

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the " Lead Water Service Line Replacement Amendment Act of 2022."

This Act repeals D.C. Official Code § 34–2159 [Lead water service line replacement payment assistance program].

The Lead Service Line Priority Replacement Assistance Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 34-2151 et seq.), is amended by adding new sections [] to read as follows:

It is hereby established that: (1) As drinking water flowing through a lead pipe will always pose a risk of lead exposure and (2) drinking water that contains any amount of lead is a public health hazard and all potential sources of lead in water, particularly lead service lines, should be removed in the District of Columbia, the existence of lead service lines is hereby prohibited in the District of Columbia. The District of Columbia's existing lead service line replacement programs are hereby replaced by a single Lead Service Line Replacement Program.

For the purposes of this chapter, the term "lead water service line" or "lead service line" means a water service line, including goosenecks and pigtails, containing any lead and shall include a:

- (1) Brass water service line; or
- (2) Galvanized water service line.

#### **Mandatory Replacement of Lead Service Lines on Public Property**

- All lead and galvanized water service lines in public space, from the water main to the property line, or within 18 inches of the building or structural projection (such as a porch, vault, or footing), shall be replaced by DC Water no later than December 31, 2030.
- All brass water service lines in public space, from the water main to the property line, or within 18 inches of the building or structural projection (such as a porch, vault, or footing), shall be replaced by DC Water no later than December 31, 20XX

#### **Mandatory Replacement of Lead Service Lines on Private Property**

- All partial lead water service lines on private property and any remaining portion in public space shall be replaced no later than **December 31, 2030**.
  - The owner of any dwelling, building, or structure serviced by a lead service line or serviced by a line that may contain lead is required to replace the lead service line on their property or demonstrate compliance with the requirements of this subsection. By [1 year from effective date of Act] or within six months after DC Water sends notice that the dwelling, building, or structure may be serviced by a lead water service line, property owners must be in compliance with this mandate.
  - The owner of any dwelling, building, or structure serviced by a lead water service line or serviced by a line that may contain lead may demonstrate compliance with the District's mandate to replace lead water service lines through the following methods:
    - (1) Signing up for the Lead Service Line Replacement Program offered by the District of Columbia at no cost to property owners and signing a Right

to Entry form agreeing to allow contractors to access their property to conduct the replacement. The Right to Entry form shall be developed and administered by the Department of Buildings in collaboration with community groups and tested with a resident focus group, and will provide the Contractor with access to the property to perform all work necessary to effectuate replacement of a lead service line. Right to Entry forms will be filed with the Rental Accommodation Division.

- (2) Replacing the lead service line on their own and at their own expense. If an owner selects this option, then replacement must be completed by [one year from the effective date of the Act] or by six months after DC Water sent notice that the dwelling, building, or structure is serviced by a lead service line. An owner is required to provide DC Water with proof that the lead service line has been replaced. Proof must include at a minimum: a permit issued by Department of Buildings 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; an inspection report verifying the removal. An extension of up to two years may be granted when the owner can demonstrate to DC Water that a good faith effort has been made to comply with the Act, such as securing a contractor or scheduling a replacement.
- A property owner may be exempt from the Mandatory Replacement if:
  - A property owner provides DC Water, by [one year from the effective date of the Act], 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.
  - DC Water has or receives data or information verifying that a lead water service line is not servicing the property.
  - DOEE will develop and publish criteria, subject to public notice and comment, for what proof is considered adequate. Such criteria will ensure that the proof addresses all sections of the service line. An in-home scratch test shall not be considered adequate proof. Service lines with copper components that may contain lead are not exempt without further testing.
- **Notice and Scheduling**
  - By [six months from the effective date of the Act] or within 6 months of DC Water's determination that a dwelling, building, or structure may be serviced by a lead water service line, DC Water shall send written notice of the requirement to remove lead water service lines or register for the Lead Service Line Replacement Program to each owner of private District property at which:
    - DC Water reasonably believes a lead water service line is being used to deliver water to a structure on the property; or
    - DC Water lacks data or information to verify that a lead service line is not being used to deliver water to a structure on the property. This includes service lines that may contain lead components, such as copper service lines.
  - Notice to property owners of property shall include, at a minimum:

- A statement that no level of lead exposure is safe and that all people exposed to lead are at risk, and that removal of lead service lines is the only way to fully prevent harm to persons from drinking water delivered through lead service lines;
  - A clear description of property owners' options for complying with this Act, as described in [the Mandatory Replacement of Lead Service Line section];
  - A short description of the lead service line replacement process and anticipated timeline; and
  - Website and contact information that property owners may use to learn more about lead service line replacement and express concerns or questions.
- By [six months from the effective date of the Act] or within 6 months of DC Water's determination that a dwelling, building, or structure may be serviced by a lead service line, notice of the potential lead service line shall be published on any public database of building citations or inspections maintained by the Department of Buildings.
- By [six months from the effective date of the Act], DC Water shall launch an extensive public outreach campaign about the requirement to remove lead service lines or register for the Lead Service Line Replacement Program. As part of this campaign, DC Water shall physically post notice of the requirement at each public library in the District.
- By [one year from the effective date of the Act], DC Water shall publish an up-to-date map of the properties described [in the first bullet of the Notice and Scheduling section] on its website and shall add updates on a monthly basis. The map shall clearly indicate which lines have not been assessed, lines that require further assessment, and copper or brass lines that may contain lead.
  - By [18 months from the effective date of the Act], DC Water shall establish a priority schedule for block-by-block lead service line replacement through the Lead Service Line Replacement Program. DC Water's priority schedule shall incorporate the prioritization methodology developed by the Lead Service Line Planning Task Force.
- DC Water shall notify property owners and occupants of their assigned placement within the service replacement schedule at least one year prior to the scheduled date of their lead service line replacement. For property owners and occupants whose lead service line is scheduled for replacement on or before [two years from the effective date of the Act], DC Water shall give 120 days' notice.
  - DC Water shall remind owners and occupants of their scheduled date of replacement three times before the scheduled date of their lead service line removal (1 month before; 1 week before; and 3 days before). When possible, these reminders shall be provided through phone calls, emails, and door hangers.

- **Replacement**

- Replacement of a lead service line shall include:
  - Replacement of any portions of the lead water service line with "lead-free" materials as defined in 40 CFR § 143.12;
  - Replacement and leveling of dirt and soil displaced during excavation and replacement of landscaping where feasible; and
  - Replacement or restoration of interior and exterior walls and floors damaged or demolished during removal and replacement to safe and habitable condition.
- All lead service lines on private property shall be replaced no later than December 31, 2030.

- **Filters**

- For all dwellings, buildings, and structures where DC Water has identified the water service line as being lead or unknown material, the District shall provide occupants with no-cost pitcher-style or point-of-use filters for all drinking water sources within fourteen (14) days of giving notice to property owners as required by section [Notice Section].
  - Filters shall meet the *NSF/ANSI 42* standard for particulate Class I reduction and the *NSF/ANSI 53* standard for lead reduction.
  - Until DC Water verifies that the service line does not contain lead or replaces the lead service line, the District shall maintain and replace filters at no-cost in accordance with the manufacturer's specifications.

- **Post-Replacement Procedure**

- Following completion of lead service line replacement, DC Water shall:
  - Immediately flush the plumbing system in all properties or provide the occupant(s) with flushing instructions; and
  - Continue to maintain and replace the filters provided pursuant to [Filter section above] for at least six months following replacement.

- **Authorization to Access Property**

- Notwithstanding [the removal provisions] of this section, if DC Water provided an owner of the dwelling, building, or structure with notice under [the Notice and Scheduling section] and the owner does not sign the Right to Entry form or does not replace its lead service line by [one year from effective date of the Act] (or within the time frame provided in an extension), is inaccessible, or otherwise denies access to the property to enable the replacement of the line, then the following procedure shall be followed:
  - At least six (6) months prior to the owner's scheduled date of their lead service line replacement, as specified by DC Water's prioritization schedule, DC Water shall attempt to contact the property owner and provide the owner with a Right to Entry Form for completion. The Right to Entry form will provide DC Water and the Contractor with access to the property to perform all work necessary to effectuate replacement of a lead

service line. The Contractor shall restore the property to its original condition, or as close as possible to its original condition;

- If the property owner does not return a signed Right to Entry Form, DC Water shall attempt to contact the occupant and provide the Occupant with a Right to Entry form for completion;
- If access is granted by the occupant of the dwelling, building, or structure, then the occupant shall be held harmless and no liability shall incur to DC Water, its contractors, the District, or the occupant due to the replacement of the lead service line by DC Water;
- If access is denied by the current owner and occupant, then the District shall perform additional outreach to the owner and occupant to address their concerns about replacement;
- If access is still denied by the current owner and occupant, then the District shall commence procedures, including filing a Court action, to conduct the replacement of the lead service line.

- **Transfer of Property Ownership**

- Upon the sale of any property, within six (6) months of the closing, the buyer is responsible for demonstrating compliance with this Act, by either enrolling in the Lead Service Line Replacement Program or in accordance with [the removal provisions] of this section above.
- Upon the sale or transfer of ownership of any dwelling, building or structure, the buyer must provide proof that they are in compliance with this Act in order to:
  - Receive or renew a business license to operate a business on the property;
  - Receive or renew a certificate of clean hands;
  - Receive a certificate of occupancy for any structure on the property;
  - Receive a permit to perform construction or improvements on the property unless the permit includes removal of the lead water service line; and
  - Receive the Homestead tax deduction.

- **Penalties for Noncompliance**

- After [two years from the effective date of the Act], a property owner who fails to comply with [the removal provisions] of this section shall be fined by the Department of Buildings up to \$150 per month for each month of non-compliance. Fines will align with [identify an existing, successful, and regularly-updated fine structure].
- A property owner assessed fines pursuant to [the provisions above] of this paragraph who submits proof that they removed the lead service line after [two years from the effective date of the Act], may elect to have up to half of the value of fines assessed reduced by the cost of removal of the lead service line.
- After [2.5 years from the effective date of the Act], a property owner who fails to comply with [the removal provisions] of this section, subject to the provisions in [section addressing transfer of ownership], may not:

- Receive or renew a business license to operate a business on the property;
- Receive or renew a certificate of occupancy for any structure on the property; or
- Receive a permit to perform construction or improvements on the property unless the permit includes removal of the lead water service line.

- **Tenants' Rights**

- A landlord shall pay the cost to relocate residential tenants displaced for a period of at least one night in order to comply with lead service line removal requirements of this section.
- A landlord may not use either costs associated with lead service line replacement or the benefits of having a non-lead service line as a basis to raise rents for residential tenants.
- After [2.5 years from the effective date of the Act], a tenant who resides in a property owned or controlled by a property owner who has failed to comply with the provisions in [the Mandatory Replacement of Lead Service Line] of this section may bring a private cause of action for abatement of the lead service line against the property owner in D.C. Superior Court. If a court finds in favor of a tenant, the property owner shall pay the tenants' attorneys' fees and a fine of up to \$25,000, 50% of which shall be deposited into the District's fund for lead service line replacement, and the remaining 50% divided among the tenants of the property. Nothing in this section shall limit any tenant's right to recover damages for actual injury. The Office of the Tenant Advocate shall provide guidance to any tenant who seeks to initiate a cause of action for lead service line abatement and removal pursuant to this section.
- By [2.5 years from the effective date of the Act], the Department of Buildings shall post a notice informing tenants of their rights under [the above paragraphs] on each building serviced by a lead service line and owned or controlled by a private property owner who has failed to comply with [the removal provisions] of this section.
  - Photographic evidence of the posting shall accompany all notices and shall be published on any public database of building citations or inspections maintained by the Department of Buildings.

- **Attorney General Action**

- After [two years from the effective date of the Act], the Attorney General may initiate a civil action against a property owner who has failed to comply the provisions in [the Mandatory Replacement of Lead Service Line] to abate any lead service lines on the property.
- Before initiating an abatement action against a property owner who resides in a property serviced by a lead service line, the Attorney General shall attempt out-of-court resolution to remove the lead service line, including by referring the property owner to DOEE for assistance in registering for the Lead Service Line Replacement Program and commencing the procedures outlined in [the

Authorization to Access Property section] if such procedures have not been attempted.

- If a court finds against the property owner, the court shall order the property owner to pay the Attorney General's attorney's fees and a fine of up to \$15,000, which shall be deposited into the District's fund for lead service line replacement.
- The property owner shall pay the cost to relocate any residential tenants displaced during lead service line abatement.

- **Reporting Obligations**

- By [six months from the effective date of the Act], DOEE and DC Water shall submit to the Mayor, Council, and an independent audit committee (the Auditor) a joint report that includes the following information:
  - A detailed control budget and schedule through Calendar Year 2030 for the full remediation of all lead service lines.
  - A plan for the implementation of the Lead Service Line Removal Program.
  - The total number of District residents at risk of lead ingestion from the aforementioned lead service lines.
  - The total number of remaining lead service lines in the District and the total number of private property owners who received notices of the existence of lead service lines on their property pursuant to [the notice provisions of this section] broken down by:
    - Ward;
    - Advisory Neighborhood Commission;
    - Commercial versus residential property; and
    - The number of properties who have previously refused lead service line removal services.
  - The estimated number of professionals in the lead service line remediation workforce, including the number of contractors the District holds agreements with and the size of their workforce.
- After [six months from the effective date of the Act], DC Water shall prepare monthly reports for the Auditor that show performance compared with control budget and schedule.
- By [18 months from effective date of the Act], and annually thereafter, the Auditor, DOEE, and DC Water shall submit to the Mayor and Council a publicly-available joint report including the following information:
  - The implementation status of the Program, including the number of lines removed and replaced with lead-free pipes, in progress for remediation, and remaining to be removed.
  - The total private property owners who provided proof of lead remediation compliance or registered for the Program in compliance with [the removal

provisions of this section], as of the submission of the report, broken down by:

- Ward;
  - Advisory Neighborhood Commission;
  - Commercial versus residential property; and
  - The reason or reasons, if known, for non-compliance to date, including any history of engagement with property owners not yet in compliance.
- Geographic and demographic summaries of property owners in or out of compliance with program requirements.
  - Geographic and demographic summaries of occupants of private properties whose lead service lines have been replaced under the Program and the year the replacement was completed.
  - The budget status and funding needs of the Program.
  - A summary of barriers to implementation and recommendations for solving or removing these barriers.
- **Interagency Coordination**

The Task Force recommendations requiring legislative changes or legislative exemptions to certain DDOT standards that cannot be granted under a MOU, but require policy changes, for example:

- Waiving Permit Fees for Construction Occupancy Permits for all Lead Service Line Replacement Programs - because these fees are used to pay for DDOT staff to review and inspect permit and work and the Interagency Spending Plan already includes those FTE requests, those fees would be redundant and that money should be spent on replacement
- Waiving curb-to-curb restoration requirement when excavating on a recently paved street under a 5-year moratorium – some streets will be repaved and require a single excavation to replace a lead service line. Under current policy, the whole street would need to be repaved again which is a monumental cost.
- Flexibility of the 2-month construction permit length to allow for more opportunity to engage homeowners to encourage replacement during block-by-block projects before closing out the block and repaving. Continuing with a 2-month construction permit length will result in closing out blocks, repaving the street, and then follow-up excavation to replace remaining lead service lines within the 5-year moratorium, and then require full curb-to-curb repaving despite the amount of excavation (see previous bullet).

DDOT has discussed these Task Force recommendations and is considering opportunities to support implementation by other means.



- **Accessibility**

- All communications to property owners and occupants required by this Act shall be written at no more than a 5th grade reading level and shall comply with the [DC Language Access Act of 2004].

If any provision of this Act 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 Act that can be given effect without the invalidated provision or application, and to this end the provisions of this Act are declared severable.