



Legislation Details (With Text)

File #: 160742 **Version:** 3
Type: Ordinance **Status:** Passed
File created: 9/26/2016 **In control:** COMMON COUNCIL
On agenda: **Final action:** 12/13/2016

Effective date:

Title: A substitute ordinance mandating the replacement of lead water service lines and establishing a special assessment for lead water service lines on private property.

Sponsors: ALD. STAMPER, ALD. COGGS, ALD. RAINEY

Indexes: LEAD POISONING, WATER WORKS

Attachments: 1. PSC rules for disconnection of water PSC 185.37, 2. NDWAC - Recommendations to the Administrator 121515.pdf, 3. NDWAC LCR Work Group Report Final 08 24 2015.pdf, 4. LSL Replacement Ordinance Summary.pdf, 5. Budget Response, 6. Hearing Notice List, 7. 2016-06-16 Lead Service Line Analysis, 8. GMAR Letter of Support, 9. Motion by Ald. Bohl, 10. Motion by Ald. Stamper, 11. Proposed Substitute B, 12. Notice Published on 12-21-16, 13. Report to CC on Lead Services Financial Impact 12-08-17

| Date | Ver. | Action By | Action | Result | Tally |
|------------|------|-------------------------------|---------------------------|--------|-------|
| 9/26/2016 | 0 | COMMON COUNCIL | ASSIGNED TO | | |
| 10/26/2016 | 0 | FINANCE & PERSONNEL COMMITTEE | HELD TO CALL OF THE CHAIR | Pass | 5:0 |
| 11/11/2016 | 0 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | HEARING NOTICES SENT | | |
| 11/11/2016 | 1 | CITY CLERK | DRAFT SUBMITTED | | |
| 11/14/2016 | 1 | FINANCE & PERSONNEL COMMITTEE | RECOMMENDED FOR PASSAGE | Pass | 4:0 |
| 11/22/2016 | 1 | COMMON COUNCIL | ASSIGNED TO | Fail | 5:10 |
| 11/22/2016 | 1 | COMMON COUNCIL | HELD IN COUNCIL | Pass | 8:7 |
| 12/13/2016 | 1 | COMMON COUNCIL | SUBSTITUTED | Pass | 13:2 |
| 12/13/2016 | 2 | COMMON COUNCIL | SUBSTITUTED | Pass | 15:0 |
| 12/13/2016 | 3 | COMMON COUNCIL | HELD IN COUNCIL | Fail | 6:9 |
| 12/13/2016 | 3 | COMMON COUNCIL | PASSED | Pass | 12:3 |

| | | | |
|------------|---|------------|-----------|
| 12/14/2016 | 3 | MAYOR | SIGNED |
| 12/21/2016 | 3 | CITY CLERK | PUBLISHED |

160742
SUBSTITUTE 3

ALD. STAMPER, COGGS AND RAINEY

A substitute ordinance mandating the replacement of lead water service lines and establishing a special assessment for lead water service lines on private property.

225-22-1-f cr

225-22.5 cr

This ordinance:

1. Requires that the privately-owned portion of a lead water service line be replaced whenever any of the following occurs:
 - a. A leak or failure has been discovered on either the privately-owned or utility-owned portion of the service line.
 - b. The utility-owned portion of the line is replaced on either a planned or emergency basis.
2. Prohibits the repair of a privately-owned lead water service line, or reconnection of a privately-owned lead water service line to a utility-owned water service line, under any of the circumstances described in #1.
3. Authorizes the commissioner of public works or the commissioner's designee to grant temporary exceptions to these regulations.
4. Requires the commissioner of public works or the commissioner's designee to provide written notice to the property owner of the replacement requirement described in #1. Upon receipt of this notice, the property owner shall, within 10 business days, either replace the privately-owned portion of the lead service line at the owner's expense by contracting with a licensed contractor or elect to have a city contractor replace the privately-owned portion of the lead service line. If the owner elects to have a city contractor complete the replacement, the owner shall be responsible for the average current cost of replacement of the privately-owned portion of the line. The cost shall be assessed as a special assessment, payable over a 10-year period.
5. Provides that, subject to availability of public funds, a property owner who meets certain criteria shall be eligible to receive the following subsidy of the cost of replacing the privately-owned portion of the lead water service line:
 - a. The property owner's share of the cost shall be the lesser of one-third of the average current cost to replace the privately-owned portion of the lead service line or \$1,600. The \$1,600 amount shall be adjusted annually based on a construction price index.
 - b. The city shall pay the balance of the cost of the line replacement.
6. Stipulates that a property owner is eligible for the city subsidy only if all of the following are true:

- a. The property is a one- to 4-unit residential property.
 - b. The owner agrees to have the work performed by a city contractor.
 - c. The owner signs a hold-harmless agreement holding the city harmless and free from any claim or liability for damage done in performance of the water service line replacement work.
 - d. The owner executes a temporary right of entry and construction easement authorizing the city and its contractor access into the dwelling as needed in order to complete the connection.
7. Authorizes the commissioner of public works or the commissioner's designee to have required lead water service line replacement work performed if the owner fails to comply with the replacement requirement. The cost of this work shall be assessed and collected as a special assessment on the property.
8. Authorizes the commissioner of neighborhood services to issue a citation in the amount of \$100 to the property owner upon determination that a violation of these regulations exists. Each day of violation shall constitute a separate offense.
9. Provides that, as an alternative to any other methods provided for obtaining compliance with these lead service line replacement requirements, if the commissioner of public works or the commissioner's designee, in consultation with the commissioner of health, determines that the owner's failure to comply will create an imminent threat to the health, safety or welfare of the public, the commissioner of public works or the commissioner's designee may discontinue water service to the property upon notice to the owner and reasonable opportunity to comply with the requirements of this section, and in a manner consistent with the rules and regulations of the Milwaukee water works and the public service commission of Wisconsin governing discontinuation of water service.

This ordinance takes effect January 1, 2017.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. The title of subchapter 2 of chapter 225 of the code is amended to read:

SUBCHAPTER 2
SEWAGE DISPOSAL >>AND WATER<< SYSTEMS

Part 2. Section 225-22-1-f of the code is created to read:

225-22. Municipal Service.

1.

f. All property shall be connected to the public water main in a manner consistent with the provisions of s. 225-22.5, to the extent that the provisions of that section apply to the property's water connection.

Part 3. Section 225-22.5 of the code is created to read:

225-22.5. Lead Service Line Replacement. 1. FINDINGS. a. The common council finds that:

a-1. Disturbance of lead water service lines, particularly partial lead service line replacement, has been shown to increase lead levels in drinking water.

a-2. Reconnection of existing lead water service lines to new copper water service lines has been shown to increase lead levels in drinking water.

a-3. Full replacement of lead service lines, as opposed to partial replacement, can reduce exposure to lead in drinking water.

a-4. Because of the significant risks to public health and safety posed by disturbance of lead water service lines and reconnection of lead to copper service lines, the city has a strong public interest in remediating privately-owned lead water service lines under certain circumstances.

a-5. Residential properties containing 5 or more dwelling units are typically investment properties operated for a profit and better able to bear the costs of water service line replacement than residential properties containing one to 4 dwelling units.

b. For the reasons stated in par. a, and under the authority granted to the city to regulate connections to public water mains by ss. 66.0911 and 281.45, Wis. Stats., to act for the health, safety and welfare of the public by s. 62.11(5), Wis. Stats., and consistent with the purpose of this code set forth in s. 200-002, the common council finds that it is necessary and appropriate to establish and enforce requirements for the full replacement of lead water service lines under certain conditions and to provide a funding mechanism to assist affected property owners in complying with those requirements.

2. DEFINITIONS. In this section:

a. "Lead water service line" means a service made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

b. "Privately-owned portion of a lead water service line" means the section of water service piping from the outlet joint of the curb stop to the outlet of the water meter outlet valve with the exception of the water meter itself, regardless of the ownership of the property upon which the piping is located.

c. "Utility-owned portion of a lead water service line" means the section of water service piping from the main to, but not including, the outlet joint of the curb stop.

3. REPLACEMENT REQUIREMENT. The privately-owned portion of a lead water service line shall be replaced whenever any of the following occurs:

a. A leak or failure has been discovered on either the privately-owned or utility-owned portion of the service line.

b. The utility-owned portion of the line is replaced on either a planned or emergency basis.

4. REPAIR OR RECONNECTION PROHIBITED. No repair of a privately-owned lead water service line, or reconnection of a privately-owned lead water service line to a utility-owned water service line,

shall be permitted under any of the circumstances specified in sub. 3.

5. EXCEPTION. The commissioner of public works or commissioner's designee may, at his or her discretion, grant a temporary exception to the requirement of sub. 3 and the prohibition of sub. 4 if the commissioner or commissioner's designee determines that doing so will not create an imminent threat to the health, safety or welfare of the public.

6. NOTICE. a. **Leak or Emergency Replacement.** In the event of a service line leak or failure under sub. 3-a or emergency replacement of the utility-owned portion of the service line under sub. 3-b, the commissioner of public works or commissioner's designee shall provide written notice of the replacement requirement to the owner upon the commissioner's or designee's determination that replacement of the utility-owned portion of the line is required.

b. **Planned Replacement.** In the event of a planned replacement under sub. 3-b, the commissioner of public works or commissioner's designee shall provide written notice of the replacement requirement to the owner at least 45 days prior to the commencement of the planned replacement of the utility-owned portion of the service line.

7. OWNER ELECTION. Upon receipt of the notice in sub. 6, the owner shall, within 10 business days, do one of the following:

a. Replace the privately-owned portion of the lead service line at the owner's expense by contracting with a licensed contractor. The work shall be performed in accordance with all applicable state, local and utility regulations.

b. Elect to have a city contractor replace the privately-owned portion of the lead service line.

8. FINANCING OF REPLACEMENT BY CITY CONTRACTOR. If the owner elects to have a city contractor complete the replacement under sub. 7-b, the cost of replacing the privately-owned portion of the lead service line shall be paid in the following manner:

a. The owner shall be responsible for the average current cost of replacing the privately-owned portion of the lead water service line. The average current cost shall be established each year by the commissioner of public works, subject to adoption by common council resolution. The owner may be eligible for a city subsidy under sub. 9.

b. The owner's share of the cost shall be assessed to the property as a special assessment. Upon receipt of an invoice for this special assessment from the commissioner of public works or the commissioner's designee, the owner may pay the invoice, without interest, by remitting payment to the city treasurer within 45 days of the date of the invoice. If such invoices are not paid in full within the specified time, they shall be placed upon the tax roll under the following terms and conditions and in the following manner:

b-1. If the total amount of the principal of the invoice remaining unpaid equals or exceeds \$125, it shall be spread equally over the first available and next succeeding 9 tax rolls.

b-2. If the total amount of the principal of the invoice remaining unpaid is less than \$125, the amount shall be placed on the first available tax roll.

b-3. In addition to the principal remaining, interest shall be added commencing after the billing date of the invoice. A 45-day grace period for payment shall be granted from the date of billing, and if not paid within the period, interest shall be charged on a restorative basis to the date of the billing. The interest rate charged shall be set annually as of the last business day in June as an approximation of the prime rate plus 1%. For the purpose of this subdivision, the prime rate shall be defined as the Wall Street Journal prime rate published in the Wall Street Journal. The monthly rate of interest shall be computed by dividing the average prime rate plus 1% by 12 rounded to the nearest 100th of one percent. The comptroller shall review the interest rate annually and shall notify the commissioner of public works of the interest rate. The interest rate shall become effective as of the public hearing date in September at which annual assessment rate changes are submitted to the appropriate committee of the common council as provided in s. 115-43. The interest rate in effect at the time the special assessment is levied shall be fixed for the 10-year duration of the installment payments.

b-4. After being placed on the tax roll in annual installments or otherwise, the amounts of special assessments shall be paid within the time allowed for the payment of general property taxes. If the property owner fails to pay a special assessment within the time allowed for payment, it shall become delinquent and shall be treated in the same manner and subject to the same laws as a delinquent general property tax.

9. CITY SUBSIDY. a. Payment Method. Subject to availability of public funds, a property owner who meets the criteria in par. b shall be eligible to receive a subsidy of the cost of replacing the privately-owned portion of the lead water service line required by sub. 3 in the following manner:

a-1. The property owner's share of the cost shall be the lesser of one-third of the average current cost to replace the privately-owned portion of the lead service line or \$1,600. Each March 1, the city clerk shall adjust the fixed-dollar amount based on the most recent monthly constant-quality (Laspeyres) price index for new single-family home construction published by the U.S. census bureau, compared to the same index for January, 2017.

a-2. The city shall pay the balance of the cost to replace the privately-owned portion of the lead service line.

b. Eligibility Criteria. A property owner shall be eligible for the city subsidy provided in par. a if the property owner submits to the commissioner of public works or commissioner's designee documentation, on a form furnished by the commissioner or designee, attesting that all of the following conditions are met:

b-1. The property is a one-, 2-, 3- or 4-family dwelling.

b-2. The owner agrees to have the work performed by a city contractor.

b-3. The owner signs a hold-harmless agreement holding the city harmless and free from any claim or liability for damage done in performance of the water service line replacement work.

b-4. The owner executes a temporary right of entry and construction easement authorizing the city and its contractor access into the dwelling as needed in order to complete the connection.

10. REQUIREMENTS FOR OWNERS INELIGIBLE FOR SUBSIDY. Any owner who elects to have a city contractor perform water service line replacement required by sub. 3 and is not eligible for city

subsidy under sub. 9 shall, prior to the commencement of this work:

- a. Execute a hold-harmless agreement holding the city harmless and free from any claim or liability for damage done in performance of the water service line replacement work.
- b. Execute a temporary right of entry and construction easement authorizing the city and its contractor access into the dwelling as needed in order to complete the connection.

11. REPORTS OF FINANCIAL IMPACTS ON PROPERTY OWNERS. a. Quarterly Reports. Prior to April 1, 2017 and every 3 months thereafter, the commissioner of public works or the commissioner's designee shall submit to the common council a report on the financial impacts of implementation of this section on property owners who have had their water service lines replaced under this section.

b. Report Contents. Prior to February 1, 2017, the commissioner of public works or the commissioner's designee shall submit, to the appropriate common council standing committee, a description of the types of financial impacts and other information that will be provided to the common council in the reports required by par. a.

12. ENFORCEMENT. a. Performance of Work by City. If the owner fails to comply with sub. 3 within the time specified in sub. 7, the commissioner of public works or the commissioner's designee may apply for and obtain an appropriate court-issued warrant pursuant to ss. 66.0119 and 196.171, Wis. Stats., to gain access to the property and have the required work performed pursuant to s. 281.45, Wis. Stats. The cost of this work shall be assessed and collected as a special assessment on the property.

b. Penalty. Upon determination that a violation of this section exists, the commissioner of neighborhood services is authorized to issue a citation in the amount of \$100 to the property owner. Each day of violation shall constitute a separate offense.

c. Discontinuation of Service. As an alternative to any other methods provided for obtaining compliance with this section, if the commissioner of public works or the commissioner's designee, in consultation with the commissioner of health, determines that the owner's failure to comply with sub. 3 will create an imminent threat to the health, safety or welfare of the public, the commissioner of public works or the commissioner's designee may discontinue water service to the property upon notice to the owner and reasonable opportunity to comply with the requirements of this section, and in a manner consistent with the rules and regulations of the Milwaukee water works and the public service commission of Wisconsin governing discontinuation of water service.

Part 4. This ordinance is effective January 1, 2017.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

DOA - Budget and Management Division

LRB166601-6

Jeff Osterman

12/13/2016