

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MASONRY BUILDING OWNERS OF OREGON, an Oregon mutual benefit non-profit organization; FOUNTAIN VILLAGE DEVELOPMENT LLC, an Oregon limited liability company; and JIM A. ATWOOD, in his capacity as trustee of the Jim A. Atwood Trust dated August 10, 2017,

Case No. 3:18-cv-02194-AC

ORDER OF
TEMPORARY INJUNCTION

Plaintiffs,

v.

TED WHEELER, in his official capacity as Mayor of the City of Portland and Commissioner in charge of the Bureau of Development Services; DAN SALTZMAN, in his official capacity as Commissioner in charge of the Fire Bureau, and CITY OF PORTLAND, an Oregon Municipal corporation,

Defendants.

ACOSTA, Magistrate Judge:

Currently pending is Plaintiffs' motion (ECF No. 24) for preliminary injunction seeking to enjoin defendant City of Portland's Ordinance 189201, which imposes various obligations on

owners of unreinforced masonry (“URM”) buildings. The ordinance’s requirements and its enforcement become effective on March 1, 2019. Hearing on Plaintiffs’ motion for preliminary injunction is scheduled for February 26, 2019.

The court convened a status conference on February 14, 2019. The court and the parties discussed Defendants’ counsels’ February 12, 2019 email in which they informed the court and Plaintiffs that a City commissioner had submitted a proposed amended ordinance which will be considered and voted upon at the February 27, 2019 City Council Meeting. Defendants’ counsel stated that the proposed amended ordinance, if passed, could moot some or all of the issues Plaintiffs’ injunction motion has placed before the court. Defendants’ counsel proposed that the court enter a 30-day injunction, to begin March 1, 2019, to allow the City Council time to consider and possibly pass the proposed amended ordinance, and take off the court’s calendar the February 26 hearing. Plaintiffs did not oppose a temporary injunction, on condition that another hearing date be set and that the temporary injunction be of longer length than 30 days, to allow Plaintiffs’ witnesses could avoid scheduling conflicts that would result from resetting the hearing within a 30-day temporary injunction period.

Having considered the record, the parties’ respective arguments and positions, and the relevant equities, the court HEREBY ORDERS:

1. Pursuant to Federal Rule of Civil Procedure 65(a), the court imposes a temporary injunction to prohibit enforcement of City of Portland Ordinance 189201 for a period of 60 days, beginning March 1, 2019, and expiring May 1, 2019.

2. During the 60-day period, all public and private persons, business, entities, and organizations who or which are subject to the ordinance are not required to comply with any provision of the ordinance, including but not limited to provisions requiring the posting of placards, the distribution and disclosures of information to existing or prospective tenants, and the requirement that compliance with the ordinance be recorded in county real property records as an exception to their titles.

3. During the 60-day period, the City may not take action in reliance on the ordinance, including but not limited to informing owners of URM buildings that they must comply with the ordinance, that they are not in compliance with the ordinance, or that they shall be or are fined for noncompliance with the ordinance. The City may, however, inform URM building owners of this temporary injunction and of any proposed and enacted changes or amendments to the ordinance.

4. Pursuant to Federal Rule of Civil Procedure 65(d), that a temporary injunction is necessary because:

a. Sufficient time is needed for the City to continue and complete consideration and possible passage of the proposed amended ordinance and any proposed changes to the proposed amended ordinance, which process could produce a new ordinance that resolves some or all of the

issues that are the subject of Plaintiffs' lawsuit and pending motion for preliminary injunction.

b. There is a substantial likelihood that the ordinance's content will be altered from its current form and, if modified or replaced, no longer will present some or all of the issues currently the subject of the Plaintiffs' pending motion for preliminary injunction. Temporarily enjoining the ordinance's effective date allows time for the court and the parties to monitor the progress of the proposed amended ordinance and determine what issues, if any, remain to be briefed and litigated, thereby promoting judicial economy.

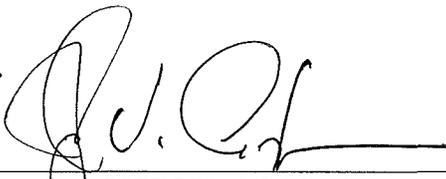
b. Enjoining the ordinance's current effective date is necessary to prevent confusion to the public generally, and for URM building owners specifically, which enforcement of the ordinance would create if the ordinance is modified or replaced, or if the February 26 hearing proceeded and the court issued an order that rendered the ordinance, or any part of it, unenforceable and the City subsequently enacted the proposed amended ordinance.

5. Pursuant to Federal Rule of Civil Procedure 65(c), the court finds that Plaintiffs are not be required to give security in any amount or form because, if Plaintiffs do not prevail, Defendants, and each of them, will suffer no damage.

FURTHER ORDERED that the February 26, 2019 hearing on Plaintiff's motion for preliminary injunction is STRICKEN and the hearing is reset for Thursday April 25, 2019, beginning at 9:00am. The City shall file a status report (by email, letter, or formal filing) on or before March 4, 2019, informing the court and the Plaintiffs of the status of the ordinance and the proposed amended ordinance, the expected amount of time for the City to complete the process for modifying or replacing the ordinance, and any other information relevant to maintaining the deadlines established by this Order.

IT IS SO ORDERED.

DATED this 15th day of February, 2019.



JOHN V. ACOSTA
United States Magistrate Judge