

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LARRY KINE,
Petitioner,

vs.

CITY OF BEND,
Respondent.

LUBA No. 2026-054

FINAL OPINION
AND ORDER

Appeal from City of Bend.

Larry Kine represented themselves.

Michael Selkirk represented respondent.

ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board
Member, participated in the decision.

DISMISSED 08/31/2026

You are entitled to judicial review of this Order. Judicial review is
governed by the provisions of ORS 197.850.

Opinion by Zamudio.

Petitioner appeals Ordinance No. NS-2556, a city council decision adopting new Bend Municipal Code (BMC) chapter 18.20, Climate Pollution Fee.

JURISDICTION

ORS 197.825(1) limits LUBA's jurisdiction to review of "land use decisions," as defined at ORS 197.015(10)(a). Under that definition, a "land use decision" includes a "final decision or determination made by a local government or special district that concerns the adoption, amendment or application of[,]" among other things, "a land use regulation." ORS 197.015(10)(a)(A)(iii). In turn, ORS 197.015(11) defines "land use regulation" to mean "any local government zoning ordinance * * * or similar general ordinance establishing standards for implementing a comprehensive plan."

Petitioner's Notice of Intent to Appeal (NITA) states that it "is a precautionary appeal in that the ordinance being challenged is an ordinance adopting a new fee and not a land use regulation." NITA 1. On July 20, 2026, the city moved to dismiss this appeal for lack of jurisdiction, arguing that petitioner has not established that LUBA has jurisdiction and emphasized petitioner's statement that the challenged ordinance is "not a land use regulation." *Id.* Petitioner has not responded to the city's motion to dismiss. As the appealing party, petitioner bears the burden of establishing that LUBA has jurisdiction to

1 review the challenged decision. *Billington v. Polk County*, 299 Or 471, 475, 703
2 P2d 232 (1985). We agree with the city that petitioner has not carried that burden.

3 The city's land use regulations are codified in the Bend Development
4 Code, which is distinct from the BMC. The new Climate Pollution Fee is codified
5 in BMC title 18, Environment and Natural Resources. The fact that standards are
6 codified outside of a zoning ordinance suggests that the standards are not "land
7 use regulations." *Lazarus v. City of Milwaukie*, 67 Or LUBA 226, 230 (2013).
8 However, location of codification alone is not dispositive. *See Oregon Aviation*
9 *Watch v. City of Hillsboro*, 67 Or LUBA 252, 256 (2013) (explaining that
10 regulations that are codified elsewhere than in a local government's zoning or
11 land use ordinance may nonetheless constitute "land use regulations" if the
12 petitioner establishes that the regulations implement the comprehensive plan);
13 *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453, 457 (2002) ("Mere
14 labeling of the ordinance or its location within a local code does not make a land
15 use regulation something else."). Petitioner has not established that the
16 challenged Climate Pollution Fee implements the city's comprehensive plan. *See*
17 *Ramsey v. City of Portland*, 30 Or LUBA 212 (1995) (agreeing with the local
18 government that its tree removal ordinance was not a land use regulation where
19 the petitioner did not identify a comprehensive plan provision that the challenged
20 ordinance implemented). We conclude that the challenged decision is not a land
21 use decision and we do not have jurisdiction to review it.

22 This appeal is dismissed.

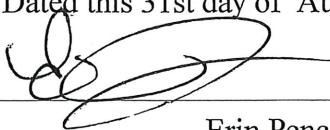
Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-054 on August 31, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Larry Kine
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Bend, OR 97703

Michael Selkirk
710 NW Wall Street
Bend, OR 97703

Dated this 31st day of August, 2026.



Erin Pence
Executive Assistant

Hannah Barkemeyer Baker
Executive Support Specialist