

**LEGISTAR #44265 - Body**

DRAFTER'S ANALYSIS: In 2000, the City entered into a consent order (2000-COEE-001) with the Wisconsin Department of Natural Resources (WDNR) that required the City to implement a lead water service line replacement program, which program is set forth in Section 13.18, MGO. This consent order was amended in 2010 (2000-COEE-001-A), giving the City until January 1, 2012 to complete the replacement of City-side lead water service lines. Under the amended consent order, the City was required to have private lead water service lines discovered after January 1, 2012 replaced within twelve-months of discovery.

The City's lead water service line replacement program has been very successful and in December, 2012 WDNR closed out the consent order. Based upon the City's own actions and the enforcement of Sec. 13.18, all City owned and most privately owned lead water service lines have been replaced. However, there remain two classes of privately owned lead water service lines in the City: properties where the lead water service line was discovered more than twelve months ago and have not yet been replaced or removed; and properties where the lead water service line has either been discovered in the last twelve months or has not yet been discovered.

This ordinance updates the lead water service line replacement ordinance to eliminate the phasing and inspection language no longer relevant. Instead, the amended ordinance sets forth the two remaining classes of properties still subject to the replacement requirement: those whose lead water service line was discovered more than twelve months ago and remain in service; and those that have been discovered during the last twelve months or have yet to be discovered.

In addition, as part of this update to the ordinance, the reimbursement rebate is being increased from \$1,000 to \$1,500. This change is being done to better reflect the current costs private property owners are incurring to replace lead water service lines.

Additionally, the bond schedule for violating this ordinance is being updated to give the Water Utility additional enforcement tools, short of pursuing a long form civil judgment, to address non-compliant properties.

Finally, this ordinance will have an effective date of November 1, 2016.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 13.18 entitled "Lead Water Service Line Replacement" of the Madison General Ordinances is amended to read as follows:

**"13.18 LEAD WATER SERVICE LINE REPLACEMENT.**

- (1) Intent and Purpose. The Common Council of the City of Madison finds that it is in the public interest to establish a comprehensive program for the removal and replacement of lead pipe water service lines in use within the Madison Water Utility system and to that end declares the purposes of this ordinance to be as follows:
  - (a) to ensure that the water quality at every tap of Madison Water Utility customers meets the water quality standards specified under the Federal Safe Drinking Water Act; and
  - (b) to reduce the lead in City drinking water to meet EPA standards and ideally to a lead contaminant level of zero in City drinking water for the health of City residents; and
  - (c) to eliminate the constriction of water flow caused by mineral rich ground water flowing through lead water service pipes and the consequent buildup of mineral deposits inside lead pipes; and

- (d) to meet the WDNR requirements for local compliance with the federal Lead and Copper Rule; and
- (e) ~~to effect the replacement of all high risk lead service lines within three years and the replacement of all remaining lead pipe water service lines in use in the City within ten years.~~

(2) Rules of Construction and Definitions. This ordinance and all rules and orders promulgated under this ordinance shall be liberally construed so that the purposes enumerated in Subsection (1) may be accomplished. Words and phrases shall be construed and understood according to their common and usual meaning unless the contrary is clearly indicated. Within this section:

~~“Child care facility” means any state licensed or county certified child care facility including, but not limited to, licensed family child care, licensed group centers, licensed day camps, certified school-age programs and Head Start programs.~~

“City” means City of Madison.

~~“Confirmed water sample test” means a tap water analysis completed after a prior analysis that indicated lead levels at the EPA Action level and conducted in accordance with the Lead and Copper Rule, with Sec. NR 809.547, Wis. Adm. Code., and with instructions provided by the Water Utility.~~

“Customer-side water service line” means the water conduit pipe running from the customer’s meter to the curb stop which is the Water Utility shut-off valve usually located eight feet into the street right-of-way from a private property line.

“EPA” means the U.S. Environmental Protection Agency.

~~“EPA Action level” means a concentration of 15 or more parts per billion (ppb) of lead as measured at a customer’s tap.~~

“Federal Safe Drinking Water Act” means 42 U.S.C.A. Sec. 300f-300j-26.

“General Manager” means the Water Utility General Manager.

~~“High risk lead service” means a lead customer-side water service line identified in Subsections (5)(a)-(c) and any lead customer-side water service line where a confirmed water sample test of a customer’s tap water reveals a lead concentration at the EPA Action level.~~

“Lead and Copper Rule” means the rule created by the EPA and adopted by the WDNR in response to the passage of the Safe Drinking Water Act, which provides maximum contaminant level goals and national primary drinking water regulations (NPDWR) for controlling lead and copper in drinking water. NPDWR regarding approved treatment techniques include corrosion control treatment, source water treatment, lead service line replacement and public education. The rule may be found in 56 FR 26460, 40 CFR part 141.80-141.90, and Wis. Adm. Code Chapter~~chs.~~ NR 809.541-NR 809.55, Wis. Adm. Code.

“Licensed plumber” means a person, firm, corporation or other entity licensed to perform plumbing work in the City by the State of Wisconsin.

~~“Person” has the meaning set forth in Sec. 342.01(9), Wis. Stats.~~

~~“Ppb” means parts per billion.~~

“Property” means any possessory interest, legal or equitable, in real property including an estate, trust, or lien, and any buildings, structures and improvements thereon.

~~“Service replacement schedule” means a ten-year schedule for the replacement of lead customer-side water service lines based on community resources, on availability of licensed plumbers and Water Utility resources to complete service line replacements, and on physical location of properties with lead customer-side water service lines. Based on the above factors, customers will be assigned a time period within the schedule for replacing their lead customer-side water service line. In no case shall a customer on this schedule have less than one year from the date of notification, pursuant to Subsection (6)(d), for the replacement of any lead customer-side water service line.~~

“Water Utility” means the City of Madison public water utility system, also known as Madison Water Utility.

“WDNR” means the Wisconsin Department of Natural Resources.

(3) Authorization. This ordinance is enacted pursuant to Wis. Stats. ~~See~~ §§ 62.11(5) and ~~Sec.~~ 281.12(5), Wis. Stats. and as mandated by 42 U.S.C. Sec. 300g, of the Federal Safe Drinking Water Act, enforced by the EPA and the WDNR.

~~(4) Survey and Self Inspections.~~

~~(a) Upon notice from the Water Utility, any person who owns, manages or otherwise exercises control over a property within the Madison Water Utility system shall inspect the customer-side water service line or have the customer-side water service line inspected by a licensed plumber to determine whether the service line is lead, copper, cast iron, galvanized steel, plastic or other material.~~

~~(b) Upon inspection, the property owner, manager or person exercising control over the property shall submit to the Water Utility on a form provided by the Water Utility a statement attesting to the type of customer-side water service line in use on the property. If the customer-side water service line is lead pipe, the property owner, manager or person exercising control over the property shall provide additional information as requested by the Water Utility about the residence, business or property and its water use.~~

~~(c) The statement required under Subsection (4)(b), based on a proper inspection, shall be due within 90 days of notification by the Water Utility. Notification shall be by first class mailing to the property owner’s address as recorded in the City Assessor’s Office. It is the sole responsibility of the person who owns, manages, or otherwise exercises control over the property to maintain a current mailing address with the City Assessor’s Office.~~

(54) Lead Service Line Replacement. Owners, managers or persons otherwise exercising control over properties within the Madison Water Utility system with lead customer-side water service lines in use shall replace the lead customer-side water service lines according to the following schedules:

(a) Schools or child care facilities: within one year of filing the statement required under Subsection (4)(b) All lead customer-side water service lines discovered prior to November 1, 2015 shall be replaced immediately.

(b) Properties at which a confirmed water sample test at the tap shows lead concentration at 15 or more ppb: within two years of filing the statement required under Subsection (4)(b) or within two years of receipt by the Water Utility of the confirmed water sample test, whichever is later All lead customer-side water service lines discovered on or after November 1, 2015 shall have no longer than one-year from discovery to be replaced.

~~(c) Properties where more than 20 people regularly have access to drinking water during any eight-hour period: within three years of filing the statement required under Subsection (4)(b).~~

~~(d) Properties where the Water Utility is replacing its side of the lead water service line to the property: at the same time the Utility replaces its service lines.~~

~~(e) Any property which is not covered in Subsections (5)(a)-(d): according to the service replacement schedule established by the Water Utility.~~

~~(f) Any property meeting the conditions of more than one category under Subsections (5)(a)-(d): according to that subsection with the earliest required replacement date.~~

~~(g) Notwithstanding the schedules set forth in Subsections (5)(a)-(f), all lead customer-side water service lines shall be replaced no later than January 1, 2011.~~

~~(65) Application and Scheduling.~~

~~(a) Owners, managers or persons otherwise exercising control over properties shall obtain from and submit to the Water Utility, in accordance with its service rules, an Application for Water Service which states an intention to replace the lead customer-side water service line.~~

~~(b) The Application for Water Service shall be filed no later than one week prior to replacement to allow for the coordination of replacement and inspection as necessary.~~

~~(c) The Water Utility will inform customers identified in Subsection (5)(d) at least thirty (30) days prior to the replacement of City-side lead water service lines.~~

~~(d) The Water Utility will notify customers identified in Subsection (5)(e) of their assigned placement within the service replacement schedule at least one year prior to the date their lead customer-side water service line must be replaced in order to comply with the schedule.~~

~~(76) Financing of Replacement.~~

~~(a) The Water Utility may, contingent on availability of funding, administer lead service replacement reimbursement program. Upon application to the Water Utility, owners, managers or persons otherwise exercising control over properties with lead customer-side water service lines who replaced such lines after ~~January 1, 1992~~ November 1, 2016, in accordance with applicable Utility rules, guidelines and schedules, and who have complied with all of the provisions of this ordinance will be eligible for a reimbursement payment not to exceed fifty percent (50%) of the cost of replacement of any lead customer-side water service line in use, up to a maximum of ~~\$4,000~~1,500 for each service line replaced. Application for reimbursement must include, as documentation of replacement and cost, a payment receipt from a licensed plumber for replacing the lead customer-side water service line at the subject property. Disputes regarding eligibility for reimbursement may be appealed to the Water Utility Board.~~

~~(b) An eligible property owner, as defined in Section 4.082(2), Madison General Ordinances, may apply to the City for financing of any portion of the cost of replacing a lead customer-side water service line that is not reimbursed under Subsection (76)(a). If approved, the amount financed shall be a special charge against the owner and treated as such in accordance with the provisions of Section 4.082 and 4.09, Madison General Ordinances. Applications for financing of costs for replacing lead customer-side water service lines must include documentation of the eligibility criteria contained in Section 4.082(2), Madison General Ordinances, and of the cost of replacing the water service lines.~~

~~(8) Exceptions.~~

~~(a) The Water Utility may extend the time for submission of the statement required under Subsection (4)(b) or may modify the inspection requirement set forth under Subsection (4)(a) if the customer so requests and demonstrates compelling need.~~

~~(b) Upon the demonstration of compelling need, the owner of a single-family dwelling or a business to which the public has no access to tap water and with no more than five (5) employees, may request a change of schedule or an extension of time for compliance with Subsection (5).~~

~~(c) Guidelines for the consideration of requests under Subsections (8)(a) and (b) will be established by the Water Utility Board. (Am. by ORD-07-00099, 8-03-07)~~

~~(d) Compliance deadlines will be calculated on a calendar year basis but may be deferred during the months of December through March on the basis of weather constraints.~~

(97) Prohibitions.

(a) ~~It shall be unlawful for any person to file a false statement under Subsection (4)(b).~~

(b) ~~It shall be unlawful for any person to fail to comply with the applicable lead customer-side water service line replacement requirements as set forth in Subsection (54).~~

(e**b**) It shall be unlawful for any person to violate any other provision of this ordinance.

(408) Penalties.

(a) Any person who violates any provision of this ordinance may be subject to a forfeiture of no less than fifty dollars (\$50) and no more than one thousand dollars (\$1,000).

(b) Each day a violation continues may be considered a separate offense.

~~(11) Severability. If any subsection or portion of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that subsection or portion shall be deemed severable and shall not affect the validity of the remaining portions of the ordinance.~~

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Lead water service line replacement.	13.18	<u>\$100, 1st</u> <u>\$250, 2nd</u> <u>\$500, 3rd &amp; sub."</u>

3. This ordinance shall become effective on November 1, 2016.