



March 7, 2017

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

RE: Strong Opposition to Senate Bills 202 and 840

Chair Hass and Members of the Committee:

Oregon City has carefully studied Senate Bills (SB) 202 and 840 and categorically opposes both bills as contrary to basic principles cities exercise daily. Oregon City's ability to serve its citizens and manage its rights of way (ROW) would be critically impacted if either of these bills were to become law. Oregon City has been managing its own ROW, free from state interference, since at least 1886, when it granted the Pacific Postal Telegraph Cable Company the right to use the ROW for its telegraph system. State preemption of this authority would be an unwarranted and unnecessary change after well over a century of effective ROW management by cities.

Despite the bill's summary statement, SB 840 in no way broadens city authority. The Bill cuts deeply into our home rule authority—authority rooted in the Oregon Constitution and based on the premise that cities have the authority to decide the scope of their powers through municipal charters without the need for statutory authorization from the legislature. The legislative record on city authority to manage their ROWs is long and remarkably consistent in *preserving*, not preempting that authority. This authority has not been abused nor is Oregon City aware of any circumstances that would justify the sweeping new limitations proposed in SB 202 and SB 840.

As longstanding managers of the public ROW, cities are all too familiar with the impact of use and in some cases, abuse of the ROW. It's a heavy lift when it comes to managing ROW users and their infrastructure, but cities have an obligation to their citizens—the taxpayers—to ensure that ROW users are accountable for their impacts. While there are many justifications for sensible ROW management, in the interest of time we have focused on our top three compelling reasons:

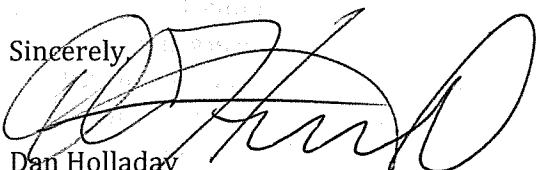
1. **Cost.** Pipelines, raceways, and direct bury infrastructure can have a costly impact on other public infrastructure costs. Repair costs, new installation costs, maintenance costs, and community impact costs all weigh heavily on cities. While it may be difficult to imagine, one conflict can complicate the work and add thousands of additional project expenses to what would otherwise be an inexpensive project. Imagine managing 43 different and competing users of the ROW—and that's just in Oregon City's ROW.

2. **Impacts.** Aside from visual pollution, overhead utilities have become a burden on cities due to the constant impact of the maintenance, replacement, and upgrades. Even with active ROW permitting and inspection programs, ROW users often fail to obtain permits, complete the work in accordance with design and safety standards, and properly repair areas disturbed by their work. The unaware public attribute unfinished business (unrepaired sidewalks, abandoned utility poles, unattended trench cuts) in the ROW to the jurisdiction, assuming we are the owners and managers of the ROW which can have a damaging impact on the jurisdiction's reputation.
3. **Risk.** In Oregon City we have potable water lines, sewer force mains, high pressure gas lines, high voltage power lines and a myriad of other utilities all within the ROW. A single point of failure in the wrong location can be catastrophic. One example of risk? Over the last decade the US has experienced an average of roughly 70 significant gas pipeline incidents each year. Cities must continually be prepared to respond to every failure, whether it's temporary traffic control or mandatory evacuations, emergency services, community outreach, etc., all as part of its ongoing ROW management responsibilities.

Oregon City recently implemented a ROW ordinance to address these and other ROW-related issues. The City's ordinance both creates more equity in how to charge users of the ROW and, over time, will improve the overall condition of the ROW, thus preventing cost escalation for all users over time. These bills will impose new limitations that significantly impact the City's efforts to manage its ROW, shift significant new utility relocation costs to all cities, and will almost certainly generate years of litigation over the ambiguities within and created by these bills.

City ROWs are local resources and, as the Supreme Court recently recognized, a city's decision on whether or not to charge ROW fees is "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." State preemption is an unwarranted intrusion in local matters the Legislature has virtually always left to cities. We strongly encourage the State Legislature to continue the long-standing tradition of local management of these local assets. Please ensure that SB 202 and SB 840 do not advance.

Sincerely,



Dan Holladay
Mayor