



City of Portland

March 7, 2017

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

Re: SB 840 and SB 202

Dear Chair Hass and Members of the Committee:

Thank you for the opportunity to comment on SB 840 and SB 202. These two bills would separately impose significant restrictions upon municipal authority to manage the public right of way, and obtain fair compensation in exchange for its use. The City of Portland opposes both SB 840 and SB 202.

SB 840 and SB 202 would represent a momentous shift on home rule authority and local responsibilities for right of way management, undermining the ability of cities to manage and charge compensation for the use of public rights-of-way held in trust by cities for their citizens. Under Oregon law, cities have primary regulatory responsibility for control of local highways, streets, roads and alleys within their incorporated boundaries. The legislature has further assigned cities the primary responsibility for managing use of the public right-of-way within their boundaries.

The City of Portland seeks to ensure that users of the public right-of-way are charged fair compensation in exchange for their occupation of these public resources. As the local road authority, the City also manages various, competing uses of the public right-of-way. The public right of way constitutes a finite resource that must serve many important but competing uses. These uses include various modes of transportation, gas and electric utilities, water and sewer, as well as telecommunications, cable and broadband services. Pre-existing infrastructure must be accommodated and affects the shape and design of all new deployments, including non-communications utilities and uses. The City strives to fairly referee and resolve all these competing demands for use of the rights-of-way in a manner that protects public health and safety.

Local management of the right-of-way prevents unnecessary disruptions to transportation, maintains access to local neighborhoods and businesses and assures emergency vehicle access. Restricting local control of rights-of-way can cause

inefficiencies such as increased congestion, impaired access to businesses, and reductions in the useful life of pavement.

Portland's longstanding policy is to assess similarly situated users of the rights-of-way comparable compensation, which extends to other governmental entities and city bureaus. SB 840 and SB 202 would contravene that intention and its ability to effectively manage the public rights-of-way by statutorily prioritizing some users above others. SB 202 and Section 4 of SB 840 would essentially endanger Portland's ability to collect fair compensation for use of the right-of-way from governmental bodies beyond administrative costs and may have unintended consequences for programs leasing City-owned property.

SB 840 would also significantly impede Portland's ability to manage the right-of-way, particularly for public improvements, utility work and the promotion of infrastructure build outs. Utility facilities may need to be moved for public works projects that give rise to conflicting uses of the public right-of-way, or to widen a street to accommodate increased traffic usage. SB 840 would upend the long-standing principle that local governments may require the relocation of utilities within the public right-of-way, thereby shifting the cost for relocations to cities and, ultimately, taxpayers.

Portland also finds the 5% cap on gross revenues for telecommunications companies concerning. A number of telecommunications companies have built infrastructure through downtown Portland to access the Pittock Internet Exchange, an internet exchange point and one of the largest within the United States. Some of those companies claim to operate exclusively in serving interstate commerce. Under SB 840, these revenues could not be proportioned or otherwise attributed to business operations in determining compensation for their use of the right-of-way. SB 840 does not provide an alternative means to assess franchise fees for use of the right-of-way. Rather, this legislation would create a loophole for some companies to avoid paying for use of the right-of-way altogether.

In addition to limiting the scope of gross revenues, SB 840 would restrict the ability of city bureaus to recover administrative costs in reviewing and processing street opening permits, utility locate requests, traffic control permits, and other requests related to a utility or telecommunications companies' specific request for construction. Bureaus who assess permitting fees already operate at cost. During fiscal year 2015-16, the total permit fees relating to utility and telecommunications requests for street opening activity was approximately \$3.9 million. SB 840 would either allow companies to offset those fees against their franchise fee payments or excuse the utilities from payment of permitting fees altogether, resulting in further reductions to general fund revenue or forcing bureaus to operate below cost with an overall negative financial impact to general fund money.

SB 840 would also arbitrarily restrict cities' authority to charge compensation of cable providers for their use of the public right-of way, negating previously negotiated fees paid by cable providers for community public benefit funds¹. In addition to residential cable television service, cable providers own content and provide services including voice over internet protocol phone service, internet access, home security, business telecommunications services, and fiber connections for wireless carrier signals. SB 840 could prevent cities from seeking fair compensation for use of the right-of-way based upon a cable provider's revenues from the full range of service offerings. This would also provide cable companies with a competitive advantage over telecommunications companies.

Essentially, SB 840 places the interest of utilities, ostensibly on behalf of ratepayers, above the interest of taxpayers and other users of the public rights-of-way. However, SB 840 provides no assurances or mechanisms that any of these savings would be passed onto utility ratepayers. SB 840 would place vital general fund revenues in jeopardy. Franchise fees and privilege taxes comprise almost 14%, or \$83.5 million, of Portland's general fund budget, which supports services and programs such as police and fire protection, parks, and 911 emergency services². Despite phrasing in SB 840, the bill would not result in cities receiving "appropriate compensation". In fact, the opposite would be true. SB 840 would greatly reduce compensation from utility, telecommunications, and cable companies by redefining gross revenues and allowing deductions of various administrative costs incurred by cities in administering the utilities use of the right of way.

SB 840 and SB 202 would inappropriately undermine the ability of Portland and other cities to effectively manage and charge compensation for the use of public rights-of-way held in trust by cities for their citizens. The City of Portland urges members of the committee to oppose SB 840 and SB 202. Thank you for your consideration of these comments.

Sincerely,



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City of Portland, Oregon



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Director
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City of Portland, Oregon

¹ Totalling of over \$5 million for Multnomah County, Mt. Hood Cable Regulatory Commission, Annual Report 2015-2016, p. 8, <http://www.mhcr.org/wp-content/uploads/2016/06/MHCRC2016AnnualReport.pdf>.

² City of Portland, Oregon FY 2016-17 Budget in Brief, p.7, <https://www.portlandoregon.gov/cbo/article/584584>