

520 CMR: DEPARTMENT OF PUBLIC SAFETY

520 CMR 16.00: ENFORCEMENT OF CIVIL FINES FOR EXPIRED ELEVATOR CERTIFICATES

Section

16.01: Authority, Purpose, Scope, and Definitions

16.02: Assessment of Fines for Operation of Elevator Beyond Certificate Expiration Date

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16.01 Authority, Purpose, Scope, and Definitions

(1) Purpose and Scope.

(a) 520 CMR 16.00 is promulgated by the Department of Public Safety pursuant to authority granted by M.G.L. c. 22 § 22 and M.G.L. c. 143 § 65.

(b) The purpose of 520 CMR 16.00 is to establish reasonable standards for the issuance of civil fines pursuant to M.G.L. c. 143 § 65 by authorized personnel of the Department for the operation of an elevator beyond its certificate expiration date.

(2) Definitions.

Commissioner. The Commissioner of the Department of Public Safety.

Department. The Department of Public Safety.

Elevator. Moving stairways, dumbwaiters, moving walks, material lifts wheelchair lifts, automatic people movers, vertical reciprocating conveyors, orchestra lifts, car lifts, and other associated devices within the elevator industry recognized by the Board of Elevator Regulations, except inclined stair lifts located and installed in residential homes.

16.02 Assessment of Fines for Operation of Elevator Beyond Certificate Expiration Date

(1) 520 CMR 16.02 establishes the standards for the assessment of fines for operating an elevator after the expiration of its certificate in violation of M.G.L. c. 143, § 65.

(2) No elevator shall be operated without a valid inspection certificate issued by the Department. An elevator shall be deemed to be operating for the purposes of this regulation unless it has been placed out of service or decommissioned in accordance with a procedure approved by the Board.

(3) The Department shall fine an owner or operator of an elevator for \$100 per day that an elevator is in operation without a valid certificate.

- (4) Fines shall stop accruing on the date on which the owner or operator has, in writing or in any manner prescribed by the Department, requested an inspection of the elevator by the Department.
- (5) Upon application for an annual inspection, the owner or operator shall provide to the Department a current mailing address for the location of the elevator and a current mailing address for the owner of the elevator.
- (6) Maximum Fines.
  - (a) For any elevator that has a travel distance of 25 feet or less, and is located in a single-family owner-occupied residence in accordance with M.G.L. c. 143, § 64, the maximum fine shall be \$5,000.00
  - (b) For all other elevators, the maximum fine shall be \$20,000.00
- (7) Notice. The Commissioner or the Commissioner's designee, or another person as the Commissioner may specifically authorize, may issue a written notice of violation under M.G.L. c. 22, § 22 for a violation of 520 CMR 16.02. The Notice shall specify:
  - (a) The provision(s) of the law or regulation with which there has been non-compliance;
  - (b) The amount that is being assessed as a penalty for each alleged violation;
  - (c) The procedure for requesting an administrative review as set forth in 520 CMR 16.03.
- (8) Unless the violator files an appeal for administrative review pursuant to 520 CMR 16.03, fines shall be due within 30 days of receipt of the notice of violation.
- (9) Failure to Pay Fines. If a violator fails to pay a fine issued pursuant to 520 CMR 16.02, the Department may shut down the elevator(s) pursuant to 524 CMR 8.03 and 524 CMR 7.03.

### 1.03 Appeal for Administrative Review

- (1) 520 CMR 16.03 establishes the administrative review process for all fines assessed pursuant to 520 CMR 16.00.
- (2) Request for Review. A person aggrieved by the issuance of a fine may make written demand upon the Commissioner for an administrative review by the Commissioner or his designee. A request for administrative review of a fine issued pursuant to 520 CMR 16.02 shall toll the accrual of fines until a final decision is rendered by the Department.
- (3) Fees. The Commissioner may assess a fee for appeals for administrative review filed under 520 CMR 16.03, to be determined by the secretary of administration and finance under M.G.L. c. 7, § 3B.
- (4) The failure to appeal within 30 days of the issuance of a fine constitutes a waiver of the right to administrative review and all fines set forth in the notice shall be imposed.

- (5) Waiver or Reduction of Fines. The Commissioner or the Commissioner's designee may waive all or a portion of the \$100 per day fine assessed for operating an elevator after the expiration of its certificate in violation of M.G.L. c. 143, § 65. The Department may waive all or a portion of the fine if:
- (a) An application for annual inspection was submitted to the Department on time, but the application was returned to the applicant due to incorrect information in the application and there is substantial evidence that the incorrect information is the result of a clerical error. Substantial evidence of a clerical error shall include, but not be limited to, an incorrect elevator Certificate ID number listed on the application, or submission of an incorrect total inspection fee.
  - (b) An application for annual inspection was not submitted to the Department on time, and the application was returned to the applicant due to incorrect information in the application and there is substantial evidence that the incorrect information is the result of a clerical error. Substantial evidence of a clerical error shall include, but not be limited to, an incorrect elevator Certificate ID number listed on the application, or submission of an incorrect total inspection fee. In such cases, the Department may waive the portion of the fine that accrued from the date that the late application was initially received by the Department to the date that the corrected application was received.
  - (c) There is substantial evidence that a fine in excess of \$5,000 was assessed against an elevator with a travel distance of 25 feet or less located in a single-family owner-occupied residence. In such instances, the fines shall be reduced to \$5,000 or less as required by M.G.L. c. 143 § 65 and 520 CMR 16.02(6)(a).
  - (d) The elevator owner submits an application to decommission the elevator within 60 days of the appeals hearing. In such case, the Department may waive the entirety of the fine upon proof of decommissioning of the unit.
  - (e) The elevator owner submits sufficient evidence demonstrating that payment of the fine would cause severe financial hardship. Severe financial hardship means the inability to provide necessities of life including food, shelter, and clothing for the owner or the owner's dependents and/or the inability to meet mortgage obligations or any other payment(s) necessary to retain ownership of the building. Sufficient evidence shall at a minimum include: two years of federal personal or company tax returns; a listing of all cash assets greater than \$1,000; a listing of all liabilities greater than \$1,000; and an affidavit from the owner or owner's representative asserting that payment of the fine will cause severe financial hardship. The elevator owner may also include any other records which may demonstrate that a severe financial hardship would result if the elevator owner were required to pay the fines assessed.
- (6) Payment of Fine After Administrative Review. If a fine is upheld, payment is due within 30 days of the date of the decision. It shall be within the sole discretion of the

Commissioner or the Commissioner's designee to allow an extended period of time in which to pay in only those cases where the owner has submitted evidence of financial hardship pursuant to 520 CMR 16.03(5)(e). Such extension shall not exceed six months from the date of the decision.

These regulations are effective [DATE].

REGULATORY AUTHORITY

M.G.L. c. 22 §22; M.G.L. c. 143 § 65