



Mashpee Wampanoag Tribe

2018-ORD-001

AMENDED AND RESTATED FULL FAITH AND CREDIT 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 and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the "Tribal Council").
- (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) Article V, § 3 of the Constitution provides that the Tribal Judiciary, as established in Article X, shall be vested with all of the Tribe's judicial powers.



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- (d) Article X, § 9 of the Constitution provides that Tribal Council shall implement the constitutional Article governing the Mashpee Wampanoag Tribal Court (the “Tribal Court”) by ordinance.
- (e) Article VI, § 2.A. of the Constitution further provides that Tribal Council shall, among other things, promote and protect the peace, morals, political integrity and general welfare of the Tribe and its members.
- (f) The Mashpee Wampanoag Judiciary Committee (the “Judiciary Committee”) is empowered under 2008-ORD-002, *Mashpee Wampanoag Tribal Judiciary*, as amended (the “Judiciary Ordinance”), to work with the Tribal Court on various matters, including, but not limited to, assisting in the establishment of procedures, rules and policies.
- (g) The Judiciary Committee has brought to the Tribal Council’s attention that the Tribe currently lacks a full faith and credit policy for judicial proceeding judgments and orders related to child support and protection issued by a state court or other tribal courts.
- (h) The Tribal Council acknowledges that the Tribe is obligated to provide full faith and credit under Federal law for both child support and protection orders.
- (i) The Tribal Council also recognizes that a full faith and credit policy will provide assurance to individuals that our Tribal Court will honor and enforce valid child support and protection orders issued by courts in other jurisdictions.
- (j) The Tribal Council finds it of utmost importance to ensure that protection orders issued by other jurisdictions, including tribal and State courts, be honored and enforced on a timely basis by the Mashpee Wampanoag Tribal Court as well as Mashpee Wampanoag Tribal Police.
- (k) The Tribal Council deems it in the best interest of the Tribe and its members to enact a judicial proceedings full faith and credit ordinance to provide certainty and efficiency for individuals coming before the Tribal Court regarding prior valid child support and protection orders.

Section 2. AUTHORITY AND PURPOSE



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(a) **Authority.** The authority for this Ordinance is found in Article V, § 3; Article VI, § 2.A.; and Article X, § 9 of the Constitution.

(b) **Purpose.** The purpose of this Ordinance is to provide full faith and credit to valid judicial judgments and orders of other states and tribal courts.

Section 3. DEFINITIONS

(a) “Enforcing Court” means a tribal or state court that recognizes and enforces a protection order against a person issued by another tribal or state court.

(b) “Issuing Court” means a tribal or state court that issues a protection order against a person.

(c) “Protection Order” means:

(1) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(2) any orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking; and

(3) includes both ex parte and permanent protection orders.

(d) “State” means State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(e) “Tribal Court” means the Mashpee Wampanoag Tribal Court.



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(f) "Tribal Police" means the Mashpee Wampanoag Tribal Police.

Section 4. FULL FAITH AND CREDIT.

(a) Full faith and credit shall be given by the Tribal Court to the judgments and orders of every state and tribal court in conformity with the provisions of this Ordinance and federal law in those cases where federal law compels recognition, including, but may not be limited to, 18 U.S.C. § 2265 (Full faith and credit given to protection orders), 28 U.S.C. § 1738B (Full faith and credit for child support orders) and 25 U.S.C. § 1911(d) (Full faith and credit to public acts, records, and judicial proceedings of Indian tribes). Notwithstanding any of the provisions in this Ordinance other than the following paragraph, the Tribal Court may refuse to recognize the judgments and orders of any state or tribal court which has refused or has clearly indicated it will refuse to honor valid final judgments or orders of the Tribal Court. Furthermore, all foreign judgments and orders must be filed with the Tribal Court before recognized and enforced by any Mashpee Wampanoag Tribal department, office, program, agency or arm of the Mashpee Tribal government.

(b) The preceding Section 3(a) shall not apply with respect to any award, judgment, order, decree or other action of any federal, state or other tribal court relating to any dispute or claim concerning which any Tribal Party validly granted a waiver of sovereign immunity (an "Excluded Court Action"), or diminish any rights with respect to or impair the enforceability of any valid agreement of a Tribal Party to the effect that a Tribal Court of the Tribe must give full faith and credit to an Excluded Court Action, including any award, order or decree rendered by a "Foreign Court" described in Section 6 of 2009-ORD-008, entitled "Commercial Transactions Ordinance" (each, a "Full Faith and Credit Agreement"). Any possible repeal, modification, contradiction, negation, diminishment of rights or other impairment with respect to any past valid grant by a Tribal Party of a waiver of sovereign immunity or with respect to any Full Faith and Credit Agreement as a result of the original enactment of this Ordinance is hereby declared to be of no effect and null and void ab initio to the date of such enactment. For the avoidance of doubt, all provisions of 2009-ORD-008, entitled "Commercial Transactions Ordinance" are declared and confirmed to be in full force and effect as the law of the Tribe and to have been in full force and effect at all times since the effective date of such ordinance. For purposes of this paragraph, the term "Tribal Party" means, the Tribe and any of its agencies, instrumentalities, branches, divisions, subdivisions, commissions, subsidiaries, enterprises, components or subsidiaries.



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Section 5. ENFORCEMENT OF PROTECTION ORDERS.

(a) **Filing of Protection Order in Tribal Court.** Any person who has received a protection order from another tribal or state court, may file the protection order with the Clerk of the Tribal Court and request that the Tribal Court grant full faith and credit to that protection order. The Tribal Court will not require any accompanying forms to be filed with the protection order. Immediately upon the filing of that protection order with the Court, a Tribal Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of Section 5(b) may enter a temporary ex parte order lasting no longer than fourteen (14) days recognizing the protection order. Tribal Court must schedule a hearing within fourteen (14) days of issuing such order and give the Respondent an opportunity to be heard before a lengthier order can be issued. If an order recognizing a protection order is issued, such order shall immediately be forwarded to Tribal and local law enforcement. A person shall be not be charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another tribal or State court must first file that protection order with the Tribal Court to receive Tribal Police protection from the Respondent under this Section 4.

(b) **Tribal Court Enforcement.** The Tribal Court shall enforce a protection order, and all provisions of that protection order if all the following are satisfied:

- (1) the order remains in effect in the issuing jurisdiction;
- (2) the issuing court had jurisdiction over the parties and subject matter; and
- (3) reasonable notice and opportunity to be heard was provided to respondent or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he may have to the issuance of a permanent protection order.

(c) **Tribal Police Enforcement.** Whenever Tribal Police is presented with an order from the Tribal Court recognizing a protection order from another jurisdiction, Tribal Police and Tribal Court shall, subject to the provisions herein, enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the Tribal Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person.



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(d) **Tribal Police Officer Immunity.** A Tribal Police Officer who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action.

Section 6. PROCEDURE FOR ENFORCING STATE AND TRIBAL COURT JUDGMENTS THAT ARE NOT PROTECTION ORDERS.

Any person in whose favor a judgment or order has been entered by a state or tribal court may seek enforcement of the judgment or order in accordance with the following procedures:

(a) **Written Petition.** The petitioner shall file a petition, accompanied by a verified copy of the state or tribal court judgment or order, and ask the Tribal Court to grant full faith and credit to the judgment or order. The petition shall contain the following: (1) a concise statement of the nature of the claim and what action the court took on it; (2) a statement indicating the jurisdictional basis, both personal and subject matter, of the judgment or order; and (3) a statement showing that the defendant received reasonable notice and had a fair opportunity to be heard before entry of judgment or order.

The Tribal Court may require additional information, particularly where a default judgment was entered. The petition shall be served in accordance with the Federal Rules of Civil Procedure, unless or until the Tribe has enacted Tribal Rules of Civil Procedure, on the person against whom the judgment or order was entered.

(b) **Written Response.** Within twenty (20) days of receipt of the petition, the person against whom the judgment or order was entered may file a response to the petition containing: (1) any correction of significant facts in the petition; (2) an admission or denial of the specific facts in the petition; (3) an explanation of the facts denied, or (4) any other matters which show why the judgment or order should not be enforced.

(c) **Hearing on the Petition.** After reasonable notice to the defendant, the Tribal Court shall hold a hearing on the petition. The defendant shall have the burden of showing why the judgment or order should not be enforced. The Tribal Court shall also inquire into the following matters:



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- (1) whether the state or tribal court had proper subject matter jurisdiction and personal jurisdiction to render the judgment; and
- (2) whether the defendant had fair notice and an opportunity for a hearing.

(d) **Entry of Judgment.** If the Tribal Court has satisfied itself that the state or tribal court judgment is entitled to full faith and credit, the Tribal Court shall enter a judgment or order in favor of the petitioner. The judgment or order may then be enforced through any of the methods allowed by Mashpee Wampanoag Tribal law.

Section 7. REPEALER. All ordinances or resolutions or parts of ordinances or resolution inconsistent with this Ordinance are hereby repealed.

Section 8. 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 portion of this Ordinance.

Section 9. EFFECTIVE DATE. This Ordinance 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 February 6, 2018.

Legislative History

Enacted November 7, 2013 as 2013-ORD-005

Amended January 29, 2014 as 2014-ORD-001

Amended February 6, 2018 as 2018-ORD-001




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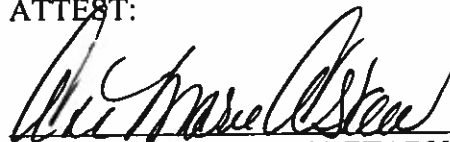
CERTIFICATION

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 regular meeting thereof, duly and regularly called, noticed, convened and held on the 6th day of February, 2018, and that the foregoing Ordinance was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 1 not voting.

DATED THIS 6th day of February, 2018.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


ATTEST:

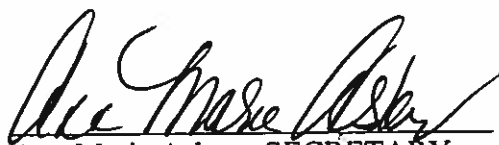

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2018-ORD-001, Amended and Restated Full Faith and Credit Ordinance, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions.

DATED this 6th day of February, 2018.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council.


Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council