



CITY OF BEND

Senate Committee on Finance and Revenue
900 Court Street. NE
Salem, OR 97301

March 7, 2017

Chair Hass and Members of the Committee:

I am writing to express the City of Bend's opposition to Senate Bill 840. Maintaining and improving public streets is a primary responsibility for cities in Oregon. Functional, safe and reliable transportation facilities are necessary to serve a wide variety of uses – emergency services, transit, vehicles, pedestrians, cyclists, utilities and service providers included. Utilities rely on this infrastructure to provide cost effective and reliable services to their customers. It is appropriate for cities to charge fees for use of public property and right of way in an effort to offset the maintenance and operational costs of these assets.

SB 840 seeks to cap the amount that cities may charge utilities for use of public right of way. The proposal would cap franchise fees at 5% of gross revenue earned by the utility within the city. SB 840 also seeks to transfer relocation expense assignment onto cities. Further, SB 840 would prohibit cities from charging utilities for permits to operate within the right of way unless permitting service costs exceed 50% of the amount the city receives in franchise fees. All three of these concepts limit our ability to provide for a well-maintained right of way.

First, utilities occupy public right of way in an effort to provide services to their customer base. Use of public right of way allows utilities to easily access customers and generate profits by using public property and avoid a much more costly alternative: reliance on countless private easements. Capping the franchise fees at 5% leaves cities in a compromised position to obtain the resources necessary to adequately maintain assets that are impacted by and relied on by utilities to conduct their business.

Measures 5 & 50 prevent cities from raising property tax rates. In Bend, this means that 80% of general fund revenue is used for public safety and the remaining is split between various programs. By local policy, 75% of franchise fees must be used for streets maintenance due to the limited amount of general fund contribution. We are struggling to find revenue to adequately maintain our streets. Limiting the revenue from a collection of service providers that have very real impacts on the state of our streets and profit from the use of the public space is not equitable nor appropriate.

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Next, placing cities in the position of enforcing which party pays for relocation of a utility facility when required to accommodate a specific type of capital project is problematic. The proposed bill makes a distinction between projects aimed at improving public health and safety versus projects the "primary purpose of which is to promote education, recreation or beautification of the city." In Bend, the City operates the sewer and water utilities, Bend La Pine School District operates the schools, and the Bend Park and Recreation District operates parks facilities and recreation programs. The City is not convinced that relocation of a utility facility for a capital project for any local district should always be a burden borne by the specific district. In some cases, it would seem fair to have the district pay for relocation and in others, it would seem fair to have the utility pay for relocation. This issue requires communication and written agreements between knowledgeable local actors and partners to address unique situations, rather than a one-size-fits-all solution such as is proposed in SB 840. Additionally, section 5 (1) (c) would require the City to collect all relocations expenses as a part of its permitting process. Cities should not have to negotiate relocation expenses, collect payments and make reimbursements on behalf of a utility when a third party requires a utility relocation for a capital or development project.

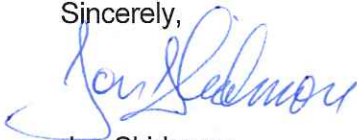
Last, the prohibition on permit fees for utility work within the right of way is problematic for those cities that have fee based permit review departments like the City of Bend. Although arguments will be made that franchise fees should cover that cost, in Bend and other cities, they don't. As mentioned above, 75% of franchise fees are used for streets maintenance purposes. The other 25% is used for capital transportation projects, ADA projects and other general fund needs. Utilities routinely work within city right of way for new capital projects and maintenance. In many instances, these projects are complex based on their location, neighboring uses and other construction projects in the area. Plans are reviewed to make sure that City standards are met and field work is reviewed to assure conditions are returned to a proper state. These services cost money to provide. Review and inspection fees cover that expense for utilities and other private entities that work in the right of way.

There may be arguments that such review isn't necessary. Exhibit A provides photos of projects that were completed in the right of way by contractors for utilities without permits. This demonstrates why such review services are needed. Assuring that the impacts to public streets are properly mitigated and that franchise infrastructure is placed within the public right of way in a safe manner is of key interest to our community.

The City of Bend values the service that utilities provide to our community. However, those utilities must share in the maintenance of the public assets they rely on and impact in the course of their business. An artificially low cap on franchise fees and prohibiting review fees for such activities in the right of way unfairly places this burden on the public. Placing cities in the unenviable position of determining which entities pay for relocations of facilities during capital projects is awkward at best. These disputes should be handled by the utility and the land owner/third party.

Please oppose this bill.

Sincerely,



Jon Skidmore
Assistant City Manager, Operations

Exhibit A:

Examples of Franchise Utility Work that impacts City Infrastructure.



Picture #1 – Franchise Utility work that was not constructed per approved permit. Street repairs not per City requirements. Poor trench repairs cause more rapid deterioration of the City's street system.



Picture #2 – Example of unpermitted work within the ROW. Note how the street cut meanders around a parked car.



Picture #3 – Photo of gas line that was installed through an existing sewer line. No permits were obtained for this work and was only discovered by City cameras prior to a scheduled sewer maintenance.