



**Mashpee Wampanoag Tribe**  
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## **2008-ORD-002**

# **MASHPEE WAMPANOAG TRIBAL JUDICIARY**

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The Mashpee Wampanoag Tribal Council does ordain as follows:

#### **CHAPTER 1: GENERAL**

##### **Section 1. FINDINGS**

The Mashpee Wampanoag Tribal Council finds as follows:

(a) We ask the Creator and Spirit of the People of the First Light to join as one, and to promote justice, peace, harmony, and respect through the Mashpee Wampanoag Judicial System.

Our purpose through the Tribal Courts is to be fair and unbiased, maintain rights, and correct wrongs for all cases brought before the courts of the Mashpee Wampanoag Tribe. Through Tribal laws, rules of court, decisional law, Tribal custom, common sense and in the context of all relevant circumstances, we as a Tribe seek to justly deal with all cases so as to protect all inherent rights of the parties. This Ordinance is designed to provide a means of settling conflicts and to provide a standard for the regulation of judicial conduct.

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

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

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

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

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

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

## **Section 2. AUTHORITY AND PURPOSE**

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

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

(1) To exert jurisdiction over all persons and matters to the full extent of the law;

(2) To provide orderly procedures that reflect Tribal traditions as well as the prevailing community standards for the resolution of conflicts;

(3) To afford all affected persons a fair, prompt and impartial hearing;

(4) To establish a court system for the interpretation of Mashpee Wampanoag Tribal Law and such other law as may properly come before the Tribal Judiciary;

(5) To ensure that all matters shall be so conducted as to afford all persons who appear before the Mashpee Wampanoag Tribal Judiciary all rights guaranteed by the Constitution of the Tribe; and

(6) To ensure that the inherent sovereignty of the Mashpee Wampanoag Tribe is recognized in all matters affecting the Mashpee Wampanoag Tribe.

### **Section 3. DEFINITIONS**

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

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

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

(d) "Judiciary Committee" shall mean the Committee of the Tribal Elders' Council that the Tribal Council has empowered by resolution to work with the Tribal Judiciary.

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

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

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

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

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

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

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

### **Section 4. LAWS AND ORDINANCES OF THE MASHPEE WAMPANOAG TRIBE**

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

### **Section 5. REPEALER**

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

### **Section 6. SEVERABILITY**

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

## **Section 7. EFFECTIVE DATE**

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

## **CHAPTER 2: SUPREME COURT AND LOWER COURTS**

### **Section 1. ESTABLISHMENT; SEPARATION OF POWERS**

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

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

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

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

### **Section 2. JURISDICTION**

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

(b) **Appellate Jurisdiction.**

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

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

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

- (1) Cases disputing the final results of a Tribal Council election;
- (2) Petitions necessary or appropriate in aid of its jurisdiction; and
- (3) Other such original actions as provided by Tribal law.

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

### **Section 3. POWERS OF THE TRIBAL JUDICIARY**

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

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

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

(d) **Court Staff.** The Chief Judge of the Supreme Court may hire, manage and supervise court staff necessary to the functioning of the Tribal Judiciary.

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

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

### **Section 4. JUDGES**

(a) **Selection.** The Judiciary Committee shall advertise vacancies and review applications for a Tribal Judge position, and conduct interviews of applicants. The Judiciary Committee shall recommend Judges for appointment by the Tribal Council. The Tribal Council may appoint or decline to appoint the applicants recommended by the Judiciary Committee.

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

(c) **Term of Office.**

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

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

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

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

(1) Be either:

(a) an enrolled member of the Tribe; or

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

(2) Be either:

(a) an attorney; or

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

(c) a current or former tribal judge; and

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

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

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

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

"I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the Mashpee Wampanoag Tribe; that I will carry out, faithfully and

impartially, the duties of my office to the best of my ability; that I will promote and protect the best interests of the Mashpee Wampanoag Tribe; and that I will uphold and enforce the Laws of the Mashpee Wampanoag Tribe to the best of my ability."

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

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

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

(2) The Chief Judge shall submit an annual report of the Tribal Judiciary to the Tribal Council and Judiciary Committee for budgetary purposes. The report shall include a description of the activities of the Courts, the number of cases by type of claim or crime, number of cases filed, pending, and resolved in each court, a description of the Court's staffing and structure, a summary of significant cases decided by the Court, and any other information required by the Tribal Council, subject to confidentiality requirements.

(h) **Duties and Powers of Judges.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(L) Issue emergency orders of protection.

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

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

**(i) Discipline, Removal and Resignation.**

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

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

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

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

(D) Felony conviction,

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

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

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

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

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

**(2) Discipline or Removal Procedure.**

(A) The Chief Judge of the Supreme Court may present a complaint regarding a Tribal Judge for grounds listed in the above subsection (i)(1) to the Judiciary Committee. An Associate Judge of the Supreme Court may present the complaint if the complaint involves the Chief Judge. The Judiciary Committee shall investigate the matter and make a non-binding recommendation to the Tribal Council. The Tribal Council will then conduct a hearing according to the procedures set forth in this section.

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

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

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

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

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

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

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

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

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

## **Section 5. COURT CLERK**

(a) **Office of Court Clerk.** The Chief Judge shall hire a Court Clerk.

(b) **Qualifications.** To be eligible to serve as the Court Clerk, an individual shall;

(1) Be at least 21 years of age; and

(2) Be of high moral character and integrity; and

(3) Have a high school diploma or its equivalent; and

(4) Be computer literate, including proficient at word processing and database management; and

(5) Be physically able to carry out the duties of the office; and

(6) Be free of any conviction of a felony or crime of moral turpitude.

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

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

(2) Subject to the approval of the Chief Judge of the Supreme Court, to supervise and direct the hiring, firing, and work of all deputy court clerks and other employees in his or her office.

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

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

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

(6) To provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court Reporter is available, the Court Reporter

shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

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

(8) To act as librarian, and to keep and maintain the Court's law library.

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

## **Section 6. ATTORNEYS**

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

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

## **CHAPTER 3: OPERATION OF PEACEMAKER COURT**

### **Section 1. GUIDING PRINCIPLES**

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

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

Peacemakers shall strive to achieve a setting which will:

- (1) Allow active participation by all parties involved in the conflict; and
- (2) Provide an environment for a party to take responsibility for his or her behavior; and
- (3) Provide an environment that is safe for the parties to work out conflicts and begin the healing process; and

(4) Assist in locating traditional practices and teachings, and community-based services for individuals involved in the conflict.

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

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

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

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

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

## Section 2. SCOPE AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

## Section 3. PEACEMAKERS

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

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

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

- (3) Be free of any conviction of a felony or a crime of moral turpitude; and
- (4) Not be a member of the Tribal Council or a Tribal Judge; and
- (5) Have a high school diploma or its equivalent and be proficient in reading, writing and speaking the English language.

**(b) Appointment.**

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

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

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

**(d) Immunities, Powers and Duties.**

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

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

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

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

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

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

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

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

#### **Section 4. PEACEMAKING PROCEDURE**

##### **(a) Request for Peacemaking.**

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

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

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

(c) A short statement of the problem involved; and

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

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

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

(4) If the contacted person agrees to participate, the Chief Judge shall immediately begin the process of peacemaking by appointing two peacemakers, one male and one female, to convene a Peacemaker court. The parties to any case may, by mutual agreement, have a specified individual or individuals from the Roll of Peacemakers serve as one, or both, of the two Peacemakers for the resolution of their conflict. If they only agree on one, then the Chief Judge shall appoint the other.

##### **(b) District Court Transfer.**

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



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

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

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

**(c) Peacemaker Disqualification and Removal.**

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

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

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

(4) A party requesting disqualification of a Peacemaker shall first request the Peacemaker to recuse him or herself from the proceedings, and shall state the reason in writing for requesting recusal. If the matter is not resolved or the Peacemaker refuses to recuse, the party may petition the Chief Judge or District Court Judge, if the case has been transferred from the District Court, by filing a request for disqualification and removal where appropriate, stating the reason(s) why disqualification is requested.

(5) The Chief Judge or District Court Judge, if the case has been transferred from the District Court, shall determine whether to grant the request. If the request is granted, a substitute Peacemaker shall be appointed by the Judge. The Chief Judge shall instruct the Court Clerk to remove a peacemaker from the Roll of Peacemakers where appropriate.

**(d) Requests during Peacemaking.**

(1) Any party may file a request with the Chief Judge or District Court Judge, if the case has been transferred from the District Court, to immediately terminate peacemaking.

(2) Any participant may file a request with the Chief Judge or District Court Judge, if the case has been transferred from the District Court, to be excused from peacemaking.

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

- (1) Any inability to serve in the matter; or
- (2) Acceptance of the appointment.

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

(g) **Confidentiality and Privilege.** Communications made during Peacemaking shall be treated as confidential by all parties and participants. Such communications shall be privileged as settlement negotiations and may not be admitted to the District Court as evidence unless otherwise agreed to in writing by the parties, or as otherwise required or allowed by Tribal law, including this Ordinance. This privilege will not apply to communications originally made for purposes other than Peacemaking, or made before Peacemaking begins.

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

- (1) The Peacemakers may allow an opening traditional prayer and ceremony such as burning cedar or smudging, or other similar practice. The parties will not be sworn in, but will agree to tell the truth to reach a mutual resolution of the conflict. Evidence law will not be applicable and the parties may submit any proof they have such as receipts, contracts, photos, and sworn statements of witnesses.
- (2) The Peacemakers will explain the risk that given that peacemaking is a voluntary undertaking one of the parties may later request to terminate peacemaking, for whatever reason, or a participant may later request to be excused from proceeding, for whatever reason, and it is important that each party knowingly and voluntarily acknowledge such risks before proceeding.
- (3) Each party should be permitted to make opening remarks which should include his or her statement of the facts that have given rise to the conflict, and what he or she wants as a remedy. The Peacemakers shall require each party to submit a written statement of facts prior to the initial hearing and may impose a time limit on opening remarks.
- (4) The Peacemakers should make certain that the participants understand the exact nature of the controversy and attempt to get the parties to agree upon the facts, and the desired remedy. The Peacemakers accomplish this by asking questions to clarify points of discussion. To help resolve issues, the Peacemakers should ask questions to determine the nature and cause of the conflict. If

they know what the conflict is and what the cause is, then, they can choose a plan of action, or choose possibilities to resolve the conflict.

(5) Once the Peacemakers are satisfied that the nature of the conflict and desired remedy have been adequately stated, they shall allow discussion of the subject matter. At this point, the Peacemakers may allow other participants to join in the discussion while keeping in mind the standards of decorum.

(6) During the discussions, the Peacemakers shall ensure that the principal parties are permitted full opportunity to address comments presented by the other party or by other participants. The Peacemakers or the parties may suggest the involvement of other participants to assist the parties with peacemaking, their agreement, or carrying out the agreement. Any necessary resource or service provider may be called upon to voluntarily assist, including social service personnel, mental health professionals, traditional healers and leaders, public or private service agencies, or any other person or program with the resources, expertise and interest to assist. No person may be forced to accept intervention or services against his or her will.

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

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

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


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

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


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 10 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 7<sup>th</sup> day of October, 2009, and that the foregoing Ordinance was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 0 not voting.

DATED THIS 7<sup>th</sup> day of October, 2009

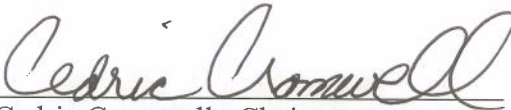
  
Cedric Cromwell, Chairman  
Mashpee Wampanoag Tribe

ATTEST:


  
Marie A. Stone, Secretary  
Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled "2008-ORD-002, Mashpee Wampanoag Tribe Judiciary" has been posted in accordance with §§ 1-2, Ordinance Regulating Adoption of Ordinances, Resolutions and Measures.

  
Cedric Cromwell., Chairman  
Mashpee Wampanoag Tribe

DATED: October 7<sup>th</sup> 2009

  
Marie A. Stone, Secretary  
Mashpee Wampanoag Tribal Council