



December 20, 2019
By Electronic Mail and U.S. Postal Mail

David Rothenberg, Esq.
Attorney for the Petitioner
McKean Law, P.C.
9105 East 56th Street
Indianapolis, IN 46216
david@mckeanlaw.com

Re: Petition for Administrative Review – IDHS Civil Penalty Order No. AE1835795-12102019 – Brothers Bar

Dear Mr. Rothenberg:

The Fire Prevention and Building Safety Commission is in receipt of your electronically-filed petition for administrative review of IDHS Civil Penalty Order No AE1835795-12102019 – Brothers Bar, dated 12/16/2019. Pursuant to the requirements of Indiana Code § 4-21.5-3-7, your petition has been granted by the Commission, given that your petition was timely-submitted, and given that you serve as legal counsel to the petitioner.

Your petition has been assigned to the Commission's administrative law judge. The judge's office will contact you to make arrangements for further proceedings. Should you have any questions, you may contact our deputy general counsel assigned to the matter, Justin Guedel, at JGuedel@dhs.in.gov or (317) 234-9515.

Sincerely,

Douglas J. Boyle, Director
Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
302 W. Washington Street, Room E-208
Indianapolis, IN 46204
doboyle@dhs.in.gov
(317) 650-7720

Enclosure

cc: Andrew McDonough – petitioner (by electronic mail and U.S. postal mail)

Justin Guedel, IDHS Deputy General Counsel – representing the respondent (by personal service and electronic mail)
Office of Attorney General Curtis Hill – Administrative Law Judge (by electronic mail)

From: [DHS Legal Mailbox](#)
To: [Boyle, Douglas J \(DHS\)](#)
Cc: [Settle, Kristin](#)
Subject: FW: Petition for Review
Date: Friday, December 20, 2019 9:07:09 AM
Attachments: [68379161_Fire_Civil_Penalty \(12-16-19\).pdf](#)
[68380022_Johnson Controls E-mail \(12-16-19\).pdf](#)

Please see the below petition for review. Please stay any additional enforcement until this administrative review is resolved. Thanks!

Justin K. Guedel | Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

From: noreply@formstack.com <noreply@formstack.com>
Sent: Monday, December 16, 2019 2:50 PM
To: DHS Legal Mailbox <Legal@dhs.IN.gov>
Subject: Petition for Review

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: [petition for review](#)

Submitted at 12/16/19 2:49 PM

Individual Name: Andrew McDonough

Business Name : 1601 Muncie, Inc. d/b/a Brothers Bar & Grill

Phone Number: (765) 287-8297

Email Address: amcdonough@fortneycompanies.com

Mailing Address:	1601 W University Ave. Munice, IN 47303
Are you represented by an attorney?:	Yes
Attorney Name:	David Rothenberg
Firm:	McKean Law, P.C.
Phone Number:	3175246320
Email Address:	David@mckeanlaw.com
Mailing Address:	9105 East 56th Street Indianapolis, IN 46216
Order Number:	1835795
Facility Device Boiler ID:	Brothers Bar
Date Order Received:	Dec 10, 2019
How did you receive the Order? :	Hand Delivery
Entity Issuing Order:	Indiana Department of Homeland Security

Entity Name:

Upload Order: [View File](#)

Was this order specifically directed to you?:

Yes

Explain:

Order is for Brothers Bar not having appropriate records as to sprinkler inspection

Have you been aggrieved or adversely affected by the order?:

Yes

Explain:

Fine of \$500 was issued

If the order was not specifically directed to you and you have not been aggrieved or adversely affected by the order, are you entitled to review under some other law? :

What law?:

I request

review of the entire order described above:

Yes

If you are not requesting review of the entire order, what is the scope of your request?:

I request a stay of effectiveness:

Yes

What is the basis of your challenge? :

The requested inspection records, which should be maintained by the landlord, are not presently available from the landlord after repeated requests. The requested inspection records will be available after an inspection to be conducted by Johnson Controls on January 6th and January 9th of the entire building as per the landlord (see attached e-mail document confirming appointment).

What is your desired outcome? :

After compliance with the required record submission (the record of which should be available on January 9, 2020, a dismissal of the order.

Additional information in support of my request:

The landlord is contractually responsible for the inspection of the records for the entire building (this is a building which houses many retail establishments). The landlord was not able to provide Brothers with the requested records, which they been requesting since this first came to their attention, over a month ago. The fire inspector himself visited with the landlord and was told in person that those records were not available. Through pressure by Brother and the visit by DHS, the landlord has arrange an inspection for the entire building during the period of 1/6-1/9 2020. The premises will then be in compliance.

Additional Attachments:

[View File](#)

**Additional
Attachments:**

**Additional
Attachments:**

Copyright © 2019 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038



CIVIL PENALTY

TO: BRETT CLEARY
1601 W. UNIVERSITY STREET
MUNCIE IN 47303
BROTHERS BAR

DATE: 12/10/2019

ORDER #: AE1835795-12102019

Pursuant to Indiana Code § 4-21.5-3-6 and Indiana Code § 22-12-7-7, the Division of Fire and Building Safety of the Indiana Department of Homeland Security (the "Division") issues this Order imposing \$500.00 fine for failing to correct all violations of the Indiana building and fire safety laws found during an inspection conducted at your facility. A copy of the inspection report order that was issued following this inspection has been attached to this Order for your reference. (attach a copy of the initial inspection report order that has not been complied with)

Specifically, the following violations you were required to correct still remain uncorrected:

Sec. 107.2.1 014 Edition IFC 675 IAC 22-2.5 Required test and inspection records shall be available to the fire code official at all times.

(Documentation of a current Fire Alarm Inspection and Smoke Detector Sensitivity Test has not been provided)

Sec. 107.2.2 2014 Edition IFC 675 IAC 22-2.5 Written records of maintenance, tests, and inspections shall be maintained on the premises where the equipment is located or at a corporate central office and shall be made immediately available to the inspection authority on request.

(Documentation of a current Automatic Sprinkler Inspection has not been provided)

Please notify the Division immediately upon your compliance with the requirements of this Order. Failure to correct the above mentioned violations and remit payment in full for the fine that has been issued will result in additional sanctions and enforcement actions.

Payments may be made by:

- 1. Certified Check or Money Order; or**

Made out to the Indiana Department of Homeland Security and delivered to:

Indiana Department of Homeland Security
Division of Fire and Building Safety, Code Enforcement
302 W. Washington St. Rm. E241
Indianapolis, IN 46204

2. Credit Card

By following the directions at the following link: <https://oas.dhs.in.gov/dfbs/idhsFeesFines/start.do>.

REVIEW RIGHTS

This order is final and effective fifteen (15) days after service. If you would like to request **informal review** of this order, please complete the informal review form located at <https://www.in.gov/dhs/4148.htm>. Following receipt of this form, the Department may modify or reverse the order, however, a request for an informal review does not extend the deadline for filing a petition for review. Additionally, if you have any questions regarding this order, you may contact that Department at (317) 232-2222.

If you desire a formal administrative review of this order, you must comply with the requirements of Indiana Code § 4-21.5-3-7 and file a written petition for review within fifteen (15) days after receiving notice of this order. Your petition for review must state facts demonstrating that you are: (1) a person to whom the order is specifically directed; (2) aggrieved or adversely affected by the order; or (3) entitled to review under any law. You may submit your petition by the following methods:

U.S. MAIL OR PERSONAL SERVICE

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
c/o Legal Counsel
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204

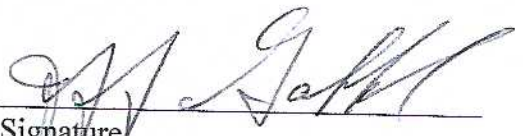
ONLINE

By completing the form at
<https://www.in.gov/dhs/4148.htm>

For additional information about the administrative review process and applicable templates that may be used for filings, visit the following link <https://www.in.gov/dhs/4148.htm>.

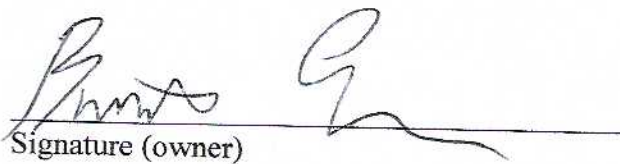
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings and Order has been served this 10th day of December, 2019, via hand delivery upon the following:



Signature
Indiana State Fire Marshal Designee

Received this 10th day of December, 2019



Signature (owner)

Received this 10th day of December, 2019

Signature (occupant/tenant if applicable)

David Rothenberg

Subject: FW: Order materials for Brothers

From: Ashley Coats [mailto:acoats@villagepromenade.com]

Sent: Monday, December 16, 2019 2:28 PM

To: David Rothenberg <david@mckeanlaw.com>

Subject: Re: Order materials for Brothers

David,

Below is the confirmation email I received this morning from Johnson Controls. If you need me to forward you the actual email, please let me know.

Thank you!

Timothy Daniel Tackett <timothy.daniel.tackett@jci.com>

Mon 12/16/2019 10:24 AM

- Ashley Coats;
- Kevin Pritchett (kpritchett@achliving.com)

□

Inspections, Fire Alarm, Sprinkler and backflows

Mon 1/6/2020, 8:00 AM to Thu 1/9/2020, 8:30 AM

Village Promenade

2 conflicts

RSVP to this event

Email organizer

Add a message to Timothy Daniel Tackett (optional)

Yes **Maybe** **No** Propose new time

Ashley, Kevin

We will be there to test fire alarms, sprinklers and backflows. On January 9th our techs will be there around 10am due to our safety meeting that morning.

On Behalf of *SimplexGrinnell/Johnson Controls* - We are planning on performing this inspection on the below date(s).

Monday, January 6, 2020 – Arriving between the hours of 8:00am – 9:00am

We will arrive on-site sometime *between the hours listed*.



Ashley Coats
General Manager

phone: 765.287.1000

email: acoats@villagepromenade.com

1623 W University Ave

Muncie, IN 47303

