March 8, 2017

Senate Committee on Finance and Revenue
Oregon State Capitol
900 Court Street NE
Salem, Oregon 97301

RE: Opposition to SB 202 and SB 840

Chair Hass and Members of the Committee:

The cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Sherwood, Tigard, and Tualatin are united in strong opposition to SB 202 and SB 840, both of which have significant impacts to the ability of cities to effectively manage their rights of way (ROW). As written, these bills preempt and prescribe how cities manage and are compensated for the use of their ROW and pose a serious threat to city finances, management, and public health and safety.

SB 202

Our recent experience in Washington County shows that local government partners are better positioned to solve the issues addressed by SB 202 and that legislation on this topic is not required.

Public jurisdictions in Washington County have a long history of collaboration and partnership. The strong and effective partnership between Clean Water Services, Tualatin Valley Water District and member cities has endured to protect public health and the environment, deliver value to our residents and customers, and ensure the economic success of the region.

As municipal governments, we share the principle that we must retain the right to control our resources, manage our affairs, and implement policies and programs based on the needs and priorities of our respective communities. Inevitably, there will be times when the priorities of one local government will conflict with those of another. That was the case last year when several cities in Washington County adopted uniform ROW Fee Ordinances that apply to all users – public and private – of the public ROW, including each adopting city's own utilities.

These ordinances apply to and impact public utility districts like Clean Water Services and Tualatin Valley Water District who use the ROW in cities within Washington County. In order to ensure that the new ROW fee ordinances were implemented in a fair and even-handed manner and in a way that minimized impacts, Clean Water Services, Tualatin Valley Water District and member cities came together to discuss and ultimately agree on the manner in which implementation of a city's ROW Fee Ordinances would occur.

Just yesterday the Washington County Board of Commissioners, on behalf of Clean Water Services, adopted a resolution and order memorializing an agreement between our jurisdictions for how Clean Water Services will pay ROW fees pursuant to our ROW ordinances.

We are proud of our strong partnership and history of collaboration that has served our residents, customers and region well for so many years. Our experience shows that local government partners are better positioned to solve the issues addressed by SB 202, and statewide legislation on this topic is not required.

SB 840

The effective management, maintenance, and improvement of public ROW are among the most important duties that cities perform on behalf of our communities. These ROW, or sections of land set aside for public benefit, include streets and sidewalks, as well as land set aside for water pipes, electricity lines, and other utility infrastructure. As ROW is acquired and maintained through public investment, it is necessary that ROW users, both private and public, contribute to preserve and protect that critical public asset.

SB 840 dramatically preempts cities and is a significant shift from existing statutes. The Oregon Supreme Court has reviewed these statutes and found that, for many decades, the legislature sought through these statutes to preserve local authority over the ROWs and ROW fees, not preempt it. The Supreme Court stated that ROW fees are "a local enactment addressing a local concern, with a local impact. Thus, it is precisely the type of enactment that historically has come within a city's home rule authority." *Northwest Natural Gas Co. v. Gresham*, 359 Or. 309, 345 (2016) The overall intent and effect of the bill reverse this long-standing treatment of local ROWs both in statute and in Oregon Supreme Court case law by finding that these are matters of statewide concern.

Further SB 840 abolishes the long-standing principle that utilities' use of the ROW is subservient to the public interest because the bill gives utilities the "right" to occupy the ROW and shifts some utility relocation costs to cities. The Oregon Supreme Court has recognized the legal principle dating back at least to the 1880s that utilities installing facilities in the ROW "took the risk of their location and should be required to make such changes as public convenience or security requires, at its own cost and charge." *Northwest Natural Gas Co. v. Portland*, 300 Or. 291, 310 (1985). SB 840 reverses this common sense principle and shifts to cities—and thus to taxpayers—utilities' cost of doing business. This legislation also introduces a new preemption on cities' permit fees of utilities, ambiguous limits on city ROW fees, the apparent expansion of authority for utilities to use non-ROW public property, like public parks, just to name a few of the potential impacts of this bill.

Our cities categorically oppose this draconian attempt to reverse decades of established policy and practice related to ROW management. This legislation will undoubtedly lead to direct and significant impacts to local budgets, compromise public health and safety, and lead to years of protracted litigation.

Sincerely,

Michael Brown, City of Hillsboro

Randy Ealy, City of Beaverton

Rob Drake, City of Cornelius

Jesse VanderZanden, City of Forest Grove

Joe Gall, City of Sherwood

Marty Wine, City of Tigard

Sherilyn Lombos, City of Tualatin