

NATURE OF THE DECISION

Petitioners appeal a city legislative ordinance adopted in 2006.

MOTION TO DISMISS

This appeal was suspended at the request of the parties on April 15, 2008 until any of the parties reactivated the appeal. When the appeal was suspended there were pending a motion to dismiss, a “motion to determine jurisdiction,” and record objections. On May 21, 2010, petitioners requested that the appeal be reactivated. The city now moves to dismiss this appeal as moot because the challenged ordinance has been repealed. According to the city, the challenged ordinance was replaced by another ordinance that was also appealed to LUBA by petitioners. We affirmed the city’s decision involving the second ordinance. *Jacobsen v. City of Winston*, 55 Or LUBA 181 (2007).

LUBA will dismiss an appeal as moot when “review would have no practical effect.” *Davis v. City of Bandon*, 19 Or LUBA 526, 527 (1990). The city argues that because the challenged ordinance has been repealed, review of the ordinance would have no practical effect. Petitioners object to the motion to dismiss. Although petitioners concede that the challenged ordinance has been repealed, they argue that because the city made decisions based upon the challenged ordinance while it was effective, review of the challenged ordinance would have a practical effect. While petitioners could have perhaps challenged those decisions and raised the issue of the challenged ordinance being repealed, they did not do so.¹ LUBA review of local legislation that has been superseded or repealed would have no practical effect. *McGreer v. City of Rajneespuram*, 46 Or LUBA 607, 610-11 (2004).

This appeal is dismissed.

¹ Petitioners acknowledge, “[a]dmittedly we could have appealed [those decisions] too but this would have affected our finances, which we could not afford at the time.” Response to Motion to Dismiss 1.