AGENDA COVER MEMO

Memorandum Date:	November 22, 2024
First Reading Date:	December 17, 2024
Second Reading/ Public Hearing:	January 7, 2025

TO:	Board of County Commissioners
DEPARTMENT:	Public Works, Engineering and Construction Services
PRESENTED BY:	Becky Taylor, Senior Transportation Planner
AGENDA ITEM TITLE:	ORDINANCE NO. 24-09/ In the Matter of Authorizing the Exercise of Power to Charge Utilities Right-of-Way Permit Fees

I. MOTION

A. December 17, 2024: Move to approve the first reading of Ordinance No. 24-09 and to set the second reading and public hearing for January 7, 2025, at 1:30 PM in the Lane County Public Service Building, 125 E. 8th Ave, Eugene, Oregon.

B. January 7, 2025: Alternative motions after public hearing:

1. Move to approve Ordinance No. 24-09.
2. Move to direct staff to return with a revised ordinance for the Board's consideration and to set a third reading.
3. Move to deny Ordinance No. 24-09.

II. AGENDA ITEM SUMMARY

The Board is being asked to approve an ordinance that would enable the County to make use of new legislation. Senate Bill 1566 (2024) allows counties to charge utilities for right-of-way permits, provided the county first authorizes the exercise of that power by county ordinance. The attached draft ordinance provides that enabling legislation for the County consistent with Senate Bill 1566. The establishment of fees would be a subsequent action by the Finance and Audit Committee.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Lane Code 15.500.020 requires Facility Permits for infrastructure and activities within the County right-of-way. The primary goals of the Facility Permit program are protection of public safety and preservation of the public's investment in infrastructure. The permit process includes verification of applicable standards, including proper traffic control, and on-site inspections to ensure the right-of-way is properly restored.

Lane Code 15.500.040 allows fees to be collected in connection with the issuance of permits. Facility Permit fees were established by the Board in 2005 (Order 05-10-19-2). Prior to 2005, Facility Permits were issued at no charge to applicants and costs were absorbed by the Road Fund. The direction of the 2005 Order was full cost recovery, primarily due to Road Fund declining revenue

Facility Permit fees currently range from $450 for a driveway to $1,000 deposit plus actual costs (beyond the deposit) for road construction within the County right-of-way. However, utility companies doing the same type of work (excavating and trenching within the County right-of-way) are not charged fees to recover the cost of issuing permits due to historical state law restrictions (ORS 758.010). Notably, ORS 758.010 allows utilities to perform work in the right-of-way free of charge, except within cities (which may charge). For reference, the City of Eugene charges $890 and the City of Springfield charges $711 for utility permits. Further, ORS 758.010 was amended in 2001 to allow the Oregon Department of Transportation (ODOT) to charge fees. As such, the law enabled cities and the state to collect permit fees, but not counties.

The inability for counties to recover permit processing costs from utilities became a financial burden for many counties which manage the largest share of public rights-of-way in the state. Administration of permits for utility work draws from Public Works' time and budget to review relevant traffic control plans and conduct site inspections. Consequently, this became a legislative priority for the Oregon Association of County Engineers and Surveyors (OACES).

During the summer of 2023, Senators Finley and Gorsek convened a committee of county commissioners and staff from around the state as well as utility company lobbyists to develop legislation that would allow counties to charge utility permit fees. The committee met three times and drafted language that became Senate Bill 1566. It was passed in the 2024 legislative session with no opposition from utility companies.

Senate Bill 1566 establishes a maximum fee of $500 per permit and exempts certain activities from permit fees, such as routine replacement and maintenance and emergency work. Under the new law, counties may collect fees beginning January 1, 2025, but only after adopting an ordinance authorizing the county to do so.

Further, regardless of whether a county chooses to collect permit fees, the new law requires utility permits to be issued within 15 days.

B. Policy Issues

The fundamental policy issue before the Board is whether to: 1) exercise authority provided by Senate Bill 1566 to enable the County to collect utility permit fees, thereby creating opportunity to reduce Road Fund subsidy; or 2) to not exercise this authority to enable some cost recovery for permit processing, but still be bound by the new mandate to issue said permits within 15 days, and continue to detract from funding needed for road and bridge operations and maintenance.

C. Board Goals

If adopted, the ability to collect utility permit fees will further Strategic Priority 3, Robust Infrastructure. Reducing reliance on the Road Fund for operating the facility permit program will protect this limited revenue resource for road and bridge operations and maintenance priorities.

D. Financial and/or Resource Considerations

Exercising authority provided by Senate Bill 1566 to collect a utility permit fee would help to offset permitting costs that are currently subsidized by the Road Fund. The current annual cost of the utility permitting program is $374,797.56. If fees were collected consistent with Senate Bill 1566, the Road Fund subsidy could be reduced by about 62 percent.

Annual Program Cost Two FTE $293,200 + Overhead (27.83%) $81,597.56	$374,797.56
Potential Cost Recovery $500 permit fee maximum x 283 eligible permits annually	$141,500
Amount Remaining as Road Fund Subsidy	**$233,297.56**

Without fees, the program would continue to be subsidized by the Road Fund, which has been on the decline with diminishing gas tax sales receipts. The Road Fund is the primary source for operating and maintaining Lane County's roads and bridges.

E. Health Implications

There are no immediate health implications related to this discussion regarding enacting authority pursuant to state law; however, the facility permit program helps to minimize public safety risks, thereby supporting public health. Resources to administer the program directly relates to the County's ability to ensure its roads are safe for the traveling public.

F. Analysis

Adoption of the proposed ordinance to exercise authority provided by Senate Bill 1566 is required to access the benefits of the new law. To forgo this opportunity would not absolve the County from the burden of the new law which requires utility permits to be issued within 15 days, thereby creating an unfunded mandate. To meet the 15-day processing mandate of Senate Bill 1566, collecting a processing fee is essential to providing sufficient staffing resources.

The greatest number of facility permits is utility work. The latest average (between 2019 and 2023) is 566 utility permits annually. About half of those permits would be eligible for fee collection (whereas the other half would be exempt as maintenance/repair activities). This enabling ordinance does not set the fees which would be a subsequent action by the Finance and Audit Committee.

G. Alternatives/Options

Alternatives following the January 7, 2025, public hearing include:

1. Approve proposed Ordinance No. 24-09.
2. Direct staff to return with a revised ordinance for the Board's consideration and action and set a third reading.
3. Deny approval of Ordinance No. 24-09.

IV. RECOMMENDATION

Following the public hearing on January 7, 2025, staff recommends approval of the Ordinance as presented (Option 1, above).

V. TIMING/IMPLEMENTATION

If approved, staff will meet with the Finance and Audit Committee to establish utility permit fees consistent with Senate Bill 1566. Notice of the pending fee change will be posted on the Public Works webpage.

VI. FOLLOW-UP

Notice of the pending fee change will be posted on the Public Works webpage.

VII. ATTACHMENTS

Draft Ordinance No. 24-09

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 24-09	In the Matter of Authorizing the Exercise of Power to Charge Utilities Right-of-Way Permit Fees

WHEREAS, Lane Code 15.500.020 requires Facility Permits for performing work or placing facilities within a County Road right-of-way; and

WHEREAS, Lane Code 15.500.040 allows fees to be collected in connection with the issuance of facility permits; and

WHEREAS, Senate Bill 1566 (2024) allows counties to charge utilities for right-of-way facility permits, provided the county first authorize the exercise of that power by county ordinance; and

WHEREAS, the County desires to exercise its authority to charge utilities for right-of-way facility permit fees in accordance with Senate Bill 1566 (2024).

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDAINS** as follows:

> Authorizes the Director, as defined in Lane Code Chapter 15, to charge and collect right-of-way facility permit fees from utilities in accordance with Senate Bill 1566 (2024).

ENACTED this ___ day of_____, 2025.

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Laurie Trieger, Chair
Lane County Board of Commissioners

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Recording Secretary for this Meeting of the Board