

ENROLLMENT ORDINANCE OF THE  
MASHPEE WAMPANOAG TRIBE

**Section 1. AUTHORITY**

This ordinance is enacted pursuant to the authority contained in Article III of the Constitution of the Mashpee Wampanoag Tribe.

**Section 2. ENROLLMENT ELIGIBILITY**

The following persons are eligible for membership in the Mashpee Wampanoag Tribe:

- A. Persons who trace direct lineal decent to:
  - (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 (hereinafter “Earle Report”); or
  - (2) to the 19th Century unions of Georgina Palmer and Charles Peters or Leander Peters and Lydia DeGrasse; and
- B. Persons who demonstrate tribal community involvement,
- C. Persons who have not publicly denounced Mashpee tribal existence or their affiliation to the Tribe; and
- D. Persons who 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 prior to application for membership.
- E. Definitions. For purposes of this Section 2.
  - (1) *tribal community involvement* or *tribal community affairs* includes, but is not limited to the following:
    - (a) attendance and participation in the annual Mashpee Wampanoag Pow Wow,
    - (b) participation or volunteerism in Mashpee Indian tribal activities.
    - (c) Evidence that an individual has sought to keep their vital records current with the Tribe.
  - (2) *family members* means someone sharing a relationship by blood.

- (3) *near Mashpee, Massachusetts* means residence or domicile within 20 miles of Mashpee.

Notwithstanding satisfaction of any other provision of this section, no person shall be eligible to be a Tribal member if that person is enrolled in another Indian tribe.

**Section 3. ENROLLMENT COMMITTEE**

- A. Composition of the Committee. There is hereby established an Enrollment Committee that shall be composed of five (5) tribal members, each appointed for staggered terms of three years by the Tribal Council. The Committee members shall appoint a Committee Chairman. A list of Committee members and their terms shall be posted at the Tribal Council building and on the Tribe's internet website.
- B. Any person who holds any elective or appointive Tribal office, except the position of Tribal Historian/Genealogist, or is a candidate for such office shall be ineligible 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 already currently serving on the Enrollment Committee.
- C. Duties of the Committee. The Enrollment Committee shall:
  - (1) maintain the official membership roll of the Tribe,
  - (2) review for accuracy and process all applications for enrollment according to the criteria as set forth in the Constitution and in this Ordinance,
  - (3) enforce all Tribal enrollment laws, and
  - (4) promulgate such regulations as may be necessary to carry out its duties.
- D. Enrollment Committee Review. Once the Enrollment Committee has reviewed the accuracy of the information contained in an enrollment application, the Enrollment Committee shall issue a written decision to either to accept or deny the Enrollment Application.
  - (1). Acceptance. If the Enrollment Application is accepted, the applicant shall then be notified of the Enrollment Committee's decision and the applicant's name shall be immediately added to the tribal roll.
  - (2). Denial. If the Enrollment Committee determines that the application for enrollment does not meet the required criteria or that the information

supplied is inaccurate, the Committee shall notify the applicant that the application has been rejected. Such notice shall be sent certified/registered mail, return receipt requested, and shall include a statement of the reason for rejection and notice of the right to seek reconsideration of the Committee's decision pursuant to this Ordinance.

**Section 4. APPLICATIONS FOR ENROLLMENT**

- A. Who Must File. All persons not currently enrolled seeking enrollment in the Tribe must file an enrollment application. Parents or guardians may file applications for minors or incompetents.
- B. When and Where to File an Application. All enrollment applications must be filed with the Enrollment Committee. Application forms may be obtained by oral or written request from the Tribal Enrollment Committee.
- C. Time of filing. There is no deadline date established for filing enrollment applications except when an enrollment cutoff date is authorized by the Tribal Council for specific distribution of tribal funds.
- D. What the Application Must Contain. Each enrollment application must be completed in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment. Applications must show the following:
  - 1. All names by which the applicant is known.
  - 2. The current address of the applicant.
  - 3. The names of all known Mashpee Indian ancestors whose names appear on the Earle report.
  - 4. The date of the filing of the application.

The application must be accompanied with the certified copy of the applicant's birth certificate and any other documentary evidence such as a notarized paternity affidavit showing the name of a parent through whom eligibility is being claimed.

**Section 5. DETERMINING PATERNITY TO ESTABLISH CONSTITUTIONAL REQUIREMENT OF LINEAL DESCENT FROM MASHPEE INDIAN**

- A. Paternity for enrollment purposes shall be established only as follows:
  - (1) by a judgment or finding of paternity issued by a court or administrative agency of competent jurisdiction under the law of a State or Indian tribe,

which shall be accorded full faith and credit by the Mashpee Wampanoag Tribe, or

- (2) by the execution of a voluntary acknowledgment of parentage by both parents in accordance with the law of a state or Indian tribe, or
- (3) genetic testing (DNA testing) by a qualified testing company approved by the Enrollment Committee, as set forth in Section 12, and at the sole cost of the applicant or in the case of a child by his or her legal guardian.

- B. Establishment of paternity shall in no way constitute automatic entitlement to enrollment in the Mashpee Wampanoag Tribe. It shall only be used to establish Mashpee Indian ancestry, which is one factor considered in the application process.

**Section 6. RIGHT TO APPEAL**

- A. Until such time as the Tribe establishes a formal Tribal court system, an applicant who is denied membership by the Enrollment Committee shall have the right to appeal the denial of membership to the Elders of the Tribe within 30 days of such denial.
- B. The Elders shall appoint from their members a tribunal consisting of seven (7) persons from their members who shall sit and consider the application for membership and documentary evidence presented. The tribunal shall conduct at a public session a formal inquiry and issue its decision. The decision of the Elders Tribunal shall be final and conclusive.

**Section 7. 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:

- A. Upon enrollment in another Indian tribe, or
- B. Upon a written finding by the Enrollment Committee that membership in the Tribe was obtained by fraud.

**Section 8. DISENROLLMENT**

- A. Conditions for Disenrollment. A Tribal member may be disenrolled, as set forth in this Section, only upon a finding by the Enrollment Committee, supported by clear and convincing evidence, that at the time of application for membership, the

decision to enroll the person relied on clearly erroneous information which was used to confirm eligibility.

- B. Process for Disenrollment. The Enrollment Committee shall prepare and submit to the Elders Tribunal a written Report why a person is subject to disenrollment; such Report shall contain all documentary evidence supporting the Enrollment Committee's action.
- (1) Upon receipt of the Enrollment Committee Report, the Elders Tribunal shall provide the member in question notice of hearing by certified mail, return receipt requested, where the Elders Tribunal will consider the Enrollment Committee's Report as to why the member is subject to disenrollment. Included in the notice shall be a copy of the Report, copies of all documentary evidence supporting the Enrollment Committee's action, and the date and place set for a hearing before the Elders Tribunal to consider the matter.
  - (2) At the Tribal Member's discretion, the Elders Tribunal hearing may be closed to the public. The Tribal Member has the right to appear with counsel at the Member's own expense.
  - (3) Upon consideration of the Report and documentary evidence submitted by the Enrollment Committee, as well as any testimony and documentary evidence offered by the Tribal Member, the Elders Tribunal shall make a determination as to the Member's disenrollment. Within thirty (30) days of the hearing, the Elders Tribunal shall provide the Member notice of the Elders Tribunal's determination, by certified/registered return receipt requested mail.
- C. Removal from Tribal Roll. In the event the Elders Tribunal's decision is to disenroll a Tribal Member, the Elders Tribunal shall direct the Enrollment Committee to remove the person's name from the Tribal Roll.

## **Section 9. RELINQUISHMENT OF MEMBERSHIP**

- A. Any adult member of the Mashpee Wampanoag Tribe may voluntarily relinquish his/her membership. The membership of any member of the tribe who is not at least 18 years of age may be relinquished by his/her parent/guardian. Such a relinquishment must be by notarized affidavit presented to the Enrollment Committee.
- (1) Any tribal member who relinquishes membership shall be ineligible to reapply for Tribal membership for a period of five years from the date of relinquishment.

- B. Minor's Relinquishment. Whenever a relinquishment is submitted for a minor member, care will be taken to determine that the individual who signed the form has legal custody of the minor affected.
- (1) Any minor whose Tribal membership is relinquished by parent or legal guardian shall have the right to petition the Enrollment Committee for automatic reinstatement upon reaching the age of 18.
  - (2) A petition for automatic reinstatement must be submitted to the Enrollment Committee within 90 days from the day that person reaches the age of 18. The petition must state the name under which the former member was enrolled in the Tribe and contain sufficient documentation to ensure that the person seeking automatic reinstatement is the same person whose membership was relinquished by a parent or legal guardian.

## **Section 10. RECORDS**

- A. Content of Individual Folder. The Enrollment Committee shall establish an individual folder (file) for each tribal member and each applicant for tribal membership. This folder will contain the following items:
1. Application Form
  2. Family Tree
  3. Birth Certificate
  4. Correspondence
  5. Copy of resolutions affecting enrollment
  6. All other documentation on the person pertinent to membership in the Tribe
  7. Death Certificate
- B. Access to Records.
- (1) Information contained in individual folders shall be considered confidential. It shall not be available to anyone except that individual member (or his/her appointed guardian) and to Enrollment staff and Enrollment Committee members when such examination is necessary in considering Enrollment decisions.
  - (2) No Tribal Member shall have access to these records without first applying in writing to the Chair of the Enrollment Committee who shall in his or her sole discretion determine whether or not records can be viewed by a non-committee member, and after having obtained the requisite

written authorization from the applicant, parents, or legal guardian of the affected applicants.

- (3) No requests from any governmental or health care provider shall be forwarded unless such request is made in writing stating the specific purpose for the request and also after first having obtained written authorization from the applicant, parents, or legal guardian of such applicant.

C. Updating Records. Upon receipt of appropriate documentation, the Enrollment staff is authorized to update the information on the tribal roll. The following documentation is deemed adequate for such actions to be taken:

1. Name Change                      Marriage License  
                                                    Divorce decree  
                                                    Court order changing name
2. Address Change                      Written statement signed by tribal member or  
                                                    his/her guardian
3. Death                                      Death certificate

Any change for which none of the above documents is available must be approved by the Enrollment Committee. A copy of that resolution stating the reason for the change without usual documentation shall be placed in the individual's folder.

## **Section 11. DNA TESTING POLICY AND PROCEDURES**

It is the policy of the Mashpee Wampanoag Tribe to provide for genetic testing (DNA testing) only as part of an initial application for tribal membership and only:

- A. If a child born to persons not married to each other, if the father is an enrolled member of the Mashpee Wampanoag Tribe, to establish paternity in order to allow such child to file an application for enrollment in the Mashpee Wampanoag Indian Tribe;
- B. If the natural father's name does not appear on the child's birth certificate;
- C. If, upon investigation of the Enrollment Committee, there is probable cause to believe that a birth certificate has been altered to reflect an incorrect father's name or other evidence of fraud in connection with paternity.
- D. In the event that DNA testing is conducted in circumstances as set forth in this section, the following policies and procedures shall be followed:

- (1) No one shall be subjected to DNA testing to determine membership solely on the basis of rumor and/or hearsay. DNA testing may only be ordered upon a specific finding of probable cause as set forth in Section 11.C. An applicant(s) ordered to have DNA testing, must comply. Failure to do so will result in the disqualification of the applicant(s) in question.
- (2) Persons selected for DNA testing by the tribal enrollment committee or other authorized governing body shall be treated with all due respect. No inference of any wrongdoing on the part of the applicant shall be presumed in any forum.
- (3) All enrollment applications and records of persons ordered to subject to DNA testing shall be deemed confidential, and at all times kept secure as set forth in Section 10. No one shall be given permission to view said records except when so ordered by the Enrollment Committee and only for enrollment purposes.
- (4) The Enrollment Committee shall investigate and certify laboratories to be used for DNA testing shall be investigated and scrutinized by authorized representatives of the tribe. A copy of all certified laboratories shall be maintained by the Enrollment Committee. Any results from a laboratory not certified by the Enrollment Committees are inadmissible.
- (5) For those individuals seeking enrollment, or for those individuals seeking enrollment for their children, the cost of DNA testing will be borne by those individuals.

## **Section 12. AMENDMENTS**

The Tribal Council may amend this ordinance by a majority vote of a quorum at any meeting of that body.