



Mashpee Wampanoag Tribe

TRIBAL ORDINANCE

2016-ORD-002 UNLAWFUL DETAINER AND EVICTION ORDINANCE

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The Mashpee Wampanoag Tribal Council does ordain as follows:

Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

- (a) The Mashpee Wampanoag Tribe (the "Tribe") is a federally-recognized Indian Tribe with a duly-enacted Constitution and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the "Tribal Council") pursuant thereto.
- (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.L of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members.



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- (d) Article V, § 3 of the Constitution provides that the Tribal Judiciary is vested with all the Tribe's judicial powers.
- (e) The Mashpee Wampanoag Tribal Housing Department (the "Housing Department") was established by 2007-ORD-004, the Mashpee Wampanoag Tribal Housing Department Ordinance, to provide housing assistance and opportunities specific to the needs of the Tribal community, including to provide quality housing on ancestral lands.
- (f) The Mashpee Wampanoag Tribe Gaming Authority and other Tribal Departments are authorized to promote and protect the economic independence and security of the Tribe.
- (g) The Tribal Council deems it in the best interest of the Tribe and its Tribal members to set forth procedures regarding unlawful detainer and eviction to insure the health, peace, morals and general welfare of the Tribal community, protection of Tribal Lands, and the maintenance of quality housing for the Tribal community.

Section 2. AUTHORITY AND PURPOSE

- (a) **Authority.** The authority for this Ordinance is found in Article VI, § 2.A and § 2.L., and Article V, § 3 of the Constitution.
- (b) **Purpose.** The purpose of this Ordinance is to accomplish the following objectives:
 - (1) to maintain the health, peace, morals, education, political integrity, economic security and general welfare of the Tribal community;
 - (2) to protect the rights of landlords and tenants;
 - (3) to provide eviction procedures and to require landlords to use those procedures when evicting tenants;
 - (4) to protect Tribal Lands; and
 - (5) to encourage landlords and tenants to maintain and improve dwellings to improve the quality of housing.



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Section 3. DEFINITIONS

- (a) "Action, petition, complaint or defense" means and shall include any dispute between persons or entities which relate to the rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of money for such housing, dwellings, or accommodations, damages to such units, condition of such units, or the relationships between owners and occupiers of such units, including the right to occupy them.
- (b) "Adult person" means any person eighteen (18) years of age or older.
- (c) "Building" means a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (d) "Commercial Property" means a Premises, buildings, or land used for business, retail or trade or connected with trade and traffic or commerce in general.
- (e) "Dwelling Unit" means a house or building or portion thereof which is owned, rented, or leased as a home or residence, by any person, not including public transient accommodation, such as hotel rooms.
- (f) "Guest" means any person, other than the tenant, who is in or around a Dwelling Unit with the permission of the tenant.
- (g) "Indian" means any person recognized as being Indian or Alaska Native by any federally recognized Tribe or the federal government.
- (h) "Landlord" means a person, entity, Tribe, Department or other subdivision or arm of the Tribe, or other governmental agency that is the owner, lessor, or sublessor of a Dwelling Unit.
- (i) "Lease" means an agreement, written or oral, and any policies, rules, and regulations incorporated by reference thereto, between Landlord and Tenant regarding the arrangement and conditions for the use and occupancy of a Dwelling Unit.
- (j) "Lessor" means the legal, beneficial or equitable owner of property under a lease, and includes the heirs, successors, executors, administrators, or assigns of the lessor.
- (k) "Lessee" means a Tenant of a Dwelling Unit.



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- (l) “Mashpee Wampanoag Tribe” or “Tribe” or “Tribal” refers to the Mashpee Wampanoag Tribe.
- (m) “Nuisance” means the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonable threatens the health or safety of the public, neighboring land or its users, or unreasonably and substantially interferes with the ability of a neighbors to reasonably enjoy, use, or occupy their property or Dwelling Units.
- (n) “Ordinance” means this 2016-ORD-002 Mashpee Wampanoag Unlawful Detainer and Eviction Ordinance, as may be amended from time to time.
- (o) “Owner” means any person or entity jointly or individually having legal or beneficial title to all or part of land or a Dwelling Unit, including the right to own, manage, use, or control a Dwelling Unit under a mortgage, lease, or other agreement.
- (p) “Premises” means any building and/or real property, whether privately or publically owned.
- (q) “Rent” means the periodic payment required to be paid to a Landlord or Lessor under a lease or other such agreement.
- (r) “Residential Property” means a Premises, building, or land that is owned or leased for the purpose of private residence of single or multiple families for non-commercial purposes.
- (s) “Tenant” means a person who uses and occupies land or a Dwelling Unit under a Lease with a Landlord.
- (t) “Tribal Court” means the Mashpee Wampanoag Tribal Court of the Tribe as established in Article V, § 3 of the Constitution and 2008-ORD-002, the Mashpee Wampanoag Tribal Judiciary Ordinance.
- (u) “Tribal Member” means a natural person who is duly enrolled in the Tribe.
- (v) “Tribal Lands” means all reservation lands of the Tribe, all trust lands of the Tribe, and all lands owned by the Tribe that are contiguous to the trust lands.
- (w) “Tribal Police Officer” means Police Officers of the Tribal Police Department as established by the 2016-ORD-00_, Mashpee Wampanoag Homeland Security Department, as amended from time to time.
- (x) “Unlawful Detainer” has the meaning provided in Section 5(a) of this Ordinance.



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Section 4. JURISDICTION

The Mashpee Wampanoag Tribal Court's jurisdiction is extended over all actions wherein one or more of the parties is the Tribe, an arm or subdivision of the Tribe including, but not limited to, the Housing Department, a person, or entity within the jurisdiction of the Tribal Court who occupy, sell, rent, lease, or allow persons to occupy land, housing, residences, Dwelling Units, or accommodations, or involves occupancy of a Building, Dwelling Unit, Premises, or land, on Commercial Property, Residential Property or any other type of property, located within Tribal Lands.

Section 5. UNLAWFUL DETAINER

(a) **Grounds.** A person shall be guilty of unlawful detainer and may be evicted for:

- (1) Nonpayment of rent in violation of a Lease.
- (2) Nuisance, intentional or careless damage, destruction or injury to the land, property, or dwelling unit, or disturbing other tenants' and neighbors' rights to quiet enjoyment.
- (3) Serious or repeated violations of a lease or rental agreement or violations of any applicable housing and building code, policy, rule, or regulation.
- (4) Unlawful entry into or occupation of any real property of another without permission or agreement, following any reasonable demand to vacate the premises by the owner, person in authority over the premises, or Tribal Officer.
- (5) Unlawful forcible entry into or occupation of any real property made or maintained through force, violence, threat, or menacing conduct.
- (6) Holding over or continuing occupancy of a Dwelling Unit or Tribal Land after the expiration of the term of a Lease or agreement, after receipt of a written notice to vacate, or upon foreclosure on the land or Dwelling Unit.

(b) **Notice to Vacate Requirements.**

- (1) A Landlord may post notice to obtain possession of a Dwelling Unit or Tribal Land when one or more grounds, under Section 5(a) of this Ordinance, are met. Notice to Vacate must be posted in accordance with this Section 5(b) prior to the commencement of an action for eviction in the Tribal Court.



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- (2) The Notice to Vacate shall be addressed to the adult tenants of the Dwelling Unit and shall:
- A. State the reasons, consistent with this Ordinance, for termination of the tenancy; and
 - B. The date by which the Tenant is required to vacate the property or Dwelling Unit.
- (3) The Notice to Vacate must be delivered to the tenant, consistent with the service requirements under Section 5(b)(4) of this Ordinance, within the following periods of time:
- A. Where Notice to Vacate is due to an emergency making the Dwelling Unit unsafe or uninhabitable or where the actions of a Tenant or Guest pose an imminent and serious threat to the Dwelling Unit, other tenants, or neighbors, an Immediate Notice to Vacate may be posted.
 - B. Where Notice to Vacate is due to a threat of injury to persons or property, the Notice to Vacate must be posted no less than three (3) calendar days prior to the date by which the Tenant is required to vacate
 - C. Where Notice to Vacate is due to failure to pay rent or for other violations of Lease or agreement provisions, or those grounds set forth in Section 5(a), the Notice to Vacate must be posted no less than seven (7) calendar days prior to the date by which the Tenant is required to vacate.
 - D. Where Notice to Vacate is due to the holdover of any tenant or individual on Commercial Property, an Immediate Notice to Vacate may be posted.
- (4) Service of the Notice to Vacate. A Notice to Vacate must be in writing and must be delivered to the Tenant in the following manner:
- A. By an adult person:
 - (1) Personally to a Tenant or other adult living in or occupying the premises or Dwelling Unit, as evidenced by completion of an Affidavit of Service;
 - (2) Personally to an adult agent or employee of the Tenant, as evidenced by completion of an Affidavit of Service; or
 - (3) By securely posting a copy of the Notice to Vacate to the main entry door of the premises or Dwelling Unit and
 - i. By certified mail, return receipt requested, to all known recent addresses of the Tenant; or
 - ii. By courier or shipping service that provides proof of delivery to all known recent addresses of the Tenant.



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- B. The person providing the notice to Vacate must retain a copy of the Notice and proof of service, for presentation to the Tribal Court in the event of eviction proceedings.

Section 6. EVICTION

- (a) A Landlord, Lessor, or Owner may commence an action for eviction by filing with the Tribal Court, consistent with all Tribal Court Rules, a complaint for eviction which shall include:
- (1) The names of the adult Tenant(s) against whom the complaint is brought;
 - (2) The address and a description of the location of the subject land or Dwelling Unit;
 - (3) Reasonable proof of ownership of the land or Dwelling Unit;
 - (4) The grounds for eviction;
 - (5) The key provisions of the Lease or rental agreement pertinent to the complaint;
 - (6) A showing that the Notice to Vacate was timely and properly served in accordance with this Ordinance, Section 5(b); and
 - (7) A statement of the relief requested, including any claim(s) for restitution or possession of the land or Dwelling Unit, money damages, fees, costs, or other special relief.
- (b) **Procedures and Timelines.**
- (1) **Applicable Rules of Practice.** Any proceedings before the Tribal Court under this Ordinance not specified herein shall be governed by generally applicable Tribal Court procedures, including the Mashpee Wampanoag District Court Rules of Civil Procedure.
 - (2) **Summons; Automatically-Scheduled Hearing.**
 - A. **For Residential Property:** When a complaint is filed, the Tribal Court Judge or Tribal Court Clerk shall issue a summons notifying the defendant(s) to appear before the Tribal Court at a specified date and time. Upon filing of a complaint, the Tribal Court Judge or Tribal Court Clerk shall determine a hearing date no less than seven (7) nor more than fourteen (14) business days from the date of the filing of the complaint. The summons shall include notice of the hearing at which an answer or other response to the complaint must be presented to the Tribal Court. The summons shall be issued, served, and returned in the same manner as a summons in a civil action specified under Tribal Court procedure; provided, however, that the summons must be served at least six (6) days prior to the scheduled hearing.
 - B. **For Commercial Property:** When a complaint is filed, the Tribal Court Judge or Tribal Court Clerk shall issue a summons notifying the defendant(s) to appear before the Tribal Court at a specified date and time. Upon filing of a complaint, the Tribal Court Judge or Tribal Court Clerk shall determine a



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hearing date no less than three (3) nor more than seven (7) days from the date of the filing of the complaint. The summons shall include notice of the hearing at which an answer or other response to the complaint must be presented to the Tribal Court. The summons shall be issued, served, and returned in the same manner as a summons in a civil action specified under Tribal Court procedure; provided, however, that the summons must be served at least two (2) days prior to the scheduled hearing.

- (3) **Simplified Pleading; Time Allowed.** To answer or challenge, in writing or orally, the complaint in any action under this ordinance, the defendant must attend the scheduled hearing.
- (4) **Judgment.** Within seven (7) calendar days of the hearing on the complaint the Tribal Court shall enter a written decision.

(c) **Remedies and Enforcement.** The following remedies are available in an eviction action.

- (1) **Restitution of Premises; Forfeiture of Lease.** If the Tribal Court rules for the plaintiff, judgment shall be entered against the defendant(s) requiring compensation for injury or loss or returning possession of the premises. A judgment in favor of the plaintiff shall, where appropriate, also declare a forfeiture of the lease.
- (2) **Damages.** The Tribal Court shall determine and include in the judgment damages to which the plaintiff is entitled which were caused by or recoverable on account of any unlawful detainer, including but not limited to any rent due at the time of judgment. Damages awards may include the payment of interest consistent with Mashpee Wampanoag District Court Rules of Civil Procedure Rule 39. Tribal Court may award the prevailing party court costs, including reasonable attorneys' fees and expenses if applicable law or contract allow. Costs shall also include the cost of title reports or investigations required of the prevailing party to comply with the requirements of this Ordinance. For unlawful holdovers on Commercial Property, the Tribal Court may also consider and award consequential damages should the Tribal Court find that the holdover has delayed or otherwise impaired the Tribe's interests. Provided, however, nothing in this section shall constitute authorization for the Tribal Court to issue or enforce a judgment for monetary damages against the Tribe or the Housing Department.
- (3) **State Court Enforcement.** Any judgment entered pursuant to this section may be certified by the Tribal Court Clerk and submitted to the Courts of Massachusetts for entry as a state court judgment, consistent with 2013-ORD-005, Full Faith and Credit Ordinance.

(d) **Execution of Eviction Order.** On request of the prevailing party, an eviction order may be executed by a Tribal Police Officer or other designee of the Homeland Security Department. To execute the order, the Officer shall:



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- (1) Provide a copy of the order to all adult Tenants remaining in occupancy of the land or Dwelling Unit;
 - (2) Remove all persons from the land or Dwelling Unit and verbally order them not to re-enter;
 - (3) Post copies of the order on the main doors of the Dwelling Unit; and
 - (4) Supervise the removal of all possessions of the evicted persons and obtain an inventory of said possessions, which inventory shall be signed by the Landlord, Lessor, or Owner and filed with the Tribal Court.
 - (5) Provided, however, that in the event the Tribal Police Officer or other designee of the Homeland Security Department, while attempting to execute an eviction order, has reason to believe that evicting a resident child who is 17-years-old or younger and suffering from a disability or a newborn infant who is two-months-old or younger will place the life, health, or safety of the child at risk, the eviction may be delayed for up to three days to give the child's parent or guardian the opportunity to arrange for the child's safe movement to another residence or medical facility.
- (e) Where a Tenant's possessions are removed from Residential Property, pursuant to Section 6(c)(4), in the absence of any Tenants, the Landlord, Lessor, or Owner may pack and store possessions removed from a Dwelling Unit. The Tenant may redeem his/her possessions within thirty (30) calendar days by paying to the Landlord, Lessor, or Owner the reasonable cost of removal and storage of the possessions. Upon the expiration of thirty (30) days, the Landlord may dispose of the possessions in its sole discretion.
- (f) Immediate Possession by Writ. Upon filing the complaint, the plaintiff may, upon motion, be granted immediate possession of the premises by a writ of possession issued by the Tribal Court. Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with Tribal Court procedure, and shall inform the defendant that the defendant may file affidavits on the defendant's behalf with the Tribal Court and may appear and present testimony on the defendant's behalf, and that, if the defendant fails to appear, the plaintiff may apply to the Tribal Court for a writ of possession. Such notice shall also explain that a writ of possession means the defendant must leave the premises by a certain time period or law enforcement will be authorized to forcibly remove the defendant. After a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, Tribal Court may issue a writ for possession directed to appropriate law enforcement upon determining that the defendant has violated this ordinance.



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Section 7. APPEALS

- (a) Appeals under this Ordinance shall be handled according to the Rules of Appellate Procedure of the Mashpee Wampanoag Supreme Court, except that the party bringing the appeal shall have only ten (10) days from the entry of the order of judgment to file an appeal.
- (b) All orders of the Tribal Court shall remain in effect during the pendency of an appeal unless a stay of execution is granted by the Tribal Court or the Tribal Supreme Court. Such a stay, if granted, may not exceed a period of sixty (60) days.

Section 8. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Ordinance 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, officers, agents, or employees, or as authorization for a claim for monetary damages against the Tribe.

Section 9. REPEALER

All ordinances or parts of ordinances inconsistent with this Ordinance are repealed.

Section 10. SEVERABILITY

If any section, subsection, paragraph, 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 portion of this Ordinance.

Section 11. EFFECTIVE DATE

This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

Passed by the Mashpee Wampanoag Tribal Council on March 7, 2016.

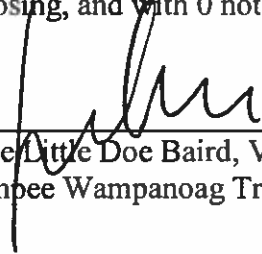


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CERTIFICATION


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.

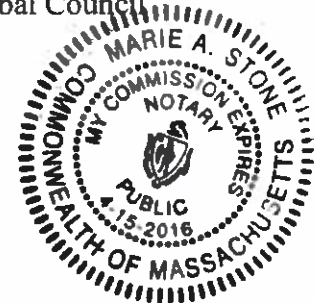


Jessie Little Doe Baird, VICE CHAIRWOMAN
Mashpee Wampanoag Tribal Council

ATTEST:



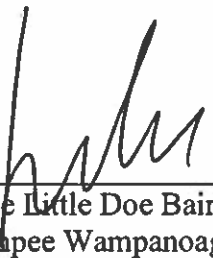
Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-15-2016



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

