

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON



March 23, 2016

Dear Tribal Member:

The Bureau of Indian Affairs (BIA) recently mailed a notice to tribal members 18 and older regarding a Secretarial election scheduled for April 11, 2016. The purpose of the Secretarial election is for eligible tribal members to vote on 15 proposed amendments to the Constitution and By-Laws. The proposed amendments relate to Article IV of the Constitution –“Organization of Tribal Council” and to articles in the By-Laws pertaining to “Qualifications”, “Salaries”, and “Meeting and Procedure”. The proposed amendments were initiated and brought forward by petitioners, or a group of tribal members, through the process outlined in our current Constitution under Article IX – “Amendments”.

The Secretarial election process is a Federal process that the BIA is responsible for overseeing. The federal regulations are set out in 25 CFR Part 81. The BIA appointed Secretarial Election Board (SEB) is responsible for implementing the process and is made up of representatives from the BIA, petitioners and the Tribe. Tribal members were required to register to vote by the March 14, 2016 deadline in order to participate in the election. A total of 973 individuals registered to vote in the Secretarial election. For the election to be valid, a minimum of 30 percent of the registered voters, or 292 voters, must cast a ballot (25 CFR §81.39).

The Official Ballots were mailed on Monday, March 21, 2016 only to those individuals who have registered to vote. **All ballots must arrive by US Mail on April 11, 2016 or can be hand-delivered to the BIA – Warm Springs Agency no later than 4pm on April 11, 2016.**

Following Election Day, the SEB will post the “Certificate of Results of the Election” with the results of the election. Any qualified voter who has registered to vote can challenge the election results within three days of the posting (25 CFR §81.43). The challenge must be in writing and include substantiating evidence. This should be submitted to the Secretary of the Interior, through the Officer in Charge as listed below:

Denys Schjoll, Election Board Chairman  
Mailing address: PO Box 1239, Warm Springs, OR 97761  
Physical address: 1233 Veterans Street, Warm Springs, OR 97761 (open 7:30am – 4:00pm)  
Phone: 541-553-2411  
Fax: 541-553-2426  
Email: [Denys.Schjoll@bia.gov](mailto:Denys.Schjoll@bia.gov)

If it is the opinion of the Secretary that the objections are valid and warrant a recount or new election, the Secretary shall order a recount or new election. The results of the recount of the new election are final.

On February 24, 2016, the Tribal Council passed a motion to provide the membership with information on the proposed changes to the Constitution and By-Laws. The purpose of this letter is to provide additional information for consideration. In the following pages the proposed amendments are presented in the Official Ballot format. Each section below has a brief description of (1) How the tribal process currently works, (2) what a “no” vote means, and (2) an example(s) of how a “yes” vote would change tribal policy.

In some cases, additional information is included because some of the proposed changes are vague and could be open for interpretation. It is also important to note that some of the proposed changes are interrelated with other sections – this means that if some of them pass and others do not, it could result in conflicting sections of the Constitution and By-Laws.

**CONSTITUTIONAL AMENDEMENTS**  
**ARTICLE IV -- ORGANIZATION OF TRIBAL COUNCIL**

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>
<b>SECTION 1. COMPOSITION:</b> THE TRIBAL COUNCIL SHALL CONSIST OF NINE MEMBERS CHOSEN AS HEREINAFTER PROVIDED. THE COUNCIL MEMBERS SHALL BE SELECTED IN SECRETARIAL ELECTIONS BY ELIGIBLE, ENTITLED AND VOTERS SET FORTH HEREAFTER.
YES [    ] NO [    ]

Currently, the Constitution defines the composition, or number, of council members to be 11. These members are nominated at the district level then voted on by district members. The tribal election process is briefly discussed in the Constitution and further outlined in the Elections Ordinance, also known as Ordinance 44, and is implemented by the Tribe for all tribal elections. On average, it costs the Tribe approximately \$12,000 to hold an election and the costs for elections is budgeted through the annual budgeting process.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on proposed amendment would change the number of council members from 11 to 9. It would also remove the authority of the Tribe to run its own council elections. The authority for running council elections would be shifted to the BIA who would implement a Secretarial election.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>
<b>SECTION 2. APPORTIONMENT</b> TRIBAL COUNCIL MEMBERS WILL BE SELECTED FROM THE TRIBAL MEMBERSHIP THAT ARE 21 YEARS OF AGE AND WHO ARE ELIGIBLE, ENTITLED AND QUALIFIED VOTERS.
YES [    ] NO [    ]

Currently, council members represent one of the three districts. Simnasho has three elected members and one recognized chief, Agency District has three elected members and one recognized chief and Seekseequa has two elected members and one recognized chief.

A “no” vote would result in no change to the article.

A “yes” vote on proposed amendment would mean that individuals would be chosen to serve on council from the whole membership of the Tribe, rather than from the districts. The proposed amendment removes the word “chiefs”, thus a chief would have to run for election if they wanted to serve on council.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<u>SECTION 3. TERM OF OFFICE</u>	
MEMBERS OF COUNCIL SHALL BE ELECTED FOR THREE YEAR TERMS WITH EXCEPTION OF THE INITIAL ELECTION (REFER TO SECTION 7, ROTATING TERMS).	
YES	[   ]
NO	[   ]

Currently, elected council members serve a three-year term. The three district chiefs serve a lifetime appointment and their successors are chosen in accordance with tribal custom.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment would remove chiefs from lifetime appointments. If a chief wants to serve on Council, they would have to run for election like other council representatives. This amendment specifically references another proposed change in Section 7, Rotating Terms.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<u>SECTION 4. FIRST ELECTION</u>	
THE FIRST ELECTION OF THE AMENDED ARTICLE IV ORGANIZATION OF TRIBAL COUNCIL SHALL BE CALLED BY THE BUREAU OF INDIAN AFFAIRS AND WILL CONTINUE AS SUCH THEREAFTER.	
YES	[   ]
NO	[   ]

Currently, the council calls for an election near the end of their three-year term and are responsible for establishing the date, place, hours of elections and timelines to address disputes. The Election Board, consisting of appointed tribal members, is responsible for implementing the election process.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment would remove the authority of the council to call for council elections and would shift the responsibility to the BIA.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<u>SECTION 5. RIGHT TO VOTE</u>	
ALL ELIGIBLE, ENTITLED AND QUALIFIED MEMBERS, WHO ARE 18 YEARS OF AGE, ARE ENTITLED TO VOTE IN TRIBAL COUNCIL ELECTIONS.	

YES [ ]
NO [ ]

Currently, tribal members who are the age of 21 are eligible to vote in a tribal election in the district that they reside (tribal members must turn 21 years of age 60 days prior to the election to be eligible to vote in that election). In addition, tribal members 18 and older and who are married are also eligible to vote.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment would lower the voting age for tribal members to 18.

<p style="text-align: center;"><b>PROPOSED CHANGE TO THE CONSTITUTION</b></p> <p><b>SECTION 6. TIME OF ELECTION</b></p> <p>ELECTION FOR COUNCIL SHALL BE SET 90 DAYS IN ADVANCE OF THE EXPIRATION OF THE TERM OF OFFICE OF THE CURRENT COUNCIL. DULY ELECTED COUNCIL MEMBERS SHALL TAKE OFFICE ON THE FIRST REGULAR MEETING OF THE COUNCIL FOLLOWING THEIR ELECTION.</p> <p style="text-align: center;">YES [ ]</p> <p style="text-align: center;">NO [ ]</p>
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Currently, council must schedule an election a minimum of 30 days in advance of the end of the current term of office. In practice, council elections are scheduled 60-90 days in advance of the end of the term to allow enough time for the district nomination processes, to determine candidates’ eligibility, mail out and receive absentee ballots, and to provide the opportunity for tribal members to update their district affiliations and addresses.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment would require that the council elections be scheduled at least 90 days in advance of the end of the current term.

<p style="text-align: center;"><b>PROPOSED CHANGE TO THE CONSTITUTION</b></p> <p><b>SECTION 7. MANNER OF ELECTIONS</b></p> <p>ELECTIONS SHALL BE BY SECRET BALLOT. THE INITIAL ELECTION WILL SEAT ALL NINE COUNCIL MEMBERS. THE ELECTED MEMBERS WILL BE NUMBERED 1-9 BASED ON A DRAWING OF NUMBERS 1-9. NUMBERS 1, 4 AND 7 WILL BE IN THE FIRST ELECTION AFTER THREE YEARS; 2, 5 AND 8 WILL BE IN THE SECOND ELECTION THE FOLLOWING YEAR; 3, 6 AND 9 WILL BE IN THE THIRD ELECTION THE FOLLOWING YEAR. THE ELECTION PROCESS FOR COUNCIL ELECTION WILL FOLLOW THIS NUMBERED PROCESS ANNUALLY THEREAFTER.</p> <p style="text-align: center;">YES [ ]</p> <p style="text-align: center;">NO [ ]</p>
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Currently, council elections are conducted by a secret ballot process, which allows voter's choice to be anonymous, at the district level. If a district wanted to change this process and implement a prevailing custom, they have the option to do so.

A "no" vote would result in no change to this article and section of the Constitution.

A "yes" vote on the proposed amendment would remove the option for implementing a prevailing custom. It would also change the composition, or number, of council from 11 to 9. Finally, it would stagger the terms for council members. Council members would continue to serve three-year terms but not all members would be elected at the same time. Under this new policy, the initial council would draw a number from 1-9. Numbers 1, 4, and 7 would run again for election in the first year, numbers 2, 5, and 8 would run in the second year, and 3, 6, and 9 would run in the third year. Following the initial council seated under this policy, three council members would have to run for election each year.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<b>SECTION 8. VACANCIES AND REMOVAL FROM OFFICE.</b>	
IF A COUNCIL MEMBER SHALL DIE, RE-SIGNS, OR IS REMOVED FROM OFFICE, THE COUNCIL POSITION SHALL BE DECLARED VACANT AND THE CANDIDATE THAT RECEIVED THE NEXT HIGHEST NUMBER OF VOTES IN THE PREVIOUS ELECTION SHALL SERVE THE REMAINDER OF THAT TERM.	
YES	[   ]
NO	[   ]

Currently, if a council member dies, resigns, permanently leaves the reservation, or is removed from office, the council declares the position vacant then appoints an individual to fill the seat until the end of that term from the same district in which the vacancy occurs. In the past, council has filled vacancies by appointing the individual with the next highest votes in the last council election.

A "no" vote would result in no change to this article and section of the Constitution.

A "yes" vote on the proposed amendment would change the current process as follows. First, when a council member dies, resigns, or is removed from office, the council would declare the position to be vacant and the position would be filled by the person who received the next highest number of votes in the previous election. The proposed amendment removes the word "districts", thus removing the option for council to appoint an individual from the same district and also removes the phrase "permanently leaves the reservation".

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<b>SECTION 9. IMPEACHMENT</b>	
THE COUNCIL MAY EXPEL A MEMBER FOR CAUSE BY 2/3 VOTE, AFTER DUE NOTICE OF CHARGES AND ALLOWING THAT MEMBER AN OPPORTUNITY TO BE HEARD.	
YES	[   ]
NO	[   ]

Currently, council can impeach, or remove, a member for cause by a 2/3 vote.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment adds a clarification to the existing language by adding “that member”.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<b>SECTION 10. RECALL</b>	
A MEMBER OF THE COUNCIL MAY BE RECALLED UPON PRESENTATION OF A PETITION SIGNED BY AT LEAST 30 PERCENT OF THE ELIGIBLE VOTERS. SUCCESSORS TO RECALLED COUNCIL MEMBERS SHALL FOLLOW THE REPLACEMENT PROCEDURE OF SECTION 8. BASED ON NUMBER OF VOTES RECEIVED IN PREVIOUS ELECTION.	
YES	[   ]
NO	[   ]

Currently, to recall a council member, members of the district must present council with a petition signed by 30 percent of the eligible voters of that district. Following the review of the petition by council to ensure it complies with the Constitution and Resolution 10,540, the council would then schedule a recall election for the eligible voters of that district. If the majority of the voters participating in the recall election vote to remove the council member, the council shall take such action. Successors to recalled council members must be elected by the voters of that district.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment would result in several changes. The proposed amendment removes the word “districts”. Under the new policy, the recall of a council member would require 30 percent of the eligible voters among the membership to sign a petition that would be presented to council. If the petition were valid, then the recall would take effect. There would be no recall election. The council would replace the recalled council member according to the procedure laid out in Section 8. There would be no election to select a replacement for the recalled council member.

<b>PROPOSED CHANGE TO THE CONSTITUTION</b>	
<b>SECTION 11. OFFICERS</b>	
THE TRIBAL COUNCIL SHALL SELECT FROM ITS MEMBERSHIP, A CHAIRPERSON AND VICE-CHAIRPERSON. THE COUNCIL MAY ALSO SELECT SUCH OTHER OFFICERS AND COMMITTEE MEMBERS BASED ON QUALIFICATIONS, AS IT MAY DEEM NECESSARY FOR PROPERLY CONDUCTING THE BUSINESS OF THE COUNCIL. THE SECRETARY-TREASURER POSITION AND OTHER EXECUTIVE OFFICERS MUST BE SELECTED THROUGH THE TRIBAL SALARY ADMINISTRATION PROGRAM UTILIZING THE TRIBAL MEMBER PREFERENCE POLICY. THE SECRETARY-TREASURER POSITION MUST BE A TRIBAL MEMBER.	
YES	[   ]
NO	[   ]

Currently, the council members select a Chairman and Vice-Chairman at the beginning of each council term. They also select individual(s) to serve as officers of the council, such as the Secretary-Treasurer/CEO. This individual(s) can be a Tribal Member although this is not a requirement. Council also selects other officers and committee members that they feel are necessary for conducting the business of the council. Chapter 105, also known as the Management Plan, gives council the authority to negotiate the salaries of officers, such as the Secretary-Treasurer/CEO. The Management Plan also lays out Tribal Council expectations as it relates to employment including advertising of positions, qualifications, as well as equal opportunity and Indian preference, to name a few.

A “no” vote would result in no change to this article and section of the Constitution.

A “yes” vote on the proposed amendment adds “qualifications” as a requirement for selection of officers, such as the Secretary-Treasurer/CEO and committee members. Next, it would require that all officers be hired through the tribal salary administration program utilizing the Tribal Member Preference Policy (Resolution 8,363). The 2010 Salary Chart would be used to determine salaries of the officers and the Secretary-Treasurer/CEO would have to be a tribal member. Finally, this amendment changes the terms Chairman and Vice-Chairman to Chairperson and Vice Chairperson.

**AMENDMENTS TO BY-LAWS OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

<p><b>PROPOSED CHANGE TO THE CONSTITUTION BY-LAWS</b></p> <p><u>ARTICLE II. QUALIFICATIONS OF OFFICE.</u></p> <p>NO PERSON SHALL REPRESENT THE CONFEDERATED TRIBES ON THE TRIBAL COUNCIL UNLESS THEY ARE A DULY ENROLLED MEMBER WHO HAS ATTAINED THE AGE OF 21 YEARS, AND WHO HAS NEVER BEEN CONVICTED OF A MAJOR CRIME OR FELONY.</p> <p align="center">YES [    ]</p> <p align="center">NO [    ]</p>
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Currently, an individual can serve on council if they are an enrolled member, 21 years of age and never been convicted of a major crime.

A “no” vote would result in no change to this by-law and section of the Constitution.

A “yes” vote on the proposed amendment adds a clarification to the existing language by adding that candidates can never have been convicted of a major crime or felony.

<p><b>PROPOSED CHANGE TO THE CONSTITUTION BY-LAWS</b></p> <p><u>ARTICLE III. SALARIES.</u></p> <p>THE TRIBAL COUNCIL MEMBERS SHALL RECEIVE AS COMPENSATION FOR THEIR SERVICES AS FOLLOWS: CHAIRPERSON-\$80,000; VICE-CHAIRPERSON-\$70,000; ALL OTHER MEMBERS \$60,000, AND MILEAGE FROM HOME TO PLACE OF MEETING AND RETURN AT A RATE USED BY THE FEDERAL GOVERNMENT. EXPENSES SHALL BE PAID FROM AVAILABLE ANNUAL TRIBAL BUDGETED FUNDS. BENEFIT PROGRAMS AND REIMBURSEMENT EXPENSES WILL FOLLOW TRIBAL ORGANIZATION POLICIES AS BUDGETED. TRIBAL COUNCIL MEMBERS WILL BE AVAILABLE TO THE MEMBERSHIP,</p>
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**COMMITTEES AND NECESSARY BUSINESS ON BEHALF OF THE TRIBE  
BEYOND THE MONTHLY TRIBAL COUNCIL AGENDA FROM THEIR  
OFFICE.**

YES [    ]  
NO [    ]

Currently, there are two ways in which a tribal council member can be compensated for their time while council is in session or when they are on approved travel for council business.

Option 1: This option is currently defined in the Constitution and By-Laws under Article III – Salaries. Under this option, council members are paid \$50 for the first 4 hours that council is in session or when they are on travel for official business. If they are in session or on travel beyond 4 hours, they are paid \$12.50 for each additional hour. The maximum a member can be paid per day is \$100. Council is in session on average 2-3 times per week.

Option 2: It has been the practice to allow council members to continue receiving their salary if they were employed by the tribe or tribal enterprise at the time of their election. Their salary is paid from the budget of the department or enterprise in which they are employed. While they are not able to devote all of their time to their position, they do not lose it and departments adjust staffing to ensure that work is completed.

Under both Option 1 and Option 2, council members are eligible for the Tribal Council Benefit Plan (Resolution 9,057). Under this plan, the tribe covers council member health care premiums and contributes to individual council member pension plans. They are also eligible for mileage from home to and from the place of their meetings using the Federal mileage rate. Finally, they are eligible to receive excess per diem under the Tribal Council Travel Policy (Resolution 10,191).

In 2015, \$60,278.26 was paid to six council members under Option 1 for hours spent conducting council business. Under Option 2, four council members continued to receive their salaries as tribal employees and two council members continued to receive their salaries as tribal enterprise employees (1 left mid-year and moved into Option 1). As stated previously, these salaries were paid from the budget of the department or enterprise in which they were employed. All 11 council members received group benefits (\$5,077.40), retirement/pension (\$25,000.00), and excess per diem (\$113,998.73).

<b>2015 COUNCIL EXPENDITURES</b>	
Council fees (5 members under Option 1)	\$ 60,278.26
Group benefits (11 members)	\$ 5,077.40
Tribal Council Retirement/Pension (11 members)	\$ 25,000.00
Excess per diem (11 members)	\$113,998.73
<b>TOTAL</b>	<b>\$ 90,355.66</b>

A “no” vote would result in no change to the article. Specifically, salaries would not be created for council members.

A “yes” vote would create paid positions for council members. The Chair would be paid \$80,000, the Vice-Chair would be paid \$70,000 and all other members would be paid \$60,000. All members would be eligible for tribal benefit programs like health and dental insurance, workers compensation, supplemental insurance, and 401Ks. Council members would continue to be eligible for mileage from home to and from the place of their meetings using the Federal mileage rate and any reimbursements for



expenses incurred would have to follow tribal policies. Council members would be required to make themselves available to membership, committees and necessary business beyond the monthly agenda from their office. This change would remove council authority to determine the salaries of officers, such as the Secretary-Treasurer/CEO and committee members. Expenses would continue to be appropriated through the annual budgeting process.

The following table provides information on both a 9 and 11 member council as it is possible for the salaries to be adopted and the composition to remain the same and vice-versa.

	<b>9 Member Council</b>	<b>11 Member Council</b>
Council salaries	\$ 570,000.00	\$ 690,000.00
State unemployment	\$ 6,264.00	\$ 7,656.00
Workers compensation	\$ 1,049.00	\$ 1,270.00
Group benefits	\$ 62,700.00	\$ 75,900.00
Tribal Council retirement/pension	\$ 28,500	\$ 34,500.00
	<b>\$782,511.73</b>	<b>\$923,324.73</b>

*Summary*

Under both scenarios, the annual budget would have to be appropriated through the annual budgeting process.

Further policy would need to be developed to establish clear expectations of council members on issues such as attendance and hours of availability to committees and membership. These policies would also need to clarify whether council members are required to resign their tribal positions or whether they can take leave and their positions would be held for them to return to in the future. Additional research would need to be conducted on the council retirement and pension plans as it may not be possible for council members who receive salaries and compensation and benefits to also receive a retirement and pension plan from the Tribe. Finally, the excess per diem allowance would need to be re-examined as it is not in line with the current tribal travel policies.

Creating paid positions for council members will create a significant budgetary impact. During the 2016 budget cycle, the Tribe had to reduce the annual budget by \$2.5 million dollars as a result of a reduction in anticipated enterprise revenue. Over the past 10 years, the tribe has experienced revenue reductions from tribal enterprises, however, several initiatives are expected to generate resources in the coming years.

<b>PROPOSED CHANGE TO THE CONSTITUTION BY-LAWS</b>	
<u>ARTICLE IV. MEETINGS AND PROCEDURES</u>	
SECTION 4. THE COUNCIL MAY DETERMINE THE RULES OF ITS PROCEEDINGS AND MAY DISCIPLINE, SUSPEND AND FINE ITS MEMBERS FOR DISORDERLY CONDUCT.	
YES	[ <input type="checkbox"/> ]
NO	[ <input type="checkbox"/> ]

Currently, council determines the rules of its proceedings, for example how their meetings function, and can punish members for disorderly conduct.

A “no” vote would result in no change to this by-law and section of the Constitution.

A “yes” vote on the proposed amendment expands on the current language and gives council the authority to discipline, suspend and fine its members for disorderly conduct.

<b>PROPOSED CHANGE TO THE CONSTITUTION BY-LAWS</b>	
<b>ARTICLE IV. MEETINGS AND PROCEDURES</b>	
<b>SECTION 9. EACH COUNCIL MEMBER SHALL MAKE MONTHLY REPORTS TO THE MEMBERSHIP CONCERNING PROCEEDINGS OF THE COUNCIL.</b>	
YES	[ <input type="checkbox"/> ]
NO	[ <input type="checkbox"/> ]

Currently, council members are required to report to the district from which they are elected concerning the proceedings of the council.

A “no” vote would result in no change to this by-law and section of the Constitution.

A “yes” vote on the proposed amendment adds a clarification to require that council members make monthly reports to the membership on proceedings of the council. The amendment removes the word “districts”, thus reports would be made to the entire membership.