

2018-ORD-000
SUSPENSION OR TERMINATION OF TRIBAL BENEFITS, AND
BANISHMENT OR EXCLUSION

TABLE OF CONTENTS

Section 1.	Findings
Section 2.	Authority and Purpose
Section 3.	Definitions
Section 4.	Notice
Section 5.	Hearing
Section 6.	Deliberations
Section 7.	Notice of Decision
Section 8.	Emergency Orders
Section 9.	Reinstatement
Section 10.	Appeal to Tribal Court
Section 11.	Repealer
Section 12.	Severability
Section 13.	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; and
- (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; and
- (c) Article VI, § 2.L. of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members; and
- (d) Article V, § 3 of the Constitution provides that the Tribal Judiciary is vested with all the Tribe's judicial powers; and
- (e) Article X of the Constitution provides for the structuring of the Tribal Judiciary; and
- (f) The Tribal Council deems it in the best interest of the Tribe and its Tribal members to set forth Tribal law that governs suspension or termination of Tribal Benefits, and Banishment or Exclusion to insure the health, peace, morals, safety and general welfare of the Tribal

community.

Section 2. AUTHORITY AND PURPOSE

(a) The authority for this Ordinance is Article VI, §§ 2.A. and L., Article V, § 3 and Article X of the Constitution of the Mashpee Wampanoag Tribe which provides the Tribal Council with the authority to establish a body to hear and determine any matter concerning the suspension or termination of any Tribal benefits, and the Banishment or Exclusion of any person from the Tribe or Tribal lands as necessary to preserve and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe.

(b) The purpose of this Ordinance is to set out a description of the way the Elders Judiciary Committee considers suspension or termination of any Tribal Benefits, and the Banishment or Exclusion of any person from Tribal Lands, and to provide notice of the kinds of activities and conduct that may give rise to such considerations. The Elders Judiciary Committee's consideration and determination of these matters will be in the context of the Tribe's traditions and customs.

(c) A Tribal member may be banished or have his or her Tribal Benefits suspended or terminated. Any non-Tribal member may be excluded for conduct that occurs either on or off the Mashpee Wampanoag Tribal lands.

Section 3. DEFINITIONS

(a) "Advocate" shall mean a person at least twenty-one (21) years old who assists, defends, or pleads for a person subject to potential sanctions under this Ordinance.

(b) "Attorney" shall mean a person admitted to practice law in at least one state or federal jurisdiction.

(c) "Banishment" shall mean prohibiting entry of a Tribal member on Tribal Lands.

(d) "Benefits" shall mean per capita or incentive payments, tuition payments, employment by the Tribe or any Tribal business, housing and social services, or any other benefit that a Tribal member is eligible to receive or receives from the Tribe. Benefits shall not include those services provided directly by the federal government, such as Indian Health Services.

(e) "Elders Judiciary Committee" shall mean the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and described in *2008-ORD-002, Mashpee Wampanoag Tribal Judiciary* as amended.

(f) "Exclusion" shall mean prohibiting entry of a non-Tribal member on Tribal Lands.

(g) "Offense" shall mean any act which is a violation of State, Federal, Mashpee Wampanoag Tribal or other tribal criminal law.

(h) “Ordinance” shall mean this 2018-ORD-000, *Suspension or Termination of Tribal Benefits, Banishment or Exclusion*, as may be amended from time to time.

(i) “Tribal Council” shall mean the Mashpee Wampanoag Tribal Council.

(j) “Tribal Court” shall mean the Mashpee Wampanoag Tribal Court.

(k) “Tribal Lands” shall mean all federal trust lands of the Tribe and all other lands over which the Tribe has jurisdiction. In the event that the federal government takes additional lands into federal trust on behalf of the Tribe, these lands will automatically be included in this definition of Tribal Lands.

(l) “Tribal Member” shall mean a duly enrolled member of the Mashpee Wampanoag Tribe.

(m) “Tribal Police” shall mean the Mashpee Wampanoag Tribal Police.

(n) “Tribe” shall mean the Mashpee Wampanoag Tribe.

Section 4. NOTICE

(a) **Prohibited Activities.** All persons are given notice that the following types of activities may result in suspension or termination of Tribal benefits, Banishment or Exclusion:

(1) Major Crimes – A Tribal member or non-Tribal member is convicted of a Major Crime that occurs on or off Tribal lands. “Major Crime” includes the following offenses: murder, manslaughter, kidnapping, maiming, sexual abuse against a minor, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, felony theft, embezzlement, fraud, domestic abuse, sexual assault, drug trafficking/distribution, and hate crimes.

(A) First Offense – The Elders Judiciary Committee may sanction offender not less than ninety (90) days.

(B) Second Offense – The Elders Judiciary Committee may sanction offender not less than six (6) months.

(C) Third Offense – The Elders Judiciary Committee may sanction offender not less than ten (10) years.

(D) Permanent Disability or Loss of Life - If the offender’s actions have resulted in either permanent disability or loss of life involving another Tribal member, the Elders Judiciary Committee may impose for up to the lifetime of the individual offender.

(E) Sex or Drug Trafficking/Distributing Offense – The Elders Judiciary Committee may sanction offender for such period as deemed appropriate.

(2) **Destroying or Misappropriating Assets of the Tribe** – A Tribal member or non-Tribal member destroying or misappropriating assets of the Tribe must make full restitution for any loss or damage that has occurred, and for a Tribal member it will result in 30 to 120 days Banishment with suspension of Tribal benefits during such time, or for a non-Tribal member it will result in a 30 to 120 days Exclusion with suspension of Tribal benefits, if any, during such time.

(b) **Request.** Before the Elders Judiciary Committee may consider suspension or termination of Tribal benefits, or Banishment or Exclusion, a request must be submitted to the Elders Judiciary Committee in writing and signed by a Tribal Police Officer.

(c) **Time Limitation.** The Elders Judiciary Committee shall not entertain any request to suspend or terminate Tribal benefits, or banish or exclude if the alleged prohibited activity occurred over five

(5) years from the time the request is submitted to the Elders Judiciary Committee.

(d) **Burden of compliance.** Whenever the Elders Judiciary Committee imposes a sanction pursuant to this Ordinance, the burden of compliance and proof of compliance shall be on the person who is the subject of such sanction. The Tribe shall also retain any records in its possession related to a sanction.

Section 5. HEARING

(a) **Appearance before Elders Judiciary Committee.** Except as otherwise provided in this Ordinance, any person who is being considered for suspension or termination of Tribal benefits, Banishment and/or Exclusion is entitled to a hearing before the Elders Judiciary Committee. The person shall be served, personally or by certified mail, with at least fourteen (14) calendar days' notice prior to the hearing. If both methods of service are unsuccessful, then a notice of hearing shall be posted in a prominent location in the Mashpee Wampanoag Tribal Community & Government Center and the official Mashpee Wampanoag Tribe Website for at least fourteen (14) calendar days. The notice shall specify the name of the person and the date, place and time of the hearing. The posting of the notice shall be sufficient notice to the person.

(b) **Hearing.** At the hearing, the Elders Judiciary Committee shall not be bound by any judicially established rules of evidence or rules of civil procedure. The hearing may be recorded at the discretion of the Elders Judiciary Committee. A person subject to the hearing may choose to be represented by an advocate or an attorney at his or her own expense at the hearing. The Elders Judiciary Committee may also choose to be represented by an attorney.

(c) **Quorum.** A quorum of four members of the Elders Judiciary Committee must be present for the hearing and the decision.

(d) **Absence and basic procedure.** The Elders Judiciary Committee may conduct the hearing in the absence of the person and impose sanctions if notice of the hearing was properly provided. At the beginning of the hearing, the person shall be informed of the conduct or activity that is detrimental to the Tribe. The Elders Judiciary Committee shall review sufficient information of

such conduct or activity and may gather such information through relevant records, documents, reports and witness interviews. The person shall be entitled to review and respond to the information presented to the Elders Judiciary Committee at the hearing. The person shall be entitled to submit information, written or otherwise, of their own at the hearing.

(e) **Right to address Elders Judiciary Committee.** At the conclusion of the hearing, the person or his or her advocate or attorney shall be given the opportunity to make a closing statement to the Elders Judiciary Committee.

Section 6. DELIBERATIONS

At the conclusion of the hearing, the Elders Judiciary Committee shall meet privately with their attorney if needed to discuss what sanctions, if any, should be imposed. The Elders Judiciary Committee may impose any sanctions on the person's continued presence on Tribal lands or on continued eligibility for Tribal benefits, as they deem appropriate and consistent with this Ordinance.

Section 7. NOTICE OF DECISION

The Elders Judiciary Committee shall set forth, in writing, their decision and shall inform the person of such decision by personal service or certified mail or where necessary posting. The Elders Judiciary Committee decision shall be distributed in writing to the following: Tribal Council, Tribal Police, and Tribal Court. The Tribal Police shall enforce any order of Banishment or Exclusion. All decisions shall become effective immediately upon the notice of decision being served on the person subject to the decision or upon posting.

Section 8. EMERGENCY ORDERS

An emergency meeting of the Elders Judiciary Committee may be called whenever the health, peace, safety or property of the Tribe or its members is substantially threatened by the continued presence of any other person on Tribal lands. If, in the opinion of the Elders Judiciary Committee, based upon the available information, that an emergency Banishment or Exclusion order should be issued, then the Elders Judiciary Committee may do so, provided that a quorum of the Committee is present and the majority have so voted. The Elders Judiciary Committee shall inform the Tribal Police of its decision and Tribal Police shall immediately enforce such decision and shall attempt to personally serve the person at the first reasonable opportunity. Upon issuance of the emergency Banishment or Exclusion order, the Elders Judiciary Committee shall schedule a hearing to be held within thirty (30) days to determine whether the emergency order shall be continued, modified or rescinded.

Section 9. REINSTATEMENT

(a) **Petition.** Upon the final disposition of any court matter or the contemplation of any terms or conditions of any order of the Elders Judiciary Committee, or after a sufficient period of time has elapsed from any order of the Elders Judiciary Committee, a person may file a written petition the Elders of the Judiciary Committee to reinstate the person's access to the

Mashpee Wampanoag Tribal Reservation and/or any other Tribal benefit. The decision to approve or deny reinstatement rests solely with the Elders Judiciary Committee.

(b) **Hearing.** The Elders Judiciary Committee may schedule a hearing to determine whether to continue, modify, or rescind their previous order.

(c) **Burden of Proof.** The burden of proof to reinstate rests on the person subject to the sanction.

Section 10. RIGHT TO APPEAL

(a) **Appeals.** Decisions of the Elders Judiciary Committee to sanction a person or to deny reinstatement of benefits or access under this Ordinance may be appealed to the Mashpee Wampanoag Tribal Court whose decision shall be final. All appeals to the Mashpee Wampanoag Tribal Court must be filed within fourteen (14) calendar days of receipt or posting of notice of the Elders Judiciary Committee's decision to sanction or to deny reinstatement.

(b) **Standard of Review, Burden of Proof and Default Judgment.** The Tribal Court shall exercise the arbitrary and capricious standard of review for appeals regarding the issuance of sanctions under this Ordinance by the Elders Judiciary Committee. The Tribal Court, therefore, shall uphold a decision of the Elders Judiciary Committee to issue sanctions so long as the decision is reasonable, regardless of whether there was a basis upon which the Elders Judiciary Committee could have reached a different result. The appellant shall have the burden of proof. The appellant shall not have the right to seek a default judgment against the Tribe in the event such applicant appeals the Elders Judiciary Committee's decision.

(c) **Tribal Court Decision is Final.** If the Tribal Court finds the Elders Judiciary Committee decision was arbitrary and capricious, it shall remand it to the Elders Judiciary Committee for reconsideration. If the Tribal Court sustains the decision of the Elders Judiciary Committee, it shall enter a final order to that effect. The Tribal Court's decision in either event shall be final.

Section 11. REPEALER

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

Section 12. SEVERABILITY

If any provision of the Ordinance or its application to any person or circumstance is held invalid, the remainder shall continue to be in full force and effect to the maximum extent possible that can be given effect without the invalid provision or application.

Section 13. 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 [date].

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, Suspension or Termination of Tribal Benefits, and Banishment or Exclusion, 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