

TOWN OF TIVERTON, RHODE ISLAND

NOTICE OF PUBLIC HEARING AMENDMENT to the CODE OF ORDINANCES

Notice is hereby given that the Tiverton Town Council will conduct a PUBLIC HEARING at the Town Hall on _____ at 7:00 P.M. on a proposed amendment to Chapter 30, COURTS, ARTICLE II, MUNICIPAL COURT of the Tiverton Code of Ordinances. The amendment would amend the following sections:

- Add: DIVISION 1. IN GENERAL
- Amend Section 30-27(b) ~~Except for the initial appointment, the term of the appointment for judge shall be concurrent with the term of the council. The initial term of appointment shall begin when the council appoints the first judge, and Pursuant to Charter the appointment shall be for a term of two (2) years, commencing in November of the year between general elections, to run concurrent with the term of the council making the appointment.~~
- Amend Section 30-37 (a) In cases of sickness, absence, or other disability or ineligibility of the ~~municipal court judge or the municipal court clerk that shall be less than 14 days, the judge or council may appoint an acting judge, and the Town eClerk may appoint an acting clerk, at the same compensation, or at such salary as the council may determine, for the term of such sickness, absence, disability, or ineligibility of the judge or clerk.~~
- Delete Section 30-37 (c) ~~In case of a prolonged sickness, absence, or other disability or ineligibility of the municipal court clerk that shall be in excess of 14 days, the council may, by resolution, appoint an acting municipal court judge or an acting municipal court clerk, respectively, for the term of such sickness, absence, disability, or ineligibility of the municipal court judge or municipal court clerk, respectively, at the same compensation or at such salary as the council may determine. The actions of an acting municipal court judge or municipal court clerk, respectively, in the performance of their duties, shall have the same effect as if performed by the municipal court judge or municipal court clerk, respectively.~~
- Add Section 30-37 (d) In the event that the municipal court judge is unable to preside, the judge of probate shall preside as the acting municipal court judge pursuant to Section 805(b) of the Town Charter.
- Add: DIVISION 2, RULES OF PROCEDURE
- Add: Subdivision I. Scope, Purpose and Construction.
- Add: Section 30-51. Rule 1. Scope and applicability. These rules govern the procedure in the Tiverton Municipal Court in all matters related to the violation of the Town of Tiverton Code of Ordinances, including minimum housing ordinances of the town and any violation of

the provisions of R.I. Gen. Laws Chapter §§ 45-24.3-1-45-24.3-23 entitled Housing Maintenance and Occupancy Code, Town of Tiverton Zoning Ordinances and the Rhode Island State Building Code, R.I. Gen. Laws § 23-27.3.3-1 et seq. When used in these rules, the term “code” shall refer to the Tiverton Code of Ordinances, the Tiverton Zoning Ordinance, the Housing Maintenance and Occupancy Code and the Rhode Island State Building Code collectively, unless otherwise specified. When used in these rules, the term “court” shall mean Tiverton Municipal Court.

- Add: **Sec. 30-52. Rule 2. Purpose and Construction.** These rules are intended to provide for the just determination of every code violation proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay; they shall also be construed consistent with the fact that they constitute the rules for the adjudication of civil violations of the code.
- Add: **Subdivision II. Commencement of Code Violation Proceedings.**
- Add: **Section 30-53. Rule 3. The Summons and Complaint.** (a) The summons consists of a listing of the code violations alleged and a requirement that the defendant appear in Court on the date and time and at the place indicated thereon. The summons shall be on a form prescribed by the Judge of the Municipal Court and shall contain a proof of service of the summons and complaint upon the defendant. A separate summons shall issue for each named defendant. The summons shall be served in the same manner as if served in civil matters in the district courts of the State of Rhode Island. (b) The summons shall be accompanied by a Town of Tiverton Municipal Court complaint signed by building/zoning official. The truth and validity of the facts supporting the charge(s) shall be contained in the complaint and shall be sworn to before the Court at the first appearance date. (c) A complaint which provides the defendant and the Court with adequate notice of the offense being charged shall be sufficient if the offense is charged by using the date of the offense and a declaration of the facts giving rise to the offense. The complaint shall also state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. An error or an omission in the complaint shall not be grounds for dismissal of the complaint or for reversal of a judgment if the error or omission did not mislead the defendant to his or her prejudice. (d) The Court may permit a complaint to be amended at any time before judgment or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. With the consent of the defendant, a complaint may be amended at any time before judgment or findings if a different offense is charged if the Court finds such amendment to be in the interest of justice.
- Add: **Section 30-54. Rule 4. Joinder of offenses.** Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses charged are based on the same act or transaction.
- Add: **Section 30-55. Rule 5. Appearance.** (a) Procedure. All defendants shall appear before the Municipal Court Judge for appearance on the date and time indicated and at the place indicated on the summons. The Town shall be represented by the Town Solicitor. Appearance shall be conducted in open court and shall consist of reading the complaint to the

defendant or stating to the defendant the substance of the violation and calling on the defendant to answer thereto. The Municipal Court Judge shall accept an answer in the form prescribed by Rule 6 of these rules. (b) *Default and/or dismissal.* If the defendant or the prosecution shall fail to appear judgment may enter accordingly pursuant to Rule 16.

- Add: **Section 30-56. Rule 6. Answer.** A defendant may answer, “admit” or “deny” to each of the violations listed in the complaint. If a defendant refuses to answer or if the Court refuses to accept an admission, the Court shall enter an answer of “deny”. If a party is without knowledge or information sufficient to form a belief as to the rule of an averment, the party shall so state and this has the effect of a denial.
- Add: **Section 30-57. Rule 7. Pleadings and motions.** (a) The filing of pleadings and motions in this Court shall follow the practice and procedure of the filing of pleadings and motions in the Rhode Island District Court Rules of Civil Procedure, Rules 7-16, inclusive. (b) A motion for recusal of the Municipal Court Judge shall be made prior to the date of appearance indicated on the summons and complaint. Failure to file a motion for recusal prior to the date of appearance shall constitute a waiver thereof.
- Add: **Sec. 30-58. Rule 8. Trial together of complaints.** The Court may order two or more complaints to be tried together of the offenses could have been joined in a single complaint. The Court may order two or more defendants to be tried together if the property which is the subject of the violation is owned by more than one defendant or they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.
- Add: **Section 30-59. Rule 9. Depositions.** In cases of extraordinary and manifest necessity, in order to prevent a failure of justice, the Court at any time after the filing of the complaint may upon motion of a party order that a witness’s testimony be taken by deposition. In such cases, the procedure for the taking of depositions in the Rhode Island District Court as set forth in rule 27 of the District Court Rules of Civil Procedure shall be followed with all expenses borne by the party movant.
- Add: **Sec. 30-60. Rule 10. Discovery and inspection.** (a) *Other books, papers, documents, tangible objects or places.* Upon motion of a defendant the Court may order the Town Solicitor to permit the defendant(s) to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Town, upon a showing of materiality to the preparation of the defendant’s defense and that the request is reasonable. (b) *Discovery by the Town.* If the Court grants relief sought by the defendant under subdivision (a) of this rule, it may, upon motion of the Town condition its order by requiring that the defendant permit the Town to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant’s possession, custody or control, upon a showing of materiality to the preparation of the towns case and the request is reasonable. (c) *Protective orders.* Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is

appropriate. (d) Time of motions. A motion or written request under this rule may be made only within fourteen (14) days after the first appearance or at such reasonable later time as the Court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice. (e) Continuing duty to disclose; failure to comply. If subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, the party shall promptly notify the other party's attorney or the Court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

- Add: **Section 30-61. Rule 11. Subpoena.** (a) For attendance of witnesses; form; issuance. Every subpoena shall be issued by the clerk of Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. (b) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable and oppressive. The Court may direct that books, papers, document or objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys. (c) Service. A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to the person the fee for one day's attendance and the mileage allowed by law. (d) Place of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Rhode Island.
- Add: **Section 30-62. Rule 12. Place of prosecution and trial.** The arraignment, prosecution and trial of code violations shall be had at the place determined by the Municipal Court Judge and the calendar of Municipal Court dates shall be posted on the Town of Tiverton Website not less than thirty (30) days prior to the scheduling thereof.
- Add: **Section 30-63. Rule 13, Inability of Municipal Court Judge to hear case.** In the event of the inability of the judge of the Tiverton Municipal Court to hear and decide a matter within the jurisdiction of the Court, and in the absence of the Council appointing an Acting Municipal Court Judge consistent with Section 30-37, the judge of the Probate Court shall preside as Acting Municipal Court Judge.
- Add: **Subdivision III. Trial and Judgment.**

- Add: **Section 30-64. Trials.** (a) *Opening statements.* Opening statements shall be permitted; at time limit of not less than five (5) minutes shall be set within the discretion of the Municipal Court Judge. (b) *Evidence, Form and admissibility.* In all trials the testimony of witnesses shall be taken orally in open Court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the statutes of this State, or under the rules of evidence applied in the courts of this State. The competency of a witness to testify shall be determined in like manner. (c) *Closing arguments.* Closing arguments shall be permitted; a time limit of not less than five (5) minutes may be set within the discretion of the trial judge.
- Add: **Section 30-65. Rule 15. Motion to dismiss.** The Court on motion of a defendant or of its own motion shall, at the close of the evidence offered by the Town, order the dismissal of one or more offenses charged in the summons if the evidence is insufficient to sustain a judgment of such offense or offenses to a standard of clear and convincing evidence. If a defendant's motion to dismiss is not granted, the defendant may offer evidence without having reserved the right.
- Add: **Section 30-66. Rule 16. Judgment.** (a) *Burden of proof.* The burden of proof shall be on the prosecution to a standard of clear and convincing evidence. Judgment on the general issue shall be in favor of the Town or in favor of the Defendant. (b) *Default.* If a defendant shall fail to appear despite notice having been given, the case may be defaulted against the defendant. If the truth and validity of the allegations on the complaint have been sworn to by the officer issuing same, or if testimony is given providing proof of facts supporting the validity of the summons, and the service of the notice has been established, a default judgment may enter against the defendant. (c) *Dismissal.* If the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed.
- Add: **Section 30-67. Rule 17. Judgment.** (a) *Sentence.* Upon judgment against the defendant(s), penalty shall be imposed without unreasonable delay before imposing penalty the Court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask the defendant if the defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of penalty. (b) *Notification of right to appeal.* After imposing sentence the Court shall advise the defendant of his or her right to appeal to the Newport County Superior Court in the manner prescribed in section 20 of these rules. (c) *Judgment.* All judgments shall be in writing. A judgment shall set forth the adjudication and penalty. If the judgment is in favor of the defendant or the charge is dismissed, judgment shall be entered accordingly. The judgment shall be signed by the judge.
- Add: **Section 30-68. Rule 18. Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice, if any, as the Court orders.
- Add: **Section 30-69. Rule 19. Relief from judgment or order.** On motion and upon such terms as are just the Court may relieve a party or the party's legal representative from a final

judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment, in whole or in part. The motion shall be made within a reasonable time, and not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

- Add: **Section 30-70. Rule 20. Appeals from decision of the Tiverton Municipal Court.** (a) Any defendant found liable for any code violation as defined herein may, within seven (7) days of judgment file an appeal from the judgment to the superior court and be entitled in the latter to a trial de novo. (b) Appeal in accordance with this provision shall be made by filing a notice of appeal with the clerk of the Tiverton Municipal Court. Upon receipt of the notice of appeal, the clerk shall forward the record of the proceedings before the Tiverton Municipal Court to the Superior Court for Newport County. The documents, records, pleadings and motions maintained by the clerk of the Court in the Court file shall comprise the record on appeal. (c) *In forma paupers.* In appropriate cases, a defendant shall be permitted to proceed *in forma paupers*.
- Add: **Subdivision IV. Post-Judgment Proceedings.**
- Add: **Section 30-71. Rule 21. Collection of judgments.** Collection of judgments shall generally follow the course of civil practice in the district court as enumerated in rule 69 of the District Court Rules of Civil Procedure including execution, supplementary proceedings, the issuance of decree for installment payments, trustee process, and contempt proceedings to the extent applicable.
- Add: **Subdivision V. General Provisions.**
- Add: **Section 30-72. Rule 22. Presence of the defendant.** (a) *Right to presence.* The defendant has the right to be present at the appearance and at the imposition of penalty, except as otherwise provided by statute or by these rules. The defendant shall be present at every state of the trial, except that the defendant may be excluded from the proceedings if, after appropriate warning, the defendant persists in conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the Court that the trial cannot be carried on with the defendant in the courtroom. (b) *Waiver of presence.* A defendant who is represented by counsel may wave his or her right to be present by filing a written waiver thereof. (c) *Corporate defendants.* A corporation shall appear by counsel for all purposes.
- Add: **Section 30-73. Rule 23. Time.** (a) *Computation.* In computing any period of time prescribed or allowed by these rules by order of Court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be

included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a holiday. (b) *Enlargement.* When by these rules or by a notice given thereunder or by order of Court an act is required or allowed to be done at or within the specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. (c) *For motions-affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, an opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time. (d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, one (1) day shall be added to the prescribed period.

- Add: **Section 30-74. Rule 24. Motions.** An application to the Court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
- Add: **Section 30-75. Rule 25. Dismissal.** (a) *By Town Solicitor.* The Town Solicitor may dismiss a complaint and the prosecution shall thereupon terminate. The dismissal shall be in writing, either on the customary judgment form or on a separate writing. It shall be dated and signed; the name of the person dismissing the summons shall be printed legibly beneath the signature. A dismissal may not be filed during the trial without the consent of the defendant. (b) *By the Court.* If a defendant is subjected to unreasonable and prejudicial delay in bringing a complaint to trial, a motion to dismiss may be heard and granted if it is found to be meritorious and the interests of justice. If the Town is subjected to prejudicial delay in bringing a complaint to trial due to the abusive or dilatory actions of a defendant, a motion for the entry of default judgment may be heard and granted if it is found to be meritorious and in the interests of justice.
- Add: **Section 30-76. Rule 26. Service and filing of papers.** (a) *Service: When required.* Written motions other than those which are heard ex parte, written notices and similar papers shall be served upon each of the parties. (b) *Service: How made.* Whenever under these rules or by an order of the Court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself or herself is ordered by the Court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions. (c) *Notice of orders.* Immediately upon

the entry of an order made on a written motion subsequent to arraignment and which is not issued orally from the bench, the clerk shall mail to each party a notice thereof and shall make note in the docket of the mailing. (d) Filing: No proof of service required. All papers required to be served shall be filed with the Court either before service or within a reasonable time thereafter. Such filing by a party or party's attorney shall constitute a representation by him or her that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence. (e) Filing with the Court defined. The filing of pleadings and other papers with the Court as required by these rules shall be made by filing them with the clerk of the Court, except that the judge may permit the papers to be filed with him or her, in which event he or she shall note thereon the filing date and forthwith transmit them to the office of the clerk. (f) Effect of failure to file. If any party to an action fails to file within five days after the service of any of the papers required by this rule to be filed, the Court, on motion of any party or of its own initiative, may order the papers to be filed forthwith, and if the order is not obeyed, the Court may order them to be regarded as stricken and their service to be of no effect.

- **Add: Section 30-77. Rule 27. Appearance, withdrawal, and excusal of attorneys.** (a) Appearance. The attorney for the defendant in a code violation action shall forthwith file his or her appearance in writing with the clerk of the Court wherein the action is pending. (b) Withdrawal. (1) By motion. An attorney who has appeared on behalf of any defendant in a code violation action may not withdraw unless he or she first obtains the consent of the Court. All withdrawals shall be upon motion with notice to the defendant and Town Solicitor. A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append his or her motion the last known address of his or her client, which shall be the official address to which notices may be sent. A motion to withdraw shall be accompanied by an affidavit setting forth facts showing the military status of the defendant. If it appears that the defendant is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, the motion shall not be granted unless the defendant consents thereto in writing or another attorney appears of record as counsel at the time of such withdrawal. (2) By stipulation. Where a defendant for whom an attorney has filed an entry of appearance is desirous of substitution of new counsel a stipulation may be entered pursuant to which the first counsel withdraws his or her entry and replacement counsel enters his or her appearance. Such a stipulation shall not be entered where the substitution of counsel shall be cited by the defendant as a justification for delay of proceedings. (c) Excusal. No attorney shall be excused from attendance except upon application to the Municipal Court Judge, and such excuse from attendance shall be granted on such terms and conditions as the Court may set. In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, the Municipal Court Judge shall take such action, without notice, as shall appear reasonable in the circumstances.
- **Add: Section 30-78. Rule 28. Courts and clerks.** (a) The calendar of cases to be heard will be posted at the Tiverton Municipal Court on the day of hearing. (b) Cancellation of calendars. If a day's calendars are cancelled due to inclement weather or other unforeseen circumstances,

all cases on said calendars shall be reassigned to the next day when the Court shall be open for business and shall be called at the same time as originally established.

- Add: Section 30-79. Rule 29. Effective date These rules shall take effect when approved by the Town Council after public hearing thereon, They shall govern all code violations proceedings thereafter commenced and so far as just and practicable all proceedings then pending.
- Add: Section 30-80. Rule 30. Title. These rules may be known and cited as the Tiverton Municipal Court Rules of Procedure and may be cited as Tiv. Mun. Ct. R. P.
- Several amendments throughout the Chapter will be included for Cross Reference purposes, specifically Section 30-28. Witnesses; attendance; subpoenas, Section 30-29. Municipal court clerk; appointment and duties and records, Section 30-31. Sessions; time; place, Section 30-33. Fines; penalties; imprisonment, and Section 30-35. Costs.

The proposed amendments may be examined on the towns website at www.tiverton.ri.gov or at the Town Clerk's Office, Tiverton Town Hall, 343 Highland Rd, Tiverton, RI 02878, between 8:30 a.m. and 4:00 p.m., Monday through Friday, except legal holidays.

At the Public Hearing, opportunity shall be given to all persons interested to be heard upon the matter of the proposed Ordinance Amendments. The proposal may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing.

Tiverton Town Council
Nancy Mello, Town Clerk

Individuals requesting interpreter services for the hearing impaired must notify the Town Clerk's Office at (401) 625-6700, 48 hours in advance of the Public Hearing date.