

BILL NO. 46-2014
AN ORDINANCE

AN ORDINANCE OF THE CITY OF READING, BERKS COUNTY, PENNSYLVANIA, NOTIFYING THE READING AREA WATER AUTHORITY (THE "AUTHORITY") OF THE TERMINATION OF THE LEASE AND OPERATING AGREEMENT; DISSOLVING THE AUTHORITY, REQUIRING THE AUTHORITY TO CONVEY THE WATER SYSTEM AND ALL PROPERTY OF THE AUTHORITY TO THE CITY OF READING UNDER PROVISIONS OF THE ACT OF ASSEMBLY APPROVED JUNE 19, 2001, P.L. 22, AS AMENDED AND SUPPLEMENTED, KNOWN AS THE MUNICIPALITY AUTHORITIES ACT; ESTABLISHING A DEADLINE BY WHICH THE READING AREA WATER AUTHORITY SHALL CONVEY BY APPROPRIATE INSTRUMENT THE WATER SYSTEM AND ALL PROPERTY OF SAID AUTHORITY TO THE CITY OF READING; IMPOSING NECESSARY PENALTIES UPON THE MEMBERS OF THE BOARD OF SUCH AUTHORITY IF THE WATER SYSTEM AND ALL PROPERTY OF SAID AUTHORITY ARE NOT CONVEYED BY SAID DEADLINE; NOTIFYING THE AUTHORITY AND ANY OTHER PARTY TO IMMEDIATELY CEASE AND DESIST FROM ALL ACTIONS AND ACTIVITIES THAT COULD DECREASE THE VALUE OF THE WATER SYSTEM OR OTHERWISE INTERFERE WITH OR DELAY THE CONVEYANCE OF THE WATER SYSTEM TO THE CITY OF READING OR THE TERMINATION OF THE LEASE AND OPERATING AGREEMENT; AUTHORIZING ALL OTHER NECESSARY ACTION; AND REPEALING ALL INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES.

WHEREAS, the Reading Area Water Authority (the "Authority"), was incorporated pursuant to an ordinance of the City Council of the City of Reading (the "City Council") under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, then known as the "Municipality Authorities Act of 1945" and as amended by the Act of Assembly approved June 19, 2001, P.L. 22, as further amended and supplemented, and now known as the "Municipality Authorities Act"; and

WHEREAS, the Authority entered into a Lease and Operating Agreement, dated May 20, 1994, as amended and supplemented (the "Water Lease") with the City of Reading (the "City") for the Water System as defined in the Water Lease, including the waterworks, water supply works and water transmission and distribution system facilities and storage facilities and properties previously built or acquired by the City together with all appurtenant facilities and properties which the City had acquired or which the City or the Authority thereafter acquired in connection with said water system, including all property, real, personal and mixed, rights, powers, licenses, easements, rights-of-way, privileges, franchises and other property or interest in property of whatsoever nature used or useful in connection with such facilities, together with all additions, extensions, alterations and improvements thereof or thereto which might have been made or acquired, from time to time, by the Authority or the City pursuant thereto;

WHEREAS, the Water System is a project of a character which the City has the power to establish, construct, acquire, operate or maintain as provided in the Third Class City

Code, 53 P.S. §§ 35101, *et seq.*, as amended and supplemented, and in the Optional Third Class City Charter Law, 53 P.S. § 41101, *et seq.*, as amended; and

WHEREAS, the City Council has determined to terminate the Water Lease, acquire the Water System, dissolve the Authority, and to assume or pay off the outstanding obligations of the Authority with respect to the Water System (the "Authority Obligations") pursuant to the provisions of Section 5622 of the Municipality Authorities Act, 53 Pa.C.S. §5622.

NOW THEREFORE, BE IT DULY ENACTED AND ORDAINED, by the City Council of this City, as follows:

Section 1. As provided in the Water Lease, City Council on behalf of the City, hereby notifies, directs and orders that the Water Lease be terminated as of December 31, 2014. This Ordinance shall constitute written notice to the Authority of the City's intent and desire to terminate the Water Lease as of December 31, 2014. The City Solicitor or City Clerk are hereby authorized and directed to immediately serve a copy of this Ordinance on the Authority notifying the Authority of the termination of the Water Lease.

Section 2. The City Council on behalf of the City hereby demands the immediate written resignation of each member of the Board of the Authority.

Section 3. The City Council of the City of Reading hereby directs and orders that the Reading Arca Water Authority be dissolved and that the Water Lease be terminated as stated above.

Section 4. (a) In addition to terminating the Water Lease as provided in Section 1 above, the City Council on behalf of City hereby determines to acquire the Water System, including all money, funds and property, real, personal and mixed and all contracts related thereto of the Authority, and all right, title and interest of the Authority thereto, pursuant to the right and power vested in the City by Section 5622 of Municipality Authorities Act to acquire the Water System; subject, however, to the provisions of subsection (b) of this Section, and the members of the Board of the Authority being appointed by City Council, the City being the only member municipality of the Authority, and the Water System being a project of the Authority, of a character which the City has, or will at the appropriate time, as further provided in subsection (b) of this Section, have the power to establish, maintain or operate, as appropriate, as contemplated by Section 5622 of the Municipality Authorities Act.

(b) The action taken by the City, pursuant to subsection (a) of this Section, is subject to the condition that this City shall enter into an agreement with a "municipality authority" governed under the Municipality Authorities Act of the Commonwealth ("New Authority"), under and pursuant to which water service provided to properties located outside of the boundaries of the City of Reading (the "Outside Water Services") will be provided by such New Authority, upon such terms and conditions that such Outside Water Services shall not be deemed or construed as being provided under provisions of Section 1301 or Section 1501 of the Public Utility Code of Pennsylvania, 66 Pa.C.S. § 101 *et seq.*; and the transfer, by sale or lease of the Water System to the New Authority necessary to provide such Outside Water Services,

pursuant to a written agreement (the "Agreement for Outside Water Services"), is hereby authorized and approved, which Agreement for Outside Water Services shall contain terms and conditions satisfactory to City Council and the Board of the New Authority.

(c) The action taken under and pursuant to Section 4, shall take effect upon the execution and delivery of the Agreement for Outside Water Services by the New Authority and by the City of Reading.

Section 5. To effectuate the City's right to own, operate, and maintain the water System for its residents, the City Council of this City hereby commands and orders the Authority through its Board, to convey the Water System and all property of the Authority to this City pursuant to Section 5622 of the Municipality Authorities Act by written instrument(s) in form and substance acceptable to the City on or before December 31, 2014 (the "Deadline").

Section 6. Pursuant to Section 5622 of the Municipality Authorities Act, City Council hereby authorizes and approves the assumption or payment by this City on or before the effective date of the conveyance of the Water System, of all outstanding obligations incurred and owing by the Authority with respect to the Water System (the "Authority Obligations"). The City Council of this City hereby commands and orders the Authority through its Board, to cooperate fully with the City and the City's officials, attorneys and agents to enable the City to effectuate the orderly assumption or payment by the City of the Authority Obligations on or before the Deadline. It is hereby declared that it is necessary for the health, safety and welfare of the citizens of the City to (i) have the City assume or pay the Authority Obligations; and (ii) have the Authority convey the Water System and all property of the Authority to the City on or before the Deadline;

Section 7. The Authority or any other party shall not take any action upon, undertake or prosecute or expend any funds (i) related to any project or projects (other than those projects which have been approved in writing by City Council) including, but not limited to, the incurrence by the Authority of any obligations or indebtedness for any purpose, or the expansion, encumbrance, transfer or other disposition of any portion of the Water System or any property of the Authority; (ii) on or in connection with ordering or obtaining any valuation, study or report of or in connection with the Water System; or (iii) which could have the effect of decreasing the value of the Water System.

Section 8. The Authority or any other party are hereby expressly prohibited from taking any action or expending any funds, for the purpose of challenging the right of the City to take the actions set forth in this Ordinance or which would have the effect of directly or indirectly, delaying, hindering, impeding or otherwise adversely affecting the City's ability to terminate the Water Lease, acquire the Water System or take any other action contemplated by this Ordinance. Violation of this provision shall constitute cause for removal of members of the Board of the Authority under Section 5610(d) of the Municipality Authorities Act, 53 Pa.C.S. §5610(d) and grounds for surcharge.

Section 9. The Mayor of the City of Reading and members of the Executive Branch are expressly prohibited from taking action or expending any funds, directly or indirectly, for the purpose of challenging the right of City Council or the City to take the actions

set forth in this Ordinance or which would have the effect of directly or indirectly, delaying, hindering, impeding or otherwise adversely affecting the City's ability to terminate the Water Lease, acquire the Water System or take any other action contemplated by this Ordinance.

Section 10. Any person who violates any of the provisions of this Ordinance shall be subject to a fine not to exceed Six Hundred Dollars (\$600.00) in a civil enforcement proceeding before a District Justice commenced by the City and having been found liable shall pay the fee plus all costs, including reasonable attorneys' fees incurred by the City. Each day that a violation is permitted to exist by the person shall constitute a separate offense.

Section 11. The Authority shall promptly execute and deliver any necessary agreements or documents as the City may request in order to effectively operate and set user rates for the Water System located outside the boundaries of the City as described in sections 4 and 5 above.

Section 12. All existing agreements between the City and the Authority shall be terminated and shall be null and void and no longer of any force or effect upon the effective date of the conveyance of the Systems to the City.

Section 13. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

Section 14. If a sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal or invalid, for any reason, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses sections or parts of this Ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been enacted had such provisions not been included.

Section 15. This Ordinance shall become effective ten (10) days after adoption pursuant to City of Reading Home Rule Charter Article II Section 219.

ENACTED and ORDAINED by the City of Reading City Council, Berks County, this 27 day of May, 2014.

President of Council

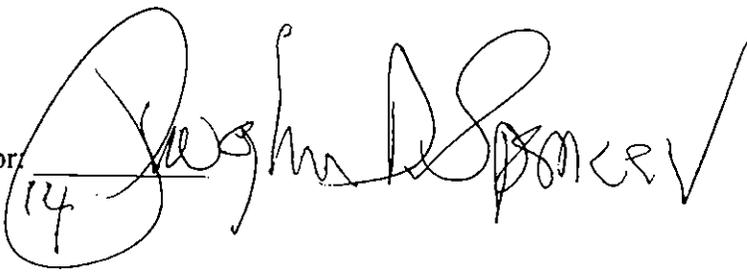
Attest:

City Clerk

(Council Staff)
Submitted to Mayor: _____
Date: 5/28/14
Received by the Mayor's Office: _____
Date: 5/28/14
Approved by Mayor: _____
Date: _____

Vetoed by Mayor:

Date: 6/6/14

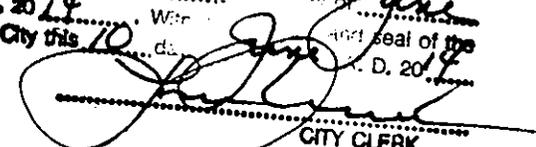


The override of the mayor's veto was approved by the following vote:

Yeas: Goodman-Hinnershitz, Reed, Sterner, Waltman, Acosta President - 5

Nays: Marmarou - 1

I, **LUNDA A. KELLEHER**, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 9 day of June A. D. 2014. With me and seal of the said City this 10 day of June A. D. 2014.


 CITY CLERK



**Executive Office of the Mayor
Vaughn D. Spencer**

June 6, 2014

MEMORANDUM

TO: Council President Acosta and Members of Council

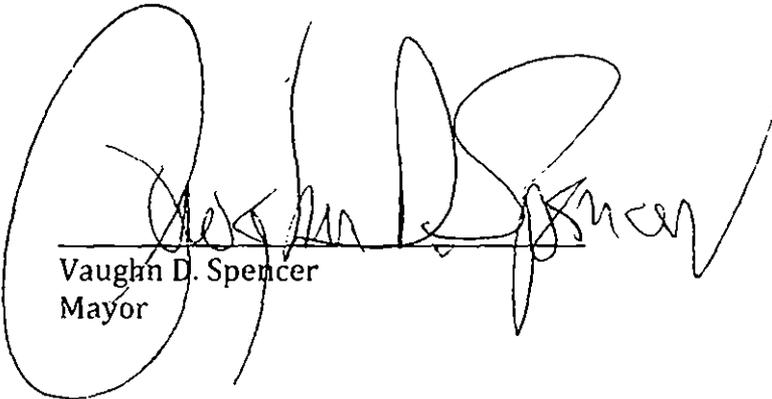
SUBJECT: Veto of Bill No. 46-2014

I am exercising my veto for Bill No. 46-2014.

This ordinance does not represent the best interests of the constituents of Reading and the Reading Area Water Authority consumers residing outside of our city.

My administration has questions and concerns related to the financial, operational collective bargaining and pension obligations. Until these concerns have been addressed, I cannot, in good faith approve Bill 46-2014.

City Council has confirmed the current authority board. It is my opinion that they have provided excellent stewardship of the water system.



Vaughn D. Spencer
Mayor