

Title 11 – Utilities
Chapter 4 – Reservation Sewer and Water Districts

Sec.

Subchapter I – Formation

- 11-04.010 Authorization
- 11-04.020 Qualified Voters
- 11-04.030 Formation by Petition to Senate
- 11-04.040 Formation by Senate Resolution
- 11-04.050 Hearing
- 11-04.060 Senate
- 11-04.070 Election
- 11-04.080 Declaration of New/Reorganized District
- 11-04.090 Formation by Petition to Manager
- 11-04.100 Tribal Utility Authority to Conduct Elections

Subchapter II – Governance

- 11-04.110 Commission
- 11-04.120 Terms of Office
- 11-04.130 Nominations, Elections, and Vacancies
- 11-04.140 Waiver from Usual Formation/Reorganization Procedures
- 11-04.150 Powers of Reservation Sewer and/or Water Districts

Legislative History

Enacted:

Codifying Title 11, Ord. 195 (11/5/03), BIA (11/25/03).

Repealed or Superseded:

Amendment to Ordinance No. 65, Ord. 78 (7/16/91), Enacting Res. 91-7-66, BIA (8/30/91) (establishing new provision for waiver of usual requirements for forming/reorganizing water and/or sewer districts).

Amendment to Ordinance 65, Ord. 72 (7/10/90), Enacting Res. 90-7-66, BIA (8/31/90).

Swinomish Indian Tribal Utility Ordinance, Ord. 65 (10/10/89), Enacting Res. 89-10-95, BIA (10/23/89) (repealing and superseding Ord. 51).

Utility and Environmental Service Ordinance, Ord. 51 (6/4/85), Enacting Res.85-6-41.

Subchapter I – Formation

11-04.010 Authorization.

- (A) Reservation sewer and/or water districts for the acquisition, construction, maintenance, operation, development, reorganization, and regulation of a system of sewers or water, including treatment and disposal plants and all necessary appurtenances and providing for additions and betterments thereto, are hereby authorized to be established or reorganized within the exterior boundaries of the Reservation.
- (B) Such reorganization of any existing reservation sewer and/or water district shall not affect the outstanding bonds, warrants or other indebtedness incurred by such district prior to its reorganization.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.020 Qualified Voters.

- (A) **Existing District.** A person is qualified to vote in any election held by a sewer and/or water district only if he or she is at least twenty-one years of age and either owns real property in fee, or is a beneficial owner of real property held in trust by the United States, within the sewer and/or water district.
- (B) **New District.** A person is qualified to vote in any election held to form a sewer and/or water district only if he or she is at least twenty-one years of age and owns real property in fee, or is a beneficial owner of real property held in trust by the United States, within the proposed sewer and/or water district.

11-04.030 Formation by Petition to Senate.

- (A) **Statement of Need.** For the purpose of formation or reorganization of a reservation sewer and/or water district, a petition shall be presented to the Senate that shall call for the creation or reorganization of the said district, designate the boundaries thereof, and assert that the establishment or reorganization of said district will be conducive to the public health, convenience and welfare and will benefit the property included therein.
- (B) **Assessment.** The petition shall specify the proposed property assessment, if any, which shall not exceed one dollar and twenty-five cents (\$1.25) per thousand dollars (\$1,000) of assessed value, for the general preliminary expenses of the district.
- (C) **Signatures.** Said petition shall be signed by at least twenty-five percent (25%) of the qualified voters residing within the district described in the petition on the

date the petition was filed. The said petition shall be filed with the Manager of the Authority, who shall, within thirty (30) days, examine the signatures thereof and certify to the sufficiency or insufficiency. No person having signed such a petition shall be allowed to withdraw his or her name after the filing of the same with the Authority.

- (D) **Transmittal to Senate.** If such petition shall be found to contain a sufficient number of signatures, the Authority shall transmit the same, together with a certificate of sufficiency attached thereto, to the Senate.
- (E) **Declaration of Necessity.** If such petition is certified to contain a sufficient number of signatures, the Senate may, by resolution, and not otherwise, declare a sewer and/or water district a necessity.
- (F) **Notice.** After such a resolution, at a regular or special meeting of the Senate, the Senate shall cause to be published for at least once a week for two (2) successive weeks in a local newspaper of suitable size and general circulation, giving notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of said proposed district.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.040 Formation by Senate Resolution.

- (A) **Declaration of Necessity.** If in the opinion of the tribal health officer the existing sewerage or water facilities are inadequate in the district to be created and it is for the public welfare, or if in the opinion of the tribal health officer the existing sewerage or water facilities are a menace to the health and convenience of the public, then the Senate may declare a sewer and/or water district a necessity, and such district shall be organized under the provisions of this Title, and all amendments thereto.
- (B) **Notice.** After such a resolution, at a regular or special meeting of the Senate, the Senate shall cause to be published for at least once a week for two (2) successive weeks in a local newspaper of suitable size and general circulation, giving notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of said proposed district.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.050 Hearing.

- (A) **Opportunity to Be Heard.** When such a petition or resolution is presented for hearing, the Senate or its designee shall hear the same or may adjourn said

hearing from time to time so long as the total adjournments do not exceed one (1) month in all. Any person, firm or corporation may appear and make objections to the establishment or reorganization of the said district or the proposed boundary lines thereof.

- (B) **Boundaries.** Upon a final hearing, the Senate or its designee shall make such changes in the proposed or reorganized boundary lines as it deems proper and shall establish and define such boundaries and shall find whether the proposed reservation sewer and/or water district will be conducive to public health, welfare and convenience and can be of special benefit to the land included within the said boundaries of said proposed district.
- (C) **All Lands Must Benefit.** No lands that will not, in the judgment of the Senate or its designee, benefit by inclusion therein, shall be included within the boundaries of said district as so established and defined, and no change shall be made in said boundary lines to include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended at such hearing to include other lands within the Reservation upon a petition signed by the owners of all of the land within the proposed extension, subject to Senate approval.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.060 Senate.

- (A) **Senate Must Approve.** Notwithstanding any provision of law to the contrary, no reservation sewer and/or water district shall form or reorganize, annex or withdraw territory, consolidate or merge into a reservation sewer and/or water district unless such proposed action shall be approved by the Senate.
- (B) **Notice.** The Senate shall, within thirty (30) days after receiving notice of the proposed action, approve such action or schedule a hearing on such action.
- (C) **Decision.**
 - (1) **Timeline.** The Senate shall decide within sixty (60) days of a hearing whether to approve or disapprove such proposed action.
 - (2) **Criteria.** The Senate shall consider the following criteria:
 - (a) Whether the proposed action in the area under consideration is in compliance with the Tribal Comprehensive Plan and its supporting documents; and
 - (b) Whether the proposed action is in compliance with the policies expressed in the Tribal plan for water and/or sewage facilities.

- (c) If the proposed action is inconsistent with subsections (a) or (b) of this Subsection, the Senate shall not approve it. If such action is consistent with both subsections, the Senate may approve it provided that the Senate finds that utility service in the area under consideration will be most appropriately served by a reservation sewer and/or water district rather than the Authority itself. If there has not been adopted for the area under consideration a plan under subsections (C)(2)(a) or (b) of this Section, the proposed action shall not be found inconsistent with such subsection.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.070 Election.

- (A) **Voting.** No water and/or sewer district shall be established or reorganized unless it is approved by a majority of the qualified voters voting on the proposition.
- (B) **Special Election.** Upon entry of the findings of the final hearing on the petition, if the Senate finds that the proposed sewer and/or water system will be conducive to the public health, welfare, and convenience and be of special benefit to the land within the boundaries of the said proposed or reorganized district, it shall by resolution call a special election to be held not less than thirty (30) days and not more than sixty (60) days from the date thereof.,
- (C) **Notice.** Notice of such election shall be published at least once a week for four (4) successive weeks in a local newspaper of suitable size and general circulation, setting forth the hours during which the polls will be open, the boundaries of the proposed or reorganized district as finally adopted, and the object of the elections. The notice shall also be posted for ten (10) days in the proposed or reorganized district.
- (D) **Ballot.**
 - (1) **Formation of New District.** A proposition to establish a new reservation sewer and/or water district shall be expressed on the ballots in the following terms:

RESERVATION SEWER AND/OR WATER DISTRICT..... YES
RESERVATION SEWER AND/OR WATER DISTRICT..... NO
 - (2) **Reorganization of Old District.** A proposition to reorganize an old reservation sewer and/or water district shall be expressed on the ballot in the following terms:

RESERVATION SEWER AND/OR WATER DISTRICT
REORGANIZATION...YES
RESERVATION SEWER AND/OR WATER DISTRICT
REORGANIZATION...NO

- (3) **Name.** In each instance, the ballot shall also state the name of the district as decided by the Senate.

- (4) **Assessment.** At the same election, the Senate may submit a proposition to the voters, for their approval or rejection, authorizing the reservation sewer and/or water district, if formed, to assess at the earliest time permitted by law on all property located in the district a fee for one (1) year, in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents (\$1.25) per thousand dollars (\$1,000) of assessed value, for general preliminary expenses of the district. Said proposition shall be expressed on the ballots in the following terms:

One year....dollars and...cents per thousand dollars
of assessed value..... YES
One year....dollars and...cents per thousand dollars
of assessed value..... NO

- (E) To be effective, such proposition must be approved by a majority of the qualified voters voting in the election.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.080 Declaration of New / Reorganized District.

If at such election a majority of the voters in each district voting upon such proposition shall vote in favor of the formation or reorganization of such district and/or districts, the Authority shall so declare in its canvass of the returns of such election.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.090 Formation by Petition to Manager.

- (A) **Petition.** As an alternative to the methods of formation set out above, a reservation sewer and/or water district may be formed by a petition signed by at least sixty percent (60%) of the property owners whose property is included in the proposed district. The petition shall propose the formation of the district, designate the boundaries thereof, and indicate the name of the district.

- (B) **Manager of the Authority.** The petition shall be filed with the Manager of the Authority, who shall, within thirty (30) days, examine the signatures thereof and

certify to the sufficiency or insufficiency. No person having signed such a petition shall be allowed to withdraw his or her name after the filing of the petition with the Manager of the Authority. If the petition is found to contain a sufficient number of signatures, the Manager of the Authority shall forward the petition to the Senate.

- (C) **Hearing.** Upon receipt of a petition for formation, the Senate or its designee shall schedule a hearing pursuant to Section 11-04.040. The Senate shall decide within sixty (60) days of a hearing to approve or disapprove the proposed action.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.100 Tribal Utility Authority to Conduct Elections.

- (A) All elections held pursuant to this Section shall be conducted by the Tribal Utility Authority.
- (B) The expense of all such elections shall be paid for out of the funds of such sewer and/or water district.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

Subchapter II – Governance

11-04.110 Commission.

- (A) **Board of Commissioners.** The governing body of a sewer and/or water district shall be a board of commissioners consisting of three (3) members. The commissioners shall annually elect one (1) of their number as president and another as secretary of the board.
- (B) **Compensation.**
 - (1) **Per Diem.** A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate not to exceed fifty dollars (\$50) for each day or portion thereof devoted to the business of the district; Provided, that the compensation for each commissioner shall not exceed four thousand eight hundred dollars (\$4,800) per year. In addition, the secretary may be paid a reasonable sum for clerical services.
 - (2) **Waiver.** Any commissioner may waive all or any portion of his or her compensation payable under this Section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this Section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the

compensation otherwise would have been paid. The waiver shall specify the month or period of months for which it is made.

- (C) **Employment.** No commissioner shall be employed full time by the district.
- (D) **Procedure.** The board shall by resolution adopt rules governing the transaction of its business. All proceedings shall be by resolution recorded in a book kept for that purpose, which shall be a public record.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.120 Terms of Office.

- (A) **First Election.** At the election held to form or reorganize a district, there shall be elected three (3) commissioners who shall assume office immediately thereafter and hold office for terms of two (2), four (4), and six (6) years respectively, and until their successors are elected and qualified and assume office.
- (B) **Subsequent Elections.** The term of each nominee shall be expressed on the ballot and shall be computed from the first day of January following the election. Thereafter, every two (2) years there shall be elected a commissioner for a term of six (6) years and until his or her successor is elected and qualified.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.130 Nominations, Elections, and Vacancies.

- (A) **Nominations.** Nominations for the first board of commissioners to be elected at the election for the formation of the sewer and/or water district shall be by petition of ten (10) voters qualified under Section 11-04.020. The petition shall be filed with the manager of the Authority at least thirty (30) days before the election.
- (B) **Election.** Thereafter candidates for the office of sewer and/or water commissioner shall file declarations of candidacy. The election shall be conducted by the district. Any voter qualified under Section 11-04.020 who is a resident in the district at the time of election may vote in any election held in the sewer and/or district.
- (C) **Vacancies.** A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners; Provided, that if there are two (2) vacancies on the board, one (1) vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two (2) commissioners and said appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled

for six (6) months, the Authority shall make the necessary appointment or appointments. If there is a vacancy of the entire board, a new board may be appointed by the Senate.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).

11-04.140 Waiver From Usual Formation/Reorganization Procedures.

- (A) If a private sewer and/or water system desires to establish itself as a Reservation Sewer and/or Water District, the Senate may waive the formation procedures set out above; Provided, that the private sewer and/or water system meets the following conditions:
- (1) The private sewer and/or water system shall be entirely within the exterior boundaries of the Reservation;
 - (2) The private sewer and/or water system shall have been in existence and providing services for a period of not less than ten (10) years;
 - (3) The owners of the private sewer and/or water system shall provide the Tribe with its organizational documents, which shall show its:
 - (a) Decision making procedures;
 - (b) Authority to convert from a private sewer and/or water system to a Reservation Sewer and/or Water District; and
 - (c) Organizational and service boundaries;
 - (4) The private sewer and/or water system shall provide notice and a hearing for its members to discuss the merits of converting to a Reservation Sewer and/or Water District; and
 - (5) The private sewer and/or water system shall present a formal resolution to the Senate requesting Reservation Sewer and/or Water District status and indicate why it qualifies for a waiver from the usual formation procedures.
- (B) The Senate, after receiving a formal request from a private sewer and/or water system, shall determine whether:
- (1) It is in the best interests of the Tribe to grant such a waiver; and
 - (2) Additional conditions shall be met or agreed to by the private sewer and/or water district as a prerequisite to granting a waiver.

- (C) If the Senate grants a waiver from the usual formation procedures set out herein, a newly established Reservation Sewer and/or Water District shall thereafter:
 - (1) Continue to operate, maintain and regulate its sewer and/or water system pursuant to its existing organizational documents unless agreed otherwise; and
 - (2) Conform to and abide by all tribal and federal laws, rules and regulations governing sewer and water.
- (D) Conversion to a Reservation Sewer and/or Water District by an existing private sewer and/or water system shall not affect the outstanding bonds, warrants or other indebtedness incurred by the private sewer and/or water system prior to its conversion.

[History] Ord. 195 (11/5/03); Ord. 78 (7/16/91).

11-04.150 Powers of Reservation Sewer and/or Water Districts.

The authority and powers of reservation sewer and/or water districts shall include but not be limited to the following, as provided in this Chapter:

- (A) Authority to adjust rates;
- (B) Additions/betterments;
- (C) Contracting;
- (D) Compel connection to system;
- (E) Lien on property;
- (F) Change name; and
- (G) Incur debt.

[History] Ord. 195 (11/5/03); Ord. 72 (7/10/90).