

1 Bassham, Board Chair.

2 This appeal involved petitioner's challenge to the city's ordinance drafted to
3 implement Ballot Measure 7 (2000) (the measure). This appeal was stayed while the Oregon
4 Supreme Court decided the constitutionality of the measure. The court held the measure was
5 unconstitutional and the measure never took effect. *League of Oregon Cities v. State of*
6 *Oregon*, 334 Or 645, 56 P3d 892 (2002). The city subsequently repealed its ordinance
7 implementing the measure, thereby making this appeal moot. Petitioner has now moved to
8 dismiss the appeal. The motion to dismiss is granted.

9 Petitioner also moves for recovery of its filing fee and deposit for costs as the
10 prevailing party. The city objects to petitioner's motion for costs, asserting that petitioner is
11 not the prevailing party. For the reasons stated in *1000 Friends of Oregon v. Deschutes*
12 *County*, ___ Or LUBA ___ (LUBA No. 2000-247, February 11, 2003), we agree that
13 petitioner is not the prevailing party. The board will return petitioner's deposit for costs.

14 This appeal is dismissed.