ORDINANCE

No. 24-020

1st Reading MAR 21 2024

Public Hearing APR 04 2024

2nd Reading & Passage APR 04 2024

Withdrawn _____ Lost _____

Date to Mayor APR 09 2024

Date Returned APR 12 2024

Date Resubmitted to Council _____

Approved as to Form and Legality

WESLEY BRIDGES, ESQ., CITY ATTORNEY

Factual content certified by

SEAN SEMPLE, DIRECTOR OF WATER & SEWER

Councilman /woman _____ presents the following Ordinance:

ORDINANCE SUPPLEMENTING AND AMENDING CHAPTER 309, "WATER AND SEWERS", OF THE CODE OF THE CITY OF TRENTON, BY ADDING ARTICLE IX "MANDATORY REPLACEMENT OF LEAD SERVICE LINES" IN CONFORMANCE WITH NEW JERSEY STATE LAW

WHEREAS, Trenton Water Works, owned and operated by the City of Trenton, Department of Water and Sewer ("TWW"), provides drinking water to approximately 217,000 customers with approximately 62,000 metered accounts in the municipalities of the City of Trenton, Ewing Township, Hamilton Township, Hopewell Township, and Lawrence Township; 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, according to the latest TWW service line inventory report submitted to the NJDEP (July 2023), there exist approximately 6,700 privately-owned properties serviced by obsolete lead service lines and galvanized steel service lines ("LSLs") within the City of Trenton and approximately 9,600 within the Townships of Lawrence, Hamilton and Ewing, with approximately 12,000 lines of unknown materials within the distribution system; and

WHEREAS, P.L. 2021, Ch. 183, enacted by the New Jersey Legislature on July 22, 2021, and codified at N.J.S.A. 58:12A-40 et al., requires all community water systems to replace their inventory of lead service lines (both the private side, and the TWW-owned side) within 10 years of the effective date of the legislation at a rate of 10% per annum; and

WHEREAS, all lead-containing service lines within the TWW distribution service area must be replaced by the year 2031; and

WHEREAS, all distribution service lines, including LSLs, connect to TWW's water distribution system, and the owner of the property owns the service line starting from the curb stop and entering the home, building or structure; and

WHEREAS, TWW will be unable to complete its lead service line replacement program without access to the privately owned property where lead services lines are located; and

WHEREAS, the replacement of all service lines containing lead is necessary to immediately and effectively reduce the exposure of the public to the hazards of lead through drinking water; and

ORDINANCE

WHEREAS, on January 9, 2020, Governor Murphy signed into law P.L. 2019, Ch. 291 (codified at N.J.S.A. 58:12A-38 et al.), 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, P.L. 2019, Ch. 291, states that New Jersey municipalities may enact ordinances to allow water personnel to enter private 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

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;

WHEREAS, N.J.S.A. 40:48-2.12a 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, P.L. 2019, Ch. 291, 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 of Trenton 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, 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, for the health, safety and welfare of its residents and customers, the City Council desires to require all property owners serviced by a lead service line to replace that service line through the program established by TWW; and

WHEREAS, timely access to private property to replace lead service lines 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 TRENTON, NEW JERSEY, THAT:

1. Chapter 309 of the Code of the City of Trenton, entitled "Water and Sewers" is hereby amended by adding Article IX, "Mandatory Replacement of Lead Service Lines" as follows:

ARTICLE IX MANDATORY REPLACEMENT OF LEAD SERVICE LINES

ORDINANCE

§309-71 Definitions. The following definitions shall apply to Chapter 309, Article IX, "Mandatory Replacement of Lead Service Lines."

Definitions:

CITY

City of Trenton.

CONTRACTOR

A licensed vendor which contracts with the City of Trenton to inspect and/or replace lead service lines.

DWELLING

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

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

The Department of Water and Sewer of the City of Trenton, New Jersey.

LEAD SAFE

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

The water line on private property that leads to the structure or building that is connected to the main Trenton Water Works water line and is comprised in any part of lead, galvanized steel, or other material deemed by TWW or the NJDEP to contain lead or pose a risk of lead exposure through drinking water.

NJDEP

New Jersey Department of Environmental Protection.

OCCUPANT

A person or persons in actual possession of and living in the building or dwelling unit.

OWNER

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.

TOWNSHIPS

ORDINANCE

The Townships in the Trenton Water Works service area where lead service lines have been identified: Lawrence, Hamilton, Hopewell and Ewing.

TWW

Trenton Water Works, which is operated by the Department of Water and Sewer of the City of Trenton, New Jersey.

TWW DISTRIBUTION SERVICE AREA

The City of Trenton and the Townships of Lawrence, Hamilton, Hopewell, and Ewing.

§309-72 Lead Service Lines Prohibited.

It is hereby established that the existence of Lead Service Lines is prohibited in the City of Trenton. The owner of all properties with Lead Service Lines are required to cooperate with TWW, its designee, and the City of Trenton to ensure that all Lead Service Lines are eradicated in accordance with the provisions of this Chapter and with N.J.S.A. 58:12A-38 et seq.

§309-73 Mandatory Replacement of Lead Service Line.

A. The owner of any dwelling, building or structure serviced by a Lead Service Line is required to have the Lead Service Lines on their property replaced.

B. The owner/occupant of any dwelling, building or structure shall cause their Lead Service Line to be replaced by any of the following methods:

1. Signing up for the Lead Service Line Replacement Program offered by TWW by executing a Right of Entry form and allowing contractors to access their property to conduct the replacement. TWW, or its designee, shall provide all owners and occupants with a Right of Entry form, or with an internet link to access the form. Execution of the Right of Entry form will provide the contractor with access to the property to verify the existence of a Lead Service Line, and/or to replace an existing Lead Service Line. Neither TWW nor its contractors shall charge or seek reimbursement for any direct fees, including permit fees, to property owners, occupants, or customers for Lead Service Line replacement work performed after the effective date of this Ordinance; or

2. Replacing the Lead Service Line on their own and at their own expense. If an owner selects this option, replacement must be completed within 90 days of the effective date of this ordinance. An extension of time may be granted where the owner can demonstrate, to the satisfaction of TWW, that a good faith effort has been made to comply with the ordinance. An owner is required to provide the TWW with proof that the Lead Service Line has been replaced. Proof must include, at a minimum: permit issued by the City of Trenton 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 that includes photographic evidence of the work done, verifying the removal.

§309-74 Exclusion from Requirement; Proof Required.

A property owner may be excluded from the Mandatory Replacement of its Lead Service Line by providing TWW, within 90 days of the effective date of this ordinance, with written proof

from a licensed and certified plumber that it does not have a Lead Service Line on its property and/or that the Lead Service Line was previously removed and replaced. TWW may require additional confirmation.

§309-75 Authorization to Access Property.

A. TWW shall secure entrance to the property from the owner or current occupant of the dwelling, building or structure, and the City shall incur no liability from the owner. TWW, its designee, or a contractor will provide the owner and current occupant with a Right of Entry form for completion, or with an internet link to access the form. The Right of Entry form will provide the contractor with access to the property to verify the existence of a Lead Service Line, and, if needed, access to the property to replace the Lead Service Line. TWW, or its designee, shall replace the Lead Service Line, and shall restore the property to its original condition, or as close as possible to its original condition.

B. If access is granted by the owner or current occupant of the dwelling, building or structure, then the owner or occupant shall be held harmless and no liability shall incur to the City and/or TWW or occupant due to the replacement of the Lead Service Line by TWW or its designee.

C. If access is denied by the current occupant or owner, the City shall commence procedures, including filing a Court action, to conduct the replacement of the Lead Service Line.

§309-76 Notice of Access to Property.

A. At least two weeks before entering a property to perform a service line inspection or a Lead Service Line replacement, TWW or its contractor shall notify the owner of record of the property and any residents of the property of the inspection or Lead Service Line replacement.

B. TWW shall make every effort to notify the owner of record and any residents of the property in person, but if the owner or occupants are unable to be reached in person, TWW shall post, at least 72 hours before entering the property, a written notification in a prominent location of the property.

C. The notification shall be written in both English and Spanish and shall include the scheduled date and time of the inspection or Lead Service Line replacement, the name and contact information of TWW's contractor who will be performing the work, the extent of any water service disruptions, and information regarding the potential penalties if TWW is unable to gain access to the property for the stated purpose.

D. Any violation of this chapter by either the property owner, landlord, or tenant by the refusal to allow access to the property or preventing the performance of the work shall be punished by a penalty as provided in this Article.

§ 309-77 Proof of Lead Service Line Replacement for Sale or Transfer of Ownership or Certificate Of Occupancy.

A. Upon the sale or transfer of ownership of any dwelling, building, or structure, the owner must provide proof that the Lead Service Line has been replaced in order to secure a Certificate of Occupancy and other required certifications.

ORDINANCE

B. Upon the sale of any City owned property, within 90 days of the closing, the purchaser of said property is responsible for replacing the Lead Service Line.

§ 309-78 Violations and Penalties.

A. Violations of this ordinance by any person or corporation shall be subject to a fine of at least two hundred fifty dollars ($250.00) but not exceeding ten thousand dollars ($10,000.00). Each day that a violation occurs shall be deemed a separate and distinct offense.

1. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistency only.

2. 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.

3. The amendments and supplements of this ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

INTRODUCTION:	MOTION:				SECOND:				ORD. AUTHORED BY:								ADOPTION	MOTION: Frisby				SECOND: Figueroa Kettenburg			
	INTRODUCTION				ADOPTION					INTRODUCTION				ADOPTION				INTRODUCTION				ADOPTION			
	AYE	NAY	NV	AB	AYE	NAY	NV	AB		AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB
EDWARDS	✓				✓				GONZALEZ	✓				✓				FELICIANO	✓				✓			
FIGUEROA KETTENBURG	✓				✓				HARRISON	✓				✓											
FRISBY	✓				✓				WILLIAMS	✓				✓											

NV - NO VOTE AB – ABSENT

Adopted on first reading at a meeting of the City Council of the City of Trenton, NJ on MAR 21 2024

Adopted on second reading after the public hearing on APR 04 2024

APPROVED / REJECTED

Mayor

Reconsidered by Council – Override Vote AYE NAY

President of Council

City Clerk