

TO: JAMES L. APP, CITY MANAGER
FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: POSTING OF UNREINFORCED MASONRY STRUCTURES
DATE: APRIL 5, 2005

Needs: For the City Council to consider approving an Ordinance that would implement Chapter 12.2 of the California Government Code with regard to posting of unreinforced masonry structures.

Facts:

1. Chapter 12.2 of the California Government Code (Gov. Code Sections 8875 et seq.) requires and authorizes local building departments to take steps to identify and establish a program for mitigation of identified buildings whose construction is unlikely to be earthquake resistant.
2. Chapter 12.2 of the California Government Code requires that certain notices be posted on unreinforced masonry buildings.
3. Any property owner who does not comply with such notification requirements may be subject to administrative fines levied by the City. The fine is \$250, escalating to \$1000 after 30 days of non-response.

Analysis and Conclusion:

The attached draft Ordinance has been recommended by the City Attorney as an appropriate step toward implementation of the California Government Code in relation to posting of unreinforced masonry structures. With adoption of the attached Ordinance, the City would be in the position to levy fines as an enforcement tool. Fines would be levied in a manner consistent with the provisions of Section 8875 et seq., a copy of which is attached.

Policy Reference: Chapter 12.2 of the California Gov. Code (Gov. Code Section 8875 et seq.)

Fiscal Impact: Should not be an extremely significant impact on the City.

Options:

- a. Introduce for first reading Ordinance No. XXX, amending Chapter 17.35 of the Municipal Code relating to Seismic Safety, and set April 19, 2005, as the date for second reading.
- b. Amend, modify or reject the foregoing option.

GOVERNMENT CODE

SECTION 8875-8875.10

8875. Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Potentially hazardous building" means any building constructed prior to the adoption of local building codes requiring earthquake resistant design of buildings and constructed of unreinforced masonry wall construction. "Potentially hazardous building" includes all buildings of this type, including, but not limited to, public and private schools, theaters, places of public assembly, apartment buildings, hotels, motels, fire stations, police stations, and buildings housing emergency services, equipment, or supplies, such as government buildings, disaster relief centers, communications facilities, hospitals, blood banks, pharmaceutical supply warehouses, plants, and retail outlets. "Potentially hazardous building" does not include warehouses or similar structures not used for human habitation, except for warehouses or structures housing emergency services equipment or supplies. "Potentially hazardous building" does not include any building having five living units or less. "Potentially hazardous building" does not include, for purposes of subdivision (a) of Section 8877, any building which qualifies as "historical property" as determined by an appropriate governmental agency under Section 37602 of the Health and Safety Code.

(b) "Local building department" means a department or agency of a city or county charged with the responsibility for the enforcement of local building codes.

8875.1. A program is hereby established within all cities, both general law and chartered, and all counties and portions thereof located within seismic zone 4, as defined and illustrated in Chapter 2-23 of Part 2 of Title 24 of the California Administrative Code, to identify all potentially hazardous buildings and to establish a program for mitigation of identified potentially hazardous buildings.

8875.2. Local building departments shall do all of the following:

(a) Identify all potentially hazardous buildings within their respective jurisdictions on or before January 1, 1990. This identification shall include current building use and daily occupancy load. In regard to identifying and inventorying the buildings, the local building departments may establish a schedule of fees to recover the costs of identifying potentially hazardous buildings and carrying out this chapter.

(b) Establish a mitigation program for potentially hazardous buildings to include notification to the legal owner that the building is considered to be one of a general type of structure that historically has exhibited little resistance to earthquake motion. The mitigation program may include the adoption by ordinance of a hazardous buildings program, measures to strengthen buildings, measures to change the use to acceptable occupancy levels or to

demolish the building, tax incentives available for seismic rehabilitation, low-cost seismic rehabilitation loans available under Division 32 (commencing with Section 55000) of the Health and Safety Code, application of structural standards necessary to provide for life safety above current code requirements, and other incentives to repair the buildings which are available from federal, state, and local programs. Compliance with an adopted hazardous buildings ordinance or mitigation program shall be the responsibility of building owners.

Nothing in this chapter makes any state building subject to a local building mitigation program or makes the state or any local government responsible for paying the cost of strengthening a privately owned structure, reducing the occupancy, demolishing a structure, preparing engineering or architectural analysis, investigation, or design, or other costs associated with compliance of locally adopted mitigation programs.

(c) By January 1, 1990, all information regarding potentially hazardous buildings and all hazardous building mitigation programs shall be reported to the appropriate legislative body of a city or county and filed with the Seismic Safety Commission.

8875.3. Local jurisdictions undertaking inventories and providing structural evaluations of potentially hazardous buildings pursuant to this chapter shall have the same immunity from liability for action or inaction taken pursuant to this chapter as is provided by Section 19167 of the Health and Safety Code for action or failure to take any action pursuant to Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13 of the Health and Safety Code.

8875.4. The Seismic Safety Commission shall report annually to the Legislature on the filing of mitigation programs from local jurisdictions. The annual report required by this section shall review and assess the effectiveness of building reconstruction standards adopted by cities and counties pursuant to this article and shall, commencing on or before January 1, 2007, include an evaluation of the impact and effectiveness of Section 8875.10.

8875.5. The Seismic Safety Commission shall coordinate the earthquake-related responsibilities of government agencies imposed by this chapter to ensure compliance with the purposes of this chapter.

8875.6. On and after January 1, 1993, the transferor, or his or her agent, of any unreinforced masonry building with wood frame floors or roofs, built before January 1, 1975, which is located within any county or city shall, as soon as practicable before the sale, transfer, or exchange, deliver to the purchaser a copy of the Commercial Property Owner's Guide to Earthquake Safety described in Section 10147 of the Business and Professions Code. This section shall not apply to any transfer described in Section 8893.3.

8875.7. If the transferee has received notice pursuant to Section 8875.8, and has not brought the building or structure into compliance within five years of that date, the owner shall not receive payment from any state assistance program for earthquake repairs resulting from damage during an earthquake until all other applicants have been paid.

8875.8. (a) An owner who has received actual or constructive notice that a building located in seismic zone 4 is constructed of unreinforced masonry shall post in a conspicuous place at the entrance of the building, on a sign not less than 5 X 7 the following statement, printed in not less than 30-point bold type:

"This is an unreinforced masonry building. Unreinforced masonry buildings may be unsafe in the event of a major earthquake."

(b) Notwithstanding subdivision (a), unless the owner of a building subject to subdivision (a) is in compliance with that subdivision on and after December 31, 2004, an owner who has received actual or constructive notice that a building located in seismic zone 4 is constructed of unreinforced masonry and has not been retrofitted in accordance with an adopted hazardous building ordinance or mitigation program shall post in a conspicuous place at the entrance of the building, on a sign not less than 8 X 10 the following statement, with the first two words printed in 50-point bold type and the remaining words in at least 30-point type:

"Earthquake Warning. This is an unreinforced masonry building. You may not be safe inside or near unreinforced masonry buildings during an earthquake."

(c) Notice of the obligation to post a sign, as required by subdivisions (a) and (b), shall be included in the Commercial Property Owner's Guide to Earthquake Safety.

(d) Every rental or lease agreement entered into after January 1, 2005, involving a building subject to the requirements of subdivision (b) shall contain the following statement: This building, which you are renting or leasing, is an unreinforced masonry building. Unreinforced masonry buildings have proven to be unsafe in the event of an earthquake. Owners of unreinforced masonry buildings are required to post in a conspicuous place at the entrance of the building, the following statement:

"Earthquake Warning. This is an unreinforced masonry building. You may not be safe inside or near an unreinforced masonry building during an earthquake."

(e) An owner who is subject to subdivision (b) and who does not comply with subdivision (a) may be subject to an administrative fine of two hundred fifty dollars (\$250) to be levied by the local building department no sooner than 15 days after the local building department notifies the owner that the owner is subject to the administrative fine. If the owner does not comply with the requirements of that subdivision within 30 days of the first administrative fine, the owner may be subject to an additional administrative fine of one thousand dollars (\$1,000).

(f) If an owner who is subject to subdivision (b) does not comply with subdivision (b), any person may bring a civil action for injunctive relief if all of the following have been met:

(1) He or she has made a request to an appropriate authority for administrative enforcement of this section at least 90 days prior to the action.

(2) An administrative fine has not been levied since the request was made pursuant to paragraph (1).

(3) At least 15 days prior to the filing of the action, the person has served on each proposed defendant a notice containing the following statement:

"You are receiving this notice because you are alleged to be in violation of Section 8875.8 of the Government Code, which requires that the owner of an unreinforced masonry building post a sign, not less than 8 X 10, in a conspicuous place at the entrance of the building with the following statement, with the first two words printed in 50-point boldface type and the remaining words in at least 30-point type:

"Earthquake Warning. This is an unreinforced masonry building. You may not be safe inside or near unreinforced masonry buildings during an earthquake.

Failure to post the sign in compliance with subdivision (b) of Section 8875.8 within 15 days of receipt of this notice entitles the sender of the notice to file an action against you in a court of law for injunctive relief."

(4) The owner has failed to post the sign in accordance with the requirements of subdivision (b) within 15 days of receipt of the notice served pursuant to this subdivision.

(g) The prohibitions and sanctions imposed pursuant to this section are in addition to any other prohibitions and sanctions imposed by law. A civil action for injunctive relief pursuant to this section shall be independent of any other rights and remedies.

8875.9. Section 8875.8 shall not apply to either one of the following:

(a) Unreinforced masonry construction if the walls are nonload bearing with steel or concrete frame.

(b) A building that has been retrofitted in accordance with an adopted hazardous buildings ordinance or mitigation program, in which case the local jurisdiction may authorize the owner to post in a conspicuous place at the entrance of the building, on a sign not less than 5 X 7 the following statement, printed in not less than 30-point bold type:

"This building has been improved in accordance with the seismic safety standards of a local building ordinance that is applicable to unreinforced masonry buildings."

8875.95. No transfer of title shall be invalidated on the basis of a failure to comply with this chapter.

8875.10. (a) Notwithstanding any other provision of law, a city or county may not impose any additional building or site conditions including, but not limited to, parking or other onsite or offsite requirements, fees, or exactions, on or before the issuance of a building permit that is necessary for the owner of a potentially hazardous building to conduct seismic-related improvements to that building in order for that building to meet the requirements of a mitigation program established pursuant to Section 8875.1 and adopted pursuant to Section 8875.2, if the building or site conditions do not relate to, or further the purpose of, seismic improvements to the building and the improvements comply with applicable building codes

and meet or exceeds the requirements of state and federal law and regulations that would otherwise apply.

(b) This section shall not apply to any changes in use, design, or other building features that are unrelated to the seismic improvements. This section shall also not apply to a request for other entitlements for the project, including, but not limited to, a general plan amendment, zone change, or approval pursuant to the Subdivision Map Act.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
ADDING CHAPTER 17.35 TO THE EL PASO DE ROBLES MUNICIPAL CODE
RELATING TO SEISMIC SAFETY

WHEREAS, Chapter 12.2 of the California Government Code (Gov. Code §8875 *et seq.*) requires and authorizes local building departments to take certain steps to identify and establish a program for mitigation of identified buildings whose construction is unlikely to be earthquake resistant; and

WHEREAS, Chapter 12.2 of the California Government Code requires that certain notices be posted on unreinforced masonry buildings, or contained in certain rental or lease agreements for tenancies in unreinforced masonry buildings; and

WHEREAS, any property owner who does not comply with such notification requirements may be subject to administrative fines levied by the local Building Official.

NOW, THEREFORE, the City of El Paso de Robles does hereby ordain as follows:

SECTION 1. Chapter 17.35 is hereby added to the El Paso de Robles Municipal Code as follows:

Chapter 17.35

SEISMIC SAFETY

17.35.010 Warning Statement; Violations

The City Council of the City of El Paso de Robles intends to secure compliance with the provisions of Chapter 12.2 of the California Government Code regarding building earthquake safety. The City Building Official is required to identify potentially hazardous buildings, must establish and implement a mitigation program for such potentially hazardous buildings, and may establish a schedule of fees to carry out such mitigation program. In addition, the City Building Official is hereby authorized to notify the owner of any building identified as potentially hazardous and to levy administrative fines pursuant to and in accordance with the provisions of Chapter 12.2 of the California Government Code.

SECTION 2. Publication. The City Clerk shall cause this Ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published, and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 3. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. Inconsistency. To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject matter thereof, such inconsistent and conflicting provisions or prior ordinances, motions, resolutions, rules and regulations are hereby repealed.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force and effect as of 12:01 a.m. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on April 5, 2005, and passed and adopted by the City Council of the City of El Paso de Robles on the 19th day of April 2005 by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk