



Legislation Text

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AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, DIRECTING THE SPECIAL ASSESSMENT OF THE COST OF PHASE 1 OF THE LEAD SERVICE LINE REPLACEMENT PROGRAM.

WHEREAS, the City of Newark, in the County of Essex, New Jersey, finally adopted Bond Ordinance Number 6PSF-d on August 8, 2018 (the "Lead Service Lines Bond Ordinance"), authorizing the City to issue its bonds and notes in the principal amount of \$75,000,000.00 for the replacement of lead service lines in the City; and

WHEREAS, prior to the adoption of the Lead Service Lines Bond Ordinance, the United States Environmental Protection Agency (the "USEPA") adopted regulations to control lead and copper in drinking water and the NJDEP directed the City to replace lead service lines in accordance with the USEPA's lead and copper rule; and

WHEREAS, prior to the adoption of the Lead Service Lines Bond Ordinance, the Department of Water and Sewer Utilities of the City of Newark, with the assistance of CDM Smith, prepared and filed with the New Jersey Infrastructure Bank (the "NJIB") and the New Jersey Department of Environmental Protection (the "NJDEP") a Planning Document for Environmental Decision Document pertaining to a Lead Service Line Replacement Program in the City of Newark (as the same may hereafter be modified or amended, the "Planning Document"), involving the replacement of full or partial lead service lines serviced by the City's water distribution system; and

WHEREAS, the lead service lines connect to the City's water distribution system, but are owned by the property owner; and

WHEREAS, the Planning Document contemplated that the lead service lines would be replaced in ten (10) phases over a projected 8-year period; and

WHEREAS, prior to the adoption of the Lead Service Lines Bond Ordinance, the City had filed an application with the NJIB and the NJDEP under the State Water Bank Financing Program for the financing of Phase I of the lead service line replacement program ("Phase I of the Lead Service Line Replacement Program"); and

WHEREAS, prior to the adoption of the Lead Service Lines Bond Ordinance, Senators Rice and Ruiz sponsored and introduced legislation in the New Jersey Senate identified as Senate Bill 2695 and Assemblywomen Pintor Marin and Tucker sponsored and introduced legislation in the New Jersey General Assembly identified as Assembly Bill 4120, authorizing, among other things, municipalities, including the City, to construct, reconstruct and finance the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into a privately-owned structure, in connection with a project undertaken for the purpose

of replacing lead-contaminated service connections, regardless of possible private service connection ownership, so long as the project is (1) an environmental infrastructure project, as defined under Section 3 of P.L.1985, c.334 (C.58:11B-3) and (2) funded either by loans from the NJIB or by loans issued through the NJDEP; and

WHEREAS, Assembly Bill 4120 was passed by the Assembly on June 21, 2018, was received in the Senate, substituted for Senate Bill 2695 and passed by the Senate on June 25, 2018, and was approved by the Governor on August 24, 2108 as Chapter 114 of the Public Laws of 2018; and

WHEREAS, the City believed and believes that the provision of clean, lead free drinking water to its residents is a public purpose beneficial to the City as a whole and any benefit to any private land owner in accomplishing this purpose in accordance with the Planning Document is incidental and subordinate to this primary public and governmental purpose; and

WHEREAS, at a hearing of the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey (the "Local Finance Board") held on September 12, 2018, the Local Finance Board approved the City's application for Municipal Qualified Bond Act approval for the Lead Service Lines Bond Ordinance but conditioned this approval on the City specially assessing the costs of the lead service line improvements to the benefited property; and

WHEREAS, the City has represented to its residents that the cost to participate in the lead service line replacement program would be not more than \$1,000.00 per service line replacement, depending on the State funding received for the program; and

WHEREAS, on December 19, 2018, the NJDEP proposed changes to the Intended Use Plan for the Drinking Water State Revolving Fund for State fiscal year 2019, proposing that \$30,000,000.00 principal forgiveness shall be available for lead service line replacement projects with up to \$10,000,000.00 project cap per system based on population; and

WHEREAS, the City now desires to provide that a portion of the cost of Phase I of the Lead Service Line Replacement Program received by the recipient properties shall be specially assessed on the properties benefitting therefrom.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1. Phase 1 of the replacement of lead service lines in the City, from the water main in the street to the meter in the structure, and including all work and materials necessary therefor or incidental thereto, is hereby authorized. The lots and parcels of real estate which may be specially benefited by Phase I of the Lead Service Line Replacement Program are attached to this Ordinance as Exhibit A.

Section 2. Notice is hereby given to the owners of all lots and parcels of real estate benefited by the improvement described in Section 1 hereof and affected by the improvement described therein that the City has determined and intends to make and to levy special assessments against each lot and parcel of real estate benefitting from Phase I of the Lead Service Line Replacement Program in an amount equal to the lesser of the net benefit of Phase I of the Lead

Service Line Replacement Program received by a recipient property or the net hard construction costs allocable to a particular recipient property as determined by the City. Such special assessments shall be made and levied in the manner provided by law and shall be as nearly as possible in proportion to and not in excess of the peculiar benefit, advantage or increase in value that the respective lots and parcels of real estate shall be deemed to receive by reason of the improvement. If the amount of the principal forgiveness from the NJDEP and the special assessments as finally confirmed is less than the costs of Phase I of the Lead Service Line Replacement Program, then the City will contribute the difference to the cost of the improvement.

Section 3. The owner of any land upon which an assessment for the local improvement shall have been made may pay such assessment in the number of equal quarterly installments determined as provided herein with legal interest on the unpaid balance of the assessment. The first of such installments shall be due and payable two months after the confirmation of the assessment, and each subsequent quarterly installment and interest shall be payable in each successive quarter at such time as the Governing Body shall determine by resolution, provided that any owner of land so assessed shall have the privilege of paying the whole of any assessment or any balance of installments with accrued interest thereon at one time. In case any such installment shall remain unpaid for thirty (30) days after the time it shall become due and payable, the whole assessment or the balance thereof shall become and be immediately due and payable, shall draw interest at the rate imposed upon the arrearage of taxes in the City and shall be collected in the same manner as provided by law for other past-due assessments. Such assessment shall remain a lien upon the land described herein until the assessment, with all installments and accrued interest thereon, shall be paid and satisfied. Notwithstanding anything herein to the contrary, the City shall have the right to waive default as may be permitted by law.

Section 4. Unless otherwise provided by subsequent resolution of the Municipal Council, the number of quarterly installments within which the special assessments are to be levied on the lots and parcels of real estate benefited by the improvement is four (4), it being intended that the assessment shall be payable in quarterly installments over one (1) year.

Section 5. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

Ordinance directing the Special Assessment of the cost of Phase 1 of the Lead Service Line Replacement Program.