To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Eric Angstadt, Director, Planning and Development Department

Subject: Amendments to Berkeley Housing Code and Berkeley Municipal Code Chapters 19.40 and 12.48 Regarding Inspections of Exterior Elevated Elements

RECOMMENDATION
Adopt first reading of two Ordinances; 1) Amending Section 19.40.035 of the Berkeley Municipal Code Chapter 19.40 (Berkeley Housing Code), and 2) Amending Section 12.48.055 of the Berkeley Municipal Code Chapter 12.48 (Residential Rental Housing Safety Program), to clarify the conditions and frequency of inspection and certification requirements for the Exterior Elevated Elements (E3) program as recommended by the E3 Task Force.

SUMMARY
This report presents an update on outcomes from the City’s E3 program since its adoption on July 14, 2015, and proposes changes to improve the program and reduce its costs of operation by:

- Clarifying that inspection requirements apply only to projecting elements extending beyond exterior walls (to be consistent with the language in Article 8 of the Berkeley Building Code);
- Rewriting the explanation of inspection and certification requirements for better clarity and consistency;
- Changing the frequency of the inspection requirement from every three years to every five years as recommended by the E3 Task Force; and
- Increasing the minimum required height triggering E3 inspections from 30 inches to six feet above grade.

FISCAL IMPACTS OF RECOMMENDATION
Requiring inspections every five years instead of every three years and excluding elements between 30 inches and six feet above grade will reduce the number of required inspections and the cost of operating the program, without jeopardizing the program goal of preserving public safety.
Staffing needs and the cost of additional staff for the E3 program over the long term continue to be assessed, and any suggested changes will be presented in the next budget cycle. The Building and Safety Division increased staffing and added a position (Office Specialist II) in October 2015 who devotes at least 50% of her time to the E3 program, and plans to create an additional inspector position in the spring of 2016 to handle the increased inspection workload generated by the program.

In response to the December 1, 2015 Council referral “Revising the Rental Housing Safety Program," staff will be analyzing the costs and staffing implications of some suggested changes to the Rental Housing Safety Program (RHSP). A future staff report planned for the June 2016 budget cycle discussions will present potential fee increases to support the additional costs of operating the E3 program, and will analyze costs and associated fee increases needed to support the other suggested initiatives from Rental Housing Safety Program Fund 375.

CURRENT SITUATION AND ITS EFFECTS

E3 Program Update
Following the City Council adoption of the urgency ordinances on July 14, 2015, Housing Code Enforcement (HCE) developed a database of residential buildings with three or more units, by researching county use codes and cross-referencing against the Rent Board list and the Rental Housing Safety Program database to ensure the appropriate buildings were included. Staff also developed Inspection Certification (http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/Inspection%20Certification.pdf) and Exemption Declaration (http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/Exemption%20Declaration.pdf) forms. To address a high volume of inquiries regarding the scope, application and implementation of the E3 inspection program, Building and Safety staff quickly developed the E3 webpage which went live on August 4, 2015, including graphical depictions and Frequently Asked Questions (http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/FAQs%20E3(1).pdf).

On August 12, 2015, HCE sent 6,090 notifications to property owners to inform them of the new inspection requirements and the deadline of January 14, 2016 to perform inspections and submit Inspection Certification forms. Since the City does not have data on which buildings have exterior elevated elements, property owners have the option of completing the Exemption Declaration form if their property does not have exterior elevated elements.

To further facilitate and expedite the filing process, Building and Safety staff worked with City Information Technology staff and the firm DocuSign to develop electronic forms for online submittals, which became available on September 1, 2015. In response to feedback from individual property owners and the Berkeley Property Owners
Association (BPOA), who shared their difficulties finding licensed professionals willing to inspect and complete the inspection certification forms, the Building and Safety Division developed a Directory of Licensed Professionals for E3 Inspections. Staff emailed the licensed professionals who had submitted inspection certifications to ask them if they would like to be listed in the Directory. The Directory of Licensed Professionals (http://bpoa.org/doc/pdf/directory_of_licensed_professionals_12-30-15.pdf) for E3 Inspections was posted on the BPOA website and made available at the Permit Service Center. BPOA conducted outreach to their members to inform them about the directory.

On October 20, 2015, the Building and Safety Division hired an Office Specialist II to support the program. The primary responsibilities of this position are to respond to phone and in-person inquiries about the E3 program, handle data entry, manage the database and reporting, and assist with code enforcement efforts for the program. On December 10, 2015, Housing Code Enforcement sent a follow-up mass mailing to remind property owners of the upcoming deadline. For properties which have been inspected within the required time period which need corrective work, the Inspection Certification forms provide for an extension of the timeline. Owners have an additional 60 days to apply for a permit and must complete the work within 90 days of permit issuance.

The table below shows the status of responses as of January 20, 2016. One form is required per building, regardless of the number of balconies or similar exterior elevated elements.

<table>
<thead>
<tr>
<th>E3 Program Numbers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total notifications sent</td>
<td>6,090</td>
</tr>
<tr>
<td>Total forms received</td>
<td>4,395 (72%)</td>
</tr>
<tr>
<td>Total Inspection Certification forms submitted</td>
<td></td>
</tr>
<tr>
<td>- # That do not pose a safety concern</td>
<td>2,176</td>
</tr>
<tr>
<td>- # That require corrective work</td>
<td>1,774</td>
</tr>
<tr>
<td></td>
<td>402</td>
</tr>
<tr>
<td>Exemption Declaration forms submitted</td>
<td>2,219</td>
</tr>
<tr>
<td>Non-responders</td>
<td>1,695 (28%)</td>
</tr>
<tr>
<td>Total number of licensed professionals who</td>
<td>340</td>
</tr>
<tr>
<td>have completed inspection certifications</td>
<td></td>
</tr>
</tbody>
</table>

**BACKGROUND**

The Building and Safety Division responded swiftly following the tragic collapse of the 4th floor balcony at 2020 Kittredge Street to develop code amendments to reduce the likelihood that a catastrophic collapse of exterior elevated elements could occur again.
Through the implementation and evaluation of the program to date, and in consultation with the volunteer Task Force of relevant building professionals and stakeholders, staff identified a number of issues and have suggested solutions, which are reflected in the proposed amendments which accompany this staff report.

**Task Force**
At the July 14, 2015 City Council meeting, representatives from a number of professional organizations, including the Structural Engineers Association of Northern California (SEAONC), the American Institute of Architects (AIA) and the East Bay Chapter International Code Council (East Bay ICC), offered to form a multi-disciplinary Task Force to further assess the technical amendments in the urgency ordinances, develop proposals for improvement on the ordinances and to assist in efforts to develop clear guidelines for the inspection program.

The E3 Task Force, composed of representatives from SEAONC, AIA, East Bay ICC, the pest control industry, the Berkeley Rental Housing Coalition, and the City of Berkeley Building and Safety Division met nine times between July 23 and November 17, 2015, and served as an advisory body, helping staff with implementation of the E3 program. Building and Safety staff facilitated the Task Force meetings, chaired the initial meetings, prepared minutes and handled meeting logistics. The Task Force elected Steven Hovland, an architect with waterproofing expertise, as Chair. The Task Force assisted with the development of key written materials and drafted the **Guidelines for Inspections** (http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/E3%20Inspection%20Guidelines.pdf) to assist owners and licensed professionals with navigating the E3 inspection and certification process. SEAONC also formed a subcommittee, including additional engineers, which met separately and provided input to the E3 Task Force.

The Task Force wrote a response to the July 14, 2015 Council referrals 51 and 52 (Attachment 3). They also made recommendations for amendments to the Housing Code and Rental Safety Program, which are consistent with the recommendations in this report. The Task Force recommends:

- Increasing the minimum height triggering inspections for exterior elevated elements from 30 inches to six feet.
- Extending the inspection requirement from three to five years.
- Removing the words “dry rot.” Because dry rot is considered a decay in wood caused by fungi, the code provision captures this more effectively with the more technical term “decay.”
Projecting Elements
The intent of the E3 program is to address projecting weather-exposed building elements extending beyond exterior walls such as decks, balconies, landings, exterior staircases, and similar exterior projecting elements or any parts thereof. The program is not intended to address exterior elements supported by exterior walls on all sides such as elevated patios, roof terraces and similar elements. Over the last six months staff received multiple inquiries regarding the scope of the program and its impracticality pertaining to roof terraces, which do not project beyond exterior walls. The proposed amendments to the Housing Code Chapter 19.40 and Residential Rental Safety Program Chapter 12.48 clarify this distinction, remove language ambiguities and make these sections consistent with the Building Code amendments adopted in July 2015, which created technical amendments in Section 19.28.090 of the Berkeley Municipal Code for construction of exterior projecting elements. Since roof terraces and patios are supported on all sides by building exterior walls, they are not prone to catastrophic collapse even when deterioration occurs over time. Furthermore, any damage caused by water intrusion into these elements can usually be observed or detected on the surfaces of spaces below prior to any failure.

Inspections and Certifications
The proposed code amendments include a rewrite of the inspection requirements to provide consistency with the inspection certification forms developed with the input of the E3 Task Force. The E3 Task Force dedicated several meetings to developing language for the inspection certification forms. The Task Force wanted the certification statement to be all inclusive to enable all designated types of licensed professionals (general contractors, architects, civil engineers, structural engineers and structural pest control operators) to certify the safety of exterior elevated elements and alleviate concerns about professional liability. Small but crucial changes were made to the wording to allay this concern on their part. The Task Force also objected to the use of the words “dry rot”, “fungus” and “decay” in the same sentence, pointing out that this was misleading and repetitive because dry rot is considered a decay in wood caused by fungi. The language was expanded and improved for clarity and consistency.

Frequency of Inspection Requirement
The Planning and Development Department initially proposed that the inspection requirement for exterior elevated elements be every five years. The City Council increased the frequency of the requirement from every five years to every three years. Staff, the E3 Task Force composed of licensed professionals, and the Berkeley Property Owners Association all concur in recommending changing the frequency of the requirement to every five years, as originally intended. The E3 program requires property owners to make repairs to exterior elevated elements if damage is discovered during the inspection that could pose a safety concern or if there is any evidence of active water intrusion. Once owners complete these repairs, or verify that the existing elements do not exhibit any signs of damage that could pose a safety concern, the
repaired and/or inspected elements are unlikely to deteriorate rapidly enough to present a collapse hazard within a five year period. This is also consistent with the City of San Francisco’s program, which was a model for Berkeley’s E3 program. Following City Council approval of the urgency ordinances, staff revised the Rental Housing Safety Program Schedule A forms (http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/SCH-A15%20FORM(3).pdf) to require annual visual inspections of E3s to further enhance the inspection and certification requirement by a licensed professional. The Schedule A forms are completed every year by property managers or property owners for rental properties in Berkeley.

Minimum Height
Staff and the E3 Task Force recommend focusing on elements which could cause catastrophic collapse and propose increasing the minimum height triggering inspections from 30 inches to six feet. If a deck or porch that is 30 inches high collapses, it would be unlikely to cause loss of life. Staff chose the 30-inch height initially because this is the height in the Building Code where guardrails are required and staff did not have adequate time to conduct an in-depth analysis. With time to conduct additional research into fall prevention measures, staff have identified the following measures, which support increasing the minimum height for E3 inspections to six feet:

- The California Occupational Health and Safety Administration (Cal/OSHA) limits free fall distance to six feet under Components of an active personal fall protection system in their Fall Protection in Construction Safety & Health Fact Sheet (http://www.dir.ca.gov/dosh/dosh_publications/Fall-Protection-in-Construction-fs.pdf).
- The Building Code requires fall prevention measures where the bottom of the operable window opening is located more than six feet above the adjacent grade or other surface below.
- The Code of Federal Regulations, 29 CFR Subpart M, Fall Protection, 1926.501 (https://www.law.cornell.edu/cfr/text/29/1926.501), sets forth requirements to provide fall protection at six feet or more above lower levels.

Berkeley Property Owners Association Input
The Berkeley Property Owners Association (BPOA) also provided input into possible improvements to the E3 inspection program. BPOA recommended:

- Requiring inspections every five years instead of every three.
- Expediting the permit process for repairs of exterior elevated elements and reducing the turnaround time for plan check as much as possible.

State Codes
On July 16, 2015, the Berkeley City Council sent a letter to the California Building Standards Commission (CBSC) urging the Commission to amend the California
Building Standards Code to introduce more restrictive building standards applicable to weather exposed balconies, decks, stairs or similar elements projecting from a structure often without any additional independent supports. The CBSC met on October 21, 2015 and reviewed that letter. On November 23, 2015, Richard Weinert, Deputy Director of the Department of Housing and Community Development (HCD) Division of Codes and Standards, sent a letter in response (Attachment 4) clarifying that HCD is the State agency responsible for promulgating residential building standards.

HCD will take steps to investigate the issues surrounding the degradation of wood structures and how to protect against such degradation, including convening a stakeholder meeting(s) in early 2016 to investigate findings related to the balcony collapse, explore recommendations from the Structural Engineers Association of California and solicit input from industry and regulatory professionals prior to proposing any building standards with statewide application. At its October meeting, several CBSC commissioners also expressed the desire to consider and possibly participate in the formation of a Task Force or Ad Hoc Committee, to explore options to improve California Building Standards for buildings and occupancies under the CBSC’s authority.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
The goal of the E3 inspection requirements is to prevent catastrophic collapses and loss of life. Clarifying that the requirements apply only to projecting elements extending beyond exterior walls, rewriting the explanation of inspection and certification requirements, changing the frequency of the inspection requirement from every three years to every five years, and increasing the minimum required height triggering E3 inspections from 30 inches to six feet above grade will improve consistency and transparency, make the program more manageable for staff, minimize expenditures on the part of owners, while meeting the public safety objective behind the program.

ALTERNATIVE ACTIONS CONSIDERED
The Task Force and Building and Safety staff discussed alternate minimum height requirements, including 7 ½ feet, which is the height at which the California Occupational Health and Safety Administration (Cal/OSHA) requires fall protection systems at elevated platforms, scaffolds or edges of floors and roofs. Staff received feedback from property owners that the deadline for inspections to occur within six months of adoption of the section was short, and considered suggestions to extend that deadline.
CONTACT PERSON
Jenny McNulty, Program and Administration Manager, 981-7451
Alex Roshal, Building Official, 981-7445

Attachments:
1. Ordinance amending Housing Code
2. Ordinance amending Residential Rental Housing Safety Program
4. Letter from the Department of Housing and Community Development Division of Codes and Standards
ORDINANCE NO. #,###-N.S.

AMENDING SECTION 19.40.035 OF THE BERKELEY MUNICIPAL CODE CHAPTER 19.40 (BERKELEY HOUSING CODE) REQUIRING INSPECTION AND CERTIFICATION OF WEATHER-EXPOSED ELEVATED ELEMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 19.40.035 of the Berkeley Municipal Code is amended to read as follows:

19.40.035 Section 601.4 of the Berkeley Housing Code

601.4 Structural Maintenance. All projecting exterior elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof in weather-exposed areas of Group R-1 and R-2 Occupancies, as defined in the most recent edition of the California Building Code, shall be inspected within six months of adoption of this section, and every three-five years thereafter, by a licensed general contractor, structural pest control licensee, licensed architect, or licensed engineer, verifying that the elements are in general safe condition, adequate working order, and do not exhibit signs of—free from—hazardous—dry rot, fungus, deterioration, decay, corrosion or similar damage that could pose a safety concern and there is no evidence of active water intrusion in concealed spaces of the inspected elements or improper alteration. Property owners shall provide proof of compliance with this section by submitting an affidavit form provided by the City. The affidavit shall be signed by the responsible inspecting party and submitted to the Housing Code Enforcement Office. For the purpose of this section, elevated "weather-exposed areas" mean those areas which are not interior building areas, extend beyond exterior walls and are located more than 30 inches six feet above adjacent grade.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.
ORDINANCE NO.    -N.S.

AMENDING SECTION 12.48.055 OF THE BERKELEY MUNICIPAL CODE CHAPTER 12.48 (RESIDENTIAL RENTAL HOUSING SAFETY PROGRAM) REQUIRING INSPECTION AND CERTIFICATION OF WEATHER-EXPOSED ELEVATED ELEMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 12.48.055 of the Berkeley Municipal Code is amended to read as follows:

12.48.055 Inspection and certification of weather-exposed elevated elements extending beyond exterior walls

All owners of apartment houses and hotels shall cause an inspection of all projecting weather-exposed elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof within six months of adoption of this section, and every three–five years thereafter, by a licensed general contractor, structural pest control licensee, licensed architect, or licensed engineer to verify that the elements are in general safe condition, adequate working order, and do not exhibit signs of hazardous dry rot, fungus, deterioration, decay, corrosion or similar damage that could pose a safety concern and there is no evidence of active water intrusion in concealed spaces of the inspected elements or improper alteration. Property owners shall provide proof of compliance with this section by submitting an affidavit form provided by the City. The affidavit shall be signed by the responsible inspecting party and submitted to the Housing Code Enforcement Office. For purposes of this section, "weather-exposed elevated elements" mean those areas which are not interior building areas, extend beyond exterior walls and are located more than 30 inches six feet above adjacent grade. Newly constructed residential buildings shall be exempt for a period of three–five years following issuance of the Certificate of Occupancy for such buildings.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.
The Task Force appreciates the opportunity to comment on the referral Item 51 and Item 52. The Task Force discussed these referrals over several meetings. We recognize this as an opportunity to help answer questions that have concerned a number of individuals.

Item 51. Steel Reinforcement of Balconies and Periodic Inspection of Balconies

Recommendation 2. Refer to the City Manager and Housing Advisory Commission to:

a) Consider the adoption of a local Building Code requirement to require steel reinforcement for all balconies in new developments. Request that the City Manager report back to Council with their analysis and recommendations within 60 days.

b) Consider establishing a requirement that prior to the issuance of a Certificate of Occupancy that all timber frame buildings built under the Building Code that have exterior balconies, landings, decks, stairs and similar floor projections exposed to the weather, obtain an approved weather proofing expert who shall:

1. Review and approve the waterproofing design
2. Observe/inspect the implementation of the waterproofing of such areas
3. After review and observation/inspection of the waterproofing, the inspecting party shall submit an affidavit to the City signed by the waterproofing expert verifying that the waterproofing design and work was completed in compliance with applicable codes and that the inspecting party approves of the design and the work completed.

Response: While we do not believe it is necessary nor possible to adopt Recommendation 2 in full, we believe that the steps currently taken by the Building and Safety Division address the fundamental concerns that resulted in this referral.

We have interpreted the use of the phrase “steel reinforcement” to indicate the use of steel structural components. The Task Force does not support the apparent contention that steel is
the only appropriate building material for the construction of exterior elevated elements. It is
the opinion of the Task Force that wood structures can be properly designed and constructed.
This is evidenced by the large number of wood structures in Berkeley, both with and without
balconies that have performed quite satisfactorily for many decades. We also recognize that
steel structures are prone to rust and create other problems that may argue against their use.
The point is that there is no perfect material and that where used appropriately wood has
shown to be a safe and cost effective material.

In response to item b) of this referral, it should be noted that enforcement of the code
provisions dealing with waterproofing systems are part of the plan review process.

In addition to the local Building Code amendments approved by the City Council on July 14,
2015, the Building and Safety Division is now requiring Special Inspections of waterproofing of
exterior elevated elements to help ensure proper installation during the initial construction
process. These inspections will provide greater assurance that the waterproofing is installed in
accordance with the construction documents, which will significantly reduce the number of
waterproofing failures and the number of structural problems associated with balconies. It is
believed that this addresses the core concern that motivated the referral.

In addition, Section 601.4 of the Berkeley Housing Code, requiring routine balcony inspections,
is expected to identify structural elements damaged by leaks that may occur in the future.

The proposal to have the Building and Safety Division approve waterproofing experts that will
review and inspect the waterproofing system cannot be implemented as proposed because it
would conflict with the current professional engineering and architecture practice acts. This
does not prevent the Building and Safety Division from implementing the special inspection
requirement listed above.

Neither the architecture nor the engineering practice acts provides a basis for differentiating
waterproofing experts from other individuals licensed to practice engineering or architecture.
This is controlling because the design of waterproofing systems is part of the practice of
architecture and engineering and because Business & Professions Code Section 460 prohibits
local jurisdictions from placing constraints on the ability of any architect or engineer to practice
their profession. Thus, the city could not designate individuals as waterproofing experts to
perform these reviews thus making this proposal moot. In spite of this, we believe that the
other actions implemented by the City will go a long way to addressing the perceived problems.

The Task Force recommends no action be taken relative to this Item 51.2.

**Item 52. Disclosure of Balcony Condition and Signage Specifying Maximum Weight Capacity**

*Recommendation 1. Develop an ordinance to require owners of rental properties and
Homeowner/Condominium Associations whose properties contain wooden cantilevered
balconies not supported by steel reinforcement to provide a mandatory written disclosure*
regarding the fact that the balcony is not supported with steel reinforcement and specifying the maximum weight capacity of the balcony. Staff should consider other existing disclosure requirements in the Berkeley Municipal Code (such as those in the Soft Story Ordinance). The disclosure should be provided as part of the rental agreement and should also be provided once to all existing tenants.

Response: It is the opinion of the Task Force that it is not appropriate to imply that only balconies constructed of steel are adequate or safe. Wood balconies are perfectly safe when properly designed, waterproofed, and maintained. Thus we do not believe that the proposed disclosure would be meaningful. The proposed disclosure would also likely create unnecessary anxiety for tenants of the many existing buildings that have no waterproofing problems. The new Section 601.4 of the Berkeley Housing Code, requiring routine balcony inspections, including inspection of concealed structural components, is expected to provide adequate warning of potential structural distress.

The Task Force recommends no action be taken relative to this Item 52.1.

**Recommendation 2. Develop an ordinance mandating posted signage either in the balcony area or in a visible location on the entrance to the balcony specifying the maximum weight capacity of the balcony.**

Response: It is the understanding of the Task Force that the design capacity was not an issue for the recent Kittredge St. balcony collapse. The balcony collapsed at a lesser load than would have been posted because the water damage reduced the available strength. Thus posting of the balcony would have done nothing to prevent the collapse.

Instead of focusing on posting of balconies, we believe the focus should be on preventing the problems that lead to water damage and on detecting problem areas early. The recently adopted local building code amendments and the special inspection program previously mentioned helps to prevent the problems from occurring. The post construction inspection program that is required every three years is expected to identify any similar water damage before it significantly weakens other balconies. We also believe most residential balconies will never receive loading approaching that required by the building code.

Thus, we believe that mandatory posting of load limits on all balconies would not promote the program’s intended goal. Property owners are, however, encouraged to voluntarily provide such signage if they deem it reasonable and prudent given the anticipated use of their property.

The Task Force recommends no action be taken relative to this Item 52.2.
November 23, 2015

Ms. Rose Thomsen, Deputy City Clerk
City of Berkeley, City Clerk Department
2180 Milivia Street
Berkeley, CA 95833

Re: Request for Higher Building Standards for Weather-Exposed Wood Structures

Dear Ms. Thomsen:

I am writing to advise you, as Deputy Clerk for the City of Berkeley (the “City”), that the California Department of Housing and Community Development (the “Department”) received, on October 8, 2015, the City’s letter dated July 16, 2015. In that letter, the City requested the California Building Standards Commission (the “CBSC”) to make more restrictive California Building Code protections against degradation of wood structures caused by weather exposure and other moisture causing environmental elements; these wood structures include but are not limited to balconies, decks, stairs, or similar elements projecting from a structure that does not have any additional supports.

The Department understands that the origin of the City’s request to make changes to the California Building Code is the result of a tragic event that occurred in the City in June 2015 which resulted in the loss of six lives and caused great injury to several others when a balcony collapsed at a local apartment building.

In this context, I must clarify that proposals requesting amendments to the building standards be forwarded to the Department, not the CBSC. The Department is authorized by statute to promulgate residential building standards and other regulations applicable on a statewide basis that are enforced by local governments. The Department is only now aware of the City’s request and desire to effectuate building code changes to protect against any future tragedies. The Department is committed to identifying the problem(s) that caused or contributed to the loss of lives in order to prevent this type of tragedy in the future.

CBSC Meeting

The Department’s Division of Codes and Standards Assistant Deputy Director, Mr. Shawn Huff, attended the CBSC meeting on October 21, 2015 where the City’s July 16, 2015 letter and request was discussed as an agenda item. Mr. Huff testified before the CBSC that the Department would take steps to investigate the issues surrounding the degradation of wood
structures and how to protect against such degradation, including convening a stakeholder meeting(s) in the beginning of the new year to do the following:

- Investigate findings directly related to the tragic event that occurred in the City;
- Explore the concepts advocated by the City and the Structural Engineers Association of California (SEAOC); and
- Solicit input from industry and regulatory professionals prior to proposing any building standards with statewide application.

At the meeting, Mr. Huff commended the City for its swift action in adopting a local ordinance to address weather-exposed elements which project from structures without additional support and suggested other local jurisdictions may wish to consider doing the same in the interim while any potential code changes are considered.

Several CBSC commissioners also expressed at the meeting the desire to consider and possibly participate in the formation of a Task Force or Ad Hoc Committee, to explore options to improve California Building Standards for other than residential structures, under the CBSC’s authority, in an effort to prevent future tragedies similar to balcony collapse.

Mr. Huff acknowledged that as a result of the combined efforts of the CBSC and the Department, amendments to the California Building Code or Title 25 Regulations to address decay resistance, inspection and maintenance requirements for enclosed elevated assemblies such as decks, balconies and stairs may be proposed. Mr. Huff also suggested that similar climatic conditions exist in many jurisdictions across the United States and perhaps this issue should be examined nationally.

**Collaboration of Efforts**

In order for the Department to be successful in its commitment and satisfy the City’s request to amend or introduce new California building standards to prevent such tragedies, the Department recognizes that the City’s cooperation is vital and necessary to any future change(s). Hence, the Department invites the City to work collaboratively with the Department as a partner. To that end, the Department requests that the City share all relevant information obtained during its investigation of this matter in the form of forensic investigation reports, testimony of city inspectors, engineers, and consultants that were relied upon by the City to form the conclusion that weather degradation of the wood structures caused or contributed to the tragic events; and how the more restrictive building standards for weather-exposed balconies, decks and stairs will reduce the chance of this type of tragedy occurring in the future.
In closing, the Department expresses its condolences to the community, families and friends affected by the tragic events of June 16, 2015. The Department understands the significance of the proposed code amendments and is committed to working with the CBSC, the City and other interested parties or stakeholders, to mitigate the negative effects of weather degradation of wood structures to prevent tragedies like the one that impacted the Berkeley community. It will only be with your cooperation that the Department may be able to determine the most appropriate course of action for a change in the building standards to prevent this type of tragedy from occurring in the future.

Thank you for your time and attention in this matter. If you have further questions, please contact Shawn Huff at (916) 263-3124 or Shawn.Huff@hcd.ca.gov.

Sincerely,

Richard Weinert
Deputy Director

cc: Michael Nearman, Acting Executive Director, CBSC
Marybel Batjer, Chair, CBSC
Tom Bates, City of Berkeley Mayor
Building Official, City of Berkeley