

Office of the Fire Commissioner



Building and Fire Safety Section

Administrative Penalties

Date Issued: May 19, 2016
OFC 16-003

What is the purpose of this bulletin?

The purpose of this bulletin is to inform local authorities and local assistants of the process involved in requesting consideration for the Fire Commissioner to impose an administrative penalty, under section 15.1(1) of *The Fires Prevention and Emergency Response Act*, (FPERA) on a person, who has been non-compliant with addressing an order issued by a local assistant or a designate. In most cases the type of Order involved will be a Fire Safety Inspection Report/Order to Remedy as a result of a fire safety inspection.

What is an administrative penalty?

An administrative penalty is a financial penalty that may be imposed by the Fire Commissioner for failure to comply with an Order made under section 12 of the FPERA, within the time specified in an Order.

How much is an administrative penalty?

Administrative penalties are administered in accordance with the *FPERA-Administrative Penalties Regulation* MR207/2014. The amount of an administrative penalty is as follows:

- | | |
|--|----------|
| (a) First contravention | \$ 2,500 |
| (b) Second or subsequent contravention | \$ 5,000 |

Definitions:

The FPERA provides the following definitions that apply to this bulletin:

"designate" means a deputy fire commissioner, an assistant fire commissioner, a designated inspector and a local assistant, and includes a person exercising a delegated power, duty or function under subsection 23(3).

"fire safety inspection" means an inspection of land or premises to determine

- whether the land or premises complies with this Act and the regulations; and
- what actions or measures are necessary to eliminate or reduce the effects of a fire or other emergency that might occur on the land or premises.

"local authority" means

- (a) a municipality;
- (b) an incorporated community established or continued under *The Northern Affairs Act*;
- (c) in the part of Northern Manitoba — as defined in section 1 of *The Northern Affairs Act*— that is not within the boundaries of an incorporated community, the minister appointed to administer *The Northern Affairs Act*; and
- (d) a local government district.

Local assistants

23(1) The following persons are local assistants under this Act:

- (a) the chief of the fire department of a local authority, or for a local authority that does not have a fire department,
 - (i) the chief administrative officer, in the case of a municipality,
 - (ii) the community administrative officer, in the case of an incorporated community established or continued under *The Northern Affairs Act*,
 - (iii) the person designated by the minister responsible for the administration of *The Northern Affairs Act*, in the case of an area in Northern Manitoba that is not within the boundaries of an incorporated community,
 - (iv) the resident administrator, in the case of a local government district;
- (b) a person designated in writing as a local assistant by the fire commissioner.

Local assistants may delegate to other employees

23(3) A local assistant described in clause (1)(a) may delegate his or her powers, duties and functions under this Act to another employee of the local authority.

When should an administrative penalty be considered?

Local authorities are recommended to use discretion when considering this type of request. Voluntary compliance continues to be encouraged, and should be promoted as the preferred alternative. An administrative penalty should be considered in circumstances where other avenues for compliance have been unsuccessful.

After an initial fire safety inspection has occurred, it is recommended that follow-up inspection(s) be scheduled to assess any actions that may have been taken to remedy the deficiencies identified in the initial inspection and to establish a pattern of non-compliance.

A local authority may request consideration of the Fire Commissioner for an administrative penalty to be imposed against a person who has failed to comply with an Order issued by a local assistant, or a fire inspector delegated to conduct fire inspections on behalf of the local assistant, by the time specified in the Order or any subsequent compliance date extensions that has been provided.

Where non-compliance is being experienced early in the inspection process, consideration for an administrative penalty may be requested by the local authority after the compliance date stated in the initial inspection has passed. This should be considered carefully. Supporting rationale will be required to support the request.

Who can request consideration for an administrative penalty?

The FPERA states that within its boundaries, a local authority must enforce the *Manitoba Fire Code*.

On behalf of the local authority, fire safety inspections are typically conducted by the local assistant (fire chief) or a person delegated the authority to conduct fire safety inspections on their behalf under section 23(3) of the FPERA.

A request for an administrative penalty to be considered by the Fire Commissioner is to come directly from the local authority. In most cases, this will come from the chief administrative officer (CAO) for the local authority. Close consultation with the local assistant (fire chief) is strongly encouraged. It is important to note that the Order must state that an administrative penalty may be imposed if the person fails to comply with the Order.

What information should be included on an order to remedy?

It is recommended that local authorities adopt the approved [Fire Safety Inspection Report/Orders to Remedy form](#).

All deficiencies must be supported with the following information:

1. The appropriate Manitoba fire code article as reference
2. A description of the deficiency
3. A description of the corrective action required
4. The required compliance date

It is also important for all Fire Safety Inspection Reports/Orders to Remedy include the following statements to ensure compliance with the FPERA:

Administrative Penalties:

The required corrective action(s) listed above are to be completed by the noted compliance date or you may be subject to an Administrative Penalty as provided for under section 15.1(1) of *The Fires Prevention and Emergency Response Act (c.c.S.M.c F80)*.

Review of Orders:

In accordance with Section 15 of *The Fires Prevention and Emergency Response Act, (c.c.S.M.c.F80)*, you have the right to request, in writing, a review of this order by the Fire Commissioner within 14 days of issue, or the period specified for compliance if it less than 14 days. Should you choose to waive that right, the order will be considered final. Your request must include:

- a) A copy of the order
- b) Your name and contact information, and
- c) The reason(s) for the request.

Please submit your request to: Fire Commissioner
Office of the Fire Commissioner
508 – 401 York Ave.
Winnipeg, MB R3C 0P8

What information should the local authority include with the request for consideration of an administrative penalty?

It is the responsibility of the local authority to provide the Fire Commissioner with a package containing all of the documents necessary to make an informed decision regarding the imposition of an administrative penalty. The package should include documents similar to the ones listed below:

- Copies of the initial Fire Safety Inspection Report/Order to Remedy
- Copies of any Follow-up Inspection Reports
- A written description of any persistent deficiencies with accompanying photographs taken during the initial and follow-up inspections
- A written explanation of the inspector's rationale for believing that non-compliance has been and that no significant effort has been made to meet the remedial requirements laid out in the inspection reports
- A copy of any relevant written or oral communications between the local assistant or fire inspector, and the non-compliant individual or their designated agent

Should the required supporting documentation not be submitted with the package, the request to impose an administrative penalty may be delayed, or not be supported.

How is an administrative penalty issued?

With the approval of the Fire Commissioner, the Notice of Administrative Penalty form will be completed and accompanied by a covering letter, signed by the Fire Commissioner to the person required to pay the penalty detailing the reasons for the penalty.

The cover letter and Notice of Administrative Penalty will be served on the person required to pay the penalty personally by a member of the Office of the Fire Commissioner, by ordinary mail, by electronic mail, by fax or by another method that allows proof of receipt in accordance with Section 43(1) of the *FPERA*.

Can an administrative penalty imposed by the Fire Commissioner be appealed?

Yes.

A person aggrieved by the decision of the Fire Commissioner to impose an administrative penalty may appeal the decision within 14 days after being served, by filing a notice of appeal with the Court of Queen's Bench, and serving a copy of the filed appeal on the Fire Commissioner.

If we have any more questions regarding this process, who should we contact?

Questions regarding administrative penalties or any other questions regarding the delivery of fire safety inspections by local authorities may be directed to the Building and Fire Safety Section of the Office of the Fire Commissioner by email to firecomm@gov.mb.ca or by phone at (204) 945-3322.

508 - 401 York Avenue
Winnipeg Manitoba R3C 0P8
T: 204 945-3322
F: 204 948-2089
Toll Free: 1-800-282-8069

