

2018-ORD-000
MASHPEE WAMPANOAG TRIBAL
LAW AND ORDER ORDINANCE

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CHAPTER 1. GENERAL PROVISIONS

From time immemorial, Wôpanâak (Wampanoag) land has been an important aspect to the meenawôhtam8ôk (culture) and way of life for the Mashpee Wampanoag. The Mashpee have maintained a special relationship and spiritual connection with kutahkeemun (our land), Wutahkeemôwun (our community), and all that encompasses the two.

We name ourselves after the land we live with. Because not only are we breathing in, we are also drinking from the water that is flavored by that very land. Whatever is deposited in the soil is in that water is in us. So we are all one

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thing, and we name ourselves after the place that is our nurturing. That sustains our life.

The purpose of this Tribal Law and Order Ordinance is to care for the Mashpee kutahkeemun (land) and wutahkeemôwuneayee (community) in weechetupôwut8ôk (harmony) with Manut (the Creator) and Spirit of the People of the First Light. Weechetupôwut8ôk means continually having a mind that is together with someone else's which is vital to be able to maintain stability within the Tribe. In addition, Weech8humôkane N8hswehtamuk (Community Health Principle) helps address the connection between the people and the land. The Principle states that 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 when this Principle is reached.

Section 1.1. 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 the governing body of the Tribe is the Mashpee Wampanoag Tribal Council pursuant thereto.
- (b) 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.
- (c) Article VI, § 2.A of the Constitution provides that the Tribal Council is empowered to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.
- (d) Article VI, § 2.L. of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members.
- (e) Article V, § 3 of the Constitution provides that the Tribal Judiciary is vested with all the Tribe's judicial powers.
- (f) The Tribal Council respects the judicial authority of the Tribal Court and the separate and equal status of the two branches of Tribal government. Thus, Tribal Council deems it necessary to ensure that it is understood that pending judicial cases in Tribal Court shall be handled in the judicial forum and not by Tribal Council.
- (g) The Tribe intends to exercise criminal jurisdiction over its Tribal citizens and others on and outside of Tribal lands to the fullest extent recognized by federal law, and toward that end,

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will adopt appropriate criminal codes and establish institutions to support the exercise thereof.

- (h) The Tribal Council deems it in the best interest of the Tribe and its Tribal members to set forth criminal offenses to insure the health, peace, morals and general welfare of the Tribal community.
- (i) The offenses as listed in this Ordinance shall be construed in accordance with the Tribe's customs and traditions with the goal of restorative justice, preventing the commission of offenses, penalties that are proportionate to the seriousness of an offense, the prevention of arbitrary sentencing, and to promote the rehabilitation and correction of persons that commit offenses under this Ordinance.
- (j) The Mashpee Wampanoag Tribal Court, as provided by the Constitution, is vested with the judicial powers to review all alleged violations of this Ordinance, develop Tribal Court rules and policies for the implementation of this Ordinance, and to sentence as deemed appropriate pursuant to this Ordinance.

Section 1.2. AUTHORITY AND PURPOSE

- (a) **Authority.** The authority for this Ordinance is found in Article V, § 1, Article VI, § 2.A and § 2.L., and Article V, § 3 of the Constitution.
- (b) **Purpose.** The Tribal Council is herein utilizing its powers vested by the Constitution, on behalf of a sovereign nation, for the following purposes:
 - (1) to exercise Tribal self-determination by issuing a clear codification of the Tribe's expectations for individuals that enter onto Tribal Lands;
 - (2) to maintain the safety and peace within and outside of Tribal Lands;
 - (3) to outline civil infractions that will be enforced by Tribal Police against individuals that come onto Tribal Lands and fall under the jurisdiction of the Tribal Court; and
 - (4) to set forth criminal offenses for persons subject to the jurisdiction of the Tribe.

Section 1.3. DEFINITIONS

- (a) "Alcohol" or "Alcoholic beverage" means any liquid intended for human consumption as a beverage and containing one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit.
- (b) "All-Terrain Vehicle" means any motor vehicle designed or modified for use over unimproved terrain if used for recreation or pleasure off a public way, specifically including, but not limited to, four (4) wheelers, three (3) wheelers, and dirt bikes.

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- (c) “Bodily injury” means substantial impairment of the physical condition including any burn, fracture of bone, subdural hematoma, injury to any internal organ, any injury which occurs as the result of repeated harm to any bodily function or organ including human skin or any physical condition which substantially imperils a child’s health or welfare.
- (d) “Camp” means to set up, or to remain in or at a campsite, for the purpose of establishing or maintaining a temporary place to live.
- (e) “Child” means any person fourteen (14) years of age or younger.
- (f) “Commercial Signage” means the use of signs for commercial gain.
- (g) “Constitution” means 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 amendment thereto that may be enacted from time to time.
- (h) “Deadly force” means force that is likely to cause either serious bodily injury or death to another person.
- (i) “Destructive device” is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive, acid, or poisonous or inflammable substance, chemical or compound, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or strike with any of its parts, unexpectedly when moved, handled, or opened, or after the passage of time or under a condition or in a manner calculated to endanger health, life, limb, or property.
- (j) “Election Committee” means the Mashpee Wampanoag Tribal Election Committee established in Article IV, Section 4 of the Constitution of the Mashpee Wampanoag Tribe with the responsibility of conducting elections in compliance with the Constitution and the 2016-ORD-014, Amended and Restated Mashpee Wampanoag Tribe Election Ordinance
- (k) “Electronic communication” means the following, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.
- (l) “Entice” means to lure, induce, persuade, tempt, incite, solicit, coax or invite.

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- (m) “Fireworks” means compositions, substances or other articles and also includes blank cartridges or toy cannons in which explosives are used, the type of toy balloon which requires fire underneath to propel the same, firecrackers, cherry bombs, silver salutes, M80's, torpedoes, sky-rockets, Roman candles, sparklers, rockets, wheels, colored fires, fountains, mines, serpents, or other fireworks of like construction or any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. The term “fireworks” does not include any instrument needed to carry out cultural, sacred or traditional ceremonies or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing twenty-five hundredths grains or less of explosive compound are used, if they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, or toy pistol paper caps or plastic caps which contain less than twenty hundredths grains of explosive mixture.
- (n) “Garage Sale” means the sale or offering for sale of new, used or secondhand items of personal property at any one (1) residential premises at any one (1) time. Includes all sales in residential areas entitled “garage sale,” “yard sale,” “tag sale,” “porch sale,” “lawn sale,” “attic sale,” “basement sale,” “rummage sale,” “flea market sale” or any similar casual sale of tangible personal property.
- (o) “Illegal drugs” means drugs prohibited by Mashpee Tribal, federal or Massachusetts state law.
- (p) “Indecent exposure” means exposing one’s genitals for the purpose of arousing or gratifying sexual desire of him or herself or at any person in a public or private place to persons present or within observation.
- (q) “Injunction” means a Tribal Court order that restrains a person from beginning or continuing an action threatening or invading the legal right of another, or that compels a person to carry out a certain lawful act.
- (r) “Loiter” means to stand or wait around idly or without apparent purpose.
- (s) “Mashpee Wampanoag Tribe” or “Tribe” or “Tribal” refers to the Mashpee Wampanoag Tribe.
- (t) “Minor” means any person under eighteen (18) or younger.
- (u) “Non-Tribal member Indians” means Indians who are members of another federally recognized Indian tribe and not duly enrolled members of the Mashpee Wampanoag Tribe.

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- (v) “nutahkeemunônash” or “Tribal Lands” or “Reservation” means 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.
- (w) “Offender” means a person charged with and/or convicted of an offense under this Ordinance.
- (x) “Offense” means an act that is a violation of Tribal criminal or civil law depending on Chapter where offense is found herein.
- (y) “Ordinance” means this 2018-ORD-000 Mashpee Wampanoag Tribal Law and Order Ordinance.
- (z) “pâshkuhôk” (“Firearm”) means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include any antique firearm or a firearm in permanently inoperable condition which is kept as a curio or museum piece or for educational purposes.
- (aa) “Person in Charge” means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship.
- (bb) “Premises” means any building and/or real property, whether privately or publicly owned.
- (cc) “Public money” means all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.
- (dd) “Public place” means any place, structure, or building on Tribal lands that the public has access to for a lawful purpose. It includes the front, back, parking lot, and other public areas around the Mashpee Wampanoag government building, Tribal Museum, Tribal Cemetery and Church, Tribal Community Centers, the public areas within Tribal housing, and any grounds where the Tribe hosts a public event.
- (ee) “Serious bodily injury” means bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.
- (ff) “Sexual conduct” means actual or simulated:

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- (1) sexual intercourse, whether between persons of the same or opposite sex;
 - (2) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
 - (3) bestiality;
 - (4) masturbation;
 - (5) sadomasochistic abuse;
 - (6) lewd exhibition of the genitals, breasts, public or rectal area of any person; or
 - (7) defecation or urination for the purpose of the sexual stimulation of the viewer.
- (gg) “Sex offender” means a person who has been convicted of a sexual offense in any federal, state, or tribal forum.
- (hh) “Solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to commit an offense.
- (ii) “Strangulation” means the intentional interference of the normal breathing or circulation of blood by applying substantial pressure on the throat or neck of another.
- (jj) “Subversive organization” means an organization that advocates for the overthrow of an incumbent government by force and violence.
- (kk) “Suffocation” means the intentional interference of the normal breathing or circulation of blood by applying substantial pressure on the throat or neck of another.
- (ll) “Tribal Council” means the Mashpee Wampanoag Tribal Council.
- (mm) “Tribal Court” or “Court” means those Tribal Courts as established under Mashpee Tribal law pursuant to the Constitution and 2008-ORD-001, Mashpee Wampanoag Tribal Judiciary, as amended.
- (nn) “Tribal Member” means a natural person who is duly enrolled in the Tribe.

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- (oo) “Tribal Police Department” or “Police Department” means the Mashpee Wampanoag Tribal Police Department as established pursuant to Chapter 3 of the 2016-ORD-004 Mashpee Wampanoag Tribal Homeland Security Ordinance as amended, and any person who by his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority on Tribal lands.
- (pp) “Tribal Police Officer” means an Officer of the Police Department as established in Chapter 3 of the 2016-ORD-004 Mashpee Wampanoag Tribal Homeland Security Ordinance, as amended.
- (qq) “Tribal Public Official” means one who holds or is invested with a Mashpee Wampanoag Tribal public office; a person elected or appointed to carry out some portion of the Mashpee Wampanoag Tribal government’s sovereign powers.
- (rr) “Veteran” shall mean a person who served in the active United States military, naval, or air service and who was discharged or released under conditions other than dishonorable.
- (ss) “Willfully and knowingly” means a deliberate act, when an actor intends to do it and knows the nature of the act.
- (tt) “wutameehpunâôk ut wutahkeemôwuneât” or “Public Nuisance” means anything that causes disturbance, hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance.

Section 1.4. CIVIL ACTIONS NOT AFFECTED. This Ordinance containing a list of criminal and civil offenses throughout does not bar, impede, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be received. Civil injuries are not merged into the criminal offenses.

Section 1.5. EXCLUSIVENESS OF OFFENSES. No conduct constitutes an offense unless so declared by this Ordinance or other Tribal law. The elements of any offense as contained in this Ordinance are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the Tribal Court Judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil contempt or decree.

Section 1.6. 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

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of any of the Tribe’s enterprises, agencies, departments, officers, agents, appointees or employees.

Section 1.7. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed. The Mashpee Wampanoag Tribal *2015-ORD-008, Criminal Offenses Ordinance* is hereby repealed in its entirety.

Section 1.8. SEVERABILITY. If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 1.9. EFFECTIVE DATE. This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

CHAPTER 2. CRIMINAL OFFENSES

Section 2.1. TRIBAL COURT JURISDICTION

(a) The Tribe’s criminal jurisdiction applies within the Mashpee Wampanoag Tribal Reservation and all other lands held in trust by the United States for the benefit of the Mashpee Wampanoag Tribe and such other lands under the control of the Tribe defined as “Indian Country” pursuant to 18 U.S.C. § 1151, provided, that the Tribe’s criminal jurisdiction apply to all Tribal members and Native American residents of the Tribe regardless of where the violation occurs, if such violation has any actual or intended effect upon the political integrity or political or economic security of the Tribe.

(b) The Tribe’s criminal jurisdiction applies to non-Native Americans to the extent not inconsistent with federal law. The non-Native American, in such cases, shall have all the procedural rights of a criminal defendant, and such cases shall be tried according to the Constitution, this Ordinance, and under the Mashpee Wampanoag Tribal Court’s Rules of Criminal Procedure, Rules of Evidence, and other Tribal Court rules developed and approved by the Tribal Court as may be amended.

(c) The Tribal Council hereby recognizes and ratifies all Rules of Criminal Procedure, Rules of Civil Procedure, Rules of Evidence, Appellate Rules and other rules that the Tribal Court has developed and approved, as may be amended from time-to-time.

Section 2.2 GENERAL PROVISIONS

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(a) **Violation of an approved Tribal ordinance.** Any person who violates this Ordinance by committing a criminal offense, which is designed to preserve the peace and welfare of the Mashpee Wampanoag Tribe that has been duly executed by the Tribal Council, may be deemed guilty of a crime and upon conviction may be sentenced as provided in this Ordinance.

(b) **Limitation of filing complaint.** No criminal complaint may be filed under this Ordinance unless the alleged offense shall have been committed within six (6) years prior to the date of the complaint. As an exception to the six (6) year limitation, all offenses that fall under the definition of “Major Crime” pursuant to 18 U.S.C. § 1153 may be filed at anytime after the purported commission of the crime with no limitation.

(c) **Foreign conviction or acquittal.** If an act or omission constitutes a criminal offense under both the ordinances of the Mashpee Wampanoag Tribe and the laws of another jurisdiction, the act or omission will not bar prosecution for the offense in Mashpee Wampanoag Tribal Court.

Section 2.3. DEFENSES

(a) **Burden of proof.** A defendant has a burden to prove an affirmative defense by a preponderance of the evidence.

(b) **Authorized use of force.** Reasonable force may be used upon or toward the person of another without his or her consent when any of the following circumstances exist or the individual reasonably believes them to exist:

(1) When used by a MWT Police Officer or one assisting him under his direction:

- (A) In effecting a lawful arrest;
- (B) In the execution of legal process;
- (C) In enforcing an order of the Court;
- (D) In executing any other duty imposed upon him by law; or

(2) In defense of property or person. It is a defense that physical force or threatened physical force is not a crime for the following lawful purposes:

- (A) In preventing or interrupting an intrusion upon the lawful possession of property; or
- (B) In self-defense or in destate fense of another against the immediate use of unlawful force to his or her person or property, or the person or property of another.

The use of force is justifiable only to the degree of force that IS reasonably necessary to accomplish the lawful purpose. The use of deadly force is not justifiable under this section unless the defendant believes that such force is necessary to protect himself or another against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat.

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If evidence of justification for use of force is presented by the defendant, the Tribe must prove beyond a reasonable doubt that the defendant did not act with justification for use of force.

(c) Consent.

- (1) The complainant's or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense.
- (2) Consent is ineffective if:
 - (A) it is given by a person who is not legally authorized to approve of the conduct constituting an offense;
 - (B) it is given by a person who by reason of youth, mental impairment, or mental incapacitation is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged;
 - (C) it is induced by force, duress, or deception; or
 - (D) it is against public policy to permit the conduct or the resulting harm, even though consent was given.

(d) **Duress.** A person is not guilty of an offense by reason of conduct which he or she performs under the threat of the imminent infliction of death or serious bodily harm if he or she reasonably believes that death or serious bodily harm will be inflicted upon him or her if he or she does not perform such conduct. Duress is not a defense to the killing of another human being.

(e) **Double Jeopardy.** A person may not be prosecuted for one or more offenses arising out of a single criminal episode or the same facts as a previous and original prosecution in Tribal Court.

(f) **Entrapment.** A person is not guilty of an offense if his or her conduct is incited or induced by a Tribal Public Official or his or her agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a Tribal Public Official or his or her agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

(g) Ignorance or mistake of fact.

- (1) The law provides that the actual state of mind which exists itself constitutes a defense when intent is an element of the offense. However, state of mind may be inferred from the acts of the defendant.
- (2) Although ignorance or mistake of fact will otherwise afford a defense to the offense charge, the defense is not available if the defendant would be guilty of another offense if the situation had been as he/she supposed, in which case the punishment available upon conviction shall not exceed that prescribed for the other offense.

(h) **Intoxication as a defense.** An act committed while in a state of voluntary intoxication is not a defense. However, when a particular intent or other state of mind is a necessary element to

constitute a particular offense, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

(i) Insanity.

- (1) The Tribal Court, upon its own motion or by either of the parties, may make a determination as to whether or not the Defendant was mentally capable to formulate the necessary criminal intent at the time the crime was committed.
- (2) The Court shall require the evaluation of such Defendant by a licensed psychologist or psychiatrist prior to such a hearing to determine the Defendant's mental ability to commit the crime. If after the hearing, the Court feels that the Defendant was unable to formulate the required mental ability to commit the crime by clear and convincing evidence because of mental defect, illness or retardation, the Court may dismiss the case, find the Defendant guilty, guilty but mentally ill or not guilty.
- (3) If the Court dismisses the case, the Court may order the Defendant to be treated by health officials.

Section 2.4. SENTENCING

(a) Judgment. The verdict or judgment shall be rendered in open court. If a verdict of not guilty is rendered by either the Court or the jury, judgment shall be rendered immediately, and the defendant shall be immediately released from custody if applicable. If a verdict of guilty is rendered by either the Court or the jury, the Court shall so advise the defendant in open Court, set a date for sentencing, and enter a judgment of guilty.

(b) Available Penalties. Any convicted offender in the Mashpee Wampanoag Tribal Court of a criminal offense may be subject to a sentence of the judge's discretion based on an assessment of the factors enumerated at subsection (d). The sentence may include one or more of the following penalties:

- (1) Monetary penalties;
- (2) Community service;
- (3) Participation in an approved treatment program, including offender education or rehabilitation programs;
- (4) Placement in a residential reentry center;
- (5) A promise prohibiting the convicted offender from committing, attempting to commit, or threatening to commit specified acts;
- (6) Posting of a Peace Bond;
- (7) Home confinement/Electronic home monitoring;
- (8) Prohibition from owning or carrying a dangerous weapon;
- (9) Diversion, including referral to the Elders Judiciary Committee;
- (10) Suspension of Sentence;
- (11) Public Shaming;
- (12) Probation;
- (13) Term of imprisonment; and
- (14) Per capita garnishment, if applicable.

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(c) **meenawee nôpahtawee pâyôhsukeey8uk (“Traditional Restorative Justice”)**. In addition to, or in lieu of the penalties provided in subsection (b), the Court may rely on traditional approaches to restoring justice, the goal of which is to resolve criminal behavior by causing togetherness of the body and mind to come to a better place. The Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(d) **Sentencing Factors.** Before imposing a sentence the court shall take into consideration each of the following factors where applicable to ensure adherence to and protection of Weech8humôkaneë N8hsweehtamuk (Community Health Principle):

- (1) The circumstances surrounding the offense;
- (2) The convicted offender’s criminal and social history;
- (3) The safety of the community, victim, or the offender;
- (4) Statements of the victim(s);
- (5) The convicted offender’s family circumstances and network of support;
- (6) The convicted offender’s current and previous employment;
- (7) The ability of the convicted offender to pay a fine; and
- (8) Any other circumstances which will aid in imposing a just and fair sentence.

(e) **Presumption Against Imprisonment.** Imprisonment is considered an extraordinary measure and should be imposed only where the offender is found to have caused or intended to cause serious injury to a victim or victims. Before imposing a sentence involving a term of imprisonment, the hearing judge must include on the record the facts that justify a term of imprisonment in light of the following equally weighted factors:

- (1) The severity of the offense;
- (2) The convicted offender’s criminal history; and
- (3) Aggravating circumstances, such as excessive force or violence, the simultaneous commission of other crimes, or injury to the victim.

(f) **Classification of Offenses and Maximum Imprisonment, Probation and Fine Allowed.**

- (1) Criminal offenses under this Ordinance are classified as misdemeanors or felonies:
 - (A) Misdemeanors are punishable for no more than 12 months imprisonment and \$2,500.00 per offense.
 - (B) Felonies are punishable for no more than 12 months imprisonment and \$5,000.00 per offense.
- (2) The Tribal Court may impose a combination of the available penalties listed above. When imposing such penalties, the Tribal Court may not exceed the authorized penalties listed for the offense category.

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- (3) As provided under subsection 2(b), the Tribal Court Judge has the discretion to impose other available penalties, in addition to imprisonment, probation or fine.
- (4) The Tribal Court Judge also has the discretion to impose available penalties without imposing the penalties of imprisonment, probation or fines.

(g) **Indigency.** If, solely because of an inability to pay, as defined under the Tribal Court’s fee waiver eligibility guidelines, a convicted offender is unable to pay a money fine assessed under any applicable section, the Court may allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the convicted offender defaults on such payments, the Court may find him or her in contempt of court and imprison him or her accordingly.

Section 2.5. INCHOATE OFFENSES (ANTICIPATING A FURTHER CRIMINAL ACT)

(a) **Conspiracy.** It is unlawful for a person to agree with another to commit a criminal offense with the purpose that the offense be committed. No person may be convicted of conspiracy unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator. The offense of conspiracy shall be considered a misdemeanor or felony based on the underlying criminal offense conspired to commit.

(b) **Solicitation.** It is unlawful for a person to command or solicit another person to engage in conduct with the intent of causing another to engage in specific conduct constituting a crime or an attempt to commit a crime. The offense of solicitation shall be considered a misdemeanor or felony based on the underlying criminal offense commanded or solicited.

(c) **Attempt.** It is unlawful for a person to intentionally engage in conduct which constitutes a substantial step toward commission of a crime, but fails in its perpetration, or is intercepted or prevented in its perpetration. The offense of attempt shall be considered a misdemeanor or felony based on the underlying criminal offense attempted.

Section 2.6. OFFENSES AGAINST PROPERTY

(a) **Arson.** It is a felony offense for a person to knowingly, without legal justification or lawful authority to do or assist in, setting fire to, burn, or cause to be burned, or set explosion to, any property of another, including public property or any unit of government, with the intent to destroy or damage that property including, but not limited to, buildings, houses, or other structures.

(b) **meeshanânutamwee chukahtâôk (“Reckless or Negligent Burning”).** A person is guilty of the misdemeanor offense of meeshanânutamwee chukahtâô (“negligent burning”) if he or she:

- (1) Recklessly starts or causes a fire to be started, which endangers human life;
- (2) Damages property of another or the Tribe by reckless use of fire;

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- (3) Wantonly or recklessly, without lawful authority, set fire to any material, or by increasing a fire already set, causes injury to, or the destruction of, any growing or standing wood of another;
- (4) Places property of another or the Tribe in danger of damage or destruction by reckless use of fire; or
- (5) Having negligently started a fire and knows that said fire is spreading and will endanger lives or property of another or the Tribe, either fails to take reasonable measures to put out or control said fire or fails to give a prompt fire alarm.

(c) **Disable Fire Alarm.** It is a misdemeanor offense to, without lawful authority, during the burning of a building or other property, willfully and maliciously cut or remove a bell rope or a wire or conduit connected with a fire alarm signal system or injures or disables any fire alarm signal box or any part of such system in the vicinity of such building or property, or otherwise prevent an alarm being given, or cut, injure or destroy an engine, hose or other fire apparatus, in said vicinity, or otherwise willfully and maliciously prevent or obstruct the extinction of a fire.

(d) **machee peetutyâôk (“Breaking and Entering”).** It is a felony offense for a person to break and enter, or enter without breaking, with the intent to commit any crime inside, any dwelling house, office, store, warehouse, barn, factory, garage, or other building or structure, or any private apartment therein, or any boat, ship, or enclosed motor vehicle, whether occupied or unoccupied. In those instances where the Court finds that there was no intent to commit an additional crime or the intent was to commit a misdemeanor when entering, the Breaking and Entering offense shall be categorized as a misdemeanor.

(e) **Burglary.** It is a felony offense for a person to enter, with intent to commit any crime inside, any dwelling house, office, store, warehouse, barn, factory, garage, or other building or structure, or any private apartment therein, or any boat, ship, or enclosed motor vehicle, while in possession of a weapon.

(f) **Destruction of Property.** It is a misdemeanor offense for a person to negligently destroy or injure the personal property, dwelling house or building of another in any manner by any means. It is a felony offense if such destruction or injury is willful or malicious.

(g) **Deceptive business practices.** It is a misdemeanor offense for a person to knowingly and intentionally sell, offer, or deliver less than the represented quality or quantity of any commodity or service. It is unlawful for a person to knowingly and intentionally make a substantial false or misleading statement in any advertisement addressed to the community or the public or for the purpose of promoting the purchase or sale of property or services.

(h) **Defrauding creditors.**

- (1) It is a felony offense for a person to knowingly and intentionally destroy, remove, conceal, or transfer property subject to a security interest in order to avoid enforcement of that interest or block the administration of the property for the benefit of creditors.

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(2) It is a felony offense for a person to knowingly falsify any writing or record relating to the property; or knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(i) **Embezzlement.** It is a felony offense to convert property lawfully in one's possession to one's own property with intent to deprive the owner. Embezzlement shall also include the spending a minor's funds by parents or guardians for other than the purpose for which the funds were placed in the custody of the parents or guardians.

(j) **mô wusuhqahôk (“Forgery”).** It is a felony for a person to fraudulently alter, authenticate, issue, or transfer a writing of another or him/herself without appropriate authorization. Writing includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, birth certificates, marriage certificates, death certificates and other symbols of value, right, privilege, or identification.

(k) **pôhch8uhtyâôk (“Fraud”).** It is a felony for a person to knowingly or intentionally misrepresent, conceal a material fact, or recklessly misrepresent a material fact so as to induce another to act his or her own detriment. This includes, but is not limited to, the use of false weights or measures to obtain any money or property of another or to obtain the property of another by use of false or fraudulent misrepresentation or deception.

(l) **Fraudulent use of credit cards.** It is a felony offense to knowingly or intentionally use a credit card for the purpose of paying for property or services with knowledge that the card was stolen or the either issuer or the person to whom the card had been issued did not authorize use of the credit card.

(m) **Receiving stolen property.** It is a misdemeanor to knowingly receive any stolen property. The possession of any stolen property shall be evidence of guilty knowledge by the person having possession that the property was stolen, unless the person shows that it was acquired in the due course of trade and for adequate consideration.

(n) **Shoplifting.** It is a misdemeanor to intentionally take possession of any merchandise with the intention of not paying for it; conceal any merchandise with the intention of not paying for it; or alter the price tag of any merchandise.

(o) **kum8tumâôk (“Theft”).**

- (1) It is a misdemeanor offense for a person to commit kum8tumâôk (“theft”), which is:
 - (A) Knowingly remove or take another person's property without their permission with the intent of depriving the owner of the property permanently, or
 - (B) Purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property.
- (2) It is a felony offense for a person to commit kum8tumâôk (“theft”) where the offender threatens harm or utilizes a weapon.

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(p) **Criminal Trespass.** It is a misdemeanor offense to willfully enter the Tribe's Lands, without lawful authority.

(q) **cheekee muk8kunumwôtamôk (“Trespass with Force or Violence”).** It is a felony to knowingly or intentionally use force or violence in entering upon or detaining the lands, real property, or structures of any kind of the Tribe.

(r) **Unauthorized use of vehicles.** It is a misdemeanor for a person to knowingly or intentionally operate another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, without the consent of the owner.

(s) **Vandalism.** It is a misdemeanor to knowingly or intentionally injure, destroy, or obstruct the use of the property of another in any manner.

(q) **Fraud in Obtaining Public Assistance.** It is a criminal offense to undertake the following:

(1) Any person shall be guilty of a misdemeanor unless the total amount of the value of public assistance so obtained exceeds \$1,000.00, in which event such person shall be guilty of a felony, who by means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:

- (A) Any grant or payment of public assistance to which he is not entitled;
- (B) A larger amount of public assistance than that to which he is entitled; or
- (C) Payment of any forfeited grant of public assistance;

(2) Or any person who, with intent to defraud a Tribal department, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor unless the total amount of the value of public assistance so obtained exceeds \$1,000.00, in which event such person shall be guilty of a felony. In determining the amount of value of public assistance obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

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- (3) It shall be a fraudulent device within the meaning of subsection (q)(1) of this Ordinance section, and punishable as therein provided, for any person:
- (A) Knowingly to use, alter, or transfer food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law;
 - (B) Knowingly to possess food stamp coupons or authorizations to purchase food stamp coupons when he or she is not authorized by law to possess them;
 - (C) Knowingly to possess or redeem food stamp coupons or benefits when he or she is not authorized by law to possess or redeem them; or
 - (D) Knowingly to use or redeem food stamp coupons or benefits in any manner or for purposes not authorized by law.
- (4) Any person who obtains any payment of public assistance to which he or she is not entitled or in excess of that to which he or she is entitled shall be liable to the Tribe for the amount of such overpayment.
- (5) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he is entitled shall also be liable to the Tribe for the amount of such payment.
- (6) Any person who receives any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the Tribe for the amount of such overpayment.
- (7) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the Tribe. Any repayment required by this subsection may be waived by the Tribe, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the Tribe.
- (8) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual

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admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge. Any such agreement shall be filed in the criminal docket of the Tribal Court pursuant to a violation of this Ordinance with the Tribal Court clerk entering upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(9) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the Tribe from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(10) If the individual fails to comply with the terms of such consent agreement, the Tribe may proceed with a criminal prosecution.

(t) **Prohibited Auction Practices.** It is a misdemeanor for a person to:

- (1) sell or offer for sale at auction goods known by him or her to be stolen property;
- (2) sell or offer for sale at auction goods known by him or her to be owned by a minor;
- (3) advertise for sale or sell goods at auction falsely representing that said goods are, in whole or in part, bankrupt or insolvent stock or damaged goods saved from fire, or otherwise falsely represent or mislead any person as to their origin, history or condition;
- (4) sell, offer for sale or give away in connection with an auction, any goods as prize packages, gifts, premiums or bonus or otherwise as an inducement to purchase any other goods;
- (5) sell, offer for sale or dispose of goods at auction by chance or lot, or without first exhibiting to prospective bidders all such goods, including those in packages, bundles or containers, except as to auctions of unclaimed articles;

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(6) employ or knowingly allow, directly or indirectly, any person for the purpose of bidding up the price of any goods in competition with bona fide bidders or for the purpose of encouraging or enticing bona fide bidders to purchase, or for the purpose of stimulating competitive bidding or sales; or personally act in such capacity; or

(7) make or knowingly accept any false bid to buy or pretend to sell or buy goods.

(u) **Damage to Boundary Mark.** It is a misdemeanor offense for any person, except as approved by the Tribal government, to remove, obliterate or cover up any monument or mark designating a boundary line of the Reservation.

Section 2.7. CRIMINAL HARASSMENT AND HARASSMENT PROTECTION ORDERS

(a) **Harassment.**

(1) It is a misdemeanor offense to, without lawful authority, knowingly threaten:

- (A) to cause bodily injury immediately or in the future to the person threatened or to any other person;
- (B) to cause physical damage to the property of another person; or
- (C) to subject the person threatened or any other person to physical confinement or restraint; or
- (D) maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety;

(2) And, the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

(b) **Subsequent Harassment.** It is a felony offense to commit a subsequent harassment offense as the offense is defined in subsection (a) above.

(c) **Harassment Protection Order.**

(1) **Person Authorized to File Petition.** A petition for a protection Harassment Protection Order must be filed in the Tribal Court and may be filed by:

- (A) A person alleged to be a victim of harassment,

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- (B) a family member or household member of a minor or vulnerable adult alleged to be the victim of harassment on behalf of the minor or vulnerable adult; or
 - (C) a Tribal prosecuting attorney.
- (2) Petition for Protection Order. The Tribal Court shall develop a form to petition for Harassment Protection Orders, which shall direct petitioners to provide the following information for the Tribal District Court:
- (A) Allegation of harassment stating specific facts and circumstances justifying the requested order; and
 - (B) statement under oath that the allegations stated within the form are truthful with the requirement of a signature.
- (3) Standard of Proof. The Tribal District Court shall review a petition for a protection utilizing the preponderance of the evidence standard specifically looking at whether the evidence shows that it is more likely than not that an act of harassment has occurred or is about to occur.
- (4) Review of Petition. Upon filing of the petition for a harassment protection order, the Tribal District Court shall review the petition as soon as practicable but in no case later than three (3) calendar days to determine whether an ex parte temporary order should be issued.
- (5) Hearing Scheduled. Every purported offender to a petition for a harassment protection order shall be given reasonable notice and opportunity to be heard at a hearing scheduled after receiving a petition for a protection order. The hearing shall be scheduled no later than thirty (30) days after receipt of the petition for a protection order.
- (6) Ex parte temporary order. The Tribal District Court may issue an ex parte temporary protection order when it finds that a petitioner is in immediate danger of harassment. Where an ex parte temporary order is issued, the Tribal District Court shall still schedule and conduct a hearing within thirty (30) days of the receipt of a petition for a protection order giving the purported offender and victim no less than fifteen (15) days' notice of the hearing. Upon issuance of an ex parte temporary order, Tribal Police shall be notified and make every effort to serve the order on the purported offender within seven (7) calendar days.
- (7) Hearing. At the hearing, the Tribal District Court shall decide whether to vacate, extend or modify an ex parte temporary harassment protection order if one was issued or the Court shall decide whether to issue a harassment protection order if an ex parte temporary order had not been issued. Once a harassment protection order is issued, ex parte or otherwise, the order may not be dismissed without a Court hearing. If any harassment protection order is issued at this hearing and the offender is not present at the hearing,

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Tribal Police will be notified of the harassment protection order and make every effort to serve the order on the purported offender within seven (7) calendar days.

- (8) Contents of Protection Order. Each Harassment Protection Order issued by the Tribal Court shall state in bold letters “VIOLATION OF THIS PROTECTION ORDER IS A CRIMINAL OFFENSE.” A protection order may include many different provisions, including:
- (A) Restraint Provision – restraining the purported offender from committing harassment;
 - (B) No Contact Provision - prohibiting the purported offender from having any contact or communications with the victim, including, but not limited to, calling, texting, emailing, mailing, communicating through third persons;
 - (C) Peaceful Contact Provision - permitting the purported offender to peacefully communicate with the victim for limited reasons;
 - (D) Stay Away Provision - ordering the purported offender to stay at least a certain number of yards or feet away from the victim, his or her home, job, school, and car;
 - (E) Move Out Provision - requiring the purported offender to move out of a home shared with the victim;
 - (F) Firearms Provision - requiring the purported offender to surrender any guns he or she possesses and/or prohibiting the abuser from purchasing a firearm;
 - (G) Counseling Provision - ordering the purported offender to attend counseling;
 - (H) Custody/Visitation Provision – awarding temporary custody of or visitation with a minor child;
 - (I) Domesticated Animal Provision - ordering the possession, care and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the petitioner; and/or
 - (J) Miscellaneous Provision - Any other order the Court deems necessary or appropriate to ensure the safety of the victim and/or minor child of the victim.
- (9) Mutual Restraining Order. The Tribal Court may issue a mutual protection order only if the Tribal Court has made specific written findings of fact. The Tribal Court shall then provide a detailed order, sufficiently specific to apprise any law enforcement officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

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- (10) Automatic Protection Order. Every purported offender that has been arrested and taken into custody for harassment or other violent crime against a victim or victims shall be issued a Harassment Protection Order by Tribal Police prior to release from custody, which order shall be deemed an order of the Tribal District Court. An automatic Harassment Protection Order shall remain in effect until extended, vacated, or modified by the Tribal District Court. Tribal Police shall provide a copy of the Harassment Protection Order to the Tribal Court Clerk.
- (11) Notification to Tribal Police and Local Jurisdictions. Tribal Court will notify Tribal Police immediately upon issuance of a Harassment Protection Order and Tribal Police shall serve such order upon the defendant unless defendant was present in and notified of the Harassment Protection Order by Tribal Court. Tribal Court or Tribal Police, whichever is notifying defendant of the issuance of a Harassment Protection Order shall: fully inform the defendant of the contents of the order and the available penalties for any violation of an order. Upon service by Tribal Police, the Tribal Court will be promptly notified that service was completed. The Tribal Court Judge will also cause Harassment Protection Orders to be shared with surrounding jurisdictions to ensure that victims are protected off-Reservation.
- (12) Violation of Harassment Protection Order.
- (A) A Harassment Protection Order is civil in nature, however, violations of Harassment Protection Orders issued hereunder are criminal in nature.
 - (B) A person commits the misdemeanor offense of Violating a Harassment Protection Order when, after having been served with a Harassment Protection Order, they violate any provision of that order.
 - (C) A Tribal Police Officer may arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a Harassment Protection Order issued or provided full faith and credit by the Tribal Court.
 - (D) Violation of a Harassment Protection Order subjects a person to criminal penalties under this Ordinance.
- (13) Duration and Modification of Order of Protection Order. The provisions of the protection order shall remain in effect for the period of time stated in the order, not to exceed 12 months unless extended by the Tribal Court at the request of any party. The Tribal Court in its discretion may upon request of either party modify a Harassment Protection Order.

Section 2.8. OFFENSES AGAINST PERSONS

- (a) **ay8utuwôk (“Simple Assault”).** A person is guilty of the misdemeanor crime of ay8utuwôk (“simple assault”) if he or she:

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- (1) Attempts to cause or knowingly causes bodily injury to another through unlawful force or violence, or
- (2) Attempts by physical menace to put another in fear of imminent serious bodily harm, whether or not such harm actually occurs.

(b) **cheekee ay8utuwôk (“Aggravated Assault”)**. A person is guilty of the felony crime of cheekee ay8utuwôk (aggravated assault) if he or she:

- (1) Attempts to cause serious bodily injury to another or causes such injury knowingly, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Attempts to cause, or knowingly causes, any bodily injury to a nânâwunumwâeenun (law enforcement officer) or wutunômât8ôkaneenun (judge or magistrate) of the Mashpee Wampanoag Tribal Court; or other public officer of the Mashpee Wampanoag Tribe, Bureau of Indian Affairs, or Public Health Service while such public officer is engaged in the performance of his or her duties; or
- (4) Assaults another with the intent to commit serious bodily injury, which results in serious bodily injury.

(c) **Unarmed Robbery**. It is a felony for a person, being unarmed with a dangerous weapon, by force and violence, or by assault and putting in fear, robs, steals or takes from the person, or from his or her immediate control, money or other property which may be the subject of larceny.

(d) **Armed Robbery**. It is a felony for a person, being armed with a dangerous weapon, to assault another and commit robbery, steal or take from a person money or other property which may be the subject of larceny.

(e) **Carjacking**. It is a felony for a person, with intent to steal a motor vehicle, to assault, confines maim or put any person in fear for the purpose of stealing a motor vehicle.

(f) **Strangulation or Suffocation**. It is a felony crime for a person to commit strangulation or suffocation on another person.

(g) **Mayhem**. It is a felony crime for a person with malicious intent to maim or disfigure, cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut off or disable a limb or member, of another person, or be privy to such intent, or is present and aids in the commission of such crime, or whoever, with intent to maim or disfigure, assaults another person with a dangerous weapon, substance or chemical, and by such assault disfigures, cripples or inflicts serious or permanent physical injury upon such person, or be privy to such intent, or is present and aids in the commission of such crime.

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(h) **Kidnapping.** It is a felony for a person to, without lawful authority, forcibly or secretly confine or imprison another person against his or her will, or forcibly carry or send such person out of Tribal Lands, or forcibly seize and confine or inveigle or kidnap another person, with intent either to cause him or her to be secretly confined or imprisoned on Tribal Lands against his or her will, or to cause him or her to be sent out of Tribal Lands against his or her will or in any way held against his or her will.

(i) **Drugging with Intent to Kidnap.** It is a felony for a person to, administer to or cause to be taken by a person any drug, matter or thing with intent to stupefy or overpower such person so as to, without lawful authority, forcibly or secretly confine or imprison another person within Tribal Lands against his or her will or to forcibly carry or send such person out of Tribal Lands, or to forcibly seize and confine or inveigle or kidnap such person with intent to cause him or her to be secretly confined or imprisoned in Tribal Lands against his or her will, or to cause him or her to be sent out of Tribal Lands against his or her will or in any way held against his or her will.

(j) **Assault in Dwelling.** It is a felony for a person to enter a dwelling and while therein assault another with intent to a commit a felony.

(k) **Assault in Dwelling with Dangerous Weapon.** It is a felony for a person, being armed with a dangerous weapon, to enter a dwelling and while therein assault another with intent to a commit a felony.

(l) **Home Invasion.** It is a felony for a person to knowingly enter the dwelling place of another knowing or having reason to know that one or more persons are present within or knowingly enters the dwelling place of another and remains in such dwelling place knowing or having reason to know that one or more persons are present within while armed with a dangerous weapon, uses force or threatens the imminent use of force upon any person within such dwelling place whether or not injury occurs, or intentionally causes any injury to any person within such dwelling place.

(m) **Mistreatment.** It is a misdemeanor offense for a person, with negligence and in violation of a legal duty to provide care for another person, including an elder, to withhold necessary and adequate food, physical care or medical attention from that person; or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, including an elder, to withhold necessary and adequate food, physical care or medical attention from that person.

(n) **Sexual Assault.** It is a felony offense for a person to purposefully and intentionally engage in sexual conduct with another without consent.

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(o) **Rape.** It is a felony offense for a person to have sexual intercourse or unnatural sexual intercourse with a person and compel such person to submit by force and against his or her will, or to compel such person to submit by threat of bodily injury. That portion of the records of the Tribal Court or Tribal Police Department, which contains the name of the victim in an arrest, investigation or complaint involving rape under this Ordinance shall be withheld from public inspection, except with the consent of a Tribal Court Judge.

(p) **Assault with Attempt to Commit Rape.** It is a felony for a person to assault a person with intent to commit a rape.

(q) **Cyberstalking.** It is a misdemeanor offense for a person to use electronic communication to threaten infliction of bodily harm to any person or physical injury to the property of any person with the intent to scare or harass the recipient of the electronic communication.

(r) **False Imprisonment.** It is a misdemeanor offense for a person to knowingly and intentionally restrain or limit the free movement of another person. If an offender uses actual or implied threats, violence, fraud or deceit, it is categorized as a felony offense.

(s) **Murder.** It is a felony for a person to with deliberate malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a felony to purposefully cause the death of a human being.

(t) **Voluntary Manslaughter.** It is a felony for a person to intentionally cause the death of a human being. Voluntary Manslaughter shall be for those instances where a person commits an intentional killing and it is not considered a Murder because of mitigating circumstances.

(u) **Involuntary Manslaughter.** It is a felony for a person, while engaging in wanton or reckless conduct, to unintentionally commit an unlawful killing.

(v) **Intent to Murder or Maim.** It is a felony for a person to assault another person with the intent to commit murder, or to maim or disfigure his or her person in any way.

(w) **Attempt to Murder.** It is a felony for a person to attempt to commit murder by poisoning, drowning, strangulation or suffocation, or by any means not constituting an assault with intent to commit murder.

(x) **Poisoning.** It is a felony for a person to mingle poison with food, drink or medicine with intent to kill or injure another person, or willfully poison any spring, well or reservoir of water with such intent.

(y) **Attempt to Extort.** It is a felony for a person to, verbally or by a written or printed communication, maliciously threaten to accuse another of a crime or offence, or by a verbal or written or printed communication maliciously threaten an injury to the person or property of another, or any police officer or person having the powers of a police officer, or any officer, or employee of any licensing authority who verbally or by written or printed communication maliciously and unlawfully uses or threatens to use against another the power or authority vested in him or her, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his or her will.

Section 2.8. OFFENSES AGAINST PUBLIC WELFARE

(a) **Facilitating Illegal Adoption.** A person is guilty of the misdemeanor offense of facilitating illegal adoption where that person knowingly places or facilitates the placement of any child in the care or control of any other person not related to that child by blood or marriage, or in the care or control of any organization other than a licensed or approved placement agency, for purposes of adoption on the Reservation. The spouse of the natural parent of a child shall be considered to be related by marriage to that child.

(b) **Receipt of Illegal Adoption.** A person is guilty of the misdemeanor offense of receipt of illegal adoption where that person unrelated to a child by blood or marriage or affiliated with an organization other than a licensed or approved placement agency receives a child for purposes of adoption, except from a licensed or approved placement agency.

(c) **Disorderly Conduct.** It is a misdemeanor offense for a person's behavior to disturb the public peace, offend the public morals, or undermine public safety. This includes the following, but is not limited to:

- (1) Engages in brawling or fighting,
- (2) Disturbs an assembly or meeting, including a tribal community meeting, which is not unlawful in its character,
- (3) Engages in offensive, obscene, or abrasive language or is boisterous (i.e. noisy conduct) tending to reasonably arouse alarm, anger, or resentment in others,
- (4) Endangers him/herself or another person or endangers his/her property,
- (5) Engages in an illegal occupation or business;
- (6) Knowingly loiters in or about a public place and whose conduct tends to reasonably arouse alarm, anger, or resentment in others;
- (7) Engages in window peeping;
- (8) Is found jostling or roughly crowding people unnecessarily in a public place;

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- (9) By any means, contacts any other person or causes any other person to be contacted and uses any vulgar, indecent, obscene, threatening or offensive language, or suggesting any lewd or lascivious act;
 - (10) Commits the act of indecent exposure to another person, or
 - (11) Interferes with the lawful activities of emergency personnel, tribal government employees, or tribal court personnel.
- (d) **Curfews.** The Tribal Council may, if satisfied that a riot or other form of civil disorder is occurring or there is a danger that it may occur, and that a curfew is necessary for the public safety impose a curfew in all or part or parts of the Reservation. Such curfew shall be imposed by a Tribal Council resolution stating the existence or threat of riot or other form of civil disturbance on the Reservation and the need of a curfew to protect the public safety. No curfew shall take effect until two hours after the issuance of the resolution declaring the imposition of such curfew. The Tribal Council shall have the authority to revoke or modify such curfew. Nothing in this subsection shall be construed to limit or supersede the power of the Tribal Council to impose curfews by other Tribal law. It is a misdemeanor offense for any person to knowingly violate any conditions of a curfew under this subsection.
- (e) **Inciting a Riot.** It is a felony offense by speech or by exhibition, distribution or promulgation of any written or printed document, paper or pictorial representation advocates, advises, counsels or incites assault upon any Tribal Public Official, or the killing of any person, or the unlawful destruction of real or personal property, or the overthrow by force or violence or other unlawful means of the Tribal government.
- (f) **Subversive Organization.** It is a misdemeanor for any person to become or remain a member of any organization knowing it to be a subversive organization.
- (g) **Destructive Devices.**
- (1) Any person who has in his possession any destructive device with intent to injure, intimidate, or terrify any person, or with the intent to injure or destroy any property without lawful authority is guilty of possession of a destructive device with the intent to injure.
 - (2) Any person who with the intent to injure or to threaten injury to any person or property places or causes to be placed a destructive device on any motor vehicle, aircraft, watercraft, railroad, or common carrier or on or about the property of the Tribe or in any place where another person is likely to be injured thereby, without lawful authority, is guilty of this offense.
 - (3) The offense shall be charged as a misdemeanor or felony depending on the destructive capacity of the device and whether its placement put others in danger of bodily injury or death.

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- (h) **wutameehpunâôk ut wutahkeemôwuneât (“Public Nuisance”)**. It is a misdemeanor offense for a person who by his or her action or failure to act does any of the following is guilty of wutameehpunâôk ut wutahkeemôwuneât (“public nuisance”):
- (1) Maintains or permits an act which unreasonably annoys, injures, or endangers the safety, health, comfort, or property of any member(s) of the Tribe;
 - (2) Interferes with, obstructs, or renders dangerous for passage, any Tribal highways or rights-of-way, or waters used by the Tribe, or
 - (3) Fails to adequately control their pet, which disturbs the peaceful enjoyment of any member(s) of the Tribe.
- (i) **kâkeesupam8ôk ut 8tânât (“Public Intoxication”)**. It is a misdemeanor offense for a person appearing in a public or private place other than his or her own home or place of business, seemingly under the influence of intoxicating liquor or other unlawful substances and in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, is guilty of kâkeesupam8ôk ut 8tânât (“public intoxication”).
- (j) **machee useeôkanash nashpee cheeke awahtyâôkanee (“Weapons Offenses”)**.
- (1) It is a misdemeanor offense for a person to appear in public places with a pâshkuhôk (“firearm”), whether loaded or unloaded or any other dangerous weapon, concealed upon his or her person or vehicle, unless he or she shall have a Tribal firearms permit.
 - (2) Without lawful authority to do so, it is a misdemeanor offense to carry a loaded pâshkuhôk (“firearm”) in a vehicle on a public road, to discharge a pâshkuhôk (“firearm”) from a motor vehicle, or to discharge a pâshkuhôk (“firearm”) upon or across any public road.
- (i) **Criminal Defamation**. It is a misdemeanor offense for a person to knowingly communicate to any person orally or in writing any information which that person knows or should know to be false and intends that the information to impeach the honesty, integrity, or reputation and thereby expose the subject of the communication to public hatred, contempt or ridicule. An injurious publication is presumed to have been intentional if no justifiable motive for making it is shown by way of defense.
- (j) **Cruelty to Animals**. It is a misdemeanor for a person to purposely or knowingly:
- (1) Torture or overwork an animal to the point of its distress; or
 - (2) Fail to provide necessary food, care, or shelter for an animal in one's custody; or
 - (3) Abandon an animal in one's custody, or
 - (4) Transport or confine an animal in a cruel manner; or

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- (5) Kill, injure, or administer poison to an animal without legal privilege to do so; or
- (6) Cause one animal to fight with another.

(k) **Prostitution.** It is a misdemeanor offense for a person to knowingly engage in or agree or offer to engage in sexual conduct with another person, not his or her spouse or partner, for compensation, whether such compensation is paid or to be paid.

(l) **Aggravated Promotion of Prostitution.** It is a felony offense for a person to purposely or knowingly commit any of the following acts:

- (1) Compel another to engage in or promote prostitution;
- (2) Promotes prostitution of a minor, whether or not he or she is aware of the minor's age; or
- (3) Promotes the prostitution of one's child, ward or any person for whose care, protection, or support he or she is responsible.

(1) **Bigamy.** It is a misdemeanor offense to, while married, knowingly contract or purport to contract another marriage unless at the time of the subsequent marriage:

- (1) The person believes on reasonable grounds that the prior spouse is dead;
- (2) A court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid;
- (3) A court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid; or
- (4) The person reasonably believes he or she is legally eligible to marry.

(m) **Trafficking of People.** It is a felony offense for a person to accept compensation for the recruitment, enticing, housing, or transportation of another person, knowing that person will become subjected to coerced activity of a commercial or sexual nature.

(m) **Trafficking of Organs.** It is a felony offense to (i) recruit, entice, harbor, transport, deliver or obtain by any means, another person, intending or knowing that an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of clause (i).

(o) **Abandonment and Public Assistance Fraud.** It is a misdemeanor crime for a father or mother who leaves his or her family for the purpose of qualifying them for assistance under any of the programs administered by the Tribal government.

(p) **Pollute Water Supply.** It is a misdemeanor offense to willfully deposit excrement or foul or decaying matter in water used for domestic water supply.

Section 2.9. OFFENSES RELATED TO ELECTIONS.

(a) **Interference with Voter Registration.** It is a misdemeanor crime to interfere with, or aid or abet any person in interfering with, the registration of voters.

(b) **Misconduct of Person Registering Voters.** It is a misdemeanor offense for a person registering voters to knowingly prevent or seek to prevent the registration of any legal voter, or to knowingly register the name of any person not qualified to vote.

(c) **False Voter Registration.** It is a misdemeanor offense for a person to knowingly or willfully make a false statement whether oral or written in order to register to vote in violation of Tribal law. It is also a misdemeanor offense for a person to knowingly or willfully aid or abet another person in making a false statement whether oral or written in order to register to vote in violation of Tribal law.

(d) **Damage to Voter and Election Notices.** It is a misdemeanor offense for a person to willfully deface or remove a notice relating to the registration of voters, an upcoming election, election results or a voting list, posted according to Tribal law.

(e) **False Nomination Paper or Petition.** It is a misdemeanor offense for a person to falsely make or willfully alter, deface, mutilate, destroy or suppress a certificate of nomination or nomination paper, or letter of withdrawal of a name from such paper, or an initiative petition or a petition for the submission of a question to the voters, or unlawfully signs any such certificate, paper, letter or petition, or files any such certificate, paper, letter or petition, knowing the same to be falsely made or altered.

(f) **Alter Nomination Papers.** It is a misdemeanor offense to falsely or willfully alter candidate nomination papers after the names of voters signed thereto and it has been submitted to and accepted by the Election Committee.

(g) **Damage to Election Materials and/or Supplies.** It is a misdemeanor offense for any person during an election to willfully deface, tear down, remove or destroy any card of instruction or specimen ballot posted for the instruction of voters, or during an election, willfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his or her ballot.

(h) **Unlawful Vote.** It is a misdemeanor offense for a person, knowing that he or she is not a qualified voter, to willfully vote or attempt to vote. It is also a misdemeanor offense for a person to knowingly or willingly aid or abet another person in committing unlawful voting under this subsection.

(i) **Voting more than once.** It is a misdemeanor offense for a person to vote or attempt to vote more than once on his or her own name. It is also a misdemeanor offense for a person to

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knowingly or willingly aid or abet another person in voting more than once under this subsection.

(j) **Voting under Another Person's Name.** It is a misdemeanor offense to vote or attempt to vote in any name other than his or her own. It is also a misdemeanor offense for a person to knowingly or willingly aid or abet another person in voting under another person's name under this subsection.

(k) **Unlawful Voter Interference.** It is a misdemeanor offense to willfully and without lawful authority hinder, delay or interfere with, or aid in hindering, delaying or interfering with, a voter while on his or her way to vote in an election with the intent to unlawfully interfere in that person voting.

(l) **Illegal Challenging.** It is a misdemeanor offense for any person to challenge a qualified voter for purposes of intimidation, or of ascertaining how he or she voted, or for any other illegal purpose.

(m) **Bribing Voter.** It is a misdemeanor for a person to, directly or indirectly, pay, give or promise to a voter, any gift or reward to influence his or her vote or to induce him or her to withhold his or her vote.

(n) **Influencing Voter.** It is a misdemeanor for a person to, by threatening to discharge a person from his or her employment, or threatening to reduce his or her wages, or otherwise threatening to adversely affect the terms and conditions of his or her employment, or promising to give him or her employment at higher wages, or otherwise promising to favorably affect the terms and conditions of his or her employment, attempt to influence a voter to give or to withhold his or her vote or political contribution. No person shall, because of the giving or withholding of a vote or a political contribution, discharge a person from his or her employment, reduce his or her wages or otherwise adversely affect the terms and conditions of his or her employment or give him or her employment at higher wages or otherwise favorably affect the terms and conditions of his or her employment.

(o) **Influencing Votes of Employees.** It is a misdemeanor for a person to, by threatening to discharge a person from his or her employment, or threatening to reduce his or her wages, or otherwise threatening to adversely affect the terms and conditions of his or her employment, or promising to give him or her employment at higher wages, or otherwise promising to favorably affect the terms and conditions of his or her employment, attempt to influence a voter to give or to withhold his or her vote. No person shall, because of the giving or withholding of a vote, discharge a person from his or her employment, reduce his or her wages or otherwise adversely affect the terms and conditions of his or her employment or give him or her employment at higher wages or otherwise favorably affect the terms and conditions of his or her employment.

(p) **Promising Public Appointment for Votes.** It is a misdemeanor offense for a person holding a public office or in nomination for, or seeking a nomination for, or appointment to, an office, shall corruptly use or promise to use, directly or indirectly, any official authority or influence to confer upon any person, or to aid a person to obtain, an office or public employment,

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or a nomination, confirmation, promotion or increase of salary, upon the consideration or condition that the vote of any person shall be given or used on behalf of a candidate.

(q) **Unauthorized use of Endorsements.** It is a misdemeanor offense for a person, in order to promote his or her success or the success of another as a candidate for nomination or election to any public office, or in connection with any question submitted to the voters, include or cause to be included in any political advertisement, circular, poster or publication, the name of any person as an endorser or supporter except with the express consent of such person.

(r) **False statements relating to candidates or questions submitted to voters.** It is a misdemeanor offense for a person to make or publish, or cause to be made or published, any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or to injure or defeat such candidate. It is also a misdemeanor for a person to publish or cause to be published in any letter, circular, advertisement, poster or in any other writing any false statement in relation to any question submitted to the voters, which statement is designed to affect the vote on said question.

(s) **Interference with Distribution of Printed Matter.** It is a misdemeanor for a person to prevent, hinder or interfere with the lawful distribution of any circular, poster, card, handbill, placard, picture or other printed matter intended to influence the action of a voter, and no person shall, willfully and with intent to injure the person in whose behalf such printed matter was distributed, remove such matter from any residential premises to which it was delivered.

(t) **Usage of term Veteran by Candidates.** It is a misdemeanor for a person, except a Veteran, as defined in this Ordinance, who is a candidate for nomination or election to any public office to use the word "Veteran" as applied to him or herself, in any circular, poster, card, handbill, placard, picture or other printed matter unless the word "Veteran" is accompanied by other words indicating a different country for which he or she served.

(u) **Disorderly Conduct at Election.** It is a misdemeanor for a person, at an election to behave in a disorderly manner, and, after notice from a member of the Election Committee, Election Monitor or Tribal Police, persist in such behavior and refuse to withdraw from the election.

(v) **Interfering with Election Committee.** It is a misdemeanor to knowingly or willfully interfere, aid or abet any person in interfering, with a member of the Election Committee, in the performance of his or her lawful duties during an election.

(w) **Obstructing Transmission of Ballots or Returns.** It is a misdemeanor for a person to willfully obstruct or interfere with the transmission of ballots to the voting box during an election or the tallying of votes after an election has ended.

(x) **Tamper with Election Ballot.** It is a misdemeanor for a person to alter a ballot cast at an election, not being lawfully authorized thereto, deposits a ballot in a ballot box, container or envelope used at an election, or removes a ballot from such ballot box, container or envelope.

(y) **Tampering with Voting Machine.** It is a felony for a person to tamper with or injure or attempt to tamper with or to injure any voting machine to be used or being used in an election, or who shall prevent or attempt to prevent the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election.

(z) **Ballot Defacement or Forgery.** It is a misdemeanor for a person to willfully forge or falsely make an official endorsement on any ballot, or willfully destroy or deface a ballot.

(aa) **Ballot Marking.** It is a misdemeanor for a person to place a mark against a name on a ballot not cast by him or herself, or places a distinguishing mark on a ballot not cast by him or herself, except as authorized by law.

Section 2.10. OFFENSES AGAINST PUBLIC JUSTICE

(a) **Bribery.** It is a felony offense for a person to ask for, give, or accept any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, given with an intent to influence the person to whom it is given.

(b) **Extortion.** It is a felony offense to intentionally or knowingly seek or obtain property by threatening damage to person or property, accusations of a crime, exposure of a secret, or the taking or withholding of action of a Tribal Public Official.

(c) **Perjury.** It is a misdemeanor offense for a person, in any official proceeding, to make a false statement under oath or an equivalent affirmation or swear or affirm the truth of a statement previously made, when the statement is material and the person does not believe it to be true. If the perjurer reveals the falsehood before it's discovered, he or she may be shielded from prosecution at the discretion of the Tribal Court Judge.

(d) **Obstruction.** It is a misdemeanor offense for a person, with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:

- (1) Harbor or conceal the other; or
- (2) Provide or aid in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or
- (3) Conceal, tamper or destroy evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or
- (5) Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of another; or
- (6) Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

(e) **Escape.** It is unlawful for a person to remove oneself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or period. The

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offense is categorized as a misdemeanor or felony based on the underlying crime that has placed the offender in police custody.

(f) **Criminal Contempt.** It is a misdemeanor for a person to purposely or knowingly fail to obey an order, subpoena, warrant or command properly made, issued, or given by the Tribal Court or any officer of the Tribal Court or otherwise issued according to law without just cause.

(g) **Criminal Contempt, Failure to Testify Under Immunity.** It is a misdemeanor offense where a witness has been granted immunity by a Tribal Court Judge and thereafter refuses to testify or produce evidence after being so ordered by such Tribal Court Judge, the Court may institute criminal contempt proceedings against such witness.

(g) **False reports.** It is a misdemeanor offense for a person to initiate or circulate a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report of warning is false or baseless and that it is likely to cause evacuation of any building, place or assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort.

(h) **Resisting Arrest.** It is unlawful for a person to knowingly prevent or attempt to prevent a police officer, acting under color of his or her official authority, from effecting an arrest or detention of the person or another, by:

- (1) using or threatening to use physical force or violence against the police officer or another; or
- (2) using any other means which creates a substantial risk of bodily harm to such police officer or another.

If the offender uses physical force against a police officer, the offense will be categorized as a felony. Otherwise, the offense is categorized as a misdemeanor.

(i) **Impersonating a Tribal Public Official.** It is a misdemeanor offense for a person to falsely assume or pretend to hold a position as a Tribal Public Official with the purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

(j) **Assault on a Tribal Officer.** It is a felony offense for a person to intentionally and knowingly, by force or violence, render physical abuse to a Tribal Officer. Self-defense to an unlawful arrest can constitute a defense to a violation of this provision.

(k) **Misuse of Public Money.** It is a felony offense for a person charged with the receipt, safekeeping, transfer or disbursement of public monies to:

- (1) Appropriate the money or any portion of it for personal use or the use of another; or
- (2) Knowingly keep any false account of the monies, including fraudulently altering, falsifying, concealing, or destroying any such account; or
- (3) Handle public money in a reckless manner as a result of which a risk of loss of such money is significant; or
- (4) Otherwise handle public money in a manner not authorized by law for personal benefit.

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(l) **Failure to Appear for Jury Duty.** It is a misdemeanor for a person to knowingly fail to complete their jury service, either by failing to respond to a summons, responding but failing to appear for service, or by appearing at the Tribal Court but failing to complete their service.

(m) **Leaving the Scene of an Accident.** It is a misdemeanor for a person involved in an accident to leave the scene before determining whether damage to property or injury to person has occurred as a result of the accident.

(n) **Failure to Provide DNA Sample.** It is a misdemeanor offense for any person to fail to provide a DNA sample within the permissible time period when ordered by the Tribal Court to provide such DNA sample in relation to a conviction under the Tribe's Law and Order Code.

(o) **Obtain DNA without proper authorization.** It is a misdemeanor offense for any person to, without proper authorization, willfully obtain a DNA record or a portion thereof contained in the Tribe's governmental records.

(p) **Bribe to Obtain Parole or Pardon.** It is a misdemeanor crime for a person to, in the attempt to procure, or for the procurement of, any pardon, parole, commutation of or respite from sentence of a prisoner then confined in, or at liberty after having been confined in, by order of the Tribal Court, or then under sentence to serve a term of imprisonment, knowingly pay or offer to pay, or solicit, offer to receive or receive, either by way of gift or of reward or of compensation for services, or otherwise, except for proper legal services, any money or other thing of value, or shall transmit the same from one person to another; nor in such attempt or for such procurement shall any person make, or offer or promise to make, or to procure or induce the making of, any appointment to any position, whether or not in the public service.

(q) **Fugitive From Justice.**

(1) It is a misdemeanor offense for any person located within the boundaries of the Reservation, who is a member of a federally-recognized tribe, and who is wanted by off-Reservation law enforcement and for whom a criminal warrant of arrest has been issued and presented to the Mashpee Wampanoag Tribe Police Department or Probation Department, shall be considered a Fugitive from Justice, and is subject to detention.

(2) Within 24 hours of detention, the person shall appear before the Tribal Court. The Tribal Court upon being presented with a criminal warrant from off-Reservation authorities for any person on the Reservation shall verify that the warrant is valid and that the person in custody is the person named in said warrant. Upon verification, the Tribal Court may issue a tribal fugitive warrant by the authority of this section. The tribal warrant shall be issued by the Tribal Court and the person arrested on the tribal warrant shall be returned to tribal law enforcement for release to off-reservation authorities.

(q) **Soliciting Adding Name to Jury List.** It is a misdemeanor to solicit or request to have his or her own, or any other name added onto a jury list.

- (r) **Jury Tampering.** It is a misdemeanor offense to cause any name to be inserted into any processing or selection of jurors or prospective jurors list wrongfully, or by causing any name to be deleted from any list wrongfully.
- (s) **Personal Property of Deceased.** The Tribal Police Department responding to the scene of a death on the Reservation shall take charge of any money or other personal property of the deceased found on or near the body. The Police department shall, unless such money or property is required as evidence, deliver it to the person or entity entitled to its custody or possession, or, if not claimed within sixty (60) days, store in a secure facility. It is a misdemeanor offense for a Tribal Police Officer to fraudulently refuse to deliver such property within ten (10) days after demand by a person or entity entitled to its custody or possession or who converts such property to his or her own use.

CHAPTER 3. DRUG OFFENSES

Section 3.1 DRUG ABUSE. Any person, under the jurisdiction of this Law and Order Code, who violates any of the following subsections shall be guilty of committing the offense of Drug Abuse and upon conviction shall be sentenced according to the categorization of the offense herein described.

Section 3.2 DEFINITIONS. As used in this Chapter 3:

- (a) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.
- (b) “Controlled substance” means a drug, substance, or immediate precursor in Schedules A - E.
- (c) “Delivery” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (d) “Distribute” means to deliver other than by administering or dispensing a controlled substance.
- (e) “Drug” means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement of any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals; (4) substances intended for use as a component of any article specified in clause (1), (2), (3) of this subsection. It does not include devices or their components, parts, or accessories.
- (f) “Legend Drug” means any drug which is required by Massachusetts state law or regulation unless inconsistent with federal law to be dispensed on prescription only or is restricted to use by licensed physicians, dentists, pharmacists, veterinarians or other health care professionals.

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- (g) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:
- (1) A practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
 - (2) A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- (h) “Marijuana” means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (i) “Narcotic” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
 - (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
 - (3) Opium poppy and poppy straw.
 - (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (j) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

Section 3.3. SCHEDULE A. The controlled substances listed in this section, by whatever official name, common or unusual name, chemical name, or brand name, are included in Schedule A.

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(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetylbutyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;

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- (28) Levophenacylmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Racemoramide; and
- (42) Trimeperidine

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphanol;
- (12) Methyldesorphine;
- (13) Methylhydromorphine;

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- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine; and
- (22) Thebacon

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designations:

- (1) Flunitrazepam;
- (2) Gamma Hydroxy Butyric Acid; and
- (3) Ketamine.

Section 3.4. SCHEDULE B. The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule B.

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) except that these substances shall not include the isoquinoline alkaloids of opium;
- (3) Opium poppy and poppy straw;
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine;
- (5) Phenyl-2-Propanone (P2P);

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- (6) Phenylcyclohexylamine (PCH);
- (7) Piperidinocyclohexanecarbonitrile (PCC); and
- (8) 3,4-methylenedioxy methamphetamine (MDMA).

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including isomers, esters, ethers, salts, and salts of isomer, esters, and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl fentanyl;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Dihydrocodeine;
- (6) Diphenoxylate;
- (7) Fentanyl;
- (8) Isomethadone;
- (9) Levomethorphan;
- (10) Levorphanol;
- (11) Metazocine;
- (12) Methadone;
- (13) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (14) Moramide-Intermediate, 2-methyl-3 morpholine-1, 1-diphenyl-propane carboxylic acid;
- (15) Pethidine;
- (16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (19) Phenazocine;
- (20) Piminodine;
- (21) Racemethorphan; and
- (22) Racemorphan.

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(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers and salts of its optical isomers;
- (2) Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid; and
- (2) Any substance which contains any quantity of methaqualone, or any salt or derivative of methaqualone.

(e) Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Lysergic acid;
- (2) Lysergic acid amide;
- (3) Lysergic acid diethylamide; and
- (4) Phencyclidine.

Section 3.5. SCHEDULE C. The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule C.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Chlordiazepoxide;
- (2) Chlorhexadol;
- (3) Clonazepam;
- (4) Clorazepate;
- (5) Diazepam;

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- (6) Flurazepam;
 - (7) Glutethimide;
 - (8) Lorazepam;
 - (9) Methyprylon;
 - (10) Oxazepam;
 - (11) Prazepam;
 - (12) Sulfondiethylmethane;
 - (13) Sulfonethylmethane;
 - (14) Sulfonmethane; and Temazepam.
- (b) Nalorphine
- (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- (1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

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(d) Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3, 4-methylenedioxy amphetamine;
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (3) 3, 4, 5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2, 5-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Mescaline;
- (10) Peyote;
- (11) N-ethyl-3-piperidyl benzilate;
- (12) N-methyl-3-piperidyl benzilate;
- (13) Psilocybin;
- (14) Psilocyn;
- (15) Tetrahydrocannabinols;
- (16) 4-Bromo-2, 5-Dimethoxy-amphetamine;
- (17) 3, 4--methylenedioxymethcathinone, MDMC;
- (18) 3, 4--methylenedioxypropylone, MDPV;
- (19) 4--methylmethcathinone, 4-MMC;
- (20) 4--methoxymethcathinone, bk-PMMA, PMMC;
- (21) 3, 4--fluoromethcathinone, FMC;
- (22) Napthylpyrovalerone, NRG-1;
- (23) Beta-keto-N-methylbenzodioxolylpropylamine;
- (24) 2-(methylamino)-propiofenone; OR alpha-(methylamino) propiofenone;
- (25) 3-methoxymethcathinone;
- (26) 4-methyl-alpha-pyrrolidinobutyrophenone;
- (27) 2-(methylamino)-1-phenylpropan-1-one;

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- (28) 4-ethylmethcathinone;
- (29) 3,4-Dimethylmethcathinone;
- (30) alpha-Pyrrolidinopentiophenone;
- (31) beta-Keto-Ethylbenzodioxolylbutanamine; and
- (32) 3,4-methylenedioxy-N-ethylcathinone.

(e) Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances or cannabimimetic agents within the structural classes identified below:

- (1) 2-(3-hydroxycyclohexyl) phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;
- (2) 3-(1-naphthoyl) indole or 3-(1-naphthyl) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;
- (3) 3-(1-naphthoyl) pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;
- (4) 1-(1-naphthylmethyl) indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent;
- (5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent;
- (6) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);
- (7) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);
- (8) 1-pentyl-3-(1-naphthoyl) indole (JWH-018 and AM678);
- (9) 1-butyl-3-(1-naphthoyl) indole (JWH-073);
- (10) 1-hexyl-3-(1-naphthoyl) indole (JWH-019);
- (11) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200);
- (12) 1-pentyl-3-(2-methoxyphenylacetyl) indole (JWH-250);
- (13) 1-pentyl-3-[1-(4-methoxynaphthoyl)] indole (JWH-081);
- (14) 1-pentyl-3-(4-methyl-1-naphthoyl) indole (JWH-122);
- (15) 1-pentyl-3-(4-chloro-1-naphthoyl) indole (JWH-398);
- (16) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201);

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- (17) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694);
- (18) 1-pentyl-3-[(4-methoxy)-benzoyl] indole (SR-19 and RCS-4);
- (19) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl) indole (SR-18 and RCS-8); and
- (20) 1-pentyl-3-(2-chlorophenylacetyl) indole (JWH-203).

Section 3.6. SCHEDULE D. The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule D.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral; and
- (11) Phenobarbital.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Marijuana;
- (2) Butyl Nitrite;
- (3) Isobutyl Nitrite; and
- (4) 1-Nitrosoxy-Methyl-Propane.

Section 3.7. SCHEDULE E. The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule E.

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(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Prescription drugs other than those included in Schedules A, B, C, D, and subsection (a) of this Schedule.

Section 3.8. DRUG PARAPHERNALIA: DEFINITIONS.

(a) Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

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- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (10) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
 - (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
 - (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish oil into the human body, such as:
 - (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (B) Water pipes;
 - (C) Carburetion tubes and devices;
 - (D) Smoking and carburetion masks;
 - (E) Roach clips: meaning objects used to hold burning material, such as marijuana cigarette, that has become too small or too short to be held in the hand;
 - (F) Miniature cocaine spoons, and cocaine vials;
 - (G) Chamber pipes;
 - (H) Carburetor pipes;
 - (I) Electric pipes;
 - (J) Air-driven pipes;
 - (K) Chillums;
 - (L) Bongs; and
 - (M) Ice pipes, or chillers.
- (c) In determining whether an object is drug paraphernalia under this section, the Tribal Court or other authority should consider, in addition to all other logically relevant facts, the following:
- (1) Statements by an owner or by anyone in control of the object concerning its use;
 - (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state, federal or tribal law relating to any controlled substance;
 - (3) The proximity of the object, in time and space, to a direct violation of this chapter;
 - (4) The proximity of the object to controlled substances;
 - (5) The existence of any residue of controlled substances on the object;
 - (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or

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- of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
 - (8) Descriptive materials accompanying the object which explain or depict its use;
 - (9) National and local advertising concerning its use;
 - (10) The manner in which the object is displayed for sale;
 - (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
 - (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
 - (13) The existence and scope of legitimate uses for the object in the community; and
 - (14) Expert testimony concerning its use.

Section 3.9. PROHIBITED ACTS (MANUFACTURE, CULTIVATE, DELIVER):

PENALTIES. Except as authorized by this section, it is a felony offense for any person to manufacture, cultivate, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Section 3.10. PROHIBITED ACTS (POSSESSION): PENALTIES. Except as authorized by this section, it is unlawful for any person to possess a controlled substance without a lawful prescription consistent with federal law. Any person who violates this subsection with respect to any controlled substance other than marijuana is guilty of a felony offense. Any person who violates this section with respect to possession of more than 40 grams of marijuana is guilty of a felony offense. An offense of possession of less than 40 grams of marijuana is a misdemeanor offense.

Section 3.11. PROHIBITED ACTS (DRUG PARAPHERNALIA): PENALTIES. Except as authorized by this section, it is a misdemeanor offense for any person to possess any drug paraphernalia.

Section 3.12. DEFENSES. Any person lawfully, and consistent with federal law, involved in the possession, distribution, manufacture or delivery of any controlled substance listed in Schedule A, B, C, D and E shall not be in violation of this section.

Section 3.13. VIOLATIONS BY PERSONS NOT SUBJECT TO TRIBAL CRIMINAL JURISDICTION. Any person found responsible for a violation of this Chapter, who is not subject to the criminal jurisdiction of the Tribe, shall be subject to other provisions of Tribal law including but not limited to civil penalties and exclusion from the lands of the Mashpee Wampanoag Tribe Reservation as determined by the Tribal Council. If the Tribal Council deems the person to be a danger to the welfare of the Tribal community, the Tribal Council may request the Elders Judiciary Committee to consider whether to exclude such person from the Reservation. The decision of the Elders Judiciary Committee may be appealed to the Tribal Court.

Section 3.14. LAWFUL PRESCRIPTION. It shall be unlawful for any person to sell, deliver, or possess any Legend Drug except upon the order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such legend drug; provided, that the above provision shall not apply to the sale, delivery or possession by drug wholesalers or drug manufacturers or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any Legend Drug is in the usual course of business or employment; and provided further that nothing in this section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners. Any person who violates this subsection is guilty of a felony offense.

CHAPTER 4. DOMESTIC VIOLENCE AND VIOLENCE AGAINST THE VULNERABLE

Section 4.1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

- (a) The Violence Against Women Act (VAWA) was passed in 1994 and has since been reauthorized in 2000 and 2005.
- (b) The 113th U.S. Congress reauthorized the VAWA for a third time in 2013 with a new Title IX–Safety for Indian Women (VAWA 2013) that, among other things, authorized tribal governments in certain circumstances to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indian offenders who commit acts of domestic violence, dating violence or violation of a protection order in the Indian Country of the participating tribe.
- (c) Under the VAWA, as amended, tribes are not authorized to exercise Special Domestic Violence Criminal Jurisdiction where the offender and victim are both non-Indians. And, to exercise SDVCJ over non-Indians an offender must either reside in the Indian Country of the participating tribe; be employed in the Indian Country of the participating tribe; or be a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.
- (d) Prior to the VAWA 2013, tribes could issue and enforce civil protection orders but could not criminally prosecute non-Indian offenders for domestic violence, dating violence or violation of civil protection orders.
- (e) Tribes are free to participate, or not in Special Domestic Violence Jurisdiction under VAWA 2013. The authority of U.S. Attorneys to prosecute crimes in Indian country remains unchanged.

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- (f) Tribes have been able to exercise Special Domestic Violence jurisdiction since March 7, 2015.
- (g) In order for tribes to utilize the Special Domestic Violence jurisdiction under VAWA 2013, tribes must provide certain enumerated due process protections that include the following:
 - (1) Protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the U.S. Constitution's Bill of Rights, including the right to due process (*See Constitution of the Mashpee Wampanoag Tribe, Article XI, § 1*);
 - (2) Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing (*See 2008-ORD-001, Mashpee Wampanoag Tribal Judiciary, as amended and Mashpee Wampanoag Tribal Court Rules of Criminal Procedure, as may be amended*);
 - a. Effective assistance of counsel for defendants;
 - b. Free, appointed, licensed attorneys for indigent defendants;
 - c. Law-trained tribal judges who are also licensed to practice law;
 - d. Publicly available tribal criminal laws and rules; and
 - e. Recorded criminal proceedings;
 - (3) Include a fair cross-section of the community in jury pools and not systematically exclude non-Indians (*See Mashpee Wampanoag Tribal Court Rules of Criminal Procedure and the Mashpee Wampanoag Tribal Court Jury Plan, as may be amended*); and
 - (4) Inform defendants ordered detained by a tribal court of their right to file federal habeas corpus petitions (*See Mashpee Wampanoag Tribal Court Rules of Criminal Procedure, as may be amended*).
- (h) The Tribal Council deems it in the best interests of the Tribe and its Tribal members to support and implement VAWA 2013 on the Mashpee Wampanoag Tribal Reservation through the passage of this Tribal Law and Order Ordinance and other Tribal laws and policies.
- (i) The Tribal Council also has determined that it is necessary to extend additional protections to the Tribe's most vulnerable including children and elders, the establishment of criminal offenses protecting children and elders is essential to promote and protect the political integrity, economic security and general welfare of the Tribe.

Section 4.2. JURISDICTION

The Tribe intends to exercise and make this Chapter 4 applicable to all persons which, now and in the future, are permitted to be within the jurisdiction of any tribal court of any Indian tribe recognized by the United States of America.

Section 4.3. DEFINITIONS

(a) “Abuser” shall mean any person that inflicts physical harm, bodily injury or sexual assault or inflicts fear of imminent physical harm.

(b) “Domestic Violence” shall mean felony or misdemeanor crimes of violence committed:

(1) by a current or former spouse or intimate partner of the victim;

(2) by a person with whom the victim shares a child in common; or

(3) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.

(c) “Dating partner” shall mean a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of—

(1) the length of the relationship;

(2) the type of relationship; and

(3) the frequency of interaction between the persons involved in the relationship.

(d) “Dating violence” shall mean felony or misdemeanor crimes of violence committed by a dating partner.

(e) “Family member or household member” means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together, or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(f) “Injunction” shall mean a request for a special proceeding in which an order is issued by a judge, which restrains or enjoins a party from doing an act, or which requires a party to do a particular act. Such orders can be temporary or permanent and are usually issued for a specific time period.

(g) “Domestic Abuse Protection Order” shall mean:

- (1) any injunction, restraining order, or any other order issued by the Tribal Court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by the Tribal Court in a civil or criminal case whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and
- (2) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to Tribal law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.

(h) “Victim Advocate” shall mean an advocate appointed to:

- (1) notify victims of court hearings;
- (2) attend court hearings with victims;
- (3) educate victims about the court system and domestic violence;
- (4) help victims to fill out applications for restraining orders; and
- (5) help victims to communicate with prosecutors, police officers, and court personnel.

Section 4.4. DOMESTIC VIOLENCE

(a) **Domestic Abuse.** Any crime committed that falls under the definition of Domestic Violence or Dating Violence under this Chapter 4 shall cause a designation of Domestic Violence or Dating Violence on the underlying criminal charge and if such designation is later removed, it

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does not preclude prosecution for any other offense under the Tribe's Criminal Offenses Ordinance arising from the same circumstance.

(b) **Plea Bargains.** The designation of domestic abuse should not be removed as part of a plea bargain.

(c) **Habitual Offender.** Any abuser with (3) three or more convictions for crimes of domestic abuse within a period of seven (7) years shall be deemed a habitual domestic abuse offender. Any third or subsequent conviction for domestic abuse shall presumptively carry a sentence of not less than twelve (12) months for each offense.

(d) **Reporting Domestic Violence.**

- (1) Any physician, nurse, school teacher, psychologist, social worker, probation officer, community health representative, or any other person knowing or suspecting that domestic violence is occurring and believes the victim is at imminent risk shall report the suspected domestic violence immediately to Tribal Police.
- (2) Any person, including individuals, corporations, governmental entities and their agents, who in good faith makes or participates in the making of the report pursuant to this section shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.
- (3) It is a misdemeanor offense for any person to make a report of domestic violence knowing that the facts reported are false or misleading, and the report causes the arrest of the person identified in the report, upon conviction thereof shall be sentenced to confinement not to exceed six months and/or to a fine not to exceed five hundred (\$500) dollars or both such confinement and fine.
- (4) Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading may, after notice and hearing, also be assessed a civil penalty in an amount not to exceed five hundred (\$500) dollars.
- (5) Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence against a vulnerable victim known to him/her may, after notice and hearing, be assessed a civil penalty in an amount not to exceed five hundred (\$500) dollars.

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(d) **Interfering with Domestic Abuse Reporting.** It is a misdemeanor crime for any person to prevent a victim or witness of domestic abuse from reporting the crime to law enforcement or from obtaining medical assistance.

(e) **Assault on Person Assisting in the Protection of Victim of Domestic Violence.** Any assault upon a person acting in an official capacity in the protection of victims of domestic violence, e.g., Victim Advocate, case manager, therapist, and other associated staff, shall be considered a felony and will subject the offender to maximum criminal fines and jail sentencing under Tribal law.

(f) **Sexual Assault and/or Abuse Confidentiality Violation.** All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality; provided, however, that all such reports shall be accessible at all reasonable times, upon written request, to: (i) the victim, the victim's attorney, others specifically authorized by the victim to obtain such information, prosecutors and (ii) victim advocates if such access is necessary in the performance of their duties; and provided further, that all such reports shall be accessible at all reasonable times, upon written, telephonic, facsimile or electronic mail request to law enforcement officers, district attorneys or assistant district attorneys and all persons authorized to admit persons to bail. Communications between police officers and victims of said offenses and abuse may also be shared with the forgoing named persons if such access is necessary in the performance of their duties.

(g) **Penalties for the crime of Domestic Violence.** Any person who shall knowingly commit an act of domestic violence as defined by Section 4.4, upon conviction shall be sentenced to:

(1) First offense: Confinement of at least three (3) months and a fine of up to one thousand (\$1,000.00) dollars.

(2) Second Offense: Confinement of at least six (6) months and a fine of up to two thousand (\$2,000.00) dollars.

(3) Third Offense: Confinement of at least twelve (12) months and a fine of up to five thousand (\$5,000.00) dollars.

Section 4.5. STALKING

(a) **Crime of Stalking.** A person commits the crime of stalking if:

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- (1) The person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact with the other person;
- (2) A reasonable person in the victim's same or similar situation would be alarmed or coerced by the contact; and
- (3) The repeated and unwanted contact causes the victim reasonable apprehension of harm regarding the personal safety of the victim or a member of the victim's family or household.

(b) **Penalties for the Crime of Stalking.** It is a misdemeanor for any person to knowingly commit an act of stalking as defined by Section 4.5 of this Ordinance. It is a felony for any person to commit a second or subsequent crime of stalking as defined by Section 4.5 of this Ordinance.

(c) **Stalking in Violation of Restraining Order.** It is a misdemeanor to stalk another person in violation of a restraining order, which depending on the circumstance may be a Domestic Violence Protection Order or Harassment Protection Order.

Section 4.6. CRIMES AGAINST CHILDREN

(a) **Interference with Custody.** It is a misdemeanor offense to intentionally take, entice, conceal, or detain a child under the age of sixteen (16) from the child's parent, guardian or other lawful custodian with the intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction; or with the intent to deprive another person of their lawful visitation or custody rights.

(b) **Child Endangerment.** It is unlawful for a person having custody or control of a child under ten (10) years of age to leave the child unattended in or at any place for such period of time as may be likely to endanger the life, health, emotional wellbeing, or welfare of such child. Child endangerment may include negligently permitting a child's access to firearms or to illegal drugs and medicines not prescribed for that child. If the conduct by an offender was merely negligent or reckless, the offense is categorized as a misdemeanor. If the conduct by offender was willful or intentional, the offense is categorized as a felony.

(c) **Abandonment of Child.** It is a misdemeanor offense to abandon a child under the age of ten (10) within or without any building, or, being its parent, or being under a legal duty to care for it, and having made a contract for its board or maintenance, absconds or fails to perform such contract, and for four weeks after such absconding or breach of his contract, if of sufficient physical and mental ability, neglects to visit or remove such infant or notify the ICWA

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Department of his or her inability to support such child. It is a felony offense if the child incurs serious bodily injury or dies by reason of such abandonment.

(d) **Contributing to Delinquency of a Child.** It is a misdemeanor offense for any person to be found to have caused, induced, abetted, or encouraged or contributed toward the delinquency of a child, or to have acted in any way tending to cause or induce such delinquency.

(e) **Conceal Fleeing Child.** Whoever is 19 years of age or older and: (i) knowingly and willfully aids or abets a child under the age of 18, to violate an order of a juvenile court of competent jurisdiction; or (ii) knowingly and willfully conceals or harbors a child who has taken flight from the custody of a court of competent jurisdiction, a parent, a legal guardian, or the Department of Health and Human Services or ICWA Department commits a misdemeanor offense. It is a defense to a violation of clause (ii) if the defendant concealed or harbored a child in the reasonable good faith belief that the child would be at risk of physical or sexual abuse if the child returned to his or her custodial residence, unless the defendant concealed or harbored such child with intent to abuse the child or if the defendant committed abuse on that child.

(f) **Kidnapping of Minor by Relative.** It is a felony, being a relative of a minor, without lawful authority, holds or intends to hold such minor permanently or for a protracted period, or takes or entices such a minor from his or her lawful custodian, or takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

(g) **Coerce Minor into Criminal Conspiracy.** It is a felony to commit an assault on a minor for the purpose of causing or coercing such minor to join or participate in a criminal conspiracy, including but not limited to a criminal street gang or other organization of three or more persons which has a common name, identifying sign or symbol and whose members individually or collectively engage in criminal activity.

(h) **Sex Offender Employed at a School or Daycare Program.** It is a misdemeanor offense for a sex offender to engage in employment that involves working at an elementary, middle, junior high or high school or daycare program.

(i) **Sex Offender Engaging in Ice Cream Truck Vending.** It is a misdemeanor offense for a sex offender to engage in ice cream truck vending.

(j) **Enticement of Child by Electronic Communication.** It is a felony for a person to, by electronic communication, knowingly entice a minor, to engage in prostitution, human trafficking or commercial sexual activity, or attempts to do so.

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(k) **Enticement of Child.** It is a felony for a person to entice a child, or someone he or she believes to be a child, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or she will assault, rape, or kidnap the child.

(l) **Indecent Assault on Child.** It is a felony offense to intentionally and unjustifiably touch the private area of a child, including, but not limited to, the breast, abdomen, thigh, buttocks, genital or pubic areas of a female or the buttocks, genital or pubic areas of a male.

(m) **Assault on a Child.** It is a misdemeanor to commit simple assault on a child and for all subsequent charges shall be categorized as a felony. It is a felony to commit aggravated assault on a child.

(n) **Rape of a Child.** It is a felony for a person to have sexual intercourse or unnatural sexual intercourse with a child and compel such child to submit by force and against his or her will or compel such child to submit by threat of bodily injury.

(o) **Assault with Intent to Commit Rape on a Child.** It is a felony for a person to assault a child with intent to commit a rape.

(p) **Trafficking of a Child.** It is a felony offense for a person to accept compensation for the recruitment, enticing, housing, or transportation of a child, knowing that child will become subjected to coerced activity of a commercial or sexual nature.

(q) **Sexual Exploitation of Children.** It is a felony offense for any person to employ, use, persuade, induce, entice, or coerce any minor to engage in, or who has a minor assist any other person to engage in, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct.

(r) **Child Pornography.** It is a felony offense for any person to knowingly receive or distribute any visual depiction by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct.

Section 4.7. ELDER OR VULNERABLE ADULT ABUSE

(a) It is a misdemeanor offense for a person to commit the crime of Elder or Vulnerable Adult Abuse under this Section 4.7 if the person has the responsibility for care or custody of an elder or a dependent adult, and the negligent exercise of that responsibility results in deprivation of services necessary to maintain minimum physical, medical and mental health to a degree of care

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below that which a reasonable person in a like position would exercise. A third conviction of Elder or Vulnerable Adult Abuse under this Section 4.7 is a felony.

“Neglect” herein includes, but is not limited to, all of the following:

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.
- (2) Failure to provide medical care for physical and mental health needs. No elder shall be deemed neglected or abused for the sole reason that he or she voluntarily, and with informed consent, relies on treatment by spiritual or traditional means in lieu of medical treatment.
- (3) Failure to prevent malnutrition.
- (4) Leaving of an elder or dependent adult unattended for indefinite periods of time.
- (5) Stealing or misappropriating money, checks, property or other assets from an elder or dependent adult.

(b) Mandatory Reporting of Elder or Vulnerable Adult Abuse. Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to Tribal Police immediately. A person commits the crime of Failure to Report Abuse who without good cause fails to report abuse or suspected abuse of elders or dependent adults.

Section 4.8. DOMESTIC ABUSE ORDER OF PROTECTION

(a) Person Authorized to File Petition. A petition for a domestic abuse protection order must be filed in the Tribal Court at no cost to the petitioner and may be filed by:

- (1) a victim of domestic violence or dating violence;
- (2) a victim of elder abuse;
- (3) a family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence or dating violence on behalf of the minor or vulnerable adult;
- (4) a family member or household member of a vulnerable adult alleged to be the victim of elder abuse;

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(5) a Tribal prosecuting attorney; or

(6) Victim Advocate.

(b) **No Charge for Copies.** The Tribal Court shall not charge the plaintiff nor the plaintiff's attorney for certified copies of any orders entered by the Court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

(c) **Confidentiality.** A petitioner seeking protection shall not be required to disclose his or address, place of residence, or place of employment except to the judge for the purposes of determining jurisdiction.

(d) **Petition for Protection Order.** The Tribal Court shall develop a form to petition for protection orders, which shall direct petitioners to provide the following information for the Tribal District Court:

- (1) allegation of domestic violence or dating violence stating specific facts and circumstances justifying the requested order; and
- (2) statement under oath that the allegations stated within the form are truthful with the requirement of a signature.

(e) **Standard of Proof.** The Tribal District Court shall review a petition for a protection utilizing the preponderance of the evidence standard specifically looking at whether the evidence shows that it is more likely than not that an act of domestic violence or dating violence has occurred or is about to occur.

(f) **Review of Petition.** Upon filing of the petition for protection order, the Tribal District Court shall review the petition as soon as practicable but in no case later than three (3) calendar days to determine whether an ex parte temporary order should be issued.

- (1) Hearing Scheduled - Every purported abuser to a petition for a protection order shall be given reasonable notice and opportunity to be heard at a hearing scheduled after receiving a petition for a protection order. The hearing shall be scheduled no later than thirty (30) days after receipt of the petition for a protection order.
- (2) Ex parte temporary order – the Tribal District Court may issue an ex parte temporary protection order when it finds that a petitioner is in immediate danger of domestic

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violence or dating violence. Where an ex parte temporary order is issued, the Tribal District Court shall still schedule and conduct a hearing within thirty (30) days of the receipt of a petition for a protection order giving the purported abuser and victim no less than fifteen (15) days' notice of the hearing. Upon issuance of an ex parte temporary order, Tribal Police shall be notified and make every effort to serve the order on the abuser within seven (7) calendar days.

- (3) Hearing – At the hearing, the Tribal District Court shall decide whether to vacate, extend or modify an ex parte temporary protection order if one was issued or the Court shall decide whether to issue a protection order if an ex parte temporary order had not been issued. Once a protection order is issued, ex parte or otherwise, the order may not be dismissed without a Court hearing. If any protection order is issued at this hearing and the abuser is not present at the hearing, Tribal Police will be notified of the protection order and make every effort to serve the order on the abuser within seven (7) calendar days.

(g) **Tribal Court Closed.** When the Tribal Court is closed for business, the Tribal Court Judge may activate the emergency Tribal Court system and grant relief to the plaintiff if the plaintiff demonstrates an immediate danger of domestic violence or dating violence. In the discretion of the Tribal Court Judge, such relief may be granted and communicated by telephone to Tribal Police. If relief has been granted without the filing of a petition pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file petition. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in section f. Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the Court Clerk.

(h) **Repeat Offender Search.** When considering a petition for a Domestic Abuse Protection Order filed under this Chapter, the Tribal Court Judge shall cause a search to be made to determine whether the defendant has a civil or criminal record involving domestic abuse or other violence. Upon receipt of information that an outstanding warrant exists against the defendant, the Tribal Court Judge shall cause notification of Tribal Police. In all instances where an outstanding warrant exists, the Tribal Court Judge shall make a finding, based upon the circumstances, as to whether an imminent threat of bodily injury exists to the victim. In instances where an imminent threat of bodily injury is found to exist, the Tribal Court Judge shall cause notification of Tribal Police of such finding.

(i) **Contents of Protection Order.** Each Protection Order issued by the Tribal Court shall state in bold letters “VIOLATION OF THIS PROTECTION ORDER IS A CRIMINAL OFFENSE.” A protection order may include many different provisions, including:

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- (1) Restraint Provision – restraining the abuser from committing further acts of domestic violence;
- (2) No Contact Provision - prohibiting the abuser from having any contact or communications with the victim, including, but not limited to, calling, texting, emailing, mailing, communicating through third persons;
- (3) Peaceful Contact Provision - permitting the abuser to peacefully communicate with the victim for limited reasons, including care and transfer for visitation of their child;
- (4) Stay Away Provision - ordering the abuser to stay at least a certain number of yards or feet away from the victim, his or her home, job, school, and car;
- (5) Move Out Provision - requiring the abuser to move out of a home shared with the victim;
- (6) Firearms Provision - requiring the abuser to surrender any guns he or she possesses and/or prohibiting the abuser from purchasing a firearm;
- (7) Counseling Provision - ordering the abuser to attend counseling;
- (8) Custody/Visitation Provision – awarding temporary custody of or visitation with a minor child or children;
- (9) Domesticated Animal Provision - ordering the possession, care and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the petitioner; and/or
- (10) Miscellaneous Provision - Any other order the Court deems necessary or appropriate to ensure the safety of the victim and/or minor children of the victim.

(j) Limitations on Court Orders. The Tribal Court shall not:

- (1) Compel parties to mediate any aspect of their case;
- (2) Deny any petition filed under this subsection solely because it was not filed within a particular time after the last alleged incident of abuse;

(k) Mutual Restraining Order. The Tribal Court may issue a mutual protection order pursuant to any domestic abuse prevention action only if the Tribal Court has made specific written findings of fact. The Tribal Court shall then provide a detailed order, sufficiently specific to apprise any law enforcement officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

(l) Automatic Protection Order. Every abuser that has been arrested and taken into custody for a domestic abuse related crime shall be issued a Domestic Abuse Protection Order by Tribal

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Police prior to release from custody, which order shall be deemed an order of the Tribal District Court. An automatic Domestic Abuse Protection Order shall remain in effect until extended, vacated, or modified by the Tribal District Court. Tribal Police shall provide a copy of the Domestic Abuse Protection Order to the Tribal District Court Clerk and Victim Advocate.

(m) Notification to Tribal Police and Local Jurisdictions. Tribal Court will notify Tribal Police immediately upon issuance of a Domestic Abuse Protection Order and Tribal Police shall serve such order upon the defendant unless defendant was present in and notified of the Domestic Abuse Protection Order by Tribal Court. Tribal Court or Tribal Police, whichever is notifying defendant of the issuance of a Domestic Violence Protection Order shall: (i) fully inform the defendant of the contents of the order and the available penalties for any violation of an order; and (ii) provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located nearby. Upon service by Tribal Police, the Tribal Court will be promptly notified that service was completed. The Tribal Court Judge will also cause Domestic Abuse Protection Orders to be shared with surrounding jurisdictions to ensure that victims are protected off-Reservation.

(n) Violation of Protection Order.

- (1) A Domestic Abuse Protection Order is civil in nature, however, violations of Domestic Abuse Protection Orders issued hereunder are criminal in nature.
- (2) A person commits the misdemeanor offense of Violating a Domestic Abuse Protection Order when, after having been served with a Domestic Abuse Protection Order, they violate any provision of that order.
- (3) A Tribal Police Officer may arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a Domestic Abuse Protection Order issued under this Section 4.7.
- (4) Violation of a Domestic Abuse Protection Order subjects a person to criminal penalties under this Chapter 4. Any defendant who is found guilty of violating the terms of a no-contact order from the Tribal Court may also, subject to the Tribal Court's discretion, be held in contempt of court, and the Tribal Court may impose such sanctions as it deems appropriate. Consent by the victim is not a defense to a violation of a Domestic Abuse Protection Order.

(o) Duration and Modification of Order of Protection Order.

- (1) The provisions of the protection order shall remain in effect for the period of time stated in the order, not to exceed 12 months unless extended by the Tribal Court at the request of any party or Victim's Advocate.
- (2) The Tribal Court in its discretion may upon request of either party or the Victim's Advocate modify a protection order.

(p) Reporting Domestic Abuse Protection Orders to Federal Criminal Justice Database(s).

Upon issuance of a Protection Order, the Tribal Court shall transmit a report containing the defendant's name and identifying information and a statement describing the defendant's alleged conduct and relationship to the plaintiff to the Federal Criminal Justice Database(s). Upon the expiration, cancellation or revocation of the order, the court shall transmit a report containing the defendant's name and identifying information, a statement describing the defendant's alleged conduct and relationship to the plaintiff and an explanation that the order is no longer current or valid to the Federal Criminal Justice Database(s).

Section 4.9. TRIBAL POLICE RESPONSIBILITIES, PROCEDURES, AND LIABILITY

(a) Tribal Police Responsibilities.

(1) A Tribal Police Officer who responds to a domestic abuse call shall use all reasonable means to protect the victim and children and prevent further violence, including but not limited to:

- (i) taking action necessary to assure the safety of the victims and children;
- (ii) remain on the scene of where abuse occurred or was in danger of occurring as long as the Tribal Police officer has reason to believe that at least one of the parties involved would be in immediate physical danger;
- (iii) confiscating any weapon involved in the alleged domestic abuse;
- (iv) transporting or obtaining transportation of the victim and children to a shelter;
- (v) assisting the victim in removing essential personal effects;
- (vi) assisting the victim and children in obtaining medical treatment including transportation to a medical facility;
- (vii) assist such person by activating the emergency Tribal Court system when the court is closed for business;
- (viii) inform the victim that the abuser will be eligible for bail and may be promptly released;
- (ix) arrest any person a law officer witnesses or has probable cause to believe has violated a Protection Order issued by the Tribal Court or another jurisdiction;

no Tribal Police officer investigating an incident of domestic violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party; and

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(x) giving the victim immediate and adequate Notice of Rights, remedies and services available as described in subsection (b) below.

(b) **Notice of Rights.** The Notice of Rights shall give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing the victim a copy of the statement which follows below and reading the same to the victim. Tribal Police shall leave a copy of the foregoing statement with the victim before leaving the scene or premises:

“You have the right to appear at the Tribal Court, if you reside on the Reservation, and file a petition requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; (e) an order directing your attacker to attend counseling; and (f) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney’s fees and other out-of-pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or weeknights the Tribal Police will notify the Tribal Court and activate the emergency Tribal Court system.

You have the right to go to the Tribal Court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that a Tribal Police officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that Tribal Police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that Tribal Police assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member’s or a friend’s residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from Tribal Police.”

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(c) **Mandatory Arrest.** When a Tribal Police Officer responds to a domestic disturbance call and has probable cause to believe that an offense of domestic violence has occurred, the Officer shall arrest and take into custody the primary aggressor, but is not required to arrest both.

(d) **Primary Aggressor.** When a Tribal Police Officer makes an arrest pursuant to this Section 4.8, the Officer shall make every effort to determine who is the primary aggressor by considering, among other factors:

- (1) the Tribe's intent to protect victims of domestic violence;
- (2) the history of domestic violence between the persons involved;
- (3) the relative severity of the injuries inflicted or serious threats creating fear of bodily injury;
- (4) whether the incident occurred in the presence of children;
- (5) the likelihood of future injuries to each person;
- (6) whether one of the persons acted in self-defense; and
- (7) the Tribal Police Officer's experience in handling domestic violence cases.

(e) **Incident Report.** Whenever Tribal Police investigates an incident of domestic abuse, Tribal Police shall immediately file a written incident report in accordance with the standards of the Tribal Police Department. The victim shall be provided a copy of the full incident report at no cost upon request.

(f) **Notification of Bail.** Tribal Police shall make reasonable efforts to inform the victim when any person held or charged with or arrested for a crime involving domestic abuse under this Chapter 4 is released from custody.

(g) **Liability.** Tribal Police Officers shall not be held liable criminally or civilly for making an arrest without a warrant upon probable cause as set forth in Section 4.8 provided that:

- (1) the Tribal Police Officer acted in good faith; or
- (2) the Tribal Police Officer had a reasonable belief that any protective or restraining order in question is in effect and that the person restrained was personally served with the order or has actual notice of the terms of the order.

Section 4.10. TRIBAL PROSECUTION RESPONSIBILITIES

(a) **Victim Participation.** In every case in which a person is arrested for or charged with a crime under this Chapter 4, the Tribal prosecuting attorney shall endeavor to maintain contact with the victim throughout the criminal proceedings, with attention to the following:

- (1) The Tribal prosecuting attorney shall assure that the victim is informed of all hearing dates and continuances and of the right to address the Tribal Court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to ensure the safety of the victim and the victim's family and household members.
- (2) The Tribal prosecuting attorney shall inform the victim of every major prosecutorial decision, including a decision to decline prosecution of the crime, to dismiss the charges, or to enter into a plea agreement and should include available resources for the victim.
- (3) The Tribal prosecuting attorney shall obtain information from the victim regarding costs and losses sustained because of the defendant's act(s) of domestic violence or family violence and seek restitution for the victim.

(b) **Dismissals.** The Tribal prosecuting attorney shall not dismiss or decline to prosecute without first consulting with the arresting Tribal Police Officer(s) and advocate where applicable. When the Tribal prosecuting attorney moves to dismiss a domestic violence or family violence charge against a defendant, the Tribal prosecuting attorney shall provide specific reasons for the dismissal to the Tribal Court.

Section 4.11. VICTIM RIGHTS AND ADVOCATE SERVICES

(a) **Victim Rights.** A victim of a crime under this Chapter 4 shall be provided a notice of rights to the following:

- (1) to be treated with dignity, respect, confidentiality, and sensitivity;
- (2) to ensure employment protection;
- (3) to be informed, including to have a victim's advocate appointed to assist victim throughout the Tribal Court proceeding. The victim's advocate will suggest procedures if the victim is subjected to threats or intimidation, provide contacts for further information, and notify the victim of appeal, escape, or if conviction has been reversed and the right to address parole board if applicable;

- (4) to an order restraining the abuser from further acts of violence against the victim;
- (5) to an order prohibiting the abuser from using or possessing a firearm or other weapon specified by the Tribal Court;
- (6) to be reasonably protected from the accused, which includes a separate waiting area or other safeguards to minimize the victim’s contact with defendant, defendant’s relatives and defense witnesses during court proceedings;
- (7) to request full and timely restitution as provided by law;
- (8) to request a speedy trial and proceedings free from unreasonable delay; and
- (9) to provide a victim impact statement to the Tribal Court, which the Tribal Court is required to consider in making sentencing determinations.

(b) Advocate Services. In the event that a crime is purported to occur under this Chapter 4, the Tribal Police or Tribal Court will notify the Tribal Victim Advocate to initiate advocate services to the victim.

Section 4.12. FULL FAITH AND CREDIT

According to *2013-ORD-005, Full Faith and Credit Ordinance* (“Full Faith and Credit Ordinance”), as amended, the Mashpee Wampanoag Tribal Court shall give full faith and credit to the judgement and orders of every state and tribal court in conformity with the Full Faith and Credit Ordinance and federal law in those cases where federal law compels recognition. Full faith and credit is required under both the Full Faith and Credit Ordinance and federal law for protective orders. Thus, the Tribal Court shall give full faith and credit to protection orders of state courts and other tribal courts per the procedure provided in the Full Faith and Credit Ordinance. Additionally, upon passage of this Ordinance, the Tribal Court will open up communications with local jurisdictions and establish Tribal Court rules and/or policy and procedure regarding the sharing of all types of protection orders with surrounding jurisdictions as the state courts and other tribal courts are also required to give full faith and credit to Tribal Court protection orders.

CHAPTER 5. GAMING OFFENSES

RESERVED

CHAPTER 6. COMMUNITY OFFENSES

Section 6.1. TRIBAL COURT JURISDICTION

(a) **Subject Matter Jurisdiction.** The Tribal Court shall have subject matter jurisdiction to hear all violations of this Chapter 6 that occur within or outside of Tribal Lands consistent with federal law.

(b) **Personal Jurisdiction.**

(1) Tribal Members. The Tribal Court shall have jurisdiction over Tribal members over violations of this Chapter that occur within or outside of Tribal Lands consistent with federal law.

(2) Non-Tribal Member Indians. The Tribal Court shall have jurisdiction over non-Tribal member Indians over violations of this Chapter that occur within or outside of Tribal Lands consistent with federal law where those non-Tribal member Indians:

- a. Have consented to the jurisdiction of the Tribe or Tribal Court,
- b. Have close social and economic ties to the Tribe or a Tribal member, or
- c. Whose conduct affects the political integrity, economic security, or health or welfare of the Tribe or any of its Tribal members.

(3) Non-Indians. The Tribal Court shall have jurisdiction over non-Indians over violations of this Chapter that occur within or outside of Tribal Lands consistent with federal law where those non-Indians:

- a. Have consented to the jurisdiction of the Tribe or Tribal Court, or
- b. Whose conduct affects the political integrity, economic security, or health or welfare of the Tribe or any of its Tribal members.

(4) Consent to the jurisdiction of the Tribe or Tribal Court may occur through the following:

- a. The transaction of any business on Tribal Lands.
- b. The commission or omission of any act which results in a tort action on Tribal Lands.
- c. The ownership use or possession of any property situated within or without the exterior boundaries of Tribal Lands.
- d. Engaging in any employer-employee relationship with the Tribe.

- e. Leasing or permitting of any land or property on Tribal Lands.
- f. Residing on Tribal Lands.
- g. Commission of any act on Tribal Lands giving rise to claims for spousal support, separate maintenance, child support, child custody, divorce or modification of any decree of divorce or separate maintenance proceeding.
- h. A contractual agreement with the Tribe.

Section 6.2. TRIBAL COURT COMMUNITY PROCEDURE

(a) **Rules of Procedure.** Unless a specific provision of this Chapter provides otherwise, the examination of the Community Offenses listed within this Chapter 6 shall be categorized as civil offenses and reviewed by the Tribal Court according to the Tribal Court’s developed and adopted Rules of Civil Procedure, as amended.

(b) **Citations.** Tribal Police are vested with the authority to issue civil citations of any and alleged violations of Community Offenses listed in this Chapter. The civil citation should include the following:

- (1) The date of the citation;
- (2) The name of the violator or the violator’s agent;
- (3) The name of the Tribal Police Officer that issued the citation;
- (4) The date the citation was issued;
- (5) Reference to the provision(s) from this Chapter that was violated;
- (6) A statement that the citation is a civil offense and represents a determination that a violation of this Chapter has been committed by the person named in the notice and that the determination shall be final unless challenged as provided in this Chapter.
- (7) A statement that the violator may challenge the citation and issuance of a fine before an officer of the Tribal Court and that the violator must notify the Tribal Court to contest the issuance of the citation.
- (8) The amount of the fine imposed, and a statement that the court may impose other available civil remedies.

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(9) The date by which the fine must be paid, and the address and individual that payment of fines should be directed to.

(10) A statement that failure to respond to the citation will result in additional sanctions under this Chapter.

(c) **Challenging a Citation.** If a violator wishes to challenge the issuance of the citation, the violator may appear before an officer of the Tribal Court for a hearing on whether the citation was incorrectly issued.

(1) A violator may notify the Tribal Court of his or her intent to challenge the issuance of a citation by indicating the corresponding box on the citation and returning it to the Tribal Court.

(2) When the Tribal Court receives the returned citation, the Tribal Court will schedule a hearing for the violator to appear and notify the violator of the time and date of the hearing. The Tribal Court will also notify the Tribal Police or its representative of the hearing.

(3) At the hearing the violator will explain why he or she believes the citation was incorrectly issued.

(4) The officer of the Tribal Court who conducts the hearing will make findings of fact and determine whether the violator committed a community offense under this Chapter.

(5) The officer of the Tribal Court may also assess whether the fine imposed by the citation should be upheld or if a different penalty or penalties are appropriate, as provided in this Chapter.

(d) **Burden of Proof.** Where a citation is challenged, the Tribe shall have the Burden of Proof for proving all elements of the below-listed community offenses by a preponderance of the evidence.

(e) **Failure to Pay.** If a violator fails to pay a fine, the Tribal Court may require the violator to show cause why the default should not be treated as contempt. The Tribal Court may issue either a summons to show cause or a bench warrant of arrest for the violator's appearance.

(f) **Appeals.** All appeals shall be governed by the Rules of Appellate Procedure.

Section 6.3. PENALTIES FOR VIOLATION

(a) **Purpose.** The commission of community offenses harms the Tribal community and, where applicable, the victim. The primary purpose of punishing community offenders under this Chapter is to repair the harm and heal the community, as well as the victim where applicable.

(b) **Potential Civil Penalties.** In its discretion and consistent with this primary purpose, the Tribal Court may issue the following civil penalties alone or in combination for violations under this Chapter:

- (1) Monetary Penalties;
- (2) Community Service;
- (3) meenawee nōpahtawee pâyôhsukeey8uk (“Traditional **Restored** Justice”), the Court may rely on traditional approaches to restoring justice, the goal of which is to resolve community offenses by causing togetherness of the body and mind to come to a better place. The Tribal Court may require an offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party;
- (4) Referral to the Elders Judiciary Committee;
- (5) Injunction prohibiting the defendant from committing, attempting to commit, or threatening to commit specified acts;
- (6) Posting of a Peace Bond; and
- (7) If applicable, per capita garnishment.

(c) **Inability to Pay.** If a Respondent is unable to pay a fine assessed under this Section 3, and can make a showing of financial hardship, the Tribal Court may allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court may find him or her in contempt of court.

(d) **Peacemaking.** The Tribal Court may request persons in violation of this Chapter 6 to appear before and participate in Peacemaker Court proceedings in accordance with the Tribal Judiciary Ordinance, as amended. Peacemaking is wholly voluntary. As such, the Tribal Court does not have the power to compel individuals to participate in Peacemaking Court proceedings. The parties must first mutually agree to participate in peacemaking.

(e) **Noncompliance.** A person who fails to comply with the penalties imposed for the violation will be subject to the applicable provisions of this Chapter. The Tribal Court may compel the violator to appear before the Tribal Court to explain why he or she is not in compliance.

Section 6.4. COMMUNITY OFFENSES

(a) **Disorderly Conduct.**

- (1) It is unlawful to engage in disorderly conduct by willfully and knowingly performing any of the following acts in a public place:

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- A. Engage in brawling, fighting, or any other violent behavior in any public place or in or near any lawful assembly of persons, provided that participants in athletic contests may engage in such conduct which is reasonably related to that sport;
- B. Engage in offensive, obscene, or abrasive language or be boisterous (i.e. noisy conduct) tending to reasonably arouse alarm, anger, or resentment in others, or
- C. Endanger him/herself or another person or endanger his/her property;
- D. By any means, contact any other person or cause any other person to be contacted and uses any vulgar, indecent, obscene, threatening or offensive language, or suggesting any lewd or lascivious act;
- E. Disturb an assembly or meeting or in or near any lawful assembly of persons, including any lawful meeting of the Mashpee Wampanoag Tribal Council, General membership meeting, or lawful Tribal community meetings;
- F. Engage in an illegal occupation or business;
- G. Willfully and knowingly loiter in or about a public place or in or near any lawful assembly of persons and engage in conduct which tends to reasonably arouse alarm, anger, or resentment in others;
- H. Engage in window peeping;
- I. Be found jostling or roughly crowding people unnecessarily in a public place or in or near any lawful assembly of persons;
- J. Commit the act of indecent exposure to another person in any public place or in or near any lawful assembly of persons or in any privately owned place open to the public;
- K. Stalk or harass another person;
- L. Interfere with the lawful activities of emergency personnel, Tribal government employees, or Tribal Court personnel;
- M. Create or continue wutameehpunâôk ut wutahkeemôwuneât (“public nuisance”), hazardous or physically offensive condition, including, but not limited to, actions or conditions offensive to the senses of sight, sound and smell, by any act which serves no legitimate purpose;

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- N. By words or action, initiate or circulate a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless; or
- O. Without authority or justification, obstruct any street, sidewalk, highway, or other Tribal public way, with the intent to prevent or hinder its lawful use by others.

(b) **Child Endangerment.** It is unlawful for a person having custody or control of a child under ten (10) years of age to leave the child unattended in or at any place for such period of time as may be likely to endanger the life, health, emotional wellbeing, or welfare of such child. Child endangerment may include negligently permitting a child's access to firearms or to illegal drugs and medicines not prescribed for that child.

(c) **Mistreatment.** It is unlawful for a person, with negligence and in violation of a legal duty to provide care for another person, including an elder, to withhold necessary and adequate food, physical care or medical attention from that person; or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, including an elder, to withhold necessary and adequate food, physical care or medical attention from that person.

(d) **Giving False Information to Law Enforcement or Security Officer.** It is unlawful to knowingly use or give a fictitious event or a false or fictitious name, address, or date of birth to any Law Enforcement or Security officer for the purpose of issuing or serving the person a citation.

(e) **kâkeusupam8ôk ut 8tânât (“Public Intoxication”).** It is unlawful to appear in public or in or near any lawful assembly of persons or private place other than their own home or place of business, under the influence of alcohol intoxication and in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others. When a Tribal Police Officer cites a person on a charge of kâkeusupam8ôk ut 8tânât (public intoxication) under this section, the Tribal Police Officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the Tribal Police Department for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested.

(f) **Underage Individuals and Alcohol.**

- (1) It is unlawful for any person under twenty-one (21) years of age to consume or willfully and knowingly have in his/her possession alcoholic beverages.
- (2) A person under twenty-one (21) years of age shall not purchase or attempt to purchase or have alcohol in their possession or control.

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- (3) A person under twenty-one (21) years of age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage.

(g) Minors and Tobacco.

- (1) It is unlawful for any minor to consume or willfully and knowingly have in his/her possession tobacco products.
- (2) A minor shall not purchase or attempt to purchase tobacco products.
- (3) A minor shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase tobacco products.
- (4) It is not an offense under this subsection for a minor to consume or have in his or her possession a tobacco product when intended for a traditional purpose.

(h) Littering. It is unlawful to leave litter, trash, glass, cans or other rubbish or similar articles upon Tribal lands or within any building owned or operated by the Tribe. No person shall dump, throw, place, deposit, discharge, abandon, bury or otherwise dispose of any litter, meaning all solid or liquid waste materials, including scrap, debris, garbage, rubbish or sludge, nor shall any person knowingly allow the same to take place upon Tribal Lands unless the property lawfully exists as an approved sanitary landfill site or said dumping is otherwise lawfully permitted by the Tribal government.

(i) Unlawful Application of Graffiti. It is unlawful for a person, having neither right to do so nor reasonable ground to believe that the person has such right, to intentionally damage the property of another by applying graffiti to the property.

(j) Garage Sales. It is unlawful under this Chapter to hold any garage sale in accordance with Mashpee Wampanoag Tribal Housing Department policy.

(k) Excessive or unusual noises.

- (1) It is unlawful for a person on Tribal lands, to cause or suffer or allow between the hours of 10:00 p.m. to 8:00 a.m. any unnecessary loud, excessive, or unusual noises, or the making of loud outcries, exclamations or other loud or boisterous noises, or the loud and boisterous singing by any person or group of persons where the noise is plainly audible at a distance of 150 feet or more from the building, structure, vehicle, or premises in which or from which it is produced.
- (2) Any person who is present in the building, structure, vehicle, or premise from which excessive or unusual noises originated will be deemed to have made, aided, caused, or otherwise assisted in the making of said excessive or unusual noises.

(l) Excessive Noise by Dogs. It is unlawful for any person who is the owner, keeper, or individual having responsibility for a dog to fail to ensure that such dog is not a nuisance by

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reason of excessive howling or barking for duration longer than 15 minutes any time during the day or night.

(m) **Failing to Observe Pets.** It is unlawful if any pet under a person's control or supervision either:

- (1) Is not secured to a leash under the control of the owner or another responsible individual capable of managing the pet; or
- (2) Causes injury to a third person party without provocation.

(n) **Rabies Vaccination.**

- (1) It is unlawful for the owner or keeper of a dog or cat to fail to have it vaccinated against rabies. The vaccination must be done by a licensed veterinarian within thirty (30) days after a dog or cat is obtained or at the time it becomes three (3) months old, whichever is later.
- (2) The owner or keeper must obtain from the veterinarian a vaccination certificate showing the duration of the immunity, or a notarized letter stating that a certificate was issued or a metal rabies tag bearing an expiration date indicating that the certificate is still in effect. All rabies vaccinations must remain current.

(o) **Licensing of Animals.** It is unlawful for any persons that are owners or keepers of dogs or cats to fail to obtain the license for each dog or cat three (3) months old or older in his/her possession. He/she must cause the dog or cat to wear a collar or harness to which the tag has been attached.

(p) **Animal Waste.** It is unlawful to fail to pick up and properly dispose of animal waste of an animal under a person's control or supervision on Tribal lands.

(q) **Fire and Smoke Detectors.** It is unlawful to violate fire and smoke detector Tribal laws. Violations are governed by this Chapter and subject to its penalties.

(r) **Burning.** It is unlawful to set or maintain fires in Public Places and all other Tribal Lands, except on approval of the Tribal Council. As an exception to this general prohibition against setting or maintaining fires, Tribal members may set and/or maintain fires for the purpose of ceremonial, sacred or traditional purposes.

(s) **Fireworks.** It is unlawful to sell, or keep or offer for sale, or have in his or her possession, or under his control, or use, or explode, or cause to explode, any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article, which was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation.

(t) **Abandoned Vehicles.** It is unlawful to abandon a vehicle in the following cases:

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- (1) The person's vehicle is not drivable and is located on Tribal Lands;
 - (2) The person's vehicle is parked in violation of posted parking requirements; or
 - (3) The person's vehicle obstructs any established right of way; and/or
 - (4) The person's vehicle lacks proper registration by any state jurisdiction.
- (u) **Trespass.** It is unlawful to enter or remain unlawfully in or upon premises. For the purposes of this subsection, "enter or remain unlawfully" means:
- (1) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or
 - (2) To fail to leave premises that are open to the public after being lawfully directed to do so by a person in charge, including law enforcement.
- (p) **All-Terrain Vehicle Use.** It is unlawful to operate an all-terrain vehicle on any Tribal Lands in violation of this Chapter unless the Tribal government has provided permission to operate an all-terrain vehicle on the Tribal Lands where the vehicle is in operation.
- (q) **Camping.** It is unlawful for any person to camp in or upon any public property or public right of way, unless otherwise specifically authorized by this Chapter or by declaration of the Mashpee Wampanoag Tribal Council or its designee.
- (r) **Gas Station.** It is unlawful to maintain a gas station on Tribal Lands that does not meet all rules and regulations set forth under Tribal law.
- (v) **Commercial Signage.** All commercial signage on Tribal Lands shall be under the sole and exclusive jurisdiction of the Tribal Council. No commercial signage shall be allowed on Tribal Lands unless first approved by Tribal Council or designee of Tribal Council. A person that violates this commercial signage requirement shall be in violation of this Chapter.

CHAPTER 7. TRAFFIC VIOLATIONS

- (a) **Content of State Motor Vehicle Offenses.** The Tribe hereby adopts as Tribal law the contents of the list of criminal and civil offenses contained in the motor vehicle laws of the State of Massachusetts cited at M.G.L. chap. 90.
- (b) Any and all contents of the motor vehicle offenses listed in M.G.L. chap. 90 of the State that prohibit, impede, obstruct, stand in the way of, hinder, inhibit, restrict, constrain, hamper, block, or handicap Tribal members from exercising his or her Tribal aboriginal rights are not herein adopted by the Tribe.

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- (c) The Tribe does not adopt the enforcement mechanisms or penalties of the motor vehicle laws of the State. The Tribal Court and Tribal Police Department shall be responsible for the establishment of rules, policies, fines and enforcement mechanisms or other penalties pursuant to this Chapter 7.
- (d) Notwithstanding anything herein, the adoption per Section 7(a) above shall not be construed as an adoption of State law, rule, or regulation (or the law, rule, or regulation of any State subdivision), or an agreement to the enforcement of any such law, rule, or regulation on Tribal Lands.
- (e) In the event of a conflict between the contents of State law adopted pursuant to this Ordinance and other Tribal laws, Tribal law shall govern.
- (f) The Tribe need not comply with any standard in the motor vehicles laws of the State of Massachusetts. Reference to the motor vehicle laws of the State of Massachusetts does not confer jurisdiction upon the State or its political subdivisions.

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CERTIFICATION

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

DATED THIS _____ day of _____, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

ATTEST:

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2018-ORD-000, Mashpee Wampanoag Tribal Law and Order Ordinance, has been posted in accordance with 2009-ORD-007, 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