

1 On August 3, 2006, intervenor moved to dismiss all petitioners in this appeal, with
2 the exception of petitioner Brown. According to intervenor, only petitioner Brown appeared
3 during the local proceedings on remand and therefore only petitioner Brown satisfies the
4 ORS 197.830(2) requirement that a petitioner at LUBA must have appeared during the local
5 proceedings that led to the appealed decision.¹

6 Intervenor’s motion to dismiss is denied. While we need not and do not determine
7 here whether the city erred by refusing to allow petitioners other than petitioner Brown to
8 appear below, that refusal obviates the ORS 197.830(2) appearance requirement for those
9 petitioners who the city prevented from making an appearance. *See Hugo v. Columbia*
10 *County*, 34 Or LUBA 577, 582, *aff’d* 157 Or App 1, 967 P2d 895 (1998) (“the appearance
11 requirement is obviated where the local government fails to abide by the statutorily mandated
12 procedures in a way that precludes petitioner’s ability to appear”). In addition, the city’s
13 proceedings on remand that led to the challenged decision are a continuation of the city
14 proceedings that led to the city’s first decision that we remanded in *Jaffer*. Petitioners’
15 appearance in the local proceedings that led to our decision in *Jaffer*, also constitute an
16 appearance in this continuation of those local proceedings. *DLCD v. Klamath County*, 25 Or
17 LUBA 355, 357-61 (1993). Intervenor’s argument that petitioners other than petitioner
18 Brown did not make the appearance that is required to participate as a petitioner in this
19 appeal is without merit.

20 The motion to dismiss is denied.

¹ As relevant, ORS 197.830(2) provides:

“[A] person may petition [LUBA] for review of a land use decision or limited land use decision if the person:

- “(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
- “(b) Appeared before the local government, special district or state agency orally or in writing.”

1 **BRIEFING SCHEDULE**

2 In accordance with OAR 661-010-0067, the deadline for filing the petition(s) for
3 review in this appeal is extended from September 8, 2006 to September 19, 2006. The
4 deadline for filing respondent's and intervenor-respondent's briefs is extended to October 10,
5 2006. The deadline for LUBA to issue its final opinion and order is extended to November
6 14, 2006.

7 Dated this 29th day of August, 2006.

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Michael A. Holstun
Board Member