



March 6, 2017

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

**RE: Oppose Senate Bill 202 and 840**

Chairman Hass and Members of the Committee:

On behalf of the City Council and residents of Milwaukie, I would like to express our opposition to SB 202 and SB 840, and all actions intended to preempt home rule authority to impose right-of-way (ROW) fees on utility providers—public and private. The public ROW is one of the most important and largest assets owned by the residents of the City of Milwaukie. Milwaukie's ability to serve its residents and manage its ROW would be critically impacted if either of these bills were to become law. Furthermore, charging utilities for the use of this public asset represents one of the largest revenue sources for local government. Milwaukie has been managing its ROW since 1903.

**SB 202 and SB 840 violate home rule authority.** SB 202 and SB 840 seek to prohibit cities from collecting reasonable fees from arbitrarily-identified ROW users providing utility services. City ROWs belong to the residents and businesses of Milwaukie and as the Supreme Court recently recognized, a city's decision whether to charge ROW fees is "a local enactment addressing a local concern, with a local impact." Therefore, it is precisely the type of enactment that historically has come within a city's home rule authority. Furthermore, the Oregon Constitution establishes a framework in which cities have the authority to decide the scope of their powers through municipal charters without the need for statutory authorization from the legislature.

**SB 202 and SB 840 deprive public assets of critical resources.** Fees assessed to utility providers for the use of the public ROW are a critical source of revenue. Across the state, these fees are the second largest source of revenue for cities. As longstanding managers of the public ROW we 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, which translates into real costs, impacts and risks.

**SB 202 and SB 840 set a dangerous precedent.** 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 budget impacts state-wide.

Milwaukie recently implemented a ROW ordinance to create equity in how to charge users to occupy the space, and over time to improve the overall condition of the ROW. Thereby, keeping costs down for all users and enhancing city services in perpetuity. Ongoing deterioration through legal ambiguities will only confuse the ROW user and Managers and result in lawsuits and court filings.

Allowing public providers to circumvent system contributions equates to the unilateral privatization of public property. From transportation maintenance fees at the household level to ROW fees at the company level, state statutes permit cities to impose reasonable fees on all system users. If residents and businesses are expected to pay ROW usage fees, then public and private utility providers should be held to the same standard.

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 ROW, but also provide critical services. Finally, this legislation perpetuates ambiguous and inconsistent standards for public bodies. For these reasons, the City of Milwaukie urges the Senate Committee on Finance and Revenue to oppose SB 202 and SB 840.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Gamba', written in a cursive style.

Mark Gamba, Mayor

cc: Senator Brian Boquist (Vice Chair)  
Senator Herman Baertschiger Jr. (Member)  
Senator Chuck Riley (Member)  
Senator Kathleen Taylor (Member)  
Milwaukie City Council