



**Mashpee Wampanoag Tribe**  
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**NOTICE AND SYNOPSIS OF PROPOSED ORDINANCE**  
**Regarding Mashpee Wampanoag Code of Ethics**

**Posted: 12/14/2023**

2009-ORD-003 of the Mashpee Wampanoag Tribe (the “Tribe”) requires notice to be served by posting of the title and synopsis of the material provisions of a proposed ordinance on the Tribe’s website and at the Tribe’s Tribal Council office. Such posting is required to be posted at least ten (10) days before the Tribal Council meeting at which a final vote will be conducted (with the day of posting and the day of the meeting not counting as part of the ten (10) day period). Notice is hereby given pursuant to Article IX, § 3(2) of the Constitution of the Mashpee Wampanoag Tribe, that the Mashpee Wampanoag Tribal Council is proposing to adopt 2023-ORD-001, Mashpee Wampanoag Code of Ethics (the “Proposed Ordinance”).

**TITLE OF THE PROPOSED ORDINANCE**

“2023-ORD-001, Mashpee Wampanoag Code of Ethics.”

**DIRECTIONS AND DEADLINES FOR PUBLIC COMMENT**

The public may submit written comments on the Proposed Ordinance by delivery or mail to the Mashpee Wampanoag Tribal Secretary, Cassie Jackson, 483 Great Neck Road South, Mashpee, MA 02649 or e-mailed to [Cassie.Jackson@mwtribe-nsn.gov](mailto:Cassie.Jackson@mwtribe-nsn.gov). Written comments should be submitted on or before **Friday, January 12, 2024**.

Any person interested in obtaining the Ordinance in its entirety may contact Cassie Jackson, Secretary to the Mashpee Wampanoag Tribal Council at 508-477-0208, or [Cassie.Jackson@mwtribe-nsn.gov](mailto:Cassie.Jackson@mwtribe-nsn.gov)

## **SYNOPSIS OF PROPOSED ORDINANCE**

Notice is hereby given pursuant to Article IX, § 3(2) of the Constitution of the Mashpee Wampanoag Tribe and 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, that the Mashpee Wampanoag Tribal Council (the “Council”) is proposing to adopt an ordinance titled “2023-ORD-001, Mashpee Wampanoag Code of Ethics” (the “Proposed Ordinance”).

The purposes and intended effect of this Ordinance is to create the Mashpee Wampanoag Ethics Commission and establish operating procedures and ethical standards to be applied by the Commission. The Ordinance is to be enacted as a guiding principle that public office is a trust and the officers and officials of the government are trustees; and both the trust and the trustees are created for the benefit of our people. Such standards and Code of Ethics in the Ordinances will apply to all Tribal Councilors, officers, appointees and employees.

### **MEMORANDUM SECTION-BY-SECTION ANALYSIS OF PROPOSED ORDINANCE**

The title of the draft ordinance is 2023-ORD-001, Mashpee Wampanoag Code of Ethics. The wording of the title is consistent with 2007-ORD-001, Establishing Format of Ordinances and Resolutions (as amended). An enacting clause gives force to the law by stating the legal authority. The enacting clause for this Ordinance is “The Mashpee Wampanoag Tribal Council does ordain as follows:”

#### **Section 2. Authority and Purpose**

- (a) The authority for this Ordinance is found in Articles V, §4, and VI, 2.A of the Tribe's Constitution.
- (b) The purpose of this Ordinance is to accomplish the following objectives:
  - (1) To create the Mashpee Wampanoag Ethics Commission and establish the basic operating procedures and standards for it.
  - (2) To promote and strengthen the faith and confidence of Tribal members and non- Tribal members in the Tribe's government and administration;
  - (3) To require accountability to the people of the Mashpee Wampanoag Tribe, including but not limited to elected, appointed and assigned public officials, employees, contractual workers, volunteers and all others engaged with the Tribe; and
  - (4) To enact as law the guiding principle that public office is a trust and the officers and officials of the government are trustees; and both the trust and the trustees are created for the benefit of our people.

## **Section 1. Establishment of the Ethics Commission**

- (a) The Tribal Council hereby establishes the Ethics Commission, an agency of the Tribe, that is empowered to effectively and fairly enforce the laws it administers.
- (b) The Ethics Commission is authorized to enforce and take action with respect to tribal laws.
- (c) The Ethics Commission may establish an Ethics Department.
- (d) The Ethics Commission may determine assistance is needed to provide administrative services for the Ethics Commission. In turn, a position description may be submitted for fiscal approval during the budget process.

## **Section 2. Ethics Commission Structure**

- a) The Ethics Commission shall be comprised of seven (7) Commissioners, each serving 4-year terms.
  - b. Appointment Order. The Tribal Elders shall select their Commissioners first. The General Body shall select their Commissioners second. The Tribal Council shall select their Commissioners third.
  - c. Initial Appointments. In appointing and electing the first seven (7) Commissioners, and in order to facilitate the creation of staggered terms, the Tribal Elders shall appoint one (1) Commissioner for a three-year term, and one (1) Commissioner for a four-year term. The General Body shall elect one (1) Commissioner to a two-year term, one (1) Commissioner to a three-year term, and one (1) Commissioner to a four-year term. The Tribal Council shall appoint one (1) Commissioner to a two-year term and one (1) Commissioner to a 4-year term. After the initial appointments all terms will be four years.
- (a) Qualifications of Commissioners.
  - 1. Commissioners shall be free of any felony conviction for the preceding five years from the date of consideration of eligibility.
  - 2. Commissioners shall be free from any previous removal from the Ethics Commission.
  - 3. Commissioners shall be able to demonstrate, through life, professional, or educational experience, an understanding of and wisdom in ethical matters.
  - 4. Commissioners must undergo and satisfy background and reference checks.

## **Section 5. Responsibilities and Requirements of the Ethics Commission**

- (a) The Commission shall be responsible for the following:
- 1) Implementation and compliance with this Ordinance;
  - 2) Enforcement of this Ordinance;
  - 3) Oversight of regulations, policies and procedures related to compliance with and enforcement of this Ordinance;
  - 4) Acceptance of inquiries, reports, questions, and complaints of non-compliance with this Ordinance;
  - 5) Investigation of allegations to determine whether a violation has occurred;
  - 6) Conducting hearings as required by this Ordinance;
  - 7) Generating reports as required by this Ordinance;
  - 8) Issuing opinions as required by this Ordinance;
  - 9) Determining corrective actions for non-compliance with this Ordinance;
  - 10) Submitting recommendations to Tribal Council regarding prevention of future ethics violations and ethics-related training and education opportunities for employees;
  - 11) Providing an annual summary to Tribal Council regarding the work of the Commission, provided that such reports shall not disclose sensitive or confidential information;
  - 12) Providing the Oath of Ethical Compliance to all individuals governed by this Ordinance.

## **CHAPTER 3: GENERAL PROHIBITIONS**

### **Section 1. Code Of Ethics**

All members of the Tribal Council, Tribal officers, appointees, and employees are expected to adhere to the following Code of Ethics:

- (a) Personal Integrity. All individuals covered by this Ordinance shall at all times:
- 1) Maintain high standards of honesty, integrity, fairness and impartiality;
  - 2) Avoid any actions that would have a negative impact on the Tribe;
  - 3) Demonstrate at all times loyalty to the Tribe;
  - 4) Work to create a safe and healthy workplace;
  - 5) Protect and take care of the physical, monetary or intellectual property of the Tribe;
  - 6) Utilize or use Tribal physical, monetary or intellectual property only when authorized to do so and for authorized purposes;
  - 7) Respect their own and all other employees' use of work/official time;
  - 8) Utilize only authorized employees and staff for the official purposes for which they are employed or otherwise retained;

- 9) Cooperate in Commission investigations, including but not limited to, providing all requested materials and participating in Commission proceedings;
- 10) Not use their positions to make commitments or promises claiming to bind the Wampanoag Tribe of Mashpee without appropriate authorization under the laws of the Tribe;
- 11) Not misuse their titles or position for improper influence;
- 12) Not use their positions for personal gains;
- 13) Not engage in verbally abusive or intimidating behavior towards other employees;
- 14) Not lie or falsify records or misreport or mischarge for time worked, billed, or reported;
- 15) Not use Tribal resources to disseminate personal messages unrelated to the business of the Tribe;
- 16) Not use any Tribal property, including computers and the Internet, for political activities;
- 17) Not engage in nepotism;
- 18) Not employ the resources of the Tribe in an unauthorized fashion;
- 19) Not receive monetary benefit, services or any form of kickback in exchange for political favor or financial gain whether perceived, actual or potentially in the future; and
- 20) Not retaliate for submission of or participation in an investigation related to a possible violation of this Ordinance.

(b) Compliance with the Law. All individuals covered by this Ordinance shall:

- (1) Comply with all Tribal and departmental laws, regulations, rules, policies and procedures;
- (2) Comply with all applicable federal and state laws, regulations, rules, policies and procedures;
- (3) Ensure that government contracting shall be conducted in a lawful, transparent manner and meet all Tribal and federal procurement requirements and standards;
- (4) Be responsible to ensure that no Tribal employee, Council Member, appointee, or officer is employed in such a way that violates Tribal law.

(c) Financial Responsibility. All individuals covered by this Ordinance shall:

- (1) Take all necessary steps to ensure that the funds of the Tribe, and its agencies, arms and departments, are carefully maintained and accounted for;
- (2) Take affirmative steps to prevent those doing business directly or indirectly before a Government Official, or in any commercial context, on the Tribe's behalf from engaging in bribery (for example, by following the Tribe's Business Gift & Entertainment Policy)
- (3) Ensure that all service, labor, material and other program costs are billed, collected, and administered correctly;

- (4) Not use Tribal funds for any unethical, unauthorized, or improper purpose;
- (5) Not obtain financial gain, kickbacks, bribes, or anything of substantial financial value for the private or personal benefit of the elected official, employee or their immediate family, or for an organization with which they are affiliated;
- (6) Not use their Tribal office or employment for private/personal gain;
- (7) Not engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office, committees, commissions, councils or employment;
- (8) Not engage in acts or omissions that offer, authorize or give anyone a bribe, or create the impression that a bribe has been offered, authorized or given;
- (9) Not solicit or receive any remuneration (including any kickback, bribe, or rebate) in return for referrals to furnish an item or service or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made by the Tribe or its arms, agencies, or departments;

Filing a Complaint. Any person who, in good faith, has reason to believe that an official or employee has violated any provision of this Ordinance, may submit a written complaint to the Ethics Commission, subject to the requirements of this Section.

## **Section 5. SANCTIONS**

(a) **Final Determinations.** The Ethics Commission shall make a final determination of whether a violation of this Ordinance has occurred. If a violation is proven, consistent with this Ordinance the Commission shall issue sanctions for the violation.

- i. In reaching a final determination, the Commission shall also recognize and take into account, as appropriate, the following considerations: whether the issue resulted from ignorance or negligence or was intentional; whether there are mitigating circumstances; whether the individual acknowledges his/her unethical conduct; and whether the individual has previous ethical or other types of offenses.
- ii. The Commission shall provide a copy of each employee -related determination to the Tribal Administrator, who shall be responsible to ensure that any sanctions related to employment (i.e., suspension or termination) are carried out in compliance with Tribal law and policies within ten (10) business days.
- iii. The Commission shall provide a copy of each Tribal Council and Tribal Official determination to the Tribal Council , who shall be responsible to ensure that any sanctions related to the Tribal Council are carried out in compliance with Tribal law and policies within ten (10) business days
- iv. The Commission may issue ethical guidance opinions.

1. An ethical guidance opinion shall be publicly available;
2. An ethical guidance opinion shall begin with a “question posed” that identifies the issue to be determined in the opinion;
3. An ethical guidance opinion shall not include specifically identifiable information for any person or entity within the opinion (i.e., a hypothetical, non-specific version of a case may be addressed in an ethical guidance opinion); and
4. An ethical guidance opinion shall provide a specific answer or proposed course of action in regard to the question posed.

(b) **Sanctions.** The Ethics Commission will recommend and the Tribal Council or any other enforcing body shall issue sanctions accordingly. The following, without limitation, are possible sanctions, corrective actions or disciplinary measures: removal of the official or employee of the Tribe, termination, restitution, monetary fine, written explanation, written reprimand, letter of warning, community service; required training or education; suspension; or recommendation for possible civil or criminal prosecution.

(c) **Appeal.** An official or employee subject to sanctions may appeal to the Mashpee Wampanoag Tribal Judiciary:

(i) A notice of appeal shall be filed within thirty (30) days of the issuance of the sanction(s).

(ii) If the Tribal Judiciary finds the complainant has made a successful appeal it shall order the Tribal Council to lift the sanctions. If the Tribal Judiciary finds the complainant has not made a successful appeal, it shall sustain the sanctions. The Tribal Judiciary’s decision shall be final.

(d) **Not a Bar to Other Penalties.** No imposition of any or all penalties provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

## CHAPTER 5. MISCELLANEOUS

### Section 1. SOVEREIGN IMMUNITY

The Ethics Commission is an agency of the Mashpee Wampanoag Tribe and thereby retains all rights of sovereign immunity of the Tribe. The Commission shall not have the authority to waive the sovereign immunity of the Tribe or any of its officers, agents, attorneys, or employees, or anyone else acting at the direction of and behalf of the Tribe. Nothing in this Ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity or as an authorization for a claim of money damages from the Tribe.

**Section 2. REPEALER.** All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

**Section 3. 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 4. EFFECTIVE DATE.** This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.