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March 11, 2021

Re: *Multnomah County support of HB 3049*

Dear Joint Committee on Transportation:

HB 3049 Testimony

My name is Courtney Lords and I'm a Senior Assistant County Attorney with the Multnomah County Attorney's Office. I am here today to advocate for the passing of HB 3049 which revises current law under ORS 758.010. I advise the County's Transportation Division and prior to coming to the County, I worked on franchise agreements while in private practice.

This bill is critical to counties because it will authorize counties to stop subsidizing utility work within counties' right of ways with state highway funds. Under ORS 758.010, counties are unable to charge for right of way or construction permits that most counties require whenever a person/party works within county right of way. The purposes of these permits are twofold: (1) coordinate activities occurring within the right of way, and (2) ensure that all county rules and construction requirements are met.

Utilities submit hundreds of ROW permits every year in Multnomah County. Each permit costs the County an average of \$428 in staff time and resources to process and review. For instance, over the last three years Multnomah County has processed about 1,100 ROW utility permits, at a total cost of \$470,000 to the County. In essence, due to the limitations in ORS 758.010, Multnomah County has subsidized utilities in just the last three years alone at a cost of nearly half a million dollars to the County. This money is not funded by property taxes, it is funded by state highway dollars. Being able to charge for ROW permits would allow for a sustainable funding source to keep those who process these permits employed, and free up precious and declining state highway dollars to fund badly needed maintenance and improvements to county rights of ways.

Additionally, with more people moving to rural areas, Multnomah County and other counties are seeing an increasing trend in the number of ROW utility permits being submitted and processed each year. We expect this trend to continue. It is not feasible for counties to continue subsidizing these permits with a declining revenue source.

Year	Permits	Permit cost to issue at \$428
2018	269	\$115,132.00
2019	340	\$145,520.00
2020	488	\$208,864.00
TOTAL	1,097	\$469,516.00

HB 3049 in no way authorizes counties to begin charging franchise fees, nor does it interfere with or infringe upon cities authority to charge franchise fees. City authority to charge franchise fees is under different statutory authority that counties do not have, and counties are not seeking to gain that authority here. In the simplest terms, counties are seeking authority, *if they choose to*, to charge utilities for county staff time to administer utility ROW permits, nothing more. This fee is not determined by a per foot or per mile assessment, nor does it have a disproportionate impact on rural counties because counties can choose whether or not they want to charge utilities for these permits; charging permitting fees is not mandatory under HB 3049.

As previously mentioned, the cost of subsidizing these permits is significant for Multnomah County and other counties. Although the utilities may tell you otherwise, we believe the financial impact to utilities will be minimal. Take for instance the 488 utility ROW permits processed by Mutlnomah County in 2020. Those permits cost the County about \$210,000. If you spread that cost out across all the different utilities, the cost to the utility companies will be *de minimis*. Also, because the fee will be charged for all ROW permits, it is competitively neutral and will be applied equally to all parties seeking use of county rights of ways.

While we understand that COVID has hit utilities hard, it has also hit county road funds very hard. This past year, Multnomah County had to cancel badly needed road projects and laid off 17 employees in the Transportation division, including employees who process these permits. While utilities will eventually be paid for the bills that people may be behind on, the county road fund will never recover what we have lost in the last year, nor will it ever recover the hundreds of thousands, and even millions of dollars, it has lost in subsidizing utilities all these years.

As more of the population moves to unincorporated rural areas, the demands on county rights of ways increases. Consequently, it is fair and makes sense for counties to have authority to cover their administrative costs of overseeing the right of way. Counties charge all other parties for right of way permits, it is only fair that utilities should have to pay also. Comparatively, when developers file development applications with counties' land use departments they pay permit fees, those permit fees cover the cost the county incurs when reviewing and processing those

applications. ROW permit fees serve the same purpose here and will be limited to the actual cost of administering those permits.

The second important piece of HB 3049 to counties is that it provides greater relief for counties when a utility does not relocate as requested. Currently, ORS 758.010(2) authorizes counties to have utilities relocate when they conflict with a public function or project. However, Multnomah County has found, on occasions, that in spite of advance notice and coordination with utilities in accordance with ORS 758.025, utilities do not always move in a timely manner.

For example, Multnomah County incurred well over \$100,000 in delay costs for a public road project when a utility failed to move in spite of notice a year in advance and regular communications with the utility. The \$100,000 does not include extra in-house costs that the County had to absorb. Taxpayers should not have to foot the bill when a utility fails to relocate, doing so results in loss of funds for necessary services, road maintenance and repairs.

HB 3049 provides explicit relief for counties that will not only reimburse counties for damages caused by a utilities failure to relocate, but it will hopefully encourage greater coordination from utilities when relocation is required.

In closing, we request your support for HB 3049 that authorizes counties to charge utilities for administering ROW permit costs, as well as the ability to recover costs incurred resulting from a utility's failure to relocate. Counties can no longer afford to use state highway funds to subsidize utilities, especially as the demand on county transportation infrastructure needs increases.

Sincerely,

/s/ Courtney Lords

Senior Assistant County Attorney