

*****AMENDED AND RESTATED ORDINANCE WITH PROPOSED CHANGES*****

The revisions made to the current version of the Mashpee Wampanoag Tribal Judiciary Ordinance by the proposed Amendment and Restatement are illustrated in this document.

KEY:

Additions to the Ordinance = **Underlined**

Deletions to the Ordinance = **~~Strikethrough~~**

**2018-ORD-000
AMENDED AND RESTATED
MASHPEE WAMPANOAG TRIBAL JUDICIARY**

TABLE OF CONTENTS

CHAPTER 1: GENERAL

Section 1. Findings

Section 2. Authority and Purpose

Section 3. Definitions

Section 4. Laws and Ordinances of the Mashpee Wampanoag Tribe

Section 5. No Waiver of Sovereign Immunity

Section ~~6~~5. Repealer

Section ~~7~~6. Severability

Section ~~8~~7. Effective Date

CHAPTER 2: SUPREME COURT AND LOWER COURTS; TRIBAL COURT

ADMINISTRATION

Section 1. Establishment

Section 2. Jurisdiction

Section 3. Powers of the Tribal Judiciary

Section 4. Judges

Section 5. Court Administrator

Section ~~5~~6. Court Clerk

Section ~~6. Attorneys~~7. **Prosecutor**

Section 8. Probation Officer

Section 9. Attorneys

CHAPTER 3: PEACEMAKER COURT

Section 1. Guiding Principles

Section 2. Scope of Jurisdiction

Section 3. Peacemakers

Section 4. Peacemaking Procedures

CHAPTER 4: [WELLNESS COURT – RESERVED]

CHAPTER 45: ELDERS JUDICIARY COMMITTEE

Section 1: Establishment of Elders Judiciary Committee as a part of and as an office of the Tribal Judiciary

Section 2: Duties of Elders Judiciary Committee

Section 3: Compensation

The Mashpee Wampanoag Tribal Council does ordain as follows:

CHAPTER 1: GENERAL

Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

(a) We ask the Creator and Spirit of the People of the First Light to join as one, and to promote justice, peace, harmony, and respect through the Mashpee Wampanoag Judicial System. Our purpose through the Tribal Courts is to be fair and unbiased, maintain rights, and correct wrongs for all cases brought before the courts of the Mashpee Wampanoag Tribe. Through Tribal laws, rules of court, decisional law, Tribal custom, common sense and in the context of all relevant circumstances, we as a Tribe seek to justly deal with all cases so as to protect all inherent rights of the parties. This Ordinance is designed to provide a means of settling conflicts and to provide a standard for the regulation of judicial conduct.

(b) The Mashpee Wampanoag Tribe is a federally-recognized Indian Tribe with a duly-enacted Constitution.

(c) Article V, § 1 of the Constitution provides that the Tribal Council and Tribal Judiciary shall be separate and equal branches of the Tribe's government and each branch shall exercise only the powers vested in it and shall have no authority over the other branch except as may be granted by the Constitution.

(d) Article V, § 1 of the Constitution provides that separation of the Tribal Judiciary from the other branch shall become effective upon the appointment of the three Judges of the Tribal Supreme Court under Article X of the Constitution.

(e) Article V, § 3 of the Constitution provides that the Tribal Judiciary, as established in Article X, shall be vested with all the Tribe's judicial powers.

(f) Article X of the Constitution provides for the structuring of the Tribal Judiciary.

(g) The Mashpee Wampanoag Tribe deems it essential to the promotion of the welfare of, to the preservation and maintenance of justice for, and the protection of the rights of, all persons under the jurisdiction of the Tribe that it separate the powers of the Tribe's government by establishing the Mashpee Wampanoag Tribal Judiciary as a duly-established branch of Tribal government.

Section 2. AUTHORITY AND PURPOSE

(a) The authority for this Ordinance is found in Articles V and X of the Constitution of the Mashpee Wampanoag Tribe.

(b) The purpose of this Ordinance is to accomplish the following objectives of the Tribe:

- (1) To exert jurisdiction over all persons and matters to the full extent of the law;
- (2) To provide orderly procedures that reflect Tribal traditions as well as the prevailing community standards for the resolution of conflicts;
- (3) To afford all affected persons a fair, prompt and impartial hearing;
- (4) To establish a court system for the interpretation of Mashpee Wampanoag Tribal Law and such other law as may properly come before the Tribal Judiciary;
- (5) To ensure that all matters shall be so conducted as to afford all persons who appear before the Mashpee Wampanoag Tribal Judiciary all rights guaranteed by the Constitution of the Tribe; and
- (6) To ensure that the inherent sovereignty of the Mashpee Wampanoag Tribe is recognized in all matters affecting the Mashpee Wampanoag Tribe.

Section 3. DEFINITIONS

(a) "Chief Judge" shall mean the Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe.

(b) "Constitution" shall mean the document that has been adopted for the self-governance of the Mashpee Wampanoag Tribe, titled "Constitution of the Mashpee Wampanoag Tribe" and certified into law on June 28, 2004, with any amendments thereto that may be enacted from time to time.

(c) "Immediate family member" shall mean any spouse, parent, child, sibling and those raised or temporarily living in the immediate home.

(d) ~~"Judiciary Committee"~~ or "Elders Judiciary Committee" shall mean the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and described in Chapter 4 of this Ordinance.

(e) "Lower Courts" shall mean the District Court, Peacemaker Court, and any other lower level courts created by the Tribal Council in the future.

(f) "Peacemaker" shall mean a person who satisfies the qualifications set forth in this Ordinance and is selected to mediate a conflict under the provisions of this Ordinance.

(g) "Perjury" shall mean any person who knowingly makes a false statement under oath, whether verbal or in writing, or procures or induces another person to do so, in any proceeding before or ancillary to the Supreme Court and lower courts of the Tribe.

(h) "Supreme Court" shall mean the Supreme Court of the Mashpee Wampanoag Tribe as established under Article X, § 1(a) of the Mashpee Wampanoag Constitution.

(i) "Tribal Council" and "Mashpee Wampanoag Tribal Council" shall mean the governing body of the Tribe pursuant to the Constitution of the Mashpee Wampanoag Tribe.

(j) "Tribal Judiciary" shall mean the Judicial Branch of the Tribe as divided into the Supreme Court, District Court, Peacemaker Court and such other lower courts and offices as may be established by amendment to this Ordinance.

(k) "Tribal Judge" shall mean any judge of the Tribal Judiciary.

(l) "Tribal Member" shall mean an enrolled member of the Tribe.

(m) "Tribe" shall mean the Mashpee Wampanoag Tribe.

Section 4. LAWS AND ORDINANCES OF THE MASHPEE WAMPANOAG TRIBE

The Tribal Council shall provide the Mashpee Wampanoag Tribal Judiciary with copies of this Ordinance, any amendments thereto, and all other Tribal Law adopted by the Tribal Council.

Section 5. 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, departments, officers, agents, appointees or employees, including, but not limited to, the Elders Judiciary Committee and any member thereof, a judge, court administrator, court clerk, prosecutor, probation officer and peacemaker.

Section 65. REPEALER

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

Section 76. 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 portions of this Ordinance.

Section 87. EFFECTIVE DATE

This Ordinance shall take effect and be enforced from and after its passage.

CHAPTER 2: SUPREME COURT AND LOWER COURTS; TRIBAL COURT ADMINISTRATION

Section 1. ESTABLISHMENT; SEPARATION OF POWERS

There is established, upon the appointment by the Tribal Council of the three Judges of the Tribal Supreme Court under Article X of the Constitution, a Mashpee Wampanoag Tribal Judiciary, which shall consist of a Tribal Supreme Court, a District Court, a Peacemaker Court, and such other lower courts and offices as may be established by amendment to this Ordinance.

(a) **Supreme Court.** The Tribal Supreme Court shall consist of three (3) judges and shall handle appeals from the District Court and shall have original jurisdiction over specified proceedings. The procedures for such appeals and proceedings shall be prescribed by the Supreme Court.

(b) **District Court.** The District Court shall be the court of general criminal and civil jurisdiction for the Tribe and shall hear all matters of a judicial nature not specifically placed within the exclusive jurisdiction of some other forum by this Ordinance or other ordinances as the Tribal Council may enact from time to time. The District Court shall also hear appeals from all Tribal administrative tribunals, agencies, commissions, and other subordinate tribal government organizations, except where the District Court is denied such appellate jurisdiction by the Constitution or other Tribal law. The Chief Judge of the Supreme Court shall supervise the activities of the District Court and shall exercise supervisory control over any Judge appointed pursuant to this Ordinance.

(c) **Peacemaker Court.** The Peacemaker Court of the Mashpee Wampanoag Tribe is part of the Tribal Judiciary. It shall be a court empowered to hear such matters as prescribed in this Ordinance. The Chief Judge of the Supreme Court shall supervise the activities of the Peacemaker Court and shall exercise supervisory control over any Peacemaker appointed pursuant to this Ordinance. The Peacemakers may use the Tribal Courts as a resource and infrastructure for purposes of supporting and maintaining the Peacemaker Court.

Section 2. JURISDICTION

(a) **General Jurisdiction.** The District Court shall be a court of general jurisdiction to hear and determine all civil and criminal matters arising within the jurisdiction of the Tribe as set forth in the Constitution and other applicable law, except where exclusive jurisdiction is given by the Constitution to some other court or tribunal.

(b) **Appellate Jurisdiction.**

(1) The District Court shall have appellate jurisdiction to hear appeals from final decisions of Tribal administrative tribunals, agencies, commissions and other subordinate tribal government organizations, except where the District Court is denied such appellate jurisdiction by the Constitution or other Tribal law.

(2) The Supreme Court shall have appellate jurisdiction to handle appeals from decisions of the District Court, except where the Supreme Court is denied such appellate jurisdiction by the Constitution of the Tribe.

(c) **Original Jurisdiction.** In addition to its appellate jurisdiction, the Supreme Court shall have original, concurrent jurisdiction to hear:

(1) Cases disputing the final results of a Tribal Council election;

(2) Petitions necessary or appropriate in aid of its jurisdiction; and

(3) Other such original actions as provided by Tribal law.

(d) **Jurisdiction and Operation of Peacemaker Court.** The jurisdiction and operation of the Peacemaker Court is set forth in Chapter 3 of this Ordinance.

Section 3. POWERS OF THE TRIBAL JUDICIARY

(a) **Procedural, Evidence and Ethics Rules.** The Supreme Court shall establish written rules of procedure, evidence, and ethics for all courts of the Tribal Judiciary. Such rules may from time to time be amended as deemed necessary or appropriate by the Supreme Court. The Supreme Court shall consult with the judges of the lower courts and the Elders Judiciary Committee in establishing such rules.

(b) **Funding.** The Tribal Council on behalf of the Tribal Judiciary shall have the power to receive gifts, donations, or grants for the enhancement of the judicial branch of the Tribe and to apply the same to the purpose designated. All such gifts, donations, or grant agreements may be accepted or entered into by the Tribal Council in accordance with applicable law and any Tribal canons or codes of ethics.

(c) **Setting Fees.** The Supreme Court may set a schedule of court-related fees, including fees for the Peacemaker Court, in consultation with the Elders Judiciary Committee. The schedule of fees may be modified from time to time as necessary.

(d) **Court Staff.** The Chief Judge of the Supreme Court may hire, ~~manage and supervise~~ judicial court staff necessary to the functioning of the Tribal Judiciary. In consideration of the Elders Judiciary Committee's role in preparing and submitting the Tribal Judiciary budget, as a duty the Chief Judge shall ~~obtain~~ seek prior to a new hire the Elders Judiciary Committee's approval of and agreement ofn a job description for a new hire and the terms of compensation for a new hire and any change in the rate of compensation or lateral move thereafter. The failure to obtain such approval and agreement is cause for discipline. The Elders Judiciary Committee shall manage

and supervise judicial court staff, including the Court Clerk, Court Administrator and Probation Officer.

(e) **Record Keeping.** The Supreme Court shall implement a system for the keeping of records of proceedings of the Tribal Judiciary.

(f) **Admission of Attorneys.** The Supreme Court may prescribe rules for attorney admissions and for a bar association, as necessary.

Section 4. JUDGES

(a) **Selection.** The Elders Judiciary Committee shall advertise vacancies and review applications for a Tribal Judge position, and conduct interviews of applicants. The Elders Judiciary Committee shall recommend Judges one or more applicants for appointment by the Tribal Council to fill a vacant position. The Tribal Council may appoint or decline to appoint the applicants recommended by the Elders Judiciary Committee. The Tribal Council shall inform the Elders Judiciary Committee of its reasons for any declination.

(b) **Appointment.** Individuals who possess the qualifications listed in subsection (d) are eligible for appointment to the office of Tribal Judge. Tribal Judges shall be appointed by resolution of six (6) or more votes by members of the Tribal Council.

(c) **Term of Office.**

(1) Supreme Court Judges shall be appointed to staggered terms of eight (8) years. The initial term of each of the first three (3) Supreme Court Judges appointed shall be randomly assigned. One judge shall serve four (4) years, one judge shall serve six (6) years, and one judge shall serve eight (8) years.

(2) District Court Judges shall be appointed to a term of five (5) years.

(3) There is no prohibition against serving multiple terms.

(4) Six months prior to the expiration of a Judge's term of office, the Elders Judiciary Committee shall commence the selection process pursuant to subsection (a) of this Section 4 in order to fill the impending vacancy.

(d) **Qualifications.** To hold the office of Tribal Judge, a person shall meet the following qualifications:

(1) Be either:

(aA) an enrolled member of the Tribe; or

(bB) be a member of an American Indian tribe that is recognized by the Tribe;
and

(2) Be either:

(~~a~~A) an attorney; or

(~~b~~B) a graduate of an American Bar Association approved Law School; or

(~~e~~C) a current or former tribal judge; and

(3) Be at least 25 years of age; and

(4) Be of sound moral and ethical character; and

(5) Have never been convicted of a felony or crime of moral turpitude in any court in any jurisdiction.

(e) **Oath of Office.** Before assuming office each Judge ~~and Peacemaker~~ shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all cases coming before him or her with integrity and fairness, without regard to the parties before him or her. The oath will be administered by the Chief Judge or the next ranking available Judge of the Supreme Court as soon after confirmation as may be practical.

"I, _____, do solemnly swear that I will support and defend the Constitution of the Mashpee Wampanoag Tribe; that I will carry out, faithfully and impartially, the duties of my office to the best of my ability; that I will promote and protect the best interests of the Mashpee Wampanoag Tribe; and that I will uphold and enforce the Laws of the Mashpee Wampanoag Tribe to the best of my ability."

(f) **Compensation.** Tribal Judges shall receive for their services reasonable compensation which shall not be diminished during their term of office, except as provided in Chapter 2, Section 4(i) of this Ordinance. The compensation to be received by the Tribal Judges shall be agreed upon with the Tribal Council at the time of appointment. The compensation to be received by all Court ~~staff personnel~~ shall be determined by the Chief Judge and approved and agreed upon by the Elders Judiciary Committee in accordance with Section 3(d) and the Tribal Council at the time of their employment by the Chief Judge. Judges shall not be entitled to participate in any employee bonus compensation plan.

(g) **Chief Judge of the Supreme Court.**

(1) The Tribal Council shall appoint a Chief Judge of the Supreme Court who, in addition to performing judicial duties in the Supreme Court, shall be responsible for the administration of the Tribal Courts, including the supervision of all Judges ~~and Court personnel~~, submission of all required reports, and performance of all other duties required by Tribal Law.

(2) The Chief Judge shall submit an annual report of the Tribal Judiciary to the Tribal Council and Elders Judiciary Committee for budgetary purposes. The report shall

include a description of the activities of the Courts, the number of cases by type of claim or crime, number of cases filed, pending, and resolved in each court, a description of the Court's staffing and structure, a summary of significant cases decided by the Court, and any other information required by the Tribal Council, subject to confidentiality requirements. The Chief Judge, in consultation with the ~~Tribal Court Clerk Administrator and the Judges of the Supreme Court~~, shall prepare a budget for the Tribal Judiciary. After consultation and preparation, but no later than July of each year, the Chief Judge shall submit the proposed budget to the Elders Judiciary Committee who shall consult with the Chief Judges and reach an agreement upon the budget which shall be submitted to the Tribal Council as a part of the general budget approval process. If no agreement is reached as to certain line items then the ~~Chief Judge~~ and the Elders Judiciary Committee shall submit comments on their proposed budget and the Tribal Council shall, after consultation with the Chief Judges and the Elders Judiciary Committee select the final budget to be enacted.

The ~~Court Administrator~~ Chief Judge shall provide to the Elders Judiciary Committee a written expenditure report on a monthly basis, no later than by the 10th day of the following month for which the expenditure report is provided for, in order to ensure that the Tribal Judiciary remains within its annual budget limit while meeting its annual objectives and goals.

(h) Duties and Powers of Judges.

(1) Supreme Court Judges. All Judges of the Supreme Court, unless disqualified for conflict of interest or other cause, shall participate in the deliberations of that body and shall have the duty and/or power to conduct all Court proceedings, and issue all orders and papers incident thereto, and to decide all matters within the jurisdiction of the Supreme Court. In doing so, Judges of the Supreme Court shall have the duty and power to:

(A) Follow all the rules created by the Supreme Court pursuant to Chapter 2, Section 3(a) of this Ordinance.

(B) Handle appeals from the District Court and handle cases of original jurisdiction properly before the Court and otherwise undertake all other duties as may be required for the operation of the Supreme Court.

(C) Hold Court regularly at a designated time and place.

(D) Issue all appropriate warrants and subpoenas to compel attendance of persons called to testify in a proceeding.

(E) Have the power to administer oaths and affirmations to persons in proceedings before the Court and in any other circumstance where such shall be necessary in the exercise of judicial powers and/or duties or where the law so requires an oath or affirmation.

(F) Have the power to preserve and enforce order in his or her immediate presence when performing official duties.

(G) Have the power to punish for contempt any person to assure the effective exercise of judicial authority.

(H) Enter all appropriate orders and judgments. Such orders and judgments shall be fair and impartial, and the imposition of sentences shall be in accordance with the law. The Court shall have the power to declare any Tribal law void if such law violates the Tribal Constitution or Federal law.

(I) Have the power to compel obedience to lawful directives and orders.

~~(J) Keep all Court and other records as may be required.~~

~~(K) Perform the duties of the Clerk in his or her absence.~~

~~(L)~~ Perform any of the duties and powers of a District Court Judge pursuant to Article X § (1)(b) of the Constitution in appropriate cases, such as in the event of a conflict or the unavailability of a District Judge. If a Supreme Court Judge serves as a Judge of the District Court, the Judge shall be disqualified from participating in a review of any decision entered by him or her sitting as a lower court judge.

~~(M)~~ Have the power to impose a civil fine not to exceed Five Hundred dollars (\$500.00) on any person committing perjury.

(2) **District Court Judges.** All Judges of the District Court shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so, Judges of the District Court shall have the duty and power to:

(A) Follow all the rules created by the Supreme Court pursuant to Chapter 2, Section 3(a) of this Ordinance.

(B) Hear and decide all cases properly brought before the Court, and otherwise undertake all duties and exercise all authority of a judicial officer.

(C) Hold Court regularly at a designated time and place.

(D) Issue all appropriate warrants and subpoenas to compel attendance of persons called to testify in a proceeding.

(E) Have the power to administer oaths and affirmations to persons in proceedings before the Court and in any other circumstance where such shall be

necessary in the exercise of judicial powers and duties or where the law so requires an oath or affirmation.

(F) Have the power to preserve and enforce order in his or her immediate presence when performing official duties.

(G) Have the power to punish for contempt any person to assure the effective exercise of judicial authority.

(H) Enter all appropriate orders and judgments. Such orders and judgments shall be fair and impartial, and the imposition of sentences shall be in accordance with the law. The Court shall have the power to declare any law void if such law violates the Tribal Constitution or Federal law.

(I) Have the power to compel obedience to lawful directives and orders.

(J) Keep all Court and other records as may be required.

(K) Issue search warrants upon the showing of probable cause.

(L) Issue emergency orders of protection.

(M) Issue emergency orders for custody or searches and seizures regarding minors or incompetent persons.

~~(N) Perform the duties of the Clerk in his or her absence.~~

(ON) Have the power to impose a civil fine not to exceed Five Hundred dollars (\$500.00) on any person committing perjury.

(i) Discipline, Removal and Resignation.

(1) Discipline or Removal for cause. Tribal Judges may be disciplined or removed from office by the Tribal Council upon the affirmative vote of at least seven (7) members of the entire Tribal Council, but only upon the following grounds:

(A) Inability to carry out the duties of the office,

(B) Failure to carry out the duties of the office,

(C) Lack of a requisite qualification for serving as a Tribal Judge,

(D) Felony conviction,

(E) Action reflecting adversely on the position of Tribal judge. Such action may include dishonesty or an act which impugns the judge's good moral character in a substantial manner,

(F) Action breaching the Supreme Court's ethical rules adopted under Chapter 2, Section 3(a) of this Ordinance,

(G) Action resulting in disbarment as an attorney in a Federal, state or tribal bar,

(H) A willful violation of any Court order or disciplinary action ordered by the Tribal Council, or

(I) Use of official position for unethical personal gain.

(2) Discipline or Removal Procedure.

(A) Before submitting a complaint under this subsection, the Elders Judiciary Committee shall in good faith meet and confer with a Judge to resolve any complaint or allegations without the need for any proceeding under this subsection.

(BA) The Chief Judge of the Supreme Court may present a complaint regarding a Tribal Judge for grounds listed in the above subsection (i)(1) to the Elders Judiciary Committee. An Associate Judge of the Supreme Court may present the complaint if the complaint involves the Chief Judge. The Elders Judiciary Committee may initiate a complaint regarding a Tribal Judge, including any Supreme Court Judge, and present it to the Chief Judge, unless it involves the Chief Judge whereupon the Elders Judiciary Committee shall present its complaint to the other judges of the Supreme Court and then proceed with its investigation. The Elders Judiciary Committee shall investigate ~~any complaint~~~~the matter~~ and make a non-binding recommendation to the Tribal Council. The Tribal Council will then conduct a hearing according to the procedures set forth in this section.

(CB) If a member of the Tribal Council obtains information which indicates that grounds exist for removal or discipline of a Tribal Judge, the Tribal Council shall refer the matter to the Elders Judiciary Committee. The Elders Judiciary Committee shall investigate the matter and make a non-binding recommendation to the Tribal Council. The Tribal Council will then conduct a hearing according to the procedures set forth in this section.

(DC) Upon a referral from the Elders Judiciary Committee to the Tribal Council under (AB) or (BC), the Tribal Council shall provide written notice of the charge and specify the facts supporting such charge to the Tribal Judge in question and the Supreme Court. The Tribal Council shall notify the Tribal Judge in question and the Supreme Court, in writing, not less than twenty (20) calendar days prior to the hearing.

(~~ED~~) The Supreme Court may, upon receipt of notice of the removal charges, suspend the Tribal Judge in question from office pending final action of the Tribal Council at the meeting. The Supreme Court shall specify whether such suspension shall be paid or unpaid. The Supreme Court shall decide any questions about the hearing procedure and shall ensure that such procedure follows due process of law.

(~~FE~~) At the hearing, the Tribal Judge in question shall have full opportunity to hear and answer all charges made against him or her, including the opportunity to examine all evidence and all adverse witnesses, to present evidence and witnesses, and to be represented by an attorney at his or her cost.

(~~GF~~) After the hearing, the Tribal Council shall consider and decide whether to accept or decline the Elders Judiciary Committee's recommendation. The Tribal Council may also fashion its own disciplinary action(s), including but not limited to: permanent removal, suspension for a definite term with or without pay, limitations on the performance of judicial duties, public or private reprimand, censure, continuing legal education and community service. Such sanction may either be made public or kept confidential.

(~~HG~~) A decision by at least seven (7) members of the entire Tribal Council shall be final and in writing. The decision is not appealable.

(3) **Resignation.** A Tribal Judge may resign his or her office at any time. Resignation from office shall be written and shall be effective as of the date tendered unless otherwise designated in the resignation document.

(4) **Vacancy.** The office of any Tribal Judge who dies, who resigns or who is removed under the above subsections (i)(1) and (2) shall be deemed to be automatically vacant.

(5) **Filling of Vacancy.** The Tribal Council shall appoint a judge to fill a vacancy. That judge shall meet all of the requirements set forth in Chapter 2, Section 4(d) of this Ordinance.

Section 5. COURT ADMINISTRATOR

(a) Office of Court Administrator. The Chief Judge in consultation with the Elders Judiciary Committee may hire a Court Administrator in accordance with Section 3(d).

(b) Qualifications of the Court Administrator. The Court Administrator shall have the qualifications as set forth by the Mashpee Wampanoag Tribe pursuant to its Court Administrator job description.

(c) Duties of Court Administrator

The Court Administrator shall be responsible for the administration of all activities and all judicial staff members of the Tribal Judicial System. Specific powers and duties shall include:

- (1) To manage and supervise the Court Clerk and such Deputy Court Clerks, as may be needed
- (2) To coordinate the selection of jurors for jury trials;
- (3) To train judicial staff members of the Tribal judicial system in legal procedures;
- (4) To develop a working relationship with surrounding jurisdictions and state and federal courts, and acting as a liaison between the Tribal judicial system and the tribal, local, county, state and federal judicial systems;
- (5) To conduct public relations activities for the Tribal judicial system;
- (6) To secure, administer and monitor compliance for any federal grants or contracts received by the Tribal judicial system, and to assist in developing and maintaining the budget for the Tribal judicial system;
- (7) To perform the duties of the Court Clerk in her or her absence; and
- (8) To undertake all duties and functions otherwise authorized for the Court Administrator by Tribal law, or necessary and proper to the exercise of a duty or function authorized by Tribal law

Section 6. COURT CLERK

(a) **Office of Court Clerk.** The Chief Judge shall hire a Court Clerk in accordance with Section 3(d).

(b) **Qualifications.** The Court Clerk shall have the qualifications as set forth by the Mashpee Wampanoag Tribe pursuant to its Court Clerk job description. To be eligible to serve as the Court Clerk, an individual shall;

- ~~————(1) Be at least 21 years of age; and~~
- ~~————(2) Be of high moral character and integrity; and~~
- ~~————(3) Have a high school diploma or its equivalent; and~~
- ~~(4) Be computer literate, including proficient at word processing and database management; and~~
- ~~————(5) Be physically able to carry out the duties of the office; and~~
- ~~————(6) Be free of any conviction of a felony or crime of moral turpitude.~~

(c) **Powers and Duties.** The Court Clerk shall have the following powers and duties:

- (1) To undertake all duties and functions otherwise authorized for the Court Clerk by Tribal law, or necessary and proper to the exercise of a duty or function authorized by Tribal law.
- ~~(2) Subject to the approval of the Chief Judge of the Supreme Court, to supervise and direct the hiring, firing, and work of all deputy court clerks and other employees in his or her office.~~

(32) To collect all fines, fees, and costs authorized or required by law to be paid to the Courts, to provide receipts for them, and to deliver them to the Tribal Treasurer for deposit in the Court fund. The Court Clerk shall make an annual accounting to be reported to the Chief Judge and Tribal Administrator.

(43) To accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the Court Clerk is authorized to maintain a bank checking account, subject to the oversight of the Chief Judge of the Supreme Court, Elders Judiciary Committee and Court Administrator, and to deposit and withdraw funds from it. This account shall be audited at least once each year by the Tribal Finance Accounting Department or an independent Certified Public Accountant, and the Court Clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Chief Judge of the Supreme Court and Court Administrator shall direct.

(54) To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme Court and District Court, and such other lower courts as shall be established.

(65) To provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts, and to coordinate the transcription or recording of all official Court proceedings. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

(76) To provide stenographic and clerical services to the Court.

(87) To act as librarian, and to keep and maintain the Court's law library with all decisions issued by the Lower Courts and the Tribal Supreme Court and an inventory for all books and periodicals.

(8) To maintain a registry of Tribal Bar members and to annually update the Tribal Bar members who are in good standing on Tribal law revisions.

(9) To undertake all duties assigned or delegated to the Court Clerk's office by Tribal law or Court Rule.

Section 7. ATTORNEYS

~~(a) **Right to Counsel.** A party to an action shall have the right to be represented by an attorney at all hearings before the District Court or Supreme Court at his or her own expense.~~

~~(b) **Attorney Admissions.** The Supreme Court and the District Court shall have authority to admit attorneys and advocates to practice before the Judiciary. To be eligible for admission, attorneys must be licensed in a state or territory of the United States and be in good standing. The Supreme Court may prescribe rules, under the powers enumerated in Chapter 2, Section 3(f) of this Ordinance, for attorney admissions and for establishment of a bar association as it finds necessary.~~

Section 7. PROSECUTOR

(a) Prosecutor. The Mashpee Wampanoag Tribal Council shall hire a Prosecutor. The Tribal Council shall oversee, manage and supervise the Prosecutor.

(b) Qualification. The Prosecutor shall have qualifications as set forth by the Mashpee Wampanoag Tribe pursuant to its Prosecutor job description. At a minimum, such qualifications shall include:

- (1) Is an attorney in good standing licensed to practice law in any state in the United States or only for civil cases is a Police Officer of the Mashpee Wampanoag Tribe Police Department;
- (2) Has not been convicted of any felony by a court of competent jurisdiction; and
- (3) The Prosecutor shall attend training and seminars to stay current on trends in criminal and civil matters pertaining to his or her function as prosecutor.

(c) Duties of Prosecutor. The Prosecutor shall have the following powers and duties:

- (1) To be the chief law enforcement officer of the Tribe and shall be responsible for all criminal investigations and prosecutions in the District Court, including arraignments, motions, trials and appeals.
- (2) To have the discretion to prosecute criminal violations of Tribal law in the District Court.
- (3) To review all charges and complaints of criminal violations of Tribal law and determine what charges to bring in the District Court and whom to charge.
- (4) To utilize the resources of the Tribal Police to assist in any investigation at the discretion of the Prosecutor. The Tribal Police shall cooperate fully with the Prosecutor. No Tribal Police Officer is authorized to disclose any information to any person (including the Tribal Administrator or other employee) without the prior approval of the Prosecutor. Inquiries made about an investigation shall be directed to the Prosecutor and the Tribal Police Officer will notify the Prosecutor of such inquiries as soon as possible after they occurred.
- (5) To interview any person in the furtherance of an investigation and for all persons to cooperate fully with the Prosecutor or Tribal Police Officer conducting the interview.
- (6) To review all requests for arrest warrants and search warrants to determine if all Tribal constitutional requirements are satisfied prior to approval or authorization.

(7) To work closely with the Court Administrator and Chief Judge to improve the delivery of services within the District Court and to assist the Court Administrator or Court Clerk in case management and docket preparation.

(8) To establish a working relationship with tribal, local, county, state and federal jurisdictions and establish a protocol for coordinating criminal investigations and prosecutions with such tribal, local, state and federal jurisdictions.

(9) To undertake all duties and functions otherwise authorized for the Tribal Prosecutor by Tribal law, or necessary and proper to the exercise of a duty or function authorized by Tribal law.

(d) Prosecutorial Subpoena Power.

(1) The Prosecutor is hereby empowered to issue subpoenas for compelling or producing documentation in criminal investigations. Failure to obey a Prosecutor's subpoena has the same force of law as a District Court issued subpoena with the same criminal penalties.

(2) A person subpoenaed may be represented by counsel at his or her expense.

(3) A person subpoenaed may invoke his or her Tribal constitutional privilege against self-incrimination.

(4) The Prosecutor shall have the power, with District Court approval, to grant immunity to any witness. Once indemnified, in writing, a witness may not refuse to answer questions covered by the immunity agreement.

(5) A person who refuses to testify pursuant to a prosecutorial subpoena, after being granted immunity, may be brought before the District Court to show cause why he or she should not be held in contempt of court.

(e) Conflict of Interest, Absence, Disability, Inability of Prosecutor to Act; Appointment of Special Prosecutor.

(1) In case of conflict of interest, or the absence, disability or inability of the Prosecutor to act, the District Court upon motion of an interested party or on its own motion, may appoint an attorney to serve as Special Prosecutor.

(2) The Special Prosecutor shall have all of the authority of the Prosecutor for that occasion.

Section 8. PROBATION OFFICER

(a) Probation Officer. The Chief Judge shall hire a Probation Officer in accordance with Section 3(d).

(b) **Qualification.** The Probation Officer shall have qualifications as set forth by the Mashpee Wampanoag Tribe pursuant to its Probation Officer job description

(c) **Duties of Probation Officer.** The Probation Officer shall have a duty to provide objective and truthful investigation and supervision services to the District Court, including, but not limited to:

(1) Investigation. The officer conducts screenings and risk/need assessments and prepares presentence reports that help the District Court determine the appropriate sentence.

(2) Case Plan. Utilize background information and the risk and needs assessments of an offender to determine level of supervision and to develop an appropriate case plan for an offender. The case plan should set forth the conditions of probation and a plan for appropriate services to foster positive behavior change in an offender and to incorporate culturally-focused interventions when available such as spiritual and cultural interventions.

(3) Supervision. The officer monitors offenders in the community to make sure they comply with court-ordered conditions of release and conditions of a suspended sentence. Supervision responsibilities include, but are not limited to:

(A) to make personal contact with the defendant on a regular basis at regularly scheduled probation appointments, home visits, and other means of contact, and when necessary, altering the frequency of personal contact that the officer has with the defendant;

(B) to require the defendant to undergo drug and alcohol testing;

(C) to verify employment, school, and vocational training;

(D) to locate and use community resources to address the defendant's needs, including referrals for drug and alcohol treatment, mental health treatment, educational or vocational training, medical care, and employment and housing assistance;

(E) to monitor fines and restitution owed, conditions of a suspended sentence, and jail report dates and coordinating jail alternatives such as electronic home program;

(F) to keep records of supervision contacts and maintaining copies of all documentation that are provided to the officer by the defendant; and

(G) to file revocation proceedings with the District Court on defendants who do not comply with supervision conditions. Prior to filing for a revocation proceeding, the officer should apply graduated sanctions such as more frequent contact with the offender by more frequent reporting to the officer by the offender, more frequent drug and alcohol testing, and an increase and verification of employment, school and vocational training status. To avoid noncompliance, the officer should provide appropriate rewards or incentives such as travel permits, early termination of probation and decrease in drug and alcohol testing to respond to compliant behavior.

(d) **Failure to Comply.** Where a convicted person fails to comply with conditions of probation, such conduct will be brought before the District Court upon a probation officer or prosecutor filing a petition, supported by affidavit or declaration, for revocation of the probation and imposition of the suspended sentence.

(1) A petition for revocation must be filed during the period of probation or within five (5) days after the period of probation ends if the offender's violations of conditions occurred within the final forty-eight (48) hours prior to the end of the period. Once a petition for revocation has been timely filed, any expiration of the probation period does not deprive the District Court of authority to hear the matter and to impose the full terms of the sentence.

(2) Upon receipt of a petition for revocation of probation, the District Court shall issue an order to the alleged offender to appear at a stated date and time to show cause to the Court why the full terms of the sentence should not be imposed for failure to comply with probation.

(3) The hearing on the petition for revocation shall be limited to issues related to the defendant's compliance or noncompliance with the conditions of probation.

The probation revocation hearing shall be held before a judge, without jury, and witnesses will not be summoned, except upon permission of the District Court. The Mashpee Wampanoag Tribal Court Rules of Evidence shall not apply to the hearing.

(e) **Report to Tribal Court.** The Probation Officer may present probation violations before the District Court or may request the assistance of a prosecutor.

(f) **Court Imposition.** If, by a preponderance of the evidence, the District Court finds that the accused person has failed to comply with the conditions of probation, the District Court may (1) impose part of the sentence originally ordered and/or allow the defendant to continue on probation on the same or additional conditions, or (2) impose a final sentence and terminate the defendant's period of probation.

(g) **Proposed Judgment.** The parties may negotiate and present to the District Court for approval a proposed judgment on the probation violation. By agreement, the parties can extend the probation period beyond the original expiration date. The District Court may accept or reject the proposed judgment and impose its own remedy consistent with this section.

(h) **Sentencing after Revocation.** A sentence imposed after the revocation of probation must comply with the mandatory minimum and maximum penalties set out in applicable Tribal Law. In determining the appropriate sentence, the District Court shall consider, but is not limited to the following factors:

- (1) the seriousness of the criminal conviction;
- (2) the severity of the probation violations;
- (3) the history of previous probation violations;
- (4) new criminal activity;

- (5) the probation officer's assessment of the seriousness of the violation and of the defendant's compliance and completion of the terms of probation and efforts towards rehabilitation;
- (6) whether the defendant seeks termination over the probation office's recommendation to continue; and
- (7) when the probation violations occurred in relation to the original probation term; and
- (8) mitigating circumstances of the probation violation.

(i) **Reinstatement.** If the District Court terminates probation and imposes a final sentence, the defendant may petition the District Court to reinstate probation and the original criminal judgment less any jail days served or fines paid subsequent to revocation, as follows:

- (1) the defendant must show good cause for reinstatement and that the interests of justice warrant the reinstatement of probation;
- (2) the petition must be filed prior to the completion of the sentence imposed on revocation;
- (3) the defendant must serve the Prosecutor's Office and the Probation Office with notice and opportunity to consent or oppose the reinstatement of probation; and
- (4) the defendant may only be reinstated on probation one time on a criminal judgment, but in no case, shall the defendant be entitled to automatic probation reinstatement.

(j) **Conflict of Interest, Absence, Disability, Inability of Probation Officer to Act; Appointment of Suitable Replacement.**

- (1) In case of conflict of interest, or the absence, disability or inability of the Probation Officer to act, the District Court upon motion of an interested party or on its own motion, may appoint a suitable replacement to serve as a Probation Officer.
- (2) Such person shall have all of the authority of the Probation Officer for that occasion.

Section 9. ATTORNEYS

(a) **Right to Counsel.** A party to an action shall have the right to be represented by an attorney at all hearings before the District Court or Supreme Court at his or her own expense, unless required by applicable law, policy or Mashpee Tribal Court rules for the Tribe to pay the expense.

(b) **Attorney Admissions.** The Supreme Court and the District Court shall have authority to admit attorneys and trained advocates to practice before the Judiciary. To be eligible for admission, attorneys must be licensed in a state or territory of the United States and be in good standing. The Supreme Court may prescribe rules, under the powers enumerated in Chapter 2, Section 3(f) of this Ordinance, for attorney admissions, for trained advocate admissions and for establishment of a bar association as it finds necessary.

CHAPTER 3: OPERATION OF PEACEMAKER COURT

Section 1. GUIDING PRINCIPLES

(a) **Purposes of Peacemaking.** Peacemaking encourages people to solve their own problems by communicating in a safe environment. Conflict resolution is based upon respect, responsibility and the importance of good, conscious, meaningful relationships. Peacemakers assist in the development of solutions to conflicts that are not patterned upon state or federal civil courts, but are more closely allied to the traditional conflict resolution processes generally followed by Native American peoples. It is intended that the Peacemaker Court serve as a vehicle through which parties arrive at consensual solutions to conflicts within the tribal community. The Peacemaker Court need not determine who is at fault in any given situation to reach an agreeable solution.

Peacemaking uses consensual agreement of the parties as the primary tool. A party's participation in Peacemaking is wholly voluntary. The parties and participants are invited to attend and decisions resolving disputes are reached by talking things out and a solution is reached by consent. This is the Mashpee Wampanoag Tribal way of resolving conflicts in the community. This process predates our court system and reaches back to the time of the People of the First Light, the ancestors of the Mashpee Wampanoag Peoples.

Peacemakers shall strive to achieve a setting which will:

- (1) Allow active participation by all parties involved in the conflict; and
- (2) Provide an environment for a party to take responsibility for his or her behavior; and
- (3) Provide an environment that is safe for the parties to work out conflicts and begin the healing process; and
- (4) Assist in locating traditional practices and teachings, and community-based services for individuals involved in the conflict.

(b) **Guiding Principles.** The guiding principles for the Peacemaker Court are as follows:

(1) **Harmony Principle:** A positive, conscious, meaningful relationship between parties is valuable. For Mashpee peoples, harmony is achieved through “Weech8humôkanee N8hswehtamuk” which means “a working together by people” by “observing the law.” Peacemaking encourages people to consciously solve their own problems by opening communications through respect, responsibility and good faith. It is conducted by the parties and accomplished by planning and group decisions for future action. By solving their own problems in peacemaking, people replace coercive decisions. Rather than judge people or force them unwillingly to do something, peacemaking addresses the consequences of people's behavior and substitutes healing to remedy any harmful consequences. Peacemaking assists people to help themselves resolve conflict through self-healing measures. Peacemaking is based on healing the mind, body, and spirit to end conflict, rather than to continue conflict by the use of power, force and punishment. It allows individuals, groups of people and communities to

take ownership of their problems and to solve them in ways which promote healthy relationships between and among the individuals and group. The objective is to achieve harmony and balance.

(2) **Non-Coercion Principle:** The most constructive way to preserve a positive relationship and settle a dispute is through the voluntary participation of the parties, rather than the use of force from an outside source. For Mashpee peoples, this means the resolution of conflict through “Muhchee cheekunum N8hswehtamuk” which means “without a forceful hand” by “observing the law.” Mashpee Peacemaking is not to be confused with the adjudicatory processes or arbitration. Those processes employ the adversarial system of conflict resolution in a court setting, and assume decision making by a person in authority. In such matters, rules are employed which are designed to compel participation, limit participation to a select few, confine consideration of a conflict to narrow issues, and impose often disharmonious decisions. Mashpee Peacemaking stresses informality, allows open and unfettered discussions, full participation of interested persons, and encourages resolution reached by consensus of all in attendance. Because Peacemaking sessions are not judicial or quasi-judicial proceedings with adjudicatory powers, characteristics or functions, and participation by the participants is wholly voluntary, the characteristics of adversarial practice, including pleadings, counterclaims, cross-claims, discovery, etc., are not contemplated and not permitted. The parties are asked to voluntarily participate, knowingly and willingly, without an attorney to fulfill this Principle.

(3) **Community Health Principle:** The health of the community at large depends on recognizing the connectedness of all things and people, and the responsibility that we all have to each other. For Mashpee peoples, a mentally, spiritually, emotionally and physically healthy community is achieved through “Wutahkeemôwuneyee N8hsweetamuk” which means “community” by “observing the law.”

(4) **Sacred Restorative Justice Principle:** Sacred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged. For Mashpee peoples, such justice is achieved through “Wuneetupânutamwee Nôpahtawee Pâyôhsukeey8uk,” which means “sacredness” “restored,” through “equity and justice”.

Section 2. SCOPE AND JURISDICTION

(a) **Appointment.** The Chief Judge may appoint Peacemakers where the civil or nonviolent, nonfelony criminal matter in dispute is within the jurisdiction of the District Court according to Chapter 1 of this Ordinance. ~~Peacemaking shall not be allowed in criminal matters.~~

(b) **Power to Compel.** The Peacemaker Court does not have the power to compel persons within the jurisdiction of the Mashpee Wampanoag community to appear and participate in Peacemaker Court proceedings nor to compel the attendance of parties. Peacemaking is wholly voluntary.

(c) **Attorney Representation.** The Peacemakers shall ask the parties to voluntarily participate, knowingly and willingly, in Peacemaking without the representation of an attorney.

(d) **Provision of Services.** As to matters within the jurisdiction of the District Court, Peacemakers shall not mediate conflicts or provide peacemaking services to entities other than the Mashpee Wampanoag Tribal Courts.

(e) **Peacemaking Cases.** Any civil or nonviolent, nonfelony criminal matter which involves personal, community or economic relationships, ~~if not otherwise prohibited by law~~, may be made the subject of peacemaking. Whether a matter is made the subject of peacemaking depends upon the mutual agreement of the parties to the dispute. Such matters include, but are not limited to:

(1) Family and other relationships, including marital relationships, intimate relationships, parent-child relationships, etc.; and

(2) Community relations, including disputes between neighbors, nuisances, trespass, disorderly conduct, breaches of the peace, etc.; and

(3) Consumer relations, including personal debts, personal contracts, etc.; and

(4) Individual land disputes, including land use, nuisance etc.; and

(5) Any other matter, except a violent, felony criminal matter, which the parties may agree to make the subject of peacemaking.

(f) **Appeals.** Appointed Peacemakers shall not have authority to hear any appeal. An agreement reached by the parties shall be a final decision without appeal.

Section 3. PEACEMAKERS

(a) **Qualifications.** To be considered a Peacemaker, a person shall meet the following minimum qualifications:

(1) Be an individual who has the respect of the Mashpee Wampanoag Tribal community, the ability to work with Tribal members, the reputation for integrity, honesty, and morality, and the ability to solve problems; and

(2) Be at least 25 years of age; and

(3) Be free of any conviction of a felony or a crime of moral turpitude; and

(4) Not be a member of the Tribal Council or a Tribal Judge; and

(5) Have a high school diploma or its equivalent and be proficient in reading, writing and speaking the English language.

(b) Appointment.

(1) The Elders Judiciary Committee shall select and certify the names of individuals as Peacemakers. The individuals certified by the Elders Judiciary Committee must agree to serve under the direction and supervision of the Chief Judge. The Tribal Council will consider such certified individuals as recommended by the Elders Judiciary Committee and will appoint such individuals in its discretion to the Roll of Peacemakers. The Court Clerk shall maintain such roll and Peacemakers shall be selected only from that roll to serve in any given case.

(2) If the Tribal Council fails to appoint Peacemakers, the Chief Judge may appoint a person to the Roll of Peacemaker from among persons known by him or her to be qualified.

(c) Oath of Office. Before assuming office, each Peacemaker shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all cases coming before him or her with integrity and fairness, without regard to the parties before him or her. The oath will be administered by the Elders Judiciary Committee as soon after appointment as may be practical.

(ed) Compensation. Peacemakers shall receive reasonable compensation for their services from the Tribe as fixed from time to time by the Tribal Council. The compensation to be received by all Peacemakers shall be determined by the Tribal Council with input from the Elders Judiciary Committee. Peacemakers shall not be entitled to participate in any Tribal employee bonus compensation plan merely by virtue of their Peacemaking position.

(de) Immunities, Powers and Duties.

(1) Peacemakers appearing on the Roll of Peacemakers shall have the same immunities as Tribal Court judges.

(2) Peacemakers shall have the power and duties ~~to~~:

(A) To mMediate conflicts among persons involved in the peacemaking process.

(B) To uUse Tribal religious and traditional forms of mediation and community conflict resolution.

(C) To instruct or counsel individuals on the traditions, tribal teachings or values relevant to their conflict or conduct.

(D) To encourage persons involved in a conflict, affected by it, or in any way connected with it, to meet to discuss the conflict being worked on and to participate in all necessary peacemaking efforts, provided that persons may not be coerced or intimidated into participating.

(E) ~~To u~~Use any reasonable means, in accordance with the Peacemaker Guiding Principles as stated in this Ordinance, to obtain the peaceful, cooperative and voluntary resolution of a conflict subject to peacemaking. No force, violence or violation of individual rights will be permitted.

(F) Where the parties involved accept or practice a given religious belief, discipline or teaching, the accepted methods and teaching of that religious way may be used.

Section 4. PEACEMAKING PROCEDURE

(a) Request for Peacemaking.

(1) Prior to filing a civil matter, an individual, or if a minor, the minor's parent or guardian, may request to submit a matter to the Peacemaker Court by filing a written request with the Court Clerk ~~or Court Administrator~~. The request may be informal and hand-written so long as the request gives the Clerk the following information:

(~~a~~A) The name and address of the person who requests the use of peacemaking; and

(~~b~~B) The name of the other person(s) involved in the conflict, and pertinent mailing addresses and places of residence if known; and

(~~e~~C) A short statement of the problem involved; and

(~~d~~D) The names and addresses of each person who should be contacted by the Clerk to be involved in peacemaking.

(2) Provided the matter is eligible for peacemaking, the Court Clerk shall immediately contact by reasonable, verifiable means the other party or parties involved to notify them that a request for peacemaking without filing a lawsuit to resolve a conflict has been filed. The contacted party or parties shall have five (5) working days from the date of notification to provide an answer to the Court Clerk of their response to the request to participate in the peacemaking process. The response must be in writing and delivered to the Court Clerk's office.

(3) Any person involved in a conflict which forms the basis of a request for such peacemaking may decline to participate in the process. A non-response to the notification shall be deemed a declaration to participate in the process. Thereafter, the Court Clerk shall notify the requesting party of the declination by the other party.

(4) If the contacted person agrees to participate, the ~~Elders Judiciary Committee Chief Judge~~ shall immediately begin the process of peacemaking by appointing two peacemakers, one male and one female, to convene a Peacemaker court. The parties to any case may, by mutual agreement, have a specified individual or individuals from the

Roll of Peacemakers serve as one, or both, of the two Peacemakers for the resolution of their conflict. If they only agree on one, then the Chief Judge shall appoint the other.

(b) District Court Transfer.

(1) Where a civil or nonviolent, nonfelony criminal matter has commenced and a proceeding is pending, any of the parties, or, if the party is a minor, then the minor's parent or guardian, may request the District Court Judge to submit the matter to the Peacemaking, provided the ~~civil~~ matter is eligible for peacemaking.

(2) If the opposing party objects to or declines to participate in Peacemaking, the matter shall continue to be heard and prosecuted in the District Court.

(3) Only parties to the proceeding can request or prevent transfer of the case to a Peacemaker Court.

(4) If the case is transferred to the Peacemaker Court, the District Court Judge shall notify the designated members of the Office of the Elders Judiciary Committee Chief Judge who shall immediately begin the process of peacemaking by appointing two peacemakers, one male and one female, to convene a peacemaker court. The parties to any case may, by mutual agreement, have a specified individual or individuals from the Roll of Peacemakers serve as one, or both, of the two Peacemakers for the resolution of their conflict. If they only agree on one, then the designated members of the Office of the Elders Judiciary Committee Chief Judge shall appoint the other.

(c) Peacemaker Disqualification and Removal.

(1) A Peacemaker shall be subject to disqualification and removed from the Roll of Peacemakers for bias, for prejudice, or for two unexcused absences to a peacemaking session. Peacemakers cannot be absent without excuse for a Peacemaking session with the parties. If this happens, the Peacemaker who is absent, as well as his or her partner, must report such absence to the designated members of the Office of the Elders Judiciary Committee Chief Judge or to the District Court Judge if the case has been transferred from the District Court, who shall determine whether such absence is excusable.

(2) A Peacemaker shall be subject to disqualification and removed from the Roll of Peacemakers for breach of any confidentiality, refusal to submit to a drug test or failure of a drug test, conviction of a felony or crime of moral turpitude in state or federal court or conviction in Tribal Court for any offense which has resulted in the imposition of a jail sentence.

(3) A Peacemaker shall be subject to disqualification from a given matter for personal interest and conflict of interest, but shall not be removed from the Roll of Peacemakers.

(4) A party requesting disqualification of a Peacemaker shall first request the Peacemaker to recuse him or herself from the proceedings, and shall state the reason in

writing for requesting recusal. If the matter is not resolved or the Peacemaker refuses to recuse, the party may petition the designated members of the Office of the Elders Judiciary Committee ~~Chief Judge~~ or District Court Judge, if the case has been transferred from the District Court, by filing a request for disqualification and removal where appropriate, stating the reason(s) why disqualification is requested.

(5) The ~~Chief Judge~~ designated members of the Office of the Elders Judiciary Committee or District Court Judge, if the case has been transferred from the District Court, shall determine whether to grant the request. If the request is granted, a substitute Peacemaker shall be appointed by the designated members of the Office of the Elders Judiciary Committee ~~Judge~~. The Chief Judge shall, with the recommendation and approval of the designated members of the Office of the Elders Judiciary Committee, instruct the Court Clerk to remove a peacemaker from the Roll of Peacemakers where appropriate.

(d) Requests during Peacemaking.

(1) Any party may file a request with the designated members of the Office of the Elders Judiciary Committee ~~Chief Judge~~ or District Court Judge, if the case has been transferred from the District Court, to immediately terminate peacemaking.

(2) Any participant may file a request with the designated members of the Office of the Elders Judiciary Committee ~~Chief Judge~~ or District Court Judge, if the case has been transferred from the District Court, to be excused from peacemaking.

(e) Notice to Begin Proceedings. Each Peacemaker Court convened shall be presided over by two Peacemakers, one male and one female. Notice of the appointment of a Peacemaker shall be provided by the Court Clerk, who shall send copies of the request and order to the Peacemaker by first class mail or email and notify the Peacemaker by telephone. The Peacemaker shall notify the Court Clerk by telephone or in writing of

(1) Any inability to serve in the matter; or

(2) Acceptance of the appointment.

If the Peacemaker does not accept the appointment within five (5) working days from receipt of such notice, another Peacemaker may be appointed. If notice of inability to serve is given, then a new appointment will be made. Upon acceptance of the appointment, each Peacemaker will contact the other appointed Peacemaker. They will contact the parties to the conflict and any other persons involved and make other necessary arrangements to conduct peacemaking sessions.

(fg) Confidentiality and Privilege. Communications made during Peacemaking shall be treated as confidential by all parties and participants. Such communications shall be privileged as settlement negotiations and may not be admitted to the District Court as evidence unless otherwise agreed to in writing by the parties, or as otherwise required or allowed by Tribal law,

including this Ordinance. This privilege will not apply to communications originally made for purposes other than Peacemaking, or made before Peacemaking begins.

(hg) Peacemaking Session. The Peacemakers should open with introductions of the parties and state the standards of decorum which will govern the sessions. The session should then follow the steps below as reasonably possible:

- (1) The Peacemakers may allow an opening traditional prayer and ceremony such as burning ~~sage~~ ~~cedar~~ or smudging, or other similar practice. The parties will not be sworn in, but will agree to tell the truth to reach a mutual resolution of the conflict. Evidence law will not be applicable and the parties may submit any proof they have such as receipts, contracts, photos, and sworn statements of witnesses.
- (2) The Peacemakers will explain the risk that given that peacemaking is a voluntary undertaking one of the parties may later request to terminate peacemaking, for whatever reason, or a participant may later request to be excused from proceeding, for whatever reason, and it is important that each party knowingly and voluntarily acknowledge such risks before proceeding.
- (3) Each party should be permitted to make opening remarks which should include his or her statement of the facts that have given rise to the conflict, and what he or she wants as a remedy. The Peacemakers shall require each party to submit a written statement of facts prior to the initial hearing and may impose a time limit on opening remarks.
- (4) The Peacemakers should make certain that the participants understand the exact nature of the controversy and attempt to get the parties to agree upon the facts, and the desired remedy. The Peacemakers accomplish this by asking questions to clarify points of discussion. To help resolve issues, the Peacemakers should ask questions to determine the nature and cause of the conflict. If they know what the conflict is and what the cause is, then, they can choose a plan of action, or choose possibilities to resolve the conflict.
- (5) Once the Peacemakers are satisfied that the nature of the conflict and desired remedy have been adequately stated, they shall allow discussion of the subject matter. At this point, the Peacemakers may allow other participants to join in the discussion while keeping in mind the standards of decorum.
- (6) During the discussions, the Peacemakers shall ensure that the principal parties are permitted full opportunity to address comments presented by the other party or by other participants. The Peacemakers or the parties may suggest the involvement of other participants to assist the parties with peacemaking, their agreement, or carrying out the agreement. Any necessary resource or service provider may be called upon to voluntarily assist, including social service personnel, mental health professionals, traditional healers and leaders, public or private service agencies, or any other person or program with the resources, expertise and interest to assist. No person may be forced to accept intervention or services against his or her will.

(7) Discussions will continue until the parties have had a full opportunity to speak on the subject matter.

(8) Once the discussions are completed, the Peacemakers shall then direct the discussions toward a resolution and allow the discussion of a remedy in the same manner as described above.

(9) Once the discussions on the conflict and remedy have been completed, the Peacemaker shall then direct the discussion toward a specific resolution, allowing full opportunity for discussion and input.

(10) Should the parties reach an agreement, the Peacemakers shall provide a final summary of such agreement and immediately reduce it to writing. The written agreement should be acknowledged by each party signing the written agreement and each party shall receive a copy of the signed agreement.

Where it appears that the Peacemaking session may not be concluded in one setting or where it appears that follow up discussions are necessary, the Peacemakers may continue with the session until such time as the matter is concluded. The Peacemakers shall notify the Court Clerk of such continuances. At the conclusion of the peacemaking or at such time as the Peacemakers find there can be no resolution of the matter, the Peacemakers shall report the results of their efforts to the District Court if the matter was referred by the District Court, or to the designated members of the Office of the Elders Judiciary Committee ~~Chief Judge~~. The reports may be informal but must be reduced to writing by the Peacemaker. This written record shall be maintained in the files of the Court Clerk.

CHAPTER 4: [WELLNESS COURT – RESERVED]

CHAPTER 54. ELDERS JUDICIARY COMMITTEE

Section 1. ESTABLISHMENT OF ELDERS JUDICIARY COMMITTEE AS A PART OF AND AS AN OFFICE OF THE TRIBAL JUDICIARY

The Tribe establishes permanently the Elders Judiciary Committee as a part of and as an office of the Tribal Judiciary in order to bring stability to the Tribal Judiciary system to ensure that the balance of powers exercised by the Tribal Judiciary remains relevant with the Mashpee Wampanoag Tribal culture, customs and traditions. The Elders Judiciary Committee is recognized as a long-standing institution of the Tribe, now forever memorialized in time, and charged with fostering and achieving the Tribe's vision, mission and goals for the Mashpee Tribal Courts, and forever sanctioned by the guardianship of the Elders Judiciary Committee of the Tribe.

Section 2. DUTIES OF ELDERS JUDICIARY COMMITTEE

The duties of the Elders Judiciary Committee as set forth in this Ordinance, other than those in this Chapter 45, are hereby re-affirmed and nothing contained herein shall impair those duties or

the implementation thereof. In addition, the Elders Judiciary Committee shall have the following duties:

(a) To act as a liaison for the Tribal Council between the Tribal Judiciary and Tribal members, the public, and the Tribal Council.

(b) To ensure t~~There shall be is~~ a review and evaluation of the Tribal ~~Court~~ judicial system which shall be conducted every year. At a minimum, at the end of each calendar year, the Elders Judiciary Committee shall conduct judicial evaluations of each judge in the Tribal judicial system by surveying the Tribal Bar on such issues as fairness, sensitivity to diversity and bias, legal knowledge of law of the Mashpee Wampanoag Tribe, legal knowledge of court procedures, integrity, diligence, impartiality, judicial temperament, communication skills, efficient administration of his or her court, respect for the rule of law, independence from political and institutional influences, and professional conduct. The results of such survey shall be reported to the Tribal Council no later than ninety (90) days following the end of the calendar year.

~~Such evaluation shall be conducted National Association of Tribal Court Judges or other similar agency as recommended by the Judicial Committee and the Chief Judge (in consultation with the other judges). The Tribal Council shall approve the reviewing entity that is best suited to perform the review. In addition to their review any complaints received by the Judicial Committee and to receive the comments and recommendation of the Judicial Committee. The reviewers shall submit a report to the Judicial Committee and the Tribal Council along with recommendations and comments, The Judicial Committee may submit a response to the review, to the Tribal Council.~~

(c) To seek funding on behalf of the Tribe for the benefit of the Tribal Judiciary and to administer awarded funding on behalf of the Tribal Council.

(d) All documents on record with the Tribal Court, with exceptions specifically by the Tribal Court, are public documents and may be obtained by any Tribal Member pursuant to Administrative Order #10-Policy Regarding Access to Tribal Court Proceedings. Tribal Members who are unable to access Tribal Court in person may request copies of Tribal Court public documents from the Elders Judiciary Committee who pass those requests on to the ~~Tribal~~ Court Clerk. The Elders Judiciary~~y~~ Committee shall keep written record of all such requests and shall include in the report the date of the request and the date the materials are supplies. In the alternative, the Elders Judiciary~~y~~ Committee may direct all such inquiries for public documents to the ~~Tribal~~ Court Clerk.

(e) To engage in Tribal judiciary program development and implementation in order to enhance new development and expand concepts with foresight and vision in a compassionate and culturally sensitive way that includes community outreach with stakeholders, including the Tribal Council.

(f) To work on a continuous basis on behalf of Tribal Council on system development, including the system to catalogue and publish court opinions, and improvement for the Tribal Judiciary.

(g) To serve as the sole and only point of contact, with the cooperation of the Judges ~~and~~, Court Administrator ~~and~~ Court Clerk, to develop and maintain a website, online social networking connections such as Facebook and Twitter, blogs, and other such means that will enhance communication and dissemination of information to and from the Tribal Judiciary to the Tribal members and the general public. Such development and maintenance shall include, but not be limited to, the approval of all changes, additions or deletions, of any nature, the responsibility to engage website engineer contractors to recommend to Tribal Council for its approval, to determine the content for each means of communication and to develop policy related thereto.

(h) To provide oversight of the Tribal Judiciary on behalf of the Tribal Council and to report thereon from time to time to the Tribal Council.

(i) To serve in the capacity as an Elders Panel as required by Tribal law or policy.

(j) To carry out such other duties as required by Tribal law or policy.

Section 3. COMPENSATION OF ELDERS JUDICIARY COMMITTEE

Members of the Elders Judiciary Committee shall receive reasonable compensation for their services from the Tribe as fixed from time to time by the Tribal Council, but no less than Fifty dollars (\$50) per Member per meeting, hearing, or other activity as required by Tribal law. The compensation to be received shall be determined by the Tribal Council with input from the Elders Judiciary Committee. Committee members shall not be entitled to participate in any Tribal employee bonus compensation plan merely by virtue of their Committee position.

Legislative history

Enacted October 7, 2009

Amended June 2, 2010

Amended May 22, 2013

Amended June __, 2018

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 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, Amended and Restated Mashpee Wampanoag Tribal Judiciary, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, as amended.

DATED this _____ day of _____, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council