of their ordinance.

³ This paragraph about scheduling the work and avoiding partial replacements was lifted from the law enacted in Green Bay, Wisconsin.

a. Signing up for the Lead Service Line Replacement Program offered by the City of _____ and allowing contractors access to their property to conduct the replacement. The contractor will provide the owner with a right of entry form for completion. The right of entry form will provide the contractor with access to the property to verify the existence of a LSL; or

b. Replacing the LSL on their own and at their own expense. If an owner selects this option, then replacement must be completed within ____ days of effective date of this ordinance.⁴ An extension of time may be granted where the owner can demonstrate, to the Department of _____ designee, that a good faith effort has been made to comply with the ordinance. An owner is required to provide the Department of _____ with proof that the LSL has been replaced. Proof must include at a minimum: a permit issued by the Department to a licensed plumber authorized to do the work; an invoice from the contractor who completed the work; a copy of the estimate along with any report of the work completed, and an inspection report verifying the removal.

_____ **local citation** _____. **Authorization to Access Property.**

1. If an owner of the dwelling, building or structure does not sign up for the Lead Service Line Replacement Program or does not replace a LSL within ____ days of the effective date of this ordinance (or within the time frame provided in an extension), or is inaccessible or otherwise denies access to the property to enable the replacement of the LSL, then the following procedure shall be followed:

i. The City shall secure entrance to the property from the owner or the current occupant of the dwelling, building, or structure, and the City shall incur no liability from the owner. The contractor will provide owner with a right of entry form for completion. The right of entry form will provide the contractor with access to the property to verify the existence of a LSL.

ii. If access is granted by the owner of the dwelling, building, or structure, and if contractor verifies the existence of a LSL; and if owner agrees to allow the City to replace it, the contractor shall make the replacement and restore the property to its original condition, or as close as possible to its original condition, and the owner shall be held harmless and no liability shall incur to the City or owner; and

iii. If access is granted by the occupant of the dwelling, building, or structure, then the occupant shall be held harmless and no liability shall incur to the City or the occupant due to the replacement of the LSL by the City; and

⁴ : City of Menasha, WI ordinance includes the following sentence re: coordinating replacement of the customer-owned LSL with the utility owned portion: “If the property owner selects this option, the lead or galvanized water service lateral shall be replaced before the start of or during construction of the utility project.”

iv. If access is denied by the owner, then the City shall commence procedures, including filing a court action, in order to verify the existence of, and conduct replacement of, the LSL.

____ **local citation** _____. Proof of LSL replacement required for Certificate of Occupancy, Certificate of Code Compliance, and Smoke & Carbon Monoxide Detector Certificates.

i. Upon the sale or transfer of ownership of any dwelling, building or structure, the owner must provide proof that the LSL has been replaced in order to secure a Certificate of Occupancy, Certificate of Code Compliance, and Smoke & Carbon Monoxide Detector Certificates.

ii. Upon the sale of any City-owned property, within _____ days of the closing, the buyer is responsible for replacing the LSL, by either enrolling in the Lead Service Line Replacement Program or in accordance with _____ **local citation** _____ above.

____ **local citation** ____ **Penalty**

Violations of this ordinance by any person or corporation shall be punishable by a fine of at least two hundred fifty dollars and zero cents (\$250.00) but not exceeding one thousand dollars and zero cents (\$1,000.00) or by imprisonment for a term not exceeding _____ or by a period of community service not to exceed _____ days.⁵

If any provision of this ordinance or application thereof to any person(s) or circumstance is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the ordinance that can be given effect without the invalidated provision or application, and to this end the provisions of this ordinance are declared severable.

This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

Customize to each locality.

City Clerk

City of _____, New Jersey

Date

⁵ Communities in Wisconsin (e.g., Mosinee) tend to authorize penalties of no less than \$50 and no more than \$1,000, but each day that the violation continues may be considered a separate offense.

Legal Disclaimer

The information provided herein is not intended to constitute legal advice. All content in this document is for general information purposes only. Readers and users should contact their attorney to obtain advice with respect to any particular legal matter. All liability regarding actions taken or not taken related to this document are expressly disclaimed.

About the Report

Jersey Water Works - Lead in Drinking Water Task Force

This publication was developed by [Jersey Water Works' Lead in Drinking Water Task Force](#), and specifically its Lead Service Line Implementation Workgroup, whose mission is to identify best practices. The Workgroup, which is composed of water utility officials, consultants, and public policy advocates, is chaired by Rich Calbi, Executive Director of Ridgewood Water, and Mike Furrey, owner of Agra Environmental and Lab Services. This report, authored by Suyog Padgaonkar, Ph.D., a research intern at New Jersey Future, was reviewed by the workgroup. For more information, contact Gary Brune, Senior Policy Advisor, gbrune@njfuture.org.

About Jersey Water Works

[Jersey Water Works](#) is working to transform New Jersey's inadequate water infrastructure through sustainable, cost-effective solutions that provide communities with clean water and waterways; healthier, safer neighborhoods; local jobs; flood and climate resilience; and economic growth.

Report published June 2022.