LEAGUE of Oregon CITIES

Date: March 2, 2011

To: Senator Ginny Burdick, Chair

Members of the Senate Finance and Revenue Committee

From: Linda Ludwig, Deputy Legislative Director

RE: SB 452 – Appeal Fees

Thank you for the opportunity to provide written comment on SB 452, that would limit the amount of a land use appeal fee that a city or county could charge.

Cities believe that local processing of land use matters and their appeals needs to be fair and equitable. Costs can be a factor in the process and the cost to the taxpayers to support the process needs to be balanced with the costs to the appellant whether they are the applicant or the opponent.

The bill calls for a shift to an appeal fee standard that would not exceed 10 percent of the original application fee or $1,000, whichever is less, which would inevitably have the result in many jurisdictions increasing their land use application fees, which conceivably could chill development recovery in our state, as we attempt to pull up from the recession.

We oppose the passage of this bill, as it would change the funding balancing out of the hands of local decision makers for a statewide preemption that results in larger fiscal deficits in local budgets makes little sense in the full picture- especially given the severe financial straits of some local governments.

Background:

Statute (ORS 215.422 & ORS 227.180 allows local governments to set appeal fees at no more than actual or average cost of appeal, whether it is a decision of a hearings officer or planning commission being appealed. The governing body may also establish a fee for the preparation of a written transcript, but not exceeding the actual cost up to $500.

Most cities that charge for actual costs cannot charge the full amount to recover costs because the amounts are simply too high. For instance, there are many cities where the cost of an appeal to council is less than $500, which has been historically subsidized by general funds.

Cities charge appeal fees in a manner that is appropriately reflective of local circumstances - with different implications in a small jurisdiction versus a large city. Some cities don't charge at all, some have a waiver provision for hearings officer decisions, some have a waiver provision for appeals to council, some have a small set fee, some charge for actual time or materials, some charge a fee that is representative of a percentage of the original land use application fee, some require a deposit in lieu of a fee.

As you are well aware, local government general fund revenues are proportionally small- growing smaller every year- in terms of a revenue source to service all needs. This is especially true in municipal planning departments, where in order to keep the doors open, many operate largely on fee-based revenues, because they have had to cut back on general fund subsidization. The lack of general fund revenue brings us back to a policy that contends that the process is also user driven and should be supported by user fees- so planning fees often become a funding hybrid.

How this funding hybrid should be internally balanced becomes a complex decision-making process for each city's policy makers. How Tigard balances these varying interests may be different than the local needs of Bend or Ashland or Reedsport. This is and should continue to be a locally determined process that allows jurisdictions to set fees and processes according to local circumstances and local needs.

Thank you for your consideration of this important matter.