



CONSTITUTION
OF THE
MASHPEE WAMPANOAG TRIBE

BY-LAWS OF THE
MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.

CERTIFICATION OF CONSTITUTION AND BY-LAWS

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I. CONSTITUTION OF THE MASHPEE WAMPANOAG TRIBE

PREAMBLE

This Constitution is created under the divine guidance of our Creator and the wisdom of our ancestors to establish and proclaim to the World that we, the People of the First Light, are a sovereign nation.

This Constitution is established for the self-governance of the Mashpee Wampanoag Tribe, as is our inherent right to do.

This Tribe declares this Constitution to be the free act and will of its people. The Constitution is created without fear of, nor wanting from, any man, woman, child, or government. The Tribe extends peace and respect for our neighbors, with whom we share Mother Earth.

Accordingly, we, the Tribal members being a sovereign native people, in order to organize for the common good, to protect our self-government and our right to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland, to conserve and develop its natural resources, to promote the social, economic, and spiritual well-being of our people, do establish and adopt this Constitution to govern, protect, and advance the common good of the Tribe and for its future generations.

ARTICLE I

Name

The name of this Tribe shall be the Mashpee Wampanoag Tribe.

Definitions

"Malfeasance" shall mean a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do.

"Nonfeasance" shall mean nonperformance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty.

"Tribe" shall mean the Mashpee Wampanoag Tribe.

"Tribal Council" shall mean the governing body of the Tribe.

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

"Voter" shall mean an enrolled member of the Tribe over the age of 18 and who has registered to vote in the Tribe.

ARTICLE II

Jurisdiction

To the full extent that Federal law allows, and unless restricted by Tribal law, the Tribe's jurisdiction shall extend over all territory of the Tribe which constitutes Indian Country or its equivalent under federal law, and to any person, property, subject, and activity within this territory. The Tribe's jurisdiction shall also extend to any person, property, subject and activity allowed under federal law outside the Tribe's Indian Country territory or its equivalent under federal law.

ARTICLE III

Tribal Member

Section 1. Requirements

A Tribal member shall be of those persons who:

(a) trace direct lineal descent (1) to a Mashpee Indian identified in the Report to the Governor and Council, concerning the Indians of the Commonwealth, Under the Act of April 16, 1859 written by John Milton and published in 1861 by William White, Printer to the State, in Boston, Massachusetts (also known as the 1859 Milton Earle Report), or (2) to the union of Georgina Palmer and Charles Peters or Leander Peters and Lydia DeGrasse; and

(b) demonstrate tribal community involvement as set forth by ordinance; and

(c) (1) have not publicly denounced Mashpee tribal existence, and (2) have not publicly denounced their affiliation to the Tribe; and

(d) have lived in or near Mashpee, Massachusetts, or have had family members actively involved in tribal community affairs who have lived in or near Mashpee, Massachusetts for at least the preceding 20 years.

Section 2. Ineligibility For Tribal Membership

No person shall be eligible to be a Tribal member if that person is enrolled in another Indian tribe.

Section 3. Enrollment Committee

(a) Within 60 days of the effective date of this Constitution an Enrollment Committee composed of five tribal members shall be appointed for staggered terms of three years by a majority vote of the members of the Tribal Council present at a meeting called for the purpose of making such appointments. The initial term of each Committee member first appointed shall be randomly assigned with three Committee members serving three years and two Committee members serving two years. Committee members may be removed from office by majority vote of the members of the Tribal Council present

at the meeting prior to the expiration of their term only for cause. Any person who holds any elective or appointive Tribal office or is a candidate for such office shall be ineligible to serve on the Enrollment Committee; however, one member of the Tribal Council may be allowed to serve on the Enrollment Committee. Any member of the Enrollment Committee who becomes a candidate or is elected or appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Enrollment Committee if one member of the Tribal Council is currently serving on the Enrollment Committee.

(b) The Enrollment Committee shall be responsible for enforcing Tribal enrollment laws. The duties of the Enrollment Committee shall include, but not be limited to, the following:

(1) maintaining the Tribal membership roll; and

(2) reviewing and approving or rejecting all applications for enrollment into the Tribe; provided that, a rejected applicant may appeal such decision under Section 4 of this Article.

(c) The Enrollment Committee shall perform such other duties as may be delegated to the Committee by Ordinance.

(d) The Enrollment Committee may issue such regulations as may be necessary to carry out Tribal enrollment law.

Section 4. Appeal From Denial of Membership Application

Any person whose application for membership in the Tribe is rejected by the Enrollment Committee shall have the right to appeal such adverse decision to the Tribal Judiciary, but only after exhausting all remedies available within the Tribal Council. That person may appeal the Tribal Council's decision to the Tribal Judiciary according to court rules. The judgment by the Tribal Judiciary shall be final.

Section 5. Automatic Forfeiture of Membership

A member shall be deemed to have automatically forfeited membership in the Tribe along with all rights and benefits to which members are entitled by virtue of their membership (1) upon enrollment in another tribe, or (2) upon a final finding that membership in the Tribe was obtained by fraud.

Section 6. Removal From Membership Roll by Tribal Council

If, upon the report and recommendations of the Enrollment Committee, the Tribal Council determines that an enrolled Tribal member lacks a required membership requirement, the Tribal Council may remove that person from the Tribal membership roll; provided that, that person may appeal the Tribal Council's decision to the Tribal Judiciary according to Tribal court rules. Only if a final judgment by the Tribal Judiciary is rendered upholding the removal

shall that person's name be removed from the membership roll.

Section 7. Relinquishment of Enrollment

Tribal members of the Tribe may relinquish membership in the Tribe in accordance with procedures established by the Enrollment Committee. Such Tribal member shall be ineligible to reapply for Tribal membership for a period of five years from the date of such relinquishment. Any minor whose Tribal membership is relinquished by a parent or legal guardian shall have the right to petition the Enrollment Committee for automatic reinstatement of Tribal membership upon reaching the age of 18; provided that, such person petitions within 90 days from the day that person reaches the age of 18. If such person fails to petition for automatic reinstatement, such person may apply for Tribal membership under Section 1 of this Article.

Section 8. Enforcement

The Tribal Council shall enforce this Article by ordinance; provided that, the Tribal Council shall have no power to establish substantive requirements for Tribal membership or removal from the membership roll in addition to those established in Sections 1 or 6 of this Article, nor to waive any of those requirements.

ARTICLE IV Elections

Section 1. Voter Requirements

Any enrolled member of the Tribe who is registered to vote shall be entitled to vote in Tribal elections, except if such member is judicially declared mentally incompetent.

Section 2. Voting

Except as may be otherwise specified in this Constitution, voting in Tribal elections shall be by secret ballot cast at polls established by the Election Committee at such sites designated by the Election Committee. Write-in voting shall be permitted in accordance with such procedures as shall be established by the Election Committee. Write-in candidates must meet all eligibility requirements, constitutional or otherwise. No proxy or absentee voting shall be allowed in Tribal elections.

Section 3. Regular and Special Elections

The Tribal Council shall provide by ordinance for the holding of regular elections, including establishing dates, times and places for holding such elections. The Tribal Council shall also provide by ordinance for the holding of special elections by establishing the procedure by which such elections may be called and held with adequate notice provided to registered Tribal voters.

Section 4. Election Committee

(a) Within 60 days of the effective date of this Constitution an Election Committee composed of five Tribal members,

who are registered voters of the Tribe, shall be appointed for staggered terms of three years by a majority vote of the members of the Tribal Council present at a meeting called for the purpose of making such appointments. The initial term of each Committee member first appointed shall be randomly assigned with three Committee members serving three years and two Committee members serving two years. Committee members may be removed from office by a majority vote of the members of the Tribal Council present at the meeting prior to the expiration of their term only for cause. Any person who holds any elective or appointive Tribal office or is a candidate for such office shall be ineligible to serve on the Election Committee; however, one member of the Tribal Council may be allowed to serve on the Election Committee. Any member of the Election Committee who becomes a candidate or is elected or appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Election Committee if one member of the Tribal Council is currently serving on the Election Committee.

(b) The Election Committee shall be responsible for enforcing Tribal election laws. The duties of the Election Committee shall include, but shall not be limited to, the following:

- (1) establishing and maintaining a system of voter registration, and
- (2) maintaining a current list of registered voters of the Tribe, and
- (3) certifying eligibility of candidates for Tribal offices (both elective and appointive) according to eligibility requirements specified in Article VI or by Tribal ordinance, and
- (4) conducting Tribal elections, and
- (5) certifying the results of Tribal elections.

(c) The Election Committee shall perform such other duties as may be delegated to the Committee by ordinance.

(d) The Election Committee may issue such regulations as may be necessary to carry out Tribal election ordinances.

Section 5. Election Ordinance

The Tribal Council shall enact an election ordinance that shall include, but shall not be limited to, voter registration requirements, a provision for the appointment of a five-member Election Committee, and a provision to judicially resolve disputed elections.

Section 6. First Election

(a) The first election under this Constitution shall be held on the date of the next regular election that was scheduled under the Constitution and Bylaws and shall be supervised and conducted pursuant to an election ordinance enacted by the Tribal Council then in office, pursuant to Section 5 of this Article. The office of Tribal Council Chairperson, Vice-Chairperson, Secretary and Treasurer and one of the five vacancies on the

Tribal Council which would have occurred for that election, shall be filled for four years. The remaining four member vacancies, which include the office of Historian, are abolished and shall not be filled in accordance with Article VI, Section 1

(a) The terms of the remaining four member incumbents shall be two years from the date of the first election, at which time their successors shall be duly elected and installed. Thereafter, there shall be an election every two years so as to continue the system of staggered terms of office.

(b) All members of the Board of Directors at the time this Constitution becomes effective shall continue to serve and shall be entitled to exercise all powers granted by this Constitution to the Tribal Council until such time as their successors are elected and installed in accordance with this Constitution.

(c) All members who are elected to the Tribal Council shall also serve as members of the Board of Directors of the Mashpee Wampanoag Indian Tribal Council, Inc., as well as members of the Board of Directors of the Old Indian Meetinghouse Authority, Inc. The Elected Chairperson of the Tribal Council shall serve as President of both the Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., the elected Vice Chairperson shall serve as Vice President of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., the Secretary shall serve as Clerk of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc., and the Treasurer shall serve as Treasurer of the Mashpee Wampanoag Indian Tribal Council, Inc. and of the Old Indian Meetinghouse Authority, Inc.

ARTICLE V

Tribal Government Powers

Section 1. Separation of Power

The Tribal Council and the Tribal Judiciary shall be separate and equal branches of the Tribal Government. 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 this Constitution. Article V, Section 3 and Article X which separate Tribal government powers shall become effective upon the appointment of the three Judges of the Tribal Supreme Court under Article X of this Constitution. Until that time, the Tribal Council will continue to exercise all Tribal government powers and any reference in this Constitution in provisions other than Article V, Section 3, and Article X to Tribal Judiciary shall mean the Tribal Council. If the government of the United States of America, by final administrative decision and after all appeals have been exhausted, fails to federally recognize the Tribe, Article V, Section 3 and Article X shall be ineffective and unenforceable.

Section 2. Tribal Council s Powers

The Tribal Council, as established in Article VI of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, and including such powers as may in the future be restored or granted to the Tribe by any law of the United States of America, or other authority. This Constitution, and ordinances of the Tribal Council adopted under this Constitution, shall be the supreme law of the Tribe. The Tribal Council shall exercise its powers consistent with the letter and spirit of this Constitution.

Section 3. Tribal Judiciarys Powers

The Tribal Judiciary, as established in Article X of this Constitution, shall be vested with all the Tribe s judicial powers.

Section 4. Ethics in Tribal Government

Within 180 days after the adoption of this Constitution, the Tribal Council shall, by ordinance, establish a code of ethics in Tribal government for Tribal public officials or others, as it deems appropriate to meet the needs of the Tribe.

ARTICLE VI

Tribal Council

Section 1. Composition, Qualifications, Terms of Office, Officers and Committees

(a) Except as set forth in Article IV, Section 6, the Tribal Council shall be composed of 13 members of the Tribe who are registered to vote, 11 of whom, including a Chairperson, Vice-Chairperson, Secretary and Treasurer, shall be elected by majority vote of all registered tribal voters, and two of whom, the Tribal Medicine Man and Tribal Chief, shall be selected by the general Tribal membership according to Tribal custom and tradition and acknowledged by resolution as such by all the elected Tribal Council members prior to taking their respective seat on the Tribal Council.

(b) For a person, other than the Tribal Medicine Man and Tribal Chief, to be eligible for election or appointment to the Tribal Council that person shall:

(1) be a member of the Tribe; and

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

(3) be free of any felony conviction for the preceding five years from the date of consideration of eligibility; and

(4) be nominated by at least 25 Tribal members who are registered to vote in tribal elections; and

(5) be able to demonstrate attendance at a minimum of six Tribal Council or General Tribal Membership meetings, or a

combination of those meetings, within the 12 months preceding the Tribal general election; and

(6) not be related as an immediate family member to more than one person serving on the Tribal Council (i.e. mother, father, brother, sister, spouse, son or daughter).

(c) The elected members of the Tribal Council shall serve four-year terms of office and remain in office until their successors are elected and installed. The Tribal Medicine Man and Tribal Chief shall serve without limit, unless removed by a majority vote of the Tribal membership present at a meeting duly called for the purpose of removing the Tribal Medicine Man or Tribal Chief.

(d) The Tribal Council may appoint or employ officers, other than the Chairperson, Vice-Chairperson, Secretary or Treasurer, from within the membership of the Tribal Council, and committees, as may be necessary. If appointed or employed from without the Tribal Council, those officers shall be Tribal members and shall neither be counted for a quorum nor may they vote at Tribal Council meetings.

Section 2. Enumerated Powers of the Tribal Council

The Tribal Council shall be authorized to exercise the following powers, subject to any limitations imposed by Federal Law or this Constitution.

A. To promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.

B. To establish a basic departmental structure for the executive branch of the Tribal government with a delegation of appropriate powers to such subdivisions and agencies.

C. To establish procedures and ordinances for the conduct of all tribal government business operations, except where elsewhere precluded in this constitution.

D. To negotiate and enter into contracts and agreements with tribal, foreign, federal, state and local governments, private persons and corporate entities.

E. To prevent the sale, loss or transfer of tribal land, and to manage the disposition, lease or encumbrance of tribal lands or interest in land inherited, acquired with tribal funds or other tribal assets.

F. To establish criteria to make assignments of Tribal lands to members of the Tribe, Tribal agencies and to corporations wholly owned by the Tribe, and regulate the use of disposition of all such assignments.

G. To purchase, take by gift or bequest, or otherwise own, hold, manage and operate land and other assets of the Tribe.

H. To approve or disapprove operating budgets of the Tribal agencies, subdivisions and departments.

I. To prepare and present an annual balanced budget of Tribal operations to the Tribal body and in the event the budget is approved by a majority of the registered voters present and voting at the annual meeting of the Tribe, to allocate the funds called for by said budget.

J. To approve or disapprove allocations or disbursements of Tribal funds (or grant or contract funds under the administrative control of the Tribe) not specifically appropriated or authorized in the budget approved by the Tribe.

K. To create or to provide by ordinance for the creation of organizations including public and private corporation and/or charters for any lawful purpose, which may be nonprofit or profit making, and to regulate the activities of such organizations by ordinance.

L. To establish and enforce all ordinances governing Tribal members.

M. To levy and collect taxes and raise revenue to meet the needs of the Tribe or to support Tribal government operations subject to Tribal vote.

N. To assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe.

O. To establish an adjustable distribution of Tribal assets among the members of the Tribe which shall be made out of the net profits of any gaming enterprise after all Tribal debts then due have been managed and considerations given to future expense.

ARTICLE VII Duties of Officers

Section 1. Duties of the Chairperson

The Chairperson shall preside over all meetings of the Tribal Council and shall perform the usual duties of a Chairperson including, but not limited to, acting as the official spokesperson for the Tribe, engaging in public relations, serving as coordinator over all Tribal government activities, and exercising any authority delegated to the Chairperson by the Tribal Council.

Section 2. Duties of the Vice-Chairperson

The Vice-Chairperson shall assist the Chairperson when called upon to do so and in the absence of the Chairperson shall preside over the meeting. When so presiding, the Vice-Chairperson shall have the rights, privileges, duties, and responsibilities of the Chairperson.

Section 3. Duties of the Secretary

The Secretary shall be responsible for all correspondence issued by the Tribal Council, keep an accurate record of all matters transacted at meetings of the Tribal Council, and perform those other duties as required by the Tribal Council.

Section 4. Duties of the Treasurer

The Treasurer shall accept, receive, preserve, and safeguard all Tribal funds or special funds for which the Tribal Council is acting as trustee or custodian. The Treasurer shall deposit all funds in appropriate insured depositories as the Tribal Council shall direct, make or preserve a faithful record of those funds, and report on all receipts and expenditures and the amount and nature of all funds in the Tribal treasury accounts at each regular meeting of the Tribal Council, at each regular general Tribal membership meeting, or at such other times as directed by the Tribal Council. After the United States of America federally recognizes the Tribe, an audit of accounts shall be made once a year and at such other times as the Tribal Council may require. All checks drawn upon Tribal funds will be handled according to the accounting procedure manual approved by the Tribal Council. The Treasurer shall be required to give satisfactory bond to the Tribal Council and that bond shall be paid from Tribal funds.

Section 5. Duties of Committees, Department Heads or Appointive Officers

The duties of all committees, department heads or officers appointed by the Tribal Council shall be clearly defined by resolution of the Tribal Council at the time of their creation or appointment. Those committees, department heads or officers shall report to the Tribal Council from time to time as it may require and the Tribal Council may review their activities and decisions.

ARTICLE VIII Vacancies and Removal of Tribal Officials

Section 1. Recall

(a) The registered voters of the Tribe may recall any elected official of the Tribe from office in accordance with the procedure set forth in subsection (b) of this Section; provided that, recall shall not be a remedy against alleged action by a Tribal official which may constitute a major crime.

(b) The procedure by which an elected Tribal official may be recalled shall be as follows:

(1) Petitioners Committee.

Any 100 registered voters of the Tribe may commence recall proceedings by filing with the Election Committee

an affidavit (1) stating their names, addresses, and the names and addresses of three representatives of the Petitioners Committee to which all notices regarding the petition are to be sent, and (2) stating that they will constitute the Petitioners Committee and will be responsible for circulating the petition and filing it in proper form, and (3) naming the Tribal official sought to be recalled, and (4) stating in less than 250 words the specific reasons upon which it is alleged that the named Tribal official should be recalled. If more than one official is sought to be recalled, there shall be separate affidavits of charges filed for each such official. The Election Committee shall promptly thereafter serve in person or by registered mail a copy of the affidavit of the Petitioners Committee upon the named official. The named official shall have 15 days after receipt of service to file an affidavit in defense with the Election Committee answering, in less than 250 words, the charges made against him or her.

(2) Certificate of Sufficiency

(A) Certificate of Sufficiency.

Within 5 working days after a petition is filed, the Election Committee shall certify as to its sufficiency.

(B) If Certified Insufficient.

If the petition is certified insufficient, the Election Committee shall state in the certificate with particularity the reasons it is insufficient. A copy of the certificate of insufficiency shall be promptly sent to the Petitioners Committee by registered mail, or served personally upon, the Petitioners Committee. A petition certified insufficient for lack of required number of valid signatures may be supplemented once, and for this purpose an appropriate number of petition forms shall be mailed or given personally to the Petitioners Committee along with the certificate of insufficiency. Such supplemental petition shall comply with the requirements of this section. Petitioners Committee shall have 15 days after receipt of the certificate of insufficiency to file a supplemental petition with the Election Committee. Within 5 working days after the filing of the supplemental petition, the Election Committee shall certify as to the sufficiency of the petition as supplemented and promptly send a copy of such certificate to the Petitioners Committee by registered mail, or shall serve a copy personally upon the Petitioners Committee.

(C) If Certified Sufficient.

If an original petition or a petition a

supplemented in accordance with Section 1(b) (2) (B) of this Article is certified as sufficient by the Election Committee, it shall promptly send a copy of the certificate of sufficiency by registered mail to, or serve it personally upon, the Petitioners Committee, and the certificate of sufficiency shall promptly be presented to the Tribal Council. Immediately thereafter, the Tribal Council shall promptly send by mail to all registered tribal voters a copy of the certified petition.

(c) Recall Election

(1) The Election Committee shall hold a meeting of the general Tribal members giving each side equal time to present their arguments and to answer any questions posed by participants at a hearing. Immediately following the hearing, a recall election shall occur. The affirmative vote of 60 percent of those voting at the recall election shall effect a recall of the official from office; provided that, at least 40 percent of the total number of registered Tribal voters who voted in the next immediately preceding annual election of Officers vote in the recall election. The 40 percent requirement shall be certified based on the attendance log at the beginning of the hearing. If the 40 percent requirement is not met, then the hearing and recall election shall be immediately canceled. In the event the official is recalled, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

(2) The ballot for the recall election shall, for each official sought to be recalled if more than one, state the grounds set forth in the recall petition for demanding such recall and the answer of the official sought to be recalled. The ballot shall set forth the following question: Shall (name of the official sought to be recalled) be recalled from the office (title of office). Following such question shall be two choices of words, "yes" or "no" on separate lines with the blank space to the right of each in which the voter shall indicate by marking a cross "x" for his or her vote for or against recall.

Section 2. Expulsion and Suspension of Members of the Tribal Council

(a) The Tribal Council shall expel a member of the Tribal Council from office on grounds of failure to attend three successive regular meetings of the Tribal Council in a given calendar year without good reason as determined by the Tribal Council, lack of a required qualification for holding office, or occurrence of a disqualification for office.

(b) The Tribal Council shall by affirmative vote of 7 members of the Tribal Council expel a member of the Tribal Council from office on grounds of malfeasance or nonfeasance. The

Tribal Council member sought to be expelled for malfeasance or nonfeasance shall be notified in person or by registered mail at least 10 days before the holding of any meeting at which the member's expulsion from office is to be considered. The notice shall set forth the alleged grounds for expulsion with specificity. The member in question shall be given full opportunity to be heard at such meeting and to confront any and all adverse witnesses. If the Tribal Council votes to expel the member in question, the grounds for removal shall be set forth with specificity in the minutes of the meeting, and the Tribal Council's decision shall be subject to prompt review by the Tribal Judiciary at the request of the expelled member.

(c) In the event the decision of the Tribal Council to expel the member of the Tribal Council in question is upheld by the Tribal Judiciary, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

(d) Any vacancy in the Tribal Council whether by death, resignation, recall, suspension or removal shall also result in a vacancy on the Board of Directors of the Mashpee Wampanoag Tribal Council, Inc. and also on the Board of Directors of the Old Indian Meeting House Authority, Inc.

(e) A member of the Tribal Council may be suspended from office pending the appeal of the member's conviction of a major crime by the vote of five members of the Tribal Council.

Section 3. Automatic Vacancies

(a) The office of any elected Tribal official shall be deemed to be automatically vacant upon the official's death, resignation, or conviction of a major crime. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document. Major crime within the meaning of this subsection means any crime included in 18 U.S.C. § 1153, or any amendment thereto, and any equivalent crime defined under state or Tribal law.

(b) Any vacancy in office which occurs under this section shall be filled in accordance with Section 4 of this Article.

Section 4. The Filling of Vacancies In Office

(a) Except as provided in this Constitution, any vacancy in the office of an elected Tribal official shall be filled as follows:

(1) For a vacancy that occurs within the calendar year, the Tribal Council shall appoint within 30 days of such vacancy the candidate that received the highest number of votes next to the person who vacated the office that is intended to be filled under this Section.

(2) If any additional vacancies occur in the same calendar year, then the Tribal Council shall immediately issue a 10-day notice to the registered voters of the

Tribe informing them of the vacancy and that nominations shall be taken at the next monthly general Tribal membership meeting following the end of the notice period; and further providing, that at the monthly general Tribal membership meeting following the meeting where nominations were made, a vote will be taken on the nominations with the nominee receiving the highest number of votes filling the vacancy.

(3) Paragraphs (1) and (2) of this subsection (a) shall not apply to fill the vacancy in the office of Chairperson. Such vacancy shall be filled in accordance with Section 6 of this Article.

(b) Any Tribal official who, by operation of this Article, vacates his office shall not be eligible for succession to that office.

(c) Any Tribal member appointed to office under the provisions of this Section shall be deemed to be subject to all provisions of this Article, and other Articles of this Constitution, and to other Tribal ordinances generally applicable to elected Tribal officials; and that Tribal official's particular office.

Section 5. Tribal Judiciary Excluded

This Article shall not be applicable to the removal of Tribal Judges, nor to the filling of any vacancies in the office of Tribal Judge.

Section 6. Succession to Chairperson and Vice-Chairperson

In the event the office of the Chairperson becomes vacant, then the Vice-Chairperson shall become Chairperson and the office of Vice-Chairperson shall become vacant and filled in accordance with Section 4 of this Article. In the event the offices of the Chairperson and Vice-Chairperson become vacant on the same calendar day, then the officer of the Tribal Council which is highest on the following list and in accordance with the order listed in Article VII, and who is not under disability to discharge the power and duties of the office of Chairperson shall act as Chairperson, Secretary and Treasurer. In such event, the office of Vice-Chairperson and the office vacated to assume the office of Chairperson shall be filled in accordance with Section 4 of this Article.

ARTICLE IX

Procedures of the Tribal Council

Section 1. Meetings of the Tribal Council

(a) The Tribal Council shall meet in official session at least once a month every calendar year at such time and place as shall be established by ordinance. The order of business for any such meeting shall be posted in accordance with Section 3 of this Article. Other business, however, may also be transacted at such meeting if the Tribal Council votes to consider such other business. The quorum for a regular meeting of the Tribal Council shall be nine members of the Tribal Council.

(b) Special Meetings

(1) Calling and Notice

Special meetings of the Tribal Council shall be called by the Chairperson of the Tribal Council at that person's discretion or upon the written request of any three members of the Tribal Council; provided that, at least 72 hours written notice of such meetings shall be given to each Tribal Council member, by personal service or by registered mail sent to that person's usual place of residence, or by electronic means that documents receipt of the notice. Notice, however, shall be considered waived by attendance at the meeting. Notice to Tribal members shall be posted as provided in Section 3 of this Article promptly after such meeting is called. The quorum for a special meeting of the Tribal Council shall be nine members of the Tribal Council.

(2) Business

No business shall be conducted at any special meeting of the Tribal Council unless the business has been stated in the notice of that meeting. Any business, however, which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the entire Tribal Council are present and consent is given in writing.

(3) Emergency Meetings

An emergency meeting of the Tribal Council may be called by the Chairperson of the Tribal Council at that person's discretion or upon the request of any three members of the Tribal Council upon less than 72 hours written notice if that meeting is necessary for the preservation or protection of the immediate health, peace, safety, or property of the Tribe. The Tribal Council shall make every effort to give maximum practical notice to each member of the Tribal Council for that meeting, and the notice shall be posted as provided in Section 3 of this Article promptly after that meeting is called. No business other than that stated in the notice shall be conducted. The quorum for an emergency meeting of the Tribal Council shall be seven members of the Tribal Council.

(c) Open Meetings and Executive Sessions

All meetings of the Tribal Council called under this Article shall be open to Tribal members who shall have a reasonable opportunity to be heard under such rules as the Tribal Council may prescribe; provided that, the Tribal Council may meet in executive session for such purposes as shall be set forth in the rules of the Tribal Council; further provided that, no vote by the Tribal Council shall be taken while convened in executive session.

The Tribal Council may determine not to keep a record of all or any part of the discussion in executive session. The general reason for that

determination shall be recorded and a record shall be kept of any action taken in executive session. The record may be withheld from inspection by Tribal members pending final disposition of the matter concerned.

(d) Organization and Rules of the Tribal Council. The Tribal Council shall adopt by motion standing written rules governing its own organization and procedure, subject to the approval of the general Tribal membership at a meeting called for such specific purpose. Those rules shall be open and available to review by Tribal members. Any amendments to those rules shall be subject to the approval of the general Tribal membership at a meeting called for such specific purpose.

(e) Voting by the Tribal Council

(1) Ordinances

Except for emergency ordinances, every ordinance shall be adopted at a regular meeting of the Tribal Council by the affirmative vote of at least seven members of the Tribal Council; provided that, the quorum for those meetings shall be seven members of the Tribal Council.

(2) Resolutions and Motions

Every resolution and motion shall be adopted by the affirmative vote of at least a majority of the members of the Tribal Council present at a regular or special meeting of the Tribal Council; provided that, the quorum for those meetings shall be nine members of the Tribal Council.

Section 2. Ordinances, Resolutions, and Motions

Promptly after the effective date of this Constitution, the Tribal Council shall enact an ordinance establishing procedures for adopting, amending, or rescinding ordinances, resolutions and motions, and handling of Tribal records.

Section 3. Posting Procedure

The following shall be the procedure of the Tribal Council in posting any notice, ordinance, or other document as required by this Constitution or by Tribal ordinance.

(1) The Tribal Council shall designate by ordinance no fewer than two public places where that posting shall be made. If any posting place is to be changed, the Tribal Council shall make such change by ordinance.

(2) Posting of the notice, ordinance or other document shall take place as soon as practicable.

Section 4. General Tribal Membership Meeting

(a) There shall be a General Tribal Membership meeting called at least once a month by the Tribal Council and open to all tribal members. The purpose of the meeting shall be to discuss problems and issues concerning Tribal affairs; to review the policies, goals, and priorities of the Tribal Council; to review the functioning of Tribal programs and to make recommendations to the Tribal Council for change.

(b) The Tribal Council shall set the meeting for the second Sunday of each month at such appropriate time and place and shall provide reasonable notice to Tribal members of that meeting by posting such notice in accordance with Section 3 of this Article.

(c) Special General Tribal Membership Meeting.

(i) The Tribal Council may call a special General Tribal Membership meeting when it deems appropriate.

(ii) Tribal members may require the Tribal Council to call a General Tribal Membership meeting for a specified purpose or purposes by presenting to the Tribal Council a petition with 100 signatures of Tribal members over the age of 18, which petition shall specify the purpose or purposes for calling the meeting. The meeting called under that petition shall be convened no later than 20 days following the submission of a valid petition which shall be certified as valid within 72 hours of submission.

(d) Annual Tribal Membership Meeting

(e) The Tribal Council shall set a date and a time to present a balanced budget and discuss other Tribal business.

**ARTICLE X
Tribal Judiciary**

Section 1. Structure

(a) The Tribal Judiciary shall be composed of one Supreme Court and of such lower courts as are designated to be established in this Article, and as may be established by ordinance by the Tribal Council as it deems appropriate to meet the needs of the Tribe.

(b) The Supreme Court of the Tribe shall have jurisdiction over appeals from all final decisions of the lower courts of the Tribe. The Supreme Court shall be composed of three Judges. Supreme Court Judges may, if necessary and if so instructed by the Tribal Council also serve as Judges of the lower courts. In such a situation, however, the Supreme Court Judge shall be disqualified from participating in a review of any decision entered by that judge while sitting as a lower court judge.

(c) The Tribal Council shall determine and establish the number of lower trial courts

necessary to serve the judicial needs of the Tribe. Such trial courts shall have general and original jurisdiction over all cases of a civil or criminal nature. Each trial court shall be presided over by one Judge.

(d) If the Tribal Council establishes special kinds of lower courts with original jurisdiction over specified subject areas, the Tribal Council shall specify whether such jurisdiction is exclusive or concurrent with the jurisdiction of the trial courts established in subsection (c) of this Section.

(e) If the Tribal Council establishes an intermediate level of courts to hear appeals from all final decisions of the lower courts, the Supreme Court shall hear appeals only from decisions of the intermediate courts of appeals. In addition, the Tribal Council may authorize the Supreme Court to exercise its discretion in all or designated kinds of cases in deciding whether to hear an appeal in any particular case.

Section 2. Appointment and Term of Office

(a) The Tribal Council shall by ordinance establish a procedure for selection of Tribal Judges.

(b) Tribal Judges shall be appointed by six or more votes of the Tribal Council.

(c) Lower Court Judges shall be appointed to a term of five years.

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

Section 3. Compensation

Tribal Judges shall receive for their services a reasonable compensation, as fixed from time to time by the Tribal Council. The Tribal Council shall not diminish the compensation of a Tribal Judge during that Judge's term of office.

Section 4. Qualifications and Disqualifications

(a) To hold the office of Tribal Judge, a person shall be a member of an American Indian tribe that is recognized by the Tribe, be at least 25 years of age, have a minimum education of a high school graduate or an equivalent and meet such other requirements as shall be set forth by ordinance.

(b) No person shall be eligible to be appointed to the office of Tribal Judge who has been convicted of a felony or a crime of moral turpitude.

Section 5. Removal from Office by Tribal Council and Automatic Vacancies

(a) Tribal Judges may be removed from office by the Tribal Council by the affirmative vote of at least seven members of the entire Tribal Council, but only upon grounds of inability to carry out the duties of the office, failure to carry out the duties

of the office, or lack of a requisite qualification for serving as a Tribal Judge. The Tribal Council shall notify the Tribal Judge in question and the Supreme Court, in writing, not less than 20 days prior to the meeting at which the Judge's removal is to be considered and voted upon. The notice shall specify the charge or charges and shall state the facts in support thereof. The Tribal Judge in question shall have full opportunity at the meeting at which that Judge's removal is to be considered and decided upon to examine all adverse witnesses and to present witnesses. The decision of the Tribal Council shall be final and not appealable to the Tribal Judiciary. 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.

(b) The office of any Tribal Judge who is convicted of a felony or a crime of moral turpitude, who dies, who resigns, or who is removed shall be deemed to be automatically vacant. Resignation from office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document.

Section 6. Rules of Tribal Courts

The Supreme Court shall by order establish written rules of procedure and ethics for all Tribal Courts. 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 in establishing rules of procedure for the lower courts.

Section 7. Records and Court Clerk

The Supreme Court shall implement the system of keeping records of proceedings of the Tribal Judiciary. The Supreme Court shall appoint a court clerk who shall be responsible for keeping the records of the Judiciary and generally for administering the daily business of the Judiciary.

Section 8. Appropriations

The Tribal Council shall give priority for appropriations of such funds as may be necessary to enable the Tribal Judiciary to carry out the provisions of this Article.

Section 9. Enforcement

The Tribal Council shall implement this Article by ordinance.

ARTICLE XI

Civil and Aboriginal Rights

Section 1. Civil Rights

The Tribe, in exercising its power of self-government over persons subject to tribal jurisdiction, shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for a public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; or

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Section 2. Aboriginal Rights

The members of the Tribe retain their aboriginal rights subject only to Tribal laws. Any other person shall have no such rights.

Section 3. Rights Retained by the People

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE XII

Initiative and Referendum

Section 1. General Authority

(a) Initiative. Registered voters of the Tribe may propose any ordinance to the Tribal Council for consideration, in accordance with procedures set forth by ordinance, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, emergency ordinances, distribution of funds as per capita payments or ordinances establishing Tribal businesses. If the Tribal Council votes not to enact the proposed ordinance, or if the Tribal Council votes to enact the proposed ordinance with substantive amendments, then the proposed ordinance, in the original form and in the amended form if any, shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or rejection.

(b) Referendum

(1) By action of registered voters. Registered voters of the Tribe may require the Tribal Council to consider the repeal of any ordinance, in accordance with procedures set forth by ordinance, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, emergency ordinances, distribution of funds as per capita payments or ordinances establishing Tribal businesses. If the Tribal Council fails to repeal such ordinance, the ordinance shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or repeal in accordance with Section 2 of this Article.

(2) By action of the Tribal Council. The Tribal Council, on its own motion, may submit at a Tribal election any proposed ordinance or other proposed action of the Tribal Council to a vote of the registered voters of the Tribe for their approval or rejection.

(c) The Tribal Council shall implement this Article by ordinance.

Section 2. Results of Election

(a) Initiative

If a majority of the registered voters of the Tribe voting on a proposed initiated ordinance vote in its favor, then it shall be considered effective upon certification of the election results. If conflicting ordinances are approved at the same election, then the one receiving the greater number of affirmative votes shall prevail.

(b) Referendum

If a majority of the registered voters of the Tribe voting on a referred ordinance vote for repeal, then it shall be considered repealed upon certification of the election results. If a majority

of the registered voters of the Tribe voting on a referred ordinance vote to approve such ordinance, then it shall be considered approved upon certification of the election results.

(c) Voting Percentage Requirements

No initiative or referendum election shall be effective unless at least 15 percent of the total number of registered voters of the Tribe vote in that election.

ARTICLE XIII

Amendments

This Constitution may be amended by a majority vote of the registered voters of the Tribe voting at an election called for that purpose by the Tribal Council provided at least 30 percent of those registered to vote shall vote in such election. The election shall be conducted in accordance with this Constitution.

ARTICLE XIV

Certificate of Results of Election and Savings

This Constitution, when adopted by a majority vote of the voters of the Tribe voting in an election called for that purpose by the Board of Directors of the Mashpee Wampanoag Indian Tribal Council, Inc. shall be effective from the date the Tribal Council certifies by resolution the election results. All tribal laws, resolutions, and policy of whatever nature adopted before the effective date of this Constitution shall continue in effect to the extent they are consistent with this Constitution.

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II. BY-LAWS OF THE MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.

ARTICLE I

NAME AND LOCATION

The name of the organization shall be the Mashpee Wampanoag Indian Tribal Council Inc. with headquarters in the Town of Mashpee, County of Barnstable, Commonwealth of Massachusetts.

PURPOSE

Section 1.

The purpose of the Council is to raise the socio-economic and spiritual level of the Mashpee Wampanoag to the level where they may compete with present day society.

The Tribal Council shall assist in the quest for self Determination in such a way that will retain the Wampanoag History and culture and preservation of tribal land.

Section 2.

The Mashpee Wampanoag Indian Tribal Council will develop educational, employment and vocational training programs.

Section 3.

The Mashpee Wampanoag Indian Tribal Council will acquire Common lands for eligibility in acquiring Federal Recognition and Indian Grants or funds that may be available, as well as for means of revenue sharing on a local level.

Section 4.

The Mashpee Wampanoag Indian Tribal Council, Inc. in conjunction with the Tribe will establish rules and regulations that pertain to all business of the Tribal Council.

Section 5.

The Mashpee Wampanoag Indian Tribal Council will be a Non-Profit Organization.

ARTICLE II

COUNCIL MEMBERSHIP

Section 1. Tribal Members

Tribal members of the corporation shall consist of those persons who have qualified for membership in accordance with the provisions of Article III of the Constitution of the Mashpee Wampanoag Indian Tribe.

ARTICLE III

MEETINGS OF MEMBER CORPORATION)

Section 1.

Meetings shall be held on the second Sunday of each month, at 2 o'clock P.M., unless otherwise advertised. They shall start at 2:00 p.m. and end at 4:00 p.m.

Section 2. Annual Meetings

The annual meeting of the members of the Corporation shall be held on the second Sunday in February. The date and time to be determined by the Nomination Committee for the purpose of electing officers and/or directors and for the transaction of such business as may properly come before them.

Officers and/or Directors shall be elected by a plurality vote of the members present, by secret ballot.

Section 3.

All business relative to the Corporation shall be presented at the monthly meeting.

Section 4.

The President shall moderate Corporate meetings and appoint any committee he/she deems necessary and shall be ex-officio members of all committees, except the Nominating and Membership Committees.

Section 5.

The Vice President shall preside in the absence of the President. In the event that both officers are absent it will be the duty of a Board Member to chair the meeting.

Section 6.

The meetings will be held with a quorum of fifteen (15) members present, but lesser number may adjourn a meeting.

Section 7.

Special meetings may be called by the President, as directed by the Board of Directors, or written requires of and (10) ten members of the Council.

ARTICLE IV

BOARD OF DIRECTORS

Section 1.

The Management of the Council shall be vested in the Board of Directors and it shall conduct the business of the Corporation.

The Board of Directors shall have the authority to delegate specific duties and responsibilities to the Board and other Officers provided that such administrative policy does not conflict with action taken by the membership at duly noticed and convened meetings.

The Board of Directors shall conduct, manage, and control the affairs of the Council and make such rules consistent with these bylaws as they deem necessary or proper for the guidance of the officers, employees and for the conduct of the Council.

Section 2. Size of Board

The number of elected Directors which

shall constitute the Board of Directors shall be thirteen (13). The Directors shall be elected by the members of the corporation every year. Each Director must be a member of the corporation. In addition to the Directors elected by the members of the Corporation, the Board of Directors shall also include the officers of the Corporation. A total of eleven (11) Directors are to be elected.

The Medicine Man and Tribal Council are automatically members of the Board of Directors, with full voting privileges.

Section 3.

Each member of the Board of Directors shall be elected by ballot of the members of the Council and shall hold office for a term of four years from the date of his/her election and until his successor is elected. The Directors shall be eligible for re-nomination and election as many times as the members of the Corporation may desire.

Section 4. Vacancy

Vacancies in office shall be filled in accordance with the provisions of Section 4 of Article VIII of the Constitution.

Section 5. Meeting Place

The Board of Directors may hold meetings at a designated place, at such times as they deem necessary and desirable.

Section 6. Quorum

A quorum for the transaction of business at any meeting of the Board of Directors shall be seven (7) members of the Board.

Section 7. Special Meetings

Special meetings may be called by the President acting alone or by at least three (3) Directors.

Section 8. Attendance

Board members shall attend all regularly called meetings of the Board, or send due notice of non-attendance. Members absent from three (3) consecutive Board of Director meetings without due cause shall be subject to expulsion from the Board of Directors on grounds of failure to attend such three (3) successive regular meetings of the Board in a given calendar year without good reason as determined by the Board of Directors, lack of a required qualification for holding office, or occurrence of a disqualification for office.

ARTICLE V DUTIES OF OFFICERS

Section 1. Officers

The officers of this corporation shall consist of a President, Vice President, Secretary, and Treasurer.

Section 2. The President

He/she shall preside at all meetings of the

Corporation and the Board of Directors. He/she may appoint the chairman of all committees which may be created and he/she shall have the general powers and duties which are usually vested in the office of President of the Corporation. As the need arises, the President shall appoint special committees who shall report to the Board meetings upon completion of their work.

Section 3. The Vice President

He/she shall perform the duties of the President in case of absence, resignation or inability of the latter to act. The Vice President shall perform such duties and have such powers as the Board of Directors may from time to time prescribe. In the event that both officers are absent it will be the duty of a Board Officer to chair the meeting, by descending order.

Section 4. The Treasurer

The Treasurer shall receive all monies of the Corporation and have custody thereof. He/she shall cause to be kept a full account of all monies received and paid out and shall make such reports thereof to the Board of Directors and Council as they may require.

Section 5. The Secretary

The Secretary shall keep the minutes of all meetings of the Board of Directors and shall perform the duties and functions customarily performed by the Secretary.

Section 6.

All officers shall at the termination of their tenure turn over forthwith to their successors all papers, materials and documents of their office in the Wampanoag Indian Tribal Council, Inc.

ARTICLE VI ELECTIONS

Section 1.

Elections of members of the Board of Directors are governed by Article IV of the Constitution.

ARTICLE VII AMENDMENTS

These By-laws may be amended by a majority of those members present and voting at a regularly or specially noticed meeting of the Corporation provided that:

A. That the proposed amendment or revision be presented at the meeting prior to the one in which it will be voted upon.

B. A two thirds majority of the members present and voting shall be required for the vote on amendment or revision on by-laws.

*Bylaws adopted 1974
Bylaws revised 1978
Accepted April 1979
Edited February 1995
Bylaws revised June 2004*

III. CERTIFICATION OF CONSTITUTION AND BYLAWS VOTES

CERTIFICATION OF CONSTITUTION AND BYLAWS VOTES

We, the undersigned members of the Tribal council and Board of Directors do hereby certify that a meeting duly noticed and held on Saturday, June 26, 2004 at which a quorum was present it was voted by a two-thirds majority of those Tribal Members present and voting to adopt a new constitution of the Mashpee Wampanoag Indian Tribe and it was further voted to amend the Bylaws of the Mashpee Wampanoag Indian Tribal Council, Inc. the amended bylaws and the newly adopted Constitution are hereby determined to be in full force and effect as of this date.

Signed this 28th day of June, 2004.

Glenn Marshall
John W. ...
Nellie Ramos
Diana ...
Robert ...
James ...
Richard ...

David ...
Norm ...
Cedric ...
Cheryl ...
Yvonne ...
Gail ...



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