

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

April 23, 2020

Hon. Seth Damon  
Office of the Speaker  
Post Office Box 3390  
Window Rock, AZ 86515

RE: CAP-19-20, *An Action Relating to an Emergency; Temporarily Suspending Title 26 Sections to Allow Chapter Meetings to be Held Telephonically or Through Video Conferencing; Temporarily Suspending Title 26 Sections and Clarifying Title 26 Sections to Authorize Chapters to Function to Meet the Needs of Their Communities During the COVID-19 Health Crisis Under the Three-Person Quorum and the Executive Branch Closure of Navajo Nation Government Offices and Related Entities, Executive Order No. 002-20*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I veto CAP-19-20.

In a previous resolution, CMA-09-20, we were concerned about keeping our Chapter officials and members safe, slowing the spread of the coronavirus, and that we follow all health safety procedures. We were also concerned about the waiver of the Chapter's quorum requirement. Nonetheless, for the safety of all, CMA-09-20 was signed into law for 60 days to allow a three-member quorum for Chapter meetings. That resolution limited the actions that Chapters could take, however, CAP-19-20 expands the actions beyond the restrictions in CMA-09-20.

Title 26 is Navajo law related to Chapters and was enacted for a specific purpose, the governance of Chapters. Temporarily suspending Title 26 is a plain and simple waiver of the law that we cannot support. During this emergency period where our people's lives are being affected by the coronavirus pandemic we must not continue to circumvent Navajo law when reasonable alternatives are available to continue government operations. Without a debate on this matter, and a rush to action under an ill-advised consent agenda, the alternatives were not deliberated, nor were the Navajo people given an opportunity to be informed about waivers of Navajo law that impacts their government.

In addition to the alternative meeting methods, CAP-19-20 includes additional provisions that allow Chapter officials to carry out certain actions without involving meaningful participation of their Chapter members. This is not transparent governance.

The following matters require thorough discussion, including legal review of Navajo applicable Navajo law:

- amending the form of Chapter government;
- allowing Chapter officials to enter into contracts;

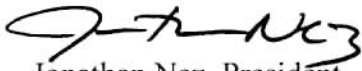
- permitting Chapter officials to carry out the duties of administrative staff;
- giving Chapter officials access to emergency funds;
- authorizing a change in the Public Employment Program;
- implying a direct acceptance of charitable donations, and;
- compensating Chapter officials for attending Agency meeting by teleconference


Waiving such important measures without input from Chapter officials or Chapter members could lead to serious consequences. We cannot condone such action to leave out the Navajo people from participating in their chapter government.

We repeat our previous position that it would have been prudent to include a provision that all Chapter action taken as a result of this resolution come back to the Chapter's full quorum for ratification once the coronavirus public health crisis has past. With the waiver actions in CAP-19-20 a ratification by Chapter members is reasonable and protects the interests of community members. This protective provision is still missing.

For the reasons outlined here CAP-19-20 is hereby vetoed.

Sincerely,

  
Jonathan Nez, President  
THE NAVAJO NATION

  
Myron Lizer, Vice President  
THE NAVAJO NATION

RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
24<sup>th</sup> NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION

RELATING TO AN EMERGENCY; TEMPORARILY SUSPENDING TITLE 26 SECTIONS TO ALLOW CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR THROUGH VIDEO CONFERENCING; TEMPORARILY SUSPENDING TITLE 26 SECTIONS AND CLARIFYING TITLE 26 SECTIONS TO AUTHORIZE CHAPTERS TO FUNCTION TO MEET THE NEEDS OF THEIR COMMUNITIES DURING THE COVID-19 HEALTH CRISIS UNDER THE THREE-PERSON QUORUM AND THE EXECUTIVE BRANCH CLOSURE OF NAVAJO NATION GOVERNMENT OFFICES AND RELATED ENTITIES, EXECUTIVE ORDER NO. 002-20

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).
- B. All authorities exercised by a Chapter pursuant to 26 N.N.C. § 101 *et al*, may be preempted by Navajo Nation Council resolutions. 26 N.N.C. § 103 (C).
- C. Pursuant to 2 N.N.C. §164 (A)(16) "[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council."

**SECTION TWO. FINDINGS**

- A. The Navajo Nation President issued Executive Order 001-20 declaring a state of emergency due to COVID-19 on March 13, 2020.
- B. On March 11, 2020, the Emergency Management Commission declared a state of emergency due to COVID-19. CEM-20-03-11.
- C. The Navajo Nation President issued Executive Order 002-20 on March 31, 2020 extending the Declaration of a State of



Emergency due to the COVID-19 virus on the Navajo Nation and extending the closure of Navajo Nation government offices and related entities.

- D. The Navajo Nation Council passed CMA-09-20 which authorized the Chapters to reduce quorum requirements to three individuals. Authorizing a reduced quorum is a safety measure to prevent the spread of COVID-19; however, it is necessary to allow Chapters to meet telephonically or through video conferencing to further reduce the spread of the COVID-19 virus.
- E. Chapters also need clarification on how to address the statutory meeting requirements, how to handle financial requirements and many other issues that are impacted by the reduced quorum requirement and the closure of Navajo Nation government offices and related entities Order.
- F. The Navajo Nation Council acknowledges that all Chapter actions are subject to audit and any misuse of funds is subject to appropriate actions.
- G. The Navajo Nation Council finds that Chapters must perform particular Chapter functions during the declared State of Emergency to provide disaster relief services to their communities. In addition, Chapter officials must function through Chapter meetings to act upon matters affecting the Chapter residents during the COVID-19 crisis. This resolution is necessary to address a pressing public need and is a matter requiring final action by the Navajo Nation Council.

**SECTION THREE. TEMPORARILY SUSPENDING TITLE 26 SECTIONS BY AUTHORIZING THE NAVAJO NATION CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR BY VIDEO CONFERENCING AND OTHER CHAPTER MEETING ISSUES**

- A. The Navajo Nation Council temporarily suspends Title 26 1002 (C) (1) and other sections expressing or implying a need to hold an in-person Chapter meeting thereby authorizing Chapter meetings to be held telephonically or by video conferencing.
- B. The Navajo Nation Council recognizes that Chapter meetings may have been held telephonically by a three-member quorum prior to the effective date of this resolution. In such instances, the Navajo Nation Council authorizes that the business items approved at these telephonic, three-member quorum Chapter meetings be ratified by a subsequent telephonic Chapter meeting operating after the effective date of this resolution.

- C. The Navajo Nation Council hereby acknowledges that the Chapters are to abide by the 48-hour meeting notice pursuant to 26 N.N.C. § 1002 (B). The Chapters are to make every effort to notify their community members of the telephonic or video conferencing call in numbers to allow Chapter membership to call in to the Chapter meetings. Such notice may be posted on the Chapter website and/or in other locations.
- D. The Navajo Nation Council hereby authorizes the Chapter meetings to include budget matters, emergency matters, and additional topics. Additional topics shall be approved on a case-by-case basis by the Division Director of the Division of Community Development in consultation with the Navajo Department of Justice.
- E. The Navajo Nation Council temporarily authorizes the Chapter President to appoint and confirm any Chapter member as pro tem vice-president and pro tem secretary/treasurer. This authorization temporarily suspends 26 N.N.C. § 1001 (B)(1)(d), which states that the Chapter President appoints and the membership approves/confirms. The pro tem vice-president and pro tem secretary-treasurer will be compensated by stipend subject to the Chapter approved budget.
- F. The Navajo Nation Council temporarily authorizes the vice-president and secretary/treasurer to make the main motion and/or the second to the main motion at a Chapter meeting. This authorization temporarily suspends 26 N.N.C. § 1003 (D)(2), which prohibits Chapter officials from making main motions or seconding motions on substantive and administrative matters during a regular Chapter meeting.
- G. The Navajo Nation Council hereby acknowledges that the secretary/treasurer is to record the telephonic Chapter meetings pursuant to 26 N.N.C. § 1001 (B)(3)(d). However, if electronic recording of the telephonic Chapter meeting is not possible, then the secretary/treasurer is to write detailed meeting minutes, as is also required by 26 N.N.C. § 1001 (B)(3)(d).
- H. The Navajo Nation Council hereby acknowledges that Chapter officials are to be compensated for the number of meetings attended by teleconference or video conferencing pursuant to the approved budget. 26 N.N.C. § 1002 (C)(1).
- I. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20 which authorized a three-member quorum was meant to reduce the statutory quorum requirement of 25 registered



members and also for Chapters that have reduced their quorum pursuant to the Resources and Development Committee Resolution No. RDCD-127-12. There are governance certified Chapters that operate under an Alternative Form of Government (AFOG) as authorized under the former Transportation and Community Development Committee Resolution No. TDCAP-36-01. Notwithstanding the three-member quorum law, the AFOGs may define their quorum requirements in accordance with their local ordinance.

- J. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20 which authorized the three-member quorum was instituted as a temporary measure to address the prohibition against gatherings of more than ten people (Navajo Department of Health Public Health Emergency Order dated March 18, 2020). There is now a Navajo Department of Health Public Health Emergency Order dated March 29, 2020 lowering the gathering limit to no more than five people.

**SECTION FOUR. TEMPORARILY ENABLE THE DIVISION OF COMMUNITY DEVELOPMENT AND NAVAJO DEPARTMENT OF JUSTICE TO GUIDE ALL 110 CHAPTERS BY USING THE 2010 MODEL FIVE MANAGEMENT SYSTEM (FMS) AND TO DEVELOP TEMPORARY MODIFICATIONS TO THE MODEL FMA TO HELP CHAPTERS ADDRESS THIS EMERGENCY**

- A. The Navajo Nation Council acknowledges that 26 N.N.C. § 101 (A) requires "all [110] chapters...to adopt and operate under a Five Management System [FMS]." The FMS must be "consistent with applicable Navajo Nation law."
- B. In 2010, the Navajo Nation Attorney General issued AG Opinion 01-10 announcing the creation of a "Model Five Management System" to be used by Chapters that have not adopted their own FMS.
- C. The Navajo Nation Council hereby authorizes the Division of Community Development and the Department of Justice to guide all 110 Chapters using the 2010 Model FMS and to suspend or modify any portion of the Model Five Management System so long as the suspension or modification is reasonably necessary for the Chapter to address this emergency.

**SECTION FIVE. TEMPORARILY SUSPEND 26 N.N.C. § 103 TO AUTHORIZE ALL NON-GOVERNANCE CERTIFIED CHAPTERS TO EXERCISE CERTAIN AUTHORITIES UNDER SECTION 103**

- A. The Navajo Nation Council recognizes that under 26 N.N.C. § 102 (B) only governance certified Chapters may exercise the authorities listed in 26 N.N.C. § 103.
- B. The Navajo Nation Council hereby temporarily suspends 26 N.N.C. § 102 (B) and authorizes all Chapter Presidents to:
  - 1. Sign temporarily leases of Chapter property in order to accommodate health personnel;
  - 2. Sign contracts for goods or services at or below \$50,000.00. For goods, use the recommended purchase order templates. For services, all Chapters should use the template contracts that can be found on DOJ's website: [www.nndoj.org](http://www.nndoj.org).

**SECTION SIX. TEMPORARILY SUSPEND 26 N.N.C. §§ 103 (E) AND 1004 TO ALLOW CHAPTER OFFICIALS TO PERFORM LIMITED ADMINISTRATIVE DUTIES WHILE THE CHAPTER STAFF ARE ON PAID ADMINISTRATIVE LEAVE**

- A. The Navajo Nation Council acknowledges that 26 N.N.C. § 103 (E) states that "[e]lected officials are prohibited from direct involvement in the management and operations of the Chapter administration."
- B. The Navajo Nation Council acknowledges that 26 N.N.C. § 1004 briefly outlines the executive functions of the Chapter employees such as implementing the Five Management System. Under subsection B, the Chapter Manager (and Community Service Coordinator) "shall co-sign all chapter checks."
- C. The Navajo Nation Council acknowledges that Chapter employees of non-governance certified Chapters are Navajo Nation Executive Branch employees under the Division of Community Development. Under Executive Orders 001-20 and 002-20, such employees are non-essential and are under mandatory stay-at-home orders.
- D. The Navajo Nation Council acknowledges that certain executive functions exercised by Chapter Officials are necessary to address this Declared State of Emergency.
- E. The Navajo Nation Council hereby temporarily suspends 26 N.N.C. §§ 103 (E) and 1004 and Chapter Officials of non-governance certified Chapters to:
  - 1. Allow two Chapter officials to co-sign all Chapter checks;



2. Allow Chapter officials to procure for emergency goods and services in strict compliance of the priorities provided in section VI (E) (2) of the Model FMS;
  3. Implement a Temporary Emergency Procurement Procedure which shall include: 1) Chapter resolution to use the emergency funds for the proposed contract; 2) Review of the priority businesses listed on the source list to see if products/services are available, if not, then use any available resources; 3) the first vendor available with the products/services may be chosen; 4) The Secretary/Treasurer will verify fund availability and sign off on a memorandum describing the procurement measures taken for each procurement; 5) Chapter President signs the Purchase Order or Contract using the recommended Purchase Order or Contract form.
- F. Notwithstanding the above, if Chapter Staff are willing to perform limited services thereby relieving Chapter Officials from having to perform certain executive functions, the Chapter Staff may perform such duties.

#### **SECTION SEVEN. BUDGET POLICIES FOR THE CHAPTER EMERGENCY FUND**

- A. The Navajo Nation Council acknowledges that the Navajo Nation Council Resolution CMA-11-20, signed by President Nez, replenished the Chapter emergency account.
- B. The Navajo Nation Council acknowledges that on March 11, 2020, the Navajo Nation Commission on Emergency Management, with concurrence by the Navajo Nation President and Vice-President, declared a Public Health State of Emergency.
- C. The Navajo Nation Council acknowledges that, as such, all Chapters are now able to access and use the Chapter emergency account.
- D. The Navajo Nation Council supports the mandate to require all 110 Chapters to coordinate all emergency relief efforts through the Navajo Nation Health Command Operations Center (HCOC) in order to avoid duplication of services.

#### **SECTION EIGHT. PUBLIC EMPLOYMENT PROGRAM (PEP)**

- A. The Navajo Nation Council acknowledges that all Chapters were authorized to develop their own policies for PEP under the former Transportation and Community Development Committee Resolution TCDCD-111-00. For Chapters that have not developed



their own policies, the former TCDC resolution provides for a template.

- B. The Navajo Nation Council acknowledges that Chapters shall comply with these policies with temporary allowance for use of the PEP funds to compensate volunteers pursuant to approved projects under the Navajo Nation Chapter Emergency Plan.
- C. The Navajo Nation Council temporarily allows, subject to a properly approved budget, Chapters to use PEP funds for Special Duty Pay in accordance with the Navajo Nation's policy on Special Duty Pay.
- D. The Navajo Nation Council acknowledges that Chapters cannot exceed their PEP budgets and volunteers are not entitled to receive compensation beyond the Chapter budget.

#### **SECTION NINE. RELIEF EFFORTS COMING FROM DONATIONS**

- A. The Navajo Nation Council acknowledges that the recently approved Navajo Nation Council Resolution No. CMA-08-20 streamlined the process for the Navajo Nation to accept gifts.
- B. The Navajo Nation Council acknowledges that Chapters are entities of delegated authorities. Chapters have not been delegated to accept gifts and, therefore, must follow CMA-08-20.
- C. The Navajo Department of Justice has recently been designated to lead the "Donations Branch" within the Navajo Nation Health Command Operations Center.
- D. The Navajo Nation Council directs the Navajo Department of Justice to promptly develop the processes for Chapters to obtain Chapter-specific donations by third parties.

#### **SECTION TEN. COMPENSATION OF CHAPTER OFFICIALS ATTENDING AGENCY COUNCIL MEETINGS**

- A. The Navajo Nation Council hereby authorizes Chapter Officials to attend Agency Council meetings via teleconference. Attendance via teleconference shall be compensated provided that the Agency Council can verify attendance.

#### **SECTION ELEVEN. EFFECTIVE DATE**

- A. The provisions of this Action shall become effective pursuant to 2 N.N.C. § 221 (B).

- B. The provisions of this Action shall expire sixty (60) days after its effective date, unless otherwise determined by resolution of the Navajo Nation Council.

**SECTION TWELVE. SAVINGS CLAUSE**

Should any provision of the amendments enacted herein be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the amendments shall remain the law of the Navajo Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the 24<sup>th</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 23 in Favor, and 00 Opposed, on this 10<sup>th</sup> day of April 2020.

  
Honorable Seth Damon, Speaker  
24<sup>th</sup> Navajo Nation Council

April 13, 2020  
DATE

Motion: Honorable Daniel E. Tso  
Second: Honorable Nathaniel Brown

Speaker Seth Damon not voting





ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Jonathan Nez, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 23rd day of April, 2020 for the reason(s) expressed in the attached letter to the Speaker.

   
Jonathan Nez, President  
Navajo Nation

NAVAJO NATION

269

Navajo Nation Council Special Session

4/10/2020  
02:25:47 PM

Amd# to Amd#

Consent Motion

PASSED

MOT Tso, D

Legislation 0076-20; Legislation

SEC Brown

0077-20; Legislation 0082-20;  
and Legislation 0083-20

Yeas : 23

Nays : 0

Excused : 0

Not Voting : 0

Yea : 23

Begay, E

Daniels

Slater, C

Tso, E

Begay, K

Freeland, M

Smith

Walker, T

Begay, P

Halona, P

Stewart, W

Wauneka, E

Brown

Henio, J

Tso

Yazzie

Charles-Newton

James, V

Tso, C

Yellowhair

Crotty

Nez, R

Tso, D

Nay : 0

Excused : 0

Not Voting : 0

Presiding Speaker: Damon