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Berkeley Gets in on Probe of Balcony

By Jaxon Van Derbeken

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After declaring their probe into last week's deadly apartment-balcony collapse finished, Berkeley authorities have done an about-face and joined a criminal investigation led by Alameda County prosecutors, The Chronicle has learned.

Berkeley authorities made the decision hours after city officials said Tuesday that the laminated-wood supports holding up the fifth-floor balcony at 2020 Kittredge St. had become "severely dry rotted" before the collapse. The 176-unit apartment building was completed just seven years ago.

Teresa Drenick, spokeswoman for Alameda County District Attorney Nancy O'Malley, said Wednesday that Berkeley police were taking part in an investigation, and that "in light of Berkeley's statement yesterday that they had closed their investigative process, the district attorney's (office) will be the lead agency."

She said Berkeley police have retained the failed balcony as evidence.

Berkeley officials had said the city was not trying to determine how the balcony was damaged by moisture. They also said police were not investigating whether any crimes had contributed to the June 16 collapse, which killed six people and injured seven who had been celebrating a visiting Irish student's 21st birthday.

Instead of conducting a forensic examination of the collapse, Berkeley officials said, they were focusing on reforms that would effectively ban the use of laminated wood on balconies in multiunit buildings by requiring pressure-treated wood or galvanized metal for supports. They are also seeking to force owners of such buildings to pay for regular inspections.

Turnaround on Probe

Berkeley's position on a criminal probe changed late Tuesday, about the time the district attorney's office said it was looking into the failure, sources familiar with the case told The Chronicle. The sources spoke on condition of anonymity because they were not authorized to discuss the case publicly.

A spokesman for the city, Matthai Chakko, did not return calls Wednesday seeking comment.

Among those who could come under investigation are the apartment building's main contractor, Segue Construction Inc. of Pleasanton, and the company that applied a waterproof membrane for the balcony's laminated-wood support beams, R. Brothers Inc. of San Jose. Independent experts who have examined photos of the damage for The Chronicle have said the membrane appeared to have been torn, possibly during construction.

The contractors have not responded to questions about how the building was constructed. R. Brothers did not immediately comment Wednesday on the probe, and efforts to reach Segue were unsuccessful.



The city had planned to return the destroyed balcony to the building's owner, BlackRock Inc. of New York. Authorities also ordered the removal of the rot-damaged balcony beneath the collapsed structure, and left it with the private contractor that took it down the day after the collapse. With authorities opening an investigation, the city intends to get the second balcony back, sources said.

Evidence destroyed?

Tom Miller, an attorney who represents litigants in construction defect cases, said he was surprised that the city had planned to give the balconies back to the owner in the first place. He also questioned Berkeley's decision to remove the second balcony, saying it may have destroyed potential evidence.

"Preserving the evidence is of utmost importance in such a case," Miller said. "The intersection between the building and the cantilevered deck is the likely source of the water — now that they have cut it out, to try to reconstruct the actual conditions will be almost impossible."

Crucial to the Probe

Miller said the crucial elements in the probe are determining the source of the water infiltration and the contractor responsible for the problem.

City officials said the second balcony had been extensively photographed, both before and during its removal. Taking the balcony off the building was important for public safety, they said.

Critics, however, said the balcony could have been braced and made off-limits, and that photos taken before a police investigation was launched were not the same thing as firsthand observation.

"The (waterproofing) membrane was cut through in order to remove it from the building. That was done apparently before any leak testing was done," said Bernard Cuzzillo, a Berkeley mechanical engineer who studies why structures fail. "It would be analogous to finding out why a tire leaks after the tire has been chopped in half right at the point of the suspected leak. You can't test the leak now."

The damage apparent from the second balcony suggested it was not as significant a collapse hazard as the failed deck, Cuzzillo said.

"It had enormous evidential value while undisturbed," Cuzzillo said. "Now that value has been compromised to an undetermined extent."

Any evidence damage would complicate the task of pressing a criminal case. The only such case in recent years in California, experts said Wednesday, was one brought by then-San Francisco District Attorney Terence Hallinan after the 1996 collapse of a Pacific Heights fourth-floor deck, which killed one woman and injured 14 people.

Manslaughter Alleged

Hallinan accused the Franklin Street apartment building owner, Randall Nathan, of manslaughter for allegedly undermining the deck's structural integrity by ordering that a support beam be moved without securing a permit. A jury deadlocked on the main charge, but convicted Nathan of two misdemeanors.

Nathan ultimately was ordered to pay \$13.5 million stemming from lawsuits in the case. Niall McCarthy, an attorney who represented some of the victims, said he has brought civil cases in other collapses, but that authorities typically have "zero interest in prosecution."

"They are tough cases to make," McCarthy said. "You have to have some sort of notice of the defect," and proof that a defendant ignored the warnings.