

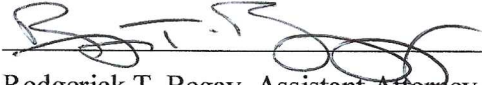


**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

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TO: All 110 Chapter Governments

FROM:   
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Navajo Nation Department of Justice, Chapter Unit

DATE: January 20, 2022

SUBJECT: Guidance for the Three-Quorum Rule under CJA-01-22

On January 7, 2022, the Navajo Nation Council passed Legislation No. 0268-21 which became Navajo Nation Council Resolution No. CJA-01-22. On January 18, 2022, President Nez signed CJA-01-22 into law. A copy of the signed resolution, excluding exhibits, is attached to this memorandum. The full version of the resolution can be found here: <http://dibb.nnols.org/publicreporting.aspx>

**I. CJA-01-22 is LIMITED AND TEMPORARY**

All Chapters should begin with the understanding that all Navajo Nation laws still apply. Under CJA-01-22, there are only a few Navajo Nation laws that have been changed on a temporary basis. In other words, most of the laws in Title 26 (Local Governance Act) are still effective unless there's language in CJA-01-22 that changes the LGA temporarily. For example, CJA-01-22 did not change the law that required Chapter meeting agendas to be posted forty-eight (48) hours before the start of the Chapter meeting. The point being that all Chapters should first assume that all laws in the LGA and all regulations in the Five Management System (FMS) still apply. That assumption must first be made in order to fully understand the effects of CJA-01-22.

Although this memorandum attempts to cover many scenarios, this memorandum cannot address all of the unique circumstances. Therefore, Chapters are strongly encouraged to continue contacting DOJ for any questions. Such inquiries can be emailed to me at [rbegay@nndoj.org](mailto:rbegay@nndoj.org). When Chapters submit questions, complete the Request for Legal Services Form which can be found at <http://www.nndoj.org/RFS.aspx>. Please also include any additional documents with your request.

**II. "LESS THAN NORMAL QUORUM RULE"**

There are basically three types of "normal quorum":

1. Twenty-five (25) members registered to vote with the Chapter. This is pursuant to sections 2(10)(a) and 1003(B) of the Local Governance Act (LGA);
2. As low as fifteen (15) members registered to vote with the Chapter. In 2012, the Resources and Development Committee passed RDCD-127-12 which allows

Chapters to reduce their quorum lower than 25.

3. Quorum amounts pursuant to an ordinance adopted under an Alternative Form of Governance (AFOG). For example, the Nahata Dziil Community Governance requires four of five Commissioners to conduct a Commission meeting.

The COVID-19 Pandemic primarily affected Chapter quorums in the first two categories. In response, the Navajo Nation Council approved a series of legislations that reduced the quorum to a minimum of three (3) registered Chapter members. Typically, the three members were the Chapter President, Vice-President, and Secretary-Treasurer. Over time, this became known as the “3 quorum rule.”

By Winter 2020, some Chapters began allowing their community members to participate in telephonic Chapter meetings. These Chapters had more than three but less than their normal quorum. In a former DOJ Memorandum dated March 19, 2021, guidelines were issued to all Chapters that included guidelines on how to include votes of those members participating by phone. It seems proper to say that the “3 quorum rule” should now be called the “less than normal quorum rule.”

A. Three (3) Person Quorum is the Minimum, not the Maximum.

Under CJA-01-22, all Chapters are now **required** to provide a teleconference or video-conference information to allow their community members to participate in Chapter meetings. This requirement is new in CJA-01-22 in comparison to older Navajo Nation Council Resolutions that made it discretionary. Thus, Chapter Officials can no longer decide to not provide a teleconference or video conference. This also means that even if a Chapter decides to have an in-person Chapter meeting, the Chapter is still required to provide a teleconference or video conference. There is one exception to the requirement. If your Chapter is experiencing issues with cell phone service or internet connectivity, your Chapter is **required** to seek an exemption from the Division of Community Development. The exemption will relieve your Chapter from having to provide a teleconference or video conference information for your Chapter meeting.

1. In-person Chapter Meeting – These are permissible so long as all safety measures are practiced. As of the date of this memorandum, the maximum gathering limit for Chapter meetings is still twenty-five (25) persons. This gathering limit may increase or decrease in the future. Chapters should always refer to the latest Emergency Public Health Order for the latest on gathering limits. Also, masks and social distancing rules are still in place.
2. Hybrid Chapter Meetings – These are Chapter meetings that have both in-person and those participating by teleconference or video conference. In light of the teleconference and video conference requirement, these will likely become the most used by Chapters.
3. Completely Virtual Chapter Meetings – These are Chapter Meetings where all participants, including Chapter Officials, are participating by teleconference and/or video conference. These types of meetings are also permitted and it benefits communities who have been designated as “hot-spots” for COVID-19 infections.



B. Chapters may adopt the following procedure or develop their own vote counting procedures:

1. Virtual attendees shall sign-in with the Secretary-Treasurer and the Secretary-Treasurer shall record the participant's name.
2. Only those registered to vote at the Chapter are allowed to vote on a Chapter action item. The Secretary-Treasurer shall verify that the person on the phone or video is a registered member of the Chapter before allowing that person to vote. If verification cannot be done during the meeting, the participant shall not be allowed to vote.
3. When voting, the Chapter Secretary-Treasurer shall perform a roll call and ask for the registered member's vote. If the member's name is called but the member does not answer, the Secretary-Treasurer should assume that the member has left the meeting. The member's non-vote shall not be counted as an abstention.
4. Abstention votes. When a member's name is called and he/she does not wish to vote in favor and does not wish to oppose, the member should voice their abstention.
5. When voting, the Secretary-Treasurer shall not solicit or count votes from guests/visitors who are not registered to vote with the Chapter. This also means that guests/visitors shall not be counted as part of the abstention vote.

C. DCD no longer approves Chapter Meeting Agendas.

Under Section Three of CJA-01-22, Chapter Meeting Agendas no longer require approval by the Division of Community Development. However, Section Three still requires Chapter Agendas be limited to COVID-19 matters, Navajo Nation Emergency Declaration matters, budget matters, and additional topics. Whenever there are additional topics, Chapters are required to present those additional topics to the Senior Programs and Projects Specialist (SPPS) of their local Administrative Service Center (ASC). The SPPS is to provide advice and guidance on those additional topics. There is no obligation by the Chapters to wait for any advice or guidance. Therefore, if no advice or guidance has been received, the Chapter may proceed to vote on those additional topics.

D. Three-Member Quorum.

A true three (3) person quorum Chapter meeting should be a rare occurrence. Having said that, here are two possible scenarios that may generate a three-member Chapter Meeting:

1. After teleconference or video conference information is provided, there are no participants except three Chapter members (three elected officials or two officials with the grazing official, etc.) In these cases, the Chapter Meeting may proceed.

2. After the Chapter has been approved for an exemption from teleconference and video conference AND only the Chapter Officials are in attendance at an in-person Chapter Meeting, the Chapter Meeting may proceed.

If a Chapter experiences a three-member quorum consisting only of the three Chapter Officials, the following apply:

- The Chapter President votes only in the event of a tie vote;
- The Chapter President may appoint a Vice-President *pro-tempore* or a Secretary-Treasurer *pro-tempore* in their absence. This appointment ends once the elected Official becomes available for the Chapter meeting.
- In the absence of the Chapter President, the Vice-President will chair the Chapter Meeting. The elected Vice-President does not appoint another Vice-President *pro-tempore*. Instead, there will need to be one other registered Chapter member present in order to satisfy the three-member quorum. Typically, the Grazing Official can serve as the 3<sup>rd</sup> voting member. If a three-member quorum cannot be achieved, the Vice-President will need to cancel the meeting.

E. Examples:

What if a Chapter fails to provide teleconference or video conference and also fails to obtain an exemption from DCD? Their Chapter Meeting becomes invalid and all Chapter resolutions are void. The Chapter Administration should inform DCD and DOJ. Additionally, the Chapter Administration should not process any claim forms for stipends.

Can a Chapter have a Regular Chapter Meeting on the same day of the Planning Meeting? Probably not because the forty-eight hour notice rule was likely not followed. The effect of the meeting is the same as above.

What if the Chapter President was absent and the elected VP appointed a VP *pro-tempore*? The meeting is valid because there would be three registered Chapter members but the appointment would be invalid. Thus, while any chapter resolution passed will still be valid, the person appointed will not earn a stipend.

There are likely other scenarios that can result in an invalid Chapter meeting or may seem invalid so if there are any questions about your Chapter meetings, please contact DCD or DOJ.

### III. FIVE MANAGEMENT SYSTEM

Under CJA-01-22, DCD has been reauthorized to provide guidance to all one-hundred and ten (110) Chapters by using the 2010 Model Five Management System (FMS). In addition, DCD was reauthorized to develop temporary modifications to the Model FMS in order to accommodate needs arising from the COVID-19 Pandemic. This memorandum lists a few modifications to the FMS for Fiscal, Procurement, Personnel, Property, and Records Management. Due to on-going changes, this memorandum does not provide a comprehensive list of changes. Thus, if your Chapter has any questions regarding the



application of any FMS policy, you are encouraged to contact your local ASC.

A. Fiscal

1. Emergency Fund Account Policy.

a. Section VI(E)(2) of the Model Procurement Policy is modified as follows:

- i. **Priority One**: High-risk elderly and individual(s) with underlying health related conditions.
- ii. **Priority Two**: Purchase of gas and diesel fuel for any equipment engaged in providing emergency response relief.
- iii. **Priority Three**: Purchase of food, water, and fuel including firewood.
- iv. **Priority Four**: Emergency Funds may be expended for temporary and short-term relief for a family of five [3-5 days] used by families for their livelihood. This may include the purchase of hay, feed, salt blocks, veterinarian supplies/medication and water for sheep, horses, cattle, and other form of livestock.

b. Any emergency fund relief shall not exceed \$200.00 per household.

2. Donations / Emergency Fund Account

- a. As a reminder, Chapters are typically unable to receive donations because this power has not been delegated to Chapters.<sup>1</sup> However, under Section Eight of CJA-01-22, Chapters have been reauthorized (on a temporary basis) to accept donation and relief efforts.
- b. Upon receipt of the donation (monetary, food, supplies, etc.), the Chapter shall perform an inventory and record the inventory and shall complete an ICS-213 form with the following information:
  - i. Donor name/organization;
  - ii. Donor contact email and/or phone number;
  - iii. Delivery method (mail or truck delivery);
  - iv. Description (type/quantity) of supplies; and
  - v. Estimated value of the donation.
- c. For any monetary donations, Chapters shall deposit it for use in accordance with the Chapter's Emergency Fund Account Management Plan. If the Chapter does not have a plan, then use section IV(A)(1)(b) above.

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<sup>1</sup> Under section 1010 of Title II of the Navajo Nation Code, the Navajo Nation President can accept gifts on behalf of the Navajo Nation. Further, if the value of the gift exceeds \$1,000, the President must obtain concurrence from the Naabikiyati Committee.

- d. The ICS-213 form is then email or sent to the Navajo Nation Health Command Center.
  - e. Generally, charitable donations to the Navajo Nation and Chapters are tax deductible for the Donor. If the Donor requests for documentation to that effect, the Chapter shall contact DOJ and shall forward a copy of the request with a copy of the completed an ICS-213 form.
3. Signatures for Chapter Checks.
- a. Under Section 1004(B) of the LGA, the Chapter Manager (or CSC) is one of the co-signers for all Chapter checks. Under Section 1001(B)(3)(I), the Chapter Secretary-Treasurer is the other co-signer for all Chapter checks.
  - b. If one or both signatories are unable to perform their duty, alternate signatories can be planned and shall be coordinated with their banks for any required changes to the bank signature authorization card. Alternates can be:
    - i. Chapter President or Chapter Vice-President.
    - ii. Senior Programs/Projects Specialist of your local ASC.
  - e. A *pro-tempore* Chapter Official cannot serve as an alternate.
  - e. If these procedures are unworkable for your Chapter, contact DCD and DOJ for further guidance.

B. Procurement

1. Temporary Emergency Procurement Procedures. Not all procurements will qualify as an emergency procurement.<sup>2</sup> If the procurement qualifies for an emergency procurement, the following procedure shall apply:
  - a. The Chapter Secretary-Treasurer and/or CSC shall verify fund availability.
  - b. Chapter resolution is passed to use the emergency funds for the good and/or service;
  - c. The Chapter Administration reviews the Navajo Business Source List containing Navajo Priority 1 and 2 businesses to see if any business offers the services or products. The Navajo Priority Business Source List can be found at [www.navajobusiness.com](http://www.navajobusiness.com).
  - d. If there are no Navajo Priority 1 and 2 businesses able to provide the good or service, the Chapter may contact any other business having available goods and/or services.

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<sup>2</sup> For example, a house wiring project that existed prior to the beginning of the Pandemic will not qualify as an emergency procurement.



- e. The first vendor with available products/services may be chosen. There will be no need to seek any other quotes.
- f. The Secretary-Treasurer and/or the Chapter Manager/CSC shall complete a Fund Approval Form.
- g. The expenditure shall be presented at the next regular Chapter meeting for a vote.
- h. If a Chapter Resolution is passed, the Chapter President signs the Chapter Purchase Order Form **or** the recommended Professional Services Contract. The recommended contract can be found at <http://www.nndoj.org/RFS.aspx>.

## 2. Signatures for Contracts

- a. Under section 102(B) and 103(D)(3) of the LGA, only governance certified Chapters can execute contracts. Under Section Six of CJA-01-22, non-LGA certified Chapters may execute contracts with a value of \$50,000 or less. For all service contracts with a value less than \$50,000, Chapters should use the template LGA Certified Chapters which can be found at: <http://www.nndoj.org/RFS.aspx>.
- b. For Non-LGA Certified Chapters: If a procurement is greater than \$50,000, the following apply:
  - i. For services, the non-LGA Certified Chapter template must be used. The template can also be found at <http://www.nndoj.org/RFS.aspx>.
  - ii. The Navajo Nation President signs the contract on behalf of the non-LGA Certified Chapter. As such, the contract and supporting documents must be submitted through the 164 Review Process. If your Chapter has any questions regarding this process, please contact your local ASC.

## C. Personnel

### 1. COVID-19 Leave.

- a. All CSC and AMS must follow the COVID-19 leave policy under the Navajo Nation's Personnel Policy.
- b. LGA Certified Chapters may adopt, by resolution, a COVID-19 leave policy for their employees upon review by DOJ.

### 2. Administrative Leave.

- a. Administrative leave issued by the Office of the President and Vice-President is applicable only to the CSC and AMS. If a non-LGA Certified Chapter wishes to extend administrative leave to other employees, the CSC, in consultation with the Chapter Officials, must issue a memorandum authorizing

administrative leave to their other employees.

- b. For LGA Certified Chapters, the Chapter should follow the procedures stated in their Personnel Policy.

4. Youth Employment.

- a. Under Section III(A) of the template Chapter Summer Youth Employment Policies and Procedures,<sup>3</sup> Chapters have discretion in identifying a work site which includes a chapter, tribal, county, state, federal, or private work sites.
- b. In light of the COVID-19 Pandemic, private work sites may include telework sites whereby the Chapter youth employee can work from home. This may include a research project assigned by the Chapter.

D. Property.

1. Under section 102(B) and section 103(D)(2) of the LGA, only governance certified Chapters can sell, lease, and acquire Chapter property. However, under Section Six (B)(1), non-LGA Certified Chapters are temporarily authorized to sign off on leases of Chapter property in order to accommodate medical health personnel.
2. There are no other temporary modifications to the 2010 Model Property Management System.

- E. Records Management. Currently, there are no temporary modifications to the 2010 Model Records Management System.

## V. SUMMARY AND CLOSING

There are still many laws, regulations, and policies that still apply to all 110 Chapters. Some of these are impractical in light of the COVID-19 Pandemic. Chapters must still comply with all Emergency Public Health Orders. Through CJA-01-22 and other prior Navajo Nation Council Resolutions, only a limited number of laws, regulations, and policies have been temporarily suspended or modified in order to allow Chapters to provide services to their community members. The effect of CJA-01-22 ends until the COVID-19 State of Emergency is undeclared. Therefore, the guidance provided herein may last for quite some time. In fact, it is likely that either DOJ or DCD may be issuing additional guidance in the future to address scenarios not covered in this memorandum. Hopefully, this memorandum is a good start in providing some clarity to CJA-01-22. Be safe everyone.

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<sup>3</sup> TCDC Resolution TCDCMY-43-01.



RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
24<sup>th</sup> NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACTION

RELATING TO AN EMERGENCY; AUTHORIZING CHAPTERS TO CONTINUE TO CONDUCT OFFICIAL BUSINESS THROUGH A QUORUM OF THREE (3) REGISTERED CHAPTER MEMBERS; AUTHORIZING CHAPTER BUSINESS TO ISSUES REGARDING THE NAVAJO NATION EMERGENCY DECLARATION, BUDGET AUTHORIZATIONS, AND ADDITIONAL TOPICS; DIRECTING THE CHAPTERS TO PROVIDE THE PUBLIC WITH TELEPHONIC AND/OR VIDEO-CONFERENCING CALL-IN NUMBERS ALLOWING THE NAVAJO PEOPLE TO PARTICIPATE IN THEIR CHAPTER MEETINGS; AND, RE-ENACTING RESOLUTION CAP-19-20 SECTIONS THREE, FOUR, FIVE, SEVEN, AND NINE AUTHORIZATIONS THAT ASSIST THE CHAPTERS TO PROVIDE SERVICES TO THEIR COMMUNITIES IN A SAFE MANNER

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 World Health Organization ("WHO") declared a Public Health Emergency of International Concern related to the outbreak of coronavirus ("COVID-19"), a highly contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak on January

31, 2020; and the WHO declared a global pandemic due to COVID-19 on March 11, 2020.

- B. The Navajo Nation Commission on Emergency Management, with the concurrence of Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. See Resolution No. CEM-20-03-11 incorporated herein by reference. The Navajo Nation Department of Health has subsequently issued numerous Public Health Emergency Orders. Public Health Orders 2020-001 through 2021-020 are incorporated herein by reference. These Public Health Emergency Orders are available at [www.ndoh.navajo-nsn.gov](http://www.ndoh.navajo-nsn.gov).
- C. The COVID-19 pandemic has caused large scale infections and loss of life throughout the world, the United States and the Navajo Nation. As of December 15, 2021, the Navajo Nation Health Command Operations Center confirmed 40,615 COVID-19 cases and 1,569 COVID-related deaths on the Navajo Nation.
- D. Due to the spread of COVID-19, the Navajo Nation Council approved CMA-09-20, attached as **Exhibit A**, AN ACTION RELATING TO AN EMERGENCY; TEMPORARILY AUTHORIZING REDUCED CHAPTER MEETING QUORUM REQUIREMENTS DURING THE COVID-19 EMERGENCY, which authorized Chapter meetings to be held with a quorum of three (3) registered Chapter members as opposed to the twenty-five (25) Chapter members required by 26 N.N.C. § 1003(B). This three-quorum authorization was initially effective for sixty (60) days.
- E. On April 13, 2020, the Navajo Nation Council passed Resolution CAP-19-20, attached as **Exhibit B**, 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. The Navajo Nation President vetoed Resolution CAP-19-20 on April 23, 2020. The Navajo Nation Council overrode the veto by Resolution CMY-36-20 on May 19, 2020.
- F. On July 26, 2020, the Navajo Nation Council enacted CJY-64-20 AN ACTION RELATING TO AN EMERGENCY; EXTENDING THE EXPIRATION OF NAVAJO NATION COUNCIL RESOLUTION NO. CAP-19-20. Resolution CJY-64-20, attached as **Exhibit C**, stated: "The Navajo Nation Council hereby extends the expiration of Resolution CAP-19-20



to expire when the public gathering limitation is lifted or changed to allow a minimum Chapter quorum of twenty-five (25) or otherwise determined by the Navajo Nation Council." The Navajo Nation President signed Resolution CJY-64-20 on August 9, 2020.

- G. Due to the downturn in COVID-19 infections and reduced hospitalizations, on June 28, 2021 Navajo Nation Council enacted Resolution No. CJN-36-21, attached as **Exhibit D**, titled "AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; REPEALING RESOLUTIONS RELATED TO OR RESPONDING TO EMERGENCY OR EXTRAORDINARY ENACTMENTS PERTAINING TO COVID-19 MITIGATION AND COVID-19 PANDEMIC OPERATIONAL AND PREPAREDNESS PROCEDURES; AUTHORIZING THE OPENING OF ALL NAVAJO NATION ENTERPRISES AND NAVAJO-OWNED BUSINESSES TO NAVAJO CITIZENS AND NON-NAVAJO TOURISTS AND VISITORS; AUTHORIZING IN-PERSON INSTRUCTION AT SCHOOLS OPERATING WITHIN THE NAVAJO NATION." Resolution No. CJN-36-21 stated that "[w]ithin ninety (90) days of enactment of this legislation, Chapter meeting quorum requirements shall return to a minimum of twenty-five persons unless otherwise authorized under RDCD-127-12." The Navajo Nation President signed the resolution on July 6, 2021. Ninety (90) days after July 6, 2021 was October 4, 2021.
- H. On October 5, 2021, the Navajo Nation Council enacted Resolution No. CS-50-21, attached as **Exhibit E**, titled "AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING CJN-36-21, SECTION SIX, TO EXTEND THE DEADLINE FOR CHAPTERS TO RETURN TO THE TWENTY-FIVE PERSON CHAPTER MEETING QUORUM REQUIREMENT," which amended CJN-36-21 by extending the deadline to return to the twenty-five (25) person Chapter meeting quorum requirement from ninety (90) days to "[w]ithin one hundred eighty (180) days[.]" The Navajo Nation President signed Resolution No. CS-50-21 on October 15, 2021. One hundred eighty (180) days from July 6, 2021 is January 2, 2022.
- I. The Centers for Disease Control and Prevention (CDC) has reported that "[o]n November 24, 2021, a new variant of SARS-CoV-2, B.1.1.529, was reported to the World Health Organization (WHO). This new variant was first detected in specimens collected on November 11, 2021 in Botswana and on November 14, 2021 in South Africa. On November 26, 2021, WHO named the B.1.1.529 Omicron and classified it as a Variant of Concern. On November 30, 2021, the United States designated Omicron as a Variant of Concern, and on December 1, 2021 the first confirmed U.S. case of Omicron was identified." <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>

- J. The Centers for Disease Control and Prevention also reports that "[t]he Omicron variant likely will spread more easily than the original SARS-CoV-2 virus and how easily Omicron spreads compared to Delta remains unknown. CDC expects that anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don't have symptoms." <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>
- K. The emergence of the new COVID-19 variant Omicron, which the CDC says "likely will spread more easily than the original SARS-CoV-2 virus," signals the need for the Navajo Nation to continue to exercise caution with regard to the number of people gathered for Chapter meetings. Therefore, the Navajo Nation should exercise caution and further extend the deadline for Chapters to return to the twenty-five (25) person Chapter meeting quorum requirement.
- L. However, the need to protect the Navajo people from contracting COVID-19 must be read with the Navajo citizens' rights and responsibilities to be part of their Chapter government. In that regard, it is important that the Chapters provide telephone conference lines or video-conferencing numbers to their citizenry. It is understood that some Chapters have phone line and internet issues; however, most Chapters have the phone lines and internet to provide their citizens call-in telephone numbers or video-conferencing numbers.
- M. Resolution CMA-09-20, the first Navajo Nation Council Resolution which authorized Chapter meetings to be held with a quorum of three (3) registered Chapter members as opposed to the twenty-five (25) Chapter members as stated in 26 N.N.C. § 1003(B) did not authorize the lower-numbered quorum to consider every potential Chapter issue. Resolution CMA-09-20 stated: "The official business authorized to be addressed by a quorum of 3 registered chapter members is limited to chapter business directed related to COVID-19, the Navajo Nation Emergency Declaration, and budget authorizations and approvals." CMA-09-20 SECTION THREE (B).
- N. Resolution CAP-19-20 further authorized the three (3) member quorums to include additional topics with the provision that "[a]dditional 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." CAP-19-20 SECTION THREE (D). Again, this is to authorize Chapters to act on matters affecting Chapter residents during the COVID-19 pandemic; however, care must be



taken to approve additional topics to be acted upon by the three (3) member quorums given that the full twenty-five (25) member quorums are suspended only because of the COVID-19 pandemic. The adaptation of using teleconference lines and video-conferencing as a supplement to in-person Chapter meetings has helped to ensure community participation. Furthermore, these supplements help promote transparency at the local level.

- O. Resolution CAP-19-20 contained additional authorizations that helped Chapters provide services to their communities in a safe manner. Resolution CAP-19-20 Sections Three, Four, Five, Seven and Nine are necessary during the continuing COVID-19 pandemic. Therefore, Resolution CAP-19-20 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; Section Four, TEMPORARILY ENABLE THE DIVISION OF COMMUNITY DEVELOPMENT AND NAVAJO DEPARTMENT OF JUSTICE TO GUIDE ALL 110 CHAPTERES BY USING THE 2010 MODEL FIVE MANAGEMENT SYSTEM (FMS) AND TO DEVELOP TEMPORARY MODIFICATIONS TO THE MODEL FMA TO HELP CHAPTERS 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; Section Seven, BUDGET POLICIES FOR THE CHAPTER EMERGENCY FUND; and Section Nine, RELIEF EFFORTS COMING FROM DONATIONS should continue during the extension of the three-member Chapter quorum.
- P. The Navajo Nation Council finds that authorizing in-person Chapter meetings with a lesser quorum requirement is a pressing public need meeting the emergency requirements of 2 N.N.C. § 164(A)(16) and teleconferences and/or video-conferencing helps promote community participation and transparency.
- Q. The Navajo Nation Council determines that it is in the best interest for the overall safety of the Navajo People to continue to conduct official business through a quorum of three (3) registered Chapter members and that Chapters use of teleconferencing and/or video-conferencing to maintain and supplement the three-member quorum is in the interest of community participation and transparency.

**SECTION THREE. APPROVAL QUORUM OF THREE (3) FOR CHAPTER MEETINGS, LIMITED TOPICS TO BE CONSIDERED BY THE CHAPTERS OPERATING BY THE SMALLER QUORUM, CHAPTER SHALL PROVIDE TELEPHONIC AND/OR VIDEO-CONFERENCING NUMBER**

- A. Notwithstanding 26 N.N.C. § 1002(C), the Navajo Nation Council hereby authorizes Chapters to continue to conduct official business through a quorum of three (3) registered Chapter members which may be comprised of Chapter officials only.
- B. The official business authorized to be addressed by a quorum of three (3) registered Chapter members is limited to Chapter business directly related to COVID-19 matters, the Navajo Nation Emergency Declaration, budget authorizations and approvals, and additional topics. Additional topics shall be presented to the Administrative Service Coordinator (ASC) for the ASC's advice and guidance on the additional topics.
- C. Chapters conducting meetings under this authorization to conduct official business through a quorum of three (3) registered Chapter members shall provide the Chapter community with a telephonic and/or video-conferencing number so that the public may participate in their Chapter meetings. The Division Director of the Division of Community Development in consultation with the Navajo Department of Justice is authorized to exempt Chapters from this requirement if it is determined that the Chapter does not have access to telephonic or video-conferencing services.

**SECTION FOUR. RE-ENACTING NAVAJO NATION COUNCIL RESOLUTION CAP-19-20 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 26 N.N.C. § 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 to 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 Chapter meetings to include budget matters, emergency matters, and additional topics. Additional topics shall be presented to the ASC for the ASC's advice and guidance on the additional topics.
- 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 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 twenty-five (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. TCDCAP-36-01. Notwithstanding the three-quorum law, the AFOGs may define their quorum requirements in accordance with their local ordinances.

- 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). The August 12, 2021 Public Health Emergency Order No. 2021-019 states that gathering limits of twenty-five (25) or fewer persons remain in effect for in-person meetings and trainings, consistent with Navajo Health Command Operations Center guidelines.

**SECTION FIVE. RE-ENACTING NAVAJO NATION COUNCIL RESOLUTION CAP-19-20 SECTION FOUR, TEMPORARILY ENABLING 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 FMS 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 the emergency.

**SECTION SIX. RE-ENACTING NAVAJO NATION COUNCIL RESOLUTION CAP-19-20 SECTION FIVE, TEMPORARILY SUSPENDING 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 SEVEN. RE-ENACTING NAVAJO NATION COUNCIL RESOLUTION CAP-19-20 SECTION SEVEN, BUDGET POLICIES FOR THE CHAPTER EMERGENCY FUND**

- A. The Navajo Nation Council acknowledges that Navajo Nation Council Resolution No. CMA-11-20, signed by President Nez, replenished Chapter emergency accounts.
- 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 their Chapter emergency accounts.
- 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. RE-ENACTING NAVAJO NATION COUNCIL RESOLUTION CAP-19-20 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 NINE. EXPIRATION DATE**

These provisions of this resolution shall expire when the State of Emergency declared by the Commission on Emergency Management in Resolution No. CEM-20-03-11 is lifted.

**SECTION TEN. EFFECTIVE DATE**

This Resolution is effective pursuant to 2 N.N.C. § 221(B).

**SECTION ELEVEN. SAVING CLAUSE**

Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid 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 22 in Favor, and 01 Opposed, on this 7<sup>th</sup> day of January 2022.

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

01-10-2022

DATE

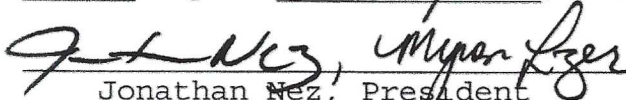
Motion: Honorable Edmund Yazzie  
Second: Honorable Pernell Halona

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 18<sup>th</sup> day of January, 2022.

  
Jonathan Nez, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this \_\_\_\_\_ day of \_\_\_\_\_, 2022 for the reason(s) expressed in the attached letter to the Speaker.

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Jonathan Nez, President  
Navajo Nation