



**TO:** Fire Prevention and Building Safety Commission  
**FROM:** Justin Guedel, Staff Attorney, IDHS  
**DATE:** Tuesday, March 5, 2019  
**RE:** Proposed Procedure for Review of Orders Pursuant to IC § 22-13-2-7(a)

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Pursuant to Indiana Code § 22-13-2-7(a), the Fire Prevention and Building Safety Commission (Commission) “may modify or reverse any variance or other order that: (1) is issued by a state agency or political subdivision; covers a subject governed by this article, IC 22-12, IC 22-14, IC 22-15, a fire safety rule, or a building rule.”

In order to carry out this authority and to establish a process for consideration of requests for this review, it is recommended that the Commission adopts the following framework:

#### **Who Can Request Review**

An “Interested Person.” An “interested person” is any person or entity who is adversely affected by an order of a state agency or political subdivision, when that order covers a subject governed by IC 22-12, IC 22-13, IC 22-14, IC 22-15, a fire safety rule, or a building rule. However, orders issued by the Indiana Department of Homeland Security must be reviewed by following the procedures outlined in the Administrative Orders and Procedure Act and filing a petition for review.

#### **When Can Review Be Requested**

In order for the Commission to review a request for review by an Interested Person, the request must be submitted within 15 days following service of the order. However, if the state agency or political subdivision has established an internal review process of their orders, the Interested Person must first exhaust all internal review options offered by the state agency or political subdivision, and file their request within 15 days of exhausting these internal review processes, before the Commission will consider review pursuant to Indiana Code § 22-13-2-7(a).

#### **How to Request Review**

To request review, an Interested Person must submit a request to the Commission by one of the following methods:

1. By email to [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov). The subject line of the email shall state: “IC 22-13-2-7(a) Request for Review.”
2. By first class mail or hand delivery to:

Fire Prevention and Building Safety Commission  
Indiana Department of Homeland Security  
302 W. Washington Street, Room E-208  
Indianapolis, IN 46204

The request must include the following information:

1. Name and contact information of the Interested Person.
2. Name and contact information of the entity issuing the order.
3. A copy of the order that the Interested Party requests to be reviewed.
4. A statement swearing that the Interested Party has exhausted all internal review options offered by the state agency or political subdivision.
5. A statement explaining the reason for review and why the Commission should modify or reverse the order.

### **Staff Review and Notification**

Upon receipt of a request, staff will review the request to ensure the request qualifies as a type of order the Commission reviews. To qualify, the request must comply with all requirements of this policy. If staff finds the request does not qualify, staff will notify the Interested Person of this finding. The request and notification will be placed on the agenda for the next meeting of the Commission (in accordance with any policies or procedures for agenda setting) to notify the Commission of the result.<sup>1</sup>

If the request qualifies, staff will notify the Interested Party and the state agency or political subdivision that a request for modification or reversal has been received and will be placed on the agenda for the next meeting of the Commission scheduled at least 15 calendar days following receipt of the request.<sup>2</sup> The state agency or political subdivision may submit a written response to the request for Commission consideration.

### **Commission Review**

For all requests to review variances or orders under Ind. Code § 22-13-2-7(a), participation by the parties or any other member of the public is at the discretion of the Commission. In determining whether to review an order or variance, the Commission may allow the parties to present evidence and argument. The Commission may take the following actions on a request to review: (1) deny the request to review; (2) table the request to review; (3) modify the order; or (4) reverse the order. If the Commission modifies or reverses the order, the Commission will issue its own order which may be reviewed pursuant to the Administrative Orders and Procedures Act. A decision of the Commission to deny a request to review is not reviewable.

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<sup>1</sup> The Commission may, at its discretion, choose to review the order. If the Commission chooses to review the order, it will notify the parties and will review the order at the next scheduled Commission meeting.

<sup>2</sup> The Commission may, at its discretion, decide not to review the order. The Commission will provide a reason for choosing not to review the order and, when appropriate, direct staff to notify parties submitting similar requests that the request does not qualify for review.