

NOTICE

Variations

Variations under the Safety Codes Act

A variance is a power exercised by a safety codes officer or an Administrator under the *Safety Codes Act* (“Act”), which provides approximately equivalent or greater safety performance to persons and property as provided by the Act. The Act includes all regulations, codes, standards and rules in force under the Act. It is an expectation that safety codes officers (SCO) who have the power to issue a variance will consider and evaluate a request for a variance. Section 38 of the Act states:

“38(1) An Administrator or a safety codes officer may issue a written variance with respect to any thing, process or activity to which this Act applies if the Administrator or officer is of the opinion that the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

(2) An Administrator or a safety codes officer may include terms and conditions in the variance.

(3) A safety codes officer on issuing a variance shall notify an Administrator.

(4) The *Regulations Act* does not apply to variations issued under this section.”

A variance does not “change code” and it is not a relaxation of the Act. A variance provides an alternative to any thing, process or activity regulated under the Act. The prescriptive rules remain in place as a benchmark from which a variance may be developed. Anything that is not regulated by the Act cannot be the subject of a variance. Regarding the process for a variance, the person proposing the variance is responsible to provide evidence to the SCO that the variance would provide “approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act”. It is not the SCO’s responsibility to develop the variance or the evidence to support a variance.

With this understanding of a variance, safety codes officers should exercise all due diligence when issuing variations for which there is no recognized standard or for innovative materials, products and systems that are not listed by a recognized evaluation service such as the Canadian Construction Materials Centre (CCMC), or in accordance with the Association of Professional Engineers and Geosciences of Alberta (APEGA) professional practice standard for authentication of professional work products.

Why issue a variance?

The Government of Alberta created the authority to issue a variance under the Act in recognition that a thing, process or activity may meet or exceed safety outcomes but not be in strict accordance with the regulations, codes, standards or other rules under the Act. Over the past few decades, jurisdictions around the world including Canada have seen the introduction of objective based and performance based codes that allow for a variance or alternative solution to meet the safety objectives of the construction and installation codes. A variance to a prescribed rule recognizes that there are often multiple ways to achieve compliance or meet the safety objective of the regulations, codes or standards.

May a variance be issued for more than one thing, process or activity at a time?

Yes. Historically, a safety codes officer within their jurisdiction issued a variance that was site specific only. Section 38 of the Act is quite broad in application and does not place restrictions on whether a

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variance can be issued for a specific site or for multiple sites for the same thing, process or activity or with the same conditions. Therefore, a safety codes officer designated with a variance power and employed by an accredited municipality, an accredited region services commission or an accredited corporation may issue a variance for the same thing, process or activity for multiple sites within their jurisdiction. Safety codes officers for accredited agencies may also issue a variance for multiple sites within the jurisdiction of the accredited organization for which they provide services.

What is the role of accredited municipalities, corporations and agencies with respect to variances?

An accredited body may manage variance issuance, including having policies and procedures for the administration of variances, provided the accredited organization does not interfere with or hinder a safety codes officer in the exercise of the officer's power when issuing a variance.

Which Administrator should receive a copy of a variance?

The *Act* requires that an Administrator be notified when a safety codes officer issues a variance. A copy of the variance is to be sent to the Administrator of Accreditation with the Safety Codes Council. The Administrator will then add the variance to the Council's variance registry system. Do not provide a copy to the Provincial Technical Administrators at Municipal Affairs.

What should be documented in a variance?

The Safety Codes Council currently provides a template for variances on their website. A revised template and updated training delivered through the Council will be developed at a later date to provide guidance for safety codes officers that aligns with this document.

Does an SCO have authority to review a variance proposed by a registered professional architect, engineer or other member?

Yes. An SCO's responsibility is to ensure the proponent confirms that a proposed variance will provide approximately equivalent or greater safety performance to that of the *Act* including applicable regulations, codes, standards or other rules under the *Act*. It is the professional member's responsibility to demonstrate to the SCO that their proposed variance or alternative solution meets the objectives of the codes and provides approximately equivalent or greater safety performance. While the professional and the SCO may engage in constructive discussions respecting the proposed variance based on their experience and knowledge of the codes, the SCO may not engage in the practice of engineering or architecture by substituting their own design proposals for that of the professional member's proposed solution, even if that SCO is a registered professional member.