

Proposed Tribal Code revisions

(The following are changes to the Tribal Code as proposed by the Warm Springs Justice Team. A hearing on the proposed changes is set for 6 p.m. on Dec. 12 at the Warm Springs Community Center.)

Basic Speed rule

Whereas the Tribal Council believes that persons driving on the Warm Springs Reservation in violation of the Basic Speed Rule set forth in Warm Springs Tribal Code ("WSTC") Section 310.408 have a detrimental effect on the safety of the Warm Springs community; and

Whereas the Tribal Council believes that the public safety risk created by speeding on the Reservation warrants the reclassification of a violation of the Basic Speed Rule from a Class B traffic infraction to a Class A traffic infraction; and

Whereas the Tribal Council believes that violation of the rules of the road set forth in WSTC Chapter 310 creates an increased safety risk in work zones where persons conducting road maintenance and improvement activities are present; and

Whereas the Tribal Council believes that the risk to the safety of road work crews warrants the doubling of traffic infraction fines when a person commits a traffic infraction in a designated work zone; now, therefore,

Be it resolved by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(i), (l), and (u), of the Tribal Constitution and By-Laws, that the Tribal Council hereby amends WSTC 310.408 as follows (amendment represented by ~~strikeout~~ and additional underlined text):

Basic Speed Rule.

(1) A person commits the offense of violating the basic speed rule if he drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to the traffic, surface and width of the highway, the hazard at intersections, weather, visibility and any other conditions then existing.

(2) As used in this section, unless the context requires otherwise, "highway" includes, but is not limited to an alley.

(3) Violating the basic speed rule is a Class ~~B~~A traffic infraction.

Be it further resolved by the Tribal Council that the Tribal Council hereby amends WSTC 310.220 as follows (amendment represented by additional underlined text):

Fines for Traffic Infractions.

(1) The penalty for committing a traffic infraction shall be a fine only or as provided in WSTC 310.260 a forfeiture, suspension, revocation of a tribal driver's license or other privilege, or other civil penalty.

(2) Unless a traffic infraction occurs in a highway work zone, a judgment to pay a fine for a traffic infraction shall be a sentence

to pay an amount not exceeding:

(a) \$500 for a Class "A" traffic infraction.

(b) \$250 for a Class "B" traffic infraction.

(c) \$100 for a Class "C" traffic infraction.

(d) \$50 for a Class "D" traffic infraction.

(3) If a traffic infraction occurs in a highway work zone, a judgment to pay a fine for such a traffic infraction shall be a sentence to pay an amount not exceeding two times the fine amounts set forth in subsection (2).

(4) As used in this section, a "highway work zone" is an area identified by advance warning where highway construction, repair, or maintenance work is being done by highway workers on or adjacent to a highway, regardless of whether or not highway workers are actually present.

(5) As used in this section, a "highway worker" is an employee of a government agency, private contractor, or utility company working in a highway work zone.

Be it further resolved by the Tribal Council that the amendments to WSTC 310.408 and WSTC 310.220 set forth above are effective immediately.

DUII

Whereas Section 310.510 of the Warm Springs Tribal Code ("WSTC") currently provides in part that a person commits the offense of driving under the influence of intoxicants if the person drives a vehicle while the person has .10% or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath, blood, urine, or saliva of the person; and

Whereas the Tribal Council is aware of research demonstrating that impairment that can affect a person's ability to drive occurs before a person reaches a blood alcohol concentration of .10%; and

Whereas the Tribal Council desires to improve the safety of the Warm Springs community by ensuring that people impaired by alcohol do not drive in the community; and

Whereas the Tribal Council desires that WSTC Chapter 310 be consistent with WSTC Chapter 312 (Boating Code) with respect to the use of a refusal to submit to field sobriety tests as evidence in a related civil or criminal action; now, therefore,

Be it resolved by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(i), (l), and (u) of the Tribal Constitution and By-Laws, that the Tribal Council hereby amends WSTC 310.510 to read as follows (amendment represented by ~~strikeout~~ and additional underlined text):

Driving While Under the Influence of Intoxicants. A person commits the offense of driving while under the influence of intoxi-

cants if the person drives a vehicle while the person:

(1) Has ~~at least .06%~~ 10% or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath, blood, urine or saliva of the person made under WSTC 310.550;

(2) Is under the influence of intoxicating liquor or a controlled substance; or

(3) Is under the influence of intoxicating liquor and a controlled substance.

Be it further resolved by the Tribal Council that that Tribal Council hereby amends WSTC 310.550 to read as follows (amendment represented by ~~strikeout~~ and additional underlined text):

Implied Consent to Chemical Tests.

(1) Any person who operates a motor vehicle upon the highways of ~~this reservation~~ the Warm Springs Reservation shall be deemed to have given consent to field sobriety tests, including a chemical test of the person's breath for the purpose of determining the alcoholic content of the person's blood, upon the request of a police officer for the purpose of determining if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of WSTC 310.510. A test field sobriety tests shall be administered upon the request of a police if the police officer having has reasonable grounds to believe the person arrested to have been driving under the influence of intoxicants in violation of WSTC 310.510.

(2) No ~~chemical test of the person's breath~~ field sobriety tests shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of WSTC 310.510 if the person refuses the request of a police officer to submit to the ~~chemical field sobriety tests~~.

(3) If a person refuses or fails to submit to field sobriety tests as required by subsection (1) of this section, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was operating a vehicle while under the influence of intoxicants.

~~(3)~~(4) If pursuant to subsection ~~(2)~~(3) of this section a person refuses ~~a breath to submit to field sobriety tests~~, he shall be informed at that time by the police officer that:

(a) Refusal or failure to submit to the breath field sobriety tests may result in suspension of his or her driving privileges on the Warm Springs Reservation for a period not to exceed 120 days; and

(b) Evidence of refusal or failure to submit to the field sobriety tests may be offered against him or her in a civil or criminal proceeding.

Be it further resolved by the Tribal Council that the amendments to WSTC 310.530 and WSTC 310.550 set forth above shall be effective immediately.

Sex offender code

Whereas, per Resolution No. 10,774, the Tribe elected to participate as a sex offender registration jurisdiction under Title I of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), which requires registration jurisdictions to create and implement a sex offender registration and notification program that meets the requirements contained in Title I of the Adam Walsh Act; and

Whereas, as part of the Tribe's effort to create and implement a sex offender registration and notification program that is compliant with Title I of the Adam Walsh Act, the Warm Springs Tribal Council approved Ordinance 91, codified as Chapter 380 of the Warm Springs Tribal Code ("WSTC"), on April 1, 2010; and

Whereas the Tribal Council believes that in order to maintain and enhance the Tribe's sex offender notification and registration program, and to improve public safety on the reservation with respect to certain sex offenders, it is necessary to amend WSTC Chapter 380 to include additional provisions regarding check-in requirements for homeless offenders and to include a criminal offense prohibiting offenders convicted of a sex offense involving a child under the age of fourteen (14) from conducting certain activities on or near places frequented by minors; now, therefore,

Be it resolved by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(i), (l), and (u), of the Tribal Constitution and By-Laws, that the Tribal Council hereby amends WSTC Chapter 380 to include the following criminal offense regarding violation of child safety zone restrictions:

380.615 Violation of Child Safety Zone Restrictions. A person is guilty of an offense subject to penalties in accordance with WSTC 380.600 or WSTC

380.605 if that person was convicted of a sex offense involving a child under the age of fourteen (14) and is subject to the registration requirements in this Chapter, and does one or more of the following:

(1) Loiters or parks a vehicle within 500 feet of a school, playground, public swimming pool, skate park, baseball field, child care facility, child care provider, youth center, or any other location accessible to the public that is established or designated specifically for the use and enjoyment of minors, while minors are present, unless the person has legal and physical custody of his or her children and is dropping off or picking up his or her children from school or a child care facility or provider or is attending a school function with his or her children;

(2) Attends an event held primarily for minors where minors are in attendance unless the person has legal and physical custody of his or her children and is attending the event with his or her children;

(3) Has contact with a child care facility or provider during its hours of operation unless the person has legal and physical custody of his or her children and is dropping off or picking up his or her children from the facility or provider; or

(4) After [insert effective date of this resolution], establishes and maintains a residence within 500 feet of a school, playground, public swimming pool, skate park, baseball field, child care facility, child care provider, youth center, or any other location accessible to the public that is established or designated specifically for the use and enjoyment of minors and is commonly used by minors.

Be it further resolved by the Tribal Council that the Tribal Council hereby amends WSTC 380.010 to include the following definition of "homeless" as subsection (8), and to renumber the existing subsections accordingly:

(8) **"Homeless"** means lacking a fixed, regular, and adequate nighttime residence; living in a publicly or privately operated shelter designated to provide temporary living ar-

rangements; or having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including, but not limited to, a car, park, abandoned building, bus or train station, airport, or camping ground.

Be it further resolved by the Tribal Council that the Tribal Council hereby amends WSTC 380.315(1) as follows (addition in bold):

(1) Jurisdiction of Residency. All sex offenders required to register with the Tribe must immediately appear in person before the Tribal Registry Administrator to update any change to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register with the Tribe shall immediately inform the Tribal Registry Administrator via phone or in-person appearance of any changes to their temporary lodging information (when a Tier 3 Sex Offender will be absent from his or her residence for 24 hours or more, or when a Tier 1 Sex Offender or Tier 2 Sex Offender will be absent from his or her residence for 7 days or more), international travel plans, vehicle information, email addresses, telephone numbers, Instant Messaging addresses, and any other designation used in Internet communications, postings, or telephone communications. In the event of a change in temporary lodging, the sex offender and the Tribal Registry Administrator shall immediately notify the jurisdiction in which the sex offender will be temporarily staying. **A sex offender who becomes homeless and is required to register with the Tribe under this Chapter must appear in person before the Tribal Registry Administrator every thirty (30) days for the duration of the sex offender's homelessness.**

Be it further resolved by the Tribal Council that amendments to WSTC Chapter 380 set forth herein shall be effective immediately.



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The next deadline to submit items for publication in the Spilyay Tymoo is Friday, December 6. Thank you!