

2018-ORD-000
MASHPEE WAMPANOAG TRIBAL PREVAILING WAGE
ORDINANCE

TABLE OF CONTENTS

Section 1.	Findings
Section 2.	Authority and Purpose
Section 3.	Definitions
Section 4.	Prevailing Wages
Section 5.	Employer Requirements
Section 6.	Enforcement and Remedies
Section 7.	Repealer
Section 8.	Severability
Section 9.	Effective Date

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 is a federally-recognized Indian Tribe with a duly-enacted Constitution.
- (b) Article V, § 2 of the Constitution provides that the Tribal Council shall exercise the executive and legislative powers of the Tribe, including the power to make and enforce the law, exercising that power consistent with the letter and spirit of the Constitution.
- (c) 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.
- (d) Article VI, § 2.L. of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members.
- (e) The Mashpee Wampanoag Tribal Court, or any authorized branch thereof, as provided by Article V, § 3 of the Constitution, is vested with the judicial powers to review violations as described under this Ordinance.
- (f) The Tribal Council desires to establish a prevailing wage for certain employees as designated by the federal government on the Mashpee Wampanoag Tribal Reservation in order to promote the general welfare and economic development of the Tribe in exercise

of the Tribe’s inherent authority and Congressionally delegated authority. Section 4114(b)(3) of Title 25 of the United States Code expressly provides that the determination of prevailing wages by an Indian Tribe supersedes federal prevailing wage determinations of the U.S. Secretary of Labor and the Davis-Bacon Act, 40 U.S.C. § 276 et. seq., and upon passage of this ordinance the Tribally determined prevailing wage shall be applied to contracts or agreements, including contracts or agreements for assistance, sale, or lease pursuant to the Native American Housing Assistance and Self Determination Act, 25 U.S.C. § 4101 et. seq.

Section 2. AUTHORITY AND PURPOSE

(a) Authority. The authority for this Ordinance is found in Articles V § 2, and VI §§ 2.A and 2.L of the Constitution.

(b) Purpose. The purpose of this Ordinance is to provide for prevailing wages to be determined and paid pursuant to Agreements performed on the Reservation. The Prevailing Wages established by the Tribe under this Ordinance are intended to supersede all federal wage determinations to the greatest extent allowed under Federal Law and to the fullest legal authority of Tribal law.

Section 3. DEFINITIONS

(a) “Agreement” means any contract, subcontract, or agreement for assistance, sale, or lease funded under any Federal Law applicable to Indian Tribes, including, but not limited to, the Native American Housing Assistance and Self-Determination Act of 1996, Pub. L. 104-330, 25 U.S.C. § 4101 et. seq., and such other Tribal agreements as may be determined by Tribal Council to be appropriate.

(b) “Constitution” means the duly adopted Constitution of the Mashpee Wampanoag Tribe.

(c) “Federal Law” means any federal legislation, rule, regulation, or contract containing requirements for establishment and payment of a determined prevailing wage, including, but not limited to, wage determinations of the U.S. Secretary of Labor or wage determinations set under the Davis-Bacon Act, 40 U.S.C. § 276 et. seq., which are applicable to Indian Tribes.

(d) “Housing Department” means the Mashpee Wampanoag Tribal Housing Department, which is the Tribe’s designated housing entity.

(e) “Ordinance” means this 2018-ORD-000, Mashpee Wampanoag Tribal Prevailing Wage Ordinance.

(f) “Prevailing Wage” means the wages as determined by the Tribe to be prevailing on the Reservation and with the Tribe’s and Housing Department’s area of operations for each category of contractor, including, but not limited to, architect, technical engineer,

draftsman, technician, laborer, carpenter, plumber, electrician, maintenance, heavy equipment operator, and mechanic.

- (g) “Records Penalty” means any penalty imposed for failing to maintain records required under this ordinance.
- (h) “Reservation” means all lands within the boundaries of the Mashpee Wampanoag Tribal Reservation.
- (i) “Tribal Council” means the Mashpee Wampanoag Tribal Council.
- (j) “Tribe” means the Mashpee Wampanoag Tribe, acting through the Tribal Council and its authorized entities and programs.
- (k) “Wage Penalty” means any penalty imposed for failure to pay Tribally determined prevailing wages required under this ordinance.

Section 4. PREVAILING WAGES

- (a) **Prevailing Wage Required.** Any Agreement pursuant to any Federal Law with the Tribe or the Housing Department for construction, installation, alteration, repair, or maintenance of buildings or works or for provision of labor, services, or materials to be performed on the Reservation within the area of operation of the Tribe or the Housing Department shall contain a provision requiring not less than prevailing wages as set pursuant to this Ordinance shall be paid by the contractor or employer.
- (b) **Volunteers.** Prevailing wages under this ordinance shall not apply to any individual who receives no compensation or is only reimbursed or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.
- (c) **Determination of Tribal Prevailing Wage.**
 - (1) Not less frequently than biennially, the Tribe’s Human Resources, in consultation with affected Tribal departments and entities, shall conduct a wage survey in order to determine the prevailing wage.
 - (2) The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall include the classifications for journeyman, apprentice, and trainee in all trades.
 - (3) The Tribe shall retain for not less than two years the names and addresses of all sources contacted and the wage rates reported by each source.

(4) Wage rates shall include salary but not the value of fringe benefits paid to or on behalf of employees.

(d) Schedule of Prevailing Wages. The results of the survey and the prevailing wage shall be contained in a schedule of prevailing wages, which shall list each covered class of profession or trade and the hourly rate for each and the effective dates of the schedule. The schedule shall be submitted to Tribal Council for approval. Tribal Council by resolution without amending this Ordinance may adopt a schedule of prevailing wages.

Section 5. EMPLOYER REQUIREMENTS

(a) Payment of Prevailing Wage and Access to Records. An employer or contractor, when performing under an Agreement on the Reservation with the Tribe or Housing Department pursuant to any Federal Law, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each employee or contractor. The certified payroll records of each employee or contractor shall be available for inspection and copying during regular office hours by the Tribe and affected employee or contractor.

(b) Schedule to be Provided. The Tribe and Housing Department shall provide every contractor and employer under this Ordinance at the time bids or proposals are solicited for work under or pursuant to any Federal Law with a copy of the currently effective schedule of prevailing wages.

(c) Posting of Schedule. At all times while performing under an Agreement pursuant to any Federal Law, each employer shall post at a conspicuous place on the job site and in its principal office a copy of the schedule of prevailing wages furnished by the Tribe.

Section 6. ENFORCEMENT AND REMEDIES

Each Agreement under this Ordinance shall contain provisions consenting to Mashpee Wampanoag Tribal Court jurisdiction to enforce this Ordinance and stating the Wage Penalty and Records Penalty. The Wage Penalty shall be calculated by determining the difference between the amount the employee was actually paid under the Agreement and the amount the employee was entitled to under this Ordinance and multiplying the sum by two. The Wage Penalty and Records Penalty may also include the award of additional court costs. In any event, the Wage Penalty and Records Penalty shall not be less than \$500. Erroneous payments not resulting from a failure to pay the prevailing rate are not within the scope of this Section 6.

Section 7. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed.

Section 8. 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 9. 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 [].

CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom _____ constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened and held on the _____ day of _____, 2018, and that the foregoing Ordinance was duly adopted by the affirmative vote of _____ members, with _____ opposing, and with _____ not voting.

DATED THIS _____ day of _____, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

ATTEST:

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2018-ORD-000, Mashpee Wampanoag Tribal Prevailing Wage Ordinance, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions.

DATED this _____ day of _____, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council