



Mashpee Wampanoag Tribe

TRIBAL ORDINANCE

2016-ORD-001

MASHPEE WAMPANOAG TRIBAL BUILDING AND SAFETY CODE ORDINANCE

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The Mashpee Wampanoag Tribal Council does ordain as follows:

SECTION 1. FINDINGS



Mashpee Wampanoag Tribe

- (a) The Mashpee Wampanoag Tribe is a federally-recognized Indian tribe with a duly-enacted Constitution, pursuant to which the governing body of the Tribe is its Tribal Council.
- (b) Article VI, § 2.A. of the Constitution, provides that the Tribal Council is empowered to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.
- (c) Article VI, § 2.B of the Constitution provides that the Tribal Council is empowered to establish a departmental structure for the Tribal government with a delegation of appropriate powers to such subdivisions and agencies.
- (d) Article VI, § 2.C of the Constitution expressly authorizes the Tribal Council to establish procedures and ordinances for the conduct of all Tribal government business,
- (e) Article VI, § 2.L. of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members.
- (f) The Tribal Council deems it necessary to enact building, life safety and fire codes for all buildings on Tribal Lands for the safety of the Tribe, its Tribal members, Tribal employees, and members of the public present on Tribal lands.

SECTION 2. AUTHORITY AND PURPOSE

- (a) **Authority.** This Ordinance is enacted pursuant to the authority contained in Article VI, §§ 2.A, 2.B, 2.C and 2.L.
- (b) **Purpose.** The purpose of this Ordinance is to adopt, as laws of the Tribe, the contents of the building codes, life safety and fire codes, and all other codes related thereto adhered to by the City of Taunton (as to Tribal Lands within the geographical boundaries of the City of Taunton only) and the Commonwealth of Massachusetts (as may be amended from time to time), it being the intent of this Ordinance to comply with the requirements of the Compact and the Intergovernmental Agreement. This Ordinance does not, however, subject the Tribe to the jurisdiction or any enforcement action of the City of Taunton or the Commonwealth of Massachusetts.

SECTION 3. DEFINITIONS. For purposes of this Ordinance, the following definitions shall apply:

- (a) "Building Department" or "Department" means the Mashpee Wampanoag Building Department.

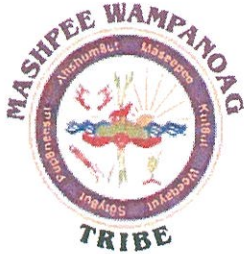


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- (b) "Building Official" means the Person designated by the Tribal Council to head the Building Department and be responsible for implementing all procedures and requirements of this Ordinance.
- (c) "Code" means this Ordinance.
- (d) "Compact" means the Tribal-State Compact Between the Commonwealth of Massachusetts and the Mashpee Wampanoag Tribe, as it may be amended from time to time. Gaming Authority" means the Mashpee Wampanoag Tribal Gaming Authority
- (e) "Gaming Commission" means the Mashpee Wampanoag Tribal Gaming Commission
- (f) "Intergovernmental Agreement" means the Intergovernmental Agreement between the Tribe and the City of Taunton, as it may be amended from time to time.
- (g) "Person" includes but is not limited to any individual, firm, limited liability company, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the Commonwealth of Massachusetts, any country, city and county, municipality, district, or other political subdivision of the Commonwealth of Massachusetts, joint powers authority, another state or its political subdivisions, the Tribe, or any of its political subdivisions, instrumentalities, agencies, or departments, or any other group or combination acting as a unit.
- (h) "Tribal Council" means the Tribal Council of the Mashpee Wampanoag Tribe.
- (i) "Tribal Lands" means any lands legally held by the United States of America in trust for the benefit of the Tribe and other lands over which the Tribe may exercise jurisdiction.
- (j) "Tribe" means the Mashpee Wampanoag Tribe, a federally recognized Indian Tribe.

SECTION 4. ESTABLISHMENT OF BUILDING DEPARTMENT AND OFFICE OF BUILDING OFFICIAL

- (a) **Establishment.** The Mashpee Wampanoag Tribal Council hereby establishes the Mashpee Wampanoag Building Department.
- (b) **Structure of Department.** The Department may organize programs and offices within itself as approved by the Tribal Council. The Tribal Council shall appoint a Building Official to manage and be in charge of the Department. The Building Official shall manage the day-to-day operations of the Department. The Tribal Council shall hire staff for the Department as necessary to implement this Building Code.



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(c) Building Official.

- (1) There is hereby established the position of the Mashpee Wampanoag Building Official to head the Building Department and implement such laws, regulations, and policies as may be enacted or adopted by the Tribal Council and the United States that apply to the Department. During any period in which the office of Building Official is not occupied, the Tribal Council will serve as the Building Official.
- (2) The Building Official shall report to the Tribal Council or its designee on a regular basis regarding building code matters on Tribal Lands and shall report to the Gaming Authority and the Gaming Commission on a regular basis regarding building code matters as necessary to allow the Gaming Authority and Gaming Commission to perform their duties under the Compact. The Building Official may work on a full-time, part-time or consultant basis as the Tribal Council shall determine.
- (3) Candidates for the position must be qualified as a "Certified Building Official" under the requirements of the Council of American Building Officials, and shall have such other credentials as may be established by the Tribal Council or otherwise required by the Compact or the IGA.

(d) Department Responsibilities.

- (1) The primary responsibility of the Department shall be to enforce the Tribe's Building Code on Tribal Lands.
- (2) The Department shall perform such other duties as may be delegated to the Department by duly adopted ordinance or resolution.
- (3) The Department shall have the authority and duty to provide for the assembly and distribution of information to the Tribal public relating to this Building Code and other Tribal Building Code related guidance, except where confidentiality is required by applicable law or due to the nature of the work.
- (4) The Department shall communicate and establish relationships with any individuals, entities or federal, state, local or tribal governments or departments, agencies, instrumentalities or subdivisions thereof for the purpose of fulfilling its responsibilities, including, but not limited to, accessing federal and state funding;



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provided, however, the authority to enter into final agreements, contracts, and formal understandings shall remain with the Tribal Council.

- (5) It shall be the duty of the Department to see that all ordinances and resolutions of the Tribal Council pertaining to the Department are properly complied with.
- (6) Each project or program related to the Tribal Building Code developed under a contract or grant providing federal financial assistance shall be developed and operated in compliance with all requirements of such contract or grant and applicable federal law including regulations and other requirements prescribed from time to time by the federal government.

SECTION 5. ADOPTION OF TRIBAL BUILDING CODES, LIFE SAFETY AND FIRE CODES, AND ALL RELATED CODES.

To accomplish the objectives of the Tribe, the Tribe hereby adopts as the Mashpee Wampanoag Building and Safety Code and to apply in all areas of Tribal Lands the following: the contents of the building codes, life safety and fire codes, and all other codes related thereto adhered to by the City of Taunton, as may be amended from time to time (as to Tribal Lands within the geographical boundaries of the City of Taunton only), and the Commonwealth of Massachusetts, as may be amended from time to time (as to all Tribal Lands), it being the intent of this Ordinance to comply with the requirements of the Compact and the Intergovernmental Agreement. The Tribe, however, acting through Tribal Council, shall have the authority to require design consultants and construction contractors to design and build to more stringent standards as the Tribe may impose. The Mashpee Wampanoag Building and Safety Code shall be made available on the Tribe's official website and in the Office of the Tribal Building Official.

SECTION 6. JURISDICTION.

Notwithstanding anything herein, the adoption per Section 5 above shall not be construed as an adoption of State law, rule, or regulation (or the law, rule, or regulation of any State subdivision), or an agreement to the enforcement of any such law, rule, or regulation on Tribal Lands. The Tribe merely adopts the contents as described above in Section 5 and the Tribe will be solely responsible for the enforcement of this Code.

SECTION 7. NO WAIVER OF SOVEREIGN IMMUNITY.



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Nothing in this Code shall be construed to waive, alter, or amend the Tribe's sovereign immunity or the sovereign immunity of any of the Tribe's enterprises, agencies, departments, officers, agents, or employees.

SECTION 8. ASSUMPTION OF RESPONSIBILITY.

The Tribe hereby assumes sole responsibility for all existing buildings and all future newly-constructed buildings on Tribal Lands.

SECTION 9. INTERPRETATION.

To the extent reasonable, this Code shall be read and interpreted in a manner that is consistent with the Laws and Ordinances of the Tribe, but in the event of an inconsistency, the Laws and Ordinances of the Tribe shall control.

SECTION 10. APPLICABILITY.

This Code shall apply to all buildings and structures erected hereafter. This Code is not applicable to buildings erected prior to the enactment of this Code. It is, however, applicable to structural alterations or relocations of existing buildings.

SECTION 11. PROMULGATION OF BUILDING AND SAFETY REGULATIONS.

The Department shall have the authority to implement this Code and to promulgate regulations respecting its area of responsibility to carry out the Code's provisions. Any regulation promulgated by the Department must be approved by the Tribal Council to become effective. The Tribal Council shall have authority to approve, reject, modify, or rescind any regulation adopted pursuant to this Code.

SECTION 12. CERTIFICATES, LICENSES, AND PERMITS.

Prior to the occupancy of any building on Tribal Lands, the Building Official shall issue to the owner a Certificate of Occupancy attesting that the construction or improvements of the building comply with this Code.

SECTION 13. FEES.

Fees shall be assessed in accordance with a schedule of fees to be established by Tribal Council, and open for inspection at the Tribal administration offices by Tribal members, their contractors



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and contractors hired by Tribe. The Tribal Council shall have the authority to waive any fees required under this Section upon its determination that the fee would result in a significant hardship. Neither the Tribe nor any of its departments, authorities, commissions or other Tribal entities will be required to pay any such fee.

SECTION 14. WORKERS' COMPENSATION REQUIREMENTS.

No permit will be issued under this Code unless and until a Certificate of Workers' Compensation coverage is submitted to the Building Official proving that the contractor(s) responsible for completion of work granted by the permit has Workers' Compensation coverage.

SECTION 15. RESPONSIBILITY UNDER OTHER APPLICABLE LAW.

Nothing in this Code shall relieve the Tribe, any Tribal member, or any other Person from any responsibility or obligation under any other applicable Tribal or federal laws or regulations for the regulation or protection of environmental or cultural resources or persons with disabilities.

SECTION 16. ENFORCEMENT.

The Building Official shall have responsibility for monitoring all planned or ongoing construction on Tribal Lands and all workplace safety and personal safety on Tribal Lands to ensure compliance with this Code, and shall investigate any complaint submitted to the Department relative to any alleged violation of this Code. If the Building Official concludes that a provision of this Code has been violated, he or she shall inform in writing the Person allegedly in violation of the concern, including the specific provision(s) of the Code and remedial action requested, with notice of same to the Tribal Council.

SECTION 17. NOTICE OF VIOLATION; PENALTIES.

If the Building Official concludes that a Person has violated a provision of this Code and failed to take reasonable corrective measures, the Building Official may issue the contractor a Notice of Violation. Any condition that is the subject of a Notice of Violation and is not corrected within five (5) calendar days after the date of the Notice of Violation may be assessed an initial fine of \$100 for each violation cited therein. Any conditions remaining uncorrected ten (10) days after the date of a Notice of Violation may, in addition, be subject to a daily fine of \$250.00 for each day the violation continues after such tenth (10th) calendar day. The Building Official shall notify the Tribal Council of any uncured violations and the Tribal Council alone may determine whether to impose penalties.



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SECTION 18. APPEAL PROCESS.

Any Person cited with a Notice of Violation shall have the right to file an appeal with the Tribal Council opposing the notice and any related penalties. Any such appeal must be submitted in writing within fifteen (15) days after the date of such Notice of Violation. Appellants shall be allowed to present evidence in their defense in a hearing before the Tribal Council. The Tribal Council shall render a final decision with respect to a Notice of Violation within fifteen (15) calendar days of the date of such hearing, either dismissing the Notice of Violation and any related penalties or declaring that such notice shall remain in effect and that related penalties, if any, shall remain payable. The process described in this section is within the exclusive jurisdiction of the Tribal government and its agencies and officers and is the sole recourse for any Person opposing a Notice of Violation or any penalties related thereto.

SECTION 19. AUTHORITY AND TRIBE PROTECTIONS

- (a) No obligation or liability of the Department of any nature, whether arising by reason of contract, tort, law, equity or otherwise, shall constitute or be accounted for as an obligation or liability of or shall be enforceable or constitute a basis for a claim against any property (real, personal, tangible and intangible) of any Tribal Party other than the Department, except as otherwise expressly provided in a duly adopted written resolution of the Tribal Council.
- (b) No obligation or liability of any Tribal Party other than the Department, whether arising by reason of contract, tort, law, equity or otherwise, shall constitute or be accounted for as an obligation or liability of or shall be enforceable or constitute a basis for a claim against the Department, except as otherwise approved to the contrary by the Department or required under federal laws.

SECTION 20. ACCOUNTING MATTERS

- (a) The fiscal year of the Department shall be the same as the fiscal year of the Tribe.
- (b) Upon the request of the Tribal Council, the books, records and property of the Department shall be available for inspection at all reasonable times by authorized representatives of the Tribal Council.

SECTION 21. BOND.



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The Building Department shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorizing to sign checks or certify vouchers as determined by the Department.

SECTION 22. COMPLIANCE WITH COMPACT.

In compliance with Section 5.4.1 of the Compact, notwithstanding any other provision of this , with respect to the Facility as defined in the Compact, if at any time any provision or provisions of this ordinance are inconsistent with or not as stringent as any one or more provisions of any building, fire, health and safety code that would lawfully apply to the Facility and the Gaming Site as defined in the Compact if the Gaming Site were subject to the civil jurisdiction of the Commonwealth of Massachusetts, such provision or provisions of that code shall apply instead of such provision or provisions of this ordinance.

SECTION 23. REPEALER.

Subject to the contractual right of any party to an existing contract binding on a Tribal Party and any limitations arising from the Constitution, all ordinances, laws (other than the Constitution), judgments, decisions, orders, resolutions, rules, regulations or other actions, or any part or provision thereof, of any Tribal Party, or any of the officers, employees, or agents of the foregoing, whether written, unwritten or established by tradition, that are in effect as of the date hereof and that are in conflict or inconsistent with the terms of this Ordinance are hereby repealed and annulled to the extent of such conflict or inconsistency, and this ordinance shall supersede the same.

SECTION 24. SEVERABILITY.

If any section, subsection, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 25. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption by the Tribal Council. Thereafter it shall be enforced in accordance with the Constitution and laws of the Tribe.

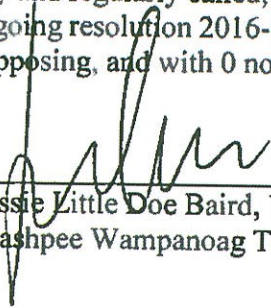


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CERTIFICATION

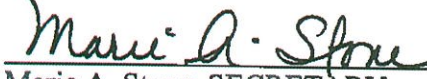
We, the undersigned Vice Chairwoman and Secretary of the Mashpee Wampanoag Tribal Council, do hereby certify that the Tribal Council is composed of 13 members of whom 9, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 7th day of March, 2016, and that the foregoing resolution 2016-ORD-002, was duly adopted by the affirmative vote of 8 members, with 0 opposing, and with 0 not voting.

DATED this 7th day of March, 2016.



Jessie Little Doe Baird, VICE CHAIRWOMAN
Mashpee Wampanoag Tribal Council

ATTEST:



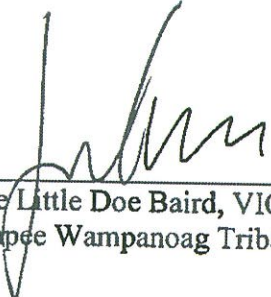
Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-15-2016



CERTIFICATION OF POSTING


This is to certify the Ordinance tied 2016-ORD-002, "MASHPEE WAMPANOAG TRIBAL BUILDING AND SAFETY CODE ORDINANCE," has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, and 2009-ORD-007, Meetings of the Tribal Council.

DATED this 7th day of March, 2016.



Jessie Little Doe Baird, VICE CHAIRWOMAN
Mashpee Wampanoag Tribal Council

ATTEST:



Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-15-2016