

September 11, 2018

The Honorable Ted Wheeler  
Mayor, City of Portland  
1221 SW Fourth Ave., Suite 340  
Portland, OR 97204

Dear Mayor Wheeler:

The Portland Business Alliance (Alliance) represents nearly 1,900 small, medium and large businesses, including property owners, throughout the Portland metro region. As you are aware, we have been closely monitoring the city's process to develop a mandate to retrofit unreinforced masonry (URM) buildings and we are largely supportive of the resolution passed in June that outlines the various class requirements and retrofit timelines.

While we recognize that resolution is binding city policy, it is our understanding that Portland City Council will consider an additional resolution on Oct. 3 that will codify the details and timeline of the placarding requirement. We certainly understand that these vulnerable buildings pose a safety risk in the event of an earthquake; however, we continue to hear significant concerns that placarding will go into effect before any clear upgrade requirement or financial incentives are in place, which is at odds with the city's URM stakeholder advisory committee recommendation of voluntary placarding for compliance.

We appreciate the clear direction in the recently passed resolution to identify incentives and other financial support for property owners required to meet this mandate. The upgrade requirement will have a financial impact on property owners and commercial tenants, particularly smaller property owners and businesses in neighborhood districts. The placard may further impact revenue and the property owners' ability to finance the required seismic upgrades.

Though our preference is to refer discussion of the placard requirement to the new stakeholder committees formed to evaluate the retrofit requirements, if the city does move forward, we urge the following to be included in the placard requirement:

1. Include an appeal process. The city has stated that the accuracy of the URM inventory cannot be confirmed due to a number of factors; property owners must have a way to avoid the placard if the building has been upgraded to current standards.
2. Include a clear process to remove the placard after upgrades are complete.

The Alliance recognizes the difficulty of balancing public safety, the need for affordable commercial and residential space and financial impacts on building owners. We urge the city to continue to monitor the impacts of any placarding requirement, should it move forward, and to take further steps to assist business and property owners if necessary.

We look forward to a continued partnership with the city on this critical issue.

Sincerely,

A handwritten signature in black ink that reads "Dave Robertson". The signature is written in a cursive, slightly slanted style.

Dave Robertson  
Chair, board of directors

cc: City Council  
Jonna Papaefthimiou



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September 26, 2018

Mayor Ted Wheeler  
Portland City Hall  
1221 SW 4<sup>th</sup>, Suite 340  
Portland, OR 97204

RE: URM Notice Ordinance

Dear Mayor Wheeler,

This letter is to inform you that I represent Denny Schuler, Lyndsay Levy and Hambone & Jake LLC. My client's own buildings that might be considered unreinforced masonry buildings under the City Code. I am writing specifically in response to the proposed requirements that 1) unreinforced masonry buildings owners display a placard stating the building may be unsafe in the event of a major earthquake; that 2) owners record a covenant not to remove the placard; and that 3) lease agreements contain language stating the building may be unsafe in the event of a major earthquake. As I understand it, these proposed requirements come from a concern about public safety. The concern is admirable, but the proposed placard solution does not address the problem. Rather, it creates major problems for property owners, their tenants and their guests.

As you know the City has compiled a data base of URM Buildings which the City itself repudiates. As noted on the web site:

“The City of Portland makes no representations, expressed or implied as to the accuracy of this database. There are no assurances as to whether the information presented is correct or comprehensive.”

In other words, the City has acknowledged that it has not done sufficient research on the inventory of URM Buildings to know whether or not any particular building presents the threat about which the City is concerned. In spite of this fundamental flaw in the City data, the City Council appears ready to impose on property owners a set of required disclosures that do not advance the cause of seismic retrofitting but, in fact, endanger public safety and impose on owners legally questionable requirements. I address these requirements.

This first relates to liability insurance. Most building owners carry a policy of property insurance for their buildings. Typically, this insurance also covers personal injuries sustained on property. While the typical property damage portion of the policy will exclude damage to a building caused by seismic activity, personal injury is another matter. I do not think the City has considered the impact of seismic disclosure requirements on personal injury coverage. As a real estate lawyer, I called several insurance brokers about this. Each was unsure about the precise impact but all were certain that insurers would have to view their coverage language differently if these disclosures were to be required. One thought it inevitable that personal injury coverage would be explicitly excluded if the injury were caused by seismic activity. This issue was not considered by the City in any of the documentation I have seen surrounding this proposed requirement. It would be unwise to impose the requirement without first studying the likely response of insurers to the requirement.

The second relates to real estate financing. As you know, most real estate is subject to some type of financing. Financing makes it possible to for property owners to buy and sell buildings and for small business owners to obtain financing for their businesses. The recordation required by this proposed ordinance will likely interfere with the financing process. When making a loan, lenders obtain title insurance paid for by their borrowers. The lender's policy of title insurance lists exceptions to coverage. There are some common exceptions to coverage to which lenders do not object. The recordation of the owners covenant not to remove a placard will create an entirely new exception—one unique to Portland. Lenders may see this new exception as one that makes them directly aware of the risks inherent in the building they are financing. An exception that may expose them to liability for the condition. This issue was not considered by

the City in any of the documentation I have seen surrounding this proposed requirement. Once again, it would be unwise to impose this requirement without having adequately considered the impact.

The third relates to lease obligations. Typically, a commercial lease for small neighborhood buildings requires the landlord to maintain the structure while the tenant maintains other components of the building. Many occupants of unreinforced masonry buildings are neighborhood tenants. This relationship provides neighborhoods with goods, services, atmosphere and vitality. If landlords are compelled to introduce into lease renewals a provision that explicitly acknowledges the danger of the building type, tenants may fear their own liability to guests and customers. The tenants' remedy would be to insist the landlord repair the structure. That is, do the seismic upgrades that the City realizes are currently not financially feasible. Thus, what may have been for many years mutually beneficial financial relationships now become antagonistic. This issue was not considered by the City in any of the documentation I have seen surrounding this proposed requirement. Once again it would be unwise to impose this requirement without having adequately considered the impact.

The placard ordinance deserves much more research before it is implemented. I cannot say that the problems raised above are certainties. But they seem quite likely—more probable than not. Imposing a signage requirement without knowing the impact of the signage on third parties essential to the industry is not a good idea. There is no reason that these issues could not be included in the ongoing City search for a solution to the URM building problem. There is no imminent reason to impose a placard requirement at this point in time—no data which shows injury will be avoided as a result of the ordinance.

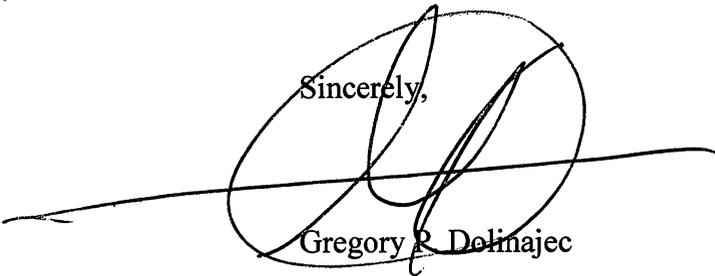
There are of course other legal issues surrounding this requirement. Other buildings more likely to be adversely impacted by a major earth quake are not even mentioned. In other words, the City is creating a class of building to which it is applying a requirement to which more vulnerable properties are not subject. The City is forcing property owners to make a declaration against self-interest which they might not believe--forcing owners to self-identify as owning an unsafe structure. I'm sure there are constitutional questions that arise from this. And there are

probably lawyers considering these types of responses to the ordinance. My response is based in fundamentals of the real estate industry. Fundamentals which may be disrupted by a premature ordinance that stigmatizes a property and an owner before the City has adequately researched the matter.

Finally, there is the question of schools and public buildings. It seems the proposed ordinance creates a totally arbitrary schedule for placarding various categories of buildings. This makes no sense since these dates merely relate to public notice and not to any remediation. Most perplexing is the requirement that schools be placarded without providing students with alternative safe facilities. Although I have not looked specifically at the issue of liability insurance for public schools I cannot believe that the placards would not have unintended consequence with the school districts insurers.

All in all, this ordinance is a bad idea. It is merely a symbolic gesture with no improvement to public safety. The issues regarding placarding have not been adequately researched by the City. There is no compelling reason that the placarding requirement should not be postponed until adequate research has been done on it. There are numerous reasons it should be. My clients respectfully request that the City postponed voting on this proposed ordinance. They like other owners will have no choice but to consider their litigation options if it is not. Hopefully, this will not be necessary.

Sincerely,



Gregory R. Dolinajec

CC:  
Commissioner Chloe Eudaly  
Commissioner Nick Fish  
Commissioner Amanda Fritz  
Commissioner Dan Saltzman

**From:** Lynn Hanrahan  
**To:** [URM Building Work Group](#)  
**Subject:** [User Approved] Re: UPDATE: URM Placarding Ordinance Draft /Comments  
**Date:** Monday, October 1, 2018 8:26:40 AM

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Hello Taylor,

I am sending a copy of a letter I am also sending to Portland City Council on the subject of placarding URMS.

Thank you,  
Lynn Hanrahan

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We own a condo in a Unreinforced Masonry Building (URM) built in 1923 called The Aberdeen at 1529 SE Hawthorne Blvd., in Portland. We bought this unit in 2006 so that a family member would have secure housing. The Aberdeen has 14 units, thus there are 14 different owners. My husband and I are sending this letter to strongly object to the proposal to mandate the placing of a warning placard on our building (and other URMs). We have a long list of reasons for our objections, and we are respectfully asking that our position be considered. Part of the proposal also would mandate tenant notification of a building's status, and that part we are *not* objecting to. A hearing on this is scheduled for the coming week, October 3, 2018 at 2:00. Please see our objections below.

- The URM policy committee of the Portland Bureau of Emergency Mgt., unanimously rejected negative placarding after two years study. That should eliminate this idea in and of itself.
- The City of Portland is working off of an inaccurate listing of URM buildings in Portland. Buildings will be stigmatized as URMs that are not, and will have to spend money to prove they are not, while others will be missed. The City of Portland should assemble an accurate, up-to-date listing of URMs.
- Placards will devalue buildings immediately; make them harder to rent out, harder to sell, and harder to get loans on. At the very time that you want owners to plan financially to retrofit, placards will have a negative impact on owner's finances due to devaluation.
- Placards will scare people and stigmatize. General signs in various areas of our city (not on buildings) that would educate residents and owners about our presence in an earthquake zone would be more appropriate and more helpful. Many buildings that are not URMs would be in danger in a strong earthquake. In the 1989 San Francisco earthquake, wood structure buildings came down too.
- The City of Portland would be better off educating the populace on how to react in an earthquake, rather than put placards on buildings. Promoting how to shut a building's gas off could save many lives, as fires started by gas leakage are a major killer and destruction agent in earthquakes.
- The City of Portland/PBEM is so uneven in their view of dangerous buildings. Liquefaction is not being considered here. Buildings of all sorts, not just URMs, in downtown, The Pearl, and other areas will be very vulnerable, yet there is no mandate to placard or retrofit anything beyond URMS.
- Should this pass, you will be placarding many public schools, and we have to wonder what the plan is when parents object to their children attending school in a "dangerous building", and they want a transfer for their child? Since so few schools are retrofitted, how will this work? Placards will scare children and their parents.
- 90% of the bridges in Oregon are not retrofitted; almost all of the bridges in Portland will collapse in a major earthquake, or suffer extensive damage. The lives lost on the bridges could be very high.

We have to conclude that the City of Portland has decided to saddle their earthquake preparedness effort onto one section of building ownership, that being a lot of small business owners, and owners of small apartment complexes, etc. The problems are so much broader than the focus of the mandates being considered, that we are quite taken aback by all of this. We feel the city has mishandled this program since 1994, when the roofing code was updated, but not implemented by roofing companies or city inspectors.

Another problem (such as we experienced) was that even though The Aberdeen was on the city's URM list, notification letters to our 14 owners went either to our address with no unit numbers and were thus undeliverable, or to the address of the developer of our building, and to an old address for him at that. Therefore, three people bought units not knowing it was a URM building, because the HOA board did not know. Why weren't realtors told? So much mishandling. We feel the placarding is more of the same.

San Francisco has a placarding program that kicks in after a deadline has been passed for an owner to obtain a permit to retrofit. That makes much more sense than stigmatizing our buildings with placards before the retrofit program is even finalized.

Thank you for considering our views.

Lynn & Steve Hanrahan  
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On Sep 21, 2018, at 10:59 AM, URM Building Work Group <[urms@portlandoregon.gov](mailto:urms@portlandoregon.gov)> wrote:

Dear URM owners, experts, and interested parties:

This is a brief mid-month update on Portland's URM work. The draft ordinance to require URM placarding and tenant notifications, and to strengthen the existing triggers for retrofitting a URM when other work is performed, is available on the BDS website:  
<https://www.portlandoregon.gov/bds/article/697998>.

In response to community concerns, publicly owned buildings will now post signs before other buildings, and non-profits will have two years to post the signs. The timeline is unchanged for private buildings, with a proposed March 1, 2019 deadline.

Comments on the proposal can be sent directly to the Council Clerk, [cctestimony@portlandoregon.gov](mailto:cctestimony@portlandoregon.gov). I also welcome your comments and will share them.

The first Council hearing of this proposal is still set for **Wednesday, October 3 at 2 PM in Portland City Hall, 1221 SW 4th Ave., Portland.**

Thank you again for your interest in this issue.

Sincerely,

**Taylor Steenblock**  
**Seismic and Resiliency Policy Advisor**

Pronouns: She/her/hers  
Portland Bureau of Emergency Management  
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Lynn Hanrahan  
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