ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING [*or ADOPTING, if new*]CHAPTER *\_\_\_\_\_\_* OF THECODIFIED ORDINANCES OF THE CITY [*or VILLAGE*] OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, OHIO, IMPLEMENTING A LEAD SERVICE LINE REPLACEMENT PROGRAM.

WHEREAS, crises in Flint, Michigan, Sebring, Ohio, Chicago, Illinois, and other cities involving elevated levels of lead in drinking water have focused the attention of the public and federal and state regulators on the risks of lead exposure from lead service lines (“LSLs”);

WHEREAS, lead exposure, especially in young children and fetuses, is known to cause serious health effects, including lower IQ, hyperactivity, slow growth, behavioral issues, learning impairments, and anemia;

WHEREAS, utilizing LSLs between public water mains and properties increases the risk that the lead content of drinking water for the properties served will increase to a dangerous level;

WHEREAS, research from the American Academy of Pediatrics documents the risks of lead from many sources, including drinking water, with specific focus on the ramifications of partial LSL replacement, and the *Report of the Lead and Copper Rule Working Group to the National Drinking Water Advisory Council* strongly recommends full LSL replacements in lieu of partial replacements;

WHEREAS, LSLs pose a health and safety hazard to the general public;

WHEREAS, full LSL replacement (both public and private) in the City of \_\_\_\_\_\_\_ within fifteen (15) years is essential to protect public health, safety and welfare;

WHEREAS, the cost of private LSL replacement is an obstacle for many customers, preventing them from permanently eliminating this risk of exposure to lead;

WHEREAS, a real property assessment program would enable property owners to spread the cost of private LSL replacement over multiple years;

WHEREAS, a customer assistance program would ease the financial burden of the cost of private LSL replacement for qualifying low-income customers;

WHEREAS, implementation of a full LSL replacement program would greatly reduce the risk of lead exposure, allowing more children to grow up without the debilitating developmental, behavioral and neurological impacts of lead exposure;

WHEREAS, Council now desires to prohibit LSLs, effective immediately, with enforcement occurring following notice to property owners of at least thirty (30) days requiring replacement of the portion of the LSL on private property;

WHEREAS, Council wishes to establish standards and inspection procedures to ensure that replacement of LSLs meets health, safety, and construction standards for property owners who prefer to cause their portion of the LSL to be replaced themselves instead of through the City of \_\_\_\_\_\_\_ Water Department;

WHEREAS, if a property owner chooses not to arrange for a plumber certified by the Water Department to replace the private LSL, Council further wishes to authorize the Water Department, as part of its multi-year capital program, to replace LSLs completely, from the water main to the water meter, or if necessary to a point inside the structure or building on the property;

WHEREAS, in order to ensure recovery of the costs of private LSL replacements performed by the Water Department, 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;

WHEREAS, it is also appropriate to require property owners to replace LSLs in certain circumstances, such as when the private portion of an LSL is leaking or requires repair or when a property owner performs work that disturbs an LSL, in which case owners shall be required to replace the LSL as specified by the Water Department’s rules and regulations;

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

WHEREAS, Council authorizes the Water Department to prioritize replacement of LSLs at certain properties where there is a higher risk of children drinking water that has passed through lead pipes, including schools, child care centers, restaurants, and other public places;

WHEREAS, implementing a program to authorize the Water Department to replace LSLs is in the best interest of the public health, safety, morals, and general welfare; and

WHEREAS, the \_\_\_\_\_\_\_\_\_ Committee of \_\_\_\_\_\_\_\_\_\_ City Council, at its regular meeting on \_\_\_\_\_\_\_\_ \_\_, 2020, considered the matter of amending [*or adopting*] Chapter \_\_\_\_ of the Codified Ordinances of the City of \_\_\_\_\_\_\_\_\_\_\_, Ohio, implementing a lead service line replacement program, and voted that this matter be brought to the floor of Council.

NOW, THEREFORE, be it ordained by the Council of the City of \_\_\_\_\_\_\_\_, County of \_\_\_\_\_\_\_\_, and State of Ohio:

SECTION 1: That Chapter \_\_\_\_ of the \_\_\_\_\_\_\_\_\_ Codified Ordinances is amended [*or adopted*]to provide as follows:

CHAPTER \_\_\_\_\_\_\_\_. LEAD SERVICE LINE REPLACEMENT PROGRAM

**\_\_\_\_.01** **Applicability**

**\_\_\_\_.02 Definitions**

**\_\_\_\_.03 Legislative Findings Related to Lead Service Lines**

**\_\_\_\_.04 Lead Service Lines Prohibited**

**\_\_\_\_.05 Lead Service Line Replacement Responsibilities of Owner and Department**

**\_\_\_\_.06 Repair of Private Lead Service Lines**

**\_\_\_\_.07 Disturbance of Private Lead Service Lines**

**\_\_\_\_.08 Authorizing Lead Service Line Replacement Program**

**\_\_\_\_.09 Procedure for Requiring Private Lead Service Line Replacement**

**\_\_\_\_.10 Inspection and Certification of Lead Service Line Replacement**

**\_\_\_\_.11 Assessment to Recover Cost of Lead Service Line Replacement**

**\_\_\_\_.12 Penalties**

\_\_\_\_.01 Applicability

This chapter applies to property that receives water service from the City’s water utility.

\_\_\_\_.02 Definitions

1. “Department” means the City of \_\_\_\_\_\_\_ Water Department.
2. “Director” means the superintendent of water works for the City of \_\_\_\_\_\_\_.
3. “Lead Service Line” means a Service Line in which the wetted surfaces of the pipes are not Lead-Free.
4. “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.
5. “Rules and Regulations” shall mean the rules and regulations promulgated by the Director for purposes of implementing Chapter \_\_\_ of the \_\_\_\_\_\_\_ Municipal Code relating to the City’s water works, as well as the requirements in the Department’s standard drawings.
6. “Service Branch” means the pipe from the Service Connection to the water meter.
7. “Service Connection” means the location and connecting equipment where a Service Branch is physically connected to a water main.
8. “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.

\_\_\_\_.03 Legislative Findings Related to Lead Service Lines

(a)   City Council of the City of \_\_\_\_\_\_\_\_\_\_ 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.

**\_\_\_\_.04 Lead Service Lines Prohibited**

1. 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.
2. Existing Lead Service Lines shall be prohibited as of the effective date of this ordinance.
3. 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.
4. All Lead Service Lines shall be replaced with Lead-Free pipe that complies with the Rules and Regulations.

**\_\_\_\_.05 Lead Service Line Replacement Responsibilities of Owner and Department**

1. 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.
2. The property owner shall be responsible for the cost of replacement of the portion of a Lead Service Line on private property, which shall be referred to herein as the “private” portion of a Lead Service Line.
3. 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 \_\_\_\_\_\_\_ and \_\_\_\_\_\_\_ of this chapter.

**\_\_\_\_.06 Repair of Private Lead Service Lines**

1. An owner who has a leaking private Lead Service Line shall:
2. 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
3. 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.
4. 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 \_\_\_\_\_\_\_\_\_\_ Municipal Code.

**\_\_\_\_.07 Disturbance of Private Lead Service Lines**

1. 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:
2. 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
3. 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.
4. 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 \_\_\_\_\_\_\_\_\_\_ Municipal Code.

**\_\_\_\_.08 Authorizing Lead Service Line Replacement Program**

1. The Department is authorized to expend funds for the costs of replacing Lead Service Lines through the systematic program authorized under this chapter.
2. 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.
3. 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.
4. 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.
5. 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.

**\_\_\_\_.09 Procedure for Requiring Private Lead Service Line Replacement**

1. 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.
2. 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.
3. 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 \_\_\_\_ of this chapter.
4. 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 construction costs of the work to the owner; and (iii) certify any amounts unpaid as assessments against the property as provided in this chapter.
5. 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.
6. 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:
7. do so at his or her own expense; and
8. ensure that the replacement is performed by a certified person as defined in Section \_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and in accordance with Section \_\_\_\_.10, “Inspection and Certification of Lead Service Line Replacement,” and all other applicable requirements of this chapter and the Department’s Rules and Regulations.
9. 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.

**\_\_\_\_.10 Inspection and Certification of Lead Service Line Replacement**

1. 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:
2. The work is performed by a certified person as defined in Section \_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
3. The replacement service line replaces the entire private portion of the prior service line with Lead-Free pipe;
4. The Department is informed of the timing of the work and provided access for inspection of the replacement service line; and
5. 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.
6. The new service line shall not be used, and water service shall not be restored, until a departmental inspector inspects and approves it.

**\_\_\_\_.11 Assessment to Recover Cost of Lead Service Line Replacement**

1. 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.
2. The bill shall clearly state the following:
3. the amount owed to the Department for the cost of replacing the private Lead Service Line;
4. 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;
5. Department contact information for payment and verification of amount; and
6. procedures for appealing the amount of the bill.
7. 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.
8. 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.
9. 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.
10. If the owner does not agree with the Department’s decision specified in paragraph (e), 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 (e) of this section.
11. 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:
12. the unpaid balance;
13. the tax years over which the amount shall be collected;
14. the amounts to be assessed each in semi-annual assessment;
15. the date(s) the costs were incurred;
16. the address and parcel number(s) of the property served by the replaced service line; and
17. the name of the property owner of record at the time the costs were incurred.
18. 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.
19. After approval of the assessment by ordinance, the Clerk of Council shall certify the assessment to the \_\_\_\_\_\_\_\_ County Auditor stating the amounts 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 \_\_\_\_\_\_\_\_\_\_ in accordance with Ohio Revised Code §§ 729.06, 727.30, 727.301, 727.33, and 727.331.
20. 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.

\_\_\_\_**.12 Penalties**

1. Failure to comply with any of the provisions in this chapter may result in the [*unit of local government*] shutting off water to the property.
2. A person who violates this chapter commits a third-degree misdemeanor offense, punishable by a fine not to exceed Five Hundred Dollars ($500.00). Any such fine shall be attached to the property and must be paid-in-full, along with any delinquencies, surcharges and cost reimbursements, in order to bring the property owner’s account into good standing. When service disconnection has occurred, service will not be restored until all criminal and civil penalties are paid.
3. If a person violates this chapter or fails to take action to comply with this chapter, the [*unit of local government*] may file a lawsuit against such person requesting:
4. civil penalties authorized under the Ohio Revised Code;
5. injunctive relief;
6. recovery of expenses, losses, or damage to municipal property or equipment; and
7. any other relief available under the law.

SECTION 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

1st reading \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2nd reading \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, President of Council

3rd reading \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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PASSED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ APPROVED

ATTEST \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_, Mayor

Approved as to form by:

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director of Law

Filed with the Mayor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_