

# City of GLADSTONE

Date: March 7, 2017

To: Senate Committee on Finance and Revenue,  
Senator Mark Hass, Chair  
900 Court Street NE, Room 431  
Salem, Oregon 97301

RE: **Strong Opposition to Senate Bill 202 and 840**

Chair Hass and Members of the Committee:

Gladstone joins all responsible Oregon cities to categorically oppose both bills, in their entirety, as contrary to basic principles upon which cities effectively operate. Gladstone's ability to serve its citizens and manage its rights of way (ROW) would be adversely impacted if either of these Senate Bills, in any form, were to become law.

The Oregon Constitution establishes a framework in which cities have the authority to decide the extent of their powers through municipal charters without the need for statutory authorization from the legislature. This authority has in no way been abused in a way that would justify the new legislation proposed in SB 202 and SB 840.

Unfortunately the Sponsors of these bills understand the severe impacts they have on the ROW, but they see SB 202 and SB 840 as an opportunity to evade being accountable for those impacts. As longstanding managers of the public ROW we are all too familiar with the effects of use and in some cases abuse of the ROW. It's a substantial responsibility born by Cities to properly steward the ROW.

While there are many justifications for sensible ROW management, please consider the following three irrefutable reasons:

- 1) The Bills authors' want rent for public property assets to be based on a complex equation of direct costs. This action would negatively impact Gladstone's ROW revenue, making the ROW maintenance deficit even worse. Imagine for a moment, Gladstone wants to use an empty conference room in the Capital building. Would Gladstone pay a fee only related to the cost of the room or would it pay fair market value for a conference room? Market value of course.
- 2) If these bills were to be considered and City's stopped receiving fair market rent for use of the ROW, then it would incentivize City's to remove or prohibit all utilities from using the ROW. Public utilities would need to find

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alternate property outside the public Right of Way, creating a domino effect of higher costs which would drive up rates for our taxpayers, while reducing efficiencies.

- 3) Finally, case law has made it clear that Cities have the authority to charge the ROW users rent for its use. Northwest Natural Gas Co. v. Gresham, 359 Or. 309 (2016). This decision is consistent with the Supreme Court's decision in 2015 that the legislature did not intend to prohibit a city from imposing a 5% franchise fee on a municipal sewer authority for use of city ROW. Rogue Valley Sewer Services v. Phoenix, 357 Or 437 (2015). We believe these laws are rightfully being handled on the local level, by local stakeholders.

The long-standing legislative intent of existing ROW statutes—ORS 221.420 and 221.450—has been to affirm city authority, not to preempt it. The Utility companies have lost nearly every court case and are now attempting to change the well-established legislative intent that protects City ROW authority.

Legal ambiguities caused by these Bills, will only confuse the ROW users and Managers and result in costly lawsuits and court filings, all at taxpayer expense. Instead we recommend the State Legislature defer to local citizens who have the effective recourse of local elections when ROW regulations have unintended impacts.

State preemption is an unwarranted intrusion in local matters the Oregon Legislature has always left to cities.

Please kill SB 202 and SB 840.

  
Tamara Stempel  
Mayor