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Preparing for the Big One: Los Angeles's New Seismic Retrofit Ordinance and Recommendations for Mitigating Risk

A major earthquake in California is inevitable. Most Californians recall the 1994 Northridge earthquake that rocked Los Angeles with a 6.7 on the Richter scale. In that earthquake, some of the structures that suffered the greatest damage were wood-framed "soft story" buildings and concrete multi-level non-ductile structures constructed prior to 1978. The damage was terrible. Many soft story buildings (i.e. those with large openings, such as parking areas, where a shear wall might otherwise have been installed for seismic resistance) collapsed causing serious personal injury and death, and damage to property, which cost Californians billions of dollars.

Los Angeles Ordinance No. 182893

Better late than never (and on the heels of a similar ordinance passed by San Francisco in 2013), in 2015 the City of Los Angeles passed ordinance No. 182893 establishing mandatory retrofit standards for such older soft story and non-ductile concrete buildings. There are some exceptions—including for certain qualified historical buildings—but the estimates are that the ordinance will affect 15,000 buildings in Los Angeles. Accordingly, this ordinance will have wide effect on building owners, managers, contractors, and design professionals.

Building Owner's Obligations

Generally, the ordinance requires the owner of all soft story wood-framed and non-ductile concrete buildings constructed within the ordinance parameters (prior to 1978 for wood-framed structures and 1977 for concrete buildings) to hire a civil or structural engineer, or an architect, to determine whether the building complies with updated seismic standards outlined by the ordinance and if necessary "shall cause the building to be structurally altered to conform to such standards" or to be demolished at the owner's option.

Time for Compliance

The timeline for compliance begins upon service by the City of an order to comply, and regardless of whether the building owner actually received notice. The timeline for compliance includes deadlines for assessment, City review of plans, permit approval, and ultimately full compliance is 7 years for wood-framed structures and 25 years for concrete buildings. Most importantly, transfer of title will not change the above timeline for compliance and the City is obligated to record the order with the County Recorder's Office. Buyer beware.

Penalties for Failing to Comply

The ordinance has teeth. It provides that it is unlawful for any person to use or occupy any building within scope of this ordinance that fails to meet the new minimum seismic standards after receiving an order to comply from the City. Any person who violates the ordinance is guilty of a misdemeanor and "shall be subject to prosecution and/or administrative enforcement." However, there is an exemption for any building that is working in compliance with the time limitations and deadlines outlined in the ordinance.

Ordinance Requires Specific Representations by Project Architect or Engineer

The ordinance further requires the retrofit architect or engineer of record to make very specific statements of compliance on the project plans, depending on whether the structure is wood-framed or concrete. For wood-framed structures, the architect or engineer of record must include on the retrofit plans the following statement:

"I am responsible for designing this building's seismic strengthening in compliance with the minimum standards of the Mandatory Earthquake Hazard Reduction In Existing Wood-Framed Buildings with Soft, Weak, or Open-Front Walls (Ordinance No. ____)."

In connection with projects to bring concrete buildings into compliance, the ordinance requires the engineer or architect of record to make the following statement on the plans:

"I am responsible for designing this building's seismic strengthening in compliance with the minimum standards of Chapter 95 of the Los Angeles Building Code using the design criteria of (75% of ASCE 7 or ASCE 41)"

And when deputy inspection is involved:

"The Registered Deputy Inspector, required as a condition of use of structural design stresses requiring continuous inspection, will be responsible to me as required by Section 1704 of the Los Angeles Building Code."

And when structural observation required:

"Structural Observation will be performed in accordance with the current Los Angeles Building Code."

These statements are designed to place significant responsibility and risk upon the design professional should a liability triggering event occur and could arguably supplement the standard of care applicable in a suit for professional negligence. Accordingly, it is clear that the intent of this ordinance is to not only to hold property owners accountable in the event of an earthquake, but design professionals (and their insurance) as well.

Design Professional Risks Created by the Ordinance

Although this ordinance will certainly increase business for architects and engineers, it also triggers potential liability for them and their professional liability insurance carriers. These include, but are not limited to, the following risks:

- Risk that a design professional could be asked to perform renovation or remodeling or other services work for a building that falls within the ordinance parameters, but is not specifically asked to perform the assessment called for in the ordinance. If a later seismic activity causes damage or injury that could have been ameliorated if the analysis and resulting retrofit had been performed, the design professional might get blamed for not raising or addressing this issue.
- Risk that the owner will blame timing issues on the design professional. The penalties under the ordinance are triggered by specific deadlines. If the building owner fails to comply, the owner may try to claim that had the design professional been more expedient or designed the project differently, then the owner would have been able to comply.
- Risk that the retrofit is performed not according to plan. As with any other project, there is the risk that those performing construction fail to do so according to the plans. In the event of a collapse due to an earthquake, the design professional may be blamed in part.
- Risk that the owner refuses to comply with the design professional's seismic retrofit recommendations. This ordinance will cost building owners money. Depending on the involvement of the professional, it may be that a design professional owes an obligation to the public to report

violations and certainly under the ordinance may not assist the owner in circumventing the new seismic standards.

Mitigating and Shifting Risk from the Perspective of the Design Professional

So what can design professionals do to mitigate or shift the risk? The first step is to determine whether the ordinance may potentially apply to the project at issue and if so, communicate clearly with the owner whether the seismic assessment is to be included within the scope of services. The written design services agreement should explicitly state one way or the other whether such assessment is included.

If no seismic assessment is to be made, then the design services agreement should include a waiver of liability, limitation of liability, indemnity clause, and a representation that owner will be retaining others to perform this assessment.

If seismic assessment under the ordinance is included within the requested scope, in addition to the above protections, the design professional should determine prior to agreeing to such a project whether compliance with the ordinance's deadlines is feasible or not. It would also be prudent to include a provision that the design professional will undertake best efforts to secure approval of the retrofit plans from the City, but that such approval cannot be guaranteed. Moreover, the design professional should try to contract away any guarantees of compliance with deadlines under the ordinance. The design services agreement should also require the owner to actually make the revisions and repairs according to plans and the design professional's assessment.

Additional risk may be mitigated by expanding the design professional's scope to include administration and site observation services. Design professionals should expand their fee for these services. As always, when these services are provided under the agreement, they should actually be performed and well documented, which may later be used in the design professional's defense in a subsequent claim arising from the unfortunate event of a collapse.

Overall, the ordinance is certainly an essential safety measure designed to save lives and property. If San Francisco's ordinance is any indication of compliance, Angelenos will be quick to get in line. The San Francisco Building Department has reported that it achieved a 99% response to the program. Accordingly, design professionals in the southland should expect work in this area. Those affected should take affirmative steps to understand the ordinance, how it affects their interests, and ways to mitigate risk now that the ordinance is law.

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