

## The Oregonian

# Portland's Earthquake Warning Ordinance Spurs Lawsuit by Owners of Brick Buildings

*By Elliot Njus  
December 20, 2018*

A group of Portland brick building owners hopes to block a city ordinance that would require them to post warnings that the buildings could crumble in an earthquake.

The plaintiffs — a nonprofit coalition of brick building owners, developer John Beardsley's company and building owner Jim Atwood — are asking a court to rule the ordinance unconstitutional under free-speech and due-process rights.

The City Council passed the ordinance in October. It would require owners of brick and similar buildings to prominently post signs with the disclosure: "This is an unreinforced masonry building. Unreinforced masonry buildings may be unsafe in the event of a major earthquake."

The same warning must be distributed to tenants of the building under the rule, which was set to take effect for most affected buildings in March.

But the building owners are seeking an injunction, saying in their lawsuit filed Wednesday that the ordinance violates their First Amendment rights.

"The government is forcing private property owners to basically broadcast the government's message instead of their own," John DiLorenzo, the building owners' attorney, said Thursday. The city, he said, could just as easily notify building residents by mailing a flier or brochure.

The city is applying the mandate unequally, he said, because it set a longer timeline for buildings owned by nonprofits, which have until November 2020 to comply.

Portland is believed to have more than 1,600 unreinforced masonry buildings that have stood, on average, almost 90 years. The brittle materials holding those buildings up are less likely to survive a major earthquake such as the Cascadia subduction zone quake that experts say will likely hit the West Coast in the coming decades.

But building owners said some might be compelled to comply even though their buildings are fully or partially reinforced because the city can't guarantee the accuracy of its unreinforced masonry building database list. To avoid the requirement, building owners must prove their buildings have been upgraded — a process they say is invasive and expensive.

"if your building is on the list you're guilty until proven innocent," said Kathy Rogers, who owns a masonry apartment building in Southeast Portland.

The dispute is an early taste of the opposition the city could face if it requires seismic upgrades for those buildings. The city is just beginning to write those ordinances, but the City Council has signaled the requirements likely wouldn't take effect for at least 20 years.

But the suing building owners say the placarding ordinance effectively forces them to upgrade or lose tenants and customers because of the stigma imposed by the placard.

Atwood said the city, through a 2015 seismic upgrade program, estimated the cost of an upgrade for a three-story building he owns in Northwest Portland at \$1.3 million, not including architectural costs and loss of revenue from vacating the building. The cost to rebuild from scratch would come to \$940,000, he said.

The city has underestimated retrofit costs publicly when promoting the ordinance, Atwood said. "Nobody really recognized the true costs involved," Atwood said. "We're all interested in safety. We all want our buildings to last forever. But there's a point of diminishing returns particularly when your buildings are already up to current code."

The Portland Bureau of Emergency Management and Mayor Ted Wheeler's office declined to comment on pending litigation.

Commissioner Dan Saltzman, who is named in the lawsuit as the commissioner in charge of the Portland Bureau of Emergency Management until he leaves office at the end of the year, said the city was confident its ordinance is constitutionally sound and described the lawsuit as "frivolous."

"I think the placarding ordinance gives people more information," Saltzman said. "The city has information that these buildings that could be unsafe in an earthquake. It's our obligation to our residents to make sure they have this information, too."

## **The Portland Tribune**

### **Lawsuit Slams City for Quake Warning Signs on Some Buildings**

*By Jim Redden  
December 20, 2018*

**Lawyer says signs required for unreinforced masonry buildings is unconstitutional for several reasons, including compelling unwanted government speech.**

Owners of unreinforced masonry buildings in Portland filed a federal lawsuit against the city Wednesday, Dec. 19, to repeal a requirement that they post signs warning of danger during major earthquakes.

The City Council approved the requirement on Oct. 10. It says owners of some but not all unreinforced masonry buildings must post signs that read, "This Building is an Unreinforced Masonry Building. Unreinforced Masonry Buildings may be unsafe in an event of a Major Earthquake."

Among other things, the lawsuit filed in Portland's U.S. District Court, alleges the requirement violates some building owners' First Amendment free speech rights and is not being applied equally to the owners of all such buildings. The city is requiring the owners of multifamily and commercial buildings to post the signs by March 1, 2019, but has given nonprofit organization and churches two years to post the signs, and has exempted single-family homes and duplexes, according to the lawsuit.

The lawsuit was filed by Portland attorneys John DiLorenzo and Aaron Stuckey, who sued the City Council for mispending water and sewer funds, and won a \$10 million settlement.

The city does not comment on pending litigation. No court date has been set for the case. You can read the lawsuit [here](#).

The lawyers are representing three clients. One is the Masonry Building Owners of Oregon, a nonprofit corporation representing the interests of owners of masonry buildings, many of whom are subject to the requirement. The second is Fountain Village Development LLC, which owns

Western Rooms, a mixed used multifamily and commercial building that appears on the city's interactive list of unreinforced masonry buildings, but has undergone significant seismic retrofitting, according to the lawsuit. The third is developer Jim A. Atwood, in his capacity as trustee of the Jim A. Atwood Trust, an owner of a Glade Hotel, a building on the city's list subject to the requirement.

The suit also alleges that the building owners' due process rights were violated by the requirement.

There are about 1,800 unreinforced masonry buildings in Portland. Of those, 1,640 are believed to have not been retrofitted to survive an earthquake. The council discussed requiring owners to bring all of them up to current earthquake codes, but felt the cost — an average of \$105 per square foot — is too expensive. The council intended requiring the warning signs to be a compromise, although the building owners group does not see it that way.

To read a previous Portland Tribune story on the issue, go to [tinyurl.com/y982xsue](http://tinyurl.com/y982xsue).

For more information, visit [www.portlandoregon.gov/bds/70766](http://www.portlandoregon.gov/bds/70766).