



STAFF REPORT ACTION REQUIRED

Loan Program for Replacement of Residential Private-Side Lead Water Service Pipes

Date:	August 17, 2015
To:	Public Works and Infrastructure Committee
From:	Deputy City Manager & Chief Financial Officer General Manager, Toronto Water
Wards:	All Wards
Reference Number:	P:\2015\Cluster B\TW\PWI15015

SUMMARY

This report is in response to a direction from City Council on August 25, 2014, to report back on the details of a self-funded City loan program for homeowners seeking to replace their private-side lead service water pipes on residential properties with copper plumbing.

While it was originally contemplated back in 2014 that a loan, under any such loan program, would be secured as a local improvement charge on the applicable residential property, for the reasons outlined in this report, it is now recommended that the local improvement charge mechanism not be used and, instead, that the proposed loan program be based on the criteria outlined in this report.

RECOMMENDATIONS

The Deputy City Manager & Chief Financial Officer and the General Manager, Toronto Water, recommend that:

1. City Council authorize the Deputy City Manager & Chief Financial Officer and the General Manager, Toronto Water, to:
 - a. Establish and implement a loan program to provide financial assistance to eligible residential property owners to replace the private-side lead water

service pipes on their properties with copper plumbing in accordance with the loan program guidelines outlined in this report (the "Loan Program");

- b. Periodically review the Loan Program and, where deemed appropriate, and in consultation with the City Solicitor, make any necessary administrative changes to the Loan Program; and
 - c. Review and report back in three (3) years on the effectiveness of the Loan Program.
2. City Council authorize the Deputy City Manager & Chief Financial Officer to:
 - a. Draw funds for the Loan Program from the Working Capital Reserve;
 - b. Repay funds to the Working Capital Reserve as loan repayments are received by the City; and
 - c. Establish the interest rate(s), as may be determined from time to time, to be charged to eligible residential property owners for any loans under the Loan Program, and any related financial terms and conditions.
3. City Council authorize the establishment of an administrative fee in the amount of \$50.00 payable by all property owners participating in the Loan Program, and that Chapter 441 of the City of Toronto Municipal Code be amended to add the fee.
4. City Council authorize the City Treasurer or his or her designate to enter into and execute any necessary loan agreements with participating eligible residential property owners on the terms and conditions set out in this report, and on such terms and conditions satisfactory to the Deputy City Manager & Chief Financial Officer and the General Manager, Toronto Water, in a form satisfactory to the City Solicitor.

Implementation Points

If the report recommendations are adopted by Council, staff will finalize the administration and process details of the Loan Program as well as develop and implement a communications and outreach plan. The anticipated launch date for the Loan Program is February 1, 2016.

Financial Impact

It is estimated that approximately 34,000 residential properties in Toronto have private-side lead water service pipes. Based on information collected by the City from its Priority Lead Water Service Replacement Program ("Priority Lead Program"), on an

annual basis, approximately 1,500 residential property owners replace their private-side lead water service pipes with copper piping.

Based on that annual conversion number and drawing from the experience of other Ontario municipalities with loan programs for private-side lead water service pipe replacement, it is estimated that approximately five hundred (500) property owners per year would apply for the Loan Program. At a maximum loan amount of \$2,500 per eligible residential property owner, the estimated Loan Program budget per year would be \$1.25 million ($\$2,500 \times 500 = \1.25 million).

Funds for the Loan Program would be drawn from the City's working capital reserve and loaned to approved applicants upon completion of their pipe replacement. Re-payment of funds will occur over a 5-year term, with interest calculated in an amount to recover the City's costs (interest earnings foregone on invested funds), being re-directed to working capital.

An assessment of loan default risk was conducted and determined to be minimal based on the low order of magnitude of loan amounts and the repayment being combined property tax payments to the City on a pre-authorized payment plan.

It is recommended that loan applicants be charged a \$50.00 administration fee to offset the administrative costs of the Loan Program, which will be recovered by Toronto Water and that this administrative fee be added to Chapter 441 of the City's Municipal Code.

Existing staff resources and programs will be utilized for the Loan Program with no net increase in staff to administer the Loan Program.

The Deputy City Manager & Chief Financial Officer has reviewed the report and agrees with the financial impacts.

DECISION HISTORY

At its meeting of August 25, 2014, City Council adopted item PW33.16 *Feasibility of Introducing a Residential Private-Side Lead Water Service Connection Replacement Funding Program*, and directed the General Manager, Toronto Water, and the Deputy City Manager & Chief Financial Officer to develop a self-funded loan program for property owners wishing to replace lead water service connections situated on their properties, and to report back by the second quarter of 2015 on the details of such program. This Council direction can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PW33.16>

Previously, at its meeting of June 10, 2014, City Council adopted item MM52.4 *Lead in Drinking Water Mitigation Strategy* and in doing so, amongst other things, directed the General Manager, Toronto Water and the Deputy City Manager & Chief Financial

Officer to submit a report on the feasibility of developing a Lead Service Replacement Loan program with installments paid through water bills or property taxes based on a model similar to the Home Energy Loan Program (HELP). This Council direction can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.MM52.4>

Public Works and Infrastructure Committee had in the past considered the feasibility of a loan program for the replacement of private-side lead water service connections in 2007 and 2010. In both instances, a loan program was not established at that time for various practical, administrative and policy reasons.

The related 2007 and 2009 staff reports can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.PW30.1>
<http://www.toronto.ca/legdocs/mmis/2007/pw/bgrd/backgroundfile-8875.pdf>

ISSUE BACKGROUND

Due to concerns about the health impacts of lead in drinking water caused by the corrosion of water pipes, and in support of the City's goal to reduce possible lead exposure, in August 2014, City Council directed staff to report back on a loan program to provide financial assistance to eligible residential property owners to replace the private-side lead water service pipes on their properties.

In response to Council's direction, a City staff working group, comprised of staff from Corporate Finance, Revenue Services, Toronto Water and Legal Services, was formed to develop the necessary loan program details for the purposes of reporting back to Council (the "Working Group").

It is estimated that approximately 34,000 remaining residential properties in Toronto have private-side lead water service pipes. This number has already been significantly reduced over recent years by the City's introduction in 2011 of the Lead in Drinking Water Mitigation Strategy, a comprehensive strategy comprised of corrosion control, City-side lead service replacement, a faucet filter program and public education geared toward reducing exposure to lead in drinking water.

A staff report from the General Manager of Toronto Water, entitled 2015 Annual Report – Lead in Drinking Water Mitigation Strategy, which provided a comprehensive update on these initiatives, was adopted by the Public Works and Infrastructure Committee on June 17, 2015. That report can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW6.10>

Now with the establishment and implementation of the Loan Program as recommended by this report, it is expected that the total number of residential properties with private-side lead water service pipes in the City will be further reduced.

COMMENTS

Approach Taken to Loan Program Development

The Working Group identified the following key factors to guide the development of the Loan Program:

- engage best practices drawing on examples from other municipal loan programs supporting the replacement of private-side lead water service connections;
- provide a high level of customer service and support;
- take reasonable steps to reduce financial risk to the City; and
- minimize administrative costs by integrating the loan program into existing City program structures.

Local Improvement Charge Approach Revisited

In view of the factors identified above, the Working Group had occasion to investigate further the feasibility of the Local Improvement Charge ("LIC") approach last recommended in the staff report entitled "Feasibility of Introducing a Residential Private-Side Lead Water Service Connection Replacement Funding Program" by drawing on the experience of other municipalities including the City's under its Home Energy Loan Program ("HELP") administered by the Environment and Energy Division.

The LIC mechanism requires following a highly prescriptive legislative regime involving various administrative steps including, at a minimum, an agreement with the property owner, the requirement for estimated costs, certification of the agreement, the enactment of two by-laws, the creation and certification of a local improvement roll, and the imposition of various notice requirements. It is a cumbersome approach which is highly regulated.

The municipalities of Hamilton and London have established lead water service replacement loan programs yet neither have utilized the LIC mechanism. While Toronto has utilized the LIC mechanism under HELP, an interview with HELP program staff, revealed to the Working Group that participation in the loan program is hindered by the requirement that property owners obtain the consent of their mortgage lender to encumber the property with the LIC to secure the loan, which, in the event of default, has priority lien status over the mortgage lender's charge. This is necessary to ensure

property owners do not inadvertently default on the terms and conditions of their mortgage due to the priority lien status of the voluntarily assumed LIC.

Although some HELP program participants have managed to satisfy this requirement, many have not been able to obtain the necessary mortgage lender consent. This is the case despite the fact that the HELP program offers generous loans in amounts that can be in the tens of thousands of dollars. By comparison, in view of the relatively small dollar amount of the loan proposed under the Loan Program for replacement of residential private-side lead water service pipes, there is less financial need to obtain the required mortgage lender consent. This factor, coupled with the other administrative complexities of the LIC requirements, create a "hassle" factor for the customer.

In the circumstances, the Working Group concluded that the LIC mechanism, while affording the City maximum risk protection in the event of loan default because the loan would be secured by a priority lien against the property, does not support the desired objective of establishing a loan program which provides a high level of customer service and support. For this reason, this report does not recommend utilization of the LIC mechanism.

Other Risk Mitigation Measures

This report also does not recommend registration of loan agreements on title. To do so would add significant costs for the property owner to the program, which costs are likely to outweigh the benefits to the property owner of participation in the program. This would have the effect of significantly limiting program uptake.

This report recommends a Loan Program pursuant to which the City provides an unsecured loan to property owners, which is enforceable by way of the loan agreement entered into between the City and the property owner.

As part of the loan agreement, the property owner will consent to the City collecting the loan payments through the property tax bill for administrative ease. Despite such collection, the loan will not have the same priority lien status as property taxes as no legislative provision affords this status to such a loan.

Risk is further mitigated by the small amount of the loans (maximum of \$2,500), the payment of funds by the City after the lead pipe has been replaced and the contractor has been paid, and eligibility criteria which includes that the property owners be current on all property taxes and other municipal charges and that the property owners enrol in the City's preauthorized tax payment plan.

Despite the protections noted above, a small percentage of loans may fall into payment default conditions, similar to rates observed for property tax collections. In a similar fashion, payment remedy options and/or collection measures will be pursued. The relative risk of non-collection is considered minimal in consideration of the benefits to

homeowners in providing a financing option to replace residential private-side lead water service pipes.

Other Municipal Loan Programs

The Working Group reviewed similar programs established by London and Hamilton, in 2007 and 2008, respectively. Based on the information reviewed, it appears that both programs are premised upon adding the amount of the loan, together with applicable interest, to the registered owner(s) property tax roll and allowing repayment of the loan, by tax installment, over a ten year period. However, there appears to be one significant difference in approach. Unlike Hamilton, London's program, at least during the period August 13, 2007 to December 31, 2008, reserved the right to secure the loan through registration of a lien on title of the property for the total loan amount.

Based on the research conducted by the Working Group, the City of Hamilton has observed a higher rate of participation in its loan program than London. This is likely attributed to the fact that Hamilton's loan program application and enrolment procedures are simplified and easy to use.

The Loan Program Guidelines

Guided by the earlier-noted program objectives, the Working Group has developed the following Loan Program guidelines:

- Financial assistance in the form a loan, if approved, is available only to registered owner(s) of single-family, duplex and triplex residential properties located in the City of Toronto.
- The amount of the loan, if approved, will not exceed \$2,500 and will be a 'one-time' only loan per property. This is considered to be the approximate market cost for such work in Toronto.
- The term of the loan, if approved, will be 5 years from the date of disbursement of the loan funds.
- The loan, if approved, is only available for the sole purpose of replacement of the residential private-side lead water service pipes with copper plumbing. The loan will not be available to cover any other associated costs, deemed by the General Manager, Toronto Water, in his sole discretion, to be unnecessary for the replacement of the owner(s) private-side lead water service pipes.
- The loan funds, if approved, and all other conditions of the Loan Program are satisfied, will only be advanced by the City to the registered owner(s) upon receipt of invoices for the completed work.
- If approved, the loan amount advanced by the City will be added to the registered owner(s)' property tax roll upon the consent of all property owners, over a five-year period.
- Loan approvals are subject to the availability of funding at any given time, as determined by Council.

- The City reserves the right to modify, discontinue or cancel the Loan Program at any time. As well, the Loan Program terms are subject to change at any time.
- Loan approvals will be valid only for a period of six (6) months and will expire if the work is not completed within that time period.
- A non-refundable administrative fee to offset the costs of processing the application in the amount of \$50.00 must be paid by the loan applicant(s) to the City at the time of application.
- In order to be eligible for the loan, in addition to the above-noted, the applicant(s) must meet the following eligibility criteria:
 - (i) The applicant(s) must be the registered owner(s) of the property and must have a property tax account with the City;
 - (ii) All registered owner(s) of the property must apply for the loan in the application form prescribed by the City, and submit same duly completed, with the submission of such other further information or documentation as may be required by the City, in the prescribed time;
 - (iii) All registered owner(s) must agree that the City shall not be liable for any damages to the owner(s)' property as a result of any work related to the replacement of the residential private-side lead water service pipes, and which work is the subject of the loan;
 - (iv) All registered owner(s) must enter into, sign and return to the City, without alteration, the Loan Agreement in the form prescribed by the City, including agreement for the City to add the loan to the property tax roll for the property and to collect the loan payments through the property tax bill;
 - (v) All registered owner(s) must agree to and enrol in the City's pre-authorized property tax payment plan;
 - (vi) All property taxes for the eligible property must be paid in full at the time of application and throughout the loan process and term;
 - (vii) The registered owner(s) must have no outstanding payments or debts owed to the City;
 - (viii) The registered owner(s) must not have defaulted on any City-sponsored loan at any time;
 - (ix) The registered owner(s) must not have commenced replacement of the eligible property's residential private-side lead water service pipes with copper plumbing prior to loan approval by the City; and,
 - (x) The registered owner(s) must meet all conditions of the Loan Program.

The Loan Agreement

A loan agreement between the City and all the registered property owners governing, among other things, the advance and repayment of loan funds is required, and will be prepared in a standard form, in consultation with the City Solicitor, for execution by the parties and use in the Loan Program. On behalf of the City, it is recommended that

authority to sign the Loan Agreement be delegated to the Treasurer or his or her designate.

The Loan Agreement will include, among other things and without limitation, terms and conditions related to the following:

- The amount of the loan, the advance of loan funds, payment and repayment conditions and the loan term;
- Fixed interest rate and amortization schedule;
- Consent to add the loan to the property tax roll and to collect it through the property tax bill;
- Default terms and remedies of the City;
- A requirement that the work be performed by a contractor licensed to perform plumbing work in the City of Toronto and, if applicable, who has obtained a Building Permit for the work;
- The obligations of the registered owner(s) and their contractor regarding the work including, without limitation, the obligation to comply with all laws;
- A release of the City and the registered owner(s) express agreement that the City shall not be liable for any damages to the owner(s) property; and
- Provisions to give effect to the above-noted Loan Program Guidelines.

The Loan Program Application Process

The Loan Program application process will be dovetailed with the Priority Lead Replacement Program to ensure that property owners do not have to duplicate information for companion programs and to maximize the number of complete service replacements achieved. The Priority Lead Replacement Program allows residents to apply to have the City replace its side of the pipe on a priority basis if the City's water service pipe is lead.

Administration of the Loan Program

The Loan Program will be administered by Toronto Water, Accounting Services and Revenue Services as described below. In order to minimize the cost to the City of introducing the Loan Program, the Working Group has designed a loan application intake and approval process based on no increase in staff personnel by utilizing the following existing current staff resources:

- Toronto Water's Business and Customer Support unit, which manages programs such as the Priority Lead Replacement Program, will provide advertising, application intake and processing;
- Revenue Services Division will affirm that all property taxes and other municipal charges are paid and current to the date and time of the application, add loan

amounts to property tax accounts and issue billings and administer collection of loan repayment amounts;

- Accounting Services Division will advance approved loan amounts, utilizing the City's working capital (available cash in hand), as a means of funding for the Loan Program; and,
- the City Treasurer or his or her designate will provide final loan approval.

By charging an administrative fee of \$50.00 and interest on any loan advanced, the Loan Program will operate on a cost recovery basis with repaid funds returning to the City's Working Capital Reserve.

Periodic Review

In order to ensure that the Loan Program operates efficiently and effectively, it is recommended that there be a periodic program review and that authority be delegated to the Deputy City Manager & Chief Financial Officer and the General Manager, Toronto Water, in consultation with the City Solicitor, to make any necessary administrative changes to the Loan Program. As well, it is recommended that staff report back in three years with an update on the progress of the Loan Program, including the level of participation by property owners, and any recommended changes to the Loan Program based on that program experience.

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