

Appeal of Decision by HAC regarding the Applicability of E3 Inspection Requirement for 1615 Fairview St.

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City of Berkeley
Planning & Development Department

Brief History

Berkeley Municipal Code

12.48.055

New Section added to the BMC
Chapter 12.48

Emergency Ordinance adopted on July 14, 2015 and immediately effective – required inspections and certification of weather-exposed elevated elements every three years for all buildings containing three or more dwelling units

California Health and Safety Code

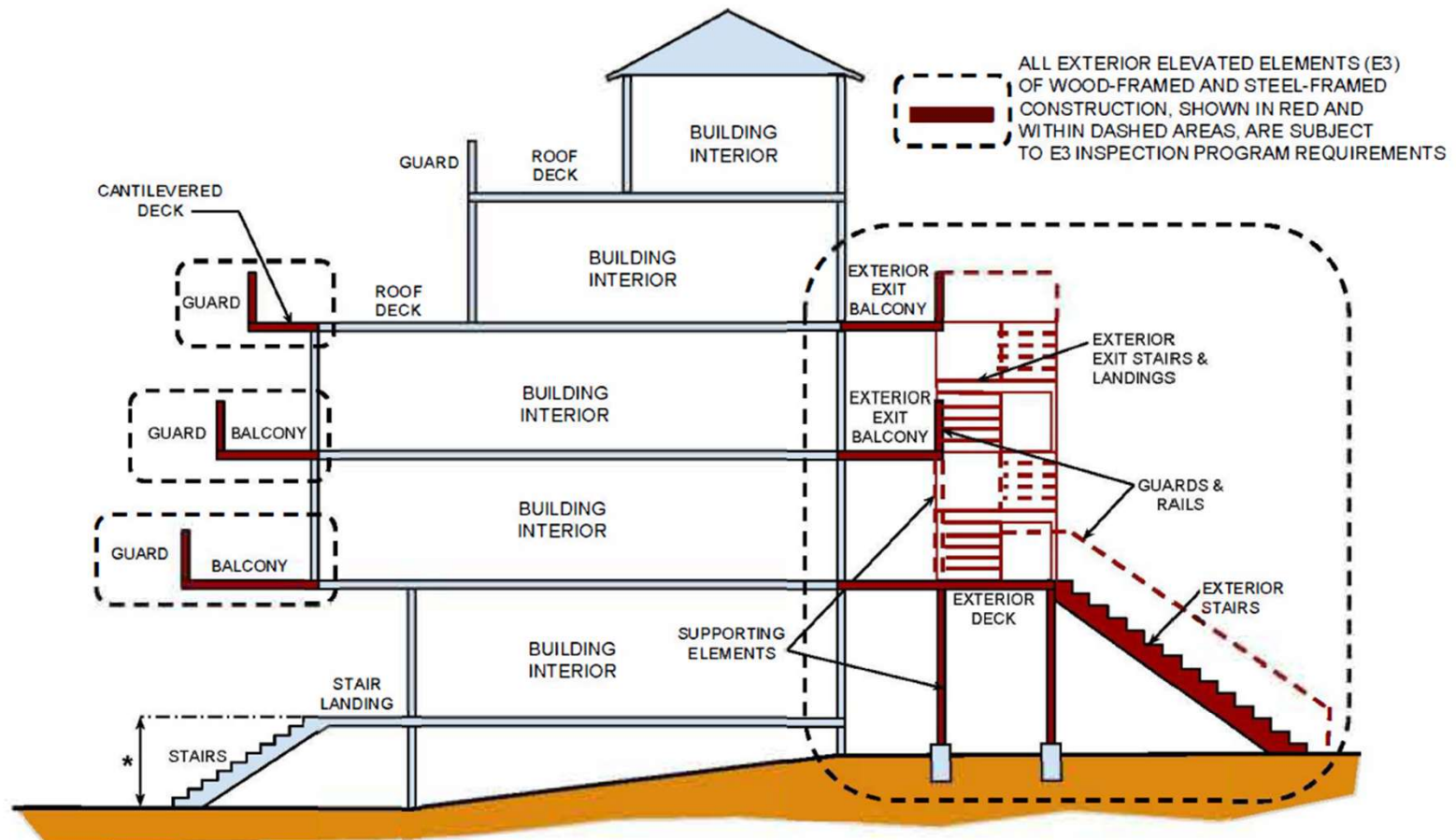
ARTICLE 2.2. Exterior Elevated
Elements: Inspections.
[Section 17973]

Required all multi-family buildings containing three or more dwelling units with exterior elevated elements located six feet or more above grade to be inspected on a 6-year cycle

Berkeley Municipal Code

19.40.040

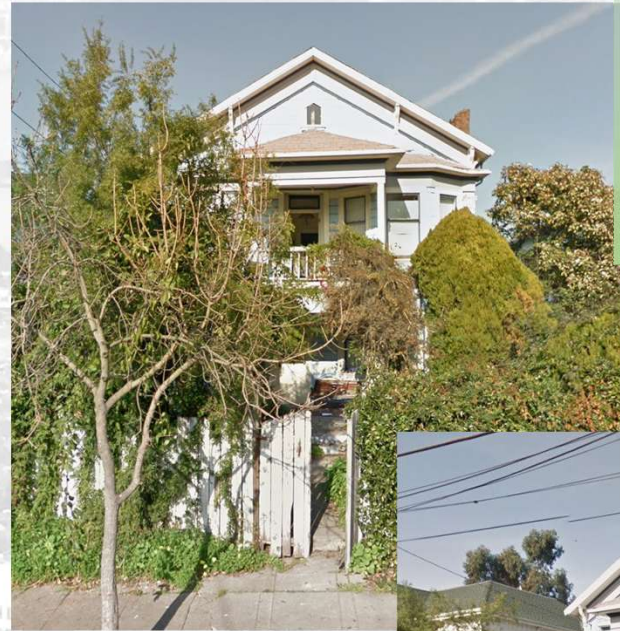
Pursuant to Health and Safety Code Section 17973, Berkeley's inspection requirements were modified to align with State law under Berkeley Municipal Code 19.40.040



* EXTERIOR ELEVATED ELEMENTS THAT ARE 72" OR LESS ABOVE GRADE ARE EXEMPT.

1615 Fairview St

- 4-unit building with exterior elevated elements 6 feet or more above the adjacent grade



1615 Fairview - E3 Case History Timeline

2016

2021

Sept 2025

Oct 2025

Jan 2026

Owner submits invalid 2016 Exemption Declaration

Owner submits 2016 Inspection Certification verifying presence of E3

Owner submits invalid 2021 Exemption Declaration

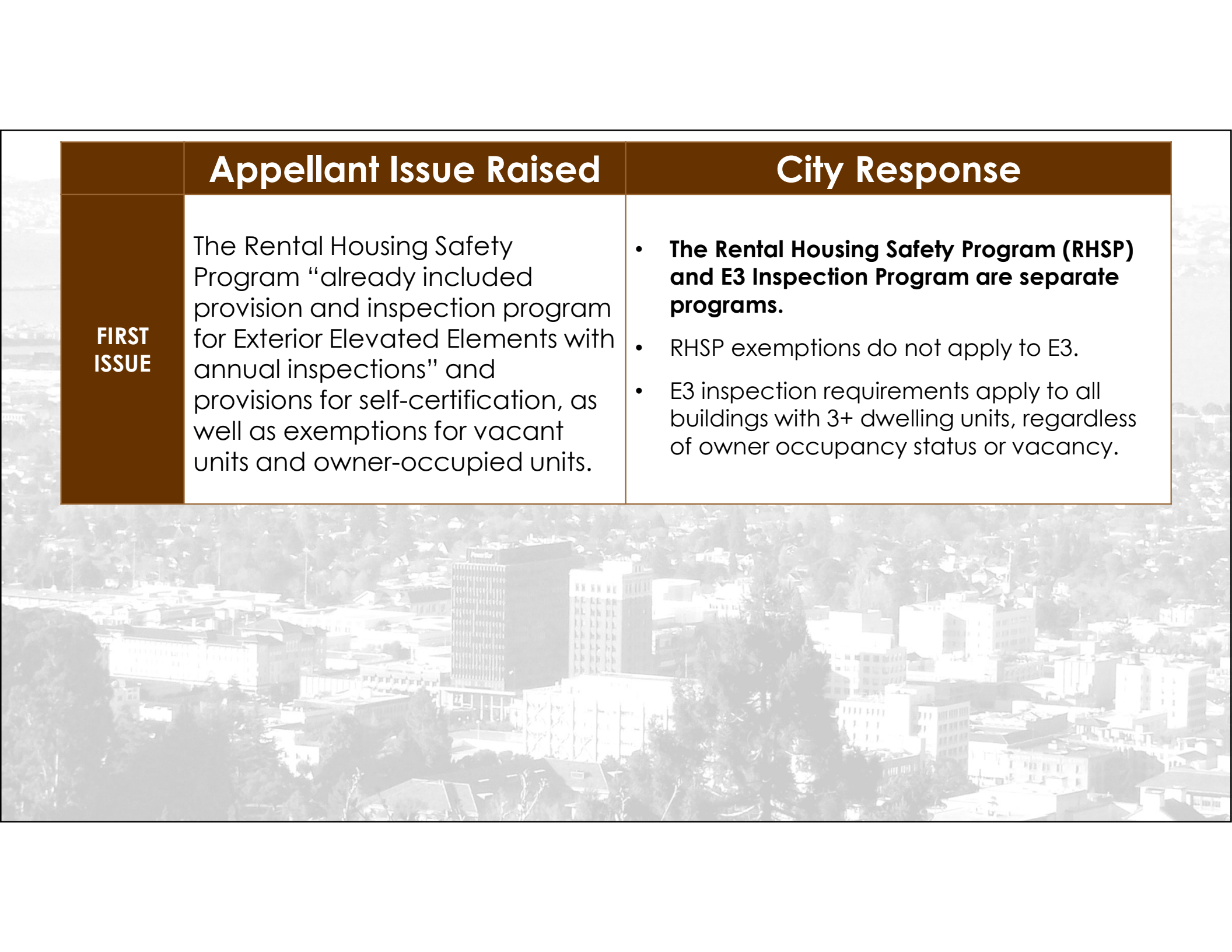
City issues Warning Letter, notifying owner they are out of compliance with E3 inspection requirements

Building Official issues Determination regarding the Applicability of E3 Inspection Requirements

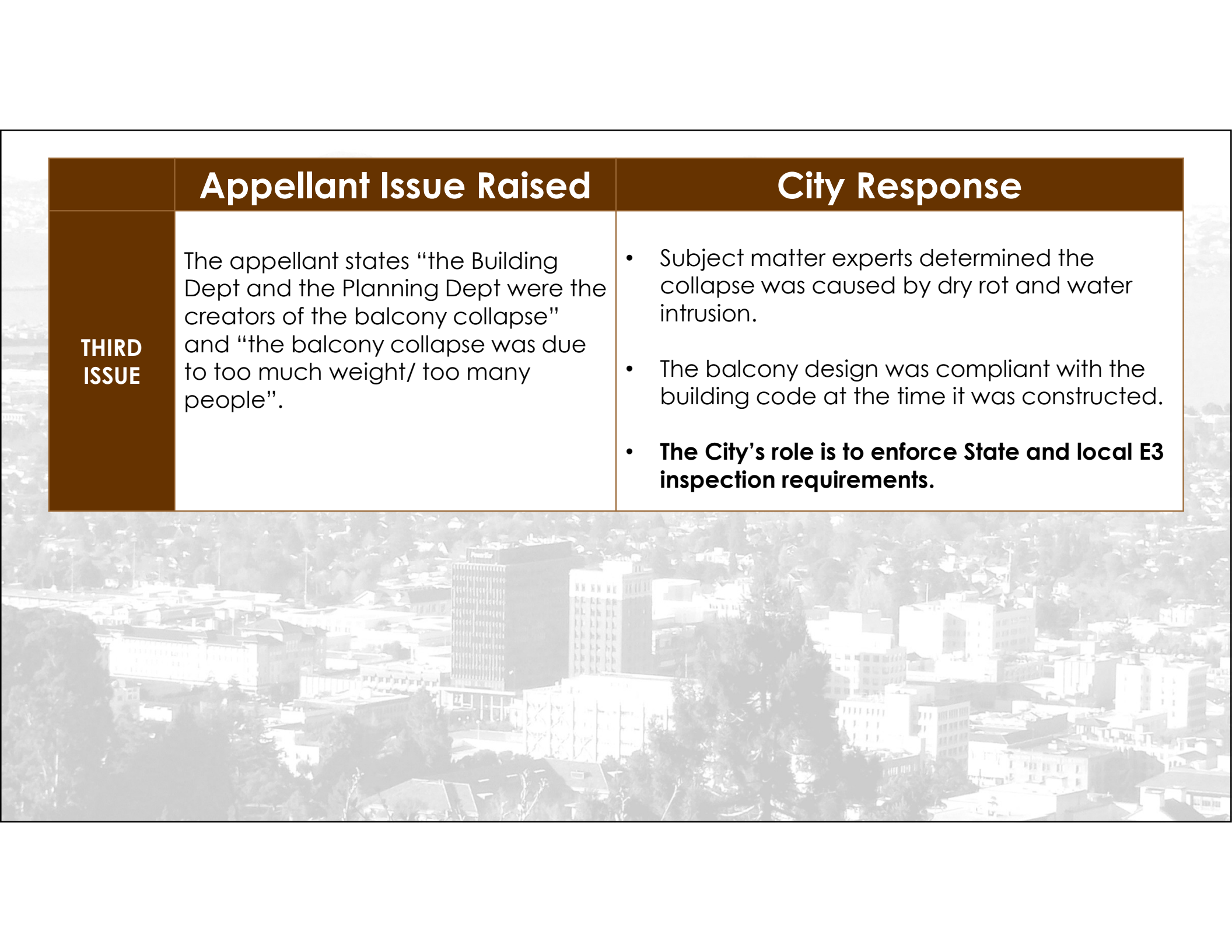
Owner appeals Building Official's Determination to HAC

HAC denies appeal and affirms Building Official's Determination

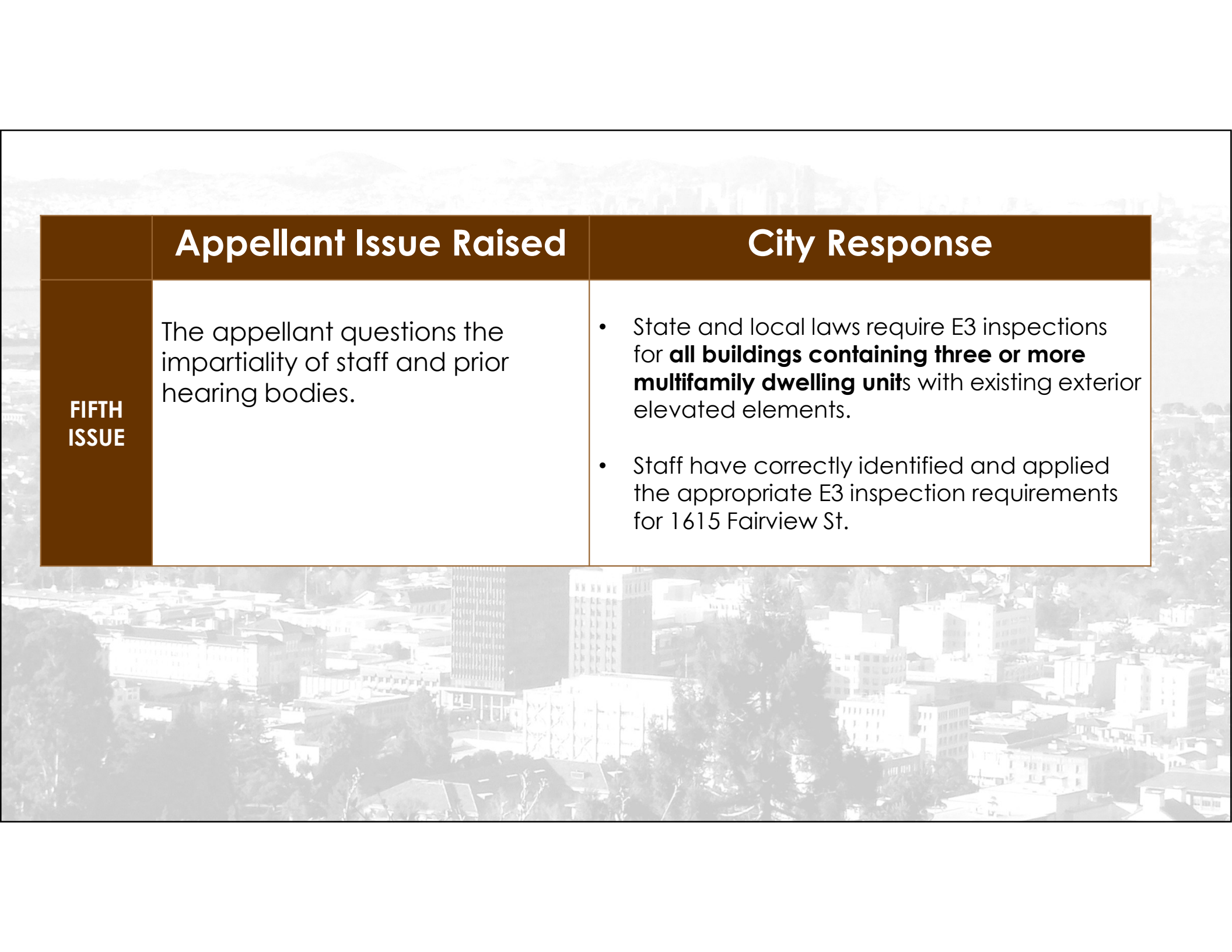
Owner appeals HAC's Notice of Decision to Council



	Appellant Issue Raised	City Response
FIRST ISSUE	<p>The Rental Housing Safety Program “already included provision and inspection program for Exterior Elevated Elements with annual inspections” and provisions for self-certification, as well as exemptions for vacant units and owner-occupied units.</p>	<ul style="list-style-type: none"> • The Rental Housing Safety Program (RHSP) and E3 Inspection Program are separate programs. • RHSP exemptions do not apply to E3. • E3 inspection requirements apply to all buildings with 3+ dwelling units, regardless of owner occupancy status or vacancy.
SECOND ISSUE	<p>“City Council delegated authority to the Building & Safety Department, resulting in a set of rules that far exceeded the scope of balconies and decks.... [and] created massive amounts of revenue for the City.”</p>	<ul style="list-style-type: none"> • Berkeley’s E3 inspection requirements align with State law (HSC Section 17973) • E3 fees are limited to program administration



	Appellant Issue Raised	City Response
<p>THIRD ISSUE</p>	<p>The appellant asserts “the Building Dept and the Planning Dept were the creators of the balcony collapse” and that “the balcony collapse was due to too much weight/ too many people”.</p>	<ul style="list-style-type: none"> • Subject matter experts determined the collapse was caused by dry rot and water intrusion. • The balcony design was compliant with the building code at the time it was constructed. • The City’s role is to enforce state and local E3 inspection requirements.
<p>FOURTH ISSUE</p>	<p>The appellant highlights application of the Hardship Exemption for low-income property owners who cannot easily afford the appeal fee and asserts the Building Official imposed a \$1,000 Appeal Fee</p>	<ul style="list-style-type: none"> • State and Local laws related to E3 inspection requirements do not provide an exception for low-income property owners. • The \$1,000 fee is a Council-adopted fee to cover staff costs associated with research and preparation for the hearing



STAFF RECOMMENDATION

1. Deny the Appeal and affirm the Building Official's determination that 1615 Fairview Street is not in compliance with the Exterior Elevated Elements (E3) Inspection Program
2. Uphold the associated fees consistent with Council-adopted policy and State law.