



The Navajo Nation Office of the President and Vice President

CONTACTS:

Jared Touchin, Communications Director
(928) 274-4275

Crystalyne Curley, Sr. Public Information Officer
(928) 274-2758

nnopvp.communications@gmail.com

FOR IMMEDIATE RELEASE

April 19, 2020

Nez-Lizer veto resolution that sought to cancel the Navajo Nation Council's spring session citing the need for Navajo people to hear from all leaders

WINDOW ROCK, Ariz. — On Sunday, Navajo Nation President Jonathan Nez and Vice President Myron Lizer vetoed Resolution CAP-27-20, which sought to cancel the Navajo Nation Council's spring session less than three days before the scheduled start. In addition, the Council deemed the legislation to be an "emergency," therefore the bill bypassed all Standing Committees, which means there was no debate and no opportunity for input from the Navajo people.

Title II of the Navajo Nation Code requires the Navajo Nation Council to hold four regular sessions each year in the months of January, April, July, and October. The spring session is scheduled to begin on Monday at 10:00 a.m. (MDT).

Although the resolution, passed by the Council, cites concerns over the possible spread of COVID-19 among Navajo Nation employees and officials, President Nez and Vice President Lizer noted that the Council and its Standing Committees have continued to hold regular and special meetings throughout the COVID-19 pandemic, despite several Public Health Emergency Orders that have been issued by health care experts to mitigate the spread of the virus. They added that with proper Personal Protective Equipment for staff and the use of tele-conferencing, the session can proceed as scheduled to allow the Navajo people to hear directly from all of the Nation's leaders, federal agencies, and others who are required to provide reports during the session.

"The Navajo Nation Council, as the legislative body, is required to meet only four times a year by statute. It is in these sessions that the people are afforded the opportunity to hear from all of their leaders regarding the actions of the government that affect their daily lives. It is a time for all persons to hear reports from the President and Vice President, from the Speaker of the Council, from the Chief Justice, as heads of the three-branch government," stated President Nez and Vice President Lizer in their veto message.

The two leaders added, "It is also a time for all persons to hear select reports that have an impact on the lives of Navajo people; to hear from the Bureau of Indian Affairs, Indian Health Service, the Navajo Nation Controller, and the Navajo Nation Department of Justice, among others." The four statutory obligated Council sessions provide an opportunity for all people across the Navajo Nation and beyond to learn the decisions of their leaders and to take into account those

decisions. Reports are a necessary aspect of transparency in government and cannot be muffled out of angst or fear.

In the veto letter, they referenced the case of the *Office of the President and Vice President, et al. v Navajo Nation Council, et al.*, SC-CV-02-10, in which the courts of the Navajo Nation stated the following in regards to using the emergency clause for legislation, “We have long required that our legislators strictly comply with Navajo Nation statutory enactment procedures. Procedural requirements for the enactment of Navajo Nation legislation must be strictly observed.

Apparently, the Council routinely uses the emergency legislation exception for all manner of legislation that ought not to qualify as emergency legislation, which enables a by passing of the statutory committee(s) review and approval process. We state unconditionally that such misuse of the emergency legislation procedural exception is impermissible.”

“There is no indication that the Council made any effort to establish a public record showing the existence of a genuine emergency threat to our Navajo Nation sovereignty. We cannot condone the non-compliance with Navajo law any longer or circumventing a statutory requirement that will leave the Navajo people with more questions on the important issues now facing the Navajo Nation. With this said, the use of the emergency clause with respect to any legislation deemed an emergency, without just cause, can be challenged by the Navajo people at any time,” they wrote.

President Nez and Vice President Lizer concluded that the right of the people to be informed and the right of the people to participate in their government is so important that leaders must find every way possible to keep the people informed, not cower behind ill-conceived legislation as to cause a blackout or void of public information.

“Our administration has been forthcoming with public information through the use of social media, tele-conferences, roadside billboards, radio forums, news media outlets, and much more. We strongly urge the 24th Navajo Nation Council to proceed with the mandated spring Council session, to allow a forum for our Navajo people to hear from all of their leaders, especially with regards to the ongoing COVID-19 pandemic. The Navajo people have every right to hear from all of their leaders,” added President Nez.

On Monday, April 20th at 12:15 p.m. (MDT), President Nez and Vice President Lizer will present the State of the Navajo Nation Address live on the Nez-Lizer Facebook page. The Office of the President and Vice President is also working with KTNN 660AM and other local radio stations to air the report live as well.

###

For the latest news from the Office of the President and Vice President, please visit <http://www.opvp.navajo-nsn.gov/> or find us on Facebook, Twitter, and Instagram.

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



April 19, 2020

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

RE: CAP-27-20, *An Action Relating to an Emergency for the Navajo Nation; Temporarily suspending 2 N.N.C. § 162(A); Canceling the 2020 Navajo Nation Council Spring Session*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am exercising the Veto authority for CAP-27-20.

As Diné bi beenahazáanii tells us “All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people’s trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of Diné bi beenahazáanii.” 1 N.N.C. § 203(B). As President and Vice President, elected by the people of the Navajo Nation, we have a duty to protect the trust of the Navajo people in their government; just as Navajo Nation Council Delegates have a duty to ensure the representation of their constituents of their respective Chapters, who individually elected them to serve on the Council. During this health crisis, it is incumbent upon us to step up and lead, to inform and make the proper decisions for our people, and to show strength as we combat an invisible enemy, COVID-19.

The Navajo Nation Council, as the legislative body, is required to meet only four times a year by statute. It is in these sessions that the people are afforded the opportunity to hear from all of their leaders regarding the actions of the government that affect their daily lives. It is a time for all persons to hear reports from the President and Vice President, from the Speaker of the Council, from the Chief Justice, as heads of the three-branch government. It is also a time for all persons to hear select reports that have an impact on the lives of Navajo people; to hear from the Bureau of Indian Affairs, Indian Health Service, the Navajo Nation Controller, and the Navajo Nation Department of Justice, among others. The four statutory obligated Council sessions provide an opportunity for all people across the Navajo Nation and beyond to learn the decisions of their leaders and to take into account those decisions. Reports are an extremely important aspect of transparency in government and cannot be muffled out of angst or fear.

We find it interesting that the Navajo Nation Council held several Special Sessions and a Naabiki’yáti’ Committee meetings during the ongoing pandemic in recent weeks, but now at a very late date is reluctant to hold a statutorily mandated session. To the contrary, we should not shirk our duties as leaders during this time but, rather, show true leadership for our people and

our communities. The people look to the wisdom of those they elected as leaders and they need to hear from leadership.

CMA-27-20 was passed by the Council on Friday, April 17, three days before the scheduled start of the Spring Session. This emergency resolution was also passed using the consent agenda procedure that allowed for no debate, no opportunity for input from the Navajo people, or development of any legislative record of why this legislation is an emergency under the requirements of Title Two. As our Navajo Nation court has said, “We have long required that our legislators strictly comply with Navajo Nation statutory enactment procedures. Procedural requirements for the enactment of Navajo Nation legislation must be strictly observed...Apparently, the Council routinely uses the emergency legislation exception for all manner of legislation that ought not to qualify as emergency legislation, which enables a by passing of the statutory committee(s) review and approval process. We state unconditionally that such misuse of the emergency legislation procedural exception is impermissible.” *See Office of the President and Vice President, et al. v Navajo Nation Council, et al.*, SC-CV-02-10. The court also emphasized the need for a legislative record--something that is missing in CAP-27-20--with regard to determining what is an emergency legislation according to the requirements listed in 2 N.N.C. § 164 and said, “There is no indication that the Council made any effort to establish a public record showing the existence of a genuine emergency threat to our Navajo Nation sovereignty.” *Id.* With this background, we cannot condone the non-compliance with Navajo law any longer or circumventing a statutory requirement that will leave the Navajo people with more questions on the important issues now facing the Navajo Nation. With this said, the use of the emergency clause with respect to any legislation deemed an “emergency,” without just cause, can be challenged by the Navajo people at any time.

Regardless of the semantics played out in CAP-27-20 by temporarily suspending the application of Title Two requirement for a council session, this resolution remains a waiver of Title Two. Imposing the justification for a waiver on the President will not correct the legally mandated requirement for a council session. By not having this statutorily-mandated spring session, the Council is causing a “blackout” or void in information to be given to the Navajo people during a time of pandemic. The Office of the President and Vice President will not be complicit in circumventing the law by agreeing to this temporary suspension when, in fact, it is a true waiver of the law.

There are audio and virtual media remedies to holding a Council session as shown in the past few weeks as the Council has been using for its special session. The Office of the President and Vice President has made use of technology during the weeks of this emergency and we see no reason for the Council not taking similar measures. The right of the people to be informed and the right of the people to participate in their government is so important that leaders must find every way possible to keep the people informed, not cower behind ill-conceived legislation as to cause a blackout or void. Navajo teachings implore coming into the light rather than going into darkness. “The recitals in Resolution CD-68-89 operate as a promise. Through the Title II Amendments, the Council acted to stabilize Navajo Nation government in face of corruption and chartered a course for further reform and enhancements. The Council recognized that the power over the structure of the Navajo government ‘is ultimately in the hands of the People and it will look to the People to guide it’.” *Id.* We want to offer leadership during these troubling times and

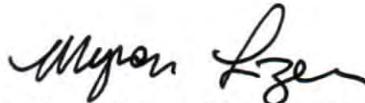
we respectfully request the Council to support us and not muzzle or compete with our office.

For these reasons I exercise the authority of the Office of the President and Vice President and veto CAP-27-20.

Sincerely,



Jonathan Nez, *President*
THE NAVAJO NATION



Myron Lizer, *Vice President*
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; TEMPORARILY
SUSPENDING 2 N.N.C. § 162 (A); CANCELING THE 2020 NAVAJO NATION
COUNCIL SPRING SESSION

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. The Navajo Nation Council shall have the authority to promulgate rules, regulations and procedures for the conduct of its meetings and that of its committees. 2 N.N.C. § 101 (E).
- C. Pursuant to 2 N.N.C. §164 (A)(16): "Matters constituting an emergency shall be limited to the cessation of law enforcement services, disaster relief services, fire protection services or other direct services required as an entitlement under the 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." 2 N.N.C. §164 (A) (16).
- D. Ensuring the health and safety of all residents and employees within the Navajo Nation is an inherent attribute of sovereignty.
- E. Decisions and determinations concerning the actions necessary to operate the Navajo Nation government while ensuring the health and safety of all employees and officials is an inherent attribute of the Navajo Nation's sovereignty.

SECTION TWO. FINDINGS

- A. COVID-19 is a dangerous and extremely contagious respiratory virus. The COVID-19 virus is pandemic and is spreading at an alarming rate within the Navajo Nation; as of April 15, 2020, the Navajo Nation has reported 921 cases of COVID-19 and 38 related deaths.

- B. The World Health Organization declared a Public Health Emergency of International Concern on January 30, 2020; the United States Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak on January 31, 2020; and the World Health Organization officially declared a pandemic due to COVID-19 on March 11, 2020.
- C. On March 11, 2020, the Navajo Nation Commission on Emergency Management, with the concurrence of the President and Vice President of the Navajo Nation, declared a Public Health State of Emergency due to the outbreak of COVID-19 in areas surrounding the Navajo Nation. Acknowledging the establishment of the Health Command Center by the Navajo Nation Department of Health, the Commission stated, "Locally, it is acknowledged and understood that the threat of COVID-19 needs to be mitigated to reduce risk of exposure to the Navajo People and the resultant consequential public health impacts." CEM-20-03-11, attached as **Exhibit A**.
- D. On March 20, 2020, Public Health Emergency Order No. 2020-003 was issued limiting mass gatherings and ordering all individuals living on the Navajo Nation to stay home (Shelter in Place). See **Exhibit B**. The same order prohibits visitors to the Navajo Nation, and requires the closure of all businesses on the Navajo Nation except "essential businesses."
- E. On March 29, 2020, Public Health Emergency Order No. 2020-004 was issued implementing a curfew from 8:00 p.m. to 5:00 a.m. on all Navajo Nation residents. The Shelter in Place order of March 20, 2020 was also indefinitely extended. **Exhibit C**.
- F. On March 31, 2020, the President issued Executive Order No. 002-20 extending the Declaration of a State of Emergency due to COVID-19 on the Navajo Nation, extending the closure of Navajo Nation government offices and related entities. **Exhibit D**.
- G. On March 24, 2020, the Chief Justice of the Navajo Nation issued Administrative Order 14-2020 ordering, among other things, that the courts of the Navajo Nation shall operate with minimum personnel on-site to provide essential court operations and permit judicial employees to work from home where practicable. **Exhibit E**.
- H. On March 18, 2019, the Speaker of the Navajo Nation Council, closed all Legislative Branch programs until further notice to mitigate the spread of COVID-19. **Exhibit F**.

- I. Title Two of the Navajo Nation Code states that "[s]tates that there shall be four regular sessions of the Navajo Nation Council each year. Such sessions shall commence at 10 a.m. on the fourth Monday of January, and the third Monday of April, July and October of each year." 2 N.N.C. § 162 (A).
- J. The 2020 Navajo Nation Council Spring Session is scheduled for April 20 - 24, 2020.
- K. It takes more than thirty (30) Legislative Branch employees, not including Council Delegates and Legislative District Assistants, to produce a Navajo Nation Council regular session; although the numbers vary, participation of Executive and Judicial Branch employees as agents for legislations and advisors to the Council is also necessary to produce a Navajo Nation Council session.
- L. Given the Declarations of Emergency, Public Health Orders, government office closures, and stay at home orders, the Navajo Nation Council finds it necessary to temporarily suspend 2 N.N.C. § 162 (A) and cancel the Navajo Nation Council Spring Session to mitigate the spread of COVID-19 to Navajo Nation employees and officials.
- M. The Navajo Tribal Council Resolution, CD-68-89, attached as **Exhibit G**, which reorganized the Navajo Nation Government into three branches, "authorizes and directs that any amendment to the [CD-68-89] adopted Title Two amendments shall require two-thirds (2/3) vote of the full membership of the Navajo Tribal Council . . . [and] these amendments shall be presented at the regular session of the Navajo Tribal Council." CD-68-89, Resolved Clause 6.
- N. The CD-68-89 amendments to 2 N.N.C. § 162 (A) read as follows: "There shall be four regular sessions of the Navajo Nation Council each year. Such sessions shall commence at 10:00 on the third Monday of January, April, July and October of each year." **Exhibit G**.
- O. Given that the CD-68-89 amendments do not change the requirement that there be a Navajo Nation Council regular session in April, the temporary suspension of 2 N.N.C. § 162 (A) to cancel the 2020 Spring Session is not limited by CD-68-89 Clause 6's restriction that CD-68-89 Title Two amendments be presented at the regular session of the Navajo Tribal Council, as long as the President is allowed to exercise his authorities pursuant to 2 N.N.C. § 221 (B) and § 1005 (C) (10) - (12). See *Judy v. White*, 9 Nav. R. 325, 345 (With the

exception of resolutions addressing matters internal to the Navajo Nation Council and its Committees, Council resolutions affecting CD-68-89 Title Two provisions must follow a process by which they are reviewed and signed by representatives of at least two of the branches.)

SECTION THREE. SUSPENDING 2 N.N.C. § 162 (A)

The Navajo Nation Council hereby suspends 2 N.N.C. § 162 (A) as necessary to cancel the 2020 Navajo Nation Council Regular Session (aka Spring Session) slated to start on April 20, 2020.

SECTION FOUR. APPROVING THE CANCELATION OF THE 2020 NAVAJO COUNCIL SPRING SESSION

The Navajo Nation Council hereby cancels the 2020 Navajo Nation Council Regular Session (aka Spring Session) slated to start on April 20, 2020 and end on April 24, 2020.

SECTION FIVE. EFFECTIVE DATE

This Action shall become effective in accord with 2 N.N.C. § 221(B).

SECTION SIX. SAVINGS CLAUSE

Should any provision of this Action 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 Action shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 21 in Favor, and 00 Opposed, on this 17th day of April 2020.


Honorable Seth Damon, Speaker

24th Navajo Nation Council

April 17, 2020
DATE

Motion: Honorable Paul Begay
Second: Honorable Pernell Halona

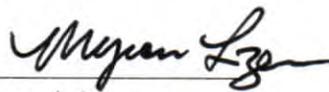
Speaker Seth Damon not voting

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 _____ day of _____, 2020.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 19th day of April, 2020 for the reason(s) expressed in the attached letter to the Speaker.

 
Jonathan Nez, President
Navajo Nation