

The Constitution of the Lumbee tribe of Cheraw Indians

As adopted by the Lumbee Tribe of Cheraw Indians July 2, 1994

LUMBEE TRIBE OF CHERAW INDIANS CONSTITUTION

PREAMBLE. In accordance with the inherent power of self-governance of the Lumbee Tribe of Cheraw Indians, the Lumbee Tribe of Cheraw Indians adopts this Constitution for the purposes of establishing a tribal government structure, preserving for all time the Lumbee way of life and community, promoting the social and economic well-being of Lumbee people, and securing justice and freedom for the Lumbee people.

Article I. Territory and Jurisdiction.

1. The territory of the Lumbee Tribe of Cheraw Indians shall include:

- Robeson, Bladen, Columbus, Cumberland, Hoke, and Scotland Counties, North Carolina, for the purposes of delivery of federal Indian services;
- all real property or natural resources owned by the Tribe and held in trust for it by the United States; and
- the boundaries of any reservation of the Tribe that are proclaimed as such by the Secretary of the Interior.

2. The Tribe's jurisdiction shall extend to the fullest extent possible under Federal law to:

- all enrolled members of the Tribe, without regard to location or residence; and
- all persons, property, and activities located or taking place upon the Tribe's territory.

Article II. Membership

1. The general membership of the Tribe shall consist of those persons who apply for enrollment and demonstrate direct descent from a person listed on Source Documents, which are listed on Exhibit A to this Constitution and incorporated herein by reference, and who maintain contact with the Tribe.

2. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant has not historically or does not presently maintain contact with the Tribe.

3. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant is an enrolled member of any other Indian tribe, unless the applicant has relinquished in writing his or her membership in such tribe.

4. For purposes of elections on the adoption of this constitution and the first tribal officers hereunder, the voting general membership shall consist of those members of the Tribe who are eighteen (18) and older. Thereafter, the voting general membership shall consist of those enrolled members who are eighteen (18) years or older who are registered voters in accordance with duly adopted tribal ordinance(s).

5. The tribal council shall have authority to enact such tribal ordinances governing tribal membership as are consistent with this and other articles of this constitution.

Article III. Distribution of powers.

1. The powers expressed herein and those powers necessary and proper to the exercise of those powers expressed herein are delegated to the specified branch of government by the general membership of the Lumbee Tribe. Those powers not delegated herein are reserved by the general membership of the Lumbee Tribe. These reserved powers shall include:

a). The power to recall any elected official of the Lumbee Tribe of Cheraw Indians who is in the second calendar year or later in his or her term. A recall election shall be held when the following occurs:

i). a petition bearing the signatures, names, addresses, and enrollment numbers of at least one hundred (100) eligible voters from the district electing a tribal official or five hundred (500) eligible voters for the tribal chairperson, stating the official subject to recall with the reason therefor in one hundred (100) words or less, and designating three signatories as a Petitioner's Committee, is filed with the Tribal Elections Board;

ii). upon certification of the signatures on the petition and within no more than five (5) days of its receipt, the Election Board shall serve a copy of the petition upon the named tribal official, who shall have fifteen (15) days from the date of said notice to respond to the reasons stated in the petition in one hundred (100) words or less;

iii). immediately upon receipt of any response, the Election Board shall serve all members of the Petitioner's Committee with a copy of the same;

iv). the Petitioner's Committee shall have forty-five (45) days from the date of receipt of the response to collect additional signatures upon their petition;

v). the Elections Board shall conduct a recall election within ten (10) days of the resubmission of the petition, provided that the petition is signed by forty (40) percent of the voters eligible to vote for the named tribal official;

vi). if at least thirty (30) percent of the voters eligible to vote for the office participate in the recall vote and a majority of those voting vote in favor of recall, the Election Board shall declare the office vacant and the vacancy shall be filled in accordance with the appropriate provisions of this constitution, except that the recalled tribal official shall not be qualified to run for office in that special election;

vii). if a recall election on a tribal official fails to obtain a majority of those voting, the Election Board shall not certify any recall petition against that tribal official for a minimum of six months thereafter.

b). The power to initiate a vote on a tribal ordinance. A vote on an initiative shall be held when the following occurs:

i). a petition bearing the signatures, names, addresses and enrollment numbers of at least five hundred (500) eligible voters, stating the proposed terms of a tribal ordinance, and designating three signatories as a Petitioner's Committee, is filed with the Tribal Elections Board;

ii). upon certification of the signatures on the petition and within no more than five (5) days of its receipt, the Elections Board shall serve a copy of the petition bearing the proposed tribal ordinance upon the tribal council, which shall take the proposed tribal ordinance under consideration and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Election Board;

iii). the Elections Board shall notify all members of the Petitioner's Committee of the tribal council's action on the proposed tribal ordinance within five (5) days of such action;

iv). if the proposed ordinance is not enacted or is enacted with substantive changes, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of tribal council action to collect additional signatures upon their petition proposing a tribal ordinance;

v). the Elections Board shall conduct an election upon the proposed tribal ordinance within ten (10) days of the resubmission of the petition proposing the tribal ordinance, provided that the petition is signed by thirty (30) percent of eligible voters;

vi). if at least thirty (30) percent of the eligible voters participate in the initiative election and a majority of those voting vote in favor of the proposed ordinance, the Election Board shall declare the ordinance duly enacted law of the Lumbee Tribe of Cheraw Indians.

c). The power to conduct a referendum on tribal ordinances, in accordance with the provisions of Article V, section 3, herein.

2. The members of the Lumbee Tribe of Cheraw Indians shall be secure in their persons and property and such security shall be preserved by the government created by this constitution.

3. The powers delegated to the legislative, executive, and judicial branches, except as expressly provided in this Constitution, shall be separate and distinct and no branch shall exercise the powers delegated herein to another branch.

Article IV. Tribal Council.

1. The legislative power to enact ordinances of the Lumbee Tribe of Cheraw Indians shall reside in the tribal council. Such legislative power shall include the enactment of annual tribal budgets; however, budgets shall be enacted into tribal law following the conduct of tribal hearing(s) on budgets proposed by the tribal chairperson. The tribal council shall also, consistent with the provisions of this Constitution, adopt rules and regulations governing the council's procedure and decorum.

2. Except as otherwise provided, members of the council shall serve three year terms and no council member can serve more than two consecutive terms. The privilege to run for election to the tribal council shall be limited to those members of the Lumbee Tribe who at the commencement of the term of office for which the member stands for election:

- are over the age of twenty-one (21);
- have maintained their principal place of residence in the particular council district for which the members stand for election no less than the preceding six (6) months;
- are not incarcerated upon conviction for any offense or have completed a sentence for a felony conviction less than seven years before, with the term sentence as used herein to include any period of restriction on civil rights; and
- hold no other publicly elected government office or no other appointed or elected tribal office at the time of taking office.

3. The council shall consist of twenty-one (21) members who shall be elected from districts within Lumbee territory. These districts shall:

- have boundaries described and drawn on Exhibit B to this constitution;
- be redrawn within one (1) year following the publication of each decennial federal census to maintain equal voting rights for tribal members;
- for purposes of the first election of tribal council members only, be limited in terms as follows: council members from districts 1, 4, 7, 10, 13, 16 and 19 shall serve one (1) year terms; council members from districts 2, 5, 8, 11, 14, 17 and 20 shall serve two (2) year terms; and council members from districts 3, 6, 9, 12, 15, 18 and 21 shall serve three (3) year terms;
- each council member shall hold community meetings within his or her district no less than four (4) times a year, with a minimum of ten (10) calendar days advance notice of such meetings to be posted at the offices of the tribal council.

4. The council members shall elect from their members the following officers:

- a speaker, who shall preside over council meetings;
- a vice-speaker, who shall preside over council meetings in the absence of the speaker;
- a secretary, who shall oversee the maintenance of all records of proceedings of the council and tribal ordinances; and
- a treasurer, who shall oversee council proceedings to prepare annual tribal budgets.

5. All proceedings of the tribal council shall be conducted in public session, except for proceedings certified in advance by the speaker as implicating privacy rights of a tribal employee or member. No proceedings of the tribal council shall take place in the absence of a quorum which shall constitute two-thirds (2/3) of the sitting council members and all decisions of the tribal council shall require an affirmative vote of the majority of present council members, except that the tribal council can override a veto of a tribal ordinance by the tribal chairperson only by a two-thirds (2/3) of all sitting council members.

6. No ordinance enacted by the tribal council shall be binding and effective until such ordinance has been posted in a place reserved for this purpose at the offices of the tribal council for a period of ten (10) calendar days following its enactment, provided that such ordinance was not certified for referendum or vetoed by the tribal chairperson in accordance with Article V, section 1 (b) and (c) within that period. The tribal council shall periodically publish in a newspaper of general distribution in Lumbee territory a calendar of proceedings showing all council actions taken and the address and phone number where copies of ordinances are available.

7. Any council member who is absent from three consecutive regularly scheduled meetings of the council shall be removed from office, provided that such absences are unexcused in accordance with a governing tribal ordinance. A vacancy in a tribal council seat will also occur automatically upon the death of a tribal council member or the occurrence during that member's term of any circumstance listed above in section 2 that would have disqualified the member from serving upon the tribal council. Vacancies in tribal council seats shall be filled as follows:

- if a tribal council seat becomes vacant for any reason and one calendar year or less remains in the term of the vacant seat, then:
 - the candidate receiving the second highest vote total in the most recent election for that seat will serve the remainder of the term, assuming such candidate remains qualified and is willing to serve;
 - if no candidate described in (a) above is available or willing to serve, the tribal council shall appoint a person who would be qualified to stand for election to that seat to serve the remainder of the term.
- if a tribal council seat becomes vacant for any reason and more than one calendar year remains in the term of the vacant seat, then:
 - a special election shall be conducted to fill the vacancy, and
 - the newly elected council member shall serve out the remainder of the vacated term.

Article V. Tribal Chairperson.

1. All executive powers, including implementation of and compliance with annual budgets, of the Lumbee Tribe of Cheraw Indians shall reside in a tribal chairperson, who shall cause all laws of the Lumbee Tribe to be faithfully executed. Specifically, the tribal chairperson shall:

- deliver to the general membership an annual state of the tribe address during the first week of July, which address shall include a proposed budget for the upcoming fiscal year;
- within ten (10) days of its passage by the tribal council, certify for referendum by the general voting membership any tribal ordinance that affects fundamental rights or interests of the Lumbee Tribe of Cheraw Indians. Any ordinance imposing a tax or authorizing gaming in Lumbee territory shall be deemed to affect fundamental rights or interests of the Lumbee Tribe of Cheraw Indians. No ordinance certified as requiring a referendum shall be effective unless and until such ordinance is approved by a majority of those voting in the referendum, provided that thirty (30) percent of the voting general membership participated in the referendum.
- have authority to veto any ordinance enacted by the tribal council;
- with the advise and consent of the tribal council, employ a tribal administrator, who shall oversee the day to day execution of all tribal laws and delivery of all tribal programs and shall serve at the pleasure of the tribal chairperson;
- represent the Lumbee Tribe of Cheraw Indians before all other governments and tribunals, including the United States, the State of North Carolina, and all federal and state agencies.

2. The chairperson shall be elected by the voting general membership for a term of four years, and shall not serve more than two consecutive terms. The privilege to run for the office of tribal chairperson shall be limited to those members of the Lumbee Tribe who at the commencement of the term:

- are thirty-five (35) years of age or more;
- have maintained his or her principal place of residence in territory of the Lumbee Tribe for the preceding six (6) months;
- is not incarcerated upon conviction for any offense or who, less than seven (7) years preceding, has completed a sentence for a felony conviction, with the term sentence as used herein to include any period of restriction on civil rights; and
- hold no other publicly elected government office or no other elected or appointed tribal office at the time of taking office.

3. A vacancy shall occur in the office of tribal chairperson upon the death of the chairperson member or the occurrence during that chairperson's term of any circumstance listed above in section 2 that would have disqualified the chairperson from running for office. Until the appointment or election of a successor, the Speaker or Acting Speaker of the tribal council shall serve temporarily as acting tribal chairperson. Vacancies in the office of tribal chairperson shall be filled as follows:

- if a vacancy occurs in the office of tribal chairperson with one calendar year or less remaining in the term of office, then the tribal council shall appoint as tribal chairperson:
 - the candidate receiving the second highest number of votes in the most recent election for the office shall be appointed, assuming such candidate remains qualified and is willing to serve;
 - if no such candidate is available or willing to serve, the tribal council shall appoint a qualified member to fill out the remainder of the term.
- if a vacancy occurs in the office of tribal chairperson with more than one calendar year remaining in the term of office, then:
 - a special election shall be conducted to fill the remainder of the term, and
 - the newly elected chairperson shall serve out the remainder of the vacated term.

Article VI. Judiciary.

1. The judicial power of the Lumbee tribe of Cheraw Indians shall reside in the Supreme Court of the Lumbee Constitution and such inferior courts as the tribal council may establish. The Supreme Court of the Lumbee Constitution shall have original jurisdiction over all cases and controversies arising under the Lumbee Constitution and all ordinances of the Lumbee Tribe of Cheraw Indians. In the event the tribal council establishes inferior courts, the Supreme Court of the Lumbee Constitution shall have appellate jurisdiction only over those cases and controversies arising under tribal ordinances.

2. The rule of law to be applied in the Supreme Court of the Lumbee Constitution in all cases and controversies within its original jurisdiction shall be the will of the Lumbee people as expressed in the Lumbee Constitution, duly adopted tribal ordinances, and Lumbee custom. In the absence of a governing rule of law from these sources, the governing rule shall be federal common law.

3. The Supreme Court of the Lumbee Constitution shall consist of five sitting judges, who shall serve five year terms; no judge may serve two consecutive terms. These judges shall have the qualifications and be selected as set out below:

- with the exception of the minimum age requirement, the qualifications for tribal chairperson specified in Article V, section 2, shall apply to judges of the Supreme Court of the Lumbee Constitution;
- at all times, three of the sitting judges shall be graduates of accredited law schools and two shall be lay people;
- the tribal chairperson shall nominate two candidates for appointment to the Supreme Court of the Lumbee Constitution from each of five judicial districts with the following boundaries: district one shall constitute that area in Robeson County north of N.C. Highway 74 and east of Interstate 95; district two, that area in Robeson County south of N.C. Highway 74 and east of Interstate 95; district three, that area in Robeson County south of N.C. Highway 74 and west of Interstate 95; district four, that area in Robeson County north of N.C. Highway 74 and west of Interstate 95; and district five, all Lumbee territory outside Robeson County. The tribal council shall appoint five judges from those nominated by the tribal chairperson;
- there shall be a Chief Judge of the Supreme Court of the Lumbee Constitution who shall bear administrative responsibilities for the conduct of the court's business.

Article VII. Elections Board.

1. There shall be an independent Elections Board of the Lumbee Tribe of Cheraw Indians which shall have the following authority:

- to promulgate necessary and appropriate regulations under authority of this constitution and tribal ordinances governing voter registration and the conduct of all regular and special tribal elections;
- to conduct all recall, initiative, and referendum proceedings; and
- any other matters specified herein or authorized by tribal ordinance.

2. The Elections Board shall consist of five (5) enrolled members over the age of eighteen (18). The tribal chairperson shall nominate two candidates for the Elections Board from each of the judicial districts described above in Article VI, section 3(d); the tribal council shall appoint the members of the Board from those nominated by the tribal chairperson.

3. Any matter decided or certified by the Elections Board shall be deemed final tribal action and shall be reviewable by the Supreme Court of the Lumbee Constitution.

Article VIII. Duty of Loyalty.

1. Every elected and appointed tribal official empowered herein shall affirm upon taking office that he or she will abide by this constitution and laws of the Lumbee Tribe of Cheraw Indians and will, to the best of his or her ability, perform his or her duties with undivided loyalty to the Lumbee Tribe of Cheraw Indians.

2. The first tribal council elected under this constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, which ordinance shall require a tribal official to recuse him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

Article IX. Adoption.

1. For purposes of this article, the delegates of the Lumbee constitutional assembly shall serve as a temporary electoral commission to conduct the public hearings and elections required by this article. Unless otherwise specified, the assembly shall be deemed to have taken formal action by a favorable vote of a majority of those delegates who names appear as in attendance at assembly meetings held on July 31, 1993, and November 20, 1993. As a temporary electoral commission, the constitution assembly shall adopt all necessary regulations and procedures governing the required public hearings and elections. All authority of the constitution assembly, as a temporary electoral commission or otherwise, shall lapse upon either the rejection of the constitution at the election held for that purpose or upon the certification by it of elections results for tribal officers under the constitution, whichever occurs first.

2. Upon a motion made to approve the constitution and passed by a two-thirds majority of the constitution assembly, this constitution shall be deemed complete and ready for submission to the Lumbee Tribe of Cheraw Indians. Within thirty (30) days of this vote, the constitution assembly shall cause the proposed constitution to be published in the following newspapers: the Carolina Indian Voice, the Community News-Advertiser, the Fairmont Times Messenger, the Fayetteville Observer-Times, the Laurinburg Exchange, the Raeford News Journal, the Red Spring Citizen, the Robesonian, and the St. Pauls Review.

3. The constitution assembly shall conduct a series of public hearings on the proposed constitution, at the sites set out below, with a schedule for such hearings showing location and dates to be published along with the text of the proposed constitution as prescribed by section two above:

- Furnell Svett High School
- South Robeson High School
- Fairgrove Middle School
- Rex Rennett Elementary School
- Oxendine School
- Magnolia Elementary School
- South Hoke Elementary School
- Scotland High School
- Cumberland County Association for Indian People
- St. Paul High School
- Littlefield Elementary School

The constitution assembly shall maintain a complete record of all comments, either written or oral, made at these hearings.

4. Within thirty (30) days of the last hearing held under section three above, the constitution assembly shall have a final meeting to consider all public comments. This meeting shall be open to the public and shall be limited to issues raised at public hearings held under section two above and revisions to the constitution based thereon.

5. If any revisions are made by the constitution assembly at its final meeting, the revised constitution shall be published in the newspapers listed in section two above within five (5) days of the final meeting. A final public hearing shall be held on the revised constitution no sooner than thirty (30) days and no longer than forty-five (45) days after the final meeting of the constitution assembly, with notice of the final hearing being given along with the publication of the revised constitution.

6. Within thirty (30) days of the final public hearing or the final meeting of the constitution assembly if no revisions are made, the constitution assembly shall conduct an election on the adoption of the constitution.

7. If a majority of those voting favor adoption of the constitution, the constitution assembly shall certify the result and the constitution as having been adopted by the Lumbee Tribe. Within sixty (60) days of the adoption of the constitution, the constitution assembly shall conduct elections for all tribal officers under the constitution. Upon certification of those election results, the tribal officers shall assume responsibility and commence tribal government operations under this constitution.

Article X. Amendment.

1. An amendment to the constitution can be proposed by either a two-thirds vote of the tribal council or by a petition bearing the signatures of two thousand (2,000) voting general members of the tribe eighteen years of age or older. Upon certification by the Elections Board of a proposed amendment to the constitution, the Elections Board shall within ten (10) working days post the proposed amendment at appropriate public places and publish the proposed amendment in newspapers of general distribution.

2. Within sixty (60) days after the posting and publication of a proposed amendment, the Elections Board shall conduct a special election on the proposed amendment. The amendment shall be adopted upon the majority vote of qualified voters voting in the special election. If adopted, the Elections Board shall within five (5) days of the special election post the amendment at appropriate public places and publish the amendment in newspapers of general distribution with notice of its adoption by special election. The amendment shall become effective ten (10) working days after its posting and publication.

The Tribal Council of the Lumbee Tribe of Cheraw Indians will meet on Monday night, October 17 at 7 p.m. in the Chavis Center. Tribal members are encouraged to attend and also urged to become familiar with the above Lumbee Tribal Constitution by which the Lumbee Tribe will be governed.

Dr. Dalton Brooks has been elected Chairman of the Lumbee Tribe. Lance Harding, Jr. has been elected speaker of the 21-member Tribal Council. This copy of the Constitution is printed here as a public service by the Carolina Indian Voice, the Tribal Newspaper.