



Mashpee Wampanoag Tribe
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2022-RES-027

**EMERGENCY APPROVAL OF MASHPEE WAMPANOAG TRIBAL GOVERNMENT
CODE OF CONDUCT**

WHEREAS, the Mashpee Wampanoag Tribe (“Tribe”) is a federally-recognized Indian Tribe with a duly-enacted Constitution; *and*,

WHEREAS, the Mashpee Wampanoag Tribal Council (“Tribal Council”), the governing body of the Tribe, deems it essential, and is empowered, under Article VI, §2.A. of the Mashpee Wampanoag Tribal Constitution to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members; *and*

WHEREAS, the Tribal Council deems it essential, and is empowered, under Article VI, §2.A. Constitution 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; *and*

WHEREAS, the Tribal Council deems it essential, and is empowered, under Article VI, §2.A. Constitution to establish procedures for the conduct of all tribal government business operations, except where elsewhere precluded in this constitution; *and*

WHEREAS, this Meeting is an emergency meeting of the Tribal Council within the meaning of the Constitution that has been duly convened by the Chairperson of the Tribe; *and*

WHEREAS, the Tribe is in urgent need of a Tribal Government Code of Conduct to implement emergency procedures for the proper, transparent and ethical conduct of the Tribal Government (the “Code of Conduct”); *and*

WHEREAS, the purpose of the Code of Conduct is to set forth standards by which Tribal government officials will conduct themselves in order to protect and promote Tribal integrity and to enhance the ability of the Tribe to achieve its objectives in a manner consistent with all applicable laws and regulations; *and*

WHEREAS, the meeting is necessary to adopt a Code of Conduct in order to preserve and protect the immediate peace and safety of the Tribe and its governmental functions; *and*

WHEREAS, the Chairperson of the Tribe and those members of the Tribal Council in attendance of this meeting have determined that such finding and the adoption of a Code of Conduct is critical

and necessary for the preservation or protection of the immediate health, peace, safety, or property of the Tribe within the meaning of 2009-ORD-003 and the Constitution; *and*

WHEREAS, pursuant to Article IX, Section 1(e)(1) of the Constitution a quorum for this Meeting is seven (7) members of the Tribal Council; *and*

BE IT RESOLVED, that the Code of Conduct is intended to guide and direct all Tribal government officials in dealing with situations they may encounter while serving in office or as appointed; *and*

BE IT FURTHER RESOLVED, that a “Tribal government official” refers to any person holding an elected or appointed office in any government body of the Mashpee Wampanoag Tribe; *and*

BE IT FURTHER RESOLVED, that a “Government body” refers to any branch, instrumentality, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency and any establishment of the executive, administrative or legislative function of the Mashpee Wampanoag Tribe; *and*

BE IT FURTHER RESOLVED, that the Tribal Council hereby adopts the following *Code of Conduct*; *and*

PRINCIPLES OF CODE OF CONDUCT

1. CONDUCT IN CONFORMITY WITH APPLICABLE RULES AND LAWS

WHEREAS, the actions of Tribal government officials reflect their commitment to conduct all the Tribe’s activities in an honest, ethical and professional manner in compliance with all applicable state, federal and tribal laws and regulations and policies; *and*

BE IT RESOLVED, that Tribal government officials shall always conduct themselves to reflect credit upon the Tribal members and Tribal government and comply with all applicable laws of the Mashpee Wampanoag Tribe with respect to their conduct in the performance of the duties of their respective office or employment; *and*

2. EQUAL REPRESENTATION

WHEREAS, that Tribal government officials shall represent the interests of all members of the Mashpee Wampanoag Tribe and not serve special interests inside or outside of the Tribe; *and*

BE IT RESOLVED, that to fully represent the interests of the Tribe, Tribal government officials shall:

- (a) Not engage in any business activity that they believe is unethical or illegal;
- (b) Refuse any illegal offers, solicitations, payments, or other remuneration to induce business opportunities;
- (c) Refuse any offer that has the appearance of being an illegal or inappropriate offer, solicitation, payment or remuneration.

3. INTEGRITY

BE IT RESOLVED, that Tribal government officials shall not use their position and/or Tribal resources to serve their own personal, financial, or business interests; *and*

4. CONFIDENTIALITY

BE IT RESOLVED, that to respect the privacy of Tribal business, Tribal employees, clients and Tribal members, Tribal government officials shall not use or disclose confidential information gained during or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else; *and*

5. RESPONSIBILITY

WHEREAS, Tribal government officials shall respect the laws that govern the operation of the Tribe and the proper treatment of Tribal members; *and*

WHEREAS, the actions of Tribal government officials reflect their commitment to conduct Tribal activities in an honest, ethical and professional manner; *and*

WHEREAS, Tribal government officials are stewards of public trust both for the Tribal community and in their representation of the Tribe at the local, state and national level; *and*

BE IT RESOLVED THAT, in carrying out their responsibilities, Tribal government officials shall:

- (a) Adhere to both the letter and the spirit of applicable Tribal, federal, and state laws and regulations.
- (b) Maintain high standards of business and ethical conduct in accordance with applicable federal, Tribal and state laws and regulations, including laws and regulations dealing with fraud, waste and abuse.
- (c) Be truthful and straightforward in dealing with other government agencies.
- (d) Maintain a workplace free of discrimination, harassment, violence and intimidation, and that is drug-free, as required by law. Tribal government officials shall not tolerate any form of threatening or abusive behavior under a zero-tolerance policy.
- (e) Follow Indian preference in employment as allowed by law in accordance with Tribal policies.

BE IT FINALLY RESOLVED, that in carrying out their responsibilities, Tribal government officials shall uphold the following legal duties without limitation:

- (a) Duty of Undivided Loyalty.
- (b) Duty of Care.
- (c) Duty of Impartiality.

- (d) Duty of Due Diligence.
- (e) Duty of Honesty & Trustworthiness.
- (f) Duty of Good Faith & Fair Dealing.
- (g) Duty to Act Lawfully.
- (h) Duty of Disclosure.

6. COMPETENCE, CONFIDENCE AND FITNESS TO SERVE

WHEREAS, Tribal government officials shall perform their duties by making informed decisions in good faith and in a manner believed to be in the best interests of the Tribe; *and*

BE IT FURTHER RESOLVED, that to maintain confidence in the Tribal government, such officials shall:

- (a) Disclose conviction of any criminal offense, felony under Federal, State, or Tribal law for which the conduct involved renders the official unfit to remain in office.
- (b) Practice good faith in all transactions occurring during tribal business.
- (c) Deal openly, effectively, professionally, and honestly with fellow Tribal government officials, employees, Tribal members, contractors, government agencies and others.
- (d) Conduct tribal business dealings in a manner such that the Tribe shall be the beneficiary of such dealings.
- (e) Make educated decisions based on sufficient inquiry and accurate information.
- (f) Prohibit displays of contemptuous conduct in connection with position within the Tribal Council and Tribal Government, including use of abusive language, making false accusations or statements, knowing them to be false or circulating or publishing malicious or libelous matter.
- (g) Uphold the sworn oath into office.

BE IT FURTHER RESOLVED, that Tribal governmental officials shall maintain the ability to adequately perform their Constitutional duties and obligations; *and*

BE IT FURTHER RESOLVED, that it may be a governmental, job-related or business necessity for Tribal Council to request a disability-related inquiry or require a medical examination, if observed that the Tribal government official may have a medical condition or has exhibited performance problems and reasonably can attribute the problems to a medical condition that will impair his/her ability to perform his/her Constitutional Duties and/or essential job functions and/or performance obligations or will pose a direct threat to the health, peace, safety, welfare and property of the Tribe if they continue in their official capacity; *and*

7. ACCOUNTABILITY

WHEREAS, Tribal government officials are bound by this Code of Conduct and shall address behavior inconsistent with this Code in an effective and efficient manner as set forth in this Code; *and*

BE IT RESOLVED, that Tribal government officials will adhere to the Code of Conduct and enumerated Principles by:

- (a) Becoming familiar with this Code of Conduct and the policies and procedures applicable to Tribal government officials provided herein.
- (b) Providing open communication channels to allow Tribal members and employees to pursue compliance or ethical questions without fear of retaliation.
- (c) Immediately reporting any suspected violations of this Code of Conduct or of any applicable law or regulation, as set forth herein for investigation either through established administrative channels or to the Tribal Ethics Officer.
- (d) Not taking any disciplinary action or otherwise retaliate in any form against any Tribal member or employee, who, in good faith, reports a concern, issue, problem, or violation of the law, regulations or the Code of Conduct. “Good faith” means that there is an objective basis for the allegation and does not require definitive proof.
- (e) Take alleged violations and suspected violations seriously, as they could delay, compromise, or otherwise impair the services the Tribe provides.

CONFLICT OF INTEREST

WHEREAS, in accordance with applicable federal and Tribal law, including, but not limited to, 2017-RES-033, *Amended and Restated Mashpee Wampanoag Tribe Standards of Conduct*, Tribal government officials shall maintain high standards of work performance and professional conduct, including, but not limited to, avoidance of any conflict of interest and self-dealing and disclosure of any existing or potential conflict of interest; *and*

BE IT RESOLVED, that no Tribal government official shall use, or attempt to use, any official or apparent authority of their office or duties which places or could reasonably be perceived as placing their private economic gain or that of any special business interests with which they are associated, before those of the Tribal membership and Government body, whose paramount interests their office or employment is intended to serve; *and*

BE IT RESOLVED, that Tribal government officials shall avoid any action, whether or not specifically prohibited by the Code of Conduct set out herein, which could result in, or create the appearance of:

- (a) Using public office for private gain.

- (b) Giving preferential treatment to any special interest organization or person.
- (c) Impeding governmental efficiency or economy.
- (d) Losing or compromising complete independence or impartiality of actions.
- (e) Making a government decision outside official channels.
- (f) Adversely affecting the confidence of the Tribal members in the integrity of the government of the Mashpee Wampanoag Tribe.

BE IT FURTHER RESOLVED, that no Tribal governmental official shall participate in the selection, or in the award or administration of a contract supported by Federal funds and/or Tribal funds, if a conflict of interest, real or apparent, would be unless a conflict waiver is duly issued in accordance with applicable Tribal law; *and*

BE IT FURTHER RESOLVED, that Tribal governmental officials, outside of their official duty, are prohibited from receiving any compensation from someone else in connection with a matter that the Tribe has an interest in; *and*

BE IT FINALLY RESOLVED, that Tribal governmental officials, outside of their official duty, whether compensated or not, are prohibited from acting as agent on behalf of someone else in connection with a matter that the Tribe has an interest in; *and*

1. CONFLICT OF INTEREST STATEMENTS AND OFFICIAL ACTION

WHEREAS, it is a premise that all Tribal governmental officials who have interests which might conflict with their duties, should divulge those interests. Disclosure shall also extend to those interests held by his/her immediate family; *and*

BE IT RESOLVED, that when a Tribal government official is required to take official action on a matter in which such Tribal government official has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under this Code of Conduct, such Tribal government official shall:

- (a) Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such Tribal government official is aware of the responsible party for inclusion in the official record of any vote or other decision or determination.
- (b) Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter.
- (c) Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise legally required by law or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.

(d) Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body.

2. ANTI-NEPOTISM

BE IT RESOLVED, that no Tribal government official shall employ, elect, appoint or otherwise cause to be employed, nor nominate or otherwise influence the appointment or employment to any Tribal office or position with the Government body of the Mashpee Wampanoag Tribe or any governmental or political subdivision thereof, any person or persons in their immediate family as defined under Tribal law, nor any member of the same household as said public official or public employee unless such relationship is fully disclosed and a conflict waiver is duly issued by the Tribal Council in accordance with Tribal law; *and*

BE IT FURTHER RESOLVED, that assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of this Code of Conduct and applicable Tribal Law; *and*

3. ECONOMIC INTERESTS

BE IT RESOLVED, that to avoid using Tribal governmental positions to serve their own personal, financial, or business interests, Tribal government officials shall:

- (a) Not participate in governmental decisions in which they have a business, financial, or professional interest outside of the Tribe or the people or persons which they represent.
- (b) No Tribal government official shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in their official capacity for performing such duties.
- (c) Not solicit or offer anything of value in the course of business dealings.
- (d) Avoid using the Tribe's resources to their own personal, financial, or business interests. Tribal government officials shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.
- (e) No Tribal government official, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.
- (f) Strictly prohibit kickback, bribes, rebates or any kind of benefits intended to induce business benefits.

(g) Report reimbursable expenses accurately and to only one source; and avoid receiving any financial gain as a result of tribal business travel or entertainment.

(h) Tribal government officials shall not:

1. Use supplies and services in a manner that avoids waste or abuse. Be responsible and accountable for the proper use of all Tribal property and equipment entrusted in their care.

2. No Tribal government official shall use any property of the Mashpee Wampanoag Tribe of any kind for use other than as authorized and approved for official Tribal purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

3. Tribal government officials shall 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 or employment; nor acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.

4. TRIBAL GOVERNMENT CONTRACTS: RESTRICTIONS AND BID REQUIREMENTS

BE IT RESOLVED, that no tribal government official shall participate in the selection or in the award or administration of a contract or grant award of funds from any government agency, if a conflict of interest, real or apparent, shall be involved; *and*

BE IT RESOLVED, that no Tribal government official or any member of such person's immediate family shall be a party to, nor have an interest in the profits or benefits of, any government contract of the Mashpee Wampanoag Tribe or of any investment of funds of the Mashpee Wampanoag Tribe, unless the contract or the investment meets the following requirements:

(a) The contract is let by notice and competitive bid or procurement procedures as required under the applicable laws, rules, regulations and policies of the Mashpee Wampanoag Tribe, for necessary materials or services for the governmental agency or entity involved; and

(b) In the continuous course of business, the bid was commenced before the Tribal government official assumed their current term of office or employment; and

(c) The entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the Tribal government official or a member of their immediate family; and

(d) The Tribal government official has taken no part in the determination of the specifications, deliberations or decisions of a governmental agency with respect to the public contract.

(e) This provision shall not apply to such persons participating in cultural events of the Tribe, qualifying for housing benefits from the Tribe or for medical benefits from the Indian Health Service or other programs and services available to all Tribal members.

(f) A conflict waiver is duly issued in accordance with applicable Tribal law.

5. GIFTS, AWARDS, LOANS, REIMBURSEMENTS AND CAMPAIGN CONTRIBUTIONS

BE IT RESOLVED, that except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Mashpee Wampanoag Tribe, or by other applicable law, no Tribal government official shall solicit or accept for themselves or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any tribal governmental office or entity with which the Tribal government official is associated or employed; or

(2) Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the Tribal government official is associated or employed; or

(3) Has any interest which, within two (2) years, has been directly involved with, or affected by, the performance or nonperformance of any official act or duty of such Tribal government official or of the government office or entity with which the Tribal government official is associated or employed or which the Tribal government official knows or has reason to believe is likely to be so involved or affected.

(b) The restrictions in this Section shall not be construed to prohibit:

(1) An occasional non-pecuniary gift of insignificant in value.

(2) Gifts from and obviously motivated by family or social relationships, as among immediate family members or family inheritances.

(3) Food and refreshments customarily made available in the ordinary course of meetings where a Tribal government official may properly be in attendance.

(4) An award or honor customarily and publicly presented in recognition of public service.

DUAL CAPACITIES AS TRIBAL OFFICIAL AND TRIBAL EMPLOYEE

1. EMPLOYMENT POLICY

BE IT RESOLVED, that subject to the restrictions and conditions set forth in this Code of Conduct, Tribal government officials are free to engage in employment with the Tribe to the same extent as the general public. The Mashpee Wampanoag Tribe may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Mashpee Wampanoag Tribe, in light of special circumstances or the particular duties of the Tribal government official.

(a) Definitions

(1) The term “employment,” within the meaning of this section includes professional services and other services rendered by a Tribal government official whether rendered as an employee, consultant, or other independent contractor.

(2) “Dual capacity at any meeting” means that a Tribal government official is attending a meeting regarding the government body in which they are employed. For example, a Tribal Council member attending a Tribal Council meeting regarding environmental regulations that is also employed in the Tribe’s environmental division is serving in a dual capacity at that particular meeting.

(3) “Honorarium” is defined as an honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service. A payment of money or anything of value made to a person for services rendered for which fees cannot legally or are not traditionally made.

(4) “Income” means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items.

2. ABSTAIN FROM VOTING

BE IT RESOLVED, that a Tribal government official serving in a dual capacity at any meeting shall abstain from voting or otherwise participating in the official decision or determination of such matter; *and*

BE IT FURTHER RESOLVED, that unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body to take such action or vote upon such matter; *and*

3. COMPENSATION

BE IT RESOLVED, that a Tribal Council member may receive income, honoraria or reimbursement of expenses attributable to the performance of duties during a duly called Tribal Council meeting or other Government body function; *and*

BE IT RESOLVED, that Tribal government officials cannot receive double compensation as an employee and council member. No honorarium shall be paid to any Tribal Council member who is paid a salary directly by any Tribal government body for attending a meeting in which they are not entitled to vote or participate. Therefore, income shall not be paid to a council member who holds such dual capacity at any meeting. However, if a Council person attends a meeting that does not address their Tribal employment agency, that person may receive all honorariums; and

BE IT FURTHER RESOLVED, that in lieu of receiving the Tribal honorarium, Tribal government officials have the option to decline their employment income for the time they are attending a meeting; *and*

BE IT FURTHER RESOLVED, that this Section shall not be construed to prohibit the receipt of authorized compensation for the performance of other distinct and lawful duties by Tribal government officials. In those instances, Tribal government officials may receive a salary and honoraria (For example, a Council person, who is also a casino employee, representing the Tribe by speaking at a public event outside of the Tribes territory regarding Indian gaming).

BE IT FINALLY RESOLVED, that in all other situations, Tribal government officials may receive a second honorarium if it is received from a non-Tribal organization. If a second honorarium is received from another Tribal organization or federal agency, the honorarium from the Tribe shall be returned to the Tribe; *and*

DEBTS OWED TO THE MASHPEE WAMPANOAG TRIBE

BE IT RESOLVED, that all Tribal governmental officials delinquent in debt(s) of six (6) months or more to the Tribe and who have not made reasonable arrangements for payment of said debt(s) shall be brought to the attention of the Tribal Council by the Tribal Treasurer, or in the absence of Treasurer, the Chairman's designated Tribal Council Officer; *and*

BE IT FURTHER RESOLVED, that for such failure to pay, such Tribal governmental officials shall be subject to expulsion or suspension immediately from his/her respective official capacities by a vote of at least seven (7) Council members in accordance with Article VIII, Section 2. of the Constitution, *and*

BE IT FURTHER RESOLVED, that such Tribal governmental official shall not have the privilege of serving in his/her official capacity until actual payment in FULL of their outstanding debt(s) has been made; *and*

BE IT FURTHER RESOLVED, that it shall be the responsibility of the Tribal Treasurer or Chairman's designated Tribal Officer to notify the Tribal governmental official delinquent in debt of their removal or suspension by Council action; *and*

BE IT FURTHER RESOLVED, that any Tribal member, singularly or a party to, being delinquent in debt(s) of six (6) months or more to the Tribe and who have not made reasonable arrangements for payment of said debt(s) shall not be awarded new contracts, subcontracts, or any moneymaking ventures until:

- (1) Delinquent debt(s) is satisfied in full, or
- (2) If the Tribal Treasurer or Chairman's designated Tribal Officer in absence of the Treasurer notifies the awarding committee that a debtor applying for a contract, subcontract, or any moneymaking ventures, has paid fifty percent (50 %) of his/her debt (s) to the Tribe, that debtor is eligible to compete for contracts, subcontracts, or any moneymaking ventures, and if awarded a contract, subcontract, or moneymaking venture, he/she shall sign a statement authorizing the deduction of a minimum of fifteen percent (15%) (Off the top) of the contract to be paid TOWARD the delinquent debt(s), *and*

PROMULGATION OF SUPPLEMENTAL STANDARDS

WHEREAS, The Tribal Council Chairperson or Tribal administrator is authorized to submit for approval and adoption by the Tribal Council such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this Code of Conduct; and

WHEREAS, upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations and shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with this Code of Conduct; *and*

IMPLEMENTATION AND COMPLIANCE

1. ETHICS OFFICER

BE IT RESOLVED, that there is hereby created a position entitled "Mashpee Tribal Ethics Officer" ("Ethics Officer") who shall be interviewed and hired by the Tribal Council to serve and create or maintain the Ethics Department and Code of Ethics. The Ethics Officer shall have only those duties set forth in this Section and further established policy and procedure in the Ethics Department. In lieu of Officer, Tribal Council shall serve as interim Ethics Officer. The Ethics Department, its officers and its employees, shall be located in a separate branch of government, preferably the Tribal Judicial Branch; *and*

2. FILING OF COMPLAINTS

BE IT RESOLVED, that the Ethics Officer may initiate and/or receive review and/or investigate complaints filed with the Tribe. Each complaint shall contain a statement of the alleged misconduct, including any section of the Tribal Government Code of Conduct alleged to have been violated, or other alleged disability and the alleged facts and any all supporting evidence upon which such charges are based; *and*

3. NOTICE

BE IT RESOLVED, that the Ethics Officer shall also issue to the Tribal government official a written notice containing a statement of alleged misconduct, including any section of the Code of Conduct alleged to have been violated, or other alleged disability. The notice shall state alleged facts upon which such charges are based; *and*

4. DETERMINATION TO PROCEED

BE IT RESOLVED, that within ten days (10) upon receipt of complaint, the Ethics Officer or department designee shall investigate the allegations in the complaint. If the Ethics Officer finds sufficient cause to proceed, the Ethics Officer or department designee shall conduct non-adjudicatory administrative hearings to determine violations or noncompliance with this Code; *and*

BE IT RESOLVED, that if the investigation brings forth violations of a minor nature or a situation that is subject to administrative remedies, the record of the investigation shall so state. Administrative remedies shall mean those internal controls of program management established by the Ethics Department; *and*

BE IT FURTHER RESOLVED, that if the investigation indicates violations of a serious nature that are prosecutable in a court of competent jurisdiction, the Ethics Officer or Ethics Officer designee shall proceed directly with his investigative reports to the Tribal court or if the situation indicates, to the Tribal Prosecutor for prosecution; *and*

BE IT FINALLY RESOLVED, that upon recommendation of the Ethics Officer, the Tribal Council may dismiss any complaint which the Tribal Council determines has insufficient facts to constitute a violation of noncompliance to this Code of Conduct, or if there is insufficient evidence to support the allegations; *and*

5. RESPONSE TO NOTICE

BE IT RESOLVED, that within five (5) working days after receipt of the complaint, the accused Tribal governmental officer shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which they intend to rely on at the hearing; *and*

6. ADMINISTRATIVE HEARINGS

BE IT RESOLVED, that a hearing on allegations of nondisclosure shall be scheduled within fifteen (15) days after it has been presented. In lieu of an Ethics Officer, the Tribal Council, in the capacity of a quasi-judicial body, shall conduct administrative adjudicatory hearings on any alleged violation of noncompliance in accordance with this Code of Conduct; *and*

BE IT RESOLVED, that the Ethics Officer shall be charged with the responsibility of representing the Mashpee Wampanoag Tribe in bringing forth all complaints filed under this Code of Conduct. The Ethics Officer shall act in the capacity of complainant on matters to be heard by the Tribal Council; *and*

BE IT FURTHER RESOLVED, that the defendant should be given Notice; particularly defining the allegations and by whom. The burden of proof will rest with the accuser. Due process requires that the accused has the right to be represented, present testimony and cross-examine witnesses and his/her accuser; *and*

BE IT FURTHER RESOLVED, that all hearings shall follow the applicable rules of procedures and evidence of the Tribe. Presentation of the evidence requesting circumstances for offenses shall be presented at a regularly scheduled Tribal Council meeting wherein a majority vote shall be obtained for subject's suspension; *and*

BE IT FINALLY RESOLVED, that in any complaint where the accused is the Tribal Chairman, Vice-Chairman, Treasurer, or Secretary, the Tribal Council, upon completion of the adjudicatory administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction. Said findings, conclusions and recommendations shall be forwarded to the Mashpee Tribal Council during its next regular or special meeting for final adoption of sanction; *and*

ADMINISTRATIVE DECISION

BE IT RESOLVED, that a majority vote of a quorum duly seated at a duly called meeting of the Tribal Council shall be required to make a determination under this Code of Conduct; *and*

BE IT RESOLVED, that the hearing body may impose or recommend any sanctions, civil damages, restitution; or other penalties provided in this Code of Conduct; or refer their findings to other appropriate entities and/or Tribal Court for further action; *and*

BE IT FURTHER RESOLVED, that in any complaint where the accused is a tribal employee or otherwise appointed under the supervisory authority of the Tribal Council, the finding of facts, conclusions of law and sanction, if any, by the Tribal Council shall be final for purposes of judicial review. Judicial review shall be limited to review of the record to determine whether the Tribal Council complied with recognized administrative law standards; *and*

BE IT FINALLY RESOLVED, that location of the repository of such records shall be the responsibility of the Tribal Secretary's approval; *and*

1. APPEALS

BE IT RESOLVED, that a notice of appeal shall be filed within ten (10) working days of the issuance of a written decision. The hearing shall be on the record only; *and*

BE IT RESOLVED, that the Mashpee Tribal Court shall have de novo jurisdiction to hear appeals from final decisions of the Tribal Council involving Tribal government officials. The standard of review shall be recognized administrative law standards; *and*

BE IT FINALLY RESOLVED, that the Mashpee Tribal Court shall have a record of the review of all other non-adjudicatory and adjudicatory hearings conducted by either the Ethics Officer or the Tribal Council; *and*

2. STATUTE OF LIMITATIONS

BE IT RESOLVED; that no action shall be commenced under this Code of Conduct by the Ethics Officer before the Tribal Council more than four (4) years after the alleged incident or cause of action, *and*

3. RETALIATION PROHIBITED

BE IT RESOLVED, that retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action; *and*

BE IT FURTHER RESOLVED, that this protection shall also be afforded to any person(s), including the Ethics Officer, Ethics Department staff, offering testimony or evidence or complying with directives authorized under this Code of Conduct; *and*

BE IT FURTHER RESOLVED; that any violations shall be subject to penalties under this Code of Conduct, as well as obstruction and contempt violations of both the civil and criminal codes of the Mashpee Wampanoag Tribe; *and*

SANCTIONS AND PENALTIES

1. GENERAL PENALTIES UNDER THIS CODE

BE IT RESOLVED, that a person found in violation of this Code of Conduct shall be further subject to, and personally liable for, the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:

(a) Any Tribal government official who violates any economic disclosure or reporting requirement of this Code of Conduct shall be held liable to the Mashpee Wampanoag Tribe for civil damages in any amount not to exceed the value of any interest not properly reported.

(b) Any Tribal government official who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in this Code of Conduct, shall be liable

to the Mashpee Wampanoag Tribe for civil damages in the amount not exceeding three (3) times the amount or value of the benefit or benefits so obtained.

(c) If two (2) or more persons are responsible for any violation, each of them shall be liable to the Mashpee Wampanoag Tribe for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually; and

(d) Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Mashpee Wampanoag Tribe and shall be paid into the general fund of the Tribe; and

(e) No imposition of any or all civil damages 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.

(f) In addition to the other penalties in this Code of Conduct, the following fines shall also be imposed, if applicable:

- (1) Loss of per diem/salary for five (5) days if contract value is less than \$100.00.
- (2) Loss of per diem/salary for ten (10) days if contract value is less than \$500.00.
- (3) Referral for possible removal in accordance with this Code of Conduct, if contract value is over \$500.00.

2. ADMINISTRATIVE SANCTIONS

BE IT RESOLVED, that upon a finding that there has been a violation of any provisions of this Code, the Tribal Council may impose any or all the following penalties or sanctions:

(a) Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.

(b) Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provisions of applicable Tribal laws and procedures.

(c) Accordingly, any public employee of the Mashpee Wampanoag Tribe shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies, or procedures applicable thereto.

(d) Suspension from public office or employment and forfeiture of all compensation and benefits accruing there from, for not less than thirty (30) days nor for more than one (1) year.

(e) Removal, discharge or termination from public office or employment in accordance with this Code of Conduct and applicable Tribal law and procedure.

BE IT FURTHER RESOLVED, that no sanctions or penalties provided herein shall limit any other powers of the Tribal Council or Tribal Courts of the Mashpee Wampanoag Tribe, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures; *and*

BE IT FURTHER RESOLVED, that all penalties and/or sanctions shall be in addition to the fines established in this Code of Conduct; *and*

BE IT FURTHER RESOLVED, that no person accused of violations under the provisions of this Code shall be removed from his/her office or position until those allegations have been proven beyond a reasonable doubt in a court of competent jurisdiction within the parameters of due process as mandated by the Constitution; *and*

BE IT FINALLY RESOLVED, that a person so accused may be suspended from his/her position with or without pay until such time guilt or innocence has been established. If the allegations are not substantiated, the person/defendant should be restored to their full official duties and responsibilities. In those cases where allegations have resulted in prosecution and conviction, and after exhaustion of all appeals, the person/defendant shall, upon conviction, immediately forfeit his/her position. Elected or selected officials of the Mashpee Wampanoag Tribe, who have been convicted under the provisions of this Code of Conduct, may be subjected to the provisions of Vacancies, Removal, Expulsion, Suspension and Recall as set forth in the Constitution, if they do not voluntarily relinquish their positions; *and*

NOW THEREFORE BE IT RESOLVED, it is the policy of the Mashpee Wampanoag Tribe to adhere to the Code of Conduct and to take action in furtherance of its implementation; *and*

BE IT FINALLY RESOLVED, that the Mashpee Wampanoag Tribe is responsible for implementing such policy and shall carry out such responsibility promptly and effectively.

If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of this Resolution shall not be affected with the respect to the same. This Resolution shall become effective immediately and shall continue pursuant to the authority vested in the Tribal Council pursuant to Article VI, Sections 2.A. and D. of the Constitution; provided that in accordance with 2009-ORD-2007, this resolution will be valid for no longer than thirty (30) days from the date hereof (unless exigent circumstances require a longer limited period of validity), and accordingly, this Resolution shall no longer be effective upon expiration of such period, unless upon the expiration of the thirty (30) day period, the Tribal Council expressly finds that the emergency situation necessitates extension of this resolution for another period not to exceed thirty (30) days.

CERTIFICATION

We, the undersigned Chairperson and Secretary of the Mashpee Wampanoag Tribal Council do hereby certify that the Tribal Council is composed of **13** members of whom **8**, constituting a quorum, were present at an Emergency meeting thereof, duly and regularly called, noticed, convened, and held on the **25th** day of, and that the foregoing Resolution was duly adopted by the affirmative vote of **6** members, with **1** opposing, and with **0** not voting.

DATED this 25th day of April, 2022.



Brian Weeden, Chairman

Mashpee Wampanoag Tribal Council

ATTEST:



Cassie Jackson, Secretary

Mashpee Wampanoag Tribal Council