



Safety Codes Council

FREQUENTLY ASKED QUESTIONS

What is a variance?

A variance is a discretionary power exercised by a safety codes officer (SCO) or an Administrator designated with this power under the Safety Codes Actⁱ (Act). An Administrator or an SCO may issue a variance for any thing, process, or activity regulated by the Act if the Administrator or SCO is of the opinion that the variance provides approximately equivalent or greater safety performance with respect to persons and property regulated by the Act. In practical terms, this means an SCO certified and designated in a specific discipline or disciplines may accept an alternative solution to the prescriptive requirements of the codes and standards for the discipline or disciplines.

Who is responsible for providing documentation to support the issuance of a variance?

The person applying for the variance is responsible for demonstrating to the SCO or Administrator that the variance will meet the safety objectives of the respective code or standard and provide approximately equivalent or greater safety performance with respect to persons and property as that provided through strict conformance with the code or standard. The applicant is responsible for developing the rationale for the proposed variance and providing evidence through supporting documentation. Hiring a third party professional such as an engineer or architect may be beneficial to support a proposed variance application.

What is the role of an SCO when reviewing variance proposals?

The role of an SCO is to review the proposed variance and supporting documentation to ensure that they are satisfied that the proposed variance meets the requirements of section 38 of the Act. SCOs must exercise due diligence when evaluating variance proposals to ensure they provide approximately equivalent or greater safety performance than that provided under the Act.

Why issue a variance?

Codes and standards adopted under the Act provide acceptable minimum standards for the protection of the public and cannot anticipate all acceptable pathways to compliance. Systems, materials, technologies, and designs typically develop at a faster rate than the rate at which codes and standards are developed and revised, and the rate of change continues to accelerate internationally. The use of a variance recognizes the limitations of prescriptive requirements by providing the authority and flexibility to recognize safe and effective alternatives.

What's changing under the Safety Codes Act?

The Government of Alberta recently proclaimed sections 19 and 25 of the Safety Codes Amendment Act, which establishes a person's right to appeal an SCO's refusal to issue a variance. This right to an appeal is already established for other powers under the Act, such as a refusal to issue a permit. An appeal for a refusal to issue a variance is made to the Safety Codes Council (the Council). A variance issued by an Administrator is not subject to appeal.



Safety Codes Council

When will the ability to appeal a Written Notice of Variance Refusal come into effect?

These amendments will come into force on December 1, 2021.

How does an SCO issue a Written Notice of Variance Refusal, and what information should the Written Notice contain?

It is recommended that SCOs use the Written Notice of Variance Refusal template available on the Council's [website](#). As the Written Notice could become the subject of an appeal hearing through the Council, it is important to have well prepared formal documentation. The Council's template provides details on the information that an SCO needs to include in order to ensure that the reason for the refusal is clear.

What happens when a variance is refused and the person appeals the Written Notice of Variance Refusal?

The appeals video on the Council's [website](#) provides an overview of the process. Persons wishing to appeal a Written Notice of Variance Refusal will need to submit the Notice of Appeal Form with a copy of the Written Notice and the \$500 appeal fee within 30 days from date of service of the Written Notice of Variance Refusal. The SCO who issued the Written Notice of Variance Refusal will attend the appeal hearing as the respondent.

What authority does an Administrative Tribunal of the Council have with respect to an appeal?

An Administrative Tribunal of the Council may, by Order, confirm the refusal by an SCO to issue a written variance or revoke the refusal and issue a written variance on the terms and conditions it considers appropriate.

When an Administrative Tribunal confirms a refusal to issue a variance, they are in agreement with the position of and supporting documentation presented by the SCO as the respondent, and the applicant must conform to the requirements of the relevant code or standard. This does not prevent the applicant from submitting another variance proposal to the authority having jurisdiction for consideration.

When an Administrative Tribunal revokes a refusal to issue a variance, they are in agreement with the position of the applicant, and the Administrative Tribunal will issue a variance by way of a Council Order. The variance may provide different requirements from what was specified in the original proposed variance in situations wherein additional supporting documentation is provided in an appeal hearing and the parties are in agreement with the proposed variance.

Are there any other options if a party to an appeal hearing does not agree with the appeal decision?

The decision is final and may only be appealed to the Court of Queen's Bench on a question of law or jurisdiction within 30 days of service of the Council Order. Refer to Section 53 of the Safety Codes Act for further information on the process.

Can an applicant appeal a decision by an Administrator to refuse to issue a variance?

No, variance refusals issued by an Administrator are not appealable.



Safety Codes Council

For more information on variances, the application process, the appeals process, or to take the Council's variance workshop, visit safetycodes.ab.ca.

¹ Safety Codes Act, Sec. 38