



## Mashpee Wampanoag Tribe

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### 2013-ORD-003

## AMENDMENT TO MASHPEE WAMPANOAG TRIBAL JUDICIARY ORDINANCE

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The Mashpee Wampanoag Tribe does ordain as follows:

#### Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

- (a) The Mashpee Wampanoag Tribe (the “Tribe”) is a federally-recognized Indian Tribe with a duly-enacted Constitution.
- (b) In accordance with 2009-ORD-003 entitled “Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions,” the Tribal Council duly enacted 2008-ORD-002 entitled “Mashpee Wampanoag Tribal Judiciary” (the “Judiciary Ordinance”).
- (c) Chapter 1, Section 3 (j) of the Judiciary Ordinance defines the Mashpee Wampanoag Tribal Judiciary as “the Judicial Branch of the Tribe as divided into the Supreme Court, District Court, Peacemaker Court and such other lower courts and offices as may be established by amendment to [the Judiciary] Ordinance.”
- (d) Chapter 2, Section 1 of the Judiciary Ordinance establishes the Mashpee Wampanoag Tribal Judiciary and provides that the Judiciary “shall consist of a Tribal Supreme Court, a District Court, a Peacemaker Court, and such other lower courts and offices as may be established by amendment to this Ordinance.”
- (e) The Mashpee Wampanoag Tribal Elders Judiciary Committee (the “Judiciary Committee” or “Committee”) was the starting point of today’s Mashpee Wampanoag Tribal Judiciary. In the summer of 2006 seven elders of the Tribe volunteered to serve on the Judiciary Committee



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and work on the development of a court system for the Tribe. The Judiciary Committee members acted as Tribal Judges during this time and heard the first case in Tribal Court on February 18, 2007. As the Tribal Judiciary's case load increased, the Judiciary Committee decided that a Tribal Judge well-versed in Federal Indian Law was necessary for fairness and justice. The Judiciary Committee interviewed attorneys and judges and recommended to the Tribal Council that Judge Rochelle Ducheneaux be appointed to serve as a Tribal Judge. The Tribal Council appointed Judge Rochelle Ducheneaux on April 1, 2008.

(f) After 2008, the power to hear and decide cases was transferred to Judge Rochelle Ducheneaux. The Tribal Judiciary has continued to grow with the addition of Chief Judge Henry Sockbeson and Judge Robert Mills. The intent of Tribal Council has always been for the Judiciary Committee to be a part of the Judicial Branch of Tribal government. The current definition of the Judiciary Committee is, therefore, inaccurate because the current definition incorrectly implies that the Judiciary Committee is a standing committee of the Executive/Legislative Branch of Tribal Government.

(g) The Judiciary Committee is empowered under the Judiciary Ordinance to work in the Tribal Judiciary on various matters as set forth expressly in the Judiciary Ordinance which is a reflection of its work over a long period of time, including its work to assist Tribal Council in the development, enactment and implementation of the Judiciary Ordinance.

(h) As the Judiciary Ordinance has been, and continues to be, implemented with the expansion of Tribal Government as a backdrop it has become necessary to clarify and further define the role and responsibilities of the Judiciary Committee considering their historic role in enhancing and fostering the Tribal Judiciary branch of Tribal Government from its embryonic days to the present day. Thus, the purpose of these amendments to the Judiciary Ordinance is to establish the Judiciary Committee as an office of the Mashpee Wampanoag Tribal Judiciary and to clarify and make clear the role and duties of the Judiciary Committee and to re-affirm its pre-existing role and duties under the Judiciary Ordinance.

(i) The Tribal Council finds it in the best interest of the Tribe and Tribe Government to amend the Judiciary Ordinance in order to foster and promote effective and efficient implementation of the Judiciary Ordinance, to enhance the political integrity of the Tribe and to protect the general welfare of the Tribe.

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

(a) **Authority.** The authority for this Amendment is found in 2009-ORD-003 entitled "Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions" and 2008-ORD-002 entitled "Mashpee Wampanoag Tribal Judiciary."



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(b) **Purpose.** The purpose of this Amendment is to permanently establish the Elders Judiciary Committee as a part of and as an Office of the Mashpee Wampanoag Tribal Judiciary and to make clear the role and duties of the Elders Judiciary Committee.

### Section 3. AMENDMENT TO JUDICIARY ORDINANCE

(a) **Amendment to Table of Contents.** The Table of Contents of the Judiciary Ordinance is hereby amended by adding thereto at the end and to read as follows:

#### CHAPTER 4: JUDICIARY COMMITTEE

Section 1: Establishment of Judiciary Committee as a part of and as an office of the Tribal Judiciary

Section 2: Duties of Judiciary Committee

Section 3: Compensation

(b) **Amendment to Chapter 1: Section 3(d).** The Judiciary Ordinance, Chapter 1: Section 3(d) is hereby amended by deleting “shall mean the Committee of the Tribal Elders' that the Tribal Council has empowered by resolution to work with the Tribal Judiciary” and adding “or ‘Elders Judiciary Committee’ shall mean the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and described in Chapter 4 of this Ordinance” in replacement thereof and to read as follows, “Judiciary Committee” or “Elders Judiciary Committee” shall mean the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and described in Chapter 4 of this Ordinance.

(c) **Amendment to Chapter 2: Section 4(g) (2).** The Judiciary Ordinance, Chapter 2: Section 4(g) (2) is hereby amended by adding thereto at the end of the paragraph and to read as follows,

The Chief Judge, in consultation with the Tribal Court Clerk and the Judges of the Supreme Court, shall use the financial report and other pertinent information to prepare a budget for the Tribal Judiciary. After such consultation and preparation, but no later than July of each year, shall submit the proposed budget to the Judiciary Committee who shall consult with the Judges and reach an agreement upon the budget which shall be submitted to the Tribal Council as a part of the general budget approval process. If no agreement is reached as to certain line items then the Court and the Judiciary Committee shall submit comments on their proposed budget and the Tribal Council shall, after consultation with the Judges and the Judiciary Committee select the final budget to be enacted.

The Chief Judge shall provide to the Judiciary Committee a written expenditure report on a monthly basis, no later than by the 10<sup>th</sup> day of the following month for which the expenditure report is provided for, in order to ensure that the Tribal Judiciary remains within its annual budget limit while meeting its annual objectives and goals. ”



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(d) **Amendment to Chapter 2: Section 3(d).** The Judiciary Ordinance, Chapter 2: Section 3(d) is hereby amended by adding thereto at the end of the paragraph and to read as follows, “In consideration of the Judiciary Committee’s role in preparing and submitting the Tribal Judiciary budget, the Chief Judge shall seek the Judiciary Committee’s approval and agreement of the terms of compensation for a new hire and any change in the rate of compensation thereafter.”

(e) **Amendment to Chapter 2: Section 4(c).** The Judiciary Ordinance, Chapter 2: Section 4(c) is hereby amended by adding thereto a subsection 4(c)(4) to read as follows: “(4) Six months prior to the expiration of a Judge’s term of office, the Judiciary Committee shall commence the selection process pursuant to subsection (a) of this Section 4 in order to fill the impending vacancy.”

(f) **Amendment to Chapter 3: Section 4(c)(5).** The Judiciary Ordinance, Chapter 3: Section 4(c)(5) is hereby amended by adding thereto in the last sentence after the words “Chief Judge shall” the following, “,with the approval of the Judiciary Committee.”.

(g) **Amendment by Adding Chapter 4.** The Judiciary Ordinance is hereby amended by adding a Chapter 4, titled “Judiciary Committee” to read as follows:

### **Chapter 4: Judiciary Committee**

#### **Section 1: Establishment of Judiciary Committee as an office of the Tribal Judiciary**

The Tribe establishes permanently the Judiciary Committee as a part of and as an office of the Tribal Judiciary in order to bring stability to the Tribal Judiciary system to ensure that the balance of powers exercised by the Tribal Judiciary remains relevant with the Mashpee Wampanoag Tribal culture, customs and traditions. The Judiciary Committee is recognized as a long-standing institution of the Tribe, now forever memorialized in time, and charged with fostering and achieving the Tribe’s vision, mission and goals for the Mashpee Tribal Courts, and forever sanctioned by the guardianship of the Elders Judiciary Committee of the Tribe.

#### **Section 2: Duties of Judiciary Committee**

The duties of the Judiciary Committee as set forth in this Ordinance, other than those in this Chapter 4, are hereby re-affirmed and nothing contained herein shall impair those duties or the implementation thereof. In addition, the Judiciary Committee shall have the following duties:



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(a) To act as a liaison for the Tribal Council between the Tribal Judiciary and Tribal members, the public, and the Tribal Council.

There shall be a review and evaluation of the Tribal Court system which shall be conducted every year. Such evaluation shall be conducted National Association of Tribal Court Judges or other similar agency as recommended by the Judicial Committee and the Chief Judge (in consultation with the other judges). The Tribal Council shall approve the reviewing entity that is best suited to perform the review. In addition to their review any complaints received by the Judicial Committee and to receive the comments and recommendations of the Judicial Committee. The reviewers shall submit a report to the Judicial Committee and the Tribal Council along with recommendations and comments, The Judicial Committee may submit a response to the review, to the Tribal Council.”

(c) To seek funding on behalf of the Tribe for the benefit of the Tribal Judiciary and to administer awarded funding on behalf of the Tribal Council.

(d) All documents on record with the Tribal Court, with exceptions provided specifically by the Tribal Court, are public documents and may be obtained by any Tribal Member pursuant to Administrative Order # 10- Policy Regarding Access to Tribal Court Proceedings. Tribal Members who are unable to access Tribal Court in person may request copies of Tribal Court public documents from the Judiciary Committee who may pass those requests on to the Tribal Court Clerk. The Judicial Committee shall keep written record of all such requests and shall include in the report the date of the request and the date the materials are supplies. In the alternative, the Judicial Committee may direct all such inquiries for public documents to the Tribal Court Clerk.

(e) To engage in Tribal Judiciary program development and implementation in order to enhance new development and expand concepts with foresight and vision in a compassionate and culturally sensitive way that includes community outreach with stakeholders, including the Tribal Council.

(f) To work on a continuous basis on behalf of Tribal Council on system development, including the system to catalogue and publish court opinions, and improvement for the Tribal Judiciary.

(g) To serve as the sole and only point of contact, with the cooperation of the Judges and Court Administrator/Court Clerk, to develop and maintain a website, online social networking connections such as Facebook and Twitter, blogs, and other such means that will enhance



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communication and dissemination of information to and from the Tribal Judiciary to the Tribal members and the general public. Such development and maintenance shall include, but not be limited to, the approval of all changes, additions or deletions, of any nature, the responsibility to engage website engineer contractors to recommend to Tribal Council for its approval, to determine the content for each means of communication and to develop policy related thereto.

(h) To provide oversight of the Tribal Judiciary on behalf of the Tribal Council and to report thereon from time to time to the Tribal Council.

### **Section 3: Compensation**

The Tribal Council shall from time to time set by resolution a rate of compensation for the services provided by Judiciary Committee.

**Section 4. REPEALER.** All ordinances or resolutions or parts of ordinances or resolution inconsistent with this Amendment are hereby repealed.

**Section 5. SEVERABILITY.** If any section, subsection, paragraph, sentence, or other portion of this Amendment is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Amendment.

**Section 6. EFFECTIVE DATE.** This Amendment shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

Passed by the Mashpee Wampanoag Tribal Council on May 22, 2013




**Mashpee Wampanoag Tribe**


**CERTIFICATION**

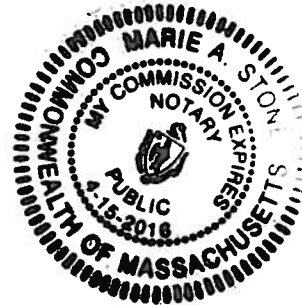
We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom 10 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 22<sup>nd</sup> day of May, 2013, and that the foregoing Ordinance was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 0 not voting.

DATED THIS 22<sup>nd</sup> day of May, 2013

  
Cedric Cromwell, CHAIRMAN  
Mashpee Wampanoag Tribal Council

ATTEST:


  
Marie A. Stone, SECRETARY  
Mashpee Wampanoag Tribal Council  
Notary Public, Commission Expires on 04-15-2016

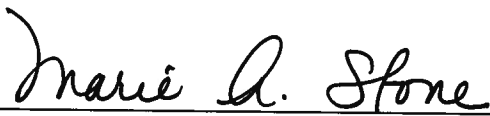


**CERTIFICATION OF POSTING**

This is to certify that the Ordinance titled 2013-ORD-003, Mashpee Wampanoag Tribal Judicial Ordinance Amendment, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, on January 9, 2013.

DATED this 22<sup>nd</sup> day of May, 2011

  
Cedric Cromwell, CHAIRMAN  
Mashpee Wampanoag Tribal Council

  
Marie A. Stone, SECRETARY  
Mashpee Wampanoag Tribal Council  
Notary Public, Commission Expires 04-15-2016