

**24.2.1 Standing – Before LUBA – Generally.** Standing to appeal a post-acknowledgment plan amendment to LUBA is governed by ORS 197.620(1), which requires only that the petitioner participate in the proceedings below. No statute governing LUBA requires that petitioners who wish to advance a facial constitutional challenge to an ordinance at LUBA must first demonstrate that the ordinance injures their legally protected interests. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

**24.2.1 Standing – Before LUBA – Generally.** When the original applicant would be allowed to intervene in an appeal under ORS 197.830(7)(b)(A) as the “applicant who initiated the action before the local government,” the original applicant’s successor in interest may also intervene. *Biggerstaff v. Yamhill County*, 58 Or LUBA 665 (2008).

**24.2.1 Standing - Before LUBA - Generally.** Persons who made an appearance during the local government proceedings that led to a city decision that was remanded by LUBA satisfy the ORS 197.830(7)(b) requirement that a person who moves to intervene in a subsequent LUBA appeal of the city’s decision following LUBA’s remand must have “appeared.” The appearance during the initial local government proceedings is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, and it does not matter that the local government refused those persons’ attempt to appear during the remand proceedings. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing - Before LUBA - Generally.** Where a person attempts but is denied the right to appear during a local government’s proceedings that lead to a land use decision, in a subsequent LUBA appeal that attempt to appear is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, to allow that person to intervene in the LUBA appeal to assign error to the local government’s refusal to allow a local appearance. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing - Before LUBA - Generally.** Where persons appeared during the local government proceedings that led to a LUBA appeal and remand, that local appearance is sufficient to satisfy the ORS 197.830(7)(b) requirement for an appearance to have standing to intervene in a subsequent LUBA appeal challenging the local government’s decision following the LUBA remand. For purposes of satisfying the ORS 197.830(7)(b) “appearance” requirement, it does not matter that those persons did not file a brief in the first LUBA appeal. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

**24.2.1 Standing - Before LUBA - Generally.** The general standing rule that governs standing to appeal land use decisions other than post-acknowledgment plan and land use regulation amendments is set out at ORS 197.830(2) and the first sentence of ORS 197.830(9). Under those statutes, a petitioner must have “[a]ppeared before the local government,” and must file a notice of intent to appeal with LUBA “not later than 21 days after the date the decision sought to be reviewed becomes final.” *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing - Before LUBA - Generally.** A petitioner appealing a post-acknowledgment plan and land use regulation amendment to LUBA must have “participated” in the proceedings that led to the amendment, whereas a petitioner appealing other kinds of land use decisions only must have “appeared” in the local proceedings. The participation standard is higher than the appearance standard. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing - Before LUBA - Generally.** Under the first sentence of ORS 197.830(9), which applies to appeals of land use decisions other than post-acknowledgment plan amendments, the 21-day appeal period commences on the date the decision is final. Under the second sentence of ORS 197.830(9), which applies to appeals of post-acknowledgment plan and land use regulation amendments, the notice of intent to appeal must be “filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615.” *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing - Before LUBA - Generally.** Where a petitioner files a timely notice of intent to appeal a post-acknowledgment land use regulation amendment within the time prescribed by the second sentence of ORS 197.830(9) but that petitioner did not participate in the local proceedings that led to the challenged decision, that petitioner does not have standing to appeal under the general standing rule that applies to appeals of post-acknowledgment land use regulation amendments. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Read in context, the ORS 197.830(2) requirement that a person must file a notice of intent to appeal in order to “petition [LUBA] for review” does not implicitly prohibit parties who have not filed a notice of intent to appeal from filing a cross-petition for review, as provided by OAR 661-010-0030(7). *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**24.2.1 Standing – Before LUBA – Generally.** The legislature’s use of different terms to describe the actions required to have standing to appeal to LUBA is some indication that the legislature intended to impose different standing requirements. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** To have standing to appeal a post-acknowledgment plan amendment under ORS 197.620(1) an appellant must have “participated” during the local proceedings, whereas to have standing to appeal under ORS 197.830(2) an appellant must have “appeared.” The dictionary definitions of “participated” and “appeared” suggest more is required to participate than to appear, but those definitions do not identify what more is required. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** When ORS 197.620(1) was first adopted, the requirement that a person must have “participated” during the local proceedings that led to adoption of a post-acknowledgment plan amendment required that an appellant

have done more than make a bare neutral appearance during the local proceedings. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** The text, context and statutory history of ORS 197.620(1) and 197.830(2) establish that while a bare neutral appearance will satisfy the standing requirement under ORS 197.830(2) that an appellant must have “appeared,” such a bare neutral appearance will not satisfy the standing requirement under ORS 197.620(1) that an appellant must have “participated.” To have participated under ORS 197.620(2), an appellant must have asserted a position on the merits. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

**24.2.1 Standing – Before LUBA – Generally.** Standing to appeal to LUBA is a matter of state law, and a local government cannot adopt code provisions that purport to enlarge or diminish the requirements for establishing standing to appeal to LUBA. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** The legislature did not contemplate in adopting the standing requirements to appeal to LUBA at ORS 197.830(2) that a local government could “appear” before itself and thereby gain standing to appeal the local government’s own decision to LUBA. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** While it may be possible for a local government to adopt code provisions that allow a department or subdivision within the local government to “appear” before the local government decision maker and establish standing for that department or subdivision to appeal the final land use decision to LUBA for purposes of ORS 197.830(2), the statute does not permit a local government to appeal its own decision and appear before LUBA as both petitioner and respondent. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

**24.2.1 Standing – Before LUBA – Generally.** When a party submits an affidavit in response to a jurisdictional challenge and the assertions in that affidavit are unchallenged, absent some other reason to question those assertions LUBA will accept them as true for purposes of resolving a jurisdictional issue. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

**24.2.1 Standing – Before LUBA – Generally.** Under *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), *pet for rev pending*, a party seeking judicial review of a LUBA decision under ORS 197.850(1), in addition to meeting the statutory standing requirements, must also establish that the Court of Appeals’ decision will have a practical effect on the appealing party’s rights. LUBA is an executive branch agency rather than a court. Therefore, the standing requirements to appeal a local government land use decision to LUBA are established by ORS 197.830; and the statute does not require that the appellant establish that LUBA’s decision will have a practical effect on the appellant. *Doob v. Josephine County*, 41 Or LUBA 569 (2001).

**24.2.1 Standing – Before LUBA – Generally.** The standing concerns identified by the Court of Appeals in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001), involve an appellant’s standing before the judicial branch. Because LUBA is part of the executive branch, the separation of powers problem involved in *Utsey* does not apply to a petitioner’s standing before LUBA. *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 247 (2002).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(7)(b)(B) allows intervention in a LUBA appeal by “[p]ersons who appeared before the local government, \* \* \* orally or in writing.” A city is a “person,” as that term is defined by ORS 197.015(18). *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

**24.2.1 Standing – Before LUBA – Generally.** Persons who appeared during local proceedings may intervene in a LUBA appeal on the side of respondent without demonstrating that the appeal will result in any actual damage or harm. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(6)(b)(A) permits an applicant to intervene in proceedings before LUBA even if the applicant did not appear below, so long as the motion to intervene is filed within 21 days of the date the notice of intent to appeal is filed. *Dowrie v. Benton County*, 37 Or LUBA 998 (1999).

**24.2.1 Standing – Before LUBA – Generally.** An internal vote prohibiting an unincorporated organization from pursuing an appeal does not, in itself, affect that organization's standing before LUBA. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

**24.2.1 Standing – Before LUBA – Generally.** As it applies to appeals to LUBA, the definition of "person" in ORS 197.015(8) includes an association. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

**24.2.1 Standing – Before LUBA – Generally.** A party has standing to appeal a moratorium if it has interests that are substantially affected by it. *Home Builders Assoc. v. City of Wilsonville*, 29 Or LUBA 604 (1995).

**24.2.1 Standing – Before LUBA – Generally.** Where a local hearing is provided, and petitioner appears at that hearing and becomes entitled to notice of the challenged land use decision under ORS 215.416(10) or 227.173(3), the filing of petitioner's notice of intent to appeal is governed by ORS 197.830(2) and (8), *not* ORS 197.830(3). *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

**24.2.1 Standing – Before LUBA – Generally.** Being the owner of the property that is the subject of a LUBA appeal proceeding does not automatically establish that person's standing to intervene. *Noble v. City of Fairview*, 28 Or LUBA 711 (1994).

**24.2.1 Standing – Before LUBA – Generally.** ORS 197.830(2) establishes two requirements for standing to bring a LUBA appeal. Petitioner must have (1) filed a timely

notice of intent to appeal, and (2) appeared during the local proceedings. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**24.2.1 Standing – Before LUBA – Generally.** Where an attorney states during local proceedings that he represents unspecified "appellants" and "opponents" but (1) nothing in the local record establishes who such persons are, and (2) the attorney fails to submit an affidavit or other evidence to establish who such persons are, the attorney's appearance below is inadequate to confer standing on the unspecified appellants and opponents. *Townsend v. City of Newport*, 21 Or LUBA 286 (1991).

**24.2.1 Standing – Before LUBA – Generally.** The amendments to ORS 197.830(3) adopted by the 1989 legislature, concerning standing to appeal a land use decision made without hearing or with inadequate notice of hearing, do not apply to decisions made before October 3, 1989, the effective date of the amendments. *Torgeson v. City of Canby*, 19 Or LUBA 623 (1990).

**24.2.1 Standing – Before LUBA – Generally.** Where standing is not an issue, an affidavit attached to the petition for review for the sole purpose of establishing petitioner's standing is not subject to a motion to strike. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).