

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck, ICMA-CM

March 8, 2017

Senator Mark Hass
Senate Committee on Finance and Revenue
900 Court Street NE, Salem, OR 97301

Re: Oppose SB 202 & SB 840

Dear Chair Hass, Vice-Chair Boquist and members of the Committee,

On behalf of the City Council, I would like to express our opposition to SB 202 and SB 840. The public right-of-way is one of the most important and largest assets owned by the City of Happy Valley. Protecting and maintaining this critical public asset demands considerable time and resources. Furthermore, charging utilities for the use of this public asset represents one of the largest revenue sources for local government. The City of Happy Valley strongly urges the Legislative Assembly abstain from, and unequivocally oppose, all actions intended to further constrict or preempt local authority to impose right-of-way fees on utility providers, public and private.

SB 202 and SB 840 violate home rule authority

As articulated in ORS 221.415(1), the Legislative Assembly reaffirms the authority of cities to regulate the use of municipally owned rights-of-way, to impose charges for the use of such rights-of-way. Contrary to the spirit of this statute, SB 202 and SB 840 seek to prohibit cities from collecting reasonable fees from arbitrarily-identified system users providing utility services. This inconsistent application of state preemption is counterintuitive and contradictory to the Legislative Assembly's original intent to affirm local regulation, necessarily thereby eroding the home rule authority afforded to municipalities.

SB 202 and SB 840 deprive public assets of critical resources

Fees assessed to utility providers for the use of the public right-of-way are a critical source of revenue. Across the state, these fees are the second largest source of revenue for cities. In Happy Valley, they nearly equal to the sum of revenues collected through property taxes. The current fee rates are envisioned to be commiserate with the expenses incurred with managing the right-of-way. However, at present levels, franchise fee revenues continue to fall well short of the true costs of managing the right-of-way. Coupled with frozen tax rates, limiting this resource more than it is already could have severe implications for the critical public services we provide.

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Preserving and enhancing the safety, livability and character of our community

SB 202 and SB 840 set a dangerous precedent

State statutes limit the amount cities may charge most utility companies; restricting fees chargeable to public service providers beyond the limitations in place for private-sector service providers sets a dangerous precedent with significant revenue and policy impacts state-wide.

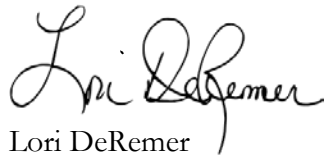
SB 840 creates inefficient and inappropriate regulations

SB 840 contains a myriad of new regulations that will result in lost efficiency and economic opportunity for all parties involved. Amongst other ramifications, SB 840 introduces a new preemption on cities' permit fees of utilities to review work in the right-of-way, ambiguous limits on city right-of-way fees and the apparent expansion of authority for utilities to occupy non-right-of-way public property, such as public parks.

Further, SB 840 abolishes the long-standing principle that utilities' use of the right-of-way is a privilege granted by cities. SB 840 gives utilities the "right" to occupy the right-of-way. Granting indiscriminate right-of-way access to commercial corporations is grossly inappropriate and detrimental to the public good. The discretion of local governments is paramount to ensuring the right-of-way operates to the benefit of *all* users, not just a subset. As such, commercial use of the right-of-way remains a *privilege*.

Summarily, SB 202 and SB 840 run contrary to current legislative practices, violate home rule authority, and deprive cities of resources to not only protect the right-of-way, but also provide critical services. Finally, this legislation perpetuates ambiguous and inconsistent standards for public bodies. For these reasons, the City of Happy Valley urges the Senate Committee on Finance and Revenue to oppose SB 202 and SB 840.

Sincerely,



Lori DeRemer
Mayor

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