



Legislation Details (With Text)

**File #:** 2017-1613      **Version:** 3

**Type:** Resolution      **Status:** Passed Finally

**File created:** 6/9/2017      **In control:** Committee on Intergovernmental Affairs

**On agenda:** 7/19/2017      **Final action:** 7/25/2017

**Enactment date:** 7/25/2017      **Enactment #:** 444

**Effective date:** 7/27/2017

**Title:** Resolution authorizing the Mayor and the Director of the Department of Public Safety to enter into voluntary agreements with private property owners for the purpose of removing and replacing privately-owned lead water service lines when the Pittsburgh Water and Sewer Authority is replacing the publicly-owned lead water service line affecting such private lines and further authorizing the Mayor and the Director of Public Safety to enter into a Cooperation Agreement or Agreements with the Pittsburgh Water and Sewer Authority to cooperate in the removal of such privately-owned lines.

**Sponsors:**

**Indexes:** AGREEMENTS, COOPERATION AGREEMENT/S

**Code sections:**

**Attachments:** 1. Summary 2017-1613

| Date      | Ver. | Action By          | Action                    | Result |
|-----------|------|--------------------|---------------------------|--------|
| 7/27/2017 | 3    | Mayor              | Signed by the Mayor       |        |
| 7/25/2017 | 3    | City Council       | Passed Finally            | Pass   |
| 7/25/2017 | 3    | City Council       | AMENDED BY SUBSTITUTE     | Pass   |
| 7/19/2017 | 2    | Standing Committee | AFFIRMATIVELY RECOMMENDED | Pass   |
| 7/19/2017 | 2    | Standing Committee | AMENDED BY SUBSTITUTE     | Pass   |
| 7/6/2017  | 1    | Standing Committee | Held in Committee         | Pass   |
| 6/28/2017 | 1    | Standing Committee | Held in Committee         | Pass   |
| 6/21/2017 | 1    | Standing Committee | Held in Committee         | Pass   |
| 6/13/2017 | 1    | City Council       | Read and referred         |        |

Resolution authorizing the Mayor and the Director of the Department of Public Safety to enter into voluntary agreements with private property owners for the purpose of removing and replacing privately-owned lead water service lines when the Pittsburgh Water and Sewer Authority is replacing the publicly-owned lead water service line affecting such private lines and further authorizing the Mayor and the Director of Public Safety to enter into a Cooperation Agreement or Agreements with the Pittsburgh Water and Sewer Authority to cooperate in the removal of such privately-owned lines.

WHEREAS, in 1991 the United States Environmental Protection Agency promulgated the Lead and Copper Rule (“LCR”) in order to control the amount of lead and copper present in drinking water; and

WHEREAS, pursuant to applicable federal and state regulations implementing the LCR, including 40 CFR 141.84(b)(1) and 25 Pa. Code § 109.1107(d)(2), the Pittsburgh Water and Sewer Authority (“PWSA”) is currently required to replace annually at least 7% of the initial number of lead service lines in its distribution

system; and

WHEREAS, federal regulations also clarify the responsibility of a water system to replace its lead service lines pursuant to the LCR:

A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line; and

40 CFR 141.84(c); and

WHEREAS, federal regulations pertaining to the LCR also state that neither the City nor PWSA is required to pay to remove and replace a private sewer line:

A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately-owned portion where the owner chooses not to pay the cost of replacing the privately-owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law.

40 CFR 141.84(c); and

WHEREAS, when a property owner chooses not to replace its portion of the line, the water system's replacement of only its portion of the line is called a "partial lead service line replacement;" and

WHEREAS, notwithstanding the LCR compliance requirements, the City and PWSA recognize that it is an extreme financial hardship for many private property owners of residential property to pay to remove and replace their portion of the lead water service line, potentially leading to numerous partial lead service line replacements affecting City residents; and

WHEREAS, in addition to its broad police powers as a home rule municipality under the Home Rule Charter and Optional Plans Law, the Pennsylvania Legislature explicitly vests the City of Pittsburgh with the power to "make regulations to secure the general health of the inhabitants, and to remove and prevent nuisances," 53 P.S. §23145; and

WHEREAS, with respect to potable water in particular, the City's Home Rule Charter preamble announces that "[a] responsible city is one which expects *aggressive action* from its officials toward the achievement of dignified housing, . . . pure air and *water . . . health, safety*, recreation and culture and the other conditions conducive to human growth." Home Rule Charter Preamble §222, emphasis added; and

WHEREAS, the City of Pittsburgh Bill of Rights, Home Rule Charter §104(a), further acknowledges that residents have a fundamental "Right to Water;" and

WHEREAS, because of the potentially significant risks to public health and safety posed by disturbance of lead water service lines in conjunction with PWSA's requirement to comply with the LCR, the City has a strong public interest in coordinating the safe and efficient removal of privately-owned lead water service lines affected by PWSA's removal of the required number of publicly-owned water service line and wishes to implement a Private Lead Line Replacement Program (the "Program") to assist with these removals; and

WHEREAS, through the City's cooperation with PWSA to act as its agent to implement the Program, these private line removal and

replacements would be performed by PWSA's contractors at no cost or reduced cost to the homeowner, subject to compliance with all Program requirements.

**Be it resolved by the Council of the City of Pittsburgh as follows:**

**Section 1.** The Mayor and the Director of the Department of Public Safety, on behalf of the City of Pittsburgh, are hereby authorized to solicit and execute temporary construction easement agreements or other appropriate agreements with private property owners of residential property who voluntarily grant the City of Pittsburgh a temporary construction easement across their private property for the purpose of allowing PWSA contractors to remove and replace privately-owned lead water service lines at no cost or reduced cost to the private property owner as determined by program regulations when the Pittsburgh Water and Sewer Authority is replacing adjoining publicly-owned lead water service lines in order to comply with the LCR (including 40 CFR 141.84(b)(1) and 25 Pa. Code § 109.1107(d)(2), which require annual replacement of at least 7% of the initial number of lead service lines in its distribution system). Said agreements shall be in the form approved by the City Solicitor and shall contain such terms and conditions for the protection of the City of Pittsburgh as the Solicitor may require.

*Section 2.* Subject to the requirements of this Resolution, the Mayor and the Director of the Department of Public Safety, on behalf of the City of Pittsburgh, are hereby further authorized to enter into a Cooperation Agreement or Agreements with PWSA to document the parties' responsibilities relating to the removal of privately-owned lead water service lines when PWSA is replacing adjoining publicly-owned lead water service lines in compliance with the LCR. The Cooperation Agreement or Agreements should address provisions relating to PWSA funding for removal and replacement of the applicable private lead water service lines and the responsibilities of its contractors during the private line removal and replacement process and should also address the following issues:

- a. PWSA's shall continue it's suspension of partial lead service line replacements within the City of Pittsburgh, except 1) in the event of a leak or emergency, 2) where a property owner does not consent to removal and replacement of a privately-owned lead service line or 3) partial replacement is ordered by the U.S. Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, or a court of competent jurisdiction;
- b. PWSA shall seek a definitive Consent Order and Agreement with the Pennsylvania Department of Environmental Protection no later than September 15, 2017, regarding the removal of lead service lines in the City of Pittsburgh;
- c. PWSA shall be required to provide at least 45 days advance notice to property owners and residents before any planned removal or replacement of public lead service lines in the City of Pittsburgh;
- d. PWSA shall be required to provide testing materials within 72 hours following the removal or replacement of a public lead service line that results in a partial lead service line replacement.
- e. PWSA shall file with the Department of Public Safety, on or before July 31, 2017, all relevant and material details of the PWSA lead service line testing program in the City of Pittsburgh, and further, in accordance with applicable law, PWSA shall be required to publicly disclose the results of such LCR compliance testing program (limited to an anonymized level) on its website, promptly after collating the data and completion of quality assurance/quality control;

- f. PWSA shall file with the Department of Public Safety, on or before July 31, 2017, all relevant and material details of the PWSA curb box inspection program in the City of Pittsburgh, and further, in accordance with applicable law, PWSA shall be required to publicly disclose the results of such curb box inspections and identify locations of discovered lead service lines on its website, promptly after collating the data and completion of quality assurance/quality control;
- g. PWSA shall file with the Department of Public Safety, on or before July 31, 2017, all relevant and material details of the PWSA program to digitize its paper records regarding locations of lead service lines in the City of Pittsburgh, and further PWSA shall be required to publicly disclose the results of such records and identify locations of discovered lead service lines on its website, promptly after collating the data and completion of quality assurance/quality control;
- h. PWSA shall fully cooperate with the Department of Public Safety and the Allegheny County Health Department to fully inform residents of the City of Pittsburgh of the necessary disclosures regarding the Program, to maximize protection or public safety for the residents of the City of Pittsburgh.

*Section 3.* Attached hereto as Exhibit A are preliminary regulations for the City's Private Lead Line Replacement Program (the "Program").

- a. The City's Director of the Department of Public Safety is hereby required to promulgate additional regulations on or before August 31, 2017 to implement the Program in cooperation with PWSA, which implementation shall begin after the parties enter into the Cooperation Agreement or Agreements authorized in Section 2 of this Resolution.
- b. The Program regulations shall include a requirement that any private property owner benefitting from the Program must agree to indemnify, hold harmless, and defend the City and PWSA from any and all damages or claims for damages, whether to property or person, arising from the construction, installation, or maintenance of the replaced lines as may be more fully set forth in the required agreement between the City and the private property owner.
- c. The Program shall be limited to removal and replacement of lead service lines for private property owners of residential property (as defined in the Program regulations.)

*Section 4.* If a court of competent jurisdiction determines that any provision of this Resolution is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Resolution and all other provisions shall remain in full force and effect.

*Section 5.* This Resolution and the corresponding Program authorized hereunder will continue for one (1) year from the date of enactment, when it will terminate and go out of existence unless extended by City Council. In the event that PWSA is no longer bound by the LCR to conduct annual replacement of at least 7% of the initial number of lead service lines in its distribution system, the Director of Public Safety is authorized to amend Program Regulations and/or Cooperation Agreement or Agreements authorized in this resolution.

**EXHIBIT A:**

**PRIVATE LEAD LINE REPLACEMENT PROGRAM REGULATIONS**

**I. DEFINITIONS:**

For purposes of this Program, the following definitions apply:

LCR - The Lead and Copper Rules promulgated by the U.S. Environmental Protection Agency and the Pennsylvania Department of Environmental Protection.

PWSA LCR Project- PWSA’s removal and replacement of a publicly-owned lead water service line in accordance with LCR requirements.

PLRP-a private lead water service line removal and replacement project covered by this Program.

PWSA- Pittsburgh Water and Sewer Authority.

Program - the City of Pittsburgh’s Private Lead Line Replacement Program implemented in cooperation with PWSA.

Property Owner- the owner or owners or authorized representatives of private Residential Property located in the City of Pittsburgh.

Residential Property - A building or structure and related property located in the City of Pittsburgh that is owned for use as a single or multi-family dwelling or is in the process of being constructed or adapted for use as a dwelling

**II. ELIGIBILITY:** This Program is available to Property Owners of Residential Property whose private lead water service lines will be affected by a PWSA LCR Project as long as the Program remains in effect.

**III. WHAT IS COVERED:** If eligible, a Property Owner’s private lead water service line will be removed

and replaced from the curb stop to the meter and will include restoration of concrete paving disturbed during the line removal and replacement as well as grass seeding for disturbed grass areas (collectively the “PLRP”). The PLRP work will be performed at no cost or reduced cost to the Property Owner, as determined by program regulations. However, all additional costs must be covered by the Property Owner as further set forth in Section VI.

#### **IV. CITY’S RESPONSIBILITIES:**

- a. Draft and enter into a signed temporary construction easement agreement (“TCEA”) with the Property Owner, who must be 18 years of age or older.
- b. Enter into a Cooperation Agreement or Agreements with PWSA to set forth responsibilities of PWSA and its contractors in conducting private lead water service line removal and replacement work in compliance with this Program.

#### **V. PWSA’S RESPONSIBILITIES:**

- a. PWSA will provide written notice to the City and potentially affected Property Owners and residents if it will be performing a PWSA LCR Project on a particular block with at least 45 days’ advance notice.
- b. For any Property Owner with a signed TCEA with the City, PWSA will fund, subject to available external funding, and conduct the PLRP work to remove and replace the lead service line from the water main to the water meter or the connection of the service line to interior plumbing at no cost or reduced cost to the Property Owner, as determined by the program regulations.
- c. PWSA’s contractors/subcontractors will be responsible for obtaining all necessary permits.
- d. PWSA will ensure that the contractor/subcontractors and all workers are properly insured.
- e. PWSA’s contractors/subcontractors will be responsible for providing all piping, fittings, miscellaneous material, equipment, tools, and labor to install the new water service line from the water main to the water meter. All repair debris will be removed from the work area upon completion of work.
- f. PWSA’s contractors/subcontractors will employ all reasonable methods and precautions in performing the water service line removal and replacement so as to avoid or minimize disturbance to both the interior as well as the exterior of the private property.
- g. PWSA’s contractors/subcontractors will examine the areas of the affected property that will be disturbed by construction and will advise as to the need for related work that may need to be done and paid for by the Property Owner separate from the PLRP work (both prior to and after the water line removal and replacement.)
- h. PWSA’s contractors/subcontractors will provide restoration of concrete paving disturbed during the water service removal and replacement as well as grass seeding for disturbed grass areas.
- i. PWSA or its contractors/subcontractors may take interior and exterior photos before and after the Project.
- j. If a Property Owner does not consent to a private lead service line removal and replacement, PWSA shall be required to provide lead testing resources within 72 hours following the removal

or replacement of a public lead service line that results in a partial lead service line replacement affecting a private lead service line.

## **VI. PROPERTY OWNERS RESPONSIBILITIES:**

Property Owners who agree to participate in the Program shall comply with the following;

- a. After receiving notice from PWSA that it will be performing a PWSA LCR Project on his/her block, the Property Owner is responsible to confirm that his/her property has a lead service line eligible for removal and replacement under the Program (if PWSA's records do not already confirm this.) To do so, a Property Owner must provide documentation to confirm a lead service pipe on the private property (i.e. photos, licensed plumber's or certified home inspection report, or other documents submitted by a qualified professional).
- b. The Property Owner must sign the required TCEA with the City, which shall include language requiring him/her to indemnify, hold harmless, and defend the City and PWSA from any and all damages or claims for damages, whether to property or person, arising from the construction, installation, or maintenance of the replaced line.
- c. The Property Owner must agree that during the removal and installation of the replacement water service line there will be an interruption of water service to the property.
- d. The Property Owner or a designee, at least 18 years in age, must be at the property on the date and time scheduled for PWSA's contractor(s) to perform the PLRP work.
- e. The Property Owner must provide reasonable, safe, lighted, and unencumbered access to the water meter and to the water service piping inside the property, including access to the wall or floor area where the water line enters the building, including moving any items blocking access such as boxes, furniture, washers, dryers, etc.
- f. If the meter and/or water service is located behind a finished wall, or under a finished floor such that gaining access will disrupt the room finish, the Property Owner is responsible for removing the obstruction and establishing the necessary access to perform the PLRP work. Additionally, restoration of the disturbed area upon completion of the PLRP work is wholly the Property Owner's responsibility.
- g. The Property Owner is responsible for the restoration of exterior landscaping, hardscaping, or structures on the property that impede the removal and replacement of the water service or will be disturbed as part of the service line removal and replacement. This includes items such as steps, patios, retaining walls, specialty or tinted concrete, stone or brick walls or paving, structures of any type, trees, shrubs, bushes, and flowers. Replacement and/or restoration of any such exterior landscaping, hardscaping, or structures is wholly the responsibility of the Property Owner. (Per Section V(g) herein, PWSA's contractors/subcontractors will discuss related work that will need to be performed by the Property Owner to enable it to carry out the PLRP work.)
- h. After completion of the PLRP work, the Property Owner is responsible for all maintenance of the water service line from the curb stop to the water meter.
- i. The Property Owner is responsible for performing the required flushing of the property's plumbing system as described in PWSA Instructions after completion of the PLRP work.

Additionally, after the replacement of the private line, the Property Owner must be provided with the testing equipment in compliance with applicable LCR requirements.

- j. The Property Owner is responsible for any plumbing modifications, beyond replacement of the service line, necessary for compliance with Allegheny County Health Department Regulations, such as installation of backflow prevention and thermal expansion protection.