

City of Cincinnati

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An Ordinance No. 185

- 2017

MODIFYING the provisions of Chapter 401, “Water Works,” of Title IV, “Public Utilities,” of the Cincinnati Municipal Code by **ORDAINING** new Sections 401-2-D1, “Department,” 401-2-L, “Lead Service Line,” and 401-2-L1, “Lead-Free,” 401-2-R, “Rules and Regulations,” 401-2-S1, “Service Branch,” 401-2-S2, “Service Connection,” and 401-2-S3, “Service Line,” of Division A, “General”; by **AMENDING** Section 401-39, “Maintenance of Service Branch by Property Owner,” of Division C, “Service Branches”; by **ORDAINING** new Sections 401-127, “Legislative Finding Related to Lead Service Lines,” 401-128, “Lead Service Lines Prohibited,” 401-129, “Lead Service Line Replacement Responsibilities of Owner and Department,” 401-130, “Repair of Private Lead Service Lines,” 401-131, “Disturbance of Private Lead Service Lines,” 401-132, “Authorizing Lead Service Line Replacement Program,” 401-133, “Procedure for Requiring Private Lead Service Line Replacement,” 401-134, “Inspection and Certification of Lead Service Line Replacement,” and 401-135, “Assessment to Recover Cost of Lead Service Line Replacement,” to be grouped together under new Division M, “Lead Service Line Replacement Program”; and by **AMENDING** the title of Division M, “Penalties”; and further **MODIFYING** Chapter 871, “Landlord-Tenant Relationships,” of Title VIII, “Business Regulations,” of the Cincinnati Municipal Code by **ORDAINING** new Section 871-12, “Lead Service Line Notification to Tenant,” in order to establish that lead service lines constitute a health and safety hazard to the general public and to empower Greater Cincinnati Water Works to replace lead service lines throughout the City of Cincinnati.

WHEREAS, high levels of lead in water create serious health risks to residents of the City, particularly young children, and using lead service lines between public water mains and properties increases the risk that the lead content of drinking water to the properties served will increase to a dangerous level; and

WHEREAS, the Ohio EPA and federal regulators have recently implemented more stringent requirements regarding lead in water, and are contemplating further tightening of restrictions; and

WHEREAS, as a part of its regular capital program, Greater Cincinnati Water Works (“GCWW”) is in the process of replacing the portion of the lead service lines, located within the public right of way; and

WHEREAS, Council must provide authority to GCWW to require property owners to replace the portion of the lead service lines located on private property, because without this authority GCWW will not be able to cure the potential lead service line health issues because private lead services lines will remain connected to private properties; and

WHEREAS, Council previously passed Ordinance 326-2016 on October 12, 2016, which authorized the City Manager to proceed with all necessary and appropriate steps to fully fund and implement a program: (1) to replace all public and private lead service lines in the City of Cincinnati within fifteen years; (2) to allow property assessment for GCWW to recover the cost of private lead service line replacement, enabling GCWW to efficiently replace private and public lead service lines simultaneously and enabling property owners to spread the cost of replacing their lead service lines over multiple years; and (3) to assist low-income property owners with the costs of private lead service line replacement through development of a customer assistance program; and

WHEREAS, Council now desires to prohibit lead service lines; effective immediately, with enforcement occurring following GCWW notice to property owners of at least thirty days requiring replacement of the portion of the lead service line on private property; and

WHEREAS, Council wishes to establish standards and inspection procedures to ensure that replacement of lead service lines meets health, safety, and construction standards for property owners who prefer to cause their portion of the lead service line to be replaced themselves instead of having GCWW accomplish the work; and

WHEREAS, in the case where a property owner chooses not to arrange for a GCWW-certified plumber to replace the private lead service line, Council further wishes to give GCWW the authority, as part of its multi-year capital program, to replace lead service lines completely, from the water main to the water meter, or if necessary to a point inside the structure or building on the property, so as to ensure that the lead service line is completely replaced; and

WHEREAS, in order to ensure recovery of the costs of private lead service line replacements performed by GCWW, Council desires to authorize a process for assessment over multiple years of any such unpaid costs to the real property served by the replaced service line; and

WHEREAS, it is also appropriate to require property owners to replace lead service lines in certain circumstances, for example, when the private portion of a lead service line is leaking or in need of repair or when an owner performs work that disturbs a lead service line, in which case owners shall be required to replace the lead service line as specified by GCWW's rules and regulations; and

WHEREAS, the City Administration will present Council with a customer assistance program for low-income property owners for Council's information, consideration, or approval, separate from this ordinance; and

WHEREAS, Council specifically authorizes GCWW to prioritize replacement of lead service lines at certain properties where there is a higher risk of children drinking water that has passed through lead pipes, including schools, child care providers, restaurants, and other public places; and

WHEREAS, Council also wishes to ensure that landlords in the City inform tenants if a property to be leased is serviced by a lead line, so that tenants can make an informed decision as to whether to assume the potential health risk of living at the property; and

WHEREAS, Council finds that instituting a program to authorize and empower GCWW to replace lead service lines is in the best interest of the public health, safety, morals, and general welfare; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Sections 401-2-D1, "Department," 401-2-L, "Lead Service Line," 401-2-L1, "Lead-Free," 401-2-R, "Rules and Regulations," 401-2-S1, "Service Branch," 401-2-S2, "Service Connection," and 401-2-S3, "Service Line," of Chapter 401, "Water Works," Division A, "General," of Title IV, "Public Utilities," of the Cincinnati Municipal Code are hereby ordained to read as follows:

Sec. 401-2-D1. - Department.

"Department" shall mean the Greater Cincinnati Water Works.

Sec. 401-2-L. - Lead Service Line.

A "Lead Service Line" means a Service Line in which the wetted surfaces of the pipes are not Lead-Free.

Sec. 401-2-L1. - Lead-Free.

"Lead-Free" shall have the same meaning as defined in Ohio Revised Code § 6109.10, which currently defines lead-free as being made of not more than a weighted average of twenty-five-hundredths percent lead.

Sec. 401-2-R. - Rules and Regulations.

"Rules and Regulations" shall mean the rules and regulations promulgated by the Director with the approval of the City Manager for the purpose of implementing Chapter 401 of the Cincinnati Municipal Code, as well as the requirements in the Department's Standard Drawings.

Sec. 401-2-S1. - Service Branch.

"Service Branch" shall mean the pipe from the Service Connection to the water meter.

Sec. 401-2-S2. - Service Connection.

“Service Connection” shall mean the location and connecting equipment where a Service Branch is physically connected to a water main.

Sec. 401-2-S3. - Service Line.

“Service Line” shall have the same meaning as “Service Branch” as defined in this chapter, except when the water meter is outside of the building or structure being served by the Service Branch, in which case the service line shall be defined to also include the pipe from the water meter to the first shutoff valve within the building or structure.

Section 2. That Section 401-39, “Maintenance of Service Branch by Property Owner,” of Chapter 401, “Water Works,” Division C, “Service Branches,” of Title IV, “Public Utilities,” of the Cincinnati Municipal Code is hereby modified to read as follows:

Sec. 401-39. Maintenance of Service Branch by Property Owner.

That the portion of a water branch from points described in (a), (b), and (c) of Section 401-38 into the premises served, shall be maintained in proper condition by the owner. Failure to repair a leak or leaks in the time allotted on notice shall be sufficient cause to justify the department in discontinuing the service. When service has been discontinued for failure to repair leaks, it will not be restored until the department has been notified and is satisfied, after inspection, that repairs have been properly completed. In the case of a Lead Service Line as defined in this chapter, the owner shall comply with the requirements of 401-130 and shall temporarily repair and then permanently replace leaking or damaged Lead Service Lines.

Section 3. That existing Section 401-39, “Maintenance of Service Branch by Property Owner,” of Chapter 401, “Water Works,” of the Cincinnati Municipal Code is hereby repealed.

Section 4. That Sections 401-127, “Legislative Finding Related to Lead Service Lines,” 401-128, “Lead Service Lines Prohibited,” 401-129, “Lead Service Line Replacement Responsibilities of Owner and Department,” 401-130, “Repair of Private Lead Service Lines,” 401-131, “Disturbance of Private Lead Service Lines,” 401-132, “Authorizing Lead Service Line Replacement Program,” 401-133, “Procedure for Requiring Private Lead Service Line Replacement,” 401-134, “Inspection and Certification of Lead Service Line Replacement,” and

401-135, "Assessment to Recover Cost of Lead Service Line Replacement," which shall be grouped together under new Division M, "Lead Service Line Replacement Program," of Chapter 401, "Water Works," of Title IV, "Public Utilities," of the Cincinnati Municipal Code, are hereby ordained to read as follows:

DIVISION M. - LEAD SERVICE LINE REPLACEMENT PROGRAM

Sec. 401-127. - Legislative Findings Related to Lead Service Lines.

- (a) City Council of the City of Cincinnati hereby determines that the public health and safety is endangered by the ingestion of drinking water that contains lead.
- (b) The use of a Lead Service Line to deliver drinking water from a water main to a residence, business, school, or other building or structure, increases the risk of lead content in the water.
- (c) The continued use of Lead Service Lines for an indefinite period of time, without a systematic plan for replacing those lead lines, should therefore be considered a threat to the health and safety of the residents, occupants, and visitors to the City.
- (d) Repair or replacement of only part of a Lead Service Line, leaving some but not all of the Lead Service Line in service, poses a higher risk of releasing lead into the drinking water on the property being served than when the whole existing Lead Service Line is left undisturbed, and this risk should be reduced to the extent practically possible.
- (e) City Council finds that the complete replacement of Lead Service Lines is essential to protect the public safety and health. Council has determined to adopt a sanitary regulation, as authorized under Ohio Revised Code § 729.06, to eliminate the public health risk caused by the use of Lead Service Lines.
- (f) Council also finds that the public, particularly tenants, should have the right to know before signing a lease whether the residence, business, or other location which the tenant intends to rent is served by a Lead Service Line.

Sec. 401-128. - Lead Service Lines Prohibited.

- (a) The Director shall not approve the installation of any new service line or the replacement of any existing service line with pipe that is not Lead-Free.
- (b) Existing Lead Service Lines shall be prohibited as of the effective date of this ordinance.

- (c) There shall be a grace period for owners of property containing Lead Service Lines before any enforcement action is taken. The Department will not take action until the owner is provided written notice of the need to replace the Lead Service Line with a minimum of thirty days to take corrective action.
- (d) All Lead Service Lines shall be replaced with Lead-Free pipe that complies with the Rules and Regulations.

Sec. 401-129. - Lead Service Line Replacement Responsibilities of Owner and Department.

- (a) The Department shall be responsible for replacement of the portion of a Lead Service Line between the service connection and the private property line, which shall be referred to herein as the “public” portion of a Lead Service Line.
- (b) The property owner shall be responsible for the cost of replacement of the portion of a Lead Service Line on the private property, which shall be referred to herein as the “private” portion of a Lead Service Line.
- (c) The division of responsibilities between the Department and a property owner in this section shall apply only to replacement of Lead Service Lines. Repair and replacement of service branches in all other circumstances shall be governed by Sections 401-38 and 401-39 of this chapter.

Sec. 401-130. - Repair of Private Lead Service Lines.

- (a) An owner who has a leaking private Lead Service Line shall:
 - (1) Cause a certified person to temporarily repair the leaking private Lead Service Line within the time for repair provided in the notice from the Department; and
 - (2) Cause the private Lead Service Line to be replaced with a new Lead-Free Service Line or allow the Department to replace the private Lead Service Line, in accordance with this chapter, within the time for replacement provided in the notice from the Department.
- (b) All materials and work shall be in compliance with this chapter and with any applicable Rules and Regulations of the Department or other applicable requirements in the Cincinnati Municipal Code.

Sec. 401-131. - Disturbance of Private Lead Service Lines.

- (a) When an owner causes disturbance to the private Lead Service Line or the meter setting, including, without limitation, through renovation, demolition and rebuild, or other construction work, the owner shall:

- (1) Cause a certified person to replace the private Lead Service Line with a new Lead-Free Service Line within the time provided in a written notice from the Department; and
 - (2) Contact the Department so that: (i) replacement of the private Lead Service Line can be inspected to ensure that it conforms to the Department's Rules and Regulations, and (ii) if the public Service Line is lead, the Department may coordinate replacement of the public Lead Service Line in conjunction with the owner's replacement of the private Lead Service Line.
- (b) All materials and work shall be in compliance with this chapter and with any applicable Rules and Regulations of the Department or other applicable requirements in the Cincinnati Municipal Code.

Sec. 401-132. - Authorizing Lead Service Line Replacement Program.

- (a) The Department is authorized to expend funds for the costs of replacing Lead Service Lines through the systematic program authorized under this chapter.
- (b) As a part of the Lead Service Line replacement program, the Department is authorized to replace private Lead Service Lines in the City in order to reduce the risk of releasing lead into drinking water.
- (c) When the Department replaces a private Lead Service Line as part of the Lead Service Line replacement program, the property owner's cost responsibility will be communicated to the property owner prior to the work and will be made clear in the Department's contract for the work.
- (d) The replacement program may include replacement of Lead Service Lines in conjunction with water main replacement, targeted neighborhood replacement of Lead Service Lines without water main replacement, or replacement of individual Lead Service Lines.
- (e) The Department shall have discretion to prioritize replacement of Lead Service Lines based on public health risk and economic considerations, including the ability to prioritize replacement of Lead Service Lines that provide water to any school, child care provider, or other business or activity frequented by children.

Sec. 401-133. - Procedure for Requiring Private Lead Service Line Replacement.

- (a) When the Department intends to replace a Lead Service Line as part of the Lead Service Line replacement program, the Department shall serve written notice upon the owner of the parcel(s) of real property in which the Lead Service Line is situated advising that the private Lead Service Lines must be replaced.

- (1) The written notice shall be served in the same manner as a service of summons in civil cases: by certified mail addressed to the owner's last known address or tax mailing address, or as otherwise provided in Ohio Revised Code § 729.06.
 - (2) The notice shall provide the owner no less than thirty days from the date of service to cause the private Lead Service Line to be replaced by a certified person as defined in Section 401-127 of this chapter.
 - (3) The notice shall state that if the private Lead Service Line is not replaced within the allotted time in the notice, the Department may: (i) complete the work; (ii) bill the costs of the work to the owner, which shall include construction costs plus an administrative charge of 5% of the construction costs; and (iii) certify any amounts unpaid as assessments against the property as provided in this chapter.
- (b) Upon receiving notice as specified in this section, an owner may request verification by the Department of whether a service line is in fact a Lead Service Line and/or may request verification of the cost calculation of the Lead Service Line. The notice shall include a website and phone number by which an owner may contact the Department to verify either of these issues of fact.
- (c) If the owner chooses to replace the private portion of the Lead Service Line prior to the allotted time in the Department's notice, the owner shall:
- (1) Do so at his or her own expense; and
 - (2) Ensure that the replacement is performed by a certified person as defined in Section 401-41, "Only Certified Persons to Install Service Branch from Property Line to and Including Meter," and in accordance with Section 401-134, "Inspection and Certification of Lead Service Line Replacement," and all other applicable requirements of this chapter and the Department's Rules and Regulations.
- (d) If the private Lead Service Line replacement has not been completed by the end of the allotted time indicated in the Department's notice as defined in this section, the Department is authorized to complete the work.

Sec. 401-134. - Inspection and Certification of Lead Service Line Replacement.

- (a) When the property owner causes a Lead Service Line to be replaced, the owner and the certified person performing the replacement shall be responsible to ensure each of the following:

- (1) The work is performed by a certified person as defined in Section 401-41, "Only Certified Persons to Install Service Branch from Property Line to and Including Meter";
 - (2) The replacement service line replaces the entire private portion of the prior service line with Lead-Free pipe;
 - (3) The Department is informed of timing of the work and provided access for inspection of the replacement service line; and
 - (4) The work and the replacement service line comply with all of the Department's technical and functional specifications and requirements in the Rules and Regulations.
- (b) The new service line shall not be used and water service shall not be restored until a departmental inspector inspects and approves it.

Sec. 401-135. - Assessment to Recover Cost of Lead Service Line Replacement.

- (a) When the Department has incurred costs for replacement of the private Lead Service Line, the Department shall send a final bill to the owner of the property served by the replaced service line.
- (b) The bill shall clearly state the following:
- (1) The amount owed to the Department for the cost of replacing the private Lead Service Line, which shall include construction costs plus an administrative charge of 5% of the construction costs;
 - (2) The owner's options to pay the bill or have any unpaid amount assessed to the real property tax bill semi-annually over either five or ten years;
 - (3) The applicable interest rate if the costs are assessed to the real property tax bill;
 - (4) Department contact information for payment and verification of amount; and
 - (5) Procedures for appealing the amount of the bill.
- (c) Prior to the date indicated on the bill, the owner may: (i) pay the amount owed directly to the Department, in part or in full, and/or (ii) notify the Department if the owner desires unpaid amounts to be assessed to the property over five years or ten years.

- (d) Any unpaid amount shall be assessed against the property. If the owner does not select the number of years of the assessment term on the form provided by the Department, the assessment shall occur over ten years.
- (e) An interest rate shall be applicable to the amount to be assessed to the property over the term of the assessment. After the first two years of the program, the interest rate shall be set at the default rate of recovery of the private Lead Service Line assessments from the preceding year. In the first two years, the interest rate shall be set at 2%, an estimate of the rate of recovery of this type of assessment.
- (f) If the owner disputes the amount owed, he or she should contact the Department no later than twenty-one days after the date of the bill specified in paragraph (b) of this section to verify that the amount is correct. The Department shall respond with a written decision to such a request for verification of the amount owed.
- (g) If the owner does not agree with the Department's decision specified in paragraph (f), the owner has the right to appeal the amount demanded before a neutral decision-maker at the Office of Administrative Hearings ("OAH"). The owner must file such appeal by filing a written notice of appeal with OAH within ten days of receiving the Department's decision as specified in paragraph (f) of this section.
- (h) Following determination of the final amount owed, either after the owner does not timely appeal the billed amount or after OAH has issued a decision on the owner's appeal, the Department shall certify any unpaid balance of such amount in an affidavit to the City Treasurer. The affidavit shall include the following information:
- (1) the unpaid balance;
 - (2) the interest rate;
 - (3) the tax years over which the amount shall be collected;
 - (4) the amounts to be assessed each in semi-annual assessment;
 - (5) the date(s) the costs were incurred;
 - (6) the address and parcel number(s) of the property served by the replaced service line; and
 - (7) the name of the property owner of record at the time the costs were incurred.
- (i) The City Manager shall thereafter submit an ordinance for Council approval with the amount(s) owed by owners to the Department for the cost of Lead Service Line replacement, and Council shall approve the assessment of such costs against the relevant properties in accordance with the Department's affidavit.

(j) After approval of the assessment by ordinance, the Clerk of Council shall certify the assessment to the Hamilton County Auditor stating the amounts, applicable interest rate, and number of years of payment to be placed as a charge on the tax list and duplicate of the relevant property. The costs shall be a lien upon such real estate from and after the date the costs were incurred and collected as other taxes and returned to the City of Cincinnati in accordance with Ohio Revised Code §§ 729.06, 727.30, 727.301, 727.33, and 727.331.

(k) All proceeds from assessments pursuant to this section and the Lead Service Line replacement program under this chapter shall be placed into the appropriate departmental account for the private Lead Service Line replacement program to repay the cost of the private Lead Service Line replacements.

Section 5. That the title of Division M, "Penalties," of Chapter 401, "Water Works," of the Cincinnati Municipal Code is hereby modified to read as follows:

DIVISION ~~MN.~~ - PENALTIES

Section 6. That Section 871-12, "Lead Service Line Notification to Tenant," of Chapter 871, "Landlord-Tenant Relationships," of Title VIII, "Business Regulations," of the Cincinnati Municipal Code is hereby ordained to read as follows:

Sec. 871-12. - Lead Service Line Notification to Tenant.

Landlords shall inform any prospective tenant in writing prior to the prospective tenant's execution of a lease if the rental unit is serviced by a Lead Service Line. Records of service line material composition may be accessed at the Greater Cincinnati Water Works webpage at <http://www.cincinnati-oh.gov/water/lead-information/>.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: June 28, 2017

Attest: [Signature]
Clerk

[Signature]
John Cranley, Mayor

New language underscored. Deleted language indicated by strikethrough.

I HEREBY CERTIFY THAT ORDINANCE No. 185-2017
WAS PUBLISHED IN THE CITY BULLETIN
11 IN ACCORDANCE WITH THE CHARTER ON 7-11-2017

[Signature]
CLERK OF COUNCIL

June 28